

2024 NMREC CORE

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New Mexico

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Triple D: Deadlines, Defaults, and Definitions – 3 CE
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ETHICS ELECTIVES:

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New Mexico

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 anti-discrimination 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 earned 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 anti-discrimination 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.

Definitions

Honesty

Merriam- Webster defines honesty as “fairness and straight forwardness of conduct” or adherence to the facts”. The Oxford English Dictionary defines honest as “the quality of being honest”. Honest is in turn defined as “free of deceit; truthful and sincere... Morally correct or virtuous... What is the opposite of honesty? Misrepresentation

Misrepresentation

Any manifestation by words or other conduct... that amounts to an assertion not in accordance with the facts. False representation of a material fact. Failure to disclose an adverse material fact.

Fraud

A lie, knowing or recklessly told. Intention to deceive, intending to induce reliance. Relied upon by a damaged party.

Negligent Misrepresentation

Negligent misrepresentation is when an individual unknowingly makes a false statement- which they should have known was false- with the intent that another person relies on the statement, causing the other person to suffer harm. Negligent misrepresentation can stem from a lack of (reasonable) care in obtaining or delivering accurate information to a buyer rather than an intentional scheme to deceive or mislead. No intent.

Negligence

Negligence is considered a type of real estate malpractice and is different from fraud because there is no intent in doing wrong. Even if a real agent acts in good faith, failure to act, carelessness, taking the wrong action, or just an error in judgement can cause a negligence lawsuit. The basis of negligence claims is brokers failure to use reasonable care in discovering and disclosing material defects in real property. “Should have known”.

Reasonable Care

The New Mexico Real Estate Commission (NMREC) defines reasonable care as “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:

Reasonable care is the opposite of negligence.

New Mexico Case Law

What is common law or case law?

- An accumulation of appellate court decisions over time.
- District court decisions do not create common law.
- Parties have the right to appeal.
- Common law is created by the Appellate Court or New Mexico Supreme Court only.

LM Ins. Corp V I Do Albuquerque

The Defendant... signed a listing agreement with sellers... to be their transaction broker for the sale of their home, insured by LM Insurance. The sellers entered into a contract for the sale of the home, but a home inspection revealed problems with portions of the roof. After the sellers were unable to find a roofer available to address the problems, the defendant volunteered to "take care of it."

The defendant did his own search for a roofer and vouched the roofer without confirming whether he was licensed or insured as a roofer. The roofer preformed the work negligently, causing a fire that destroyed the home. Plaintiffs filed a complaint for damages against defendants that included claims for breach of contract and negligence.

After a bench trial the district court concluded that defendants owed statutory duties independent of the listing agreement regarding the recommendation and procurement of [the roofer], found defendants 45 percent at fault and awarded damages as well as attorney fees plus prejudgment interest to plaintiffs. Defendants appeal.

The Appeal

Defendants argue that:

- 1) They did not own plaintiffs a duty of care to investigate whether the roofer was properly licensed because defendants did not enter into an agency relationship with plaintiffs;
and
- 2) Because the listing agreement placed the duty to investigate contractors solely on plaintiffs.

We disagree.

Even without the existence of an agency relationship... transaction brokers are licensees who must perform all duties established by the New Mexico Real Estate Commission (NMREC).

Reasonable Care

The commission established reasonable care as a duty for transaction brokers, defined as “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.”

The Appeal

To meet this standard of reasonable care, defendants must “apply the knowledge, care, and skill of reasonably well qualified professionals practicing under similar circumstances.”

Expert Witness Testimony

Defendants’ expert witness testified that there is no statute, code, regulation or standard that requires New Mexico transaction brokers to research the license or insurance status of a potential vendor.

Plaintiffs’ expert witness testified to the contrary, explaining that recommending qualified people who are licensed and insured is a universal standard in the real estate business.

Plaintiffs’ expert additionally testified that the standard of care in the industry was for a broker who has no information about whether a vendor is licensed to disclose that lack of knowledge and to disclose adverse information.

