

# Broker Administration

30 Broker Pre-Licensing Credit Hours

## TABLE OF CONTENTS

A. New Mexico License Law .....	4
1. Real estate license required [61-29-1] .....	4
2. Exceptions to License Requirement [61-29-2 (C)] .....	4
3. Requirements for Qualifying Broker License [61-29-9 (C)] .....	4
4. Creation of Agency Relationship by Written Agency Agreement [61-29-10.1] ....	5
5. Brokerage Services without Agency—with or without written agreement .....	5
6. Use of Qualifying Broker's Name on Licenses [61-29-11] .....	5
7. Renewal Cycle for License and Education [61-29- 11] .....	5
8. Qualifying Broker and Registered Trade Name [61-29-11 (D)] .....	5
9. Termination of License and Return to Commission [61-29-11 (E)] .....	5
10. Discipline of Licensee for various Failures to Comply to License Law .....	6
11. Guilty Knowledge and Revocation of Qualifying Broker's License .....	7
12. Qualifying Broker Must Maintain Law Suits for Compensation Owed .....	7
13. Statutory Penalty for Practicing RE on Behalf of Others Without a Lisc. ....	7
14. Administrative Penalty from NMREC for Practicing RE on Behalf of Others Without a License. ....	7
B New Mexico Real Estate Commission Rules .....	7
Part 1: Definitions .....	7
Part 2: Errors & Omissions Insurance .....	9
Part 3: Time Requirements for License Transfer .....	10
Part 4: Effective Date of Inactivation of License .....	10
Part 5: Continuing Education Requirements: .....	10
Part 6: Qualifying Broker Responsibilities .....	10
Part 7: Associate Broker Responsibilities .....	12
Part 8: Broker Disclosures and Broker Duties .....	12
Part 9: Dual Agency Relationships and Disclosure .....	13
Part 10: Unlicensed Assistants Limited Activities .....	13
Part 11: Trust Accounts Requirements .....	14
Part 12: Property Management .....	15
Part 13: Time Share Activities .....	15
Part 14: Foreign Broker .....	15
Part 15: Criminal Background Checks .....	16
Part 16: Trade Name Registration .....	16
Part 17: Signage Display .....	16
Part 18: Advertising/Disclosure and Qualifying Broker Responsibilities .....	17
Part 19: Document Execution and Delivery .....	17
Part 20: Child Support Enforcement .....	18
Part 21: Complaints and Investigations .....	18
Part 22: NMREC Office Inspection Check List .....	18
A. Other New Mexico Statutes and Regulations .....	18
B. Antidiscrimination in Employment Laws .....	19
C. Starting your Brokerage .....	20
2. Business entry options .....	27
Trade Name Search NMREC Website .....	29

Multiple Listing Service participation .....	30
3. Accurate Information and Broker Cooperation: .....	31
5. Place of business: Zoning and CC&R, appropriate signage, lease provisions .....	33
6. Fair Employment Practices .....	33
7. Internal Affiliation Relationships and Agreements .....	34
8. New Mexico Common Law.....	34
9. New Mexico Real Estate Commission Rules Part 1 .....	34
10. Employment Agreements.....	35
11. Independent Contractor Agreements .....	35
12. Respondeat superior .....	36
13. Associate Broker Employment of Unlicensed Assistants.....	36
14. New Mexico Real Estate Commission Rules Part 21 .....	36
15. Associate Broker Employment Agreement with Unlicensed Assistants. ....	36
16. Real Estate Services Offered .....	37
I. Property Management.....	39
20. Professional and Licensing Fees and Obligations; .....	68
D. Participation in Multiple Listing Services .....	79

**I. MODULE I. “Pertinent Statutes and Regulations Overview”**

4 Hours

**A. New Mexico License Law**

**1. Real estate license required [61-29-1]**

Persons engaging in the business, acting in the capacity of, advertising or displaying in any manner or otherwise assuming to engage in the business of, or acting as an Associate Broker or Qualifying Broker within New Mexico. Includes buying, selling, exchanging, renting, leasing auctioning, or dealing in options, for others.

**2. Exceptions to License Requirement [61-29-2 (C)]**

- a.) Owner or lessor; (regular) employees of the owner or lessor; some employees of a Qualifying Broker involved in Property Management
- b.) Person acting as attorney-in-fact under a power of attorney to finally consummate a sale, lease or exchange transaction on behalf of an owner/lessor. Limit: 2 per year
- c.) Attorney-in fact related to owner within fourth degree of consanguinity
- d.) Attorney at law in performance of such attorney duties
- e.) Receiver; trustee in bankruptcy; administrator or executor; a person selling real estate under a court order; a trustee acting under a trust agreement, deed of trust or will; regular salaried employee of a trustee
- f.) Salaried employee of government agency, acting within scope of employment
- g.) persons dealing in mineral leases, or sale of mineral rights or royalties where title to the land or the surface rights are not involved in the transaction

**3. Requirements for Qualifying Broker License [61-29-9 (C)]**

<b>Associate Broker (AB) Applying for Qualifying Broker License</b>				
<b>Requirements &gt;&gt;</b>	<b>Broker Basics</b>	<b>Brokerage Admin.</b>	<b>Licensed 2 years</b>	<b>Pass Broker Test</b>
AB before 1/1/06**	*	Yes	Yes	Done
Became AB on 1/1/06	Yes	Yes	Yes	Yes
AB after 1/1/06	Done	Yes	Yes	Done

\*If you acquired your Associate Broker license before Broker Basics was a prerequisite, you are not required to take it before becoming a Qualifying Broker.

\*\*If you were a Qualifying Broker (QB) prior to 1/1/06, and had chosen to change to Associate Broker (AB), the Brokerage Office Administration course is not required to obtain a QB license, if your past QB licensure can be verified by the commission.



Applicants for license, and license renewal, must submit a Criminal Background check to the commission.

**4. *Creation of Agency Relationship by Written Agency Agreement [61-29-10.1]***

No real estate Agency relationship between a consumer and a Brokerage shall exist unless the consumer and Brokerage agree, in writing, to the Agency relationship.

**5. *Brokerage Services without Agency—with or without written agreement***

[61-29-10.1]

Agency, with a written agency agreement between the client and Brokerage:

Transaction Broker, with a written agreement between the client and Brokerage, but no agency created

Transaction Broker, with no written agreement between the customer and Brokerage

**6. *Use of Qualifying Broker's Name on Licenses [61-29-11]***

License shows name and address of licensee.

Associate Broker's (AB) license shows the name of the Qualifying Broker (QB) by whom AB is engaged.

All licenses must be displayed, and are in the custody and control of the QB.

**7. *Renewal Cycle for License and Education [61-29- 11]***

License expires every 3 years on the last day of the month following licensee's birth month. Licensee must provide proof of compliance with continuing education requirements and pay the renewal fee.

If license expires, the commission may require a person to apply for a license as if they had not been licensed, and may require reexamination, OR allow that person to renew, for a period of 1 year, without a test, for a fee equal to 3 X the renewal fee.

**8. *Qualifying Broker and Registered Trade Name [61-29-11 (D)]***

All Brokerage business conducted under the trade name and address registered with the commission.

Every Brokerage shall have a QB in charge.

New office location requires notification to commission within 10 days.

**9. *Termination of License and Return to Commission [61-29-11 (E)]***

If AB is discharged or terminates his association with the QB, the QB shall deliver or mail that license to the commission with 48 hours.

Licensee is inactive, and may not operate until transfer form and fee have been received by commission and the license reissued and reactivated by the commission.

**10. *Discipline of Licensee for various Failures to Comply to License Law***

[61- 29-12 (A)]

Commission could refuse to issue a license if an applicant or licensee has by false or fraudulent representations obtained a license or, in performing or attempting to perform any of the actions specified in the 61-29, an applicant or licensee has:

- a.) made a substantial misrepresentation;
- b.) pursued a continued and flagrant course of misrepresentation; made false promises through agents, salespersons, advertising or otherwise used the insignia of an organization you are not a member of;
- c.) paid or received any rebate, profit, compensation or commission to or from any unlicensed person, except his principal or other party to the transaction, and then only with his principal's written consent;
- d.) represented or attempted to represent a Qualifying Broker other than the Qualifying Broker with whom the licensee is associated without the express knowledge and consent of that Qualifying Broker;
- e.) failed, within a reasonable time, to account for or to remit any money coming into his possession which belongs to others, commingling funds or failed to furnish legible copies of all listing and sales contracts to all parties executing them;
- f.) been convicted in any court of competent jurisdiction of a felony or any offense involving moral turpitude;
- g.) employed or compensated directly or indirectly any person for performing any of the acts regulated by Chapter 61, Article 29 NMSA 1978 who is not a licensed Qualifying Broker or an Associate Broker; provided, however, that a Qualifying Broker may pay a commission to a licensed broker of another state;
- h.) failed, if a Qualifying Broker, to place as soon after receipt as is practicably possible, after securing signatures of all parties to the transaction, any deposit money or other money received by him in a real estate transaction in a custodial, trust or escrow account maintained by him in a bank or savings and loan institution or title company authorized to do business in this state, in which the funds shall be kept until the transaction is consummated or otherwise terminated, at which time a full accounting of the funds shall be made by the Qualifying Broker;
- i.) failed, if an Associate Broker, to place as soon after receipt as is practicably possible in the custody of the Associate Broker's Qualifying Broker, after securing signatures of all parties to the transaction, any deposit money or other money entrusted to the Associate Broker by any person dealing with the Associate Broker as the representative of the Qualifying Broker;
- j.) violated a provision of Chapter 61, Article 29 NMSA 1978 or a rule promulgated by the commission.;
- k.) committed an act, that is related to dealings as a Qualifying Broker or Associate Broker that constitutes or demonstrates bad faith, incompetency, untrustworthiness, impropriety, fraud, dishonesty, negligence or any unlawful act; or
- l.) been the subject of disciplinary action as a licensee while licensed to practice real estate in another jurisdiction, territory or possession of the United States or another country.



