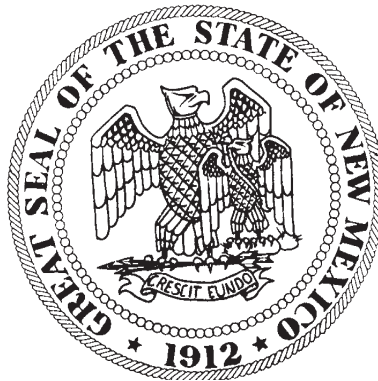


NEW MEXICO
REAL ESTATE LICENSE LAW
AND REAL ESTATE
COMMISSION RULES

2012-2013 EDITION



Reprinted from
Michie's Annotated Statutes of New Mexico
and 2011 Supplement



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Product Number 2172714

(Pub. 21727)

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January 2012

Dear New Mexico Real Estate Broker:

The New Mexico Real Estate Commission is pleased to present the 2012-2013 edition of the New Mexico Real Estate License Law and Rules Manual.

The manual contains the latest versions of the New Mexico Real Estate License Law, the Real Estate Commission Rules, and the Uniform Owner Resident Relations Act (UORRA). Although the UORRA is not under the Commission's jurisdiction, it is included in the manual as a resource for brokers and consumers in view of the many inquiries the Commission receives about landlord-tenant issues.

Significant changes in the License Law include:

- The requirement for fingerprinting of applicants for initial licensure and license renewal.
- Repeal of the exemption from continuing education for brokers over 65 years of age with 20 years of continuous licensure. Brokers who qualified for the exemption prior to July 1, 2011 remain exempt.
- Repeal of language referring to corporate real estate licenses. Although the Commission stopped issuing corporate licenses years ago, language referring to such licenses remained in the law.
- Repeal of language that extended the exemption from licensure as a real estate broker to "lessors" of real property.
- An increase in the criminal penalty for violating provisions of the Real Estate License Law, including unlicensed real estate activity, from a misdemeanor to a fourth-degree felony carrying a \$5,000 fine and 18 months imprisonment.

Significant changes in the Commission Rules include:

- Repeal of the long-standing prohibition against a broker being able to simultaneously act as a qualifying broker for one brokerage and an associate broker for another.
- Removal of the seven (7) day threshold at which a qualifying broker is required to designate a broker-in-charge, and leaving it to the

judgment of the qualifying broker to determine if actual supervision is not possible during their absence from the brokerage office.

- A new provision allowing a corporate officer, family member or other responsible person to designate a broker-in-charge in the event a qualifying broker is unable because of death or incapacitation to perform their duties.
- A provision allowing a qualifying broker to avoid taking the Qualifying Broker Refresher Course if they downgrade to Associate Broker at the time of renewal, but requiring completion of the course as a condition of reinstating their Qualifying Broker status.
- Extension of the period of record retention from three to six years, whether in electronic or paper format, to make Commission Rules consistent with the six-year statute of limitations for written contracts.
- Updating and streamlining of property management and trust account rules to reflect current practices, including electronic transactions.
- Clarification of the property management rule to state that a brokerage must establish a separate property management trust account if they are managing even one property for others.
- An amended definition of qualifying broker as a person who qualifies a business entity to conduct real estate brokerage activity in New Mexico, and who performs the duties and has the responsibilities of a qualifying broker as spelled out in the qualifying broker rule.

Finally, in an effort to make the manual more user-friendly, the current edition contains a subject matter, page-number index for ease of reference.

The Commission appreciates and values the services that licensed real estate brokers provide to the State of New Mexico. The Commission considers each of you to be a valued customer, and we welcome and encourage you to call, write, or contact us by email anytime that we can be of service.

Sincerely,



Wayne W. Ciddio
Executive Secretary
New Mexico Real Estate Commission

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NEW MEXICO REAL ESTATE LICENSE LAW

CHAPTER 61

Professional and Occupational Licenses

ARTICLE 29

Real Estate Brokers and Salesmen

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61-29-1. Prohibition.

It is unlawful for a person to engage in the business, act in the capacity of, advertise or display in any manner or otherwise assume to engage in the business of, or act as an associate broker or a qualifying broker within this state without a license issued by the commission. A person who engages in the business or acts in the capacity of an associate broker or a qualifying broker in

this state, except as otherwise provided in Section 61-29-2 NMSA 1978, with or without a New Mexico license, has thereby submitted to the jurisdiction of the state and to the administrative jurisdiction of the commission and is subject to all penalties and remedies available for a violation of any provision of Chapter 61, Article 29 NMSA 1978.

History: 1953 Comp., § 67-24-19, enacted by Laws 1959, ch. 226, § 1; 1965, ch. 304, § 1; 2001, ch. 163, § 1; 2005, ch. 35, § 1.

STATUTORY NOTES

Cross reference. — Registration required of time share projects; real estate salesperson license required, 47-11-2.1 NMSA 1978.

The 2005 amendment, effective January 1, 2006, substituted “an associate broker or a qualifying broker” for “a broker or real estate salesperson” in two places.

Editor’s notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16,

2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

JUDICIAL DECISIONS

Generally.

Real estate broker’s or salesperson’s license is required for a variety of activities, including buying selling, exchanging, renting, leasing,

auctioning, or dealing with options in real estate. *Garcia v. N.M. Real Estate Comm’n*, 108 N.M. 591, 775 P.2d 1308 (Ct. App. 1989), cert. denied, 108 N.M. 624, 776 P.2d 846 (1989).

61-29-1.1. Recompiled.

STATUTORY NOTES

Editor’s notes. — This section, relating to registration of time share projects and licens-

ing of salespersons, was recompiled as 47-11-2.1 NMSA 1978.

61-29-2. Definitions and exceptions.

A. As used in Chapter 61, Article 29 NMSA 1978:

(1) “agency relationship” means the fiduciary relationship created solely by an express written agency agreement between a person and a brokerage, authorizing the brokerage to act as an agent for the person according to the scope of authority granted in that express written agreement for real estate services subject to the jurisdiction of the commission;

(2) “agent” means the brokerage authorized, solely by means of an express written agreement, to act as a fiduciary for a person and to provide real estate services that are subject to the jurisdiction of the commission; in the case of an associate broker, “agent” means the person who has been authorized to act by that associate broker’s qualifying broker;

(3) “associate broker” means a person who, for compensation or other valuable consideration, is associated with or engaged under contract by a qualifying broker to participate in an activity described in Paragraph (4) of this subsection or to carry on the qualifying broker’s business as a whole or partial vocation;

(4) “broker” or “qualifying broker” means a person who for compensation or other consideration from another:

(a) lists, sells or offers to sell real estate; buys or offers to buy real estate; or negotiates the purchase, sale or exchange of real estate or options on real estate;

(b) is engaged in managing property for others;

(c) leases, rents or auctions or offers to lease, rent or auction real estate;

(d) advertises or makes any representation as being engaged in the business of buying, selling, exchanging, renting, leasing, auctioning or dealing with options on real estate for others as a whole or partial vocation; or

(e) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract under which the broker or qualifying broker undertakes primarily to promote the sale of real estate through its listing in a publication issued primarily for that purpose or for the purpose of referral of information concerning real estate to brokers, qualifying brokers or associate brokers;

(5) “brokerage” means a licensed qualifying broker and the licensed real estate business represented by the qualifying broker and its affiliated licensees;

(6) “brokerage relationship” means the legal or contractual relationship between a person and a brokerage in a real estate transaction subject to the jurisdiction of the commission;

(7) “client” means a buyer, seller, landlord or tenant who has entered into an express written agreement with a brokerage for real estate services subject to the jurisdiction of the commission;

(8) “commission” means the New Mexico real estate commission;

(9) “customer” means a buyer, seller, landlord or tenant who uses real estate services without entering into an express written agreement with a brokerage subject to the jurisdiction of the commission;

(10) “license” means a qualifying broker’s license or an associate broker’s license issued by the commission;

(11) “licensee” means a person holding a valid qualifying broker’s license or an associate broker’s license subject to the jurisdiction of the commission;

(12) “real estate” means land, improvements, leaseholds and other interests in real property that are less than a fee simple ownership interest, whether tangible or intangible;

(13) “real estate salesperson” means a person who, for compensation or other valuable consideration, is associated with or engaged under contract by a broker to participate in an activity described in Paragraph (4) of this subsection or to carry on the broker’s business as a whole or partial vocation; and

(14) “transaction broker” means a qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship.

B. A single act of a person in performing or attempting to perform an activity described in Paragraph (4) of Subsection A of this section makes the person a qualifying broker. A single act of a person in performing or attempting

to perform an activity described in Paragraph (3) of Subsection A of this section makes the person an associate broker.

C. The provisions of Chapter 61, Article 29 NMSA 1978 do not apply to:

(1) a person who as owner performs any of the activities included in this section with reference to property owned by the person, except when the sale or offering for sale of the property constitutes a subdivision containing one hundred or more parcels;

(2) the employees of the owner or the employees of a qualifying broker acting on behalf of the owner, with respect to the property owned, if the acts are performed in the regular course of or incident to the management of the property and the investments, except when the sale or offering for sale of the property constitutes a subdivision containing one hundred or more parcels;

(3) isolated or sporadic transactions not exceeding two transactions annually in which a person acts as attorney-in-fact under a duly executed power of attorney delivered by an owner authorizing the person to finally consummate and to perform under any contract the sale, leasing or exchange of real estate on behalf of the owner; and the owner or attorney-in-fact has not used a power of attorney for the purpose of evading the provisions of Chapter 61, Article 29 NMSA 1978;

(4) transactions in which a person acts as attorney-in-fact under a duly executed power of attorney delivered by an owner related to the attorney-in-fact within the fourth degree of consanguinity or closer, authorizing the person to finally consummate and to perform under any contract for the sale, leasing or exchange of real estate on behalf of the owner;

(5) the services rendered by an attorney at law in the performance of the attorney's duties as an attorney at law;

(6) a person acting in the capacity of a receiver, trustee in bankruptcy, administrator or executor, a person selling real estate pursuant to an order of any court or a trustee acting under a trust agreement, deed of trust or will or the regular salaried employee of a trustee;

(7) the activities of a salaried employee of a governmental agency acting within the scope of employment; or

(8) persons who deal exclusively in mineral leases or the sale or purchase of mineral rights or royalties in any case in which the fee to the land or the surface rights are in no way involved in the transaction.

History: 1978 Comp., § 61-29-2, enacted by Laws 1999, ch. 127, § 1; 2003, ch. 36, § 1; 2005, ch. 35, § 2; 2011, ch. 85, § 1.

STATUTORY NOTES

Cross reference. — Tax credit; certain conveyances of real property, 7-2A-8.9 NMSA 1978.

Prohibition, 61-29-1 NMSA 1978.

The 2005 amendment, effective January 1, 2006, rewrote Paragraph A(1) which formerly defined both agency relationship and brokerage relationship; added Paragraphs A(2), (3), (6) and (14); redesignated former Paragraphs A(2) and A(3) as present Paragraphs A(4) and A(5); redesignated former Paragraphs A(4)

through A(10) as present Paragraphs A(7) through A(13); substituted "qualifying broker" for "real estate broker" throughout the section; in present Paragraph A(10), substituted "an associate broker's license" for "a real estate salesperson's license"; and changed the internal references in Paragraph A(13) and Subsection B.

The 2011 amendment, effective July 1, 2011, added (A)(4)(b); redesignated former (A)(4)(b) through (A)(4)(d) to (A)(4)(c) through

(A)(4)(e); substituted “makes any representation” for “holds himself out” in (A)(4)(d); in (C)(1), deleted “or lessor” preceding “performs,” deleted “or leased” following “owned” and added “except when the sale or offering for sale of the property constitutes a subdivision containing one hundred or more parcels”; added the (C)(2) designation; in (C)(2), deleted “or lessor” following “the owner” twice, “or leased” following “property owned,” and “or the lease or offering for lease” following “offering

for sale”; redesignated former (C)(2) through (C)(7) to (C)(3) through (C)(8).

Editor’s notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978. See 12-1-8 NMSA 1978.

JUDICIAL DECISIONS

Broker.
Investments.
Jurisdiction.
Lessor/owner.
Suspension.

Broker.

Where a real estate broker purchased real estate, contacted a brokerage corporation to find a buyer for the contract, and then defaulted on the contract, the broker was not acting as a real estate broker; therefore, suspension of his license by the real estate commission was improper. *Vihstadt v. Real Estate Comm’n*, 106 N.M. 641, 748 P.2d 14 (1988).

Investments.

A real estate license is not legally required in order arrange investments in real estate contracts. *Garcia v. N.M. Real Estate Comm’n*, 108 N.M. 591, 775 P.2d 1308 (Ct. App. 1989), cert. denied, 108 N.M. 624, 776 P.2d 846 (1989).

Jurisdiction.

New Mexico Real Estate Commission had jurisdiction over a complaint alleging that a real estate broker violated 61-29-12 NMSA 1978 in connection with the sale of a real estate contract because the broker was a real estate broker as defined in 61-29-2A NMSA 1978, he represented himself as such and acted in that capacity, the contract itself indicated that the

broker was being employed in a broker’s capacity, and he received a commission for the transaction. *Elliott v. New Mexico Real Estate Comm’n*, 103 N.M. 273, 705 P.2d 679 (1985).

Lessor/owner.

Former lessee and owner of a building located on leased premises could not maintain an action to recover compensation or a commission from the landowner after he negotiated a new lease between the landowner and a company that purchased the building because he was not a licensed real estate broker at the time he negotiated the lease. The former lessee was not exempted from the provisions of the Real Estate Brokers and Salesmen Act as either a lessor or an owner in the regular course of management of the property. *Bosque Farms Home Ctr. v. Tabet Lumber Co.*, 107 N.M. 115, 753 P.2d 894 (1988).

Suspension.

New Mexico Real Estate Commission’s suspension of a real estate broker’s license in connection with the sale of a real estate contract was not unlawful, arbitrary, or capricious because it was supported by substantial evidence that the broker by commingled funds, failed to place funds entrusted to him in a trust account, and failing to remit money in his possession belonging to others within a reasonable time. *Elliott v. New Mexico Real Estate Comm’n*, 103 N.M. 273, 705 P.2d 679 (1985).

OPINIONS OF ATTORNEY GENERAL

License.

A person may hold more than one real estate broker’s license at the same time, and the part-time broker provisions of Rule 3 of the

New Mexico real estate commission’s rules and regulations are legally correct. 1980 Op. Atty. Gen. No. 80-22, 1980 N.M. AG LEXIS 19.

61-29-3. Criminal offender’s character evaluation.

The provisions of the Criminal Offender Employment Act [28-2-1 NMSA 1978] shall govern any consideration of criminal records required or permitted by Sections 61-29-1 through 61-29-18 NMSA 1978.

History: 1953 Comp., § 67-24-20.1, enacted by Laws 1974, ch. 78, § 29.

STATUTORY NOTES

Editor's notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

OPINIONS OF ATTORNEY GENERAL

Applicability.

If the real estate commission is contemplating denial, suspension or revocation of a license because of a conviction of a felony or offense

involving moral turpitude by the licensee, the Criminal Offender Employment Act, 28-2-1 NMSA 1978, et seq., must be followed. 1982 Op. Atty. Gen. No. 82-2, 1982 N.M. AG LEXIS 23.

61-29-4. Creation of commission; powers and duties.

There is created the “New Mexico real estate commission”. The commission shall be appointed by the governor and shall consist of five members who shall have been residents of the state for three consecutive years immediately prior to their appointment, four of whom shall have been associate brokers or qualifying brokers licensed in New Mexico and one of whom shall be a member of the public who has never been licensed as an associate broker or a qualifying broker; provided that not more than one member shall be from any one county within the state. The members of the commission shall serve for a period of five years or until their successors are appointed and qualified. The governor may remove a member for cause. In the event of vacancies, the governor shall appoint members to complete unexpired terms. The commission shall possess all the powers and perform all the duties prescribed by Chapter 61, Article 29 NMSA 1978 and as otherwise provided by law, and it is expressly vested with power and authority to make and enforce rules to carry out the provisions of that article. Prior to a final action on a proposed change or amendment to the rules of the commission, the commission may publish notice of the proposed action in its official publication, distribute the publication to each active licensee and give the time and place for a public hearing on the proposed changes. The hearing shall be held at least thirty days prior to a proposed final action. Changes or amendments to the rules shall be filed in accordance with the procedures of the State Rules Act [14-4-1 NMSA 1978] and shall become effective thirty days after notification to all active licensees of the filing of the changes or amendments.

History: 1953 Comp., § 67-24-21, enacted by Laws 1959, ch. 226, § 3; 1978, ch. 203, § 1; 1983, ch. 261, § 1; 1987, ch. 90, § 2; 1990, ch. 75, § 25; 2003, ch. 22, § 1; 2003, ch. 408, § 30; 2005, ch. 35, § 3.

STATUTORY NOTES

Cross reference. — Additional powers of the commission; professional liability insurance; minimum coverage, 61-29-4.2 NMSA 1978.

License fees; disposition, 61-29-8 NMSA 1978.

The 2005 amendment, effective January 1,

2006, substituted “associate brokers or qualifying brokers” for “real estate brokers” and “an associate broker or a qualifying broker” for “a real estate broker or salesperson” in the second sentence; deleted the fourth sentence which formerly read: “Members to fill vacancies shall be appointed for an unexpired term”;

inserted the present sixth sentence and deleted “and regulations” following “rules” in the seventh and eighth sentences.

Editor’s notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of

Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

61-29-4.1. Additional powers of commission; continuing education programs; minimum requirements.

The commission shall adopt rules providing for continuing education courses in selling, leasing or managing residential, commercial and industrial property as well as courses in basic real estate law and practice and other courses prescribed by the commission. The regulations shall require that every licensee except licensees who were already exempted from continuing education requirements prior to the effective date of this 2011 act [July 1, 2011], as a condition of license renewal, successfully complete thirty classroom hours of instruction every three years in courses approved by the commission. The rules may prescribe areas of specialty or expertise and may require that part of the classroom instruction be devoted to courses in the area of a licensee’s specialty or expertise.

History: 1978 Comp., § 61-29-4.1, enacted by Laws 1985, ch. 89, § 1; 1993, ch. 253, § 1; 2005, ch. 35, § 4; 2011, ch. 85, § 2.

STATUTORY NOTES

Cross reference. — Additional powers of the commission; professional liability insurance; minimum coverage, 61-29-4.2 NMSA 1978.

The 2005 amendment, effective January 1, 2006, rewrote the first sentence which formerly read: “In addition to the powers and duties granted the commission under the provisions of Section 61-29-4 NMSA 1978, the commission shall adopt regulations providing for continuing educational programs that offer courses in selling, leasing or managing residential, commercial and industrial property as well as courses reviewing basic real estate law and practice”; and rewrote the third sentence which formerly read: “The regulations shall prescribe areas of specialty or expertise and may require that a certain part of the thirty hours of classroom instruction be devoted to courses in the area of a licensee’s specialty or expertise”.

The 2011 amendment, effective July 1, 2011, substituted “were already exempted from continuing education requirements prior to the effective date of this 2011 act” for “are sixty-five years of age or older and who have a minimum of twenty years’ continuously licensed experience in the selling, leasing or managing of real property”; deleted “shall” preceding “renewal” in the second sentence; and made stylistic changes.

Editor’s notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978. See 12-1-8 NMSA 1978.

61-29-4.2. Additional powers of the commission; professional liability insurance; minimum coverage.

A. In addition to the powers and duties granted to the commission pursuant to the provisions of Sections 61-29-4 and 61-29-4.1 NMSA 1978, the commission may adopt rules that require professional liability insurance coverage and may establish the minimum terms and conditions of coverage, including limits

of coverage and permitted exceptions. If adopted by the commission, the rules shall require every applicant for an active license and licensee who applies for renewal of an active license to provide the commission with satisfactory evidence that the applicant or licensee has professional liability insurance coverage that meets the minimum terms and conditions required by commission rule.

B. The commission is authorized to solicit sealed, competitive proposals from insurance carriers to provide a group professional liability insurance policy that complies with the terms and conditions established by commission rule. The commission may approve one or more policies that comply with the commission rules; provided that the maximum annual premium shall not exceed three hundred dollars (\$300) for a licensee, that the minimum coverage shall not be less than one hundred thousand dollars (\$100,000) for an individual claim and not less than a five hundred thousand dollar (\$500,000) aggregate limit per policy and that the deductible shall not be greater than one thousand dollars (\$1,000).

C. Rules adopted by the commission shall permit an active licensee to satisfy any requirement for professional liability insurance coverage by purchasing an individual policy.

D. Rules adopted by the commission shall provide that there shall not be a requirement for a licensee to have professional liability insurance coverage during a period when a group policy, as provided in Subsection B of this section, is not in effect.

History: 1978 Comp., § 61-29-4.2, enacted by Laws 2001, ch. 216, § 1; 2005, ch. 35, § 5; 2008, ch. 18, § 1.

STATUTORY NOTES

The 2005 amendment, effective January 1, 2006, deleted “maximum cost of premium” from the section heading and substituted “two hundred dollars (\$200)” for “one hundred fifty dollars (\$150)” in Subsection B.

The 2008 amendment, effective July 1, 2008, substituted “three hundred dollars (\$300)” for “two hundred dollars (\$200)” in Subsection B.

Editor’s notes. — Laws 2011, ch. 30, § 8,

approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

61-29-4.3. Regulation and licensing department; administratively attached.

The commission is administratively attached to the regulation and licensing department.

History: Laws 2001, ch. 163, § 12.

STATUTORY NOTES

Editor's notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

61-29-4.4. Additional powers of commission; fingerprinting and criminal history background checks.

A. All applicants for licensure as provided for in Chapter 61, Article 29 NMSA 1978 shall:

(1) be required to provide fingerprints on two fingerprint cards for submission to the federal bureau of investigation to conduct a national criminal history background check and to the department of public safety to conduct a state criminal history check;

(2) pay the cost of obtaining the fingerprints and criminal history background checks; and

(3) have the right to inspect or challenge the validity of the records resulting from the background check if the applicant is denied licensure as established by commission rule.

B. Electronic live scans may be used for conducting criminal history background checks.

C. Criminal history records obtained by the commission pursuant to the provisions of this section are confidential. The commission is authorized to use criminal history records obtained from the federal bureau of investigation and the department of public safety to conduct background checks on applicants for certification as provided for in Chapter 61, Article 29 NMSA 1978.

D. Criminal history records obtained by the commission pursuant to the provisions of this section shall not be used for any purpose other than conducting background checks. Criminal history records obtained pursuant to the provisions of this section and the information contained in those records shall not be released or disclosed to any other person or agency, except pursuant to a court order or with the written consent of the person who is the subject of the records.

E. A person who releases or discloses the criminal history records or information contained in those records in violation of the provisions of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 2005, ch. 35, § 6; 2011, ch. 85, § 3.

STATUTORY NOTES

The 2011 amendment, effective July 1, 2011, in the section heading, added “fingerprinting and” and “history”; and rewrote the section, which formerly read: “The commission may require license applicants, as a condition of licensure, to submit to criminal background checks”.

Effective dates. — Laws 2005, ch. 35, § 21A makes this section effective January 1, 2006.

Editor's notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of

Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978. See 12-1-8 NMSA 1978.

61-29-5. Organization of commission.

The commission shall organize by electing a president, vice president and secretary from its members. A majority of the commission shall constitute a quorum and may exercise all powers and duties devolving upon it and do all things necessary to carry into effect the provisions of Chapter 61, Article 29 NMSA 1978. The secretary of the commission shall keep a record of its proceedings; a register of persons licensed as associate brokers and qualifying brokers, showing the name and place of business of each and the date and number of each person's license; and a record of all licenses issued, denied, suspended or revoked. This record shall be open to public inspection at all reasonable times.

History: 1953 Comp., § 67-24-22, enacted by Laws 1959, ch. 226, § 4; 2001, ch. 163, § 2; 2005, ch. 35, § 7.

STATUTORY NOTES

The 2005 amendment, effective January 1, 2006, in the third sentence, substituted "associate brokers and qualifying brokers" for "real estate brokers and as real estate salespersons" near the middle of the sentence and "denied" for "refused, removed" near the end.

Editor's notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16,

2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

61-29-5.1. Recompiled.

STATUTORY NOTES

Editor's notes. — This section, relating to a register of time share projects and appli-

cants for certificates of registration, was recompiled as 47-11-11.1 NMSA 1978.

61-29-6. Meeting of the commission.

The commission shall meet at least once each quarter-year at such time and place as may be designated by the commission president, and special meetings may be held upon five days' written notice to each of the commission members by the commission president.

History: 1953 Comp., § 67-24-23, enacted by Laws 1959, ch. 226, § 5; 2005, ch. 35, § 8.

STATUTORY NOTES

The 2005 amendment, effective January 1, 2006, inserted “commission” preceding “president” near the middle and substituted “commission president” for “president of the commission” at the end.

Editor’s notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which

would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

61-29-7. Reimbursement and expenses.

Each member of the commission shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

History: 1953 Comp., § 67-24-24, enacted by Laws 1959, ch. 226, § 6; 1963, ch. 43, § 28; 1965, ch. 304, § 3; 2003, ch. 22, § 2; 2003, ch. 408, § 31.

STATUTORY NOTES

Editor’s notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July

1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

61-29-8. License fees; disposition.

A. The following fees shall be established and charged by the commission and paid into the real estate commission fund:

(1) for each examination, a fee established by the commission based on competitive bids for examination services submitted to the commission in response to a commission request for proposals, not to exceed ninety-five dollars (\$95.00);

(2) for each qualifying broker’s license issued, a fee not to exceed two hundred seventy dollars (\$270) and for each renewal thereof, a fee not to exceed two hundred seventy dollars (\$270);

(3) for each associate broker’s license issued, a fee not to exceed two hundred seventy dollars (\$270) and for each renewal thereof, a fee not to exceed two hundred seventy dollars (\$270);

(4) subject to the provisions of Paragraph (10) of this subsection, for each change of place of business or change of employer or contractual associate, a transfer fee not to exceed twenty dollars (\$20.00);

(5) for each duplicate license, where the license is lost or destroyed and affidavit is made thereof, a fee not to exceed twenty dollars (\$20.00);

(6) for each license history, a fee not to exceed twenty-five dollars (\$25.00);

(7) for copying of documents by the commission, a fee not to exceed one dollar (\$1.00) per copy;

(8) for each license law and rules booklet, a fee not to exceed ten dollars (\$10.00) per booklet;

(9) for each hard copy or electronic list of licensed associate brokers and qualifying brokers, a fee not to exceed actual costs up to fifty dollars (\$50.00);

(10) for each license reissued for an associate broker because of change of address of the qualifying broker's office or death of the qualifying broker when a successor qualifying broker is replacing the decedent and the associate broker remains in the office or because of a change of name of the office or the entity of the qualifying broker, a fee in an amount not to exceed twenty dollars (\$20.00) to be paid by the qualifying broker or successor qualifying broker as the case may be; but if there are eleven or more affected associate brokers in the qualifying broker's office, the total fee paid to effect reissuance of all of those licenses shall not exceed two hundred dollars (\$200);

(11) for each application to the commission to become an approved sponsor of prelicensing and continuing education courses, a fee not to exceed five hundred dollars (\$500) and for each renewal thereof, a fee not to exceed five hundred dollars (\$500);

(12) for each application to the commission to become an approved instructor of prelicensing and continuing education courses, a fee not to exceed seventy dollars (\$70.00) per course; and

(13) for each application to the commission to renew certification as a commission-approved instructor, a fee not to exceed one hundred dollars (\$100).

B. All fees set by the commission shall be set by rule and only after all requirements have been met as prescribed by Chapter 61, Article 29 NMSA 1978. Any changes or amendments to the rules shall be filed in accordance with the State Rules Act [14-4-1 NMSA 1978].

C. The commission shall deposit all money received by it from fees in accordance with the provisions of Chapter 61, Article 29 NMSA 1978 with the state treasurer, who shall keep that money in a separate fund to be known as the "real estate commission fund", and money so deposited in that fund is appropriated to the commission for the purpose of carrying out the provisions of Section 61-29-4 NMSA 1978 or to maintain the real estate recovery fund as required by the Real Estate Recovery Fund Act [61-29-20 NMSA 1978] and shall be paid out of the fund upon the vouchers of the executive secretary of the commission or the executive secretary's designee; provided that the total fees and charges collected and paid into the state treasury and any money so deposited shall be expended only for the purposes authorized by Chapter 61, Article 29 NMSA 1978.

History: 1953 Comp., § 67-24-25, enacted by Laws 1959, ch. 226, § 7; 1977, ch. 295, § 1; 1983, ch. 261, § 2; 1987, ch. 90, § 3; 1990, ch. 75, § 26; 1992, ch. 21, § 1; 1995, ch. 143, § 1; 2001, ch. 163, § 3; 2003, ch. 22, § 3; 2005, ch. 35, § 9; 2011, ch. 85, § 4.

STATUTORY NOTES

Cross reference. — Issuance, renewal and surrender of licenses, 61-29-11 NMSA 1978.

The 2005 amendment, effective January 1, 2006, substituted "associate broker" for "real estate salesperson" throughout the section and substituted "qualifying broker" for "licensed broker" throughout the section; in Subsection

C, substituted "appropriated to the commission for the purpose of carrying out the provisions of Section 61-29-4 NMSA 1978" for "appropriated for the purpose of carrying out the provisions of Chapter 61, Article 29 NMSA 1978" near the middle and deleted Subsection D.

The 2011 amendment, effective July 1, 2011, in (A)(1), added “established by the commission based on competitive bids for examination services submitted to the commission in response to a commission request for proposals”; substituted “actual costs up to fifty dollars (\$50.00)” for “twenty dollars (\$20.00)” in (A)(9); added “the executive secretary’s” in (C); and made a stylistic change.

Editor’s notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978. See 12-1-8 NMSA 1978.

61-29-9. Qualifications for license.

A. Licenses shall be granted only to persons who meet the requirements for licensure prescribed by law and are deemed by the commission to be of good repute and competent to transact the business of a qualifying broker or an associate broker in a manner that safeguards the interests of the public.

B. An applicant for a qualifying broker’s license or an associate broker’s license shall be a legal resident of the United States and have reached the age of majority. Each applicant for a qualifying broker’s license or an associate broker’s license shall have passed the real estate examination approved by the commission and shall:

(1) furnish the commission with a certificate that the applicant has completed successfully ninety classroom hours of instruction in basic real estate courses approved by the commission, thirty hours of which shall have been a broker basics course; or

(2) furnish the commission with a certificate that the applicant is a duly licensed real estate broker in good standing in another state; provided that the applicant has successfully completed ninety classroom hours of instruction in basic real estate courses approved by the commission, thirty hours of which shall have been a broker basics course.

C. An applicant for a qualifying broker’s license shall have been actively engaged in the real estate business as an associate broker or real estate salesperson for at least two of the last five years immediately preceding application for a qualifying broker’s license and furnish the commission proof that the applicant has completed successfully one hundred twenty hours of prelicensing courses, including a broker basics course, approved by the commission.

D. A licensee holding a current real estate salesperson’s license on the effective date of this 2005 act shall automatically qualify for an associate broker’s license without any additional requirements. However, to be eligible to apply for a qualifying broker’s license, a real estate salesperson obtaining an associate broker’s license pursuant to this subsection shall, in addition to meeting all other requirements for a qualifying broker’s license, pass a real estate broker’s examination approved by the commission.

E. The commission shall require the information it deems necessary from every applicant to determine that applicant’s honesty, trustworthiness and competency.

History: 1953 Comp., § 67-24-26, enacted by Laws 1959, ch. 226, § 8; 1965, ch. 304, § 4; 1973, ch. 40, § 1; 1977, ch. 295, § 2; 1979, ch. 94, § 1; 1983, ch. 261, § 3;

1999, ch. 272, § 35; 2001, ch. 163, § 4; 2003, ch. 22, § 4; 2003, ch. 329, § 1; 2005, ch. 35, § 10; 2011, ch. 85, § 5.

STATUTORY NOTES

The 2005 amendment, effective January 1, 2006, inserted “meet the requirements for licensure prescribed by law and” near the beginning of Subsection A; substituted “qualifying broker or an associate broker” in Subsection A and B; deleted Paragraph B(1) and redesignated former Paragraphs B(2) and B(3) as present Paragraphs B(1) and B(2) respectively; in present Paragraph B(1), substituted “ninety classroom hours” for “one hundred eighty classroom hours” and added “thirty hours of which shall have been a broker basics course” at the end; deleted former Paragraphs B(4), B(5) and Subsection C; added present Subsection C and D and redesignated former Subsection D as Subsection E.

The 2011 amendment, effective July 1, 2011, deleted the former second and third sentences in (E), which read: “Corporations, partnerships or associations may hold a qualifying

broker’s license issued in the name of the corporation, partnership or association; provided that at least one member of the partnership or association, or one officer or employee of a corporation, who actively engages in the real estate business first secures a qualifying broker’s license. The license shall be issued in the name of the corporation, partnership or association, naming the partner, associate officer or employee as qualifying broker for the corporation, partnership or association.”

Editor’s notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978.

JUDICIAL DECISIONS

Knowledge.

Misrepresentation.

Knowledge.

Where income-producing property purchased through a real estate broker was condemned, it was incumbent upon the broker to have a general knowledge of the building code and the zoning ordinances which dealt with the particular property being offered for sale or which was being purchased. *Amato v. Rathbun Realty*, 98 N.M. 231, 647 P.2d 433 (Ct. App. 1982).

Misrepresentation.

