

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 66 HOME INSPECTOR LICENSING
PART 8 DISCIPLINARY PROCEEDINGS

16.66.8.1 ISSUING AGENCY: New Mexico home inspectors board.
[16.66.8.1 NMAC – N, 1/15/2021]

16.66.8.2 SCOPE: All licensed home inspectors, license applicants, other agencies, professional associations, and any member of the general public affected by or interested in home inspectors.
[16.66.8.2 NMAC – N, 1/15/2021]

16.66.8.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Home Inspector Licensing Act, Sections 61-24D-1 through 16 NMSA 1978 (2019).
[16.66.8.3 NMAC – N, 1/15/2021]

16.66.8.4 DURATION: Permanent.
[16.66.8.4 NMAC – N, 1/15/2021]

16.66.8.5 EFFECTIVE DATE: January 15, 2021, unless a later date is cited at the end of a section.
[16.66.8.5 NMAC – N, 1/15/2021]

16.66.8.6 OBJECTIVE: The objective of Part 8 of Chapter 66 is to establish the procedures for denying applications for licensure, processing complaints against licensees and applicants, reinstatement of suspended or revoked licenses, and taking disciplinary action against licensees.
[16.66.8.6 NMAC – N, 1/15/2021]

16.66.8.7 DEFINITIONS: Refer to Definitions, 16.66.1.7 NMAC.
[16.66.8.7 NMAC – N, 1/15/2021]

16.66.8.8 GROUNDS FOR DISCIPLINARY ACTION: The following are grounds for taking disciplinary action against licensees and unlicensed practitioners, and for denying licenses to applicants:

- A.** Substantial misrepresentation;
- B.** Violations of the Home Inspector Licensing Act or any rule of the board, including but not limited to the code of ethics and standards of practice as outlined in Parts 5 and 6 of these rules;
- C.** Offered or delivered compensation, inducement, or reward to the owner of an inspected property or to the broker or the agent for the referral of any business to the home inspector or the home inspector's company;
- D.** A license to perform home inspections revoked, suspended, denied, stipulated or otherwise limited in any state, jurisdiction, territory or possession of the United States or another country for actions of the licensee similar to acts proscribed in Section 61-24D-11 of the Home Inspector Licensing Act;
- E.** Failure to furnish the board, its investigators or its representatives with information requested by the board in the course of an official investigation;
- F.** Performance or offer to perform for an additional fee any repair to a structure on which the home inspector or the home inspector's company has prepared a report at any time during the twelve months immediately prior to the repair or offer to repair, except that a home inspection company that is affiliated with or that retains a home inspector does not violate this paragraph if the home inspection company performs repairs pursuant to a claim made pursuant to the terms of a home inspection contract; or
- G.** Failure to maintain errors and omissions insurance and professional liability insurance as required by the Home Inspector Licensing Act and the rules of the board.

[16.66.8.8 NMAC – N, 1/15/2021]

16.66.8.9 COMPLAINTS AND RESPONSES:

- A.** A complaint against a licensee or applicant may be filed with the board by any person, office, or organization. In order to be considered by the board, a complaint must be sworn and notarized. The complaint must also contain specific factual allegations of violations of either the Home Inspector Licensing Act or the board's rules.

B. Upon receipt of any complaint alleging that a licensee has violated the Home Inspector Licensing Act or the board's rules, board staff shall forward the complaint to the respective licensee and request a response within ten business days of receipt. The licensee ("respondent") must provide a response to the board within ten business days of receipt. A respondent's failure to respond to the complaint within this specified time frame shall be grounds for disciplinary action, up to and including revocation of the license at the discretion of the board.

C. The board administrator may authorize the issuance of an investigative subpoena to obtain documents or other evidence relevant to a disciplinary complaint.

D. Subject to applicable exceptions to confidentiality established by law, all complaints, responses, and other disciplinary and investigatory records are public records available for inspection and copying, pursuant to state law, irrespective of the final disposition of the underlying disciplinary complaint.

[16.66.8.9 NMAC – N, 1/15/2021]

16.66.8.10 REVIEW OF COMPLAINT: All complaints will, where practicable, be reviewed by the board's complaint committee.

A. Should the board, in its discretion, choose to utilize a complaint committee, the complaint committee shall be responsible for reviewing disciplinary complaints against licensees and applicants and making informal, non-binding recommendations to the board as to their disposition. The complaint committee shall not have any policymaking authority of any kind.

B. The board's complaint committee shall consist of no more than two board members and no more than two other volunteer members who are not members of the board, for a total of no more than four members at any given time.

C. After completing its review of a complaint, the complaint committee shall either recommend that the board take disciplinary action or that it close the case. As part of any recommendation of disciplinary action, the complaint committee may also make recommendations as to the proper amount of discipline (i.e. letter of reprimand, fine, suspension, revocation, etc.), including discipline that might be obtained through a negotiated settlement agreement with the licensee, applicant, or unlicensed practitioner.

