

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 61 REAL ESTATE BROKERS
PART 24 PROPERTY MANAGEMENT

16.61.24.1 ISSUING AGENCY: New Mexico Real Estate Commission.
[16.61.24.1 NMAC - Rp, 16.61.24.1 NMAC, 1-1-2012]

16.61.24.2 SCOPE: The provisions in Part 24 of Chapter 61 apply to all licensed New Mexico associate brokers and qualifying brokers engaged in property management.
[16.61.24.2 NMAC - Rp, 16.61.24.2 NMAC, 1-1-2012]

16.61.24.3 STATUTORY AUTHORITY: Part 24 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.
[16.61.24.3 NMAC - Rp, 16.61.24.3 NMAC, 1-1-2012]

16.61.24.4 DURATION: Permanent.
[16.61.24.4 NMAC - Rp, 16.61.24.4 NMAC, 1-1-2012]

16.61.24.5 EFFECTIVE DATE: January 1, 2012, unless a later date is cited at the end of a section.
[16.61.24.5 NMAC - Rp, 16.61.24.5 NMAC, 1-1-2012]

16.61.24.6 OBJECTIVE: The objective of Part 24 of Chapter 61 is to establish the requirements, policies and procedures that must be met by a New Mexico real estate associate broker or qualifying broker engaged in property management for others.
[16.61.24.6 NMAC - Rp, 16.61.24.6 NMAC, 1-1-2012]

16.61.24.7 DEFINITIONS: Refer to Definitions 16.61.1.7 NMAC.
[16.61.24.7 NMAC - Rp, 16.61.24.7 NMAC, 1-1-2012]

16.61.24.8 PROPERTY MANAGEMENT ADVISORY COMMITTEE: The commission may appoint a property management advisory committee (PMAC) with the goal of enhancing the professional competence of property managers and reducing violations and complaints about property management services.
[16.61.24.8 NMAC - N, 1-1-2012]

16.61.24.9 DECLARATION OF INTENT: At any time that a qualifying broker or associate broker offers or intends to offer property management services for others, the broker shall declare that intent on a form approved by the commission, and shall be subject to education and meeting attendance requirements pursuant to 16.61.3.14 NMAC, and delineated as follows:

A. Qualifying brokers and associate brokers who offer or intend to offer property management services for others, shall as a condition of offering property management services, first complete the commission approved course, Uniform Owner-Resident Relations Act, or a commission approved equivalent property management related course, prior to offering such services, and in every subsequent three-year licensing cycle.

B.. Associate brokers who offer or intend to offer property management services for others, shall do so only with the knowledge, written permission and under the supervision of their qualifying broker. As a condition of offering property management services, in addition to the course requirement in Subsection A above, the broker shall complete a minimum of six hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue during each three-year licensing cycle.

C. Qualifying brokers who offer or intend to offer property management services for others, shall as a condition of offering such services, in addition to the course requirement in Subsection A above, complete a minimum of 12 hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue, each three-year licensing cycle.

D. Qualifying brokers and associate brokers shall attend at least one New Mexico real estate commission meeting, rule hearing, or disciplinary hearing for at least three hours, or until the commission goes into executive session, or the hearing/meeting ends, whichever comes first, in each three three-year licensing cycle. Attendance may be at a live meeting/hearing or by live or recorded distance broadcast; but must be documented by signing into and out of the meeting/hearing.

[16.61.24.9 NMAC - N, 1-1-2012; A, 1-1-2014; A, 1-1-2019]

16.61.24.10 COMPLIANCE WITH APPLICABLE LAW:

Brokers shall comply with applicable local, state and federal laws and ordinances concerning managing and leasing, and maintaining property for others, including but not limited to the following:

- (1) Federal fair housing law
- (2) New Mexico Uniform Owner-resident Relations Act
- (3) Federal lead-based paint regulations, including provisions of the federal Environmental Protection Agency's lead-based paint renovation, repair and painting rule.

[16.61.24.10 NMAC - N, 1-1-2012; A, 1-1-2019]

16.61.24.11 PROPERTY MANAGEMENT TRUST ACCOUNT: In addition to the rules set forth in 16.61.23 NMAC, the following also apply to property management trust accounts.

A. This account shall only contain funds derived from the management of property for others and shall be clearly identified as a property management trust account.

B. All funds received by the qualifying broker shall be deposited into the property management trust account prior to any disbursements. Once deposited, the qualifying broker may then disburse funds as specified in the management agreement.

