

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

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

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

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

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

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

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

16.61.1.7 DEFINITIONS:

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

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

C. “Agent”: the brokerage authorized solely, by means of an express written agreement, to act as a fiduciary for a person and to provide real estate services that are subject to the jurisdiction of the commission; in the case of an associate broker, “agent” means the person who has been authorized to act by that associate broker's qualifying broker. In the case of residential property management, the property manager is an agent of the owner(s) of the property for the purpose of performing the obligations of the owner(s) under the property management agreement. In the case of commercial property management, the property manager is an agent of the owner(s) of the property for the purpose of performing the obligations of the owner(s) pursuant to a property management agreement if the property management agreement specifically creates an agency relationship.

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

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

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

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

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

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

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

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

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

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

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

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

P. N. “Core elective course”: a ~~four-hour~~ commission-approved advanced continuing education course in residential transactions, commercial transactions, property management transactions, or vacant land/ranch transactions required once during each three-year cycle, core elective courses advance the broker’s practice of real estate by one or more of the following: (1) improve broker transactional expertise focusing on, but not limited to, contractual and disclosure forms used in the practice of real estate, real estate title issues, contracts, and real estate transactional negotiating skills; (2) improves broker business practices and professionalism focusing on, but not limited to, broker responsibilities and duties; (3) improves broker awareness of issues that impact the public and real estate transactions focusing on, but not limited to, land development, jurisdictional taxation issues; and/or (4) increases the broker knowledge of third party services within a transaction. The number of core elective hours required for both associate brokers and qualifying brokers is further defined at 16.61.13.8 NMAC.

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

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

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

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

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

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

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

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

W. Elective Course: a commission approved elective course not considered as intensive in focus as a core elective course in a broad array of topics directly and indirectly related to the practice of real estate or the skills

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

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

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

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

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

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

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

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

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

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

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

~~I. HH.~~ **“Land title trust account”**: a pooled interest-bearing account subject to the land title trust fund act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and the parties to the contract to facilitate the closing of the real estate transaction, and assembling the final real estate transaction file for closing. A transaction coordinator involved in real estate transactions in New Mexico must have a New Mexico broker's license. A person assisting with real estate transactions who is not licensed is an unlicensed assistant.

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

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

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

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

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

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

[16.61.1.7 NMAC - Rp, 16.61.1.7 NMAC, 1/1/2012; A, 1/1/2017, A, 1/15/2018; A, 1/1/2019, A, 1/02/2021]

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

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

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

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

HISTORY of 16.61.1 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the state records center and archives under:

REC 73-1, Real Estate License Law Manual, filed 10/2/1973;

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

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

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

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

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

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

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

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

History of Repealed Material:

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

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

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

Other History:

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

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

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

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

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

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 61 REAL ESTATE BROKERS
PART 3 REAL ESTATE BROKER'S LICENSE: EXAMINATION AND LICENSING
APPLICATION REQUIREMENTS

16.61.3.1 ISSUING AGENCY: New Mexico Real Estate Commission.
[16.61.3.1 NMAC – Rp. 16.61.3.1, 1/15/2018]

16.61.3.2 SCOPE: The provisions in Part 3 of Chapter 61 apply to all applicants for real estate broker licensure in New Mexico.
[16.61.3.2 NMAC – Rp. 16.61.3.2, 1/15/2018]

16.61.3.3 STATUTORY AUTHORITY: Part 3 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, Section 61-29-4 NMSA 1978.
[16.61.3.3 NMAC – Rp. 16.61.3.3, 1/15/2018]

16.61.3.4 DURATION: Permanent.
[16.61.3.4 NMAC – Rp. 16.61.4.1, 1/15/2018]

16.61.3.5 EFFECTIVE DATE: January 15, 2018, unless a later date is cited at the end of a section.
[16.61.3.5 NMAC – Rp. 16.61.3.5, 1/15/2018]

16.61.3.6 OBJECTIVE: The objective of Part 3 of Chapter 61 is to set forth the examination and application requirements for candidates desiring to obtain a New Mexico real estate broker's license.
[16.61.3.6 NMAC – Rp. 16.61.3.6, 1/15/2018]

16.61.3.7 DEFINITIONS: Refer to 16.61.1.7 NMAC.
[16.61.3.7 NMAC – Rp. 16.61.3.7, 1/15/2018, A. 1/03/2021]

16.61.3.8 TYPES OF LICENSES: All licensees in New Mexico are considered real estate brokers. The New Mexico real estate commission issues two types of ~~real estate~~ broker's licenses; an associate broker's license and a qualifying broker's license. Both types of licenses are issued only to individuals. The requirements for obtaining both types of licenses are described below.
[16.61.3.8 NMAC – Rp. 16.61.3.8, 1/15/2018, A. 1/03/2021]

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 ~~both the a national broker examination prescribed by the commission,~~ and the New Mexico real estate broker's examination prescribed by the commission.

B. Examination application.
(1) Applications to take the prescribed broker's ~~examination~~ examination(s) 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~~ 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~~ examinations. Exam candidates who are licensed as associate brokers and are taking the broker's examination to upgrade to qualifying broker are exempt from the three-year time limit and must only provide documentation of course completion.

(2) Exam candidates ~~currently~~ originally licensed as real estate salespersons or brokers or licensees in other states or jurisdictions ~~will be exempt~~ may apply for waivers 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 associate broker upgrading to qualifying broker will ~~also~~ be exempt from taking the national portion of the broker's exam.

(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. Associate Broker_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 the applicant 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. Recent veteran applicants and military service members, their spouses and dependent children, are exempt from the license application fee for the first period of licensure.

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

E. Military service members and recent veterans.

~~(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.~~

(1) The commission shall, process the application and issue a license to the spouse of a military service member, a dependent child of a military service member, or a recent veteran that meets all the requirements for licensure as a real estate broker in New Mexico.

(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.

(4) Military service members and recent veteran applicants, their spouses and dependent children, are exempt from the license application fee for the first period of licensure.

[16.61.3.9 NMAC - Rp. 16.61.3.9, 1/15/2018, A, 1/03/2021]

16.61.3.10 QUALIFYING BROKER LICENSING REQUIREMENTS: To be eligible to apply for a New Mexico qualifying broker's license, an applicant must furnish the commission satisfactory evidence of completing the following:

A. Passage of the broker's examination pursuant to Section 9(D) of 16.61.3 NMAC.

B. At least four years active experience as a licensed associate broker during the 60-month period, immediately preceding the filing of the application.

C. In the case of a qualifying broker who will not be supervising or managing other brokers, at least two years of active experience as a licensed associate broker during the 60-month period immediately preceding the filing of the application.

D. Qualifying brokers who have qualified for qualifying broker status under the exception provided in subsection C, must document at least four years of active experience as an associate broker and qualifying broker before being eligible to supervise other brokers.

E. If licensed in another state, not less than four years' experience as the equivalent of an associate broker during the 60-month period immediately preceding the filing of the application with verification in writing by the applicant's qualifying broker(s) or the state's applicable equivalent to a qualifying broker. A candidate for a qualifying broker license from another state will, in all circumstances, be required to fulfill all the remaining requirements, including experience, education and acknowledgement of responsibilities.

F. Documented qualifying transactional experience totaling 100 points, with at least one transaction accomplished during each of the four years prior to filing of the application. These transactions are to be verified in writing by the applicant's qualifying broker. Transactions involving property owned by the applicant do not count toward the required total. Points are awarded as follows and can be accumulated through any combination of the following activities:

(1) Each sale or lease transaction is deemed to have two sides; one side working with the buyer/tenant and the other side working with the seller/owner. Both transaction sides receive points.

(2) In the event of transactions handled by teams comprised of more than one associate broker the qualifying broker shall monitor the transactions to determine which associate broker is deserving of earning the points allowed, or the division of the allowable points among team members.

(3) Real estate and property management transactions; total points available per transaction side:

- (a)** Residential sales transactions: five points
- (b)** Residential lot sale transactions: three points
- (c)** Residential lease transactions: four points
- (d)** Commercial improved property sale transactions: eight points
- (e)** Commercial unimproved lot sale transactions: six points
- (f)** Commercial lease transactions: six points
- (g)** Property management points are accumulated as follows: Points are awarded for

each location for which the broker has direct responsibility. Direct responsibility means acting as an agent for the owner and is not just collecting rent. Property management points are accumulated as follows:

(i) Residential property management: Each property receives three points, plus one point for each additional unit in that property to a maximum of 25 points per property per year. A unit is defined as a separate residence with its own postal address.

(ii) Commercial property management: Each property receives four points, plus one point for each individual tenant space in that property to a maximum of 25 points per property per year. A space is defined as a commercial location that has its own postal address.

(h) Farm and ranch/vacant land - For the purposes of this paragraph a farm or a ranch is defined as a property which is used for commercial agricultural purposes. Farm and ranch points are awarded as follows:

- (i)** Less than 100 acres, eight points.
- (ii)** 100 acres or more, 10 points.

(i) Limited waiver: A waiver may be granted by the commission to an associate broker who can demonstrate that their particular circumstance, i.e. size of market, lack of property types, health issues, force majeure, make it very difficult to obtain 100 points. The commission may waive up to 30 points and the transaction per year requirement. Written documentation and statements of proof shall be submitted with the application for waiver.

[16.61.3.9 NMAC – Rp. 16.61.3.10, 1/15/2018, A. 1/03/2021]

16.61.3.11 QUALIFYING BROKER CANDIDATE EDUCATION REQUIREMENTS FOR

APPLICATION: An associate broker or salesperson licensed in another state who is applying for a qualifying broker license shall furnish the commission satisfactory evidence of:

- A. Completion of the commission approved 30-hour brokerage office administration course, with an in-course instructor-created exam administered by the instructor at the end of the course.
- B. Completion of the eight-hour understanding and using RANM forms course or at least eight hours of other commission-approved contract course(s).
- C. Completion of a minimum of eight hours of core elective courses.
- D. Attendance at one New Mexico real estate commission meeting, rule hearing, or disciplinary hearing for at least three hours, or until the commission meeting goes into executive session, or the hearing/meeting ends, whichever comes first. Attendance may be by live meeting/hearing or by live or recorded distance broadcast; but must be documented by signing into and out of the meeting/hearing. In the event of broker hardship, approved by the commission, the real estate commission may authorize an equivalent to attendance at a commission meeting by an online download, attendance at any approved equivalent, or by other approved participation.

[16.61.3.9 NMAC – Rp. 16.61.3.11, 1/15/2018; A, 1/1/2019]

16.61.3.12 QUALIFYING BROKER APPLICATION REQUIREMENTS: An associate broker or salesperson licensed in another state who is applying for a qualifying broker license shall furnish the commission satisfactory evidence of the following:

- A. A notarized affidavit of the applicant’s acknowledgement of the responsibilities of a qualifying broker, including the direct supervision of all brokers affiliated with the qualifying broker. Supervision shall be defined in the affidavit as follows:
 - (1) Review and maintain all records and documents required for real estate related matters processed by personnel supervised by the qualifying broker.
 - (2) Provide or promote appropriate training of all brokers and staff affiliated with the qualifying broker for compliance with the real estate license law and commission rules.
 - (3) Supervise advertising of real estate or real estate services conducted on behalf of others by anyone affiliated with the qualifying broker.
 - (4) Execute and maintain current written employment agreements or independent contractor agreements with associate brokers affiliated with the qualifying broker.
- B. A broker applying to be licensed as a qualifying broker supervised by another qualifying broker is not required to submit this affidavit.
- C. A supervisory plan which will outline the qualifying broker’s schedule of training and education provided or promoted. The supervisory plan will be applicable to the broker applying to be a qualifying broker and to all other brokers affiliated with them, if any. A broker applying to be licensed as a qualifying broker supervised by another qualifying broker is not required to submit a supervisory plan.
- D. Applicants with current licenses who can document that they were New Mexico qualifying brokers 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.
- E. 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 broker’s examination prior to being issued a qualifying broker’s license.
- F. 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.
- G. ~~Military service members:~~ Military service members and recent veterans:
 - (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.~~

(1) The commission shall, process the application and issue a license to the spouse of a military service member, a dependent child of a military service member, or a recent veteran that meet all the requirements for licensure as a real estate broker in New Mexico.

(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.

(4) Military service members and recent veteran applicants, their spouses and dependent children, are exempt from the license application fee for the first period of licensure.