Where a real estate broker’s registration forms failed to admit that he had default judg-

ments against him for unpaid student loans and an automobile loan, but the New Mexico Real Estate Commission made no specific findings or conclusions that resolved whether the broker intended to deceive and to induce the Commission to act in reliance upon a misrepresentation of fact known by him to have been untrue, it was not clearly shown that the license revocation decision was based upon false representations relevant and material to facts bearing upon the good repute and competence of a licensee in the public interest. *Padilla v. Real Estate Comm’n*, 106 N.M. 96, 739 P.2d 965 (1987).

OPINIONS OF ATTORNEY GENERAL

Multiple licensure.

A person may hold more than one real estate broker’s license at the same time, and the part-time broker provisions of Rule 3 of the

New Mexico real estate commission’s rules and regulations are legally correct. 1980 Op. Atty. Gen. No. 80-22, 1980 N.M. AG LEXIS 19.

61-29-10. Application for license and examination.

A. All applications for licenses to act as qualifying brokers and associate brokers shall be made in writing to the commission and shall contain such data and information as may be required upon a form to be prescribed and furnished by the commission. The application shall be accompanied by:

(1) the recommendation of two reputable citizens who own real estate in the county in which the applicant resides, which recommendation shall certify that the applicant is of good moral character, honest and trustworthy; and

(2) the triennial license fee prescribed by the commission.

B. In addition to proof of honesty, trustworthiness and good reputation, an applicant shall pass a written examination approved by the commission. The examination shall be given at the time and places within the state as the commission shall prescribe; however, the examination shall be given not less than two times during each calendar year. The examination shall include business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisals, a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency and brokerage and the provisions of Chapter 61, Article 29 NMSA 1978.

C. An applicant is not permitted to engage in the real estate business until the applicant has passed the approved examination, complied with the other requirements of Chapter 61, Article 29 NMSA 1978, and until a license has been issued to the applicant.

D. Notice of passing or failing to pass the examination shall be given to an applicant not later than three weeks following the date of the examination.

E. The commission may establish educational programs and procure qualified personnel, facilities and materials for the instruction of persons desiring to become qualifying brokers or associate brokers or desiring to improve their proficiency as qualifying brokers or associate brokers. The commission may inspect and accredit educational programs and courses of study and may establish standards of accreditation for educational programs conducted in this state. The expenses incurred by the commission in activities authorized pursuant to this subsection shall not exceed the total revenues received and accumulated by the commission.

History: 1953 Comp., § 67-24-27, enacted by Laws 1959, ch. 226, § 9; 1965, ch. 304, § 5; 1979, ch. 94, § 2; 1981, ch. 22, § 1; 2001, ch. 163, § 5; 2005, ch. 35, § 11.

STATUTORY NOTES

The 2005 amendment, effective January 1, 2006, substituted "qualifying brokers and associate brokers" for "real estate brokers and real estate salespersons" throughout the section.

Editor's notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which

would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

61-29-10.1. Brokerage relationships; creation.

A. For all regulated real estate transactions first executed on or after January 1, 2000, no agency relationship between a buyer, seller, landlord or tenant and a brokerage shall exist unless the buyer, seller, landlord or tenant and the brokerage agree, in writing, to the agency relationship. No type of agency relationship may be assumed by a buyer, seller, landlord, tenant or licensee, or created orally or by implication.

B. A brokerage may provide real estate services to a client pursuant to an express written agreement that does not create an agency relationship and no agency duties will be imposed on the brokerage.

C. A brokerage may provide real estate services to a customer without entering into an express written agreement and without creating an agency relationship and no agency duties will be imposed on the brokerage.

D. The commission shall promulgate rules governing the rights of clients or customers and the rights, responsibilities and duties of a brokerage in those brokerage relationships that are subject to the jurisdiction of the commission.

History: Laws 1999, ch. 127, § 2; 2003, ch. 36, § 2.

STATUTORY NOTES

Editor's notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

61-29-10.2. Licensee's duties; disclosure.

A. Prior to the time a licensee generates or presents any written document that has the potential to become an express written agreement, the licensee shall give to a prospective buyer, seller, landlord or tenant a list of the licensee's duties that are in accordance with requirements established by the commission.

B. Licensees shall perform all duties that are established for licensees by the commission.

History: Laws 1999, ch. 127, § 3; 2003, ch. 36, § 3; 2005, ch. 35, § 12.

STATUTORY NOTES

The 2005 amendment, effective January 1, 2006, rewrote Subsection A which formerly read: "A licensee shall give to a prospective buyer, seller, landlord or tenant, at the time when the parties enter into an express written agreement, a list of the licensee's duties that are in accordance with requirements established by the commission".

Editor's notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

61-29-10.3. Brokerage nonagency relationships. (Repealed.)

STATUTORY NOTES

Repeals. — Pursuant to Laws 2003 ch. 36 § 4, this section was repealed effective January 1, 2004.

61-29-11. Issuance, renewal and surrender of licenses.

A. The commission shall issue to each qualified applicant a license in the form and size prescribed by the commission.

B. The license shall show the name and address of the licensee. An associate broker's license shall show the name of the qualifying broker by whom the associate broker is engaged. The commission shall deliver or mail the license of the associate broker to the qualifying broker by whom the associate broker is engaged, and the qualifying broker shall display the license at the brokerage from which the associate broker will be conducting real estate business on behalf of the brokerage. The license of the associate broker shall remain in the custody and control of the qualifying broker as long as the associate broker is engaged by that qualifying broker.

C. Every license shall be renewed every three years on or before the last day of the month following the licensee's month of birth. Upon written request for renewal by the licensee, the commission shall certify renewal of a license if there is no reason or condition that might warrant the refusal of the renewal of a license. The licensee shall provide proof of compliance with continuing education requirements and pay the renewal fee. If a licensee has not made application for renewal of license, furnished proof of compliance with continuing education requirements and paid the renewal fee by the license renewal date, the license shall expire. The commission may require a person whose license has expired to apply for a license as if the person had not been previously licensed under Chapter 61, Article 29 NMSA 1978 and further require that the person be reexamined. The commission shall require a person whose license has expired to pay when the person applies for a license, in addition to any other fee, a late fee. If during a period of one year from the date the license expires the person or the person's spouse is either absent from this state on active duty military service or the person is suffering from an illness or injury of such severity that the person is physically or mentally incapable of making application for a license, payment of the late fee and reexamination shall not be required by the commission if, within three months of the person's permanent return to this state or sufficient recovery from illness or injury to allow the person to make an application, the person makes application to the commission for a license. A copy of that person's or that person's spouse's military orders or a certificate from the applicant's physician shall accompany the application. A person excused by reason of active duty military service, illness or injury as provided for in this subsection may make application for a license without imposition of the late fee. All fees collected pursuant to this subsection shall be disposed of in accordance with the provisions of Section 61-29-8 NMSA 1978. The revocation of a qualifying broker's license automatically suspends every associate broker's license granted to any person by virtue of association with the qualifying broker whose license has been revoked, pending a change of qualifying broker. Upon the naming of a new qualifying broker, the suspended license shall be reactivated without charge if granted during the three-year renewal cycle.

D. A qualifying broker shall conduct brokerage business under the trade name and from the brokerage address registered with the commission. Every brokerage shall have a qualifying broker in charge. The license of the

qualifying broker and each associate broker associated with that qualifying broker shall be prominently displayed in each brokerage office. The address of the office shall be designated in the qualifying broker's license, and a license issued shall not authorize the licensee to transact real estate business at any other address. In case of removal from the designated address, the licensee shall make application to the commission before the removal or within ten days thereafter, designating the new location of the licensee's office and paying the required fee, whereupon the commission shall issue a license for the new location if the new location complies with the terms of Chapter 61, Article 29 NMSA 1978. A qualifying broker shall maintain a sign at the brokerage office of such size and content as the commission prescribes.

E. When an associate broker is discharged or terminates association or employment with the qualifying broker with whom the associate broker is associated, the qualifying broker shall deliver or mail the associate broker's license to the commission within forty-eight hours. The commission shall hold the license on inactive status. It is unlawful for an associate broker to perform any of the acts authorized by Chapter 61, Article 29 NMSA 1978 either directly or indirectly under authority of an inactive license after the associate broker's association with a qualifying broker has been terminated and the associate broker's license has been returned to the commission until the appropriate fee has been paid and the license has been reissued and reactivated by the commission.

History: 1953 Comp., § 67-24-28, enacted by Laws 1959, ch. 226, § 10; 1965, ch. 304, § 6; 1977, ch. 295, § 3; 1979, ch. 94, § 3; 1980, ch. 82, § 11; 1981, ch. 22, § 2; 1983, ch. 261, § 4; 1985, ch. 89, § 2; 1987, ch. 90, § 4; 1993, ch. 253, § 2; 1995, ch. 143, § 2; 2001, ch. 163, § 7; 2003, ch. 22, § 5; 2005, ch. 35, § 13.

STATUTORY NOTES

Cross reference. — Telephone solicitation sales; automated telephone dialing systems for sales restricted; disclosure and other requirements established for authorized telephone solicitation sales; prohibited telephone solicitation, 57-12-22 NMSA 1978.

The 2005 amendment, effective January 1, 2006, rewrote Subsection B which formerly read: "The license shall show the name and address of the licensee. A real estate salesperson's license shall show the name of the broker by whom he is engaged. The license of the real estate salesperson shall be delivered or mailed to the broker by whom the real estate salesperson is engaged and shall be kept in the custody and control of that broker"; and substituted "associate broker" for "real estate salesperson" and inserted "qualifying" preced-

ing "broker" throughout the section; and in Subsection D, rewrote the first sentence which formerly read: "Each resident licensed broker shall maintain within this state a fixed office that conforms with local regulations. Every office operated by a licensed broker shall have a licensed broker in charge who is a natural person".

Editor's notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

61-29-12. Refusal, suspension or revocation of license for causes enumerated.

A. The commission may refuse to issue a license or may suspend, revoke, limit or condition a license if the applicant or licensee has by false or fraudulent representations obtained a license or, in performing or attempting

to perform any of the actions specified in Chapter 61, Article 29 NMSA 1978, an applicant or licensee has:

- (1) made a substantial misrepresentation;
- (2) pursued a continued and flagrant course of misrepresentation; made false promises through agents, salespersons, advertising or otherwise; or used any trade name or insignia of membership in any real estate organization of which the licensee is not a member;
- (3) paid or received a rebate, profit, compensation or commission to or from any unlicensed person, except the licensee's principal or other party to the transaction, and then only with that principal's written consent;
- (4) represented or attempted to represent a qualifying broker other than a qualifying broker with whom the licensee is associated without the express knowledge and consent of that qualifying broker;
- (5) failed, within a reasonable time, to account for or to remit any money coming into the licensee's possession that belongs to others, commingled funds of others with the licensee's own or failed to keep funds of others in an escrow or trustee account or failed to furnish legible copies of all listing and sales contracts to all parties executing them;
- (6) been convicted in any court of competent jurisdiction of a felony or any offense involving moral turpitude;
- (7) employed or compensated, directly or indirectly, a person for performing any of the acts regulated by Chapter 61, Article 29 NMSA 1978 who is not a licensed qualifying broker or an associate broker; provided, however, that a qualifying broker may pay a commission to a qualifying broker of another state as provided in Section 61-29-16.1 NMSA 1978;
- (8) failed, if a qualifying broker, to place as soon after receipt as is practicably possible, after securing signatures of all parties to the transaction, any deposit money or other money received by the qualifying broker in a real estate transaction in a custodial, trust or escrow account, maintained by the qualifying broker in a bank or savings and loan institution or title company authorized to do business in this state, in which the funds shall be kept until the transaction is consummated or otherwise terminated, at which time a full accounting of the funds shall be made by the qualifying broker. Records relative to the deposit, maintenance and withdrawal of the funds shall contain information as may be prescribed by the rules of the commission. Nothing in this paragraph prohibits a qualifying broker from depositing nontrust funds in an amount not to exceed the required minimum balance in each trust account so as to meet the minimum balance requirements of the bank necessary to maintain the account and avoid charges. The minimum balance deposit shall not be considered commingling and shall not be subject to levy, attachment or garnishment. This paragraph does not prohibit a qualifying broker from depositing any deposit money or other money received by the qualifying broker in a real estate transaction with another cooperating broker who shall in turn comply with this paragraph;
- (9) failed, if an associate broker, to place as soon after receipt as is practicably possible in the custody of the associate broker's qualifying broker, after securing signatures of all parties to the transaction, any deposit money or other money entrusted to the associate broker by any person dealing with the associate broker as the representative of the qualifying broker;

(10) violated a provision of Chapter 61, Article 29 NMSA 1978 or a rule promulgated by the commission;

(11) committed an act, whether of the same or different character from that specified in this subsection, that is related to dealings as a qualifying broker or an associate broker and that constitutes or demonstrates bad faith, incompetency, untrustworthiness, impropriety, fraud, dishonesty, negligence or any unlawful act; or

(12) been the subject of disciplinary action as a licensee while licensed to practice real estate in another jurisdiction, territory or possession of the United States or another country.

B. An unlawful act or violation of Chapter 61, Article 29 NMSA 1978 by an associate broker, employee, partner or associate of a qualifying broker shall not be cause for the revocation of a license of the qualifying broker unless it appears to the satisfaction of the commission that the qualifying broker had guilty knowledge of the unlawful act or violation.

History: 1953 Comp., § 67-24-29, enacted by Laws 1959, ch. 226, § 11; 1965, ch. 304, § 7; 1981, ch. 22, § 3; 1983, ch. 261, § 5; 1984, ch. 56, § 1; 1987, ch. 90, § 5; 1991, ch. 13, § 1; 2001, ch. 163, § 8; 2005, ch. 35, § 14; 2011, ch. 85, § 6.

STATUTORY NOTES

Cross reference. — Purchaser's right to cancel; escrow; violation, 47-11-5 NMSA 1978.

Trust accounts; escrow accounts; special accounts; pooled interest-bearing accounts; disposition of earned interest on certain accounts, 58-18B-5 NMSA 1978.

Disciplinary action not limited, 61-29-29 NMSA 1978.

The 2005 amendment, effective January 1, 2006, inserted "qualifying" preceding "broker" and substituted "qualifying broker" for "licensed broker" and "associate broker" for "salesperson" throughout the section.

The 2011 amendment, effective July 1, 2011, substituted "as provided in Section 61-

29-16.1 NMSA 1978" for "provided further that the nonresident broker shall not conduct in this state any of the negotiations for which a fee, compensation or commission is paid except in cooperation with a licensed qualifying broker of this state" in (A)(7).

Editor's notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978.

JUDICIAL DECISIONS

Judicial review.

Jurisdiction.

Notice.

Revocation.

Suspension.

Judicial review.

New Mexico Real Estate Commission's suspension of a real estate broker's license was subject to judicial review, and could be reversed only if it was unconstitutional, in excess of the Commission's authority or jurisdiction, procedurally or legally defective, unsupported by substantial evidence on the record as a whole, or arbitrary or capricious. *Elliott v. New Mexico Real Estate Comm'n*, 103 N.M. 273, 705 P.2d 679 (1985).

Jurisdiction.

Where a broker purchased real estate, con-

tacted a brokerage corporation to find a buyer for the contract, and then defaulted on the contract, the broker was not acting as a real estate broker, and thus, the Real Estate Commission of the State of New Mexico lacked jurisdiction to suspend the broker's license. *Vihstadt v. Real Estate Comm'n*, 106 N.M. 641, 748 P.2d 14 (1988).

New Mexico Real Estate Commission had jurisdiction over a complaint against a real estate broker in connection with the sale of a real estate contract because the broker represented himself as such and acted in that capacity, the contract itself indicated that the broker was being employed in a broker's capacity, and he received a commission for the transaction. *Elliott v. New Mexico Real Estate Comm'n*, 103 N.M. 273, 705 P.2d 679 (1985).

Notice.

Notice to a broker of a hearing to determine whether probable cause existed to suspend or revoke his real estate license was sufficient to apprise him of the charges against him where it quoted the relevant statute and specifies that his misrepresentations to a prospective house buyer violated those provisions because such conduct was incompetent, untrustworthy, and improper. Further, the broker had ample opportunity before the hearing to object to the notice or to request that a more definite statement be issued. *Wolfley v. Real Estate Comm'n*, 100 N.M. 187, 668 P.2d 303 (1983).

Revocation.

Where a real estate broker's registration forms failed to admit that he had default judgments against him for unpaid student loans and an automobile loan, but the New Mexico Real Estate Commission made no specific findings or conclusions that resolved whether the broker intended to deceive and to induce the Commission to act in reliance upon a misrepresentation of fact known by him to have been untrue, the license revocation action was remanded to the Commission with express directions to enter proper findings of fact and conclusions of law. *Padilla v. Real Estate Comm'n*, 106 N.M. 96, 739 P.2d 965 (1987).

Where the state real estate commission issued an order revoking a real estate broker's license, although the commission had jurisdiction over the transactions in question it erred

in not holding a hearing de novo required by statute. *Poorbaugh v. N.M. Real Estate Comm'n*, 91 N.M. 622, 578 P.2d 323 (1978).

Suspension.

New Mexico Real Estate Commission's suspension of a real estate broker's license for statutory violations in connection with the sale of a real estate contract was not prohibited because the broker entered into the agreement with the sellers as a broker, the fiduciary relationship was that of broker and client, the power of attorney was given to the broker later to enable him to complete the transaction without the sellers' presence, and the attorney-in-fact exception did not apply. *Elliott v. New Mexico Real Estate Comm'n*, 103 N.M. 273, 705 P.2d 679 (1985).

Substantial evidence supported a finding that a broker's actions in the sale of a house were untrustworthy, incompetent, and improper, and warranted the suspension of the broker's real estate license for four months, where he misrepresented both the size of the lot and the age and condition of the roof. Based on the special relationship the broker has as the former owner of the property and the listing agent, the broker knew or should have known the size of the lot, and his possession of an inspection report indicating that the roof was about 18 years old did not justify his claim that the roof was new because it had been resurfaced with plastic spray. *Wolfley v. Real Estate Comm'n*, 100 N.M. 187, 668 P.2d 303 (1983).

OPINIONS OF ATTORNEY GENERAL

Moral turpitude.

If the real estate commission is contemplating denial, suspension or revocation of a license because of a conviction of a felony or offense

involving moral turpitude by the licensee, the Criminal Offender Employment Act, 28-2-1 NMSA 1978, et seq., must be followed. 1982 Op. Atty. Gen. No. 82-2, 1982 N.M. AG LEXIS 23.

61-29-13. Provision for hearing before suspension or revocation of license.

The commission shall, before suspending or revoking any license, set the matter down for a hearing pursuant to the provisions of the Uniform Licensing Act [61-1-1 NMSA 1978].

History: 1953 Comp., § 67-24-30, enacted by Laws 1959, ch. 226, § 12; 1979, ch. 94, § 4.

STATUTORY NOTES

Editor's notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

JUDICIAL DECISIONS

Hearing.

Where the state real estate commission issued an order revoking a real estate broker's license, the commission had jurisdiction over

the transactions in question but had not held a hearing de novo required by statute. *Poorbaugh v. N.M. Real Estate Comm'n*, 91 N.M. 622, 578 P.2d 323 (1978).

61-29-14. Repealed.

STATUTORY NOTES

Repeals. — Laws 2003, ch. 22, § 7 repeals this section, as last affected by Laws 1959, ch. 226, § 13, relating to the creation of a real estate commission and nonresident broker and salesmen.

61-29-15. Maintenance of list of licensees.

The commission shall maintain a list of the names and addresses of all licensees licensed by it under the provisions of Chapter 61, Article 29 NMSA 1978, and of all persons whose license has been suspended or revoked within that year, together with such other information relative to the enforcement of the provisions of Chapter 61, Article 29 NMSA 1978 as it may deem of interest to the public. The commission shall also maintain a statement of all funds received and a statement of all disbursements, and copies of the statements shall be mailed by the commission to any person in this state upon request.

History: 1953 Comp., § 67-24-32, enacted by Laws 1959, ch. 226, § 14; 2001, ch. 163, § 10.

STATUTORY NOTES

Editor's notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

61-29-16. Suit by qualifying or associate broker.

No action for the collection of a commission or compensation earned by any person as a qualifying broker or an associate broker required to be licensed under the provisions of Chapter 61, Article 29 NMSA 1978 shall be maintained in the courts of the state unless such person was a duly licensed qualifying broker or associate broker at the time the alleged cause of action arose. In any event, suit against a member of the public as distinguished from any person

licensed under Chapter 61, Article 29 NMSA 1978 shall be maintained only in the name of the qualifying broker.

History: 1953 Comp., § 67-24-33, enacted by Laws 1959, ch. 226, § 15; 2005, ch. 35, § 16.

STATUTORY NOTES

The 2005 amendment, effective January 1, 2006, inserted “qualifying or associate” and deleted “or salesman” in the section heading; substituted “qualifying broker or associate broker” for “real estate broker or salesman” and “Chapter 61, Article 29 NMSA 1978” for “this act” throughout the section.

Editor’s notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16,

2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

JUDICIAL DECISIONS

Corporations.
Exemptions.
Foreign licensure.
Time of licensure.
Unlicensed persons.
Unlicensed Persons..

Corporations.

Realty corporations were not entitled to a real estate commission pursuant to a written agreement to sell property because the corporations failed to prove that they were licensed real estate brokers. *Star Realty Co. v. Sellers*, 73 N.M. 207, 387 P.2d 319 (1963).

Exemptions.

Former lessee and owner of a building located on leased premises could not maintain an action to recover compensation or a commission from the landowner after he negotiated a new lease between the landowner and a company that purchased the building because he was not a licensed real estate broker at the time he negotiated the lease. The former lessee was not exempted from the provisions of the Real Estate Brokers and Salesmen Act as either a lessor or an owner because he was not a party to the lease and did not negotiate it in the regular course of management of the property. *Bosque Farms Home Ctr. v. Tabet Lumber Co.*, 107 N.M. 115, 753 P.2d 894 (1988).

Foreign licensure.

A competent broker, licensed in another state, who becomes licensed in New Mexico before his cause of action arises, should be permitted to recover his commission. *Lakeview*

Invs. v. Alamogordo Lake Vill., Inc., 86 N.M. 151, 520 P.2d 1096 (1974).

Time of licensure.

Complaint for commissions due should not have been dismissed for failure to state a cause of action where the real estate broker became licensed after the commission contract was entered into, but before the sales for which commissions were allegedly due; the breach occurred after broker’s licensing and that was when the cause of action arose. *Lakeview Invs. v. Alamogordo Lake Vill., Inc.*, 86 N.M. 151, 520 P.2d 1096 (1974).

Unlicensed persons.

Where an unlicensed person brought parties together for the purposes of buying and selling real estate he was not entitled to a commission. *Watts v. Andrews*, 98 N.M. 404, 649 P.2d 472 (1982).

Unlicensed realtor, who could not recover against his employer for commissions under this section, could likewise not maintain an action against a bank for which he worked as a contractor. *Bank of New Mexico v. Freedom Homes*, 94 N.M. 532, 612 P.2d 1343 (Ct. App. 1980).

Unlicensed Persons.

This section barred plaintiff, a Texas real estate agent, from recovering a real estate commission on the sale of a ranch because the Texas agent was acting as a broker without a valid New Mexico broker’s license or a written foreign broker’s agreement. *PC Carter Co. v. Miller*, N.M. , 253 P.3d 950 (Ct. App. 2011).

61-29-16.1. Foreign brokers; nonresident licensees.

A. A foreign associate broker or qualifying broker currently licensed by another state or licensing jurisdiction other than New Mexico may engage in real estate activity in New Mexico as a foreign broker; provided that the foreign broker enters into a transaction-specific written agreement with a New Mexico licensed qualifying broker prior to commencing such real estate activity. The foreign broker shall comply with all New Mexico laws, including those acts regulated by Chapter 61, Article 29 NMSA 1978.

B. An associate broker or qualifying broker with a license application address that is not within the state of New Mexico shall file with the commission an irrevocable consent that lawsuits and actions may be commenced against the associate broker or qualifying broker in the proper court of any county of this state in which a cause of action may arise or in which the plaintiff may reside, by service on the commission of any process or pleadings authorized by the laws of this state, the consent stipulating and agreeing that such service of process or pleadings on the commission is as valid and binding as if personal service had been made upon the associate broker or qualifying broker in New Mexico. Service of process or pleadings shall be served in duplicate upon the commission; one shall be filed in the office of the commission and the other immediately forwarded by certified mail to the main office of the associate broker or qualifying broker against whom the process or pleadings are directed.

History: Laws 2005, ch. 35, § 15; 2011, ch. 85, § 7.

STATUTORY NOTES

The 2011 amendment, effective July 1, 2011, in the section heading, added "Foreign brokers" and deleted "consent to service" following "licensees"; added (A); added the (B) designation; in (B), deleted "A nonresident" from the beginning of the paragraph; added "with a license application address that is not within the state of New Mexico," deleted "nonresident" preceding "associate broker," substituted "associate broker or qualifying broker" for "nonresident licensee" in the second and last sentences, deleted the former second sentence, which read: "The instrument containing the consent shall be acknowledged and, if executed on behalf of a corporation or association, shall be accompanied by a certified copy of the

resolution of the proper officers or managing board authorizing the executing officer to execute the instrument"; and made a stylistic change.

Effective dates. — Laws 2005, ch. 35, § 21A makes this section effective January 1, 2006.

Editor's notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978. See 12-1-8 NMSA 1978.

61-29-17. Penalty; injunctive relief.

A. Any person who violates any provision of Chapter 61, Article 29 NMSA 1978 is guilty of a fourth degree felony and shall be punished by a fine of not more than five thousand dollars (\$5,000) or by imprisonment for a definite term of eighteen months, or both.

B. In the event any person has engaged or proposes to engage in any act or practice violative of a provision of Chapter 61, Article 29 NMSA 1978, the

attorney general or the district attorney of the judicial district in which the person resides or the judicial district in which the violation has occurred or will occur shall, upon application of the commission, maintain an action in the name of the state to prosecute the violation or to enjoin the proposed act or practice.

C. In any action brought under Subsection B of this section, if the court finds that a person is engaged or has willfully engaged in any act or practice violative of a provision of Sections 61-29-1 through 61-29-18 NMSA 1978, the attorney general or the district attorney of the judicial district in which the person resides or the judicial district in which the violation has occurred or is occurring shall, upon petition to the court, recover on behalf of the state a civil penalty not exceeding five thousand dollars (\$5,000) per violation and attorney fees and costs.

History: 1953 Comp., § 67-24-34, enacted by Laws 1965, ch. 304, § 8; 1993, ch. 192, § 2; 2011, ch. 85, § 8.

STATUTORY NOTES

The 2011 amendment, effective July 1, 2011, in (A), substituted “fourth degree felony and shall be punished by a fine of not more than five thousand dollars (\$5,000) or by imprisonment for a definite term of eighteen months” for “misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than six months” in the first sentence and deleted the former second sentence, which read: “Any corporation or business association which violates any provision of Chapter 61, Article 29 NMSA 1978 shall be punished by a fine of not more than one thousand dollars

(\$1,000)”; deleted “business association or corporation” following “any person” in (B); deleted “of New Mexico” following “state” in (C); and made a stylistic change.

Editor’s notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978.

61-29-17.1. Recompiled.

STATUTORY NOTES

Editor’s notes. — This section, relating to disciplinary action by the New Mexico real estate commission concerning time share proj-

ects, was recompiled as 47-11-11.2 NMSA 1978.

61-29-17.2. Unlicensed activity; civil penalty; administrative costs.

The commission may impose a civil penalty on any person who is found, through a court or administrative proceeding, to have acted in violation of Chapter 61, Article 29 NMSA 1978 in an amount not to exceed one thousand dollars (\$1,000) for each violation or, if the commission can so determine, in the amount of the total commissions received by the person for the unlicensed activity. The commission may assess administrative costs for any investigation and administrative or other proceedings against any such person. Any money collected by the commission under the provisions of this section shall be deposited into the real estate recovery fund.

History: Laws 2001, ch. 163, § 11; 2011, ch. 85, § 9.

STATUTORY NOTES

The 2011 amendment, effective July 1, 2011, added “administrative costs” in the section heading; in the first sentence, added “on any person who is found, through a court or administrative proceeding, to have acted in violation of Chapter 61, Article 29 NMSA 1978” and “if the commission can so determine, in the amount of the total commissions received by the person for the unlicensed activity”; in the second sentence, added “The commission may” at the beginning, deleted “who is found, through a court or administrative proceeding, to have acted without a li-

cense in violation of Chapter 61, Article 29 NMSA 1978” following “person”; added the third sentence; and made related and stylistic changes.

Editor’s notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978.

61-29-18. Interpretation of act.

Nothing contained in Chapter 61, Article 29 NMSA 1978 shall affect the power of cities and villages to tax, license and regulate qualifying brokers or associate brokers. The requirements hereof shall be in addition to the requirements of an existing or future ordinance of any city or village so taxing, licensing or regulating qualifying brokers or associate brokers.

History: 1953 Comp., § 67-24-35, enacted by Laws 1959, ch. 226, § 18; 2005, ch. 35, § 17.

STATUTORY NOTES

The 2005 amendment, effective January 1, 2006, substituted “in Chapter 61, Article 29 NMSA 1978” for “in this act” and substituted “qualifying brokers or associate brokers” for “real estate brokers”.

Editor’s notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which

would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

61-29-19. Termination of agency life; delayed repeal. (Repealed.)

Repealed by Laws 2011, ch. 85, § 11, effective July 1, 2011.

History: 1953 Comp., § 67-24-36, enacted by Laws 1978, ch. 203, § 2; 1981, ch. 241, § 33; 1983, ch. 261, § 7; 1987, ch. 333, § 12; 1993, ch. 83, § 7; 1993, ch. 253, § 3; 2000, ch. 4, § 17; 2005, ch. 208, § 21; 2011, ch. 30, § 8.

STATUTORY NOTES

Editor's notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed this section. See 12-1-8 NMSA 1978.

61-29-19.1. Real estate education and training fund created; purpose; appropriation.

A. The “real estate education and training fund” is created in the state treasury. The fund shall consist of an initial transfer of the balance in the real estate recovery fund as provided in Subsection C of this section; legislative appropriations to the fund; fees charged by the commission for approval of real estate education sponsors, courses and instructors; gifts, grants, donations and bequests to the fund; and income from investment of the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year.

B. The fund shall be administered by the commission, and money in the fund is subject to appropriation by the legislature to the commission to improve real estate education and to train real estate instructors. The commission shall promulgate rules specifying the manner in which the fund shall be administered.

C. Notwithstanding the provisions of Sections 61-29-21 and 61-29-22 NMSA 1978, on July 1, 2005, the balance in excess of two hundred fifty thousand dollars (\$250,000) in the real estate recovery fund shall be transferred to the real estate education and training fund.

History: Laws 2005, ch. 35, § 20.

STATUTORY NOTES

Effective dates. — Laws 2005, ch. 35, § 21A makes this section effective January 1, 2006.

Editor's notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

61-29-20. Short title.

Sections 1 through 10 [61-29-20 to 61-29-29 NMSA 1978] of this act may be cited as the “Real Estate Recovery Fund Act.”

History: Laws 1980, ch. 82, § 1.

STATUTORY NOTES

Editor's notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

61-29-21. Fund created.

There is created in the state treasury a fund which shall be known as the “real estate recovery fund” to be administered by the real estate commission in accordance with the provisions of the Real Estate Recovery Fund Act [61-29-20 NMSA 1978]. All money received by the real estate commission pursuant to the Real Estate Recovery Fund Act shall be credited to the real estate recovery fund. The state treasurer may invest money in the real estate recovery fund in United States bonds or treasury certificates under such rules and regulations as may be prescribed by the state board of finance, provided that no investments shall be made which will impair the necessary liquidity required to satisfy judgment payments awarded pursuant to the Real Estate Recovery Fund Act. All interest earned from such investments shall be credited to the fund to pay any future judgments only.

History: Laws 1980, ch. 82, § 2.

STATUTORY NOTES

Cross reference. — Real estate education and training fund created; purpose; appropriation, 61-29-19.1 NMSA 1978.

Editor's notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of

Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

61-29-22. Additional fees.

A. The commission shall collect an annual fee not in excess of ten dollars (\$10.00) from each real estate licensee prior to the issuance of the next license.

B. The commission shall collect from each successful applicant for an original real estate license, in addition to the original license fee, a fee not in excess of ten dollars (\$10.00).

C. The additional fees provided by this section shall be credited to the real estate recovery fund. The amount of the real estate recovery fund shall be maintained at one hundred fifty thousand dollars (\$150,000). If the real estate recovery fund falls below this amount, the commission shall have authority to adjust the annual amount of additional fees to be charged licensees or to draw on the real estate commission fund in order to maintain the fund level as required in this section. If on July 1 of any year, the balance in the fund exceeds four hundred thousand dollars (\$400,000), the amount over four hundred thousand dollars (\$400,000) shall be transferred to the real estate commission fund to be used for the purposes of carrying out the provisions of Chapter 61, Article 29 NMSA 1978.

History: Laws 1980, ch. 82, § 3; 1987, ch. 90, § 6; 1993, ch. 253, § 4; 2003, ch. 22, § 6; 2011, ch. 85, § 10.

STATUTORY NOTES

Cross reference. — Real estate education and training fund created; purpose; appropriation, 61-29-19.1 NMSA 1978.

The 2011 amendment, effective July 1, 2011, substituted “one hundred fifty thousand dollars (\$150,000)” for “two hundred fifty thousand dollars (\$250,000)” in (C); and made a stylistic change.

