

NOTICE OF SPECIAL MEETING AND RULE HEARING

The New Mexico Real Estate Commission (NMREC) will hold a special meeting and public hearing on proposed amendments to the Real Estate Commission Rules on Tuesday, October 20, 2020, at 9 a.m. Interested parties may participate in the public hearing through live/streaming.

The Rule Hearing Agenda will be available on the NMREC website at least 10 days prior to the hearing date at: http://www.rld.state.nm.us/boards/Real_Estate_Commission_Members_and_Meetings.aspx. Those wishing to participate may do so virtually through live streaming, and may register in advance of the rule hearing by clicking on the following Zoom link:

When: Oct 20, 2020 09:00 AM Mountain Time (US and Canada)

Register in advance for this meeting:

<https://us02web.zoom.us/join/tZUscqopjwG9cVipl6j5yCdWwWbZ95WI4T>

After registering, registrants will receive a confirmation email containing information about joining the meeting. The Zoom link is sponsored by the Greater Albuquerque Association of Realtors (GAAR). For questions regarding live stream access, contact Nate Brooks at nbrooks@gaar.com or Gabe Baca at gabe@gaar.com, or by calling GAAR at (505) 842-1433.

Following the publication of this Notice of Rule Hearing in the New Mexico Register on September 15, 2020, the full text of the proposed rule changes are available on the New Mexico Real Estate Commission web site at: http://www.rld.state.nm.us/boards/Real_Estate_Commission_Members_and_Meetings.aspx, or you may contact Thomas P. Baca, NMREC Education Administrator, at thomas.baca@state.nm.us. Beginning on September 15, 2020, written comments on the proposed rules will be accepted by the Commission up to the commencement of the Rule Hearing on October 20, 2020 at 9:00 a.m. Written comments will be posted on the Commission's website listed above. Oral comments will be accepted during the rule hearing. Written comments should be provided by email to Thomas Baca, Education Administrator, at Thomas.baca@state.nm.us

The NMREC will be considering and receiving public comments on proposed amendments to the following rules recommended by the Commission acting as a Rules Task Force.

16.61.1.7 NMAC, GENERAL PROVISIONS: Definitions: The amendment would further add, define, expand and clarify the following 13 definitions:

(1) Agent at C. of 16.61.1.7 NMAC: This amendment adds language that differentiates between residential and commercial property management applications of when a broker is considered an "agent" with respect to clients and customers. **Purpose:** The purpose of the amendment is to clarify the differences between residential and commercial property management relationships to customers and clients.

(2) Approved education course at D. of 16.61.1.7 NMAC: The amendment eliminates the education category of courses offered. **Purpose:** The elimination of this definition allows for the creation of the non-core elective category of courses that is a combination of education and training courses that are non core elective courses.

(3) Approved training Course at E. of 16.61.1.7 NMAC: The amendment eliminates the training category of courses offered. **Purpose:** The elimination of this definition allows for the creation of the non-core elective category of courses that is a combination of education and training courses that are non-core elective courses.

(4) Core Elective Course at P. of 16.61.1.7 NMAC: The amendment clarifies the definition of core elective as having a focus on important topical subjects as key to the practice of real estate. **Purpose:** The amended definition allows for a clearer set of subject matter and topical parameters necessary in order to determine that a course is in this more important category.

(5) Custodial Trust Account at R. of 16.61.1.7 NMAC: This strikes the word “trust” in the definition leaving it titled Custodial Accounts. **Purpose:** The amended definition clarifies the qualifying broker’s custodial and controlling responsibility with respect to these accounts.

(6) Exclusive Agency at AA. Of 16.61.1.7 NMAC: This amendment adds clarifying language differentiating between applications of agency to commercial as opposed to residential property management situations. **Purpose:** The purpose of the amendment is to clarify applications of agency to the two modes of property management (i.e. commercial property management, and residential property management).

(7) In house transaction at HH. Of 16.61.1.7 NMAC: This amendment further clarifies that one brokerage may facilitate both sides of an individual transaction. **Purpose:** The purpose of this amendment is to clarify the meaning of a transaction handled by one brokerage.

(8) Military service member at JJ. Of 16.61.1.7 NMAC: This amendment adds dependent children into the definition of military service member. **Purpose:** The purpose is to bring the definition into conformity with HB30 in the 2020 Legislative session of the New Mexico Legislature which amended the definition to include dependents of the service member.

(9) Non-core elective course. This is a new definition. The amendment combines courses categorized as training and education that are not core electives or ethics courses. **Purpose:** This amendment allows for a removal of the 10 CEU cap on training courses especially those training courses that are a part of specialty certification and designation and combines valuable courses that are not considered core electives.

(10) Property management at QQ of 16.61.1.7 NMAC: The amendment expands the definition to include activities of owner associations managed by licensed real estate brokers. **Purpose:** The purpose of the amendment is to clarify that the definition of property management as defined in Paragraph QQ of 16.61.1 NMAC includes owner associations managed by licensed brokers.

