TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 61 REAL ESTATE BROKERS
PART 20 TRANSACTION COORDINATOR

16.61.20.1 ISSUING AGENCY: New Mexico Real Estate Commission.
[16.61.20.1 NMAC - N, 01-01-2019]

16.61.20.2 SCOPE: The provisions in Part 20 of Chapter 61 apply to all New Mexico brokers.
[16.61.20.2 NMAC - N, 01-01-2019]

16.61.20.3 STATUTORY AUTHORITY: Part 20 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 61-29-4.
[16.61.20.3 NMAC - N, 01-01-2019]

16.61.20.4 DURATION: Permanent.
[16.61.20.4 NMAC - N, 01-01-2019]

16.61.20.5 EFFECTIVE DATE: January 1, 2019, unless a later date is cited at the end of a section.
[16.61.20.4 NMAC - N, 01-01-2019]

16.61.20.6 OBJECTIVE: The objective of Part 20 of Chapter 61 is to set forth the responsibilities, in addition to all other requirements imposed by law, of all brokers.
[16.61.20.6 NMAC - N, 01-01-2019]

16.61.20.7 DEFINITIONS: Refer to 16.61.1.7 NMAC.
[16.61.20.7 NMAC - N, 01-01-2019]

16.61.20.8 REQUIREMENTS.

A. Any transaction coordinator performing activities that require a New Mexico real estate license, including offering and negotiating contracts and leases, must hold a current real estate license issued by the real estate commission.

B. A transaction coordinator performing activities for a brokerage under one ownership is not required to have a qualifying broker's license provided that the transaction coordinator is under the direct supervision of a qualifying broker of that same brokerage.

C. Any transaction coordinator providing services for multiple brokerages other than the transaction coordinator's own brokerage must hold a current New Mexico qualifying broker's license.

D. Any transaction coordinator providing services for a brokerage other than the transaction coordinator's own brokerage must have a transaction-specific written agreement with the qualifying broker of the brokerage for which those transaction coordinator services are being provided that details the services being provided by the transaction coordinator and any compensation being paid to the transaction coordinator for those services.

E. A broker who engages the services of a transaction coordinator to perform activities that may require a real estate license whether within the broker's brokerage or outside the broker's brokerage, shall be responsible for disclosing the name(s) of the transaction coordinator, in writing, to the buyer, seller and brokers in the transaction.

F. A broker who hires a transaction coordinator must have a transaction-specific written agreement with that broker's qualifying broker detailing the services being provided by the transaction coordinator and any compensation being paid to the transaction coordinator for those services, including written authorization that the transaction coordinator may be paid by the associate broker who has hired him or her.

G. A broker who hires a transaction coordinator remains responsible for the transaction; the hiring of a transaction coordinator in no way eliminates or mitigates the broker's responsibilities or obligations to the broker's customer or client or to other brokers and parties to the transaction.

H. Transaction coordinators may owe the following broker duties:

(1) If a transaction coordinator does not hold a real estate license and is not performing duties that require a real estate license, no broker duties are owed.

(2) If a transaction coordinator performs duties that require a real estate license, but only works for the broker that hired the transaction coordinator and has no interaction with the broker's customer or client or other brokers involved in the transaction, the transaction coordinator owes the broker duties under paragraphs (1) through (5) of Subsection A of 16.61.19.8 NMAC, as follows.

(a) Honesty and reasonable care and ethical and professional conduct;

(b) Compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico real estate license law and the Real Estate Commission rules, the New Mexico Uniform Owner Resident Relations Act, and other applicable local, state, and federal laws and regulations;

(c) Performance of any and all written agreements made with the prospective buyer, seller, landlord (owner) or occupant;

(d) Written disclosure of any potential conflict of interest or any other written agreement that the broker has in the transaction including but not limited to:

(i) Any written brokerage relationship the broker has with any other parties to the transaction or;

(ii) Any material interest or relationship of a business, personal, or family nature that the broker has in the transaction;

(iii) Any written agreement the broker has with a transaction coordinator who will be providing brokerage services related to the transaction.

(e) Written disclosure of any adverse material facts actually known by the associate broker or qualifying broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act.

(3) If a transaction coordinator performs duties that require a real estate license and works directly with a customer or client or other brokers and parties involved in the transaction, the transaction coordinator owes the following broker duties listed under paragraphs (1) through (5) of Subsection A of 16.61.19.8 NMAC listed in the preceding subparagraphs (a) through (e); and paragraphs (5) (7) and (8) of Subsection B of 16.61.19.8 NMAC, as follows.

(a) The broker shall maintain any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former principal's written consent or is required by law;

(b) Unless otherwise authorized in writing, a broker who is directly providing real estate services to a seller/owner shall not disclose the following to the buyer/occupant in a transaction:

(i) That the seller/owner has previously indicated they will accept a sales/lease price less than the asking or listed price of a property;

(ii) That the seller/owner will agree to financing terms other than those offered;

(iii) The seller/owner's motivations for selling/leasing; or

(iv) Any other information the seller/owner has requested in writing remain confidential, unless disclosure is required by law;

(c) Unless otherwise authorized in writing, a broker who is directly providing real estate services to a buyer/tenant shall not disclose the following to the seller/owner in the transaction:

(i) That the buyer/tenant has previously indicated they will pay a price greater than the price submitted in a written offer.

(ii) The buyer/tenant's motivation for buying/leasing; or

(iii) Any other information the buyer has requested in writing remain confidential, unless disclosure is required by law.

[16.61.20.8 NMAC - N, 01-01-2019]

HISTORY OF 16.61.19 NMAC: [RESERVED]