

**New Mexico Real Estate Commission
Special Meeting of June 20, 2016
Real Estate Commission Offices
5500 San Antonio Drive NE
Albuquerque, New Mexico 87109**

MINUTES

Commissioners Present: Greg Foltz, President
Gretchen Koether, Vice President
Kurstin Johnson, Secretary
Clifford Stroud, Member

Commissioner Absent: Kirk Clifton, Member

Staff Present: Wayne W. Ciddio, Executive Secretary
Lyn Carter, Chief Investigator
Gillian Hubka, Investigator
Perry Bryant, Investigator
Tom Baca, Education Administrator
Germelyn Vivar, Administrative Secretary

Others Present: Jennifer Salazar, Assistant Attorney General

1. 9:00 a.m.- Call to Order, Welcome, and Introductions- Greg Foltz, President

Commission President Foltz called the meeting to order, welcomed all in attendance, and asked Commissioners and Commission staff to introduce themselves.

2. Determination of Quorum

With four Commissioners present, Commissioner Foltz determined that a quorum was present.

3. Pledge of Allegiance

Commissioner Foltz led Commissioners, staff, and all in attendance in the Pledge of Allegiance.

4. Approval of the Agenda for the June 20, 2016 Special Meeting

Commissioner Kurstin Johnson moved approval of the agenda for the June 20, 2016 Special Meeting. Commissioner Gretchen Koether seconded the motion and it carried unanimously.

5. Old Business

a. Approval of the Minutes of the May 16, 2016 Rule Hearing and Regular Meeting

Commissioner Clifford Stroud noted that on page 11 of the minutes under the item “Final Order, NMREC Case No. 13-01-19-019, Neil Lyon, Timothy Van Camp, Ray Rush and Liz Cale”, there is a motion to adopt the order, but a second and the final vote on the order is missing.

Commissioner Stroud moved that the minutes be amended to reflect that Commissioner Koether seconded the motion to adopt the order, and that the motion passed unanimously. Commission Koether seconded the motion and it carried unanimously.

Commissioner Stroud moved approval of the minutes of the May 16, 2016 Rule Hearing and Regular Meeting, as amended. Commissioner Koether seconded the motion and it carried unanimously.

b. Discussion and final action on proposed changes to rules considered at rule hearings and February 19, 2016 and May 16, 2016.

- Part I, General Provisions
- Part 3, Real Estate Broker’s License: Examination and Licensing Requirements
- Part 5, Errors and Omissions Insurance
- Part 7, Fingerprinting and Arrest Record Checks
- Part 13, Continuing Education Requirements
- Part 15, Approval of Real Estate Courses, Sponsors, and Instructors
- Part 16, Qualifying Broker: Affiliation and Responsibilities
- Part 17, Associate Broker, Affiliation and Responsibilities
- Part 19, Broker Duties and Brokerage Relationships

- Part 23, Trust Accounts
- Part 24, Property Management
- Part 27, Foreign Brokers
- Part 32, Real Estate Advertising
- Part 36, Complaints and Investigations

Prior to discussing the proposed rule changes, Commissioner Foltz asked Mr. Ciddio to summarize for the record written comments received from brokers since the May 16, 2016 rule hearing. Those comments were:

- A June 15, 2016 letter from Bill Hallett asking the Commission to consider changing broker duties to specify to whom these duties are owed and when the duties are owed.
- Draft language proposed by Mr. Hallett describing “required courses” under the proposed new rule that would replace the eight-hour Mandatory Course with the four-hour Core Course.
- Draft language proposed by Mr. Hallett establishing a January 1, 2017 effective date for the new Core Course; establishing December 31, 2016 as the date beyond which the Mandatory Course would no longer be available; and specifying that brokers who had already completed the Mandatory Course for their current licensing cycle would not be required to take the Core Course until their next licensing cycle.
- A June 13, 2016 email from Ashley Strauss-Martin asking the Commission to consider amending Part 24, Property Management to specify that the property management agreement would ask the property owner to disclose any financial situation with the potential to impact a tenant’s occupancy.
- A June 15, 2015 email from broker Diana Griego opposing the proposed change that would require brokers to display their license numbers on all forms of real estate advertising.
- A June 14, 2015 email from broker Greg Jones supporting the change from the Mandatory Course to the Core Course, the increase in continuing education hours from 30 to 36 hours every three years, but opposing the proposed change that would require brokers to display their license numbers on all forms of real estate advertising.

- A May 18, 2016 email from broker Beth Pittman opposing the proposed change that would require brokers to display their license numbers on all forms of real estate advertising.
- A May 20, 2016 email from broker David Buck opposing the proposed change that would require brokers to display their license numbers on all forms of real estate advertising.
- A May 18, 2016 email from broker Judy Buck opposing the proposed change that would require brokers to display their license numbers on all forms of real estate advertising.
- A May 24, 2016 email from broker Cynthia Anderson opposing the proposed change that would require brokers to display their license numbers on all forms of real estate advertising.
- A June 14, 2016 email from broker Joe Padilla opposing the proposed change that would require brokers to display their license numbers on all forms of real estate advertising.
- A June 14, 2016 email from broker Marilyn Eifert opposing the proposed change that would require brokers to display their license numbers on all forms of real estate advertising.
- A June 14, 2016 email from broker Mary Padilla opposing the proposed change that would require brokers to display their license numbers on all forms of real estate advertising.
- A June 19, 2016 email from broker George Amos opposing the proposed change that would require brokers to display their license numbers on all forms of real estate advertising.
- A June 14, 2016 email from broker Jan Rader opposing the proposed change that would require brokers to display their license numbers on all forms of real estate advertising.

Part 1, General Provisions

After discussion, Commissioner Stroud moved adoption of the following changes to Part 1, General Provisions, Definitions. Commissioner Johnson seconded the motion and it carried unanimously.

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.

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. Associate broker: a person holding a New Mexico associate broker's license who is affiliated with a New Mexico qualifying broker.

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

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

I. 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. 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. Broker duties: the duties that brokers owe to their clients and customers in the course of a real estate transaction. Certain duties owed by brokers to their customers, clients, other parties to the transaction, and/or to other brokers.

L. 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. 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. 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 (5) or more multi-family units; provided that all units are located on a single parcel of land with a single legal description.

O. Core course: the four (4) hour commission-approved continuing education course that all brokers are required to complete annually as a condition of license renewal.

P. Core elective course: a four (4) hour commission-approved continuing education course in residential transactions, commercial transactions, property management transactions, or vacant land/ranch transactions required once during each three (3) year cycle.

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

R. 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 the qualifying broker as trustee. This account may be interest bearing.

S. 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. 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. 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.

S. V. 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.

T. W. 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.

U. X. 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.

V. Y. Employee: for the purposes of Section 61-29-2 C (1) 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.

W. Z. 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 coverages, limitations, and exclusions of the specific insurance policy or policies in place.

X. AA. 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: subagency and residential property management~~.

Y. BB. 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.

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

AA. DD. 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. 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 territory of the United States, a province of Canada, or any other sovereign nation.

FF. 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.

BB. GG. 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.

CC. HH. In house transaction: a transaction that occurs under the supervision of one qualifying broker in the same brokerage.

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

EE. ~~Mandatory course: the commission approved course required of all brokers, except exempt brokers, as a condition of license renewal.~~

FF. JJ. Military service member: a person, or the spouse 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.

GG. KK. 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 (10) percent or more.

HH. LL. 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.

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

JJ. NN. 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.

KK. OO. Principal: any person who authorizes or employs another to do certain acts on behalf of that person.

LL. PP. Property ledger: a record of deposits and disbursements within a trust account that is associated with the same property or owner.

MM. QQ. 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; 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 and other documents. 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.

NN. RR. 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.

OO. SS. Property manager: a broker who, for a fee, salary, commission or other valuable consideration, is engaged in managing property for others. A residential property manager is, by virtue of a written agency agreement, 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.

PP. TT. 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.

QQ. UU. 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.

RR. VV. Reconciliation: the process by which the property ledgers within a trust account are balanced with the trust account and the trust account is balanced with the bank statement.

SS. WW. 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.

