

READY, SET, GO! BROKER DUTIES & OTHER REQUIRED DISCLOSURES

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CE

CORE
ELECTIVE



MESA

Real Estate Institute, LLC
New Mexico

In addition to the 2021, 2022, 2023 & 2024 NMREC Core courses, MESA REI offers the following:

Core Electives:

- A Blunt Conversation About Marijuana 4CE
- A Look at Real World Issues- Claim Studies 4CE
- Anatomy of a Listing Contract 4CE
- Anatomy of a Purchase Contract 4CE
- Broker Beware: Getting from Contract to Closing 4CE
- Clear the Confusion: Offers (Counters, Multiples, Contingencies, etc.) 4CE
- Disclose, Disclose, Disclose (Unless You're NOT Supposed To) 4CE
- E & O Insurance: Know What you are Buying & Why 4CE
- Highest & Best Offers: An Escalating Concern 2CE
- Inspections, ORR's & Repairs, OH MY! 2 CE
- Intro to Seller Financing 4CE
- NMAR Forms Update 4CE
- NMAR's Many Miscellaneous Forms 4CE
- One Thing Leads to Another- The PA Contingencies Explained 2CE
- QB Refresher Course 6CE
- Ready Set Go: Broker Duties & Other Required Disclosures 2CE
- Taxes and Your Real Estate Business 4CE
- Triple D: Deadlines, Defaults & Definitions 3CE
- Yes Your Honor, I Did Disclose! 4CE
- Understanding & Using NMAR Forms 8CE
- Wells & Septics 4CE

Ethics Electives:

- Handling Multiple Offers Ethically & Effectively 4CE
- NAR Code of Ethics & Enforcement 4CE

Property Management Electives:

- Property Management & The 3 Way Reconciliation 2CE Prop Mang
- Trust Accounts 4CE Prop Mang
- UORRA 6CE Prop Mang
- Case Studies- Residential Property Management 3CE
- Going to Court- Residential Property Management 3CE
- Brokerage Operations- Residential Property Management 4CE
- Leasing & Management Residential Property Management 6CE

Electives:

- Bump In the Pipe 2CE
- 7 Tech Tips To Level Up 2CE



ON DEMAND CLASSES

- NMREC Meeting Replay (CE varies by Month)- ELECTIVE
- Business Ethics In Real Estate- 4CE Ethics *NAR Approved
- Triple D: Deadlines, Defaults, & Definitions-3CE Core Elective
- Qualifying Broker Refresher Course-6CE Elective (QB) Core Elective (AB)
- Closing On Time Is Possible-3CE Elective
- Handling Multiple Offers Ethically & Effectively-4CE Ethics Elective



PART19: BROKER DUTIES AND BROKERAGE RELATIONSHIPS

16.61.19.8. Broker duties; disclosure

Brokers owe specific broker duties to prospective buyers, sellers, landlords (owners), tenants as set forth herein, 16.61.19.8 NMAC. Brokers shall disclose the applicable set of broker duties owed to buyers, sellers, landlords (owners) of rental property and tenants as set forth herein, 16.61.19.8 NMAC, prior to the time the broker generates or presents any written document to that party that has the potential to become an express written agreement and obtain from that applicable party written acknowledgement that the broker has made such disclosures. Brokers shall perform all duties established for brokers by the commission. In the case of prospective buyers, sellers, landlord (owners) and tenants to whom the broker is not directly providing real estate services, such disclosure and acknowledgment of receipt shall be made through the broker who is directly providing real estate services to that buyer, seller, landlord (owner) or tenant.

A. Brokers owe the following duties to prospective buyers, sellers, landlords (owners) and tenants:

- (1) Honesty and reasonable care and ethical and professional conduct;
- (2) Compliance with local, state, and federal fair housing and antidiscrimination laws, the New Mexico real estate license law and the Real Estate Commission rules, the New Mexico Uniform Owner Resident Relations Act, and other applicable local, state, and federal laws and regulations;
- (3) Performance of any and all written agreements made with the prospective buyer, seller, landlord (owner) or tenant;
- (4) Written disclosure of any potential conflict of interest or any other written agreement that the broker has in the transaction including but not limited to:
 - (a) Any written brokerage relationship the broker has with any other parties to the transaction or;
 - (b) Any material interest or relationship of a business, personal, or family nature that the broker has in the transaction;
 - (c) Any written agreement the broker has with a licensed transaction coordinator who will be providing brokerage services related to the transaction.
- (5) Written disclosure of any adverse material facts actually known by the associate broker or qualifying broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act.

