

This is an amendment to Section 16.61.1 NMAC, Section 7, effective, 2/25/2022.

16.61.1.7 DEFINITIONS:

- A. “Acceptable financial institution”:** is a federally insured bank, savings and loan or title company authorized to do business in the state of New Mexico.
- B. “Agency”:** the fiduciary relationship created solely by the express written agency agreement between a person and a brokerage, authorizing the brokerage to act as agent for the person according to the scope of authority granted in that express written agreement for real estate services subject to the jurisdiction of the commission.
- C. “Agent”:** the brokerage authorized solely, by means of an express written agreement, to act as a fiduciary for a person and to provide real estate services that are subject to the jurisdiction of the commission; in the case of an associate broker, “agent” means the person who has been authorized to act by that associate broker's qualifying broker. In the case of residential property management, the property manager is an agent of the owner(s) of the property for the purpose of performing the obligations of the owner(s) under the property management agreement. In the case of commercial property management, the property manager is an agent of the owner(s) of the property for the purpose of performing the obligations of the owner(s) pursuant to a property management agreement if the property management agreement specifically creates an agency relationship.
- D. “Associate broker”:** a person holding a New Mexico associate broker's license who is affiliated with a New Mexico qualifying broker.
- E. “Broker”:** any person holding a current New Mexico associate broker's or qualifying broker's real estate license.
- F. “Brokerage”:** a person, corporation, partnership or association qualified by a New Mexico licensed qualifying broker to conduct real estate brokerage activity in New Mexico.
- G. “Brokerage relationship”:** the relationship between a customer or client and a brokerage for the provision of services in connection with a real estate transaction.
- H. “Brokerage trust account”:** an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money belonging to others received during a real estate sales transaction.
- I. “Broker duties”:** certain duties owed by brokers to prospective buyers, sellers, owners and tenants, and broker obligation to other brokers as set forth in Part 16.61.19.8 NMAC.
- J. “Broker in charge”:** a New Mexico licensed real estate broker qualified to be a qualifying broker who has been designated in writing by the qualifying broker to assume responsibility for the brokerage during a period of time when supervision by the qualifying broker is not possible.
- K. “Client”:** a person who has entered into an express written agreement with a brokerage for real estate services subject to the jurisdiction of the commission.
- L. “Commercial real estate”:** real estate that is zoned for business or commercial use by a city or county; or designated by a city or county to allow five or more multi-family units; provided that all units are located on a single parcel of land with a single legal description.
- M. “Core course”:** the four-hour commission-approved continuing education course that all brokers are required to complete annually as a condition of license renewal.
- N. “Core elective course”:** commission-approved advanced continuing education course in residential transactions, commercial transactions, property management transactions, or vacant land/ranch transactions required once during each three-year cycle, core elective courses advance the broker's practice of real estate by one or more of the following:
- (1) improve broker transactional expertise focusing on, but not limited to, contractual and disclosure forms used in the practice of real estate, real estate title issues, contracts, and real estate transactional negotiating skills;
 - (2) improves broker business practices and professionalism focusing on, but not limited to, broker responsibilities and duties;
 - (3) improves broker awareness of issues that impact the public and real estate transactions focusing on, but not limited to, land development, jurisdictional taxation issues; or
 - (4) increases the broker knowledge of third party services within a transaction. The number of core elective hours required for both associate brokers and qualifying brokers is further defined at 16.61.13.8 NMAC.
- O. “Credit hours(s)”:** credits toward education requirements as assigned by the real estate commission for each commission-approved course.

P. “Custodial account”: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of an owner. The account shall be established in the owner’s name under the qualifying broker’s control. This account may be interest bearing.

Q. “Customer”: a person who uses real estate services without entering into an express written agreement with a brokerage subject to the jurisdiction of the commission.

R. “Designated agent”: a broker who is designated in writing by their qualifying broker to represent a client of the brokerage as their exclusive agent in a real estate transaction.

S. “Designated agency”: a policy chosen by the qualifying broker of a brokerage that discloses to a client of the brokerage that the broker representing them as an agent by means of an express written agency agreement is their only representative in the brokerage. The designated agency disclosure is made at the time that the client and the brokerage enter into an express written agency agreement, or at such time that the qualifying broker of a brokerage determines the need to designate one broker of the brokerage as agent of the buyer and another as agent of the seller in the same transaction.

