

**TITLE 16        OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 61    REAL ESTATE BROKERS**  
**PART 25        TIME SHARE REGISTRATION**

**16.61.25.1        ISSUING AGENCY:** New Mexico Real Estate Commission.  
[8-15-97; 16.61.25.1 NMAC - Rn & A, 16 NMAC 61.25.1, 1-1-2002]

**16.61.25.2        SCOPE:** The provisions in Part 25 of Chapter 61 apply to developers of time shares and individuals who perform duties outlined in this Part.  
[8-15-97; 16.61.25.2 NMAC - Rn, 16 NMAC 61.25.2, 1-1-2002]

**16.61.25.3        STATUTORY AUTHORITY:** Part 25 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.  
[8-15-97; 16.61.25.3 NMAC - Rn, 16 NMAC 61.25.3, 1-1-2002]

**16.61.25.4        DURATION:** Permanent.  
[8-15-97; 16.61.25.4 NMAC - Rn, 16 NMAC 61.25.4, 1-1-2002]

**16.61.25.5        EFFECTIVE DATE:** 8-15-97, unless a later date is cited at the end of a section.  
[8-15-97; 16.61.25.5 NMAC - Rn & A, 16 NMAC 61.25.5, 1-1-2002]

**16.61.25.6        OBJECTIVE:** The objective of Part 25 of Chapter 61 is for carrying into effect the provisions of the New Mexico Time Share Act Section 47-11-1 through 47-11-13, NMSA 1978, and to assist the New Mexico real estate commission in the administration and performance of its duties and functions.  
[8-15-97, A, 1-1-2000; 16.61.25.6 NMAC - Rn, 16 NMAC 61.25.6, 1-1-2002]

**16.61.25.7        DEFINITIONS:**

- A. "Commission" means the New Mexico real estate commission.
  - B. "Developer" means any person creating or engaged in the business of selling ten or more of its own time shares and includes any person who controls, is controlled by or is in common control with the developer and who is engaged in creating or selling time shares for the developer;
  - C. "Exchange company" means any person operating an exchange program;
  - D. "Purchaser" means any person, other than a developer or lender, who owns or acquires an interest or proposes to acquire an interest in a time share;
  - E. "Time share salesperson" means a person, other than a person who has at least a fifteen (15) percent interest in the developer, who sells or offers to sell on behalf of a developer a time share to a purchaser; and
- [8-15-97, A, 2-14-2000; 16.61.25.7 NMAC - Rn & A, 16 NMAC 61.25.7, 1-1-2002]  
[Refer to 16.61.1.7 NMAC]

**16.61.25.8        APPLICATION FOR REGISTRATION:** Every application for time share project registration shall be filed at the commission office upon form TS-1 (questionnaire and application for registration of time share project) and shall contain all information requested by form TS-1 applicable to the time share project.

A. Registration fee: Every application for time share project registration must be accompanied by a certified check made payable to the New Mexico real estate commission in the amount of twenty dollars (\$20.00) per time share interest to be sold, to a maximum of one thousand five hundred dollars (\$1,500.00). Applications for registration not accompanied by the appropriate fee shall not be considered by the commission. In the event a properly completed application filed with the commission is denied for any reason, the amount of two hundred fifty dollars (\$250.00) shall be retained by the commission from the application fee and the balance refunded to the applicant developer.

B. A developer shall obtain a separate certificate of registration for each time share program. Noncontiguous time share projects created by the same developer may be treated for registration purposes as one time share program only if such projects are (1) marketed and otherwise held out to the public as one program, and (2) offered for sale by a single staff of time share salespersons.

C. A developer shall file an amendment to the time share project registration with the commission within a reasonable time after the occurrence of any event or change in plans which materially affects the operation or status of the time share project, including but not limited to the following:

- (1) a material change in ownership of the developer;
- (2) an increase or decrease in the number of time shares to be offered;
- (3) any material alteration of the physical plant and amenities, or of plans for development thereof;
- (4) any material change in the exchange rights offered to purchasers;
- (5) the appearance of new hazards or other unusual conditions near the time share project;
- (6) any material amendment to the documents governing rights and restrictions of time share

ownership

- (7) the recording of any new lien or encumbrance against the time share project;
- (8) any change in management of the time share project;
- (9) any material change in the developer's arrangement for the escrow of purchaser's funds; and,
- (10) any other change requiring a material amendment to the disclosure statement for the project.

D. Amendments to the time share project registration shall be made in writing to the commission.

Every amendment shall identify the section of the project registration to be amended and shall contain a summary of the amendment and a brief statement of the reasons for the amendment. The amendment shall include either the text of the project registration section to be substituted or a copy of the document to be modified.

E. The commission may, in its discretion, require the developer to file a new time share project registration application in the place of an amendment form. Such refiling shall be without a fee.

F. If a developer files an amendment to increase the number of time shares to be offered for sale, a registration fee of twenty dollars (\$20.00) per additional time share interest, subject to the overall maximum of one thousand five hundred dollars (\$1,500.00), shall accompany the amendment.

[8-15-97; 16.61.25.8 NMAC - Rn, 16 NMAC 61.25.8, 1-1-2002]

#### **16.61.25.9 DISCLOSURE STATEMENTS:**

A. In addition to the disclosures required by Section 5 of the act, each developer shall fully and conspicuously disclose to each purchaser in the disclosure statement the following information:

- (1) if any part of the project is not completely constructed at the time of sale, what financial arrangements have been made to secure the completion of each portion.
- (2) if the unit sold to the purchaser is not completely constructed and furnished at the time of sale, the projected date the unit will be ready for occupancy; any limitations upon the purchaser's exchange rights until the unit is ready for occupancy; any limitations upon the effectiveness of title insurance obtained by the purchaser prior to the time the unit is ready for occupancy;
- (3) a complete description of the project, including: the total number of time shares sold and to be sold in the project; the number and types of units available; the types of facilities and amenities available;
- (4) a description of all terms and conditions of each charter membership, owner referral, rental, resale, in-house exchange or other program offered to time share owners; provided, however, if no reference to the program will be made to the purchaser prior to the expiration of the purchaser's 7-day right of rescission, the developer may provide such description, by separate letter to the purchaser, after the expiration of such period; and
- (5) any other information contained in the questionnaire and application for registration of time share project which the commission may require to be disclosed.

