

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 61 REAL ESTATE BROKERS
PART 21 UNLICENSED ASSISTANTS

16.61.21.1 ISSUING AGENCY: New Mexico Real Estate Commission.
[8-15-97; 16.61.21.1 NMAC - Rn & A, 16 NMAC 61.21.1, 1-1-2002]

16.61.21.2 SCOPE: The provisions in Part 21 of Chapter 61 apply to all persons defined as unlicensed assistants in New Mexico.
[8-15-97; 16.61.21.2 NMAC - Rn, 16 NMAC 61.21.2, 1-1-2002]

16.61.21.3 STATUTORY AUTHORITY: Part 21 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.
[8-15-97; 16.61.21.3 NMAC - Rn, 16 NMAC 61.21.3, 1-1-2002]

16.61.21.4 DURATION: Permanent.
[8-15-97; 16.61.21.4 NMAC - Rn, 16 NMAC 61.21.4, 1-1-2002]

16.61.21.5 EFFECTIVE DATE: 8-15-97, unless a later date is cited at the end of a section.
[8-15-97; 16.61.21.5 NMAC - Rn & A, 16 NMAC 61.21.5, 1-1-2002]

16.61.21.6 OBJECTIVE: The objective of Part 21 of Chapter 61 is to establish the activities in which an unlicensed assistant is permitted/not permitted to participate.
[8-15-97; 16.61.21.6 NMAC - Rn, 16 NMAC 61.21.6, 1-1-2002]

16.61.21.7 DEFINITIONS: Refer to 16.61.1.7 NMAC.
[8-15-97, 12-15-99; 16.61.21.7 NMAC - Rn, 16 NMAC 61.21.7, 1-1-2002]

16.61.21.8 PERMITTED ACTIVITIES: An unlicensed assistant is permitted to engage in the following activities:

- A. obtaining information pursuant to written instructions from the responsible person from public records, a multiple listing service, listing exchange or from third party sources including, but not limited to, surveyors, banks, appraisers and title companies;
- B. hosting and/or distributing literature at an open house under the following conditions:
 - (1) an unlicensed assistant does not discuss, negotiate or solicit offers for the property or provide any information other than printed material prepared and approved by the responsible person; and
 - (2) the responsible person is present at the open house where the unlicensed assistant is located;
 - (3) all inquiries are referred to the responsible person or other associate brokers or qualifying brokers;
- C. disseminating and distributing information prepared and approved by the responsible person;
- D. picking up and delivering paperwork to associate brokers or qualifying brokers other than the responsible person;
- E. picking up and delivering paperwork to sellers or purchasers after a contract has been executed if the paperwork has already been reviewed and approved by the responsible person, without answering any questions or providing any opinions or advice to the recipient of the paperwork; all substantive questions must be referred to the responsible person;
- F. writing advertisements, flyers, brochures, and other promotional materials for the approval of the responsible person, and placing classified advertisements approved by the responsible person;
- G. placing or removing signs on real property as directed by the responsible person;
- H. ordering repairs as directed by the responsible person;
- I. receiving and depositing funds, maintaining books and records, while under the supervision of the responsible person;
- J. typing or word processing documents, including purchase and listing agreements, prepared by the responsible person.

[Rn, 16.61.21.8.9, 1-1-2000, A, 1-1-2000; 16.61.21.8 NMAC - Rn, 16 NMAC 61.21.8, 1-1-2002; A, 1-1-2006]

16.61.21.9 PROHIBITED ACTIVITIES: An unlicensed assistant is not permitted to engage in the following activities in connection with the purchase, sale or exchange of real property:

- A. preparing legal documents such as listing and sales contracts;
- B. interpreting documents, offering opinions or advice;
- C. disseminating and distributing information, unless the information is in writing and is prepared and approved by the responsible person;
- D. obtaining personal or property information from a client or customer of the responsible person except when acting as a coordinator directed by the responsible person by gathering and following up on information and the status of matters pertaining to the transaction after a contract has been executed;
- E. picking up from or delivering to customers or clients financial documents prepared by title companies, lenders or other third persons for the purpose of obtaining signatures;
- F. attending a closing without the responsible person present;
- G. representing himself or herself as being an associate broker or a qualifying broker or as being engaged in the business of buying, selling, exchanging, renting, leasing, managing, auctioning or dealing with options on any real estate or the improvements thereon for others;
- H. telephone solicitation of any kind designed to procure transactions requiring licensure under Section 61-29-1 et. Seq. NMSA 1978, including, but not limited to, procuring buyers, sellers, listings or appointments for listing presentations.

[8-15-97; 16.61.21.9 NMAC - Rn & A, 16 NMAC 61.21.9, 1-1-2002; A, 1-1-2006]

16.61.21.10 DISABILITY: Notwithstanding the foregoing, if an associate broker or qualifying broker is a person with a disability as defined in the Americans with Disabilities Act or regulations promulgated hereunder, an unlicensed assistant may provide such additional services normally requiring a license to or on behalf of the associate broker or qualifying broker as would constitute a reasonable accommodation so long as the unlicensed assistant is under the direct control of the associate broker or qualifying broker, the associate broker or qualifying broker is as close as is practical to the activity, and the unlicensed assistant is not represented as being or having the authority to act as an associate broker or qualifying broker. The associate broker or qualifying broker shall notify the commission of the identity of all unlicensed assistants who perform services normally requiring a license for the associate broker or qualifying broker pursuant to this rule prior to performance of these services.

[8-15-97, A, 1-1-2000; 16.61.21.10 NMAC - Rn, 16 NMAC 61.21.10, 1-1-2002; A, 1-1-2006]

16.61.21.11 PENALTIES: Unlicensed assistants are subject to the penalties of Section 61-29-17 and 61-29-17.2 NMSA 1978.

[8-15-97, A, 1-1-2000; 16.61.21.11 NMAC - Rn & A, 16 NMAC 61.21.11, 1-1-2002]

HISTORY OF 16.61.21 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the state records center and archives under: Rule No. 21, Real Estate Licensees Utilizing Unlicensed Assistants, filed 4-13-95.

History of Repealed Material: [RESERVED]

Other History:

Rule No. 21, Real Estate Licensees Utilizing Unlicensed Assistants (filed 4-13-95) was reformatted, amended, renumbered, and replaced by 16 NMAC 16.21, Unlicensed Assistants, effective 8-15-97.

16 NMAC 61.21, Unlicensed Assistants (filed 6-25-97) was reformatted, amended, renumbered, and replaced by 16.61.21 NMAC, Unlicensed Assistants, effective 1-1-2002.