

**NOTICE OF REGULAR MEETING AND RULE HEARING**

The New Mexico Real Estate Commission will hold a regular meeting and public hearing on proposed amendments to the Real Estate Commission Rules on Monday, September 17, 2018 at 9 a.m. at the offices of the Greater Albuquerque Association of Realtors, 1635 University Boulevard NE, Albuquerque, New Mexico.

The Real Estate Commission will be considering and receiving public comments on proposed amendments to the following rules recommended by the Commission's Rules Task Force.

The full text of the proposed rule changes is available on the Real Estate Commission web site at: <http://www.rld.state.nm.us/> or by contacting Gie Vivar at (505) 222-9820 at the Real Estate Commission office at 5500 San Antonio Drive NE, Albuquerque, New Mexico 87109.

Written comments on the proposed rules will be accepted up to and throughout the rule hearing. Oral comments will be accepted throughout the rule hearing.

**16.61.1 NMAC GENERAL PROVISIONS:**

Broker, Brokerage, Brokerage Relationship: The amendments would break the three terms into separate definitions.

Purpose: The purpose of the amendment is to create a distinct definition for each of these terms. The terms are currently under the Broker heading.

Property Management: An amendment to the definition of property management that would exclude advertising and taking reservations for vacation property rentals from the definition of property management.

Purpose: The purpose of the proposed amendment is to allow companies to advertise and take reservations for vacation properties in New Mexico without obtaining a New Mexico real estate broker's license.

Transaction Coordinator: The amendment would create new definition of a Transaction Coordinator as a licensed New Mexico associate broker who performs brokerage related services for one brokerage, or a licensed New Mexico qualifying broker who performs brokerage related services for multiple brokerages with different ownership.

Purpose: The purpose of the new language is to codify licensure requirements for transaction coordinators that the Real Estate Commission adopted by a motion at a public meeting.

Statutory Authority: Section 61.29.4 NMSA 1978

**16.61.2 NMAC LICENSE AND OTHER FEES:**

Section 8, Fees: The amendment would set fees charged for applications to teach pre-licensing and continuing education courses to a fee not to exceed \$70 to teach an existing approved course, and a fee not to exceed \$100 to renew certification as an approved instructor. An additional amendment would set a fee not to exceed \$50 plus \$2 for each credit hour up to a maximum of 10 credit hours for approval to teach a new pre-licensing course, and a fee not exceed \$25 plus \$1 for each credit hour up to a maximum of 10 credit hours for "bulk course approval", defined as five or more courses submitted for approval at any single meeting of the Education Advisory Committee.

Purpose: The purpose of the proposed amendments is to clarify and standardize fees charged for approval of pre-licensing and continuing education courses.

Statutory Authority: Section 61.29.4 NMSA 1978

### **16.61.3 NMAC REAL ESTATE BROKER'S LICENSE: EXAMINATION AND LICENSING APPLICATION REQUIREMENTS:**

Section 11, Qualifying Broker Candidate Education Requirements for Application: The amendment would specify that a qualifying broker candidate shall attend a commission meeting, public hearing, or disciplinary hearing for at least three hours or until the meeting or hearing adjourns or goes into executive session whichever happens first. The amendment would permit attendance through a live or recorded distance broadcast.

Section 13, Qualifying Broker License Renewal: The amendment would specify that a qualifying broker candidate shall attend a commission meeting, public hearing, or disciplinary hearing for at least three hours or until the meeting or hearing adjourns or goes into executive session whichever happens first. The amendment would permit attendance through a live or recorded distance broadcast.

Purpose: The purpose of the amendments is to clarify how long a qualifying broker must attend a commission meeting, public hearing, or disciplinary hearing to satisfy their licensing application and renewal requirements.

Statutory Authority: Section 61.29.4 NMSA 1978

**16.61.11 NMAC LICENSE EXPIRATION AND RENEWAL:** The amendment would not allow a qualifying broker to avoid paying a late fee on an expired license by allowing the license to expire and applying for an additional license. An application for an additional license within the broker's next licensing cycle would only be accepted if the qualifying broker brings all other licenses current with respect to fees, continuing education, and other renewal requirements.

Purpose: The purpose of the amendment is to close a loophole in the rules that currently allows a qualifying broker to avoid paying \$810 to renew an expired license by applying for a new license for \$270.

Statutory Authority: Section 61.29.4 NMSA 1978

### **16.61.13 NMAC CONTINUING EDUCATION REQUIREMENTS:**

Section 8, Requirements: The amendments would clarify course completion requirements for the four-hour Core Course. The amendment would require brokers to complete the core course designated for each year of the three licensing cycle, but would allow brokers who missed a core course required in the first year of the licensing cycle to take make up the course by taking the course required in the third year of the licensing cycle twice with different instructors. Although the repeated course would be given credit for purposes of license renewal, the broker would not receive continuing education credit for the repeated course.

