

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 61 REAL ESTATE BROKERS
PART 1 GENERAL PROVISIONS

16.61.1.1 ISSUING AGENCY: New Mexico Real Estate Commission.
[16.61.1.1 NMAC - Rp, 16.61.1.1 NMAC, 1/1/2012]

16.61.1.2 SCOPE: The provisions in Part 1 apply to all parts of Title 16, Chapter 61 and provide relevant information to brokers, applicants, other agencies, professional associations, and any member of the general public affected by or interested in Chapter 61 of Title 16.
[16.61.1.2 NMAC - Rp, 16.61.1.2 NMAC, 1/1/2012]

16.61.1.3 STATUTORY AUTHORITY: Part 1 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, Section 61-29-4 NMSA 1978.
[16.61.1.3 NMAC - Rp, 16.61.1.3 NMAC, 1/1/2012]

16.61.1.4 DURATION: Permanent.
[16.61.1.4 NMAC - Rp, 16.61.1.4 NMAC, 1/1/2012]

16.61.1.5 EFFECTIVE DATE: January 1, 2012, unless a later date is cited at the end of a section.
[16.61.1.5 NMAC - Rp, 16.61.1.5 NMAC, 1/1/2012]

16.61.1.6 OBJECTIVE: The objective of Part 1 of Chapter 61 is to set forth the provision, which apply to all of Chapter 61, and to all persons and entities affected by Chapter 61 of Title 16, and to define the terms and terminology related to real estate qualifying brokers and associate brokers used throughout Chapter 61 of Title 16.
[16.61.1.6 NMAC - Rp, 16.61.1.6 NMAC, 1/1/2012]

16.61.1.7 DEFINITIONS:

A. **“Acceptable financial institution”:** is a federally insured bank, savings and loan or title company authorized to do business in the state of New Mexico.

B. **“Agency”:** the fiduciary relationship created solely by the express written agency agreement between a person and a brokerage, authorizing the brokerage to act as agent for the person according to the scope of authority granted in that express written agreement for real estate services subject to the jurisdiction of the commission.

C. **“Agent”:** the brokerage authorized solely, by means of an express written agreement, to act as a fiduciary for a person and to provide real estate services that are subject to the jurisdiction of the commission; in the case of an associate broker, “agent” means the person who has been authorized to act by that associate broker's qualifying broker. In the case of residential property management, the property manager is an agent of the owner(s) of the property for the purpose of performing the obligations of the owner(s) under the property management agreement. In the case of commercial property management, the property manager is an agent of the owner(s) of the property for the purpose of performing the obligations of the owner(s) pursuant to a property management agreement if (1) the property management agreement specifically creates an agency relationship; (2) the property manager enters into contracts on behalf of the owner; or, (3) the property manager's actions would lead a reasonable third party to believe that the property manager is an agent of the owner.

D. **“Approved education course”:** a commission approved course offered by a commission approved sponsor in real estate law and practice; real estate financing including mortgages and other financing techniques; material specific to the regulatory, technical and ethical practice of real estate; and all state and federal laws including but not limited to fair housing, the Americans with Disabilities Act (ADA), and lead based paint disclosure.

E. **“Approved training course”:** a commission approved course offering in personal and property protection for the broker and clients; offerings in using the computer, the internet, business calculators, and other technologies to enhance the broker's service to the public; offerings concerning professional development, customer relations skills, sales promotion including salesmanship, negotiation, marketing techniques, servicing the client, or similar courses.

F. **D. “Associate broker”:** a person holding a New Mexico associate broker's license who is affiliated with a New Mexico qualifying broker.

G. E. “**Broker**”: any person holding a current New Mexico associate broker's or qualifying broker's real estate license.

H. F. “**Brokerage**”: a person, corporation, partnership or association qualified by a New Mexico licensed qualifying broker to conduct real estate brokerage activity in New Mexico.

L. G. “**Brokerage relationship**”: the relationship between a customer or client and a brokerage for the provision of services in connection with a real estate transaction.

J. H. “**Brokerage trust account**”: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money belonging to others received during a real estate sales transaction.

K. I. “**Broker duties**”: certain duties owed by brokers to prospective buyers, sellers, owners and tenants, and broker obligation to other brokers as set forth in Part 16.61.19.8 NMAC.

L. J. “**Broker in charge**”: a New Mexico licensed real estate broker qualified to be a qualifying broker who has been designated in writing by the qualifying broker to assume responsibility for the brokerage during a period of time when supervision by the qualifying broker is not possible.

M. K. “**Client**”: a person who has entered into an express written agreement with a brokerage for real estate services subject to the jurisdiction of the commission.

N. L. “**Commercial real estate**”: real estate that is zoned for business or commercial use by a city or county; or designated by a city or county to allow five or more multi-family units; provided that all units are located on a single parcel of land with a single legal description.

