

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 62 REAL ESTATE APPRAISERS
PART 13 DISCIPLINARY PROCEEDINGS

16.62.13.1 ISSUING AGENCY: Regulation and Licensing Department - NM Real Estate Appraisers Board.
[10/1/1997; 16.62.13.1 NMAC - Rn, 16 NMAC 62.13.1, 9/13/2004; A, 1/1/2015]

16.62.13.2 SCOPE: All applicants, trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.
[10/1/1997; 16.62.13.2 NMAC - Rn & A, 16 NMAC 62.13.2, 9/13/2004; A, 1/1/2015; A, 2/3/2019]

16.62.13.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the real estate appraisers board, Sections 61-30-7, 15, 16 and 22 NMSA 1978 as amended.
[10/1/1997; 16.62.13.3 NMAC - Rn, 16 NMAC 62.13.3, 9/13/2004]

16.62.13.4 DURATION: Permanent.
[10/1/1997; 16.62.13.4 NMAC - Rn, 16 NMAC 62.13.4, 9/13/2004]

16.62.13.5 EFFECTIVE DATE: October 1, 1997, unless a later date is cited at the end of a section.
[10/1/1997; 16.62.13.5 NMAC - Rn & A, 16 NMAC 62.13.5, 9/13/2004]

16.62.13.6 OBJECTIVE: This part ~~lists actions which can be the cause of disciplinary action by the board against a trainee, licensee or certificate holder and provides a procedure for a respondent to accept a letter of reprimand pursuant to violations of law or regulations.~~ sets forth procedures applicable to application denials, disciplinary proceedings, and administrative proceedings against unlicensed practitioners.
[10/1/1997; 16.62.13.6 NMAC - Rn, 16 NMAC 62.13.6, 9/13/2004; A, 11/25/2006, A, 1/1/2015]

16.62.13.7 DEFINITIONS:
A. "Complaint committee" means the committee created and appointed by the board for the purposes of reviewing, evaluating, and making recommendations on disciplinary cases. shall be appointed by the board. Complaint committee chairperson shall be an appraiser board member. The complaint committee is for the purpose of evaluating complaints.
B. "Board investigator" means an investigator utilized by the board for the purposes of carrying out investigations into disciplinary complaints.
C. "Administrative prosecutor" means the attorney assigned to administratively prosecute cases pending before the board.
D. "disqualifying criminal conviction" has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978;
[10/1/1997; 16.62.13.7 NMAC - Rn & A, 16 NMAC 62.13.7, 9/13/2004; A, 1/1/2015]

16.62.13.8 FILING COMPLAINT: Upon receipt of a sworn complaint against any person who is a trainee, licensed or certified under the Real Estate Appraisers Act, the board may administratively evaluate the complaint to determine whether sufficient information of a potential violation of board statute or rules, or the national uniform standards of professional appraisal practice (USPAP) exists to pursue investigation and possible formal disciplinary action. Upon receipt of a complaint, the board may:
A. evaluate or investigate the alleged violations;
B. refer the matter to ~~a peer~~ the complaint committee; or
C. dispose of a complaint if it determines that there is insufficient information, lack of probable cause, lack of jurisdiction or if the complaint is determined to be frivolous.
[10/1/1997; 16.62.13.8 NMAC - Rn & A, 16 NMAC 62.13.8, 9/13/2004; A, 1/1/2015]

16.62.13.9 REVIEW OF COMPLAINT: The chairman of the board shall appoint at least one appraiser member of the board to evaluate each complaint filed with the board.
A. The board member appointee/evaluator shall also be chairperson of the complaint committee. The evaluation of complaints shall be completed by this person.

B. If the board member appointee or evaluator determines that there is insufficient information, lack of probable cause, lack of jurisdiction or if the complaint is determined to be frivolous, an investigation shall not be initiated and the complaint shall be referred to the board with a recommendation that the case be closed. If the chair of the complaint committee determines that the complaint merits further investigation, the complaint will be assigned to the complaint committee.

C. The complaint committee may perform a regulatory review of an appraisal that is the subject of a complaint. Complaint committee members shall be competent to perform a regulatory review of an appraisal.

D. The complaint committee may refer the appraisal that is the subject of a complaint to a peer committee to perform a Standard 3 review of the appraisal.

