

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 44 LANDSCAPE ARCHITECTS
PART 9 COMPLAINTS

16.44.9.1 ISSUING AGENCY: New Mexico Board of Landscape Architects, P.O. Box 25101, Santa Fe, NM 87504.

[16.44.9.1 NMAC – Rp, 16 44.9.1 NMAC, 9-30-16]

16.44.9.2 SCOPE: The provisions of 16.44.9 NMAC apply to all licensees and applicants for such registration or certification licensure. These provisions may also be of interest to anyone who may wish to file a complaint against a licensee of this board.

[16.44.9.2 NMAC – Rp, 16 44.9.2 NMAC, 9-30-16]

16.44.9.3 STATUTORY AUTHORITY: This part is adopted pursuant to Landscape and Architects Act, Sections 61-24B12, and Section 61-24B16 NMSA 1978.

[16.44.9.3 NMAC – Rp, 16 44.9.3 NMAC, 9-30-16]

16.44.9.4 DURATION: Permanent.

[16.44.9.4 NMAC – Rp, 16 44.9.4 NMAC, 9-30-16]

16.44.9.5 EFFECTIVE DATE: September 30, 2016, unless a later date is cited at the end of a section.

[16.44.9.5 NMAC - Rp 16 44.9.5 NMAC, 9-30-16]

16.44.9.6 OBJECTIVE: The objective of 16.44.9 NMAC is to establish the procedures for filing complaints against a licensee, the authority of the board regarding grounds for denial, suspension, or revocation of a license.

[16.44.9.6 NMAC – Rp, 16 44.9.6 NMAC, 9-30-16]

16.44.9.7 DEFINITIONS: (Refer to Part 1)

16.44.9.8 COMPLAINT PROCEDURES:

A. Inquiries regarding filing of complaints.

(1) Inquiries made to the board or to a board member regarding a potential complaint will be referred to the board administrator for a response.

(2) Upon receipt of an inquiry, the board administrator shall forward to the potential complainant a statement regarding the board's jurisdiction, the conduct or grounds for possible action by the board against a licensee or applicant, and a complaint form with instructions on how to file the complaint. Complaints shall be submitted in writing on the prescribed form, signed and notarized, and state the facts upon which the complaint is based.

B. Procedures for processing complaints. The board administrator shall:

(1) log in the date of receipt of the complaint;

(2) determine that the subject of the complaint is a registered landscape architect, a certified landscape architect in training or an applicant or person otherwise within the jurisdiction of the board;

(3) assign a complaint number and set up an individual file; complaint numbering shall begin in January of each year;

(4) forward the complaint to the chair of the complaint committee and the complaint manager or a designee;

(5) send a letter to the complainant confirming receipt of the complaint.

C. Review by the complaint committee.

(1) The chairperson of the board shall appoint a board member to chair the complaint committee. The complaint committee shall consist of at least one member of the board.

(2) The complaint manager, if assigned, or designee will review the complaint and meet with the administrative prosecutor and complaint committee chair as needed.

(3) If the allegations in the complaint would, if substantiated, constitute grounds for disciplinary action, the complaint committee will recommend a course of action regarding investigation of the complaint.

(4) The complaint committee shall oversee the investigation of the complaint. A case summary including the alleged violations of the code of conduct or other parts of the regulations or act will be presented to the full board along with recommendation(s) for disposition of the complaint. The identity of the licensee or applicant and the complainant will not be disclosed to the full board by the complaint committee.

(5) Unless the complaint committee determines that it will impede an investigation or interfere with the acquisition of documents or relevant papers or the development of the case, the complaint committee shall inform the licensee or applicant of the complaint and request a response to the allegations. Disclosure of data, communications, and information relating to actual or potential disciplinary action shall be made in accordance with Section 61-1-11 NMSA 1978 or superseding statute.

(6) The complaint committee may employ experts, consultants, or private investigators to assist in investigations of complaints.

(7) The complaint committee, on behalf of the board, may issue investigative subpoenas, pursuant to Subsection A of Section 61-1-4 NMSA 1978.

D. Review by the full board.

(1) Any board member or any member of the complaint committee who is partial or who believes he or she is not capable of judging a particular controversy fairly on the basis of its own circumstances shall not participate in the decision whether to issue a notice of contemplated action and shall not participate in the hearing, deliberation, or decision of the board.