Editor’s notes. — Laws 2011, ch. 30, § 8,

approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978.

61-29-23. Judgment against qualifying or associate broker; petition; requirements; recovery limitations.

A. When any aggrieved person claims a pecuniary loss caused by a state-licensed qualifying broker or associate broker based upon fraud, knowing or willful misrepresentation or wrongful conversion of funds entrusted to the qualifying broker or associate broker, which loss arose out of any transaction for which a qualifying broker’s or an associate broker’s license is required and arose out of or during the course of a transaction involving the sale, lease, exchange or other disposition of real estate, where the cause of action arose on or after July 1, 1980, that person may, within one year after obtaining a final judgment based upon fraud, knowing or willful misrepresentation or wrongful conversion of funds entrusted to the qualifying broker or associate broker and the termination of all proceedings, including appeals in connection with the judgment, file a verified petition with the commission for payment from the real estate recovery fund for the actual damages included in the judgment and unpaid, but not more than ten thousand dollars (\$10,000) per judgment regardless of the number of persons aggrieved or parcels of real estate involved in the transaction. The aggregate amount recoverable by all claimants for losses caused by any one licensee shall not exceed thirty thousand dollars (\$30,000).

B. A copy of the petition shall be served upon the commission in the manner provided by law for service of a civil summons.

C. The commission shall conduct a hearing on the petition after service of the petition upon the commission. At the hearing, the petitioner shall be required to show that the petitioner:

(1) is not the spouse of the judgment debtor, the personal representative of the spouse or related to the third degree of consanguinity or affinity to the licensee whose conduct is alleged to have caused the loss;

(2) has complied with all the requirements of the Real Estate Recovery Fund Act [61-29-20 NMSA 1978];

(3) has obtained a judgment of the kind described in Subsection A of this section, the amount awarded and the amount owing at the date of the petition;

(4) has had execution issued upon the judgment and that the officer executing the writ has made a return showing that the judgment debtor has no

property within the state subject to execution. If execution is levied against the property of the judgment debtor, the petitioner shall show that the amount realized on the sale was insufficient to satisfy the judgment and shall set forth the amount realized from the sale and the balance remaining due on the judgment after application of the amount realized;

(5) has made reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment, including partnership assets, licensee's estate or any bond or insurance, and that the petitioner has exercised reasonable diligence to secure payment of the judgment from the assets of the judgment debtor; and

(6) has a judgment that is not:

(a) covered by any bond, insurance, surety agreement or indemnity agreement;

(b) a loss incurred by a partner, joint venturer, employer, employee or associate of the licensee whose conduct is alleged to have caused the loss; or a corporate officer or director of a corporation in which the judgment debtor is also an officer, director or employee; or

(c) a loss incurred by any business or other entity in which the licensee whose conduct is alleged to have caused the loss has any interest at the time of the conduct alleged to have caused the loss.

History: Laws 1980, ch. 82, § 4; 1987, ch. 90, § 7; 2005, ch. 35, § 18.

STATUTORY NOTES

Cross reference. — Commission; review; compromise, 61-29-24 NMSA 1978.

Commission finding, 61-29-25 NMSA 1978.

The 2005 amendment, effective January 1, 2006, substituted “qualifying or associate broker” for “or salesperson” in the section heading; and substituted “qualifying broker or associate broker” for “real estate broker or salesperson” throughout the section.

Editor's notes. — Laws 2011, ch. 30, § 8,

approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

JUDICIAL DECISIONS

Purpose of fund.

Under the Real Estate Recovery Fund Act, the Commission administers a fund for the benefit of persons who are unable to satisfy judgments obtained against a licensed real estate broker or salesperson based upon particular acts of wrongdoing. Recovery is limited to

unsatisfied judgments based upon any transaction for which a real estate broker's or salesperson's license is required by law. *Garcia v. N.M. Real Estate Comm'n*, 108 N.M. 591, 775 P.2d 1308 (Ct. App. 1989), cert. denied, 108 N.M. 624, 776 P.2d 846 (1989).

61-29-24. Commission; review; compromise.

Upon receipt of a petition as required by Section 61-29-23 NMSA 1978, the commission shall conduct a hearing in substantially the same manner as set forth in the Uniform Licensing Act [61-1-1 NMSA 1978], including Sections 61-1-9 through 61-1-11 NMSA 1978. Review of the commission's decision shall

be in the manner provided by Section 61-1-20 NMSA 1978. The commission may compromise a claim based upon the application of a petitioner.

History: Laws 1980, ch. 82, § 5; 1987, ch. 90, § 8.

STATUTORY NOTES

Editor's notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

61-29-25. Commission finding.

If the commission makes a specific finding of the items enumerated in Section 61-29-23 NMSA 1978 and determines that a claim should be levied against the real estate recovery fund, the commission shall enter an order requiring payment from the fund of that portion of the petitioner's claim that is payable from the fund pursuant to the provisions of and in accordance with the limitations contained in Section 61-29-23 NMSA 1978.

History: Laws 1980, ch. 82, § 6; 1987, ch. 90, § 9.

STATUTORY NOTES

Editor's notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

61-29-26. Insufficient funds.

If at any time the money deposited in the real estate recovery fund is insufficient to satisfy any authorized claim for payment from the fund, the real estate commission shall, when sufficient money has been deposited in the fund, satisfy such unpaid claims in the order that they were originally filed, together with accumulated interest at the rate of eight percent per year.

History: Laws 1980, ch. 82, § 7.

STATUTORY NOTES

Editor's notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

61-29-27. Subrogation.

When the commission makes any payment from the real estate recovery fund to a judgment creditor, the commission shall be subrogated to all rights of the judgment creditor for the amounts paid out of the fund and any amount and interest so recovered by the commission shall be deposited in the fund. The commission may, pursuant to the provisions of the Uniform Licensing Act [61-1-1 NMSA 1978], revoke, suspend or refuse to renew the license of any qualifying broker or associate broker for whom payment from the fund has been made in accordance with the provisions of the Real Estate Recovery Fund Act [61-29-20 NMSA 1978]. Further, the commission may refuse to issue or renew the license of any person for whom payment from the real estate recovery fund has been made, until that person reimburses the fund for all payments made on that person's behalf.

History: Laws 1980, ch. 82, § 8; 1987, ch. 90, § 10; 2005, ch. 35, § 19.

STATUTORY NOTES

The 2005 amendment, effective January 1, 2006, substituted "qualifying broker or associate broker" for "real estate broker or salesperson" near the middle of the second sentence.

Editor's notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which

would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

61-29-28. Waiver.

The failure of any person to comply with all of the provisions of the Real Estate Recovery Fund Act [61-29-20 NMSA 1978] shall constitute a waiver of any rights pursuant to that act.

History: Laws 1980, ch. 82, § 9.

STATUTORY NOTES

Editor's notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July

1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

61-29-29. Disciplinary action not limited.

Nothing contained in the Real Estate Recovery Fund Act [61-29-20 NMSA 1978] shall limit the authority of the real estate commission to take disciplinary action against a licensee for a violation of any of the provisions of Section 61-29-12 NMSA 1978 or of the rules and regulations of the real estate commission, nor shall the repayment in full of all obligations to the real estate recovery fund by any licensee nullify or modify the effect of any other

disciplinary proceeding brought pursuant to the provisions of Section 61-29-12 NMSA 1978 or the rules and regulations promulgated by the commission.

History: Laws 1980, ch. 82, § 10.

STATUTORY NOTES

Editor's notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July 1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

Real Estate Commission Rules

New Mexico Administrative Code

The regulations contained in this publication were provided to the publisher by the New Mexico Real Estate Commission and may differ from those which appear in the NM LAW ON DISC.

Title 16. OCCUPATIONAL AND PROFESSIONAL LICENSING

CHAPTER 61

REAL ESTATE BROKERS

PART 1

GENERAL PROVISIONS

16.61.1.7. Definitions.

A. Acceptable financial institution: is a federally insured bank, savings and loan or title company authorized to do business in the state of New Mexico.

B. Agency: the fiduciary relationship created solely by the express written agency agreement between a person and a brokerage, authorizing the brokerage to act as agent for the person according to the scope of authority granted in that express written agreement for real estate services subject to the jurisdiction of the commission.

C. Agent: the brokerage authorized solely, by means of an express written agreement, to act as a fiduciary for a person and to provide real estate services that are subject to the jurisdiction of the commission; in the case of an associate broker, "agent" means the person who has been authorized to act by that associate broker's qualifying broker.

D. Approved education course: a commission approved course offered by a commission approved sponsor in real estate law and practice; real estate financing including mortgages and other financing techniques; material specific to the regulatory, technical and ethical practice of real estate; and all state and federal laws including but not limited to fair housing, the Americans with Disabilities Act (ADA), and lead-based paint disclosure.

E. Approved training course: A commission approved course offering in personal and property protection for the broker and clients; offerings in using

the computer, the internet, business calculators, and other technologies to enhance the broker's service to the public; offerings concerning professional development, customer relations skills, sales promotion including salesmanship, negotiation, marketing techniques, servicing the client, or similar courses.

F. Associate broker: a person holding a New Mexico associate broker's license who is affiliated with a New Mexico qualifying broker.

G. Broker: any person holding a current New Mexico associate broker's or qualifying broker's real estate license.

H. Brokerage: a person, corporation, partnership or association qualified by a New Mexico licensed qualifying broker to conduct real estate brokerage activity in New Mexico.

I. Brokerage relationship: the relationship between a customer or client and a brokerage for the provision of services in connection with a real estate transaction.

J. Brokerage trust account: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money belonging to others received during a real estate sales transaction.

K. Broker duties: the duties that brokers owe to their clients and customers in the course of a real estate transaction.

L. Broker in charge: a New Mexico licensed real estate broker qualified to be a qualifying broker who has been designated in writing by the qualifying broker to assume responsibility for the brokerage during a period of time when supervision by the qualifying broker is not possible.

M. Client: a person who has entered into an express written agreement with a brokerage for real estate services subject to the jurisdiction of the commission.

N. Credit hours(s): credits toward education requirements as assigned by the real estate commission for each commission-approved course.

O. Custodial trust account: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of an owner. The account shall be established in the owner's name with the qualifying broker as trustee. This account may be interest bearing.

P. Customer: a person who uses real estate services without entering into an express written agreement with a brokerage subject to the jurisdiction of the commission.

Q. Designated agent: a broker who is designated in writing by their qualifying broker to represent a client of the brokerage as their exclusive agent in a real estate transaction.

R. Designated agency: a policy chosen by the qualifying broker of a brokerage that discloses to a client of the brokerage that the broker representing them as an agent by means of an express written agency agreement is their only representative in the brokerage. The designated agency disclosure is made at the time that the client and the brokerage enter into an express written agency agreement, or at such time that the qualifying broker of a brokerage determines the need to designate one broker of the brokerage as agent of the buyer and another as agent of the seller in the same transaction.

S. Distance education: distance learning is education and training that takes place outside of the traditional classroom setting and in which other

instructional media are used because the instructor, teaching materials, and student are separated by either distance or time.

T. Dual agency: an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as a facilitator in a real estate transaction rather than as an exclusive agent for either party to the transaction.

U. Dual agent: the brokerage in a dual agency relationship working as a facilitator in a single transaction for both a buyer client and a seller client who have modified existing exclusive agency agreements with the brokerage.

V. Employee: for the purposes of Section 61-29-2 C (1) of the real estate license law, a person employed by an owner of real property, or a person employed by the brokerage acting on behalf of the owner of real property. In determining whether a person is an employee, as opposed to an independent contractor, the commission shall consider the following:

(1) does the employer withhold income tax from the person's wages, salary, or commission;

(2) does the employer pay a portion of the person's FICA tax;

(3) is the person covered by workers' compensation insurance;

(4) does the employer make unemployment insurance contributions on behalf of the person.

W. Errors and omissions insurance: a type of professional liability insurance that provides insurance coverage to holders of active New Mexico real estate brokers licenses for errors and omissions made during the course of real estate transactions, subject to the coverages, limitations, and exclusions of the specific insurance policy or policies in place.

X. Exclusive agency: an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interests of the person in a real estate transaction. Such agreements include buyer agency, seller agency, designated agency, and subagency agreements.

Y. Expired license: an associate broker's or qualifying broker's license that has not been renewed as of the last day of the month following the broker's birth month at the end of the broker's three-year licensing cycle.

Z. Express written agreement: any written agreement signed by all parties pertaining to a real estate transaction or the provision of real estate services.

AA. Facilitator: the role of a brokerage in either a dual agency relationship or a transaction brokerage relationship in which the exclusive relationships between a seller or landlord client or buyer or tenant client are modified so that the brokerage impartially facilitates the transaction.

BB. Foreign broker: a real estate brokerage licensed by a jurisdiction other than New Mexico engaged in real estate-related activities in New Mexico.

CC. Inactive broker: a New Mexico licensed real estate broker not currently affiliated with a New Mexico real estate brokerage and therefore ineligible to participate in any brokerage activity or collect fees or commissions in connection with such activity except as provided in Subsection C of 16.61.9.8 NMAC.

DD. In house transaction: a transaction that occurs under the supervision of one qualifying broker in the same brokerage.

EE. Land title trust account: a pooled interest-bearing account subject to the land title trust fund act.

FF. Mandatory course: the commission-approved course required of all brokers, except exempt brokers, as a condition of license renewal.

GG. Party to the transaction: a client or customer or any other person who utilizes real estate related services subject to the jurisdiction of the commission, not including a person who acquires an interest as security for an obligation.

HH. Person: any natural person, corporation, business trust, estate, trust, partnership, association, joint venture, governmental entity or other legal entity.

II. Post-licensing course: the commission-approved new broker business practices course required within the first year of licensure of brokers first licensed in New Mexico as associate brokers on or after January 1, 2012.

JJ. Principal: any person who authorizes or employs another to do certain acts on behalf of that person.

KK. Property ledger: a record of deposits and disbursements within a trust account that are associated with the same property or owner.

LL. Property management: real estate services as specified by a management agreement which include, but are not limited to, the marketing, showing, renting and leasing of real property; the collection and disbursement of funds on behalf of owners; the supervision of employees and vendors; the coordination of maintenance and repairs; the management of tenant relations; or the preparation of leases or rental agreements, financial reports and other documents. In the course of listing and marketing properties for sale, inspections of the property, repairs and maintenance incident to the sale and authorized by the owner shall not be considered property management.

MM. Property management trust account: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money belonging to others received during the management of real property for others.

NN. Property manager: a broker who, for a fee, salary, commission or other valuable consideration, is engaged in managing property for others.

OO. Qualifying broker: a broker who has qualified a proprietorship, corporation, partnership or association to do business as a real estate brokerage in the state of New Mexico, and who discharges the responsibilities of a qualifying broker as set forth in 16.61.16.9 NMAC.

PP. Reconciliation: the process by which the property ledgers within a trust account are balanced with the trust account and the trust account is balanced with the bank statement.

QQ. Referral: the communication by one broker or brokerage to another broker or brokerage of the identity of a potential buyer/tenant or seller/lessor of real property available for sale, lease, rent or exchange.

RR. Responsible person: the qualifying broker or associate broker for whom an unlicensed assistant works. If an unlicensed assistant works for more than one broker, each broker for whom the unlicensed assistant works is a responsible person. Each responsible person will be subject to the provisions of Section 61-29-12 A (7) NMSA 1978.

SS. Scope of authority: the range of authority granted by the principal to act on behalf of that principal.

TT. Short-term/vacation rental: with the exception of hotels and motels, the rental of real property for a period of 29 days or less.

UU. Special trust account: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of a named party to a transaction. This account may be interest bearing.

VV. Sponsor: an organization or entity approved by the real estate commission to offer courses approved by the real estate commission.

WW. Subagent: an agent of the agent, authorized to act for the agent in performing functions undertaken by the agent for his principal.

XX. Transaction: any real estate activity subject to the jurisdiction of the commission.

YY. Transaction broker: a qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship. The transaction broker relationship is a non-fiduciary relationship.

ZZ. Trust account: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of others received by the qualifying broker in a transaction which includes a brokerage trust account, property management trust account, custodial trust account or special trust account.

AAA. Unlicensed assistant: a person who does not hold an active New Mexico broker's license and works under the supervision of a responsible person to perform duties for the brokerage as provided in 16.61.21 NMAC.

[16.61.1.7 NMAC - Rp, 16.61.1.7 NMAC, 1-1-2012]

16.61.1.8. Offices.

The offices of the New Mexico real estate commission will be located in Albuquerque, New Mexico.

[16.61.1.8 NMAC - Rp, 16.61.1.8 NMAC, 1-1-2012]

16.61.1.9. Telephonic meeting attendance.

Commission members may participate in a meeting of the commission by means of a conference telephone or similar communications equipment and participation by telephone may only occur when it is difficult or impossible for commission members to attend a meeting of the commission, i.e. when circumstances beyond the member's control would make attendance in person extremely burdensome.

[16.61.1.9 NMAC - Rp, 16.61.1.9 NMAC, 1-1-2012]

PART 2

LICENSE AND OTHER FEES

16.61.2.7. Definitions.

Refer to Definitions 16.61.1.7 NMAC.

[16.61.2.7 NMAC - Rp, 16 NMAC 61.2.7, 1-1-2002]

16.61.2.8. Fees.

A. For each examination, a fee not to exceed ninety-five dollars (\$95.00).

B. For each broker's license issued, and for each renewal thereof, a fee not to exceed two hundred seventy dollars (\$270.00).

C. For each license transferred, a fee not to exceed twenty dollars (\$20.00). If there are eleven or more affected licenses in the brokerage, the total transfer fee paid shall not exceed two hundred dollars (\$200.00).

D. For each duplicate license, where the license is lost or destroyed and affidavit is made thereof, a fee not to exceed twenty dollars (\$20.00).

E. For each license history, a fee not to exceed twenty-five dollars (\$25.00).

F. For copying of documents by the commission a fee not to exceed one dollar (\$1.00) per copy.

G. For each state of New Mexico real estate license law and rules manual a fee not to exceed ten dollars (\$10.00).

H. For each hard copy or electronic list of licensed real estate brokers, a fee not to exceed fifty dollars (\$50.00).

I. For each initial broker's license, and for the renewal thereof, a fee not to exceed ten dollars (\$10.00) shall be credited to the real estate recovery fund pursuant to NMSA 1978 Section 61-29-22 if in the commission's judgment the assessment of such fee is necessary to maintain the fund at its statutory minimum level.

J. For each application to the commission to become an approved sponsor of real estate pre-licensing and continuing education courses, a fee not to exceed five hundred dollars (\$500.00) and for each renewal thereof a fee not to exceed five hundred dollars (\$500.00).

K. For each application to the commission to become an approved instructor of real estate pre-licensing and continuing education courses, a fee not to exceed seventy dollars (\$70.00) per course.

L. For each application to the commission to renew certification as a commission approved instructor of real estate pre-licensing and continuing education courses, a fee not to exceed one hundred dollars (\$100.00).

[16.61.2.8 NMAC - Rp, 16 NMAC 61.2.8, 1-1-2002; A, 01-01-2004; A, 1-1-2006; A, 1-1-2012]

16.61.2.9. Fees non-refundable.

Fees paid to the commission pursuant to 16.61.2.8 NMAC of the commission rules are non-refundable.

[16.61.2.9 NMAC - Rp, 16 NMAC 61.2.9, 1-1-2002; A, 01-01-2004; A, 1-1-2006]

PART 3

REAL ESTATE BROKER'S LICENSE: EXAMINATION AND LICENSING APPLICATION REQUIREMENTS

16.61.3.7. Definitions.

Refer to 16.61.1.7 NMAC.

[16.61.3.7 NMAC - Rp, 16.61.3.7 NMAC, 1-1-2012]

16.61.3.8. Types of licenses.

The New Mexico real estate commission issues two types of real estate broker's licenses; an associate broker's license and a qualifying broker's license. Both types of licenses are issued only to individuals. The requirements for obtaining both types of licenses are described below.

[16.61.3.8 NMAC - N, 1-1-2012]

16.61.3.9. Examination and licensing requirements.

A. Associate broker's license: prior to applying for an associate broker's license, an applicant must pass the real estate broker's examination prescribed by the commission.

B. Examination application.

(1) Applications to take the broker's examination are made directly to the commission's examination contractor on a form prescribed by the commission and provided by the contractor in a candidate information bulletin. Along with the application form, an applicant must submit certificates of completion of commission-approved 30 hour pre-licensing courses in real estate principles and practice, real estate law, and broker basics. These pre-licensing courses must have been completed within the three years prior to application.

(2) Exam candidates currently licensed as real estate salespersons or brokers in other states or jurisdictions will be exempted from completing the real estate principles and practice and real estate law courses in New Mexico if they can provide a certified license history from their resident licensing jurisdiction documenting that they have completed these courses or their equivalent.

(3) Except in a case of a license applicant from a state or jurisdiction with which the New Mexico real estate commission has a written license recognition agreement, an exam applicant cannot be exempted from completing the commission-approved 30 hour broker basics course.

(4) License applicants currently licensed by state or jurisdiction with which the commission has a written license recognition agreement are not required to take any of the prescribed pre-licensing courses or take either portion of the broker's examination to be eligible to apply for a New Mexico broker's license.

(5) Exam applicants exempted from taking the real estate principles and practice and real estate law courses by virtue of having a current real estate broker's license in another state shall attach to their examination application a letter of pre-licensing education waiver from the commission and a certificate of completion of the 30 hour broker basics course.

(6) All other applicants for the examination shall attach to their license examination application certificates documenting completion of one 30 hour pre-licensing course each in real estate principles and practice, real estate law, and broker basics.

(7) At the time of making application to take the examination, applicants shall pay to the commission's examination contractor a non-refundable fee not to exceed \$95.

(8) Applicants are required to pass both the state and national portions of the examination with a minimum score of 75 no later than 90 calendar days

after the first time they took the examination. Applicants failing to pass both portions of the examination within this time frame will be required to re-take and pass both portions of the examination before being eligible to apply for a broker's license.

C. License application.

(1) Upon passing both portions of the New Mexico real estate broker's examination, an individual has six months to apply for an associate broker's license on the application prescribed by the commission.

(2) An individual who fails to apply for an associate broker's license within six months of having passed both portions of the broker's examination shall be required to re-take both portions of the examination, unless they provide in writing to the commission a reasonable explanation for why they were unable to meet the six month deadline.

(3) An applicant for an associate broker's license shall be a legal resident of the United States and have reached the age of majority in New Mexico or in the state in which the applicant resides.

(4) Along with the license application form prescribed by the commission, the applicant must submit a written score report provided by the examination contractor documenting that he/she has passed both portions of the examination with a minimum score of 75, documentation of having been fingerprinted for purposes of matching with state and national arrest record databases, a certificate of insurance documenting that the applicant has a current errors and omissions insurance policy that meets the requirements for such insurance as described in 16.61.5 NMAC of the commission rules, and a non-refundable license application fee not to exceed \$270.

D. Qualifying broker's license examination: there is no separate qualifying broker's examination.

E. License application.

(1) Before being issued a qualifying broker's license, an applicant must document that their associate broker's or equivalent license has been on active status with a real estate brokerage for two of the last five years immediately preceding their application to become a qualifying broker, and must provide a certificate of completion of the commission-approved 30 hour brokerage office administration course. Applicants with current licenses who can document that they were New Mexico qualifying broker's on or before December 31, 2005 are not subject to those requirements and may regain qualifying broker status by filling a trade name registration form and paying the trade name registration fee to the commission.

(2) Brokers who were salespersons on January 1, 2006 when the license law was amended to eliminate the salesperson category and were converted to associate broker status, shall in addition to meeting the requirements in the preceding section, document that they have met the requirements for and passed the associate broker's examination prior to being issued a qualifying broker's license.

(3) An application for a New Mexico qualifying broker's license shall be made on the form prescribed by the commission and shall be accompanied by documentation of having been fingerprinted for purposes of matching with state and national arrest record databases, a certificate documenting that the applicant has a current errors and omissions insurance policy that meets the

requirements for such insurance as described in 16.61.5.8 NMAC of the commission rules, and a non-refundable license application fee not to exceed \$270.

[16.61.3.9 NMAC - Rp, 16.61.3.8 NMAC, 1-1-2012]

PART 4

SALESPERSON'S LICENSE: EXAMINATION AND LICENSING APPLICATION REQUIREMENTS [REPEALED 01-01-06]

PART 5

ERRORS AND OMISSIONS INSURANCE

16.61.5.7. Definitions.

Refer to 16.61.1.7 NMAC.

[16.61.5.7 NMAC - N, 1-1-2002]

16.61.5.8. Group errors and omissions insurance policy.

Effective January 1, 2002 every active New Mexico real estate broker shall have in effect a policy of errors and omissions insurance. The commission shall enter into a contract with a qualified insurance carrier or its agent or broker to make available to all New Mexico real estate brokers and broker applicants a group policy of insurance under the following terms and conditions:

A. the insurance carrier is licensed and authorized by the New Mexico department of insurance to write policies of errors and omissions insurance in New Mexico;

B. the insurance carrier maintains an A.M. Best rating of "B" or better;

C. the insurance carrier will collect premiums, maintain records and report names of those insured and a record of claims to the commission on a timely basis and at no expense to the state;

D. the insurance carrier has been selected through a competitive bidding process;

E. the contract and policy are in conformance with Part 5 and all relevant New Mexico statutory requirements.

[16.61.5.8 NMAC - N, 1-1-2002; A, 1-1-2006]

16.61.5.9. Terms of coverage.

The group policy shall provide, at a minimum, the following terms of coverage:

A. coverage of all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage;

B. an annual premium not to exceed the amount set by statute 61-29-4.2B NMSA 1978;

C. that the coverage cannot be cancelled by the insurance carrier except for non-payment of the premium or in the event a broker becomes inactive or has their license revoked or an applicant is denied a license;

D. pro-ration of premiums for coverage which is purchased during the course of the calendar year but with no provision for refunds of unused premiums;

E. not less than \$100,000 coverage for each licensed individual and entity per covered claim regardless of the number of brokers or entities to which a settlement or claim may apply;

F. an aggregate limit of \$500,000 per licensed individual or entity;

G. a deductible amount for each occurrence of not more than \$1,000 per claim and no deductible for legal expenses and defense;

H. the obligation of the insurance carrier to defend all covered claims;

I. coverage of a broker's use of lock boxes;

J. the ability of a broker, upon payment of an additional premium, to obtain higher or excess coverage or to purchase additional coverage from the insurance provider as may be determined by the provider;

K. that coverage is individual and license specific and will cover the associate broker regardless of changes in qualifying broker;

L. an extended reporting period of not less than 365 days;

M. a conformity endorsement allowing a New Mexico resident broker to meet errors and omissions insurance requirements for an active license in another group mandated state without the need to purchase separate coverage in that state.

[16.61.5.9 NMAC - N, 1-1-2002; A, 1-1-2006; A, 12-31-2008]

16.61.5.10. Equivalent errors and omissions insurance policies.

New Mexico real estate associate broker or qualifying broker applicants may obtain errors and omissions coverage equivalent to the group plan from any insurance carrier subject to the following terms and conditions.

A. The insurance carrier is licensed and authorized by the New Mexico department of insurance to write policies of errors and omissions insurance in this state and is in conformance with all New Mexico statutes.

B. The insurance provider maintains an A.M. Best rating of "B" or better.

C. The policy, at a minimum, complies with all relevant conditions set forth in this rule and the insurance carrier so certifies in a certificate issued to the insured real estate broker or broker applicant in a form acceptable to the commission and agrees to immediately notify the commission of any cancellation or lapse in coverage. The commission will make no independent determination of whether equivalent policies meet the requirements of Part 5.

D. Coverage includes all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage.

E. Coverage cannot be cancelled by the insurance provider except for nonpayment of premium or in the event a broker becomes inactive or the license is revoked, or in the event an applicant is denied a license.

F. Coverage is for not less than \$100,000 for each licensed individual and entity per covered claim and not less than a \$500,000 aggregate limit per licensed individual or entity.

G. A deductible amount for each occurrence of not more than \$1,000.

H. Payment of claims by the provider shall be on a first dollar basis and the provider shall look to the insured for payment of any deductible.

I. An extended reporting period of not less than 365 days.

J. Coverage of a broker's use of lock boxes.

K. Real estate brokers or broker applicants who obtain equivalent coverage and wish to be on active status must present to the commission the certificate referred to in 16.61.5.10 NMAC:

(1) when renewing an active license, no later than at the time of renewal;

or

(2) upon any request for reinstatement or activation of a license; or

(3) upon application for an active license.

[16.61.5.10 NMAC - N, 1-1-2002; A, 1-1-2006]

16.61.5.11. Broker compliance.

Applicants for licensure, transfer, and renewal shall certify compliance with this rule by submitting along with the license, transfer, or renewal application a copy of a certificate from their insurance company certifying current coverage. The commission will not issue an active license to a first time applicant who fails to provide proof of current coverage, and the license of any active New Mexico broker who fails to provide a certificate certifying current errors and omissions coverage will not be renewed or transferred until such certificate is received in the commission office.

[16.61.5.11 NMAC - N, 1-1-2002; A, 1-1-2006]

16.61.5.12. Insurance requirements suspended.

The requirements of 16.61.5.8 NMAC shall be suspended if the commission through a competitive bidding and contract award process is not able to enter into a contract with a qualified insurance carrier to make available to all applicants for or holders of active New Mexico real estate broker's licenses a group policy of insurance under the terms and conditions described in Part 5.

[16.61.5.12 NMAC - N, 1-1-2002; A, 1-1-2006]

16.61.5.13. Penalties for violation.

Brokers who fail to obtain and maintain an errors and omissions insurance policy as specified herein are guilty of violating NMSA 1978 Section 61-29-4.2 of the Real Estate License Law and are subject to license suspension and revocation as provided in Section 61-29-12 A (10).

[16.61.5.13 NMAC - N, 1-1-2006]

PART 6

DESIGNATION OF A QUALIFYING BROKER TO QUALIFY A REAL ESTATE BROKERAGE

16.61.6.7. Definitions.

Refer to 16.61.1.7 NMAC.

[16.61.6.7 NMAC - Rp, 16.61.6.7 NMAC, 1-1-2012]

16.61.6.8. Requirements.

Upon compliance with all requirements set out in the real estate license law and the real estate commission rules for licensure as a New Mexico qualifying broker, the commission shall issue a New Mexico qualifying broker's license to the applicant(s). Such license shall bear the name of the qualifying broker, the trade name of the brokerage and the address as registered with the commission. In the event a qualifying broker is unable for any reason to perform their qualifying broker duties, a corporate officer, family member or other responsible person, shall designate a broker in charge until such time as an individual files a trade name registration form with the commission designating that individual as the qualifying broker, or until the commission issues a qualifying broker's license to an individual.

[16.61.6.8 NMAC - Rp, 16.61.6.8 NMAC, 1-1-2012]

PART 7

FINGERPRINTING AND ARREST RECORD CHECKS

16.61.7.7. Definitions.

Refer to 16.61.1.7 NMAC

[16.61.7.7 NMAC - Rp, 16.61.7.7 NMAC, 1-1-2012]

16.61.7.8. Requirements.

A. All persons applying for or renewing a New Mexico real estate broker's license or upgrading an associate broker's license to a qualifying broker's license must submit to the New Mexico department of public safety two completed fingerprint cards, a completed company or law enforcement agency fingerprint certification form, and a check or money order for the applicable fee payable to the department of public safety.

B. Applicants for licensure or license renewal shall submit to the commission along with their license or renewal application a copy of the fingerprint certification form completed by the company or law enforcement agency that fingerprints the applicant. The commission will not issue a new license prior to receiving a report from the federal bureau of investigation of the results of the match of the applicant's fingerprints with state and national arrest record databases. However, license renewal applications will be processed upon receipt of a copy of the fingerprint certification form.

C. Fingerprint cards will be submitted to the New Mexico department of public safety for purposes of matching with fingerprints in state and national arrest record databases. Fingerprint cards shall be provided to license applicant's by the commission. Fingerprints shall be taken:

(1) under the supervision of and certified by a certified law enforcement officer, or

(2) by a private agency or company qualified to take and certify fingerprints.

D. The frequency with which a license applicant will be required to submit a new set of fingerprints will be determined by the commission's authority under state law to re-submit an existing set of fingerprints for an arrest record update.

[16.61.7.8 NMAC - Rp, 16.61.7.8 NMAC, 1-1-2012]

PART 8

LICENSE TRANSFER

16.61.8.7. Definitions.

Refer to Definitions 16.61.1.7 NMAC.

[1-1-2000; 16.61.8.7 NMAC - Rn, 16 NMAC 61.8.7, 1-1-2002]

16.61.8.8. Requirements.

An associate broker may request that their license be transferred to a new qualifying broker. The transfer is effective on the date that the transfer fee, transfer form, and the current license are received and stamped at the commission office. When an associate broker requests that their license be transferred the qualifying broker or the broker in charge shall within 48 hours return the license to the commission. If a license transfer form is not accompanied by a certificate certifying that the associate broker or qualifying broker has current errors and omissions insurance coverage, the license will not be transferred until the certificate is received in the commission office.

A. When a qualifying broker returns his or her own license to the commission for transfer they shall within 48 hours either mail or deliver to the commission all licenses issued under that license. If the brokerage is to continue operation, an application from a new qualifying broker, along with transfer forms and appropriate fees for each license, shall also be included.