The Decision

After considering both lay and expert testimony, the district court found that [the defendant] breached his professional duty of care in his recommendation and procurement of [the roofer]. New Mexico law imposes a duty of reasonable care on transaction brokers, and the district court relied on expert and lay testimony to determine that this duty includes disclosing the licensing status for recommended contractors.

Appellate Court Decision

The district court did not Err in concluding the defendants owed a duty of care to disclose the licensing status of [the roofer].



Broker Liable for Damage Caused by Recommended Roofer

Court finds that a broker's recommendation of a vendor who destroyed house was breach of reasonable care.

April 30, 2024

 Being a Broker, Risk Management, Insurance, Fraud, Negligence & Liability, Legal, Agency



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Feedback

Takeaways

- Prior to making recommendations of vendors, implement vetting practices requiring confirmation in writing of licensure/accreditation status and liability insurance coverage.
- Avoid hiring third party vendors directly for work being performed at a consumer's property. Instead, act as an intermediary by introducing the third party vendor to the property owner.
- Always recommend multiple trusted professionals to clients for their own selection.
- Evaluate your client agreements to include a clear and explicit delegation of duties in investigating and evaluating third party contractors.
- Be sure to comply with your state's laws regarding duties owed to clients and consumers, including the duty of reasonable care, broadly defined as conduct meeting standards of professionalism and ethical conduct within a profession, including but not limited to good faith, competence, trustworthiness, diligence, and lawful behavior.

On December 19, 2022, the Court of Appeals in New Mexico affirmed a verdict assigning liability in the amount of \$143,188.60 against a broker and their brokerage who were found negligent for the broker's recommendation of an uninsured and unlicensed

roofer who negligently destroyed his clients' home. Despite not being involved in the work, the broker's recommendation of the roofer without confirming insurance status or licensure status was deemed a breach of the broker's duty of reasonable care.

In 2016, a New Mexico couple ("Homeowners") entered a listing agreement with a New Mexico licensee ("Broker") to sell their Albuquerque, New Mexico home. The agreed terms of the listing agreement defined the contractual relationship as a "transaction brokerage relationship," defined by New Mexico statute as where a broker provides services but does not owe fiduciary duties to their client.

Soon after, Homeowners entered into a contract with a buyer, but an inspection revealed problems with the roof. Homeowners could not find an available roofer, but then Broker volunteered to "take care of it" and found a roofer to perform the work. Broker recommended the roofer to Homeowners, but Broker never confirmed the roofer's licensure or insurance status. Based on the recommendation, the Homeowners entered an agreement with the roofer. During the repairs, the roofer's work triggered a fire that completely destroyed the home.

Homeowners and their insurance company ("Plaintiffs") sued Broker and their brokerage ("Defendants") for damages caused by the fire,



alleging claims of professional negligence and breach of contract in recommending the uninsured and unlicensed roofer.

The district court conducted a bench trial to determine whether Broker, as a transaction broker, owes the duty of reasonable care to Homeowners as an intermediary; and whether the recommendation of the roofer was a breach of that duty that led to Plaintiffs' damages. The court held that regulations established by the New Mexico Real Estate Commission imposed the duty of reasonable care on transaction brokers, even without an agency agreement and despite the New Mexico statute defining the transaction broker relationship as non-fiduciary.

During trial, each party presented expert witness testimony regarding the professional standards of practice for brokers recommending vendors for home repairs. Plaintiffs' expert witness testified that recommending licensed and insured vendors is a universal standard; and if a broker does not have information about a vendor's licensure or insurance status, then the standard was to disclose that lack of information to the clients. Defendants' expert witness testified there is no statute, code, regulation, or standard requiring New Mexico transaction brokers to research the license or insurance status of a potential vendor. Additionally, a representative of Defendant

brokerage testified that the brokerage had an expectation to only recommend licensed and insured vendors.

In the trial's conclusion, the court found Broker breached the duty of reasonable care in recommending the roofer and determined that they were 45% at fault for the damage caused by the fire, awarding damages, attorneys fees and prejudgment interest to Plaintiffs.