T. “Distance education”: distance learning is education and training that takes place outside of the traditional classroom setting and in which other instructional media are used because the instructor, teaching materials, and student are separated by either distance or time.

U. “Dual agency”: an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as a facilitator in a real estate transaction rather than as an exclusive agent for either party to the transaction.

V. “Dual agent”: the brokerage in a dual agency relationship working as a facilitator in a single transaction for both a buyer client and a seller client who have modified existing exclusive agency agreements with the brokerage.

W. Elective Course: a commission approved elective course not considered as intensive in focus as a core elective course in a broad array of topics directly and indirectly related to the practice of real estate or the skills necessary to practice real estate including: real estate law and practice; real estate financing, mortgages and other financing techniques; material specific to the regulatory, technical and ethical practice of real estate; and all state and federal laws including but not limited to fair housing, the Americans with Disabilities Act (ADA), and lead-based paint disclosure. This broad category of courses also includes courses associated with various national and state designations and certifications not already categorized as core electives; courses in personal and property protection for the broker and clients; broker skills-related offerings in using the computer, the internet, business calculators, and other technologies to enhance the broker’s service to the public; other skills offerings related to broker professional development, broker customer relations skills, broker sales promotion including salesmanship, negotiation, marketing techniques, servicing the client, or similar courses.

X. “Employee”: for the purposes of Paragraph (1) of Subsection C of Section 61-29-2 NMSA 1978 of the real estate license law, a person employed by an owner of real property, or a person employed by the brokerage acting on behalf of the owner of real property. In determining whether a person is an employee, as opposed to an independent contractor, the commission shall consider the following:

- (1) does the employer withhold income tax from the person’s wages, salary, or commission;
- (2) does the employer pay a portion of the person’s FICA tax;
- (3) is the person covered by workers’ compensation insurance;
- (4) does the employer make unemployment insurance contributions on behalf of the person.

Y. “Errors and omissions insurance”: a type of professional liability insurance that provides insurance coverage to holders of active New Mexico real estate brokers licenses for errors and omissions made during the course of real estate transactions, subject to the coverage’s, limitations, and exclusions of the specific insurance policy or policies in place.

Z. “Exclusive agency”: an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interests of the person in a real estate transaction. Such agreements include buyer agency, seller agency, designated agency, subagency, residential property management, and may include commercial property management.

AA. “Expired license”: an associate broker’s or qualifying broker’s license that has not been renewed as of the last day of the month following the broker’s birth month at the end of the broker’s three-year licensing cycle.

BB. “Express written agreement”: any written agreement signed by all parties pertaining to a real estate transaction or the provision of real estate services.

CC. “Facilitator”: the role of a brokerage in either a dual agency relationship or a transaction brokerage relationship in which the exclusive relationships between a seller or landlord client or buyer or tenant client are modified so that the brokerage impartially facilitates the transaction.

DD. “Foreign broker”: a real estate broker who does not hold a real estate license issued by the New Mexico real estate commission, but who holds a current and valid real estate broker’s license issued by another state in the United States, a province of Canada, or any other sovereign nation.

EE. “Honesty and reasonable care and ethical and professional conduct”: conduct that a reasonable person would understand to meet standards of professionalism and ethical conduct within a profession, including but not limited to good faith, competence, trustworthiness, diligence, and lawful behavior.

FF. “Inactive broker”: a New Mexico licensed real estate broker not currently affiliated with a New Mexico real estate brokerage and therefore ineligible to participate in any brokerage activity or collect fees or commissions in connection with such activity except as provided in Subsection C of 16.61.9.8 NMAC.

GG. “In house transaction”: a transaction in which both sides of the transaction occur under the supervision of one qualifying broker in the same brokerage.

HH. “Land title trust account”: a pooled interest-bearing account subject to the land title trust fund act.

II. “Military service member”: a person, the spouse of a person, or the dependent children of a person, who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard. For purposes of this definition, any dependent child must be a dependent for federal income tax purposes.

JJ. “Owner or property owner”: a person who is recognized and held responsible by law as the owner of real property, including real property held by any legally recognized entity in which the owner has an interest of ten percent or more.

KK. “Party to the transaction”: a client or customer or any other person who utilizes real estate related services subject to the jurisdiction of the commission, not including a person who acquires an interest as security for an obligation.

LL. “Person”: any natural person, corporation, business trust, estate, trust, partnership, association, joint venture, governmental entity or other legal entity.

