

New Mexico Real Estate Commission

Regular Meeting and Rule Hearing

September 24, 2021

Zoom Meeting hosted by the Greater Albuquerque

Association of Realtors

1635 University Boulevard NE

Zoom Link

https://gaar.zoom.us/meeting/register/tZ0qdOyurjIiEtYMcaWu44sKFOp_rXyVz3BA.

Please register in advance for this meeting. Upon registering, you will receive a confirmation and further instructions for joining the meeting.

AGENDA

1. 9:00 a.m. – Welcome and Call to Order- Gretchen Koether, Vice President.
2. Roll Call and Determination of Quorum
3. Approval of the Agenda of the September 24, 2021 Regular Meeting and Rule Hearing.
4. Approval of the Minutes of the July 19, 2021 Regular Meeting
5. Broker and Public Forum

6. Notice of Non-Compliance Hearing, Lindsey Cavazos
7. Notice of Non-Compliance Hearing, Dominic Madrid
8. Rule Hearing
 - Part 1, General Provisions and Definitions, PP, Property Management, and RR, Property Manager.

The Commission will consider a proposal from a homeowner's association trade group that would amend the existing definitions of Property Management and Property Managers to remove references to the activities of homeowners and unit owner associations (HOA's) from the definitions.

The Commission will consider changes to the following rules:

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

Expedited Licensure for Military Members and Veterans

The Commission proposes to amend Part 3 of its rules to conform with the provisions of House Bill 120 passed by the 2021 legislature that require professional and occupational licensing boards to issue licenses to military members, their spouses and dependent children, and veterans, within 30 days of receiving a completed application and to waive initial licensing fees.

The detailed amendment is shown below:

OBJECTIVE: The purpose of this part is to expedite licensure for military service members, their spouses, their dependent children and for veterans pursuant to 61-1-34 NMSA 1978.

DEFINITIONS:

A. "License" has the same meaning as defined in Subsection F (1) of Section 61-1-34 NMSA 1978.

B. "Licensing fee" has the same meaning as defined in Subsection F (2) of Section 61-1-34 NMSA 1978.

C. "Military service member" has the same meaning as defined in Subsection F (3) of Section 61-1-34 NMSA 1978.

D. "Substantially equivalent" means the determination by the board that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to, or exceed the education, examination, and experience requirements of the [redacted] Act.

Commented [GR1]: Fill in the appropriate practice act name. You may also reference by Chapter and Article number per the NMSA if your enactment does not have a name of the Act. i.e. real estate is Chapter 61, Article 29, Real Estate Brokers and Salesmen.

E. "Veteran" has the same meaning as defined in Subsection F (4) of Section 61-1-34 NMSA 1978.

APPLICATION REQUIREMENTS:

A. Applications for registration shall be completed on a form provided by the [redacted] board/commission.

Commented [GR2]: Edited to select appropriate entity.

B. The applicant shall provide a complete application that includes the following information:

- (1) applicant's full name;
- (2) current mailing address;
- (3) current electronic mail address, if any;
- (4) date of birth;
- (5) background check, if required; and
- (6) proof as described in subsection C below.

Commented [GR3]: This section subject to modification depending on practice act requirements for licensure.

C. The applicant shall provide the following satisfactory evidence as follows:

(1) applicant is currently licensed and in good standing in another jurisdiction, including a branch of the United States armed forces;

(2) applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing requirements in that jurisdiction are substantially equivalent to the licensing requirements for New Mexico; and

(3) the following documentation:

a. for military service member: copy of military orders;

b. for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

c. for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

d. for dependent children of military service members: copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

e. for veterans (retired or separated) a copy of Form DD 214 showing proof of honorable discharge.

D. The license or registration shall be issued by the board/commission as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background check if required for a license, and any required fees.

E. Military service members and veterans shall not pay and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

F. A license issued pursuant to this section shall be valid for the time that is specified in the Act.

Commented [GR4]: See first note above regarding citation to the practice act.

RENEWAL REQUIREMENTS:

A. A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for renewal set forth in 16. . . NMAC pursuant to Chapter 61, Article ___ NMSA 1978.

Commented [GR5]: Fill in the rule that addresses renewals and the appropriate Chapter and Article number for the practice act.

B. As a courtesy, the board/commission will send via electronic mail license renewal notifications to licensees or registrants before the license expiration date to the last known email address on file with the board/commission. Failure to receive the renewal notification shall not relieve the licensee or registrant of the responsibility of timely renewal on or before the expiration date.

- Part 3, Real Estate Broker’s License: Examination and Licensing Application Requirements.

Potential Disqualifying Convictions

The Commission proposes to amend Part 3 of its rules to conform with the provisions of Senate Bill 2 passed by the 2021 legislature that limit a professional and occupational licensing board’s ability to deny, suspend, revoke, or condition a license only for felony convictions that relate to the profession or occupation in which the applicant has applied for licensure.

Pursuant to the provisions of Senate Bill 2, the Commission proposes to amend Part 3 to include a list of felony convictions that would potentially disqualify an applicant from being issued a real estate broker’s license.

