

NMREC MANDATORY COURSE
Test Study Guide
2007
1st Major Exam

www.proedservices.com

7/12/2007

Testing Requirements

- Psychological Services, Inc. (PSI) testing service-Mandatory Test. Cost to take test is \$95.00 with prior online registration
- Testing Sites in Albuquerque, Las Cruces and Roswell
- Mandatory test will be "open book" and must be passed prior to license expiration date
- Test scores will be transmitted electronically by PSI

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January 1, 2007 Part 19 Disclosure

"Every licensed New Mexico real estate Broker is obligated to disclose Broker Duties. Please acknowledge receipt of this information by signing or initialing at the bottom of this page. Disclosure: The following brokerage relationships are available in New Mexico: (1) transaction broker, (2) exclusive agency, and (3) dual agency"

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January 1, 2007 Part 19 Broker Duties

- G. Prior to the time the Associate Broker or Qualifying Broker generates or presents any written document that has the potential to become an express written agreement, written disclosure of (1) ... (2) ... and (3) Other Brokerage Relationship options available in New Mexico

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MODULE I:
Real Estate Commission, License Law Violations and Disciplinary Cases

- Pages 1-6 in Manual

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I: Real Estate Commission

- Process
 - *Complaint, Investigation, Broker B Report, NCA
 - Formal Hearing, Decision & Order, Appeal/Stay
- Sanctions
 - Letter of Reprimand, Education without Credit
 - Pay Cost of Hearing/ Impose Fine up to \$1,000
 - Suspend License
 - Revoke License

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Violations

- License Law Violations 81-29-12 (A) 1-12
 - Substantial Misrepresentation
 - Continuous and Flagrant Misrepresentation
 - Getting Paid by other than Principal/Other Party
 - Representing Qualifying Brokers other than Own
 - Delayed Accounting for Monies and Clear Contract Copies
 - *Conviction of Felony or for Moral Turpitude

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Violations

- Getting Paid by other than One's Qualifying Broker
- Delay in Placing Monies in Trust/Escrow
- Violation of any of the NMREC RULES
- Been Disciplined as Licensee in another State
- Been Involved in Bad Faith, Incompetency, Untrustworthiness, Impropriety, Fraud, Dishonesty, Negligence, or any Unlawful Act

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The Disciplinary Process

- Complaint
- Investigation
- "Broker B" Report to Commission
- Notice of NCA
- Formal Hearing: Decision and Order
- Sanctions
- Right of Appeal

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Disciplinary Sanctions

- Letter of Reprimand
- Education
- Pay Hearing Costs
- Fine up to \$1,000
- Suspension
- Revocation

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Cases

- NMREC Case #1
 - In-House and Double-Ended
 - Alleged Understatement of Property Tax Due
 - Source Deemed Reliable
 - Qualifying Broker's Responsibility

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Cases

- NMREC Case #2
 - Property Management Trust Account Underage
 - \$5,878.10 Missing
 - Qualifying Broker's Supervisory Responsibility
- NMREC Case #3
 - Flood Zone Issues
 - Septic/Permit Issues
 - Source of Information Issues

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Module II: RULES

- Pages 7-20 in Manual

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Module II: RULES

- Part 1 - Definitions
- Part 2 - Fees
- Part 3 - Examination Requirements
- Part 5 - E & O Insurance
- Part 6 - QB Necessary for Any Entity
- Part 8 - License Transfer
- Part 9 - License Inactivation

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Module II: RULES

- Part 11 - License Renewal
- Part 12 - License Discipline
- Part 13 - Continuing Education
- Part 15 - Instructors and Sponsors
- Part 16 - Qualifying Brokers

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Module II: RULES

- Part 16 QB Responsibilities
- Written Agreements with ABs
- Conduct Business with Registered Trade Name
- Copy of NM RE License Law/ Rules in Office
- Supervise all Real Estate Related Activities
- Maintain Records Minimum of 3 Years
- Deposit Monies in Proper Trust Account
- Prompt Disbursement of Commissions

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Module II: RULES

- Part 16 Continued
 - Bona Fide Qualifying Broker Service
 - *Broker- in-Charge Requirements
 - Return AB License within 48 Hours
 - Qualifying Broker/Associate Broker E&O Oversight
 - Complete "QB Refresher Course" every 3 Years

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Module II: RULES

- Part 17 - Associate Brokers
- Part 19 - Brokerage Relationships
- Part 19 - Broker Duties
- Part 19 - Dual Agency
- Part 21 - Unlicensed Assistants
- Part 23 - Trust Accounts
- Part 24 - Property Management