[16.61.3.9 NMAC - Rp. 16.61.3.12, 1/15/2018; A, 1/1/2019, A, 1/03/2021]

16.61.3.13 QUALIFYING BROKER LICENSE RENEWAL REQUIREMENTS: A qualifying broker applying for renewal of their license shall furnish the commission satisfactory evidence of successful completion of:

~~A. The qualifying broker refresher course.~~

B. A. A minimum of ~~36~~ 42 hours of commission-approved courses, including

(1) The four-hour core course in each year of the broker's licensing cycle

(2) Eight hours of core elective courses.

(3) The qualifying broker refresher course (6 hours)

(4) Four hours of ethics.

~~C. B.~~ Attendance at one commission meeting, rule hearing, or disciplinary hearing for at least three hours, or until the commission goes into executive session, or the hearing/meeting ends, whichever comes first. Attendance may be by live meeting/hearing or by live or recorded distance broadcast, but must be documented by signing into and out of the meeting/hearing. In the event of broker hardship, approved by the commission, the real estate commission may authorize an equivalent to the attendance of a commission meeting either by an online download, attendance at any approved equivalent, or by other approved participation.

~~D. C.~~ An application for renewal of a qualifying broker's license shall include a notarized affidavit of the applicant's acknowledgement of the responsibilities of a qualifying broker, including the direct supervision of all brokers affiliated with the brokerage, including but not limited to:

(1) Review and maintain all records and documents required for real estate related matters processed by the brokerage.

(2) Provide or promote appropriate training of all brokers and staff affiliated with the qualifying broker to ensure compliance with the Real Estate License Law and commission rules.

(3) Supervise advertising of real estate or real estate services conducted on behalf of others by anyone affiliated with the qualifying broker.

(4) Execute and maintain current written employment agreements or independent contractor agreements with associate brokers affiliated with the qualifying broker.

~~E. D.~~ A qualifying broker applying for license renewal who will be supervised by another qualifying broker will not be required to submit this affidavit.

~~F. E.~~ An application for renewal of a qualifying broker's license shall include a statement affirming that the qualifying broker substantially fulfilled the supervisory plan filed with the initial application, and a plan outlining the schedule of training and education to be provided or promoted and the policies for supervision in the next licensing cycle. The supervisory plan will be applicable to the applicant for renewal of the qualifying broker's license and all affiliated brokers, if any. A qualifying broker who is supervised by another qualifying broker is not required to submit a supervisory plan.

[16.61.3.9 NMAC – Rp. 16.61.3.13, 1/15/2018; A, 1/1/2019, A, 1/03/2021]

16.61.3.14 PROPERTY MANAGEMENT EDUCATIONAL REQUIREMENTS: Qualifying brokers or associate brokers intending to offer property management services for others, shall as a condition of offering property management services complete the following education requirements:

A. Completion of the commission approved course, Uniform Owner-Resident Relations Act, or a commission approved equivalent property management related course, prior to offering property management services and during every subsequent three-year licensing cycle.

B. As a condition of offering property management services, in addition to the course requirement in paragraph A above, associate brokers shall complete a minimum of six hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue during each three-year licensing cycle.

C. Qualifying brokers who offer or intend to offer property management services for others, shall as a condition of offering such services, in addition to the course requirement in Section A above, complete a minimum of 12 hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue, during each three-year licensing cycle.

D. While qualifying brokers are already subject to the meeting attendance renewal requirements listed in Section 13 C of 16.61.3 NMAC, associate brokers who offer or intend to offer property management services shall also be subject to the same meeting attendance requirements in Section 13 C of 16.61.3 NMAC, namely, the attendance at one commission meeting, rule hearing, or disciplinary hearing for at least three hours, or until the commission goes into executive session, or the hearing/meeting ends, whichever comes first. Attendance may be live meeting/hearing or by live or recorded distance broadcast, but must be documented by signing into and out of the meeting/hearing. In the event of broker hardship, approved by the commission, the real estate commission may authorize an equivalent to the attendance of a commission meeting either by an online download, attendance at any approved equivalent, or by other approved participation.

[N, 1/1/2019]

HISTORY OF 16.61.3 NMAC:

Pre-NMAC History:

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

REC-9, filed as Rule No. 9 Amendment No. 2 Broker Examinations; Time for Filing; Place of, filed 6/15/1979;

REC 80-2, filed as Rule No. 9 Amendment No. 3, Broker Examinations; Time for Filing, Place of, filed 7/17/1980;

REC 70-7, Broker Examinations - Time for Filing - Place of, filed 10/6/1981;

REC 71-7, Broker Examinations - Time for Filing - Place of, filed 11/29/1982;

Rule No. 2, Examinations-Requirements/Application for, filed 12/18/1987;

NMREC Rule No. 2 Examination-Requirements/Application for, filed 10/3/1994.

History of Repealed Material:

16 NMAC 61.3, Broker's License: Examination and Application Requirements (filed 6/25/1997) repealed 1/1/2000.

16 NMAC 61.3, Broker's License: Examination and Licensing Requirements (filed 12/10/1999) repealed 1/1/2002.

16.61.3 NMAC, Broker's License: Examination and Licensing Application Requirements (filed 11/30/2001) repealed 1/1/2006.

16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements (filed 11/16/2005) repealed 12/31/2008.

16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements (filed 11/17/2008) repealed 1/1/2012.

16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements (filed 11/21/2011) repealed 1/15/2018.

Other History:

That applicable portion of NMREC Rule No. 2 Examination-Requirements/Application for (filed 10/3/1994) was renumbered, reformatted, and replaced by 16 NMAC 61.3, Broker's License: Examination and Application Requirements, effective 8/15/1997.

16 NMAC 61.3, Broker's License: Examination and Application Requirements (filed 6/25/1997) was replaced by 16.61.3 NMAC, Broker's License: Examination and Licensing Application Requirements, effective 1/1/2000.

16 NMAC 61.3, Broker's License: Examination and Licensing Application Requirements (filed 12/10/1999) was replaced by 16.61.3 NMAC, Broker's License: Examination and Licensing Application Requirements, effective 1/1/2002.

16.61.3 NMAC, Broker's License: Examination and Licensing Application Requirements (filed 11/30/2001) was replaced by 16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements, effective 1/1/2006.

16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements (filed 11/16/2005) replaced by 16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements, effective 12/31/2008.

16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements (filed 11/17/2008) replaced by 16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements, effective 1/1/2012.

16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements (filed 11/21/2011) repealed 1/15/2018.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 61 REAL ESTATE BROKERS
PART 7 FINGERPRINTING AND ARREST RECORD CHECKS

16.61.7.1 ISSUING AGENCY: New Mexico Real Estate Commission.
[16.61.7.1 NMAC - Rp, 16.61.7.1 NMAC, 1/1/2012]

16.61.7.2 SCOPE: The provisions in Part 7 apply to Title 16, Chapter 16 and provide relevant information about criminal background check requirements for a first-time or renewal applicant for a New Mexico real estate broker's license.
[16.61.7.2 NMAC - Rp, 16.61.7.2 NMAC, 1/1/2012]

16.61.7.3 STATUTORY AUTHORITY: Part 7 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978, Section 61-29-4.4.
[16.61.7.3 NMAC - Rp, 16.61.7.3 NMAC, 1/1/2012]

16.61.7.4 DURATION: Permanent.
[16.61.7.4 NMAC - Rp, 16.61.7.4, NMAC, 1/1/2012]

16.61.7.5 EFFECTIVE DATE: 1/1/2012, unless a later date is cited at the end of a section.
[16.61.7.5 NMAC - Rp, 16.61.7.5 NMAC, 1/1/2012]

16.61.7.6 OBJECTIVE: The objective of Part 7 is to ensure that first-time or renewal applicants for a New Mexico real estate broker's license are of good repute and competent to transact the business of a qualifying broker or associate broker in a manner that safeguards the interests of the public.
[16.61.7.6 NMAC - Rp, 16.61.7.6, NMAC, 1/1/2012]

16.61.7.7 DEFINITIONS: Refer to 16.61.1.7 NMAC
[16.61.7.7 NMAC - Rp, 16.61.7.7 NMAC, 1/1/2012]

16.61.7.8 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 shall be done no earlier than 21 days prior to submitting documents to apply for ~~or renew~~ a license. The commission cannot accept fingerprints that are older than 21 days.

D. Background checks: The commission will conduct a background check on all applications including renewal applications and may use that information in determining the applicant's eligibility for licensure or renewal.
[16.61.7.8 NMAC - Rp, 16.61.7.8 NMAC, 1/1/2012; A, 1/1/2017, A, 1/03/2021]

HISTORY OF 16.61.7 NMAC:

History of Repealed Material:

16.61.7 NMAC, Criminal Background Checks (filed 11/9/2006) repealed 1/1/2012.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 61 REAL ESTATE BROKERS
PART 11 LICENSE EXPIRATION AND RENEWAL

16.61.11.1 ISSUING AGENCY: New Mexico Real Estate Commission.
[8/15/1997; 16.61.11.1 NMAC - Rn & A, 16 NMAC 61.11.1, 1/1/2002]

16.61.11.2 SCOPE: The provisions in Part 11 of Chapter 61 apply to all currently licensed New Mexico real estate brokers.
[8/15/1997; 16.61.11.2 NMAC - Rn, 16 NMAC 61.11.2, 1/1/2002; A, 1/1/2006]

16.61.11.3 STATUTORY AUTHORITY: Part 11 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, Section 61-29-4 NMSA 1978.
[8/15/1997; 16.61.11.3 NMAC - Rn, 16 NMAC 61.11.3, 1/1/2002]

16.61.11.4 DURATION: Permanent.
[8/15/1997; 16.61.11.4 NMAC - Rn, 16 NMAC 61.11.4, 1/1/2002]

16.61.11.5 EFFECTIVE DATE: August 15, 1997, unless a later date is cited at the end of a section.
[8/15/1997; 16.61.11.5 NMAC - Rn & A, 16 NMAC 61.11.5, 1/1/2002]

16.61.11.6 OBJECTIVE: The objective of Part 11 of Chapter 61 is to set forth the requirements and procedures for the renewal of a real estate broker's license.
[8/15/1997; 16.61.11.6 NMAC - Rn, 16 NMAC 61.11.6, 1/1/2002; A, 1/1/2006]

16.61.11.7 DEFINITIONS: Refer to 16.61.1.7 NMAC.
[1-1-2000; 16.61.11.7 NMAC - Rn, 16 NMAC 61.11.7, 1/1/2002]

16.61.11.8 REQUIREMENTS: ~~Every real estate license expires every three years on the last day of the month following the broker's birth month, unless it is renewed on or before that date. Renewal of a license is the sole responsibility of each broker. A broker whose license has expired may reinstate their license without reexamination up to one year after expiration by paying a reinstatement fee three times the regular license renewal fee. A qualifying broker with multiple licenses cannot avoid paying the late fee on an expired license by allowing the license to expire and applying for an additional license. An application for an additional license within one year of the broker's license expiration date will only be accepted if the qualifying broker brings all other licenses current with respect to fees, continuing education, and other renewal requirements. In addition to paying a reinstatement fee, the broker will be required as a condition of reinstatement to provide documentation of the completion of 36 hours of commission approved continuing education courses. The commission shall email online license renewal forms and all related web links to brokers at the broker's email address on file at the commission, and if possible, in the case of active associate brokers, send a copy of said email notice to the applicable qualifying broker. Brokers are responsible for providing the commission with a current email address, and phone number; and, for notifying the commission within 10 days of a change of email address. Brokers must also maintain a current residential address with the commission and notify the commission within 10 days of a residential address change. The qualifying broker may pay a commission to a broker whose license is expired or to the estate of a deceased broker if the transaction was under contract while the broker's license was current.~~

A. Renewal period: Every real estate license expires every three years on the last day of the month following the broker's birth month unless it is renewed on or before that date. Renewal of a license is the sole responsibility of each broker.

B. Late renewal fee penalty: A broker whose license has expired may reinstate their license without reexamination up to one year after expiration by paying a renewal/reinstatement fee three times the regular \$270 license renewal fee.

C. Exemption from late fee penalty for documentable medical or military reasons: Pursuant to Section 61-29-8 NMSA 1978, a broker may be excused from paying a late license renewal/reinstatement fee of three times the normal \$270 renewal fee if the broker by reason of (1) active duty military service; or (2) due to impairment by illness or injury, cannot complete renewal requirements. In these cases the broker may make application for a license

renewal/reinstatement if the application is submitted within the one-year period after license expiration. A broker may apply for an exemption from the late fee under the following conditions and procedures:

(1) Active military/reserve duty: The broker or their spouse must have been placed on active military/reserve duty, and can document military orders.

