

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; and, (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,

STATUTORY NOTES

Cross reference — Additional powers of the commission; professional liability insurance; minimum coverage, 61-29-4.2 NMSA 1978.

The 2005 amendment, effective January 1, 2006, rewrote the first sentence which formerly read: "In addition to the powers and duties granted the commission under the provisions of Section 61-29-4 NMSA 1978, the commission shall adopt regulations providing for continuing educational programs that offer courses in selling, leasing or managing residential, commercial and industrial property as well as courses

reviewing basic real estate law and practice"; and rewrote the third sentence which formerly read: "The regulations shall prescribe areas of specialty or expertise and may require that a certain part of the thirty hours of classroom instruction be devoted to courses in the area of a licensee's specialty or expertise".

The 2011 amendment, effective July 1, 11, substituted "were already exempted from continuing education requirements prior to the effective date of this 2011 act" for "are sixty-five years of age or older and who have a minimum of twenty

years' continuously licensed experience in the selling, leasing or managing of real property"; deleted "shall" preceding "renewal" in the second sentence; and made stylistic changes.

The 2013 amendment, effective June 14, 2013, in the second sentence, substituted "July 1, 2011" for "the effective date of this 2011 act" and added "a minimum of."

Editor's notes — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July

1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978. See 12-1-8 NMSA 1978.

61-29-4.2 Additional powers of the commission; professional liability insurance; minimum coverage.

- A. In addition to the powers and duties granted to the commission pursuant to the provisions of Sections 61-29-4 and 61-29-4.1 NMSA 1978, the commission may adopt rules that require professional liability insurance coverage and may establish the minimum terms and conditions of coverage, including limits of coverage and permitted exceptions. If adopted by the commission, the rules shall require every applicant for an active license and licensee who applies for renewal of an active license to provide the commission with satisfactory evidence that the applicant or licensee has professional liability insurance coverage that meets the minimum terms and conditions required by commission rule.
- B. The commission is authorized to solicit sealed, competitive proposals from insurance carriers to provide a group professional liability insurance policy that complies with the terms and conditions established by commission rule. The commission may approve one or more policies that comply with the commission rules; provided that the maximum annual premium shall not exceed five hundred dollars (\$500) for a licensee, that the minimum coverage shall not be less than one hundred thousand dollars (\$100,000) for an individual claim and not less than a five-hundred-thousand-dollar (\$500,000) aggregate limit per policy and that the deductible shall not be greater than one thousand dollars (\$1,000).

- C. Rules adopted by the commission shall permit an active licensee to satisfy any requirement for professional liability insurance coverage by purchasing an individual policy.
- D. Rules adopted by the commission shall provide that there shall not be a requirement for a licensee to have professional liability insurance coverage during a period when a group policy, as provided in Subsection B of this section, is not in effect.

History: 1978 Comp., § 61-29-4.2, enacted by Laws 2001, ch. 216, § 1; 2005, ch. 35, § 5; 2008, ch. 18, § 1; 2013, ch. 167, § 4.

STATUTORY NOTES

The 2005 amendment, effective January 1, 2006, deleted "maximum cost of premium" from the section heading and

substituted "two hundred dollars (\$200)" for "one hundred fifty dollars (\$150)" in Subsection B.

The 2008 amendment, effective July 1, 2008, substituted "three hundred dollars (\$300)" for "two hundred dollars (\$200)" in Subsection B.

The 2013 amendment, effective June 14, 2013, substituted "five hundred dollars (\$500)" for "three hundred dollars (\$300)" in the second sentence of (B).

Editor's notes — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July

1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

61-29-4.3 Regulation and licensing department; administratively attached

The commission is administratively attached to the regulation and licensing department.

History: Laws 2001, ch. 163, § 12.

STATUTORY NOTES

Editor's notes. — Laws 2011, ch. 30, § 8, approved April 2, 2011 and effective June 16, 2011, amended 61-29-19 NMSA 1978 which would have extended the sunset provisions of Chapter 61, Article 29 NMSA 1978 from July 1, 2012 to July

1, 2018. However, Laws 2011, ch. 85, § 11, approved April 6, 2011 and effective July 1, 2011, repealed 61-29-19 NMSA 1978 making the amendment by Laws 2011, ch. 30 not effective. See 12-1-8 NMSA 1978.

