

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 61 REAL ESTATE BROKERS
PART 19 BROKER DUTIES AND BROKERAGE RELATIONSHIPS

16.61.19.1 ISSUING AGENCY: New Mexico Real Estate Commission.
[16.61.19.1 NMAC - Rp, 16.61.19.1 NMAC, 1/1/2004]

16.61.19.2 SCOPE: The provisions in Part 19 of Chapter 61 applies to all licensed associate brokers and qualifying brokers in New Mexico.
[16.61.19.2 NMAC - Rp, 16.61.19.2 NMAC, 1/1/2004; A, 1/1/2006]

16.61.19.3 STATUTORY AUTHORITY: Part 19 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, Section 61-29-4 NMSA 1978.
[16.61.19.3 NMAC - Rp, 16.61.19.3 NMAC, 1/1/2004]

16.61.19.4 DURATION: Permanent.
[16.61.19.4 NMAC - Rp, 16.61.19.4, 1/1/2004]

16.61.19.5 EFFECTIVE DATE: January 1, 2004, unless a later date is cited at the end of a section.
[16.61.19.5 NMAC - Rp, 16.61.19.5 NMAC, 1/1/2004]

16.61.19.6 OBJECTIVE: The objective of Part 19 of Chapter 61 is to define the duties of real estate associate brokers and qualifying brokers, to define the various potential brokerage relationships and to define the disclosures associate brokers and qualifying brokers are required to make when working with consumers.
[16.61.19.6 NMAC - Rp, 16.61.19.6 NMAC, 1/1/2004; A, 1/1/2006]

16.61.19.7 DEFINITIONS: Refer to 16.61.1.7 NMAC.
[16.61.19.7 NMAC - Rp, 16.61.19.7 NMAC, 1/1/2004]

16.61.19.8 BROKER DUTIES; DISCLOSURE: Brokers owe specific broker duties to prospective buyers, sellers, landlords (owners), tenants as set forth herein, 16.61.19.8 NMAC. Brokers shall disclose the applicable set of broker duties owed to buyers, sellers, landlords (owners) of rental property and tenants as set forth herein, 16.61.19.8 NMAC, prior to the time the broker generates or presents any written document to that party that has the potential to become an express written agreement and obtain from that applicable party written acknowledgement that the broker has made such disclosures. Brokers shall perform all duties established for brokers by the commission. In the case of prospective buyers, sellers, landlord (owners) and tenants to whom the broker is not directly providing real estate services, such disclosure and acknowledgment of receipt shall be made through the broker who is directly providing real estate services to that buyer, seller, landlord (owner) or tenant.

A. Brokers owe the following duties to prospective buyers, sellers, landlords (owners) and tenants:

- (1) Honesty and reasonable care and ethical and professional conduct.
- (2) Compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico real estate license law and the real estate commission rules, the New Mexico Uniform Owner Resident Relations Act, and other applicable local, state, and federal laws and regulations.
- (3) Performance of any and all written agreements made with the prospective buyer, seller, landlord (owner) or tenant.
- (4) Written disclosure of any potential conflict of interest ~~or any other written agreement~~ that the broker has in the transaction including but not limited to:
 - (a) Any written brokerage relationship the broker has with any other parties to the transaction,
 - (b) Any material interest or relationship of a business, personal, or family nature that the broker has in the transaction, or;
 - (c) Any written agreement the broker has with a transaction coordinator who will be providing brokerage services related to the transaction.
- (5) Written disclosure of any adverse material facts actually known by the associate broker or qualifying broker about the property or the transaction, or about the financial ability of the parties to the

transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act.

B. In addition to the broker duties owed to prospective buyers, sellers, landlords (owners) and tenants as set forth in this Subsection A of 16.61.19.8 NMAC, Brokers owe the following broker duties to the buyers, sellers, landlord (owners) and tenants to whom the broker is directly providing real estate services, regardless of the scope and nature of those services; brokers working as property managers for a landlord (owner) are directly providing real estate services to the landlord (owner), not to the tenant:

(1) Assistance to the party in completing the transaction, unless otherwise agreed to in writing by the party to whom the broker is directly providing real estate services, including:

(a) Timely presentation of and response to all written offers or counter-offers; and

(b) Active participation in assisting in complying with the terms and conditions of the contract and with the finalization of the transaction; If the broker in the transaction is not providing the service, advice or assistance described in Paragraphs (a) and (b) of this Subsection B of 16.61.19.8 NMAC, the party must agree in writing that the broker is not expected to provide such service, advice or assistance. The broker shall disclose the existence of such agreement in writing to the other brokers involved in the transaction.

(2) Acknowledgement by the broker that there may be matters related to the transaction that are outside the broker's knowledge or expertise and that the broker will suggest that the party seek expert advice on these matters.

(3) Advice to consult with an attorney regarding the effectiveness, validity or consequences of any written document generated by the brokerage or presented to the party and that has the potential to become an express written agreement.

(4) Prompt accounting for all money or property received by the broker;

(5) Maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former principal's written consent or is required by law;

(6) Written disclosure of brokerage relationship options available in New Mexico;

(7) Unless otherwise authorized in writing, a broker who is directly providing real estate services to a seller/owner shall not disclose the following to the buyer/tenant in a transaction:

(a) That the seller/owner has previously indicated they will accept a sales/lease price less than the asking or listed price of a property;

(b) That the seller/owner will agree to financing terms other than those offered;

(c) The seller/owner's motivations for selling/leasing; or

(d) Any other information the seller/owner has requested in writing remain confidential, unless disclosure is required by law.

