

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

16.61.16.1 ISSUING AGENCY: New Mexico Real Estate Commission.
[16.61.16.1 NMAC - Rp, 16.61.16.1 NMAC, 1/1/2012]

16.61.16.2 SCOPE: The provisions in Part 16 of Chapter 61 applies to all New Mexico qualifying brokers.
[16.61.16.2 NMAC - Rp, 16.61.16.2 NMAC, 1/1/2012]

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, 16.61.16.3 NMAC, 1/1/2012]

16.61.16.4 DURATION: Permanent.
[16.61.16.4 NMAC - Rp, 16.61.16.4 NMAC, 1/1/2012]

16.61.16.5 EFFECTIVE DATE: January 1, 2012, unless a later date is cited at the end of a section.
[16.61.16.5 NMAC - Rp, 16.61.16.5 NMAC, 1/1/2012]

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, 16.61.16.6 NMAC, 1/1/2012]

16.61.16.7 DEFINITIONS: Refer to 16.61.1.7 NMAC.
[16.61.16.7 NMAC - Rp, 16.61.16.7 NMAC, 1/1/2012]

16.61.16.8 AFFILIATION: A qualifying broker is responsible for all real estate activities within the brokerage. A qualifying broker may serve concurrently as a qualifying broker for more than one brokerage. A qualifying broker may by written agreement engage the services of associate brokers and qualifying brokers, provided that the terms of such agreements are consistent with the responsibilities of associate brokers and qualifying brokers as set forth in parts 16.61.16.9 NMAC and 16.61.17.9 NMAC. A qualifying broker may serve as qualifying broker and associate broker for different brokerages simultaneously provided that there are written agreements executed specifying the responsibilities and scope of authority that the broker has for each brokerage. For purposes of this section “broker” means any licensee in a brokerage who is not acting in the capacity of a supervising qualifying broker.
[16.61.16.8 NMAC - Rp, 16.61.16.8 NMAC, 1/1/2012; A, 1/3/2021]

16.61.16.9 RESPONSIBILITIES: A qualifying broker shall, in addition to all other requirements imposed by law, comply with the following:

A. Conduct the real estate brokerage business under the trade name and from the brokerage address or addresses registered with the commission.

B. Prominently display in the brokerage office, the qualifying broker's own license and the licenses of all other affiliated associate brokers conducting real estate brokerage business from the brokerage office; in the event of a virtual office, this requirement is met by displaying a legible photo or scanned image of the licenses on the brokerage's web site through a link labeled “real estate licenses.

C. Have in the brokerage office and available to all affiliated associate brokers and qualifying brokers a current copy of the state of the New Mexico real estate license law and rules manual.

D. Notify the commission in writing within ten days of a change of the brokerage office address or telephone number.

E. Supervise trust account management by brokerage owners whether or not the brokerage owners are licensed real estate brokers. Such trust account management will conform to other trust account requirements in the commission rules.

F. Maintain all transaction records for six years if not performing property management, and for the full term of the assignment if performing property management. All such records shall be available to the commission or any duly authorized commission representative at the place of business of the qualifying broker or at

the commission office. Records may be in paper or electronic format. In the case of property managers, all records shall be retained for the full term of any agreement and for six years from the termination of the management agreement;

G. Develop written office policies describing duties and responsibilities of brokers within the brokerage and guidance to brokers in avoiding violations of state or federal laws regarding real estate or rules of the real estate commission. Qualifying brokers who do not supervise are not required to develop written office policies. Office policies shall:

- (1) Be provided to each broker within the brokerage and must include a signed acknowledgement by broker that policies were received and read and that broker agrees to follow the policies;
- (2) Be available for inspection, upon request, by any authorized representative of the commission;
- (3) Include obligations for brokers to inform the qualifying broker of any situation in which the broker is unsure, untrained, or concerned;
- (4) Include obligations for the broker to be competent;
- (5) Include obligations of the qualifying broker to make reasonable attempts to resolve issues that arise;
- (6) Include a requirement to follow the state and federal laws regarding real estate and the rules of the real estate commission;
- (7) Include a requirement for broker to present all advertising drafts not prepared by the brokerage to the qualifying broker for approval; and,
- (8) Include a requirement for brokers to renew their license on time, and to be responsible for completing continuing education as required by the commission rules for renewal.

H. Provide guidance to newly licensed brokers throughout their first six transactions or more if deemed necessary by the qualifying broker. Provide guidance for all new and experienced brokers including but not limited to:

- (1) Review of the office policies;
- (2) Provide consultation, ongoing training and education to help the brokers avoid violations of local, state, and federal laws regarding real estate and rules of the real estate commission;
- (3) Timely take action to mitigate potential or actual violations of which qualifying broker is made aware;
- (4) Respond to broker promptly regarding any issues on the previous list;
- (5) Provide assistance in preparing contracts as necessary;
- (6) Monitor transactions as necessary;
- (7) Instruct the associate broker to review closing documents and attend closing or have an experienced substitute attend closing (unless restricted by the title company); and,
- (8) The qualifying broker may require review of all transaction documents.

I. Require all brokers to provide drafts of advertising not drafted by the brokerage to the qualifying broker for review and approval.

J. Execute and maintain written independent contractor agreements with brokers affiliated with qualifying broker. This section shall not be construed to mean that an employer/employee relationship is required between the qualifying broker and any broker.