E. Upon completion and review of the investigation initiated pursuant to this regulation, the board member appointee/evaluator along with the complaint committee shall recommend to the board either ~~recommend to the board~~ action in lieu of disciplinary action, ~~a recommendation for formal~~ disciplinary action, or ~~a recommendation~~ that the case be closed.

[10/1/1997; 16.62.13.9 NMAC - Rn & A, 16 NMAC 62.13.9, 9/13/2004; A, 1/1/2015; A, 2/3/2019]

16.62.13.10 RESPONDING TO COMPLAINT: All disciplinary complaints shall be automatically forwarded to the licensee for a response.

A. In response to an investigation against any person who is a trainee, licensed or certified under the Real Estate Appraisers Act, the respondent must respond within 10 business days of receipt as allowed by the Uniform Licensing Act.

B. Failure to respond within time frame specified may result in disciplinary action up to and including revocation of license at the discretion of the board.

[16.62.13.10 NMAC - N, 11/25/2006; A, 1/1/2015; A, 1/15/2017]

16.62.13.11 ~~RESERVED~~ INVESTIGATIONS OF DISCIPLINARY COMPLAINTS: To the maximum extent permitted by law, the board may conduct investigations of disciplinary complaints.

A. Should the board choose to employ one, the board may utilize the services of an investigator. The investigator may operate pursuant to a contract with the board, as the board's employee, or as the employee of a department to which the board is administratively attached, at the discretion of the board.

B. The board may issue investigative subpoenas as part of its review and investigation of disciplinary complaints. Each of the following individuals, acting independently, may approve and sign an investigative subpoena: the chairperson of the complaint committee, the board administrator, and, if utilized, the board investigator.

C. The board's staff, the members of the board's complaint committee, and, if utilized, the board investigator may carry out investigations into disciplinary complaints. No board member other than the chairperson of the complaint committee shall carry out investigations into disciplinary complaints.

[16.62.13.11 NMAC - N, xx/xx/2021]

16.62.13.12 REPRIMAND PUBLIC RECORD: The fact that a trainee appraiser, license or certificate holder has received a letter of reprimand is a matter of public record.

[10/1/1997; 16.62.13.12 NMAC - Rn & A, 16 NMAC 62.13.12, 9/13/2004; A, 1/1/2015]

16.62.13.13 PRIVATE REMEDY: Action or non-action by the board on any complaint does not preclude any private remedy taken by the complainant.

[10/1/1997; 16.62.13.13 NMAC - Rn, 16 NMAC 62.13.13, 9/13/2004]

16.62.13.14 REFUSAL, SUSPENSION OR REVOCATION:

A. Disciplinary proceedings may be instituted by the sworn complaint of any person, including members of the board, filed with the board. ~~The complaint shall conform with the provisions of the Uniform Licensing Act, Section 61-1-1 et seq., NMSA 1978.~~

B. In accordance with the procedures contained in the Uniform Licensing Act, the board may deny, revoke or suspend any trainee, license or certificate held or applied for upon finding, after a hearing, that the trainee appraiser, licensee, certificate holder or applicant has violated any provision of the Real Estate Appraisers Act (Section 61-30-1 et seq., NMSA 1978) or regulations or continually or repeatedly or persistently or willfully violated any of the prohibitions found hereinafter:

- dishonesty;
- (1) obtaining or attempting to obtain any fee through fraud, misrepresentation, or other dishonesty;
 - (2) impersonating another person trainee, licensed or certified to practice real estate appraisal or permitting or allowing any person to use his/her registration, license or certificate;
 - (3) aiding or abetting the practice of real estate appraisal by a person not a trainee, licensed or certified by the board;
 - (4) the suspension or revocation by another state of a trainee registration, license or certificate to practice real estate appraisal based upon acts by the trainee appraiser, certificate holder or licensee similar to acts described in the section;
 - (5) the solicitation of any person either by a trainee appraiser, licensee or certificate holder or by one in his/her employ or under his/her control under circumstances suggesting that the appraiser or other person was taking advantage of the person being solicited from making a rational independent decision as to whether or not to obtain the services of an appraiser, or any particular appraiser;
 - (6) falsifying of real estate appraisal records, whether or not for personal gain;
 - (7) practicing beyond the scope of the trainee, license or certificate as defined by state law and/or regulations;
 - (8) advertising in any manner that violates the board's regulation on advertising, as provided in 16.62.16 NMAC; or
 - (9) making false statements in any application for trainee, licensure or certification.

