

**NOTICE OF SPECIAL MEETING AND RULE HEARING**

THURSDAY, DECEMBER 8, 2022, 9:00 A.M.,  
NEW MEXICO REGULATION AND LICENSING DEPARTMENT OFFICES  
5500 SAN ANTONIO DRIVE NE  
Albuquerque, New Mexico 87109

The New Mexico Home Inspectors Board will conduct a Special Meeting and Rule Hearing on Thursday, December 8, 2022 at 9:00 a.m. at the New Mexico Regulation and Licensing Department (RLD) offices at 5500 San Antonio Drive NE, Albuquerque, New Mexico.

Because seating at the RLD offices is limited, brokers and the public participate in the meeting and rule hearing by Zoom. A link to the meeting will be posted on the Board website no later than 72 hours before the meeting.

**Synopsis**

The Board will be considering the following proposed changes to the Board Rules:

**16.66.1 NMAC, General Provisions**

**16.66.1.7 Definitions:**

**A. Definitions beginning with the letter “A”:**

(2) “**Activate**” means the act of turning on, supplying power, or otherwise enabling systems, equipment, or devices to become active by normal operating controls.

**Not used (only reference 16.66.1.7 NMAC GARAGES (C) (2) is pressure-activated auto-reverse)**

(3) “**Ancillary services**” means a service or inspection provided by a licensee or other provider but beyond the scope of the Standards of Practice for Home Inspection provided in 16.66.7 including but not limited to Mold Inspection, Lead Paint Assessment, Commercial Building Inspection, Pool and Spa Inspection, Termite Inspection, and other Ancillary Services and Inspections.

(5) “**Appliance**” means a household device powered by electricity or gas, but not including central heating, central cooling, or plumbing components;

**Modify (5) “Appliance” means a permanently installed household device powered by electricity or gas, but not including central heating, central cooling, or plumbing components.**

**“Appliance” used in SOP section 16.66.7.23**

**B. Definitions beginning with the letter “B”**

(1) “**Business relationship**” means a former, current or prospective relationship between a person or a person’s licensed agent, a home inspection company and its clients, a home inspection company and the company providing ancillary services, and between a client and a company providing ancillary services. The business relationship is based upon a financial contract between a person and a consumer which is in force including those relationships in which the individual benefits by receiving a salary, royalty, intellectual property rights, consulting fee, honoraria, ownership interest (e.g., stocks, stock options or other ownership interest, excluding diversified mutual funds), or other financial benefit. A former relationship if it occurred within a twelve-month time period of the contract, a current or prospective relationship shall be disclosed in writing to the client and the client must acknowledge in writing receipt and acceptance of the disclosure. The receipt and acceptance of the disclosure may be by electronic signature.

**Definitions beginning with the letter “C”:**

(1) **“Central air conditioning”** ~~[means a system which uses ducts to distribute either or both cooled or dehumidified air to more than one room or uses pipes to distribute chilled water to heat exchangers in more than one room. This definition does not include systems or appliances that are plugged into an electrical convenience outlet]~~ **“Central air conditioning”** means:

(a) designed to be permanently installed for central cooling (ducted) or modular (non-ducted) system. Systems may include evaporator coil(s), condenser unit(s), heat pump(s), air handler(s) and furnace(s) or

(2) permanently installed evaporative cooling ducted systems. This definition does not include cooling units or appliances that are designed and intended to be portable, non-permanent and or are designed for installation at windows.

**Rationale Note:** *Portable units are often installed permanently thru-walls and not per the manufacturer*

### **16.66.7 NMAC, Standards of Practice**

#### **16.66.7.15 NMAC PLUMBING:**

A. The licensee shall inspect:

(1) Interior water supply and distribution systems including fixtures and fixture trim components (faucets, valves, drain stops, shower arms and showerheads, flush handles, and functional flow at each fixture group, etc.).

(2) Interior drain, waste, and venting systems, including fixtures and functional drainage at each fixture group.

### **16.66.3 NMAC, Applications and Licenses**

#### **Expedited Licensure for Military Members and Veterans**

The Board proposes to amend Part 3 of its rules to conform with the provisions of House Bill 120 passed by the 2021 legislature that require professional and occupational licensing boards to issue licenses to military members, their spouses and dependent children, and veterans, within 30 days of receiving a completed application and to waive initial licensing fees for a period of three years if applicant holds equivalent license from another state or jurisdiction. Furthermore, the board seeks to add definitions to 16.66.17 NMAC as well as 16.66.3.7 NMAC. These definitions will further specify qualifications for expedited licensure. Additionally, the proposed revisions will provide notice to the public and interested parties of applications and renewal changes for military personnel, their spouses and dependent children as contemplated by House Bill 120 to be codified in 16.66.3.12.