(2) The board shall review the case summary presented by the complaint committee, relevant documents, witness statements, and other pertinent information regarding the complaint. If the board has sufficient evidence that a violation may have occurred, the board shall forward the evidence to the administrative prosecutor for issuance of a notice of contemplated action.

(3) Following the issuance of a notice of contemplated action, the board may at its option authorize a board member, the hearing officer, or the administrative prosecutor to confer with the applicant or the licensee for the purpose of settlement of the complaint. Such settlement must be approved by the board, must be with the consent of the applicant or licensee, and shall include a knowing and intentional waiver by the applicant or the licensee of his or her rights to hearing under the Uniform Licensing Act.

(4) The board may refer a complaint to the attorney general for injunctive proceedings or to the district attorney for criminal prosecution.

[16.44.9.8 NMAC – Rp, 16 44.9.8 NMAC, 9-30-16]

16.44.9.9 ADJUDICATORY PROCEEDINGS:

A. General provisions and pre-hearing and preliminary matters.

(1) All hearings shall be conducted either by the board or, at the election of the board, by a hearing officer.

(2) If the board appoints a hearing officer, the hearing officer shall have authority to decide pre-hearing matters, preside over the hearing, and direct post-hearing matters in accordance with the requirements of the case in a manner that ensures an efficient and orderly hearing and expedites the final resolution of the case. Except as otherwise limited in this part, the hearing officer shall have the authority to rule on all non-dispositive motions. If the board does not appoint a hearing officer or if the hearing officer is unavailable or unable to proceed, the board chair or other board member designated by the board shall have the authority to decide pre-hearing or preliminary matters on behalf of the board. This authority shall be in accordance with the requirements of the case in a manner that ensures an efficient and orderly hearing and expedites the final resolution of the case, including, without limitation:

(a) unopposed or stipulated motions to change venue;

(b) motions for continuance of a hearing date; a motion to vacate the hearing must contain a statement that the licensee or applicant waives his or her right to a hearing held not more than 60 days from the date of service of the notice of hearing;

(c) the granting of one notice of peremptory excusal to each party if the notice is timely and if the peremptory excusal does not result in a loss of a quorum of the board; and

(d) motions regarding discovery.

(3) The original of any papers and pleadings shall be filed with the board. Copies shall be sent to the hearing officer and attorneys or parties of record.

(4) The hearing officer or designated board member shall issue appropriate orders to control the course of the proceedings.

(5) Consistent with provisions of the Uniform Licensing Act and to the extent practicable, the rules of civil procedure for the district courts shall apply unless the hearing officer or designated board member orders otherwise.

(6) A request for an order shall be made by motion filed with the board. Except for motions made during the course of the hearing, a motion shall be in writing. A motion shall state with particularity the grounds for the motion and shall set forth the relief and order sought.

(7) A motion shall be accompanied by a memorandum brief in support of the motion. The brief shall state with particularity the grounds for the motion and shall contain citation to authorities, statutes, and references to the pleadings on file. If matters outside of the pleadings are considered, a copy of the referenced material shall be attached to the brief.

(8) The hearing officer or the designated board member may order the filing of briefs or other documents and may set oral argument on any matter.

(9) No more than two continuances of the hearing date will be granted without the approval of the board for good cause shown.

(10) All dispositive motions shall be decided by the board.

(11) No proposed settlement, consent agreement, voluntary surrender of a license in lieu of prosecution, or other proposal for the resolution of a pending disciplinary case shall be effective unless approved by the board and executed by the board and the licensee or applicant. The board or hearing officer may seek information from the administrative prosecutor and the licensee or applicant concerning circumstances of the case relevant to a consideration of the proposed settlement or clarification of the proposed terms and conditions. No board member is presumed to be biased and shall not be excused based solely on the reason that the member considered a proposed settlement, consent agreement, or other proposal for the resolution of a pending disciplinary case. The board may submit a counterproposal for the settlement or resolution of the case.

