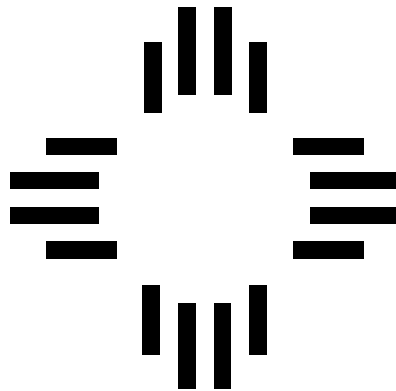


# **New Mexico Register**

**Volume XII, Issue Number 23**  
**December 14, 2001**



The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

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Administrative Law Division  
2001

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# New Mexico Register

Volume XII, Number 23

December 14, 2001

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#### Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. "No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register." 14-4-5 NMSA 1978

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**Please note that the (\*) entries obey the reformatting rules set forth in 1.24.10 NMAC, effective 2/29/00**

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO PUBLIC ACCOUNTANCY BOARD

December 14, 2001

#### NOTICE OF RULE HEARING

The New Mexico Public Accountancy Board will convene a rule hearing on Friday, January 18, 2002, at 9:00 a.m. in the Real Estate Commission Board Room, 1650 University Blvd. NE, Suite 490, Albuquerque, New Mexico. This hearing will be followed by a regular Board meeting in the same location.

The Board will review comments submitted by licensees and the public regarding the adoption of proposed new rules that will replace existing rules. The proposed new rules pertain to general provisions for public accountants; examination requirements; initial licensure requirements and requirements for continuing professional education; requirements for accounting firms; and the code of professional conduct.

Copies of the proposed new rules may be obtained by contacting the Public Accountancy Board at (505) 841-9108 or by accessing the Board's website at [www.rld.state.nm.us/accountancy](http://www.rld.state.nm.us/accountancy). Individuals wishing to present their views on the proposed new rules may appear in person at the hearing and/or send written comments to the attention of Mr. Daniel Keays, Executive Director, New Mexico Public Accountancy Board, 1650 University Blvd. NE, Suite 400-A; Albuquerque, NM 87102. Comments may also be sent via facsimile to 841-9101 or via email to [Dan.Keays@state.nm.us](mailto:Dan.Keays@state.nm.us).

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the rule hearing or meeting, please contact Mr. Keays at least one week prior to the rule hearing or as soon as possible.

#### RULE HEARING

Friday, January 18, 2002, 9:00 a.m.  
Real Estate Commission Board Room  
1650 University Blvd. NE, Suite 490  
Albuquerque, New Mexico

### NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

#### NOTICE OF PUBLIC HEARING

The Prevention and Intervention Division of the Children, Youth and Families Department will hold a public hearing on January 16, 2002 beginning at 9:00a.m. at 1120 Paseo de Peralta, (PERA Building), Apodaca Hall (Second Floor), Santa Fe, New Mexico, 87501, to consider the following proposed policy change.

7.20.11 NMAC – Certification Requirements for Child and Adolescent Mental Health Services – The scope of the regulations include general provisions and service specific regulations for Medicaid covered child/adolescent behavioral health services.

The proposed policies may be reviewed, or a copy obtained, during regular business hours of the Children's Behavioral Health and Community Services Bureau, Licensing and Certification Unit 8:00a.m. to 5:00p.m. Monday through Friday, 1120 Paseo de Peralta, Santa Fe, New Mexico 87502, phone number (505) 827-5889.

Interested persons may testify at the hearing or submit written comments to the Children's Behavioral Health and Community Services Bureau, Licensing and

Certification Unit, P. O. Drawer 5160, Santa Fe, New Mexico 87502 or via fax 827-5883 no later than 5:00 p.m., January 16, 2002. Written comments will be given the same consideration as oral testimony given at the public hearing.

If you are a person with a disability and you require this information in an alternative format or require special accommodation to participate in the public hearing, please contact the Department toll free at 1-800-610-7610 extension 5889 or (505) 827-5889. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

### NEW MEXICO CONSTRUCTION INDUSTRIES COMMISSION

Notice is hereby given that the Construction Industries Commission will hold a regular meeting on Friday, January 18, 2002 at 9:30 a.m., at the Regulation and Licensing Department, Main Conference Room, 725 St. Michael's Drive, Santa Fe, New Mexico. The Commission will consider pending agenda items and discuss such other business as may require formal action by the Commission. Anyone who requires special accommodations is requested to notify the Commission at 725 St. Michael's Drive, Santa Fe, New Mexico 87501 of such needs at least ten days prior to the meeting.

### NEW MEXICO BOARD OF DENTAL HEALTH CARE

#### Legal Notice

Notice is hereby given that the New Mexico Board of Dental Health Care will convene a Rule Hearing to renumber to conform to the current NMAC requirements and amend:

Title 16, Chapter 5, Part 1	General Provisions
Title 16, Chapter 5, Part 5	Dentists, Fees
Title 16, Chapter 5, Part 6	Dentists, Licensure by Examination
Title 16, Chapter 5, Part 7	Dentists, Temporary Licensure
Title 16, Chapter 5, Part 15	Dentists, Anesthesia Administration
Title 16, Chapter 5, Part 33	Dental Assistants, Requirements for Certification
Title 16, Chapter 5, Part 39	Dental Assistants, Practice & Supervision

This Hearing will be held at the St. Joseph's Northeast Heights Hospital, 4801 Montgomery NE, Conference Room A, Albuquerque, NM, Friday, January 18, 2002 at 8:30 a.m.

Following the Rule Hearing the Dental Hygienists Committee will convene a regular. The New Mexico Board of Dental Health Care will convene a regular meeting following the Dental Hygienists Committee Meeting on January 19, 2002. beginning with Executive Session. The public portion of the meeting is anticipated to begin about 11:00 and end by 5:00 p.m.

Copies of the proposed rules are available on request from the Board office, P. O. Box 25101, Santa Fe, New Mexico, 87504-5101, or phone (505) 476-7125.

Anyone wishing to present their views on the proposed rules may appear in person at the Hearing, or may send written comments to the Board office. Written comments must be received by January 4, 2002 to allow time for distribution to the Board and Committee members. Individuals planning on testifying at the hearing must provide 14 copies of their testimony.

Final action on the proposed rules will be taken during the Board meeting. Portions of the committee and Board meeting may be closed to the public while the Board and Committee are in Executive Session to discuss licensing matters. Copies of the agenda will be available 24 hours in advance of the meeting from the Board office.

Disabled members of the public who wish to attend the meeting or hearing and are in need of reasonable accommodations for their disabilities should contact the Board Administrator at least one week prior to the meeting.

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**NEW MEXICO HUMAN  
SERVICES DEPARTMENT  
MEDICAL ASSISTANCE DIVISION**

**NOTICE**

The New Mexico Human Services Department (HSD) will hold a public hearing at 2:00 p.m., on January 15, 2002, in Room 2027, on the second floor in the New Mexico State Library at 1205 Camino Carlos Rey, Santa Fe, New Mexico. The subject of the hearing will be to hear public comments on a proposal to reinstate crowd-out provisions in the SCHIP program. The proposed changes prohibit eligibility for families that have existing health insurance for their children. Families who voluntarily drop their children's health insurance would be ineligible for SCHIP for six months from the date their private insurance was voluntarily dropped. This proposed regulation would affect families who voluntarily drop health insurance on or after March 1, 2002. It should be noted that the previous crowd-out provisions provided for a 12-month period of ineligibility if insurance was dropped, rather than the six-month period being proposed here.

Interested persons may testify or submit written comments no later than 5:00 p.m., January 15, 2002, to Robin Dozier Otten,

Deputy Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of the Human Services Register are available for review at the local Income Support Division offices or by sending a self-addressed stamped envelope to Medical Assistance Division, Planning & Program Operations Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

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**NEW MEXICO RACING  
COMMISSION**

**NOTICE OF RULEMAKING AND  
PUBLIC HEARING**

**NOTICE IS HEREBY GIVEN**

that a rulemaking and public hearing will be held at Sunland Racetrack & Casino, 1200 Futurity Drive, Sunland Park, New Mexico, commencing at 8:30 o'clock a.m. on Wednesday, January 16, 2002. The Commission will consider adoption of proposed new/amended rules for incorporation into the Rules Governing Horse Racing in New Mexico Nos. 15.2.1.7 NMAC (regarding definitions); 16.47.1.8 NMAC (regarding license categories and drug testing); 16.47.1.9 (regarding private barns) and 16.47.1.17 NMAC (regarding drug testing), and other matters of general business.

Copies of these proposed rules may be obtained from Julian Luna, Agency Director, New Mexico Racing Commission, P.O. Box 8576, 300 San Mateo N.E., Suite 110, Albuquerque, New Mexico 87198, (505) 841-6400. Interested persons may submit their views on the proposed rules to the Commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

Anyone who requires special

accommodations is requested to notify the Commission of such needs at least five days prior to the meeting.

---

Kim Ahlbom  
Deputy Agency Director

Dated: 11/30/01

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**STATE OF NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT  
CONSTRUCTION INDUSTRIES  
DIVISION**

**NOTICE OF PUBLIC HEARING**

Public Meeting to receive comments regarding the adoption of the NFPA codes will be held on January 15, 2002, 9:00 a.m. to 12:00 p.m. at CID Conference Room, 2nd floor, 1650 University Blvd. N.E.

The proposed codes for adoption are as follows:

- \* NFPA 58, 2001 Edition
- \* NFPA 54, 1999 Edition
- \* NFPA 52, 1998 Edition
- \* NFPA 57, 1999 Edition
- \* NFPA 1192, 1999 Edition

You are invited to attend and express your opinion of the adoption of the above referenced codes. If you cannot attend the meeting, you may send your written comments to the LP Gas Bureau, Construction Industries Division, 1650 University Blvd N.E., Suite 201, Albuquerque, NM 87102, Telephone (505) 841-8020, FAX (505) 765-5670. All comments must be received no later than 5:00 pm January 15, 2002.

Copies of the NFPA codes are available at the Construction Industries Division Office at the above address.

**If you require special accommodation, please notify the Division of such needs no later than January 7, 2002.**

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**End of Notices and  
Proposed Rules Section**

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# Adopted Rules and Regulations

## NEW MEXICO BOARD OF EDUCATION

### TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 80 ALTERNATIVE EDUCATION - CHARTER SCHOOLS PART 4 CHARTER SCHOOL APPLICATION AND APPEAL REQUIREMENTS

**6.80.4.1 ISSUING AGENCY:**

State Board of Education  
[6.80.4.1 NMAC - N, 12-14-01]

**6.80.4.2 SCOPE:** Start-Up and Conversion Charter Schools

[6.80.4.2 NMAC - N, 12-14-01]

**6.80.4.3 STATUTORY AUTHORITY:** Sections 22-2-1 and 22-8B-1 through 22-8B-15, NMSA, 1978

[6.80.4.3 NMAC - N, 12-14-01]

**6.80.4.4 DURATION:** Permanent

[6.80.4.4 NMAC - N, 12-14-01]

**6.80.4.5 EFFECTIVE DATE:** December 14, 2001, unless a later date is cited at the end of a section.

[6.80.4.5 NMAC - N, 12-14-01]

**6.80.4.6 OBJECTIVE:** To clarify the initial application and renewal process for charter schools, whether start-up or conversion, the appeal process of charter schools to the State Board of Education and the State Board of Education's review process.

[6.80.4.6 NMAC - N, 12-14-01]

**6.80.4.7 DEFINITIONS:**

A. "Charter School" means a conversion school or start-up school within a school district authorized by the local school board to operate as a charter school.

B. "Conversion school" means an existing public school within a school district authorized by the local school board to become a charter school.

C. "Start-up school" means a public school developed by one or more parents, teachers or community members authorized by the local school board of the school district in which the school is located to become a charter school.

[6.80.4.7 NMAC - N, 12-14-01]

**6.80.4.8 PROCEDURES FOR**

**APPLICATION AND RENEWAL AS A CHARTER SCHOOL:** Charter school application, whether for a start-up or a conversion school, shall be a proposed agreement between the local school board and the charter school and shall include:

A. The mission statement of the charter school. The mission statement must answer the following questions: "Who do you serve?", "What do you seek to accomplish?", "What methods will you use?", and "How will we know if you are achieving your mission?"

B. The goals, objectives and student performance standards to be achieved by the charter school must address how the charter school will comply with the State Board of Education's required content standards, benchmarks, and performance standards, state accreditation, standardized testing and school report card in accordance with Sections 22-1-6 and 22-2-8, NMSA, 1978. The goals and objectives must be measurable and student-centered.

C. A description of the charter schools educational program, student performance standards and curriculum that must meet or exceed the state board of education's educational standards and must be designed to enable each student to achieve those standards and addresses the following:

(1) Documentation, research or rationale that supports a particular curricular approach.

(2) A specific, detailed description of the curriculum including scope and sequence and student performance standards.

(3) A timeline for alignment of the curriculum with the State Board of Education's content standards, benchmarks and performance standards.

(4) Strategies and methods to be used in delivering the curriculum and how the curriculum will address students needs and assist each student in reaching those standards.

(5) Length of school day and school year

(6) Grades, class size and total projected student enrollment.

(7) Proposed requirements for graduation, if applicable.

D. A description of the way a charter school's educational program will meet the individual needs of students, including those students determined to be at risk and address the following:

(1) Suggested modifications to meet individual student needs, including bilingual, limited English proficient, and

Special Education.

(2) Specific Special Education Plan.

(3) Access to other services including but not limited to counseling and health.

E. A description of the charter school's plan for evaluating student performance, the types of assessments that will be used to measure student progress toward achievement of the state's standards and the school's student performance standards, the time line for achievement of the standards and the procedures for taking corrective action in the event that student performance falls below the standards, and addresses the following:

(1) Specific remediation plan for students not achieving standards, including a timeline for implementation of the remediation plan.

(2) Assessments in addition to the statewide mandated testing.

(3) Plan for documentation and reporting of student data.

F. Evidence that the plan for the charter school is economically sound, including a proposed budget for the term of the charter and a description of the manner in which the annual audit of the financial and administrative operations of the charter school is to be conducted and addresses the following:

(1) A proposed budget for year one and the following four years based on the current Unit Value.

(2) Description of the administrative operations of the charter school.

G. Evidence that the fiscal management of the charter school complies with all applicable federal and state laws and regulations relative to fiscal procedures and addresses the following:

(1) Plan on how the charter school will manage its fiscal responsibilities.

(2) Specific description of the internal control procedures that the charter school will utilize to safeguard assets, provide reliable financial information, promote operational efficiency, and ensure compliance with all applicable federal and state laws and regulations relative to fiscal procedures.

H. Evidence of a plan for the displacement of students, teachers and other employees who will not attend or be employed in the conversion school and addresses the following:

(1) Specific plan for how the charter school and district will address the displacement of students and staff who will not attend or be employed in the charter

school, including:

(2) Transportation of students not attending the conversion school.

I. A description of the governing body and operation of the charter school, including how the governing body will be selected, the nature and extent of parental, professional educator and community involvement in the governance and operation of the school and the relationship between the governing body and the local school board and addresses the following:

(1) How the interim and/or permanent governing body will be selected and its composition.

(2) When the governing body will meet and how meetings will be advertised and conducted in accordance with the Open Meetings Act, Sections 10-15-1 et seq., NMSA 1978

(3) The nature and extent of parental, professional educator and community involvement and how they will be notified.

(4) Policies and procedures of the governing body, including model of governance, committee functions, relationship to staff, and professional development.

(5) Role of the governing body in policy-making, personnel decisions, budgeting, and operation of the charter school, including how decisions will be made.

(6) Relationship between the governing body of the charter school and the local school board, including how disputes will be resolved between the charter school/governing body, the local district superintendent and/or the local school board. The charter school is accountable to the local school board for ensuring compliance with applicable laws, rules and charter provisions.

J. An explanation of the relationship that will exist between the proposed charter school and its employees, including evidence that the terms and conditions of employment will be addressed with affected employees and their recognized representatives, if any and addresses the following:

(1) Personnel policies and procedures that comply with the School Personnel Act, Sections 22-10-1 et seq., NMSA 1978.

(2) Evaluation process for staff

(3) Relationship with employee labor representatives, if any.

(4) Proposed salary schedule.

(5) Job descriptions of staff and proposed pupil-teacher ratio.

K. The employment and student discipline policies of the proposed charter school that addresses the following:

(1) Employment policies for staff and procedures that comply with the School

Personnel Act, Sections 22-10-1 et seq., NMSA 1978, as set forth in section J of 6.80.4.8 NMAC above.

(2) Discipline policy for students that addresses the State Board of Education's regulation on student's rights and responsibilities.

L. An agreement between the charter school and the local school board regarding their respective legal liability and applicable insurance coverage, that includes participation in the Public School Insurance Authority and compliance with any applicable rules of authority.

M. A description of how the charter school plans to meet the transportation and food service needs of its students, and includes:

(1) Description or plan of how the charter school and school district plan to meet the transportation needs of students in the charter school.

(2) Description or plan of how the charter school plans to meet the food service needs of students in the charter school.

N. A description of the waivers that the charter school is requesting from the local school board and the state board and the charter school's plan for addressing these waiver requests that addresses the following:

(1) List the specific waivers by number and title that are requested from local school board policy.

(2) Describe how the charter school will address these waivers from local school board policy.

