

**New Mexico Real Estate Commission
Special Meeting
March 19, 2018
Real Estate Commission Offices
5500 San Antonio Drive NE
Albuquerque, New Mexico**

MINUTES

Commissioners Present: Kurstin Johnson, President
Greg Foltz, Vice President
Bill Davis, Secretary
Gretchen Koether, Member
Lindsay Rollins, 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: Lori Chavez, Assistant Attorney General and
Commission Counsel

1. Call to Order and Welcome- Kurstin Johnson, President

Commission President Kurstin Johnson called the meeting to order at 9:00 a.m. and welcomed those in attendance.

2. Determination of Quorum

With all five Commissioners present, Commissioner Johnson determined that a quorum was present.

3. Pledge of Allegiance

Commissioner Johnson led Commissioners and all present in the Pledge of Allegiance.

4. Introductions

Commissioners and Commission staff introduced themselves.

5. Approval of the Agenda of the March 19, 2018 Special Meeting

Commissioner Gretchen Koether moved approval of the agenda of the March 19, 2018 Special Commission meeting. Commissioner Greg Foltz seconded the motion and it carried unanimously.

6. Approval of the Minutes of the January 22, 2018 Regular Commission Meeting

Commissioner Foltz moved approval of the minutes of the January 22, 2018 Regular Commission meeting. Commissioner Bill Davis seconded the motion and it carried unanimously.

7. Broker and Public Forum

John “Jack” Piserchia had requested to be placed on the agenda under Broker and Public Forum to address the Commission regarding the revocation of his broker’s license. Mr. Piserchia failed to appear at the meeting.

Mr. Piserchia’s license was revoked by the Commission on October 23, 2017 for his failure to appear at a September 25, 2017 hearing to show cause why his license should not be revoked for his failure to comply with a Decision and Order in NMREC Case No. 11-06-03-048.

The Decision and Order in NMREC Case No. 11-06-03-048, signed by then Commission President Christina Eberly on November 21, 2011 provided that Mr. Piserchia pay a \$3,000 fine, receive a letter of reprimand, and complete for no continuing education credit a Commission-approved course in the Uniform Owner Resident Relations Act and Trust Accounts. Mr. Piserchia appealed the Commission order to the District Court, but the court dismissed the appeal in 2017 for lack of activity and the Commission was authorized to enforce the order.

8. Old Business

a. Discussion and development of action plan for Real Estate Commission 2020 Fiscal Year Budget Request

Commission Executive Secretary Wayne W. Ciddio summarized the discussion of the Commission's budget request from the January 22, 2018 meeting stating that the Commission should decide whether a budget expansion should be in the areas of enforcement, licensing, or education technology.

Commission Chief Investigator Lyn Carter said the case back log is currently at 70 cases, down from 98 when he joined the Commission staff. He said the backlog, plus the fact that the Commission shares one vehicle with the Public Accountancy Board, Human Resources, and whoever within the Albuquerque office of Regulation and Licensing needs a vehicle, has resulted in no office inspection program for the last three years. Mr. Carter said an additional investigator would alleviate the backlog and free up time and personnel for office inspections.

Mr. Ciddio said that although improved technology is desirable to enhance distance education and provide alternatives to attending Commission meetings and disciplinary hearings in person, investment in equipment is probably not the best use of resources in view of the fact that the Commission is currently housed in leased office space and infrastructure would likely remain with the building at the end of the current lease.

After further discussion, Mr. Ciddio was asked to prepare for the next meeting budget projections for an additional investigator, and an additional staff member in licensing, including the option of making one or both positions temporary. The Commission will have to submit to the Regulation and Licensing Department (RLD) a budget expansion plan on or about August 1, 2018 in order to meet the September 1, 2018 deadline by which the department will have to submit a budget request to the Department of Finance and Administration (DFA).

- b. Discussion by telephone with Cindy Rice Grissom of Rice Insurance Services about graduated premiums for group E&O Insurance.

In response to a request from Commissioner Koether for a discussion about the possibility of including a graduated premium for brokers reflecting their claims history in the Commission's next Request for Proposals (RFP) for an E&O provider, Rice Insurance CEO Cindy Rice Grissom joined the Commission meeting by phone.

Ms. Rice Grissom said the difficulties with a graduated premium based on claims history include:

- Brokers frequently have claims filed against them even though they've done nothing wrong.
- Many claims are closed without incurring any payments or legal fees.
- A high number of claims doesn't always translate in to high losses; a high number of claims may simply reflect a high number of transactions.
- The current premium is not "risk-based" but based on membership in a group; premiums are lower because the risk is spread among the members of the group.
- Administration of a multi-tiered premium program could result in higher costs that might result in higher premiums for all policy holders.
- High legal fees and New Mexico case law have been a significant factor in claims payments and legal defense costs.

9. New Business

- a. Discussion and possible action on a Commission strategy for dealing with property management company failures.

Commissioner Johnson requested discussion of this matter in view of the large number of property management company failures that the Commission has dealt with in the past 18-24 months.

Mr. Ciddio said that the Commission has revoked the licenses of qualifying brokers involved in property management company failures, either by settlement agreement or default. Some of these cases have been

referred to District Attorneys for criminal prosecution, where they remain pending.

