



BUYER INFORMATION

This pamphlet mentions some common areas of concern to buyers of real property. Because information provided is merely introductory buyers must seek the advice of their own experts prior to making decisions.

Buyers should review and understand pertinent documents and examine the physical condition of the property and its surrounding areas. It is vital that your real estate broker be informed of any special concerns related to making a purchase.

Professional property inspections and other sources of expert opinion relative to making a purchase are absolutely essential. A real estate broker can provide a variety of services essential to finding your desired property and assistance in drafting and presenting offers to purchase but is not expert in discovering defects or in evaluating the physical condition of a property.

Common Documents for Buyer's Review

Documents indicated may not be applicable in every transaction nor is the list comprehensive. Unless stated otherwise, a real estate broker has not independently verified the information contained in any of these documents.

Broker Duties and Conflict of Interest Disclosures

New Mexico Real Estate License Law requires that all real estate brokers provide buyers with several disclosures whenever presenting to buyers written forms that when filled out could become an express written agreement—including a copy of *Broker Duties*, and written disclosure of any material or relationship of a business, personal, or family nature that the broker has in the transaction.

Purchase Agreement (RANM Form 2104 *Purchase Agreement--Residential Resale*)

Buyers should protect their interests by taking time to read the Purchase Agreement and understand their legal rights and obligations *prior* to submitting an offer to purchase.

Multiple Listing Service (MLS) Customer Printout

A listing is a service agreement between a seller and the listing broker and may authorize the listing broker to submit information to a Multiple Listing Service (MLS). This printout contains various abbreviations and symbols describing the property. Because the information provided may be incomplete, an approximation, or otherwise inaccurate, a buyer should seek verification of any MLS information important to the purchase. Buyers need to know that neither the listing agreement nor the printout is part of any agreement to purchase.

Property Disclosure Statement (RANM Form 2301 *Property Disclosure Statement-Residential*)

Where customary, most sellers make a *Property Disclosure Statement* available. The *Purchase Agreement* provides opportunity for buyer to require receipt of the *Property Disclosure Statement* as a matter of contract. It is to a buyer's advantage to receive the *Property Disclosure Statement* prior to submitting an offer to purchase in order to be better informed as to the desirability of the property and in making requests for inspections or reports.



Permission to use this copyrighted material is granted without any warrant as to completeness or accuracy.

A real estate broker is not responsible for verifying or confirming the accuracy or completeness of items contained in the *Property Disclosure Statement*. Should the broker be aware of discrepancies the broker is required to disclose them to the buyer. Buyer needs to know that a review of a *Property Disclosure Statement* is not a substitute for professional inspections.

New Mexico Real Estate Commission *Broker Duties*

Every licensed New Mexico real estate Broker is obligated to disclose Broker Duties including that in the State of New Mexico the following brokerage relationships are available: (1) transaction Broker; (2) exclusive agency; and (3) dual agency

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, and (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 (D)(1) and (2), 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) Acknowledgment 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 Broker;
- (G) Prior to the time a Broker generates or presents any written document that has the potential to become an Express Written Agreement, written disclosure of (1) any written Brokerage Relationship the Broker has with any other Parties to the Transaction; (2) any material interest or relationship of a business, personal, or family nature that the Broker has in the Transaction; and (3) other Brokerage Relationship options 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;
- (J) 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



Permission to use this copyrighted material is granted without any warrant as to completeness or accuracy.

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.