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Module II: RULES

- Part 27 - Foreign Brokers
- Part 29 - Trade Names
- Part 31 - Signage
- Part 32 - Advertising/Disclosure
- Part 33 - Documentation/Delivery
- Part 35 - Child Support Enforcement
- Part 36 -- Complaints/Investigations

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Module III: Trust Accounts

- Pages 21-25 in Manual

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Module III: Trust Accounts

- Trust Accounts-Establishment
 - By Broker in a New Mexico Bank or Savings and Loan
 - By Title Company involved in transaction
 - NOT in a Credit Union or Escrow or Trust Company
- Trust Account Types
 - Sales Trust Account-(No Interest, Transactions)
 - Special Trust Account-(Interest, Transactions)
 - Property Management Trust Account-(No Interest)
 - Custodial Account-(Interest-Deposited to and then disbursed from Property Management to Custodial)

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Trust Accounts (cont.)

- Record Maintenance-Minimum of 3 Years-- Including the whole range of documents
- Commingling-wrongfully blending funds into a trust account
- Wrongful Deposits
- Wrongful Disbursements

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Module IV: Brokerage Relationships

- Pages 28-31 in Manual

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Module IV: Brokerage Relationships

- Basis for NM Brokerage Relationships
 - A. _____
 - B. _____
 - C. _____
 - D. _____
- Types of Brokerage Relationships
 - Transaction Broker,
 - Agency
 - Dual Agency

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Module IV: Broker Duties

- Honesty and Reasonable Care
- Compliance with Applicable Laws and Regulations
- Performance of Promises
- Assistance in Matters Agreed Upon
- Acknowledge when Outside Expertise is Indicated
- Prompt Accounting for Monies and Property
- Disclosure of "Other Brokerage Relationships & Conflicts"
- Disclosure of Known Adverse Material Facts
- Maintenance of Prior Agency Confidentialities
- Maintenance of Client/Customer Confidentialities

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Module IV: Exclusive Agency

- Fiduciary Duties of OLD CAR-interpreted in the light of the particular circumstances and the "scope of authority" or capacity granted to the agent to act on behalf of and commit the client
- Fiduciary Duties as understood by the Realtor® Code of Ethics (Article 1) require "promoting and protecting client's interests as primary"

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Do Not Interfere with Another Broker's Exclusive Agreements

- **NAR Code of Ethics Article 16**
 - Not interfere with written exclusive agreement of another broker
 - Work directly with the broker who has the exclusive written agreement with that client
 - *Affirmative duty to inquire, before offering to provide substantial services to a member of the public whether that person is obligated under a written contract with another broker

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Module V: Civil Rights Laws

- Pages 32--44

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Module V: Civil Rights Laws

- Fair Housing Act (FHA)
 - **Protected Classes:** Race, Color, Religion, Sex, Familial Status, Disability and National Origin and is exclusively residential!
- New Mexico Human Rights Act: 28-1-1ff
 - **Protected Classes-- PLUS another 4:** Sexual Orientation, Gender Identity, Spousal Affiliation, and Ancestry includes commercial

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Module V: Civil Rights Laws

- Fair Housing Prohibitions
 - Steering and Restricting of Choices
 - Blockbusting
 - Advertising
 - Denial of Brokerage, Appraisal, Financing Services
 - *Article 10 of NAR Code of Ethics and Equal Professional Service

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Module V: Civil Rights Laws

- FHA Familial Status-no discrimination against families with children under the age of 18
- Exceptions
 - Older Persons Exception-62+(100%) and 55+ (80%)
 - "Good Faith Defense" for real estate brokers who did not possess actual knowledge of non-compliance

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Module V: Civil Rights Laws

- Disability--prohibits discrimination toward individuals who are with physical and mental handicaps
- Exceptions--does not prohibit discrimination based on an individual being currently addicted to drugs or having been convicted of a drug-related felony, and transvestites

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Module V: Civil Rights Laws

- Modification and New Construction Requirements-
 - Tenant's right to remodel existing dwellings at own expense with savings rates on any required deposit to restore to general utility
 - Landlord's right to require a deposit for restoration of such modifications
 - "Covered Dwellings" March 13, 1991 and later must conform to certain accessibility standards

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Module V: Civil Rights

- HUD Advertising Guidelines
 - MLS Settlement in Portland, Oregon
- Administrative Enforcement
 - Up to \$11,000--\$27,500--\$55,000
- Enforcement by Justice Department
 - Up to \$50,000 and up to \$100,000

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Module 5 (cont.)

