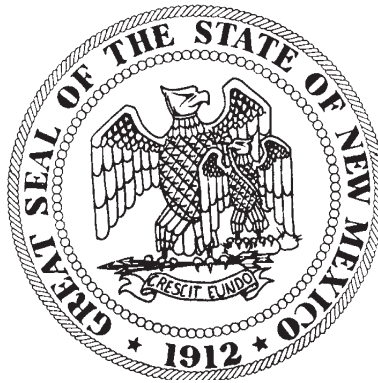


**NEW MEXICO  
REAL ESTATE LICENSE LAW,  
REAL ESTATE COMMISSION  
RULES, AND TIME SHARE ACT**

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**2009 EDITION**



Reprinted from  
Michie's Annotated Statutes of New Mexico  
and 2008 Supplement

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Product Number 2172712

(Pub. 21727)

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January 2009

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Dear New Mexico Real Estate Broker:

The Real Estate Commission is pleased to present the 2009 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 Time Share Act.

The first section of the manual is the Real Estate License Law, the second is the Real Estate Commission Rules, and the third is the Time Share Act. Although the license law and rules have equal authority, the law can only be changed by action of the New Mexico State Legislature, whereas the rules can be amended by the Commission through a prescribed rule making process. Because the laws are usually written in general terms, the rules are written to provide the details about how the laws are enforced.

Although there are instances in which brokers and members of the public will want or need to know what the Real Estate License Law says, in general the rules will be more helpful in addressing day to day situations arising in the course of brokerage practice.

The Commission office receives numerous calls from real estate brokers looking for information contained in the manual. In recognition of that fact, the current version of the manual attempts to simplify and clarify the rules dealing with some of the most frequently asked questions, including license applications (Part 3), license renewals (Part 11), criminal background checks (Part 7), and continuing education requirements (Parts 13 and 15).

The Commission staff is available to answer your questions; however, if you require a legal interpretation of how the law applies to a particular situation, we strongly recommend that you consult an attorney.

The Commission is continuously updating and improving its web site to make it a better resource for brokers and members of the public. The site includes detailed information about licensing, education, and enforcement, including forms for transferring licenses, applying for continuing education credit, and filing complaints against real estate brokers. It also includes a News and Information link that includes the minutes of Real Estate Commission meetings and articles on current topics of interest to brokers. The web site address is [www.state.nm.us/nmrec](http://www.state.nm.us/nmrec).

Significant among the rules changes effective January 1, 2009 are:

**Alcohol and Gaming Division**  
(505) 476-4875  
**Boards and Commissions Division**  
(505) 476-4600  
**Construction Industries Division**  
(505) 476-4700  
**Financial Institutions Division**  
(505) 476-4885  
**Manufactured Housing Division**  
(505) 476-4770  
**Securities Division**  
(505) 476-4580  
**Administrative Services Division**  
(505) 476-4800

- Associate brokers licensed for the first time on or after January 1, 2009 will be required to take a Commission approved, 30-hour post licensing course during their first, three-year licensing cycle. The course is in addition to the 30 hours of approved courses all brokers are required to complete every three years as a condition of license renewal.
- The Commission will no longer grant continuing education credit for courses not on the Commission-approved list of courses if approval is sought after the broker has taken the course.
- The Commission will no longer grant continuing education credit for courses completed in fulfillment of another state's continuing education requirements, unless it is a state with which New Mexico has a written license recognition agreement. Those states are Colorado, Georgia, Louisiana, Massachusetts, Montana, Oklahoma, Tennessee and Wyoming.
- Associate brokers can receive a commission check from an entity other than their qualifying broker as long as their qualifying broker has authorized that entity in writing to disburse the commission. For example; a qualifying broker may authorize a title company in writing to disburse a commission check directly to an associate broker rather than requiring the title company to write the check to the qualifying broker who in turn writes a commission check to an associate broker.
- Associate brokers can be affiliated with more than one brokerage as long as those brokerages have the same qualifying broker.
- The 4-hour Qualifying Broker Refresher Course required of all active qualifying brokers must be completed as a condition of license renewal every three years

The Commission appreciates and values the services that licensed real estate brokers provide to New Mexico consumers. The Commission considers each one of you to be a valued customer, and we welcome and encourage you to call on us any time 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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61-29-24.	Commission; review; compromise.	61-29-28.	Waiver. (Repealed effective July 1, 2012.)
		61-29-29.	Disciplinary action not limited. (Repealed effective July 1, 2012.)

### 61-29-1. Prohibition. (Repealed effective July 1, 2012.)

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

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978.

**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 2005, ch. 208, § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

#### 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. (Repealed effective July 1, 2012.)**

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

(c) advertises or holds himself out 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

(d) 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 or lessor performs any of the activities included in this section with reference to property owned or leased by the person, the employees of the owner or lessor or the employees of a qualifying broker acting on behalf of the owner or lessor, with respect to the property owned or leased, 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 or the lease or offering for lease of the property constitutes a subdivision containing one hundred or more parcels;

(2) 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;

(3) 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;

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

(5) 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;

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

(7) 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.

## STATUTORY NOTES

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978.

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

Tax credit; certain conveyances of real property, 7-2-18.10 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.

**Editor’s notes.** — Laws 2005, ch. 208, § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

## 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. (Repealed effective July 1, 2012.)

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

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978.

**Editor's notes.** — Laws 2005, ch. 208,

§ 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

### 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. (Repealed effective July 1, 2012.)

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

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978.

**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 2005, ch. 208, § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

### **61-29-4.1. Additional powers of commission; continuing education programs; minimum requirements. (Repealed effective July 1, 2012.)**

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 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, as a condition of his license renewal, shall 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.

### STATUTORY NOTES

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978.

**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".

**Editor's notes.** — Laws 2005, ch. 208, § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

**61-29-4.2. Additional powers of the commission; professional liability insurance; minimum coverage. (Repealed effective July 1, 2012.)**

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

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978.

**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 2005, ch. 208, § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.



**61-29-4.3. Regulation and licensing department; administratively attached. (Repealed effective July 1, 2012.)**

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

**History:** Laws 2001, ch. 163, § 12.

**STATUTORY NOTES**

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978. § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

**Editor's notes.** — Laws 2005, ch. 208,

**61-29-4.4. Additional powers of commission; criminal background checks. (Repealed effective July 1, 2012.)**

The commission may require license applicants, as a condition of licensure, to submit to criminal background checks.

**History:** Laws 2005, ch. 35, § 6.

**STATUTORY NOTES**

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978.

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

**Editor's notes.** — Laws 2005, ch. 208, § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

**61-29-5. Organization of commission. (Repealed effective July 1, 2012.)**

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**

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978.

**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 2005, ch. 208, § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

**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. (Repealed effective July 1, 2012.)**

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**

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978.

**The 2005 amendment,** effective January 1, 2006, inserted “commission” preceding “president” near the middle and substituted “com-

mission president” for “president of the commission” at the end.

**Editor’s notes.** — Laws 2005, ch. 208, § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

**61-29-7. Reimbursement and expenses. (Repealed effective July 1, 2012.)**

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**

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978. § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

**Editor's notes.** — Laws 2005, ch. 208,

**61-29-8. License fees; disposition. (Repealed effective July 1, 2012.)**

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 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 twenty dollars (\$20.00);
- (10) for each license reissued for an associate broker because of change of address of the qualifying broker's office, 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 pre-licensing 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 pre-licensing 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 his 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.

### STATUTORY NOTES

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978.

**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 commis-

sion 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.

**Editor’s notes.** — Laws 2005, ch. 208, § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

### **61-29-9. Qualifications for license. (Repealed effective July 1, 2012.)**

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 [January 1, 2006] 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. 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.

**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.

### STATUTORY NOTES

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978.

**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), substi-

tuted "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.

**Editor's notes.** — Laws 2005, ch. 208, § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

### 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. (Repealed effective July 1, 2012.)**

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

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978.

**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 2005, ch. 208, § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

### **61-29-10.1. Brokerage relationships; creation. (Repealed effective July 1, 2012.)**

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

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978.

**Editor’s notes.** — Laws 2005, ch. 208,

§ 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

### **61-29-10.2. Licensee’s duties; disclosure. (Repealed effective July 1, 2012.)**

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

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978.

**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 2005, ch. 208, § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

### **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. (Repealed effective July 1, 2012.)**

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

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978.

**Cross reference.** — Definitions, 57-12A-2 NMSA 1978.

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” preceding “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 2005, ch. 208, § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

### **61-29-12. Refusal, suspension or revocation of license for causes enumerated. (Repealed effective July 1, 2012.)**

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; 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;

(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.

### STATUTORY NOTES

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978.

**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.

**Editor's notes.** — Laws 2005, ch. 208, § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

### 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, 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, 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 oppor-

tunity 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. (Repealed effective July 1, 2012.)

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

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978.

**Editor's notes.** — Laws 2005, ch. 208,

§ 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

### 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. (Repealed effective July 1, 2012.)

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

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978. § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

**Editor's notes.** — Laws 2005, ch. 208,

### 61-29-16. Suit by qualifying or associate broker. (Repealed effective July 1, 2012.)

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

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978.

**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 2005, ch. 208, § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

### JUDICIAL DECISIONS

Corporations.  
Exemptions.  
Foreign licensure.  
Time of licensure.  
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 oc-

curred 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).

**61-29-16.1. Nonresident licensees; consent to service. (Repealed effective July 1, 2012.)**

A nonresident associate broker or qualifying broker shall file with the commission an irrevocable consent that lawsuits and actions may be commenced against the nonresident 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 nonresident licensee in New Mexico. 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. 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 nonresident licensee against whom the process or pleadings are directed.