B. RESERVED

[8-15-97; 1-1-2000; 16.61.8.8 NMAC - Rn, 16 NMAC 61.8.8, 1-1-2002; A, 1-1-2006; A 1-1-2012]

PART 9

LICENSE INACTIVATION AND REACTIVATION

16.61.9.7. Definitions.

Refer to 16.61.1.7 NMAC.

[8-15-97; 16.61.9.7 NMAC - Rn, 16 NMAC 61.9.7, 1-1-2002; A, 1-1-2012]

16.61.9.8. Requirements.

A. When a broker requests that their license be placed on inactive status, the qualifying broker or broker in charge shall within 48 hours return the license to the commission. The license shall be inactivated and all real estate activity on the part of the broker shall cease.

B. When a qualifying broker returns their license to the commission for inactivation, they shall within 48 hours either mail or deliver to the commission all licenses issued under that license. If the brokerage is to continue operation, an application for a new qualifying broker, along with transfer applications and appropriate fees for each license, shall also be included.

C. Inactivation of a license shall take place at the time a license is received and stamped at the commission office. In the event that a license is lost, or otherwise unavailable for delivery by the qualifying broker to the commission office, inactivation of the license will take place at the time the commission receives and stamps a written notification from the qualifying broker that the associate broker is no longer affiliated with the brokerage. The qualifying broker may pay a commission to an associate broker whose license is on inactive status if the transaction was under contract while the broker was on active status. Payment of the commission is subject to the terms and conditions of the independent contractor agreement between the associate broker and the qualifying broker.

D. The voluntary inactivation of a license will not prevent the commission from taking disciplinary action against that license as provided in Section 61-29-1 through 61-29-29, NMSA, 1978.

E. Brokers whose licenses are inactive are required to fulfill the following requirements of licensure.

(1) The payment of triennial renewal fees.

(2) Documentation of having been fingerprinted for purposes of matching with state and national arrest record databases.

(3) Completion of continuing education requirements.

(4) During the course of advertising personally owned property for sale, lease, or auction, disclosure that they are a licensed broker.

F. Brokers whose licenses are on inactive status are not required to have an errors and omissions insurance policy in effect while on inactive status. Inactive brokers are required to produce a certificate of current errors and omissions insurance as a condition of license activation.

G. If a license has been placed in inactive status and is not renewed at the time of next renewal, that license shall expire.

[8-15-97; 16.61.9.8 NMAC - Rn & A, 16 NMAC 61.9.8, 1-1-2002; A, 12-31-08; A, 1-1-2012]

PART 10**[RESERVED]****PART 11****LICENSE EXPIRATION AND RENEWAL****16.61.11.7. Definitions.**

Refer to 16.61.1.7 NMAC.

[1-1-2000; 16.61.11.7 NMAC - Rn, 16 NMAC 61.11.7, 1-1-2002]

16.61.11.8. Requirements.

Every real estate license expires every three years on the last day of the month following the broker's birth month, unless it is renewed on or before that date. Renewal of a license is the sole responsibility of each broker. A broker whose license has expired may reinstate their license without reexamination up to one year after expiration by paying a reinstatement fee three times the regular license renewal fee. In addition to paying a reinstatement fee, the broker will be required as a condition of reinstatement to provide documentation of the completion of 30 hours of commission-approved continuing education courses. Application for renewal shall be on the renewal form prescribed by the commission. Renewal forms will be mailed to brokers at the last residential mailing address on file at the commission. The broker must notify the commission of a residential address change within 10 days of address change. The qualifying broker may pay a commission to a broker whose license is expired or to the estate of a deceased broker if the transaction was under contract while the broker's license was current.

[8-15-97; A, 1-1-2000; 16.61.11.8 NMAC - Rn & A, 16 NMAC 61.11.8, 1-1-2002; A, 01-01-2004; A, 1-1-2006; A, 12-31-2008; A, 1-1-2012]

PART 12**LICENSE SUSPENSION AND REVOCATION****16.61.12.7. Definitions.**

Refer to Definitions 16.61.1.7 NMAC.

[16.61.12.7 NMAC - Rp, 16 NMAC 61.12.7, 1-1-2002]

16.61.12.8. Disciplinary actions.

Violation of any provision of the real estate license law or commission rules may be cause for disciplinary action against any person who engages in the business or acts in the capacity of a real estate broker in New Mexico with or without a New Mexico real estate license, up to and including license suspension or revocation if the person is licensed in New Mexico, and other

penalties as provided by law, commission rules, or policies, in the case of an unlicensed person. A person found by the commission to be engaging in unlicensed real estate activity has thereby submitted to the jurisdiction of the state and to the administrative jurisdiction of the commission and is subject to all penalties and remedies available for a violation of any provision of the real estate license law Chapter 61, Article 29 NMSA 1978 and the commission rules, Title 16 Chapter 61 NMAC. Nothing herein contained shall be deemed to be a restriction on any other penalty or provision provided by law.

[16.61.12.8 NMAC - Rp, 16 NMAC 61.12.8, 1-1-2002; A, 1-1-2006; A, 12-31-2008]

16.61.12.9. License surrender.

Upon delivery of a final order of suspension or revocation of a license(s), the qualifying broker or broker in charge shall surrender the license(s) of the associate broker(s) whose license has been suspended or revoked to the commission in person or by certified mail, and the associate broker whose license has been suspended or revoked shall cease all activities requiring a license.

[16.61.12.9 NMAC - Rp, 16 NMAC 61.12.9, 1-1-2002; A, 1-1-2006]

PART 13

CONTINUING EDUCATION REQUIREMENTS

16.61.13.7. Definitions.

Refer to 16.61.1.7 NMAC.

[1-1-2000; 16.61.13.7 NMAC - Rn, 16 NMAC 61.13.7, 1-1-2002]

16.61.13.8. Requirements.

Except for brokers who were exempt from continuing education prior to July 1, 2011.

A. All active and inactive associate brokers and qualifying brokers shall successfully complete thirty (30) credit hours of continuing education in courses approved by the commission during each licensing cycle.

B. All associate brokers and qualifying brokers shall successfully complete the approved eight (8) credit hour real estate commission mandatory course during each licensing cycle. Of the remaining twenty-two (22) credit hours, ten (10) credit hours may be credited toward the continuing education requirement from approved training category courses. At least twelve (12) credit hours must be taken from approved education category courses; however, all twenty-two (22) credit hours may be taken from the list of commission-approved continuing education courses.

C. Commission approved pre-licensing courses may count for up to ten (10) credit hours toward continuing education credit for license renewal. The commission approved thirty (30) hour post-licensing course may also count for up to ten (10) education category credit hours toward continuing education.

D. No commission approved continuing education course in either the education or the training category will be granted more than ten (10) credit hours of continuing education credit.

E. Continuing education credit hours cannot be carried forward to the next licensing cycle.

F. The same continuing education course cannot be repeated for credit in a three-year renewal cycle.

G. Brokers may receive four (4) approved education course credit hours during each licensing cycle for attending commission meetings, rule hearings and disciplinary hearings.

H. Approved instructors may use up to ten (10) credit hours during each three-year licensing cycle toward fulfillment of their own continuing education requirements for teaching commission approved courses. Teaching documentation must be provided by the course sponsor.

I. Classes required by the commission for disciplinary reasons cannot be counted towards the continuing education requirements for license renewal.

[1-1-2000; 16.61.13.8 NMAC - Rn & A, 16 NMAC 61.13.8, 1-1-2002; A, 1-1-2006; A, 1-1-2007; A, 12-31-2008; A, 1-1-2012]

16.61.13.9. Verification of completion of course work.

At the time of license renewal, associate brokers and qualifying brokers shall submit to the real estate commission verification of completion of continuing education course work.

[1-1-2000; 16.61.13.9 NMAC - Rn, 16 NMAC 61.13.9, 1-1-2002; A, 1-1-2006; A, 12-31-2008; A, 1-1-2012]

PART 14

EDUCATION AND TRAINING FUND

16.61.14.7. Definitions.

Refer to 16.61.1.7 NMAC.
[16.61.14.7 NMAC - N, 01/01/07]

16.61.14.8. Providers.

The New Mexico real estate commission may enter into contracts with public or private institutions or individuals to establish, continue, or expand educational programs or research programs which will benefit real estate brokers and the public in its potential dealings with real estate brokers. Priority will be given to those programs that enhance educational opportunities for New Mexico-licensed real estate associate brokers and qualifying brokers, and further the real estate commission's mission of protecting the public and increasing the professional competence of real estate brokers.

[16.61.14.8 NMAC - N, 01/01/07]

16.61.14.9. Amounts and terms of contracts for education or research.

The amount to be paid and the duration of any contract shall be as provided for in each contract. Any amendment to a contract to increase the payment or

extend the time of performance shall be at the discretion of the commission. No provision of any contract shall be construed as obligating the commission to make any payment beyond the fiscal year in which the commission enters into the contract, unless otherwise provided for in the contract.

[16.61.14.9 NMAC - N, 01/01/07]

16.61.14.10. Proposals.

Proposals to enter into contracts for education or research with the commission will be required to contain the following:

A. a statement of the educational objective of the proposed program or research;

B. a statement of how the program will benefit associate brokers or qualifying brokers or the public who may deal with them;

C. if applicable, a detailed course outline, the number of educational hours in the program, length of course, schedule of instruction, location, and anticipated number of participants;

D. if applicable, the purpose, scope, length, and place of research work;

E. a detailed cost analysis of the entire course or project including, but not limited to such items as source(s) of other funding for the program, cost of advertising, administration, instructors, materials, and physical facilities, and fees proposed to be charged to participants;

F. if applicable, a list of instructors who may be used and their credentials;

G. any academic, real estate, or other professional credit proposed to be awarded, subject to the approval of the commission;

H. such other information as the commission may require at the time of submission of the proposal or after reviewing the proposal.

[16.61.14.10 NMAC - N, 01/01/07]

16.61.14.11. Commission action on proposals.

A. The commission shall act on all proposals within sixty (60) days of receipt of a written original or amended proposal and shall notify the applicant in writing of:

(1) the terms of acceptance of the proposal;

(2) the reason or reasons for rejection of the proposal;

(3) any further information needed to accept or reject the proposal;

B. Decisions of acceptance and rejection by the commission shall be final.

[16.61.14.11 NMAC - N, 01/01/07]

16.61.14.12. Reports.

Within thirty (30) days of the end of the term of the contract or at such other time as the commission may require, the provider under contract shall provide to the commission a report of the expenditure of funds under the contract, and a written report explaining how the program benefited New Mexico real estate brokers and consumers. Whenever a contract for education or research requires that the provider conduct courses, seminars, or other educational venues, the provider shall issue to each participant who successfully completes the program a certificate of course completion that includes the participant's

name, the course name, the number of approved credit hours, and whether the course is in the education or training category of approved commission courses. Within fourteen (14) days of the end of the program, the provider shall send to the commission a list of all real estate brokers who successfully completed the program. The commission may direct its employees or representatives to monitor any contracted program at any time and the providers shall be required to supply to such representatives requested reasonable data upon reasonable notice.

[16.61.14.12 NMAC - N, 01/01/07]

16.61.14.13. Use of commission name.

Any advertising of a program or project funded by the education and training fund must indicate that the New Mexico real estate commission underwrites a portion or all of the cost of the program. Any publication or any other educational materials produced as a result of a contract must include indication that the New Mexico real estate commission underwrites a portion or all of the cost of producing the material. All participants in any program underwritten totally or in part by the New Mexico real estate commission must be clearly and affirmatively made aware of the participation of the New Mexico real estate commission and how they may forward comments on the program to the commission. No other use of the name of the commission shall be permitted without the commission's prior approval.

[16.61.14.13 NMAC - N, 01/01/07]

16.61.14.14. Product of service — Copyright.

All materials developed or acquired by a Contractor providing educational and research services funded in whole or in part by the Education and Training Fund shall become the property of the New Mexico real estate commission and shall be delivered to the Commission no later than the termination date of the contract. Nothing produced, in whole or in part, by the Contractor shall be the subject of an application for copyright other claim of ownership by or on behalf of the Contractor.

[16.61.14.14 NMAC - N, 01/01/07]

16.61.14.15. Changes.

No substantive changes, including schedule of programs, may be made in a program under a contract for education and research without the prior approval of the commission. The commission at a regularly scheduled meeting may make emergency changes on a temporary basis with the prior approval of the administrator of the commission subject to review and final approval. All requests for changes and authorizations of changes must be made in writing before they may be implemented.

[16.61.14.15 NMAC - N, 01/01/07]

16.61.14.16. Participants.

Any courses offered to New Mexico licensed associate brokers and qualifying brokers which the commission has underwritten in part or in total must be

made available to all persons regardless of race, color, religion, sex, handicap, familial status, national origin, age, or membership in any organization.

[16.61.14.16 NMAC - N, 01/01/07]

16.61.14.17. Expenditures.

Any funds not expended in the implementation of a contract for education or research shall revert to the Education and Training Fund.

[16.61.14.17 NMAC - N, 01/01/07; A, 12-31-2008]

16.61.14.18. Revenues.

The Real Estate Education and Training Fund shall consist of an initial transfer of the balance in the Real Estate Recovery Fund in excess of the \$250,000 statutory minimum balance; legislative appropriations to the fund; fees charged by the commission for approval of real estate education sponsors, courses, and instructors; gifts, grants, donations, and bequests to the fund; and income from investment of the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year.

[16.61.14.18 NMAC - N, 01/01/07]

16.61.14.19. Violations.

Any violation of the provisions of this part, any falsification or misrepresentation in a proposal for a contract for education and research, or violation of any written agreement entered into with the commission under this part may result in a termination of the contract and the requirement that all funds paid by the commission be returned. Any provider under a contract for education and research found to have not properly accounted for or improperly expended all funds shall repay said funds plus interest at 6 percent per annum to the commission and said recipient shall be ineligible to enter into any contract for education and research with the commission until said recipient first repays the fund plus interest. Should the commission allege any violation under this rule, it shall provide the respondent with a formal hearing under the provisions of the Uniform Licensing Act.

[16.61.14.19 NMAC - N, 01/01/07; A, 12-31-2008]

PART 15

APPROVAL OF REAL ESTATE COURSES, SPONSORS, AND INSTRUCTORS

16.61.15.7. Definitions.

Refer to 16.61.1.7 NMAC.

[16.61.15.7 NMAC - Rp, 16.61.15.7 NMAC, 1-1-2012]

16.61.15.8. Education steering committee.

The commission shall appoint an education steering committee (ESC) with the goal of upgrading and improving the real estate education program in

order to carry out the commission's mission of protecting the public and increasing the professional competence of real estate brokers.

A. The committee shall meet monthly or as required for the purpose of certification reviews of real estate sponsors, courses, and instructors and shall make recommendations to the commission as to its findings.

(1) The committee shall use specific criteria to evaluate a course, an instructor or course sponsor for approval. This specific criteria shall consider both the instructor's depth of knowledge of the subject and the instructor's ability to convey that knowledge.

(2) The committee shall clearly state in writing to the applicant the reasons for which a course, an instructor or course sponsor are not approved.

(3) A sponsor or instructor applicant not recommended for approval by the committee may ask the commission to review the committee's unfavorable recommendation.

B. The committee shall consist of at least nine members appointed by the commission. Each member shall serve a term of three years or until their successors are appointed. The commission may remove a member for cause.

[16.61.15.8 NMAC - Rp, 16.61.15.8 NMAC, 1-1-2012]

16.61.15.9. Approval of education programs.

A. Courses offered for New Mexico real estate commission approved credit must be offered by sponsors approved by the New Mexico real estate commission.

B. Applications for sponsor, instructor and course approvals shall be accompanied by the fee(s) specified in 16.61.2.8 NMAC of the commission rules.

(1) An approved education category course shall consist of a course offered by a commission approved sponsor in real estate law and practice; real estate financing including mortgages and other financing techniques; material specific to the regulatory, and ethical practice of real estate; and real estate related local, state and federal laws including but not limited to fair housing, the Americans with Disabilities Act (ADA), and lead-based paint disclosure.

(2) Approved training category courses include personal and property protection for the broker and clients; using the computer, the internet, business calculators and other technologies to enhance the broker's service to the public; concerning professional development, customer relations skills, sales promotion including salesmanship, negotiation, marketing techniques, servicing the client, or similar courses.

(3) With the exception of courses taken in states with which New Mexico has a written license recognition agreement, non-acceptable continuing education classes shall include courses taken in fulfillment of another state's continuing education requirements. Other non-acceptable courses include mechanical office and business skills such as typing; speed reading; memory improvement; language report writing; offerings concerning physical well-being or personal development such as personal motivation; stress management; time management; dress-for-success; or similar courses.

C. The ESC shall review instructor candidates:

(1) to determine the candidate's knowledge of the subject matter;

(2) to determine the candidate's ability to communicate his/her knowledge to students;

- (3) to determine if the candidate uses appropriate teaching delivery skills;
- (4) to determine if the candidate is honest, truthful, reputable, and competent.

[16.61.15.9 NMAC - Rp, 16.61.15.9 NMAC, 1-1-2012]

16.61.15.10. Approval of sponsors and sponsor responsibilities.

A. All sponsors wishing to offer commission approved courses for credit must be approved by the commission before the course being offered for credit.

B. Educational institutions, proprietary schools, professional organizations or businesses wishing to become commission approved sponsors must submit a completed sponsor application form with supporting documentation as required by the commission.

C. The commission will maintain a list of approved sponsors.

D. An approved sponsor shall comply with the following requirements:

(1) conduct all courses in accordance with commission rules and education policies, and in accordance with approved course content;

(2) permit all New Mexico real estate brokers to attend all classes offered by the sponsor for which continuing education credit is awarded;

(3) document electronically to the real estate commission that the student has completed the course;

(a) certify no candidate as successfully completing the broker basics or brokerage office administration course unless the student has attended at least 90% of the classroom instruction and has passed a written examination at the conclusion of the course;

(b) certify no broker as successfully completing a commission approved course unless the broker has attended 50 minutes of each hour, or successfully completed a distance education course approved by the New Mexico real estate commission. In the case of a course that is offered in both live and distance education formats, the sponsor shall have discretion as to completion and certification;

(4) maintain current, complete, and accurate student records; these records shall include, but not be limited to, a record of payments made, a record of attendance, and a record of course work completed; records shall be maintained for a period of three years;

(5) permit the commission or its representative access to classes being conducted, and make available to the commission, upon request, all information pertaining to the activities of the sponsor;

(6) advertise at all times in a manner free from misrepresentation, deception or fraud; all course advertising must include the name of the commission-approved sponsor, and must specify whether the course is in the education or training category;

(7) in the event a sponsor determines that it intends to cease sponsoring real estate classes it shall inform the commission in writing not less than 30 days before cessation;

(8) advise the commission within 30 days of changes in ownership, directorship, financial status, location or other pertinent information, and reapply for sponsorship in the event of change of majority ownership;

(9) at the end of each course, the sponsor shall collect from each student an evaluation that evaluates adherence to course content, the effectiveness of the instructor, and other prescribed criteria; the evaluation forms shall be maintained by the sponsor for not less than one year and shall be made available to the commission upon request;

(10) renew sponsorship approval every three years by submitting a sponsor renewal form and renewal fee to the commission;

(11) shall meet the requirements of the Americans with Disabilities Act and all other local, state and federal laws.

E. Failure to comply with this rule may result in the loss of sponsor approval. The commission may investigate any claim of violation of this rule pursuant to 16.61.36.8 NMAC of the commission rules.

[16.61.15.10 NMAC - Rp, 16.61-15.10 NMAC, 1-1-2012]

16.61.15.11. Approval of courses.

A. Any pre-licensing or continuing education course must have been approved by the commission before the course being offered for credit. Courses must incorporate New Mexico law and regulations when relevant. A course application form must be completed and submitted to the commission before consideration of a course for approval by the education steering committee (ESC).

(1) Before course approval, the instructor teaching the course shall make a presentation before the ESC according to presentation criteria established by the ESC.

(2) The ESC shall assign the number of credit hours to each course and determine whether the course is in the education or training category.

(3) Commission approved pre-licensing courses may count for up to ten credit hours toward continuing education requirements for license renewal.

B. The ESC may waive an ESC course presentation appearance by a nationally recognized professional real estate organization that provides professional designations if the organization can document to the ESC's satisfaction that the course instructor received training in the course subject matter in addition to attending a train the trainer class.

C. The commission must approve any continuing education course offered for one-time credit before the course is offered.

(1) A commission approved application form for one-time credit approval must be completed and submitted to the ESC before consideration of the course for credit.

(2) Approved sponsors are limited to four course submittals for one-time credit during each calendar year.

(3) The sponsor, or its representative, requesting one-time course credit, shall make a presentation before the ESC according to presentation criteria established by the ESC.

D. The course shall conform to the generally accepted principles of education as prescribed by the real estate educators association (REEA) and shall comply with commission approved course content requirements. The minimum length of a course shall be one hour.

E. The commission will maintain a list of courses that have been approved for credit.

F. If the course represents an update to a previously approved course, and new material becomes available, the instructor shall be responsible for updating the course and presenting the most current information. Significant changes to course outlines should be provided by the instructor to the commission's education administrator as they occur. If a course outline has not been updated within the last three years the ESC may, at its discretion, recommend to the commission that the course be removed from the list of approved courses.

G. Distance education: For purposes of this part, distance learning is education and training that takes place outside of the traditional classroom setting and in which non-traditional instructional media are used because the teacher and student are separated by distance or time. Distance education sponsors seeking continuing education credit for their courses will be required to designate a New Mexico approved instructor to make a presentation to the ESC and shall submit for ESC review and approval:

(1) a course syllabus which clearly states the course objectives and the specific learning objectives for desired student competencies;

(2) instructions for accessing, using and testing the online materials for ESC auditing purposes including everything necessary for evaluating course content materials, duration, accuracy and timeliness;

(3) reference materials appropriate to the course;

(4) when a series of courses is offered in a curriculum, evidence of sequential development and logical progression;

(5) description of the method, such as examination and quizzes, by which student progress and mastery of the subject matter are measured, and for determining what is required for a student to successfully complete the course;

(6) description of the method by which student identity is verified, such as user name and password;

(7) the names, telephone numbers and email addresses of individuals, web-sites or other resources that students can contact for technical assistance;

(8) the name and contact information of the New Mexico instructor approved to teach the course who will be available to answer subject matter questions during regularly posted hours;

(9) a description of the methodology used by the sponsor in determining the classroom hour equivalency of each distance education course.

[16.61.15.11 NMAC - Rp, 16.61.15.11 NMAC, 1-1-2012]

16.61.15.12. Approval of instructors.

A. Commission approved course instructors. Instructors must be approved by the commission before teaching courses. The following requirements apply to all commission approved courses.

(1) Be honest, truthful, reputable and competent.

(2) Submit a commission-approved application before presenting the course to the ESC.

(3) Complete a commission approved instructor training course within one year of being initially approved as an instructor and every three years thereafter. Instructors who fail to submit documentation of completion of the instructor-training course will not be re-certified.

(4) Provide copies of student handouts during their course presentation.

(5) Make a minimum 15 minute presentation to the ESC exhibiting their teaching skills and knowledge of the subject matter, and be prepared to answer questions. Presentations must conform to the generally accepted principles of education (GAPE) as established by the real estate educators' association (REEA).

B. Pre-licensing instructors. Pre-licensing courses include: real estate law, real estate principles and practices, broker basics and brokerage office administration. In addition to Subsection A above, these instructor candidates must:

(1) pass the New Mexico broker's examination with a minimum score of 84 within the previous three years from the date of application;

(2) audit the course they wish to teach before being approved as an instructor for that course; documentation of having audited the course must be submitted with the candidate's application;

(3) broker basics: be approved to teach real estate law and real estate principles and practice;

(4) brokerage office administration: be approved to teach real estate law and real estate principles and practice and broker basics; in addition, candidates must also have two years experience as a qualifying broker in New Mexico or another licensing jurisdiction.

C. Mandatory course instructors. In addition to Subsection A above mandatory course instructor candidates must:

(1) be a currently approved instructor for real estate law and real estate principles and practice or be currently approved to teach three or more continuing education courses;

(2) ensure the mandatory course materials they present include the most recent updates provided by the New Mexico real estate commission; and

(3) make a minimum 60 minute presentation to the ESC and answer questions.

D. Qualifying broker refresher course instructors. In addition to Subsection A above, qualifying broker refresher course instructor candidates must comply with one of the following:

(1) be a currently approved instructor for real estate law and real estate principles and practice and broker basics and be a qualifying broker or would qualify to be one; or

(2) be approved to teach the mandatory course and be a qualifying broker.

E. New broker business practices post-licensing course instructors. In addition to Subsection A above, new broker business practices course instructors must:

(1) have two years experience as an active qualifying broker with supervisory responsibilities or two years actively licensed as an associate broker and served in the capacity as a trainer for the brokerage, or two years actively licensed as an associate broker and be approved as a continuing education instructor;

(2) attend, when offered, a commission approved train-the-trainer on how to instruct the post-licensing course and attend, when offered, a periodic update of the course offered by the commission or the commission contractor; and

(3) make a minimum 60 minute presentation to the ESC and answer questions.

F. ESC approval process. The ESC will make its recommendation to the commission to grant or deny instructor approval. If the application is denied, a written evaluation to the candidate will provide specific reasons for denial and recommendations for improvement. An instructor candidate not recommended for approval by the ESC may ask the commission to review the ESC's unfavorable recommendation.

G. Post-approval requirements. After approval all instructors must comply with the following:

- (1) pay applicable fee(s);
- (2) conduct all classes in accordance with commission rules and educational policies;
- (3) ensure all instruction is free from all misrepresentation, solicitations of products and recruitment;
- (4) conform to commission-approved course content requirements; and
- (5) allow access to any class to any duly appointed representative of the commission.

H. Instructor approval expiration and re-certification.

(1) Expiration. Instructor approvals expire on the same three-year cycle as the instructor's broker's license. If an instructor is not a real estate broker, then the expiration will be three years from the date of initial approval.

(2) Re-certification. Instructors seeking re-certification shall:

- (a) submit the commission-approved form;
- (b) submit documentation of having completed a commission-approved instructor training course;
- (c) an instructor who has not taught a course in the preceding three year instructor renewal cycle will not be recertified to teach that course. An instructor may submit at the time of renewal, a written request to the ESC to be re-certified to teach that course. The written request must specify how the instructor has remained current on the course material, and must include the course outline and course material.

I. Failure to comply with this part may result in the loss of instructor approval. The commission may investigate any claim of instructor impropriety pursuant to 16.61.36.8 NMAC of the commission rules.

[16.61.15.12 NMAC - Rp, 16.61.15.12 NMAC, 1-1-2012]

PART 16

QUALIFYING BROKER: AFFILIATION AND RESPONSIBILITIES

16.61.16.7. Definitions.

Refer to 16.61.1.7 NMAC.

[16.61.16.7 NMAC - Rp, 16.61.16.7 NMAC, 1-1-2012]

16.61.16.8. Affiliation.

A qualifying broker is responsible for all real estate activities within the brokerage. A qualifying broker may serve concurrently as a qualifying broker for more than one brokerage. A qualifying broker may by written agreement

engage the services of associate brokers and qualifying brokers, provided that the terms of such agreements are consistent with the responsibilities of associate brokers and qualifying brokers as set forth in parts 16.61.16.9 NMAC and 16.61.17.9 NMAC. A qualifying broker may serve as qualifying broker and associate broker for different brokerages simultaneously provided that there are written agreements executed specifying the responsibilities and scope of authority that the broker has for each brokerage.

[16.61.16.8 NMAC - Rp, 16.61.16.8 NMAC, 1-1-2012]

16.61.16.9. Responsibilities.

A qualifying broker shall, in addition to all other requirements imposed by law, comply with the following:

A. conduct the real estate brokerage business under the trade name and from the brokerage address or addresses registered with the commission;

B. prominently display in the brokerage office, the qualifying broker's own license and the licenses of all other affiliated associate brokers conducting real estate brokerage business from the brokerage office;

C. have in the brokerage office and available to all affiliated associate brokers and qualifying brokers a current copy of the state of the New Mexico real estate license law and rules manual;

D. notify the commission in writing within ten days of a change of the brokerage office address or telephone number;

E. supervise all real estate related activities including advertising of real estate or real estate services conducted on behalf of others by associate brokers and qualifying brokers affiliated with the brokerage and execute and maintain current written employment or independent contractor agreements with them;

F. maintain full and complete records wherein the qualifying broker and affiliated associate broker(s) are engaged on behalf of others, or on their own behalf, in real estate related matters processed through the brokerage. The required records shall be available to the commission or any duly authorized commission representative at the place of business of the qualifying broker or at the commission office. All such records whether in paper or electronic format shall be retained for a period not less than six years. In the case of a property manager, all records shall be retained for the full term of any agreement and for six years from the termination of the management agreement;

G. deposit all money received on behalf of others in the proper trust account as soon after receipt as is practicably possible after securing signatures of all parties on the transaction documents;

H. receive and disburse all commissions, referral fees, and other considerations to any broker affiliated with the qualifying broker, or broker who had been affiliated with the qualifying broker at the time the transaction went under contract. The qualifying broker may also disburse or authorize the disbursement of such commissions and fees to any entity entitled by law to receive same, including the estate of a deceased broker, a partnership, corporation, or limited liability company wholly owned by an associate broker and their spouse. Such partnership, corporation, or limited liability company shall not be required to have a qualifying broker for purposes of this sub-part;

I. assure that when the brokerage cooperates with or makes a referral to, or receives a referral from any broker, there be a transaction specific written co-brokerage or referral agreement signed by the qualifying broker;

J. designate a broker in charge in the event actual supervision by the qualifying broker is not possible, and inform the commission of such designation. During this period of time, the broker in charge shall assume all of the responsibilities of the qualifying broker for the brokerage;

K. upon termination or discharge of an associate broker return the associate broker's license to the commission within 48 hours;

L. ensure that each qualifying broker and associate broker affiliated with the brokerage obtain and maintain a current errors and omissions insurance policy as provided in NMSA 1978 Section 61-29-4.2 of the real estate license law and 16.61.5.8 NMAC of the commission rules;

M. successfully complete as a condition of license renewal or as a condition of reinstatement of qualifying broker status the commission-approved minimum four hour qualifying broker refresher course;

N. ensure that associate broker's affiliated with their brokerage complete the commission-approved new broker business practice course within their first year of licensure.

[16.61.16.9 NMAC - Rp, 16.61.16.9 NMAC, 1-1-2012]

PART 17

ASSOCIATE BROKER: AFFILIATION AND RESPONSIBILITIES

16.61.17.7. Definitions.

Refer to 16.61.1.7 NMAC.

[1-1-2000; 16.61.17.7 NMAC - Rn, 16 NMAC 61.17.7, 1-1-2002]

16.61.17.8. Affiliation.

An associate broker must be affiliated with a qualifying broker in order to engage in real estate brokerage business. An associate broker may have only one associate broker's license and be affiliated with only one qualifying broker at a time.

[1-1-2000; 16.61.17.8 NMAC - Rn, 16 NMAC 61.17.8, 1-1-2002; A, 1-1-2006; A, 1-1-2012]

16.61.17.9. Responsibilities.

An associate broker shall:

A. complete in the first year of licensure, the commission-approved new broker business practices course;

B. be affiliated with only one qualifying broker at a time;

C. not engage in any real estate activity for any other qualifying broker other than the qualifying broker with whom the broker is affiliated;

D. not engage in any real estate activities for others for which a real estate license is required outside the knowledge and supervision of their qualifying broker;

E. not engage in any real estate activities outside the knowledge of the qualifying broker with whom the broker is affiliated;

F. not engage in any real estate activity under a trade name(s) other than the trade name(s) of the qualifying broker with whom the broker is affiliated;

G. not receive any commissions or fees for real estate activities from anyone other than the qualifying broker with whom the broker was affiliated with at the time the transaction went under contract, or persons authorized in writing by the qualifying broker to disburse such commissions or fees;

H. when advertising real estate or real estate services for others, include in the advertising the trade name and telephone number as registered with the commission of the qualifying broker with whom the broker is affiliated;

I. remit all funds received from others related to real estate transactions to the qualifying broker or their designee as soon as possible after receipt of those funds, and after securing signatures of all parties to the transaction;

J. deliver in a timely manner to their qualifying broker all records required to be maintained by their qualifying broker under 16.61.16 NMAC.

[1-1-2000, A, 2-14-2000; 16.61.17.9 NMAC - Rn, 16 NMAC 61.17.9, 1-1-2002; A, 1-1-2006; A, 12-31-2008; A, 1-1-2012]

PART 18

SALESPERSONS: AFFILIATION AND RESPONSIBILITIES [REPEALED 01-01-06]

PART 19

BROKER DUTIES AND BROKERAGE RELATIONSHIPS

16.61.19.7. Definitions.

Refer to 16.61.1.7 NMAC.

[16.61.19.7 NMAC - Rp, 16.61.19.7 NMAC, 1-1-2004]

16.61.19.8. Broker duties; disclosure.

Before 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 their prospective customer or client, and obtain a written acknowledgement from their prospective customer or client, showing the delivery of the disclosure of the following broker duties:

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 other applicable local, state, and federal laws and regulations;

C. performance of any and all written agreements made with the 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 the transaction is not providing the service, advice or assistance described in Paragraphs (1) and (2) of Subsection D of 16.61.19.8 NMAC, 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 the existence of such agreement in writing to the other brokers involved in the transaction;

E. acknowledgement by the broker that there may be matters related to the transaction that are outside the associate broker's or qualifying broker's knowledge or expertise and that the associate broker or qualifying broker will suggest that the customer or client seek expert advice on these matters;

F. prompt accounting for all money or property received by the broker;

G. disclosure of any potential conflict of interest that the broker has in the transaction including but not limited to:

(1) any written brokerage relationship the broker has with any other parties to the transaction or;

(2) any material interest or relationship of a business, personal, or family nature that the broker has in the transaction;

(3) other brokerage relationship options available in New Mexico;

H. written disclosure of any adverse material facts actually known by the associate broker or qualifying broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction;

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, an associate broker or qualifying 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 will pay a 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 associate broker's or the qualifying broker's customer or client to remain confidential, unless disclosure is required by law.