- New Mexico Court Cases
 - Eubanks Heights Apartments
 - El Pueblo Apartments
 - Four Hills Group Home

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Module 5 (cont.)

- Realtor® Code of Ethics--Article 10
 - SOP 10-1
 - SOP 10-2

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Module V: Civil Rights Laws

- Americans with Disabilities Act
 - Purpose is to mandate and end to discrimination against individuals with disabilities
 - Purpose is to provide clear, strong, enforceable standards
 - ADA prohibits inquiring if a person has a disability, or inquiring into the nature or severity of a suspected disability

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Module V: Civil Rights Laws

- Title I-Employment in all aspects including application procedures, employee compensation, and other terms and conditions of employment.

Real estate firms with 15 or more employees are covered under Title I

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Module V: Civil Rights Laws

- Title II-Public Services prohibits discrimination toward individuals with disabilities by state and local governments and covers programs, employment, transportation, and communication

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Module V: Civil Rights Laws

- Title III-Public Accommodations means that there cannot be discrimination on the basis of disability and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases, or operates a place of public accommodation-including Real Estate firms and education facilities

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Module V: Civil Rights Laws

- Barrier Removal-Requires reasonable changes unless the changes would result in an undue burden. Leases should stipulate which party is responsible for ADA compliance
- Enforcement-Private civil action or the US Attorney General may bring civil action with civil penalties up to \$50,000 for first and up to \$100,000 for subsequent violations

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Module VI: Risk Management

- Pages 45-54 in Manual

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- Types of Legal Risk
- Techniques for Risk Management
- Sources of Risk in Real Estate Brokerage

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Module VI: Risk Management

- Process and Benefits of Mediation Clause
- Tort Liabilities
 - Fraud-Active and Passive
 - Negligent Misrepresentation
 - Negligence
- Gouveia v Citicorp

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Module VI: Risk Management

- Environmental Concerns
 - *Clandestine Drug Laboratories
 - *Residential Lead-Based Paint Hazard
- Contamination of Real Property

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Contamination Source: Hazardous Waste Sites

- CERCLA (Superfund)
- Liability imposed on
 - Present owner and operator of the site
 - Any owner when the site was contaminated
 - Any generator who arranged to have waste taken to the site
 - Any transporter of waste to the site

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Hazardous Waste Site Liability

- Due Diligence
 - Phase I Site History Study
 - Phase II Site Investigation
 - Phase III Site Remediation

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Module VI: Risk Management

- Liquid Waste and Ground Water
 - New Mexico Environment Department
 - Bernalillo County Environmental Health Dept
- New Mexico Office of State Engineer
- Hazard Insurance Issues

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Module VI: Risk Management

- Antitrust
 - Contract, Combination or Conspiracy
 - Resulting in an Unreasonable Restraint of Trade
 - Real Estate easy Target
- Enforcement
- Perception versus Reality

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Module VII: Legislation affecting Real Estate
Pages 55-60 in Manual

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Module VII: Legislation

- Disclosure of Sales Price to Assessor
**Applies only to residential properties*
- National "Do Not Call" Registry
 - Illegal to call a residential telephone subscriber for solicitation if the subscriber has placed that number in the "do not call registry"
 - It is illegal to block information about a company's identity through a "caller-ID" blocking service

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Module VII: Legislation

- "Do Not Fax" Requirements
 - A "facsimile broadcaster" is defined
 - New required information that must appear on such broadcast fax transmissions
 - Liability included fines from the FCC up to \$11,000 per violation, plus penalties under the New Mexico "Consumer No-Call Act" and claims from private individuals up to \$500 per violation

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Module VII: Legislation

- To download the list of numbers on the "do-not-call" list
 - <https://telemarketing.donotcall/>
- Consumer advisory on FCC "Do-Not-Call"
 - www.ftc.gov/bcp/online/ubs/alerts/dncalrt.htm
- To Register your number on the "Do-Not-Call" list www.ftc.gov/donotcall

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Module VII: Legislation

- Psychologically Impacted Properties
 - Does NOT Prohibit Disclosure!
 - *Natural death, homicide, suicide, assault, sexual assault, any other crime punishable as a felony, or property occupied by a person infected with HIV or AIDS or other disease determined to highly unlikely to be transmitted through occupancy or improvements of real property
 - Exempts sellers, landlords, agents from liability for failure to disclose the above events