MM. “Post-licensing course”: the commission-approved new broker business practices course required within the first year of licensure of brokers first licensed in New Mexico as associate brokers on or after January 1, 2009.

NN. “Principal”: any person who authorizes or employs another to do certain acts on behalf of that person.

OO. “Property ledger”: a record of deposits and disbursements within a trust account or custodial account that are associated with the same property or owner.

PP. “Property management”: real estate services as specified by a written management agreement between a property owner [~~or owner association~~] and a third party property management company; which includes, but are not limited to, the marketing, showing, renting and leasing of real property; the collection and disbursement of funds on behalf of owners [~~or owner associations~~]; the supervision of employees and vendors; the coordination of maintenance and repairs; the management of tenant relations; or the preparation of leases or rental agreements, financial reports, disclosure certificates, resale certificates, and other documents [~~, or the undertaking of any of the foregoing activities on behalf of a homeowners’ or unit owners’ association~~]. In the course of listing and marketing properties for sale, inspections of the property, repairs and maintenance incident to the sale and authorized by the owner shall not be considered property management. Advertising and taking reservations for vacation rental properties shall not be considered property management.

QQ. “Property management trust account”: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money belonging to others received during the management of real property for others.

RR. “Property manager”: a broker who, for a fee, salary, commission or other valuable consideration, is engaged in managing property for others [~~including owner associations~~]. A residential property manager is an agent of the owner(s) of the property for the purpose of performing the obligations of the owner(s) under the Uniform Owner-Resident Relations Act and under the rental or lease agreement. A commercial property manager may be an agent of the owner(s) as determined by the contract with the owner(s).

SS. “Qualifying broker”: a broker who has qualified a proprietorship, corporation, partnership or association to do business as a real estate brokerage in the state of New Mexico, and who discharges the responsibilities of a qualifying broker as set forth in 16.61.16.9 NMAC.

TT. “Recent veteran”: a person who has received an honorable discharge or separation from military service within the three years immediately preceding the date the person applied for a real estate broker’s license.

UU. “Reconciliation”: the process by which the property ledgers within a trust account or custodial account are balanced with the trust account or custodial account and the account or custodial account is balanced with the bank statement.

VV. “Referral”: the communication by one broker or brokerage to another broker or brokerage of the identity of a potential buyer/tenant or seller/lessor of real property available for sale, lease, rent or exchange.

WW. “Responsible person”: the qualifying broker or associate broker for whom an unlicensed assistant works. If an unlicensed assistant works for more than one broker, each broker for whom the unlicensed assistant works is a responsible person. Each responsible person will be subject to the provisions of Paragraph (7) of Subsection A of Section 61-29-12 NMSA 1978.

XX. “Residential real estate”: real estate which is zoned for private use as a living facility by a city or county; or designated by a city or county to allow four or less multi-family units on a single parcel of land with a single legal description.

YY. “Scope of authority”: the range of authority granted by the principal to act on behalf of that principal.

ZZ. “Special trust account”: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of a named party to a transaction. This account may be interest bearing.

AAA. “Sponsor”: an organization or entity approved by the real estate commission to offer courses approved by the real estate commission.

BBB. “Subagent”: an agent of the agent, authorized to act for the agent in performing functions undertaken by the agent for his principal.

CCC. “Transaction coordinator”: a person engaged by a broker who assists the broker in the processing of the real estate transaction, and whose services may include, but not be limited to, the following: gathering necessary information and paperwork for and from buyers and sellers, overseeing and organizing contractual deadlines, communicating and coordinating with lenders, title companies, inspectors, other brokers in the transaction and the parties to the contract to facilitate the closing of the real estate transaction, and assembling the final real estate transaction file for closing. A transaction coordinator involved in real estate transactions in New Mexico must have a New Mexico broker’s license. A person assisting with real estate transactions who is not licensed is an unlicensed assistant.

DDD. “Transaction”: any real estate activity subject to the jurisdiction of the commission.

EEE. “Transaction broker”: a qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship. The transaction broker relationship is a non-fiduciary relationship.

FFF. “Trust account”: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of others received by the qualifying broker in a transaction which includes a brokerage trust account, property management trust account or special trust account.

GGG. “Unlicensed assistant”: a person who does not hold an active New Mexico broker’s license and works under the supervision of a responsible person to perform duties for the brokerage as provided in 16.61.21 NMAC.