(2) Medically related impairment or incapacitation: The broker, spouse or a member of the broker's immediate family is placed under a doctor's care, suffering from an illness or injury of such severity that the broker is physically or mentally incapable or otherwise deterred of completing renewal requirements on time, and deterred from submitting an application for license renewal prior to license expiration. This exemption includes brokers who are temporarily deterred from completing renewal requirements due to parental or immediate family caregiving as documentable by sufficient medical affidavit.

(3) Documentation: The broker's late renewal/reinstatement application must contain documentable medical evidence, or in the case of military service, a document that shows the effective date of return from active military duty. Nevertheless, in all cases, the license will be considered expired and the broker may not practice real estate until the broker, within the one year from expiration, renews/reinstates his/her license. In all cases, brokers renewing/reinstating late must meet all continuing education requirements due during the expired cycle in question.

(4) Procedure: Brokers seeking the late fee exemption under the above conditions must first contact commission staff prior to submittal of the late renewal application, and must submit a letter of explanation along with the pertinent documentation supporting late fee exemption request. Following commission staff review of the documentation, commission staff will determine the validity of the documentation. If a late fee exemption is granted, the commission staff will notify the broker to submit the late renewal application. If an exemption from the late fee is not granted, the broker may still submit the late renewal, but be subject to the late fee penalty at the time of submission.

D. Forfeiture of license renewal/reinstatement: After the time period of one year from the date of license expiration, the broker will not be able to renew or reinstate their license, and the broker would have to undergo all prelicensure requirements to become licensed in the future.

E. Multiple license circumvention of late fees disallowed: A qualifying broker with multiple licenses cannot avoid paying the late fee on an expired license by allowing the license to expire and subsequently applying for an additional license. An application for an additional license within one year of the broker's license expiration date will only be accepted if the qualifying broker brings all other licenses current with respect to fees, continuing education, and other renewal requirements. In addition to paying a license renewal/reinstatement fee, the broker will be required, as a condition of license renewal/reinstatement, to provide documentation of the completion of the necessary 42 hours of continuing education required for a qualifying broker.

F. On-line renewal forms: The commission shall email online license renewal forms and all related web links to brokers at the broker's email of record on file at the commission, and if possible, in the case of active associate brokers, send a copy of said email renewal notice to the applicable qualifying broker.

G. Phone number of record and email of record address changes: Brokers are responsible for providing the commission with a current email address, and phone number; and, for notifying the commission within 10 days of a change of email address. Brokers must also maintain a current residential address with the commission and notify the commission within 10 days of a residential address change.

H. Payment of commissions to brokers with expired license: The qualifying broker may pay a commission to a broker whose license is expired or to the estate of a deceased broker only if the transaction was under contract while the broker's license was current.

I. Background checks: The commission will conduct a background check on all renewal applicants and may use that information in determining their eligibility for renewal.

[8/15/1997; A, 1/1/2000; 16.61.11.8 NMAC - Rn & A, 16 NMAC 61.11.8, 1/1/2002; A, 1/1/2004; A, 1/1/2006; A, 12/31/2008; A, 1/1/2012; A, 1/1/2017; A, 1/1/2019; A, 01/03/2021]

HISTORY OF 16.61.11 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the state records center and archives under:

REC 70-13, Cancellation; Surrender and Renewal of Licenses, filed 10/6/1981.

REC 71-13, Cancellation, Surrender and Renewal of Licenses, filed 11/29/1982.

REC 84-13, Inactive Surrender and Renewal of License, filed 10/25/1984.

Rule No. 4, Transfer/Surrender/Cancellation/Renewal of License, filed 12/18/1987.

NMREC Rule 4, Transfer/Surrender/Inactivation/Renewal of License, filed 10/3/1994.

History of Repealed Material: [RESERVED]

Other History:

That applicable portion of NMREC Rule 4, Transfer/Surrender/Inactivation/Renewal of License (filed 10/3/1994) was renumbered, reformatted, and replaced by 16 NMAC 61.11, License Renewal, effective 8/15/1997.

16 NMAC 61.11, License Renewal, filed 6/25/1997 reformatted, amended and renumbered to 16.61.11 NMAC, License Renewal, effective 1/1/2002.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 61 REAL ESTATE BROKERS
PART 13 CONTINUING EDUCATION REQUIREMENTS

16.61.13.1 ISSUING AGENCY: New Mexico Real Estate Commission.
[1/1/2000; 16.61.13.1 NMAC - Rn & A, 16 NMAC 61.13.1, 1/1/2002]

16.61.13.2 SCOPE: The provisions in Part 13 of Chapter 61 applies to all brokers intending to renew or reactivate their New Mexico broker license.
[1/1/2000; 16.61.13.2 NMAC - Rn, 16 NMAC 61.13.2, 1/1/2002; A, 1/1/2006; A, 12/31/2008]

16.61.13.3 STATUTORY AUTHORITY: Part 13 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.
[1/1/2000; 16.61.13.3 NMAC - Rn, 16 NMAC 61.13.3, 1/1/2002]

16.61.13.4 DURATION: Permanent.
[1/1/2000; 16.61.13.4 NMAC - Rn, 16 NMAC 61.13.4, 1/1/2002]

16.61.13.5 EFFECTIVE DATE: January 1, 2000, unless a later date is cited at the end of a section.
[1/1/2000; 16.61.13.5 NMAC - Rn & A, 16 NMAC 61.13.5, 1/1/2002]

16.61.13.6 OBJECTIVE: The objective of Part 13 of Chapter 61 is to set forth continuing education requirements for New Mexico real estate brokers.
[1/1/2000; 16.61.13.6 NMAC - Rn, 16 NMAC 61.13.6, 1/1/2002; A, 1/1/2006]

16.61.13.7 DEFINITIONS: Refer to 16.61.1.7 NMAC.
[1/1/2000; 16.61.13.7 NMAC - Rn, 16 NMAC 61.13.7, 1/1/2002]

16.61.13.8 REQUIREMENTS: Except for brokers who are exempt from continuing education by virtue of having attained 65 years of age and a minimum of 20 years of continuous licensure prior to July 1, 2011, the following requirements apply:

A. All active and inactive associate brokers ~~and qualifying brokers~~ shall successfully complete a minimum of 36 credit hours of continuing education in courses approved by the commission during each licensing cycle. All active and inactive qualifying brokers shall successfully complete a minimum of 42 credit hours of continuing education in courses approved by the commission during each licensing cycle, which includes the qualifying broker refresher course.

B. For each three-year licensing cycle, Required required courses include the four-hour New Mexico real estate commission (NMREC) core course to be completed annually; a four-hour four hours of commission-approved core elective course course(s) to be completed onee during each three-year licensing for associate brokers; eight hours of commission-approved core elective course(s) to be completed during each three-year licensing cycle for qualifying brokers; and four hours of commission-approved ethics courses to be completed during each three year three-year licensing cycle. Property managers have additional continuing education requirements as specified in paragraph N M. of this section.

C. Of the remaining 16 credit hours, no more than 10 credit hours may be earned toward the continuing education requirement from commission approved training category courses. All 16 remaining credit hours may be earned toward the continuing education renewal requirement from commission-approved education elective category courses, additional core elective category courses, and/or additional ethics category courses.

D. The NMREC core course requirements shall apply to those associate brokers and qualifying brokers who have not completed the eight hour mandatory course in their current licensing cycle by December 31, 2016. If a broker has so completed the eight hour mandatory course, the NMREC core course requirement will not apply until their next licensing cycle. Brokers who have completed the eight hour mandatory course in their current licensing cycle and who wish to take the NMRE core course will receive four additional hours of education category credit in their current licensing cycle.

E. D. The Each annual iteration of the NMREC core course title will contain have a unique course name preceded by a calendar year for which the course is designated and course number each year, including the calendar year in which it was is to be presented. The commission shall ensure that the content of each annual

iteration is unique for each year's course to ensure that brokers are not receiving identical information in more than one course.

F. E. Pursuant to 16.61.11.8 NMAC, the broker's licensee's license will expire and can only be renewed within one year of expiration by payment of a late fee, notwithstanding any exemptions by law or rule, and successful completion of all renewal requirements; including all applicable annual core course requirements. If a licensee broker fails to meet the core course requirements at the time of renewal, and are is not exempt under 16.61.13.8 NMAC, the following policy will be in effect until December 31, 2019 :

(1) If a broker failed to complete the core course required for the renewal year, the third calendar year of their license renewal cycle, the broker must complete that core course with a core course instructor, in a regular core course class setting, or another format that has been approved by the commission within one year of expiration.

~~(2) If a broker failed to complete the core course required for the first and/or second years of their license renewal cycle, the broker 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 commission. The broker will have the option to repeat the current year's core course, with a different instructor, to fulfill the renewal requirements of the first and/or second year's core course. The broker 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.~~

~~(3) (2) Effective January 1, 2020, paragraph (2) above will be replaced by the following:~~
If a broker failed to complete a an annual core course required for the first and/or second years of their three-year license renewal cycle, and is unable to complete a make-up of the missed course(s) with an approved core course instructor prior to license expiration, the broker will be required to successfully complete the 30-hour broker basics course prior to expiration or as a condition of expired license renewal/reinstatement. The broker will be given credit for renewal purposes, but will not be given any continuing education credit.

~~(3) If a broker failed to complete any one of the three annual core course requirements within the context of their three-year cycle due to medical reasons and can present documentation to the commission of such medical reasons or active military deployment, the commission may authorize the broker to take the missed core course iteration by repeating, preferably under different instructors, the most recent core course iteration the number of annual core courses they missed prior to license expiration. Such medical reasons may include documentation (i.e., doctor's affidavit/ letter) indicating the necessity of the broker to serve as a parental or immediate family caregiver.~~

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

H. G. No individual commission-approved continuing education course in either the education or the training category will be granted more than 10 credit hours of continuing education credit.

I. H. Continuing education credit hours generally cannot be carried forward to the next licensing cycle except for new calendar year iterations of the annual core courses in excess of 12 core course hours normally sufficient for the cycle. If the broker renews their license early within their on-line renewal two-month window, and they meet the 36-hour minimum for that renewal for an associate broker and the 42-hour minimum for that renewal for a qualifying broker, and the broker takes a core course between the date of the renewed license, and the end of the cycle's date of expiration, they may carry a fourth four-hour core course credit forward to the next cycle.

J. I. The same continuing education course ~~cannot~~ may not be repeated for credit in a the same three-year renewal cycle.

K. J. Brokers may receive up to a maximum of four approved education elective course credit hours during each licensing cycle for attending commission meetings, rule hearings, disciplinary hearings, or meetings of the education advisory committee (EAC). Brokers are prohibited from receiving credit for attending a disciplinary hearing in which they are a respondent.

L. K. Approved instructors may use up to ~~40~~ 28 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. Instructors may not use the same course for credit during any three-year licensing cycle.

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

N. M. Pursuant to 16.61.3.14 NMAC, all brokers who intend to offer property management services for others, shall as a condition of offering property management services complete the education requirements as listed below:

(1) Completion of the commission approved course, Uniform Owner-Resident Relations Act, or a commission approved equivalent property management related course, prior to offering property management services; and every subsequent three-year licensing cycle.

(2) As a condition of offering property management services, in addition to the course requirement in subsection A above, associate brokers shall complete a minimum of six hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue during each three-year licensing cycle.

(3) Qualifying brokers who offer or intend to offer property management services for others, shall as a condition of offering such services, in addition to the course requirement in subsection A above, complete a minimum of 12 hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue, each three-year licensing cycle.

(4) While qualifying brokers are already subject to the meeting attendance requirements for license renewal under Subsection C of 16.61.3.13 NMAC, associate brokers who offer or intend to offer property management services shall also be subject to the same meeting attendance requirements namely, the attendance at one commission meeting, rule hearing, or disciplinary hearing for at least three hours, or until the commission goes into executive session, or the hearing/meeting ends, whichever comes first. Attendance may be live meeting/hearing or by live or recorded distance broadcast, but must be documented by signing into and out of the meeting/hearing. In the event of broker hardship, approved by the commission, the real estate commission may authorize an equivalent to the attendance of a commission meeting either by an online download, attendance at any approved equivalent, or by other approved participation.

N. In recognition of the volunteer service to the Real Estate Commission and subject to Subsection J of 16.61.13.8 NMAC, the following is in effect:

(1) Effective with the appointment of new commissioners after January 1, 2021, a broker currently serving their appointed term as a real estate commissioner may receive up to a maximum of 16 elective credit hours during each three-year licensing cycle for which they serve.