[16.61.19.8 NMAC - Rp, 16.61.19.8 NMAC, 1-1-2004; A, 1-30-2004; A, 3-27-2004; A, 1-1-2006; A, 1-1-2006, A, 1-1-2007; A, 12-31-2008; A, 1-1-2012]

16.61.19.9. Brokerage relationships.

Brokerages working with consumers either as customers or clients may do so through a variety of brokerage relationships. These relationships include but are not limited to a transaction broker relationship, an exclusive agency relationship or a dual agency relationship. For all regulated real estate transactions, a customer or client may enter into an express written agreement

to become a client of a brokerage without creating an agency relationship, and no agency duties will be imposed.

A. Transaction broker: a qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship. The transaction broker relationship is a non-fiduciary relationship.

B. Exclusive agency: an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interests of the person in a real estate transaction. Such agreements include buyer agency, seller agency, designated agency, and subagency agreements.

C. Dual agency: an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as a facilitator in a real estate transaction rather than as an exclusive agent for either party to the transaction.

[16.61.19.9 NMAC - Rp, 16.61.19.9 NMAC, 1-1-2004; A, 12-31-2008; A, 1-1-2012]

16.61.19.10. Dual agency relationship.

A. Dual agency occurs when:

(1) an associate broker or qualifying broker is agent for both a seller client and a buyer client in the same transaction;

(2) an associate broker is agent for either a seller client or a buyer client, and the agent's qualifying broker is agent for the other client in the transaction; and,

(3) in a transaction where a buyer client and a seller client are each served by different associate brokers in an agency relationship supervised by the same qualifying broker, and the qualifying broker does not choose the designated agency option, both the associate brokers and the qualifying broker are dual agents in the transaction.

B. In all situations, a dual agent shall act in the capacity of a facilitator rather than as an exclusive agent of either party to the transaction.

C. Prior to writing or presenting offers, a dual agent shall obtain written authority from the buyer client and the seller client in the form of a separate dual agency agreement.

D. Information obtained by an associate broker or qualifying broker prior to the time that written authority for dual agency was granted shall not be disclosed to the other party unless required by law or rules or permitted by the client who originally disclosed the confidential information.

[16.61.19.10 NMAC - Rp, 16.61.19.11 NMAC, 1-1-2004; A, 1-1-2006]

PART 20

[RESERVED]

PART 21

UNLICENSED ASSISTANTS

16.61.21.7. Definitions.

Refer to 16.61.1.7.

[8-15-97, 12-15-99; 16.61.21.7 NMAC - Rn, 16 NMAC 61.21.7, 1-1-2002]

16.61.21.8. Permitted activities.

An unlicensed assistant is permitted to engage in the following activities:

A. obtaining information pursuant to written instructions from the responsible person from public records, a multiple listing service, listing exchange or from third party sources including, but not limited to, surveyors, banks, appraisers and title companies;

B. hosting and/or distributing literature at an open house under the following conditions:

(1) an unlicensed assistant does not discuss, negotiate or solicit offers for the property or provide any information other than printed material prepared and approved by the responsible person; and

(2) the responsible person is present at the open house where the unlicensed assistant is located;

(3) all inquiries are referred to the responsible person or other associate brokers or qualifying brokers;

C. disseminating and distributing information prepared and approved by the responsible person;

D. picking up and delivering paperwork to associate brokers or qualifying brokers other than the responsible person;

E. picking up and delivering paperwork to sellers or purchasers after a contract has been executed if the paperwork has already been reviewed and approved by the responsible person, without answering any questions or providing any opinions or advice to the recipient of the paperwork. All substantive questions must be referred to the responsible person;

F. writing advertisements, flyers, brochures, and other promotional materials for the approval of the responsible person, and placing classified advertisements approved by the responsible person;

G. placing or removing signs on real property as directed by the responsible person;

H. ordering repairs as directed by the responsible person;

I. receiving and depositing funds, maintaining books and records, while under the supervision of the responsible person;

J. typing or word processing documents, including purchase and listing agreements, prepared by the responsible person.

[Rn, 16.61.21.8.9, 1-1-2000, A, 1-1-2000; 16.61.21.8 NMAC - Rn, 16 NMAC 61.21.8, 1-1-2002; A, 1-1-2006]

16.61.21.9. Prohibited activities.

An unlicensed assistant is not permitted to engage in the following activities in connection with the purchase, sale or exchange of real property:

- A. preparing legal documents such as listing and sales contracts;
- B. interpreting documents, offering opinions or advice;
- C. disseminating and distributing information, unless the information is in writing and is prepared and approved by the responsible person;
- D. obtaining personal or property information from a client or customer of the responsible person except when acting as a coordinator directed by the responsible person by gathering and following up on information and the status of matters pertaining to the transaction after a contract has been executed;
- E. picking up from or delivering to customers or clients financial documents prepared by title companies, lenders or other third persons for the purpose of obtaining signatures;
- F. attending a closing without the responsible person present;
- G. representing himself or herself as being an associate broker or a qualifying broker or as being engaged in the business of buying, selling, exchanging, renting, leasing, managing, auctioning or dealing with options on any real estate or the improvements thereon for others;
- H. telephone solicitation of any kind designed to procure transactions requiring licensure under Section 61-29-1 et. Seq. NMSA 1978, including, but not limited to, procuring buyers, sellers, listings or appointments for listing presentations.

[8-15-97; 16.61.21.9 NMAC - Rn & A, 16 NMAC 61.21.9, 1-1-2002; A, 1-1-2006]

16.61.21.10. Disability.

Notwithstanding the foregoing, if an associate broker or qualifying broker is a person with a disability as defined in the Americans with Disabilities Act or regulations promulgated hereunder, an unlicensed assistant may provide such additional services normally requiring a license to or on behalf of the associate broker or qualifying broker as would constitute a reasonable accommodation so long as the unlicensed assistant is under the direct control of the associate broker or qualifying broker, the associate broker or qualifying broker is as close as is practical to the activity, and the unlicensed assistant is not represented as being or having the authority to act as an associate broker or qualifying broker. The associate broker or qualifying broker shall notify the commission of the identity of all unlicensed assistants who perform services normally requiring a license for the associate broker or qualifying broker pursuant to this rule prior to performance of these services.

[8-15-97, A, 1-1-2000; 16.61.21.10 NMAC - Rn, 16 NMAC 61.21.10, 1-1-2002; A, 1-1-2006]

16.61.21.11. Penalties.

Unlicensed assistants are subject to the penalties of Section 61-29-17 and 61-29-17.2 NMSA 1978.

[8-15-97, A, 1-1-2000; 16.61.21.11 NMAC - Rn & A, 16 NMAC 61.21.11, 1-1-2002]

PART 22**[RESERVED]****PART 23****TRUST ACCOUNTS****16.61.23.7. Definitions.**

Refer to 16.61.1.7 NMAC.

[16.61.23.7 NMAC - Rp, 16.61.23.7 NMAC, 1-1-2012]

16.61.23.8. Description, designation and reconciliation.

A. Funds of others. A qualifying broker who receives money belonging to others related to a real estate transaction shall deposit same only in a trust account in an acceptable financial institution, title company or with a qualifying broker also involved in the transaction.

B. Designation. All trust accounts shall be designated on the institution's records as "trust account" and include the trade name of the brokerage as registered with the commission.

C. Electronic transactions. Online payments, direct deposits and other electronic transactions are permitted as long as each transaction can be tracked on the bank statement and on the property ledger.

D. Reconciliation. Trust accounts must be reconciled monthly.

E. Property ledgers. Each trust account transaction shall be assigned to a managed property (e.g. single family home, apartment complex or commercial property).

F. Number of trust accounts. A brokerage may have more than one trust account.

[16.61.23.8 NMAC - Rp, 16.61.23.8 NMAC, 1-1-2012]

16.61.23.9. Types of trust accounts.

A qualifying broker shall have only the following types of accounts and they shall be used only for the purposes stated.

A. Brokerage trust account. This account shall be used for money belonging to others related to a real estate sales transaction. Property management funds may not be placed in this trust account. In lieu of a brokerage trust account, a broker may deposit funds with a title company authorized to do business in the state of New Mexico. If a title company is used in lieu of a brokerage trust account, then receipt and deposit records shall be kept as outlined in this section.

B. Property management trust account. This account shall be used for money belonging to others received by a qualifying broker related to managing properties for others. All management commissions and fees may be deposited, withdrawn and tracked through the property management trust account as long as those commissions and fees are specified in the management agreement.

C. Special trust account. In the event the principals agree in writing that an interest bearing special trust account is to be established, a written agreement shall be prepared stating as a minimum the following:

- (1) the qualifying broker shall be named as sole trustee;
- (2) name of the acceptable financial institution wherein the funds are to be deposited;
- (3) the amount of interest to be paid on the funds and to whom the interest shall accrue;
- (4) the final disposition of principal and interest upon closing, termination or default by either party to the transaction; and
- (5) the signatures of all parties to the transaction and the qualifying broker as trustee.

D. Custodial account. Funds designated to be deposited in a custodial account shall first be placed in a brokerage trust account or a property management trust account of the qualifying broker and then may be transferred to the custodial account of the owner. Custodial accounts shall not contain any funds other than those belonging to the owner of the custodial account. Custodial accounts may be interest bearing; however, the interest shall be paid only to the owner or his designee. The qualifying broker shall have on file a written agreement signed by all principals as to the establishment and operational details of each custodial account.

[16.61.23.9 NMAC - Rp, 16.61.23.8 & 9 NMAC, 1-1-2012]

16.61.23.10. Record accessibility, retention and inspection.

Every qualifying broker shall keep bank and office records of all funds related to all trust accounts, as set forth below.

A. Accessibility. Records shall be maintained at or accessible from the brokerage office as registered with the commission.

B. Retention. All trust account records shall be retained for six years after the completion of a transaction.

C. Property management. All property management trust account records shall be retained for the full term of any agreement and for six years from the termination of the management agreement.

D. Inspection. All financial documents shall be subject to inspection by the commission or its duly authorized representative at the designated location of such records or at the offices of the commission. The records shall include, at a minimum, clear indication of all funds received and disbursed on behalf of others in all real estate transactions wherein the qualifying broker is involved.

E. The qualifying broker is responsible for the maintenance and safekeeping of all trust account records.

[16.61.23.10 NMAC - Rp, 16.61.23.9 NMAC, 1-1-2012]

16.61.23.11. Deposits, disbursements and commingling.

A. Deposits. All trust account deposits shall conform to the following requirements.

- (1) Timeliness. All funds of others pertaining to a real estate transaction shall be deposited into the proper trust account per written agreement of the parties to the transaction.

(2) Receipt records. A detailed record of all funds received shall be maintained by the qualifying broker and shall clearly indicate the following:

- (a) date received;
- (b) date deposited;
- (c) from whom received;
- (d) amount of deposit;
- (e) property address or legal description including unit number (if unit number is applicable); and
- (f) category or purpose of receipt (e.g., earnest money, rent, security deposit, funds from owner, etc.).

(3) Wrongful deposits. The following actions involving any trust account shall be improper and shall constitute commingling:

- (a) depositing a broker's own funds into a trust account without disclosure to the owner of a managed property;
- (b) depositing funds in a trust account that are not directly related to a real estate transaction or a managed property; and
- (c) depositing funds of others in an account that is not a properly designated trust account.

B. Disbursements. All trust account disbursements shall conform to the following requirements.

(1) Timeliness. All funds of others pertaining to a real estate transaction shall be disbursed as soon as reasonably possible after the conclusion of a transaction.

(2) Disbursement records. A detailed record of all funds disbursed shall be maintained by the qualifying broker and shall clearly indicate the following:

- (a) check number or unique transaction identification number;
- (b) date of disbursement;
- (c) payee;
- (d) category or purpose of disbursement;
- (e) amount of disbursement;
- (f) property address or legal description including unit number (if unit number is applicable).

(3) Fees due broker. Fees as determined by written agreement may be disbursed as soon as the basis for calculation can be determined and funds are available.

(4) Wrongful disbursements. The following actions involving any trust account shall be improper and shall constitute commingling:

- (a) disbursing trust funds for personal use of the qualifying broker or the broker's designee;
- (b) disbursing commission or commission splits from any trust account to any entity other than the qualifying broker.
- (c) disbursing New Mexico gross receipts tax or other non-property related business expenses directly from a trust account;
- (d) disbursing funds before the completion of the related transaction, except upon court order. This provision does not prevent a broker from transferring funds from one properly designated trust account to another properly designated trust account within the same brokerage;
- (e) disbursing funds in excess of the trust account balance or in excess of a specific property or client ledger balance; and

(f) trust account overages can only be disbursed in accordance with the Unclaimed Property Act and after written notification to the commission.

C. Commingling. Commingling of trust account funds is not permitted. Commingling shall include, but is not limited to, the following actions:

- (1) wrongful deposits as described in this section;
- (2) wrongful disbursements as described in this section;
- (3) allowing a property or client ledger within a trust account to be in deficit;
- (4) placing funds derived from the management of the qualifying broker's personally owned properties in a trust account containing funds of others;
- (5) failing to withdraw from the trust account within a reasonable time, funds to which the qualifying broker is entitled;
- (6) allowing money designated to one property or transaction to be used for the benefit of another property or transaction.

D. Exceptions to commingling. The following are exceptions.

(1) Non-trust funds may be placed in a trust account in an amount not to exceed the required minimum balance requirements of a financial institution necessary to maintain the account and avoid charges.

(2) Non-trust funds may be placed in a trust account in order to pay fees for credit card transactions and bank fees.

(3) Depositing broker's own funds in a trust account with full disclosure to the owner of a managed property.

(4) If a written sharing agreement specifies, funds of one property may be used for the benefit of another property owned by the same person or entity.

(5) Funds received from an owner for the benefit of all their managed properties may be credited to an owner's ledger.

[16.61.23.11 NMAC - Rp, 16.61.23.10 NMAC, 1-1-2012]

PART 24

PROPERTY MANAGEMENT

16.61.24.7. Definitions.

Refer to Definitions 16.61.1.7 NMAC.

[16.61.24.7 NMAC - Rp, 16.61.24.7 NMAC, 1-1-2012]

16.61.24.8. Property management advisory committee.

The commission may appoint a property management advisory committee (PMAC) with the goal of enhancing the professional competence of property managers and reducing violations and complaints about property management services.

[16.61.24.8 NMAC - N, 1-1-2012]

16.61.24.9. Declaration of intent.

At the time of initial licensure or renewal, brokers and associate brokers shall declare on the license application form intent to offer property management services for others.

[16.61.24.9 NMAC - N, 1-1-2012]

16.61.24.10. Compliance with applicable law.

Brokers shall comply with applicable local, state and federal laws and ordinances concerning managing and leasing property for others, including but not limited to the New Mexico Uniform Owner Resident Relations Act, section 47-8-1 through 47-8-52 NMSA 1978.

[16.61.24.10 NMAC - N, 1-1-2012]

16.61.24.11. Property management trust account.

In addition to the rules set forth in 16.61.23 NMAC, the following also apply to property management trust accounts.

A. This account shall only contain funds derived from the management of property for others.

B. All funds received by the qualifying broker shall be deposited into the property management trust account prior to any disbursements. Once deposited, the qualifying broker may then disburse funds as specified in the management agreement.

C. Deposits from tenants shall be placed in a property management trust account. Deposits may be held in a property management trust account or may be disbursed to the owner as specified in the property management agreement and agreed to by the tenant.

D. Commingling of funds is not permitted. No funds may be deposited in a property management trust account that are not received in connection with a managed property except as provided for in 16.61.23.11 D NMAC Exceptions to commingling.

E. Property ledgers. When the property management trust account contains funds from the rental or lease of more than one property, separate accounting records shall be maintained on each property.

[16.61.24.11 NMAC - Rp, 16.61.24.8 NMAC, 1-1-2012]

16.61.24.12. Reports and documents to owners.

A. Owner statements. The qualifying broker shall provide the owner with a report of receipts and disbursements monthly or as required by the management agreement, showing the following:

- (1) previous balance;
- (2) funds deposited by category;
- (3) funds disbursed by category; and
- (4) ending balance.

B. Additional reports may be provided as set forth in the property management agreement.

C. Documents. Fully executed copies of the management agreement shall be provided to the owner after obtaining all signatures. Signed leases shall be provided to owner upon request.

D. Final statement after termination. Final accounting of property management trust account funds shall be provided to the owner within 60 days of the effective date of termination of a management agreement.

[16.61.24.12 NMAC - Rp, 16.61.24.12 NMAC, 1-1-2012]

16.61.24.13. Management agreements.

A. There shall be a signed written management agreement between the brokerage and the owner for each property managed. The agreement shall be executed prior to acting on behalf of the owner and shall specify the brokerage relationship.

B. The agreement shall define the duties and responsibilities of the brokerage and the owner including, but not limited to, the following:

- (1) duties to be provided by the brokerage;
- (2) disclosure of all fees to be charged to owner; and
- (3) disclosure of all fees to be charged to tenant that are retained by the brokerage.

[16.61.24.13 NMAC - Rp, 16.61.24.13 NMAC, 1-1-2012]

16.61.24.14. Tenancy agreements.

There shall be a signed written tenancy agreement for each property or rental unit. Tenancy agreements shall include, but not be limited to, the following:

- A. name of tenant;
- B. property address or legal description including unit number (if unit number is applicable);
- C. rent amount;
- D. security deposit and other deposit amounts;
- E. when and where rent is to be paid;
- F. date possession began;
- G. date possession ends;
- H. all fees charged tenant; and
- I. how payments are to be applied to outstanding charges.

[16.61.24.14 NMAC - Rp, 16.61.24.14 NMAC, 1-1-2012]

16.61.24.15. Record accessibility, retention and inspection.

The property management brokerage shall maintain office records of all properties managed for others.

A. Accessibility. Records shall be maintained at or accessible from the brokerage office at the location as registered with the commission.

B. Retention. All property management records shall be retained for the full term of any agreement and for six years from the termination of the management agreement.

C. Inspection. All records are subject to inspection by the commission or its duly appointed representative at or accessible from the brokerage office or at the offices of the commission.

D. The qualifying broker is responsible for the maintenance and safe-keeping of all property management records.

[16.61.24.15 NMAC - Rp, 16.61.24.15 NMAC, 1-1-2012]

16.61.24.16. Short term and vacation rentals.

In addition to the provisions set forth above, the following special provisions apply only with respect to the management of short term and vacation rentals.

A. Management agreement to authorize collection of New Mexico gross receipts tax and lodger's tax from tenant. Broker to report and pay gross receipts tax and lodger's tax due on all receipts derived from reservations in accordance with New Mexico law.

B. Tenancy agreement shall also include the following:

- (1) arrival and departure dates;
- (2) check-in and check-out times;
- (3) nightly rental rate;
- (4) rental deposit;
- (5) security deposit;
- (6) disclosure of all fees charged to tenant (e.g. cleaning, hot tub, phone, cable internet, resort, etc.);
- (7) accommodation rules (e.g. occupancy, parking, smoking, pets, noise, etc.); and
- (8) cancellation policy.

C. Reports to owners. In the monthly statement to the owner, the qualifying broker shall also list rental income, credit card fees, maintenance charges and amount paid in commission to the brokerage office.

D. Tenant security deposits. Funds collected as a tenant security deposit shall be deposited into the property management trust account.

E. Tenant rental deposits. Funds collected as a tenant rental deposit shall be deposited into the property management trust account to secure a reservation.

F. Employees of the brokerage handling short term or vacation rentals or third parties who engage only in taking reservations for short term or vacation rentals shall not be required to be licensed.

[16.61.24.16 NMAC - Rp, 16.61.24.16 NMAC, 1-1-2012]

PART 25

TIME SHARE REGISTRATION

16.61.25.7. Definitions.

A. "Commission" means the New Mexico real estate commission.

B. "Developer" means any person creating or engaged in the business of selling ten or more of its own time shares and includes any person who controls, is controlled by or is in common control with the developer and who is engaged in creating or selling time shares for the developer;

C. "Exchange company" means any person operating an exchange program;

D. "Purchaser" means any person, other than a developer or lender, who owns or acquires an interest or proposes to acquire an interest in a time share;

E. "Time share salesperson" means a person, other than a person who has at least a fifteen (15) percent interest in the developer, who sells or offers to sell on behalf of a developer a time share to a purchaser; and

[8-15-97, A, 2-14-2000; 16.61.25.7 NMAC - Rn & A, 16 NMAC 61.25.7, 1-1-2002]

[Refer to 16.61.1.7 NMAC]

16.61.25.8. Application for registration.

Every application for time share project registration shall be filed at the commission office upon form TS-1 (questionnaire and application for registration of time share project) and shall contain all information requested by form TS-1 applicable to the time share project.

A. Registration fee: Every application for time share project registration must be accompanied by a certified check made payable to the New Mexico real estate commission in the amount of twenty dollars (\$20.00) per time share interest to be sold, to a maximum of one thousand five hundred dollars (\$1,500.00). Applications for registration not accompanied by the appropriate fee shall not be considered by the commission. In the event a properly completed application filed with the commission is denied for any reason, the amount of two hundred fifty dollars (\$250.00) shall be retained by the commission from the application fee and the balance refunded to the applicant developer.

B. A developer shall obtain a separate certificate of registration for each time share program. Noncontiguous time share projects created by the same developer may be treated for registration purposes as one time share program only if such projects are (1) marketed and otherwise held out to the public as one program, and (2) offered for sale by a single staff of time share salespersons.

C. A developer shall file an amendment to the time share project registration with the commission within a reasonable time after the occurrence of any event or change in plans which materially affects the operation or status of the time share project, including but not limited to the following:

- (1) a material change in ownership of the developer;
- (2) an increase or decrease in the number of time shares to be offered;
- (3) any material alteration of the physical plant and amenities, or of plans for development thereof;
- (4) any material change in the exchange rights offered to purchasers;
- (5) the appearance of new hazards or other unusual conditions near the time share project;
- (6) any material amendment to the documents governing rights and restrictions of time share ownership
- (7) the recording of any new lien or encumbrance against the time share project;
- (8) any change in management of the time share project;
- (9) any material change in the developer's arrangement for the escrow of purchaser's funds; and,
- (10) any other change requiring a material amendment to the disclosure statement for the project.

D. Amendments to the time share project registration shall be made in writing to the commission. Every amendment shall identify the section of the project registration to be amended and shall contain a summary of the amendment and a brief statement of the reasons for the amendment. The amendment shall include either the text of the project registration section to be substituted or a copy of the document to be modified.

E. The commission may, in its discretion, require the developer to file a new time share project registration application in the place of an amendment form. Such refiling shall be without a fee.

F. If a developer files an amendment to increase the number of time shares to be offered for sale, a registration fee of twenty dollars (\$20.00) per additional time share interest, subject to the overall maximum of one thousand five hundred dollars (\$1,500.00), shall accompany the amendment.

[8-15-97; 16.61.25.8 NMAC - Rn, 16 NMAC 61.25.8, 1-1-2002]

16.61.25.9. Disclosure statements.

A. In addition to the disclosures required by Section 5 of the act, each developer shall fully and conspicuously disclose to each purchaser in the disclosure statement the following information:

(1) if any part of the project is not completely constructed at the time of sale, what financial arrangements have been made to secure the completion of each portion.

(2) if the unit sold to the purchaser is not completely constructed and furnished at the time of sale, the projected date the unit will be ready for occupancy; any limitations upon the purchaser's exchange rights until the unit is ready for occupancy; any limitations upon the effectiveness of title insurance obtained by the purchaser prior to the time the unit is ready for occupancy;

(3) a complete description of the project, including: the total number of time shares sold and to be sold in the project; the number and types of units available; the types of facilities and amenities available;

(4) a description of all terms and conditions of each charter membership, owner referral, rental, resale, in-house exchange or other program offered to time share owners; provided, however, if no reference to the program will be made to the purchaser prior to the expiration of the purchaser's 7-day right of rescission, the developer may provide such description, by separate letter to the purchaser, after the expiration of such period; and

(5) any other information contained in the questionnaire and application for registration of time share project which the commission may require to be disclosed.

B. Every disclosure statement shall contain an introductory summary prescribed by the commission and completed by the developer entitled "summary of disclosures." The "summary of disclosures" shall appear on the cover, or immediately following the cover of the disclosure statement, and shall be on the form prescribed by the commission. "Summary of disclosures" forms are available upon request at the commission office.

C. Information contained in a disclosure statement shall be accurate on the date it is supplied to a purchaser.

[8-15-97; 16.61.25.9 NMAC - Rn, 16 NMAC 61.25.9, 1-1-2002]

16.61.25.10. Description of interest in time share property; recordation.

All contracts and deeds conveying an interest in a time share must contain a legal description of the time share project, time share unit and interval number for which the interest is being conveyed, if applicable. The developer

shall not record a conveyance instrument until after the expiration of the purchaser's 7-day right of rescission.

[8-15-97; 16.61.25.10 NMAC - Rn, 16 NMAC 61.25.10, 1-1-2002]

16.61.25.11. Questionnaire and application.

The "questionnaire and application for registration of time share project" (form TS-1) shall be made on the form prescribed by the commission. Questionnaire and application forms are available upon request at the commission office.

[8-15-97; 16.61.25.11 NMAC - Rn, 16 NMAC 61.25.11, 1-1-2002]

16.61.25.12. License requirements.

Any individual, including a tour guide, who shows time share units or facilities to prospective purchasers, shall hold a New Mexico real estate associate broker's or qualifying broker's license. No person except the developer may participate in any part of a time share sales presentation unless that person holds a New Mexico real estate associate broker or qualifying broker license.

[8-15-97, A, 2-14-2000; 16.61.25.12 NMAC - Rn, 16 NMAC 61.25.12, 1-1-2002; A, 1-1-2006]

16.61.25.13. Developers.

Every developer of a time share project registered in this state shall, in addition to any other requirements by law:

A. Maintain a full and complete record of all transactions wherein that developer or any real estate associate broker or qualifying broker representing said developer are engaged. All records shall contain, but are not limited to:

(1) record of all purchases, sales, leases or exchanges of time share interests in the registered time share project;

(2) the name or names of the buyer and seller, or in the case of exchanges, the names of the parties thereto;

(3) the date or dates of such transactions;

(4) the amount, if any, of the commission earned in such transaction; and,

(5) the amount, if any, of the commission or commissions paid by the qualifying broker or the developer to an associate broker and the amount, if any, of the commission or commissions retained by the qualifying broker or developer.

B. All sales of time share interests by associate brokers must be through the qualifying broker of the time share project, and all commissions to such associate brokers must be disbursed by the qualifying broker. If a qualifying broker transfers his license from a time share project and all commissions earned by associate brokers have not been disbursed, those commissions must be accounted for and remitted within a reasonable time by the time share developer.

C. The records required to be maintained by these regulations will be available to the commission or its duly authorized representative at the

location of the registered time share project in New Mexico, at the location of the time share sales office in New Mexico, or at the commission offices.

[8-15-97, A, 2-14-2000; 16.61.25.13 NMAC - Rn & A, 16 NMAC 61.25.13, 1-1-2002; A, 1-1-2006]

16.61.25.14. Trust accounts.

Records to be maintained. Every developer of a time share project registered in New Mexico shall, within a reasonable time, account for and remit any money coming into his possession which belongs to others during the sale of a time share interest. Such developer shall keep such funds of others in an escrow or trust account maintained by him in a bank or savings and loan institution or title company authorized to do business in this state. Such developer shall not commingle funds of others with his own. Every developer of a time share project registered in this state shall maintain full and complete records of all funds deposited in his trust account. Such records shall clearly indicate the date and from whom the money was received, date deposited, date of withdrawal, and any other pertinent information concerning the transaction. The records shall clearly show for whose account the money is deposited and to whom the money belongs. All such records and funds shall be subject to inspection by the commission or its duly authorized representative at the location in New Mexico of the registered time share project, the location in New Mexico of the time share sales office, or at the commission offices.

[8-15-97, A, 2-14-2000; 16.61.25.14 NMAC - Rn, 16 NMAC 61.25.14, 1-1-2002; A, 1-1-2006]

PART 26

LAND TITLE TRUST FUND ACT

16.61.26.7. Definitions.

Refer to 16.61.1.7.

[16.61.26.7 NMAC - N, 1-1-2002]

16.61.26.8. Trust accounts, escrow accounts, special accounts, pooled interest-bearing accounts, and disposition of earned interest on certain accounts.

A. Every real estate qualifying broker who maintains a trust or escrow account as required pursuant to the provisions of Subsection H of 61-29-12 NMSA 1978 may maintain a pooled interest-bearing escrow account and may deposit all customer funds into that account except for:

(1) funds required to be deposited into a property management trust account under an express property management agreement; or

(2) funds required to be deposited into an interest-bearing account under an express agreement between the parties to a transaction and under which agreement provisions are made for the payment of interest to be earned on the funds deposited.

B. The following procedures and forms should be used in establishing and operating pooled interest-bearing escrow accounts.

(1) Form 5828-1 instructions for financial institutions regarding processing land title trust fund act and low income housing trust fund act accounts.

(2) Form 5828-2 account enrollment and agreement between company and financial institution.

(3) Form 5828-3 financial institution report of interest remittance.

[16.61.26.8 NMAC - N, 1-1-2002; A, 1-1-2006]

PART 27

FOREIGN BROKERS

16.61.27.7. Definitions.

Refer to Definitions 16.61.1.7 NMAC.

[1-1-2000; 16.61.27.7 NMAC - Rn, 16 NMAC 61.27.7, 1-1-2002]

16.61.27.8. [RESERVED]

[8-15-97, A, 1-1-2000; 16.61.27.8 NMAC - Rn & A, 16 NMAC 61.27.9, 1-1-2002; A, 1-1-2006; Repealed, 12-31-2008]

16.61.27.9. Transactions involving foreign brokers.

A. A real estate broker currently licensed by another state or licensing jurisdiction other than New Mexico, may engage in real estate activity in New Mexico as a foreign broker provided that he/she enters into a transaction specific written agreement with a New Mexico licensed qualifying broker prior to commencing such real estate activity. The foreign broker shall comply with all New Mexico laws, including but not limited to the real estate license law and real estate commission rules.

B. The New Mexico qualifying broker will have the same responsibilities for the transaction that he/she would have for any other transaction conducted through their brokerage. All funds handled for others in such transactions shall be deposited by the New Mexico qualifying broker in a bank, savings and loan institution, or title company authorized to do business in New Mexico.

C. A New Mexico licensed broker found to have violated another state's license law or rules in the course of acting as a foreign broker in that state may be subject to section 61-29-12 A (12) of the real estate license law which provides that the commission may suspend, revoke, or condition a license if the broker has been the subject of disciplinary action in another state or jurisdiction.

[8-15-97, A, 1-1-2000, A, 2-14-2000; 16.61.27.9 NMAC - Rn & A, 16 NMAC 61.27.8, 1-1-2002; A, 1-1-2006; A, 12-31-2008; A, 1-1-2012]

PART 28**[RESERVED]****PART 29****TRADE NAME****16.61.29.7. Definitions.**

Refer to 16.61.1.7 NMAC.

[16.61.29.7 NMAC - Rp, 16 NMAC 61.29.7, 1-1-2002]

16.61.29.8. Registration and use of trade name.

A. Prior to the use of any trade name for the operation of a brokerage, the qualifying broker shall register such trade name with the commission. A qualifying broker must conduct their real estate brokerage business under a trade name registered with the commission. A qualifying broker wishing to conduct real estate brokerage business under a different trade name must execute a new trade name registration form, provide verification of current errors and omission coverage and pay the required fee with the commission.

B. When a brokerage ceases using a trade name, the qualifying broker shall, within 10 days, return the qualifying broker's license and the licenses of all qualifying and associate brokers affiliated with the brokerage to the commission, advise the commission in writing that the trade name is no longer being used, and remove all signs and advertising using the trade name.

C. Use of a trade name in such a fashion as to mislead the public may be grounds for disciplinary action by the commission.

D. An associate broker executing a trade name registration form for the purposes of reinstating qualifying broker status shall be required, as a condition of reinstatement, to provide documentation of having completed the commission-approved minimum four-hour qualifying broker refresher course during the current license renewal cycle.

[16.61.29.8 NMAC - Rp, 16 NMAC 61.29.8, 1-1-2002; A, 1-1-2006; A, 1-1-2012]

PART 30**BRANCH OFFICE/TEMPORARY OFFICE****[REPEALED 01-01-06]**

PART 31

SIGNAGE

16.61.31.7. Definitions.

Refer to 16.61.1.7 NMAC.

[1-1-2000; 16.61.31.7 NMAC - Rn, 16 NMAC 61.31.7, 1-1-2002]

16.61.31.8. Requirements.

A. Each qualifying broker shall place and maintain a legible sign in a conspicuous place near the office entrance identifying them as the qualifying broker. The trade name of the brokerage as registered with the commission shall be clearly shown.

B. In the case of a qualifying broker whose office is located in an office building, the qualifying broker may comply with this regulation by listing their name on the directory of offices provided by the office building and by displaying the trade name on or near the office entrance.