TT. XX. 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 Section 61-29-12 A (7) NMSA 1978.

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

VV. ZZ. Short-term/vacation rental: with the exception of hotels and motels, the rental of real property for a period of 29 days or less.

WW. AAA. 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.

XX. BBB. Sponsor: an organization or entity approved by the real estate commission to offer courses approved by the real estate commission.

YY. CCC. Subagent: an agent of the agent, authorized to act for the agent in performing functions undertaken by the agent for his principal.

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

AAA. 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.

BBB. **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.

CCC. **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. Virtual Office. A real estate brokerage office that provides communication and address services without providing dedicated office space.

Part 3, Real Estate Broker's License: Examination and Licensing Requirements

After discussion, Commissioner Johnson moved adoption of the following changes to Part 3, Real Estate Broker's License: Examination and Licensing Requirements. Commissioner Koether seconded the motion and it carried unanimously.

16.61.3.9 EXAMINATION AND LICENSING REQUIREMENTS:

A. Associate broker's license: prior to applying for an associate broker's license, an applicant must pass the real estate broker's examination prescribed by the commission.

B. Examination application.

(1) Applications to take the broker's examination are made directly to the commission's examination contractor on a form prescribed by the commission and provided by the contractor in a candidate information bulletin. Along with the application form, an applicant must submit certificates of completion of commission-approved 30 hour pre-licensing courses in real estate principles and practice, real estate law, and broker basics. These pre-licensing courses must have been completed within the three years prior to application to take the broker's examination.

Candidates who are licensed as associate brokers and are taking the broker's examination to upgrade to qualifying broker status are exempt from the three-year time limit and must only provide documentation of course completion.

(2) Exam candidates currently licensed as real estate salespersons or brokers in other states or jurisdictions will be exempted from completing the real estate principles and practice and real estate law courses in New Mexico and from taking the national portion of the broker's examination if they can provide a certified license history from their resident licensing jurisdiction documenting that they have completed these courses or their equivalent. A New Mexico broker upgrading their license from associate broker to qualifying broker will also be exempted from taking the national portion of the broker's examination.

(3) Except in a case of a license applicant from a state or jurisdiction with which the New Mexico real estate commission has a written license recognition agreement, an exam applicant cannot be exempted from completing the commission-approved 30 hour broker basics course.

(4) License applicants currently licensed by state or jurisdiction with which the commission has a written license recognition agreement are not required to take any of the prescribed pre-licensing courses or take either portion of the broker's examination to be eligible to apply for a New Mexico broker's license.

(5) Exam applicants exempted from taking the real estate principles and practice and real estate law courses by virtue of having a current real estate broker's license in another state shall attach to their examination application a letter of pre-licensing education waiver from the commission and a certificate of completion of the 30 hour broker basics course.

(6) All other applicants for the examination shall attach to their license examination application certificates documenting completion of one 30 hour pre-licensing course each in real estate principles and practice, real estate law, and broker basics.

(7) At the time of making application to take the examination, applicants shall pay to the commission's examination contractor a non-refundable fee not to exceed \$95.

(8) Applicants are required to pass both the state and national portions of the examination with a minimum score of 75 no later than 90 calendar days after the first time they took the examination. Applicants failing to pass both portions of the examination within this time frame will be required to re-take and pass both portions of the examination before being eligible to apply for a broker's license.

C. License application.

(1) Upon passing both portions of the New Mexico real estate broker's examination, an individual has six months to apply for an associate broker's license on the application prescribed by the commission.

(2) An individual who fails to apply for an associate broker's license within six months of having passed both portions of the broker's examination shall be required to re-take both portions of the examinations six month deadline.

(3) An applicant for an associate broker's license shall be a legal resident of the United States and have reached the age of majority in New Mexico or in the state in which the applicant resides.

(4) Along with the license application form prescribed by the commission, the applicant must submit a written score report provided by the examination contractor documenting that he/she has passed both portions of the examination with a minimum score of 75, documentation of having been fingerprinted for purposes of matching with state and national arrest record databases, a certificate of insurance documenting that the applicant has a current errors and omissions insurance policy that meets the requirements for such insurance as described in 16.61.5 NMAC of the commission rules, and a non-refundable license application fee not to exceed \$270.

D. Qualifying broker's license examination: there is no separate qualifying broker's examination.

E. License application.

(1) Before being issued a qualifying broker's license, an applicant must document that their associate broker's or equivalent license has been on active status with a real estate brokerage for two of the last five years immediately preceding their application to become a qualifying broker, and must provide a certificate of completion of the commission-approved 30 hour brokerage office administration course. Applicants with current licenses who can document that they were New Mexico qualifying broker's on or before December 31, 2005 are not subject to those requirements and may regain qualifying broker status by filling a trade name registration form and paying the trade name registration fee to the commission.

(2) Brokers who were salespersons on January 1, 2006 when the license law was amended to eliminate the salesperson category and were converted to associate broker status, shall in addition to meeting the requirements in the preceding section, document that they have met the requirements for and passed the associate broker's examination prior to being issued a qualifying broker's license.

(3) An application for a New Mexico qualifying broker's license shall be made on the form prescribed by the commission and shall be accompanied with documentation of having been fingerprinted for purposes of matching with state and national arrest record databases, a certificate documenting that the applicant has a current errors and omissions insurance policy that meets the requirements for such insurance as described in 16.61.5 NMAC of the commission rules, and a non-refundable license application fee not to exceed \$270.

F. Military service members.

(1) The commission shall, as soon as practicable after a military service member, the spouse of a military service member or a recent veteran files an application for an associate broker's or qualifying broker's license, process the application and issue a license to a qualified applicant who submits satisfactory documentation that the applicant holds a real estate license issued by another licensing jurisdiction, including a branch of the armed forces of the United States, that is current and in good standing, and that has licensing requirements that are substantially equivalent to New Mexico requirements.

(2) A license issued pursuant to this part is not a provisional license and confers the same rights, privileges, and responsibilities as any other license issued by the commission.

(3) A license issued pursuant to this part shall not be renewed unless the licensee satisfies the commission's requirements for license renewal.

Part 5, Errors and Omissions Insurance

After discussion, Commissioner Stroud moved adoption of the following changes to Part 5, Errors and Omissions Insurance. Commissioner Johnson seconded the motion and it carried unanimously.

TERMS OF COVERAGE: The group policy shall provide, at a minimum, the following terms of coverage:

A. coverage of all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage;

B. an annual premium not to exceed the amount set by statute 61-29-4.2B NMSA 1978;

- C. that the coverage cannot be cancelled by the insurance carrier except for non-payment of the premium or in the event a broker becomes inactive or has their license revoked or an applicant is denied a license;
- D. pro-ration of premiums for coverage which is purchased during the course of the calendar year but with no provision for refunds of unused premiums;
- E. not less than \$100,000 coverage for each licensed individual and entity per covered claim regardless of the number of brokers or entities to which a settlement or claim may apply;
- F. an aggregate limit of \$500,000 per licensed individual or entity;
- G. a deductible amount for each ~~occurrence~~ claim of not more than \$1,000 per claim and no deductible for legal expenses and defense;
- H. ~~the obligation of the insurance carrier to defend all covered claims; payment of claims by the provider shall be on a first dollar basis and the provider shall look to the insured for payment of any deductible~~
- I. ~~coverage of a broker's use of lock boxes; the obligation of the insurance carrier to defend all covered claims with payment of defense costs outside of policy limits.~~
- J. ~~coverage of a broker's use of lock boxes which may include a sublimit of not less than \$5,000 per claim for property damage or loss of use of property arising from a lock box claim;~~
- K. the ability of a broker, upon payment of an additional premium, to obtain higher or excess coverage or to purchase additional coverage from the insurance provider as may be determined by the provider;
- L. that coverage is individual and license specific and will cover the associate broker regardless of changes in qualifying broker;
- M. ~~an extended reporting period of not less than 365 days; an automatic 90-day extended reporting period with the ability of any insured broker, upon payment of an additional premium, to obtain an optional extended reporting period of one, two, or three years.~~
- N. ~~the ability of a broker, upon payment of an additional premium to obtain~~ a conformity endorsement allowing a New Mexico resident broker to meet errors and omissions insurance requirements for an active license in another group mandated state without the need to purchase separate coverage in that state.
- [16.61.5.9 NMAC - N, 1-1-2002; A, 1-1-2006; A, 12-31-2008]

16.61.5.10 EQUIVALENT ERRORS AND OMISSIONS INSURANCE POLICIES: New Mexico real estate associate broker or qualifying broker applicants may obtain errors and omissions coverage equivalent to the group plan from any insurance carrier subject to the following terms and conditions.