**11. Guilty Knowledge and Revocation of Qualifying Broker's License**

[61-29-12 (B)]

An unlawful act or violation of 61-29 by an Associate Broker, employee, partner or associate of the Qualifying Broker shall not be cause for the revocation of the QB's license unless it appears to the commission that the QB had guilty knowledge of the unlawful act or violation.

**12. Qualifying Broker Must Maintain Law Suits for Compensation Owed**

[61-29-16]

Suits for commission or compensation shall be maintained in the courts only if the person suing is a licensed Qualifying Broker or Associate Broker.  
Suits against a member of the public shall be maintained only in the name of the QB.

**13. Statutory Penalty for Practicing RE on Behalf of Others Without a Lisc.**

[61-29-17 (A)]

Violator of License Law could face a fine up to \$500, and/or 6 months in jail; up to \$1,000 fine for violation by corporation or business association.

**14. Administrative Penalty from NMREC for Practicing RE on Behalf of Others Without a License.**

[61-29-17.2]

Commission may impose a civil penalty of \$1,000, plus administrative fees, for each violation found guilty of acting without a license in violation of the license law.

**B New Mexico Real Estate Commission Rules**

**Part 1: Definitions**

**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.

**Associate Broker**: A Person holding an Associate Broker's license who is affiliated with a Qualifying Broker.

**Brokerage Relationship**: the legal or contractual relationship between a Person and a Brokerage in a real estate transaction subject to the jurisdiction of the commission.

**Broker Duties**: those duties established by the Commission that are owed by all Brokers to all Clients and Customers.

**Broker in Charge:** a New Mexico licensed real estate Broker who is eligible to be a Qualifying Broker designated by the Qualifying Broker to be responsible for real estate related activity within the Brokerage during the temporary absence of the Qualifying Broker.

**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.

**Consumer:** prospective sellers and buyers, lessors and lessees, landlords and tenants.

**Criminal Background Check:** a criminal background check of a first-time or renewal applicant for a New Mexico real estate Broker's license on or after January 1, 2007 conducted by an entity or source approved by the Commission.

**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.

**Designated Broker:** A Qualifying Broker or Associate Broker who is designated in writing by a Qualifying Broker to serve as exclusive Agent or exclusive Transaction Broker for a seller, landlord, buyer or tenant in a real estate transaction.

**Designated Brokerage:** the Brokerage Relationship established between the seller, landlord, buyer or tenant and a Designated Broker, including the duties, obligations and responsibilities of this relationship which shall not extend to the Qualifying Broker nor to any other Associate Broker employed or engaged by that Qualifying Broker.

**Dual Agency:** an Express Written Agreement that modifies existing Exclusive Agency Agreements to provide that the Brokerage agrees to act as a Facilitator in real estate transaction rather than as an Exclusive Agent for either Party to the Transaction.

**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 existing Exclusive Agency Agreements with the Brokerage.

**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.

**Express Written Agreement:** a listing agreement, a written Agency or Brokerage Relationship agreement, an exclusive Transaction Broker agreement or purchase or lease agreement, or any written agreement signed by all parties to a real estate transaction.



**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.

**Foreign Broker:** a real estate Brokerage licensed by a jurisdiction other than New Mexico engaged in real estate-related activities in New Mexico.

**In House Transaction:** a Transaction that occurs under the supervision of one Qualifying Broker in the same Brokerage.

**Property Management:** includes the showing, renting and leasing of real property, the collection and disbursement of funds on behalf of other Persons, the supervision of employees as specified in the management agreement, the supervision of maintenance and repair work, handling of tenant relations, and/or preparation of financial reports. In the course of listing and marketing properties for sale, repairs and maintenance incident to the sale and authorized by the owner, shall not be considered property management.

**Property Management Trust Account:** a Trust Account containing money of others derived from the management of leased or rental properties.

**Qualifying Broker:** a Broker who has qualified an individual proprietorship, corporation, partnership or association to do business as a real estate Brokerage in the state of New Mexico.

**Transaction Broker:** any Broker or Brokerage that provides real estate services without entering into an Agency relationship.

**Unlicensed Assistant:** a Person who:

- (1) Does not hold a New Mexico real estate license;
- (2) Works under the supervision of a Qualifying Broker or Associate Broker;
- (3) Performs only those routine clerical, secretarial, administrative or bookkeeping activities defined in Part 21 of the Real Estate Commission Rules which do not require a New Mexico real estate license.

## ***Part 2: Errors & Omissions Insurance***

Every active New Mexico real estate Broker shall have in effect a policy of Errors and Omissions Insurance. [The NM Real Estate Commission makes a policy available.]

A. The group policy shall provide, at a minimum, the following terms of coverage:

- (1) Coverage for all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage.
- (2) An annual premium not to exceed \$200.

Licensee may buy E&O from any vendor that provides the minimum coverage required.

**B. Qualifying Broker for Corporation, Partnership, or Association as Real Estate Brokerage**

The license shall entitle the New Mexico Qualifying Broker to act as an officer or agent of the partnership, association or corporation under the Trade Name of the real estate Brokerage as registered with the Commission.

***Part 3: Time Requirements for License Transfer***

When a licensee requests a transfer, the Qualifying Broker or Broker in Charge must return that licensee's license to the commission within 48 hours. All real estate activity on the part of the Associate Broker shall cease until the transfer has been completed. The transfer form must be accompanied with a certificate certifying that the Associate Broker has current Errors and Omissions insurance coverage.

***Part 4: Effective Date of Inactivation of License***

Inactivation takes place at the time the license is received and stamped at the Commission, or upon receipt of written notification to the Commission by the Qualifying Broker or Broker in Charge, whichever is earlier.

***Part 5: Continuing Education Requirements:***

- 30 credit hours required per 3 year licensing cycle
  - a. For new AB, first licensed as the result of passing the Broker exam after 1/1/06, 10 hours CE must be completed in first year, 20 hours CE by the end of year 2, and 30 hours CE by the end of the renewal cycle.
- 8 hour Mandatory Course required, plus 22 elective CE. [Will be tested in 2007.]
- Maximum of 10 credit hours may be from 'Training' courses
- Minimum of 12 credit hours must be from 'Education' courses [All 22 OK]
- Maximum credit hours per course = 10
- 90% attendance required for CE courses, except 30 hr. pre-license for CE
- Commission Meeting or Rules/Disciplinary Hearing attendance: up to 4 'Ed'
- CE Credit Hours may not be carried forward to next cycle.
- New cycle starts the day after your license expiration date.
- CE courses available on-line, computer disk, and by correspondence.
- Pre- and Post-Approval of other courses: apply to Education Director.
- Post-Approval will be for 'Training' credit only.

***Part 6: Qualifying Broker Responsibilities***

The Qualifying Broker shall:



- If employed as a Qualifying Broker for others, have a written agreement of such.
- Conduct their real estate Brokerage business under the Trade Name and from the Brokerage address or addresses registered with the Commission.
- Prominently display the license(s) of all affiliated Associate Brokers conducting real estate brokerage business from the Brokerage office at the address registered with the Commission.
- Have in the Brokerage office, and available to all affiliated Associate Brokers and Co-Qualifying Brokers, a current copy [hardcopy] of the State of New Mexico Real Estate License Law and Rules Manual.
- Supervise all real estate related activities conducted on behalf of others, and execute and maintain current written employment or independent contractor agreements with them. Such agreements should specify the relationship and mutual responsibilities of the Associate Broker and the Brokerage, and the scope of authority of the Associate Broker to act on behalf of the Brokerage.
- Maintain [for a minimum of 3 years] full and complete records of transactions by the Brokerage. Records shall include: purchases, offers, counter-offers, lead-based paint disclosures and other disclosures required by law, seller's disclosure statements (if they provided), options, leases, rentals, letters of intent, Brokerage Relationship agreements and disclosures, and current, expired, and cancelled listings. [See Rule Manual]
- Deposit all money received on behalf of others in the proper Trust Account as soon after receipt as practicably possible after securing signatures of all parties to the transaction.
- Receive and disburse all commissions and other funds properly and promptly, including those to legal entities, entitled by law to receive same, including to partnerships, corporations or Limited Liability Companies (LLC's) wholly owned by Associate Brokers and their spouse [No QB required in legal entity].
- Not permit the use of the Qualifying Broker's license to enable an affiliated Associate Broker to establish and carry on transactions outside the knowledge and supervision of the Qualifying Broker.
- In the event actual supervision by the Qualifying Broker is not possible for a time exceeding seven (7) consecutive days, including in circumstances in which supervision of affiliated Associate Brokers is not possible because the Qualifying Broker resides in another state, designate a Broker In Charge and inform the Commission in writing of the designation. During this period of time, the Broker In Charge shall assume all of the responsibilities of the Qualifying Broker for the Brokerage.
- Upon termination/transfer requests, return Associate Broker's licenses within 48 hours.