(2) A broker currently serving their appointed term as an education advisory committee member may receive up to a maximum of 16 elective credit hours during each three-year licensing cycle for which they serve upon written request to the commission at least two months prior to the date of license expiration.

(3) A broker currently serving their appointed term as a member of any other real estate commission task force or ad-hoc committee may receive up to a maximum of 16 elective credit hours during each three-year licensing cycle for which they serve upon written request to the commission at least two months prior to the date of license expiration.

(4) All those seeking volunteer service credit must submit a summary of such service to commission staff.

[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; A, 1/1/2017; A, 1/1/2019; A, 1/03/2021]

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.

[1/1/2000; 16.61.13.9 NMAC - Rn, 16 NMAC 61.13.9, 1/1/2002; A, 1/1/2006; A, 12/31/2008; A, 1/1/2012]

HISTORY OF 16.61.13 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the state records center and archives under: Rule No. 6, Education Required, filed 12/18/1987; NMREC Rule 6, Education Required, filed 10/3/1994.

History of Repealed Material:

16 NMAC 61.13, Continuing Education: Licensee Requirements (filed 6/25/1997) repealed 1/1/2000.

Other History:

NMREC Rule 6, Education Required (filed 10/3/1994) was reformatted, renumbered, and replaced by 16 NMAC 61.13, Continuing Education: Licensee Requirements, effective 8/15/1997.

16 NMAC 61.13, Continuing Education: Licensee Requirements (filed 6/25/1997) was replaced by 16 NMAC 61.13, Continuing Education: Licensee Requirements, effective 1/1/2000.

16 NMAC 61.13, Continuing Education: Licensee Requirements, (filed 12/10/1999) was reformatted, renumbered, amended and replaced by 16.61.13, Continuing Education: Licensee Requirements, effective 1/1/2002.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 61 REAL ESTATE BROKERS
PART 15 APPROVAL OF REAL ESTATE COURSES, SPONSORS, AND INSTRUCTORS

16.61.15.1 ISSUING AGENCY: New Mexico Real Estate Commission.
[16.61.15.1 NMAC - Rp, 16.61.15.1 NMAC, 1/1/2012]

16.61.15.2 SCOPE: The provisions in Part 15 of Chapter 61 apply to all real estate pre-licensing and continuing education course sponsors and instructors wishing to obtain accreditation to offer and teach real estate pre-licensing and continuing education courses to New Mexico real estate brokers.
[16.61.15.2 NMAC - Rp, 16.61.15.2 NMAC, 1/1/2012]

16.61.15.3 STATUTORY AUTHORITY: Part 15 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, Section 61-29-4 NMSA 1978.
[16.61.15.3 NMAC - Rp, 16.61.15.3 NMAC, 1/1/2012]

16.61.15.4 DURATION: Permanent.
[16.61.15.4 NMAC - Rp, 16.61.15.4 NMAC, 1/1/2012]

16.61.15.5 EFFECTIVE DATE: January 1, 2012, unless a later date is cited at the end of a section.
[16.61.15.5 NMAC - Rp, 16.61.15.5 NMAC, 1/1/2012]

16.61.15.6 OBJECTIVE: The objective of Part 15 of Chapter 61 is to set forth the procedures and requirements for the accreditation of real estate continuing education and pre-licensing sponsors, courses, and instructors.
[16.61.15.6 NMAC - Rp, 16.61.15.6 NMAC, 1/1/2012]

16.61.15.7 DEFINITIONS: Refer to 16.61.1.7 NMAC.
[16.61.15.7 NMAC - Rp, 16.61.15.7 NMAC, 1/1/2012]

16.61.15.8 EDUCATION ADVISORY COMMITTEE: The commission shall appoint an education advisory committee (EAC), hereinafter referred to as the committee, with the goal of upgrading and improving the real estate education program in order to carry out 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 broker education.

A. The committee shall meet monthly or as required for the purpose of evaluating applications for real estate course sponsors, courses, and instructors and shall make recommendations to the commission as to its findings.

(1) The committee shall use specific criteria to evaluate a course, an instructor or course sponsor for approval. 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 applicant the reasons for which a course, an instructor or course sponsor are not approved.

(3) A sponsor or instructor applicant not recommended for approval by the committee may ask the commission to review the committee's unfavorable recommendation.

B. The committee shall consist of up to ~~nine voting members and not fewer than three non-voting instructor/advisory members~~ nine non-instructor members and no fewer than three instructor members. The A committee chair and a vice chair shall be elected by the committee ~~from among the voting members~~. ~~Upon the effective date of this rule, approximately half of the members shall be appointed to two year terms and half to three year terms. Thereafter, all members~~ All members shall be appointed to three-year terms.

C. Members shall serve a maximum of two consecutive terms, but may reapply for membership on year after the expiration of their second term. The commission shall appoint members to fill vacancies until the end of the term of the vacant position.

[16.61.15.8 NMAC - Rp, 16.61.15.8 NMAC, A, 1/15/2018; A, 1/03/2021]

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 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.

B. Applications for sponsor, instructor and course approvals must be filled in completely and accompanied with the necessary supporting documentation (i.e. timed outlines, power point slides electronic links, course review access information, etc.). Any fees as specified in 16.61.2.8 NMAC will be due to the commission following final approval. Course applications must request one of the following course categories: Core elective, or elective. If a core elective category designation is requested, the application must clearly state the reason the course meets the requirements for the core elective category designation. The course category definitions are as follows:

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

(2) An elective 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. This broad category of courses also includes some national designation and certifications offerings not already categorized as core electives; courses in personal and property protection for the broker and clients; broker skills-related offerings in using the computer, the internet, business calculators, and other technologies to enhance the broker's service to the public; other skills offerings related to broker professional development, broker customer relations skills, broker sales promotion including salesmanship, negotiation, marketing techniques, servicing the client, or similar courses.

(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 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, professional, and competent. [16.61.15.9 NMAC - Rp, 16.61.15.9 NMAC, 1/1/2012; A, 1/1/2017; A, 1/1/2019; A, 1/03/2021]

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 ninety percent 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.

(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; a core elective, an elective, or ethics course.

(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, or any duly authorized commission representative, 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.

[16.61.15.10 NMAC - Rp, 16.61-15.10 NMAC, 1/1/2012; A, 1/1/2019; A, 1/03/2021]

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 rules when relevant. A course application form must be completed and submitted to the commission before consideration of a course for approval by the committee.

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

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

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

B. The committee may waive a course presentation appearance by a nationally recognized professional real estate organization that provides professional designations if the organization can document to the 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 offered.

(1) A commission approved application form for one-time credit approval must be completed and submitted to the committee before consideration of the course for credit. Applications must contain all the necessary supporting materials regarding the instructors and the venue and date(s) the course will be offered.

(2) Approved sponsors are limited to 10 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 committee according to presentation criteria established by the committee.

D. ~~The course~~ All Courses 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 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 approved course activity ~~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 committee and shall submit for 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 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 name and contact information of the New Mexico instructor approved to teach the course who will 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.

H. Live distance education is distance education in which the teacher and student are separated by distance, but not time. In addition to the requirements of subsection G, the following regulations will apply to live distance education. Live distance education sponsors and instructors seeking approval to offer continuing education credit will be required to designate a New Mexico approved instructor to make a presentation to the committee and shall submit for submit for committee approval the following:

(1) The technology a sponsor intends to use to provide live distance education will be in place, at the place of instruction and at student location(s), and demonstrated to the committee in a situation as near to the actual proposed class setting as possible.

(2) The sponsor or instructor will provide technical support sufficient to rectify minor technical problems. If there are interruptions that exceed the regulatory mandate of 50 minutes of instruction per hour, no credits will be issued to students.

(3) At live distance education locations where there is a proctor provided by the sponsor or the instructor, a final examination is not required. At locations where there is no proctor, a final examination is required.

(4) Live distance education core course instruction will be proctored, will have a maximum of 40 students total, and a minimum of five students at each location, unless there is a one teacher to one student instruction.

[16.61.15.11 NMAC - Rp, 16.61.15.11 NMAC, 1/1/2012; A, 1/1/2017; A, 1/1/2019; A, 1/03/2021]

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 instructors.

(1) Be honest, truthful, reputable, professional, and competent.

(2) Submit a commission-approved application before presenting the course to the 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 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-year's experience as a qualifying broker in New Mexico or another licensing jurisdiction.

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 commission executive secretary or commission 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 core class; and

(4) Appear before the commission, and be sworn in, and

(5) Ensure that the core course materials the applicant presents includes the materials approved by the commission for the current calendar 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:

(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 core 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

F. 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 committee may ask the commission to review the 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 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.

[16.61.15.12 NMAC - Rp, 16.61.15.12 NMAC, A 1/1/2017; A, 1/1/2019]

HISTORY OF 16.61.15 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the state records center and archives under: Rule No. 7, Education: Accreditation of Sponsors/ Courses/Instructors, filed 12/18/1987; NMREC Rule 7, Education: Accreditation of Sponsors/Courses/Instructors, filed 10/3/1994.

History of Repealed Material:

16 NMAC 61.15, Continuing Education: Accreditation of Sponsors; Courses; Instructors (filed 6/25/1997) repealed 1/1/2000.

16.61.15 NMAC, Continuing Education: Approval of Sponsors, Courses, and Instructors (filed 11/30/2001) repealed 1/1/2006.

16.61.15 NMAC, Continuing Education: Approval of Sponsors, Courses, and Instructors (filed 11/16/2005) repealed 1/1/2007.

16.61.15 NMAC, Approval of Real Estate Courses, Sponsors, and Instructors (filed 11/16/2006) repealed 1/1/2012.

Other History:

NMREC Rule 7, Education: Accreditation of Sponsors/Courses/Instructors (filed 10/3/1994) was reformatted, renumbered, and replaced by 16 NMAC 61.15, Continuing Education: Approval of Sponsors, Courses, Instructors, effective 8/15/1997.

16 NMAC 61.15, Continuing Education: Accreditation of Sponsors; Courses; Instructors (filed 6/25/1997) was replaced by 16 NMAC 61.15, Continuing Education: Approval of Sponsors, Courses, Instructors, effective 1/1/2000.

16 NMAC 61.15, Continuing Education: Approval of Sponsors, Courses, and Instructors (filed 12/10/1999) reformatted, amended, renumbered, and replaced by 16.61.15 NMAC, Continuing Education: Approval of Sponsors, Courses, and Instructors, effective 1/1/2002.

16.61.15 NMAC, Continuing Education: Approval of Sponsors, Courses, and Instructors (filed 11/30/2001) replaced by 16.61.15 NMAC, Continuing Education: Approval of Sponsors, Courses, and Instructors, effective 1/1/2006.

16.61.15 NMAC, Continuing Education: Approval of Sponsors, Courses, and Instructors (filed 11/16/2005) replaced by 16.61.15 NMAC, Approval of Real Estate Courses, Sponsors, and Instructors, effective 1/1/2007.

16.61.15 NMAC, Approval of Real Estate Courses, Sponsors, and Instructors (filed 11/16/2006) replaced by 16.61.15 NMAC, Approval of Real Estate Courses, Sponsors, and Instructors, effective 1/1/2012.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 61 REAL ESTATE BROKERS
PART 16 QUALIFYING BROKER: AFFILIATION AND RESPONSIBILITIES

16.61.16.1 ISSUING AGENCY: New Mexico Real Estate Commission.
[16.61.16.1 NMAC - Rp, 16.61.16.1 NMAC, 1/1/2012]

16.61.16.2 SCOPE: The provisions in Part 16 of Chapter 61 applies to all New Mexico qualifying brokers.
[16.61.16.2 NMAC - Rp, 16.61.16.2 NMAC, 1/1/2012]

16.61.16.3 STATUTORY AUTHORITY: Part 16 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.
[16.61.16.3 NMAC - Rp, 16.61.16.3 NMAC, 1/1/2012]

16.61.16.4 DURATION: Permanent.
[16.61.16.4 NMAC - Rp, 16.61.16.4 NMAC, 1/1/2012]

16.61.16.5 EFFECTIVE DATE: January 1, 2012, unless a later date is cited at the end of a section.
[16.61.16.5 NMAC - Rp, 16.61.16.5 NMAC, 1/1/2012]

16.61.16.6 OBJECTIVE: The objective of Part 16 of Chapter 61 is to set forth the responsibilities, in addition to all other requirements imposed by law, of a qualifying broker.
[16.61.16.6 NMAC - Rp, 16.61.16.6 NMAC, 1/1/2012]

16.61.16.7 DEFINITIONS: Refer to 16.61.1.7 NMAC.
[16.61.16.7 NMAC - Rp, 16.61.16.7 NMAC, 1/1/2012]

16.61.16.8 AFFILIATION: A qualifying broker is responsible for all real estate activities within the brokerage. A qualifying broker may serve concurrently as a qualifying broker for more than one brokerage. A qualifying broker may by written agreement engage the services of associate brokers and qualifying brokers, provided that the terms of such agreements are consistent with the responsibilities of associate brokers and qualifying brokers as set forth in parts 16.61.16.9 NMAC and 16.61.17.9 NMAC. A qualifying broker may serve as qualifying broker and associate broker for different brokerages simultaneously provided that there are written agreements executed specifying the responsibilities and scope of authority that the broker has for each brokerage. For purposes of this section “broker” means any licensee in a brokerage who is not acting in the capacity of a supervising qualifying broker.
[16.61.16.8 NMAC - Rp, 16.61.16.8 NMAC, 1/1/2012; A, 1/03/2021]

16.61.16.9 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.