- A. The insurance carrier is licensed and authorized by the New Mexico department of insurance to write policies of errors and omissions insurance in this state and is in conformance with all New Mexico statutes.
- B. The insurance provider maintains an A.M. Best rating of "B" or better.
- C. The policy, at a minimum, complies with all relevant conditions set forth in this rule and the insurance carrier so certifies in a certificate issued to the insured real estate broker or broker applicant in a form acceptable to the commission and agrees to immediately notify the commission of any cancellation or lapse in coverage. The commission will make no independent determination of whether equivalent policies meet the requirements of Part 5.
- D. Coverage includes all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage.
- E. Coverage cannot be cancelled by the insurance provider except for nonpayment of premium or in the event a broker becomes inactive or the license is revoked, or in the event an applicant is denied a license.
- F. Coverage is for not less than \$100,000 for each licensed individual and entity per covered claim and not less than a \$500,000 aggregate limit per licensed individual or entity.
- G. A deductible amount for each ~~occurrence~~ claim of not more than \$1,000.
- H. Payment of claims by the provider shall be on a first dollar basis and the provider shall look to the insured for payment of any deductible.
- I. ~~An extended reporting period of not less than 365 days. The obligation of the insurance carrier to defend all covered claims with payment of defense costs outside of policy limits.~~
- J. ~~Coverage of a broker's use of lock boxes. Coverage of a broker's use of lock boxes which may include a sublimit of not less than \$5,000 per claim for property damage or loss of use of property arising from a lock box claim.~~
- K. ~~An automatic 90-day extended reporting period with the ability of the broker, upon payment of an additional premium, to obtain an optional extended reporting period of one, two, or three years.~~
- L. Real estate brokers or broker applicants who obtain equivalent coverage and wish to be on active status must present to the commission the certificate referred to in 16.61.5.10 C. NMAC:

- (1) when renewing an active license, no later than at the time of renewal; or
- (2) upon any request for reinstatement or activation of a license; or
- (3) upon application for an active license.

[16.61.5.10 NMAC - N, 1-1-2002; A, 1-1-2006]

16.61.5.11 BROKER COMPLIANCE: Applicants for licensure, transfer, and renewal shall certify compliance with this rule by submitting along with the license, transfer, or renewal application a copy of a certificate from their insurance company certifying current coverage. The commission will not issue an active license to a first time applicant who fails to provide proof of current coverage, and the license of any active New Mexico broker who fails to provide a certificate certifying current errors and omissions coverage will not be renewed or transferred until such certificate is received in the commission office

[16.61.5.11 NMAC - N, 1-1-2002; A, 1-1-2006]

16.61.5.12 INSURANCE REQUIREMENTS SUSPENDED: The requirements of 16.61.5 NMAC shall be suspended if the commission through a competitive bidding and contract award process is not able to enter into a contract with a qualified insurance carrier to make available to all applicants for or holders of active New Mexico real estate broker's licenses a group policy of insurance under the terms and conditions described in Part 5.

[16.61.5.12 NMAC - N, 1-1-2002; A, 1-1-2006]

16.61.5.13 PENALTIES FOR VIOLATION: Brokers who fail to obtain and maintain an errors and omissions insurance policy as specified herein are guilty of violating NMSA 1978 Section 61-29-4.2 of the Real Estate License Law and are subject to license suspension and revocation as provided in Section 61-29-12 A (10).

[16.61.5.13 NMAC - N, 1-1-2006]

Part 6, Designation of Qualifying Broker to Qualify a Real Estate Brokerage

After discussion, Commissioner Johnson moved adoption of the following changes to Part 6, Designation of Qualifying Broker to Qualify a Real Estate Brokerage. Commissioner Stroud seconded the motion and it carried unanimously.

- A. A corporation, partnership, association, proprietorship, limited liability company, or any other business entity engaging in real estate brokerage in New Mexico, except as otherwise provided in 61-29-2 C NMSA 1978, must employ or enter into an independent contractor agreement with a qualifying broker(s) to qualify such entity to engage in real estate brokerage in the state.
- B. Upon compliance with all requirements set out in the real estate license law and the real estate commission rules for licensure as a New Mexico qualifying broker, the commission shall issue a New Mexico qualifying broker's license to the applicant(s). Such license shall bear the name of the qualifying broker, the trade name of the brokerage that the qualifying broker has qualified to conduct brokerage business in the state and under which the brokerage will be conducting business and the address as registered with the commission from which the brokerage is conducting business.
- C. In the event a qualifying broker is unable for any reason to perform their qualifying broker duties, a corporate officer, family member or other responsible person, shall designate a broker in charge to conduct the brokerage business and supervise any other brokers affiliated with the brokerage until such time as an individual files a trade name registration form with the commission designating that individual as the qualifying broker.

Part 7, Fingerprinting and Arrest Record Checks

After discussion, Commissioner Johnson moved adoption of the following changes to Part 7, Fingerprinting and Arrest Record Checks. Commissioner Stroud seconded the motion and it carried unanimously.

REQUIREMENTS:

A. All persons applying for or renewing a New Mexico real estate broker's license or upgrading an associate broker's license to a qualifying broker's license must be fingerprinted as a condition of licensure or license renewal.

B. Applicant fingerprints and processing fees are submitted electronically to the New Mexico department of public safety from approved live scan vendor sites for the purpose of matching applicant fingerprints with fingerprints in state and national arrest record databases. Applicants must register on the vendor web site prior to being fingerprinted. The vendor web site address and a list of approved live scan sites are available on the real estate commission web site at www.rld.state.nm.us.

C. To verify compliance with the fingerprinting requirement, applicants for licensure or license renewal shall submit to the commission along with their license or renewal application a copy of the commission-approved fingerprint certification form completed by the vendor. To ensure that the commission is receiving the most current information available, fingerprinting ~~should shall~~ be done no earlier than ~~six months twenty-one days~~ prior to applying for or renewing a license submitting documents to apply for or renew a license.

D. License or license renewal applicants who do not have access to approved live scan vendor sites may be fingerprinted by other vendors using hardcopy fingerprint cards provided by the commission. Such applicants will be responsible for mailing the hardcopy cards and fees to vendor's headquarters at the address shown on the commission web site.

Part 13, Continuing Education Requirements

After discussion, Commissioner Johnson moved approval of the following changes to Part 13, Continuing Education Requirements. Commissioner Koether seconded the motion and it carried unanimously.

REQUIREMENTS: Except for brokers who were exempt from continuing education prior to July 1, 2011.

A. All active and inactive associate brokers and qualifying brokers shall successfully complete ~~thirty (30) credit hours a minimum of thirty six (36) credit hours~~ of continuing education in courses approved by the commission during each licensing cycle.

~~B. All active associate brokers and qualifying brokers shall successfully complete the approved eight (8) credit hour real estate commission mandatory course during each licensing cycle. Of the remaining twenty two (22) credit hours, ten (10) credit hours may be credited toward the continuing education requirement from approved training category courses. At least twelve (12) credit hours must be taken from approved education category courses; however, all twenty two (22) credit hours may be taken from the list of commission approved continuing education courses.~~

~~B.C. Required courses include the four (4) hour core course to be completed annually, a four (4) hour commission-approved core elective course to be completed once during each three (3) year licensing cycle, and four (4) hours of ethics training in commission-approved ethics courses to be completed once during each three (3) year cycle.~~

~~B.C. Of the remaining twenty two (22) credit hours sixteen (16) credit hours, no more than ten (10) credit hours may be credited earned toward the continuing education requirement from approved training category courses. At least twelve (12) credit hours must be taken from approved education category courses. All sixteen (16) remaining credit hours may be earned toward the continuing education requirement from approved education category courses.~~

- D. The new core course requirements shall apply to those associate brokers and qualifying brokers who have not completed the eight (8) hour mandatory course in their current licensing cycle by December 31, 2016. If a broker has so completed the eight (8) hour mandatory course, the core course requirement will not apply until their next licensing cycle. The eight (8) hour mandatory course will not be offered after December 31, 2016. Brokers who have so completed the eight (8) hour mandatory course and who wish to take the new four (4) hour course will receive four (4) additional hours of education category credit in their current licensing cycle.
- E. The new core course will have a unique name, identifying the year, for each year during which it is presented. The commission shall ensure that the course content is unique for the identifying year to ensure that a broker will not receive the identical information in more than one core course.