61-29-4.4 Additional powers of commission; fingerprinting and criminal history background checks

- A. All applicants for licensure as provided for in Chapter 61, Article 29 NMSA 1978 shall:

(1) Be required to provide fingerprints on two fingerprint cards for submission to the federal bureau of investigation to conduct a national criminal history background check and to the department of public safety to conduct a state criminal history check;

- B. As a condition of offering property management services, in addition to the course requirement in paragraph A above, associate brokers shall complete a minimum of six hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue during each three-year licensing cycle.
- C. Qualifying brokers who offer or intend to offer property management services for others, shall as a condition of offering such services, in addition to the course requirement in paragraph A above, complete a minimum of 12 hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue, during each three-year licensing cycle.
- D. While qualifying brokers are already subject to the meeting attendance renewal requirements listed in Section 13 C of 16.61.3 NMAC, associate brokers who offer or intend to offer property management services shall also be subject to the same meeting attendance requirements in Section 13 C of 16.61.3 NMAC, namely, the attendance at one commission meeting, rule hearing, or disciplinary hearing for at least three hours, or until the commission goes into executive session, or the hearing/meeting ends, whichever comes first. Attendance may be live meeting/hearing or by live or recorded distance broadcast, but must be documented by signing into and out of the meeting/hearing. In the event of broker hardship, approved by the commission, the real estate commission may authorize an equivalent to the attendance of a commission meeting either by an online download, attendance at any approved equivalent, or by other approved participation.

[N, 1-01-2019]

PART 4: SALESPERSON'S LICENSE: EXAMINATION AND LICENSING APPLICATION REQUIREMENTS [REPEALED 01-01-06]

PART 5: ERRORS AND OMISSIONS INSURANCE

16.61.5.7. Definitions

Refer to 16.61.1.7 NMAC. [16.61.5.7 NMAC - N, 1-1-2002]

16.61.5.8. Group errors and omissions insurance policy

Effective January 1, 2002 every active New Mexico real estate broker shall have in effect a policy of errors and omissions insurance. The commission shall enter into a contract with a qualified insurance carrier or its agent or broker to make available to all New Mexico real estate brokers and broker applicants a group policy of insurance under the following terms and conditions:

- A. The insurance carrier is licensed and authorized by the New Mexico department of insurance to write policies of errors and omissions insurance in New Mexico;
- B. The insurance carrier maintains an A.M. Best rating of "B" or better;

- C. The insurance carrier will collect premiums, maintain records and report names of those insured and a record of claims to the commission on a timely basis and at no expense to the state;
- D. The insurance carrier has been selected through a competitive bidding process;
- E. The contract and policy are in conformance with Part 5 and all relevant New Mexico statutory requirements.

[16.61.5.8 NMAC - N, 1-1-2002; A, 1-1-2006]

16.61.5.9. Terms of coverage

The group policy shall provide, at a minimum, the following terms of coverage:

- A. Coverage of all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage;
- B. An annual premium not to exceed the amount set by statute 61-29-4.2B NMSA 1978;
- C. That the coverage cannot be cancelled by the insurance carrier except for non-payment of the premium or in the event a broker becomes inactive or has their license revoked or an applicant is denied a license;
- D. Pro-ration of premiums for coverage which is purchased during the course of the calendar year but with no provision for refunds of unused premiums;
- E. Not less than \$100,000 coverage for each licensed individual and entity per covered claim regardless of the number of brokers or entities to which a settlement or claim may apply;
- F. An aggregate limit of \$500,000 per licensed individual or entity;
- G. A deductible amount for each claim of not more than \$1,000 per claim and no deductible for legal expenses and defense;
- H. Payment of claims by the provider shall be on a first dollar basis and the provider shall look to the insured for payment of any deductible;
- I. The obligation of the insurance carrier to defend all covered claims with payment of defense costs outside of policy limits;
- J. Coverage of a broker's use of lock boxes which may include a sublimit of not less than \$5,000 per claim for property damage or loss of use of property arising from a lock box claim;
- K. The ability of a broker, upon payment of an additional premium, to obtain higher or excess coverage or to purchase additional coverage from the insurance provider as may be determined by the provider;

- L. That coverage is individual and license specific and will cover the associate broker regardless of changes in qualifying broker;
- M. An automatic 90-day extended reporting period with the ability of the broker, upon payment of an additional premium, to obtain an optional extended reporting period of one, two, or three years.
- N. A conformity endorsement allowing a New Mexico resident broker to meet errors and omissions insurance requirements for an active license in another group mandated state without the need to purchase separate coverage in that state.

[16.61.5.9 NMAC - N, 1-1-2002; A, 1-1-2006; A, 12-31-2008; A, 1-1-2017]

16.61.5.10. Equivalent errors and omissions insurance policies

New Mexico real estate associate broker or qualifying broker applicants may obtain errors and omissions coverage equivalent to the group plan from any insurance carrier subject to the following terms and conditions.