**History:** Laws 2005, ch. 35, § 15.

**STATUTORY NOTES**

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978.

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

**61-29-17. Penalty; injunctive relief. (Repealed effective July 1, 2012.)**

A. Any person who violates any provision of Chapter 61, Article 29 NMSA 1978 is guilty of a 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 or both; 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).

B. In the event any person, business association or corporation 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 of New Mexico a civil penalty not exceeding five thousand dollars (\$5,000) per violation and attorneys' fees and costs.

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

#### STATUTORY NOTES

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978. § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

**Editor's notes.** — Laws 2005, ch. 208,

#### 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 projects, was recompiled as 47-11-11.2 NMSA 1978.

#### 61-29-17.2. Unlicensed activity; civil penalty. (Repealed effective July 1, 2012.)

The commission may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) for each violation and assess administrative costs for any investigation and administrative or other proceedings against any person who is found, through a court or administrative proceeding, to have acted without a license in violation of Chapter 61, Article 29 NMSA 1978.

**History:** Laws 2001, ch. 163, § 11.



### STATUTORY NOTES

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978. § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

**Editor's notes.** — Laws 2005, ch. 208,

### **61-29-18. Interpretation of act. (Repealed effective July 1, 2012.)**

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

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978. “qualifying brokers or associate brokers” for “real estate brokers”.

**The 2005 amendment,** effective January 1, 2006, substituted “in Chapter 61, Article 29 NMSA 1978” for “in this act” and substituted

**Editor's notes.** — Laws 2005, ch. 208, § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

### **61-29-19. Termination of agency life; delayed repeal. (Repealed effective July 1, 2012.)**

The New Mexico real estate commission is terminated on July 1, 2011 pursuant to the Sunset Act [12-9-11 NMSA 1978]. The commission shall continue to operate according to the provisions of Chapter 61, Article 29 NMSA 1978 until July 1, 2012. Effective July 1, 2012, Chapter 61, Article 29 NMSA 1978 is repealed.

**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.

### STATUTORY NOTES

**The 2005 amendment,** effective June 17, 2005, substituted “July 1, 2011” for “July 1, 2005” and twice substituted “July 1, 2012” for “July 1, 2006”.

### **61-29-19.1. Real estate education and training fund created; purpose; appropriation. (Repealed effective July 1, 2012.)**

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

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978. **Effective dates.** — Laws 2005, ch. 35, § 21A makes this section effective January 1, 2006.

#### **61-29-20. Short title. (Repealed effective July 1, 2012.)**

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

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978. **Editor’s notes.** — Laws 2005, ch. 208, § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

#### **61-29-21. Fund created. (Repealed effective July 1, 2012.)**

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

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978.

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

**Editor's notes.** — Laws 2005, ch. 208, § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

#### **61-29-22. Additional fees. (Repealed effective July 1, 2012.)**

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 his 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 two hundred fifty thousand dollars (\$250,000). 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.

### STATUTORY NOTES

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978.

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

**Editor's notes.** — Laws 2005, ch. 208, § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

#### **61-29-23. Judgment against qualifying or associate broker; petition; requirements; recovery limitations. (Repealed effective July 1, 2012.)**

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

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978.

**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 bro-

ker” 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 2005, ch. 208, § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

### 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. (Repealed effective July 1, 2012.)**

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

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978.

**Editor’s notes.** — Laws 2005, ch. 208,

§ 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

#### **61-29-25. Commission finding. (Repealed effective July 1, 2012.)**

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**

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978.

**Editor's notes.** — Laws 2005, ch. 208,

§ 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

**61-29-26. Insufficient funds. (Repealed effective July 1, 2012.)**

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**

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978.

**Editor's notes.** — Laws 2005, ch. 208,

§ 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

**61-29-27. Subrogation. (Repealed effective July 1, 2012.)**

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**

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978.

**The 2005 amendment,** effective January 1, 2006, substituted "qualifying broker or associate broker" for "real estate broker or sales-

person" near the middle of the second sentence.

**Editor's notes.** — Laws 2005, ch. 208, § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

**61-29-28. Waiver. (Repealed effective July 1, 2012.)**

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**

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978. § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

**Editor's notes.** — Laws 2005, ch. 208,

**61-29-29. Disciplinary action not limited. (Repealed effective July 1, 2012.)**

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**

**Delayed repeals.** — For termination of agency and repeal of this section, see 61-29-19 NMSA 1978. § 21, amended 61-29-19 NMSA 1978 which changed the repeal of this section from July 1, 2006 to July 1, 2012.

**Editor's notes.** — Laws 2005, ch. 208,





# **Real Estate Commission Rules**

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## **New Mexico Administrative Code**

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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.

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### **Title 16. OCCUPATIONAL AND PROFESSIONAL LICENSING**

#### **CHAPTER 61**

#### **REAL ESTATE BROKERS**

##### **PART 1**

##### **GENERAL PROVISIONS**

###### **16.61.1.7. Definitions.**

A. 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.

B. Agent: the brokerage authorized to act as a fiduciary for a person and to provide real estate services solely by means of an express written agreement.

C. 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.

D. 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 offerings.

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

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

G. Brokerage: a licensed qualifying broker, the licensed real estate business represented by the qualifying broker and its affiliated associate brokers.

H. Brokerage relationship: the legal or contractual relationship between a person and a brokerage in a real estate transaction subject to the jurisdiction of the commission.

I. Broker duties: those duties established by the commission that are owed by all brokers to all clients and customers.

J. Broker in charge: a New Mexico licensed real estate broker who is eligible to be a qualifying broker designated by the qualifying broker to be responsible for real estate related activity within the brokerage during the temporary absence of the qualifying broker.

K. 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.

L. Credit hours(s): credits toward continuing education requirements as assigned by the real estate commission for each commission-approved course. May vary from actual classroom hours. Each credit hour shall consist of not less than fifty minutes of instruction within a sixty minute period.

M. Criminal background check: a criminal background check of a first-time or renewal applicant for a New Mexico real estate broker's license conducted by an entity or source approved by the commission.

N. Custodial account: an account in the owner's name of which the qualifying broker is a trustee. Established for the purpose of holding monies received by the qualifying broker on behalf of the owner, and may be interest bearing.

O. 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.

P. Designated agent: an associate broker who is designated in writing by their qualifying broker to serve as exclusive agent for a seller, landlord, buyer or tenant in a real estate transaction.

Q. Designated agency: the brokerage relationship established between the seller, landlord, buyer or tenant and a designated broker, including the duties, obligations and responsibilities of this relationship which shall extend to the qualifying broker but not to any other associate broker employed or engaged by that qualifying broker.

R. 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.

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

T. 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 existing exclusive agency agreements with the brokerage.

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

(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;

(5) does the employer consider the person an employee.

V. 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.

W. 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.

X. Express written agreement: a listing agreement, a written agency or brokerage relationship agreement, an exclusive transaction broker agreement or purchase or lease agreement, or any written agreement signed by all parties to a real estate transaction.

Y. 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.

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

AA. Inactive broker: a New Mexico licensed qualifying broker or associate broker who has returned their license to the real estate commission because they are not currently affiliated with a real estate brokerage in New Mexico.

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

CC. Sponsor: an organization or entity that offers or administrates courses in real estate practice and law, continuing education, professional designations, or accreditations for real estate brokers.

DD. Licensee: any person holding a New Mexico real estate license.

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

FF. Mandatory course: the course the commission requires brokers, except for those brokers exempted from continuing education requirements pursuant to Section 61-29-4.1 of the real estate license law, to take during each license renewal cycle.

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 commis-

sion, 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 thirty (30) hour commission approved course for associate brokers in their first three year licensing cycle.

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

KK. Property management: includes the showing, renting and leasing of real property, the collection and disbursement of funds on behalf of other persons, the supervision of employees as specified in the management agreement, the supervision of maintenance and repair work, handling of tenant relations, and/or preparation of financial reports. In the course of listing and marketing properties for sale, repairs and maintenance incident to the sale and authorized by the owner, shall not be considered property management.

LL. Property management trust account: a trust account containing money of others derived from the management of leased or rental properties.

MM. Property manager: a broker (with the exception of those mentioned in Section 61-29-2(C), NMSA 1978) who, for a fee, salary, commission or other valuable consideration, is engaged in managing property for others.

NN. Qualifying broker: a broker who has qualified an individual proprietorship, corporation, partnership or association to do business as a real estate brokerage in the state of New Mexico.

OO. 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.

PP. 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 61-29-12A(7) NMSA 1978.

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

RR. Short-term rental: with the exception of hotels and motels, the rental of real property for a period of less than thirty (30) days.

SS. Special trust account: a trust account bearing interest payable to a named party to the transaction.

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

UU. Transaction: any brokerage relationship, sale, lease, rental, option or exchange subject to the jurisdiction of the commission.

VV. Transaction broker: the non-fiduciary relationship created by 61-29-2 A 14 NMSA 1978, wherein a broker or brokerage provides real estate services without entering into an agency relationship.

WW. Trust account: an account established by the qualifying broker for the purpose of holding money of others received by the qualifying broker in a transaction.

XX. Unlicensed assistant: a person who:

(1) does not hold an active New Mexico real estate license, and is subject to the jurisdiction of the commission and;

(2) works under the supervision of a qualifying broker or associate broker;

(3) performs only those routine clerical, secretarial, administrative or bookkeeping activities defined in Part 21 of the real estate commission rules which do not require a New Mexico real estate license.