C.F. Commission approved pre-licensing courses may count for up to ten (10) credit hours toward continuing education credit for license renewal. The commission approved thirty (30) hour post-licensing course may also count for up to ten (10) education category credit hours toward continuing education.

D.G. No commission approved continuing education course in either the education or the training category will be granted more than ten (10) credit hours of continuing education credit.

E.H. Continuing education credit hours cannot be carried forward to the next licensing cycle.

F.I. The same continuing education course cannot be repeated for credit in a three-year renewal cycle.

G.J. Brokers may receive up to a maximum of four (4) approved education category credit hours during each licensing cycle for attending commission meetings, rule hearings, and disciplinary hearings, or meetings of the Education Advisory Committee.

H.K. Approved instructors may use up to ten (10) credit hours during each three-year licensing cycle toward fulfillment of their own continuing education requirements for teaching commission approved courses. Teaching documentation must be provided by the course sponsor.

I.L. Classes required by the commission for disciplinary reasons cannot be counted towards the continuing education requirements for license renewal.

[1-1-2000; 16.61.13.8 NMAC - Rn & A, 16 NMAC 61.13.8, 1-1-2002; A, 1-1-2006; A, 1-1-2007; A, 12-31-2008; A, 1-1-2012]

16.61.13.9 VERIFICATION OF COMPLETION OF COURSE WORK: At the time of license renewal, associate brokers and qualifying brokers shall submit to the real estate commission verification of completion of continuing education course work.

Part 15, Approval of Real Estate Courses, Sponsors, and Instructors

After discussion, Commissioner Stroud moved adoption of the following changes to Part 15, Approval of Real Estate Courses, Sponsors, and Instructors. Commissioner Johnson seconded the motion and it carried unanimously.

16.61.15.8 EDUCATION ADVISORY COMMITTEE -The commission shall appoint an education advisory committee, hereinafter referred to as “the committee”, with the goal and purpose of upgrading and improving the real estate education program. This committee will be a means to accomplish the commission’s mission of protecting the public and increasing the professional competence of real estate brokers. The committee shall advise the commission on all matters related to real estate education in the state of New Mexico, and shall make recommendations to the commission regarding methods whereby the delivery, content, and requirements of real estate education can be improved in New Mexico.

- A. The committee shall meet monthly or as required to fulfill its goal and purpose, including certification reviews of real estate sponsors, courses, and instructors and shall make recommendations to the commission as to its findings and recommendations.
 - (1) The committee shall use specific criteria to evaluate a course, an instructor or course sponsor for approval recommendation to the commission. In the case of an instructor evaluation, these specific criteria shall consider both the instructor's depth of knowledge of the subject and the instructor's ability to convey that knowledge.
 - (2) The committee shall clearly state in writing to the commission the reasons for which a course, an instructor, or course sponsor are recommended for approval. The committee shall clearly state in writing to the commission the reasons for which a course, an instructor or course sponsor are not recommended for approval. The commission shall review and approve, modify, or deny committee recommendations and only the commission shall notify the applicant of approval or denial of real estate sponsors, courses, and instructors of same.
 - (3) A sponsor or instructor applicant not recommended for approval by the committee may ask the commission to review the committee's unfavorable recommendation. Following the commission's review, the commission shall notify the applicant for real estate sponsors, courses, and instructors of the commission's decision.
- B. The commission- appointed committee shall consist of eleven members, seven (7) voting members, none of whom shall be instructors. Four (4) voting members, including the chair, shall constitute a quorum. The chair and the vice chair shall be appointed by the commission from among the voting committee members. Upon the effective date of this rule at the first commission meeting thereafter, the commission shall appoint four (4) voting committee members to three (3) year terms; three (3) voting committee members to two (2) year terms; two (2) non-voting committee members to three (3) year terms and two (2) non-voting committee members to two (2) year terms. Upon expiration of each term, the commission shall appoint new members. The commission shall also appoint members to fill vacancies until the end of the unexpired term of the vacant position. The committee chair shall call upon other non-voting / non- committee member subject matter experts to assist the committee on a case-by-case basis as deemed necessary by the committee chair.
- C. Term Limits
No committee member shall serve more than two (2) consecutive terms if reappointed to a second term following expiration of their first term, but may re-apply for committee membership one year after the expiration of their second term.

It shall be incumbent upon the commission executive secretary to advise the commissioners and committee members, in writing, of expiring committee member terms no less than sixty days prior to expiration and to place committee member appointments on the commission agenda closest to the expiring term(s).

Committee members shall serve at the pleasure of the commission. The commission may remove a member for cause.

16.61.15.9 APPROVAL OF EDUCATION PROGRAMS:

- A. Courses offered for New Mexico real estate commission approved credit must be offered by sponsors approved by the New Mexico real estate commission.
- B. Applications for sponsor, instructor and course approvals shall be accompanied by the fee(s) specified in 16.61.2.8 NMAC of the commission rules.
 - (1) An approved education category course shall consist of a 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, and ethical practice of real estate; and real estate related local, state and federal laws including but not limited to fair housing, the Americans with Disabilities Act (ADA), and lead-based paint disclosure.
 - (2) Approved training category courses include personal and property protection for the broker and clients; using the computer, the internet, business calculators and other technologies to enhance the broker's service to the public; concerning professional development, customer relations skills, sales promotion including salesmanship, negotiation, marketing techniques, servicing the client, or similar courses.

(3) With the exception of courses taken in states with which New Mexico has a written license recognition agreement, non-acceptable continuing education classes shall include courses taken in fulfillment of another state's continuing education requirements. Other non-acceptable courses include mechanical office and business skills such as typing; speed reading; memory improvement; language report writing; offerings concerning physical well-being or personal development such as personal motivation; stress management; time management; dress-for-success; or similar courses.

C. The ~~ESC~~ committee shall review instructor candidates:

- (1) to determine the candidate's knowledge of the subject matter;
- (2) to determine the candidate's ability to communicate his/her knowledge to students;
- (3) to determine if the candidate uses appropriate teaching delivery skills;
- (4) to determine if the candidate is honest, truthful, reputable, and competent.

[16.61.15.9 NMAC - Rp, 16.61.15.9 NMAC, 1-1-2012]

16.61.15.10 APPROVAL OF SPONSORS AND RESPONSIBILITIES:

A. All sponsors wishing to offer commission approved courses for credit must be approved by the commission before the course being offered for credit.

B. Educational institutions, proprietary schools, professional organizations or businesses wishing to become commission approved sponsors must submit a completed sponsor application form with supporting documentation as required by the commission.