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 all personnel, licensed or unlicensed, on behalf of others; as follows:~~

~~(1) Review and maintain all records and documents required for real estate related matters processed by all personnel supervised by the qualifying broker.~~

~~(2) Provide or promote appropriate training of all brokers and staff affiliated with the qualifying broker for compliance with the Real Estate License Law and Commission Rules.~~

~~(3) — Supervise advertising of real estate or real estate services conducted on behalf of others by anyone affiliated with the qualifying broker.~~

~~(4) — Execute and maintain current written employment agreements or independent contractor agreements with associate brokers affiliated with the qualifying broker.~~

~~F. — All records and documents wherein the qualifying broker and affiliated associate brokers are engaged on behalf of others, or on their own behalf, in real estate related matters; 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 of 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.~~

~~H. — Deposit all money received on behalf of others in the proper trust account as soon after receipt as is practically possible after securing signatures of all parties to the transaction documents.~~

~~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 subsection.~~

~~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.~~

~~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.~~

~~L. — Return the associate broker's license to the commission within 48 hours of termination or discharge.~~

~~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 Section 61-29-4.2 NMSA 1978 of the Real Estate License Law and 16.61.5 NMAC of the commission rules.~~

~~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.~~

~~O. — Ensure that associate brokers affiliated with their brokerage complete the commission approved new broker business practices course or the CCIM 101 course within their first year of licensure.~~

~~P. — Ensure that the qualifying broker's name and contact information 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.~~

~~E. — Supervise trust account management by brokerage owners whether or not the brokerage owners are licensed real estate brokers. Such trust account management will conform to other trust account requirements in the commission rules.~~

~~F. — Maintain all transaction records for six years if not performing property management, and for the full term of the assignment if performing property management. All such 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. Records may be in paper or electronic format. In the case of property managers, all records shall be retained for the full term of any agreement and for six years from the termination of the management agreement.~~

~~G. — Develop written office policies describing duties and responsibilities of brokers within the brokerage and guidance to brokers in avoiding violations of state or federal laws regarding real estate or rules of the real estate commission. Qualifying brokers who do not supervise are not required to develop written office policies. Office policies shall:~~

~~(1) Be provided to each broker within the brokerage and must include a signed acknowledgement by broker that policies were received and read and that broker agrees to follow the policies;~~

~~(2) Be available for inspection, upon request, by any authorized representative of the commission;~~

~~(3) Include obligations for brokers to inform the qualifying broker of any situation in which the broker is unsure, untrained, or concerned;~~

~~(4) Include obligations for the broker to be competent;~~

(5) Include obligations of the qualifying broker to make reasonable attempts to resolve issues that arise;

(6) Include a requirement to follow the state and federal laws regarding real estate and the rules of the real estate commission;

(7) Include a requirement for broker to present all advertising drafts not prepared by the brokerage to the qualifying broker for approval; and,

(8) Include a requirement for brokers to renew their license on time, and to be responsible for completing continuing education as required by the commission rules for renewal.

H. Provide guidance to newly licensed brokers throughout their first six transactions or more if deemed necessary by the qualifying broker. Provide guidance for all new and experienced brokers including but not limited to:

(1) Review of the office policies;

(2) Provide consultation, ongoing training and education to help the brokers avoid violations of local, state, and federal laws regarding real estate and rules of the real estate commission;

(3) Timely take action to mitigate potential or actual violations of which qualifying broker is made aware;

(4) Respond to broker promptly regarding any issues on the previous list;

(5) Provide assistance in preparing contracts as necessary;

(6) Monitor transactions as necessary;

(7) Instruct the associate broker to review closing documents and attend closing or have an experienced substitute attend closing (unless restricted by the title company); and,

(8) The qualifying broker may require review of all transaction documents.

I. Require all brokers to provide drafts of advertising not drafted by the brokerage to the qualifying broker for review and approval.

K. Execute and maintain written independent contractor agreements with brokers affiliated with qualifying broker. This section shall not be construed to mean that an employer/employee relationship is required between the qualifying broker and any broker.

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

M. Receive and disburse or authorize the disbursement of all commissions, referral fees, and other considerations to a 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 brokers surviving spouse, or any legally recognized entity wholly owned by an associate broker and their spouse. Such partnership, corporation, or limited liability company (LLC) shall not be required to have a qualifying broker for purposes of this subpart;

N. When the brokerage cooperates with, in expectation of compensation, or makes a referral to, or receives a referral from any broker, there must be a transaction specific written co-brokerage or referral agreement or for corporate or network referrals, a general referral agreement or contract signed by the qualifying broker;

O. 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;

P. Return a broker's license to the commission within 48 hours of termination or discharge;

Q. Require each broker affiliated with the brokerage to obtain and maintain a current errors and omissions policy as provided in Section 61-29-4.2 NMSA 1978 of the Real Estate License Law and 16.61.5 NMAC of the commission rules;

R. Successfully complete the commission-approved qualifying broker refresher course as a condition of license renewal or as a condition of reinstatement of qualifying broker status;

S. Require each broker affiliated with their brokerage to complete the commission-approved new broker business practices course, or the CCIM 101 course within their first year of licensure;

T. Require brokers to include the qualifying broker's name and contact information, including license number, clearly and conspicuously 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;

U. Identify oneself on real estate related phone calls, texts or emails as a licensed New Mexico real estate broker.

V. Disclose, when buying, selling or leasing real property on broker's own behalf, that broker holds a New Mexico real estate license.
[16.61.16.9 NMAC - Rp, 16.61.16.9 NMAC, 1/1/2012; A, 1/1/2017, A, 1/15/2018; A, 1/03/2021]

16.61.16.10 MITIGATING FACTORS TO QUALIFYING BROKER RESPONSIBILITIES

Any of the following may be considered by the commission as mitigating factors regarding an alleged violation of the responsibilities named in 16.61.16.9 NMAC, above:

A. The qualifying broker has written policies guiding brokers from violating state or federal laws regarding real estate or rules of the real estate commission as demonstrated by all of the following:

(1) The qualifying broker demonstrates the broker received written policies and an acknowledgment that broker read and agreed to follow the policies;

(2) The qualifying broker can demonstrate access was provided to associate brokers to any of the following:

(a) Ongoing training or education sessions for associate brokers;

(b) Ongoing discussions regarding real estate practice, procedures and law, the rules of the commission;

(c) Ongoing discussions regarding completing real estate forms correctly;

(d) Ongoing discussions regarding changes to forms, rules and regulations, statutes and any other commission regulations

B. Any violation of the provisions of the New Mexico Real Estate License Act by any licensee associated with qualifying broker shall not be cause for suspension or revocation of a qualifying broker license unless the qualifying broker had guilty knowledge of the act or rule violation.

C. The qualifying broker's failure to provide an appropriate written company policy may be cause for discipline, including suspension or revocation of the qualifying broker's license.

[16.61.16.10 NMAC - N, 1/03/2021]

HISTORY OF 16.61.16 NMAC:

Pre-NMAC History:

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

(REC-3) Rule No. 3 Amendment No. 3, Salesperson-Employment; Place of Business; Records to be Maintained, filed 6/15/1979;

REC 70-3, Associate Broker/Salesperson-Affiliation; Place of Business; Records to be Maintained, filed 10/6/1981;

REC 71-3, Associate Broker/Salesperson-Affiliation; Place of Business; Records to be Maintained, filed 11/29/1982;

Rule No. 5, Qualifying Broker/Associate Broker/ Salesperson-Affiliation and Responsibilities, filed 12/18/1987.

History of Repealed Material:

16 NMAC 61.16, Qualifying Broker: Affiliation and Responsibilities (filed 6/25/1997) repealed 1/1/2000.

16 NMAC 61.16, Qualifying Broker: Affiliation and Responsibilities (filed 12/10/1999) repealed 1/1/2002.

16 NMAC 61.16, Qualifying Broker: Affiliation and Responsibilities (filed 11/30/2001) repealed 1/1/2012.

Other History:

That portion of Rule No. 5, Qualifying Broker/Associate Broker/ Salesperson-Affiliation and Responsibilities (filed 12/18/1987) was reformatted, renumbered , and replaced by 16 NMAC 61.16, Qualifying Broker: Affiliation and Responsibilities, effective 8/15/1997.

16 NMAC 61.16, Qualifying Broker: Affiliation and Responsibilities (filed 6/25/1997), replaced by 16 NMAC 61.16, Qualifying Broker: Affiliation and Responsibilities, effective 1/1/2000.

16 NMAC 61.16, Qualifying Broker: Affiliation and Responsibilities (filed 12/10/1999), was reformatted, renumbered, and replaced by 16.61.16 NMAC, Qualifying Broker: Affiliation and Responsibilities, effective 1/1/2002.

16.61.16 NMAC, Qualifying Broker: Affiliation and Responsibilities (filed 11/30/2001), replaced by 16.61.16 NMAC, Qualifying Broker: Affiliation and Responsibilities, effective 1/1/2012.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 61 REAL ESTATE BROKERS
PART 17 ASSOCIATE BROKER: AFFILIATION AND RESPONSIBILITIES

16.61.17.1 ISSUING AGENCY: New Mexico Real Estate Commission.
[1/1/2000; 16.61.17.1 NMAC - Rn & A, 16 NMAC 61.17.1, 1/1/2002]

16.61.17.2 SCOPE: The provisions in Part 17 of Chapter 61 apply to all New Mexico associate brokers.
[1/1/2000; 16.61.17.2 NMAC - Rn, 16 NMAC 61.17.2, 1/1/2002; A, 1/1/2006]

16.61.17.3 STATUTORY AUTHORITY: Part 17 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 61-29-4.
[1/1/2000; 16.61.17.3 NMAC - Rn, 16 NMAC 61.17.3, 1/1/2002]

16.61.17.4 DURATION: Permanent.
[1/1/2000; 16.61.17.4 NMAC - Rn, 16 NMAC 61.17.4, 1/1/2002]

16.61.17.5 EFFECTIVE DATE: January 1, 2002, unless a later date is cited at the end of a section.
[1/1/2000; 16.61.17.5 NMAC - Rn & A, 16 NMAC 61.17.5, 1/1/2002]

16.61.17.6 OBJECTIVE: The objective of Part 17 of Chapter 61 is to set forth the responsibilities, in addition to all other requirements imposed by law, of associate brokers.
[1/1/2000; 16.61.17.6 NMAC - Rn, 16 NMAC 61.17.6, 1/1/2002; A, 1/1/2006]

16.61.17.7 DEFINITIONS: Refer to 16.61.17 NMAC.
[1/1/2000; 16.61.17.7 NMAC - Rn, 16 NMAC 61.17.7, 1/1/2002]

16.61.17.8 AFFILIATION: An associate broker must be affiliated with a qualifying broker in order to engage in real estate brokerage business. An associate broker may have only one associate broker's license and be affiliated with only one qualifying broker at a time. If specified in the independent contractor agreement between the brokerage and the associate broker, an associate broker may perform brokerage services for different qualifying brokers within the same brokerage with the same ownership. A broker performing brokerage related services in the capacity of a transaction coordinator for multiple brokerages must have a qualifying broker's license issued by the commission.
[1/1/2000; 16.61.17.8 NMAC - Rn, 16 NMAC 61.17.8, 1/1/2002; A, 1/1/2006; A, 1/1/2012; A, 1/1/2019]

16.61.17.9 RESPONSIBILITIES: An active associate broker shall:

- A.** complete 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 license 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.** Notify the qualifying broker immediately and seek counsel and advice of the qualifying broker if the associate broker has questions or concerns about a transaction or process, including but not limited to, possible violations of office policies and procedures, local, state and federal laws regarding real estate and rules of the real estate commission, and must seek help with contract creation and completion when unsure.
- E.** Ensure associate broker's own competence and knowledge of the profession by taking continuing education courses in areas where associate broker is lacking skill or knowledge in those areas.
- F.** Read, understand and follow the written policies provided by qualifying broker.
- ~~**G.**~~ 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;
- ~~**H.**~~ 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.~~ I. 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.~~ J. 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.~~ K. 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.~~ L. 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.~~ M. deliver in a timely manner to their qualifying broker all records required to be maintained by their qualifying broker under 16.61.16 NMAC; and

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

~~O.~~ Disclose, when buying, selling or leasing real property on broker's own behalf, that broker holds a New Mexico Real Estate License.