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Module VII: Legislation

- **Megan's Law**
 - Federal Violent Crimes Control and Law Enforcement Act of 1996 and Megan's Law
 - Sex Offender Registration and Notification Act 29-11A-1-8 and New Mexico Megan's Law
- This Act does not address licensee responsibilities or offer licensee indemnification

www.nmsexoffender.dhs.state.nm.us/

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Module VII: Legislation

- **Business and Finance**
 - Electronic Transactions: The "Electronic Signatures in Global and National Commerce Act" of 2001
 - Conduct electronically for purchase or lease of real property
 - Process mortgage loan transactions electronically
 - Transfer promissory notes and payments online
 - Obtain electronic records of transactions

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Module VII: Legislation

- **RESPA**
 - *General Provisions-covers settlement services involving federally related loans
 - Coverage and Exclusion from Coverage of Act
 - Penalties for Section 8 Violations--> \$10,000 and not more than 1 year or both

"No person shall give and no person shall accept any fee, kickback, or other thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a settlement service involving federally-related mortgage loan shall be referred to any individual, firm, or institution."

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Module VII: Legislation

- **Settlement Services under RESPA**
 - Any service provided in connection with a real estate settlement including but not limited to: title searches; title examinations; title insurance; services rendered by an attorney; document preparation; property surveys; rendering of credit reports; appraisals; pest and fungus inspections rendered by a real estate broker, origination of a federally-related mortgage loan, loan processing and underwriting and funding, closings

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Module VII: Legislation

- **Prepayment Penalties**
 - New Mexico Home Loan Act 56-8-30
 - Federal Parity Act and Alternative Mortgage

The New Mexico Home Loan Act states that "No provision in a home loan, the evidence of indebtedness of a home loan, a real estate contract or an obligation secured by a real estate mortgage requiring a penalty for pre-payment of the balance of the indebtedness is enforceable." 56-8-30 NMSA, 1978.

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Module VII: Legislation

- **Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801)**
 - This federal legislation is being cited by residential lenders as the authority to enforce prepayment clauses in alternative mortgage transactions despite the New Mexico Residential Home Loan Act (56-8-30 NMSA, 1978 [1980] declaring these clauses unenforceable.

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Module VII: Legislation

- An alternative mortgage is defined the by Parity Act as a loan secured by a home, manufactured home, or stock in a housing cooperative
 - In which the interest rate may be adjusted or renegotiated
 - Involves a fixed rate, but which implicitly allows rate adjustments by having the debt mature at the end of an interval shorter than the amortized schedule (a loan with a balloon payment)
 - Involving any similar type of rate, method of determining return, term, repayment, or other variations not common to traditional fixed-rate, fixed-term transaction

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Module VII: Legislation

- NM Subdivision Act 47-6-1ff
- NM Property Tax Legislation
 - Limiting Property Tax Assessment Increases
- NM Deed of Trust Act (HB 252) 2006
 - Trustor-Trustee-Beneficiary

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Module VII: Legislation

- HB 827 guarantees surface owner rights when subsurface drilling or excavation takes place passed. Surface owners, who don't own the mineral rights below their property must be notified 30 days prior to beginning any drilling-related operations. Surface owners must receive a description of proposed oil and gas operations so they can evaluate the potential impacts to their property. Effective ~~1/1/07~~ ~~1/1/07~~

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Module VIII: Property Management

- Pages 61-67 in Manual

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Module VIII: Property Management

- Authorities
 - NM Real Estate License Law
 - NMREC Rules: Part 16, Part 19, Part 23, Part 24
 - NM Uniform Owner-Resident Relations Act
 - Fair Housing Act
 - NM Human Rights Act
 - Federal Lead-Based Paint Hazards Act

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Module VIII: Property Management

- New Mexico Requirements
 - Written Property Management Agreements with Owners
 - Written Tenancy Agreements with Tenants
 - Proper Trust Account
 - Record Retention
 - Monthly Accounting to Owners
 - Final Accounting when PM Contract is Terminated
 - Final Accounting to Tenant for any Balances Due

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Module VIII: Property Management

- Part 24 of NMREC RULES Highlights
- Uniform Owner-Resident Relations Act Highlights-
- Fair Housing Act Property Management

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Module 8 (cont.)

- Forcible Entry or Unlawful Detainer Act 35-10-1
- Special Provisions of the Act 35-10-3
- Enforcement

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