C. The commission will maintain a list of approved sponsors.

D. An approved sponsor shall comply with the following requirements:

- (1) conduct all courses in accordance with commission rules and education policies, and in accordance with approved course content;
- (2) permit all New Mexico real estate brokers to attend all classes offered by the sponsor for which continuing education credit is awarded;
- (3) document electronically to the real estate commission that the student has completed the course;
 - (a) certify no candidate as successfully completing the broker basics or brokerage office administration course unless the student has attended at least 90% of the classroom instruction and has passed a written examination at the conclusion of the course;
 - (b) certify no broker as successfully completing a commission approved course unless the broker has attended 50 minutes of each hour, or successfully completed a distance education course approved by the New Mexico real estate commission. In the case of a course that is offered in both live and distance education formats, the sponsor shall have discretion as to completion and certification;
- (4) maintain current, complete, and accurate student records; these records shall include, but not be limited to, a record of payments made, a record of attendance, and a record of course work completed; records shall be maintained for a period of three years;

(5) permit the commission or its representative access to classes being conducted, and make available to the commission, upon request, all information pertaining to the activities of the sponsor;

(6) advertise at all times in a manner free from misrepresentation, deception or fraud; all course advertising must include the name of the commission-approved sponsor, and must specify whether the course is in the education or training category;

(7) in the event a sponsor determines that it intends to cease sponsoring real estate classes it shall inform the commission in writing not less than 30 days before cessation;

(8) advise the commission within 30 days of changes in ownership, directorship, financial status, location or other pertinent information, and reapply for sponsorship in the event of change of majority ownership;

(9) at the end of each course, the sponsor shall collect from each student an evaluation that evaluates adherence to course content, the effectiveness of the instructor, and other prescribed criteria; the evaluation forms shall be maintained by the sponsor for not less than one year and shall be made available to the commission upon request;

(10) renew sponsorship approval every three years by submitting a sponsor renewal form and renewal fee to the commission;

(11) shall meet the requirements of the Americans with Disabilities Act and all other local, state and federal laws.

E. Failure to comply with this rule may result in the loss of sponsor approval. The commission may investigate any claim of violation of this rule pursuant to 16.61.36.8 NMAC of the commission rules.

[16.61.15.10 NMAC - Rp, 16.61-15.10 NMAC, 1-1-2012]

16.61.15.11 APPROVAL OF COURSES:

A. Any pre-licensing or continuing education course must have been approved by the commission before the course being offered for credit. Courses must incorporate New Mexico law and regulations when relevant. A course application form must be completed and submitted to the commission before consideration of a course for approval by the ~~education steering committee (ESC) committee~~.

(1) Before course approval, the instructor teaching the course shall make a presentation before the ~~ESC committee~~ according to presentation criteria established by the ~~ESC committee~~.

(2) The ~~ESC committee~~ shall assign the number of credit hours to each course and determine whether the course is in the education or training category.

(3) Commission approved pre-licensing courses may count for up to ten credit hours toward continuing education requirements for license renewal.

B. The ~~ESC committee~~ may waive ~~an ESC a~~ course presentation appearance by a nationally recognized professional real estate organization that provides professional designations if the organization can document to the ~~ESC's committee's~~ satisfaction that the course instructor received training in the course subject matter in addition to attending a train the trainer class.

C. The commission must approve any continuing education course offered for one-time credit before the course ~~being is~~ offered.

(1) A commission approved application form for one-time credit approval must be completed and submitted to the ~~ESC committee~~ before consideration of the course for credit.

(2) Approved sponsors are limited to four course submittals for one-time credit during each calendar year.

(3) The sponsor, or its representative, requesting one-time course credit, shall make a presentation before the ~~ESC committee~~ according to presentation criteria established by the ~~ESC committee~~.

D. The course shall conform to the generally accepted principles of education as prescribed by the real estate educators association (REEA) and shall comply with commission approved course content requirements. The minimum length of a course shall be one hour.

E. The commission will maintain a list of courses that have been approved for credit.

F. If the course represents an update to a previously approved course, and new material becomes available, the instructor shall be responsible for updating the course and presenting the most current information. Significant changes to course outlines should be provided by the instructor to the commission's education administrator as they occur. If a course outline has not been updated within the last three years the ~~ESC committee~~ may, at its discretion, recommend to the commission that the course be removed from the list of approved courses.

G. Distance education: For purposes of this part, distance learning is education and training that takes place outside of the traditional classroom setting and in which non-traditional instructional media are used because the teacher and student are separated by distance or time. Distance education sponsors seeking continuing education credit for their courses will be required to designate a New Mexico approved instructor to make a presentation to the ~~ESC committee~~ and shall submit for ~~ESC committee~~ review and approval:

(1) course syllabus which clearly states the course objectives and the specific learning objectives for desired student competencies;

(2) instructions for accessing, using and testing the online materials for THE COMMITTEE auditing purposes including everything necessary for evaluating course content materials, duration, accuracy and timeliness;

(3) reference materials appropriate to the course;

(4) when a series of courses is offered in a curriculum, evidence of sequential development and logical progression;

(5) description of the method, such as examination and quizzes, by which student progress and mastery of the subject matter are measured, and for determining what is required for a student to successfully complete the course;

(6) description of the method by which student identity is verified, such as user name and password;

(7) the names, telephone numbers and email addresses of individuals, web-sites or other resources that students can contact for technical assistance;

(8) the New Mexico instructor approved to teach the course must be available to answer subject matter questions during regularly posted hours;

(9) a description of the methodology used by the sponsor in determining the classroom hour equivalency of each distance education course.

[16.61.15.11 NMAC - Rp, 16.61.15.11 NMAC, 1-1-2012]

16.61.15.12 APPROVAL OF INSTRUCTORS:

A. Commission approved course instructors. Instructors must be approved by the commission before teaching courses. The following requirements apply to all commission approved courses.

- (1) Be honest, truthful, reputable and competent.
- (2) Submit a commission-approved application before presenting the course to the ESC committee.

(3) Complete a commission approved instructor training course within one year of being initially approved as an instructor and every three years thereafter. Instructors who fail to submit documentation of completion of the instructor-training course will not be re-certified.

- (4) Provide copies of student handouts during their course presentation.
- (5) Make a minimum 15 minute presentation to the ESC committee exhibiting their teaching skills and knowledge of the subject matter, and be prepared to answer questions. Presentations must conform to the generally accepted principles of education (GAPE) as established by the real estate educators' association (REEA).

B. Pre-licensing instructors. Pre-licensing courses include: real estate law, real estate principles and practices, broker basics and brokerage office administration. In addition to Subsection A above, these instructor candidates must:

(1) pass the New Mexico broker's examination with a minimum score of 84 within the previous three years from the date of application;

(2) audit the course they wish to teach before being approved as an instructor for that course; documentation of having audited the course must be submitted with the candidate's application;

(3) broker basics: be approved to teach real estate law and real estate principles and practice;

(4) brokerage office administration: be approved to teach real estate law and real estate principles and practice and broker basics; in addition, candidates must also have two years' experience as a qualifying broker in New Mexico or another licensing jurisdiction.

C. Mandatory Core course instructors. In addition to Subsection A above mandatory core course instructor candidates must:

(1) ~~be a currently approved instructor for real estate law and real estate principles and practice or be currently approved to teach three or more continuing education courses; complete a core course training, make a presentation to the committee, receive a favorable recommendation from the committee, and be approved by the commission.~~

(2) ensure the mandatory core course materials they present include the most recent updates provided by the New Mexico real estate commission; and

(3) make a minimum 60 minute presentation to the ESC committee and answer questions.

D. Qualifying broker refresher course instructors. In addition to Subsection A above, qualifying broker refresher course instructor candidates must comply with one of the following:

(1) be a currently approved instructor for real estate law and real estate principles and practice and broker basics and be a qualifying broker or would qualify to be one; or

(2) be approved to teach the mandatory course and be a qualifying broker.

E. New broker business practices post-licensing course instructors. In addition to Subsection A above, new broker business practices course instructors must:

(1) have two years' experience as an active qualifying broker with supervisory responsibilities or two years actively licensed as an associate broker and served in the capacity as a trainer for the brokerage, or two years actively licensed as an associate broker and be approved as a continuing education instructor;

(2) attend, when offered, a commission approved train-the-trainer on how to instruct the post-licensing course and attend, when offered, a periodic update of the course offered by the commission or the commission contractor; and

(3) make a minimum 60 minute presentation to the committee and answer questions.

F. ESC The committee approval process. The committee will make its recommendation to the commission to grant or deny instructor approval. If the application is denied, a written evaluation to the candidate will provide specific reasons for denial and recommendations for improvement. An instructor candidate not recommended for approval by the ESC committee may ask the commission to review the ESC's committee's unfavorable recommendation.