[16.61.1.7 NMAC - Rp, 16.61.1.7 NMAC, 1-1-2006; A, 12-31-2008]

### **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, 1-1-2006]

### **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, 1-1-2006]

## **PART 2**

### **LICENSE AND OTHER FEES**

#### **16.61.2.7. Definitions.**

Refer to 16.61.1.7.

[1-1-2000; 16.61.2.7 NMAC - Rn, 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 twenty dollars (\$20.00).

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).

[1-1-2000, A, 2-14-2000; 16.61.2.8 NMAC - Rp, 16 NMAC 61.2.8, 1-1-2002; A, 01-01-2004; A, 1-1-2006]

#### **16.61.2.9. Fees non-refundable.**

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

[1-1-2000; 16.61.2.9 NMAC - Rn, 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, 12-31-2008]

##### **16.61.3.8. Examination and Licensing Requirements.**

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 to individuals. There is no corporate real estate broker's license in New Mexico. An associate broker can hold only one associate broker's license and be affiliated with one qualifying broker at a time. A qualifying broker can be the qualifying broker for multiple brokerages, but cannot be a qualifying broker for one brokerage and an associate broker for another brokerage at the same time. The requirements for obtaining both types of licenses are described below.

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 thirty (30) hour pre-licensing courses in real estate principles and practice, real estate law, and broker basics.

(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 thirty (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 thirty (30) hour broker basics course.

(6) All other applicants for the examination shall attach to their license examination application certificates documenting completion of one thirty (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 ninety (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 he/she provides in writing to the commission a reasonable explanation for why he/she was 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, a completed arrest record check from the New Mexico department of public safety or the equivalent agency in their state of residence, 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 part 5 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 thirty (30) hour brokerage office administration course. Applicants who can document that they were New Mexico qualifying brokers on or before December 31, 2005 are not subject to those requirements and may regain qualifying broker status by filing 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 a completed arrest record check from the New Mexico department of public safety or the equivalent agency in their state of residence, a certificate documenting that the applicant has a current errors and omissions insurance policy that meets the requirements for such insurance as described in part 5 of the commission rules, and a non-refundable license application fee not to exceed \$270.

[16.61.3.8 NMAC - Rp, 16.61.3.8 NMAC, 12-31-2008]



**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 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**

## **QUALIFICATION OF A CORPORATION, PARTNERSHIP, OR ASSOCIATION AS A REAL ESTATE BROKERAGE**

#### **16.61.6.7. Definitions.**

Refer to 16.61.1.7.

[1-1-2000; 16.61.6.7 NMAC - Rn, 16 NMAC 61.6.7, 1-1-2002]

#### **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 broker applicant(s). Such license shall bear the name of the qualifying broker or brokers who have qualified the corporation, partnership, or association as a real estate brokerage and the trade name under which the corporation, partnership, or association will conduct real estate brokerage activity. Thereupon, the qualifying broker shall be entitled to perform all the acts of a real estate broker under the trade name of the real estate brokerage as registered with the commission. The license shall entitle the qualifying broker to act as an officer or agent of the corporation, partnership, or association. If the broker applicant(s) is refused a qualifying broker's license by the commission (or the person ceases to be connected with the corporation, partnership or association), the corporation, partnership, or association shall have the right to designate another broker who shall make application for a qualifying broker's license to qualify the corporation, partnership or association as a real estate brokerage as in the first instance. Prior to acting as a real estate broker, any member or officer of the corporation, partnership, or association, shall first obtain a real estate license as provided by law.

[8-15-97, A, 1-1-2000; 16.61.6.8 NMAC - Rn, 16 NMAC 61.6.8, 1-1-2002; A, 1-1-2006]

## **PART 7**

### **CRIMINAL BACKGROUND CHECKS**

#### **16.61.7.7. Definitions.**

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

#### **16.61.7.8. Requirements.**

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 along with their application an arrest record report from the New Mexico department of public safety or, in the case of a non-resident applicant, an arrest record from the equivalent agency in their state of residence, that is no more than six months old. License applicants residing in states that do not make arrest record reports available must, in lieu of the arrest record report, provide written documentation from the appropriate agency in their state of residence that such reports are not available.

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

## **PART 8**

### **LICENSE TRANSFER**

#### **16.61.8.7. Definitions.**

Refer to Definitions 16.61.1.7.  
[1-1-2000; 16.61.8.7 NMAC - Rn, 16 NMAC 61.8.7, 1-1-2002]

**16.61.8.8. Requirements.**

A real estate license may be transferred to a new address and be placed under a new qualifying broker at the request of the associate broker, upon payment of a transfer fee, completion of a transfer form, and return to the commission office of the current license. When an associate broker requests that their license be transferred the qualifying broker or the broker in charge shall within forty-eight (48) hours return the license to the commission. All real estate activity on the part of the associate broker shall cease until the transfer has been completed. 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. A broker changing address must notify the commission of his or her new address within ten (10) days of address change.

B. When a qualifying broker returns his or her own license to the commission for transfer they shall within forty-eight (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.

C. 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]

**PART 9****LICENSE INACTIVATION****16.61.9.7. Definitions.**

[RESERVED]

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

**16.61.9.8. Requirements.**

Whenever a broker is no longer transacting business under the trade name and from the address registered with the commission the qualifying broker, or the properly designated broker in charge, shall return the license to the commission within forty-eight (48) hours. The license shall be inactivated and all real estate activity on the part of the licensee shall cease.

A. When a broker requests that their license be placed on inactive status, the qualifying broker or broker in charge shall within forty-eight (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 forty-eight (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 longer is no longer affiliated with the brokerage.

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 status are required to fulfill the following requirements of licensure.

(1) The payment of triennial renewal fees.

(2) Submission of an arrest record report at the time of renewal.

(3) Completion of continuing education requirements, except in the case of exemption from continuing education by virtue of being sixty-five (65) years of age and having had twenty (20) years of continuous licensure.

(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]

## **PART 10**

**[RESERVED]**

## **PART 11**

### **LICENSE 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 shall expire every three years on the last day of the month following the broker's birth month, and shall be renewed on or before that date. Renewal of a license is the sole responsibility of the 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 educa-

tion courses. Application for renewal shall be on the renewal form prescribed by the commission. Renewal forms will be mailed to brokers at the last mailing address on file at the commission. The commission assumes no responsibility for renewal applications not received by the broker for any reason. It shall be the broker's responsibility to make a request for a renewal form in the event the form has not been received by the broker. The license(s) of any active broker who fails to submit with the license renewal application a certification of current errors and omissions insurance coverage and an arrest record check not more than six (6) months old shall not be renewed until all documentation is received in the commission office.

[8-15-97; R 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]

## **PART 12**

### **LICENSE SUSPENSION AND REVOCATION**

#### **16.61.12.7. Definitions.**

Refer to Definitions 16.61.1.7 NMAC.

#### **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.**

The only exception to this part is for brokers exempted from continuing education by virtue of being sixty-five (65) years of age with twenty (20) years continuous licensure.

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 education education courses.

C. Commission approved pre-licensing courses may count for up to ten (10) credit hours toward continuing education if the course is being used to upgrade from associate broker to qualifying broker. The commission approved thirty (30) hour post-licensing course may 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. Brokers may receive four (4) approved education course credit hours during each licensing cycle for attending commission meetings, rules hearings, and disciplinary hearings.

G. 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.

[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]



**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 on commission approved forms, sponsors' 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]

**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 [96] 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, 1-1-2007]

#### **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.

B. The committee shall consist of at least nine members. Each member shall serve a term of three years. The commission may appoint new members. The term of a committee member may be renewed by the commission.

(1) The appointments should be made so the terms are staggered.

(2) A person who accepts an appointment to the ESC shall be committed to the appointment. An absence of two times in succession shall result in removal from the committee.

[16.61.15.8 NMAC - Rp, 16.61.15.8 NMAC, 1-1-2007]

### **16.61.15.9. Approval Of Education Programs.**

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

B. Review of Courses. The ESC shall determine if a course meets commission guidelines as to course content and has significant content relating directly to the real estate business. The course must have an acceptable structure and method for measurement of student proficiency, and must be categorized as either an education category or a training category course.

(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, 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.

(2) With the exception of courses taken in states with which New Mexico has a written license recognition agreement, non-acceptable offerings shall include courses taken in fulfillment of another state's continuing education requirements. 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 offerings.

(3) Approved training category courses include offerings 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 offerings.

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.

D. The ESC shall review sponsor applications to determine if the sponsor is qualified and credible.

E. Agenda and procedures for approval of sponsors, instructors, and courses.

(1) The ESC shall schedule no more than eight presentations related to applications for instructor, sponsor, or course approvals during any one meeting.

(2) Applications must be received by the education administrator in the commission office at least 30 days prior to a scheduled ESC meeting.

[16.61.15.9 NMAC - N, 1-2007; A, 12-31-2008]

### **16.61.15.10. Approval of Sponsors.**

A. All sponsors wishing to offer commission approved courses for credit must be approved by the commission prior to accepting students.

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) prominently display the current certificate of sponsorship in the main office of the sponsor as registered with the commission;

(3) prepare and provide to each student who successfully completes a pre-licensing or continuing education course, a course completion certificate showing the student name, the course name, the course number, the credit hours earned and whether the course is in the education or training category;

(a) certify no candidate as successfully completing a pre-licensing real estate course unless the student has attended at least 75% of the classroom instruction and has passed a written examination at the conclusion of the course;

(b) certify no broker as successfully completing the mandatory course unless the broker has attended each credit hour;

(c) certify no broker as successfully completing an approved continuing education course unless the broker has attended each credit hour;

(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 prior to cessation. The sponsor shall also inform the commission in writing of the plan for reimbursement and disposition of student fees for courses not completed by the date operations cease. The sponsor shall forward all student records to the commission for proper disposition; if the sponsor ceases operations while students are still enrolled who have not completed their program of study, the sponsor shall submit to the commission within thirty (30) days a list of students enrolled at the time of closure, the amount of tuition paid, the status of course work in progress, and all other student records;

(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 three years;

(10) renew sponsorship approval every three (3) years by submitting a sponsor renewal form to the commission;

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

E. Affiliates of the National Association of Realtors, or other organizations that routinely and ordinarily offer courses in real estate practice and law for continuing education credit, or courses leading to real estate broker professional designations or accreditations, without the intention of having such courses added to the list of permanent approved courses, may apply to be course sponsors.