B. In addition to the broker duties owed to prospective buyers, sellers, landlords (owners) and tenants as set forth in this Section 16.61.19.8(A), Brokers owe the following Broker Duties to the buyers, sellers, landlord (owners) and tenants to whom the broker is directly providing real estate services, regardless of the scope and nature of those services; Brokers working as Property Managers for a landlord (owner) are directly providing real estate services to the landlord (owner), not to the tenant:

- (1) Assistance to the party in completing the transaction, unless otherwise agreed to in writing by the party to whom the broker is directly providing real estate services, including:
 - (a) Timely presentation of and response to all written offers or counter-offers; and
 - (b) Active participation in assisting in complying with the terms and conditions of the contract and with the finalization of the transaction; If the broker in the transaction is not providing the service, advice or assistance described in Paragraphs (a) and (b) of this Subsection B of 16.61.19.8 NMAC, the party must agree in writing that the broker is not expected to provide such service, advice or assistance;
- (2) Acknowledgement by the broker that there may be matters related to the transaction that are outside the broker's knowledge or expertise and that the broker will suggest that the party seek expert advice on these matters;
- (3) Advice to consult with an attorney regarding the effectiveness, validity or consequences of any written document generated by the brokerage or presented to the party and that has the potential to become an express written agreement.

- (4) Prompt accounting for all money or property received by the broker;
- (5) Maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former principal's written consent or is required by law;
- (6) Written disclosure of brokerage relationship options available in New Mexico;
- (7) Unless otherwise authorized in writing, a broker who is directly providing real estate services to a seller/owner shall not disclose the following to the buyer/tenant in a transaction:
 - (a) That the seller/owner has previously indicated they will accept a sales/lease price less than the asking or listed price of a property;
 - (b) That the seller/owner will agree to financing terms other than those offered;
 - (c) The seller/owner's motivations for selling/leasing; or) Any other information the seller/owner has requested in writing remain confidential, unless disclosure is required by law;
- (8) Unless otherwise authorized in writing, a broker who is directly providing real estate services to a buyer/tenant shall not disclose the following to the seller/owner in the transaction:
 - (a) That the buyer/tenant has previously indicated they will pay a price greater than the price submitted in a written offer;
 - (b) The buyer/tenant's motivation for buying/leasing; or
 - (c) Any other information the buyer has requested in writing remain confidential, unless disclosure is required by law.
- (9) In the event the broker is working for the landlord (owner) as a residential property manager, the broker additionally owes to the landlord (owner) all duties owed under the law of agency.

C. In addition to the broker duties owed to prospective buyers, sellers, landlords (owners) and tenants as set forth in this Subsection A of 16.61.19.8 NMAC, brokers working as Property Managers for a landlord (owner) owe the following duties to tenants:

- (1) Prompt accounting for all money or property received by the broker from the tenant, including issuance of a receipt for cash received;
- (2) If a residential property manager, written disclosure that the broker is the agent of the owner of the property and not of the tenant; in the commercial property management context, written disclosure of the broker's relationship with the landlord (owner).

D. Broker Obligations to Other Brokers. Brokers owe the following professional obligations to other brokers; however, brokers are not required to provide to one another a list of these broker obligations.

1. Honesty, reasonable care, and ethical and professional conduct.
2. Timely presentation of all written offers or counter-offers and responses thereto, unless otherwise agreed to in writing by the party to whom the broker is directly providing real estate services;
3. Active participation in assisting the party to whom the broker is directly providing real estate services in complying with the terms and conditions of the contract and with the closing of the transaction, unless otherwise agreed to in writing by the party to whom the broker is directly providing real estate services;
4. Compliance with local, state, and federal fair housing and antidiscrimination laws, the New Mexico real estate license law and the Real Estate Commission rules; the New Mexico Uniform Owner-Resident Relations Act, and other applicable local, state, and federal laws and regulations;
5. Written disclosure of any adverse material facts actually known by the broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act;
6. Written disclosure of any potential conflict of interest that the broker has in the transaction, including but not limited to, any material interest the broker has in the transaction or any relationship of a business, personal, or family nature that the broker has with a party to the transaction;
7. Non-interference with a purchase agreement or any express written agreement that another broker has with a buyer, seller, landlord (owner) or tenant.