G. Post-approval requirements. After approval all instructors must comply with the following:

- (1) pay applicable fee(s);
- (2) conduct all classes in accordance with commission rules and educational policies;

- (3) ensure all instruction is free from all misrepresentation, solicitations of products and recruitment;
- (4) conform to commission-approved course content requirements; and
- (5) allow access to any class to any duly appointed representative of the commission.

H. Instructor approval expiration and re-certification.

(1) Expiration. Instructor approvals expire on the same three-year cycle as the instructor's broker's license. If an instructor is not a real estate broker, then the expiration will be three years from the date of initial approval.

- (2) Re-certification. Instructors seeking re-certification shall:

- (a) submit the commission-approved form;
- (b) submit documentation of having completed a commission-approved instructor training course;

(c) an instructor who has not taught a course in the preceding three year instructor renewal cycle will not be recertified to teach that course; an instructor may submit at the time of renewal, a written request to the ESC committee to be re-certified to teach that course; the written request must specify how the instructor has remained current on the course material, and must include the course outline and course material.

I. Failure to comply with this part may result in the loss of instructor approval. The commission may investigate any claim of instructor impropriety pursuant to 16.61.36.8 NMAC of the commission rules.
[16.61.15.12 NMAC - Rp, 16.61.15.12 NMAC, 1-1-2012]

Part 16, Qualifying Broker: Affiliation and Responsibilities

After discussion, Commissioner Johnson moved adoption of the following changes to Part 16, Qualifying Broker: Affiliation and Responsibilities. Commissioner Stroud seconded the motion and it carried unanimously.

RESPONSIBILITIES: A qualifying broker shall, in addition to all other requirements imposed by law, comply with the following:

A. conduct the real estate brokerage business under the trade name and from the brokerage address or addresses registered with the commission;

B. prominently display in the brokerage office, the qualifying broker's own license and the licenses of all other affiliated associate brokers conducting real estate brokerage business from the brokerage office; in the event of a virtual office, this requirement is met by displaying a legible photo or scanned image of the licenses on the brokerage's web site through a link labeled "real estate licenses".

C. have in the brokerage office and available to all affiliated associate brokers and qualifying brokers a current copy of the state of the New Mexico real estate license law and rules manual in hard copy or electronic format.

D. notify the commission in writing within ten days of a change of the brokerage office address or telephone number;

E. supervise all real estate related activities performed by the brokerage on behalf of others including but not limited to advertising of real estate or real estate services conducted on behalf of others by associate brokers, and qualifying brokers, and employees; affiliated with the brokerage and execute and maintain current written employment or independent contractor agreements with them; and trust account management by brokerage owners whether or not they are licensed real estate brokers.

F. execute and maintain current written employment or independent contractor agreements with all persons affiliated with the brokerage, including brokers, and brokerage owners whether or not the brokerage owners are licensed real estate brokers.

F. G. maintain full and complete records wherein the qualifying broker and affiliated associate broker(s) are engaged on behalf of others, or on their own behalf, in real estate related matters processed through the brokerage; the required records shall be available to the commission or any duly authorized commission representative at the place of business of the qualifying broker or at the commission office; all such records whether in paper or electronic format shall be retained for a period not less than six years; in the case of a property manager, all records shall be retained for the full term of any agreement and for six years from the termination of the management agreement;

G. H. deposit all money received on behalf of others in the proper trust account as soon after receipt as is practicably possible after securing signatures of all parties to the transaction documents;

H. I. receive and disburse all commissions, referral fees, and other considerations to any broker affiliated with the qualifying broker, or broker who had been affiliated with the qualifying broker at the time the transaction went under contract; the qualifying broker may also disburse or authorize the disbursement of such commissions and fees to any entity entitled by law to receive same, including the estate of a deceased broker, the deceased broker's surviving spouse, or any legally recognized entity wholly owned by an associate broker and their spouse. Such partnership, corporation, or limited liability company shall not be required to have a qualifying broker for purposes of this sub-part;

I. J. assure that when the brokerage cooperates with or makes a referral to, or receives a referral from any broker, there be a transaction specific written co-brokerage or referral agreement signed by the qualifying broker;

J. K. designate a broker in charge in the event actual supervision by the qualifying broker is not possible, and inform the commission of such designation in writing. During this period of time, the broker in charge shall assume all of the responsibilities of the qualifying broker for the brokerage;

K. L. return the associate broker's license to the commission within 48 hours of termination or discharge;

L. M. ensure that each qualifying broker and associate broker affiliated with the brokerage obtain and maintain a current errors and omissions insurance policy as provided in NMSA 1978 Section 61-29-4.2 of the Real Estate License Law and 16.61.5 NMAC of the commission rules;

M. N. successfully complete as a condition of license renewal or as a condition of reinstatement of qualifying broker status the commission-approved four hour qualifying broker refresher course;

N. O. ensure that associate brokers affiliated with their brokerage complete the commission-approved new broker business practice course or the CCIM 101 course within their first year of licensure.

P. ensure that the qualifying broker's name and contact information, including license number, is clearly and conspicuously displayed on any written document generated by the brokerage or presented to a prospective customer or client, and that has the potential to become an express written agreement.

[16.61.16.9 NMAC - Rp, 16.61.16.9 NMAC, 1-1-2012; A, 1-1-2014]

Part 17, Associate Broker: Affiliation and Responsibilities

After discussion, Commissioner Koether moved adoption of the following changes to Part 17, Associate Broker: Affiliation and Responsibilities. Commissioner Stroud seconded the motion and it carried unanimously.

RESPONSIBILITIES: An active associate broker shall:

A. complete in the within their first year of licensure, the commission-approved new broker business practices course or the CCIM 101 course. Associate brokers who have been on inactive status since their initial licensure shall complete the new broker business practices course or the CCIM 101 course prior to activation of their license.

B. be affiliated with only one qualifying broker at a time;

C. not engage in any real estate activity for any other qualifying broker other than the qualifying broker with whom the broker is affiliated;

D. not engage in any real estate activities for others for which a real estate license is required outside the knowledge and supervision of their qualifying broker;

E. not engage in any real estate activities on their own behalf outside the knowledge of the qualifying broker with whom the broker is affiliated;

F. not engage in any real estate activity under a trade name(s) other than the trade name(s) of the qualifying broker with whom the broker is affiliated;

G. not receive any commissions or fees for real estate activities from anyone other than the qualifying broker with whom the broker was affiliated with at the time the transaction went under contract, or persons authorized in writing by the qualifying broker to disburse such commissions or fees;

H. when advertising real estate or real estate services for others, include in the advertising the trade name and telephone number as registered with the commission of the qualifying broker with whom the broker is affiliated;

I. remit all funds received from others related to real estate transactions to the qualifying broker or their designee as soon as possible after receipt of those funds, and after securing signatures of all parties to the transaction;

J. deliver in a timely manner to their qualifying broker all records required to be maintained by their qualifying broker under 16.61.16 NMAC.

K. maintain a current errors and omissions insurance policy as provided in NMSA 1978 Section 61-29-4.2 of the Real Estate License Law and part 16.61.5.8 of the commission rules, and provide documentation of such policy to their qualifying broker.

Part 19, Broker Duties and Brokerage Relationships.

After discussion, Commissioner Johnson moved adoption of the following changes to Part 19, Broker Duties and Brokerage Relationships, Commissioner Koether seconded the motion and it carried unanimously.