Mr. Carter said he and the other Commission investigators continue to believe that requiring property managers to have performance bonds would afford the best level of consumer protection when property management companies fail.

After further discussion, the consensus of the Commission was to continue its current approach of administrative sanctions against brokers and referrals to the Attorney General's Office and District Attorneys for criminal prosecution, with an increased level of follow up by Commission staff.

Mr. Carter said he was also looking to the recommendations of the Commission's Property Management Task for additional tools for dealing with property management company failures.

- b. Discussion and possible action on Qualifying Broker licensure and renewal requirements.

Mr. Ciddio said Realtors Association of New Mexico (RANM) General Counsel Ashley Strauss-Martin has raised concerns about inconsistencies between the qualifying broker licensure requirements in the Real Estate License Law and those in the Commission Rules.

Mr. Ciddio said the perceived inconsistency lies in the fact that whereas the license law at Section 61-29-9 (D) states that a supervisory qualifying broker must have had an active associate broker's or qualifying broker's or equivalent license for four years, the Commission Rules at Part 16.61.3.10 (2) says that the four years of active experience must have been within the 60 months preceding the application for a qualifying broker's license.

Mr. Ciddio said the concern appears to be that because the Commission Rules require that the four years of active experience be within the 60 months preceding the application, whereas the law merely states four years, the Commission rule has exceeded the statutory requirement and could be subject to challenge.

Assistant Attorney General and Commission Counsel Lori Chavez said she believes the Commission has the authority to clarify statutes by rule.

No action was taken on this matter.

c. Discussion and action on Education Advisory Committee report and recommendations.

- Commission discussion and action on recommendations from February 21, 2018 EAC meeting

After presentation by EAC Chair Jacque Moise, Commissioner Foltz moved approval of the recommendations from the February 21, 2018 EAC meeting. Commissioner Davis seconded the motion and it carried unanimously.

- Commission discussion and action on EAC proposed letter to all sponsors and instructors regarding advertising and solicitation.

Ms. Moise presented the following letter that the EAC proposes to mail to all sponsors and instructors:

TO: All NMREC Sponsors and Instructors
Re: Advertising and Solicitations

Dear NMREC Sponsors and Instructors:

It has recently come to the attention of the Education Advisory Committee that some of you may not be familiar with the NM Real Estate Commission rules regarding advertising and solicitations for approved course offerings and instruction. So, in an effort to avoid further confusion, here are our comments and the actual rules that we wish to clarify:

With regard to our **Sponsors**, please note that your name must be included in all advertisements regarding your course offerings and course material distributed to a class:

16.61.15.10. Approval of sponsors and sponsor responsibilities. Paragraph D (6) states: "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;" (Emphasis added).

With regard to our **Instructors**, please ensure that you do not include any brokerage or business information on your clothing, the course materials, or on any other material that you pass out or distribute in any other format:

16.61.15.12. Approval of instructors. Paragraph G (3) states: "Ensure all instruction is free from all misrepresentation, solicitations of products and recruitment;" (Emphasis added).

Please feel free to contact me or any member of the EAC regarding these concerns.

Sincerely,
Jacque Moise, Chair
Education Advisory Committee
NM Real Estate Commission

Commissioner Foltz moved approval of the EAC letter. Commissioner Davis seconded the motion and it carried unanimously.

- Commission discussion and action EAC recommendations for rule changes.

Ms. Moise presented the following proposed changes to the Commission Rules:

EAC recommending clarification of fee charged to become an approved instructor and also recommending a separate fee structure for approval of a CE course and a reduced fee structure for 5 or more courses presented at one time.

Part 2: License and Other Fees

16.61.2.8 *Edits on Paragraphs J, K and a replacement Paragraph L:*

J. ~~Ør~~ ***For*** each application to the commission . . . (correcting a typo on the first word of this sentence)

K. For each application to the commission to become an approved instructor of real estate pre-licensing and continuing education courses, a fee not to exceed seventy dollars (\$70.00) ~~per course~~, ***and for each renewal thereof a fee not to exceed one hundred dollars (\$100.00).***

L. ***For each application to the commission for pre-licensing and continuing education course approval, a fee not to exceed fifty dollars (\$50.00) plus two dollars (\$2.00) for each credit hour up to a maximum of 10 credit hours. For applications to the commission for bulk course approval, defined as five (5) or more courses at a single committee meeting, a reduced*** fee not to exceed twenty-five dollars plus one dollar (\$1.00) for each credit hour up to a ***maximum of 10 credit hours.***

EAC recommending the addition of a new paragraph for our licensees who have failed to complete the required Core Course(s) at time of renewal. This document was presented at your last meeting and as a result of that discussion, the \$25.00 late fee was removed as an incentive to meet all the Core Course requirements within 30 days of expiration of a license.

Part 13: Continuing Education Requirements

16.61.13.8 *New Paragraph F:*

F. If a licensee fails to meet the Core Course requirements at the time of renewal, and are not exempt under **NMREC Rule 13 (16.61.13.8 D)**, the following policy will be in effect:

Pursuant to **NMREC Rule 11 (16.61.11.8)**, the licensee's license will expire and can only be renewed within one year of expiration by payment of a late fee, and successful completion of all renewal requirements; including all applicable Core Course requirements:

(1) **If a licensee failed to complete the Core Course required for the renewal year, the third year of their license renewal cycle, the licensee must**

complete that Core Course with a Core Course Instructor, in a regular Core Course class setting, or other format that has been approved by the NMREC.