**NEW MEXICO ASSOCIATION OF REALTORS® — 2024
PURCHASE AGREEMENT – RESIDENTIAL RESALE**



PART I – BROKER DUTIES DISCLOSURE

Per New Mexico law, Brokers are required to perform a specific set of applicable Broker Duties. Prior to the time the Broker generates or presents any written document that have the potential to become an express written agreement, they must disclose such duties and obtain written acknowledgement that the Broker has made such disclosures.

SECTION A:

All Brokers in this transaction owe the following Broker duties to ALL buyers and sellers in this transaction, even if the Broker is not representing the buyer or the seller in the transaction:

1. Honesty and reasonable care and ethical and professional conduct;
2. Compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico Real Estate License Law and the Real Estate Commission rules and other applicable local, state, and federal laws and regulations;
3. Performance of any and all written agreements made with the prospective buyer, seller, landlord (owner) or tenant;
4. Written disclosure of any potential conflict of interest that the Broker has in the transaction, including, but not limited to;
 - A. Any written Brokerage relationship the Broker has with any other parties to the transaction or;
 - B. Any material interest/relationship of a business, personal or family nature that the Broker has in the transaction; or
 - C. Any written agreement the Broker has with a Transaction Coordinator who will be providing services related to the transaction.
5. Written disclosure of any adverse material facts actually known by the Broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act.

SECTION B:

In addition to the above duties, Broker(s) owes the following Broker Duties to the buyer(s) and/or seller(s) in this transaction to whom the Broker(s) is/are directly providing real estate services, regardless of the scope and nature of those services.

1. Unless otherwise agreed to in writing by the party, assistance to the party in completing the transaction including:
 - A. Timely presentation of and response to all written offers or counteroffers; and
 - B. Active participation in assisting in complying with the terms and conditions of the contract and with the finalization of the transaction;

If the Broker in the transaction is not providing the service, advice or assistance described in Para. 1 (A) or 1 (B) of this Subsection, the party must agree in writing that the Broker is not expected to provide such service, advice or assistance. The Broker shall disclose the existence of such agreement in writing to the other Brokers involved in the transaction.
2. Acknowledgement by the Broker that there may be matters related to the transaction that are outside the Broker's knowledge or expertise and that the Broker will suggest that the party seek expert advice on these matters;
3. Advice to consult with an attorney regarding the effectiveness, validity or consequences of any written document generated by the Brokerage or presented to the party and that has the potential to become an express written agreement;
4. Prompt accounting for all money or property received by the Broker;
5. Maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former principal's written consent or is required by law;
6. Written disclosure of Brokerage relationship options available in New Mexico:
 - A. **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 real estate transaction;
 - B. **Dual agency:** an express written agreement that modifies existing exclusive agency agreements to provide that the Brokerage agrees to act as a facilitator in the real estate transaction rather than as an exclusive agent for either party;
 - C. **Transaction Broker:** the non-fiduciary relationship created by law, wherein a Brokerage provides real estate services without entering an agency relationship.
7. Unless otherwise authorized in writing, a Broker who is directly providing real estate services to a seller shall not disclose the following to the buyer in a transaction:
 - A. That the seller has previously indicated they will accept a sales price less than the asking or listed price;
 - B. That the seller will agree to financing terms other than those offered;
 - C. The seller's motivations for selling/leasing; or
 - D. Any other information the seller has requested in writing remain confidential, unless disclosure is required by law;
8. Unless otherwise authorized in writing, a Broker who is directly providing real estate service to a buyer shall not disclose the following to the seller in the transaction:
 - A. That the buyer has previously indicated they will pay a price greater than the price submitted in a written offer;
 - B. The buyer's motivation for buying; or
 - C. Any other information the buyer has requested in writing remain confidential unless disclosure is required by law.

BUYER(S) AND SELLER(S): PLEASE ACKNOWLEDGE RECEIPT BY INITIALING BELOW



NEW MEXICO ASSOCIATION OF REALTORS® — 2024
PURCHASE AGREEMENT – RESIDENTIAL RESALE



PART II – OTHER REQUIRED DISCLOSURES
Broker shall update these and all other required disclosures as needed.