**16.66.3.7 DEFINITIONS:** ~~[Refer to Definitions, 16.66.1.7 NMAC.]~~ **“Disqualifying criminal conviction”** has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.

#### **Disqualifying Convictions**

The Board proposes to amend Part 3 of its rules to conform with the provisions of Senate Bill 2 passed by the 2021 legislature that limit a professional and occupational licensing board’s ability to deny, suspend, revoke, or condition a license only for felony convictions that relate to the profession or occupation in which the applicant has applied for licensure.

Pursuant to the provisions of Senate Bill 2, the Board proposes to amend Part 3 to include a list of felony convictions that could potentially disqualify an applicant from being issued a home inspectors license. The proposed rule amendment is shown below in 16.66.3.15 NMAC.

#### **16.66.3.11- Pre-Licensing Examinations**

The Board proposes to amend Subsection A of 16.66.3.11 of its rules to allow passage of either the National Home Inspector Examination (NHIE) or the Proctored Inter-NACHI Examination for applicants applying for licensure under Training and Examination.

**16.66.3.15 CRIMINAL CONVICTIONS:**

**A.** Convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or a licensee from retaining a license issued by the board:

(1) homicide, voluntary or involuntary manslaughter;

(2) trafficking in controlled substances, manufacturing of controlled substances or distribution of controlled substances.

(3) human trafficking, kidnapping, false imprisonment, aggravated assault or aggravated battery;

(4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;

(5) crimes involving adult abuse, neglect or financial exploitation;

(6) crimes involving child abuse or neglect; or

(7) crimes involving robbery, larceny, extortion, burglary, possession of burglary tools, destruction of property, criminal damage to property, unlawful or dangerous use of explosives, breaking and entering, arson, making a bomb scare, tampering with evidence or receiving stolen property.

(8) financial crimes involving fraud, forgery, embezzlement, or credit card fraud.

(a) This includes a conviction of an offense which, if committed in this state, would be deemed a felony under either state or federal law, without regard to its designation elsewhere.

(b) The term "conviction" shall include a finding or verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon or an appeal of the conviction has been sought.

**B.** The board shall not consider the fact of a criminal conviction as part of an application for licensure or licensure renewal unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

**C.** The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

**D.** Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Home Inspector Licensing Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.

**E.** In connection with an application for licensure or licensure renewal, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

(1) an arrest not followed by a valid conviction;

(2) a conviction that has been sealed, dismissed, expunged or pardoned;

(3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule.

**F.** In the circumstance where the board reserves a decision on an applicant/ licensee based on a potentially disqualifying conviction, the applicant/licensee will be entitled to notice and a hearing on the issues.

**16.66.6 NMAC, Code of Ethics**

The board proposes to amend 16.66.6.8 NMAC, Code of Ethics to add a new paragraph C:

**16.66.6.8 CODE OF ETHICS:** All licensed home inspectors in New Mexico shall abide at all times by the Code of Ethics contained in this Part.

**A.** This Code of Ethics rests on the fundamental principles of integrity, honesty, and objectivity. All provisions contained herein shall be interpreted at all times in the light of these principles, which govern the New Mexico home inspection industry.

**B.** All licensees shall comply with this Code of Ethics, shall avoid association with any enterprise whose practices violate this Code of Ethics, and shall strive to uphold, maintain, and improve the integrity, reputation, and practice of home inspection.

**C.** All licensees shall be of good repute and competent to transact the business of a home inspector in a manner that safeguards the interests of the public.

### **Statutory Authority**

These rules are promulgated pursuant to the Home Inspector Licensing Act, Subsection G of Section 61-24D-3 NMSA 1978 (2019).

### **Public Comment and Participation**

Interested persons may submit written comments on the proposed changes to the board rules by email at [wayne.ciddio@state.nm.us](mailto:wayne.ciddio@state.nm.us) or may submit written comments to the New Mexico Home Inspectors Board, 5500 San Antonio Drive NE, Albuquerque, New Mexico 87109, Attn. Wayne W. Ciddio, Board Administrator.

Interested persons may make comments and ask questions about the proposed rules via Zoom during the rule hearing. The board will vote on the final rules at the conclusion of the rule hearing.

Full copies of the texts of the proposed rules can be obtained from the Board office at the email and physical addresses shown above.

### **Special Accommodations**

If you are individual with a disability who is in need of reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service to attend or participate in the meeting and hearing, contact Wayne W. Ciddio, Board Administrator, New Mexico Home Inspectors Board at (505) 785-3937 at least one week prior to the meeting or as soon as possible.

Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact Mr. Ciddio if a summary or other type of accessible format is needed.