(1) Organizations applying to be sponsors for the reasons described in paragraph E, shall be limited to four (4) course submittals during each calendar year, and these courses must be approved by the Education Steering Committee (ESC) and the commission prior to their presentation.

(2) As part of the sponsor application and course submittal process, a sponsor or its representative shall be required to make a presentation to the ESC that describes course content, materials, objectives, and goals. The sponsor will be responsible for ensuring that the course is presented as approved by the ESC.

(3) Failure to assure that the class is delivered in accordance with the approved outline and materials, shall result in loss of sponsorship status and revocation of continuing education credit.

F. 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, 16.61.15.9 NMAC, 1-1-2007; A, 12-31-2008]

### **16.61.15.11. Approval of Courses.**

A. A pre-licensing or continuing education course must have been approved by the commission before it is offered for pre-licensing or continuing education credit.

(1) A full and complete application for approval of a new course must be submitted to the commission on the approved form with all applicable fees before consideration of the course by the education steering committee (ESC).

The application must be accompanied with all written materials to be used in the course, and a course outline in an electronic format specified by the commission.

(2) For each course submitted for approval, the ESC shall determine the appropriate number of credit hours to be granted for the course, and whether the course is in the education or training category.

(a) Licensees taking these courses need only provide evidence to the commission of having completed such a course.

(b) A New Mexico sponsor is not required for these courses.

(3) Commission approved pre-licensing courses may count for up to ten (10) credit hours toward continuing education if the course is being used to upgrade from associate broker to qualifying broker.

B. All courses shall be offered in accordance with established commission approved course content requirements. The minimum length of a course shall be one hour.

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

D. 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 3 years the ESC may, at its discretion, recommend to the commission that the course be removed from the list of approved courses.

E. 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 other instructional media are used because the teacher and student are separated by distance or time. Distance education providers seeking continuing education credit for their courses shall submit for ESC review and approval:

(1) course syllabi which clearly state the course objectives and explain the desired student competencies;

(2) paper copies of detailed course content materials that allow for the evaluation of the course's content, duration, accuracy, and timeliness without the necessity of going on line to evaluate the course;

(3) instructions for accessing, using, and testing the on line materials tailored to individuals or organizations, such as ESC members, who will be evaluating the courses rather than completing them for credit;

(4) reference materials appropriate to the course;

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

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

(7) description of the method by which student identity is verified;

(8) evidence that qualified individuals are involved in the design and planning of distance learning courses;

(9) the names, telephone numbers and email addresses of individuals, web sites, or other resources that students can contact for technical assistance and subject matter questions, and the hours and other conditions of availability of such individuals and resources;

(10) a description of the methodology used by the provider in determining the classroom hour equivalency of each distance education course;

(11) documentation that the course has met the distance education certification requirements of the association of real estate license law officials (ARELLO), the commission, or another entity qualified to grant such certifications;

(12) courses shall have a New Mexico approved instructor competent in the subject matter available to monitor progress and answer student questions during regularly posted hours; the sponsor must demonstrate a method for



monitoring student progress, through live interaction, testing or some other method approved by the commission.

[16.61.15.11 NMAC - Rp, 16.61.15.10 NMAC, 1-1-2007; A, 12-31-2008]

### **16.61.15.12. Approval of Instructors.**

A. An individual applying to teach courses for pre-licensing or continuing education credit shall be approved by the commission prior to teaching a course, except for instructors teaching courses leading to national professional designations at the discretion of the education steering committee.

(1) All instructor candidates must complete an application on the approved form with all applicable fees no less than 30 days before the presentation of a course.

(2) All instructor candidates shall complete a commission-approved instructor-training course within one year of being 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.

(3) All instructor candidates must be honest, truthful, reputable and competent.

(4) Instructor candidates must 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:

(a) The presentation shall conform to the generally accepted principles of education as proposed by the real estate educators association (REEA).

(b) The ESC will make its recommendation to the commission to grant or deny instructor approval based on this presentation. If the application is denied, a written notice to the candidate will provide specific reasons and prescriptive measures for improvement.

#### **B. Pre-licensing instructors.**

(1) Candidates seeking approval to teach real estate law, real estate principles and practices, broker basics and brokerage office administration must have passed the New Mexico broker's examination with a minimum score of 84 within three years of having made application to the commission to become an instructor. Candidates seeking approval to teach the brokerage office administration course must have been previously approved to teach real estate law, real estate principles and practice and broker basics and have two years of experience as a qualifying broker in New Mexico or another licensing jurisdiction in a capacity supervising associate brokers, salespersons, or persons exempt from licensure, in a real estate endeavor.

(2) Candidates shall complete an audit of each course they will be teaching and prepare teaching notes on the course of study. Candidates shall provide written documentation of having audited the class with the application for instructor approval.

#### **C. Mandatory course instructors.**

(1) Candidates seeking approval to teach the mandatory course must have passed the New Mexico mandatory course examination with a minimum score of 84 within six months of having made application to the commission to teach the mandatory course.

(2) Candidates must be currently approved instructors in real estate law and real estate principles and practice or certified in three or more commission-approved education courses.

(3) Candidates must attend a seminar on how to present the mandatory course, and must attend a periodic update of the course offered by the commission or its mandatory course contractor.

(4) Candidates must be prepared to make a minimum 60-minute presentation to the ESC and answer questions. This presentation shall conform to the requirements set forth by the ESC.

D. Continuing education course instructors.

(1) Candidates seeking commission approval to teach approved continuing education courses shall comply with the requirements set forth in 16.61.15.12 NMAC, Approval of Instructors.

(2) Approved continuing education instructors shall comply with the following requirements:

(a) conduct all classes in accordance with commission rules and education policies;

(b) ensure that all instruction is free from misrepresentation;

(c) instruct in accordance with commission approved course content requirements;

(d) allow access to any approved class to any duly appointed representative of the commission;

(e) certify to the sponsor a true and correct record of student attendance.

E. 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.

(1) Instructors shall apply for recertification every three years on the commission approved form. As part of the recertification process, each instructor shall be required to appear before the ESC. Instructors shall complete a commission approved instructor training course within one year of being approved to teach pre-licensing and continuing education courses.

(2) Failure to submit documentation of completion of the instructor-training course will result in the instructor being decertified.

(3) Instructors shall have taught in the preceding year a minimum of one class in each course for which approval is sought.

F. 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, 16.61.15.11 NMAC, 1-1-2007; A, 12-31-2008]

## **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 NMAC 61.16.7, 1-1-2002]

**16.61.16.8. Affiliation.**

A New Mexico qualifying broker may by written agreement engage the services of associate brokers and qualifying brokers.

[16.61.16.8 NMAC - Rp, 16 NMAC 61.16.8, 1-1-2002; A, 1-1-2006]

**16.61.16.9. Responsibilities.**

The 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. supervise all real estate related activities to include advertising of real estate or real estate services conducted on behalf of others by associate brokers affiliated with the brokerage and execute and maintain current written employment or independent contractor agreements with them; such agreements should specify the relationship and responsibilities of the associate broker and the qualifying broker, and the scope of authority of the associate broker to act on behalf of the brokerage;

E. 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;

(1) such records shall include but are not limited to a record and receipt of all deposits to a title company trust account, purchases, offers to purchase, counter offers, sales, lead-based paint disclosures and other disclosures required by law, seller's disclosure statements if provided by the seller, options, leases, rentals, letters of intent, brokerage relationship agreements and disclosures, and current, expired, and cancelled listings;

(2) the names of all principals or parties to the transaction;

(3) clear and correct dates of transactions;

(4) the names of persons to whom compensation was paid;

(5) 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 three (3) years. In the case of a property manager, all records shall be retained for the full term of any agreement and for three (3) years from the close of the transaction;

F. 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 to the transaction;

G. receive and disburse all commissions, referral fees, and/or other considerations to any associate broker affiliated with the qualifying broker or any other entity entitled by law to receive same, including to a partnership, corporation, or limited liability company (llc ) wholly owned by an associate

broker and their spouse, or authorize and direct the disbursement thereof, and maintain complete records thereof; such partnership, corporation, or llc shall not be required to have a qualifying broker for purposes of this sub-part;

H. assure that when the brokerage cooperates with or makes a referral to, or receives a referral from any broker, sign a transaction specific written co-brokerage or referral agreement;

I. not permit the use of the qualifying broker's license to enable an affiliated associate broker to establish and carry on transactions outside the knowledge and supervision of the qualifying broker;

J. in the event actual supervision by the qualifying broker is not possible for a time exceeding seven (7) consecutive days, including but not limited to circumstances in which supervision of affiliated associate brokers is not possible because the qualifying broker is consistently and regularly absent from the office designate a broker in charge and inform the commission in writing of the 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 forty-eight (48) hours; although the license may be delivered to the commission by an associate broker, the responsibility for the delivery of the license to the commission remains that of the qualifying broker;

L. if employed as qualifying broker for others, have a written agreement of such employment maintained in the office of the brokerage;

M. 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 NMAC of the commission rules;

N. successfully complete as a condition of license renewal a commission-approved minimum four (4) hour qualifying broker refresher course;

[16.61.16.9 NMAC - Rp, 16 NMAC 61.16.9, 1-1-2002; A, 01-01-2004; A, 1-1-2006; A, 12-31-2008]

## **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]

### **16.61.17.9. Responsibilities.**

An associate broker shall:

A. complete in the first three year licensing cycle, the commission approved thirty (30) hour post-licensing 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 he/she is affiliated;

D. not engage in any real estate activities for himself/herself outside the knowledge of the qualifying broker with whom he/she is affiliated;

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

F. not receive any commissions or fees for real estate activities from anyone other than the qualifying broker with whom he/she is affiliated, or persons authorized in writing by the qualifying broker to disburse such commissions or fees;

G. 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 he/she is affiliated;

H. 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;

I. maintain all files for transactions performed under the auspices of the qualifying broker with whom he/she is affiliated at the brokerage address as registered with the commission.