BROKER DUTIES; DISCLOSURE: ~~Before the time a broker generates or presents any written document that has the potential to become an express written agreement, the broker shall disclose in writing to their prospective customer or client, and obtain a written acknowledgement from their prospective customer or client, showing the delivery of the disclosure of the following broker duties: Prior to the time a broker generates or presents to their prospective customer or client any written document that has the potential to become an express written agreement, the broker shall disclose in writing to that customer or client the list of broker duties set forth in Part 16.61.19.8 that are owed by brokers to their customers, clients, other parties to the transaction, and/or other brokers. The broker shall obtain from their prospective customer or client written acknowledgement that the broker has made such disclosure.~~

Brokers owe the following duties to their customers and clients

A. honesty and reasonable care ~~as set forth in the provisions of this section; and ethical and professional conduct~~

B. 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;

C. performance of any and all written agreements made with the customer or client;

D. assistance to the broker's customer or client in completing the transaction, unless otherwise agreed to in writing by the customer or client, including:

- (1) timely presentation of and response to all offers or counter-offers ~~in a timely manner~~; and
- (2) active participation in assisting their customer or client assistance in complying with the terms

and conditions of the contract and with the closing of the transaction; if the broker in the transaction is not providing the service, advice or assistance described in Paragraphs (1) and (2) of Subsection D of 16.61.19.8~~9~~ NMAC, the customer or client must agree in writing that the broker is not expected to provide such service, advice or assistance, and the broker shall disclose the existence of such agreement in writing to the other brokers involved in the transaction;

E. acknowledgement by the broker that there may be matters related to the transaction that are outside the associate broker's or qualifying broker's knowledge or expertise and that the associate broker or qualifying broker will suggest that the customer or client seek expert advice on these matters;

F. advice to clients and customers to consult with an attorney regarding the effectiveness, validity or consequences of any written document generated by the brokerage or presented to a prospective customer or client, and that has the potential to become an express written agreement.

G. prompt accounting for all money or property received by the broker;

G-H. written disclosure to their client or customer and to other brokers involved in the transaction of any potential conflict of interest that the broker has in the transaction including but not limited to:

- (1) any written brokerage relationship the broker has with any other parties to the transaction or;
- (2) any material interest or relationship of a business, personal, or family nature that the broker has in the transaction;

~~(3) other brokerage relationship options available in New Mexico;~~

H-I. 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;

I-J. maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former client's consent or is required by law;

K. ~~written disclosure of brokerage relationship options available in New Mexico;~~

J-L. unless otherwise authorized in writing, an associate broker or qualifying broker shall not disclose to their customer or client during the transaction that their seller client or customer has previously indicated they will accept a sales price less than the asking or listed price of a property; that their buyer client or customer has previously indicated they will pay a price greater than the price submitted in a written offer; the motivation of their client or customer for selling or buying property; that their seller client or customer or their buyer client or customer will agree to financing terms other than those offered; or any other information requested in writing by the associate broker's or the qualifying broker's customer or client to remain confidential, unless disclosure is required by law.

Brokers owe the following duties to tenants:

- A. honesty, reasonable care, and ethical and professional conduct;
- B. compliance with the New Mexico real estate license law and the real estate commission rules; and other applicable local, state, and federal laws and regulations;
- C. performance of any and all written agreements entered into with the tenant;
- D. prompt accounting for all money or property received by the broker from the tenant, including issuance of a receipt for cash received;
- E. written disclosure that the broker is the agent of the owner of the property and not of the tenant;
- F. 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 do not include any information covered by federal fair housing laws or the New Mexico human rights act;
- G. advice to tenants to consult an attorney regarding the effectiveness, validity, or consequences of any express written agreement the tenant is required to sign.
- H. for residential tenants, 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 owner resident relations act, and other applicable local, state, and federal laws and regulations.

Brokers owe the following duties to other brokers:

- A. honesty, reasonable care, and ethical and professional conduct;
- B. timely presentation of and response to all offers or counter-offers;
- C. active participation in assisting their customer or client in complying with the terms and conditions of the contract and with the closing of the transaction
- D. 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.
- E. 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.
- F. written disclosure to their client or customer and to other brokers involved in the transaction of any potential conflict of interest that the broker has in the transaction including but not limited to:
 - (1) any written brokerage relationship the broker has with any other parties to the transaction;

- (2) any material interest or relationship of a business, personal, or family nature that the broker has in the transaction.
- G. non-interference with a purchase agreement or any express written agreement that another broker has with their client or customer.

[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]

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~~ subagency and residential property management.

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]

Part 23, Trust Accounts

After discussion, Commissioner Johnson moved adoption of the following changes to Part 23, Trust Accounts. Commissioner Stroud seconded the motion and it carried unanimously.

DESCRIPTION, DESIGNATION AND RECONCILIATION:

A. Funds of others. A qualifying broker who receives money belonging to others related to a real estate transaction shall deposit same only in a trust account in an acceptable financial institution, title company or with a qualifying broker also involved in the transaction.

B. Designation. All trust accounts shall be designated on the institution's records as "trust account" and include the trade name of the brokerage as registered with the commission.

C. Electronic transactions. Online payments, direct deposits and other electronic transactions are permitted as long as each transaction can be tracked on the bank statement and on the property ledger.

D. Reconciliation. ~~Trust accounts must be reconciled monthly. As defined in Part 16.61.1.7 VV of the commission rules reconciliation must be performed monthly and verified by the qualifying broker.~~

E. Property ledgers. Each trust account transaction shall be assigned to a managed property (e.g. single family home, apartment complex or commercial property).

F. Number of trust accounts. A brokerage may have more than one trust account.

Part 24, Property Management

After discussion, Commissioner Stroud moved adoption of the following changes to Part 24, Property Management. Commissioner Koether seconded the motion and it carried unanimously.

REPORTS AND DOCUMENTS TO OWNERS:

- A. Owner statements. The qualifying broker shall provide the owner with a report of receipts and disbursements monthly or as required by the management agreement, showing the following:
- (1) previous balance;
 - (2) funds deposited by category;
 - (3) funds disbursed by category; and
 - (4) ending balance.
- B. Additional reports may be provided as set forth in the property management agreement.
- C. Documents. Fully executed copies of the management agreement shall be provided to the owner after obtaining all signatures. Except as otherwise provided herein, signed leases or other documents related to the management agreement shall be provided to the owner upon request, except for documents that the property manager is prohibited by law or contract from disclosing, including but not limited to criminal background checks and credit reports.
- D. Final statement after termination. Final accounting of trust account funds shall be provided to the owner within 60 days of the effective date of termination of a management agreement.
[16.61.24.12 NMAC - Rp, 16.61.24.12 NMAC, 1-1-2012; A, 1-1-2014]

16.61.24.13 MANAGEMENT AGREEMENTS:

- A. There shall be a signed written management agreement between the brokerage and the owner for each property managed. The agreement shall be executed prior to acting on behalf of the owner and shall specify that the brokerage relationship between the residential property manager and the owner is an agency relationship.
- B. The agreement shall define the duties and responsibilities of the brokerage and the owner including, but not limited to, the following:
- (1) duties to be provided by the brokerage;
 - (2) disclosure of all fees to be charged to owner; and
 - (3) disclosure of all fees to be charged to tenant that are retained by the brokerage; and
 - (4) a question asking the owner to disclose the status of any foreclosure or other financial situation that could affect the tenant's occupancy.
- C. If the property manager is prohibited by law or contract from providing the owner with a given document, such as a tenant's criminal background check or credit report, the property management agreement shall include the following:
- (1) a written disclosure to the owner that the property manager is prohibited by law or contract from providing such documents to the owner; and
- (2) the owner's written consent that such documents will not be provided.

Part 27, Foreign Brokers

After discussion, Commissioner Stroud moved adoption of the following new rule on Foreign Brokers. Commissioner Johnson seconded the motion and it carried unanimously.