(2) **If a licensee failed to complete the Core Course required for the second year of their license renewal cycle**, the licensee must complete that Core Course with a Core Course Instructor, in a regular Core Course class setting, or other format that has been approved by the NMREC.

(3) **If a licensee failed to complete the Core Course required for the first year of their license renewal cycle**, the licensee must complete that Core Course, with a Core Course Instructor, in a regular Core Course class setting, or other format that has been approved by the NMREC, **OR** the licensee will have the option to repeat the current year's Core Course, with a different instructor, to fulfill the renewal requirement of the first year's Core Course. The licensee will be given credit for the repeated Core Course for renewal purposes, but will not be given any continuing education credit for the repeated Core Course.

EAC recommending clarification of who can offer a course and who must teach that course; recommending adding the word "professional" as an additional requirement for all instructor candidates; deleting the sentence giving Sponsors the discretion to determine whether a student has completed a course offered in a live or distance course format; recommending course evaluation be available to the Commission or its duly authorized representative; and striking the reference to 16.61.36.8 NMAC which refers to the complaint process for licensees, and has nothing to do with the de-certification of an instructor or sponsor.

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

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 **and be taught by instructors approved by the New Mexico real estate commission.**

C. The committee shall review instructor candidates:

(4) To determine if the candidate is honest, truthful, reputable, competent **and professional.**

16.61.15.10. Approval of sponsors and sponsor responsibilities

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

(3) Document electronically to the real estate commission that the student has completed 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.”**

(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, **or any duly authorized Commission representative**, upon request.

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**.

EAC recommending that CE courses offered for one-time be expanded from 4 per year to 10 per year; EAC also recommending an entire new paragraph defining Live Distance Courses (“LDE”) and the requirements to be met for a course to be offered as a LDE. This new paragraph was presented to you at your last meeting. Comments were made about determining whether or not an instructor has the ability to successfully present in this format.

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

16.61.15.11. Approval of courses

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

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

(New Paragraph)

H. Live Distance Education (LDE) is Distance Education in which the Teacher and Student are separated by distance, but not time. In addition to the requirements of paragraph G, the following guidelines will apply to LDE. Whether the instruction is by a live webinar directly to a student's computer or meeting room; or a direct link from an instructor to a group of students by microphone and camera; or other technology; live distance education sponsors seeking continuing education credit for their LDE courses will be required to designate a New Mexico approved instructor to make a presentation to the committee and shall submit for committee review and approval:

1. The technology a sponsor intends to use to provide LDE will be in place, at the point of origination and the distant location; and demonstrated to the EAC in a situation as near to the actual proposed class setting as possible.
2. The maximum number of students to be taught by LDE, at all locations, shall be 100 students; except that the maximum number of students for an LDE Core Course (CC) is a total of 40; and the recommended minimum number of students at any location where CC students are located shall be 5; unless there is a one teacher / one student instruction.
3. There will be a Proctor provided by the Sponsor at every LDE location. The proctor will attempt to encourage every student enrolled in a LDE CC to interact with the Core Course instruction.
4. The Sponsor will provide technical support sufficient to rectify minor technical problems. If there are any interruptions during LDE that exceed the regulatory mandate requiring 50 minutes of instruction per hour, no credits will be issued to students.

EAC recommending adding the word "professional" as an additional requirement for all instructors; recommending expanding the criteria to become a Core Course Instructor which was previously presented to you in January but we added that a Core Course instructor candidate cannot receive compensation for co-teaching prior to approval as a Core Course Instructor. Also, that the Education Administrator (Tom) will designate who the candidates co-teach with; deleting the reference to the mandatory course as a requirement to teach the Qualifying Broker Refresher Course; and deleting the requirement to make a 60 minute presentation to the EAC to teach the New Broker Business Practices because it is already

covered under Subsection A which was also presented to you in January; and striking the reference to 16.61.36.8 NMAC which, once again, refers to the complaint process for licensees.

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

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 course instructors

- (1) Be honest, truthful, reputable, competent **and professional**

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

- (1) Successfully complete a core course training **class recommended by the committee and approved by the commission; and**

- (2) **Teach the current Core Course twice for no compensation; teamed with two different approved Core Course Instructors designated by the Education Administrator; and receive “above average” evaluations in both courses, and**

- (3) **Appear before and be approved by the committee, including presentation to the committee of a component of the current year’s class; and**

- (4) **Appear before the Commission, and be sworn in, and**

- (5) Ensure that the NMREC core course materials they present include the **materials approved by the** New Mexico real estate commission **for the year that is being taught.**

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:

- (2) Be approved to teach the core **or 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:

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

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.**

- Commission discussion and action on EAC recommendation to amend the anti-harassment and non-solicitation policy previously adopted by the Commission.

Ms. Moise presented the following amended anti-harassment and non-solicitation policy:

**ANTI-HARASSMENT and
NON-SOLICITATION POLICY**

It is the policy of the New Mexico Real Estate Commission that all persons who are registered to take any real estate pre-licensing or continuing education courses approved by the Real Estate Commission, be able to do so in an environment in which they are treated with dignity and respect and that is free from all forms of harassment, discrimination or solicitation. Through adoption, implementation and enforcement of this policy, the New Mexico Real Estate Commission will seek to prevent, correct and discipline any behavior that violates this policy.