[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]

## **PART 18**

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

## **PART 19**

### **ASSOCIATE BROKER AND QUALIFYING BROKER DUTIES, DISCLOSURE, BROKERAGE RELATIONSHIPS AND DUAL AGENCY 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.**

Prior to the time an associate broker or qualifying broker generates or presents any written document that has the potential to become an express written agreement, the associate broker or qualifying broker shall disclose in

writing to their prospective, buyer, seller, landlord or tenant, the following list of broker duties that are owed to customers and clients by all brokers:

- A. honesty and reasonable care as set forth in the provisions of this section;
- B. compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico real estate license law and the real estate commission rules, and other applicable local, state, and federal laws and regulations;
- C. performance of any and all oral or 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;
  - (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 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 monies or property received by the broker;
- G. prior to the time the associate broker or qualifying broker generates or presents any written document that has the potential to become an express written agreement, written disclosure of:
  - (1) any written brokerage relationship the broker has with any other parties to the transaction and/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. 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; adverse material facts do not include data from a sex offender registry or the existence of group homes;
- I. maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former client's consent or is required by law;
- J. unless otherwise authorized in writing, 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]

### **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 an exclusive agency relationship, a dual agency relationship, or a transaction broker relationship. For all regulated real estate transactions, a buyer, seller, landlord or tenant 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. 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.

B. 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.

C. Transaction broker: the non-fiduciary relationship created by 61-29-2 A 14 NMSA 1978, wherein a brokerage provides real estate services without entering into an agency relationship.

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

### **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****SPECIAL TRUST ACCOUNTS, CUSTODIAL ACCOUNTS,  
AND OTHER ACCOUNTS CONTAINING FUNDS OF  
THIRD PARTIES****16.61.23.7. Definitions.**

Refer to 16.61.1.7 NMAC.

[8-15-97, 1-1-2000; 16.61.23.7 NMAC - Rn, 16 NMAC 61.23.7, 1-1-2002]

**16.61.23.8. Description and Establishment of Accounts.**

A. A qualifying broker who receives money belonging to others related to a real estate transaction wherein the qualifying broker is involved shall deposit same only in a bank, savings and loan institution, or title company authorized to do business in the state of New Mexico or with a cooperating New Mexico licensed broker also involved in the transaction.

B. All trust accounts in banks and savings and loan institutions must be designated on the institution's records as "trust account." At a minimum, the words "trust account" and the trade name of the brokerage as registered with the commission shall appear on all checks, deposit slips and other bank documents related to the trust account.

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

(1) Trust account. Property management funds may be placed in the trust account only if a qualifying broker manages no more than five (5) individual rental units in this account. Should the qualifying broker manage six (6) or more individual rental units all management related monies shall be removed from the trust account and placed in the property management trust account (see Property Management Part 24). This type of trust account shall not be interest bearing.

(2) Special trust account. In the event the principals agree in writing that an interest bearing special trust account is to be established, it shall be done as follows: A written trust agreement shall be prepared stating as a minimum the following:

- (a) the qualifying broker shall be named as sole trustee;
- (b) name of the bank or savings and loan wherein the funds are to be deposited;
- (c) the amount of interest to be paid on the funds and to whom the interest shall accrue;
- (d) the final disposition of principal and interest upon closing, termination or default by either party to the transaction; and
- (e) the signatures of all parties to the transaction and the qualifying broker as trustee.

(3) Custodial account. Monies designated to be deposited in a custodial account shall first be placed in a trust account of the qualifying broker and then may be transferred to the custodial account of the owner. Custodial accounts shall not contain any monies 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.

[8-15-97; Rn, 16.61.23.8.3.3, 1-1-2000, A, 1-1-2000; 16.61.23.8 NMAC - Rn & A, 16 NMAC 61.23.8, 1-1-2002; A, 1-1-2006; A, 12-31-2008]

### **16.61.23.9. Record Maintenance.**

Every qualifying broker shall keep bank and office records of all funds related to all trust accounts of the brokerage. All such records shall be maintained and retained in the New Mexico office of the qualifying broker at the location as registered with the commission, or at the bank, savings and loan institution, or title company where the trust account is maintained. In a multi-office company, or in a circumstance in which the trust account is maintained at a bank, savings and loan institution, or title company, trust account records may be maintained and retained at the main corporate office, or at the main or branch office of the bank, savings and loan institution or title company where the trust account is maintained, provided that the commission is notified in writing of the location of the trust account records and the qualifying broker who is responsible for the trust account records. All such records 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, as 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. The qualifying broker shall be ultimately responsible for the maintenance and safe-keeping of trust account records.

A. Trust account control. A check numbering system with a check register shall be used for control purposes. Voided checks shall be retained. All trust account bank records and office records shall be reconciled monthly.

B. Trust account receipts and disbursements.

(1) Timeliness. All funds of others that come into the possession of the qualifying broker shall be deposited into the proper trust account as soon as practicably possible after securing signatures of all parties to the transaction.

(2) All funds held in any trust account for each transaction shall be disbursed as soon as practicably possible upon complete closing of the transaction; or, according to written agreement signed by all parties to the transaction; or, upon court order.

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

- (a) date received;
- (b) date deposited;
- (c) from whom received;

- (d) the related property transaction; and,
  - (e) the nature of the funds, i.e., earnest money deposit, rents, security deposit, owner's funds, etc.
  - (f) amount of deposit.
- (4) 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;
  - (b) date of payment;
  - (c) payee;
  - (d) purpose of payment;
  - (e) amount of payment;
  - (f) the related property transaction.

C. Retention of records. The qualifying broker shall retain all trust account records for a minimum of three (3) years.

D. Commingling. Commingling shall include, but is not limited to, the following actions involving a trust account on the part of a qualifying broker or the qualifying broker's designee:

- (1) placing funds of others directly into any account that is not a properly designated trust account;
- (2) placing non-trust account funds into a trust account; the qualifying broker may deposit 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 a bank or savings and loan institution necessary to maintain the account and avoid charges;
- (3) allowing an owner's fund within a trust account to be in deficit. (see Part 24, property management);
- (4) placing funds derived from the management of the qualifying broker's own 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 to be used for the benefit of another property; however, if a written agreement exists between the qualifying broker and the property owner, allowing the commingling of funds of more than one property owned by that property owner, the commingling of funds for those designated properties is allowed.

[8-15-97; 16.61.23.9 NMAC - Rn & A, 16 NMAC 61.23.9, 1-1-2002; A, 1-1-2006]

### **16.61.23.10. Deposits and Disbursements.**

A. Wrongful deposits. The following deposit actions by the qualifying broker or the qualifying broker's designee involving any trust account shall be improper.

- (1) Depositing a qualifying broker's own funds into a trust account without specific prior approval of the commission except the minimum balance as required in writing by a bank or savings and loan institution.
- (2) Depositing any funds in any trust account which are not directly related to a real estate transaction wherein the qualifying broker is involved.
- (3) Depositing funds of others in an account other than a trust account.

(4) Depositing funds received on behalf of others directly into a custodial account without first depositing the funds in a trust account.

B. Wrongful disbursements. The following actions by the qualifying broker or the qualifying broker's designee shall be improper:

(1) disbursing trust funds for the personal use of the qualifying broker or the qualifying broker's designee;

(2) disbursing commissions from any trust account to any entity other than the qualifying broker; commission splits shall not be made directly from any trust account;

(3) disbursing trust funds from any trust account prior to the complete closing of the related transaction without written consent and signatures of all parties to the transaction, except upon court order; this does not prevent the qualifying broker from transferring trust account funds to another commission approved trust account or title company;

(4) disbursing funds from any trust account in excess of the amount in the trust account;

(5) disbursement of trust account overages can be made only in accordance with the Unclaimed Property Act and after written notification to the commission.

[N, 1-1-2000; 16.61.23.10 NMAC - Rn, 16 NMAC 61.23.10, 1-1-2002; A, 1-1-2006; A, 12-31-2008]

## PART 24

### PROPERTY MANAGEMENT

#### 16.61.24.7. Definitions.

Refer to Definitions 16.61.1.7 NMAC.

[8-15-97, 1-1-2000; 16.61.24.7 NMAC - Rn, 16 NMAC 61.24.7, 1-1-2002]

#### 16.61.24.8. Property Management Trust Account.

A. When maintaining six (6) or more individual rental units, a property management trust account shall be established by the qualifying broker to receive and hold funds for the benefit of his/her clients. The account shall indicate on the checks, deposit slips and bank records that the account is a "property management trust account." Records of this account must be kept under the qualifying broker's control as set forth herein.