HHH. “Vacation rental”: With the exception of hotels and motels, a vacation rental is the rental of real property by a renter who does not manifest an intent to make the real property a permanent residence. Evidence that the renter does not intend to make the real property a permanent residence includes, but is not limited to, the following: landlord/property manager supplies all furnishings, appliances, bedding, towels, utensils, plates, and silverware.

III. “Virtual office”: A real estate brokerage office that provides communication and address services without providing dedicated office space.

[16.61.1.7 NMAC - Rp, 16.61.1.7 NMAC, 1/1/2012; A, 1/1/2017, A, 1/15/2018; A, 1/1/2019; A, 1/3/2021; A, 2/25/2022]

This is an amendment to 16.61.3 NMAC, Section 9 and 15, effective 2/25/2022.

16.61.3.9 EXAMINATION AND LICENSING REQUIREMENTS:

A. Associate broker's license: prior to applying for an associate broker's license, an applicant must pass both a national broker examination prescribed by the commission, and the New Mexico real estate broker's examination prescribed by the commission.

B. Examination application.

(1) Applications to take the prescribed broker's examination(s) are made directly to the commission's examination contractor on a form prescribed by the commission and provided by the contractor in a candidate information bulletin. Along with the application form, an applicant must submit certificates of completion of commission-approved 30-hour pre-licensing courses in real estate principles and practice, real estate law, and broker basics. These pre-licensing courses must have been completed within the three years prior to application to take the examinations. Exam candidates who are licensed as associate brokers and are taking the broker's examination to upgrade to qualifying broker are exempt from the three-year time limit and must only provide documentation of course completion.

(2) Exam candidates originally licensed as real estate salespersons or brokers or licensees in other states or jurisdictions may apply for waivers from completing the real estate principles and practice and real estate law courses in New Mexico and from taking the national portion of the broker's examination if they can provide a certified license history from their resident licensing jurisdiction documenting that they have completed these courses or their equivalent. A New Mexico associate broker upgrading to qualifying broker will be exempt from taking the national portion of the broker's exam.

(3) Except in a case of a license applicant from a state or jurisdiction with which the New Mexico real estate commission has a written license recognition agreement, an exam applicant cannot be exempted from completing the commission-approved 30-hour broker basics course.

(4) License applicants currently licensed by state or jurisdiction with which the commission has a written license recognition agreement are not required to take any of the prescribed pre-licensing courses or take either portion of the broker's examination to be eligible to apply for a New Mexico broker's license.

(5) Exam applicants exempted from taking the real estate principles and practice and real estate law courses by virtue of having a current real estate broker's license in another state shall attach to their examination application a letter of pre-licensing education waiver from the commission and a certificate of completion of the 30-hour broker basics course.

(6) All other applicants for the examination shall attach to their license examination application certificates documenting completion of one 30-hour pre-licensing course each in real estate principles and practice, real estate law, and broker basics.

(7) At the time of making application to take the examination, applicants shall pay to the commission's examination contractor a non-refundable fee not to exceed \$95.

(8) Applicants are required to pass both the state and national portions of the examination with a minimum score of 75 no later than 90 calendar days after the first time they took the examination. Applicants failing to pass both portions of the examination within this time frame will be required to re-take and pass both portions of the examination before being eligible to apply for a broker's license.

C. Associate Broker License application.

(1) Upon passing both portions of the New Mexico real estate broker's examination, an individual has six months to apply for an associate broker's license on the application prescribed by the commission.

(2) An individual who fails to apply for an associate broker's license within six months of having passed both portions of the broker's examination shall be required to re-take both portions of the examinations six month deadline.

(3) An applicant for an associate broker's license shall be a legal resident of the United States and have reached the age of majority in New Mexico or in the state in which the applicant resides.

(4) Along with the license application form prescribed by the commission, the applicant must submit a written score report provided by the examination contractor documenting that the applicant has passed both portions of the examination with a minimum score of 75, documentation of having been fingerprinted for purposes of matching with state and national arrest record databases, a certificate of insurance documenting that the applicant has a current errors and omissions insurance policy that meets the requirements for such insurance as described in 16.61.5 NMAC of the commission rules, and a non-refundable license application fee not to exceed \$270. Recent veteran applicants and military service members, their spouses and dependent children, are exempt from the license application fee for the first period of licensure.