K. Deposit all money received on behalf of others in the proper trust account as soon after receipt as is practically possible after securing the signatures of all parties to the transaction on the documents;

L. Receive and disburse or authorize the disbursement of all commissions, referral fees, and other considerations to a broker affiliated with the qualifying broker, or broker who had been affiliated with the qualifying broker at the time the transaction went under contract; the qualifying broker may also disburse or authorize the disbursement of such commissions and fees to any entity entitled by law to receive same, including the estate of a deceased broker, the deceased brokers surviving spouse, or any legally recognized entity wholly owned by an associate broker and their spouse. Such partnership, corporation, or limited liability company (LLC) shall not be required to have a qualifying broker for purposes of this subpart;

M. When the brokerage cooperates with, in expectation of compensation, or makes a referral to, or receives a referral from any broker, there must be a transaction specific written co-brokerage or referral agreement or for corporate or network referrals, a general referral agreement or contract signed by the qualifying broker;

N. Designate a broker in charge in the event actual supervision by the qualifying broker is not possible, and inform the commission of such designation in writing. During this period of time, the broker in charge shall assume all of the responsibilities of the qualifying broker for the brokerage;

O. Return broker's license to the commission within 48 hours of termination or discharge;

P. Require each broker affiliated with the brokerage to obtain and maintain a current errors and omissions policy as provided in Section 61-29-4.2 NMSA 1978 of the Real Estate License Law and 16.61.5 NMAC of the commission rules;

Q. Successfully complete the commission-approved qualifying broker refresher course as a condition of license renewal or as a condition of reinstatement of qualifying broker status;

R. Require each broker affiliated with their brokerage to complete the commission-approved new broker business practices course, or the CCIM 101 course within their first year of licensure;

S. Require brokers to include the qualifying broker's name and contact information, including license number, clearly and conspicuously on any written document generated by the brokerage or presented to a prospective customer or client, and that has the potential to become an express written agreement;

T. Identify oneself on real estate related phone calls, texts or emails as a licensed New Mexico real estate broker.

U. Disclose, when buying, selling or leasing real property on broker's own behalf, that broker holds a New Mexico real estate license.

[16.61.16.9 NMAC - Rp, 16.61.16.9 NMAC, 1/1/2012; A, 1/1/2017, A, 1/15/2018; A, 1/3/2021]

16.61.16.10 MITIGATING FACTORS TO QUALIFYING BROKER RESPONSIBILITIES

Any of the following may be considered by the commission as mitigating factors regarding an alleged violation of the responsibilities named in 16.61.16.9 NMAC, above:

A. The qualifying broker has written policies guiding brokers from violating state or federal laws regarding real estate or rules of the real estate commission as demonstrated by all of the following:

(1) The qualifying broker demonstrates the broker received written policies and an acknowledgment that broker read and agreed to follow the policies;

(2) The qualifying broker can demonstrate access was provided to associate brokers to any of the following:

(a) Ongoing training or education sessions for associate brokers;
(b) Ongoing discussions regarding real estate practice, procedures and law, the rules of the commission;

(c) Ongoing discussions regarding completing real estate forms correctly;
(d) Ongoing discussions regarding changes to forms, rules and regulations, statutes and any other commission regulations

B. Any violation of the provisions of the New Mexico Real Estate License Act by any licensee associated with qualifying broker shall not be cause for suspension or revocation of a qualifying broker license unless the qualifying broker had guilty knowledge of the act or rule violation.

C. The qualifying broker's failure to provide an appropriate written company policy may be cause for discipline, including suspension or revocation of the qualifying broker's license.

[16.61.16.10 NMAC - N, 1/3/2021]

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 and archives under: Real Estate License Law Manual, filed 10-2-73;

(REC-3) Rule No. 3 Amendment No. 3, Salesperson-Employment; Place of Business; Records to be Maintained, filed 6/15/1979;

REC 70-3, Associate Broker/Salesperson-Affiliation; Place of Business; Records to be Maintained, filed 10/6/1981;

REC 71-3, Associate Broker/Salesperson-Affiliation; Place of Business; Records to be Maintained, filed 11/29/1982;

Rule No. 5, Qualifying Broker/Associate Broker/ Salesperson-Affiliation and Responsibilities, filed 12/18/1987.

History of Repealed Material:

16 NMAC 61.16, Qualifying Broker: Affiliation and Responsibilities (filed 6/25/1997) repealed 1/1/2000.

16 NMAC 61.16, Qualifying Broker: Affiliation and Responsibilities (filed 12/10/1999) repealed 1/1/2002.

16 NMAC 61.16, Qualifying Broker: Affiliation and Responsibilities (filed 11/30/2001) repealed 1/1/2012.

Other History:

That portion of Rule No. 5, Qualifying Broker/Associate Broker/ Salesperson-Affiliation and Responsibilities (filed 12/18/1987) was reformatted, renumbered , and replaced by 16 NMAC 61.16, Qualifying Broker: Affiliation and Responsibilities, effective 8/15/1997.

16 NMAC 61.16, Qualifying Broker: Affiliation and Responsibilities (filed 6/25/1997), replaced by 16 NMAC 61.16, Qualifying Broker: Affiliation and Responsibilities, effective 1/1/2000.

16 NMAC 61.16, Qualifying Broker: Affiliation and Responsibilities (filed 12/10/1999), was reformatted, renumbered, and replaced by 16.61.16 NMAC, Qualifying Broker: Affiliation and Responsibilities, effective 1/1/2002.

16.61.16 NMAC, Qualifying Broker: Affiliation and Responsibilities (filed 11/30/2001), replaced by 16.61.16 NMAC, Qualifying Broker: Affiliation and Responsibilities, effective 1/1/2012.