[1-1-2000, A, 2-14-2000; 16.61.31.8 NMAC - Rn, 16 NMAC 61.31.8, 1-1-2002; A, 12-31-2008]

PART 32

REAL ESTATE ADVERTISING

16.61.32.7. Definitions.

Refer to 16.61.1.7 NMAC.

[1-1-2000; 16.61.32.7 NMAC - Rn, 16 NMAC 61.32.7, 1-1-2002]

16.61.32.8. Advertisements.

A. All real estate advertising shall be a true and factual representation of the property and real estate services being advertised and shall not be presented in such a manner that will confuse or mislead the public.

B. Every qualifying broker advertising real property for others for sale, purchase, lease, exchange or rent, including short-term or vacation rentals, or advertising real estate services, shall at a minimum, use in such advertising the trade name and current brokerage office telephone number as registered with the commission. Directional signs are exempt from these requirements. Additional telephone numbers may be used in such advertising.

C. Associate brokers, when advertising real property for others for sale, purchase, lease, exchange or rent, or when advertising real estate services, shall include in the advertisement the trade name and the current telephone number as registered with the commission of the brokerage with which they are affiliated.

D. A broker advertising to, sell, or exchange real property which the broker owns or partially owns shall indicate within such advertising, including signs, that the broker owns the real property. Disclosure of such ownership must also be made in the listing contract, purchase agreement, or exchange agreement. If an owner-broker engages a third party broker to list the owner-broker's property, the third party broker is not required to make an owner-broker disclosure in advertising and signs, but such disclosure is required in the listing contract, purchase agreement or exchange agreement. A broker advertising to rent or lease real property which the broker owns or partially owns is not required to disclose such ownership in advertising and signs, but is required to make such disclosure in rental or lease agreements.

E. When advertising real property owned by a broker and the telephone number of the brokerage is used in the advertisement, the advertisement must also include the trade name of the brokerage as registered with the commission.

F. All advertising must be in compliance with all local, state and federal laws and regulations.

G. These requirements apply to all forms of advertising, including but not limited to print, audio and video recordings, computer presentations, online and electronic media.

[N, 1-1-2000; 16.61.32.8 NMAC - Rn, 16 NMAC 61.32.8, 1-1-2002; A, 1-1-2006; A, 1-1-2007; A, 1-1-2012]

PART 33

DOCUMENT EXECUTION AND DELIVERY

16.61.33.7. Definitions.

Refer to 16.61.1.7.

[16.61.33.7 NMAC - Rp, 16 NMAC 61.33.7, 1-1-2002]

16.61.33.8. Execution of documents.

All transactions shall be documented and signed by all parties to the transaction.

[16.61.33.8 NMAC - Rp, 16 NMAC 61.33.8, 1-1-2002]

16.61.33.9. Delivery of documents.

Except as otherwise provided by law, in all circumstances it shall be the responsibility of each broker engaged in a transaction to assure that all parties to the transaction receive legible copies of any and all documents they have signed and any documents that pertain to their respective interest in the transaction as soon as practicably possible, and copies of all fully executed documents thereafter.

[16.61.33.9 NMAC - Rp, 16 NMAC 61.33.9, 1-1-2002; A, 1-1-2006]

PART 34**[RESERVED]****PART 35****CHILD SUPPORT ENFORCEMENT****16.61.35.7. Definitions.**

All terms defined in the Parental Responsibility Act shall have the same meanings in Part 35 of Chapter 61 as used in Part 35.

A. "HSD" means the New Mexico human services department;

B. "license" means a license issued by the commission that a person is required to have to engage in the profession or occupation of real estate in New Mexico;

C. "statement of compliance" means a certified statement from HSD stating that an applicant or broker is in compliance with a judgment and order for support; and

D. "statement of non-compliance" means a certified statement from HSD stating that an applicant or broker is not in compliance with a judgment and order for support.

[8-15-97, A, 2-14-2000; 16.61.35.7 NMAC - Rn, 16 NMAC 61.35.7, 1-1-2002; A, 1-1-2006]

16.61.35.8. Disciplinary action.

If a license applicant or licensed broker is not in compliance with a judgment and order for support, the commission:

A. shall deny an application for a license;

B. shall deny the renewal of the license; and

C. has grounds for suspension or revocation of the license.

[8-15-97; 16.61.35.8 NMAC - Rn & A, 16 NMAC 61.35.8, 1-1-2002; A, 1-1-2006]

16.61.35.9. Certified list.

Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support, the commission shall match the certified list against the current list of commission brokers or broker applicants. Upon the later receipt of an application for license or renewal, the commission shall match the applicant against the current certified list. By the end of the month in which the certified list is received, the commission shall report to HSD the names of commission brokers or broker applicants who are on the certified list and the action the commission has taken in connection with such brokers or broker applicants.

[8-15-97, A, 2-14-2000; 16.61.35.9 NMAC - Rn & A, 16 NMAC 61.35.9, 1-1-2002; A, 1-1-2006]

16.61.35.10. Initial action.

Upon determination that a broker or broker applicant appears on the certified list, the commission shall:

A. commence a formal proceeding as set forth in Section 11 of Part 35 to take the appropriate action under Section 8 of Part 35; or

B. for current brokers only, informally notify the broker that the broker's name is on the certified list, and that the broker must provide the commission with a subsequent statement of compliance from HSD by the earlier of the application for license renewal or a specified date not to exceed thirty (30) days. If the broker fails to provide this statement, the commission shall commence a formal proceeding as set forth in Section 11 of Part 35.

[8-15-97, A, 2-14-2000; 16.61.35.10 NMAC - Rn, 16 NMAC 61.35.10, 1-1-2002; A, 1-1-2006]

16.61.35.11. Notice of contemplated action.

Prior to taking any action specified in Section 8 of Part 35, the commission shall serve upon the broker or broker applicant a written notice stating that:

A. the commission has grounds to take such action, and that the commission shall take such action unless the broker or broker applicant:

(1) mails a letter (certified, return receipt requested) within twenty (20) days after service of the notice requesting a hearing; or

(2) provides the commission, within thirty (30) days of the date of the notice, with a statement of compliance from HSD; and

B. if the broker or broker applicant disagrees with the determination of non-compliance, or wishes to come into compliance, the broker or broker applicant should contact the HSD child support enforcement division.

[8-15-97, A, 1-1-2000; 16.61.35.11 NMAC - Rn & A, 16 NMAC 61.35.11, 1-1-2002; A, 1-1-2006]

16.61.35.12. Evidence and proof.

In any hearing under Part 35 of Chapter 61, relevant evidence is limited to the following:

A. a statement of non-compliance is conclusive evidence that requires the commission to take the appropriate action under Section 8 of Part 35 of Chapter 61 unless;

B. the broker or broker applicant provides the commission a subsequent statement of compliance which shall preclude the commission from taking any action based solely on the prior statement of non-compliance.

[8-15-97; 16.61.35.12 NMAC - Rn & A, 16 NMAC 61.35.11, 1-1-2002; A, 1-1-2006]

16.61.35.13. Order.

When an action is taken under Part 35 of Chapter 61 solely because the license applicant or Licensee is not in compliance with a judgment and order for support, the order shall state that the application or license shall be reinstated upon presentation of a subsequent Statement of Compliance. The

Commission may also include any other conditions necessary to comply with Commission requirements for reapplication or reinstatement of lapsed licenses.

[8-15-97, A, 1-1-2000; 16.61.35.13 NMAC - Rn & A, 16 NMAC 61.35.13, 1-1-2002; A, 1-1-2006]

16.61.35.14. Procedures.

Proceedings under Part 35 of Chapter 61 shall be governed by the Uniform Licensing Act, Section 61-1-1, et seq., or any other adjudicatory procedures adopted by the commission.

[8-15-97; 16.61.35.14 NMAC - Rn, 16 NMAC 61.35.14, 1-1-2002]

PART 36

COMPLAINTS AND INVESTIGATIONS

16.61.36.7. Definitions.

Refer to 16.61.1.7 NMAC.

[16.61.36.7 NMAC - Rp, 16 NMAC 61.36.7, 1-1-2002]

16.61.36.8. Complaints.

The commission may file a complaint against any person who engages in the business or acts in the capacity of a real estate broker or a real estate commission approved education sponsor or instructor, in New Mexico with or without a New Mexico real estate license based on information indicating that there may have been a violation of the real estate license law or the commission rules. The commission may also act on a complaint made by a member of the commission, a member of the public, or another real estate broker. Upon receipt of a complaint the commission will determine if the complaint is within its jurisdiction. If the commission determines the complaint is within its jurisdiction, the complaint will be assigned for investigation.

[16.61.36.8 NMAC - Rp, 16 NMAC 61.36.8, 1-1-2002; A, 1-1-2006; A, 12-31-2008]

16.61.36.9. Investigations.

In conducting an investigation, the commission shall give the person under investigation the opportunity to answer the complaint made against them in writing and to produce relevant documentary evidence, in accordance with the Uniform Licensing Act. If the person under investigation fails to respond within ten (10) working days of having been provided with a copy of the complaint and having been informed by the commission in writing that a complaint has been filed against him or her, the investigation may proceed without benefit of that person's response.

A. If the investigation reveals that the complaint does not involve a violation of the Real Estate License Law or the commission rules, the

complaint will be dismissed by the commission, and the parties to the complaint will be so advised.

B. Withdrawal of a complaint by a member of the commission, a member of the public, or another broker does not bind the commission to dismiss the complaint.

[16.61.36.9 NMAC - Rp, 16 NMAC 61.36.9, 1-1-2002; A, 1-1-2006]

Owner-Resident Relations

CHAPTER 47

Property Law

ARTICLE 8

Owner-Resident Relations

Sec.		Sec.	
47-8-1.	Short title.	47-8-31.	Resident rights following fire or casualty.
47-8-2.	Purpose.	47-8-32.	Repealed.
47-8-3.	Definitions.	47-8-33.	Breach of agreement by resident and relief by owner.
47-8-4.	Principles of law and equity.	47-8-34.	Notice of extended absence.
47-8-5.	General act.	47-8-34.1.	Disposition of property left on the premises.
47-8-6.	Recovery of damages.	47-8-34.2.	Personal property and security deposit of deceased resident; contact person.
47-8-7.	Provision for agreement.	47-8-35.	Claim for rent and damages.
47-8-8.	Rights, obligations and remedies.	47-8-36.	Unlawful removal and diminution of services prohibited.
47-8-9.	Exemptions.	47-8-36.1.	Landlord lien.
47-8-10.	Judicial jurisdiction.	47-8-37.	Notice of termination and damages.
47-8-11.	Obligation of good faith.	47-8-38.	Injunctive relief.
47-8-12.	Inequitable agreement provision.	47-8-39.	Owner retaliation prohibited.
47-8-13.	Service of notice.	47-8-40.	Action for possession by owner.
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47-8-18.	Deposits.	47-8-45.	Legal or equitable defense.
47-8-19.	Owner disclosure.	47-8-46.	Writ of restitution.
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47-8-24.	Right of entry.	47-8-51.	Applicability.
47-8-25.	Use of dwelling unit limited.	47-8-52.	Conflicts; applicability of law.
47-8-26.	Delivery of possession.		
47-8-27.	Repealed.		
47-8-27.1.	Breach of agreement by owner and relief by resident.		
47-8-27.2.	Abatement.		
47-8-28.	Repealed.		
47-8-29.	Repealed.		
47-8-30.	Action for counterclaim for resident.		

47-8-1. Short title.

Sections 47-8-1 through 47-8-51 [47-8-52] NMSA 1978 may be cited as the "Uniform Owner-Resident Relations Act".

History: 1953 Comp., § 70-7-1, enacted by Laws 1975, ch. 38, § 1; 1995, ch. 195, § 1.

STATUTORY NOTES

Cross reference. — Conversion buildings, 47-7D-12 NMSA 1978.

JUDICIAL DECISIONS

Constitutionality.
Generally.
Applicability.
Construction.
Instructions.
Notice.
Requirements.
Statute of limitations.

Constitutionality.

70-7-27B, 1953 Comp. is not found to be constitutionally vague in connection with an action brought by a landowner to recover unpaid rent under the Uniform Owner-Resident Relations Act, “former 70-7-1, 1953 Comp. (now 47-8-1 NMSA 1978)”, after the resident was awarded damages. *Kepler v. Covarrubia*, 91 N.M. 443, 575 P.2d 952 (1978).

Generally.

Property owners’ actions against residents were not barred by Uniform Owner-Resident Relations Act (UORRA) because the UORRA created no bar to an otherwise proper action for possession brought in retaliation for residents’ complaints about their noisy neighbors. *Casa Blanca Mobile Home Park v. Hill*, 1998-NMCA-094, 125 N.M. 465, 963 P.2d 542, cert. denied, 125 N.M. 322, 961 P.2d 167 (1998).

Ruling that plaintiff mobile home park met the notice requirements contained in the Mobile Home Park Act, 47-10-1 NMSA 1978, for the termination of a mobile home tenancy was reversed where the park failed to strictly comply with the notice requirements of the Owner-Resident Relations Act, 47-8-1 to 47-8-52 NMSA 1978, showing good cause for the termination of defendant renter’s month-to-month tenancy in the park; even though there had been extensive communication, both written and oral, regarding the park’s dissatisfaction with the renter’s maintenance of the rental space, the park was required to include in its notice to quit a statement of the cause justifying the termination and strict compliance with the notice provision was required. *Green Valley Mobile Home Park v. Mulvaney*, 1996-NMSC-037, 121 N.M. 817, 918 P.2d 1317.

Metropolitan court has legal and equity jurisdiction in cases arising under the New Mexico Uniform Owner-Resident Relations Act, 47-8-1 NMSA 1978 et seq., pursuant to 47-8-45 NMSA 1978; the application of equitable defenses in cases involving public housing rests in the sound discretion of the metropolitan court, and its exercise thereof will not be dis-

turbed on appeal unless there is a clear abuse of discretion. *Albuquerque v. Brooks*, 114 N.M. 572, 844 P.2d 822 (1992).

Applicability.

New Mexico Uniform Owner-Resident Relations Act applied to parties’ agreement that constituted a residential lease; tenants had no right to abate rent where property was not uninhabitable. *Hedicke v. Gunville*, 2003-NMCA-032, 133 N.M. 335, 62 P.3d 1217, cert. denied, N.M. , 63 P.3d 516 (2003).

Contention of a tenant that the implied warranty of habitability was in effect in New Mexico and that he had a right to abate rent because the landlord did not supply reasonable heat for his rental unit was remanded to the trial court for determination of the applicability of 47-8-20 NMSA 1978 of the Uniform Owner-Resident Relations Act, 47-8-1 to 47-8-51 NMSA 1978, which encompassed the issue and which was adopted after the court held that there was no implied warranty of habitability in New Mexico. *T.W.I.W., Inc. v. Rhudy*, 96 N.M. 354, 630 P.2d 753 (1981).

Construction.

The Uniform Owner-Resident Relations Act, 47-8-1 NMSA 1978 et seq., does not create a bar to property owners’ alleged retaliatory action for possession of the premises following the residents’ complaints about their noisy neighbors. *Casa Blanca Mobile Home Park v. Hill*, 1998-NMCA-094, 125 N.M. 465, 963 P.2d 542, cert. denied, 125 N.M. 322, 961 P.2d 167 (1998).

Instructions.

Given the provisions of Rules 12-216 and 1-051 NMRA, because defendant landlord did not tender correct instructions to inform jury of his theory that the Owner-Resident Relations Act, 47-8-1 to 47-8-51 NMSA 1978, did not apply because plaintiff tenant was an employee whose residency depended on his employment status, and because landlord was not entitled to rely on the concept of fundamental error to escape the consequences of his failure to object and his failure to tender appropriate instructions, judgment in favor of tenant against landlord was affirmed. *Gracia v. Bittner*, 120 N.M. 191, 900 P.2d 351 (Ct. App. 1995).

Notice.

Resident is not entitled to abatement of rent after being awarded damages in connection with an action brought by a landowner to recover unpaid rent under the Uniform Owner-Resident Relations Act, “former 70-7-1, 1953

Comp. (now 47-8-1 NMSA 1978)", because the resident failed to give written notice of any breach as required by 70-7-29, 1953 Comp. *Kepler v. Covarrubia*, 91 N.M. 443, 575 P.2d 952 (1978).

Requirements.

"Former 70-7-13A, 1953 Comp. (now 47-8-13 NMSA 1978)" controls any notice requirement under the Uniform Owner-Resident Relations Act, "former 70-7-1, 1953 Comp. (now 47-8-1 NMSA 1978)", except for the written notice specifically required by 70-7-29, 1953 Comp. *Kepler v. Covarrubia*, 91 N.M. 443, 575 P.2d 952 (1978).

Statute of limitations.

Where the tenant waited three years after he

moved out of the rental property before suing the landlords for negligence in connection with mold and for a violation of their obligations under 47-8-20A(1)-(4) NMSA 1978 of the New Mexico Uniform Owner-Resident Relations Act, the tenant's claim was barred by the applicable three-year statute of limitations set forth in 37-1-8 NMSA 1978. Applying the discovery rule, the tenant's cause of action accrued no later than the day he vacated the home; at that time, the tenant knew there was mold in the home, believed that the mold was causing his symptoms, and had been informed that mold could be dangerous to humans. *Gerke v. Romero*, 2010-NMCA-060, 148 N.M. 367, 237 P.3d 111.

47-8-2. Purpose.

The purpose of the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] is to simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of owner and resident, and to encourage the owners and the residents to maintain and improve the quality of housing in New Mexico.

History: 1953 Comp., § 70-7-2, enacted by Laws 1975, ch. 38, § 2.

JUDICIAL DECISIONS

Negligence.

Because 47-8-2 NMSA 1978 in the Uniform Owner-Resident Relations Act, 47-8-1 to 47-8-51 NMSA 1978, states that the Act's general purpose is to clarify the rights and the obligations of owners and residents and because it is not clear that the provision in 47-8-47 NMSA 1978, which gives a tenant a right to file an appeal to stay the execution of a writ of restitution regarding an eviction action, in the Act is

intended to provide protection against sheriff's deputies who execute the writ due to not knowing of the appeal, the execution of the writ by the deputies did not entitle the tenants to a recovery as to the negligence claim that was filed against the County of Bernalillo (New Mexico), the sheriff and the deputies. *Runge v. Fox*, 110 N.M. 447, 796 P.2d 1143 (Ct. App. 1990).

47-8-3. Definitions.

As used in the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978]:

A. "abandonment" means absence of the resident from the dwelling, without notice to the owner, in excess of seven continuous days; providing such absence occurs only after rent for the dwelling unit is delinquent;

B. "action" includes recoupment, counterclaim, set-off, suit in equity and any other proceeding in which rights are determined, including an action for possession;

C. "amenity" means a facility appurtenance or area supplied by the owner and the absence of which would not materially affect the health and safety of the resident or the habitability of the dwelling unit;

D. "codes" includes building codes, housing codes, health and safety codes, sanitation codes and any law, ordinance or governmental regulation

concerning fitness for habitation or the construction, maintenance, operation, occupancy or use of a dwelling unit;

E. “deposit” means an amount of currency or instrument delivered to the owner by the resident as a pledge to abide by terms and conditions of the rental agreement;

F. “dwelling unit” means a structure, mobile home or the part of a structure, including a hotel or motel, that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household and includes a parcel of land leased by its owner for use as a site for the parking of a mobile home;

G. “eviction” means any action initiated by the owner to regain possession of a dwelling unit and use of the premises under terms of the Uniform Owner-Resident Relations Act;

H. “fair rental value” is that value that is comparable to the value established in the market place;

I. “good faith” means honesty in fact in the conduct of the transaction concerned as evidenced by all surrounding circumstances;

J. “normal wear and tear” means deterioration that occurs based upon the use for which the rental unit is intended, without negligence, carelessness, accident, abuse or intentional damage of the premises, equipment or chattels of the owner by the residents or by any other person in the dwelling unit or on the premises with the resident’s consent; however, uncleanliness does not constitute normal wear and tear;

K. “organization” includes a corporation, government, governmental subdivision or agency thereof, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest or any other legal or commercial entity;

L. “owner” means one or more persons, jointly or severally, in whom is vested:

(1) all or part of the legal title to property, but shall not include the limited partner in an association regulated under the Uniform Limited Partnership Act [54-2-1 NMSA 1978]; or

(2) all or part of the beneficial ownership and a right to present use and enjoyment of the premises and agents thereof and includes a mortgagee in possession and the lessors, but shall not include a person or persons, jointly or severally, who as owner leases the entire premises to a lessee of vacant land for apartment use;

M. “person” includes an individual, corporation, entity or organization;

N. “premises” means facilities, facilities and appurtenances, areas and other facilities held out for use of the resident or whose use is promised to the resident coincidental with occupancy of a dwelling unit;

O. “rent” means payments in currency or in-kind under terms and conditions of the rental agreement for use of a dwelling unit or premises, to be made to the owner by the resident, but does not include deposits;

P. “rental agreement” means all agreements between an owner and resident and valid rules and regulations adopted under Section 47-8-23 NMSA 1978 embodying the terms and conditions concerning the use and occupancy of a dwelling unit or premises;

Q. “resident” means a person entitled under a rental agreement to occupy a dwelling unit in peaceful possession to the exclusion of others and

includes the owner of a mobile home renting premises, other than a lot or parcel in a mobile home park, for use as a site for the location of the mobile home;

R. “roomer” means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility in a structure where one or more major facilities are used in common by occupants of the dwelling units. As referred to in this subsection, “major facility”, in the case of a bathroom, means toilet and either a bath or shower and, in the case of a kitchen, means refrigerator, stove or sink;

S. “single family residence” means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment nor any other essential facility or service with any other dwelling unit;

T. “substantial violation” means a violation of the rental agreement or rules and regulations by the resident or occurring with the resident’s consent that occurs in the dwelling unit, on the premises or within three hundred feet of the premises and that includes the following conduct, which shall be the sole grounds for a substantial violation:

- (1) possession, use, sale, distribution or manufacture of a controlled substance, excluding misdemeanor possession and use;
- (2) unlawful use of a deadly weapon;
- (3) unlawful action causing serious physical harm to another person;
- (4) sexual assault or sexual molestation of another person;
- (5) entry into the dwelling unit or vehicle of another person without that person’s permission and with intent to commit theft or assault;
- (6) theft or attempted theft of the property of another person by use or threatened use of force; or
- (7) intentional or reckless damage to property in excess of one thousand dollars (\$1,000);

U. “term” is the period of occupancy specified in the rental agreement; and

V. “transient occupancy” means occupancy of a dwelling unit for which rent is paid on less than a weekly basis or where the resident has not manifested an intent to make the dwelling unit a residence or household.

History: 1953 Comp., § 70-7-3, enacted ch. 340, § 1; 1995, ch. 195, § 2; 1997, ch. 39, by Laws 1975, ch. 38, § 3; 1977, ch. 55, § 1; § 1; 1999, ch. 91, § 1. 1983, ch. 122, § 18; 1985, ch. 146, § 1; 1989,

STATUTORY NOTES

Cross reference. — Deposits, 47-8-18 NMSA 1978.

JUDICIAL DECISIONS

Generally.
Holdover period.

Generally.

Uniform Building Code, 47-8-3C NMSA 1978, sets minimum standards to safeguard health and property by regulating and controlling the use and occupancy and maintenance of all buildings and structures within New Mexico; 47-8-3C NMSA 1978 defines "codes" within the Act as including building codes. *T.W.I.W., Inc. v. Rhudy*, 96 N.M. 354, 630 P.2d 753 (1981).

Holdover period.

Pursuant to 47-8-35 NMSA 1978 of the Uniform Owner-Resident Relations Act, 47-8-1 to 47-8-51, NMSA 1978, a landowner was entitled to rent during a holdover period; because there was no rental agreement after a particular date, the tenant was required to pay the fair rental value of the premises as they existed during these months, under 47-8-15 NMSA 1978 and defined by 47-8-3 NMSA 1978. *T.W.I.W., Inc. v. Rhudy*, 96 N.M. 354, 630 P.2d 753 (1981).

47-8-4. Principles of law and equity.

Unless displaced by the provisions of the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978], the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, equitable abatement, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy or other validating or invalidating cause supplement its provisions.

History: 1953 Comp., § 70-7-4, enacted by Laws 1975, ch. 38, § 4; 1995, ch. 195, § 3.

STATUTORY NOTES

Cross reference. — Breach of agreement by resident and relief by owner, 47-8-33 NMSA 1978.

47-8-5. General act.

The Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] being a general act is intended as a unified coverage of its subject matter, and no part of it is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

History: 1953 Comp., § 70-7-5, enacted by Laws 1975, ch. 38, § 5.

47-8-6. Recovery of damages.

A. The remedies provided by the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] shall be so administered that the aggrieved party may recover damages as provided in the Uniform Owner-Resident Relations Act. The aggrieved party has a duty to mitigate damages.

B. Any right or obligation declared by the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] is enforceable by action unless the provision declaring it specifies a different and limited effect.

History: 1953 Comp., § 70-7-6, enacted by Laws 1975, ch. 38, § 6.

47-8-7. Provision for agreement.

A claim or right arising under the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] or on a rental agreement may be settled by agreement.

History: 1953 Comp., § 70-7-7, enacted by Laws 1975, ch. 38, § 7.

47-8-8. Rights, obligations and remedies.

The Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] applies to, regulates and determines rights, obligations and remedies under a rental agreement, wherever made, for a dwelling unit located within this state.

History: 1953 Comp., § 70-7-8, enacted by Laws 1975, ch. 38, § 8.

JUDICIAL DECISIONS

Generally.
Incidental to employment.

Generally.

Where 47-8-8 NMSA 1978 in the Uniform Resident Relation Act, 47-8-1 et seq. NMSA 1978, stated that the Act only applied when a landlord-tenant relationship existed, the Act did not provide any basis of relief to the private employee regarding the police-assisted removal of him from the barn in which he was living as an incident of his employment for the employer since the employee was not a tenant because he did not pay rent or any other expenses and

because he did not have an oral or a written lease. *Collins v. Storment*, F. Supp. 2d (D.N.M. Apr. 23, 1993).

Incidental to employment.

Where a tenant's occupation of premises was incidental to his employment, the relationship of landlord and tenant did not exist and the Uniform Resident Relation Act, 47-8-8 NMSA 1978, was inapplicable to the tenant's claim of illegal eviction against certain law enforcement officers. *Collins v. Storment*, F. Supp. 2d (D.N.M. Apr. 23, 1993).

47-8-9. Exemptions.

Unless created to avoid the application of the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978], the following arrangements are exempted by that act:

A. residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, counseling, religious, educational when room and board are an entity or similar service;

B. occupancy under a contract of sale of a dwelling unit or the property of which it is part, if the occupant is the purchaser or a person who succeeds to his interest;

C. occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

D. transient occupancy in a hotel or motel;

E. occupancy by an employee of an owner pursuant to a written rental or employment agreement that specifies the employee's right to occupancy is conditional upon employment in and about the premises; and

F. occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.

History: 1953 Comp., § 70-7-9, enacted by Laws 1975, ch. 38, § 9; 1995, ch. 195, § 4.

47-8-10. Judicial jurisdiction.

A. The district or magistrate court of this state may exercise jurisdiction over any person with respect to any conduct in this state governed by the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] or with respect to any claim arising from a transaction subject to this act for a dwelling unit located within its jurisdictional boundaries. In addition to any other method provided by rule or by statute, personal jurisdiction over a person may be acquired in a civil action or proceeding instituted in the district or magistrate court by the service of process in the manner provided by this section.

B. If a person is not a resident of this state or is a corporation not authorized to do business in this state and engages in any conduct in this state governed by the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978], or engages in a transaction subject to this act, he may designate an agent upon whom service of process may be made in this state. The agent shall be a resident of this state or a corporation authorized to do business in this state. The designation shall be in writing and shall be filed with the secretary of state. If no designation is made and filed or if process cannot be served in this state upon the designated agent, process may be served upon the secretary of state, but service upon him is not effective unless the plaintiff or petitioner immediately mails a copy of the process and pleading by registered or certified mail to the defendant or respondent at his last reasonably ascertainable address. An affidavit of compliance with this section shall be filed with the clerk of the court on or before the return day of the process, if any, or within any further time the court allows.

History: 1953 Comp., § 70-7-10, enacted by Laws 1975, ch. 38, § 10.

47-8-11. Obligation of good faith.

Every duty under the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] and every act which must be performed as a condition precedent to the exercise of a right or remedy under the Uniform Owner-Resident Relations Act imposes an obligation of good faith in its performance or enforcement.

History: 1953 Comp., § 70-7-11, enacted by Laws 1975, ch. 38, § 11.

JUDICIAL DECISIONS

Reasonableness.

Reversal of decision that found lessor had right to refuse to allow sublease but could only do so reasonably and in good faith was im-

proper because 47-8-11 NMSA 1978 required commercial transaction to be guided by right dealing and fairness. *Boss Barbara, Inc. v. Newbill*, 97 N.M. 239, 638 P.2d 1084 (1982).

47-8-12. Inequitable agreement provision.

A. If the court, as a matter of law, finds that any provision of a rental agreement was inequitable when made, the court may limit the application of such inequitable provisions to avoid an inequitable result.

B. If inequity is put into issue by a party to the rental agreement, the parties to the rental agreement shall be afforded a reasonable opportunity to present evidence as to the setting, purpose and effect of the rental agreement, or settlement, to aid the court in making determination.

History: 1953 Comp., § 70-7-12, enacted by Laws 1975, ch. 38, § 12.

JUDICIAL DECISIONS

Generally.
Review.
—Standards.

Generally.

In an action brought by a lessee against a lessor to recover a security deposit, the trial court's conclusion that the lessee should not be forced to pay \$850 per month where the apartment in question was occupied by another party at fair market value throughout the duration of the lease was appropriate; there was authority and substantial evidence upon which the trial court could have found that the lessee's agreement to pay \$850 per month, \$125 over the market value, was inequitable and should not have been enforced. *Ramirez-Eames v. Hover*, 108 N.M. 520, 775 P.2d 722 (1989).

Review.

—Standards.

Uniform Owner-Resident Relations Act, 47-8-1 NMSA 1978 et seq., specifically 47-8-12 NMSA 1978, modifies common law unconscionability principles by allowing a trial court in its discretion to make a determination of the underlying fairness of a rental agreement when made and by allowing selective enforcement of the contract to bring about an equitable result. However, appellate courts should not be de novo courts of equity in landlord-tenant disputes and should uphold the trial court's determination if it is supported by substantial evidence. *Ramirez-eames v. Hover*, 108 N.M. 520, 775 P.2d 722 (1989).

47-8-13. Service of notice.

A. A person has notice of a fact if:

- (1) he has actual knowledge of it;
- (2) he has received a notice or notification of it; or
- (3) from all facts and circumstances known to him at the time in

question he has reason to know that it exists.

B. A person notifies or gives a notice or notification to another by taking steps reasonably calculated to inform the other in ordinary course, whether or not the other actually comes to know of it.

C. A person receives a notice or notification:

- (1) when it comes to his attention;
- (2) where written notice to the owner is required, when it is mailed or otherwise delivered at the place of business of the owner through which the rental agreement was made or at any place held out by him as the place for receipt of the communication; or

(3) if written notice to the resident is required, when it is delivered in hand to the resident or mailed to him at the place held out by him as the place for receipt of the communication, or in the absence of such designation, to his last known place of residence.

D. Notwithstanding any other provisions of this section, notice to a resident for nonpayment of rent shall be effective only when hand delivered or mailed to the resident or posted on an exterior door of the dwelling unit. In all other cases where written notice to the resident is required, even if there is a notice by posting, there must also be a mailing of the notice by first class mail or hand delivery of the notice to the resident. The date of a posting shall be included in any notice posted, mailed or hand delivered, and shall constitute the effective date of the notice. A posted notice shall be affixed to a door by taping all sides or placed in a fixture or receptacle designed for notices or mail.

E. Notice, knowledge or a notice or notification received by the resident or person is effective for a particular transaction from the time it is brought to the attention of the resident or person conducting that transaction, and in any event from the time it would have been brought to the resident's or person's attention if the resident or person had exercised reasonable diligence.

F. Where service of notice is required under the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978], and the item is mailed but returned as undeliverable, or where the last known address is the vacated dwelling unit, the owner shall serve at least one additional notice if an alternative address has been provided to the owner by the resident.

History: 1953 Comp., § 70-7-13, enacted by Laws 1975, ch. 38, § 13; 1995, ch. 195, § 5.

JUDICIAL DECISIONS

Requirements.

“Former 70-7-13A, 1953 Comp. (now 47-8-13 NMSA 1978)” controls any notice requirement under the Uniform Owner-Resident Relations Act, “former 70-7-1, 1953 Comp. (now 47-8-1

NMSA 1978)”, except for the written notice specifically required by 70-7-29, 1953 Comp. Kepler v. Covarrubia, 91 N.M. 443, 575 P.2d 952 (1978).

47-8-14. Terms and conditions of agreement.

The owner and resident may include in a rental agreement terms and conditions not prohibited by the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] or other rule of law including rent, term of the agreement or other provisions governing the rights and obligations of the parties.

History: 1953 Comp., § 70-7-14, enacted by Laws 1975, ch. 38, § 14.

47-8-15. Payment of rent.

A. The resident shall pay rent in accordance with the rental agreement. In the absence of an agreement, the resident shall pay as rent the fair rental value for the use of the premises and occupancy of the dwelling unit.