B. All funds received by the qualifying broker acting as property manager 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. Security and/or deposits from tenants shall be placed and held in the property management trust account, except as stated below. However, if agreed upon in the written rental or lease agreement between the property owners and tenants, security and/or damage deposits only may be directed or disbursed to the property owners without first being deposited to the property management trust account and the qualifying broker shall not be held responsible for such deposits.

C. A qualifying broker may have a custodial account in the owner's name; however, all funds going into the account must first pass through the property management trust account.

D. Commingling of funds is not permitted. No funds may be deposited in the property management trust account that are not received in connection with a client's rental account, except for funds deposited by the qualifying broker to the property management trust account for the purpose of maintaining a minimum balance required in writing by the bank or savings and loan institution. In addition, the qualifying broker may deposit non trust funds into the property management trust account for the purpose of paying fees charged for credit card transactions.

E. When the property management trust account contains money from the rental or lease of more than one piece of property, separate accounting records shall be maintained on each property. Money designated to one piece of property on accounting records shall not be mingled with money designated for another property on the records. However, if a written agreement exists between the qualifying broker or broker in charge and property owner, allowing the mingling of funds of more than one property owned by that property owner, then mingling of funds from those designated properties only is allowed.

[8-15-97, A, 1-1-2000; 16.61.24.8 NMAC - Rn & A, 16 NMAC 61.24.8, 1-1-2002; A, 12-31-2008]

#### **16.61.24.9. Property Management Trust Account Receipts.**

A. Timeliness. Funds that come into the possession of the brokerage that are designated for a client's account will be deposited in the proper trust account as soon as practicably possible.

B. Records. A detailed record of all funds received shall be maintained which clearly indicates the following:

- (1) date deposited;
- (2) from whom received;
- (3) from which client and property;
- (4) nature of receipts, i.e., rent, security deposits, late charge, utility reimbursements, etc.;
- (5) amount of deposit.

[8-15-97; 16.61.24.9 NMAC - Rn & A, 16 NMAC 61.24.9, 1-1-2002]

#### **16.61.24.10. Property Management Trust Account Disbursements.**

A. Control. A check numbering system with a check register shall be used for control purposes. Voided checks are to be retained.

B. Paid bills shall be available for inspection by the owner at reasonable times. A detailed record of disbursements shall be maintained, which clearly shows the following:

- (1) date of payment;
- (2) payee;
- (3) purpose of payment;

(4) the amount of payment.

C. Management and leasing fees may be disbursed as soon as the basis for computation can be determined. In general, the timing and frequency of these payments shall be set forth in the management agreement.

D. Deficit accounts are not permitted. Funds shall not be disbursed in excess of the amount held in the property management trust account for a specific property owner.

[8-15-97; 16.61.24.10 NMAC - Rn & A, 16 NMAC 61.24.10, 1-1-2002]

### **16.61.24.11. Reconciliation.**

A. The trust account shall be reconciled monthly.

B. The individual property account balance shall be reconciled monthly.

[8-15-97; 16.61.24.11 NMAC - Rn, 16 NMAC 61.24.11, 1-1-2002]

### **16.61.24.12. Reports to Owners.**

A. 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, i.e., rent, deposits, late payment fee, etc.;

(3) funds disbursed by category, i.e., mortgage payments, utilities, maintenance, management fees, etc.

B. other additional reports will be provided per agreement between the owner and the brokerage.

C. upon written notice of termination of any property management agreement, a final accounting of that property management trust account shall be delivered or mailed to the property owner within forty-five (45) days of the effective date of termination.

[8-15-97, A, 2-14-2000; 16.61.24.12 NMAC - Rn & A, 16 NMAC 61.24.12, 1-1-2002; A, 01-01-2004]

### **16.61.24.13. Management Agreements.**

There shall be a signed written management agreement with each owner that shall set forth the understanding of the owner and the brokerage as to the duties and responsibilities of each. This agreement shall be executed prior to acting on behalf of the owner. It shall specify whether the property or properties are to be operated in the name of the owner or in the name of the Brokerage with regard to such things as the signing of leases, the sending of notices and the establishment of vendor accounts.

[8-15-97, A, 1-1-2000; 16.61.24.13 NMAC - Rn, 16 NMAC 61.24.13, 1-1-2002]

### **16.61.24.14. Tenancy Agreements.**

There shall be a signed written tenancy agreement for each rental unit rented or leased. A copy of the agreement signed by the owner or the brokerage and the tenant shall be maintained in the file for each owner's property. Tenancy agreements shall include at a minimum the following:

- A. name of tenant;
  - B. rental unit address;
  - C. rental rate and due date;
  - D. date possession began;
  - E. date and amount of payments and due date;
  - F. what the payments are for, i.e., rent, late charges, deposits, etc.
- [8-15-97; 16.61.24.14 NMAC - Rn, 16 NMAC 61.24.14, 1-1-2002]

### **16.61.24.15. Retention of Property Management Records.**

The qualifying broker shall maintain records for each rental property during the period covered by the management agreement. Upon termination of the management agreement, records shall be retained by the qualifying broker for a period of not less than three (3) years.

[8-15-97, A, 1-1-2000; 16.61.24.15 NMAC - Rn, 16 NMAC 61.24.15, 1-1-2002]

### **16.61.24.16. Short Term Rentals.**

The following special provisions apply only with respect to the management of short-term rentals:

A. Staff of the brokerage handling short-term rentals who engage only in taking reservations for short term rentals shall not be required to be licensed, but shall comply with Part 21: Unlicensed Assistants.

B. Brokerages managing short-term rental properties may enter into a written agreement with an owner granting permission to hold credit card charge slips given as a security and/or damage deposit for return to the tenant at the end of the short-term rental period.

[8-15-97, A, 2-14-2000; 16.61.24.16 NMAC - Rn & A, 16 NMAC 61.24.16, 1-1-2002; A, 12-31-2008]

## **PART 25**

### **TIME SHARE**

#### **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]



### **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 in Other States.**

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]

**PART 28****[RESERVED]****PART 29****TRADE NAME****16.61.29.7. Definitions.**

Refer to 16.61.1.7.

[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 with the commission.

B. When a brokerage ceases using a trade name, the qualifying broker shall, within thirty (30) days, advise the commission in writing that the trade name is no longer being used, and remove all signs 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.

[16.61.29.8 NMAC - Rp, 16 NMAC 61.29.8, 1-1-2002; A, 1-1-2006]

**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**

### **ADVERTISING/DISCLOSURE**

#### **16.61.32.7. Definitions.**

Refer to 16.61.1.7.

[1-1-2000; 16.61.32.7 NMAC - Rn, 16 NMAC 61.32.7, 1-1-2002]

#### **16.61.32.8. Advertisements.**

A. Every qualifying broker advertising real property for others for sale, purchase, lease, exchange, or rent, including short-term rentals or advertising real estate services, shall at a minimum, use in such advertising the trade name and New Mexico brokerage office telephone number as registered with the commission. Additional telephone numbers may be used in such advertising.

B. 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 telephone number as registered with the commission of the brokerage with which they are affiliated.

C. Every broker advertising to buy, sell or exchange real property which is owned or partially owned by that broker shall indicate within the advertisement (including signs), listing contract, purchase agreement or exchange agreement that one of the parties is a broker. Disclosures using initials or symbols are not permitted.

D. 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.

E. All real estate advertising shall be a true and factual representation of the property and/or real estate services being advertised. If the qualifications, credentials, staffing or sales history of the brokerage are included in the brokerage's advertising, such information shall be presented in such a manner that will not confuse or mislead the public.

F. All advertising must be in compliance with all local, state and federal laws and regulations.

G. All real estate advertising of real property for others or advertising of real estate services shall be under the direct supervision of the qualifying broker or the broker in charge.

H. These requirements apply to all forms of advertising, including but not limited to print, audio and video, including audio and video recordings,

computer presentations, and electronic media, such as the internet, e-mail, virtual office websites, and all broker web sites.

[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]

## **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, real estate commission approved education sponsor or instructor, in this state 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]



# Time Share Act

## CHAPTER 47

### Property Law

#### ARTICLE 11

#### Time Shares

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#### **47-11-1. Short title.**

This act [47-11-1 to 47-11-13 NMSA 1978] may be cited as the "New Mexico Time Share Act".

**History:** Laws 1986, ch. 97, § 1.

#### **47-11-2. Definitions.**

As used in the New Mexico Time Share Act [47-11-1 NMSA 1978]:

- 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. "enrolled" means having a paid membership in an exchange program or a membership in an exchange program evidenced by written acceptance or confirmation of membership;
- D. "exchange company" means any person operating an exchange program;
- E. "exchange program" means any opportunity or procedure for the assignment or exchange of time shares among purchasers in the same or another time share project;
- F. "managing agent" means a person who undertakes the duties, responsibilities and obligations of the management of a time share program;

G. "person" means one or more natural persons, corporations, partnerships, associations, trusts, other entities or any combination thereof;

H. "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;

I. "time share" means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with a freehold estate or an estate for years in a time share project or a specified portion thereof, including, but not limited to, a vacation license, prepaid hotel reservation, club membership, limited partnership interest or vacation bond;

J. "time share program" means any arrangement for time shares whereby real property has been made subject to a time share;

K. "time share project" means any real property that is subject to a time share program;

L. "time share salesperson" means a person, other than a person who has at least a fifteen percent interest in the developer, who sells or offers to sell on behalf of a developer a time share to a purchaser; and

M. "time share unit" or "unit" means a living space in a time share project that is divided into time shares and designated for separate occupancy or use.