O. M. “**Core course**”: the four-hour commission-approved continuing education course that all brokers are required to complete annually as a condition of license renewal.

P. N. “**Core elective course**”: a four-hour commission-approved advanced continuing education course in residential transactions, commercial transactions, property management transactions, or vacant land/ranch transactions required once during each three-year cycle. Core elective courses advance the broker's practice of real estate by one or more of the following: improve broker transactional expertise focusing on, but not limited to, contractual and disclosure forms used in the practice of real estate, real estate title issues, contracts, and real estate transactional negotiating skills; improves broker business practices and professionalism focusing on, but not limited to, broker responsibilities and duties; improves broker awareness of issues that impact the public and real estate transactions focusing on, but not limited to, land development, jurisdictional taxation issues; or increases the broker knowledge of third party services within a transaction. The number of core elective hours required for both associate brokers and qualifying brokers is further defined at 16.61.13.8 NMAC.

Q. O. “**Credit hours(s)**”: credits toward education requirements as assigned by the real estate commission for each commission-approved course.

R. P. “**Custodial trust account**”: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of an owner. The account shall be established in the owner's name with under the qualifying broker's control as trustee. This account may be interest bearing.

S. Q. “**Customer**”: a person who uses real estate services without entering into an express written agreement with a brokerage subject to the jurisdiction of the commission.

T. R. “**Designated agent**”: a broker who is designated in writing by their qualifying broker to represent a client of the brokerage as their exclusive agent in a real estate transaction.

U. S. “**Designated agency**”: a policy chosen by the qualifying broker of a brokerage that discloses to a client of the brokerage that the broker representing them as an agent by means of an express written agency agreement is their only representative in the brokerage. The designated agency disclosure is made at the time that the client and the brokerage enter into an express written agency agreement, or at such time that the qualifying broker of a brokerage determines the need to designate one broker of the brokerage as agent of the buyer and another as agent of the seller in the same transaction.

V. T. “**Distance education**”: distance learning is education and training that takes place outside of the traditional classroom setting and in which other instructional media are used because the instructor, teaching materials, and student are separated by either distance or time.

W. U. “**Dual agency**”: an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as a facilitator in a real estate transaction rather than as an exclusive agent for either party to the transaction.

X. V. “**Dual agent**”: the brokerage in a dual agency relationship working as a facilitator in a single transaction for both a buyer client and a seller client who have modified existing exclusive agency agreements with the brokerage.

Y. W. “Employee”: for the purposes of Paragraph (1) of Subsection C of Section 61-29-2 NMSA 1978 of the real estate license law, a person employed by an owner of real property, or a person employed by the brokerage acting on behalf of the owner of real property. In determining whether a person is an employee, as opposed to an independent contractor, the commission shall consider the following:

- (1) does the employer withhold income tax from the person’s wages, salary, or commission;
- (2) does the employer pay a portion of the person’s FICA tax;
- (3) is the person covered by workers’ compensation insurance;
- (4) does the employer make unemployment insurance contributions on behalf of the person.

Z. X. “Errors and omissions insurance”: a type of professional liability insurance that provides insurance coverage to holders of active New Mexico real estate brokers licenses for errors and omissions made during the course of real estate transactions, subject to the coverage’s, limitations, and exclusions of the specific insurance policy or policies in place.

AA. Y. “Exclusive agency”: an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interests of the person in a real estate transaction. Such agreements include buyer agency, seller agency, designated agency, subagency, and residential property management, and may include commercial property management.

BB. Z. “Expired license”: an associate broker’s or qualifying broker’s license that has not been renewed as of the last day of the month following the broker’s birth month at the end of the broker’s three-year licensing cycle.

CC. AA. “Express written agreement”: any written agreement signed by all parties pertaining to a real estate transaction or the provision of real estate services.

DD. BB. “Facilitator”: the role of a brokerage in either a dual agency relationship or a transaction brokerage relationship in which the exclusive relationships between a seller or landlord client or buyer or tenant client are modified so that the brokerage impartially facilitates the transaction.

EE. CC. “Foreign broker”: a real estate broker who does not hold a real estate license issued by the New Mexico real estate commission, but who holds a current and valid real estate broker’s license issued by another state in the United States, a province of Canada, or any other sovereign nation.

FF. DD. “Honesty and reasonable care and ethical and professional conduct”: conduct that a reasonable person would understand to meet standards of professionalism and ethical conduct within a profession, including but not limited to good faith, competence, trustworthiness, diligence, and lawful behavior.

GG. EE. “Inactive broker”: a New Mexico licensed real estate broker not currently affiliated with a New Mexico real estate brokerage and therefore ineligible to participate in any brokerage activity or collect fees or commissions in connection with such activity except as provided in Subsection C of 16.61.9.8 NMAC.