B. Every disclosure statement shall contain an introductory summary prescribed by the commission and completed by the developer entitled "summary of disclosures." The "summary of disclosures" shall appear on the cover, or immediately following the cover of the disclosure statement, and shall be on the form prescribed by the commission. "Summary of disclosures" forms are available upon request at the commission office.

C. Information contained in a disclosure statement shall be accurate on the date it is supplied to a purchaser.

[8-15-97; 16.61.25.9 NMAC - Rn, 16 NMAC 61.25.9, 1-1-2002]

**16.61.25.10 DESCRIPTION OF INTEREST IN TIME SHARE PROPERTY; RECORDATION:** All contracts and deeds conveying an interest in a time share must contain a legal description of the time share project, time share unit and interval number for which the interest is being conveyed, if applicable. The developer shall not record a conveyance instrument until after the expiration of the purchaser's 7-day right of rescission.

[8-15-97; 16.61.25.10 NMAC - Rn, 16 NMAC 61.25.10, 1-1-2002]

**16.61.25.11 QUESTIONNAIRE AND APPLICATION:** The "questionnaire and application for registration of time share project" (form TS-1) shall be made on the form prescribed by the commission. Questionnaire and application forms are available upon request at the commission office.

[8-15-97; 16.61.25.11 NMAC - Rn, 16 NMAC 61.25.11, 1-1-2002]

**16.61.25.12 LICENSE REQUIREMENTS:** Any individual, including a tour guide, who shows time share units or facilities to prospective purchasers, shall hold a New Mexico real estate associate broker's or qualifying broker's license. No person except the developer may participate in any part of a time share sales presentation unless that person holds a New Mexico real estate associate broker or qualifying broker license.

[8-15-97, A, 2-14-2000; 16.61.25.12 NMAC - Rn, 16 NMAC 61.25.12, 1-1-2002; A, 1-1-2006]

**16.61.25.13 DEVELOPERS:** Every developer of a time share project registered in this state shall, in addition to any other requirements by law:

A. Maintain a full and complete record of all transactions wherein that developer or any real estate associate broker or qualifying broker representing said developer are engaged. All records shall contain, but are not limited to:

(1) record of all purchases, sales, leases or exchanges of time share interests in the registered time share project;

(2) the name or names of the buyer and seller, or in the case of exchanges, the names of the parties thereto;

(3) the date or dates of such transactions;

(4) the amount, if any, of the commission earned in such transaction; and,

(5) the amount, if any, of the commission or commissions paid by the qualifying broker or the developer to an associate broker and the amount, if any, of the commission or commissions retained by the qualifying broker or developer.

B. All sales of time share interests by associate brokers must be through the qualifying broker of the time share project, and all commissions to such associate brokers must be disbursed by the qualifying broker. If a qualifying broker transfers his license from a time share project and all commissions earned by associate brokers have not been disbursed, those commissions must be accounted for and remitted within a reasonable time by the time share developer.

C. The records required to be maintained by these regulations will be available to the commission or its duly authorized representative at the location of the registered time share project in New Mexico, at the location of the time share sales office in New Mexico, or at the commission offices.

[8-15-97, A, 2-14-2000; 16.61.25.13 NMAC - Rn & A, 16 NMAC 61.25.13, 1-1-2002; A, 1-1-2006]

**16.61.25.14 TRUST ACCOUNTS:** Records to be maintained. Every developer of a time share project registered in New Mexico shall, within a reasonable time, account for and remit any money coming into his possession which belongs to others during the sale of a time share interest. Such developer shall keep such funds of others in an escrow or trust account maintained by him in a bank or savings and loan institution or title company authorized to do business in this state. Such developer shall not commingle funds of others with his own. Every developer of a time share project registered in this state shall maintain full and complete records of all funds deposited in his trust account. Such records shall clearly indicate the date and from whom the money was received, date deposited, date of withdrawal, and any other pertinent information concerning the transaction. The records shall clearly show for whose account the money is deposited and to whom the money belongs. All such records and funds shall be subject to inspection by the commission or its duly authorized representative at the location in New Mexico of the registered time share project, the location in New Mexico of the time share sales office, or at the commission offices.

[8-15-97, A, 2-14-2000; 16.61.25.14 NMAC - Rn, 16 NMAC 61.25.14, 1-1-2002; A, 1-1-2006]

## **HISTORY OF 16.61.25 NMAC:**

### **Pre-NMAC History:**

The material in this part was derived from that previously filed with the state records center and archives under: REC Rule No. 86-100, Purpose of Rules and Regulations - Time Share Act, filed 11-21-86; Rule No. 16 Time Share Rules and Regulations, filed 12-18-87.

**History of Repealed Material:** [RESERVED]

### **Other History:**

Rule No. 16 Time Share Rules and Regulations (filed 12-18-87) was reformatted, renumbered and replaced by 16 NMAC 61.25, Time Share, effective 8-15-97.  
16 NMAC 61.25, Time Share (filed 6-25-97) was reformatted, renumbered, amended and replaced by 16.61.25 NMAC, Time Share, effective 1-1-2002.