(11) Property manager at SS of 16.61.1.7 NMAC. The amendment would expand the definition of property manager to include brokers who manage homeowner associations and further define the difference between residential property managers and commercial property managers. **Purpose:** The purpose of the amendment is to clarify and differentiate the duties owed by residential property managers and commercial property managers.

(12) Residential real estate at XX. Of 16.61.1.7 NMAC: This is a new definition defines the parameters for considering properties based upon zoning by authorities primarily for residential use as opposed to multifamily and commercial properties. **Purpose:** This new definition clarifies what is considered residential within a zoning context.

(13) Transaction coordinator at CCC. Of 16.61.1.7 NMAC: This definition clarifies that transaction coordinators may be subject to licensure if they engage in activities requiring such by law. **Purpose:** This amendment emphasizes that licensure may be required if transaction coordinators engage in the specific activities defined by law as requiring licensure.

16.61.3 NMAC REAL ESTATE BROKER’S LICENSE: EXAMINATION AND LICENSING

APPLICATION REQUIREMENTS: Sections 9 through 12, New legislatively mandated considerations for military service members and veterans. The amendment adds new considerations toward licensure for those considered military service members, their spouses, their direct dependents and Veterans. A new consideration for this category of applicants is an exemption from the initial license fee of \$270 for their first term of licensure. The commission must issue a license provided the candidate in this category meets all precensure requirements within 60 days.

Purpose: Recent changes in New Mexico law require additional license benefits and considerations for those who meet the new definition of military service member to include spouses and dependents, and to veterans. This amendment incorporates those legislative changes and considerations into the rule.

16.61.3 NMAC REAL ESTATE BROKER'S LICENSE: EXAMINATION AND LICENSING

APPLICATION REQUIREMENTS: Section 13 Qualifying broker refresher course: This amendment would award six continuing education credits for taking the qualifying broker refresher course. The amendment incorporates the six hours earned as a part of the cumulative continuing education credits required for qualifying brokers to renew their license, and increases the 36 qualifying broker cumulative continuing education hours to 42 hours per cycle.

Purpose: The purpose of this amendment is to acknowledge the continuing education value of the qualifying broker refresher course. The cumulative education requirement for qualifying brokers that includes this course is 42 hours and not 36 as the course was taken above and beyond the current stated 36 hour cumulative renewal requirement. The awarding of continuing education credits makes it possible for this course to be taken by associate brokers as part of their 36 hour continuing education requirements.

16.61.7 NMAC FINGERPRINTING AND ARREST RECORD CHECKS: Section 8. Requirements. The amendment strikes the requirement for fingerprinting for renewal applications based upon a change in New Mexico law that went into effect on July 1, 2020. Fingerprinting will continue to be required for new applications. The amendment clarifies that background checks will continue to be done for all applications.

Purpose: The amendment incorporates the new legislative mandate exempting fingerprinting for renewal application submittals.

16.61.11 NMAC LICENSE EXPIRATION AND RENEWAL: Section 8. Requirements. The amendment codifies Section 61-29-8 NMSA 1978, into the rules and incorporates statutory language concerning certain penalty fee exemptions in place but that have not been mirrored in the rule. Based upon the statutory provision, the amendment to the rule would allow an exemption from paying a late renewal fee if a broker by reason of active duty military service, illness or injury, and may make application for a license renewal/reinstatement without the late penalty if the application is submitted within the one-year period after license expiration. The amendment adds a provision that background checks will be conducted on all renewal applications. The amendment reformats requirements detailed in the current rule.

Purpose: The purpose of the amendment is to mirror existing statutory provisions in exempting brokers from late fee renewal penalties per Section 61-29-8 NMSA 1978 and expand the exemption to include caregiving.

16.61.13 NMAC CONTINUING EDUCATION REQUIREMENTS: Section 8. Requirements. The amendments to Section 8:

(1) expands qualifying broker minimum renewal hours to be 42 as the minimum number of continuing education now would include the qualifying broker refresher course which would award six credits as opposed to no credits. The associate broker 36 minimum hours remains the same;

(2) removes references to training category courses and education category courses exchanging for them the core elective category course and non-core elective category course;

(3) removes reference to the pre-2017 eight-hour mandatory course requirement that was repealed after the 2017 rule change implementing the annual core course requirement in its place;

(4) confirms the penalty for failure to complete any one of the annual core courses required in a three-year cycle as the 30 classroom hour broker basics course for no continuing education credits; and removes reference to the previous penalty;

(5) establishes a new provision that allows relief for brokers who missed an annual core course because of medical incapacity or medical related impairment to complete the most recent iteration of an annual core course twice under different instructors;

(6) establishes a new provision to allow for the carry-over of core course continuing education credit to the next cycle under certain criteria;

(7) expands instructor continuing education credit from 10 hours to up to 28 hours for teaching courses for which they are approved; and,

(8) establishes that up to 16 non-core elective continuing education credits may be awarded to brokers serving on the commission and on appointed committees of the commission. For members of the real estate commission the provision would not be effective until the appointment of new commissioners after January 1, 2021.