TITLE 16 CHAPTER 61 PART 27

OCCUPATIONAL AND PROFESSIONAL LICENSING REAL ESTATE BROKERS FOREIGN BROKERS

16.61.27.1 ISSUING AGENCY: New Mexico Real Estate Commission
(16.61.27.1 NMAC, Rp, 16.61.27.1 NMAC, 1-1-2014; N, 1-1-2017)

16.61.27.2 SCOPE: The provisions in Part 3 of Chapter 61 apply to all applicants for real estate broker licensure in New Mexico.
(16.61.27.2 NMAC, Rp, 16.61.27.2 NMAC, 1-1-2014; N, 1-1-2017)

16.61.27.3 **STATUTORY AUTHORITY:** Part 3 of Chapter 61 is promulgated pursuant to the Real Estate License Law, NMSA 1978, Section 61-29-16.1
(16.61.27.3 NMAC, Rp. 16.61.27.3 NMAC, 1-1-2014; N, 1-1-2017)

16.61.27.4 **DURATION:** Permanent.
(16.61.27.4 NMAC, Rp. 16.61.27.4 NMAC, 1-1-2014; N, 1-1-2017)

16.61.27.5 **EFFECTIVE DATE:** 1-1-2017, unless a later date is cited at the end of a section.
(16.61.27.5 NMAC, Rp. 61.61.27 NMAC, 1-1-2014; N, 1-1-2017)

16.61.27.6 **OBJECTIVE:** The objective of Part 27 of Chapter 61 is to set forth the requirements for a foreign broker, a real estate broker licensed in another state, to conduct commercial real estate brokerage business in New Mexico.
(16.61.27.6 NMAC, Rp. 61.61.27.6 NMAC, 1-1-2014; N, 1-1-2017)

16.61.27.7 **DEFINITIONS:** Refer to 16.61.1.7 NMAC
(16.61.27.7 NMAC, Rp. 61.61.27.7 NMAC, 1-1-2014; N, 1-1-2017)

16.61.27.8 FOREIGN BROKERS

- A.** A foreign broker may act in the capacity of a qualifying broker or associate broker with respect to commercial real estate located in New Mexico provided that prior to performing any of the real estate activities of a qualifying broker or associate broker the foreign broker enters into a transaction-specific written agreement with a New Mexico qualifying broker that includes, at a minimum:
 - (1) a description of the parties, the commercial real estate and any additional information necessary to identify the specific transaction governed by the agreement;
 - (2) the terms of compensation between the foreign broker and the New Mexico qualifying broker;
 - (3) the effective date and definitive termination date of the agreement;
 - (4) a statement that the foreign broker agrees to;
 - a. cooperate fully with the New Mexico qualifying broker and all associate brokers designated by the New Mexico qualifying broker.
 - b. except for the foreign broker's interaction with the foreign broker's client, conduct all contact with the parties, including the general public and other brokers, in association with the New Mexico qualifying broker or associate broker designated by the New Mexico qualifying broker.
 - c. conduct all marketing and solicitations for business in the name of the New Mexico qualifying broker.
 - d. timely furnish the New Mexico qualifying broker with copies of all documents related to the transaction that are required by the laws of New Mexico to be retained by its brokers, including without limitation brokerage relationship disclosures, offers, counteroffers, purchase and sale contracts, leases and closing statements.
 - e. comply with and be bound by and subject to New Mexico law and the rules of the real estate commission;
 - f. submit to the jurisdiction of the courts of New Mexico with respect to the transaction and any and all claims related thereto by service of process upon the secretary of state of New Mexico and upon the appropriate official of the state, province, or nation of the foreign broker's real estate licensure.
- B.** When a New Mexico associate broker or qualifying broker makes a referral to or receives a referral from a foreign broker for the purpose of receiving a fee, commission or other consideration, the qualifying broker of the New Mexico brokerage office and the foreign broker shall execute a written, transaction-specific referral agreement at the time of the referral.
(16.61.27.8 NMAC, Rp. 16.61.27.8, 1-1-2014; N, 1-1-2017)

Part 32, Real Estate Advertising

After discussion, Commissioner Stroud moved adoption of the following changes to Part 32, Real Estate Advertising. Commissioner Koether seconded the motion and it carried unanimously.

ADVERTISEMENTS:

A. All real estate advertising shall be a true and factual representation of the property and real estate services being advertised and the brokerage providing the services and shall not be presented in such a manner that will confuse or mislead the public.

B. Every qualifying broker advertising real property for others for sale, purchase, lease, exchange or rent, including short-term or vacation rentals, or advertising real estate services, shall at a minimum, use in such advertising the trade name and current brokerage office telephone number as registered with the commission. Directional signs are exempt from these requirements. Additional telephone numbers may be used in such advertising.

C. Associate brokers, when advertising real property for others for sale, purchase, lease, exchange or rent, or when advertising real estate services, shall include in the advertisement the trade name and the current telephone number as registered with the commission of the brokerage with which they are affiliated. Effective January 1, 2017 the trade name and the brokerage office telephone number shall be prominently displayed in a type size not less than 33 percent of the associate broker's name, or in the case of a team of associate brokers, the team name.

D. A broker advertising to, sell, or exchange real property which the broker owns or partially owns shall indicate within such advertising, including signs, that the broker owns the real property. Disclosure of such ownership must also be made in the listing contract, purchase agreement, or exchange agreement. If an owner-broker engages a third party broker to list the owner-broker's property, the third party broker is not required to make an owner-broker disclosure in advertising and signs, but such disclosure is required in the listing contract, purchase agreement or exchange agreement. A broker advertising to rent or lease real property which the broker owns or partially owns is not required to disclose such ownership in advertising and signs, but is required to make such disclosure in rental or lease agreements.

E. When advertising real property owned by a broker and the telephone number of the brokerage is used in the advertisement, the advertisement must also include the trade name of the brokerage as registered with the commission.

F. All advertising must be in compliance with all local, state and federal laws and regulations.

G. These requirements apply to all forms of advertising, including but not limited to print, audio and video recordings, computer presentations, online and electronic media. In the event that disclosure of the brokerage name and telephone number as registered with the commission is not practical in electronic displays of limited information, such as "thumbnails", text messages, links and "tweets" of 200 characters or less, such displays are exempt from the disclosure requirement provided such displays are linked to a display that includes all of the required disclosures.

Part 36, Complaints and Investigations

After discussion, Commissioner Johnson moved adoption of the following changes to Part 36, Complaints and Investigations. Commissioner Stroud seconded the motion and it carried unanimously.

INVESTIGATIONS: In conducting an investigation, the commission shall give the person under investigation the opportunity to answer the complaint made against them in writing and to produce relevant documentary evidence, in accordance with the Uniform Licensing Act. If the person under investigation fails to respond within ten (10)

working days of having been provided with a copy of the complaint and having been informed by the commission in writing that a complaint has been filed against him or her, the investigation may proceed without benefit of that person's response.

A. If the investigation reveals that the complaint does not involve a violation of the Real Estate License Law or the commission rules, the complaint will be dismissed by the commission, and the parties to the complaint will be so advised.

B. If the investigation reveals that the complaint does involve a violation of the real estate license law or the commission rules, the commission may refer the complaint to the attorney general's office and request that a notice of contemplated action (NCA) be issued to the respondent, or offer the respondent a pre-NCA settlement with the understanding that if the respondent does not accept the settlement offer the complaint will be referred to the attorney general's office for the issuance of an NCA.

B.—C. Withdrawal of a complaint by a member of the commission, a member of the public, or another broker does not bind the commission to dismiss the complaint.

6. New Business

a. Determination of effective date of new rules

Commissioner Stroud moved that the determination of the effective date of the new rules be deferred until the July 18, 2016 Commission meeting. Commissioner Johnson seconded the motion and it carried unanimously.

b. Review and receipt of letter from Assistant Attorney General Richard Word to State Representative Yvette Herrell, entitled Opinion Request: Necessity of a Real Estate Broker's License to Auction to Real Estate.

Mr. Word's letter concluded that his reading of the Real Estate License Law is that a real estate broker's license is required to auction real estate in New Mexico.

c. Request for Commissioner travel to the ARELLO Annual Conference in Vancouver, B.C., September 21-25, 2016

Mr. Ciddio reported he had been advised by Boards and Commissions Division Director Enrique Knell that because of budget constraints at the state level, Commissioners cannot be reimbursed for out-of-state travel; however, Commissioners can travel at their own expense. Such travel still requires approval by the Regulation and Licensing Department and the Governor's Office.

Before adjourning, Commissioner Stroud asked that agenda items for the July 18, 2016 Commission meeting include a discussion of a path forward for the recommendations of the Commission-appointed Qualifying Broker

Task Force; a discussion and update on the status of the Core Course; and refinement of the Road Map for becoming a Core Course Instructor to make it consistent with the rules adopted at the June 20, 2016 meeting.

7. Adjourn

There being no further business, Commissioner Johnson moved that the meeting be adjourned. Commissioner Stroud seconded the motion and it carried unanimously. The meeting adjourned at 3:26 p.m.

Greg Foltz, President
New Mexico Real Estate Commission