- Ensure that each Qualifying Broker and Associate Broker affiliated with the Brokerage obtain and maintain a current Errors & Omissions Insurance policy.
- Successfully complete a Commission-approved four (4) hour Qualifying Broker refresher course every three years.

***Part 7: Associate Broker Responsibilities***

The Associate Broker shall:

- Receive compensation (including referral fees) only from their Qualifying Broker or Broker in Charge.
- Conduct all real estate related activities in the name of the Brokerage.
- Remit all monies of others, including checks and promissory note, related to real estate Transactions, to the Qualifying Broker or Broker in Charge as soon after receipt as is practicably possible after securing signatures of all Parties to the Transaction.

***Part 8: Broker Disclosures and Broker Duties***

Prior to the time a Broker generates or presents any written document that has the potential to become an Express Written agreement, the Broker shall disclose in writing to a prospective buyer, seller, landlord or tenant, the following list of Broker Duties that are owed to all Customers and Clients by all Brokers:

- A. Honesty and reasonable care; as set forth in the provisions of this section;
- 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 and Regulations, and other applicable local, state, and federal laws and regulations;
- C. Performance of any and all oral or written agreements made with the Broker's Customer or Client;
- D. Assistance to the Broker's Customer or Client in completing the Transaction, unless otherwise agreed to in writing by the Customer or Client, including:
  - 1. Presentation of all offers or counter-offers in a timely manner;
  - 2. Assistance in complying with the terms and conditions of the contract and with the closing of the transaction.

If the Broker in a Transaction is not providing the service, advice or assistance described in paragraphs (1) and (2) of Subsection D of 16.61.19.8 NMAC, the Customer or Client must agree in writing that the Broker is not expected to provide such service, advice or assistance, and the Broker shall disclose such agreement in writing to the other Brokers involved in the Transaction;

- E. Acknowledgement by the Broker that there may be matters related to the Transaction that are outside the Broker's knowledge or expertise and that the Broker will suggest that the Customer or Client seek expert advice on these matters;
- F. Prompt accounting for all monies or property received by the Licensee;



G. Prior to the time the Broker generates or presents any written document that has the potential to become an Express Written Agreement, written disclosure of (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 Licensee has in the Transaction; and/or other Brokerage Relationships available in New Mexico.

H. Disclosure of any adverse material facts actually known by the Broker about the property or the Transaction, or about the financial ability of the Parties to the Transaction to complete the Transaction. Adverse material facts do not include data from a sex offender registry or the existence of group homes;

I. Maintenance of any confidential information learned in the course of any prior Agency relationship unless the disclosure is with the former Client's consent or is required by law;

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

#### ***Part 9: Dual Agency Relationships and Disclosure***

Dual Agency: An express written agreement that modifies existing Exclusive Agency agreements to provide that the Brokerage agrees to act as a Facilitator rather than as an exclusive agent of either party to the transaction. 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.

#### ***Part 10: Unlicensed Assistants Limited Activities***

- An unlicensed individual may not:
- Prepare legal documents such as listing and sales contracts
- Interpret documents, and/or offer opinions or advice.
- Provide any information other than printed material prepared and approved by their Responsible Person.
- Host an open house, unless the Responsible Person is present.
- Obtain personal or property information from a Client or Customer of the Responsible Person except when acting as a coordinator directed by the Responsible Person by gathering and following up on information and the status of matters pertaining to the Transaction after a contract has been executed.

- Pick up from or deliver to Customers or Clients financial documents prepared by title companies, lenders or third persons for the purpose of obtaining signatures.
- Attend Transaction closing, unless the Responsible Person is present.
- Represent himself or herself as being a Licensee or being engaged in the business of buying, selling, exchanging, renting, leasing, managing, auctioning or dealing in options on any real estate or the improvements thereon for others.
- Conduct telephone solicitation [telemarketing] of any kind designed to procure Part 36 Transactions requiring licensure under 61-29, including, but not limited to, procuring buyers, sellers, listings or appointments for listing presentation.

***Part 11: Trust Accounts Requirements***

Trust Account: An account established by the Qualifying Broker for the purpose of holding money of others received by the Qualifying Broker in a Transaction.

A Qualifying Broker who receives money belonging to others related to a real estate Transaction wherein he is involved shall only deposit/remit in a: New Mexico Bank, New Mexico Savings and Loan institution, Title company authorized to do business in the State of New Mexico or cooperating New Mexico licensed Broker also involved in the Transaction.

Per the NMREC Rules, there are no other authorized depositories such as Escrow Companies or Credit Unions.

All Trust Accounts in banks and savings and loan institutions must be designated on the institution's records as "Trust Account." The words "Trust Account" and the trade name of the Brokerage as registered with the Commission must appear on all checks and deposit slips related to the Trust Account. In the case of a Property Management Trust Account, the words "Property Management Trust Account" must appear. These accounts must be reconciled monthly.

The NMREC does not require a Trust Account, but does require Trust Account records, which must be maintained for a minimum of 3 years.

Commingling: Mixing the QB's monies with monies of consumers; mixing one consumers funds with funds of another consumer; No deficit accounts are permitted.

Wrongful Deposits: Depositing QB's own funds into a Trust Account without prior approval of the commission, except a minimum balance requirement of a bank; funds that are not directly related to a real estate transaction involving the QB; funds of others into an account other than a Trust Account; funds received on behalf of others directly into a Custodial Account without first depositing the funds in a Trust Account.



Wrongful Disbursements: Disbursing Trust funds for the personal use of the QB; commissions from any Trust Account to any entity other than the QB (commission splits not made from the Trust Account); prematurely, before transaction closes; trust funds in excess of the amount in the Trust Account; overages in the Trust Account not in accordance with the Unclaimed Properties Act and after commission approval.

Trust Fund monies must be disbursed:

- Upon complete closing
- According to a written agreement, signed by all Parties to the Transaction, or
- Upon court order (broker holding deposited funds may seek relief by filing an Interpleader Action)

*Most common practice is to let the Title Co. hold earnest deposits.*

### ***Part 12: Property Management***

The Disclosures and Broker Duties in Part 19 also apply to Property Management.

Property Management Trust Account

- Established when managing 6 or more units.
- **Must be under the direct control and supervision of the Qualifying Broker.**
- Must contain Broker's trade name.
- Must be reconciled monthly.
- Deposits must be placed and held in the Trust Account, unless the Broker has a written agreement between the owner and tenant giving the Broker permission to turn the monies over to the owner.
- Commingling of funds is not permitted. However, a written Agreement may be executed between the Broker and owner of multiple properties giving the Broker permission, with a proper paper trail, to mingle funds of those properties only.
- Monthly reports are made in accordance with the Management Agreement.
- All Management Agreements and Lease Agreements must be in writing.
- Final accounting to owner required within 45 days of the effective date of written termination notice.

### ***Part 13: Time Share Activities***

A New Mexico Brokers license is required of any individual, including a tour guide, who shows time share units or facilities to prospective purchasers.

### ***Part 14: Foreign Broker***

Any Broker licensed by any jurisdiction other than New Mexico. May also be a third party company, corporation, referral, or relocation company in real estate.

When a New Mexico AB or QB cooperates with or makes a Referral to or receives a Referral from a Foreign Broker, for a fee, salary, commission or any other consideration, the following requirements shall be complied with by the New Mexico Brokerage:

A specific written co-brokerage or Referral agreement signed by the QB of the New Mexico Brokerage and the Foreign Broker shall be executed prior to the closing of any transaction.

All negotiations in New Mexico must be done through the New Mexico Brokerage, with the New Mexico QB assuming responsibility for all activities conducted relating to properties within the state of New Mexico.

All funds handled for others in transactions on New Mexico real property shall be placed by the New Mexico QB in a bank, savings and loan or title company authorized to do business in New Mexico.

#### ***Part 15: Criminal Background Checks***

All Persons applying for a New Mexico real estate Broker's license, whether new or renewal, on the effective date of this rule, must submit to a criminal background check as a condition of licensure and must submit documentation of having submitted to such a check from a source approved by the Commission. [New Mexico Dept. of Public Safety]

#### ***Part 16: Trade Name Registration***

Prior to the use of any Trade Name for the operation of a Brokerage, the QB shall register such Trade Name with the Commission. A QB must conduct their real estate Brokerage business under a Trade Name registered with the Commission. A QB wishing to conduct their real estate Brokerage business under a different Trade Name must execute a new Trade Name Registration Form with the Commission.

When a Brokerage ceases using a Trade Name, the QB shall, within thirty (30) days, advise the Commission in writing that the Trade Name is no longer being used, and remove all signs using the Trade Name

Use of a Trade Name in such a fashion as to mislead the public may be grounds for disciplinary action by the Commission.