D. Qualifying broker's license examination: there is no separate qualifying broker's examination.

~~**E.** Military service members and recent veterans.~~

~~(1) The commission shall, process the application and issue a license to the spouse of a military service member, a dependent child of a military service member, or a recent veteran that meets all the requirements for licensure as a real estate broker in New Mexico.~~

~~(2) A license issued pursuant to this part is not a provisional license and confers the same rights, privileges, and responsibilities as any other license issued by the commission.~~

~~(3) A license issued pursuant to this part shall not be renewed unless the licensee satisfies the commission's requirements for license renewal.~~

~~(4) Military service members and recent veteran applicants, their spouses and dependent children, are exempt from the license application fee for the first period of licensure.]~~

E. Expedited licensure for military service members, spouses, children, and veterans.

(1) Applicants for licensure shall meet the following requirements:

(a) complete an application on a form provided by the real estate commission.

(b) include on the application the applicant's full name, current mailing address, and email address if any, date of birth, and proof of a criminal background check obtained through fingerprinting.

(2) The applicant shall also provide documentation that they are licensed and in good standing in another jurisdiction, including a branch of the United States armed forces, and have met the minimum licensing requirements in a jurisdiction with requirements that are substantially equivalent to New Mexico licensing requirements.

(3) The applicant shall provide documentation as follows:

(a) for a military service member, a copy of military orders;

(b) for a spouse of military service member, a copy of military service member's military orders, and a copy of the marriage license;

(c) for spouses of deceased military service members, a copy of decedent's form DD 214 and a copy of the marriage license;

(d) for dependent children of military service members, a copy of military service member's orders listing dependent children, or a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated): a copy of form DD 214 showing proof of honorable discharge.

(4) The license shall be issued by the real estate commission as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application, and provides proof a criminal background check obtained by fingerprinting.

(5) Military service members and veterans shall not pay and the real estate commission shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

(6) A license issued pursuant to this section shall be valid for a period of three years from the date of issuance to the last day of the month following the licensee's birth month.

F. License renewal requirements.

(1) A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for renewal set forth in 16.61.11.8 NMAC pursuant to Chapter 61, Article 61-29-11 D NMSA 1978.

(2) As a courtesy, the real estate commission will send via electronic mail license renewal notifications to licensees before the license expiration date to the last known email address on file with the board. Failure to receive the renewal notification shall not relieve the licensee of the responsibility of timely renewal on or before the expiration date.

[16.61.3.9 NMAC – Rp, 16.61.3.9, 1/15/2018; A, 1/3/2021; A, 1/25/2022]

16.66.3.15 FELONY CRIMINAL CONVICTIONS:

A. Felony convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying felony criminal convictions that may disqualify an applicant from receiving or retaining a license issued by the real estate commission. This includes a felony conviction of an offense which if committed in this state, would be deemed a felony under either state or federal law, without regard to its designation elsewhere. The term "conviction" shall include a finding or verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon, or an appeal of the conviction has been sought. These felony convictions include:

- (1) homicide, voluntary or involuntary manslaughter;
- (2) trafficking in controlled substances, manufacturing of controlled substances or distribution of controlled substances;
- (3) human trafficking, kidnapping, false imprisonment, aggravated assault or aggravated battery;
- (4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;
- (5) crimes involving adult abuse, neglect, or financial exploitation;
- (6) crimes involving child abuse or neglect;
- (7) crimes involving robbery, larceny, extortion, burglary, possession of burglary tools, destruction of property, criminal damage to property, unlawful or dangerous uses of explosives, breaking and entering, arson, making a bomb scare, tampering with evidence or receiving stolen property; and,
- (8) financial crimes involving fraud, forgery, embezzlement, and credit card fraud.

B. The real estate commission shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

C. The real estate commission shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule, and without a hearing as provided in the uniform licensing act.

D. Nothing in this rule prevents the real estate commission from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the real estate license law, regardless of whether the individual was convicted of a felony crime for such conduct or whether the felony crime for which the individual was convicted is listed as one of the disqualifying felony criminal convictions listed in Subsection A of this rule.

E. In connection with an application for licensure, the real estate commission shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

- (1) an arrest not followed by a valid conviction;
- (2) a conviction that has been sealed, dismissed, expunged or pardoned;
- (3) a juvenile adjudication; or
- (4) a conviction for any crime other than the disqualifying felony criminal convictions listed in Subsection A of this rule.

[16.61.3.15 NMAC - N, 1/25/2022]