(3) List the specific waivers that are requested from the State Board of Education requirements, rules, and provisions of the Public School Code, Sections 22-1-1 et seq., NMSA 1978, pertaining to graduation requirements, evaluation standards for school personnel, school principal duties and driver education.

(4) Describe how the charter school will address these waivers from the State Board of Education.

O. A description of the facilities the charter school plans to use, taking phase-in into account, that addresses the following:

(1) Site plan, lease, and contractual arrangements for the facility or plan for locating a facility with sites being considered.

(2) Plan for addressing code, accessibility requirements and any other health and safety requirements, if necessary.

(3) Proposed plan for operation, maintenance and repair of a facility.

(4) Proposed plan for use of a school district facility by a conversion school.

(5) Prior to opening, charter

school will provide assurance and documentation to local school board on meeting health, safety and code issues.

P. A description of the enrollment procedures to be used by the charter school that complies with Section 22-8B-4.1, NMSA, 1978 and which addresses the following:

(1) Plan on how the charter school will enroll students as either first-come, first-serve or lottery selection process.

(2) Plan on how the charter school will be advertised so that there is equal opportunity for all parents and students to learn about the school and apply.

(3) Documentation that the charter school shall not charge tuition or have admission requirements, except as otherwise provided in the Public School Code, Sections 22-1-1 et seq., NMSA 1978.

Q. An explanation of how the charter school is in the best interest of students, school district and community and evidence that the charter school serves a purpose in the community.

R. An application for a charter school shall include signed assurances.

(1) A charter school shall be a nonsectarian, nonreligious, and non-home-based public school that operates within a public school district.

(2) An assurance that the school complies with the Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and Part B of the Individuals with Disabilities Education Act.

(3) An assurance that the charter school complies with the same Federal and State audit requirements as do other public schools in the State.

(4) An assurance that the charter school meets all applicable Federal, State, and local health and safety requirements.

(5) An assurance that the charter school operates in accordance with State law.

(6) An assurance that the charter school does not charge tuition.

(7) An assurance that the charter school will provide equitable access to, and participation in, its federally assisted program for students, teachers, and other program beneficiaries with special needs.

(8) An assurance that the charter school's admission process will not discriminate against anyone, regarding race, gender, national origin, color, disability, or age.

(9) An assurance that the charter school will admit students in accordance with the enrollment procedures set forth in



Section 22-8B-4.1, NMSA 1978.

S. An application for conversion charter school shall include a petition of support signed by not less than sixty-five percent of the employees in the school. Additionally, a petition in support of the charter school signed by a majority of the households whose children are enrolled in a proposed conversion school must accompany the application.

T. Any revision or amendment to the terms of the charter contract may be made only with the approval of the local school board and the governing body of the charter school.

U. A charter school renewal application submitted to the local school board shall contain:

(1) A report on the progress of the charter school in achieving the goals, objectives, student performance standards, state board minimum educational standards and other terms of the initial approved charter application, including the accountability requirements set forth in Section 22-1-6, NMSA, 1978.

(2) A financial statement that discloses the costs of administration, instruction and other spending categories for the charter school that is understandable to the general public, that will allow comparison of costs to other schools or comparable organizations and that is in a format required by the State Board of Education.

(3) Contents of the charter application set forth in Section 8 of the 1999 Charter Schools Act [Section 22-8B-8, NMSA, 1978] and State Board of Education regulations.

(4) A petition in support of the charter school renewing its charter status signed by not less than sixty-five percent of the employees in the charter school.

(5) A petition in support of the charter school renewing its charter status signed by a majority of the households whose children are enrolled in the charter school.

[6.80.4.8 NMAC - N, 12-14-01]

#### **6.80.4.9 LOCAL APPLICATION AND REVIEW PROCESS**

A. The local school board shall have the authority to approve the establishment of a charter school within the local school district in which it is located.

B. A charter school applicant shall apply to a local school board for a charter. An applicant shall only submit an application in the district in which the school is located. Applications shall be submitted by October 1 to be eligible for consideration for the following school year. The October 1 deadline may be waived upon agreement of the applicant and the

local board.

C. An application for a start-up school may be made by one or more teachers, parents or community members.

D. An application for a conversion school may be made by one or more teachers, parents or community members and shall include petitions of support as specified in subsection S of 6.80.4.8 NMAC above.

E. The local school board shall receive and review all applications for charter schools. The local board shall not charge application fees.

F. The superintendent of schools shall designate a review coordinator (who may be the superintendent) and other appropriate staff members to assist the local board in reviewing applications for charter schools. The coordinator shall be the point of contact for communications to and from the applicant and shall ensure that appropriate staff members perform the following duties:

(1) Identify any concerns regarding noncompliance with requirements of the Charter Schools Act [Sections 22-8B-1 et seq., NMSA 1978], this regulation or other applicable State or Federal laws or regulations which district staff or individual board members believe would arise from the establishment or operation of the proposed charter school;

(2) Identify any professional educational concerns which district staff or individual board members believe would arise from the establishment or operation of the proposed charter school;

(3) Identify any interests of the students, the school district or the community which district staff or individual board members believe would be adversely affected by the establishment or operation of the proposed charter school and describe the apparent adverse effects;

(4) Identify any additional information which district staff or individual board members regard as necessary to complete the charter school application;

(5) Identify any other concerns which district staff or individual board members regard as obstacles to the approval of the proposed charter school; and

(6) Meet and confer with the applicant in good faith to discuss all identified concerns and other matters pertaining to the approval of the application.

G. The review coordinator shall ensure that the district responds to requests for information on school operations, policies or practices which an applicant or prospective applicant regards as necessary to enable it to present an approvable

application. At a minimum, such responses shall include compliance with the Inspection of Public Records Act and paragraph 6 of subsection F of 6.80.4.9 NMAC above.

H. A charter applicant or prospective applicant shall likewise respond to requests for information which district staff or individual board members regard as necessary to resolve concerns about the charter proposal and shall negotiate in good faith in an attempt to resolve such concerns by agreement.

I. The local school board shall hold at least one public meeting to obtain information and community input to assist the local school board in its decision whether to grant a charter school application. At any such meeting the review coordinator shall discuss any concerns identified under subsection F of 6.80.4.9 NMAC above that have not been resolved by the time of the meeting.

J. The local school board shall rule on the application in a subsequent public meeting that is held within 60 days after receiving the application. If not ruled upon within 60 days, the charter application will be automatically reviewed by the State Board pursuant to the applicable provisions of Section 22-8B-7 NMSA 1978 and 6.80.4.10 NMAC and 6.80.4.11 NMAC below. The charter applicant and the local school board may, however, jointly waive the deadlines set forth in this subsection.

K. If the local board denies a charter school application, it shall state all of its reasons and concisely summarize the factual basis for each reason in a formal motion that is approved by a majority of a quorum in a public meeting. The motion may incorporate by reference all or parts of designated documents, reports or other written materials but must clearly identify any documents or parts of documents so incorporated. The approved motion shall constitute the local board's official decision and its complete statement of reasons for purposes of any appeal.

L. If the local board denies a charter school application or imposes conditions for approval that are unacceptable to the charter applicant, the applicant may appeal the decision to the State Board pursuant to Section 22-8B-7 NMSA 1978 and 6.80.4.10 NMAC below.

M. If a local board grants a charter, it shall send a copy of the approved charter to the Alternative Education Unit of the State Department of Education within 15 days after granting the charter.

N. The provisions of subsections F through M of 6.80.4.9 NMAC above shall also apply to any local board decision regarding renewal or revocation of

a charter under Section 22-8B-12 NMSA 1978.

[6.80.4.9 NMAC - N, 12-14-01]

#### **6.80.4.10 APPEALS TO THE STATE BOARD**

**A. Right of appeal.** Pursuant to Sections 22-8B-6G and 22-8B-12F NMSA 1978 and subsections L and N of 6.80.4.9 NMAC above, a charter applicant may appeal to the State Board of Education from any local board decision denying a charter school application, revoking or refusing to renew a previously approved charter or imposing conditions for approval or renewal that are unacceptable to the applicant.

**B. Filing and service of documents.** All documents submitted for consideration on appeal shall be filed with the State Board of Education in care of the superintendent of public instruction, 300 Don Gaspar Avenue, Santa Fe, NM 87501. Each party shall simultaneously serve a copy of all documents filed with the State Board upon the other party at that party's address of record on appeal. Filings with the State Board shall reflect that a copy of all documents being submitted is simultaneously being served on the other party and the method of service. Filing or service by mail is not complete until the documents are received.

#### **C. Notice of appeal**

(1) Grounds of appeal. The appellant shall limit the grounds of its appeal to the reasons for denial, nonrenewal or revocation specified by the local school board in the motion required under subsection K of 6.80.4.9 NMAC above.

(2) Filing and service of notice. A charter applicant or governing body of a charter school that wishes to appeal a decision of a local school board concerning the denial, nonrenewal or revocation of a charter or the imposition of conditions for approval or renewal that are unacceptable to the charter school or charter school applicant shall file and serve a written notice of appeal pursuant to subsection B of 6.80.4.10 NMAC above within 30 days after the local school board's decision. The notice shall include a brief statement of the reasons why the appellant contends the local school board's decision was in error with reference to the standards set forth in paragraphs 5 and 6 of subsection E of 6.80.4.10 NMAC below.

(3) Required attachments. The appellant shall attach to the notice of appeal:

(a) A copy of the local board's decision from the minutes or draft minutes of the local board meeting; and

(b) A copy of the charter or pro-

posed charter in question.

#### **D. Pre-hearing procedures**

(1) Within 10 days after receipt of the notice of appeal, the State Board, through the State Superintendent, shall inform the parties of the date, time and location for the appeal hearing.

(2) Except as provided by this regulation, neither party shall communicate or encourage others to communicate about a pending appeal with any member of the State Board of Education outside of a duly convened meeting of the State Board or a State Board Committee. A State Board member who engages in any such communication about any matter affecting the merits of the case shall have a duty to abstain from voting pursuant to the board's rules of procedure, but may participate in the hearing and discussion before the board.

(3) Except for brief inquiries about scheduling, logistics, procedure or similar questions that do not affect the merits of the case, neither party shall communicate with or encourage others to communicate with any staff member of the State Department of Education about a pending appeal unless the other party is simultaneously served with a copy of any written communication or has an opportunity to participate in any conversation by meeting or conference call.

(4) The timelines in 6.80.4.10 NMAC may be extended by the State Board, through its president, for good cause. Good cause may include, but shall not be limited to, an agreement between the parties, a reasonable request from either party or reasonable consideration of the board's previously established meeting schedule.

(5) All submissions to the State Board on appeal shall focus on the factual and legal correctness of the local board's decision in light of the standards for affirmation or reversal set forth in paragraphs 5 and 6 of subsection E of 6.80.4.10 NMAC below.

(6) Within 10 days after filing the notice of appeal, the appellant shall file 20 copies and serve upon the local board one copy of:

(a) The appellant's arguments for reversal of the local board's decision;

(b) The local board's decision as reflected in the motion required by section K of 6.80.4.9 NMAC above;

(c) The charter or proposed charter in question; and

(d) Any other materials related to the issues raised by the appellant which the appellant wishes to have considered in support of its appeal.

(7) Within 10 days after receiving the appellant's submissions, the local school

board shall file 20 copies and serve upon the appellant one copy of:

(a) The local board's response to the appellant's arguments; and

(b) Any other materials the local board wishes to have considered in support of its decision.

(8) The Department of Education's Alternative Education Unit and other staff as appropriate shall review each party's submissions and prepare a report for the State Board which:

(a) Discusses the parties' contentions on appeal with reference to the standards of paragraphs 5 and 6 of subsections E of 6.80.4.10 NMAC below;

(b) Identifies and discusses any additional matters which appear to raise significant concerns under paragraphs 5 or 6 of subsections E of 6.80.4.10 NMAC that were not raised by the parties;

(c) Identifies and discusses any additional statutory, regulatory, policy or procedural concerns raised by the case which the staff believes the State Board should be aware of; and

(d) Sets forth the staff's recommendations for the State Board to affirm or reverse the local board's decision, with or without conditions or changes to the charter, and the reasons for those recommendations.

(9) At least five days before the hearing date, the staff shall deliver its report and recommendations to the State Board in care of the superintendent of public instruction and shall simultaneously serve a copy upon each party.

(10) The parties are strongly encouraged to continue discussions and negotiations while an appeal is pending in an effort to resolve the matter by agreement and reestablish productive working relations. An appellant may withdraw an appeal at any time before the State Board reaches a final decision. If an appeal is withdrawn, the State Board in a public meeting shall approve an appropriate order of dismissal. The State Board's order may incorporate the terms of any agreement reached by the parties. An appeal which has been withdrawn may not be refiled.

#### **E. State board hearing and decision**

(1) Unless an extension for good cause has been granted pursuant to paragraph 4 of subsection D of 6.80.4.10 NMAC above, within 60 days after receipt of the notice of appeal, the State Board, at a public hearing that may be held in the school district in which the proposed charter school has applied for a charter, shall review the decision of the local school board and make its findings.

(2) Participants before the State Board shall be the designated representa-

tives of the appellant, the local board and the State Department of Education's Alternative Education Unit and other department staff as appropriate.

(3) The time allotment for a hearing shall be two hours. Each party and the department staff shall be allowed up to 20 minutes for their presentations. The appellant may reserve part of its 20 minutes for rebuttal if desired. The order of presentations will be department staff, appellant, local board and rebuttal by the appellant if time has been reserved. The parties may present remarks from whomever they wish in their 20 minutes but must include any comments they wish to make on the staff recommendations within their allotted time. Presentations, board questions or discussions that exceed these limits may be ruled out of order by the State Board president. The State Board may ask questions of the staff, the parties or the State Board's counsel at any time and may take up to one hour after the staff's and the parties' presentations for further questions, discussion and its decision.

(4) All presentations and discussion before the State Board shall focus on

(a) The factual and legal correctness of the local board's decision in light of the standards for affirmance or reversal set forth in paragraphs 5 and 6 of subsection E of 6.80.4.10 below; and

(b) Any additional issues raised by the Department staff's report and recommendations.

(5) The State Board shall affirm the decision of the local board if it finds that one or more of the following concerns exists and cannot be remedied by a charter amendment which the parties have agreed to implement, which could be implemented unilaterally by one willing party or which could be mandated by the State Board without either party's agreement:

(a) The establishment or operation of the proposed charter school would violate one or more mandatory requirements of (i) the New Mexico Charter Schools Act, Sections 22-8B-1 et seq., NMSA 1978; (ii) any Federal or State laws concerning civil rights; or (iii) any other applicable State or Federal laws or regulations;

(b) The establishment or operation of the proposed charter school would violate any court order;

(c) The establishment or operation of the proposed charter school would threaten the health or safety of students within the school district;

(d) The establishment or operation of the proposed charter school would violate the provisions of Section 22-8B-11 NMSA 1978 prescribing the permissible

number of charter schools; or

(e) The establishment or operation of the proposed charter school would be contrary to the best interests of the students, the school district or the community, taking into consideration the purposes of the Charter Schools Act, Sections 22-8B-1 et seq., NMSA 1978.

(6) The State Board shall reverse the decision of the local board, with or without instructions for changes to the charter, if the State Board finds that:

(a) None of the local board's stated reasons for its decision were factually and legally sufficient under the standards set forth in paragraph 5 of subsection E of 6.80.4.10 NMAC above;

(b) One or more of the local board's stated reasons for its decision were factually and legally sufficient under the standards set forth in paragraph 5 of subsection E of 6.80.4.10 NMAC above but any such concerns can be remedied by a charter amendment which the parties agree to implement, which could be implemented by one willing party or which could be mandated by the State Board without either party's agreement; or

(c) The local board's decision was contrary to the best interests of the students, the school district or the community, taking into consideration the purposes of the Charter Schools Act, Sections 22-8B-1 et seq., NMSA 1978.

(7) If the State Board reverses the local board's decision, the State Board shall remand the decision to the local board with written instructions for approval of the charter. The instructions shall include specific recommendations concerning approval of the charter and any changes the State Board directs to remedy any concerns identified under paragraph 6 of subsection E of 6.80.4.10 NMAC above.

(8) The decision of the State Board shall be final and not subject to appeal, rehearing or reconsideration. However, a decision upholding the denial of a charter shall not prevent the applicant from presenting a revised application to the local board in a subsequent school year and appealing to the State Board from a denial of that application.

F. Implementation of State Board's decision

(1) The State Board, through the superintendent of public instruction, shall promptly serve a formal notice of the State Board's decision upon the parties to the appeal.

(2) If the local school board's decision is reversed and remanded, the local school board, at a public hearing, shall approve the charter with any required changes within 30 days following the

receipt of the notice of the decision. If the local board does not comply with the State Board's order, the State Board may take appropriate administrative or judicial action.

[6.80.4.10 NMAC - N, 12-14-01]

#### 6.80.4.11 REVIEW ON THE STATE BOARD'S OWN MOTION

A. The State Board, on its own motion, may review a local school board's decision to grant a charter.

B. Within 10 days after the State Board approves a motion to review, the State Board, through its president, shall issue an appropriate order establishing procedures for the local board and the charter applicant to submit information and arguments for review by the State Board and department staff.