**History:** Laws 1986, ch. 97, § 3.

### **47-11-2.1. Registration required of time share projects; real estate salesperson license required.**

A. It shall be unlawful for any person in this state to engage or attempt to engage in the business of a time share salesperson without first obtaining a real estate broker or salesperson license issued by the New Mexico real estate commission under the provisions of Section 61-29-1 NMSA 1978.

B. It shall be unlawful for a time share developer to sell or offer to sell time shares located in this state without first obtaining a certificate of registration for the time share project to be offered for sale issued by the New Mexico real estate commission under the provisions of the New Mexico Time Share Act [47-11-1 NMSA 1978].

**History:** Laws 1986, ch. 97, § 2; 1978 Comp., § 61-29-1.1, recompiled as 1978 Comp., § 47-11-2.1.

### **47-11-3. Time shares deemed real estate; partition.**

A. A time share is deemed to be an interest in real estate and shall be governed by the law of this state relating to real estate.

B. A purchaser of a time share may, in accordance with Section 14-9-1 NMSA 1978, record the instrument by which he acquired his interest and upon such recordation shall be entitled to the protection provided by Section 14-9-2 NMSA 1978 for the recordation of other real property instruments.

C. A document transferring or encumbering a time share shall not be rejected for recordation because of the nature or duration of that estate,

provided all other requirements necessary to make an instrument recordable are complied with.

D. When a time share is owned by two or more persons as tenants in common or as joint tenants, either may seek a partition by sale of that interest but no purchaser of a time share may maintain an action for partition from the time share project of the unit in which such time share is held.

**History:** Laws 1986, ch. 97, § 4.

#### **47-11-4. Disclosure statement.**

Each developer shall fully and conspicuously disclose to each purchaser in a disclosure statement at least the following information:

A. the total financial obligation of the purchaser, including the initial purchase price and any additional charges to which the purchaser may be subject;

B. any person who has or may have the right to alter, amend or add to charges to which the purchaser may be subject and the terms and conditions under which such charges may be imposed;

C. the nature and duration of each agreement between the developer and the person managing the time share program or its facilities;

D. the date of availability of each amenity and facility of the time share program which is not completed at the time of sale of a time share;

E. the specific term of the time share;

F. the purchaser's right to cancel within seven days of execution of the contract and how that right may be exercised under the New Mexico Time Share Act [47-11-1 NMSA 1978]; and

G. a statement that under New Mexico law an instrument conveying a time share must be recorded in the office of the clerk of the county where the real property is located to protect that interest.

**History:** Laws 1986, ch. 97, § 5.

#### **47-11-5. Purchaser's right to cancel; escrow; violation.**

A. A developer shall, before conveyance of a time share and not later than the execution of any contract of sale, provide a purchaser with a copy of a disclosure statement containing the information required by the New Mexico Time Share Act [47-11-1 NMSA 1978]. The contract of sale is voidable by the purchaser within seven days after execution of the contract of sale. The contract shall conspicuously disclose the purchaser's right to cancel under this subsection and how that right may be exercised. An instrument transferring a time share shall not be recorded until seven days after the execution of the contract of sale.

B. A purchaser may elect to cancel within the time period set out in Subsection A of this section by hand-delivering or by mailing notice to the developer or to his agent for service of process. Cancellation under this section is without penalty and upon receipt of the notice all payments made prior to cancellation shall be refunded within thirty days.

C. Any payments received by a time share developer or real estate licensee in connection with the sale of a time share shall be handled in accordance with

Subsections E, H and I of Section 61-29-12 NMSA 1978 and applicable rules and regulations of the commission. These payments shall be held in such manner until:

- (1) delivered to the developer at closing;
- (2) delivered to the developer because of the purchaser's default under a contract of sale; or
- (3) refunded to purchaser.

D. The commission may waive the requirements of Subsection C of this section for a time share project if:

- (1) the time share developer submits to the commission information sufficient to allow the commission to determine the total cost of completing the time share project; and
- (2) the time share developer delivers to the commission a performance bond, with a surety acceptable to the commission, in an amount sufficient to complete the time share project. If the developer does not complete the project, the commission may use funds received from the bond to complete the project.

**History:** Laws 1986, ch. 97, § 6.

#### **47-11-6. Prizes.**

An advertisement or promotion of a time share which includes the offer of a prize or other inducement shall fully comply with the provisions of the Unfair Practices Act [57-12-1 NMSA 1978].

**History:** Laws 1986, ch. 97, § 7.

#### **47-11-7. Time share proxy.**

No proxy, power of attorney or similar device given by the purchaser of a time share regarding the management of the time share program or its facilities shall exceed one year in duration, but the same may be renewed from year to year.

**History:** Laws 1986, ch. 97, § 8.

#### **47-11-8. Exchange programs.**

A. If a purchaser is offered the opportunity to subscribe to an exchange program, the developer shall, except as provided in Subsection C of this section, deliver to the purchaser, prior to the execution of the sales contract or any contract between the purchaser and the exchange company, at least the following information regarding such exchange program:

- (1) the name and address of the exchange company;
- (2) the names of all officers, directors and share holders owning five percent or more of the outstanding stock of the exchange company;
- (3) whether the exchange company or any of its officers or directors has any legal or beneficial interest in any developer or managing agent for any time share project participating in the exchange program and, if so, the name and location of the time share project and the nature of the interest;



(4) unless the exchange company is also the developer, a statement that the purchaser's contract with the exchange company is a contract separate and distinct from the sales contract;

(5) whether the purchaser's participation in the exchange program is dependent upon the continued affiliation of the time share project with the exchange program;

(6) whether the purchaser's membership or participation, or both, in the exchange program is voluntary or mandatory;

(7) a complete and accurate description of the terms and conditions of the purchaser's contractual relationship with the exchange company and the procedure by which changes thereto may be made;

(8) a complete and accurate description of the procedure to qualify for and effectuate exchanges;

(9) a complete and accurate description, expressed in boldfaced type, of all limitations, restrictions or priorities employed in the operation of the exchange program, including but not limited to limitations on exchanges based on seasonality, unit size or levels of occupancy and, in the event that such limitations, restrictions or priorities are not uniformly applied by the exchange program, a clear description of the manner in which they are applied;

(10) whether exchanges are arranged on a space available basis and whether any guarantees of fulfillment of specific requests for exchanges are made by the exchange program;

(11) whether and under what circumstances an owner, in dealing with the exchange company, may lose the use and occupancy of his time share in any properly applied-for exchange without substitute accommodations being provided or arranged for by the exchange company;

(12) the expenses, fees or range of fees for participation by owners in the exchange program, whether any such fees may be altered by the exchange company and the circumstances under which alterations may be made;

(13) the name and address of the site of each time share project or other property which is participating in the exchange program;

(14) the number of units in each project or other property participating in the exchange program which are available for occupancy and qualify for participation in the exchange program, expressed within the following numerical groupings, 1-5, 6-10, 11-20, 21-50 and 51 and over;

(15) the number of owners with respect to each time share project or other property which are eligible to participate in the exchange program expressed within the following numerical groupings, 1-100, 101-249, 250-499, 500-999 and 1,000 and over, and the criteria used to determine those owners who are currently eligible to participate in the exchange program;

(16) the disposition made by the exchange company of time shares deposited with the exchange program by owners eligible to participate in the exchange program and not used by the exchange company in effecting exchanges;

(17) the following information which, except as provided in Subparagraph (b) of this paragraph, shall be independently audited by a certified public accountant in accordance with the standards of the accounting standards board of the American institute of certified public accountants and reported for each year no later than July 1 of the succeeding year:

(a) the number of owners enrolled in the exchange program and the relationship between the exchange company and owners as being either fee paying or gratuitous in nature;

(b) the number of time share projects or other properties eligible to participate in the exchange program indicating those having a contractual relationship between the developer or the association and the exchange company and those having solely a contractual relationship between the exchange company and owners directly;

(c) the percentage of confirmed exchanges, which shall be the number of exchanges confirmed by the exchange company divided by the number of exchanges properly applied for, together with a complete and accurate statement of the criteria used to determine whether an exchange request was properly applied for;

(d) the number of time shares or other intervals for which the exchange company has an outstanding obligation to provide an exchange to an owner who relinquished a time share or interval during the year in exchange for a time share or interval in any future year; and

(e) the number of exchanges confirmed by the exchange company during the year; and

(18) a statement in boldfaced type to the effect that the percentage described in Subparagraph (c) of Paragraph (17) of this subsection is a summary of the exchanges properly applied for in the period reported and that the percentage does not indicate the likelihood of confirmation of a purchaser's specific choice or range of choices, since availability at individual locations may vary.

The developer shall obtain the purchaser's written certification of receipt of the information required by this subsection.

B. The information required by Paragraphs (2), (3), (13), (14), (15) and (17) of Subsection A of this section shall be accurate as of December 31 of the year preceding the year in which the information is delivered, except for information delivered within the first one hundred eighty days of any calendar year which shall be accurate as of December 31 of the year two years preceding the year in which the information is delivered to the purchaser. The remaining information required by Subsection A of this section shall be accurate as of a date which is no more than thirty days prior to the date on which the information is delivered to the purchaser.

C. In the event an exchange company offers an exchange program directly to the purchaser, the exchange company shall deliver to each purchaser, concurrently with the offering and prior to the execution of any contract between the purchaser and the exchange company, the information set forth in Subsection A of this section. The requirements of this subsection shall not apply to any renewal of a contract between a purchaser and an exchange company.

D. All promotional brochures, pamphlets, advertisements or other materials disseminated by the exchange company to purchasers in this state which contain the percentage of confirmed exchanges described in Subparagraph (c) of Paragraph (17) of Subsection A of this section must include the statement set forth in Paragraph (18) of Subsection A of this section.