Defendants appealed to the Court of Appeals of New Mexico, raising three main arguments: 1) Broker did not owe a duty of reasonable care to investigate the roofer's licensure and insurance status based on the transactional brokerage relationship and the duties outlined in the listing agreement; 2) No causation connection existed between the alleged lack of insurance and licensing to the negligence by the roofer; and 3) The listing agreement did not permit the award of attorney's fees based on Defendants' negligence.

In addressing Defendants' first argument, the Court of Appeals considered the transaction broker's role as a non-fiduciary intermediary while analyzing the New Mexico Real Estate Commission Rules that all brokers, including transaction brokers, owe a duty of reasonable care to consumers. The Court of Appeals reasoned the lack of an agency relationship did not alter the transaction broker's duty of reasonable care, agreeing with the district court's finding that



transaction brokers have a duty of care to disclose the licensing status of contractors recommended for repairs.

Additionally, Defendants argued they should be absolved of liability because the listing agreement placed the vendor investigation responsibilities solely on Homeowners. The court disagreed. While the listing agreement clearly obligated Homeowners to independently investigate contractors recommended, the listing agreement was silent as to Defendants' duties, therefore, the agreement could not limit or extinguish Broker's duty of reasonable care as established by the New Mexico Real Estate Commission.

Next, Defendants argued the lack of license or insurance was not the reason the home was destroyed; therefore, Defendants could not legally be found negligent for recommending the roofer. In disagreeing with Defendants, the Court of Appeals focused on Homeowners' testimony that they would not have hired the roofer had they known his licensure and insurance status. Additionally, the district court found causation was supported because licensure is a competence indicator, and vendor insurance provides a remedy for property owners if the vendor causes damage. The Court of Appeals held it was reasonable for the district court to conclude that the fire and resulting damages were a natural and continuous result from Broker's roofer recommendation.

Defendants also argued the district court's award of attorney fees to Plaintiffs was unwarranted based on language in the listing agreement entitling the prevailing party to attorney fees if "any aspect" of the agreement resulted in litigation. Defendants contended that the language of the agreement limited awards of attorney's fees to contractual disputes, not for disputes based on negligence. The Court of Appeals agreed with the district court's analysis that evidence supported a connection between the listing agreement and the dispute, affirming the award of attorney's fees. The listing agreement was the basis for the parties' relationship; the impetus for Broker to seek and recommend the roofer; and the Commission rules were incorporated into the agreement.

The district court's judgment was affirmed.

LM Ins. Corp. v. I Do Albuquerque, 527 P.3d 685 (N.M. App. 2022) [↗](#)



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**NEW MEXICO ASSOCIATION OF REALTORS® — 2024
INFORMATION SHEET — LEAD-BASED PAINT (LBP)
RENOVATION REPAIR AND PAINTING PROGRAM**

This form is NOT a disclosure and does NOT provide property-specific information. The general information contained herein is not an exhaustive analysis of the subject matter. Brokers are not experts in the subject matter. If you have additional questions or concerns, you are encouraged to conduct further research and to contact a subject-matter expert.

THE LEAD-BASED PAINT RENOVATION, REPAIR AND PAINTING PROGRAM ("PROGRAM") GOVERNS RENOVATION ACTIVITIES IN BUILDINGS "TARGETED" BY THE PROGRAM. THE PROGRAM COVERS TRAINING AND CERTIFICATION OF RENOVATORS; PRE-RENOVATION NOTIFICATION REQUIREMENTS; WORK PRACTICE REQUIREMENTS BEFORE, DURING AND AFTER RENOVATIONS; POST-RENOVATION COMPLIANCE NOTIFICATION AND RECORD KEEPING. THIS INFORMATION SHEET SUMMARIZES SOME OF THE KEY COMPONENTS OF THE PROGRAM. IT IS NOT ALL INCLUSIVE AND SHOULD NOT BE RELIED UPON WHEN CONDUCTING ACTIVITIES GOVERNED BY THE PROGRAM. REFER TO <https://www.epa.gov/lead> FOR COMPLETE INFORMATION ON THE PROGRAM AND CONSULT YOUR ATTORNEY WITH QUESTIONS AND CONCERNS.