Harassment

The New Mexico Real Estate Commission prohibits harassment of any kind, including sexual harassment, and will take prompt and appropriate action in response to complaints or knowledge of violation of this policy. Harassment is any verbal or physical behavior that a reasonable person would find threatening, intimidating or coercive.

Harassment is a form of discrimination that is generally based on race, religion, color, national origin, age, ancestry, sex, sexual orientation, gender identity, physical or mental disability, serious medical condition or spousal affiliation. Harassment generally involves conduct, comment or display that a reasonable person would find insulting, intimidating, humiliating, hurtful, demeaning or degrading or that causes offense, discomfort or personal humiliation or embarrassment to a person or persons.

Harassment can include such behavior as slurs, demeaning jokes or comments, innuendoes, unwelcome compliments of a personal or intimate nature, use of racial or ethnic epithets or racially offensive words or phrases communicated in any language, cartoons, pictures, pranks, hazing, stereotyping comments, derogatory descriptions or other similar verbal, nonverbal or physical conduct. It is not necessary that the behavior be intentional to be considered harassment. Harassment can be a single serious incident or a series of incidents over time.

Sexual Harassment

Sexual harassment includes forms of harassment that can be quid pro quo (i.e., this for that) or a hostile work environment (i.e., intimidating, offensive or demeaning environment in which to work) and warrants separate emphasis. Complaints of sexual harassment will be evaluated using a reasonable person standard.

Sexual harassment includes unwelcome sexual advances, requests for sexual favors and other verbal, nonverbal or physical conduct of a sexual nature when:

1. submission to such conduct is made, either explicitly or implicitly, a term or condition of a pre-licensure or licensee's successful completion of an approved pre-licensing or continuing education course;
2. submission to or rejection of such conduct by a person is used as the basis for successful completion of an approved pre-licensing or continuing education course affecting that pre-licensure or licensee;
3. submission to or rejection of such conduct by a pre-licensure or licensee is used as the basis for decision or actions related to the successful completion of an approved pre-licensing or continuing education course; or
4. such conduct has the purpose or effect of interfering with a pre-licensure or licensee's ability to successfully complete an approved pre-licensing or continuing education course.

The following are examples of conduct that may constitute sexual harassment under this policy:

Verbal harassment – requests or demands for any type of sexual favor; repeated requests for a date; sexual innuendoes; suggestive comments; use of sexually offensive words or phrases in any language; jokes of a sexual nature; or “kidding”, teasing and threats, any of which are unwelcome and sexual in nature.

Nonverbal harassment – distribution or display (including written, hard copy or electronic communications) of any graphic material, such as calendars, posters and cartoons, that is sexual in nature; or insulting sounds, leering, staring, whistling and obscene gestures.

Physical harassment – unwelcome physical contact, such as touching, tickling, pinching, hugging, patting, cornering, kissing, fondling and forced sexual intercourse or assault.

Non-Solicitation of Licensees

Any instructor certified by the Real Estate Commission and instructing a qualified pre-licensing or continuing education course, or the sponsor of that course and/or instructor, will not, directly or indirectly, approach, solicit, entice or attempt to approach, solicit or entice any of their course attendees to leave the brokerage with whom the licensee is associated, either during the instructional period or subsequently, through information gained by the instructor through the pre-licensee's or licensee's registration for the course.

The following are examples of conduct that may constitute solicitation under this policy:

Verbal solicitation – direct invitation by an Instructor to purchase products and/or services or recruitment to join their respective brokerage office;

Non-Verbal solicitation – wearing clothing during an approved New Mexico Real Estate Commission class by an Instructor signifying their personal brokerage office or business and/or displaying the name of the personal brokerage office or business on course materials. Handing out business cards, brochures or other forms of advertising containing the name of an Instructor's personal brokerage office or business.

Reporting Harassment

A person who has experienced or observed harassment is strongly encouraged to identify the offensive behavior and advise the offender to stop and to report the harassment as provided in this policy. Early reporting and intervention have proven to be the most effective way to resolve actual or perceived incidents of harassment. Delays in reporting harassment can affect the ability to take appropriate action and resolve the matter. Accordingly, reports of harassment should be made as soon as possible after experiencing or observing the harassment so that prompt and appropriate action can be taken.

Sexual assault should be reported to law enforcement immediately.

Confidentiality

A report or complaint of harassment and documents related to any investigation shall be maintained confidentially to the extent possible pursuant to applicable law, rule or policy, including the Inspection of Public Records Act. The expressed wishes of the person reporting or complaining will be considered in the context of the legal obligation to act on the allegations and the right of the respondent to obtain information.

No Retaliation

The Real Estate Commission prohibits any retaliation against any person who reports harassment or files a complaint or cooperates as a witness under this policy.

Complaint Procedure

Complaints against an Instructor

If the person alleged to have violated this policy is a New Mexico Real Estate Commission approved instructor, the person making a complaint of harassment or solicitation shall report it to any one of the following:

1. The designated investigator at the NM Real Estate Commission;
2. Any member of the NM Real Estate Commission; or
3. Any member of the Education Advisory Committee.