[16.66.8.10 NMAC – N, 1/15/2021]

16.66.8.11 HEARINGS AND DISCIPLINARY PROCEEDINGS:

A. All disciplinary proceedings conducted by the board shall fully conform to the provisions of the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 to -34 (1957, as amended through 2019).

B. In the event that the board seeks to proceed with formal disciplinary action and issue a notice of contemplated action pursuant to the Uniform Licensing Act, the board shall send a request to the litigation division of the New Mexico Office of the Attorney General, which shall, if it elects to do so, serve as the administrative prosecutor on behalf of the board.

C. If a respondent requests an evidentiary hearing in response to a notice of contemplated action, the board chair shall designate a hearing officer to preside over the hearing. Alternatively, at the discretion of the board chair or upon vote of the board, the entire board may preside over the hearing.

D. Any continuance of an evidentiary hearing requested or stipulated by a respondent shall only be considered by the hearing officer, or board chair if the hearing is conducted by the full board, if the respondent has knowingly, voluntarily, and intelligently signed a waiver of the applicable time limits set forth by the Uniform Licensing Act.

[16.66.8.11 NMAC – N, 1/15/2021]

16.66.8.12 SETTLEMENT AGREEMENTS: As a means of resolving disciplinary complaints against licensees, applicants, and unlicensed practitioners without the time and expense of formal hearings, settlement agreements are encouraged at any stage in the disciplinary process prior to the adjournment of the evidentiary hearing.

A. Prior to the board voting on a disciplinary complaint or the matter being referred to the Office of the Attorney General for administrative prosecution, the board staff may negotiate a settlement agreement with the respondent. However, the board itself must vote to approve the settlement agreement at an open meeting, and no settlement agreement is valid under any circumstances until the board so votes.

B. Prior to the issuance of a notice of contemplated action or the adjournment of an evidentiary hearing, the board's administrative prosecutor may negotiate a settlement agreement with the respondent. However, the board itself must vote to approve the settlement agreement at an open meeting, and no settlement agreement is valid under any circumstances until the board so votes.

C. Following the conclusion of an evidentiary hearing, no settlement agreement shall be considered by the board.
[16.66.8.12 NMAC – N, 1/15/2021]

16.66.8.13 REINSTATEMENT OF SUSPENDED OR REVOKED LICENSES:

A. Reinstatement of Suspended Licenses: Licensees whose licenses have been suspended by the board may apply to reinstate those licenses in accordance with the terms of the suspension. Any licensee seeking reinstatement of a suspended license shall be required to provide to the board:

- (1) A completed board-issued application form;
- (2) Payment of the non-refundable renewal fee in full as provided in Part 2;
- (3) Payment of the non-refundable reinstatement fee in full as provided in Part 2;
- (4) Any evidence necessary to demonstrate that the licensee has satisfactorily completed any

terms of the licensee's suspension.

B. Reinstatement of Revoked Licenses: Former licensees whose licenses were revoked by the board may apply to reinstate those licenses no sooner than five years following the date of the order of revocation, unless the former licensee's license was revoked pursuant to the Parental Responsibility Act, in which case the former licensee may apply for reinstatement immediately upon the name of the former licensee's removal from the certified list issued by the New Mexico department of human services. Any former licensee seeking reinstatement of a revoked license shall, pursuant to the terms of the Uniform Licensing Act, carry the burden of demonstrating to the board the former licensee's qualifications for licensure. The former licensee shall be required to provide to the board:

- (1) A completed board-issued application form;
- (2) Payment of the non-refundable renewal fee in full as provided in Part 2;
- (3) Payment of the non-refundable reinstatement fee in full as provided in Part 2;
- (4) A letter, affidavit, or other evidence necessary to demonstrate that the former licensee

will, in the future, comply with all of the provisions of the Home Inspector Licensing Act and the board's rules.

[16.66.8.13 NMAC – N, 1/15/2021]

16.66.8.14 PARENTAL RESPONSIBILITY ACT: The authority of the board to issue a notice of contemplated action against any licensee or applicant for licensure whose name appears on the certified list issued by the New Mexico department of human services, as provided in NMSA 1978, 40-5A-1, et seq, as deficient in child support payments, and to refer cases in which notices of contemplated action have been issued for administrative prosecution, is delegated to the administrator of the board. This section shall not be construed to deprive the board of its authority and power to issue a notice of contemplated action for any apparent violation of the Parental Responsibility Act, and to refer any such case for administrative prosecution.

[16.66.8.14 NMAC – N, 1/15/2021]

HISTORY OF 16.66.8 NMAC