C. Within 60 days after the State Board approves a motion to review, the State Board, at a public hearing that may be held in the district in which the proposed charter school applied for a charter, shall review the decision of the local school board and determine whether the decision was arbitrary and capricious or whether the establishment or operation of the proposed charter school would violate any standard in paragraphs 5 or 6 of subsection E of 6.80.4.10 NMAC above.

D. If the State Board determines that the charter would violate any standard in subsection paragraphs 5 or 6 of subsection E of 6.80.4.10 NMAC above, the State Board shall reverse the local board's decision and remand the decision to the local school board with instructions to deny the charter application or revoke the charter.

E. The timelines in 6.80.4.11 NMAC may be extended by the State Board, through its president, for good cause. Good cause may include but shall not be limited to an agreement between the parties, a reasonable request from either party or reasonable consideration of the board's previously established meeting schedule.

F. The decision of the State Board shall be final and not subject to appeal, rehearing or reconsideration as to the charter at issue. However, a decision denying or revoking a charter shall not prevent the school's organizers from developing a new application that addresses the State Board's concerns and presenting the application to the local board for approval in a subsequent school year.

G. The State Board, through the superintendent of public instruction, shall promptly serve a copy of the State Board's decision on the parties to the proceeding.

H. If the local school board's decision is reversed and remanded,

the local school board, at a public hearing, shall deny or revoke the charter within 30 days following the receipt of the State Board's decision. If the local board does not comply with the State Board's order, the State Board may take appropriate administrative or judicial action.  
[6.80.4.11 NMAC - N, 12-14-01]

**HISTORY OF 6.80.4 NMAC: [Reserved]**

## NEW MEXICO EDUCATIONAL RETIREMENT BOARD

**This is an amendment to 2.82.5 NMAC, Section 15.**

### 2.82.5.15 RETURN TO WORK

A. The twelve month consecutive break in service required under the return to work program of the Act shall mean that no service shall be rendered to any administrative unit by the retired member for this period. Such service shall be defined as including all employment whether full time, part-time including service of less than .25 FTE, or the \$10,000 per year limit, substitute teaching, or services rendered as an independent contractor, an employee of an independent contractor or any other employment as described in 82.2.11.A through 82.2.11.D.

B. The consecutive twelve month break in service shall be calculated from the effective date of retirement until the first day of re-employment. To qualify for the return to work program, the break in service may have commenced at anytime, but must be at least 12 consecutive months directly preceding the retired member's return to work, as long as such re-employment commences on or after January 1, 2002.

C. Any and all time that a retired member has provided service to an administrative unit under the return to work program cannot be used in the calculation of retirement benefits.

D. No retired member is eligible for the return to work program of this act until they submit a signed and notarized return to work form as supplied by ERB, verifying their eligibility for the return to work program of the Act.

E. The date of suspension for any retired member shall be the last day of the month in which the member suspended retirement.

F. A retired member who was participating in the return to work program must wait a minimum of ninety (90) days from the date of suspension

before he or she can purchase any withdrawn service.

G. Any retired member who is participating in the return to work program who has violated the provisions of the program, failed to submit the required form as described in 82.5.15(D) or is discovered to have been ineligible to participate in the program shall have their retirement immediately suspended and shall pay the Educational Retirement Fund a sum equal to all retirement payments that they have received while ineligible under the provisions of the return to work program plus interest at a rate to be set by the Board. Before his or her monthly retirement benefits can resume, the suspended retired member must certify to the ERB that they have terminated any and all employment that would disqualify them from retirement under the Act. To requalify for the return to work program, he or she must complete the minimum twelve month break in service as described in 82.5.15 calculated from the date of reinstatement of retirement [2.82.5.15 NMAC - N, 11-30-2001; A, 12-14-2001]

## NEW MEXICO DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES OIL CONSERVATION DIVISION

19 NMAC 15.D has been reformatted and renumbered to 19.15.4 NMAC to comply with the current NMAC requirements, effective 12-14-01.

19 NMAC 15.F has been reformatted and renumbered to 19.15.6 NMAC to comply with the current NMAC requirements, effective 12-14-01.

## NEW MEXICO DEPARTMENT OF GAME AND FISH

**This is an amendment to 19.30.2 NMAC, Section 13.**

### 19.30.2.13 BIG GAME DEPREDATION DAMAGE FUND:

**A. Expenditures:**  
Allowable expenditures from the Big Game Depredation Damage Fund shall be in accordance with Subsection C of 19.30.2.8 NMAC, including leasing of forage and water, and building of barriers. Direct compensation shall not be allowed.

**(1) Expenditures shall be made available to correct or prevent damage to federal, state or private lands caused by big game.**

**(2) Supplies and material may be placed, installed, erected or utilized on federal, state or private lands only after a written agreement between the complainant and the Department has been signed.**

**(3) No intervention method shall be approved if funding is not available.**

**(4) If funding is limited, big game depredation damage agreements/projects will be funded and given a priority by magnitude of the problem, historic depredation reporting and amount of available funding.**

**B. Written agreements:**  
Shall be signed by both the Department and an authorized representative of the landowner. Each agreement shall specify the exact location of the intervention method to be utilized, the standard at which it will be implemented (i.e. fence-height, width, length, gate design, etc.), cost per intervention, life expectancy of intervention, maintenance and repair responsibilities. Prior to implementation of any intervention method, an owner or their representative must provide verifiable proof as to the land status and ownership of the property. If any conflict in documentation, map, deed or survey is found to exist, the owner shall either sign an affidavit attesting to ownership and liability of all installation of materials and supplies, or have a survey completed depicting land ownership status and submit the results to the Department prior to implementation of any intervention method.  
[19.30.2.13 NMAC - N, 12-14-01]

## NEW MEXICO DEPARTMENT OF GAME AND FISH

**This is an amendment to 19.31.3 NMAC, sections 11 & 12.**

### 19.31.3.11 RESTRICTIONS:

**A. One license per big game species per year:** It shall be unlawful for anyone to hold more than one permit or license for any one big game species during the current license year unless otherwise allowed by regulation.

**B. Valid dates of license or permit:** All permits or licenses shall be valid only during the dates specified and only in the area which is specified.

**C. Rocky Mountain Bighorn sheep - once-in-a-lifetime:** It shall be unlawful for anyone to apply for a Rocky Mountain Bighorn Sheep license if one has previously held a license to hunt

Rocky Mountain Bighorn Sheep in New Mexico. Exception: Any resident, nonresident, or alien is eligible to submit a bid for the special bighorn permit S-1-488 (auction permit) and S-1-490 (lottery permit) regardless if he/she has previously held a permit to hunt Rocky Mountain or Desert Bighorn Sheep in New Mexico.

**D. Desert Bighorn sheep-once-in-a-lifetime:** It shall be unlawful for anyone to apply for a Desert Mountain Bighorn Sheep license if one has previously held a license to hunt Desert Mountain Bighorn Sheep in New Mexico. Exception: Any resident, nonresident, or alien is eligible to submit a bid for the special bighorn permit S-1-488 (auction permit) and S-1-490 (lottery permit) regardless if he/she has previously held a permit to hunt Rocky Mountain or Desert Bighorn Sheep in New Mexico.

**E.** It shall be **unlawful to apply for both Rocky Mountain and Desert Bighorn Sheep licenses** in the same license year.

**F. Trophy Ibex - once-in-a-lifetime:** It shall be unlawful for anyone to apply for a trophy Ibex license if he/she ever held a license or authorization to purchase a license to hunt trophy Ibex.

**G. Oryx - once-in-a lifetime:** It shall be unlawful, beginning April 1, 1993, for anyone to apply for an oryx license if he/she ever held a "once-in-a-lifetime" license to hunt oryx. Exception: Depredation oryx hunts, youth oryx hunts and incentive hunts are not once-in-a-lifetime hunts.

**H. Valle Vidal:** It shall be unlawful for anyone to apply for a license of a species in the Valle Vidal if he/she ever held a license for that species in Valle Vidal area since 1983. Exceptions: A person who had held a rifle license for a mature bull elk may apply for an antlerless elk license and vice versa, and a person who has held a Valle Vidal license issued through the incentive authorization program.

**I. Transfer of Permits of Licenses:** It shall be unlawful to transfer permits or licenses to other persons, areas, or other hunt periods except as permitted by regulation adopted by the State Game Commission.

**J. Refunds** will not be made for any license or permit after it has been awarded or issued.

**K. More Than One Application:** It shall be unlawful to submit more than one application per species for any license issued through a special drawing, unless otherwise permitted by regulation. Exception: An individual may apply for both a population reduction hunt on public or private land and a special drawing

hunt.

**L. Deer Entry Hunts:** Any hunter successfully drawing a permit in any Deer Entry hunt must have his/her deer license validated for that hunt. It shall be unlawful for any Deer Entry hunter to hunt during any other deer season. All deer entry hunters must have in their possession their deer entry permit and deer license while hunting.

**M. Handicapped Fishing or Handicapped General Hunting License Qualifications:** To hold a handicapped fishing or handicapped general hunting license, the individual must be a resident of New Mexico and must show proof of a severe disability by reason of one or more physical disabilities resulting from amputation, arthritis, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, muscular dystrophy, musculoskeletal disorders, neurological disorders, paraplegia, quadriplegia and other spinal cord conditions, sickle cell anemia, and end-stage renal disease, or who has a combination of permanent disabilities which cause comparable substantial functional limitation. Reasonable accommodation will be made, relating to these licenses, upon request.

**N. Handicapped Elk or Antelope License Qualifications:** To hold a handicapped elk or antelope license, any individual must show proof of a permanent mobility restriction which limits their activity to a walker, wheelchair, or two crutches, or severely restricts the movement in both arms or who has a combination of permanent disabilities which cause comparable substantial functional limitation.

**O. Bison-once-in-a-lifetime:** It shall be unlawful for anyone to apply for a bison license if he/she ever held a license or authorization to purchase a license to hunt bison

**P. Youth Hunts: Only applicants who have not reached their 18th birthday by the opening day of the hunt are eligible to apply for or participate in a youth only hunt.**

[4-1-95, 10-14-95, 10-31-97; Rn, 19 NMAC 31.3.7, 2-28-98, A, 12-29-99, A, 5-14-99 A, 7-15-99, A, 10-15-99; 19.31.3.11 NMAC - Rn & A, 19 NMAC 31.3.11, 1-31-2001; A, 12-14-2001]

**19.31.3.12 DENIAL OR REVOCATION:**

**A. Any applicant for any license, permit, certificate or registration will be automatically rejected if their name and other identifying factors appears on the Department's revocation list or a list of provided by the Wildlife Violator Compact.**

**B. Any applicant auto-**

**matically rejected shall be afforded a revocation hearing in accordance with 19.31.2 NMAC, unless a hearing has already been offered.**

**C. Any applicant automatically rejected must re-apply for any license: permit, certificate or registration if they are found to be eligible, providing applicant shall comply with all the conditions set forth by Chapter 17 and its implementing regulations.**

[19.31.3.12 NMAC - N, 12-14-01]

**NEW MEXICO  
DEPARTMENT OF GAME  
AND FISH**

**This is an amendment to 19.31.10 NMAC, Section 17**

**19.31.10.17 USE OF VEHICLES AND ROADS IN HUNTING:**

**A. Roads:** It shall be unlawful to shoot at, wound, take, attempt to take, or kill any protected species on, from, or across any graded and including the areas lying within right-of-way fences or 40 feet from the edge of the pavement or maintained surface, in absence of right-of-way fences.

**B. Vehicles, Boats, Aircraft:** It shall be unlawful to shoot at any protected species from within a motor vehicle, power boat, sailboat, or aircraft. EXCEPTION - Migratory birds may be taken from a motor-driven boat (or other craft with attached motor) or sailboat when resting at anchor or fastened within or immediately alongside a fixed hunting blind or is used solely as a means of picking up dead birds.

**C. Harassing Protected Wildlife:** It shall be unlawful, at any time, to pursue, harass, harry, drive, or rally any protected species by use of or from a motor-driven vehicle, powerboat, sailboat, or aircraft.

**D. Hunting After Air Travel:** It shall be unlawful for anyone to hunt for or take any protected species until after the start of legal hunting hours on the day following any air travel except by regularly scheduled commercial airline flights or legitimate direct flight to the final destination.

**E. Use of Aircraft for Spotting Game:** It shall be unlawful to use aircraft to spot or locate and relay the location of any protected species to anyone on the ground by any means of communication or signaling device or action.

**F. Using Information Gained from Air Flight:** It shall be unlaw-

ful to hunt for or to take, or assist in the hunting for or taking of, any protected species with the use of information regarding location of any protected species gained from the use of any aircraft until 48 hours after such aircraft use.

**G. Vehicle Off of Established Road:** During the seasons established for any protected species, it shall be unlawful to drive or ride in a motor vehicle which is driven off an established road when the vehicle bears a licensed hunter, fisherman or trapper. EXCEPTION: 1) Snowmobiles; 2) To retrieve lawfully taken game not in an area closed to vehicular traffic. **3) All landowners, lessees or their employees, while on their owned or leased lands in connection with legitimate agricultural activities.**

**H. Closed Roads:** It shall be unlawful for licensed hunters, anglers, or trappers to drive on closed roads during established seasons for protected species.

**I. Handicapped License:**  
(1) Shooting From a Vehicle: The holder of a handicap license is authorized to shoot at and kill protected species during their respective open seasons from a stationary motor-driven vehicle that is not on a public road or highway. The Director may issue permits to shoot from a stationary vehicle to applicants who provide certification that the applicant is permanently disabled in accordance with the American Disability Act. Such certification shall be signed by an M.D. or O.D. licensed to practice in the applicant's state of residence.

(2) Driving Off Established Roads: Holders of a handicap license may, with permission of the landowner, lessee, or land management agency, drive off established roads to hunt for or take squirrels or game birds, excluding turkey, during open seasons.

(3) Assistance for Handicapped Hunter: The holder of a handicapped license may be accompanied by another person to assist in reducing to possession any big game animal which has clearly been wounded by the licensed handicapped hunter.  
[6-25-90; 4-1-95; 19.31.1.17 NMAC - Rn, 19 NMAC 31.1.17, 4-14-2000; 19.31.10.17 NMAC - Rn, 19.31.1.17 NMAC, 9-29-00; A, 12-14-01]

## NEW MEXICO DEPARTMENT OF GAME AND FISH

**This is an amendment to 19.31.2 Sections 3, 6, 8, 9, & 26. This rule was also renumbered to comply with NMAC requirements.**

**19.31.2.3 STATUTORY AUTHORITY:**  
11-16-1, 17-1-14, A10, 17-3-34, 30-14-1, 40-5A-3, and 40-5A-6.  
[4-1-95, 10-31-98; 19.31.2.3 NMAC - Rn & A, 19 NMAC 31.2.3, 12-14-01]

**19.31.2.6 OBJECTIVE:** To revoke the hunting, fishing, trapping and outfitting and guiding privileges of any person who persistently, flagrantly or knowingly violates or countenances the violation of any of the provisions of Chapter 17 NMSA 1978, of any regulation adopted by the State Game Commission, Section 30-14-1 NMSA 1978, or revoke the hunting, fishing, or trapping license privileges or guiding and outfitting registration of any person whose name appears on a Human Services Department certified list of obligors not in compliance with the Parental Responsibility Act, 40-5A-1 NMSA 1978 Compilation, **or to revoke the hunting, fishing, trapping, outfitting and guiding privileges of any person who has been placed on revocation by a Wildlife Violator Compact member state or temporarily suspend these privileges of any resident that fails to meet the terms of a citation issued from a compact state, or to revoke or deny the landowner authorization privileges of any person who does not comply with the landowner authorization hunting agreement.**

[4-1-95, 10-31-98, 1-29-99; 19.31.2.6 NMAC - Rn & A, 19 NMAC 31.2.6, 12-14-01]

### **19.31.2.8 REVOCATION:**

**A. Points:** Any person accumulating 20 or more points within any consecutive three-year period shall be considered for revocation and suspension of all his/her hunting and fishing, trapping license privileges, or guiding and outfitting registration or revocation and suspension of any permit or certificate issued under Chapter 17 and its implementing regulations.

**B. Timeframe:** Any person found to be in violation of Chapter 17, its implementing regulations, or Section 30-14-1 NMSA 1978, after notice and an opportunity for review by a hearing officer, shall have his or her license, permit, or certificate revoked for up to three (3) years in accordance with Section 8, unless other-

wise provided for by law. Any person found to be in violation of the Parental Responsibility Act, 40-5A-1, after notice and an opportunity for review by a hearing officer, shall have his or her license, permit, or certificate or registration privileges revoked until he or she provides a certified letter of compliance from the Human Services Department. **Any person whose found to be violation by another Wildlife Violator Compact state and in accordance with 17-2-10.3.B and revoked by the State Game Commission, shall remain on revocation until he or she proves by certified letter or list from the respective member state that his or her revocation is no longer in place. Any person found to not comply with landowner authorization hunting agreement shall have his or her authorization privileges placed on revocation for up to 3 years.**

[4-1-95, 10-31-98, 11-14-98, 1-29-99; 19.31.2.8 NMAC - Rn & A, 19 NMAC 31.2.8, 12-14-01]

### **19.31.2.9 POINT CATEGORIES:**

**A. 20-Point Violations:**  
Any person who violates one of the following listed provisions shall accumulate twenty (20) points for each violation toward the revocation of his/her license, permit, or certificate and suspension of associated privileges:

(1) Illegally taking, attempting to take, killing, capturing or possessing any big game species outside of hunting season in violation of Section 17-2-7 or 17-3-33.