~~C. If the complaint committee, following an investigation and review, believes there is sufficient evidence that would justify denying, revoking or suspending a professional license or taking other disciplinary action, it will recommend to the board to issue a notice of contemplated action (“NCA”).~~

~~D. Based on the board’s decision, board staff will send a request for an NCA to the litigation division of the attorney general’s office. The NCA request must include a description of the licensee’s allegedly improper conduct and the provisions of the board’s practice act and rules that the conduct allegedly violated. If the respondent is an applicant, the NCA must include an explanation as to why the board is contemplating denying licensure. An assistant attorney general in the litigation division, referred to as the “administrative prosecutor,” will review the file. Based on his/her review, the administrative prosecutor may return the file to the board for additional investigation or information or will draft an NCA.~~

E. C. Constitutional due process principles require a board to conduct an administrative hearing at the timely request of a respondent who has been served with an NCA. The respondent is entitled to:

- (1) a statement of the charge(s);
- (2) notice of the time and place of the hearing;
- (3) a hearing before an impartial decision maker;
- (4) the right to cross-examine witnesses who testify against him/her;
- (5) the right to present his or her own witnesses, and
- (6) the right to be represented by an attorney or a licensed member of the profession or both.

[10/1/1997; 16.62.13.14 NMAC - Rn & A, 16 NMAC 62.13.14, 9/13/2004; A, 11/25/2006; A, 1/1/2015]

16.62.13.15 HEARINGS AND DISCIPLINARY PROCEEDINGS:

A. All disciplinary proceedings conducted by the board shall conform to the provisions of the Uniform Licensing Act, NMSA 1978, Sections 61-1-1-34 (1957, as amended through 2019).

B. If the board so votes, board staff will send a request for an NCA to the litigation division of the attorney general’s office. The NCA request must include a description of the licensee’s allegedly improper conduct all supporting documentation and evidence, a written summary of the provisions in statute or rule that the conduct allegedly violated, and any other documentation that may be required by the litigation division. If the respondent is an applicant, the NCA request must also include an explanation as to why the board is contemplating denying licensure. After reviewing the file, the board’s administrative prosecutor may draft an NCA, return the file to the board for additional investigation or information, propose a settlement agreement or other resolution to the case, or decline in writing to prosecute the case on behalf of the board. The administrative prosecutor is not required to be an investigator and shall not be requested to perform investigative work on behalf of the board.

C. If a respondent requests an evidentiary hearing in response to a NCA, the board administrator or compliance liaison may designate a hearing officer to preside over the hearing. Alternatively, at the discretion of the board chair or upon vote of the board, the entire board may preside over the hearing.

D. Upon the issuance of a notice of hearing, no mention for continuance, motion to vacate, or proposed settlement agreement may be filed with the board less than 10 days prior to the hearing except under

extraordinary, unforeseen circumstances beyond the control of the movant. In the absence of such circumstances, a hearing officer may not continue or vacate a hearing in response to a motion submitted to the board later than 10 days prior to the hearing. Lack of knowledge or familiarity with this rule may not be considered extraordinary or unforeseen circumstances.

E. Parties to a disciplinary case may raise issues in the form of the dispositive motions. Any such dispositive motion, when made at a hearing presided over by a hearing officer, shall be taken under consideration by the hearing officer and presented to the board along with the final hearing officer report.

[16.62.13.15 NMAC – N, xx/xx/2021]

16.62.13.16 SETTLEMENT AGREEMENTS: As a means of resolving disciplinary complaints against licensees, applicants, and unlicensed practitioners without the time and expense of formal hearings, settlement agreements are encouraged throughout the disciplinary process.

A. Prior to the board voting on a disciplinary complaint or the matter being referred to the Office of the Attorney General for administrative prosecution, the board staff may negotiate a settlement agreement with the respondent. However, the board itself must vote to approve the settlement agreement at an open meeting, and no settlement agreement may take effect under any circumstances until the board so votes.