B. Rent is payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit. Unless otherwise agreed, periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly installments at the beginning of each monthly period. The date of one month to the same date of the following month shall constitute a term of one month.

C. Unless the rental agreement fixes a definite term, the residency is week-to-week in the case of a person who pays weekly rent and in all other cases month-to-month.

D. If the rental agreement provides for the charging of a late fee, and if the resident does not pay rent in accordance with the rental agreement, the owner may charge the resident a late fee in an amount not to exceed ten percent of the total rent payment for each rental period that the resident is in default. To assess a late fee, the owner shall provide notice of the late fee charged no later than the last day of the next rental period immediately following the period in which the default occurred.

E. An owner may not assess a fee from the resident for occupancy of the dwelling unit by a reasonable number of guests for a reasonable length of time. This shall not preclude charges for use of premises or facilities other than the dwelling unit by guests.

F. An owner may increase the rent payable by the resident in a month-to-month residency by providing written notice to the resident of the proposed increase at least thirty days prior to the periodic rental date specified in the rental agreement or, in the case of a fixed term residency, at least thirty days prior to the end of the term. In the case of a periodic residency of less than one month, written notice shall be provided at least one rental period in advance of the first rental payment to be increased.

G. Unless agreed upon in writing by the owner and the resident, a resident's payment of rent may not be allocated to any deposits or damages.

History: 1953 Comp., § 70-7-15, enacted by Laws 1975, ch. 38, § 15; 1995, ch. 195, § 6.

JUDICIAL DECISIONS

Holdover period.

Pursuant to 47-8-35 NMSA 1978 of the Uniform Owner-Resident Relations Act, 47-8-1 to 47-8-51 NMSA 1978, a landowner was entitled to rent during a holdover period; because there was no rental agreement after a particular

date, the tenant was required to pay the fair rental value of the premises as they existed during these months, under 47-8-15 NMSA 1978 and defined by 47-8-3 NMSA 1978. *T.W.I.W., Inc. v. Rhudy*, 96 N.M. 354, 630 P.2d 753 (1981).

47-8-16. Waiver of rights prohibited.

No rental agreement may provide that the resident or owner agrees to waive or to forego rights or remedies under the law.

History: 1953 Comp., § 70-7-16, enacted by Laws 1975, ch. 38, § 16.

47-8-17. Unlawful agreement provision.

If an owner deliberately uses a rental agreement containing provisions known by him to be prohibited by law, the resident may recover damages sustained by him resulting from application of the illegal provision and reasonable attorney's fees.

History: 1953 Comp., § 70-7-17, enacted by Laws 1975, ch. 38, § 17.

47-8-18. Deposits.

A. An owner is permitted to demand from the resident a reasonable deposit to be applied by the owner to recover damages, if any, caused to the premises by the resident during his term of residency.

(1) Under the terms of an annual rental agreement, if the owner demands or receives of the resident such a deposit in an amount greater than one month's rent, the owner shall be required to pay to the resident annually an interest equal to the passbook interest permitted to savings and loan associations in this state by the federal home loan bank board on such deposit.

(2) Under the terms of a rental agreement of a duration less than one year, an owner shall not demand or receive from the resident such a deposit in an amount in excess of one month's rent.

B. It is not the intention of this section to include the last month's prepaid rent, which may be required by the rental agreement as a deposit as defined in Subsection D [E] of Section 47-8-3 NMSA 1978. Any deposit as defined in Paragraph (1) of Subsection A of this section shall not be construed as prepaid rent.

C. Upon termination of the residency, property or money held by the owner as deposits may be applied by the owner to the payment of rent and the amount of damages which the owner has suffered by reason of the resident's noncompliance with the rental agreement or Section 47-8-22 NMSA 1978. No deposit shall be retained to cover normal wear and tear. In the event actual cause exists for retaining any portion of the deposit, the owner shall provide the resident with an itemized written list of the deductions from the deposit and the balance of the deposit, if any, within thirty days of the date of termination of the rental agreement or resident departure, whichever is later. The owner is deemed to have complied with this section by mailing the statement and any payment required to the last known address of the resident. Nothing in this section shall preclude the owner from retaining portions of the deposit for nonpayment of rent or utilities, repair work or other legitimate damages.

D. If the owner fails to provide the resident with a written statement of deductions from the deposit and the balance shown by the statement to be due, within thirty days of the termination of the tenancy, the owner:

(1) shall forfeit the right to withhold any portion of the deposit;

(2) shall forfeit the right to assert any counterclaim in any action brought to recover that deposit;

(3) shall be liable to the resident for court costs and reasonable attorneys' fees; and

(4) shall forfeit the right to assert an independent action against the resident for damages to the rental property.

E. An owner who in bad faith retains a deposit in violation of this section is liable for a civil penalty in the amount of two hundred fifty dollars (\$250) payable to the resident.

History: 1953 Comp., § 70-7-18, enacted by Laws 1975, ch. 38, § 18; 1985, ch. 146, § 2; 1989, ch. 340, § 2.

STATUTORY NOTES

Cross reference. — Breach of agreement by owner and relief by resident, 47-8-27.1 NMSA 1978.

JUDICIAL DECISIONS

Generally.
Attorney fees.

Generally.

In a landlord-tenant dispute, the trial court did not err in granting directed verdicts on the claims for interest and for conversion since there was no security deposit upon which interest could accrue or conversion could be committed because no reasonable jury could have found that \$50,000 was merely a security deposit; 47-8-18A NMSA 1978 required the deposit to be reasonable and there would have been no circumstance under which a landlord would ask for, or a tenant would agree to, a security deposit that was nearly 32 times greater than the monthly rent. *Hedicke v. Gunville*, 2003-NMCA-032, 133 N.M. 335, 62 P.3d 1217, cert. denied, N.M. , 63 P.3d 516 (2003).

Landlord was entitled to apply tenant's security deposit to tenant's unpaid rent without sending a written itemization where tenant failed to provide landlord with 30 days notice of his intent to terminate their rental agreement as required by 47-8-37 NMSA 1978. *Bruce v. Attaway*, 1996-NMSC-030, 121 N.M. 755, 918 P.2d 341.

If a landlord does not provide a former tenant with an itemized listing of damages to the property within 30 days of vacancy, the landlord forfeits any right to withhold any portion of the deposit or to file suit for the alleged damages to the property. *Bruce v. Attaway*, 1996-NMSC-030, 121 N.M. 755, 918 P.2d 341.

Section 47-8-18D NMSA 1978 provides that if an owner fails to provide a resident with a written statement of deductions from a deposit and the balance shown by the statement to be due, within 30 days of the termination of the tenancy, the owner shall forfeit the right to withhold any portion of the deposit, shall forfeit the right to assert any counterclaim in

any action brought to recover that deposit, shall be liable to the resident for court costs and reasonable attorneys' fees, and shall forfeit the right to assert an independent action against the resident for damages to the rental property. *Bruce v. Attaway*, 1996-NMSC-030, 121 N.M. 755, 918 P.2d 341.

Owner is deemed to have complied with 47-8-18C NMSA 1978 by mailing a statement and any payment required to the last known address of resident; nothing in 47-8-18 NMSA 1978 shall preclude an owner from retaining portions of a deposit for nonpayment of rent or utilities, repair work, or other legitimate damages. *Bruce v. Attaway*, 1996-NMSC-030, 121 N.M. 755, 918 P.2d 341.

Section 47-8-18C NMSA 1978 provides that upon termination of residency, property or money held by the owner as deposits may be applied by the owner to the payment of rent and the amount of damages which the owner has suffered by reason of the resident's non-compliance with the rental agreement or of 47-8-22 NMSA 1978; no deposit shall be retained to cover normal wear and tear, and in the event actual cause exists for retaining any portion of the deposit, the owner shall provide the resident with an itemized written list of the deductions from the deposit and the balance of the deposit, if any, within 30 days of the date of termination of the rental agreement or resident departure, whichever is later. *Bruce v. Attaway*, 1996-NMSC-030, 121 N.M. 755, 918 P.2d 341.

Attorney fees.

Landlord, who did not comply with the requirement of 47-8-18 NMSA 1978 to give an itemized account of damages pursuant to 47-8-22 NMSA 1978, forfeited the deposit and the rights to recover additional damages, and owed the tenant attorney fees pursuant to 47-8-18D(3) NMSA 1978. *Garcia v. Thong*, 119 N.M. 704, 895 P.2d 226 (1995).

47-8-19. Owner disclosure.

A. The owner or any person authorized to enter into a rental agreement on his behalf shall disclose to the resident in writing at or before the commencement of the residency the name, address and telephone number of:

- (1) the person authorized to manage the premises; and

(2) an owner of the premises or a person authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands.

B. The information required to be furnished by this section shall be kept current, and this section extends to and is enforceable against any successor, owner or manager.

C. A person designated under Paragraph (2) of Subsection A of this section becomes an agent of each person who is an owner for the purpose of service of process and receiving and receipting for notices and demands. A person designated under Paragraph (1) of Subsection A of this section becomes an agent of each person who is an owner for the purpose of performing the obligations of the owner under the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] and under the rental agreement.

D. Failure of the owner to comply with this section shall relieve the resident from the obligation to provide notice to the owner as required by the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978].

History: 1953 Comp., § 70-7-19, enacted by Laws 1975, ch. 38, § 19; 1995, ch. 195, § 7.

47-8-20. Obligations of owner.

A. The owner shall:

(1) substantially comply with requirements of the applicable minimum housing codes materially affecting health and safety;

(2) make repairs and do whatever is necessary to put and keep the premises in a safe condition as provided by applicable law and rules and regulations as provided in Section 47-8-23 NMSA 1978;

(3) keep common areas of the premises in a safe condition;

(4) maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators, if any, supplied or required to be supplied by him;

(5) provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish and other waste incidental to the occupancy of the dwelling unit and arrange for their removal from the appropriate receptacle; and

(6) supply running water and a reasonable amount of hot water at all times and reasonable heat, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the resident and supplied by a direct public utility connection.

B. If there exists a minimum housing code applicable to the premises, the owner's maximum duty under this section shall be determined by Paragraph (1) of Subsection A of this section. The obligations imposed by this section are not intended to change existing tort law in the state.

C. The owner and resident of a single family residence may agree that the resident perform the owner's duties specified in Paragraphs (5) and (6) of

Subsection A of this section and also specified repairs, maintenance tasks, alterations and remodeling, but only if the transaction is in writing, for consideration, entered into in good faith and not for the purpose of evading the obligations of the owner.

D. The owner and resident of a dwelling unit other than a single family residence may agree that the resident is to perform specified repairs, maintenance tasks, alterations or remodeling only if:

(1) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the owner and is set forth in a separate writing signed by the parties and supported by consideration; and

(2) the agreement does not diminish or affect the obligation of the owner to other residents in the premises.

E. Notwithstanding any provision of this section, an owner may arrange with a resident to perform the obligations of the owner. Any such arrangement between the owner and the resident will not serve to diminish the owner's obligations as set forth in this section, nor shall the failure of the resident to perform the obligations of the owner serve as a basis for eviction or in any way be considered a material breach by the resident of his obligations under the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] or the rental agreement.

F. In multi-unit housing, if there is separate utility metering for each unit, the resident shall receive a copy of the utility bill for his unit upon request made to the owner or his agent. If the unit is submetered, the resident shall then be entitled to receive a copy of the apartment's utility bill. When utility bills for common areas are separately apportioned between units and the costs are passed on to the residents of each unit, each resident may, upon request, receive a copy of all utility bills being apportioned. The calculations used as the basis for apportioning the cost of utilities for common areas and submetered apartments shall be made available to any resident upon request. The portion of the common area cost that would be allocated to an empty unit if it were occupied shall not be allocated to the remaining residents. It is solely the owner's responsibility to supply the items and information in this subsection to the resident upon request. The owner may charge an administrative fee not to exceed five dollars (\$5.00) for each monthly request of the items in this subsection.

G. The owner shall provide a written rental agreement to each resident prior to the beginning of occupancy.

History: 1953 Comp., § 70-7-20, enacted by Laws 1975, ch. 38, § 20; 1987, ch. 297, § 1; 1989, ch. 340, § 3; 1999, ch. 91, § 2.

STATUTORY NOTES

Cross reference. — Delivery of possession, 47-8-26 NMSA 1978.

Breach of agreement by owner and relief by resident, 47-8-27.1 NMSA 1978.

Abatement, 47-8-27.2 NMSA 1978.

Owner retaliation prohibited, 47-8-39 NMSA 1978.

Action for possession by owner, 47-8-40 NMSA 1978.

JUDICIAL DECISIONS

Applicability.
Burden of proof.
Construction with other law.
Negligence.
Negligence per se.
Statute of limitations.

Applicability.

Contention of a tenant that the implied warranty of habitability was in effect in New Mexico and that he had a right to abate rent because the landlord did not supply reasonable heat for his rental unit was remanded to the trial court for determination of the applicability of 47-8-20 NMSA 1978 of the Uniform Owner-Resident Relations Act, 47-8-1 to 47-8-51 NMSA 1978, which encompassed the issue and which was adopted after the court held that there was no implied warranty of habitability in New Mexico. *T.W.I.W., Inc. v. Rhudy*, 96 N.M. 354, 630 P.2d 753 (1981).

Burden of proof.

Section 47-8-20A(6), B NMSA 1978 of the Uniform Owner-Resident Relations Act, 47-8-1 to 47-8-51 NMSA 1978, places the burden upon the landlord to show that a law exists that exempts him from providing reasonable heat for a tenant. *T.W.I.W., Inc. v. Rhudy*, 96 N.M. 354, 630 P.2d 753 (1981).

Construction with other law.

Section 47-8-20A(1), B of the Uniform Owner-Resident Relations Act, 47-8-1 to 47-8-51

NMSA 1978, require owners to comply with housing and building codes; Section 47-8-20A(2) — (6) NMSA 1978 remain as minimum standards if there is no applicable code. It does not make sense to read 47-8-20A(6) NMSA 1978 as requiring reasonable heat unless there is a law requiring it and if a housing or building code applied, the court would never get to 47-8-20A(6) NMSA 1978 because 47-8-20A(1) NMSA 1978 would apply and this would make 47-8-20A(6) NMSA 1978 mere surplusage. *T.W.I.W., Inc. v. Rhudy*, 96 N.M. 354, 630 P.2d 753 (1981).

Negligence.

A landlord owed a duty to his tenant, an eight-year-old child, to keep a fence that he erected around a common playground area in reasonably safe condition. *Calkins v. Cox Estates*, 110 N.M. 59, 792 P.2d 36 (1990).

Negligence per se.

In a negligence action against landlord by tenant whose son was injured when he fell through a gap in a balcony railing, trial court properly refused to hold landlord to higher standard than that of ordinary care, and refused tenant's proffered negligence per se instruction. *Heath v. La Mariana Apts.*, 2007-NMCA-003, 141 N.M. 131, 151 P.3d 903, aff'd in part, rev'd in part on other grounds, 2008-NMCA-017, 143 N.M. 657, 180 P.3d 664, 2008 N.M. LEXIS 188.

RESEARCH REFERENCES

New Mexico Law Review.

Note: The Continuing Debate Over Tort Duty in New Mexico: The Role of Foreseeability and Policy in *Herrera v. Quality Pontiac*, Quinn M. Bumgarner-Kirby, 34 N.M.L. Rev. 433 (2004).

Statute of limitations.

Where the tenant waited three years after he moved out of the rental property before suing the landlords for negligence in connection with mold and for a violation of their obligations

under Subsection A(1)-(4), the tenant's claim was barred by the applicable three-year statute of limitations set forth in 37-1-8 NMSA 1978. Applying the discovery rule, the tenant's cause of action accrued no later than the day he vacated the home; at that time, the tenant knew there was mold in the home, believed that the mold was causing his symptoms, and had been informed that mold could be dangerous to humans. *Gerke v. Romero*, 2010-NMCA-060, 148 N.M. 367, 237 P.3d 111.

47-8-21. Relief of owner liability.

A. Unless otherwise agreed, upon termination of the owner's interest in the dwelling unit, including but not limited to terminations of interest by sale, assignment, death, bankruptcy, appointment of receiver or otherwise, the owner is relieved of all liability under the rental agreement and of all obligations under the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] as to events occurring subsequent to written notice to the resident of the termination of the owner's interest. The successor in interest to the owner shall be liable for all obligations under the rental agreement or under the Uniform Owner-Resident Relations Act. Upon receipt by the resident of

written notice of the termination of the owner's interest in the dwelling unit, the resident shall pay all future rental payments, when due, to the successor in interest to the owner.

B. Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] as to events occurring after written notice to the resident of the termination of his management.

History: 1953 Comp., § 70-7-21, enacted by Laws 1975, ch. 38, § 21.

47-8-22. Obligations of resident.

The resident shall:

A. comply with obligations imposed upon residents by applicable minimum standards of housing codes materially affecting health or safety;

B. keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit, and, upon termination of the residency, place the dwelling unit in as clean condition, excepting ordinary wear and tear, as when residency commenced;

C. dispose from his dwelling unit all ashes, rubbish, garbage and other waste in a clean and safe manner;

D. keep all plumbing fixtures in the dwelling unit or used by the resident as clean as their condition permits;

E. use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilation, air conditioning and other facilities and appliances including elevators, if any, in the premises;

F. not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so;

G. conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises;

H. abide by all bylaws, covenants, rules or regulations of any applicable condominium regime, cooperative housing agreement or neighborhood association not inconsistent with owner's rights or duties; and

I. not knowingly commit or consent to any other person knowingly committing a substantial violation.

History: 1953 Comp., § 70-7-22, enacted by Laws 1975, ch. 38, § 22; 1995, ch. 195, § 8.

STATUTORY NOTES

Cross reference. — Deposits, 47-8-18 NMSA 1978.

Breach of agreement by resident and relief by owner, 47-8-33 NMSA 1978.

Prevailing party rights in law suit; civil penalties, 47-8-48 NMSA 1978.

JUDICIAL DECISIONS

Damages.

Landlord, who did not comply with the requirement of 47-8-18 NMSA 1978 to give an itemized account of damages pursuant to 47-8-22 NMSA 1978, forfeited the deposit and the

rights to recover additional damages, and owed the tenant attorney fees pursuant to 47-8-18D(3) NMSA 1978. *Garcia v. Thong*, 119 N.M. 704, 895 P.2d 226 (1995).

47-8-23. Application of rules or regulations.

An owner, from time to time, may adopt rules or regulations, however described, concerning the resident's use and occupancy of the premises. They are enforceable as provided in Section 47-8-33 NMSA 1978 against the resident only if:

A. their purpose is to promote the appearance, convenience, safety or welfare of the residents in the premises, preserve the owner's property from abusive use or make a fair distribution of services and facilities held out for the residents generally;

B. they are reasonably related to the purpose for which they are adopted;

C. they apply to all residents in the premises in a fair manner;

D. they are sufficiently explicit in their prohibition, direction or limitation of the resident's conduct to fairly inform him of what he must or must not do to comply;

E. they are not for the purpose of evading the obligations of the owner; and

F. the resident is presented with copies of existing rules and regulations at the time he enters into the rental agreement and is presented notice of amendments to the rules and regulations and rules and regulations adopted subsequent to the time he enters into the rental agreement. A rule or regulation adopted after the resident enters into the rental agreement is enforceable against the resident if reasonable notice of its adoption is given to the resident and it does not work a substantial modification of his bargain.

History: 1953 Comp., § 70-7-23, enacted by Laws 1975, ch. 38, § 23; 1995, ch. 195, § 9.

STATUTORY NOTES

Cross reference. — Definitions, 47-8-3 Obligations of owner, 47-8-20 NMSA 1978. NMSA 1978.

47-8-24. Right of entry.

A. The resident shall, in accordance with provisions of the rental agreement and notice provisions as provided in this section, consent to the owner to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, prospective residents, workmen or contractors; provided that:

(1) unless otherwise agreed upon by the owner and resident, the owner may enter the resident's dwelling unit pursuant to this subsection only after giving the resident twenty-four hours written notification of his intent to enter, the purpose for entry and the date and reasonable estimate of the time frame of the entry;

(2) this subsection is not applicable to entry by the owner to perform repairs or services within seven days of a request by the resident or when the owner is accompanied by a public official conducting an inspection or a cable television, electric, gas or telephone company representative; and

(3) where the resident gives reasonable prior notice and alternate times or dates for entry and it is practicable or will not result in economic detriment to the owner, then the owner shall attempt to reasonably accommodate the alternate time of entry.

B. The owner may enter the dwelling unit without consent of the resident in case of an emergency.

C. The owner shall not abuse the right of access.

D. The owner has no other right of access except by court order, as permitted by this section if the resident has abandoned or surrendered the premises or if the resident has been absent from the premises more than seven days, as permitted in Section 47-8-34 NMSA 1978.

E. If the resident refuses to allow lawful access, the owner may obtain injunctive relief to compel access or terminate the rental agreement. In either case, the owner may recover damages.

F. If the owner makes an unlawful entry, or a lawful entry in an unreasonable manner, or makes repeated demands for entry that are otherwise lawful but that have the effect of unreasonably interfering with the resident's quiet enjoyment of the dwelling unit, the resident may obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case, the resident may recover damages.

History: 1953 Comp., § 70-7-24, enacted by Laws 1975, ch. 38, § 24; 1995, ch. 195, § 10.

47-8-25. Use of dwelling unit limited.

Unless otherwise agreed, the resident shall occupy his dwelling unit only as a dwelling unit and in compliance with terms and conditions of the rental agreement. The rental agreement may require that the resident notify the owner of any anticipated extended absence from the premises in excess of seven days no later than the first day of the extended absence.

History: 1953 Comp., § 70-7-25, enacted by Laws 1975, ch. 38, § 25.

47-8-26. Delivery of possession.

A. At the time specified in the rental agreement for the commencement of occupancy, the owner shall deliver possession of the premises to the resident in compliance with the rental agreement and Section 47-8-20 NMSA 1978. The owner may bring an action for possession against the resident or any person

wrongfully in possession and may recover the damages provided in Subsection F of Section 47-8-33 NMSA 1978.

B. If the owner fails to deliver possession of the premises to the prospective resident as provided in Subsection A of this section, one hundred percent of the rent abates until possession is delivered and the prospective resident may:

(1) upon written notice to the owner, terminate the rental agreement effective immediately. Upon termination the owner shall return all prepaid rent and deposits; or

(2) demand performance of the rental agreement by the owner and, if the prospective resident elects, maintain an action for possession of the premises against any person wrongfully withholding possession and recover the damages sustained by him and seek the remedies provided in Section 47-8-48 NMSA 1978.

C. If the owner makes reasonable efforts to obtain possession of the premises and returns prepaid rents, deposits and fees within seven days of receiving a prospective resident's notice of termination, the owner shall not be liable for damages under this section.

History: 1953 Comp., § 70-7-26, enacted by Laws 1975, ch. 38, § 26; 1999, ch. 91, § 3.

47-8-27. Repealed.

STATUTORY NOTES

Repeals. — Laws 1995, ch. 195 § 27, repeals this section, as last affected by Laws 1975, ch. 38, § 27, relating to owner-resident relations and noncompliance by the owner.

47-8-27.1. Breach of agreement by owner and relief by resident.

A. Upon the failure of the owner to perform his obligations as required by Section 47-8-20 NMSA 1978, the resident shall give written notice to the owner specifying the breach and:

(1) if there is a material noncompliance by the owner with the rental agreement or a noncompliance with the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] materially affecting health and safety, the resident shall deliver a written notice to the owner specifying the acts and omissions constituting the breach. The notice shall state that the rental agreement will terminate upon a date not less than seven days after receipt of the notice if a reasonable attempt to remedy the breach is not made in seven days, and the rental agreement shall terminate as provided in the notice. If the owner makes a reasonable attempt to adequately remedy the breach prior to the date specified in the notice, the rental agreement shall not terminate. If the rental agreement is terminated by the resident and possession restored to the owner, the owner shall return the balance, if any, of prepaid rent and deposit to which the resident is entitled pursuant to the rental agreement or Section 47-8-18 NMSA 1978; or

(2) the resident may be entitled to abatement of the rent as provided in Section 47-8-27.2 NMSA 1978.

B. The rights provided under this section do not arise if the condition was caused by the deliberate or negligent act or omission of the resident, a member of his family or other person on the premises with his consent. If the noncompliance with the rental agreement or with Section 47-8-20 NMSA 1978 results solely from circumstances beyond the owner's control, the resident is entitled only to those remedies set forth in Paragraph (1) or (2) of this subsection and is not entitled to an action for damages or injunctive relief against the owner.

C. The resident may also recover damages and obtain injunctive relief for any material noncompliance by the owner with the rental agreement or the provisions of Section 47-8-20 NMSA 1978. The remedy provided in this subsection is in addition to any right of the resident arising under Subsection A of this section.

D. If the resident proceeds under Paragraph (1) of Subsection A of this section, he shall not proceed under Paragraph (2) of Subsection A of this section in the same rental period for the same violation. If the resident proceeds under Paragraph (2) of Subsection A of this section, he shall not proceed under Paragraph (1) of Subsection A of this section in the same rental period for the same violation. A resident may, however, proceed under another paragraph of Subsection A of this section for a subsequent violation or the same violation that occurs in subsequent rental periods.

E. When the last day for remedying any breach pursuant to the written notice required under the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] occurs on a weekend or federal holiday, the period to remedy shall be extended until the next day that is not a weekend or federal holiday.

History: 1978 Comp., § 47-8-27.1, enacted by Laws 1995, ch. 195, § 11.

STATUTORY NOTES

Cross reference. — Owner retaliation prohibited, 47-8-39 NMSA 1978.

JUDICIAL DECISIONS

Notice.

Where the resident did not give written notice of deficiencies to the landowner, the resident was not eligible for abatement of rent and

the trial court erred by abating after finding only that the landowner had actual notice of deficiencies. *Kepler v. Covarrubia*, 91 N.M. 443, 575 P.2d 952 (1978).

47-8-27.2. Abatement.

A. If there is a violation of Subsection A of Section 47-8-20 NMSA 1978, other than a failure or defect in an amenity, the resident shall give written notice to the owner of the conditions needing repair. If the owner does not remedy the conditions set out in the notice within seven days of the notice, the resident is entitled to abate rent as set forth below:

(1) one-third of the pro-rata daily rent for each day from the date the resident notified the owner of the conditions needing repair, through the day the conditions in the notice are remedied. If the conditions complained of continue to exist without remedy through any portion of a subsequent rental

period, the resident may abate at the same rate for each day that the conditions are not remedied; and

(2) one hundred percent of the rent for each day from the date the resident notified the owner of the conditions needing repair until the date the breach is cured if the dwelling is uninhabitable and the resident does not inhabit the dwelling unit as a result of the condition.

B. For each rental period in which there is a violation under Subsection A of this section, the resident may abate the rent or may choose an alternate remedy in accordance with the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978]. The choice of one remedy shall not preclude the use of an alternate remedy for the same violation in a subsequent rental period.

C. If the resident's rent is subsidized in whole or in part by a government agency, the abatement limitation of one month's rent shall mean the total monthly rent paid for the dwelling and not the portion of the rent that the resident alone pays. Where there is a third party payor, either the payor or the resident may authorize the remedy and may abate rent payments as provided in this section.

D. Nothing in this section shall limit a court in its discretion to apply equitable abatement.

E. Nothing in this section shall entitle the resident to abate rent for the unavailability of an amenity.

History: 1978 Comp., § 47-8-27.2, enacted by Laws 1995, ch. 195, § 12; 1999, ch. 91, § 4.

STATUTORY NOTES

Cross reference. — Breach of agreement by owner and relief by resident, 47-8-27.1 NMSA 1978. Owner retaliation prohibited, 47-8-39 NMSA 1978.

Breach of agreement by resident and relief by owner, 47-8-33 NMSA 1978.

47-8-28. Repealed.

STATUTORY NOTES

Repeals. — Laws 1999, ch. 91, § 8 repeals this section, as last affected by Laws 1975, ch. 38, § 28, relating to owner-resident relations, failure to deliver possession.

47-8-29. Repealed.

STATUTORY NOTES

Repeals. — Laws 1995, ch. 195 § 27, repeals this section, as last affected by Laws 1975, ch. 38, § 29, relating to owner-resident relations and resident rights in the event of breach.

47-8-30. Action for counterclaim for resident.

A. In an action for possession based upon nonpayment of rent or in an action for rent where the resident is in possession, the resident may counterclaim for any amount which he may recover under the rental agreement or the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978], providing that the resident shall be responsible for payment to the owner of the rent specified in the rental agreement during his period of possession. Judgment shall be entered in accordance with the facts of the case.

B. If the defense or counterclaim by the resident is without merit and is not raised in good faith, the owner may recover reasonable attorney's fees and his court costs.

C. If the action or reply to the counterclaim is without merit and is not in good faith, the resident may recover reasonable attorney's fees and his court costs.

History: 1953 Comp., § 70-7-30, enacted by Laws 1975, ch. 38, § 30.

47-8-31. Resident rights following fire or casualty.

A. If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the resident may:

(1) vacate the premises and notify the owner in writing within seven days thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

(2) if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the resident's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

B. If the rental agreement is terminated, the owner shall return the balance, if any, [of] prepaid rent and deposits recoverable under Section 18 [47-8-18 NMSA 1978] of the Uniform Owner-Resident Relations Act. Accounting for rent, in the event of termination or apportionment, is to occur as of the date of the vacation. Notwithstanding the provisions of this section, the resident is responsible for damage caused by his negligence.

History: 1953 Comp., § 70-7-31, enacted by Laws 1975, ch. 38, § 31.

47-8-32. Repealed.

STATUTORY NOTES

Cross reference. — Unlawful removal and diminution of services prohibited, 47-8-36 NMSA 1978.

Repeals. — Laws 1995, ch. 195 § 27, re-

peals this section, as last affected by Laws 1975, ch. 38, § 32, relating to owner-resident relations and injunctive relief.

47-8-33. Breach of agreement by resident and relief by owner.

A. Except as provided in the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978], if there is noncompliance with Section 47-8-22 NMSA 1978 materially affecting health and safety or upon the initial material noncompliance by the resident with the rental agreement or any separate agreement, the owner shall deliver a written notice to the resident specifying the acts and omissions constituting the breach, including the dates and specific facts describing the nature of the alleged breach, and stating that the rental agreement will terminate upon a date not less than seven days after receipt of the notice if the breach is not remedied in seven days.

B. Upon the second material noncompliance with the rental agreement or any separate agreement by the resident, within six months of the initial breach, the owner shall deliver a written notice to the resident specifying the acts and omissions constituting the breach, including the dates and specific facts describing the nature of the alleged breach, and stating that the rental agreement shall terminate upon a date not less than seven days after receipt of the notice. If the subsequent breach occurs more than six months after the initial breach, it shall constitute an initial breach for purposes of applying the provisions of this section.

C. The initial notice provided in this section shall state that the rental agreement will terminate upon the second material noncompliance with the rental agreement or any separate agreement by the resident, within six months of the initial breach. To be effective, any notice pursuant to this subsection shall be given within thirty days of the breach or knowledge thereof.

D. If rent is unpaid when due and the resident fails to pay rent within three days after written notice from the owner of nonpayment and his intention to terminate the rental agreement, the owner may terminate the rental agreement and the resident shall immediately deliver possession of the dwelling unit; provided that tender of the full amount due, in the manner stated in the notice, prior to the expiration of the three-day notice shall bar any action for nonpayment of rent.

E. In any court action for possession for nonpayment of rent or other charges where the resident disputes the amount owed because:

(1) the resident has abated rent pursuant to Section 47-8-27.2 or 47-8-4 NMSA 1978; or

(2) the owner has allocated rent paid by the resident as payment for damages to the premises, then, if the owner is the prevailing party, the court shall enter a writ of restitution conditioned upon the right of the resident to remedy within three days of entry of judgment. If the resident has satisfied the judgment within three days, the writ shall be dismissed. If the resident has not satisfied the judgment within three days, the owner may execute upon the writ without further order of the court.

F. Except as provided in the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978], the owner may recover damages and obtain injunctive or other relief for any noncompliance by the resident with the rental agreement or this section or Section 47-8-22 NMSA 1978.

G. In a judicial action to enforce a remedy for which prior written notice is required, relief may be granted based only upon the grounds set forth in the

written notice served; provided, however, that this shall not bar a defendant from raising any and all defenses or counterclaims for which written notice is not otherwise required by the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978].

H. When the last day for remedying any breach pursuant to written notice required under the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] occurs on a weekend or federal holiday, the period to remedy shall be extended until the next day that is not a weekend or federal holiday.

I. If the resident knowingly commits or consents to another person in the dwelling unit or on the premises knowingly committing a substantial violation, the owner shall deliver a written notice to the resident specifying the time, place and nature of the act constituting the substantial violation and that the rental agreement will terminate upon a date not less than three days after receipt of the notice.

J. In any action for possession under Subsection I of this section, it shall be a defense that the resident is a victim of domestic violence. If the resident has filed for or secured a temporary domestic violence restraining order as a result of the incident that is the basis for the termination notice or as a result of a prior incident, the writ of restitution shall not issue. In all other cases where domestic violence is raised as a defense, the court shall have the discretion to evict the resident accused of the violation, while allowing the tenancy of the remainder of the residents to continue undisturbed.

K. In any action for possession under Subsection I of this section, it shall be a defense that the resident did not know of, and could not have reasonably known of or prevented, the commission of a substantial violation by any other person in the dwelling unit or on the premises.

L. In an action for possession under Subsection I of this section, it shall be a defense that the resident took reasonable and lawful actions in defense of himself, others or his property.