(2) Except as otherwise provided by Sections 17-2-37 to 17-2-46, taking, possessing, transporting, exporting, processing, selling or offering for sale, or shipping any species or subspecies of wildlife listed on the state list of endangered species or the United States' list of endangered native and foreign fish and wildlife;

(3) Signing a false statement to procure a resident hunting or fishing license when the applicant is residing in another state at the time of application, in violation of Section 17-3-6;

(4) Selling, offering for sale, offering to purchase or purchasing any game animal, game bird or protected species, in violation of Section 17-2-7;

(5) Hunting with the aid of an artificial light or spotlight, in violation of Section 17-2-31;

(6) Hunting elk outside the ranch boundaries for which a ranch-only license is issued or otherwise hunting elk in the wrong area, in violation of Section 17-2-7.

(7) Criminal trespass, in violation of Section 30-14-1, for a minimum of three (3) years;

(8) For violations of Section 17-2-29, involving hunting or boating while intoxicated (revocation for a period of one (1) year, as prescribed by Section 17-2-30).

(9) Buying of licenses, permits certificates or registration without sufficient funds to pay for same;

(10) Buying or procuring a prohibited license or registration while on revocation;

(11) flagrant violation of the provisions of any special use of wildlife permit issued by the Department pursuant to Chapter 17 and its implementing regulations.

(12) Any person whose name appears on a Human Services Department certified list of obligors not in compliance with the Parental Responsibility Act;

(13) Guiding and/or outfitting without being registered (17-2A-3);

(14) Using an outfitter or guide license issued to another;

(15) Accessory of any of the above.

**(16) Any person whose name appears on the Wildlife Violator Compact Certified List or has been revoked by another Wildlife Violator Compact member state and is in accordance with 17-2-10.3.B.**

**(17) Any resident who fails to comply with the terms of a citation including failure to appear, from a Wildlife Violator Compact member state. However re-instatement of licenses privileges shall occur once the Department receives a certified notice from the state that initiated this actions that the terms of the citation have been met.**

#### **B. 10-Point Violations:**

Any person who violates one of the following listed provisions shall accumulate ten (10) points toward the revocation of his/her license, permit, or certificate and suspension of associated privileges:

(1) hunting in a closed area;  
(2) exceeding the bag limit of game;

(3) using a license issued to another;

(4) illegal possession of fish;  
(5) procurement or possession of additional deer license;

(6) fishing without a license;  
(7) exceeding the bag limit on fish;

(8) fishing by an illegal method;  
(9) illegally taking, attempting to take, killing, or capturing of any big game species during hunting season, in violation of Section 17-2-7 (1);

(10) illegal possession of any big game species during hunting season, in violation of Section 17-2-7 (2);

(11) hunting without a license.

#### **C. 5-Point Violations:**

Any person who violates any provision of Chapter 17 and its implementing regulations, that is not specifically listed herein, shall accumulate five (5) points toward the revocation of his/her license, permit, or certificate and suspension of associated privileges except violations of Section 17-2A-3 and its implementing regulations.

#### **D. Guide and Outfitter:**

Any registered outfitter or guide who violates provisions of Section 17-2A-3 and its implementing regulations not already addressed in this section shall be assessed points towards the revocation or suspension of their guide and or outfitting registration as follows: Guides and outfitters shall be afforded a hearing before the assessment of points.

(1) Failure to provide signed contract pursuant to Subsection A of 19.30.8.11 NMAC (5pts)

(2) Failure to provide sufficient guides pursuant to Subsection B of 19.30.8.11 NMAC (10pts)

(3) Failure to supervise pursuant to Subsection C of 19.30.8.11 NMAC (10pts)

(4) Misconduct pursuant to Subsection D of 19.30.8.11 NMAC (20pts)

(5) Unregistered Services pursuant to Subsection E of 19.30.8.11 NMAC (10pts)

(6) Failure to report illegal activity pursuant to Subsection F of 19.30.8.11 NMAC (5pts)

(7) Failure to comply with and convicted of any local, state, or federal laws pursuant to Subsection G of 19.30.8.11 NMAC (10pts)

(8) Willfully allowing client misconduct pursuant to Subsection I of 19.30.8.11 NMAC (10pts)

(9) Breach of contract pursuant to Subsection J of 19.30.8.11 NMAC (10pts).

(10) Violation of conditions of registration pursuant to Subsection K of 19.30.8.11 NMAC (20pts).

(11) An outfitter knowingly (unlawfully) using an unregistered guide (10pts).

#### **E. Landowner Contracts**

**and Agreements: Any landowner who breaches or violates the conditions of any Landowner Sportsman System (LOSS) agreement/contract entered into with the Department of Game and Fish shall be assessed points towards the revocation or suspension of their landowner permits as follows. Landowners shall be afforded a hearing before the assessment of points.**

**(1) Unit-wide option antelope: Failure to grant free and equal access, (to include vehicle access) to the ranch**

**named on the contract only for the purpose of hunting antelope, to the licensed hunters, and some that may be accompanied with their outfitters/guides. The licenses must be valid for the same coded hunt and same management unit as the licenses authorized by the land owners contract. Hunters must carry written permission from a Department representative to move to another ranch. (20 points)**

**(2) Denying licensed public antelope hunters assigned to the ranch by the Department, some who may be accompanied with their registered outfitter, the same access that private hunters have to the ranch for the purpose of hunting antelope. (20 points)**

**(3) Unit-wide option elk: Failure to grant free and equal access, including vehicular access, for the sole purpose of hunting elk to any legally licensed person and their companions during all corresponding public hunt periods with their sporting arms and bag-limit restrictions in the same unit as the ranch. (20 points)**

**(4) Discriminating against those with whom he/she negotiates for the use of the private land licenses on the basis of race, color, religion, sex and origin. (20 points)**

**(5) Failure to provide reasonable access to include keys and /or combinations, if necessary, to locked gates for Department personnel during the entire hunt periods for elk and antelope for the purpose to record biological data and enforce laws and regulations. (20 points)**

**(6) Providing false documentation, records or falsifying a landowner hunting agreement/contract in any manner. (20 points)**

**(7) Failure of the Landowner, Manager or Lessee to inform the Department of any changes in ownership, acreage and/or address changes, etc. (5 points)**

[4-1-95, 10-31-98, 11-14-98, 1-29-99; 19.31.2.9 NMAC - Rn & A, 19 NMAC 31.2.9, 12-14-01]

**19.31.2.26 WILDLIFE VIOLATOR COMPACT SUSPENSION AND REVOCATION: Any person whose name appears on the Wildlife violator compact list or who has been revoked by another Wildlife Violator Compact Member state and is accordance with 17-2-10.3.B shall have his or her license, permit, certificate or registration immediately and temporarily withheld or suspended, if no such license, permit, certificate or registration has not been issued by the Department. Any resident who**

fails to comply with the terms of a citation including failure to appear, from a member state shall have his or her license, permit, certificate or registration immediately and temporarily withheld or suspended, if no such license, permit, certificate or registration has not been issued by the Department. The information provided by the Board of Wildlife Violator Compact Administrators or their designee shall be deemed sufficient to allow the department by and through its Director to send the same violator a notice of commission contemplated action. Revocation proceedings and hearings shall be in accordance with this rule 19.31.2 NMAC.

[19.31.2.26 NMAC - N, 12-14-01]

### NEW MEXICO RACING COMMISSION

Explanatory Paragraph: This is an amendment to Paragraph (2) of Subsection C of 15.2.5.8 NMAC, which defines the procedures for drawing entries for trial races. It requires the entries to be split by owners, trainers and leased horses; specifying that if a leased horse draws into the same trial race of a horse owned or leased in whole or part by an owner or trainer in the same race that it will be coupled for pari mutuel wagering.

(2) For trial races, entries will be split by owners, trainers and leased horses consecutively. If a leased horse draws into the same trial race of a horse that is owned or leased in whole or in part by the same owner, or trainer who owns or leases any other horse in the race, it will be coupled.

[(2)] (3) No more than two horses having common ties through ownership or training may be entered in any overnight race. When making a coupled or uncoupled entry in an overnight race, the horse with the better date will be preferred. If both horses have the same date, the trainer must make a first and second choice. Under no circumstances may both horses of a coupled, or uncoupled, entry start to the exclusion of a single preferred entry unless the race conditions specifically state otherwise. No two preferred horses entered by the same trainer or owned by the same owner shall start to the exclusion of a single preferred entry in overnight races.

### NEW MEXICO RACING COMMISSION

Explanatory Paragraph: This is an amendment to Subsection A of 16.47.1.8 NMAC, which reduces the license fee for an assistant trainer from \$55.00 to \$15.00 annually and deletes obsolete license categories for electrician, film employee, gateman and photo operator that are no longer used; an amendment to Subsection B of 16.47.1.8 NMAC allowing license applicants to submit a North American Pari Mutuel Regulators multi-state application form; and an amendment to Paragraph (3) of Subsection K of 16.47.1.8 NMAC allowing the Commission to submit license denials of applications to the North American Pari Mutuel Regulators also. The Commission is a member jurisdiction of NAPRA, which collects data for member jurisdictions in the United States.

(2) Persons required to be licensed shall submit a completed application on forms furnished by the Commission and accompanied by the required fee. The following fees are assessed for the issuance of the specified licenses. In addition to license fees listed herein, \$20.00 is assessed for each identification picture and badge.

Announcer	\$55.00
Assistant General Manager	\$80.00
Assistant Racing Secretary	\$15.00
Association	\$80.00
Auditor, Official	\$55.00
Casino Employee	\$ 5.00
Clerk of Scales	\$15.00
Clocker	\$15.00
Club, Racetrack	\$80.00
Concession Employee	\$ 5.00
Concession Operator	\$80.00
Custodian of Jockey Room	\$15.00
Director or Corporate Officer	\$80.00
Director of Operations	\$55.00
Director of Racing	\$55.00
<del>Electrician</del>	<del>\$ 5.00</del>
Exercise Person	\$15.00
<del>Film Employee</del>	<del>\$ 5.00</del>
<del>Gateman (Admissions)</del>	<del>\$ 5.00</del>
General Manager	\$80.00
Groom	\$ 5.00
Horseman's Bookkeeper	\$15.00
Identifier (Horse)	\$15.00
Janitor	\$ 5.00
Jockey (3 year)	\$100.00
Jockey (1 year)	\$80.00
Jockey (Apprentice) (3 year)	\$100.00
Jockey (Apprentice) (1 year)	\$80.00
Jockey Agent	\$55.00
Jockey Valet	\$ 5.00
Laborer	\$ 5.00
Official Personnel	
(specify position)	\$ 5.00

Official Veterinarian (3 year)	\$100.00
Official Veterinarian (1 year)	\$80.00
Outrider	\$15.00
Owner (3 year)	\$100.00
Owner (1 year)	\$80.00
Paddock Judge	\$15.00
Pari Mutuel Employee	\$ 5.00
Pari Mutuel Manager	\$55.00
Placing Judge	\$15.00
<del>Photo Operator</del>	<del>\$80.00</del>
Photo Employee	\$ 5.00
Plater	\$80.00
Pony Person	\$ 5.00
Racing Secretary-Handicapper	
	\$55.00
Security Chief	\$55.00
Security Staff	\$ 5.00
Simulcast Company	
Employee	\$ 5.00
Simulcast Coordinator	\$55.00
Simulcast Operator	\$80.00
Special Event, 1 or 2 day	\$100.00
Stable Name (3 year)	\$100.00
Stable Name (1 year)	\$80.00
Stable Superintendent	\$55.00
Starter	\$55.00
Starter Assistant	\$15.00
Ticket Seller (Admissions)	\$ 5.00
Timer	\$15.00
Totalisator Employee	\$ 5.00
Totalisator Operator	\$80.00
Track Maintenance	
Employee	\$ 5.00
Track Physician	\$80.00
Track Superintendent	\$55.00
Trainer (3 year)	\$100.00
Trainer (1 year)	\$80.00
Trainer Assistant	<del>\$55.00</del> <b>15.00</b>
Veterinarian Assistant	\$15.00
Veterinarian,	
Practicing (3 year)	\$100.00
Veterinarian,	
Practicing (1 year)	\$80.00
Veterinarian, Racing (3 year)	\$100.00
Veterinarian, Racing (1 year)	\$80.00
Watchman	\$ 5.00

### B. MULTI-STATE LICENSING INFORMATION:

Applicants ~~shall~~ **may** be permitted to submit an Association of Racing Commissioners International, Inc. (RCI) **or North American Pari Mutuel Regulators Association (NAPRA)** Multi-State License Information Form and RCI fingerprint card and thereby obtain a criminal records check that can be used in other jurisdictions.

(3) An application denied ~~shall~~ **may** be reported to the Association of Racing Commissioners International, Inc. **and North American Pari Mutuel**



**Regulators**, whereby other racing jurisdictions shall be advised.

**NEW MEXICO REAL ESTATE COMMISSION**

16 NMAC 61.2, License and Other Fees, filed 12-10-99 repealed effective 1-1-2002.

16 NMAC 61.3, Broker's License: Examination and Licensing Application Requirements, filed 12-10-99 repealed effective 1-1-2002.

16 NMAC 61.4, Salesperson's License: Examination and Licensing Application Requirements, filed 12-10-99 repealed effective 1-1-2002.

16 NMAC 61.12, License Revocation, filed 06-25-97 repealed effective 1-1-2002.

16 NMAC 61.16, Qualifying Broker: Affiliation and Responsibilities, filed 12-10-99 repealed effective 1-1-2002.

16 NMAC 61.29, Trade Name, filed 06-25-97 repealed effective 1-1-2002.

16 NMAC 61.33, Document Execution and Delivery, filed 12-10-99 repealed effective 1-1-2002.

16 NMAC 61.36, Investigations, filed 06-25-97 repealed effective 1-1-2002.

**NEW MEXICO REAL ESTATE COMMISSION**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS AND SALESPERSONS PART 2 LICENSE AND OTHER FEES**

**16.61.2.1 ISSUING AGENCY:** New Mexico Real Estate Commission. [16.61.2.1 NMAC - Rp, 16 NMAC 61.2.1, 1-1-2002]

**16.61.2.2 SCOPE:** The provisions in Part 2 of Chapter 61 apply to all licensed Salespersons and Brokers; applicants for

Salesperson and Broker licensure in New Mexico; anyone wishing to purchase Licensee lists, mailing labels, or license law and rules and regulation booklets; or anyone who requests a written verification of licensure to be completed by the Commission. [16.61.2.2 NMAC - Rp, 16 NMAC 61.2.2, 1-1-2002]

**16.61.2.3 STATUTORY AUTHORITY:** Part 2 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4. [16.61.2.3 NMAC - Rp, 16 NMAC 61.2.3, 1-1-2002]

**16.61.2.4 DURATION:** Permanent. [16.61.2.4 NMAC - Rp, 16 NMAC 61.2.4, 1-1-2002]

**16.61.2.5 EFFECTIVE DATE:** 1-1-2000, unless a later date is cited at the end of a Section. [16.61.2.5 NMAC - Rp, 16 NMAC 61.2.5, 1-1-2002]

**16.61.2.6 OBJECTIVE:** The objective of Part 2 of Chapter 61 is to establish the fees to generate sufficient revenues required by the Commission to carry out its administrative functions. [16.61.2.6 NMAC - Rp, 16 NMAC 61.2.6, 1-1-2002]

**16.61.2.7 DEFINITIONS:** Refer to Definitions 16.61.1.7 NMAC. [16.61.2.7 NMAC - Rp, 16 NMAC 61.2.7, 1-1-2002]

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

B. For each Broker's license issued, and for each renewal thereof, a fee not to exceed one hundred eighty dollars (\$180.00).

C. For each Salesperson's license issued, and for each renewal thereof, a fee not to exceed one hundred eighty dollars (\$180.00).

D. 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).

E. 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).

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

G. For copying of docu-

ments by the Commission a fee not to exceed one dollar (\$1.00) per copy.

H. For each State of New Mexico Real Estate License Law and Rules and Regulations manual a fee not to exceed ten dollars (\$10.00).

I. For each hard copy or electronic list of licensed real estate brokers and salespersons, a fee not to exceed twenty dollars (\$20.00).

J. For each initial Salesperson's and 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. [16.61.2.8 NMAC - Rp, 16 NMAC 61.2.8, 1-1-2002]

**16.61.2.9 REFUNDS:** The Commission shall refund, on a proportionate basis, the license issuance fee or the license renewal fee if the license is terminated with more than one year remaining. [16.61.2.9 NMAC - Rp, 16 NMAC 61.2.9, 1-1-2002]

**HISTORY OF 16.61.2 NMAC:**

**Pre-NMAC History:**

The material in this Part was derived from that previously filed with the State Records Center & Archives under: Real Estate License Law Manual, filed 10-2-73; NMREC Rule 19, Relating to Real Estate Brokers & Salesmen; License Fees, filed 8-18-92; NMREC Rule 19 Relating to Real Estate Brokers & Salesmen, filed 8-23-95.

**History of Repealed Material:**

16 NMAC 61.2, License Fees, filed with the State Records Center & Archives on 6-25-97 is repealed 1-1-2000. Re-promulgated as 16 NMAC 61.2, License and Other Fees, effective 1-1-2000. 16 NMAC 61.2, License and Other Fees, filed 12-10-99 repealed effective 1-1-2002.