#### ***Part 17: Signage Display***

Each QB shall place and maintain a sign, the letters of which shall not be less than two (2) inches high, in a conspicuous place near the office entrance identifying them as the QB. The Brokerage's Trade Name as registered with the Commission shall be clearly shown.

In the case of a QB whose office is located in an office building, the QB may comply with this regulation by listing their name on the directory of offices provided by the office building and by displaying the Trade Name on or near the office entrance.



***Part 18: Advertising/Disclosure and Qualifying Broker Responsibilities***

Every QB advertising real property for others for sale, purchase, lease, exchange, or rent, including Short-Term Rentals or advertising real estate services, shall as a minimum, use in such advertising the trade name and New Mexico office telephone number as registered with the Commission. Additional telephone numbers may be used.

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 telephone number of the Brokerage as registered with the Commission. (Multiple telephone numbers may be registered with the Commission.)

Every Broker [active and inactive] advertising to buy, sell or exchange real property which is owned or partially owned by that Broker shall indicate within the advertisement (including signs), listing contract, purchase agreement or exchange agreement that one of the parties is a Broker. Disclosures using initials or symbols are not permitted.

When advertising real property owned by a Broker and the Brokerage's telephone number is used in the advertisement, the advertisement must also include the Brokerage's Trade Name as registered with the Commission.

All real estate advertising shall be a true and factual representation of the property and/or real estate services being advertised. If the qualifications, credentials, staffing or sales history of the Brokerage are included in the Brokerage's advertising, such information shall be presented in such a manner that it will not confuse or mislead the public.

Advertising must be in compliance with all local, state and federal laws and regulations.

All real estate advertising of real property for others or advertising of real estate services shall be under the direct supervision of the QB or the Broker in Charge.

These requirements apply to all forms of advertising, including but not limited to print [including MLS printout], audio, video, including audio and video recordings, computer presentations, and electronic transmissions such as the internet, e-mail, virtual office websites (VOW's) and all Broker's websites.

***Part 19: Document Execution and Delivery***

All Transactions shall be documented and signed by all Parties to the Transaction.

Except as otherwise provided by law, in all circumstances it shall be the responsibility of each Broker engaged in a Transaction to assure that all Parties to the Transaction receive legible copies of any and all documents they have signed and any documents that pertain

to their respective interest in the Transaction as soon as practicably possible and copies of all fully executed documents thereafter.

### ***Part 20: Child Support Enforcement***

If a license applicant or a licensed Broker is not in compliance with a judgment and order for support, the Commission: Shall deny an application for a license; Shall deny the renewal of license; and has grounds for suspension or revocation of the license.

### ***Part 21: Complaints and Investigations***

The Real Estate Commission may file a complaint against any Person who engages in the business or acts in the capacity of a real estate Broker in this state with or without a New Mexico real estate license based on information indicating that there may have been a violation of the Real Estate License Law or the Commission Rules.

The commission may also act on a complaint made by a member of the commission, a member of the public, or another real estate Licensee.

Upon receipt of a complaint the commission will determine if the complaint is within its jurisdiction. If the commission determines the complaint is within its jurisdiction, the complaint will be assigned for investigation.

In conducting an investigation, the commission shall give the Person under investigation the opportunity to answer the complaint made against them in writing and to produce relevant documentary evidence, in accordance with the Uniform Licensing Act.

If the Person under investigation fails to respond to the complaint within ten (10) working days of having been provided with a copy of the complaint and having been informed by the commission in writing that a complaint has been filed against them, the investigation may proceed without benefit of that person's response.

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

Withdrawal of a complaint by a member of the commission, a member of the public, or another licensee does not bind the commission to dismiss the complaint.

### ***Part 22: NMREC Office Inspection Check List***

#### ***A. Other New Mexico Statutes and Regulations***

1. Written Service Agreements, Exclusivity and Enforceability. 47-1-45



2. New Mexico Real Estate Disclosure Act expressly exempts requirement for disclosure of certain events occurring on the property. 47-13-1 through 3

3. New Mexico Human Rights Act prohibits discrimination against any person in the terms, conditions or privileges of the sale, rental, assignment, lease or sublease of any housing accommodation or real property or in the provision of facilities or services in connection therewith because of being a member of a protected class.  
28-1-7(2)

4. New Mexico Uniform Owner-Resident Relations Act governing all management of residential properties in New Mexico providing for deposits, late charges, right of entry, duties of tenant and duties of landlord, eviction processes, etc. 47-8-1 to 47-8-51

5. Other New Mexico Property Statutes

a. House Bill 254 – 2006

b. T.O.D.D.

### ***B. Antidiscrimination in Employment Laws***

(See Federal Employment Law Manual on disk)

1. Civil Rights Act of 1866
2. Civil Rights Act of 1964
3. Fair Housing Act of 1968
4. Civil Rights Act of 1991
5. Affirmative Action
6. Rehabilitation Act
7. Age Discrimination in Employment Act
8. Americans with Disabilities Act
9. Immigration Reform Act of 1986
10. The Family and Medical Leave Act of 1993
11. National Labor Relations Act of 1935

New Mexico requires all employers to display the poster, “Discrimination is Against the Law.” Also the New Mexico Human Rights Act was amended so that certain employers cannot discriminate in hiring employees based on sexual orientation or gender identity if the person is otherwise qualified.  
28-1-1ff.

Contact New Mexico Human Rights Commission **(800)556-9471**

### ***C. Starting your Brokerage***

(6 Classroom Hours)

#### 1. Legal Structure of Brokerage

A. Creation, management and taxation  
(2 hours). RANM IDC and Unlicensed Assistant Form

##### 1. Sole Proprietorship

A sole proprietorship is an unincorporated business that is owned by one individual. It is the simplest form of business organization to start and maintain. The business has no existence apart from you, the owner. Its liabilities are your personal liabilities. You undertake the risks of the business for all assets owned, whether used in the business or personally owned. You include the income and expenses of the business on your own tax return.

1. Control - the owner does not have to sell his/her decisions to other owners,
2. Liability - The proprietor is liable only for his/her own acts.
3. Economy - There are a minimum of costs associated with establishing a proprietorship.
4. Simplicity - By acquiring a real estate license, you are in business.

If you are a sole proprietor use the information in the chart below to help you determine some of the forms that you may be required to file.

<b>If you are a sole proprietor then you may be liable for...</b>	<b>Use Form...</b>
Income Tax	1040 and <u>Schedule C</u> or <u>C-EZ</u> ( <u>Schedule F</u> for farm business)
Self-employment tax	1040 and <u>Schedule SE</u>
Estimated tax	<u>1040-ES</u>
Employment taxes: Social security and Medicare taxes and income tax withholding Federal unemployment (FUTA) tax Depositing employment taxes	<u>941</u> ( <u>943</u> for farm employees) <u>940</u> or <u>940-EZ</u> 8109

##### 2. General Partnership

A partnership is the relationship existing between two or more persons who join to carry on a trade or business. Each person contributes money, property, labor, or skill, and expects to share in the profits and losses of the business.

1. Two or More People - A general partnership can be formed by as few as two people, with each person being a general partner.

2. Management - All general partners share equally in management. As a general partner, each person has the ability to take part in the day-to-day management of the properties owned by the partnership. Each party has a particular expertise and brings a different value to the partnership; it



makes sense that each partner would be interested in taking part in making the day to day management decisions.

### 3. Joint and Several Liability

As general partners, each partner is totally liable for all the debts of the partnership, regardless of the amount of money each partner invests in the partnership.

For example, assume that in a general partnership, one partner invests \$500,000 in cash and the other partner invests only \$5,000 cash, but, as an additional contribution, agrees to oversee the business operations at a reduced cost. Each general partner would be totally liable for any and all judgments levied against the business. Of course, insurance may be available to protect the partners against various losses, but on any uninsured loss each partner would be fully liable.

### 4. Title

Title to property is held in the name of the partnership, in a general partnership, the title to the property is held by the partnership, not the individual partners. For example A&B Partnership may be made up of investors A and B, but A&B Partnership holds the title. The partnership owns the real estate business, and the individual partners have a personal property interest in the partnership.

This becomes an important consideration in certain situations such as death or divorce. The asset owned by the investor is an interest in the group. While the real estate business may have a marketable value, the interest in the group investment may not have the same value. It is possible that the estate of the person who died, or the divorced spouse may not be able to sell the business to free up their ownership interest. This is another area where the lack of liquidity in a group investment may be a disadvantage.

### 5. Tax

Partnership is a tax reporting entity only. Investors get a K-1 schedule and pay taxes on the income. The partnership will file a tax return at the end of the year reporting the results of the operation of the property using Federal Income Tax Form 1065. This form reports the results of the operations of the business venture for that year.

However, no tax is paid by the partnership. The partnership will allocate to each partner his or her share of taxable income or loss, depending on the formula contained in the partnership agreement. Most formulas call for a pro rata distribution of profits or losses, among partners, but there are provisions in the tax code that would allow for a *disproportionate allocation*. Such an allocation may give one partner all of the cash flow and the other partner all of the tax losses. A tax attorney or accountant would be needed to draft such disproportionate allocations.