(see **attached list** for contact information). The person receiving the complaint shall promptly cause an investigation to be conducted and may delegate the investigation to a person with appropriate training. Each complaint shall be investigated promptly, impartially and discreetly. The investigation shall begin within five business days of having received the complaint. The individual responsible for the investigation shall keep the complainant and respondent advised of the status of the investigation, notify them when the investigation is complete and advise them of corrective action to be taken, if any. Disciplinary action against an Instructor who is found to have violated this policy includes written reprimand, suspension or termination as a Real Estate Commission approved Instructor. A record of each complaint and resolution shall be provided to and maintained by the Education Administrator at the New Mexico Real Estate Commission.

Complaints against a Sponsor

If the person alleged to have violated this policy is a New Mexico Real Estate Commission approved Sponsor, the person making a complaint of harassment or solicitation must report it to any one of the following:

1. The designated investigator at the NM Real Estate Commission;
2. Any member of the NM Real Estate Commission; or
3. Any member of the Education Advisory Committee.

(see **attached list** for contact information). The person receiving the complaint shall promptly cause an investigation to be conducted and may delegate the investigation to a person with appropriate training. Each complaint shall be investigated promptly, impartially and discreetly. The investigation shall begin within five business days of having received the complaint. The individual responsible for the investigation shall keep the complainant and respondent advised of the status of the investigation, notify them when the investigation is complete and advise them of corrective action to be taken, if any. Disciplinary action against a Sponsor who is found to have violated this policy includes written reprimand, suspension or termination as a New Mexico Real Estate Commission approved Sponsor. A record of each complaint and resolution

shall be provided to and maintained by the Education Administrator at the New Mexico Real Estate Commission.

Implementation of This Policy

The New Mexico Real Estate Commission will ensure that this policy is disseminated to all approved Instructors and Sponsors, licensees and pre-licensees taking approved New Mexico Real Estate Commission courses, and posted on the New Mexico Real Estate Commission website.

NOTE: A complaint of harassment or other information provided in support of the complaint that is found to be intentionally or recklessly dishonest or malicious will be deemed a violation of this policy.

d. Property Management Task Force Report- Bill Hallett

Mr. Hallett presented the following recommendations for rules changes related to property management:

Note ... The existing 16.61.23.11 to be renumbered 16.61.23.12

PART 16.61.23.11 Audit Declaration.

Definitions in 16.61.1.7 of the Real Estate Commission Rules shall govern.

- A. Qualifying brokers who maintain a trust account, but who do not offer property management services for others, shall advise the commission of the following, annually, no later than January 31, on an Audit Declaration form prescribed by the commission:
 - 1. the name of bank(s) where trust account(s) is maintained;
 - 2. account number(s) for all trust accounts; and
 - 3. balance(s) on all trust accounts as of December 31 of the previous year.
- B. Qualifying brokers who do not maintain a trust account shall so advise the commission annually, no later than January 31 on a form prescribed by the commission.
- C. Every qualifying broker who offers property management services for others shall declare an intent to so do per 16.61.24.9, and shall report to the commission annually, no later than January 31 of each year, on an Audit Declaration form prescribed by the commission, the following information:
 - 1. Identification of all property management trust accounts, as described and defined in 16.61.23.9B, including the following:
 - a. name of bank(s) where trust accounts are maintained;
 - b. account numbers of all trust accounts; and
 - c. balances on all trust accounts as of December 31 of the previous year.
 - 2. A signed statement in which the qualifying broker affirms the following:

- a. qualifying broker has reconciled and balanced all trust accounts monthly during the previous year;
 - b. qualifying broker has reviewed NMREC Rules Parts 23 and 24, "Trust Accounts" and "Property Management," with all qualifying brokers, associate brokers and unlicensed employees who provide property management services, and that the qualifying broker has complied with all rules;
 - c. qualifying broker acknowledges that he/she is individually responsible for all trust account and property management activity within the brokerage.
3. Qualifying broker shall maintain records in accordance with 16.61.23.10 and have available for the commission upon request documentation supporting the qualifying broker's Audit Declaration.
 4. Any qualifying broker who supplies false information on his/her Audit Declaration shall be subject to disciplinary action per Part 36.
- D. At such time that a qualifying broker first offers property management services for others, he/she shall so advise the commission and immediately complete an Audit Declaration form and comply with all provisions thereof.
- E. Within 30 days of any change to a bank or account number of any trust account referenced in 16.61.23.11, the qualifying broker shall inform the commission on a form prescribed by the commission.
- F. Any trust account information provided to the commission electronically shall be done only on a secure portal.

24.7 shall remain;

24.8 shall remain.

16.61.24.9 Declaration of Intent

- A. At any time that a qualifying broker or associate broker offers or intends to offer property management services for others, broker shall declare that intent on an Audit Declaration form approved by the commission and shall be subject to these Rules.
- B. Qualifying brokers and associate brokers who do offer or so intend to offer property management services for others, shall as a condition of offering property management services, complete the commission approved course, "Uniform Owner Resident Relations Act," or a commercial alternative class as approved by the commission, prior to offering such services, and in every subsequent three year licensing cycle.
- C. Associate brokers who do offer or so intend to offer property management services for others, shall as a condition of offering property management services, in addition to the above course, complete a minimum of six (6) hours of approved continuing education courses in property management from a list of courses as approved by the commission, per three (3) year licensing cycle. Qualifying brokers who do offer or so intend to offer property management services for others, shall as a condition of offering such services, in addition to the above course, complete a minimum of twelve (12) hours of approved continuing education courses in

property management from a list of courses as approved by the commission. per three (3) year licensing cycle.