B. Prior to or after the Board has issued a notice of contemplated action to the respondent, the board's administrative prosecutor may negotiate a settlement agreement with respondent. However, the board itself must vote to approve the settlement agreement at an open meeting, and no settlement agreement is valid under any circumstances until the board so votes.

C. Upon the issuance of a notice of hearing, settlement agreements may only be considered by the board if submitted to the board in written form and signed by the respondent. In the absence of extraordinary, unforeseen circumstances beyond the control of both the administrative prosecutor and respondent, a hearing officer may not continue or vacate a hearing on a basis of a proposed settlement agreement if the proposed agreement is submitted to the board later than 10 days prior to the hearing.

D. No board member may be presumed to be biased or excused for cause based solely on the basis that the member considered, approved, or rejected a proposed settlement, consent agreement or other proposal for the resolution of a pending disciplinary case.

[16.62.13.16 NMAC – N, xx/xx/2021]

16.62.13.17 DELEGATION OF AUTHORITY: The authority of the real estate appraisers board to issue a notice of contemplated action against any licensee/registrant or applicant for licensure/registration whose name appears on the certified list issued by the New Mexico department of human services, as provided in **NMSA 1978, 40-5A-1**, et seq, and to refer cases in which notices of contemplated action have been issued for administrative prosecution, is delegated to the administrator of the board. This section shall not be construed to deprive the board of its authority and power to issue a notice of contemplated action for any apparent violation of the Parental Responsibility Act, and to refer any such case for administrative prosecution.

[16.62.13.15 NMAC - N, 1/16/2011, A, xx/xx/2021]

16.62.13.18 CRIMINAL CONVICTIONS:

A. Convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or retaining a license issued by the board:

(1) homicide;

(2) aggravated assault, aggravated battery, kidnapping, false imprisonment, human trafficking, or other crimes of violence against persons;

(3) robbery, larceny, burglary, extortion, receiving stolen property, possession of burglary tools, unlawful taking of a motor vehicle, or other crimes involving theft or appropriation of personal property or funds;

(4) breaking and entering, criminal damage to property, arson, or other related crimes of violence against property;

(5) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, child solicitation, or other crimes constituting sexual offenses;

(6) battery on a peace officer, assault on a peace officer, or other crimes against law enforcement;

(7) trafficking controlled substances;

- (8) crimes involving child abuse or neglect;
(9) fraud, forgery, money laundering, embezzlement, credit card fraud, counterfeiting, financial exploitation, or other crimes of altering any instrument affecting the rights or obligations of another;
(10) making a false statement under oath or in any official document;
(11) evasion of a lawful debt or obligation, including but not limited to tax obligations; or
(12) an attempt, solicitation or conspiracy involving any of the felonies in this subsection.
- B. The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.
- C. The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.
- D. Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Real Estate Appraisers Act or Appraisal Management Company Registration Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.
- E. In connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:
- (1) an arrest not followed by a valid conviction;
(2) a conviction that has been sealed, dismissed, expunged or pardoned;
(3) a juvenile adjudication; or
(4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule.
- [16.62.13.18 NMAC – N, xx/xx/2021]

HISTORY OF 16.62.13 NMAC:

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

REAB Rule 13, Discipline: Letter of Reprimand, filed 11/29/1990.

Rule 14, Discipline: Letter of Reprimand, filed 4/6/1993.

Rule 14, Discipline: Letter of Reprimand, filed 1/28/1994.

REAB Rule 14, Refusal, Suspension or Revocation of License or Certificate, filed 11/29/1990.

Rule 15, Refusal, Suspension or Revocation of License or Certificate, filed 4/6/1993.

Rule 15, Refusal, Suspension or Revocation of Registration, License or Certificate, filed 1/28/1994.

History of Repealed Material: [RESERVED]

Other History:

Rule 15, Refusal, Suspension or Revocation of Registration, License or Certificate (filed 1/28/1994) was renumbered, reformatted and replaced by 16 NMAC 62.13, Disciplinary Proceedings, effective 10/1/1997.

16 NMAC 62.13, Disciplinary Proceedings (filed 8/29/1997) was renumbered, reformatted, amended, and replaced by 16.62.13 NMAC, Disciplinary Proceedings, effective 9/13/2004.