~~P.~~ Identify oneself on real estate related phone calls, texts or emails as a licensed New Mexico real estate broker.

~~Q.~~ Renew the real estate license timely and take all required continuing education courses in order to renew the license. Notify qualifying broker immediately if the license cannot be renewed or has expired.

~~R.~~ Submit all advertising not prepared by the brokerage to the qualifying broker for review and approval prior to public release.

[1/1/2000, A, 2/14/2000; 16.61.17.9 NMAC - Rn, 16 NMAC 61.17.9, 1/1/2002; A, 1/1/2006; A, 12/31/2008; A, 1/1/2012; A, 1/1/2014; A, 1/1/2017; A, 1/03/2021]

HISTORY OF 16.61.17 NMAC:

Pre-NMAC History:

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

(REC-3) Rule No. 3 Amendment No. 3, Salesperson-Employment; Place of Business; Records to be Maintained, filed 6/15/1979;

REC 70-3, Associate Broker/Salesperson-Affiliation; Place of Business; Records to be Maintained, filed 10/6/1981;

REC 71-3, Associate Broker/Salesperson-Affiliation; Place of Business; Records to be Maintained, filed 11/29/1982;

Rule No. 5, Qualifying Broker/Associate Broker/ Salesperson-Affiliation and Responsibilities, filed 12/18/1987.

History of Repealed Material:

16 NMAC 61.17, Associate Broker: Affiliation and Responsibilities (filed 6/25/1997) repealed 1/1/2000.

16 NMAC 61.17, Associate Broker/Salesperson Affiliation and Responsibilities (filed 12/10/1999) repealed 1/1/2002.

Other History:

That portion of Rule No. 5, Qualifying Broker/Associate Broker/ Salesperson-Affiliation and Responsibilities (filed 12/18/1987) was reformatted, renumbered, and replaced by 16 NMAC 61.17, Associate Broker/Salesperson: Affiliation and Responsibilities, effective 8/15/1997.

16 NMAC 61.17, Associate Broker/Salesperson: Affiliation and Responsibilities (filed 6/25/1999) was replaced by 16 NMAC 61.17, Associate Broker/Salesperson: Affiliation and Responsibilities, effective 1/1/2000.

16 NMAC 61.17, Associate Broker/Salesperson: Affiliation and Responsibilities (filed 12/10/1999) was reformatted, amended, renumbered and replaced by 16.61.17 NMAC, Associate Broker/Salesperson: Affiliation and Responsibilities, effective 1/1/2002.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Active participation in assisting in complying with the terms and conditions of the contract and with the finalization of the transaction;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[16.61.19.8 NMAC - Rp, 16.61.19.8 NMAC, 1/1/2004; A, 1/30/2004; A, 3-27-2004; A, 1/1/2006; A, 1/1/2006, A, 1/1/2007; A, 12/31/2008; A, 1/1/2012; A, 1/1/2014. A, 1/15/2018; A, 1/1/2019; A, 1/03/2021]

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

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

B. Exclusive agency: an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interests of the person in a real estate transaction. Such agreements include buyer agency, seller agency, designated agency, and subagency agreements.

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

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

16.61.19.10 DUAL AGENCY RELATIONSHIP:

A. Dual agency occurs when:

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

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

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

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

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

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

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

HISTORY OF 16.61.19 NMAC:

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

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

History of Repealed Material:

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

Other History:

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

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

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

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

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 61 REAL ESTATE BROKERS
PART 20 TRANSACTION COORDINATOR

16.61.20.1 ISSUING AGENCY: New Mexico Real Estate Commission.
[16.61.20.1 NMAC - N, 1/1/2019]

16.61.20.2 SCOPE: The provisions in Part 20 of Chapter 61 apply to all New Mexico brokers.
[16.61.20.2 NMAC - N, 1/1/2019]

16.61.20.3 STATUTORY AUTHORITY: Part 20 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 61-29-4.
[16.61.20.3 NMAC - N, 1/1/2019]

16.61.20.4 DURATION: Permanent.
[16.61.20.4 NMAC - N, 1/1/2019]

16.61.20.5 EFFECTIVE DATE: January 1, 2019, unless a later date is cited at the end of a section.
[16.61.20.4 NMAC - N, 1/1/2019]

16.61.20.6 OBJECTIVE: The objective of Part 20 of Chapter 61 is to set forth the responsibilities, in addition to all other requirements imposed by law, of all brokers.
[16.61.20.6 NMAC - N, 1/1/2019]

16.61.20.7 DEFINITIONS: Refer to 16.61.1.7 NMAC.
[16.61.20.7 NMAC - N, 1/1/2019]

16.61.20.8 REQUIREMENTS:

A. ~~Any transaction coordinator performing activities that require a New Mexico real estate license, including offering and negotiating contracts and leases, must hold a current real estate license issued by the real estate commission.~~ Any transaction coordinators involved in real estate transactions in New Mexico including transaction coordinators from other states must have a New Mexico broker's license.

B. A transaction coordinator performing activities for a brokerage under one ownership is not required to have a qualifying broker's license provided that the transaction coordinator is under the direct supervision of a qualifying broker of that same brokerage.

C. Any transaction coordinator providing services for multiple brokerages other than the transaction coordinator's own brokerage must hold a current New Mexico qualifying broker's license.

D. Any transaction coordinator providing services for a brokerage other than the transaction coordinator's own brokerage must have a ~~transaction-specific~~ written agreement with the qualifying broker of the brokerage for which those transaction coordinator services are being provided that details the services being provided by the transaction coordinator and any compensation being paid to the transaction coordinator for those services.

E. A broker who engages the services of a transaction coordinator ~~to perform activities that may require a real estate license~~ whether within the broker's brokerage or outside the broker's brokerage, shall be responsible for disclosing the name(s) of the transaction coordinator, in writing, to the buyer, seller and brokers in the transaction.

F. A broker who hires a transaction coordinator must have a ~~transaction-specific~~ written agreement with that broker's qualifying broker detailing the services being provided by the transaction coordinator and any compensation being paid to the transaction coordinator for those services, including written authorization that the transaction coordinator may be paid by the associate broker who has hired him or her.

G. A broker who hires a transaction coordinator remains responsible for the transaction; the hiring of a transaction coordinator in no way eliminates or mitigates the broker's responsibilities or obligations to the broker's customer or client or to other brokers and parties to the transaction.

H. ~~Transaction coordinators may owe the following broker duties:~~ A transaction coordinator owes broker duties as delineated in 16.61.19.8 NMAC.

~~(1) — If a transaction coordinator does not hold a real estate license and is not performing duties that require a real estate license, no broker duties are owed.~~

~~(2) — If a transaction coordinator performs duties that require a real estate license, but only works for the broker that hired the transaction coordinator and has no interaction with the broker's customer or client or other brokers involved in the transaction, the transaction coordinator owes the broker duties under paragraphs (1) through (5) of Subsection A of 16.61.19.8 NMAC, as follows:~~

~~(a) — Honesty and reasonable care 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 prospective buyer, seller, landlord (owner) or occupant;~~

~~(d) — Written disclosure of any potential conflict of interest or any other written agreement that the broker has in the transaction including but not limited to:~~

~~(i) — Any written brokerage relationship the broker has with any other parties to the transaction or;~~

~~(ii) — Any material interest or relationship of a business, personal, or family nature that the broker has in the transaction;~~

~~(iii) — Any written agreement the broker has with a transaction coordinator who will be providing brokerage services related to the transaction.~~

~~(e) — 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.~~

~~(3) — If a transaction coordinator performs duties that require a real estate license and works directly with a customer or client or other brokers and parties involved in the transaction, the transaction coordinator owes the following broker duties listed under paragraphs (1) through (5) of Subsection A of 16.61.19.8 NMAC listed in the preceding subparagraphs (a) through (e); and paragraphs (5) (7) and (8) of Subsection B of 16.61.19.8 NMAC, as follows.~~

~~(a) — The broker shall maintain any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former principal's written consent or is required by law;~~

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

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

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

~~(iii) — The seller/owner's motivations for selling/leasing; or~~

~~(iv) — Any other information the seller/owner has requested in writing remain confidential, unless disclosure is required by law;~~

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

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

~~(ii) — The buyer/tenant's motivation for buying/leasing; or~~

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

[16.61.20.8 NMAC - N, 1/1/2019; A, 1/03/2021]

HISTORY OF 16.61.19 NMAC: [RESERVED]

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 61 REAL ESTATE BROKERS
PART 23 TRUST ACCOUNTS

16.61.23.1 ISSUING AGENCY: New Mexico Real Estate Commission.
[16.61.23.1 NMAC - Rp, 16.61.23.1 NMAC, 1/1/2012]

16.61.23.2 SCOPE: The provisions in Part 23 of Chapter 61 apply to all licensed qualifying brokers in New Mexico.
[16.61.23.2 NMAC - Rp, 16.61.23.2 NMAC, 1/1/2012]

16.61.23.3 STATUTORY AUTHORITY: Part 23 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, Section 61-29-4 NMSA 1978.
[16.61.23.3 NMAC - Rp, 16.61.23.3 NMAC, 1/1/2012]

16.61.23.4 DURATION: Permanent.
[16.61.23.4 NMAC - Rp, 16.61.23.4 NMAC, 1/1/2012]

16.61.23.5 EFFECTIVE DATE: January 1, 2012, unless a later date is cited at the end of a section.
[16.61.23.5 NMAC - Rp, 16.61.23.5 NMAC 1/1/2012]

16.61.23.6 OBJECTIVE: The objective of Part 23 of Chapter 61 is to set forth the requirements and procedures for the description, establishment, maintenance, retention of, and deposits to and disbursement from, trust accounts by qualifying brokers.
[16.61.23.6 NMAC - Rp, 16.61.23.6 NMAC, 1/1/2012]

16.61.23.7 DEFINITIONS: Refer to 16.61.1.7 NMAC.
[16.61.23.7 NMAC - Rp, 16.61.23.7 NMAC, 1/1/2012, A, 1/1/2017]

16.61.23.8 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. As defined in Subsection VV. of 16.61.1 NMAC Section 1 of the commission rules, trust account reconciliation must be performed monthly and verified by the qualifying broker.

E. Property ledgers. Each trust account transaction shall be assigned to and properly accounted for in relation to the managed property to which it belongs ~~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.
[16.61.23.8 NMAC - Rp, 16.61.23.8 NMAC, 1/1/2012; A, 1/1/2017; A, 1/03/2021]

16.61.23.9 TYPES OF TRUST ACCOUNTS: A qualifying broker shall have only the following types of accounts and they shall be used only for the purposes stated.

A. Brokerage trust account. This account shall be used for money belonging to others related to a real estate sales transaction. Property management funds may not be placed in this trust account. In lieu of a brokerage trust account, a broker may deposit funds with a title company authorized to do business in the state of New Mexico. If a title company is used in lieu of a brokerage trust account, then receipt and deposit records shall be kept as outlined in this section.

B. Property management trust account. This account shall be used for money belonging to others received by a qualifying broker related to managing properties for others. All management commissions and fees

may be deposited, withdrawn and tracked through the property management trust account as long as those commissions and fees are specified in the ~~management~~ agreement between the property owner and brokerage.

C. Special trust account. In the event the principals to a sale transaction agree in writing that an interest bearing special trust account is to be established, a written agreement shall be prepared stating as a minimum the following:

- (1) the qualifying broker shall be named as sole trustee;
- (2) name of the acceptable financial institution wherein the funds are to be deposited;
- (3) the amount of interest to be paid on the funds and to whom the interest shall accrue;
- (4) the final disposition of principal and interest upon closing, termination or default by either party to the transaction; and
- (5) the signatures of all parties to the transaction and the qualifying broker as trustee.