(8) Unless otherwise authorized in writing, a broker who is directly providing real estate services to a buyer/tenant shall not disclose the following to the seller/owner in the transaction:

(a) That the buyer/tenant has previously indicated they will pay a price greater than the price submitted in a written offer;

(b) The buyer/tenant's motivation for buying/leasing; or

(c) Any other information the buyer has requested in writing remain confidential, unless disclosure is required by law.

(9) In the event the broker is working for the landlord (owner) as a residential property manager, the broker additionally owes to the landlord (owner) all duties owed under the law of agency.

C. In addition to the broker duties owed to prospective buyers, sellers, landlords (owners) and tenants as set forth in this Subsection A of 16.61.19.8 NMAC, brokers working as property managers for a landlord (owner) owe the following duties to tenants:

(1) Prompt accounting for all money or property received by the broker from the tenant, including issuance of a receipt for cash received;

(2) If a residential property manager, written disclosure that the broker is the agent of the owner of the property and not of the tenant; in the commercial property management context, written disclosure of the broker's relationship with the landlord (owner).

D. Broker obligations to other brokers. Brokers owe the following professional obligations to other brokers; however, brokers are not required to provide to one another a list of these broker obligations.

(1) Honesty, reasonable care, and ethical and professional conduct;

- (2) Timely presentation of all written offers or counter-offers and responses thereto, unless otherwise agreed to in writing by the party to whom the broker is directly providing real estate services;
 - (3) Active participation in assisting the party to whom the broker is directly providing real estate services in complying with the terms and conditions of the contract and with the closing of the transaction, unless otherwise agreed to in writing by the party to whom the broker is directly providing real estate services;
 - (4) Compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico real estate license law and the real estate commission rules; the New Mexico Uniform Owner-Resident Relations Act, and other applicable local, state, and federal laws and regulations;
 - (5) Written disclosure of any adverse material facts actually known by the broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act;
 - (6) Written disclosure of any potential conflict of interest that the broker has in the transaction, including but not limited to, any material interest the broker has in the transaction or any relationship of a business, personal, or family nature that the broker has with a party to the transaction;
 - (7) Non-interference with a purchase agreement or any express written agreement that another broker has with a buyer, seller, landlord (owner) or tenant.
- [16.61.19.8 NMAC - Rp, 16.61.19.8 NMAC, 1/1/2004; A, 1/30/2004; A, 3-27-2004; A, 1/1/2006; A, 1/1/2006, A, 1/1/2007; A, 12/31/2008; A, 1/1/2012; A, 1/1/2014. A, 1/15/2018; A, 1/1/2019]

16.61.19.9 BROKERAGE RELATIONSHIPS: Brokerages working with consumers either as customers or clients may do so through a variety of brokerage relationships. These relationships include but are not limited to a transaction broker relationship, an exclusive agency relationship or a dual agency relationship. For all regulated real estate transactions, a customer or client may enter into an express written agreement to become a client of a brokerage without creating an agency relationship, and no agency duties will be imposed.

A. 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.

B. 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, and subagency agreements.

C. 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.

[16.61.19.9 NMAC - Rp, 16.61.19.9 NMAC, 1/1/2004; A, 12/31/2008; A, 1/1/2012]

16.61.19.10 DUAL AGENCY RELATIONSHIP:

A. Dual agency occurs when:

(1) an associate broker or qualifying broker is agent for both a seller client and a buyer client in the same transaction;

(2) an associate broker is agent for either a seller client or a buyer client, and the agent's qualifying broker is agent for the other client in the transaction; and,

(3) in a transaction where a buyer client and a seller client are each served by different associate brokers in an agency relationship supervised by the same qualifying broker, and the qualifying broker does not choose the designated agency option, both the associate brokers and the qualifying broker are dual agents in the transaction.

B. In all situations, a dual agent shall act in the capacity of a facilitator rather than as an exclusive agent of either party to the transaction.

C. Prior to writing or presenting offers, a dual agent shall obtain written authority from the buyer client and the seller client in the form of a separate dual agency agreement.

D. Information obtained by an associate broker or qualifying broker prior to the time that written authority for dual agency was granted shall not be disclosed to the other party unless required by law or rules or permitted by the client who originally disclosed the confidential information.

[16.61.19.10 NMAC - Rp, 16.61.19.11 NMAC, 1/1/2004; A, 1/1/2006]

HISTORY OF 16.61.19 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

NMREC Rule 18, Agency: Relationship, Disclosure and Compensation, filed 12/17/1991; and
Rule 18, Licensee Duties: Brokerage Relationships/ Disclosure, filed 4/13/1995.

History of Repealed Material:

16 NMAC 61.19, Licensee Duties; Brokerage Relationships/Disclosures (filed 12/17/1996) repealed 1/1/2000.
16.61.19 NMAC, Brokerage Relationships and Disclosures (filed 11/30/2001) is repealed effective 1/1/2004.

Other History:

Rule 18, Licensee Duties: Brokerage Relationships/ Disclosure (filed 4/13/1995) was reformatted, renumbered, and replaced by 16 NMAC 61.19, Agency Relationships/Disclosures, effective 1/31/1997.

16 NMAC 61.19, Agency Relationships/Disclosures (filed 12/17/1996) was replaced by 16 NMAC 61.19, Licensee Duties, Brokerage Relationships and Disclosures, effective 1/1/2000.

16 NMAC 61.19, Brokerage Relationships and Disclosures (filed 12/10/1999) reformatted, amended, renumbered, and replaced by 16.61.19 NMAC, Brokerage Relationships and Disclosures, effective 1/1/2002.

16.61.19 NMAC, Brokerage Relationships and Disclosures (filed 11/30/2001) replaced by 16.61.19 NMAC, Basic Licensee Duties, Disclosure, Brokerage Relationships and Dual Agency Relationships, effective 1/1/2004.