M. In any action for possession under Subsection I of this section, if the court finds that the action was frivolous or brought in bad faith, the petitioner shall be subject to a civil penalty equal to two times the amount of the monthly rent, plus damages and costs.

History: 1953 Comp., § 70-7-33, enacted by Laws 1975, ch. 38, § 33; 1977, ch. 130, § 1; 1995, ch. 195, § 14; 1999, ch. 91, § 5.

STATUTORY NOTES

Cross reference. — Application of rules or regulations, 47-8-23 NMSA 1978. Appeal stays execution, 47-8-47 NMSA 1978. Delivery of possession, 47-8-26 NMSA 1978.

JUDICIAL DECISIONS

Payment after notice.
Restitution.

Payment after notice.

Judgment was properly rendered in favor of a tenant in connection with a landlord's unlawful detainer action, which had been brought under former 1915 Code, § 2384 after the tenant failed to pay the rent at the time stipulated for the payment thereof, because the tenant tendered his rent money to the landlord within three days after receiving notice of termination of the lease from the landlord as required under former N.M. Code § 2386. *El Dorado Inv. Co. v. Burrus*, 28 N.M. 551, 215 P. 819 (1923).

Restitution.

In a city's action against a tenant of a public housing unit for a money judgment and for a writ of restitution that would order that the premises be vacated, restitution by a qualified indigent tenant was not mandatory and other forms of relief were available under the New Mexico Uniform Owner-Resident Relations Act, 47-8-1 NMSA 1978, where the trial court found that the tenant was in default on rent. *City of Albuquerque v. Brooks*, 114 N.M. 572, 844 P.2d 822 (1992).

47-8-34. Notice of extended absence.

A. If the rental agreement requires the resident to give notice to the owner of an anticipated extended absence in excess of seven days as required in Subsection A of Section 3 [47-8-3 NMSA 1978] of the Uniform Owner-Resident Relations Act and the resident willfully fails to do so, the owner may recover damages from the resident.

B. During any absence of the resident in excess of seven days, the owner may enter the dwelling unit at times reasonably necessary.

C. If the resident abandons the dwelling unit as defined in Subsection A of Section 3 of the Uniform Owner-Resident Relations Act, the owner shall be entitled to take immediate possession of the dwelling unit. The owner shall, in such cases, be responsible for the removing and storing of the personal property for such periods as are provided by law. Upon abandonment, the owner may make reasonable efforts to rent the dwelling unit and premises at a fair rental. If the owner rents the dwelling unit for a term beginning prior to the expiration of the rental agreement, it is deemed to be terminated as of the date the new tenancy begins.

History: 1953 Comp., § 70-7-34, enacted by Laws 1975, ch. 38, § 34.

STATUTORY NOTES

Cross reference. — Right of entry, 47-8-24 NMSA 1978. Disposition of property left on the premises, 47-8-34.1 NMSA 1978.

47-8-34.1. Disposition of property left on the premises.

A. Where the rental agreement terminates by abandonment pursuant to Section 47-8-34 NMSA 1978:

(1) the owner shall store all personal property of the resident left on the premises for not less than thirty days;

(2) the owner shall serve the resident with written notice stating the owner's intent to dispose of the personal property on a date not less than thirty days from the date of the notice. The notice shall also contain a telephone

number and address where the resident can reasonably contact the owner to retrieve the property prior to the disposition date in the notice;

(3) the notice of intent to dispose of personal property shall be personally delivered to the resident or be sent by first class mail, postage prepaid, to the resident at his last known address. If the notice is returned as undeliverable, or where the resident's last known address is the vacated dwelling unit, the owner shall also serve at least one notice to such other address as has been provided to the owner by the resident, including the address of the resident's place of employment, or of a family member or emergency contact for which the owner has a record;

(4) the resident may contact the owner to retrieve the property at any time prior to the date specified in the notice for disposition of the property;

(5) the owner shall provide reasonable access and adequate opportunities for the resident to retrieve all of the property stored prior to any disposition; and

(6) if the resident does not claim or make attempt to retrieve the stored personal property prior to the date specified in the notice of disposition of the property, the owner may dispose of the stored personal property.

B. Where the rental agreement terminates by the resident's voluntary surrender of the premises, the owner shall store any personal property on the premises for a minimum of fourteen days from the date of surrender of the premises. The owner shall provide reasonable access to the resident for the purpose of the resident obtaining possession of the personal property stored. If after fourteen days from surrender of the premises, the resident has not retrieved all the stored personal property, the owner may dispose of the stored personal property.

C. Where the rental agreement terminates by a writ of restitution, the owner shall have no obligation to store any personal property left on the premises after three days following execution of writ of restitution, unless otherwise agreed by the owner and resident. The owner may thereafter dispose of the personal property in any manner without further notice or liability.

D. Where the property has a market value of less than one hundred dollars (\$100), the owner has the right to dispose of the property in any manner.

E. Where the property has a market value of more than one hundred dollars (\$100), the owner may:

(1) sell the personal property under any provisions herein, and the proceeds of the sale, if in excess of money due and owing to the owner, shall be mailed to the resident at his last known address along with an itemized statement of the amounts received and amounts allocated to other costs, within fifteen days of the sale; or

(2) retain the property for his own use or the use of others, in which case the owner shall credit the account of the resident for the fair market value of the property against any money due and owing to the owner, and any value in excess of money due and owing shall be mailed to the resident at his last known address along with an itemized statement of the value allocated to the property and the amount allocated to costs within fifteen days of the retention of the property.

F. If the last known address is the dwelling unit, the owner shall also mail at least one copy of the accounting and notice of the sums for distribution, to

the other address, if provided to the owner by the resident, such as, place of employment, family members, or emergency contact on record with the owner.

G. An owner may charge the resident reasonable storage fees for any time that the owner provided storage for the resident's personal property and the prevailing rate of moving fees. The owner may require payment of storage and moving costs prior to the release of the property.

H. The owner may not hold the property for any other debts claimed due or owning or for judgments for which an application for writ of execution has not previously been filed. The owner may not retain exempt property where an application for a writ of execution has been granted.

History: 1978 Comp., § 47-8-34.1, enacted by Laws 1995, ch. 195, § 15.

47-8-34.2. Personal property and security deposit of deceased resident; contact person.

A. As used in this section, "contact person" means the person designated by a resident in writing as the person to contact and release property to in the event of the resident's death.

B. The owner may request in writing, including by a requirement in the rental agreement, that the resident:

(1) provide the owner with the name, address and telephone number of a contact person; and

(2) sign a statement authorizing the owner in the event of the resident's death to:

(a) grant the contact person access to the dwelling unit at a reasonable time and in the presence of the owner or the owner's agent;

(b) allow the contact person to remove the resident's property from the dwelling unit; and

(c) refund the resident's security deposit, less lawful deductions, to the contact person.

C. A resident may, without request from the owner, provide the owner with the name, address and telephone number of a contact person.

D. Except as provided in Subsection E of this section, in the event of the death of a resident who is the sole occupant of a rental dwelling, the owner:

(1) shall turn over possession of property in the dwelling unit to the contact person or to any other person lawfully entitled to the property if the request is made prior to the property being discarded pursuant to Paragraph (5) of this subsection;

(2) shall refund the resident's security deposit, less lawful deductions, including the cost of removing and storing the property, to the contact person or to any other person lawfully entitled to the refund;

(3) may remove and store all property found in the dwelling unit;

(4) may require any person who removes property from the resident's dwelling unit to sign an inventory of the property being removed; and

(5) may discard property removed by the owner from the resident's dwelling unit if:

(a) the owner has mailed a written request by certified mail, return receipt requested, to the contact person, requesting that the property be removed;

(b) the contact person failed to remove the property within thirty days after the request is mailed; and

(c) the owner, prior to the date of discarding the property, has not been contacted by anyone claiming the property.

E. An owner and a resident may agree to a procedure different than the procedure in this section for removing, storing or disposing of property in the dwelling unit of a deceased resident in a written rental agreement or other agreement.

F. If, after a written request by an owner, a resident does not provide the owner with the name, address and telephone number of a contact person, the owner shall have no responsibility after the resident's death for removal, storage, disappearance, damage or disposition of property in the resident's dwelling.

G. An owner who violates Subsection D of this section shall be liable to the estate of the deceased resident for actual damages.

History: Laws 2007, ch. 169, § 1.

STATUTORY NOTES

Effective dates. — Laws 2007, ch. 169 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 15, 2007, 90 days after adjournment of the legislature.

47-8-35. Claim for rent and damages.

If the rental agreement is terminated, the owner is entitled to possession and may have a claim for rent and a separate claim for damages for breach of the rental agreement and reasonable attorney's fees as provided in Subsection C of Section 33 [47-8-33 NMSA 1978] of the Uniform Owner-Resident Relations Act.

History: 1953 Comp., § 70-7-35, enacted by Laws 1975, ch. 38, § 35.

JUDICIAL DECISIONS

Holdover period.
Restitution.

Holdover period.

Pursuant to 47-8-35 NMSA 1978 of the Uniform Owner-Resident Relations Act, 47-8-1 to 47-8-51 NMSA 1978, a landowner was entitled to rent during a holdover period; because there was no rental agreement after a particular date, the tenant was required to pay the fair rental value of the premises as they existed during these months, under 47-8-15 NMSA 1978 and defined by 47-8-3 NMSA 1978. *T.W.I.W., Inc. v. Rhudy*, 96 N.M. 354, 630 P.2d 753 (1981).

Restitution.

In a city's action against a tenant of a public housing unit for a money judgment and for a writ of restitution that would order that the premises be vacated, restitution by a qualified indigent tenant was not mandatory and other forms of relief were available under the New Mexico Uniform Owner-Resident Relations Act, 47-8-1 NMSA 1978 et seq., where the trial court found that the tenant was in default on rent. *City of Albuquerque v. Brooks*, 114 N.M. 572, 844 P.2d 822 (1992).

47-8-36. Unlawful removal and diminution of services prohibited.

A. Except in case of abandonment, surrender or as otherwise permitted in the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978], an owner or any person acting on behalf of the owner shall not knowingly exclude the resident, remove, threaten or attempt to remove or dispossess a resident from the dwelling unit without a court order by:

- (1) fraud;
- (2) plugging, changing, adding or removing any lock or latching device;
- (3) blocking any entrance into the dwelling unit;
- (4) interfering with services or normal and necessary utilities to the unit pursuant to Section 47-8-32 NMSA 1978, including but not limited to electricity, gas, hot or cold water, plumbing, heat or telephone service, provided that this section shall not impose a duty upon the owner to make utility payments or otherwise prevent utility interruptions resulting from nonpayment of utility charges by the resident;
- (5) removing the resident's personal property from the dwelling unit or its premises;
- (6) removing or incapacitating appliances or fixtures, except for making necessary and legitimate repairs; or
- (7) any willful act rendering a dwelling unit or any personal property located in the dwelling unit or on the premises inaccessible or uninhabitable.

B. The provisions of Subsection A of this section shall not apply if an owner temporarily interferes with possession while making legitimate repairs or inspections as provided for in the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978].

C. If an owner commits any of the acts stated in Subsection A of this section, the resident may:

- (1) abate one hundred percent of the rent for each day in which the resident is denied possession of the premises for any portion of the day or each day where the owner caused termination or diminishment of any service for any portion of the day;
- (2) be entitled to civil penalties as provided in Subsection B of Section 47-8-48 NMSA 1978;
- (3) seek restitution of the premises pursuant to Sections 47-8-41 and Section 47-8-42 NMSA 1978 or terminate the rental agreement; and
- (4) be entitled to damages.

History: 1953 Comp., § 70-7-36, enacted by Laws 1975, ch. 38, § 36; 1995, ch. 195, § 16.

STATUTORY NOTES

Cross reference. — Prevailing party rights in law suit; civil penalties, 47-8-48 NMSA 1978.

47-8-36.1. Landlord lien.

A. There shall be no landlord's lien arising out of the rental of a dwelling unit to which the Uniform Owner-Resident [Relations] Act [47-8-1 to 47-8-51 NMSA 1978] applies.

B. Nothing in this section shall prohibit the owner from levy and execution on a judgment arising out of a claim for rent or damages.

History: 1978 Comp., § 47-8-36.1, enacted by Laws 1995, ch. 195, § 17.

JUDICIAL DECISIONS

Lien.

A landlord who had a landlord's lien on the property of a lessee was found to have been wholly wrong in her procedure when she forcibly took possession of the property without first demanding the rent due and claiming the land-

lord's lien as required under 1917 N.M. Laws ch. 65, § 26 (47-8-36.1 NMSA 1978); thus, the remedy of injunction was available to the lessee because the business of the lessee would be destroyed by way of legal remedies. *Ross v. Overton*, 29 N.M. 651, 226 P. 162 (1924).

47-8-37. Notice of termination and damages.

A. The owner or the resident may terminate a week-to-week residency by a written notice given to the other at least seven days prior to the termination date specified in the notice.

B. The owner or the resident may terminate a month-to-month residency by a written notice given to the other at least thirty days prior to the periodic rental date specified in the notice.

C. If the resident remains in possession without the owner's consent after expiration of the term of the rental agreement or its termination, the owner may bring an action for possession and if the resident's holdover is willful and not in good faith the owner, in addition, may recover the damages sustained by him and reasonable attorney's fees. If the owner consents to the resident's continued occupancy, Subsection C of Section 15 [47-8-15 NMSA 1978] of the Uniform Owner-Resident Relations Act applies.

History: 1953 Comp., § 70-7-37, enacted by Laws 1975, ch. 38, § 37.

JUDICIAL DECISIONS

Construction with other law.
Equivocal.
Payment after notice.
Time limitations.

Construction with other law.

A court overturned a decision allowing a mobile home park to terminate some residents' month-to-month tenancy, as the court determined that (1) the mobile home park had failed to provide a statement of cause on the notice to quit served on the residents, and (2) even if the notice to quit complied with the requirements of the Owner-Resident Relations Act (ORRA) in 47-8-37B NMSA 1978, the Mobile Home Park Act (which, under 47-10-3A NMSA 1978, was

found to require a statement of cause on the notice of quit) prevailed over the ORRA where the statutes were in direct conflict. *Green Valley Mobile Home Park v. Mulvaney*, 1996-NMSC-037, 121 N.M. 817, 918 P.2d 1317.

Equivocal.

Tenant contended that a notice to quit was ineffective because it did not sufficiently notify him that he must terminate the tenancy, as required by 47-8-37 of the Uniform Owner-Resident Relations Act, 47-8-1 to 47-8-51 NMSA 1978; the court found that the notice was not sufficiently definite to inform the tenants of the landlords desire that they vacate because it was equivocal and they could have

construed it to mean that they could remain at an increased rental, although a second notice that was unequivocal was sufficient. *T.W.I.W., Inc. v. Rhudy*, 96 N.M. 354, 630 P.2d 753 (1981).

Payment after notice.

Judgment was properly rendered in favor of a tenant in connection with a landlord's unlawful detainer action, which had been brought under former 1915 Code, § 2384 after the tenant failed to pay the rent at the time stipulated for the payment thereof, because the tenant tendered his rent money to the landlord within three days after receiving notice of termination of the lease from the landlord as required under

former 1915 Code, § 2386. *El Dorado Inv. Co. v. Burrus*, 28 N.M. 551, 215 P. 819 (1923).

Time limitations.

Tenant contended that the landlord's notices to quit were not effective because they were not given at least 30 days prior to the periodic rental rate, as required by 47-8-37B of the Uniform Owner-Resident Relations Act, 47-8-1 to 47-8-51 NMSA 1978; the court held that a notice to quit which is ineffective because it did not give the month-to-month tenant the requisite 30 days prior to the periodic rental date is nonetheless effective for the next ensuing rental date. *T.W.I.W., Inc. v. Rhudy*, 96 N.M. 354, 630 P.2d 753 (1981).

47-8-38. Injunctive relief.

A. If the resident refuses to allow lawful access, the owner may obtain injunctive relief to compel access or terminate the rental agreement. In either case, the owner may recover damages, reasonable attorney's fees and court costs.

B. If the owner makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the resident, the resident may obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case, the resident may recover damages and reasonable attorney's fees.

History: 1953 Comp., § 70-7-38, enacted by Laws 1975, ch. 38, § 38.

47-8-39. Owner retaliation prohibited.

A. An owner may not retaliate against a resident who is in compliance with the rental agreement and not otherwise in violation of any provision of the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] by increasing rent, decreasing services or by bringing or threatening to bring an action for possession because the resident has within the previous six months:

(1) complained to a government agency charged with responsibility for enforcement of a minimum building or housing code of a violation applicable to the premises materially affecting health and safety;

(2) organized or become a member of a residents' union, association or similar organization;

(3) acted in good faith to exercise his rights provided under the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978], including when the resident makes a written request or complaint to the owner to make repairs to comply with the owner's obligations under Section 47-8-20 NMSA 1978;

(4) made a fair housing complaint to a government agency charged with authority for enforcement of laws or regulations prohibiting discrimination in rental housing;

(5) prevailed in a lawsuit as either plaintiff or defendant or has a lawsuit pending against the owner relating to the residency;

(6) testified on behalf of another resident; or

(7) abated rent in accordance with the provisions of Section 47-8-27.1 or 47-8-27.2 NMSA 1978.

B. If the owner acts in violation of Subsection A of this section, the resident is entitled to the remedies provided in Section 47-8-48 NMSA 1978 and the violation shall be a defense in any action against him for possession.

C. Notwithstanding the provisions of Subsection A of this section, the owner may increase the rent or change services upon appropriate notice at the end of the term of the rental agreement or as provided under the terms of the rental agreement if the owner can establish that the increased rent or changes in services are consistent with those imposed on other residents of similar rental units and are not directed at the particular resident, but are uniform.

History: 1953 Comp., § 70-7-39, enacted by Laws 1975, ch. 38, § 39; 1989, ch. 253, § 1; 1995, ch. 195, § 18; 1999, ch. 91, § 6.

STATUTORY NOTES

Cross reference. — Action for possession by owner, 47-8-40 NMSA 1978.

Prevailing party rights in law suit; civil penalties, 47-8-48 NMSA 1978.

JUDICIAL DECISIONS

Generally.
Burden of proof.
Construction.
Defenses.

Generally.

Where an owner properly terminated a rental agreement and brought an action for possession motivated by retaliation for a resident's complaints about noisy neighbors, that retaliatory action was not barred by 47-8-39A(3) NMSA 1978 of the Uniform Owner-Resident Relations Act because no specific provision of the Uniform Owner-Resident Relations Act, 47-8-1 NMSA 1978 et seq., gave a resident the right to complain about noisy neighbors or required the owner to keep residents from being too noisy. *Casa Blanca Mobile Home Park v. Hill*, 1998-NMCA-094, 125 N.M. 465, 963 P.2d 542, cert. denied, 125 N.M. 322, 961 P.2d 167 (1998).

Burden of proof.

Tenants' claim that a landlord's motion for restitution was retaliation against them for abating the rent and was therefore a violation of 47-8-39 NMSA 1978 failed because the tenants were living on the premises continuously until a fire occurred, and the premises were not uninhabitable for any of the 17 months that the tenants had not paid rent; therefore, the tenants were not permitted to abate their rent pursuant to the New Mexico Uniform Owner-

Resident Relations Act, 47-8-1 through 47-8-51 NMSA 1978. *Hedicke v. Gunville*, 2003-NMCA-032, 133 N.M. 335, 62 P.3d 1217, cert. denied, N.M. , 63 P.3d 516 (2003).

Construction.

Where an owner properly terminated a rental agreement and brought an action for possession motivated by retaliation for a resident's complaints about noisy neighbors, that retaliatory action was not barred by 47-8-39A(3) NMSA 1978 of the Uniform Owner-Resident Relations Act; no specific provision of the Uniform Owner-Resident Relations Act, 47-8-1 NMSA 1978 et seq., gave a resident the right to complain about noisy neighbors or required the owner to keep residents from being too noisy. *Casa Blanca Mobile Home Park v. Hill*, 1998-NMCA-094, 125 N.M. 465, 963 P.2d 542, cert. denied, 125 N.M. 322, 961 P.2d 167 (1998).

Defenses.

As landlord and tenant did not dispute that the apartment owner's decision to discontinue participation in the section-eight housing program was to be equally applied to each section-eight tenant upon expiration of the respective lease, the tenant could not ground her retaliation defense on the owner's discontinuance of participation in the section-eight program. *Carol Rickert & Assocs. v. Law*, 2002-NMCA-096, 132 N.M. 687, 54 P.3d 91.

47-8-40. Action for possession by owner.

A. Notwithstanding Subsections A and B of Section 47-8-39 NMSA 1978, an owner may bring an action for possession if:

(1) the violation of the applicable minimum building or housing code was caused primarily by lack of reasonable care by the resident or other person in his household or upon the premises with the resident's consent;

(2) the resident is in default in rent;

(3) there is a material noncompliance with the rental agreement that would otherwise give rise to the owner's right to terminate the rental agreement;

(4) a resident knowingly commits or consents to any other person in the dwelling unit or on the premises knowingly committing a substantial violation; or

(5) compliance with the applicable building or housing code requires alteration, remodeling or demolition that would effectively deprive the resident of use of the dwelling unit.

B. The maintenance of an action under Subsection A of this section does not release the owner from liability under Section 47-8-20 NMSA 1978.

History: 1953 Comp., § 70-7-40, enacted by Laws 1975, ch. 38, § 40; 1995, ch. 195, § 19.

JUDICIAL DECISIONS

Restitution.

In a city's action against a tenant of a public housing unit for a money judgment and for a writ of restitution that would order that the premises be vacated, restitution by a qualified indigent tenant was not mandatory and other

forms of relief were available under the New Mexico Uniform Owner-Resident Relations Act, 47-8-1 NMSA 1978, where the trial court found that the tenant was in default on rent. *City of Albuquerque v. Brooks*, 114 N.M. 572, 844 P.2d 822 (1992).

47-8-41. Action for possession by owner or resident.

An action for possession of any premises subject to the provisions of the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] shall be commenced in the manner prescribed by the Uniform Owner-Resident Relations Act.

History: 1953 Comp., § 70-7-41, enacted by Laws 1975, ch. 38, § 41.

47-8-42. Petition for restitution.

The person seeking possession shall file a petition for restitution with the clerk of the district or magistrate court. The petition shall contain:

A. the facts, with particularity, on which he seeks to recover;

B. a reasonably accurate description of the premises; and

C. the requisite compliance with the notice provisions of the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978].

The petition may also contain other causes of action relating to the residency, but such causes of action shall be answered and tried separately, if requested by either party in writing.

History: 1953 Comp., § 70-7-42, enacted by Laws 1975, ch. 38, § 42.

STATUTORY NOTES

Cross reference. — Unlawful removal and diminution of services prohibited, 47-8-36 NMSA 1978.

JUDICIAL DECISIONS

Restitution.

In a city's action against a tenant of a public housing unit for a money judgment and for a writ of restitution that would order that the premises be vacated, restitution by a qualified indigent tenant was not mandatory and other

forms of relief were available under the New Mexico Uniform Owner-Resident Relations Act, 47-8-1 NMSA 1978, where the trial court found that the tenant was in default on rent. *City of Albuquerque v. Brooks*, 114 N.M. 572, 844 P.2d 822 (1992).

47-8-43. Issuance of summons.

A. The summons shall be issued and directed, with a copy of the petition attached to the summons, and shall state the cause of the complaint, the answer day for other causes of action and notice that if the defendant fails to appear, judgment shall be entered against him. The summons may be served pursuant to the New Mexico rules of civil procedure and returned as in other cases. Trial of the action for possession shall be set as follows:

(1) for any matter brought by the owner for possession, not less than seven or more than ten days after the service of summons; or

(2) for any matter brought by the resident for possession, not less than three or more than five days after the service of summons.

B. Upon finding of good cause, the court may continue the date of hearing on the action for possession for up to seven days from the date of the initial hearing.

History: 1953 Comp., § 70-7-43, enacted by Laws 1975, ch. 38, § 43; 1995, ch. 195, § 20.

STATUTORY NOTES

Cross reference. — Action for termination, 47-10-4 NMSA 1978.

47-8-44. Absence from court of defendant.

If the defendant shall not appear in response to the summons, and it shall have been properly served, the court shall try the cause as though he were present.

History: 1953 Comp., § 70-7-44, enacted by Laws 1975, ch. 38, § 44.

47-8-45. Legal or equitable defense.

On or before the day fixed for his appearance, the defendant may appear and answer and assert any legal or equitable defense, setoff or counterclaim.

History: 1953 Comp., § 70-7-45, enacted by Laws 1975, ch. 38, § 45.

JUDICIAL DECISIONS

Restitution.

In a city's action against a tenant of a public housing unit for a money judgment and for a writ of restitution that would order that the premises be vacated, restitution by a qualified indigent tenant was not mandatory and other forms of relief were available under the New Mexico Uniform Owner-Resident Relations Act, 47-8-1 NMSA 1978 et seq., where the trial court found that the tenant was in default on rent. *City of Albuquerque v. Brooks*, 114 N.M. 572, 844 P.2d 822 (1992).

Metropolitan court had both equitable and legal jurisdiction under the New Mexico Uniform Owner-Resident Relations Act, 47-8-1 NMSA 1978 et seq., in the city's action against a tenant of a public housing unit for a money judgment and for a writ of restitution that would order that the premises be vacated. *City of Albuquerque v. Brooks*, 114 N.M. 572, 844 P.2d 822 (1992).

47-8-46. Writ of restitution.

A. Upon petition for restitution filed by the owner if judgment is rendered against the defendant for restitution of the premises, the court shall declare the forfeiture of the rental agreement and shall, at the request of the plaintiff or his attorney, issue a writ of restitution directing the sheriff to restore possession of the premises to the plaintiff on a specified date not less than three nor more than seven days after entry of judgment.

B. Upon a petition for restitution filed by the resident, if judgment is rendered against the defendant for restitution of the premises, the court shall, at the request of the plaintiff or his attorney, issue a writ of restitution directing the sheriff to restore possession of the premises to the plaintiff within twenty-four hours after entry of judgment.

History: 1953 Comp., § 70-7-46, enacted by Laws 1975, ch. 38, § 46; 1995, ch. 195, § 21.

STATUTORY NOTES

Cross reference. — Remedies, 47-10-9 NMSA 1978.

JUDICIAL DECISIONS

Restitution.

In a city's action against a tenant of a public housing unit for a money judgment and for a writ of restitution that would order that the premises be vacated, restitution by a qualified indigent tenant was not mandatory and other

forms of relief were available under the New Mexico Uniform Owner-Resident Relations Act, 47-8-1 NMSA 1978 et seq., where the trial court found that the tenant was in default on rent. *City of Albuquerque v. Brooks*, 114 N.M. 572, 844 P.2d 822 (1992).

47-8-47. Appeal stays execution.

A. If either party feels aggrieved by the judgment, that party may appeal as in other civil actions. An appeal by the defendant shall stay the execution of any writ of restitution; provided that in cases in which the resident is the appellant, the execution of the writ of restitution shall not be stayed unless the resident, within five days of the filing of the notice of appeal, pays to the owner or into an escrow account with a professional escrow agent an amount equal to the rental amount that shall come due from the day following the judgment through the end of that rental period. The resident shall continue to pay the monthly rent established by the rental agreement at the time the complaint was filed, on a monthly basis on the date rent would otherwise become due. Payments pursuant to this subsection by a subsidized resident shall not exceed the actual amount of monthly rent paid by that resident. When the resident pays the owner directly, the owner shall immediately provide a written receipt to the resident upon demand. When the resident pays into an escrow account the resident shall cause such amounts to be paid over to the owner immediately upon receipt unless otherwise ordered by the court. Upon the failure of the resident or the escrow agent to make a monthly rent payment on the first day rent would otherwise be due, the owner may serve a three-day written notice on the resident pursuant to Subsection D of Section 47-8-33 NMSA 1978. If the resident or the resident's escrow agent fails to pay the rent within the three days, a hearing on the issue shall be scheduled within ten days from the date the court is notified of the failure to pay rent. In the case of an appeal de novo, the hearing shall be in the court in which the appeal will be heard. If, at the hearing, the court finds that rent has not been paid, the court shall immediately lift the stay and issue the writ of restitution unless the resident demonstrates a legal justification for failing to comply with the rent payment requirement.

B. In order to stay the execution of a money judgment, the trial court, within its discretion, may require an appellant to deposit with the clerk of the trial court the amount of judgment and costs or to give a supersedeas bond in the amount of judgment and costs with or without surety. Any bond or deposit shall not be refundable during the pendency of any appeal.

History: 1953 Comp., § 70-7-47, enacted by Laws 1975, ch. 38, § 47; 1989, ch. 253, § 2; 1995, ch. 195, § 22; 1999, ch. 91, § 7.

JUDICIAL DECISIONS

Negligence.

Because 47-8-2 NMSA 1978 in the Uniform Owner-Resident Relations Act, 47-8-1 to 47-8-51 NMSA 1978, states that the Act's general purpose is to clarify the rights and the obligations of owners and residents and because it is not clear that the provision in 47-8-47 NMSA 1978, which gives a tenant a right to file an appeal to stay the execution of a writ of restitution regarding an eviction action, in the Act is intended to provide protection against sheriff's deputies who execute the writ due to not knowing of the appeal, the execution of the writ by the deputies did not entitle the tenants to a recovery as to the negligence claim that was filed against the County of Bernalillo (New Mexico), the sheriff and the deputies. *Runge v. Fox*, 110 N.M. 447, 796 P.2d 1143 (Ct. App. 1990).

Bernalillo County (New Mexico), the sheriff,

and the deputies were entitled to a favorable judgment regarding the tenants' negligence claim under 41-4-4 NMSA 1978 in the Tort Claims Act, 41-4-1 to 41-4-27 NMSA 1978, regarding executing the writ of restitution that was issued due to the landlord's desire to evict the tenants; the county was not negligent because the deputies were not negligent because the deputies were only meeting their duty under 4-41-14 NMSA 1978 in executing the facially valid writ of restitution and the deputies were not required to check with the magistrate clerk's office regarding the possibility of the tenants filing the appeal, which they did file, that had the intent under 47-8-47 NMSA 1978 in the Uniform Owner-Resident Relation Act, 47-8-1 to 47-8-51 NMSA 1978, of staying the execution of the writ. *Runge v. Fox*, 110 N.M. 447, 796 P.2d 1143 (Ct. App. 1990).

47-8-48. Prevailing party rights in law suit; civil penalties.

A. If suit is brought by any party to the rental agreement to enforce the terms and conditions of the rental agreement or to enforce any provisions of the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978], the prevailing party shall be entitled to reasonable attorneys' fees and court costs to be assessed by the court.

B. Any owner who violates a provision of Section 47-8-36 or 47-8-39 NMSA 1978 shall be subject to a civil penalty equal to two times the amount of the monthly rent.

C. Any resident who intentionally violates a provision of Subsection F of Section 47-8-22 NMSA 1978 shall be subject to a civil penalty equal to two times the amount of the monthly rent.

History: 1953 Comp., § 70-7-48, enacted by Laws 1975, ch. 38, § 48; 1995, ch. 195, § 23.

STATUTORY NOTES

Cross reference. — Delivery of possession, 47-8-26 NMSA 1978.

Unlawful removal and diminution of services prohibited, 47-8-36 NMSA 1978.

Owner retaliation prohibited, 47-8-39 NMSA 1978.

JUDICIAL DECISIONS

Construction.

In a landlord-tenant dispute, under the terms of 47-8-48 NMSA 1978 of the New Mexico Uniform Owner-Resident Relations Act, 47-8-1 through 47-8-51 NMSA 1978, the landlords were entitled to reasonable attorneys' fees and

court costs because they successfully avoided an adverse judgment on every claim, making them the prevailing party on the tenants' claims. *Hedicke v. Gunville*, 2003-NMCA-032, 133 N.M. 335, 62 P.3d 1217, cert. denied, N.M. , 63 P.3d 516 (2003).

47-8-49. Unlawful and forcible entry.

The laws and procedures of New Mexico pertaining to complaints of unlawful and forcible entry shall apply to actions for possession of any premises not subject to the provisions of the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] or the Mobile Home Park Act [47-10-1 NMSA 1978].

History: 1953 Comp., § 70-7-49, enacted by Laws 1975, ch. 38, § 49; 1995, ch. 195, § 24.

STATUTORY NOTES

Cross reference. — Action for termination, 47-10-4 NMSA 1978.

47-8-50. Prior transactions valid.

Transactions entered into before the effective date of the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978], and not extended or renewed after that date, and the rights, duties and interests flowing from them remain valid and may be terminated, completed, consummated or enforced as required or permitted prior to the effective date of the Uniform Owner-Resident Relations Act.

History: 1953 Comp., § 70-7-50, enacted by Laws 1975, ch. 38, § 50.

47-8-51. Applicability.

The provisions of the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] are applicable to rental agreements entered into or extended or renewed after the effective date and shall not be applicable to any agreements or conditions entered into between the owner and resident which provisions may alter agreements or conditions existing prior to the effective date of the provisions of the Uniform Owner-Resident Relations Act.

History: 1953 Comp., § 70-7-51, enacted by Laws 1975, ch. 38, § 51.

47-8-52. Conflicts; applicability of law.

Unless a provision of the Mobile Home Park Act [47-10-1 NMSA 1978] directly conflicts with the provisions of the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978], the provisions of the Uniform Owner-Resident Relations Act shall apply to mobile home park owners and residents.

History: Laws 1989, ch. 253, § 3.

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