D. Custodial account. Funds designated to be deposited in a custodial account shall first be placed in a brokerage trust account or a property management trust account of the qualifying broker and then may be transferred to the custodial account of the owner. Custodial accounts shall not contain any funds other than those belonging to the owner of the custodial account. Custodial accounts may be interest bearing; however, the interest shall be paid only to the owner or his designee. The qualifying broker shall have on file a written agreement signed by all principals as to the establishment and operational details of each custodial account.

[16.61.23.9 NMAC - Rp, 16.61.23.8 & 9 NMAC, 1/1/2012; A, 1/03/2021]

16.61.23.10 RECORD ACCESSIBILITY, RETENTION AND INSPECTION: Every qualifying broker shall keep bank and office records of all funds related to all trust and custodial accounts under the qualifying broker's control, as set forth below.

A. Accessibility. Records shall be maintained at or accessible from the brokerage office as registered with the commission.

B. Retention. All trust and custodial account records shall be retained for six years after the completion of a transaction.

C. Property management. All trust and custodial account records shall be retained for the full term of any agreement. At the termination of a management agreement, records shall be retained for six years from the date of termination.

D. Inspection. All financial documents shall be subject to inspection by the commission or its duly authorized representative at the designated location of such records or at the offices of the commission. The records shall include, at a minimum, clear indication of all funds received and disbursed on behalf of others in all real estate transactions wherein the qualifying broker is involved.

E. The qualifying broker is responsible for the maintenance and safekeeping of all trust and custodial account records.

[16.61.23.10 NMAC - Rp, 16.61.23.9 NMAC, 1/1/2012; A, 1/03/2021]

16.61.23.11 DEPOSITS, DISBURSEMENTS AND COMMINGLING:

A. Deposits. All trust account deposits shall conform to the following requirements.

(1) Timeliness. All funds of others pertaining to a real estate transaction shall be deposited into the proper trust or custodial account per written agreement of the parties to the transaction.

(2) Receipt records. A detailed record of all funds received shall be maintained by the qualifying broker and shall clearly indicate the following:

- (a) date received;
- (b) date deposited;
- (c) from whom received;
- (d) amount of deposit;
- (e) property address or legal description including unit number (if unit number is applicable); and

(f) category or purpose of receipt (e.g., earnest money, rent, security deposit, funds from owner, etc.).

(3) Wrongful deposits. The following actions involving any trust account shall be improper and shall constitute commingling:

(a) depositing a broker's own funds into a trust or custodial account without disclosure to the owner of a managed property and the real estate commission;

(b) depositing funds in a trust or custodial account that are not directly related to a real estate transaction or a managed property except as allowed by law; and
(c) depositing funds of others in an account that is not a properly designated trust account.

B. Disbursements. All trust account disbursements shall conform to the following requirements.

(1) Timeliness. All funds of others pertaining to a real estate transaction shall be disbursed as soon as reasonably possible after ~~the conclusion of a transaction~~ receipt of the funds.

(2) Disbursement records. A detailed record of all funds disbursed shall be maintained by the qualifying broker and shall clearly indicate the following:

- (a) check number or unique transaction identification number;
- (b) date of disbursement;
- (c) payee;
- (d) category or purpose of disbursement;
- (e) amount of disbursement;
- (f) property address or legal description including unit number (if unit number is applicable).

(3) Fees due broker. Fees as determined by written agreement may be disbursed as soon as the basis for calculation can be determined and funds are available.

(4) Wrongful disbursements. The following actions involving any trust or custodial account shall be improper and shall constitute commingling:

- (a) disbursing trust funds or custodial funds for personal use of the qualifying broker, an associate broker or the broker's designee;
- (b) disbursing commission or commission splits from any trust or custodial account to any entity other than the qualifying broker.
- (c) disbursing New Mexico gross receipts tax or other non-property related business expenses directly from a trust or custodial account;
- (d) disbursing funds before the completion of the related transaction, except upon court order; this provision does not prevent a broker from transferring funds from one properly designated trust or custodial account to another properly designated trust or custodial account within the same brokerage;
- (e) disbursing funds in excess of the trust or custodial account balance or in excess of a specific property or client ledger balance; and
- (f) trust or custodial account overages can only be disbursed in accordance with the Unclaimed Property Act with written notification to the commission.

C. Commingling. Commingling of trust or custodial account funds is not permitted. Commingling shall include, but is not limited to, the following actions:

- (1) wrongful deposits as described in this section;
- (2) wrongful disbursements as described in this section;
- (3) allowing a property or client ledger within a trust or custodial account to be in deficit;
- (4) placing funds derived from the management of the qualifying broker's personally owned properties, or properties owned by any legally recognized entity in which the qualifying broker has ~~a ten percent or more~~ any interest in a trust account containing funds of others;
- (5) failing to withdraw from the trust or custodial account within a reasonable time, funds to which the qualifying broker is entitled;
- (6) allowing money designated to one property or transaction to be used for the benefit of another property or transaction.

D. Exceptions to commingling.

(1) Non-trust funds may be placed in a trust or custodial account in an amount not to exceed the required minimum balance requirements of a financial institution necessary to maintain the account and avoid charges.

(2) Non-trust funds may be placed in a trust or custodial account in order to pay fees for credit card transactions and bank fees.

(3) Depositing a broker's own funds in a trust or custodial account with full disclosure to the owner of a managed property and with specific, prior written approval of the commission followed immediately by written documentation to the owner and to the commission of the deposit transaction.

(4) If a written sharing agreement specifies, funds of one property may be used for the benefit of another property owned by the same person or entity.

(5) Funds received from an owner for the benefit of all their managed properties may be credited to an owner's ledger.
[16.61.23.11 NMAC - Rp, 16.61.23.10 NMAC, 1/1/2012; A. 1/1/2014; A, 1/03/2021]

16.61.23.12 TRUST ACCOUNT DECLARATION AND RECORD KEEPING: Qualifying brokers who offer property management services for others shall:

A. Execute and submit to the commission, on a form provided by the commission, a declaration of intent to offer such services. Such declaration will acknowledge the qualifying broker's responsibility for all property management services provided by the brokerage including maintenance of the records described below.

B. Maintain records of such services as provided in 16.61.23 NMAC and 16.61.24 NMAC, including:

(1) A list of all property management trust and custodial accounts maintained by the brokerage;

(2) The name of the bank(s) at which such trust or custodial accounts are maintained;

(3) Monthly trust or custodial account reconciliation(s) demonstrating a three-way reconciliation between the trust or custodial account, the bank statement, and the property ledger;

(4) Trust or custodial account year-end balances.

C. Qualifying brokers who offer property management services for others shall review 16.61.23 NMAC and 16.61.24 NMAC of the commission rules with licensed and unlicensed personnel performing property management services at the brokerage.

D. Qualifying brokers offering property management services for others shall make the records and information delineated in this part available to the commission upon request.

E. Failure of a qualifying broker to comply with the provisions of 16.61.23.12 NMAC, shall subject the qualifying broker to disciplinary action.

[16.61.23.12 NMAC – N, 1/1/2019; A, 1/03/2021]

HISTORY OF 16.61.23 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives under:

Real Estate License Law Manual, filed 10/2/1973;

Rule No. 15 Amendment No. 1, Trust Fund Accounts; Records to be Maintained, filed 6/15/1979;

REC 70-14 Trust Fund Accounts; Records to be Maintained, filed 10/6/1981;

REC 84-14, Trust Fund Accounts; Records to be Maintained, filed 10/25/1984;

Rule No. 11 Trust Accounts, filed 12/18/1987.

History of Repealed Material:

16.61.23 NMAC, Special Trust Accounts, Custodial Accounts, and Other Accounts Containing Funds of Third Parties (filed 11/30/2001) repealed 1/1/2012.

Other History:

Rule No. 11 Trust Accounts (filed 12/18/1987) was reformatted, renumbered, amended, and replaced by 16 NMAC 61.23, Trust Accounts, effective 8/15/1997.

16 NMAC 61.23, Trust Accounts (filed 6/25/1997) was reformatted, amended, renumbered, and replaced by 16.61.23 NMAC, Trust Accounts, effective 1/1/2002.

16.61.23 NMAC, Special Trust Accounts, Custodial Accounts, and Other Accounts Containing Funds of Third Parties (filed 11/30/2001) was replaced by 16.61.23 NMAC, Trust Accounts, effective 1/1/2012.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 61 REAL ESTATE BROKERS
PART 24 PROPERTY MANAGEMENT

16.61.24.1 ISSUING AGENCY: New Mexico Real Estate Commission.
[16.61.24.1 NMAC - Rp, 16.61.24.1 NMAC, 1/1/2012]

16.61.24.2 SCOPE: The provisions in Part 24 of Chapter 61 apply to all licensed New Mexico associate brokers and qualifying brokers engaged in property management.
[16.61.24.2 NMAC - Rp, 16.61.24.2 NMAC, 1/1/2012]

16.61.24.3 STATUTORY AUTHORITY: Part 24 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.
[16.61.24.3 NMAC - Rp, 16.61.24.3 NMAC, 1/1/2012]

16.61.24.4 DURATION: Permanent.
[16.61.24.4 NMAC - Rp, 16.61.24.4 NMAC, 1/1/2012]

16.61.24.5 EFFECTIVE DATE: January 1, 2012, unless a later date is cited at the end of a section.
[16.61.24.5 NMAC - Rp, 16.61.24.5 NMAC, 1/1/2012]

16.61.24.6 OBJECTIVE: The objective of Part 24 of Chapter 61 is to establish the requirements, policies and procedures that must be met by a New Mexico real estate associate broker or qualifying broker engaged in property management for others.
[16.61.24.6 NMAC - Rp, 16.61.24.6 NMAC, 1/1/2012]

16.61.24.7 DEFINITIONS: Refer to Definitions 16.61.1.7 NMAC
[16.61.24.7 NMAC - Rp, 16.61.24.7 NMAC, 1/1/2012]

16.61.24.8 PROPERTY MANAGEMENT ADVISORY COMMITTEE: The commission may appoint a property management advisory committee (PMAC) with the goal of enhancing the professional competence of property managers and reducing violations and complaints about property management services.
[16.61.24.8 NMAC - N, 1/1/2012]

16.61.24.9 DECLARATION OF INTENT: At any time that a qualifying broker or associate broker offers or intends to offer property management services for others, the broker shall declare that intent on a form approved by the commission, and shall be subject to education and meeting attendance requirements pursuant to 16.61.3.14 NMAC, and delineated as follows:

A. Qualifying brokers and associate brokers who offer or intend to offer property management services for others, shall as a condition of offering property management services, first complete the commission approved course, Uniform Owner-Resident Relations Act, or a commission approved equivalent property management related course, prior to offering such services, and in every subsequent three-year licensing cycle.

B. Associate brokers who offer or intend to offer property management services for others, shall do so only with the knowledge, written permission and under the supervision of their qualifying broker. As a condition of offering property management services, in addition to the course requirement in Subsection A above, the broker shall complete a minimum of six hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue during each three-year licensing cycle.

C. Qualifying brokers who offer or intend to offer property management services for others, shall as a condition of offering such services, in addition to the course requirement in Subsection A above, complete a minimum of 12 hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue, each three-year licensing cycle.

D. Qualifying brokers and associate brokers offering property management services shall attend at least one New Mexico real estate commission meeting, rule hearing, or disciplinary hearing for at least three hours, or until the commission goes into executive session, or the hearing/meeting ends, whichever comes first, in each three-three-year licensing cycle. Attendance may be at a live meeting/hearing or by live or recorded distance broadcast; but must be documented by signing into and out of the meeting/hearing.

[16.61.24.9 NMAC - N, 1/1/2012; A, 1/1/2014; A, 1/1/2019; A, 1/03/2021]

16.61.24.10 COMPLIANCE WITH APPLICABLE LAW: Brokers shall comply with applicable local, state and federal laws and ordinances concerning managing and leasing, and maintaining property for others, including but not limited to the following:

- A. Federal fair housing law
 - B. New Mexico Uniform Owner-resident Relations Act
 - C. Federal lead-based paint regulations, including provisions of the federal Environmental Protection Agency's lead-based paint renovation, repair and painting rule
 - D. Construction Industries Licensing Act (CILA NMSA Chapter 60 Article 13), The Manufactured Housing Act (MHA NMSA chapter 60 Article 14), and the LPG and CNG Act (NMSA chapter 70 Article 5).
- [16.61.24.10 NMAC - N, 1/1/2012; A, 1/1/2019; A, 1/03/2021]

16.61.24.11 PROPERTY MANAGEMENT TRUST AND CUSTODIAL ACCOUNTS: In addition to the rules set forth in 16.61.23 NMAC, the following also apply to property management trust and custodial accounts.