BUYER’S BROKER DISCLOSURES:

1. **Brokerage Relationship.** _____ (“Buyer’s Broker”) is working with the Buyer as a:
 - Transaction Broker with without a written Buyer Broker Agreement.
 - Agent with a written Buyer Broker Agreement with Agency Addendum.
 - Transaction Broker without a written Buyer Broker Agreement, but with a Compensation Agreement.
2. **In-House Transaction: Buyer and Seller’s Consent to Dual Representation, NO Dual Agency created.**
 - Brokerage is representing both Buyer and Seller.
 - Buyer’s Broker is licensed under the same Qualifying Broker as Seller’s Broker.
 - Buyer’s Broker is also Seller’s Broker for the property in this Transaction. Broker has a written listing agreement with Seller as a Transaction Broker Agent. **Unless otherwise stated in another agreement between Buyer’s Broker and Buyer, Buyer understands that they are NOT OBLIGATED to consent to this dual representation and that they may obtain their own broker to represent them in this transaction.**

BUYER CONSENTS TO BUYER’S BROKER ALSO REPRESENTING THE SELLER IN THIS TRANSACTION YES or NO Buyer’s initials _____/_____.
3. **Dual Agency:** Brokerage is representing both Buyer and Seller by means of written agency agreements with each of them and Designated Agency has not been chosen by the Qualifying Broker; Designated Agency is a policy that discloses to a client that the Broker representing him/her as an agent is the client’s only representative in the Brokerage. When Designated Agency is *not* chosen, Dual Agency is created. Prior to writing or presenting this offer, Broker must obtain written consent from the parties to act as a Dual Agent (NMAR Form 1301 - Agency Agreement – Dual).
4. **Additional Disclosures:** If applicable, check box below.
 - Buyer’s Broker has an **OWNERSHIP INTEREST IN PROPERTY**
 - Buyer’s Broker has a **CONFLICT OF INTEREST** or **MATERIAL INTEREST** (business, personal or family)

_____ 1

_____ 1

 - Buyer’s Broker knows of **ADVERSE MATERIAL FACTS** about the Property and/or Transaction

_____ 1

 - Buyer’s Broker has engaged a **TRANSACTION COORDINATOR:** _____.

SELLER’S BROKER DISCLOSURES:

1. **Brokerage Relationship.** _____ (“Seller’s Broker”) is working with the Seller as a:
 - Transaction Broker with a written Listing Agreement.
 - Agent with a written Listing Agreement with Agency Addendum.
 - Transaction Broker without a written Listing Agreement, but with a Compensation Agreement.
2. **Additional Disclosures:** If applicable, check box below.
 - Seller’s Broker has an **OWNERSHIP INTEREST IN PROPERTY**
 - Seller’s Broker has a **CONFLICT OF INTEREST** or **MATERIAL INTEREST** (business, personal or family)

_____ 1

 - Seller’s Broker knows of **ADVERSE MATERIAL FACTS** about the Property and/or Transaction _____

_____ 1

 - Seller’s Broker has engaged a **TRANSACTION COORDINATOR:** _____.

¹ If more space is needed, attach NMAR Form 2100 – Broker Duties Supplemental Disclosure or other disclosure.



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TRANSACTION COORDINATORS are licensed Brokers who have been engaged by the Broker as indicated above to assist the Broker in the processing of the transaction, which may include gathering information and paperwork, overseeing, and organizing contractual deadlines, communicating, and coordinating with lenders, title companies, inspectors, other Brokers, and the parties to the contract to facilitate the Closing of the transaction, and assembling the final transaction file for Closing. **TCs OWE BROKER DUTIES AS SET FORTH ON COVER PAGE 1. ATTN TCs: USE NMAR FORM 2100 TO MAKE ANY DISCLOSURES REQUIRED BY BROKER DUTIES.**

- Buyer is a New Mexico Real Estate Broker Seller is a New Mexico Real Estate Broker
 Buyer is a party to another Buyer-Broker Agreement

BUYER(S)

SELLER(S)

Buyer Signature	Printed Name	Date	Time	Seller Signature	Printed Name	Date	Time
Buyer Signature	Printed Name	Date	Time	Seller Signature	Printed Name	Date	Time

**THE FOLLOWING IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY.
BROKERS ARE NOT PARTIES TO THIS PURCHASE AGREEMENT.**

BUYER'S BROKER(S)

