

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 61 REAL ESTATE BROKERS
PART 36 COMPLAINTS AND INVESTIGATIONS

16.61.36.1 ISSUING AGENCY: New Mexico Real Estate Commission.
[16.61.36.1 NMAC - Rp, 16 NMAC 61.36.1, 1-1-2002]

16.61.36.2 SCOPE: The provisions in Part 36 of Chapter 61 apply to anyone violating the Real Estate License Law, NMSA 1978 Section 61-29-12. The provisions in Part 36 of Chapter 61 may be of interest to anyone who may wish to file a complaint against a broker licensed by the commission, or against any person who acts as a real estate broker in this state with or without a New Mexico real estate license.
[16.61.36.2 NMAC - Rp, 16 NMAC 61.36.2, 1-1-2002; A, 1-1-2006]

16.61.36.3 STATUTORY AUTHORITY: Part 36 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.
[16.61.36.3 NMAC - Rp, 16 NMAC 61.36.3, 1-1-2002]

16.61.36.4 DURATION: Permanent.
[16.61.36.4 NMAC - Rp, 16 NMAC 61.36.4, 1-1-2002]

16.61.36.5 EFFECTIVE DATE: 8-15-97, unless a later date is cited at the end of a section.
[16.61.36.5 NMAC - Rp, 16 NMAC 61.36.5, 1-1-2002]

16.61.36.6 OBJECTIVE: The objective of Part 36 of Chapter 61 is to set forth the procedure by which the real estate commission receives and investigates complaints against associate brokers or qualifying brokers or any other person who performs the acts of a real estate broker in this state with or without a New Mexico real estate license.
[16.61.36.6 NMAC - Rp, 16 NMAC 61.36.6, 1-1-2002; A, 1-1-2006]

16.61.36.7 DEFINITIONS: Refer to 16.61.1.7 NMAC.
[16.61.36.7 NMAC - Rp, 16 NMAC 61.36.7, 1-1-2002]

16.61.36.8 COMPLAINTS: The commission may file a complaint against any person who engages in the business or acts in the capacity of a real estate broker, real estate commission approved education sponsor or instructor, in this state with or without a New Mexico real estate license based on information indicating that there may have been a violation of the Real Estate License Law or the commission rules. The commission may also act on a complaint made by a member of the commission, a member of the public, or another real estate broker. Upon receipt of a complaint the commission will determine if the complaint is within its jurisdiction. If the commission determines the complaint is within its jurisdiction, the complaint will be assigned for investigation.
[16.61.36.8 NMAC - Rp, 16 NMAC 61.36.8, 1-1-2002; A, 1-1-2006; A, 12-31-2008]

16.61.36.9 INVESTIGATIONS: In conducting an investigation, the commission shall give the person under investigation the opportunity to answer the complaint made against them in writing and to produce relevant documentary evidence, in accordance with the Uniform Licensing Act. If the person under investigation fails to respond within 10 working days of having been provided with a copy of the complaint and having been informed by the commission in writing that a complaint has been filed against him or her, the investigation may proceed without benefit of that person's response.

A. If the investigation reveals that the complaint does not involve a violation of the Real Estate License Law or the commission rules, the complaint will be dismissed by the commission, and the parties to the complaint will be so advised.

B. If the investigation reveals that the complaint does involve a violation of the Real Estate License Law or the commission rules, the commission may refer the complaint to the attorney general's office and request that a notice of contemplated action (NCA) be issued to the respondent, or offer the respondent a pre-NCA settlement with the understanding that if the respondent does not accept the settlement offer, the complaint will be referred to the attorney general's office for the issuance of an NCA.

C. Withdrawal of a complaint by a member of the commission, a member of the public, or another broker does not bind the commission to dismiss the complaint.
[16.61.36.9 NMAC - Rp, 16 NMAC 61.36.9, 1-1-2002; A, 1-1-2017]

HISTORY OF 16.61.36 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the state records center and archives under:
Real Estate License Law Manual, filed 10-2-73;
Rule No. 18 Penalties, filed 6-15-79;
REC 70-17 Penalties, filed 10-6-81;
REC 71-18 Penalties, filed 11-29-82;
Rule No. 17 Penalties, filed 12-18-87;
NMREC Rule 17 Investigation/Penalties, filed 10-3-94.

History of Repealed Material:

16 NMAC 61.36, Investigations (filed 6-25-97) repealed 1-1-2002.

Other History:

That portion of NMREC Rule 17 Investigation/Penalties (filed 10-3-94) was reformatted, renumbered, and replaced by 16 NMAC 61.36, Investigations, effective 8-15-97.

16 NMAC 61.36, Investigations (filed 6-25-97) replaced by 16.61.36 NMAC, Complaints and Investigations, effective 1-1-2002.