Antidiscrimination and Disability

The federal Fair Housing Act prohibits discrimination in the sale, rental, and financing of dwellings based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18), and handicap (disability). For more information, visit HUD's Fair Housing Website at www.hud.gov/fairhousing/

The New Mexico Human Rights Act (28-1-7(2)) 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 race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation or physical or mental handicap, provided that the physical or mental handicap is unrelated to a person's ability to acquire or rent and maintain particular real property or housing accommodation; <http://legis.state.nm.us/LCSBillfinder.asp>

For information on the Americans with Disabilities Act, visit www.usdoj.gov/crt/ada/adahom1.htm

Title Commitment

The Purchase Agreement requires that either the seller or buyer order a "Title Commitment" within an agreed upon number of days after seller's acceptance of the offer to purchase. The Title Commitment is provided by the title company issuing insurance and providing escrow functions for the transaction. The "Title Commitment" lists documents that are exceptions to the title insurance (Schedule B Exceptions). Schedule B Exceptions may include encumbrances, easements, and liens against the property--some of which affect the use of the property, such as a future addition or swimming pool. Buyers should make sure they receive the Title Commitment in a timely manner and confirm that the legal description contained the same as indicated on the agreement to purchase. Buyer should review all the documents referenced in the Title Commitment with the contractual right to approve or disapprove of condition of title. General information about title issues may be found at <http://www.alta.org/consumer/questions.cfm>

Covenants, Conditions and Restrictions ("CC&Rs")

The CC&Rs are recorded against the property and generally empower the property owners within a subdivision or development to control certain aspects of property use within that subdivision or development. These may include landscaping, RV parking, play equipment, satellite antennas, use of yard signs, and other restrictions as well.

Buyers purchasing property within a subdivision or development agree to be bound by the CC&Rs. Thus the CC&Rs form an enforceable contract upon all property owners. A homeowner's association, the property owners as a whole, and individual property owners can enforce this contract. It is essential that a buyer receive, review and agree to these restrictions prior to becoming obligated under a Purchase Agreement.



Homeowner's Association ("HOA") Governing Documents--whether for condominiums or subdivisions. In addition to CC&Rs, HOAs may be governed by Articles of Incorporation, Bylaws, Rules and Regulations, and often by architectural control standards.

The HOA is the place to enforce these rules and preserve the value property in the development. Buyer should read and understand these documents and be aware that some HOAs impose fees that must be paid when the property is sold, so it is important to inquire if the purchase of such property would result in any fees and to know the financial requirements, obligations and condition of the HOA.

Condominium developments are also regulated under New Mexico statutes (47-7A-1ff NMSA 1978) See (RANM Form 2302A *Resale Certificate from Condominium Association*)

Loan Documents

Unless a buyer is paying cash, the buyer must qualify for a loan in order to complete the purchase. If at all possible, a buyer should complete a loan application with a mortgage broker or mortgage banker before making an offer on a property and attach a copy of the lender's *conditional* "pre-approval" to the Purchase Offer as a numbered exhibit. A borrower is entitled to receive the government mandated Good Faith Estimate (GFE) and Truth in Lending (TIL) documents in the context of making a loan application.

The main purpose for Congress enacting the Truth in Lending Act (TILA) is to enable consumers to make informed use of credit information. To achieve this purpose, TILA requires full disclosures about credit terms and costs. TILA requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (APR). These baseline requirements in TILA and in the rules under Regulation Z create uniformity in creditors' disclosures so that consumers can use them in comparison shopping. The Mortgage Disclosure Improvement Act of 2008 (MDIA) further strengthens these borrower protections. For more information visit www.dfi.wa.gov/cs/pdf/mdia-notice.pdf

It is the buyer's responsibility to deposit any down payment and insure that the buyer's lender, in a timely manner, deposits the remainder of the purchase price into escrow prior to the funding date. Make sure you get all requested documentation to your lender as soon as possible.

For information on loans and the lending process, visit the following websites: Ginnie Mae: www.ginniemae.gov/ Housing and Urban Development www.hud.gov/ Mortgage Bankers Association: www.mbaa.org/ National Association of Mortgage Brokers: www.namb.org/

Professional Home Inspection Report

Even though New Mexico does not license anyone as a "home inspector" the importance of having a home inspected by a professional home inspector cannot be over-emphasized. A home inspection is a visual physical examination, performed for a fee, designed to identify material defects in the home. The home inspector should provide the buyer with a report detailing information about the home's condition. The inspector and the report will point out existing problems and possible potential problems. The buyer should carefully review this report with the inspector and ask the inspector about any item of concern. Pay attention to the scope of the inspection and any portions of the property excluded from the inspection.