D. Qualifying and associate brokers shall attend at least one New Mexico Real Estate Commission meeting, public hearing, or disciplinary hearing in each three year licensing cycle.

16.61.24.10 Compliance with applicable law.

All Brokers shall comply with applicable local, state and federal laws and ordinances concerning managing, leasing and maintaining property for others, including but not limited to:

- (1) Federal Fair Housing Law.
- (2) New Mexico Uniform Owner Resident Relations Act.
- (3) Federal lead-based paint regulations, including provisions of the EPA's Lead-Based Paint Renovation, Repair and Painting Rule.

16.61.24.11 Vendors.

5. All brokers hiring vendors or employees to perform maintenance activities shall use only properly licensed and/or certified vendors and employees. "Maintenance activities" used in this section include routine service and cleaning, repairs and replacement when necessary.
6. When such maintenance activities require a permit, qualifying broker shall obtain a copy of any and all permits, and final inspection(s), as required by the applicable governing body.
7. All brokers hiring vendors to perform maintenance activities shall ensure that every vendor has (1) an appropriate general liability insurance policy in an amount of not less than one million dollars (\$1,000,000) and (2) a worker's compensation policy if required by NM law. Qualifying brokers shall obtain a certificate of insurance from the vendor.
8. Qualifying brokers shall maintain required permit and insurance records per 16.61.24.16.

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*24.11 shall be renumbered 24.12;
24.12 shall be renumbered 24.13;
24.13 shall be renumbered 24.14;
24.14 shall be renumbered 24.15;
24.15 shall be renumbered 24.16;
24.16 shall be renumbered 24.17.*

16.61.24.14 Management agreements. [This was formerly 24.13]

Adding:

- D. Qualifying broker shall include with every written residential management agreement a copy, either in writing or electronically, of the New Mexico Uniform Owner Resident Relations Act. Qualifying broker shall obtain separate written confirmation from each client that the client has received such copy of the Act. Qualifying broker shall make this confirmation available to the New Mexico Real Estate Commission upon request.

16.61.24.15 Tenancy agreements. [This was formerly 24.14]

Adding:

- J. Qualifying broker shall include with every written residential tenancy agreement a copy, either in writing or electronically, of the New Mexico Uniform Owner Resident Relations Act. Qualifying broker shall obtain separate written or electronic confirmation from each tenant that the tenant has received such copy of the Act. Broker shall make this confirmation available to the New Mexico Real Estate Commission upon request.

NMREC AUDIT DECLARATION

This form is to be used in conjunction with Rules in Part 23, "Trust Accounts," and Part 24, "Property Management."

Qualifying Broker _____ DOES _____ DOES NOT maintain a trust account as defined in 16.61.23.9. *If Qualifying Broker does not maintain a trust account, skip the rest of this form, sign and date this form below, and submit this form to the NMREC no later than January 31 of each year.*

Qualifying Broker _____ DOES _____ DOES NOT offer property management services. *If Qualifying Broker does maintain a trust account but does not offer property management services for others, complete the following and submit this form to the NMREC no later than January 31 of each year. (Use additional pages if necessary.)*

Name of bank(s) where trust account is maintained:

All trust account names, numbers (last 4 digits) and balances on the previous December 31:

Brokerage Name and Address

Qualifying Broker:

number _____

Name printed: _____ License

Signature: _____

* * * * *
*

If Qualifying Broker does offer property management services for others, complete the previous section and affirm the following, per 16.61.23.11. Submit this form to the NMREC no later than January 31 of each year.

1. Qualifying Broker has reconciled and balanced all trust accounts monthly during the previous year, in accordance with 16.61.23.8.
2. Qualifying Broker has reviewed NMREC Rules Parts 23 and 24, "Trust Accounts" and "Property Management," with all qualifying brokers and associate brokers licensed under him/her, and with all unlicensed employees who provide property management services.
3. Qualifying Broker has complied with all rules.
4. Qualifying Broker acknowledges that he/she is individually responsible for all trust account and property management activity within the brokerage.

	So Affirmed _____	
Number	_____ Qualifying Broker (printed)	License
_____	_____ Qualifying Broker (signature)	Date

Finally, Mr. Hallett presented a petition signed by 75 brokers asking the Commission to consider waiving the fee for approval of nationally approved course. The rationale for the petition was stated as follows:

"This petition is designed to show support to the NM Real Estate Commission that we would like the instructor course approval fee to be waved for all courses that have been previously vetted and approved by national professional organizations (i.e. NARPM, IREM, Apartment Association, etc.)."

"We were asked by the RE Commission to create solutions for our industry and to raise the bar for property management. Education is a large part of the need. We do not want to hamper the efforts by the imposed fee of \$70 per class. There are more than 30 courses that have been sent through for approval and there will be more to come. This serves to help remedy the issue of the lack of current CE approved courses available in property management."

e. Discussion and possible action on scheduling a rule hearing.