The individual partners will receive a Schedule K-1 from the partnership reporting their allocation of taxable profit or loss for the year. The information from the Schedule K-1 will then get reported on the individual partner's Federal tax form 1040 and may result in an increased or decreased tax liability for the individual partner.

Because of the allocation of income or loss to the individual partner and the resulting reporting of that allocation on the individual's tax return, a general partnership is called a *pass through entity*.

A partnership must file an annual information return to report the income, deductions, gains, losses etc., from its operations, but it does not pay income tax. Instead, it "passes through" any profits or losses to its partners. Each partner includes his or her share of the partnership's income or loss on his or her tax return.

Partners are not employees and should not be issued a Form W-2. The partnership must furnish copies of Schedule K-1 (Form 1065) to the partners by the date Form 1065 is required to be filed, including extensions.

If you are a partnership or a partner (individual) in a partnership use the information in the charts below to help you determine some of the forms that you may be required to file.

**Chart 1 (Partnership)**

<b>If you are a partnership then you may be liable for...</b>	<b>Use Form...</b>
Annual return of income	<u>1065</u>
Employment taxes: Social security and Medicare taxes and income tax withholding Federal unemployment (FUTA) tax Depositing employment taxes	<u>941</u> ( <u>943</u> for farm employees) <u>940</u> or <u>940-EZ</u> <u>8109</u>
Excise Taxes	Refer to the <u>Excise Tax</u> web page

**Chart 2 (Individual Partners in a Partnership)**

<b>If you are a partner (individual) in a partnership then you may be liable for...</b>	<b>Use Form...</b>
Income Tax	1040 and <u>Schedule E</u>
Self-employment tax	1040 and <u>Schedule SE</u>
Estimated tax	<u>1040-ES</u>

**3. Limited Partnership**

Limited Partnerships are popular ownership entities for larger groups of investors, where most of the investors want the protection of limited liability.

a.) Investors - A limited partnership must have two or more partners. One partner must be a general partner who manages the partnership and has the authority to bind the partnership. The general partner is willing to assume unlimited liability, The remaining partners would be classified as limited partners.

b.) Management - By definition, a limited partner has limited involvement in the partnership, including limited involvement in management, leaving all of the management to the general partner. In order to protect the status of being considered a limited partner, the partner must not take any actions that would cause the partner to be re-classified as a general partner.



In order to maintain the limited liability feature, each limited partner must be limited in their involvement in management. They must be *passive* with regards to their management of the partnership's business. If an investor begins to take part in management, the investor suddenly looks like a general partner to the IRS and faces the potential of losing his/her protection of limited liability.

#### 4. Limited Liability

As a limited partner, a partner is only liable for the money he/she has at risk. This means that if a limited partner has invested \$5,000, that is all the money they could lose in the investment. Their liability is limited to their investment.

Some partnerships have provisions for additional investments over and above the original investment. This provision is sometimes called a *capital call* or an *assessment* provision. If a provision such as this is included in the partnership agreement, the limited partner would also be liable for that amount over and above the initial capital investment. Even with a capital call or assessment provision, the limited partners know at the outset the total extent of their liability.

#### 5. Liquidity

The ownership interests in a limited partnership are personal property and not real property and there is seldom a market for a limited partnership interest. An investor in a limited partnership must be prepared to stay in the investment group until the business or investment cycle is completed.

#### 6. Taxation

Just as in the general partnership, the partnership files an informational return with the IRS and distributes the Schedule K-1 to each limited partner, who then reports their share of income or expense on their own tax return. A limited partnership is a pass through entity.

#### 7. Limited Life

A limited partnership has a finite life, meaning that the partnership agreement calls for a date on which the partnership will end. This is different than a corporation, which has an infinite life. Limited partners should be certain that the life of the partnership is long enough to allow the partnership to accomplish the business purpose.

#### 8. Title

In a limited partnership, as in a general partnership, the title to the property is held by the partnership, not the individual partners. For example, Equity Limited Partnership may be made up of 20 individual investors. Title to the property is held by *Equity Partnership, a New Mexico Limited Partnership*. The partnership owns the real estate, and the individual partners have a personal property interest in the partnership.

## 9. Passive Activity

Limited partnership interests are by definition passive and as such, are affected by the restrictions in the current passive loss rules. This is a very complicated area of the tax law, in that a limited partnership interest is a passive activity, but the general partner could be either passive or active or both, depending upon their level of involvement in the management of the entity or the property, and the source of income in question (e.g. active for general partner activities and passive for limited partnership income),

## 4. General (C) Corporation

In forming a corporation, prospective shareholders exchange money, property, or both, for the corporation's capital stock. A corporation generally takes the same deductions as a sole proprietorship to figure its taxable income. A corporation can also take special deductions.

- a.) Ownership - The corporation is owned by the shareholders.
- b.) Management - The shareholders elect the Directors who in turn hire the officers of the corporation. The Officers run the business on a day-to-day basis.
- c.) Taxation - Generally the corporate entity is not favored for the ownership of real estate because of the double taxation which exists by virtue of the fact that the corporation must pay taxes on the taxable income generated by the business venture and the individual shareholder pays taxes on the cash flow distributed as dividends. This double taxation is avoided by the use of a pass through entity such as a partnership or a Limited Liability Company (LLC).
- d.) Formality - The strict requirements of maintaining corporate formalities or be faced with the loss of limited liability make the corporate structure a difficult one in which to own and operate real estate business',

The profit of a corporation is taxed to the corporation when earned, and then is taxed to the shareholders when distributed as dividends. However, shareholders cannot deduct any loss of the corporation.

If you are a corporation or an S corporation use the information in the charts below to help you determine some of the forms that you may be required to file.



### Chart 1 - Corporation or S Corporation

If you are a corporation or an S corporation then you may be liable for...	Use Form...
Income Tax	<u>1120</u> or <u>1120-A</u> (corporation) <u>1120S</u> (S corporation)
<u>Estimated tax</u>	<u>1120-W</u> (corporation only) and 8109
<u>Employment taxes:</u> <ul style="list-style-type: none"> <li>• Social security and Medicare taxes and income tax withholding</li> <li>• Federal unemployment (FUTA) tax</li> <li>• Depositing employment taxes</li> </ul>	<u>941</u> ( <u>943</u> for farm employees)  940 or <u>940EZ</u> 8109
Excise Taxes	Refer to the <u>Excise Tax</u> web page

### Chart 2 - S Corporation Shareholders

If you are an S corporation shareholder then you may be liable for...	Use Form...
Income Tax	1040 and <u>Schedule E</u>
Estimated tax	<u>1040-ES</u>

#### 5. S Corporation

An eligible domestic corporation can avoid double taxation (once to the shareholders and again to the corporation) by electing to be treated as an S corporation. Generally, an S corporation is exempt from federal income tax other than tax on certain capital gains and passive income. On their tax returns, the S corporation's shareholders include their share of the corporation's separately stated items of income, deduction, loss, and credit, and their share of non-separately stated income or loss.

If you are an S corporation use the information in the charts below to help you determine some of the forms that you may be required to file.

### Chart 1 - S Corporation

If you are an S corporation then you may be liable for...	Use Form...
Income Tax	<u>1120S</u> (S corporation)
Estimated tax	<u>1120-W</u> (corporation only) and 8109
Employment taxes: <ul style="list-style-type: none"> <li>• Social security and Medicare taxes and income tax withholding</li> <li>• Federal unemployment (FUTA) tax</li> <li>• Depositing employment taxes</li> </ul>	<u>941</u> ( <u>943</u> for farm employees)  <u>940</u> or <u>940-EZ</u> 8109
Excise Taxes	Refer to the <u>Excise Tax</u> web page

### Chart 2 - S Corporation Shareholders

If you are an S corporation shareholder then you may be liable for...	Use Form...
Income Tax	1040 and <u>Schedule E</u>
Estimated tax	<u>1040-ES</u>

#### 6. Limited Liability Company (LLC)

A Limited Liability Company (LLC) is a relatively new business structure allowed by state statute.

LLCs are popular because, similar to a corporation, owners have limited personal liability for the debts and actions of the LLC. Other features of LLCs are more like a partnership, providing management flexibility and the benefit of pass-through taxation.

Owners of an LLC are called members. Since most states do not restrict ownership, members may include individuals, corporations, other LLCs and foreign entities. There is no maximum number of members. Most states also permit “single member” LLCs, those having only one owner.

A few types of businesses generally cannot be LLCs, such as banks, insurance companies and nonprofit organizations. Check your state’s requirements and the federal tax regulations for further information. There are special rules for foreign LLCs.

For additional information on the kinds of tax returns to file, how to handle employment taxes and possible pitfalls, refer to IRS Publication 3402, Tax Issues for Limited Liability Companies.



---

Discussion of the advantages, disadvantages of each legal structure and basic information about how to proceed and what resources are available for assistance.

## 2. *Business entry options*

### A. Naming your brokerage

#### 1. Federal Trademarks and Service marks

What is a trademark?

A trademark includes any word, name, symbol, or device, or any combination, used, or intended to be used, in commerce to identify and distinguish the goods of one manufacturer or seller from goods manufactured or sold by others, and to indicate the source of the goods. In short, a trademark is a brand name.