PERSONS TO WHOM THE PROGRAM APPLIES: Owners and property managers who *have renovations performed for compensation on properties "TARGETED" by the Program* and contractors, such as painters, plumbers, carpenters and electricians *who perform renovations for compensation on properties "TARGETED" by the Program.*

PROPERTIES "TARGETED" BY THE PROGRAM: 1) Residential houses constructed prior to 1978; 2) Apartments or other multi-family housing units constructed prior to 1978; 3) Child-occupied facilities constructed prior to 1978, including schools and daycares; and 4) Housing for the elderly and/or disabled constructed prior to 1978 **WHERE CHILDREN LESS THAN SIX (6) YEARS OF AGE RESIDE OR ARE EXPECTED TO RESIDE.**

DEFINITIONS: CHILD-OCCUPIED FACILITY is defined as a building or portion thereof that is visited regularly by the same child less than six (6) years of age, on at least two (2) different days per week when each day's visit lasts at least three (3) hours. Combined weekly visits must total at least six (6) hours and combined annual visits must total at least sixty (60) hours, HOUSING FOR THE ELDERLY refers to retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or older at the time of initial occupancy, PRIOR TO 1978 means buildings for which a construction permit was obtained, or if no permit was obtained, buildings on which construction was started, before January 1, 1978; and RENOVATION is defined as any activity that disturbs painted surfaces including: most repairs (painting, plumbing and electrical work), remodeling, carpentry and maintenance activities, such as window replacement.

COMMON AREAS AND EXTERIOR SIDES: The Program applies to common areas and exteriors of "targeted" properties. In child-care facilities, the Program only applies to common areas routinely used by children less than six (6) years of age, such as restrooms and cafeterias and to exterior sides of the building that are immediately adjacent to the child-care facility or common areas used by children less than six (6) years of age.

PROPERTY NOT AFFECTED: 1) Buildings built in or after 1978 (See definition of "Prior to 1978"); 2) Housing for elderly or disabled persons built prior to 1978, **UNLESS CHILDREN UNDER SIX (6) YEARS OF AGE RESIDE OR ARE EXPECTED TO RESIDE THERE;** 3) Zero (0) bedroom dwellings (studio apartments, dormitories, barracks, etc.); and, 4) Housing declared lead-free in writing by a certified inspector or risk assessor.

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**NEW MEXICO ASSOCIATION OF REALTORS® — 2024
INFORMATION SHEET — LEAD-BASED PAINT (LBP)
RENOVATION REPAIR AND PAINTING PROGRAM**



PRE-RENOVATION NOTICE REQUIREMENTS: Firms and renovators conducting renovations governed by the Program are required to provide notice to specific individuals prior to beginning renovations. Notice shall include the nature, location, start and end dates of renovations, and a copy of the prescribed Pamphlet entitled *"RENOVATE RIGHT: IMPORTANT LEAD HAZARD INFORMATION FOR FAMILIES, CHILD-CARE PROVIDERS AND SCHOOLS"* ("Pamphlet") or information on how to obtain a copy of the Pamphlet from the firm at no charge. The specific individuals entitled to Notice, time frames for providing Notice, and additional requirements of Notice are available at www.epa.gov/lead.

PRE- AND POST- RENOVATION REQUIREMENTS AND LEAD-SAFE WORK PRACTICES: Firms and renovators conducting renovation activities governed by the Program must follow specific lead-safe work practices during each phase of the renovation which include the following: 1) Pre-renovation activities including, but not limited to, Notice (as discussed above) and site-area containment; 2) Renovation activities, which include work-area containment of dust and debris and prohibition against the use of certain techniques, such as open flame burning; 3) Post-renovation clean-up which includes the use of HEPA vacuums and a "white-glove" verification procedure; and 4) Post-renovation compliance notification (as discussed below). Certified renovators will have received training in all of these areas, as well as in the record keeping requirements of the Program. Complete information on the requirements in each of these areas is available at www.epa.gov/lead.

