

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 61 REAL ESTATE BROKERS
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 broker's licenses.
[16.61.5.2 NMAC - N, 1-1-2002; A, 1-1-2006]

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 broker's licenses.
[16.61.5.6 NMAC - N, 1-1-2002; A, 1-1-2006]

16.61.5.7 DEFINITIONS: Refer to 16.61.1.7 NMAC.
[16.61.5.7 NMAC - N, 1-1-2002]

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

- A.** the insurance carrier is licensed and authorized by the New Mexico department of insurance to write policies of errors and omissions insurance in New Mexico;
- B.** the insurance carrier maintains an A.M. Best rating of "B" or better;
- C.** the insurance carrier will collect premiums, maintain records and report names of those insured and a record of claims to the commission on a timely basis and at no expense to the state;
- D.** the insurance carrier has been selected through a competitive bidding process;
- E.** the contract and policy are in conformance with Part 5 and all relevant New Mexico statutory requirements.

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

16.61.5.9 TERMS OF COVERAGE: The group policy shall provide, at a minimum, the following terms of coverage:

- A.** coverage of all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage;
- B.** an annual premium not to exceed the amount set by statute 61-29-4.2B NMSA 1978;
- C.** that the coverage cannot be cancelled by the insurance carrier except for non-payment of the premium or in the event a broker becomes inactive or has their license revoked or an applicant is denied a license;
- D.** pro-ration of premiums for coverage which is purchased during the course of the calendar year but with no provision for refunds of unused premiums;
- E.** not less than \$100,000 coverage for each licensed individual and entity per covered claim regardless of the number of brokers or entities to which a settlement or claim may apply;
- F.** an aggregate limit of \$500,000 per licensed individual or entity;

- G.** a deductible amount for each claim of not more than \$1,000 per claim and no deductible for legal expenses and defense;
 - 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.** the obligation of the insurance carrier to defend all covered claims with payment of defense costs outside of policy limits;
 - J.** coverage of a broker's use of lock boxes which may include a sublimit of not less than \$5,000 per claim for property damage or loss of use of property arising from a lock box claim;
 - K.** the ability of a broker, upon payment of an additional premium, to obtain higher or excess coverage or to purchase additional coverage from the insurance provider as may be determined by the provider;
 - L.** that coverage is individual and license specific and will cover the associate broker regardless of changes in qualifying broker;
 - M.** an extended reporting period of not less than 365 days;
 - N.** a conformity endorsement allowing a New Mexico resident broker to meet errors and omissions insurance requirements for an active license in another group mandated state without the need to purchase separate coverage in that state.
- [16.61.5.9 NMAC - N, 1-1-2002; A, 1-1-2006; A, 12-31-2008; A, 1-1-2017]

16.61.5.10 EQUIVALENT ERRORS AND OMISSIONS INSURANCE POLICIES: New Mexico real estate associate broker or qualifying broker applicants may obtain errors and omissions coverage equivalent to the group plan from any insurance carrier subject to the following terms and conditions.

- A.** The insurance carrier is licensed and authorized by the New Mexico department of insurance to write policies of errors and omissions insurance in this state and is in conformance with all New Mexico statutes.
 - B.** The insurance provider maintains an A.M. Best rating of "B" or better.
 - C.** The policy, at a minimum, complies with all relevant conditions set forth in this rule and the insurance carrier so certifies in a certificate issued to the insured real estate broker or broker applicant in a form acceptable to the commission and agrees to immediately notify the commission of any cancellation or lapse in coverage. The commission will make no independent determination of whether equivalent policies meet the requirements of Part 5.
 - D.** Coverage includes all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage.
 - E.** Coverage cannot be cancelled by the insurance provider except for nonpayment of premium or in the event a broker becomes inactive or the license is revoked, or in the event an applicant is denied a license.
 - F.** Coverage is for not less than \$100,000 for each licensed individual and entity per covered claim and not less than a \$500,000 aggregate limit per licensed individual or entity.
 - G.** A deductible amount for each claim 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.** The obligation of the insurance carrier to defend all covered claims with defense costs outside of policy limits.
 - J.** Coverage of a broker's use of lock boxes which may include a sublimit of not less than \$5,000 per claim for property damage or loss of use of property arising from a lock box claim.
 - K.** Real estate brokers or broker applicants who obtain equivalent coverage and wish to be on active status must present to the commission the certificate referred to in 16.61.5.10 NMAC:
 - (1) when renewing an active license, no later than at the time of renewal; or
 - (2) upon any request for reinstatement or activation of a license; or
 - (3) upon application for an active license.
 - L.** An automatic 90-day extended reporting period with the ability of the broker, upon payment of an additional premium, to obtain an optional extended reporting period of one, two, or three years.
- [16.61.5.10 NMAC - N, 1-1-2002; A, 1-1-2017]

16.61.5.11 BROKER COMPLIANCE: Applicants for licensure, transfer, and renewal shall certify compliance with this rule by submitting along with the license, transfer, or renewal application a copy of a certificate from their insurance company certifying current coverage. The commission will not issue an active license to a first time applicant who fails to provide proof of current coverage, and the license of any active New

Mexico broker who fails to provide a certificate certifying current errors and omissions coverage will not be renewed or transferred until such certificate is received in the commission office
[16.61.5.11 NMAC - N, 1-1-2002; A, 1-1-2006]

16.61.5.12 INSURANCE REQUIREMENTS SUSPENDED: The requirements of 16.61.5 NMAC shall be suspended if the commission through a competitive bidding and contract award process is not able to enter into a contract with a qualified insurance carrier to make available to all applicants for or holders of active New Mexico real estate broker's licenses a group policy of insurance under the terms and conditions described in Part 5.
[16.61.5.12 NMAC - N, 1-1-2002; A, 1-1-2006]

16.61.5.13 PENALTIES FOR VIOLATION: Brokers who fail to obtain and maintain an errors and omissions insurance policy as specified herein are guilty of violating NMSA 1978 Section 61-29-4.2 of the Real Estate License Law and are subject to license suspension and revocation as provided in Section 61-29-12 A (10).
[16.61.5.13 NMAC - N, 1-1-2006]

HISTORY of 16.61.5 NMAC: [RESERVED]