A list of disqualifying convictions must be published on the Commission website by no later than December 31, 2021.

The detailed amendment is shown below:

Potentially Disqualifying Criminal Convictions

DEFINITIONS:

A. “disqualifying criminal conviction” has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978;

Commented [KJ6]: This is meant to emulate the definitions used in the HB 120 template rule. Also, the statute citation here needs to be checked once the bill takes effect.

I would note that I was very tempted to define the term “disqualifying criminal conviction” by listing the specific crimes. I refrained from that approach because technically agencies are not supposed to redefine terms that appear in statute. But that approach would have the benefit of simplicity.

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/commission:

- (1) crime A;
- (2) crime B; etc.

Commented [KJ7]: It is also possible that there will be so many crimes that they should be further subcategorized.

B. The board/commission 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.

Commented [GR8R7]: Please check the practice act for any enumerated crimes that could keep an applicant from licensure.

C. The board/commission 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.

Commented [KJ9]: Subsections B and E are based on the amendments to the Criminal Offender Employment Act, which states that boards can’t “use” a criminal conviction in connection with an application denial unless it is effectively a disqualifying criminal conviction. A client not subject to the Criminal Offender Employment Act would not need these provisions.

D. Nothing in this rule prevents the board/commission from denying an application or disciplining a licensee on the basis of an individual’s conduct to the extent that such conduct violated the _____ 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.

Commented [KJ10]: We may want to rephrase this, but I view this as an essential provision to include in these rules. A distinction must be drawn between the individual’s conduct and conviction. For instance, if an individual is engaged in unlicensed practice as a barber and is convicted of a misdemeanor offense for that, the fact that he was convicted of a misdemeanor doesn’t mean that the Barbers Board can’t consider it as part of the application or disciplinary process.

E. In connection with an application for licensure, the board/commission 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.

Potential Disqualifying Convictions

Physical Harm to Others

1. Murder
2. Manslaughter
3. Assault
4. Battery
5. Abandonment of a child resulting in death or great bodily harm
6. Abuse of a child
7. Kidnapping
8. False imprisonment
9. Sexual assault

Property Damage

1. Shooting at property
2. Criminal damage to property
3. Dangerous use of explosives
4. Graffiti
5. Arson

Fraud

1. Misrepresentation/fraudulent statements or alteration of documents
2. Improper sale, disposal, removal or concealing of encumbered property
3. Tax fraud
4. Conspiracy
5. Medicaid/Medicare or insurance fraud
6. Money laundering

Theft

1. Breaking and entering
2. Larceny
3. Robbery
4. Burglary
5. Shoplifting
6. I.D. Theft
7. Credit card or other financial information
8. Receiving or transferring stolen property

Financial Crimes

1. Embezzlement
2. Extortion
3. Receiving stolen property
4. Forgery
5. Receiving illegal kickbacks
6. Racketeering
7. Falsification of documents
8. White Collar crimes

Drug Offenses

1. Drug Trafficking
2. Possession
3. Contributing to the delinquency of a minor

Sex Crimes

1. Distribution of pornography
2. Human Trafficking
3. Criminal sexual penetration or contact
4. Failure to register with the Sex Offender Registration and Notification Act

Miscellaneous

1. Felon in possession of a firearm
2. Bribery of an official
3. Accepting a Bribe
4. Gambling/gaming crimes
5. Stalking

Terrify, intimidate, threaten, harass, annoy or offend

9. Old Business

- a. Report of the Teams Task Force, discussion, and possible action on appointment of task force members- Bob Treece.

10. Review and Approval of the Minutes of the Education Advisory Committee meetings of August 11 and September 8, 2021.

- Presentation by Don Oliva, CE Broker, regarding continuing education tracking service,

11. Investigator's Report

- Complaints Received
 - July
 - August
 - September
- Disciplinary Hearings Schedule

12. Executive Session

a. Reports of investigation.

- NMREC Case No. 21-05-02-023
- NMREC Case No. 21-06-04-029
- NMREC Case No. 21-07-02-032
- NMREC Case No. 21-03-06-016
- NMREC Case No. 21-09-05-044
- NMREC Case No. 21-05-03-024
- NMREC Case No. 21-06-03-028
- NMREC Case No. 21-06-05-030
- NMREC Case No. 21-08-01-033
- NMREC Case No. 21-08-02-034
- NMREC Case No. 21-09-01-040
- NMREC Case No. 21-09-02-041
- NMREC Case No. 21-09-03-042
- NMREC Case No. 21-09-09-048

b. Pending Civil Litigation

- NMREC Case No. 20-06-08-036

- NMREC Case No. 21-04-03-020

b. Settlement agreements.

- NMREC 20-06-05-033 Patterson
- NMREC Case No. 19-10-08-088 Kvern
- NMREC Case No. 19-10-08-088 Tucker
- NMREC Case No. 19-10-08-088- Daniel

c. Default order

- NMREC Case No. 19-10-08-088- Lopez

d. Withdrawal of NCA

- NMREC Case No. 21-04-02-019, Jessica Webb

e. Pending Litigation

13. Action on items discussed in Executive Session

14. Adjourn

