

This is an amendment to 16.61.1 NMAC Section 7, effective 12-31-2008.

**16.61.1.7 DEFINITIONS:**

A. 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.

B. Agent: the brokerage authorized to act as a fiduciary for a person and to provide real estate services solely by means of an express written agreement.

C. Approved education course: ~~[a continuing education course approved by the real estate commission dealing with selling, leasing, or managing residential, commercial and industrial property, as well as courses in basic real estate law and practice.]~~ a commission approved course offered by a commission approved sponsor in real estate law and practice; real estate financing including 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.

D. Approved training course: ~~[all other continuing education courses approved by the commission with the exception of approved education courses and the mandatory course].~~ A commission approved course offering in personal and property protection for the broker and clients; offerings in using the computer, the internet, business calculators, and other technologies to enhance the broker's service to the public; offerings concerning professional development, customer relations skills, sales promotion including salesmanship, negotiation, marketing techniques, servicing the client, or similar offerings.

E. Associate broker: a person holding an associate broker's license who is affiliated with a qualifying broker.

F. Broker: any person holding a valid New Mexico associate broker's or qualifying broker's real estate license.

G. Brokerage: a licensed qualifying broker, the licensed real estate business represented by the qualifying broker and its affiliated associate brokers.

H. Brokerage relationship: the legal or contractual relationship between a person and a brokerage in a real estate transaction subject to the jurisdiction of the commission.

I. Broker duties: those duties established by the commission that are owed by all brokers to all clients and customers.

J. Broker in charge: a New Mexico licensed real estate broker who is eligible to be a qualifying broker designated by the qualifying broker to be responsible for real estate related activity within the brokerage during the temporary absence of the qualifying broker.

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. Consumer: prospective sellers and buyers, lessors and lessees, landlords and tenants.]~~

~~[M]~~ L. Credit hours(s): credits toward continuing education requirements as assigned by the real estate commission for each commission-approved course. May vary from actual classroom hours. Each credit hour shall consist of not less than fifty minutes of instruction within a sixty minute period.

~~[N]~~ M. Criminal background check: a criminal background check of a first-time or renewal applicant for a New Mexico real estate broker's license on or after January 1, 2006 conducted by an entity or source approved by the commission.

~~[O]~~ N. Custodial account: an account in the owner's name of which the qualifying broker is a trustee. Established for the purpose of holding monies received by the qualifying broker on behalf of the owner, and may be interest bearing.

~~[P]~~ O. 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.

~~[Q]~~ P. Designated ~~[broker: a qualifying broker or associate]~~ agent: an associate broker who is designated in writing by ~~[a]~~ their qualifying broker to serve as exclusive agent ~~[or exclusive transaction broker]~~ for a seller, landlord, buyer or tenant in a real estate transaction.

~~[R]~~ Q. Designated ~~[brokerage]~~ agency: the brokerage relationship established between the seller, landlord, buyer or tenant and a designated broker, including the duties, obligations and responsibilities of this relationship which shall ~~[not]~~ extend to the qualifying broker ~~[nor]~~ not to any other associate broker employed or engaged by that qualifying broker.

R. 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.

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

T. 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 existing exclusive agency agreements with the brokerage.

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

- (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;
- (5) does the employer consider the person an employee.

V. 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 coverages, limitations, and exclusions of the specific insurance policy or policies in place.

W. 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, and subagency agreements.

X. Express written agreement: a listing agreement, a written agency or brokerage relationship agreement, an exclusive transaction broker agreement or purchase or lease agreement, or any written agreement signed by all parties to a real estate transaction.

Y. 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.

Z. Foreign broker: a real estate brokerage licensed by a jurisdiction other than New Mexico engaged in real estate-related activities in New Mexico.

AA. Inactive broker: a New Mexico licensed qualifying broker or associate broker who has returned their license to the real estate commission because they are not currently affiliated with a real estate brokerage in New Mexico.

BB. In house transaction: a transaction that occurs under the supervision of one qualifying broker in the same brokerage.

CC. Sponsor: an organization or entity that offers or administrates courses in real estate practice and law, continuing education, professional designations, or accreditations for real estate brokers.

~~CC~~ DD. Licensee: any person holding a New Mexico real estate license.

~~DD~~ EE. Land title trust account: a pooled interest-bearing account subject to the land title trust fund act.

~~EE~~ FF. Mandatory course: the course the commission requires brokers, except for those brokers exempted from continuing education requirements pursuant to Section 61-29-4.1 of the real estate license law, to take during each license renewal cycle.

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

~~GG~~ HH. Person: any natural person, corporation, business trust, estate, trust, partnership, association, joint venture, governmental entity or other legal entity.

II. Post-licensing course: the thirty (30) hour commission approved course for associate brokers in their first three year licensing cycle.

~~HH~~ JJ. Principal: any person who authorizes or employs another to do certain acts on behalf of that person.

[~~HH~~] KK. Property management: includes the showing, renting and leasing of real property, the collection and disbursement of funds on behalf of other persons, the supervision of employees as specified in the management agreement, the supervision of maintenance and repair work, handling of tenant relations, and/or preparation of financial reports. In the course of listing and marketing properties for sale, repairs and maintenance incident to the sale and authorized by the owner, shall not be considered property management.

[~~JJ~~] LL. Property management trust account: a trust account containing money of others derived from the management of leased or rental properties.

[~~KK~~] MM. Property manager: a broker (with the exception of those mentioned in Section 61-29-2(C), NMSA 1978) who, for a fee, salary, commission or other valuable consideration, is engaged in managing property for others.

[~~LL~~] NN. Qualifying broker: a broker who has qualified an individual proprietorship, corporation, partnership or association to do business as a real estate brokerage in the state of New Mexico.

[~~MM~~] OO. 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.

[~~NN~~] PP. 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 Section 61-29-12A(7) NMSA 1978.

[~~OO~~] QQ. Scope of authority: the range of authority granted by the principal to act on behalf of that principal.

[~~PP~~] RR. Short-term rental: with the exception of hotels and motels, the rental of real property for a period of less than thirty (30) days.

[~~QQ~~] SS. Special trust account: a trust account bearing interest payable to a named party to the transaction.

[~~RR~~] TT. Subagent: an agent of the agent, authorized to act for the agent in performing functions undertaken by the agent for his principal.

[~~SS~~] UU. Transaction: any brokerage relationship, sale, lease, rental, option or exchange subject to the jurisdiction of the commission.

[~~TT~~] VV. Transaction broker: ~~[any]~~ the non-fiduciary relationship created by 61-29-2 A 14 NMSA 1978, wherein a broker or brokerage [that] provides real estate services without entering into an agency relationship.

[~~UU~~] WW. Trust account: an account established by the qualifying broker for the purpose of holding money of others received by the qualifying broker in a transaction.

[~~VV~~] XX. Unlicensed assistant: a person who:

(1) does not hold [~~a~~] an active New Mexico real estate license, and is subject to the jurisdiction of the commission and;

(2) works under the supervision of a qualifying broker~~[-, associate broker]~~ or associate broker;

(3) performs only those routine clerical, secretarial, administrative or bookkeeping activities defined in Part 21 of the real estate commission rules which do not require a New Mexico real estate license.

[16.61.1.7 NMAC - Rp, 16.61.1.7 NMAC, 1-1-2006; A, 12-31-2008]