**Other History:**

16 NMAC 61.2, License and Other Fees, filed 12-10-99 replaced by 16.61.2 NMAC, License and Other Fees, effective 1-1-2002.

## NEW MEXICO REAL ESTATE COMMISSION

### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS AND SALESPERSONS PART 3 BROKER'S LICENSE: EXAMINATION AND LICENSING APPLICATION REQUIREMENTS

**16.61.3.1 ISSUING AGENCY:** New Mexico Real Estate Commission.  
[16.61.3.1 NMAC - Rp, 16 NMAC 61.3.1, 1-1-2002]

**16.61.3.2 SCOPE:** The provisions in Part 3 of Chapter 61 apply to all applicants for Broker licensure in New Mexico.  
[16.61.3.2 NMAC - Rp, 16 NMAC 61.3.2, 1-1-2002]

**16.61.3.3 STATUTORY AUTHORITY:** Part 3 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.  
[16.61.3.3 NMAC - Rp, 16 NMAC 61.3.3, 1-1-2002]

**16.61.3.4 DURATION:** Permanent.  
[16.61.3.4 NMAC - Rp, 16 NMAC 61.3.4, 1-1-2002]

**16.61.3.5 EFFECTIVE DATE:** 1-1-2000, unless a later date is cited at the end of a Section.  
[16.61.3.5 NMAC - Rp, 16 NMAC 61.3.5, 1-1-2002]

**16.61.3.6 OBJECTIVE:** The objective of Part 3 of Chapter 61 is to set forth the examination and application requirements for candidates desiring to obtain a New Mexico Broker's license.  
[16.61.3.6 NMAC - Rp, 16 NMAC 61.3.6, 1-1-2002]

**16.61.3.7 DEFINITIONS:** Refer to 16.61.1.7 NMAC.  
[16.61.3.7 NMAC - Rp, 16 NMAC 61.3.7, 1-1-2002]

**16.61.3.8 EXAMINATION AND LICENSING REQUIREMENTS:** Each applicant for a Broker's license shall be a legal resident of the United States, have reached the age of majority and except as provided in Section 61-29-14 NMSA 1978, be a resident of New Mexico. An applicant for a Broker's license who holds a real estate license in another jurisdiction that administers a real estate broker's examination may be issued a Broker's license if the

applicant establishes that they possess credentials and qualifications that are substantively equivalent to the requirements in New Mexico for licensure. A Broker's license may be issued under this paragraph only if the jurisdiction from which the applicant holds a real estate license allows the issuance of a real estate Broker's license to applicants from the state of New Mexico in substantially the same manner as set forth in this paragraph.

A. Individuals wishing to take the Broker's license examination must pre-register for the examination with the Commission. An applicant failing to apply for a license within sixty (60) days following notice of having passed the examination shall be required to re-examine unless the applicant provides the Commission with a written affidavit setting out good cause for failing to meet the deadline.

B. An application for license will not be processed until a sealed credit report has been received in the Commission office and any discrepancies revealed in that report are explained and/or resolved by proper documentation and/or personal appearance of the applicant before the Commission.

C. The Commission shall administer at least two (2) Broker's examinations annually at locations and on dates determined by the Commission and its examination contractor. The examination is in two sections, State and Uniform, with a required minimum passing grade of 75 on each section. Both sections must be taken at the original sitting. If either section is failed, it may be retaken individually upon payment of the prescribed fee and completion of an examination application form. Applicants must complete both sections of the examination with a passing score within ninety (90) days of the original sitting or the previous passing score will be invalidated. An applicant who fails to take the examination at the place, time, and date scheduled may reschedule the examination for a later date, but may be required to file a new application and pay the prescribed fee in order to reschedule.

D. **S A L E S P E R S O N EXPERIENCE:** Applicants applying to take the Broker's examination under Section 61-29-9B(1) NMSA 1978 shall provide the Commission with certification from a Qualifying Broker(s), on a form prescribed by the Commission, attesting to the fact that the Salesperson was actively engaged in real estate business for a least twenty-four (24) of the last preceding thirty-six (36) months immediately prior to filing an application for examination, and shall furnish the Commission with a certificate attesting to the fact that they have successfully com-

pleted at least one thirty (30) credit hour course each in Real Estate Principles and Practice, Real Estate Law, and Broker Basics. The Commission may request any information it deems necessary to document the applicant's prior active engagement in real estate activity.

E. **NO PRIOR EXPERIENCE:** Applicants attempting to qualify to take the Broker's license examination under Section 61-29-9-B(2) NMSA 1978 based on successful completion of one hundred eighty (180) credit hours of real estate courses, must have completed one thirty (30) credit hour course each in Real Estate Principles and Practice, Real Estate Law, and Broker Basics, and ninety (90) credit hours of other Commission approved courses.

F. **EQUIVALENT EXPERIENCE:** Applicants attempting to qualify to take the Broker's license examination under Section 61-29-9B(4) (equivalent experience) shall furnish the Commission with documentation of their prior activities closely related to or associated with real estate, and shall furnish the Commission with a certificate(s) attesting to the fact that they have successfully completed at least one thirty (30) credit hour course each in Real Estate Principles and Practice, Real Estate Law, and Broker Basics. All applicants attempting to qualify under this section shall contact the Commission Education Manager for a determination of acceptable equivalent experience before making application.

[16.61.3.8 NMAC - Rp, 16 NMAC 61.3.8, 1-1-2002]

#### **HISTORY OF 16.61.3 NMAC:**

##### **Pre-NMAC History:**

The material in this Part was derived from that previously filed with the State Records Center & Archives under: Real Estate License Law Manual, filed 10-2-73; NMREC Rule No. 9 Amendment No. 2 Broker Examinations; Time For Filing; Place Of, filed 6-15-79; Rule No. 9 Amendment No. 3, Broker Examinations; Time For Filing, Place Of, filed 7-17-80; REC 70-7 Broker Examinations Time For Filing; Place Of, filed 10-6-81; REC 71-7 Broker Examinations; Time For Filing; Place Of, filed 11-29-82; Rule No.2 Examinations-Requirements/Application For, filed 12-18-87; NMREC Rule No. 2 Examination-Requirements/Application For, filed 10-3-94.

##### **History of Repealed Material:**

16 NMAC 61.3, Broker's License: Examination and Application Requirements filed with the State Records Center & Archives on 6-25-97 is repealed 1-1-2000.

Re-promulgated as 16 NMAC 61.3, Broker's License: Examination and Licensing Requirements. 16 NMAC 61.3, Broker's License: Examination and Licensing Application Requirements, filed 12-10-99 repealed effective 1-1-2002.

**Other History:**

16 NMAC 61.3, Broker's License: Examination and Licensing Application Requirements filed 12-10-99 replaced by 16.61.3 NMAC, Broker's License: Examination and Licensing Application Requirements, effective 1-1-2002.

## NEW MEXICO REAL ESTATE COMMISSION

### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS AND SALESPERSONS PART 4 SALESPERSON'S LICENSE: EXAMINATION AND LICENSING APPLICATION REQUIREMENTS

**16.61.4.1 ISSUING AGENCY:** New Mexico Real Estate Commission.  
[16.61.4.1 NMAC - Rp, 16 NMAC 61.4.1, 1-1-2002]

**16.61.4.2 SCOPE:** The provisions in Part 4 of Chapter 61 apply to all applicants for Salesperson licensure in New Mexico.  
[16.61.4.2 NMAC - Rp, 16 NMAC 61.4.2, 1-1-2002]

**16.61.4.3 STATUTORY AUTHORITY:** Part 4 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.  
[16.61.4.3 NMAC - Rp, 16 NMAC 61.4.3, 1-1-2002]

**16.61.4.4 DURATION:** Permanent.  
[16.61.4.4 NMAC - Rp, 16 NMAC 61.4.4, 1-1-2002]

**16.61.4.5 EFFECTIVE DATE:** 1-1-2000, unless a later date is cited at the end of a Section.  
[16.61.4.5 NMAC - Rp, 16 NMAC 61.4.5, 1-1-2002]

**16.61.4.6 OBJECTIVE:** The objective of Part 4 of Chapter 61 is to set forth the examination and application requirements for candidates desiring to obtain a New Mexico Salesperson's license.  
[16.61.4.6 NMAC - Rp, 16 NMAC 61.4.6, 1-1-2002]

**16.61.4.7 DEFINITIONS:** Refer to 16.61.1.7 NMAC.  
[16.61.4.7 NMAC - Rp, 16 NMAC 61.4.7,

1-1-2002]

### 16.61.4.8 EXAMINATION AND LICENSING APPLICATION REQUIREMENTS:

Each applicant for a Salesperson's license shall be a legal resident of the United States, have reached the age of majority and shall furnish the Commission a certificate attesting to the fact that they have successfully completed thirty (30) credit hours each in Real Estate Principles and Practice and Real Estate Law within three years preceding the application for examination for licensure. An applicant for a Salesperson's license who holds a real estate license in another jurisdiction that administers a real estate Salesperson's or equivalent examination may be issued a Salesperson's license if the applicant establishes that they possess credentials and qualifications that are substantively equivalent to the requirements in New Mexico for licensure. A Salesperson's license may be issued under this paragraph only if the jurisdiction from which the applicant holds a real estate license allows the issuance of a real estate Salesperson's or equivalent license to applicants from the state of New Mexico in substantially the same manner as set forth in this paragraph.

A. Individuals wishing to take the Salesperson's license examination must register for the examination with the Commission. An applicant who fails to apply for a license within sixty (60) days following notice of having passed the examination shall be required to reexamine unless the applicant provides the Commission with a written affidavit setting out good cause for failing to meet the deadline.

B. An application for license will not be processed until a sealed credit report has been received in the Commission office and any discrepancies revealed in that report are explained and/or resolved by proper documentation and/or personal appearance of the applicant before the Commission.

C. The Commission shall administer at least six (6) Salesperson's examinations annually at locations and on dates determined by the Commission and its examination contractor. The examination is in two sections, State and Uniform, with a required minimum passing grade of 75 on each section. Both sections must be taken at the original sitting. If either section is failed, it may be retaken individually upon payment of the prescribed fee and completion of an examination application form. Applicants must pass both sections of the examination with a passing score within ninety (90) days of the original sitting or the previous passing score will be invalidated.

An applicant who fails to take the examination at the place, time, and date scheduled may reschedule the examination for a later date, but may be required to file a new application and pay the prescribed fee in order to reschedule.

[16.61.4.8 NMAC - Rp, 16 NMAC 61.4.8, 1-1-2002]

### HISTORY OF 16.61.4:

#### Pre-NMAC History:

The material in this Part was derived from that previously filed with the State Records Center & Archives under: Real Estate License Law Manual, filed 10-2-73; Rule No. 2, Examinations-Requirements/Application For, filed 12-18-87; NMREC, Rule 2, Examinations-Requirements/ Application For, filed 10-3-94.

#### History of Repealed Material:

16 NMAC 61.4, Salesperson's License: Examination and Application Requirements, filed with the State Records Center & Archives on 6-25-97 is repealed 1-1-2000. Re-promulgated as 16 NMAC 61.4, Salesperson's License: Examination and Licensing Requirements, effective 1-1-2000. 16 NMAC 61.4, Salesperson's License: Examination and Licensing Application Requirements, filed 12-10-99 repealed effective 1-1-2002.

#### Other History:

16 NMAC 61.4, Salesperson's License: Examination and Licensing Application Requirements, filed 12-10-99 replaced by 16.61.4 NMAC, Salesperson's License: Examination and Licensing Application Requirements, effective 1-1-2002.

## NEW MEXICO REAL ESTATE COMMISSION

### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS AND SALESPERSONS PART 12 LICENSE SUSPENSION AND REVOCATION

**16.61.12.1 ISSUING AGENCY:** New Mexico Real Estate Commission.  
[16.61.12.1 NMAC - Rp, 16 NMAC 61.12.1, 1-1-2002]

**16.61.12.2 SCOPE:** The provisions in Part 12 of Chapter 61 apply to licensees whose licenses have been suspended or revoked by the Commission.  
[16.61.12.2 NMAC - Rp, 16 NMAC

61.12.2, 1-1-2002]

**16.61.12.3 STATUTORY AUTHORITY:** Part 12 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-1.

[16.61.12.3 NMAC - Rp, 16 NMAC 61.12.3, 1-1-2002]

**16.61.12.4 DURATION:** Permanent.

[16.61.12.4 NMAC - Rp, 16 NMAC 61.12.4, 1-1-2002]

**16.61.12.5 EFFECTIVE DATE:** 8-15-97, unless a later date is cited at the end of a Section.

[16.61.12.5 NMAC - Rp, 16 NMAC 61.12.5, 1-1-2002]

**16.61.12.6 OBJECTIVE:** The objective of Part 12 of Chapter 61 is to set forth the procedures for license suspension and revocation for violation of the Real Estate License Law or the Commission Rules and Regulations.

[16.61.12.6 NMAC - Rp, 16 NMAC 61.12.6, 1-1-2002]

**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 and Regulations may be cause for disciplinary action against any person who engages in the business or acts in the capacity of a Broker or real estate Salesperson 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, and other penalties as provided by law, Commission rules, regulations, or policies, in the case of an unlicensed person. Such person has thereby submitted to the jurisdiction of the state and to the administrative jurisdiction of the New Mexico Real Estate Commission and is subject to all penalties and remedies available for a violation of any provision of Chapter 61, Article 29 NMSA 1978. 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]

**16.61.12.9 LICENSE SURRENDER:** Upon delivery of a final order of suspension or revocation of license(s), the Qualifying Broker or Broker in Charge shall

surrender the license(s) to the Commission in person or by certified mail, and the Licensee shall cease all activities requiring a license.

[16.61.12.9 NMAC - Rp, 16 NMAC 61.12.9, 1-1-2002]

#### **HISTORY OF 16.61.12 NMAC:**

##### **Pre-NMAC History:**

The material in this Part was derived from that previously filed with the State Records Center & Archives under: Real Estate License Law Manual, filed 10-2-73; Rule No. 18, Penalties, filed 6-15-79; REC 70-17, Penalties, filed 10-6-81; REC 71-18, Penalties, filed 11-29-82; Rule No. 17, Penalties, filed 12-18-87; NMREC Rule 17, Investigation/Penalties, filed 10-3-94.

##### **History of Repealed Material:**

16 NMAC 61.12, License Revocation, filed 12-10-99 repealed effective 1-1-2002.

##### **Other History:**

16 NMAC 61.12, License Revocation, filed 12-10-99 replaced by 16.61.12 NMAC, License Suspension and Revocation, effective 1-1-2002

## **NEW MEXICO REAL ESTATE COMMISSION**

### **TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS AND SALESPERSONS PART 16 QUALIFYING BROKER: AFFILIATION AND RESPONSIBILITIES**

**16.61.16.1 ISSUING AGENCY:** New Mexico Real Estate Commission.

[16.61.16.1 NMAC - Rp, 16 NMAC 61.16.1, 1-1-2002]

**16.61.16.2 SCOPE:** The provisions in Part 16 of Chapter 61 apply to all Qualifying Broker Licensees.

[16.61.16.2 NMAC - Rp, 16 NMAC 61.16.2, 1-1-2002]

**16.61.16.3 STATUTORY AUTHORITY:** Part 16 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.

[16.61.16.3 NMAC - Rp, 16 NMAC 61.16.3, 1-1-2002]

**16.61.16.4 DURATION:** Permanent.

[16.61.16.4 NMAC - Rp, 16 NMAC

61.16.4, 1-1-2002]

**16.61.16.5 EFFECTIVE DATE:** 1-1-2000, unless a later date is cited at the end of a Section.

[16.61.16.5 NMAC - Rp, 16 NMAC 61.16.5, 1-1-2002 ]

**16.61.16.6 OBJECTIVE:** The objective of Part 16 of Chapter 61 is to set forth the responsibilities, in addition to all other requirements imposed by law, of a Qualifying Broker.

[16.61.16.6 NMAC - Rp, 16 NMAC 61.16.6, 1-1-2002]

**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 Qualifying Broker may by written agreement engage the services of another Broker or Salesperson.

[16.61.16.8 NMAC - Rp, 16 NMAC 61.16.8, 1-1-2002]

#### **16.61.16.9**

**RESPONSIBILITIES:** The Qualifying Broker shall, in addition to all other requirements imposed by law, comply with the following:

A. Maintain, if a resident Broker, a place of business within New Mexico.

B. Prominently display their own license and the licenses of all other Licensees affiliated with that Qualifying Broker in the office at the address as registered with the Commission.

C. Have in the place of business and available to all Licensees a current copy of the State of the New Mexico Real Estate License Law and Rules and Regulations Manual.

D. Supervise all real estate related activities conducted on behalf of others by Associate Brokers and Salespersons, and maintain current written employment or independent contractor agreements with them.

E. Maintain full and complete records wherein the Qualifying Broker, Associate Broker(s), or Salesperson(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 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.

(4) The names of Persons to whom compensation was paid.

(5) The required records shall be available to the Commission or any duly authorized representative thereof at the place of business of the Qualifying Broker or at the Real Estate Commission office. All such records shall be retained for a period not less than three (3) years.

F. Deposit all money received on behalf of others in the proper Trust Account as soon after receipt as practicable possible after securing signatures of all Parties to the Transaction.