C. Deposits from tenants shall be placed in a property management trust account. Deposits may be held in a property management trust account or may be disbursed to the owner as specified in the property management agreement and agreed to by the tenant.

D. Commingling of funds is not permitted. No funds may be deposited in a property management trust account that are not received in connection with a managed property except as provided for in 16.61.23 NMAC. Exceptions to commingling.

E. Property ledgers. When the property management trust account contains funds from the rental or lease of more than one property, separate accounting records shall be maintained on each property.

[16.61.24.11 NMAC - Rp, 16.61.24.8 NMAC, 1-1-2012; A, 1-1-2014; A, 1-1-2019]

16.61.24.12 REPORTS AND DOCUMENTS TO OWNERS:

A. Owner statements. The qualifying broker shall provide the owner with a report of receipts and disbursements monthly or as required by the management agreement, showing the following:

- (1) previous balance;
- (2) funds deposited by category;
- (3) funds disbursed by category; and
- (4) ending balance.

B. Additional reports may be provided as set forth in the property management agreement.

C. Documents. Fully executed copies of the management agreement shall be provided to the owner after obtaining all signatures. Signed leases or other documents related to the management agreement shall be provided to the owner upon request, except for documents that the property manager is prohibited by law or contract from disclosing, including but not limited to criminal background checks and credit reports.

D. Final statement after termination. Final accounting of trust account funds shall be provided to the owner within 60 days of the effective date of termination of a management agreement.

[16.61.24.12 NMAC - Rp, 16.61.24.12 NMAC, 1-1-2012; A, 1-1-2014; A, 1-1-2019]

16.61.24.13 MANAGEMENT AGREEMENTS:

A. There shall be a signed written management agreement between the brokerage and the owner for each property managed. The agreement shall be executed prior to acting on behalf of the owner and shall specify the brokerage relationship.

B. The agreement shall define the duties and responsibilities of the brokerage and the owner including, but not limited to, the following:

- (1) duties to be provided by the brokerage;
- (2) disclosure of all fees to be charged to owner;
- (3) disclosure of all fees to be charged to tenant that are retained by the brokerage; and
- (4) a question asking the owner to disclose the status of any foreclosure or other financial situation that could affect the tenant's occupancy.

C. If the property manager is prohibited by law or contract from providing the owner with a given document, such as a tenant's criminal background check or credit report, the property management agreement shall include the following:

- (1) a written disclosure to the owners that the property manager is prohibited by law or contract from providing such documents to the owner; or
- (2) the owner's written consent that such documents will not be provided.

D. The qualifying broker shall include with every written residential management agreement a copy, either in hard copy form or electronically, of the New Mexico Uniform Owner-Resident Relations Act. The qualifying broker shall obtain separate written confirmation from each client that the client has received such a copy of the act. The qualifying broker shall make this confirmation available to the New Mexico real estate commission if requested.

E. Before the brokerage transfers any management agreement to another brokerage, both the qualifying broker assigning the contract and the qualifying broker receiving the contract shall execute an assignment of contract. Because the management agreement is a personal services contract, the qualifying broker must have the property owner's written consent to assign the contract to another brokerage. If there is no assignment of contract, the qualifying broker receiving the contract must execute a new management agreement.

[16.61.24.13 NMAC - Rp, 16.61.24.13 NMAC, 1-1-2012; A, 1-1-2017; A, 1-1-2019]

16.61.24.14 RESIDENTIAL TENANCY AGREEMENTS: There shall be a signed written tenancy agreement for each property or rental unit.

A. Tenancy agreements shall include, but not be limited to, the following:

- (1) name of tenant;
- (2) property address or legal description including unit number (if unit number is applicable);
- (3) rent amount;
- (4) security deposit and other deposit amounts;
- (5) when and where rent is to be paid;
- (6) date property possession began;
- (7) date property possession ends;
- (8) all fees charged to the tenant; and
- (9) how payments are to be applied to outstanding expenses/charges.

B. The qualifying broker shall include a copy, either in hard copy form or electronically, of the New Mexico Uniform Owner-Resident Relations Act, with every written residential tenancy agreement. The qualifying broker shall obtain separate written or electronic confirmation from each tenant that the tenant has received such copy of the act. The qualifying broker shall make this confirmation available to the commission if requested.

C. If the property manager's name is on a lease as the agent of the property owner, and a new property manager takes over management of the property, the lease shall be assigned to the new property manager. The owner of the property must give written consent for assignment of the lease and the assignment must be acknowledged in writing by the qualifying broker.

