

NOTICE OF RULE HEARING

Unlicensed Activity, Licensure Recognition, Errors and Omissions Insurance to be Focus of Real Estate Commission Rule Hearing

The New Mexico Real Estate Commission will convene a rule hearing on Friday, August 24, 2001, at 9 a.m. in the Real Estate Commission offices, 1650 University NE, Suite 490, Albuquerque, New Mexico. A regular Commission meeting will convene at the same location following the conclusion of the rule hearing.

The Commission will be reviewing and receiving licensee and public comment on proposed amendments to existing rules, and adoption of new rules, pertaining to licensing fees; licensing requirements; unlicensed activity; licensure recognition agreements with other states and jurisdictions; mandatory errors and omissions insurance for active salespersons and brokers; Salesperson and Associate Broker incorporation; continuing education credit for teaching Commission-approved continuing education courses; the Land Title Trust Fund Act; trade names; delivery of documents related to real estate transactions; and the Commission's complaint, investigative, and disciplinary processes.

Persons desiring to present their views on the proposed rule changes may appear in person at the hearing and/or send written comments to the attention of Wayne W. Ciddio, Executive Secretary, New Mexico Real Estate Commission, 1650 University NE, Suite 490, Albuquerque, New Mexico 87102 or by e-mail at wayne.ciddio@state.nm.us.

If you are an individual with a disability who is need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the rule hearing or meeting, please contact Mr. Ciddio at least one week prior to the rule hearing or as soon as possible. Public documents can be provided in various accessible formats. Please contact Mr. Ciddio if a summary or some other type of accessible format is needed.

A summary of the proposed rule changes follows. Interested persons may obtain a complete text of proposed changes by contacting Dora Forte, Commission Administrative Secretary, by telephone at (505) 841-9120, or by accessing the Commission web site at www.state.nm.us/clients/nmrec under "News" "Notice of Rule Hearing".

Summary of Proposed Rule Changes

Part 1 – General Provisions and Definitions, creates a new definition for "Errors and Omissions Insurance", a new program that is described in detail in a new Part 5, "Errors and Omissions Insurance".

Part 2 – License and Other Fees, inserts the language "not to exceed" before each fee category, thereby enabling the Commission to lower fees without a rule hearing.

Part 3 – Broker's License: Examination and Licensing Application Requirements, gives the Commission broad authority to issue Broker's licenses to applicants from other states and jurisdictions whose licensing requirements are substantively equivalent to New Mexico's requirements. This concept is known as "licensure recognition".

Part 4 – Salesperson's License: Examination and Licensing Application Requirements, gives the Commission broad authority to issue Salesperson's licenses to applicants from other states and jurisdictions whose licensing requirements are substantively equivalent to New Mexico's requirements. This concept is known as "licensure recognition".

Part 5 – Errors and Omissions Insurance, creates a new rule requiring active Salespersons and Brokers to obtain and maintain errors and omissions insurance coverage, either through the Commission's contract insurance provider or through an independent provider that meets the minimum requirements of this rule, effective January 1, 2002. If the Commission cannot secure through a competitive bidding process a

provider that can provide coverage of not less than \$100,000 for each licensed individual and entity per covered claim and not less than a \$500,000 aggregate limit per licensed individual or entity, with a deductible for each occurrence of not more than \$1,000, at a maximum \$150 annual premium, the insurance requirement would be suspended. Please see the Commission web site for the complete text of this proposed rule.

Part 9 – License Surrender/ Inactivation, deletes the word “Surrender” from the Part name, and specifies that a Salesperson’s or Broker’s license will be placed on inactive status if they fail to obtain and maintain an errors and omissions insurance policy either through the contract provider or an independent provider meeting the minimum requirements in the proposed Errors and Omissions Insurance rule.

Part 11 – License Renewal, specifies that a Salesperson or Broker will not be eligible to renew their license in active status if they fail to obtain and maintain an errors and omissions insurance policy either through the contract provider or an independent provider meeting the minimum requirements in the proposed Errors and Omissions Insurance rule.

Part 12 – License Revocation, renames the Part “License Suspension and Revocation”, and rewrites the Part to clarify that the Commission may take disciplinary action up to and including license suspension and revocation for violations of the license law and rules and regulations by a person who is licensed, and may impose other penalties as provided by law, Commission rules, regulations, and policies, for unlicensed persons who violate the license law or rules and regulations. This language, along with enabling language in the real estate license law, brings unlicensed real estate activity under the jurisdiction of the Real Estate Commission.

Part 13 – Continuing Education: Licensee Requirements, allows Commission-approved instructors to apply up to ten (10) credit hours during each three-year licensing cycle toward fulfillment of their own continuing education requirements for teaching Commission approved courses.

Part 16 – Qualifying Broker: Affiliation and Responsibilities, allows a Qualifying Broker to receive and disburse commissions, referral fees and other considerations to partnerships, corporations, or Limited Liability Companies (LLC’s) wholly owned by Salespersons or Associate Brokers and their spouses.

Part 26- Land Title Trust Fund Act, creates a new rule reflecting changes to the Act allowing but not requiring Qualifying Brokers to maintain pooled interest-bearing trust accounts whose proceeds are paid to Land Title Trust Fund and Low Income Housing Trust accounts.

Part 29 – Trade Name, continues the requirement that a Qualifying Broker register and do business under a trade name as registered with the Commission, but removes the Commission’s authority to approve trade names.

Part 33 – Document Execution and Delivery, specifies that it is the Qualifying Broker or Broker-in-Charge’s responsibility to insure that all parties to a real estate transaction receive legible copies of “any and all” documents pertaining to the transaction, but deletes from the rule the list of specific documents that must be provided.

Part 36 – Investigations, renames the Part “Complaints and Investigations”, specifies who may file a complaint, how complaints are assigned, investigated, and dismissed, sets time limits for responding to complaints, and specifies that a complaint may be filed not only against a licensee, but against any person who engages in the acts of a real estate Salesperson or Broker with or without a real estate license.

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Friday, August 24, 2001
9 a.m. Real Estate Commission Offices
1650 University NE, Suite 490
Albuquerque, New Mexico**