- A. The insurance carrier is licensed and authorized by the New Mexico department of insurance to write policies of errors and omissions insurance in this state and is in conformance with all New Mexico statutes.
- B. The insurance provider maintains an A.M. Best rating of "B" or better.
- C. The policy, at a minimum, complies with all relevant conditions set forth in this rule and the insurance carrier so certifies in a certificate issued to the insured real estate broker or broker applicant in a form acceptable to the commission and agrees to immediately notify the commission of any cancellation or lapse in coverage. The commission will make no independent determination of whether equivalent policies meet the requirements of Part 5.
- D. Coverage includes all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage.
- E. Coverage cannot be cancelled by the insurance provider except for nonpayment of premium or in the event a broker becomes inactive or the license is revoked, or in the event an applicant is denied a license.
- F. Coverage is for 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.
- G. A deductible amount for each claim of not more than \$1,000.
- H. Payment of claims by the provider shall be on a first dollar basis and the provider shall look to the insured for payment of any deductible.
- I. The obligation of the insurance carrier to defend all covered claims with defense costs outside of policy limits.

- J. Coverage of a broker's use of lock boxes which may include a sublimit of not less than \$5,000 per claim for property damage or loss of use of property arising from a lock box claim.
- K. Real estate brokers or broker applicants who obtain equivalent coverage and wish to be on active status must present to the commission the certificate referred to in 16.61.5.10 NMAC:
 - (1) When renewing an active license, no later than at the time of renewal; or
 - (2) Upon any request for reinstatement or activation of a license; or
 - (3) Upon application for an active license.
- L. An automatic 90-day extended reporting period with the ability of the broker, upon payment of an additional premium, to obtain an optional extended reporting period of one, two, or three years.

[16.61.5.10 NMAC - N, 1-1-2002; A, 1-1-2017]

16.61.5.11. Broker compliance

Applicants for licensure, transfer, and renewal shall certify compliance with this rule by submitting along with the license, transfer, or renewal application a copy of a certificate from their insurance company certifying current coverage. The commission will not issue an active license to a first time applicant who fails to provide proof of current coverage, and the license of any active New Mexico broker who fails to provide a certificate certifying current errors and omissions coverage will not be renewed or transferred until such certificate is received in the commission office.

[16.61.5.11 NMAC - N, 1-1-2002; A, 1-1-2006]

16.61.5.12. Insurance requirements suspended

The requirements of 16.61.5.8 NMAC shall be suspended if the commission through a competitive bidding and contract award process is not able to enter into a contract with a qualified insurance carrier to make available to all applicants for or holders of active New Mexico real estate broker's licenses a group policy of insurance under the terms and conditions described in Part 5.

[16.61.5.12 NMAC - N, 1-1-2002; A, 1-1-2006]

16.61.5.13. Penalties for violation

Brokers who fail to obtain and maintain an errors and omissions insurance policy as specified herein are guilty of violating NMSA 1978 Section 61-29-4.2 of the Real Estate License Law and are subject to license suspension and revocation as provided in Section 61-29-12 A (10).

[16.61.5.13 NMAC - N, 1-1-2006]



New Mexico Regulation and Licensing Department
BOARDS AND COMMISSIONS DIVISION
New Mexico Real Estate Commission

**Certificate of Equivalent Coverage
Errors and Omissions Insurance**

Real estate brokers purchasing errors and omissions insurance from an insurance company other than Rice Insurance Services Company, the New Mexico Real Estate Commission's group plan contractor, must have their insurer complete and return this Certificate of Equivalent Coverage to the Commission Licensing Manager. The named insurer certifies that the errors and omissions insurance policy issued to:

Name of Insured Broker: _____
License No(s). _____
Brokerage Trade Name _____
Effective Date of Policy: _____ **Expiration Date of Policy:** _____

Hereby meets the following requirements for equivalent errors and omissions insurance policies specified in Part 16.61.5.10 of the New Mexico Real Estate Commission Rules:

- A. The insurance carrier is licensed and authorized by the New Mexico Department of Insurance to write policies of errors and omissions insurance in New Mexico and is in conformance with all New Mexico statutes.
- B. The insurance provider maintains an A.M. Best rating of "B" or better.
- C. The policy, at a minimum, complies with all relevant conditions set forth in this rule and the insurance carrier so certifies in a certificate issued to the insured real estate broker or broker applicant in a form acceptable to the commission and agrees to immediately notify the commission of any cancellation or lapse in coverage. The commission will make no independent determination of whether equivalent policies meet the requirement of this rule.
- D. Coverage includes all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage.
- E. Coverage cannot be cancelled by the insurance provider except for nonpayment of premium or in the event a broker becomes inactive or the license is revoked, or in the event an applicant is denied a license.
- F. Coverage is for 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.
- G. A deductible amount for each occurrence of not more than \$1,000.
- H. Payment of claims by the provider shall be on a first dollar basis and the provider shall look to the insured for payment of any deductible.
- I. An extended reporting period of not less than 365 days.
- J. Coverage of a broker's use of lock boxes.

Name of Insurance Company

Signature of Insurance Company Representative Date