After discussion, the Commission agreed to appoint a rules task force at the May 21, 2018 meeting, and determine the subject matter of the rule hearing and set a rule hearing date at the July 16, 2018 meeting. Mr. Ciddio said that if the rule hearing was scheduled to coincide with the September 17, 2018 Commission

meeting, there would still be enough time to file the adopted rules with a January 1, 2019 effective date.

Mr. Ciddio said a new law governing rules filings requires that rules be filed with the State Records Center and Archives no later than 15 days after they are adopted by the Commission. He said this deadline will be easier to meet if the number of rules to be amended can be limited.

f. Chief Investigator's Report

Mr. Carter said the Commission received 5 new complaints in January, 14 in February, and 8 so far in March, for a total of 30 new complaints year to date.

He said there are currently no disciplinary hearings scheduled.

Mr. Carter said the Commission investigators would like to have the Commission's pre approval to offer pre-NCA offers consisting of a \$250 fine, a letter of reprimand, and continuing education courses for no credit to brokers who violate the Commission's advertising rules.

Mr. Carter said this approach have been effective in the past in sending the message to brokers that the Commission takes advertising violations seriously, and in expediting the resolution of advertising complaints that might otherwise languish for up to two years. Just as in other pre-NCA offers, brokers would have the option to decline the offer and request a hearing, thereby preserving their due process rights.

After discussion, Commissioner Koether moved that the Commission grant investigators and the Executive Secretary approval to offer pre-NCA offers to brokers who violate advertising rules. Commissioner Davis seconded the motion and it carried unanimously.

10.Executive Session

Commissioner Lindsay Rollins moved that pursuant to Section 10-15-1 H (1) and (3) of the Open Meetings Act, the Commission go into Executive Session to discuss matters listed on the agenda under Item 10, Executive Session. Commissioner Foltz seconded the motion.

Mr. Ciddio called the roll. Commissioners Johnson, Foltz, Koether, Davis, and Rollins voted in favor of the motion. No Commissioners voted against the motion.

At the conclusion of the Executive Session, Commissioner Johnson stated that the Commission was back in Open Session and attested that the only matters discussed in Executive Session were those matters specified in the motion to go into Executive Session.

At this point Commissioner Davis excused himself from the remainder of the meeting.

11. Action on Items Discussed in Executive Session

i. Reports of investigation

NMREC Case No. 16-09-05-067; NMREC Case No. 16-09-06-068; NMREC Case No. 17-08-08-070; NMREC Case No. 17-08-19-081; NMREC Case No. 16-11-04-080; NMREC Case No. 16-11-03-079; NMREC Case No. 17-05-07-038; NMREC Case No. 17-07-09-062.

Commissioner Koether moved that the above-referenced cases be closed. Commissioner Rollins seconded the motion and it carried unanimously.

NMREC Case No. 16-10-05-074

Commissioner Koether moved that the respondent associate broker, respondent qualifying broker, and respondent unlicensed assistant all be offered \$1,000 fines, letters of reprimand, and continuing education courses for no credit as deemed appropriate by the Commission upon acceptance of the offer. If the offer is not accepted within 30 days, the case will be referred to the Attorney General's for the issuance of a Notice of Contemplated Action (NCA). Commissioner Rollins seconded the motion and it carried unanimously.

The respondents are also to be reminded that unlicensed activity is a fourth degree felony and the Commission make further action to pursue criminal charges.

NMREC Case No. 16-11-05-081

Commissioner Koether moved that the Commission issue an NCA to the respondent in the above-referenced case. Commissioner Rollins seconded the motion and it carried unanimously.

NMREC Case No. 16-11-06-082

Commissioner Koether moved that the above-referenced case be closed and referred to the Certified Commercial Investment Manager (CCIM) program. (Did I get this right?) Commissioner Rollins seconded the motion and it carried unanimously.

NMREC Case No. 18-02-07-015

Commissioner Koether moved that the Commission issue an NCA to the respondent in the above-referenced case. Commissioner Rollins seconded the motion and it carried unanimously.

NMREC Case No. 18-03-04-026

Commissioner Koether moved that the Commission issue an NCA to the respondent in the above-referenced case. Commissioner Rollins seconded the motion and it carried unanimously

NMREC Case No. 18-03-05-027

Commissioner Koether moved that the Commission issue an NCA to the respondent in the above-referenced case. Commissioner Rollins seconded the motion and it carried unanimously.

NMREC Case No. 18-03-06-028

Commissioner Koether moved that the Commission issue an NCA to the respondent in the above-referenced case. Commissioner Rollins seconded the motion and it carried unanimously.

NMREC Case No. 18-03-07-029

Commissioner Koether moved that the above-referenced case be closed because subsequent to the submission of the report of investigation, the respondent has provided the Commission with a Certificate of Compliance from the Child Support Enforcement Bureau. Commissioner Rollins seconded the motion and it carried unanimously.

NMREC Case No. 17-07-05-058

Commissioner Koether moved that the respondent associate broker and the respondent qualifying broker each be offered \$1,000 fines, letters of reprimand, and continuing education courses for no credit as deemed appropriate by the Commission upon acceptance of the offer. If the offer is not accepted within 30 days, the case will be referred to the Attorney General's for the issuance of a Notice of Contemplated Action (NCA). Commissioner Rollins seconded the motion and it carried unanimously.