A. ~~This~~ A property management trust account shall only contain funds derived from the management of property for others and shall be clearly identified with the banking institution as well as the public as a property management trust account.

B. A custodial account utilized for property management shall contain funds derived from the management of property for only one property owner and the account will be in the name of that property owner and will be under the care and direction of the qualifying broker. The property owner may have signatory or viewing rights to this account.

~~**B. C.**~~ All funds received by the qualifying broker which are received in association with managed properties, shall be deposited into the property management trust account, excepting funds which are received for the management of property which in whole or part belongs to the qualifying broker, prior to any disbursements. Once deposited, the qualifying broker may then disburse funds as specified in the management agreement.

~~**C. D.**~~ Deposits from tenants shall be placed in a property management trust account. Deposits may be held in a property management trust account or may be disbursed to the owner as specified in the property management agreement and agreed to by the tenant. Unless the tenant occupies a property owned by the qualifying broker, deposits shall be placed in a property management trust account. Deposits may be held in a property management trust account, or may be disbursed to the owner as specified in the property management agreement and agreed to by the tenant.

D. E. Commingling of funds is not permitted. No funds may be deposited in a property management trust account that are not received in connection with a managed property except as provided for in 16.61.23 NMAC Exceptions to commingling.

E. F. Property ledgers. When the property management trust account contains funds from the rental or lease of more than one property, separate accounting records shall be maintained on each property.

[16.61.24.11 NMAC - Rp, 16.61.24.8 NMAC, 1/1/2012; A, 1/1/2014; A, 1/1/2019; A, 1/03/2021]

16.61.24.12 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. 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 which may include but are not limited to criminal background checks and credit reports.

D. Final statement after termination. Final accounting of trust account or custodial 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; A, 1/1/2019; A, 1/03/2021]

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 the brokerage 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;
- (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 owners that the property manager is prohibited by law or contract from providing such documents to the owner; or
- (2) the owner's written consent that such documents will not be provided.

D. The qualifying broker shall include with every written residential management agreement a copy, either in hard copy form or electronically, of the New Mexico Uniform Owner-Resident Relations Act. The qualifying broker shall obtain separate written confirmation from each client that the client has received such a copy of the act. The qualifying broker shall make this confirmation available to the New Mexico real estate commission if requested.

E. Before the brokerage transfers any management agreement to another brokerage, both the qualifying broker assigning the contract and the qualifying broker receiving the contract shall execute an assignment of contract. Because the management agreement is a personal services contract, the qualifying broker must have the property owner's written consent to assign the contract to another brokerage. If there is no assignment of contract, the qualifying broker receiving the contract must execute a new management agreement.

[16.61.24.13 NMAC - Rp, 16.61.24.13 NMAC, 1/1/2012; A, 1/1/2017; A, 1/1/2019]

16.61.24.14 RESIDENTIAL TENANCY AGREEMENTS: There shall be a signed written tenancy agreement for each property or rental unit.

A. Tenancy agreements shall include, but not be limited to, the following:

- (1) name of tenant;
- (2) property address or legal description including unit number (if unit number is applicable);
- (3) rent amount;
- (4) security deposit and other deposit amounts;
- (5) when and where rent is to be paid;
- (6) date property possession began;
- (7) date property possession ends;
- (8) all fees charged to the tenant; and
- (9) how payments are to be applied to outstanding expenses/charges.

B. The qualifying broker shall include a copy, either in hard copy form or electronically, of the New Mexico Uniform Owner-Resident Relations Act, with every written residential tenancy agreement. The qualifying broker shall obtain separate written or electronic confirmation from each tenant that the tenant has received such copy of the act. The qualifying broker shall make this confirmation available to the commission if requested.

C. If the property manager's name is on a lease as the agent of the property owner, and a new property manager takes over management of the property, the lease shall be assigned to the new property manager. The owner of the property must give written consent for assignment of the lease and the assignment must be acknowledged in writing by the qualifying broker.

[16.61.24.14 NMAC - Rp, 16.61.24.14 NMAC, 1/1/2012; A, 1/1/2019]

16.61.24.15 RECORD ACCESSIBILITY, RETENTION AND INSPECTION: The property management brokerage shall maintain office records of all properties managed for others.

A. Accessibility. Records shall be maintained at or accessible from the brokerage office at the location as registered with the commission.

B. Retention. All property management records shall be retained for the previous duration of the contract and six years during a management agreement. At the termination of a management agreement, records shall be retained for six years from the date of termination.

C. Inspection. All records are subject to inspection by the commission or its duly appointed representative at or accessible from the brokerage office or at the offices of the commission.

D. The qualifying broker is responsible for the maintenance and safe-keeping of all property management records.

[16.61.24.15 NMAC - Rp, 16.61.24.15 NMAC, 1/1/2012; A, 1/03/2021]

16.61.24.16 VACATION RENTALS: In addition to the provisions set forth above, the following special provisions apply only with respect to the management of vacation rentals.

A. If gross receipts taxes and/or lodgers' taxes are due, the management agreement shall specify who or what entity is responsible for collection, reporting and/or remitting of such taxes. If the taxes are to be collected from the tenant by the broker or a third party, the management agreement shall authorize the broker or third party entity to collect and remit the applicable taxes from the renter.

B. Management agreements shall disclose if the broker is using a third party advertising or reservation service (such as AirBnB, VRBO, etc.).

C. Compensation retained by or paid to third parties who engage in advertising and/or taking reservations for vacation rental properties shall not be considered to be in violation of Subsection (3) of Section 61-29-12 A NMSA 197 of the New Mexico real estate license law which prohibits real estate brokers from paying or receiving rebate, profit, compensation or commission to or from any unlicensed person.

D. If a broker uses an online travel agent or third party advertising entity which prohibits disclosure of the brokerage name and/or telephone number as registered with the commission, such displays are exempt from the disclosure requirement in Subsection B of 16.61.32.8 NMAC. In this event, the broker shall ensure that the renter receives this disclosure promptly upon completing a rental reservation.

E. The broker shall not be required to deliver a copy of the Uniform Owner-Resident Relations Act to a renter of a vacation rental.

F. A rental agreement shall also include the following:

- (1) arrival and departure dates;
- (2) check-in and check-out times;
- (3) nightly rental rate;
- (4) rental deposit;
- (5) security deposit;
- (6) disclosure of all fees charged to the renter (e.g. cleaning, hot tub, phone, cable internet, resort, etc.);
- (7) accommodation rules (e.g. occupancy, parking, smoking, pets, noise, etc.); and
- (8) cancellation policy.

G. Reports to owners. In the monthly statement to the owner, qualifying broker shall also list rental income, credit card fees, maintenance charges and amount paid in commission to the brokerage office.

H. Renter security deposits. Funds collected as a tenant security deposit shall be deposited into the property management trust account.

I. Rental deposits. Funds collected as a rental deposit shall be deposited into the property management trust account to secure a reservation.

J. Employees of the brokerage handling short term or vacation rentals or third parties who engage only in taking reservations for short term or vacation rentals shall not be required to be licensed.

[16.61.24.16 NMAC - Rp, 16.61.24.16 NMAC, 1/1/2012; A, 1/1/2019]

16.61.24.17 VENDORS

All ~~brokers~~ property managers hiring vendors or employees to perform maintenance, repair or renovation activities on behalf of property owners which may require a permit issued by the Construction Industries Division or an equivalent local or municipal permitting agency shall only use vendors and employees who are:

A. certified and/or licensed as required by local, state and/or federal law; and,

B. insured and/or bonded.

[16.61.24.17 NMAC - N, 1/1/2019; A, 1/03/2021]

HISTORY OF 16.61.24 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the state records center and archives under:
REC 71-17 Property Management, filed 11/29/1982;
REC 84-17 Property Management, filed 10/25/1984;
Rule No. 15, Property Management, filed 12/18/1987;
NMREC Rule 15, Property Management filed 10/3/1994.

History of Repealed Material:

16.61.24 NMAC, Property Management (filed 11/30/2001) repealed 1/1/2012.

Other History:

NMREC Rule 15, Property Management (filed 10-3-94) was reformatted, renumbered, amended, and replaced by 16 NMAC 61.24, Property Management, effective 8-15-97.

16 NMAC 61.24, Property Management (filed 6-25-97) was reformatted, amended, renumbered, and replaced by 16.61.24 NMAC, Property Management, effective 1/1/2002.

16.61.24 NMAC, Property Management (filed 11-30-01) was replaced by 16.61.24 NMAC, Property Management, effective 1/1/2012.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 61 REAL ESTATE BROKERS
PART 32 REAL ESTATE ADVERTISING

16.61.32.1 ISSUING AGENCY: New Mexico Real Estate Commission.
[8/15/1997; 16.61.32.1 NMAC - Rn & A, 16 NMAC 61.32.1, 1/1/2002]

16.61.32.2 SCOPE: **The provisions in Part 32 of Chapter 61** applies to all real estate brokers in New Mexico.
[8/15/1997, A, 2/14/2000; 16.61.32.2 NMAC - Rn, 16 NMAC 61.32.2, 1/1/2002; A, 1/1/2006]

16.61.32.3 STATUTORY AUTHORITY: **Part 32 of Chapter 61 is promulgated pursuant to the** Real Estate Licensing Law, NMSA 1978 Section 61-29-4.
[8/15/1997; 16.61.32.3 NMAC - Rn, 16 NMAC 61.32.3, 1/1/2002]

16.61.32.4 DURATION: Permanent.
[8/15/1997; 16.61.32.4 NMAC - Rn, 16 NMAC 61.32.4, 1/1/2002]

16.61.32.5 EFFECTIVE DATE: August 15, 1997, unless a later date is cited at the end of a section.
[8/15/1997; 16.61.32.5 NMAC - Rn & A, 16 NMAC 61.32.5, 1/1/2002]

16.61.32.6 OBJECTIVE: **The objective of Part 32 of Chapter 61** is to set forth the requirements governing the advertising of real property for others for sale, purchase, rent, lease or exchange in the state of New Mexico.
[8/15/1997; 16.61.32.6 NMAC - Rn, 16 NMAC 61.32.6, 1/1/2002]

16.61.32.7 DEFINITIONS: Refer to 16.61.1.7 NMAC.
[1/1/2000; 16.61.32.7 NMAC - Rn, 16 NMAC 61.32.7, 1/1/2002]

16.61.32.8 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 brokerage trade name and telephone number shall be prominently displayed in a type size not less than thirty-three percent of the type size 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. A broker advertising to buy, sell, lease, rent, or exchange real property which the broker owns, partially owns, will own or will partially own shall indicate within such advertising, including signs, that the broker owns or will own the real property. Disclosure of such ownership must also be made in the listing contract, purchase agreement, rental agreements, lease agreements, or exchange agreements. 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, rental agreement, lease agreement, or exchange agreement.

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.

[N, 1/1/2000; 16.61.32.8 NMAC - Rn, 16 NMAC 61.32.8, 1/1/2002; A, 1/1/2006; A, 1/1/2007; A, 1/1/2017; A, 1/03/2021]

HISTORY of 16.61.32 NMAC:

Pre-NMAC History:

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

Rule No. 4 Amendment No. 1 (aka REC-4), Misleading Advertising, filed 6/15/1979;

REC 70-4, Misleading Advertising, filed 10/6/1981;

REC 71-4, Misleading Advertising, filed 11/29/1982;

REC 84-4, Misleading Advertising, filed 10/25/1984;

Rule No. 12, Advertising/Disclosure, filed 12/18/1987;

NMREC Rule 12, Advertising/Disclosure, filed 10/3/1994.

History of Repealed Material: [RESERVED]

Other History:

NMREC Rule 12, Advertising/Disclosure (filed 10/3/1994) was reformatted, renumbered, and replaced by 16

NMAC 61.32, Advertising/Disclosure, effective 8/15/1997.

16 NMAC 61.32, Advertising/Disclosure (filed 6/25/1997) was reformatted, renumbered, amended, and replaced by

16.61.31 NMAC, Advertising/Disclosure, effective 1/1/2002.