What is a service mark?

A service mark is any word, name, symbol, device, or any combination, used, or intended to be used, in commerce, to identify and distinguish the services of one provider from services provided by others, and to indicate the source of the services.

#### a. Realtor trademark usage

### **The MARKS: REALTOR<sup>®</sup>; REALTORS<sup>®</sup>; and, the REALTOR<sup>®</sup> Logo**

The National Association is the proud owner of numerous marks including but not limited to the terms REALTOR<sup>®</sup>, REALTORS<sup>®</sup>, the REALTOR<sup>®</sup> Logo and the Block "R" mark (which may be referred to collectively as the "MARKS").

The Marks are collective membership marks that serve to identify Members of the National Association and distinguish them from non-members\*. Since 1916, when the unique term REALTOR<sup>®</sup> was first "coined" or "invented", the public has come to recognize those who use the MARKS as Members of the NATIONAL ASSOCIATION OF REALTORS<sup>®</sup> and, as such, providers of real estate related services consistent with a strict Code of Ethics and the highest standards of

professionalism. Member Boards\*\*, through their use of the MARKS, are recognized as Member organizations.

Members are licensed by the National Association to use one or more of the MARKS in connection with or in reference to themselves and their real estate businesses.

Member Boards are licensed to use the term REALTORS® as part of their name, or in the title of their publication, and to use the REALTOR® Logo in connection with their name. Member Boards may also be licensed to use the Block "R" mark in connection with a Member Board logo.

## ***B. Form and Context: Key Considerations***

The primary purpose of this Manual is to explain certain simple but essential policies and guidelines which have been adopted by the National Association to govern and protect the usage of its MARKS. These policies and guidelines include five limitations on the rights of Members and Member Boards to use the MARKS.

Without diminishing the importance of geographical, business and membership limitations governing use of the MARKS, Members and Member Boards are encouraged to take special note of those limitations regarding FORM and CONTEXT for these are the key to understanding the various policies and guidelines.

The balance of this Manual is devoted to explaining, by example, day-to-day applications of these guidelines and policies which will assist the Member and Member Board in conforming their use of the MARKS to these limitations and to the handling of special exceptions and situations.

As used in this Manual, the word FORM refers to the distinguishing style or appearance of these MARKS with respect to accompanying text, punctuation or symbols (e.g., capitalization, boldface type, italics, spacing, color and use of the federal registration symbol "®"). Proper FORM is necessary for the public to recognize the MARKS for their registered status and significance as more than simply words of ordinary use. The word CONTEXT refers to the meaning or definition likely to be attributed to the MARKS by the public as a result of accompanying wording or the overall setting of the use. The discussion of Proper Use appearing below is designed to assist in evaluating the CONTEXT of any particular use of the Marks.

The guidelines and policies set forth in this Manual are designed to encourage the widest possible consistent use of the MARKS while at the same time preserving and perpetuating their meaning and identifying function. Without such guidelines and policies and the cooperation and assistance of Member Boards and Members everywhere in assuring proper use, the MARKS might become confused in the public mind and lose their protectable, valuable qualities. To remain effective in



performing their identifying function, the MARKS must be used consistently and correctly.

For a full copy of this manual refer to:

<http://www.realtor.org/letterlw.nsf/pages/mmmPartOne>

***Trade Name Search NMREC Website***

[www.state.nm.us/nmrec](http://www.state.nm.us/nmrec)

1. Franchise
2. Name reservation from the Commission and if LLC or Corporation also from Public Regulation Commission  
Qualification of Corp., Partnership, Association as Brokerage 61-6-8
3. Registration of desired Internet address (URL) [www.whois.org](http://www.whois.org)
4. Extensions .com .net .org .biz .edu
5. Hosting
6. Municipal/County Business Licenses  
  
Most municipalities require a business license or permit. Contact your treasurer's office for forms and fees. Most registrations are annual and fees vary.
7. Registering to pay taxes required of every brokerage
8. New Mexico Gross Receipts tax: New Mexico Department of Taxation and Revenue, Joseph Montoya Building Santa Fe, New Mexico 87504-0630. (505) 827-0900, Fax (505) 827-9801 [www.state.nm.us/tax](http://www.state.nm.us/tax)
9. Federal and State Income tax
10. Employer Identification Number (EIN)
11. Estimated Income Tax
12. Employee withholding including income taxes and contributions to Social Security and Medicare, and unemployment funds and worker's compensation fund required by the NM Worker's Compensation Act 2410 Central Avenue SE, Albuquerque, New Mexico P.O. Box 27198 87125-7198 (505) 841-6000
13. Liability, malpractice and other insurance
14. Liability Insurance for Board of Directors and Officers of Entity
15. Key Man Insurance

16. Fire and Extended Coverage
17. Business Interruption Coverage
18. Errors and Omissions Insurance [www.risceo.com](http://www.risceo.com)
19. Trade Association memberships

### ***Multiple Listing Service participation***

A sample definition taken, from Albuquerque's Southwest Multiple Listing Service Bylaws is as follows:

“A Multiple Listing Service is a means by which authorized Participants make blanket unilateral offers of compensation to other Participants, by which information is accumulated and disseminated to enable authorized Participants to prepare appraisals, analyses, and other valuations of real property for clients and customers, by which Participants engaging in real estate appraisal contribute to common databases; and is a facility for the orderly correlation and dissemination of listing information so Participants may better serve their clients and the public.”

An MLS consists of privately held data that is compiled by participating members. The value of an MLS is largely dependent upon cooperation, accuracy and compliance with the rules and regulations.

#### **1. Joining**

Membership in a Multiple Listing Service (MLS) is not required, but in order to have the most information at your fingertips for your market, it is recommended. Each MLS has different requirements for joining.

Check with your local Board to determine what the requirements are in your area. If you do not have a local Board, as a Qualifying Broker, you may join the RANM MLS (NM Multi Board MLS) by having RANM act as your local Board. Most often, the first requirement is having a valid NM real estate license being a Realtor member, and either being or having a Qualifying Broker who wishes to be a member.

For Angel Fire, Artesia, Carlsbad, Clovis, Deming, Gallup, Grants, Hobbs, and Las Vegas, the MLS is run from RANM (Realtors Association of New Mexico).

Membership in the NM Multi Board MLS involves the local Board and the Qualifying Broker's choice as to whether to participate or not. The Qualifying Broker must be a member in order for a Broker to be a member.

#### **2. Compliance with By-Laws:**



Each MLS has a set of By-Laws and Rules and Regulations that each member must abide by. Most often the By-laws and Rules and Regulations can be found on the Board website. As a QB, you should read both documents and be aware of certain rules and time frames that are very important.

For example:

- a.) the Rules and Regulations often require that a listing is entered into the MLS within a certain time frame after signatures are acquired on the listing papers,.
- b.) they often state that a Participant is obligated to verify all the information filed in the listing is accurate
- c.) they set forth rules regarding showing properties, presenting offers, time frames for reporting status changes on the listing to the service
- d.) they state that each member QB agrees to compensate the co-op Broker.

### ***3. Accurate Information and Broker Cooperation:***

As stated above, the Rules and Regulations of each MLS usually require that the information supplied for each listing by the Participant be verified and accurate.

- a.) This information goes on the public websites that MLS associates with such as Realtor.com.
- b.) When information is distributed to the public, it is seen as an advertisement, and therefore all rules and regulations that apply to advertising regarding antidiscrimination apply to the listing print out.
- c.) The QB is responsible for each of his Brokers and is therefore liable for the information disseminated in MLS for each of his listings.
- d.) The QB is responsible if what is represented is incorrect.
- f.) Data Input Sheets are often used as a method of obtaining information on the listing. They include all of the fields used by the MLS such as square footage, number of bedrooms, type of heating and cooling, etc. Do not guess. Verify.

In Albuquerque, a good resource for information regarding school district, flood zone, upc code etc, is actually incorporated into the entry process. When entering a listing, hit the "GIS information" button. It will take you to the city site and show you a page specific to the listing address, where you will find quite a bit of information that even the Seller sometimes does not know.

g.) As stated in the example definition of an MLS, above, by joining an MLS, each member is agreeing to cooperate with and compensate other Brokers. The Rules and Regulations of each MLS state clearly that in joining, you are agreeing to these items at the very least:

1. Provide accurate information on listings
2. Provide access to those listings
3. Compensate Broker representing Buyer.

The MLS has nothing to do with the amount of the compensation. Each Qualifying Broker determines what he will charge the Seller and what split of that fee will be paid to the cooperating Broker.

#### 4. The Etiquette of Cooperation:

Cooperation involves three aspects.

##### a. Offers and Information:

Presenting offers and counter offers in a timely manner  
Providing accurate information on listings  
Assuring the status of the listing is as up to date as possible  
Providing safe access to listings; making sure dogs are put away

##### b. Compensation:

Each listing states what the Listing Broker is offering in the form of a split. Remember, the commission is actually agreed upon by the Seller and the Listing Broker. The split in MLS is what the Listing Broker is willing to share with the co-op Broker.