NMREC Case No. 17-07-08-061

Commissioner Koether moved that the respondent associate broker be offered a \$3,000 fine, a letter of reprimand, and a continuing education course for no credit as deemed appropriate by the Commission upon acceptance of the offer. If the offer is not accepted within 30 days, the case will be referred to the Attorney General's for the issuance of a Notice of Contemplated Action (NCA).

Commissioner Rollins seconded the motion and it carried unanimously.

NMREC Case No. 17-08-09-071

Commissioner Koether moved that the respondent associate broker and the respondent qualifying broker each be offered a \$2,000 fine, a letter of reprimand, and a continuing education course for no credit as deemed appropriate by the Commission upon acceptance of the offer. If the offer is not accepted within 30 days, the case will be referred to the Attorney General's for the issuance of a Notice of Contemplated Action (NCA). Commissioner Rollins seconded the motion and it carried unanimously.

Additionally, Commissioner Koether moved that the Commission file a complaint against the Complainant in the above-referenced case on the grounds that the Complainant committed violations in the course of the transaction that was the subject of the complaint. Commissioner Rollins seconded the motion and it carried unanimously.

NMREC Case No. 17-08-16-078

Commissioner Koether moved that the respondent broker be offered a \$2,500 fine, a letter of reprimand, and a continuing education course for no credit as deemed appropriate by the Commission upon acceptance of the offer. If the offer is not accepted within 30 days, the case will be referred to the Attorney General's for the issuance of a Notice of Contemplated Action (NCA). Commissioner Rollins seconded the motion and it carried unanimously.

NMREC Case No. 17-02-04-012

Commissioner Koether moved that the respondent broker be offered a \$1,500 fine, a letter of reprimand, and a continuing education course for no credit as deemed appropriate by the Commission upon acceptance of the offer. If the offer is not accepted within 30 days, the case will be referred to the Attorney General's for the issuance of a Notice of Contemplated Action (NCA). Commissioner Rollins seconded the motion and it carried unanimously.

NMREC Case No. 17-04-01-023

Commissioner Koether moved that the respondent broker be offered a \$1,000 fine, a letter of reprimand, and a continuing education course for no credit as deemed appropriate by the Commission upon acceptance of the offer. If the offer is not accepted within 30 days, the case will be referred to the Attorney General's for the issuance of a Notice of Contemplated Action (NCA). Commissioner Rollins seconded the motion and it carried unanimously.

NMREC Case No. 17-05-01-032

Commissioner Koether moved that the above-referenced case be closed. Commissioner Rollins seconded the motion and it carried unanimously.

NMREC Case No. 17-12-03-109

Commissioner Koether moved that the Commission issue an NCA to the respondent broker in the above-referenced case. Commissioner Rollins seconded the motion and it carried unanimously.

ii. Hearing Officer Reports

NMREC Case No. 15-11-05-112 Carol Rickert-Asbury

Commissioner Koether moved adoption of the Hearing Officer Report in the above-referenced case. Commissioner Rollins seconded the motion and the motion carried, with Commissioners Koether, Foltz, and Rollins voting in favor and Commissioner Johnson abstaining.

Commissioner Koether moved that Ms. Asbury be fined \$5,000, be assessed administrative hearing costs, receive a letter of reprimand, and be ordered to take for no continuing education credit 12 hours of Commission-approved courses in property management. Commissioner Rollins seconded the motion and the motion carried with Commissioners Koether, Foltz, and Rollins voting in favor of the motion and Commissioner Johnson abstaining.

NMREC Case No. 15-11-09-116 Clara Encinias and Demecia Csanyi

Commissioner Koether moved adoption of the Hearing Officer Report in the above-referenced case. Commissioner Rollins seconded the motion and it carried, with Commissioners Koether, Johnson, and Rollins voting in favor and Commissioner Foltz abstaining.

Commissioner Koether moved that Ms. Encinias receive a letter of reprimand and be assessed administrative hearing costs. Commissioner Rollins seconded the motion and it carried with Commissioners Koether, Johnson and Rollins voting in favor and Commissioner Foltz abstaining.

No action was taken against Ms. Csanyi.

iii. Reconsideration of Pre-NCA Offer, NMREC Case No. 16-10-04-073

Commissioner Koether moved that the respondent in the above-referenced case be offered a \$1,000 fine, voluntary cessation of unlicensed activity in New Mexico, and notification of the New York Real Estate Commission of the action taken against the New York broker. Commissioner Rollins seconded the motion and it carried unanimously.

iv. Default Orders

a. NMREC Case No. 16-01-06-06- Jesus Cano- Carolina Olivares

Commissioner Koether moved that the Commission revoke by default the licenses of Jesus Cano and (First Name) Olivares for their failure to request a hearing within the time frame specified in the Uniform Licensing Act (ULA) upon receiving an NCA. Commissioner Rollins seconded the motion and it carried unanimously.

12. Adjourn

There being no further business, Commissioner Koether moved that the meeting adjourn. Commissioner Rollins seconded the motion and it carried unanimously. The meeting adjourned at 5:07 p.m.

Kurstin Johnson
President
New Mexico Real Estate Commission