HH. FF. “In house transaction”: a transaction that in which both sides of the transaction occurs under the supervision of one qualifying broker in the same brokerage.

II. GG. “Land title trust account”: a pooled interest-bearing account subject to the land title trust fund act.

JJ. HH. “Military service member”: a person, or the spouse of a person, or the dependent children of a person, who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard. For purposes of this definition, any dependent child must be a dependent for “federal income tax purposes.”

II. Non-Core Elective Course: a commission approved elective course not considered as intensive in focus as a core elective course in a broad array of topics directly and indirectly related to the practice of real estate or the skills necessary to practice real estate including: real estate law and practice; real estate financing, mortgages and other financing techniques; material specific to the regulatory, technical and ethical practice of real estate; and all state and federal laws including but not limited to fair housing, the Americans with Disabilities Act (ADA), and lead-based paint disclosure. This broad category of courses also includes courses associated with various national and state designations and certifications not already categorized as core electives; courses in personal and property protection for the broker and clients; broker skills-related offerings in using the computer, the internet, business calculators, and other technologies to enhance the broker’s service to the public; other skills offerings related to broker professional development, broker customer relations skills, broker sales promotion including salesmanship, negotiation, marketing techniques, servicing the client, or similar courses.

KK. JJ. “Owner or property owner”: a person who is recognized and held responsible by law as the owner of real property, including real property held by any legally recognized entity in which the owner has an interest of ten percent or more.

LL. KK. “**Party to the transaction**”: a client or customer or any other person who utilizes real estate related services subject to the jurisdiction of the commission, not including a person who acquires an interest as security for an obligation.

MM. LL. “**Person**”: any natural person, corporation, business trust, estate, trust, partnership, association, joint venture, governmental entity or other legal entity.

NN. MM. “**Post-licensing course**”: the commission-approved new broker business practices course required within the first year of licensure of brokers first licensed in New Mexico as associate brokers on or after January 1, 2009.

OO. NN. “**Principal**”: any person who authorizes or employs another to do certain acts on behalf of that person.

PP. OO. “**Property ledger**”: a record of deposits and disbursements within a trust account or custodial account that are associated with the same property or owner.

QQ. PP. “**Property management**”: real estate services as specified by a management agreement which include, but are not limited to, the marketing, showing, renting and leasing of real property; the collection and disbursement of funds on behalf of owners and/or owner associations; the supervision of employees and vendors; the coordination of maintenance and repairs; the management of tenant relations; or the preparation of leases or rental agreements, financial reports disclosure certificates, resale certificates, and other documents, or the undertaking of any of the foregoing activities on behalf of a homeowners' or unit owners' association. In the course of listing and marketing properties for sale, inspections of the property, repairs and maintenance incident to the sale and authorized by the owner shall not be considered property management. Advertising and taking reservations for vacation rental properties shall not be considered property management.

RR. QQ. “**Property management trust account**”: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money belonging to others received during the management of real property for others.

SS. RR. “**Property manager**”: a broker who, for a fee, salary, commission or other valuable consideration, is engaged in managing property for others. The residential property manager is an agent of the owner(s) of the property for the purpose of performing the obligations of the owner(s) under the Uniform Owner-Resident Relations Act and/or under the rental or lease agreement. A commercial property manager may be an agent of the owner(s) as determined by the contract with the owner(s) and the actions of the property manager.

TT. SS. “**Qualifying broker**”: a broker who has qualified a proprietorship, corporation, partnership or association to do business as a real estate brokerage in the state of New Mexico, and who discharges the responsibilities of a qualifying broker as set forth in 16.61.16.9 NMAC.

UU. TT. “**Recent veteran**”: a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applied for a real estate broker's license.

VV. UU. “**Reconciliation**”: the process by which the property ledgers within a trust account or custodial account are balanced with the trust account or custodial account and the trust account is balanced with the bank statement.

WW. VV. “**Referral**”: the communication by one broker or brokerage to another broker or brokerage of the identity of a potential buyer/tenant or seller/lessor of real property available for sale, lease, rent or exchange.

XX. WW. “**Responsible person**”: the qualifying broker or associate broker for whom an unlicensed assistant works. If an unlicensed assistant works for more than one broker, each broker for whom the unlicensed assistant works is a responsible person. Each responsible person will be subject to the provisions of Paragraph (7) of Subsection A of Section 61-29-12 NMSA 1978.

XX. “Residential” real estate which is zoned for private use as a living facility by a city or county; or designated by a city or county to allow four or less multi-family units on a single parcel of land with a single legal description.

YY. “Scope of authority”: the range of authority granted by the principal to act on behalf of that principal.

ZZ. “Special trust account”: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of a named party to a transaction. This account may be interest bearing.