G. Receive and disburse all commissions, referral fees, and/or other considerations to all Licensees associated with the Qualifying Broker or any other entity entitled by law to receive same, including to partnerships, corporations, or Limited Liability Companies (LLC's) wholly owned by Salespersons or Associate Brokers and their spouse, or authorize and direct the disbursement thereof, and maintain complete records thereof. Such partnerships, corporations, or LLC's are not required to have a Qualifying Broker for purposes of this Sub-Part.

H. Not permit the use of their Qualifying Broker's license to enable an affiliated Licensee to establish and carry on Transactions outside the supervision of the Qualifying Broker.

I. In the event actual supervision by the Qualifying Broker is not possible for a time exceeding seven (7) days, designate a Broker in Charge and inform the Commission in writing of the designation. The Broker in Charge shall assume the responsibilities of the Qualifying Broker.

J. Upon termination or discharge of an Associate Broker or Salesperson, within forty eight (48) hours mail or deliver the license to the Commission. Although the license may be delivered to the Commission by an Associate Broker or Salesperson, the responsibility for the delivery of the license to the Commission remains that of the Qualifying Broker.

K. If employed as Qualifying Broker for others, have a written agreement of such employment.  
[16.61.16.9 NMAC - Rp, 16 NMAC 61.16.9, 1-1-2002]

**HISTORY OF 16.61.16 NMAC:**  
**Pre-NMAC History:**

The material in this Part was derived from that previously filed with the State Records Center & Archives under: Real Estate License Law Manual, filed 10-2-73; Rule No. 3 Amendment No. 3, Salesperson-Employment; Place of Business; Records To Be Maintained, filed 6-15-79; REC 70-3, Associate Broker/Salesperson-Affiliation; Place Of Business; Records To Be Maintained, filed 10-6-81; REC 71-3, Associate Broker/Salesperson-Affiliation; Place of Business; Records To Be Maintained, filed 11-29-82; REC 71-3, Amendment No. 1 Associate Broker/Salesperson-Affiliation; Place of Business; Records To Be Maintained, filed 10-25-84; Rule No. 5 Qualifying Broker/Associate Broker/Salesperson-Affiliation and Responsibilities, filed 12-18-87.

**History of Repealed Material:**

16 NMAC 61.16, Qualifying Broker: Affiliation and Responsibilities, filed with the State Records Center and Archives on 6/25/97, is repealed 1-1-2000. Re-promulgated as 16 NMAC 61.16, Qualifying Broker: Affiliation and Responsibilities, effective 1-1-2000. 16 NMAC 61.16, Qualifying Broker: Affiliation and Responsibilities, filed 12-10-99 repealed effective 1-1-2002.

**Other History:**

16 NMAC 61.16, Qualifying Broker: Affiliation and Responsibilities, replaced by 16.61.16 NMAC, Qualifying Broker: Affiliation and Responsibilities, effective 1-1-2002.

**NEW MEXICO REAL ESTATE COMMISSION**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS AND SALESPERSONS PART 26 LAND TITLE TRUST FUND ACT**

**16.61.26.1 ISSUING AGENCY:** New Mexico Real Estate Commission.  
[16.61.26.1 NMAC - N, 1-1-2002]

**16.61.26.2 SCOPE:** The provisions in Part 26 of Chapter 61 apply to all New Mexico licensees as defined herein.  
[16.61.26.2 NMAC - N, 1-1-2002]

**16.61.26.3 STATUTORY AUTHORITY:** Part 26 of Chapter 61 is promulgated pursuant to the Land Title Trust Fund Act, NMSA 1978 Section 58-18B-5.  
[16.61.26.3 NMAC - N, 1-1-2002]

**16.61.26.4 DURATION:** Permanent.  
[16.61.26.4 NMAC - N, 1-1-2002]

**16.61.26.5 EFFECTIVE DATE:** 1-1-2002, unless a later date is cited at the end of a Section.  
[16.61.26.5 NMAC - N, 1-1-2002]

**16.61.26.6 OBJECTIVE:** The objective of Part 26 of Chapter 61 is to set Land Title Trust Fund Act policies and procedures used to establish and operate pooled interest-bearing escrow accounts.  
[16.61.26.6 NMAC - N, 1-1-2002]

**16.61.26.7 DEFINITIONS:** Refer to 16 NMAC 1.1.7.  
[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 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]

**HISTORY of 16.61.26 NMAC:**  
[RESERVED]

## NEW MEXICO REAL ESTATE COMMISSION

### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS AND SALESPERSONS PART 29 TRADE NAME

**16.61.29.1 ISSUING AGENCY:** New Mexico Real Estate Commission.  
[16.61.29.1 NMAC - Rp, 16 NMAC 61.29.1, 1-1-2002]

**16.61.29.2 SCOPE:** The provisions in Part 29 of Chapter 61 apply to all New Mexico Salesperson and Broker Licensees.  
[16.61.29.2 NMAC - Rp, 16 NMAC 61.29.2, 1-1-2002]

**16.61.29.3 STATUTORY AUTHORITY:** Part 29 of Chapter 61 is promulgated pursuant to the Real Estate Licensing law, NMSA 1978 Section 61-29-4.  
[16.61.29.3 NMAC - Rp, 16 NMAC 61.29.3, 1-1-2002]

**16.61.29.4 DURATION:** Permanent.  
[16.61.29.4 NMAC - Rp, 16 NMAC 61.29.4, 1-1-2002]

**16.61.29.5 EFFECTIVE DATE:** 8-15-97, unless a later date is cited at the end of a Section.  
[16.61.29.5 NMAC - Rp, 16 NMAC 61.29.5, 1-1-2002]

**16.61.29.6 OBJECTIVE:** The objective of Part 29 of Chapter 61 is to establish the requirements for obtaining and use thereof of a trade name for the operation of a real estate office in New Mexico.  
[16.61.29.6 NMAC - Rp, 16 NMAC 61.29.6, 1-1-2002]

**16.61.29.7 DEFINITIONS:** Refer to 16.61.1.7 NMAC.  
[16.61.29.7 NMAC - Rp, 16 NMAC 61.29.7, 1-1-2002]

### 16.61.29.8 REGISTRATION AND USE OF TRADE NAME:

A. Prior to the use of any trade name for the operation of a Brokerage, the Qualifying Broker shall register such trade name with the Commission. A Qualifying Broker must conduct their real estate Brokerage business under a trade name registered with the Commission. A Qualifying Broker wishing to conduct their real estate Brokerage business under a dif-

ferent 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]

### HISTORY OF 16.61.29 NMAC:

#### Pre-NMAC History:

The material in this Part was derived from that previously filed with the State Records Center & Archives under: Real Estate License Law Manual, filed 10-2-73; Rule 12, Amendment No. 1 Trade Name-Use Thereof, filed 6-15-79; REC 70-10 Trade Name-Use Thereof, filed 10-6-81; Rule No. 8, Trade Name: Obtaining and Use Thereof, filed 12-18-87.

#### History of Repealed Material:

16 NMAC 61.29, Trade Name, filed 12-10-99 repealed effective 1-1-2002.

#### Other History:

16 NMAC 61.29, Trade Name, filed 12-10-99 replaced by 16.61.29, Trade Name, effective 1-1-2002.

## NEW MEXICO REAL ESTATE COMMISSION

### TITLE 16 OCCUPATION AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS AND SALESPERSONS PART 33 DOCUMENT EXECUTION AND DELIVERY

**16.61.33.1 ISSUING AGENCY:** New Mexico Real Estate Commission.  
[16.61.33.1 NMAC - Rp, 16 NMAC 61.33.1, 1-1-2002]

**16.61.33.2 SCOPE:** The provisions of Part 33 of Chapter 61 apply to all licensed Salespersons and Brokers in New Mexico.  
[16.61.33.2 NMAC - Rp, 16 NMAC 61.33.2, 1-1-2002]

**16.61.33.3 STATUTORY AUTHORITY:** Part 33 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-

4.  
[16.61.33.3 NMAC - Rp, 16 NMAC 61.33.3, 1-1-2002]

**16.61.33.4 DURATION:** Permanent.  
[16.61.33.4 NMAC - Rp, 16 NMAC 61.33.4, 1-1-2002]

**16.61.33.5 EFFECTIVE DATE:** 1-1-2000, unless a later date is cited at the end of a Section.  
[16.61.33.5 NMAC - Rp, 16 NMAC 61.33.5, 1-1-2002]

**16.61.33.6 OBJECTIVE:** The objective of Part 33 of Chapter 61 is to set forth the requirements for documentation and delivery of documentation of Transactions.  
[16.61.33.6 NMAC - Rp, 16 NMAC 61.33.6, 1-1-2002]

**16.61.33.7 DEFINITIONS:** Refer to 16.61.1.7 NMAC.  
[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 Licensee 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]

### HISTORY OF 16.61.33 NMAC:

#### Pre-NMAC History:

The material in this Part was derived from that previously filed with the State Records & Archives under: Real Estate License Law Manual, filed 10-2-73; Rule No. 5 Amendment No. 1, Closing Statement; Delivery to Buyer and Seller, filed 6-15-79; REC 70-5, Closing Statement; Delivery to Buyer and Seller, filed 10-6-81; REC 71-5, Closing Statement; Delivery to Buyer and Seller, filed 11-29-82; Rule No. 13 Delivery of Documents, filed 12-18-87.

#### History of Repealed Material:

16 NMAC 61.33, Documents: Execution,

Delivery of, filed with the State Records Center & Archives on 6-25-99, is repealed 1-1-2000. Re-promulgated as 16 NMAC 61.33, Document Execution and Delivery, effective 1-1-2000. 16 NMAC 61.33, Document Execution and Delivery, filed 12-10-99 repealed effective 1-1-2002.

**Other History:**

16 NMAC 61.33, Document Execution and Delivery, filed 12-10-99 replaced by 16.61.33 NMAC, Document Execution and Delivery, effective 1-1-2002.

## NEW MEXICO REAL ESTATE COMMISSION

### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BRO- KERS AND SALESPERSONS PART 36 COMPLAINTS AND INVESTIGATIONS

**16.61.36.1 ISSUING AGENCY:**  
New Mexico Real Estate Commission.  
[16.61.36.1 NMAC - Rp, 16 NMAC  
61.36.1, 1-1-2002]

**16.61.36.2 SCOPE:** The provisions in Part 36 of Chapter 61 apply to anyone violating the Real Estate Licensing Law, NMSA 1978 Section 61-29-12. The provisions in Part 36 of Chapter 61 may be of interest to anyone who may wish to file a complaint against a Salesperson or Broker licensed by the Commission, or against any person who acts as a real estate Salesperson or Broker in this state with or without a New Mexico real estate license.  
[16.61.36.2 NMAC - Rp, 16 NMAC  
61.36.2, 1-1-2002]

**16.61.36.3 STATUTORY AUTHORITY:** Part 36 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.  
[16.61.36.3 NMAC - Rp, 16 NMAC  
61.36.3, 1-1-2002]

**16.61.36.4 DURATION:** Permanent.  
[16.61.36.4 NMAC - Rp, 16 NMAC  
61.36.4, 1-1-2002]

**16.61.36.5 EFFECTIVE DATE:**  
8-15-97, unless a later date is cited at the end of a Section.  
[16.61.36.5 NMAC - Rp, 16 NMAC  
61.36.5, 1-1-2002]

**16.61.36.6 OBJECTIVE:** The

objective of Part 36 of Chapter 61 is to set forth the procedure by which the Real Estate Commission receives and investigates complaints against Licensees or any other person who performs the acts of a real estate Salesperson or Broker in this state with or without a New Mexico real estate license.

[16.61.36.6 NMAC - Rp, 16 NMAC  
61.36.6, 1-1-2002]

**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 Salesperson or Broker 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 and Regulations. The Commission may also act on a complaint made by a member of the Commission, a member of the public, or another real estate Licensee. 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]

**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 them, 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 and Regulations, 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 licensee does not bind the Commission to dismiss the complaint.

[16.61.36.9 NMAC - Rp, 16 NMAC

61.36.9, 1-1-2002]

**HISTORY OF 16.61.36 NMAC:****Pre-NMAC History:**

The material in this Part was derived from that previously filed with the State Records Center & Archives under: Real Estate License Law Manual, filed 10-2-73; Rule No. 18 Penalties, filed 6-15-79; REC 70-17 Penalties, filed 10-6-81; REC 71-18 Penalties, filed 11-29-82; Rule No. 17 Penalties, filed 12-18-87; NMREC Rule 17 Investigation/Penalties, filed 10-3-94.

**History of Repealed Material:**

16 NMAC 61.36, Investigations, filed 12-10-99 repealed effective 1-1-2002.

**Other History:**

16 NMAC 61.36, Investigations, filed 12-10-99 replaced by 16.61.36 NMAC, Complaints and Investigations, effective 1-1-2002.

## NEW MEXICO REAL ESTATE COMMISSION

### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BRO- KERS AND SALESPERSONS PART 5 ERRORS AND OMISSIONS INSURANCE

**16.61.5.1 ISSUING AGENCY:** New Mexico Real Estate Commission.  
[16.61.5.1 NMAC - N, 1-1-2002]

**16.61.5.2 SCOPE:** The provisions in Part 5 of Chapter 61 apply to all applicants for and holders of active New Mexico real estate Salespersons and Broker's licenses.  
[16.61.5.2 NMAC - N, 1-1-2002]

**16.61.5.3 STATUTORY AUTHORITY:**  
Part 5 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.2.  
[16.61.5.3 NMAC - N, 1-1-2002]

**16.61.5.4 DURATION:** Permanent.  
[16.61.5.4 NMAC - N, 1-1-2002]

**16.61.5.5 EFFECTIVE DATE:** 1-1-2002, unless a later date is cited at the end of a Section.  
[16.61.5.5 NMAC - N, 1-1-2002]

**16.61.5.6 OBJECTIVE:** The objective of Part 5 of Chapter 61 is to set forth the Errors and Omissions Insurance coverage requirements for all applicants for and holders of active New Mexico real estate Salespersons and Brokers licenses.

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

**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 real estate Salesperson and 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 Salespersons and Salesperson applicants and to all 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]

**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 \$150.

C. That the coverage cannot be cancelled by the insurance carrier except for non-payment of the premium or in the event a licensee 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 licensees 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 licensee's use of lock boxes.

J. The ability of a licensee, 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 licensee 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 licensee 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]

**16.61.5.10 EQUIVALENT ERRORS AND OMISSIONS INSURANCE POLICIES:** Salespersons or Salesperson applicants and Broker or 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 Salesperson or Salesperson applicant or 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 licensee becomes inactive or has their license 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 licensee's use of lock boxes.

K. Salespersons or Salesperson applicants or 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]

**16.61.5.11 LICENSEE COMPLIANCE:** Applicants for licensure, transfer, and renewal shall certify compliance with this rule in a manner prescribed by the Commission. The license of any active Salesperson or Broker who so certifies and fails to obtain errors and omissions coverage or to provide proof of continuous coverage, either through the group carrier or directly to the Commission, shall be placed on inactive status:

A. Immediately, if certification of current insurance coverage is not provided to the Commission; or

B. Immediately upon the expiration of any current insurance when certification of continuous coverage is not provided.

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

**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 Salespersons or Brokers licenses a group policy of insurance under the terms and conditions described in Part 5.

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

**HISTORY of 16.61.5 NMAC:**  
[RESERVED]

## NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.1.1 NMAC, 16.61.1.2 NMAC, 16.61.1.5 NMAC, and 16.61.1.7 NMAC of 16.61.1 NMAC, General Provisions.

**16.61.1.1 ISSUING AGENCY:** New Mexico Real Estate Commission, ~~1650 University N.E., Suite 490, Albuquerque, New Mexico 87102, (505) 841-9120~~. [1-1-2000; 16.61.1.1 NMAC - Rn & A, 16 NMAC 61.1.1, 1-1-2002]

**16.61.1.2 SCOPE:** The provisions in Part 1 [of Chapter 61] apply to all parts of Title 16, Chapter 61 and provide relevant information to Licensees, applicants, other agencies, professional associations, and any member of the general public affected by or interested in Chapter 61 of Title 16. [1-1-2000; 16.61.1.2 NMAC - Rn & A, 16 NMAC 61.1.2, 1-1-2002]

**16.61.1.5 EFFECTIVE DATE:** 1-1-2000, unless a later date is cited at the end of a Section [or Paragraph]. [1-1-2000; 16.61.1.5 NMAC - Rn & A, 16 NMAC 16.61.1.5, 1-1-2002]

### 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, solely by means of an express written Agency agreement, to act as a fiduciary for a Person and to provide real estate services subject to jurisdiction of the Commission; in the case of an Associate Broker or Salesperson, the Person who has been authorized to act by their Qualifying Broker or Broker in Charge.

C. Approved Education Course: A continuing education course approved by the Real Estate Commission dealing with selling, leasing, or managing residential, commercial and industrial prop-

erty, as well as courses in basic real estate law and practice.

D. Approved Training Course: All other continuing education courses approved by the Commission with the exception of Approved Education Courses and the Mandatory Course.

E. Associate Broker: A Licensee holding a broker's license who is associated with a Qualifying Broker, and is deemed to be acting in the capacity of a Salesperson.

F. Basic Duties: Those minimum duties required of all Licensees regardless of any contractual or non-contractual Brokerage Relationship.