Purpose: The purpose of the amendment is to clarify the annual requirement of the core course, but to provide a makeup option to brokers who missed the course in the first year of their cycle.

Statutory Authority: Section 61.29.4 NMSA 1978

### **16.61.15 NMAC APPROVAL OF REAL ESTATE COURSES, SPONSORS, AND INSTRUCTORS:**

Section 9, Approval of Education Programs: The amendments would clarify that courses offered for Real Estate Commission-approved credit must be taught by Commission-approved instructors, that instructors will be evaluated by the Education Advisory Committee for their honesty, truthfulness, good repute, competence, and professionalism; and that student evaluations of instructors shall be made available to the commission or any duly authorized commission representative upon request.

Section 11, Approval of Courses: The amendments would clarify the definition of distance education, require sponsors of distance education to provide technical support to rectify minor technical problems, require proctors and set a 40 student maximum for administration of the Core Course, and require final exams for courses that are not proctored.

Section 12, Approval of Instructors: The amendments would require Core Course instructors to complete a Core Course training approved by the Education Advisory Committee; teach the Core Course twice for no compensation; be teamed with two different approved Core Course instructors; and receive above average evaluations in both courses; appear before and be approved by the Education Advisory Committee; and appear before and be sworn in by the Real Estate Commission.

Purpose: The purpose of the foregoing amendments to Part 15 is to ensure the highest possible quality of real estate instruction, and set standards for distance education.

Statutory Authority: Section 61.29.4 NMSA 1978

**16.61.17 NMAC ASSOCIATE BROKER: AFFILIATION AND RESPONSIBILITIES:** The amendment would specify that an associate broker could perform brokerage services for different qualifying brokers within the same brokerage, but would be required to have a qualifying broker's license to perform brokerage services for multiple brokerages with different ownership in the capacity of a transaction coordinator.

Purpose: The purpose of the amendments is to clarify what brokerage duties an associate broker can perform in light of the emergence of the transaction coordinator in brokerage business.

Statutory Authority: Section 61.29.4 NMSA 1978

**16.61.19 NMAC BROKER DUTIES AND BROKERAGE RELATIONSHIPS:** The amendments would create new language requiring brokers to disclose in writing to customers and clients when the broker has a written agreement with a transaction coordinator who will be providing brokerage services related to their customer's or client's transaction.

Other amendments would require brokers to make timely presentation of and response to all written offers and counter-offers to customers and clients and to other brokers.

Purpose: The purpose of the amendment is to ensure that the broker makes full disclosure to their customer or client of the involvement of a transaction coordinator in the transaction, and to clarify that the requirement for timely presentation of offers and counter-offers applies to written offers.

Statutory Authority: Section 61.29.4 NMSA 1978

**16.61.23 NMAC TRUST ACCOUNTS:** The amendments would require brokers who maintain trust accounts but do not engage in property management to file an annual audit declaration naming the bank where the trust account is maintained, the last four digits of the trust accounts maintained, and the balance of all such accounts as of December 31 of the previous year. Brokers who maintain trust accounts and engage in property management would be required to disclose such involvement to the Real Estate Commission; submit an annual audit declaration form to the Commission, and attest that they have reconciled and balanced all trust accounts related to their brokerage business on a monthly basis during the previous year.

Purpose: The purpose of the amendments is to enhance public protection by making property managers more accountable to their customers and to the Real Estate Commission.

Statutory Authority: Section 61.29.4 NMSA 1978

**16.61.24 NMAC PROPERTY MANAGEMENT:** The amendments would require brokers providing property management services to attach to any residential tenancy agreement a copy of the Uniform Owner Resident Act and take additional continuing education courses in property management. The amendments would also require the broker to disclose if they are using an online travel agent or third party advertising entity.

Other amendments would require property managers hiring vendors or employees to perform maintenance, repair or renovation to use certified, licensed and/or insured vendors to perform such work; require brokers to execute

assignments of contracts when transferring management between broker and obtain owners' consent of such assignments.

Other amendments would change the name of Part 16.51.24.16 from Short term and vacation rentals to Vacation rentals and would allow New Mexico brokerages to pay fees to unlicensed companies engaged in advertising and taking reservations for vacation rentals without violating Section 61-29-12 A (3) of the Real Estate License Law which prohibits paying or receiving compensation to or from an unlicensed entity.

Purpose: The purpose of the amendments is to enhance public protection by ensuring a higher level of education, accountability, disclosure, and professionalism among property managers.

Statutory Authority: Section 61.29.4 NMSA 1978