Additional information on inspections may be found at the American Society of Home Inspectors website, www.ashi.com.

Guidance on hiring a home inspector may be found at www.realtor.com/basics/buy/

Service Contract

A service or “home warranty” contract covering various named components of a home for a stated period of time is a contract item that may be selected in the purchase agreement. Buyers should examine the service contract language to understand extent and limitations of coverage. A service contract may not be substitute for appropriate inspections by other professionals.

Lead-Based Paint Disclosure Requirement

If the residence for sale or rent was built prior to 1978, a seller having actual knowledge must provide the buyer with this information and any existing documentation regarding the presence of lead hazard on the property-- including a copy of the EPA pamphlet *Protect Your Family from Lead in Your Home*. Buyer must receive and sign an appropriately signed copy of RANM Form 5112 *Lead-Based Paint Addendum to the Purchase Agreement* prior to making an offer to purchase. More information is available at www.epa.gov/lead/ and www.loutulga.com/renovate-right for regulations covering renovations

County Assessors/Tax Records

The county assessor's records contain a variety of valuable information, including the assessed value of the property for tax purposes and some of the physical aspects of the property. Buyers must be aware that Property Tax Levy for a residence newly purchased may be significantly greater than the seller's current property tax obligation.

Because of this, New Mexico law requires that, upon request, a County Assessor must furnish in writing an *Estimated Property Tax Levy* with respect to a residential property in that County, calculated at a property value specified by the party (usually the seller) requesting this information. The County Assessor must comply with the request, in writing, by the close of business of the day following the day the request is received.

For further information visit the website of the County where the property is situated, for example, <http://www.bernco.gov/property/> for Bernalillo County.

Termites and Other Wood Destroying Insects and Organisms

Even though New Mexico does not require a pest inspection in home sales the importance of having a home inspected by a professional for termites and other wood destroying insects and organisms cannot be over-emphasized. .

Electrical and Plumbing Functionality and Materials

Electrical: Check for functionality, capacity and code conformance relative to copper or aluminum wiring, existence of GFI (ground fault interrupter) outlets,, and whether there is 220 service.

Plumbing: Check functionality. Also, a national class action suit has been settled, providing relief for qualifying leaks in polybutylene pipe (PB). For more information, see www.pbpipe.com



Square Footage

Square footage on the MLS printout or as listed by the county assessor's *records is often only an estimate and generally should not be relied upon for the exact* square footage of a property. An appraiser or other professional can measure the property's size to verify the square footage. If the square footage is important, you should have it confirmed by one of these experts during the agreed upon inspection period in a resale transaction and prior to executing a contract in a new home transaction.

Septic and Other On-Site Wastewater Treatment Facilities

If the property includes an on-site liquid waste system the transfer of the property is subject to Regulations of the State of New Mexico Environment Department governing on-site liquid waste systems. Use of the RANM Form 5120a *Septic System Contingency Addendum* is essential when purchasing properties with liquid waste systems. For a summary <http://www.nmenv.state.nm.us/fod/LiquidWaste/LWDRrewrite.pdf>

Additional valuable information is contained in the RANM Form 2308 *Septic Systems, Wells and Water Information*.

Soil Problems

Soil in some areas of New Mexico has "clay-like" tendencies, sometimes referred to as "expansive soil." Other areas are subject to fissures, subsidence and other soil conditions. Properties built on such soils may experience significant movement causing a major problem. If it has been disclosed that the property is subject to any such soil conditions or if the buyer has any concerns about the soil condition or observes evidence of cracking, the buyer should secure an independent assessment of the property and its structural integrity by a licensed, bonded, and insured professional engineer.

Previous Fire/Water Damage

If it is disclosed there has been a fire or water damage on the property, a qualified inspector should be hired to advise you regarding any possible future problems as a result of the fire or flood damage and/or any subsequent repairs. For example, if the property was not properly cleaned after water damage, mold issues may result. Your insurance agent may be able to assist you in obtaining information regarding fire, water damage, or other past damage to the property.