Buyer's Broker Name	Buyer's Broker's Qualifying Broker's Name and NMREC License No.		
Buyer's Brokerage Firm	Office Phone	Cell Phone	Email Address
Buyer's Brokerage Address	City	State	Zip Code
			Broker <input type="checkbox"/> is <input type="checkbox"/> is not a REALTOR®

Buyer's Broker Name	Buyer's Broker's Qualifying Broker's Name and NMREC License No.		
Buyer's Brokerage Firm	Office Phone	Cell Phone	Email Address
Buyer's Brokerage Address	City	State	Zip Code
			Broker <input type="checkbox"/> is <input type="checkbox"/> is not a REALTOR®

SELLER'S BROKER(S)

Sellers's Broker Name	Seller's Broker's Qualifying Broker's Name and NMREC License No.		
Seller's Brokerage Firm	Office Phone	Cell Phone	Email Address
Seller's Brokerage Address	City	State	Zip Code
			Broker <input type="checkbox"/> is <input type="checkbox"/> is not a REALTOR®

Sellers's Broker Name	Seller's Broker's Qualifying Broker's Name and NMREC License No.		
Seller's Brokerage Firm	Office Phone	Cell Phone	Email Address
Seller's Brokerage Address	City	State	Zip Code
			Broker <input type="checkbox"/> is <input type="checkbox"/> is not a REALTOR®

Definitions

(From the New Mexico Real Estate Commission)

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.”

16.61.1.7 EEE NMAC

Facilitator

“The role of a brokerage in either a dual agency relationship or a transaction broker 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.”

16.61.1.7 CC NMAC

Agency

“The fiduciary relationship created solely by the express written **agency agreement** between a person and a brokerage, authorizing the brokerage to act as an 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.”

16.61.1.7B NMAC

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.

16.61.1.7 V NMAC

In House Transaction

“A transaction in which both sides of the transaction occur under the supervision of **one qualifying broker** within the same **brokerage**.”

16.61.1.7 GG

Designated Agency

“**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. 16.61.1.7 S NMAC

Definition

From the NAR Code of Ethics

Standard of Practice 1-5

REALTORS® may represent the seller/landlord and buyer/tenant in the same transaction only after full disclosure to and with informed consent of both parties. *(Adopted 1/93)*

Informed Consent

What is Informed Consent

The law recognizes that a person can only legally consent to something, whether that is to allow something to occur, or to perform some act, if that person has been informed of, and understands the facts of the situation. It is only with a full comprehension of the risks and benefits of the decision, as well as an understanding of the possible alternatives, that any individual can consider whether an action would be in his best interests.

PART 20: LICENSED TRANSACTION COORDINATOR

16.61.20.7 DEFINITIONS:

Refer to 16.61.1.7 NMAC.

[16.61.20.7 NMAC - N, 01-01-2019]

16.61.20.8 REQUIREMENTS

A. Any transaction coordinators involved in real estate transactions in New Mexico including transaction coordinators from other states must have a New Mexico broker's license.

B. A transaction coordinator performing activities for a brokerage under one ownership is not required to have a qualifying broker's license provided that the transaction coordinator is under the direct supervision of a qualifying broker of that same brokerage.

C. Any transaction coordinator providing services for multiple brokerages other than the transaction coordinator's own brokerage must hold a current New Mexico qualifying broker's license.

D. Any transaction coordinator providing services for a brokerage other than the transaction coordinator's own brokerage must have a written agreement with the qualifying broker of the brokerage for which those transaction coordinator services are being provided that details the services being provided by the transaction coordinator and any compensation being paid to the transaction coordinator for those services.

E. A broker who engages the services of a transaction coordinator whether within the broker's brokerage or outside the broker's brokerage, shall be responsible for disclosing the name(s) of the transaction coordinator, in writing, to the buyer, seller and brokers in the transaction.

F. A broker who hires a transaction coordinator must have a written agreement with that broker's qualifying broker detailing the services being provided by the transaction coordinator and any compensation being paid to the transaction coordinator for those services, including written authorization that the

transaction coordinator may be paid by the associate broker who has hired him or her.

G. A broker who hires a transaction coordinator remains responsible for the transaction; the hiring of a transaction coordinator in no way eliminates or mitigates the broker's responsibilities or obligations to the broker's customer or client or to other brokers and parties to the transaction.

H. A transaction coordinator owes broker duties as delineated in 16.61.19.8 NMAC. [16.61.20.8 NMAC - N, 1/1/2019; A, 1/3/2021]