##### c. Showings:

a.) Follow the instructions on listing regarding showing. You should always either leave a business card when showing a home, or sign in if there is a sign in sheet. Each area will differ some, but the following are some examples:

**LBCF** means lockbox call first. It is generally understood that if you cannot reach the owner, then leaving a message is acceptable and it is ok to access the lockbox.

**VLB** means vacant on lockbox. No call is necessary, but you must still leave a card or sign in. **CLA**: Means call listing agent for an appointment

**HMOT**: Owner home most of the time

b.) When showing a home, after following the listing instructions,

- ALWAYS ring the doorbell.



- ALWAYS announce yourself.
- ALWAYS leave the home exactly as you found it
- ALWAYS double-check to make sure you have locked every door you opened.
- ALWAYS remember that you are responsible for the behavior of the customer you have brought into someone's home
  
- NEVER touch people's personal belongings
- NEVER open drawers or cabinet doors that are not built in.
- NEVER feed or water pets or plants
- NEVER discuss the people, ONLY the property.
- NEVER climb up on someone's roof or access their crawl space without permission

***Realize that as the Broker opening someone's home, there is quite a bit of responsibility involved that goes over and above those things listed in paragraph b. In addition to your own behavior, you are responsible for the behavior of the customers you have brought in and that of the children they may have with them as well. You must make sure that the customer follows the same etiquette that you do. Be respectful of people's homes.***

**5. Place of business: Zoning and CC&R, appropriate signage, lease provisions**

- i. Location
- ii. Market recognition
- iii. Recruitment/retention issues
- 4. Design and layout of office facilities
- 5. Building recognition
- 6. Lease provisions: rent and escalators, term and renewal options, tenant build- out allowances, ADA compliance, sufficient parking, etc.

**6. Fair Employment Practices**

(1 Hour)

- 1. Minimum wage
  - a. Federal
  - b. State
  - c. Municipal
  
- 2. Federal Employment Manual on disk
  - a. Equal pay
  - b. Employment of minor
  - c. Family leave
  - d. Military leave
  - e. Reporting wages

**7. *Internal Affiliation Relationships and Agreements***  
(Contract, Taxation, and Relationship Issues)

1. Significance of Legal Distinctions

- a.) The Internal Revenue Code requires that certain provisions be met for a real estate broker to be considered an independent contractor certain conditions must be met:
- b.) The broker must be duly licensed as a real estate broker AND
- c.) Substantially all of the broker's remuneration must be directly related to sales or other output rather than to the number of hours worked; AND
- d.) The broker must be a party to a written agreement with the qualifying broker for whom the broker works that expressly includes specific language required by the Code. (See Section 3508)—Information is taken from the RANM Form 7502 "Independent Contractor Agreement Form Explanation and Disclaimer"

**8. *New Mexico Common Law.***

No statutory test controls whether a broker is an independent contractor for other purposes. Under the common law, independent contractor status is determined by weighing many factors, which may include, among others, instructions by the company; training by the company; integration (whether worker provides essential services of the business); whether services must be rendered personally; hiring, supervising, paying assistants by the worker; continuing relationship; set hours of work; full-time required; working on company's premises; sequence of work set by company; oral or written reports by the worker to the company; payment by the hour, week, month; payment of business or travel expenses of the worker; worker opportunity to realize profit or loss; work for more than one firm at a time; making services available to the public; right to discharge by company; right to terminate by worker.

A written agreement may be one of the factors considered, but the parties' conclusion about their relationship is not binding on others. The RANM Form 7502 "Independent Contractor Agreement Form Explanation and Disclaimer"

**9. *New Mexico Real Estate Commission Rules Part 1***

Provides that an employee for the purposes of License Law

(1) Is a person employed by an owner or lessor of real property, or a person employed by the brokerage acting on behalf of the owner or lessor of real property. In determining whether a person is an employee, as opposed to an independent contractor, the commission shall consider the following

- (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;
- (5) Does the employer consider the person an employee.



## 10. Employment Agreements

- **Necessity of Employment Agreement Between Real Estate Company and Qualifying Broker**—other than with Qualifying Broker contract with employing entity (other than sole proprietorship).
- **New Mexico Real Estate Commission Rules Part 6 See Module 1**
- **Necessity of Affiliation Agreement between Qualifying Broker and All Associate Brokers**

1. **New Mexico License Law** (Section 61-17-8 NMSA 1978) provides that “a qualifying broker may *by written employment or independent contractor agreement* engage the services of associate brokers or co-qualifying brokers.

2. **New Mexico Real Estate Commission Rules Part 17** requires that “an associate broker’s license shall show the name of the qualifying broker by whom the associate broker is engaged [and]... the license of the associate broker shall remain in the custody and control of the qualifying broker as long as the associate broker is engaged by that qualifying broker.”

## 11. Independent Contractor Agreements

### **Between Qualifying Broker and Associate Brokers –**

RANM Form 7502 “Independent Contractor Agreement Broker/Associate Broker”

1. Realtor® Affiliation. Item 2.
2. Contractor is a “statutory non-employee” Item 4.
3. Contractor has free hand as to *means* of production. Item 4.
4. Contractor under control of Qualifying Broker as to *results*. Item 4.
5. Contractor is not in a partnership with Qualifying Broker. Item 4.
6. Contractor has no authority to bind Qualifying Broker by any promise or representation unless specifically authorized by Qualifying Broker in writing. Item 4.
7. Qualifying Broker is not liable for any obligation or liability incurred by Contractor. Item 4.
8. Qualifying Broker shall not, except to the extent required by License Law, direct or limit Contractor’s activities. Item 6.
9. Contractor shall submit for Qualifying Broker’s review all documents which may have a material effect upon the rights and duties of the principals in a transaction. Item 7.
11. Qualifying Broker has the right to require of Contractor compliance, to the extent required by License Law, with directions, office policies and procedures, etc. Item 7.
12. Contractor will comply with License Law and Rules of the New Mexico Real Estate Commission. Item 9.
13. All compensation will be received by the Qualifying Broker. Item 13.
- m. Contractor is free to hire assistants who will be *employees* of the Contractor and not the Qualifying Broker and must be in compliance with New Mexico Real Estate License Law and Rules of the New Mexico Real Estate Commission and other applicable laws. Item 16.
14. All listings or other agreements for performance of licensed acts and associated documents or records are the property of the Qualifying Broker. Item 17.
16. This Agreement may be terminated at any time by either party providing 24 hours written notice. Item 18.
17. After termination disputes arising out of the Agreement shall be submitted to arbitration under guidelines of the National Association of Realtors® Ethics and Arbitration Manual. Item 18.
18. Prior to termination disputes will be submitted to mediation. Item 21
19. This is the entire Agreement. Item 23.

**12. Respondeat superior**

New Mexico Court of Appeals and Qualifying Broker liability under the common law doctrine of *respondeat superior* (*Robertson v Carmel Builders* Opinion #2204-NMCA-056) where the Qualifying Broker was held responsible under the circumstances of that case to pay the damage award in place of the absentee defendant associate broker.

**13. Associate Broker Employment of Unlicensed Assistants.**

**a. New Mexico Real Estate Commission Rules Part 1: Definitions**

- 1) Unlicensed Assistant: a person who:
- (a) Does not hold a New Mexico real estate license;
  - (b) Works under the supervision of a qualifying broker, associate broker or associate broker;
  - (c) performs only those routine clerical, secretarial, administrative or bookkeeping activities defined in Part 21 of the real estate commission rules which do not require a New Mexico real estate license.

**14. New Mexico Real Estate Commission Rules Part 21**

(See Module 1)

- Permitted activities.
- Prohibited activities.
- Exceptions for Disability.

Notwithstanding the foregoing, if an associate broker or qualifying broker is a person with a disability as defined in the Americans with Disabilities Act or regulations promulgated hereunder, an unlicensed assistant may provide such additional services normally requiring a license to or on behalf of the associate broker or qualifying broker as would constitute a reasonable accommodation so long as the unlicensed assistant is under the direct control of the associate broker or qualifying broker, the associate broker or is as close as is practical to the activity, and the unlicensed assistant is not represented as being or having the authority to act as an associate broker or qualifying broker. The associate broker or qualifying broker shall notify the commission of the identity of all unlicensed assistants who perform services normally requiring a license for the associate broker or qualifying broker pursuant to this rule prior to performance of these services.

**15. Associate Broker Employment Agreement with Unlicensed Assistants.**

RANM Form 7503 "Unlicensed Assistant Employment Agreement."

- a. Employer. Item 1.
- b. Conditions of Employment. Item 2.
- c. Key Definitions. Item 3.
- d. Employer is the "Responsible Person." Item 4.
- e. Role of Assistant. Item 5.
- f. Assistant Expense Reimbursement. Item 10.
- g. Assistant is employee-at-will. Item 12.
- h. Confidentiality. Item 13.



## ***16. Real Estate Services Offered***

### **A. Brokerage—listing and selling properties**

- a. Broker Service Agreements with Buyers and Sellers
- b.) Must be in writing to be enforceable under contract law
- c.) Must expressly state that the agreement is “exclusive” to have an enforceable exclusivity.