Psychologically Impacted Properties. New Mexico law states that sellers and real estate licensees have no liability for failure to disclose to a buyer that the property was ever the site of natural death, homicide, suicide, assault, sexual assault, or any other crime punishable as a felony or that the property is or has been owned or occupied by a person exposed to, infected or suspected to be infected with human immunodeficiency virus or diagnosed to be suffering from acquired immune deficiency syndrome, or any other disease which has been determined by medical evidence to be highly unlikely to be transmitted to others through occupancy of improvements on real property or that is not known to be transmitted through occupancy of improvements located on the real property. If you have concerns about events that may have occurred on the property alert your real estate broker *prior* to submitting an offer to purchase.



Proximity of Convicted Sex Offenders

New Mexico law requires registration of convicted sex offenders with law enforcement agencies. The secretary of public safety provides a website of registered convicted sexoffenders at <http://www.nmsexoffender.dps.state.nm.us/>

The presence of a convicted sex offender in the vicinity of the property is not a fact that New Mexico law requires sellers or real estate brokers to disclose.

If proximity of convicted sex offenders is material to your making a purchase you should contact appropriate available governmental sources *prior* to sumitting an offer to purchase

Mold

Mold has always been in our environment. However, over the past few years certain kinds of mold have been identified as possible contributors to illnesses. Mold growth is found underneath materials where water has damaged surfaces, or behind walls. RANM Form 2309 *Mold General Information* is helpful and the U.S. Environmental Improvement Agency website is an excellent resource <http://www.epa.gov/molds/>

Other Indoor Air Quality Concerns

Radon gas and carbon monoxide poisoning are two of the more common and potentially serious indoor air quality ("IAQ") concerns. Both of these concerns can be addressed by the home inspector, usually for an additional fee. As for the many other IAQ concerns, the EPA has a host of resource materials and pamphlets available at www.epa.gov/iaq/iaginfol.html and www.epa.gov/iaq/pubs/index.html.

Flood Plain Status

If the property is in a flood zone, an additional annual insurance premium may be required (check with your insurance agent about cost and coverage). If the property is in an area deemed high risk, the buyer may be required by the lender to obtain flood hazard insurance through the National Flood Insurance Program. The FEMA Map Service Center: www.fema.gov/maps

Insurance (Claims History)

Many factors affect the availability and cost of homeowner's insurance. Depending on the insurance company, these factors may include past insurance claims filed on the property being purchased, past insurance claims filed by the buyer on previous properties, and the buyer's credit score. Many insurance companies use a database known as the Comprehensive Loss Underwriting Exchange ("C.L.U.E.") in their underwriting practices to track the insurance claim history of a property and the insurance score of the parties applying for coverage.

To reduce the risk of insurance cancellation, a buyer should ask their insurance agent about the company's underwriting practices and request that their insurance agent confirm in writing the availability and cost of insurance early in any real estate transaction. And, although a buyer cannot directly *obtain the claims history of a property, a buyer may ask the seller to provide* a copy. However, be aware that obtaining a claims history or C.L.U.E. report on a property will not give a buyer all the necessary information to determine insurability, since not all



Permission to use this copyrighted material is granted without any warrant as to completeness or accuracy.
insurance companies use this information or use it in the same manner.

Property owners may request a five year claims history from their insurance agent or purchase a
C.L.U.E. report online at www.choicetrust.com or by calling 866-527-2600.