[16.61.24.14 NMAC - Rp, 16.61.24.14 NMAC, 1-1-2012; A, 1-1-2019]

16.61.24.15 RECORD ACCESSIBILITY, RETENTION AND INSPECTION: The property management brokerage shall maintain office records of all properties managed for others.

A. Accessibility. Records shall be maintained at or accessible from the brokerage office at the location as registered with the commission.

B. Retention. All property management records shall be retained for the previous six years during a management agreement. At the termination of a management agreement, records shall be retained for six years from the date of termination.

C. Inspection. All records are subject to inspection by the commission or its duly appointed representative at or accessible from the brokerage office or at the offices of the commission.

D. The qualifying broker is responsible for the maintenance and safe-keeping of all property management records.

[16.61.24.15 NMAC - Rp, 16.61.24.15 NMAC, 1-1-2012]

16.61.24.16 VACATION RENTALS: In addition to the provisions set forth above, the following special provisions apply only with respect to the management of vacation rentals.

A. If gross receipts taxes and/or lodgers' taxes are due, the management agreement shall specify who or what entity is responsible for collection, reporting and/or remitting of such taxes. If the taxes are to be collected from the tenant by the broker or a third party, the management agreement shall authorize the broker or third party entity to collect and remit the applicable taxes from the renter.

B. Management agreements shall disclose if the broker is using a third party advertising or reservation service (such as AirBnB, VRBO, etc.)

C. Compensation retained by or paid to third parties who engage in advertising and/or taking reservations for vacation rental properties shall not be considered to be in violation of Subsection (3) of Section 61-29-12 A NMSA 197 of the New Mexico real estate license law which prohibits real estate brokers from paying or receiving rebate, profit, compensation or commission to or from any unlicensed person.

D. If a broker uses an online travel agent or third party advertising entity which prohibits disclosure of the brokerage name and/or telephone number as registered with the commission, such displays are exempt from the disclosure requirement in Subsection B of 16.61.32.8 NMAC. In this event, the broker shall ensure that the renter receives this disclosure promptly upon completing a rental reservation.

E. The broker shall not be required to deliver a copy of the Uniform Owner-Resident Relations Act to a renter of a vacation rental.

F. A rental agreement shall also include the following:

- (1) arrival and departure dates;
- (2) check-in and check-out times;
- (3) nightly rental rate;
- (4) rental deposit;
- (5) security deposit;
- (6) disclosure of all fees charged to ~~tenant~~ the renter (e.g. cleaning, hot tub, phone, cable internet, resort, etc.);
- (7) accommodation rules (e.g. occupancy, parking, smoking, pets, noise, etc.); and
- (8) cancellation policy.

G. Reports to owners. In the monthly statement to the owner, qualifying broker shall also list rental income, credit card fees, maintenance charges and amount paid in commission to the brokerage office.

H. Renter security deposits. Funds collected as a tenant security deposit shall be deposited into the property management trust account.

I. Rental deposits. Funds collected as a rental deposit shall be deposited into the property management trust account to secure a reservation.

J. Employees of the brokerage handling short term or vacation rentals or third parties who engage only in taking reservations for short term or vacation rentals shall not be required to be licensed.

[16.61.24.16 NMAC - Rp, 16.61.24.16 NMAC, 1-1-2012; A, 1-1-2019]

16.61.24.17 VENDORS

All brokers hiring vendors or employees to perform maintenance, repair or renovation activities shall only use vendors and employees who are:

- A. certified and/or licensed as required by local, state and/or federal law; and,
- B. insured and/or bonded.

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

HISTORY OF 16.61.24 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the state records center and archives under:
REC 71-17 Property Management, filed 11-29-82;
REC 84-17 Property Management, filed 10-25-84;
Rule No. 15, Property Management, filed 12-18-87;
NMREC Rule 15, Property Management filed 10-3-94.

History of Repealed Material:

16.61.24 NMAC, Property Management (filed 11-30-2001) repealed 1-1-2012.

Other History:

NMREC Rule 15, Property Management (filed 10-3-94) was reformatted, renumbered, amended, and replaced by 16 NMAC 61.24, Property Management, effective 8-15-97.

16 NMAC 61.24, Property Management (filed 6-25-97) was reformatted, amended, renumbered, and replaced by 16.61.24 NMAC, Property Management, effective 1-1-2002.

16.61.24 NMAC, Property Management (filed 11-30-01) was replaced by 16.61.24 NMAC, Property Management, effective 1-1-2012.