**History: Laws 1986, ch. 97, § 9.**

**47-11-9. Service of process on exchange company.**

Any exchange company offering an exchange program to a purchaser shall be deemed to have made an irrevocable appointment of the commission to receive service of lawful process in any proceeding against the exchange company arising under the New Mexico Time Share Act [47-11-1 NMSA 1978].

**History:** Laws 1986, ch. 97, § 10.

**47-11-10. Securities laws apply.**

The Securities Act of New Mexico shall apply to time shares deemed to be investment contracts or to other securities offered with or incident to a time share.

**History:** Laws 1986, ch. 97, § 11.

**47-11-11. Application for registration of time share project; denial of registration; renewal; reinstatement; termination of developer's interest.**

A. Prior to the offering in this state of any time share located in this state, the developer of the time share project shall make written application to the commission for the registration of the project. The application shall be accompanied by a fee in an amount fixed by the commission, based upon the number of time shares to be offered for sale, but not to exceed one thousand five hundred dollars (\$1,500). The application shall include a description of the project, copies of proposed time share instruments including disclosure statements, sale contracts and deeds, information pertaining to any marketing or managing entity to be employed by the developer for the sale of time shares in the time share project or for the management of the project, information regarding any exchange program available to the purchaser, an irrevocable appointment of the commission to receive service of any lawful process in any proceeding against the developer or the developer's salespersons arising under the New Mexico Time Share Act [47-11-1 NMSA 1978] and any other information or documentation required by the commission.

Upon receipt of a properly completed application and fee and upon a determination by the commission that the sale and management of the time shares in the time share project will be directed and conducted by persons of good moral character, the commission shall issue to the developer a certificate of registration authorizing the developer to offer time shares in the project for sale. The commission shall, within fifteen days after receipt of an incomplete application, notify the developer by mail that the commission has found deficiencies, which shall be specified in the notice, and shall, within forty-five days after the receipt of a properly completed application, either issue the certificate of registration or notify the developer by mail of any specific objections to the registration of the project. The certificate shall be prominently displayed in the office of the developer on the site of the project.

The developer shall promptly report to the commission any and all changes in the information required to be submitted for the purpose of the registration.

The developer shall also immediately furnish the commission complete information regarding any change in its interest in a registered time share project. In the event a developer disposes of or otherwise terminates its interest in a time share project, the developer shall certify to the commission in writing that its interest in the time share project is terminated and shall return the certificate of registration to the commission for cancellation.

B. In the event the commission finds that there is substantial reason to deny the application for registration as a time share project, the commission shall notify the applicant that such application has been denied and shall afford the applicant an opportunity for a hearing before the commission to show cause why the application should not be denied. The provisions of the Uniform Licensing Act [61-1-1 NMSA 1978] shall apply in all proceedings to deny a certificate of registration.

C. The acceptance by the commission of an application for registration shall not constitute the approval of its contents or waive the authority of the commission to take disciplinary action as provided by the New Mexico Time Share Act [47-11-1 NMSA 1978].

**History:** Laws 1986, ch. 97, § 12.

#### **47-11-11.1. Register of applicants; roster of registrants; registered projects; financial report to secretary of state.**

A. The executive secretary of the commission shall keep a register of all applicants for certificates of registration, showing for each the date of application, name, business address and whether the certificate was granted or refused.

B. The executive secretary of the commission shall also keep a current roster showing the name and address of all time share projects registered with the commission. The roster shall be kept on file in the office of the commission and be open to public inspection.

C. On or before the first day of September of each year, the commission shall file with the secretary of state a copy of the roster of time share projects registered with the commission and a report containing a complete statement of income received by the commission in connection with the registration of time share projects for the preceding fiscal year ending June 30 attested by the affidavit of the executive secretary of the commission.

**History:** Laws 1986, ch. 97, § 13; 1978 Comp., § 61-29-5.1, recompiled as 1978 Comp., § 47-11-11.1.

#### **47-11-11.2. Disciplinary action by commission.**

A. The commission shall have power to take disciplinary action. Upon its own motion, or on the verified complaint of any person, the commission may investigate the actions of any time share broker or salesperson or any developer of a time share project registered under the New Mexico Time Share Act [47-11-1 NMSA 1978] or any other person or entity who shall assume to act in such capacity. If the commission finds probable cause that a time share

broker, salesperson or developer has violated any of the provisions of this act, the commission may hold a hearing on the allegations of misconduct. All such hearings shall be conducted in accordance with the provisions of the Uniform Licensing Act [61-1-1 NMSA 1978].

The commission shall have power to suspend or revoke a real estate license issued to a time share broker or salesperson, suspend or revoke a certificate of registration of a time share project issued, reprimand or censure such broker, salesperson or developer, or fine such developer in the amount of five hundred dollars (\$500) for each violation of the New Mexico Time Share Act [47-11-1 NMSA 1978], if, after a hearing, the commission adjudges that broker, salesperson or developer to be guilty of:

(1) making any willful or negligent misrepresentation or any willful or negligent omission of material fact about any time share or time share project;

(2) making any false promise of a character likely to influence, persuade or induce;

(3) pursuing a course of misrepresentation or making of false promises through agents, salespersons, advertising or otherwise;

(4) failing, within a reasonable time, to account for all money received from others in a time share transaction and failing to remit such money as may be required in Section 6 [47-11-5 NMSA 1978] of the New Mexico Time Share Act;

(5) paying a commission, salary or other valuable consideration to any person for acts or services performed in violation of the New Mexico Time Share Act [47-11-1 NMSA 1978];

(6) any other conduct which constitutes improper, fraudulent or dishonest dealing;

(7) performing or undertaking to perform the practice of law as set forth in Section 36-2-27 NMSA 1978;

(8) failing to deposit and maintain in a trust or escrow account in an insured bank or savings and loan association in New Mexico all money received from others in a time share transaction as may be required in Section 6 [47-11-5 NMSA 1978] of the New Mexico Time Share Act;

(9) failing to deliver to a purchaser a disclosure statement containing the information required by Section 5 [47-11-4 NMSA 1978] of the New Mexico Time Share Act and any other disclosures that the commission may by regulation require;

(10) failing to comply with the provisions of Section 7 [47-11-6 NMSA 1978] of this act in the advertising or promotion of time shares for sale or failing to assure such compliance by persons engaged on behalf of a developer;

(11) failing to comply with the provisions of Section 9 [47-11-8 NMSA 1978] of this act in furnishing complete and accurate information to a purchaser concerning any exchange program which may be offered to such purchaser; or

(12) making any false or fraudulent representation on an application for registration.

B. Following a hearing, the commission shall also have power to suspend or revoke any certificate of registration issued under the provisions of the New Mexico Time Share Act [47-11-1 NMSA 1978] or to reprimand or censure any developer when the registrant has been convicted or has entered a plea of

guilty or no contest upon which final judgment is entered by a court of competent jurisdiction in this state, or any other state, of any felony or any one or more of the criminal offenses of embezzlement, obtaining money under false pretense, fraud, forgery, conspiracy to defraud or other offense involving moral turpitude which would reasonably affect the developer's performance in the time share business.

C. The commission may appear in its own name in district court in actions for injunctive relief to prevent any person or entity from violating the provisions of the New Mexico Time Share Act [47-11-1 NMSA 1978] or rules promulgated by the commission. The district court shall have the power to grant an injunction even if criminal prosecution has been or may be instituted as a result of the violations and regardless of whether the person or entity has been registered by the commission.

D. Each developer shall maintain or cause to be maintained complete records of every time share transaction including records pertaining to the deposit, maintenance and withdrawal of money required to be held in a trust or escrow account pursuant to Section 6 [47-11-5 NMSA 1978] of the New Mexico Time Share Act, or as otherwise required by the commission. The commission may inspect these records periodically without prior notice and may also inspect these records whenever the commission determines that they are pertinent to an investigation of any specific complaint against a time share project.

E. Nothing in the New Mexico Time Share Act [47-11-1 NMSA 1978] precludes any enforcement authority provided pursuant to the Unfair Practices Act [57-12-1 NMSA 1978] or other enforcement authority provided by law.

**History:** Laws 1986, ch. 97, § 14; 1978 Comp., § 61-29-17.1, recompiled as 1978 Comp., § 47-11-11.2.

### **47-11-12. Private enforcement.**

The provisions of the New Mexico Time Share Act [47-11-1 NMSA 1978] shall not be construed to limit in any manner the right of a purchaser or other person injured by a violation of the New Mexico Time Share Act to bring a private action.

**History:** Laws 1986, ch. 97, § 15.

### **47-11-13. Release of liens.**

A. Prior to the recordation of any instrument transferring a time share, the developer shall record or furnish to the purchaser a release of all liens affecting that time share or shall provide a surety bond or insurance against the lien from a company acceptable to the commission as provided for liens on real estate in this state, and such underlying lien document shall contain a provision wherein the lienholder subordinates its rights to that of a time share purchaser who fully complies with all of the provisions and terms of the contract of sale.

B. Unless a time share purchaser or a time share purchaser's predecessor in title has agreed otherwise with the lienholder, if a lien other than a mortgage

or deed of trust becomes effective against more than one time share in a time share project, any time share purchaser is entitled to a release of his time share from a lien upon payment of the amount of the lien attributable to his time share. The amount of the payment shall be proportionate to the ratio that the time share purchaser's liability bears to the liabilities of all time share purchasers whose interests are subject to the lien. Upon receipt of payment, the lienholder shall promptly deliver to the time share purchaser a release of the lien covering that time share. After payment, the managing agent may not assess or have a lien against that time share for any portion of the expenses incurred in connection with that lien.

**History:** Laws 1986, ch. 97, § 16.





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