(12) Any proposed settlement, consent agreement, voluntary surrender of a license in lieu of prosecution, or other proposal for the resolution of a pending disciplinary case shall contain at least the following:

(a) an admission of all jurisdictional facts; an acknowledgment of the rights contained in the Uniform Licensing Act and an express waiver of those rights and of all rights to hearing and judicial review or any other opportunity to contest the validity of the board order in any other proceeding or forum;

(b) a provision that the proposal resolves only the violations alleged in the specific notice of contemplated action and a statement that the board reserves the right to initiate other proceedings for any other violations of the act or board regulations;

(c) a description of the facts underlying each alleged violation;

(d) if appropriate, a list of the acts or practices from which the licensee or applicant will refrain in the future;

(e) a statement of the type, terms, and conditions of the proposed disciplinary action of the board;

(f) a statement that the licensee will be responsible for all costs of disciplinary proceedings or a statement setting forth the reason why the licensee should be excused from paying costs; the affidavit of the board administrator concerning the costs incurred to date shall accompany the proposal;

(g) a statement that the decision and order of the board shall be a public record and shall be reported as required by law; and

(h) other provisions necessary to ensure the complete and final resolution of the proceedings.

(13) A proposal to settle a matter shall not stay the proceedings or vacate the hearing date unless otherwise ordered by the hearing officer or presiding officer upon the filing of a timely motion.

B. Duties of the board administrator. The board administrator shall:

(1) after consultation with the board or hearing officer, issue a notice of hearing stating the date, time, and place of the hearing;

(2) execute on behalf of the hearing officer or board notices, scheduling orders, subpoenas, and subpoenas duces tecum, and other routine procedural documents that facilitate the efficient conduct of adjudicatory proceedings;

(3) maintain the official record of all papers and pleadings filed with the board in any matter;

(4) prepare an affidavit as to costs of any disciplinary proceeding at the conclusion of any hearing or upon request by a party submitting a proposed settlement, consent agreement, or voluntary surrender of a license in lieu of prosecution;

(5) prepare, certify, and file with the district court the record of the case on appeal or review;

(6) unless the board orders otherwise, have the authority to sign the decision of the board to grant or refuse a request to reopen the case.

C. Conduct of hearings.

(1) The hearing officer, or presiding officer if the case is heard by the board, shall ensure the fair, efficient, and orderly conduct of the hearing in accordance with the Uniform Licensing Act.

(2) Unless the board orders otherwise, a board member hearing officer, the board chair, or presiding officer shall have the authority to sign the written decision of the board.

(3) The board administrator shall serve the decision of the board on the licensee or applicant in accordance with law.

(4) A motion for an order staying the operation of a board decision shall be decided by the board.

[16.44.9.9 NMAC – Rp, 16 44.9.9 NMAC, 9-30-16]

16.44.9.10 SURRENDER OF LICENSE:

A. If a license is suspended or revoked by the board for any reason specified in the rules and regulations of the board or in the act, the licensee shall immediately surrender his or her license in person or by registered mail to the board.

B. If the licensee's scope of practice is restricted or limited or otherwise subject to conditions, the license may reflect the restriction, limitations, or condition.

[16.44.9.10 NMAC – Rp, 16 44.9.10 NMAC, 09-30-16]

16.44.9.11 FAILURE TO RESPOND TO ANY BOARD REQUEST

Failure of a licensee to furnish the board, its investigators, or representatives with information that has been requested within 10 business days of the request is a violation, subject to discipline, including:

A. Failure to appear before the board when requested by the board in any disciplinary proceeding; or

B. Failure to be in compliance with the Parental Responsibility Act Section 40-5A-3 NMSA 1978 seq.; or

C. Fraudulent record keeping, or

D. Failure to comply with Continuing Education Audit as defined in 16.44.5 NMAC.

[16.37.11.10 NMAC – N, A,x/xx/xxxx.]

HISTORY OF 16.44.9 NMAC:

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

LAB 85-1, Rules and Regulations filed 11-27-85;

LAB 85-1, Rules and Regulations filed 12-02-85;

LAB 89-1, Rules and Regulations filed 05-05-89;

Rule 5 NMBLA, Complaints filed 07-08-92;

Rule 6, NMBLA, Denial, Suspension, Revocation filed 07-08-92.

History of Repealed Material:

16 NMAC 44.3, Complaints - Repealed 10-05-02.

16.44.9 NMAC, Complaints filed 9-5-2002 - Repealed effective 9-30-16.