G. Broker: Any person holding a valid New Mexico real estate broker's license.

H. Brokerage: A licensed Qualifying Broker, the licensed real estate business represented by the Qualifying Broker and its affiliated Licensees.

I. 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.

J. Broker in Charge: A Broker designated by the Qualifying Broker to be temporarily responsible for real estate related activity within the office during the absence of the Qualifying Broker.

K. Client: A Consumer either in an Agency or Nonagency relationship who has entered into an express written agreement with a Brokerage for real estate services subject to the jurisdiction of the Commission.

L. Consumer: Prospective sellers and buyers, lessors and lessees, landlords and tenants.

M. 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.

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 Consumer who uses real estate services without entering into an express written agreement with a Brokerage subject to the jurisdiction of the Commission.

P. Designated Agency: A fiduciary relationship chosen by the Qualifying Broker, created solely by an express written Agency agreement between a Person and a Brokerage, authorizing the Brokerage to act as Agent for that Person

through the designated Licensee. The Designated Agency exists only between the Designated Agent and the Person.

Q. Designated Agent: That Licensee designated by the Qualifying Broker, to the exclusion of others in the Brokerage, to be the Agent of the Person who has entered into an express written Agency with the Brokerage.

R. Dual Agency: A Brokerage Relationship created by a written modification of existing Exclusive Agency agreements providing real estate related services by express written agreement between the Qualifying Broker and both Parties to the Transaction resulting in facilitation.

S. Dual Agent: A Licensee in a Dual Agency relationship working as a Facilitator for both a buyer Client and a seller Client in a single transaction.

T. Errors and Omissions Insurance: A type of professional liability insurance that provides insurance coverage to holders of active New Mexico real estate Salespersons and 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.

[F.] U. Exclusive Agency: An Agency relationship created between a Person and a Brokerage only by express written Agency agreement providing real estate related services, such as Agency for buyer or seller, Designated Agency or Subagency.

V. Facilitator: The role of a licensee in a Dual Agency relationship whereby the existing Agency relationships with a seller Client and a buyer Client are modified so that the Licensee impartially facilitates the transaction.

W. Foreign Broker: Any Broker licensed by any jurisdiction other than New Mexico. May also be a third party company, corporation, referral, or relocation company in real estate.

X. Inactive License: A license that has been placed with the Commission for storage.

Y. In House Transaction: A transaction that occurs under the supervision of one Qualifying Broker.

Z. Licensee: Any Person holding a New Mexico real estate license.

AA. Land Title Trust Account: A pooled interest-bearing account subject to the Land Title Trust Fund Act.

BB. Mandatory Course: The eight (8) credit hour course the Commission requires Licensees to take during each license renewal cycle.

CC. Nonagent: A Brokerage and its Licensees providing real estate serv-

ices to either Clients by means of an express written agreement that does not provide for fiduciary duties, or to Customers without an express written agreement.

DD. Party to the Transaction: A Client or Customer or any other Person who utilizes real estate related services subject to jurisdiction of the Commission, but shall not include any Person who acquires an interest as security for an obligation.

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

FF. Principal: Any person who authorizes or employs another to do certain acts on their behalf.

GG. ~~[Property Management Trust Account: A Trust Account containing money of others derived from the management of leased or rental properties.]~~ Property Management: Includes the showing, renting and leasing of property, the collection of all funds, 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 sale and authorized by the owner, shall not be considered Property Management.

HH. ~~[Property Manager: A Licensee (with the exception of those mentioned in Section 61.29-2(D), NMSA 1978) who, for a fee, salary, commission or other valuable consideration, is engaged in managing a specific property for others.]~~ Property Management Trust Account: A Trust Account containing money of others derived from the management of leased or rental properties.

II. ~~[Property Management: Includes the showing, renting and leasing of property, the collection of all funds, 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 sale and authorized by the owner, shall not be considered Property Management.]~~ Property Manager: A Licensee (with the exception of those mentioned in Section 61.29-2(D), NMSA 1978) who, for a fee, salary, commission or other valuable consideration, is engaged in managing a specific property for others.

JJ. Qualifying Broker: A Broker who has qualified an individual proprietorship, corporation, partnership or association to do business as a Brokerage in the State of New Mexico.

KK. Referral: Any communication of the identity of a potential buyer/tenant or seller/lessor of a particular parcel of real property available for sale, lease, or exchange.

LL. Responsible Person: The Qualifying Broker, Associate Broker, or Salesperson for whom an Unlicensed Assistant works. If an Unlicensed Assistant works for more than one Licensee, each Licensee for whom the Unlicensed Assistant works is a Responsible Person. Each Responsible Person will be subject to the provisions of Section 61-29-12G NMSA 1978, which provides that a license may be refused, suspended or revoked if the Licensee is guilty of compensating, directly or indirectly any Person for performing any of the acts regulated by Chapter 61, Article 29, NMSA 1978.

MM. Salesperson: A Licensee holding a Salesperson's license who is associated with a Qualifying Broker.

NN. Scope of Authority: The authority to act on behalf of or in the place of a Principal with specific parameters governing the Licensee's authority to act.

OO. Short-Term Rental: The rental of real property for a period of less than thirty (30) days.

PP. Special Trust Account: A Trust Account bearing interest payable to a named Party to the Transaction.

QQ. Subagent: An Agent of the Agent, authorized to act for the Agent in performing functions undertaken by the Agent for his Principal.

RR. Substantive Contact: That point in any communication between a Licensee and a Consumer where information regarding the Consumer's finances or other confidential information is revealed or conveyed.

SS. Transaction: All Brokerage Relationships, sales, leases, rentals, options and exchanges subject to the jurisdiction of the Commission.

TT. 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.

UU. Unlicensed Assistant: A Person who:

(1) Does not hold a New Mexico Real Estate license;

(2) Works under the supervision of a Qualifying Broker, Associate Broker or Salesperson;

(3) Performs only those routine real estate clerical, secretarial, administrative or bookkeeping activities, which do not require a New Mexico Real Estate License under Section 61-29-2 NMSA 1978.

VV. Unlicensed Employee: A regular employee who performs services subject to the will and control of an employer. In determining whether a Person is an employee, the Commission shall consider the following indicia:

(1) Is the employer required to withhold income tax from the Person's wages, salary or commission;

(2) Is FICA tax required to be paid by the employer;

(3) Is the Person covered by Workers' Compensation Insurance;

(4) Is the employer required to make unemployment insurance contributions on the Person; and,

(5) Does a Person's employer consider the Person to be an employee.

(6) If all the indicia mentioned are present, the Commission will presume that the Person is an employee. However, a Person may be an employee even if one or more of the above items are not present.

[1-1-2000, A, 2-14-2000; 16.61.1.7 NMAC - Rn & A, 16 NMAC 61.1.7, 1-1-2002]

## NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.6.1 NMAC, 16.61.6.5 NMAC, and 16.61.6.8 NMAC of 16.61.6 NMAC, Corporate, Partnership, or Association Licensure.

**16.61.6.1 ISSUING AGENCY:** New Mexico Real Estate Commission[ ~~1650 University N.E., Suite 490, Albuquerque, New Mexico 87102~~].

[8-15-97; 16.61.6.1 NMAC - Rn & A, 16 NMAC 61.6.1, 1-1-2002]

**16.61.6.5 EFFECTIVE DATE:** 8-15-97, unless a later date is cited at the end of a Section [or Paragraph].

[8-15-97; 16.61.6.5 NMAC - Rn & A, 16 NMAC 61.6.5, 1-1-2002]

**16.61.6.8 [POLICIES] REQUIREMENTS:** Upon compliance with all requirements of this Act by a partnership, association or corporation, as well as by the Qualifying Broker or Brokers, the Commission shall issue a Broker's license to the Qualifying Broker or Brokers. Such license shall bear the name of the Broker who has qualified and the trade name of the partnership, association or corporation as it is registered with the Commission.

Thereupon, the Qualifying Broker shall, without payment of any other fee, be entitled to perform all the acts of a real estate

Licensee. The license shall entitle the Qualifying Broker to act as an officer or agent of the partnership, association or corporation and not on their own behalf. If the Qualifying Broker is refused a license by the Commission (or the person ceases to be connected with the partnership, association or corporation), the partnership, association or corporation shall have the right to designate another Qualifying Broker who shall make application and qualify as in the first instance. Prior to acting as a real estate Broker or Salesperson, any member or officer of the partnership, corporation 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 & A, 16 NMAC 61.6.8, 1-1-2002]

**NEW MEXICO REAL ESTATE COMMISSION**

This is an amendment to 16.61.8.1 NMAC and 16.61.8.5 NMAC of 16.61.8 NMAC, License Transfer.

**16.61.8.1 ISSUING AGENCY:** New Mexico Real Estate Commission[ ~~1650 University N.E., Suite 490, Albuquerque, New Mexico 87102~~].  
[8-15-97; 16.61.8.1 NMAC - Rn & A, 16 NMAC 61.8.1, 1-1-2002]

**16.61.8.5 EFFECTIVE DATE:** 8-15-97, unless a later date is cited at the end of a Section [~~or Paragraph~~].  
[8-15-97; 16.61.8.5 NMAC - Rn & A, 16 NMAC 61.8.5, 1-1-2002]

**NEW MEXICO REAL ESTATE COMMISSION**

16.61.9 NMAC, Part Name, was changed from License Surrender/Inactivation to License Inactivation; 16.61.9.1 NMAC, 16.61.9.5 NMAC and 16.61.9.8 NMAC of 16.61.9 NMAC, are amended.

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS AND SALESPEOPLE PART 9 LICENSE [~~SURRENDER~~] INACTIVATION**

**16.61.9.1 ISSUING AGENCY:** New Mexico Real Estate Commission[ ~~1650 University N.E., Suite 490, Albuquerque, New Mexico 87102~~].  
[8-15-97; 16.61.9.1 NMAC - Rn & A, 16 NMAC 61.9.1, 1-1-2002]

**16.61.9.5 EFFECTIVE DATE:** 8-15-97,

unless a later date is cited at the end of a Section [~~or Paragraph~~].  
[8-15-97; 16.61.9.5 NMAC - Rn & A, 16 NMAC 61.9.5, 1-1-2002]

**16.61.9.8 REQUIREMENTS:** Whenever a licensee is no longer transacting business at the office designated on that licensee's license, or at a temporary or field office associated with that office, the Qualifying Broker, or his properly designated "Broker in Charge", shall immediately return the license to the Commission. The license shall be inactivated and all real estate activity on the part of the licensee shall cease. The license of any active Broker or Salesperson who fails to obtain errors and omissions insurance coverage as provided by Commission rule or to provide proof of continuous coverage, either through the group carrier or in the case of equivalent coverage directly to the Commission, shall be placed on inactive status until documentation of such coverage is received in the Commission office.

A. When a Licensee 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 Licensee 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 or upon receipt of written notification to the Commission by the Qualifying Broker or Broker in Charge of termination, whichever is earlier.

D. The voluntary inactivation of a license will not prohibit the Commission from revoking or suspending the rights to existing or future licensing as provided in Section 61-29-1 through 61-29-29, NMSA, 1978.

E. An Inactive Licensee must comply with Commission rules and regulations including but not limited to those pertaining to disclosure that they are a real estate Licensee, payment of renewal and transfer fees, and completion of Continuing Education.

F. If a license has been placed in inactive status and is not renewed

at the time of next renewal, that license may not be subsequently renewed except as provided in Section 61-29-11, C, NMSA, 1978.  
[8-15-97; 16.61.9.8 NMAC - Rn & A, 16 NMAC 61.9.8, 1-1-2002]

**NEW MEXICO REAL ESTATE COMMISSION**

This is an amendment to 16.61.11.1 NMAC, 16.61.11.5 NMAC, and 16.61.11.8 NMAC of 16.61.11 NMAC, License Renewal.

**16.61.11.1 ISSUING AGENCY:** New Mexico Real Estate Commission[ ~~1650 University N.E., Suite 490, Albuquerque, New Mexico~~].  
[8-15-97; 16.61.11.1 NMAC - Rn & A, 16 NMAC 61.11.1, 1-1-2002]

**16.61.11.5 EFFECTIVE DATE:** 8-15-97, unless a later date is cited at the end of a Section [~~or Paragraph~~].  
[8-15-97; 16.61.11.5 NMAC - Rn & A, 16 NMAC 61.11.5, 1-1-2002]

**16.61.11.8 REQUIREMENTS:**  
[~~A~~] Every license shall expire every three years on the last day of the month following the Licensee's birth month, and shall be renewed on or before that date. Renewal of a license is the sole responsibility of the Licensee. Application for renewal shall be on the renewal form prescribed by the Commission. Renewal forms will be mailed to Licensees at the last mailing address on file at the Commission. The Commission assumes no responsibility for renewal applications not received by the Licensee for any reason. It shall be the Licensee's responsibility to make a request for a renewal form in the event the form has not been received by the Licensee thirty (30) days prior to the renewal deadline. Any active Broker or Salesperson who fails to obtain errors and omissions insurance coverage as provided by Commission rule or to provide proof of continuous coverage, either through the group carrier or in the case of independent coverage directly to the Commission, shall not be eligible to renew their license and the license will be placed on inactive status until documentation of such insurance coverage is received in the Commission office.

- [~~B~~] ~~REPEALED~~
- [~~C~~] ~~REPEALED~~
- [~~D~~] ~~REPEALED~~
- [~~E~~] ~~REPEALED~~

[ 8-15-97; A, 1-1-2000; 16.61.11.8 NMAC - Rn & A, 16 NMAC 61.11.8, 1-1-2002]

## NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.13.1 NMAC, 16.61.13.5 NMAC, and 16.61.13.8 NMAC of 16.61.13 NMAC, Continuing Education: Licensee Requirements.

**16.61.13.1 ISSUING AGENCY:** New Mexico Real Estate Commission[ ; ~~1650 University N.E., Suite 490, Albuquerque, NM 87102~~]. [1-1-2000; 16.61.13.1 NMAC - Rn & A, 16 NMAC 61.13.1, 1-1-2002]

**16.61.13.5 EFFECTIVE DATE:** 1-1-2000, unless a later date is cited at the end of a Section ~~or paragraph~~. [1-1-2000; 16.61.13.5 NMAC - Rn & A, 16 NMAC 61.13.5, 1-1-2002]

**16.61.13.8 [CONTINUING EDUCATION] REQUIREMENTS:** The only exception to this Part is that specified in Section 61-29-4.1, NMSA 1978.

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

B. All Licensees shall successfully complete the eight (8) credit hour Mandatory Course during each licensing cycle.

C. Of the remaining twenty-two (22) credit hours, ten (10) credit hours may be credited toward the continuing education requirement from Approved Training Courses. At least twelve (12) credit hours must be taken from Approved Education Courses; however, all twenty-two (22) credit hours may be taken from Approved Education Courses.

D. Commission approved pre-licensing courses may count for up to ten (10) credit hours toward continuing education.

E. No Commission approved continuing education course will be granted more than ten (10) credit hours of continuing education credit.

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

G. Licensees may receive ~~[two (2)]~~ **four (4)** Approved Education Course credit hours during each licensing cycle for attending Commission meetings, rules hearings, and disciplinary hearings.

H. Approved instructors may apply 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]

## NEW MEXICO REAL ESTATE COMMISSION

16.61.15 NMAC, Part Name, was changed from Continuing Education: Approval of Sponsors; Courses; Instructors to Continuing Education: Approval of Sponsors, Courses, and Instructors; 16.61.15.1 NMAC, 16.61.15.5 NMAC, and 16.61.15.9 NMAC of 16.61.15 NMAC, are amended.

### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BRO- KERS AND SALESPERSONS PART 15 CONTINUING EDUCATION: APPROVAL OF SPONSORS[;], COURSES[;], AND INSTRUCTORS

**16.61.15.1 ISSUING AGENCY:** New Mexico Real Estate Commission[ ; ~~1650 University N.E., Suite 490, Albuquerque, New Mexico 87102~~]. [1-1-2000; 16.61.15.1 NMAC - Rn & A, 16 NMAC 61.15.1, 1-1-2002]

**16.61.15.5 EFFECTIVE DATE:** 1-1-2000, unless a later date is cited at the end of a Section ~~or paragraph~~. [1-1-2000; 16.61.15.5 NMAC - Rn & A, 16 NMAC 61.15.5, 1-1-2002]

### 16.61.15.9 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 an application for Commission approval.

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 Regulations and education policies.

(2) 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.

(3) Advertise at all times in a manner free from misrepresentation, decep-

tion or fraud.

(4) Prominently display the current Certificate of Sponsorship in the main office of the sponsor as registered with the Commission.

(5) In the event a sponsor ceases operations while students are enrolled who have not completed their program of study, submit 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.

(6) Maintain current, complete, and accurate student records and instructor critiques or summaries, which shall be accessible at all times to the Commission or its authorized representatives. 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.

(7) Conduct all courses in accordance with course content requirements approved by the Commission.

(8) Certify no student as successfully completing a pre-licensing real estate course unless the student has attended at least 75% of the classroom instruction and has passed the course.

(9) Certify no Licensee as successfully completing the Mandatory Course, or other approved continuing education course, unless they have attended at least 90% of the classroom instruction.

(10) Advise the Commission of change of address and telephone number.

(11) Reapply for sponsorship in the event of change of majority ownership.

(12) Notify the Commission in writing of change of directorship.