(9) adds a prohibition for brokers receiving CE credit for attending a disciplinary hearing in which they are a respondent.

Purposes: The purposes of the amendments are: (a) to acknowledge the continuing education value of the qualifying broker refresher course; (b) to make changes concurrent with the elimination of training and education categories and their replacement with core elective and non-core elective definitions in 16.61.1.7 NMAC; (c) to clarify core elective requirements for qualifying brokers and associate brokers; (d) to clarify minimum continuing education cumulative credits for qualifying brokers and associate brokers; (e) to remove the antiquated reference to a now defunct mandatory course requirement; (f) to confirm the penalty for failing to complete core course requirements; (g) to establish relief if non-completion of the annual core course requirement is due to medical incapacitation or impairment; (h) to expand continuing education incentives for instructors to develop and instruct needed courses; (i) to establish incentives for brokers who participate in time intensive volunteer work as appointed members of committees, task forces, and work groups; and (j) clarify that respondent brokers cannot gain continuing education credits for attending their own hearing.

16.61.15 NMAC APPROVAL OF REAL ESTATE COURSES, SPONSORS, AND INSTRUCTORS: Section 8 Education Advisory Committee and Section 9. Continuing Education Programs. The amendment to Section 8, Education Advisory Committee, eliminates the non-voting member category of appointments to the education advisory committee and would allow all appointees to the committee would have voting status. Amendments to Section 9 Continuing Education Programs, eliminates references to education and training category courses, and replaces those categories with core elective and non-core elective categories, and establish how applications for new courses will be considered in light of the two new categories concurrent and consistent with amendments to 16.61.13 NMAC, Continuing Education Requirements, and changes to 16.61.1.7 NMAC, Definitions.

Purpose: The purpose of the amendment to Section 8 (B) is to honor equally the value of all the commission's appointees to the education advisory committee. The purpose of the amendments to Section 9, Continuing Education Programs, is to make the language consistent with changes to 16.61.1.7 NMAC Definitions, concerning eliminated training and education categories of courses, and replacement with core elective and non-core elective categories of courses.

16.61.16 NMAC QUALIFYING BROKER: AFFILIATION AND RESPONSIBILITIES: Section 9 Responsibilities. The amendment would further define the supervisory responsibilities of the qualifying brokers in their relationship to the associate brokers.

Purpose: The purpose of the amendments are to clarify and expand the qualifying broker to associate broker supervisory relationship, and to outline steps to improve communication within brokerages and ensure compliance with best management practices in light of emerging complexities in modern brokerages.

16.61.17 NMAC ASSOCIATE BROKER: AFFILIATION AND RESPONSIBILITIES: This amendment would clarify the role of the associate broker within the complexities of modern brokerages and the need to follow policies and procedures and supervisory initiatives of the qualifying broker. The amendment compliments amendments made to Part 16.

Purpose: The purpose of the amendments is to clarify the duties of associate brokers toward qualifying brokers in light of emerging complexities in modern brokerages.

16.61.19 NMAC BROKER DUTIES AND BROKERAGE RELATIONSHIPS: Section 8 Disclosure. This amendment adds a disclosure provision to the existing rule that if a broker in the transaction is not providing the service, advice or assistance described in Paragraphs (a) and (b) of this Subsection B of 16.61.19.8 NMAC, the party must agree in writing that the broker is not expected to provide such service, advice or assistance.

Purpose: This amendment is for the purpose of clarifying all disclosure responsibilities in all transactions.

16.61.20.8 NMAC TRANSACTION COORDINATOR: Section 8(H) Requirements: This amendment clarifies the duties of brokers who are hired by other brokers to act as transaction coordinators but who have no interaction with the broker's customer or client or other brokers involved in the transaction.

Purpose: The purpose of the amendment is to clarify that brokers who are hired solely to serve as transaction coordinators still may owe some broker duties.

16.61.23 NMAC TRUST ACCOUNTS: Sections 8 through 12: The amendments clarify responsibilities regarding the keeping of records, the filing of reports, and the overall management of trust and custodial account management.

Purpose: The purpose of the amendments are to clarify that established record keeping, and reporting responsibilities apply to the management of custodial accounts.

16.61.24 NMAC PROPERTY MANAGEMENT: Sections 9 through 12: These amendments follow amendments to Part 23 to clarify that the brokers who offer property management services have record keeping and reporting responsibilities as they apply to the management of trust accounts as well as custodial accounts.

Purpose: The purpose of the amendments are to clarify that established record keeping, and reporting responsibilities apply to the management of custodial accounts in the context of offering property management services to others.

16.61.32 NMAC REAL ESTATE ADVERTISING: Section 8 Advertisements: The amendments clarify broker disclosure responsibilities concerning advertising properties which the broker owns, or partially owns, and adds “will own” to the disclosure responsibility on advertising, signs etc.

Purpose: The purpose of the amendment is to clarify broker disclosure responsibilities regarding advertising real estate.

Statutory Authority: Section 61.29.4 NMSA 1978