### **B. Types of listings**

- a) Exclusive Right to Sell
- b) Exclusive Agency
- c) Limited Service
- e. Open

### **C. RANM Form 1207 Limited Service Notice –Buyer’s Broker to Seller**

### **D. RANM Form 1203 Compensation to Broker Agreement—Unlisted Property**

### **E. Cooperating with other Brokerages**

1. Realtor® Code of Ethics Article 3 distinction between “cooperation” and “compensation”
2. Necessity of contract between brokerage to assure compensation
3. RANM Form 1108 Cooperation and Compensation Agreement where there is no prior contract to assure compensation to cooperating broker.

By becoming a Participant in a particular MLS a contractual obligation is established with other Participants of that MLS, Cooperating brokers outside that particular MLS should have the RANM Cooperation and the listed property to a buyer prospect

4. RANM Form 1109 Referral Agreement – In State
5. RANM Form 1107 Cooperation and Compensation Agreement Foreign Broker and requirements of Part 27 of the Commission Rules including the requirement that the New Mexico qualifying broker must sign.

### **F. Single Family**

1. RANM Form 1106 Listing Agreement—Exclusive Right to Sell (with Agency Addendum)
2. RANM Form 2104 Purchase Agreement – Residential Resale
3. RANM Form 2105 Purchase Agreement – Residential New Construction on

Seller Owned Lot

### **G. Vacant Land**

1. RANM Form 1106 Listing Agreement—Exclusive Right to Sell (with Agency Addendum)
2. RANM Form 4101 Purchase Agreement – Vacant Land
3. RANM Form 4103 Property Disclosure Statement—Vacant Land Real Estate Specialty Practice: Commercial, Farm and Ranch
4. RANM Form 1106 Listing Agreement—Exclusive Right to Sell (with Agency Addendum)
5. RANM Form 3107 Listing Agreement—Commercial
6. RANM Form 3101 Purchase and Sale Agreement—Commercial
7. RANM Form 3106 Financing Addendum --Commercial
8. RANM Form 3103 Property Disclosure Statement—Commercial
9. RANM Form 4104 Purchase Agreement—Farm and Ranch
10. RANM Form 4104 Property Disclosure Statement—Farm and Ranch

#### H. Real Estate Specialty Practice: Leasing

1. Gross Lease: Tenant pays a fixed rental, and the landlord pays all taxes, insurance, repairs, utilities, and the like connected with the property. This is the typical rent structure for residential property.
2. Net Lease: Tenant pays all or some of the property charges in addition to the rent. The monthly rental is net income for the landlord after operating costs have been paid. Leases for entire commercial or industrial buildings and the land on which they are located, ground leases, and long-term leases are usually net leases.
3. Triple-net lease, or net-net-net lease, the tenant pays all operating and other expenses in addition to a periodic rent. These expenses include taxes, insurance, assessments, maintenance, utilities, and other charges related to the premises.
4. Percentage Lease: Either a gross lease or a net lease may be a percentage lease. The rent is based on a minimum fixed rental fee plus a percentage of the gross income received by the tenant doing business on the leased property. This type of lease is usually used for retail businesses. The percentage charged is negotiable and varies depending on the nature of the business, the location of the property and general economic conditions.
5. Variable Lease: Several types of leases allow for increases in the rental charges during the lease periods. One of the more common is the graduated lease. A graduated lease provides for specified rent increases at set future dates. Another is the index lease, which allows rent to be increased or decreased periodically based on changes in the consumer price index or some other indicator.
6. Ground Lease: When a landowner leases unimproved land to a tenant who agrees to erect a building on the land, the lease is usually referred to



as a ground lease. Ground leases usually involve separate ownership of the land and buildings and are of sufficient term to allow intended use.

## ***I. Property Management***

### **1. Property Management Trust Account 61-24-8**

When maintaining six (6) or more individual rental units, a property management trust account shall be established by the qualifying broker to receive and hold funds for the benefit of his/her clients. The account shall indicate on the checks and bank records that the account is a "property management trust account." Records of this account must be kept under the qualifying broker's control as set forth in the New Mexico Rules and Law.

2. All funds received by the qualifying broker, acting as property manager shall be deposited into the property management trust account prior to any disbursements. Once deposited, the qualifying broker may then disburse funds as specified in the management agreement.

Security and/or deposits from tenants shall be placed and held in the property management trust account, except as stated below. However, if agreed upon in the written rental or lease agreement between the property owners and tenants, security and/or damage deposits only may be directed or disbursed to the property owners without first being deposited to the property management trust account and the qualifying broker shall not be held responsible for such deposits.

3. A Qualifying Broker may have a custodial account in the owner's name; however, all funds going into the account must first pass through the property management trust account.

4. Commingling of funds is not permitted. No funds may be deposited in the property management trust account that are not received in connection with a client's rental account, except for funds deposited by the qualifying broker to the property management trust account for the purpose of maintaining a minimum balance.

5. When the property management trust account contains money from the rental or lease of more than one piece of property, separate accounting records shall be maintained on each property.

Money designated to one piece of property on accounting records shall not be mingled with money designated for another property on the records.

However, if a written agreement exists between the qualifying broker or broker in charge and property owner, allowing the mingling of funds of more than one property owned by that property owner, then mingling of funds from those designated properties only is allowed.

- a.) Trust Account Receipts 61-24-9 See Module 1
  - b.) Trust Account Disbursements 61-24-10 See Module 1
  - c.) Reconciliation 61-24-11 See Module 1
  - d.) Reports to Owners 61-24-12 See Module 1
  - e.) Management Agreements 61-24-13 RANM Form 6102 Property Management Agreement.
5. There shall be a signed written management agreement with each owner that shall set forth the understanding of the owner and the brokerage as to the duties and responsibilities of each.
6. This agreement shall be executed prior to acting on behalf of the owner. It shall specify whether the property or properties are to be operated in the name of the owner or in the name of the Brokerage with regard to such things as the signing of leases, the sending of notices and the establishment of vendor accounts.
8. Tenancy Agreements 61-24-14 RANM Form 6101 Residential Rental Agreement
- a.) There shall be a signed written tenancy agreement for each rental unit rented or leased. A copy of the agreement signed by the owner or the brokerage and the tenant shall be maintained in the file for each owner's property. Tenancy agreements shall include at a minimum the following:
    - b.) name of tenant;
    - c.) rental unit address;
    - d.) rental rate and due date;
    - e.) date possession began;
    - f.) date and amount of payments and due date;
    - g.) what the payments are for, i.e., rent, late charges, deposits, etc.
  - h.) Retention of Records 61-24-15
  - i.) The qualifying broker shall maintain records for each rental property during the period covered by the management agreement. Upon termination of the management agreement, records shall be retained by the qualifying broker for a period of not less than three (3) years.
  - j.) Short-term Rentals 61-24-16
  - k.) The following special provisions apply only with respect to the management of short-term rentals:
    - 1.) Staff of the brokerage handling short-term rentals who engage only in taking reservations for short term rentals shall not be required to be licensed, but shall comply with Part 211: Unlicensed Assistants.
    - 2.) Brokerages managing short-term rental properties may enter into a written agreement with an owner as to the manner in which payments made by credit card are to be deposited and disbursed.



This agreement may include permission to hold credit card charge slips given as a security and/or damage deposit for return to the tenant at the end of the short-term rental period.

3.) In the case of short-term rentals only, the qualifying broker may deposit non-trust funds into the trust account for the purpose of paying fees charged for credit card transactions.

#### 9. Uniform Owner-Resident Relations Act (Highlights)

- a.) Owner Responsibilities 47-8-20
- b.) Tenant Obligations 47-8-22
- c.) Right-of-Entry 47-8-24
- d.) Payment of Rent 47-8-14

#### 10. Notices to Vacate (3, 7, 30 Days) & Forms

a.) 3 Day Notice: The three day notice is used if the tenant has failed to pay rent. If the rent is not paid within three days from the date of delivery of the notice, the rental agreement is terminated.

b.) 7 Day Notice: The seven day notice is used if the tenant in noncompliance with the rental agreement for anything other than non-payment of rent, such as pets being on the premises when they have been specifically denied. If the noncompliance is not corrected within seven days of delivery of notice, the rental agreement is terminated. In addition, regardless of whether the noncompliance is corrected, if a second material noncompliance with the rental agreement or any separate agreement occurs within six (6) months of the initial noncompliance, the rental agreement is terminated.

c.) 30 Day Notice: The thirty day notice is used when either the tenant or landlord wish to terminate the rental agreement for anything other than non-payment of rent or a noncompliance with the rental agreement. The notice must be given from the first day of the rental period. If rent is payable on the 1<sup>st</sup> of the month, notice must be given from the 1<sup>st</sup> of the following month.

#### 11. Service of Notice 47-8-13

#### 12. Other Considerations

a.) HUD Approval For Rentals: The tenant typically makes the application with HUD based on the number of people in the household. HUD has their own rent schedule and the rents may not exceed their limits.

An inspection of the premises must be made to ensure that every thing is in working order, and that there is no damage to the property. HUD will then approve or disapprove the residence. If an approval is given, HUD prepares the rental agreement and sends it to the landlord. Usually only a portion of the total rent is paid by HUD and the remainder is paid by the tenant.