(13) Renew sponsorship approval every three (3) years.

(14) Limit enrollment in any approved course to seventy-five (75) students with the exception of the Mandatory Course where attendance shall be limited to fifty (50) students. Requests for exceptions to enrollment limits must be made in writing to the Commission ~~[at least sixty (60) days prior to the offering of the course]~~.

E. Failure to comply with this rule may result in the loss of sponsor approval.

[1-1-2000, A, 2-14-2000; 16.61.15.9 NMAC - Rn & A, 16 NMAC 61.15.9, 1-1-2002]

## NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.17.1 NMAC and 16.61.17.5 NMAC of 16.61.17 NMAC, Associate Broker/Salesperson: Affiliation

and Responsibilities.

**16.61.17.1 ISSUING AGENCY:**  
New Mexico Real Estate Commission[ ; ~~1650 University N.E., Suite 490, Albuquerque, New Mexico 87102~~].  
[1-1-2000; 16.61.17.1 NMAC - Rn & A, 16 NMAC 61.17.1, 1-1-2002]

**16.61.17.5 EFFECTIVE DATE:**  
1-1-2000, unless a later date is cited at the end of a Section [~~or paragraph~~].  
[1-1-2000; 16.61.17.5 NMAC - Rn & A, 16 NMAC 61.17.5, 1-1-2002]

**NEW MEXICO REAL ESTATE COMMISSION**

16.61.19 NMAC, Part Name, was changed from Brokerage Relationships and Disclosures: Brokerage to Brokerage Relationships and Disclosures; 16.61.19.1 NMAC, 16.61.19.5 NMAC, 16.61.19.9 NMAC, and 16.61.19.11 NMAC of 16.61.19 NMAC, are amended.

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 61 REAL ESTATE BROKERS AND SALESPERSONS PART 19BROKERAGE RELATIONSHIPS AND DISCLOSURES[~~-BROKERAGE~~]**

**16.61.19.1 ISSUING AGENCY:**  
New Mexico Real Estate Commission[ ; ~~1650 University N.E., Suite 490, Albuquerque, New Mexico 87102~~].  
[1-1-2000; 16.61.19.1 NMAC - Rn & A, 16 NMAC 61.19.1, 1-1-2002]

**16.61.19.5 EFFECTIVE DATE:**  
1-1-2000, unless a later date is cited at the end of a Section [~~or paragraph~~].  
[1-1-2000; 16.61.19.5 NMAC - Rn & A, 16 NMAC 61.19.5, 1-1-2002]

**16.61.19.9 B R O K E R A G E RELATIONSHIP [A] DISCLOSURE:**

A. A Licensee shall disclose in writing to Consumers the existence of all Brokerage Relationships. A Licensee in a residential Property Management transaction shall have complied with this disclosure requirement upon satisfying the disclosure requirements of the New Mexico Owner Resident Relations Act, 47-8-1 through 47-8-51 NMSA 1978.

B. This disclosure shall be in writing and shall be made at the time of first Substantive Contact with a Consumer. Disclosure shall include, but is not limited to:

- (1) Notification that an Agency

relationship is created only with an express written Agency agreement;

- (2) The Licensee's Basic Duties;
- (3) Notification that in an Agency Relationship, a Licensee owes fiduciary duties in addition to Basic Duties;

(4) Notice of Brokerage Relationships offered by the Brokerage;

(5) Notice of the right of a Qualifying Broker to designate one or more Licensees supervised by that Qualifying Broker as Designated Agent(s) for the seller or Designated Agent(s) for the buyer, known as Designated Agency;

(6) Notice that if Dual Agency occurs, a written Dual Agency agreement must be signed by all Parties to the Transaction prior to writing or presenting offers.

C. Basic Duties: A Licensee owes the following:

(1) Disclosure of any adverse material facts actually known by the Licensee about the property or the Transaction; adverse material facts do not include data from a sex offender registry or the existence of group homes;

(2) Disclosure of any adverse material facts actually known by the Licensee pertaining to the financial ability of the Parties to the Transaction to complete the Transaction;

(3) Disclosure of any material interest or relationship of a business, personal, or family nature;

(4) Presentation of all offers in a timely manner;

(5) Performance of any oral or written agreement(s) made with the Parties to the Transaction;

(6) Accounting promptly for all monies or properties received;

(7) Assistance to all parties in accordance with local, state, and federal fair housing and anti-discrimination laws;

(8) Assistance regarding the Transaction including suggestions to obtain expert advice concerning matters beyond the Licensee's expertise;

(9) Assistance to the Parties to the Transaction in complying with the terms and conditions of the contract and with the closing of the Transaction; and,

(10) 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.

[1-1-2000, A, 2-14-2000; 16.61.19.9 NMAC - Rn & A, 16 NMAC 61.19.9, 1-1-2002]

**16.61.19.11 DUAL AGENCY RELATIONSHIP [A] DISCLOSURE:**

A. Dual Agency occurs

when:

(1) A Licensee is Agent for both a seller Client and a buyer Client in the same Transaction;

(2) A Licensee 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 Licensees in an Agency relationship supervised by the same Qualifying Broker, and the Qualifying Broker does not choose the Designated Agency option, both the Licensees 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; and,

D. Information obtained by a Licensee 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 regulations or permitted by the Client who originally disclosed the confidential information.

[1-1-2000; Rn, 16.61.19.12, 2-14-2000; 16.61.19.11 NMAC - Rn & A, 16 NMAC 61.19.11, 1-1-2002]

**NEW MEXICO REAL ESTATE COMMISSION**

This is an amendment to 16.61.21.1 NMAC, 16.61.21.5 NMAC, 16.61.21.9 NMAC, and 16.61.21.11 NMAC of 16.61.21 NMAC, Unlicensed Assistants.

**16.61.21.1 ISSUING AGENCY:**  
New Mexico Real Estate Commission[ ; ~~1650 University N.E., Suite 490, Albuquerque, New Mexico 87102~~].  
[8-15-97; 16.61.21.1 NMAC - Rn & A, 16 NMAC 61.21.1, 1-1-2002]

**16.61.21.5 EFFECTIVE DATE:**  
8-15-97, unless a later date is cited at the end of a Section [~~or paragraph~~].  
[8-15-97; 16.61.21.5 NMAC - Rn & A, 16 NMAC 61.21.5, 1-1-2002]

**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. [~~Preparation~~ of]Preparing legal documents such as list-

ing and sales contracts.

B. ~~[Interpretations of]~~ 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 a Licensee 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 presentation. [8-15-97; 16.61.21.9 NMAC - Rn & A, 16 NMAC 61.21.9, 1-1-2002]

**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]

## NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.23.1 NMAC, 16.61.23.5 NMAC, 16.61.23.8 NMAC, and 16.61.23.9 NMAC of 16.61.23 NMAC, Trust Accounts.

**16.61.23.1 ISSUING AGENCY:** New Mexico Real Estate Commission[ ; ~~1650 University N.E., Suite 490, Albuquerque, New Mexico 87102.~~] [8-15-97; 16.61.23.1 NMAC - Rn & A, 16 NMAC 61.23.1, 1-1-2002]

**16.61.23.5 EFFECTIVE DATE:** 8-15-97, unless a later date is cited at the

end of a Section ~~or paragraph~~. [8-15-97; 16.61.23.5 NMAC - Rn & A, 16 NMAC 61.23.5, 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 he 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 and deposit slips 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) RESERVED.}~~

~~{(3)}~~(2) Special Trust Account[s]. 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.

~~{(4)}~~(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]

**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 Broker. 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. In a multi-office company, Trust Account records may be maintained and retained at the main/corporate office, provided that the Commission is notified in writing of the Qualifying Broker who is responsible for all Trust Account records, and duplicate Transaction files. All such records and funds shall be subject to inspection by the Commission or any duly authorized representative thereof at the designated New Mexico office location of the Qualifying Broker 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. All records shall be under the direct control and supervision of the Qualifying Broker.

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 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 bank and office records on all Trust Accounts for a minimum period 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 his 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 the bank 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 [~~Rule~~].)

(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, then 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]

## NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.24.1 NMAC, 16.61.24.5 NMAC, 16.61.24.8 NMAC, 16.61.24.9 NMAC, 16.61.24.10 NMAC, 16.61.24.12 NMAC and 16.61.24.16 NMAC of 16.61.24 NMAC, Property Management.

**16.61.24.1 ISSUING AGENCY:**  
New Mexico Real Estate Commission[ ; ~~1650 University N.E., Suite 490, Albuquerque, New Mexico 87102~~].

[8-15-97; 16.61.24.1 NMAC - Rn & A, 16 NMAC 61.24.1, 1-1-2002]

**16.61.24.5 EFFECTIVE DATE:**  
8-15-97, unless a later date is cited at the end of a Section [~~or paragraph~~].

[8-15-97; 16.61.24.5 NMAC - Rn & A, 16 NMAC 61.24.5, 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 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.

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]

**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 [~~in accordance with Section 8.1 of this Part~~].

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 lease-

ing 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]

#### **16.61.24.12 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 termination of any property management agreement, a final accounting of that Property Management[~~ing~~] Trust Account shall be delivered or mailed to the property owner within forty-five (45) days of termination. [8-15-97, A, 2-14-2000; 16.61.24.12 NMAC - Rn & A, 16 NMAC 61.24.12, 1-1-2002]

**16.61.24.16 SHORT TERM [PROPERTY MANAGERS: PAYMENT OF FEES] 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 as to the manner in which payments made by credit card are to be deposited and disbursed. This agreement may include 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.

C. In the case of Short-Term Rentals only, the Qualifying Broker may deposit nontrust funds into the Trust Account for the purpose of paying fees charged for credit card transactions.

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

### **NEW MEXICO REAL ESTATE COMMISSION**

This is an amendment to 16.61.25.1 NMAC, 16.61.25.5 NMAC, 16.61.25.7 NMAC, and 16.61.25.13 NMAC of 16.61.25 NMAC, Time Share.

**16.61.25.1 ISSUING AGENCY:** New Mexico Real Estate Commission[ ; ~~1650 University N.E., Suite 490, Albuquerque, New Mexico 87102~~].

[8-15-97; 16.61.25.1 NMAC - Rn & A, 16 NMAC 61.25.1, 1-1-2002]

**16.61.25.5 EFFECTIVE DATE:** 8-15-97, unless a later date is cited at the end of a Section [or paragraph].

[8-15-97; 16.61.25.5 NMAC - Rn & A, 16 NMAC 61.25.5, 1-1-2002]

**16.61.25.7 DEFINITIONS:**  
A. "Commission" means the New Mexico Real Estate Commission.

[A]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;

[B]C. "Exchange company" means any Person operating an exchange program;

[C]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;

[D]E. "Time Share Salesperson" means a Person, other than a person who has at least a fifteen (15) percent interest in the developer, who sells or offers to sell on behalf of a developer a time share to a purchaser; and

[8-15-97, A, 2-14-2000; 16.61.25.7 NMAC - Rn & A, 16 NMAC 61.25.7, 1-1-2002] [Refer to 16.61.1.7 NMAC]

**16.61.25.13 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 Broker or Salesperson 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 or Salesperson 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 or Salespersons must be through the Qualifying Broker of the time share project, and all commissions to such Associate Brokers and Salespersons 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 and Salespersons 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 any duly authorized representative thereof at the location of the registered time share project in New Mexico or at the location of the time share sales office in New Mexico.

[8-15-97, A, 2-14-2000; 16.61.25.13 NMAC - Rn & A, 16 NMAC 61.25.13, 1-1-2002]

### **NEW MEXICO REAL ESTATE COMMISSION**

This is an amendment to 16.61.27.1 NMAC, 16.61.27.5 NMAC, 16.61.27.8 NMAC, and 16.61.27.9 NMAC of 16.61.27 NMAC, Foreign Brokers.

**16.61.27.1 ISSUING AGENCY:** New Mexico Real Estate Commission[ ; ~~1650 University N.E., Suite 490, Albuquerque, New Mexico 87102~~].

[8-15-97; 16.61.27.1 NMAC - Rn & A, 16 NMAC 61.27.1, 1-1-2002]

**16.61.27.5 EFFECTIVE DATE:** 8-15-97, unless a later date is cited at the end of a Section [or paragraph].

[8-15-97; 16.61.27.5 NMAC - Rn & A, 16 NMAC 61.27.5, 1-1-2002]

~~[16.61.27.9]~~ **16.61.27.8 [COOPERATION] REQUIREMENTS:** When a



New Mexico Licensee cooperates with or makes a Referral to or receives a Referral from a Foreign Broker, for a fee, salary, commission or any other consideration, the following requirements shall be complied with by the New Mexico Brokerage:

A. A specific written co-brokerage or Referral agreement between the New Mexico Brokerage and the Foreign Broker shall be executed prior to the closing of any transaction,

B. All negotiations in New Mexico must be done through the New Mexico Brokerage, with the New Mexico Qualifying Broker assuming responsibility for all activities conducted relating to properties within the state of New Mexico.

C. All funds handled for others in transactions on New Mexico real property shall be placed by the New Mexico Qualifying Broker in a bank, savings and loan or title company authorized to do business in New Mexico.

[8-15-97, A, 1-1-2000; 16.61.27.8 NMAC - Rn & A, 16 NMAC 61.27.9, 1-1-2002]

~~[16.61.27.8]~~**16.61.27.9** **TRANSACTIONS IN OTHER STATES:** A New Mexico Licensee cooperating with a Foreign Broker on Transactions dealing with real property outside the State of New Mexico may be subject to the laws of the jurisdiction wherein the property is located. A New Mexico Licensee found guilty of violation of another jurisdiction's real estate licensing laws may be subject to action against the Licensee by the Commission. [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]

### NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.30.1 NMAC and 16.61.30.5 NMAC of 16.61.30 NMAC, Branch Office/Temporary Office.

**16.61.30.1 ISSUING AGENCY:** New Mexico Real Estate Commission[ ; ~~1650 University N.E., Suite 490, Albuquerque, New Mexico 87102~~]. [8-15-97; 16.61.30.1 NMAC - Rn & A, 16 NMAC 61.30.1, 1-1-2002]

**16.61.30.5 EFFECTIVE DATE:** 8-15-97, unless a later date is cited at the end of a Section [~~or paragraph~~]. [8-15-97; 16.61.30.5 NMAC - Rn & A, 16 NMAC 61.30.5, 1-1-2002]

### NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.31.1 NMAC and 16.61.31.5 NMAC of 16.61.31 NMAC, Signage.

**16.61.31.1 ISSUING AGENCY:** New Mexico Real Estate Commission[ ; ~~1650 University N.E., Suite 490, Albuquerque, New Mexico 87102~~]. [1-1-2000; 16.61.31.1 NMAC - Rn & A, 16 NMAC 61.31.1, 1-1-2002]

**16.61.31.5 EFFECTIVE DATE:** 1-1-2000, unless a later date is cited at the end of a Section [~~or paragraph~~]. [1-1-2000; 16.61.31.5 NMAC - Rn & A, 16 NMAC 61.31.5, 1-1-2002]

### NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.32.1 NMAC and 16.61.32.5 NMAC of 16.61.32 NMAC, Advertising/Disclosure.

**16.61.32.1 ISSUING AGENCY:** New Mexico Real Estate Commission[ ; ~~1650 University N.E., Suite 490, Albuquerque, New Mexico 87102~~]. [8-15-97; 16.61.32.1 NMAC - Rn & A, 16 NMAC 61.32.1, 1-1-2002]

**16.61.32.5 EFFECTIVE DATE:** 8-15-97, unless a later date is cited at the end of a Section [~~or paragraph~~]. [8-15-97; 16.61.32.5 NMAC - Rn & A, 16 NMAC 61.32.5, 1-1-2002]

### NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.35.1 NMAC, 16.61.35.5 NMAC, 16.61.35.8 NMAC, 16.61.35.9 NMAC, 16.61.35.11 NMAC, 16.61.35.12 NMAC, and 16.61.35.13 NMAC of 16.61.35 NMAC, Child Support Enforcement.

**16.61.35.1 ISSUING AGENCY:** New Mexico Real Estate Commission[ ; ~~1650 University N.E., Suite 490, Albuquerque, New Mexico 87102~~]. [8-15-97; 16.61.35.1 NMAC - Rn & A, 16 NMAC 61.35.1, 1-1-2002]

**16.61.35.5 EFFECTIVE DATE:** 8-15-97, unless a later date is cited at the end of a Section [~~or paragraph~~]. [8-15-97; 16.61.35.5 NMAC - Rn & A, 16 NMAC 61.35.5, 1-1-2002]

**16.61.35.8 DISCIPLINARY**

**ACTION:** If a license applicant or Licensee 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 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]

### 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 Licensees and license 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 license applicants and Licensees who are on the certified list and the action the Commission has taken in connection with such applicants and Licensees.

[8-15-97, A, 2-14-2000; 16.61.35.9 NMAC - Rn & A, 16 NMAC 61.35.9, 1-1-2002]

### 16.61.35.11 NOTICE OF CON-

**TEMPLATED ACTION:** Prior to taking any action specified in Section 8 of Part 35, the Commission shall serve upon the license applicant or Licensee a written notice stating that:

A. The Commission has grounds to take such action, and that the Commission shall take such action unless the Licensee or license 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 license applicant or Licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the license applicant or Licensee 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]

### 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 license applicant or Licensee 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]

**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]

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**2001**  
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