AAA. “Sponsor”: an organization or entity approved by the real estate commission to offer courses approved by the real estate commission.

BBB. “Subagent”: an agent of the agent, authorized to act for the agent in performing functions undertaken by the agent for his principal.

CCC. “Transaction coordinator”: a person engaged by a broker who assists the broker in the processing of the real estate transaction, and whose services may include, but not be limited to, the following: gathering necessary information and paperwork for and from buyers and sellers, overseeing and organizing contractual

deadlines, communicating and coordinating with lenders, title companies, inspectors, other brokers in the transaction and the parties to the contract to facilitate the closing of the real estate transaction, and assembling the final real estate transaction file for closing. If a transaction coordinator engages in any of the activities prohibited under 16.61.21.9. NMAC, a license may be required.

DDD. "Transaction": any real estate activity subject to the jurisdiction of the commission.

EEE. "Transaction broker": a qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship. The transaction broker relationship is a non-fiduciary relationship.

FFF. "Trust account": an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of others received by the qualifying broker in a transaction which includes a brokerage trust account, property management trust account, ~~custodial trust account~~ or special trust account.

GGG. "Unlicensed assistant": a person who does not hold an active New Mexico broker's license and works under the supervision of a responsible person to perform duties for the brokerage as provided in 16.61.21 NMAC.

HHH. "Vacation rental": With the exception of hotels and motels, a vacation rental is the rental of real property by a renter who does not manifest an intent to make the real property a permanent residence. Evidence that the renter does not intend to make the real property a permanent residence includes, but is not limited to, the following: landlord/property manager supplies all furnishings, appliances, bedding, towels, utensils, plates, and silverware.

III. "Virtual office": A real estate brokerage office that provides communication and address services without providing dedicated office space.

[16.61.1.7 NMAC - Rp, 16.61.1.7 NMAC, 1/1/2012; A, 1/1/2017, A, 1/15/2018; A, 1/1/2019]

16.61.1.8 OFFICES: The offices of the New Mexico real estate commission will be located in Albuquerque, New Mexico.

[16.61.1.8 NMAC - Rp, 16.61.1.8 NMAC, 1/1/2012]

16.61.1.9 TELEPHONIC MEETING ATTENDANCE: Commission members may participate in a meeting of the commission by means of a conference telephone or similar communications equipment and participation by telephone may only occur when it is difficult or impossible for commission members to attend a meeting of the commission, i.e. when circumstances beyond the member's control would make attendance in person extremely burdensome.

[16.61.1.9 NMAC - Rp, 16.61.1.9 NMAC, 1/1/2012]

HISTORY of 16.61.1 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the state records center and archives under: REC 73-1, Real Estate License Law Manual, filed 10/2/1973;

REC-1, (filed as Rule No. 1, Amendment No. 1) Purpose of Rules, Office Location, filed 6/15/1979;

REC 70-1, Purpose of Rules, Office Location, filed 10/6/1981;

REC 71-1, Purpose of Rules, Office Location, Definitions, filed 11/29/1982;

Rule No. 1, Purpose of Rules, Office Location, Definitions, filed 12/18/1987;

NMREC Rule 1, Purpose of Rules, Office Location, Definitions, filed 12/17/1991;

NMREC Rule 1, Purpose of Rules, Office Location, Definitions, filed 10/3/1994;

Rule No. 1, Purpose of Rules, Office Location, Definitions, filed 6/16/1995;

NMREC Rule 20, Telephonic Attendance by Commission Member, filed 10/3/1994.

History of Repealed Material:

16 NMAC 61.1, General Provisions (filed 12/17/1996) repealed 1/1/2000.

16.61.1 NMAC, General Provisions (filed 11/19/2003) repealed 1/1/2006.

16.61.1 NMAC, General Provisions (filed 11/16/2005) repealed 1/1/2012.

Other History:

Rule No. 1, Purpose of Rules, Office Location, Definitions (filed 6/16/1995) and NMREC Rule 20, Telephonic Attendance by Commission Member (filed 10/3/1994) both renumbered, reformatted, and replaced by 16 NMAC 61.1, General Provisions, effective 1/31/1997.

16 NMAC 61.1, General Provisions (filed 12/17/1996) was replaced by 16 NMAC 61.1, General Provisions, effective 1/1/2000.

16 NMAC 61.1, General Provisions (filed 12/10/1999) reformatted, amended, renumbered and replaced by 16.61.1 NMAC, General Provisions, effective 1/1/2002.

16.61.1 NMAC, General Provisions (filed 11/19/2003) was replaced by 16.61.1 NMAC, General Provisions, effective 1/1/2006.

16.61.1 NMAC, General Provisions (filed 11/16/2005) was replaced by 16.61.1 NMAC, General Provisions, effective 1/1/2012.