Broker's Confirmation of Delivery

Brokerage (Printed)

Date

Signature of Broker

Date

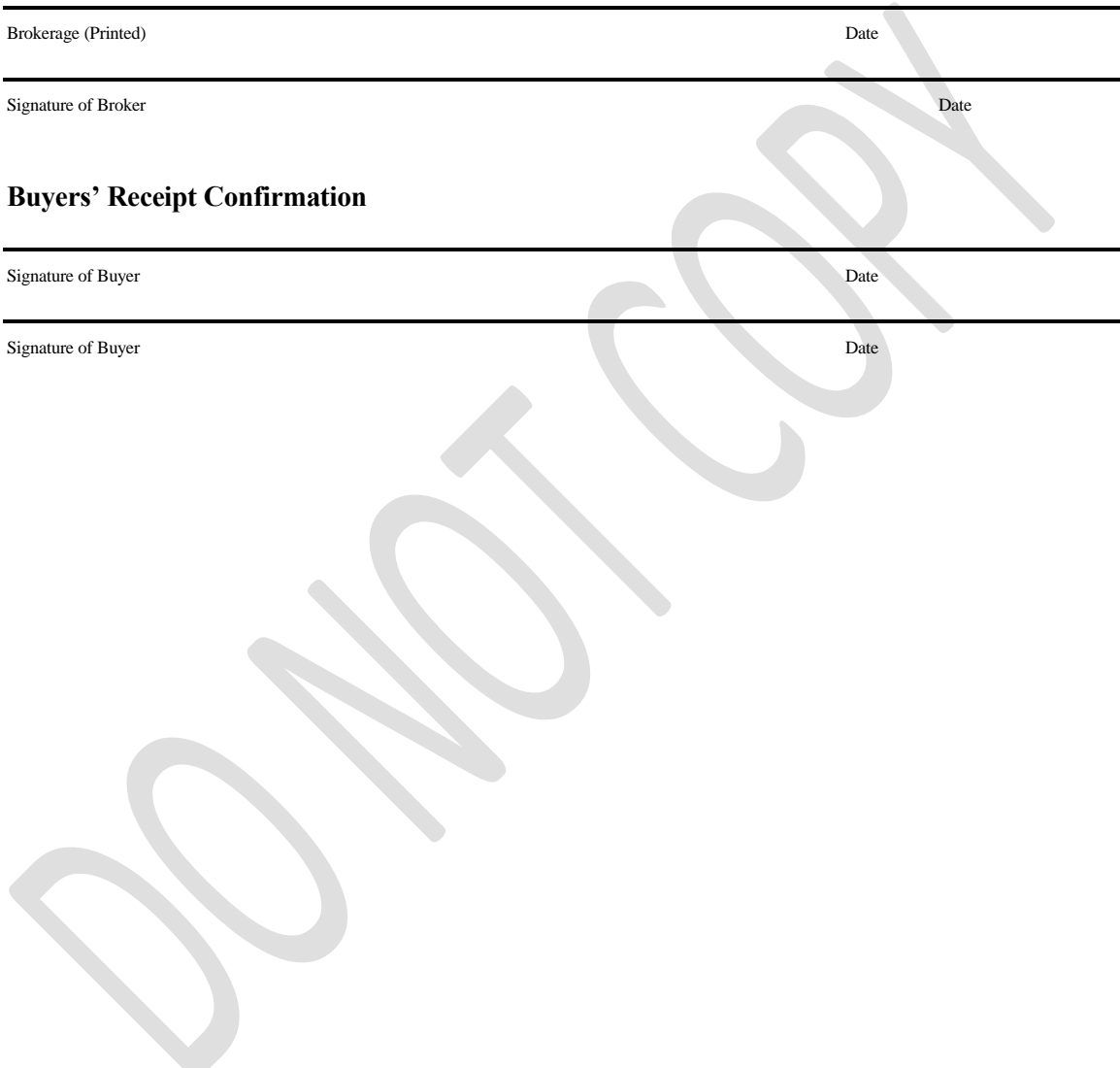
Buyers' Receipt Confirmation

Signature of Buyer

Date

Signature of Buyer

Date





Copyright© 05/04/2010 Lou Tulga CCIM CRB Professional Education Services 505-889--4569
www.loutulga.com

Permission to use this copyrighted material is granted without any warrant as to completeness or accuracy.

DO NOT COPY