POST-RENOVATION COMPLIANCE NOTIFICATION: Effective July 6, 2010, renovation firms are required to provide owners and occupants of buildings being renovated with a copy of records demonstrating compliance with the Program and work practice requirements. This information must be delivered along with the final invoice for the renovation, or within 30 days of the completion of the renovation, whichever is earlier. This notification can be accomplished through the use of EPA's "Sample Renovation Recordkeeping Checklist". Firms may also develop their own forms or checklists as long as they include all of the required information. This information should be provided in a short, easily read checklist or other form. For common area renovations, the renovation firm must provide the residents of the affected housing units with instructions on how to review or obtain this information from the renovation firm at no charge. These instructions must also be provided to parents/guardians of children attending child-care facilities where renovations have been performed. Additional information regarding the Compliance Notification are available at www.epa.gov/lead.

FIRM CERTIFICATION: Firms are required to be certified, to have all employees trained in the use of lead-safe work practices, and to implement lead-safe work practices that minimize occupant's exposure to lead hazards. Firms must submit an "APPLICATIONS FOR FIRMS" to the Environmental Protection Agency (EPA), signed by the authorized agent of the firm and pay the correct fees. Renovators of the firm must be trained, and lead-safe work practices must be followed.

CERTIFIED FIRM RESPONSIBILITIES: 1) to ensure that all persons who perform activities that disturb painted surfaces on behalf of the firm are either certified renovators or have been trained by a certified renovator; 2) to ensure that a certified renovator is assigned to each renovation and performs all of the certified renovator responsibilities; 3) to ensure that all renovations performed by the firm are done so in accordance with the work practice standards of the Program; 4) to ensure pre-renovation education and post-renovation Compliance Notification requirements of the Program are performed; and 5) to ensure that the Program's record keeping requirements are met.

RENOVATOR CERTIFICATION: 1) Attended an eight (8) hour Renovation Training Course offered by an accredited provider, **and** 2) Received a completion certificate **OR** if the renovator had already completed a Lead Abatement Worker or Supervisor Course or a Model Renovation Training Course, attended a four (4) hour refresher course. Renovators must be re-certified every five (5) years.

RESPONSIBILITIES OF CERTIFIED RENOVATORS: 1) Must be in overall compliance with the Program requirements; 2) Must use test kits acceptable to the EPA; 3) Must provide on-the-job training to workers; 4) Must be physically present at the work site when warning signs are being posted, while work-area containment is being established, and while work-area cleaning is being performed; 5) Must regularly direct work being performed by others to ensure overall compliance; 6) Must be available, either on-site or by telephone, at all times renovations are being

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**NEW MEXICO ASSOCIATION OF REALTORS® — 2024
INFORMATION SHEET — LEAD-BASED PAINT (LBP)
RENOVATION REPAIR AND PAINTING PROGRAM**



conducted; 7) Must have with them at all work sites, copies of their initial course completion certificate and their most recent refresher course completion certificate; 8) Must perform project cleaning verification; and 9) Must prepare required records.

EXCEPTIONS TO APPLICATION OF THE PROGRAM: 1) Owner-occupants performing renovations on their own homes; 2) Tenants performing work on their own rental units/homes **PROVIDED, HOWEVER, THE LANDLORD/OWNER DOES NOT REBATE ANY PORTION OF THE RENT OR OTHERWISE COMPENSATE THE TENANT FOR THE WORK;** 3) Abatement actions which permanently eliminate lead-based paint; 4) Emergency renovations which are defined as a sudden unexpected event that presents a safety hazard and/or risk of significant damage and include interim controls performed in response to an elevated blood lead level in a resident child. **THIS EXCEPTION DOES NOT APPLY TO CLEAN-UP OR RECORD KEEPING WHICH ARE STILL REQUIRED PER THE PROGRAM;** and 5) “Minor repairs and maintenance” which is defined as renovations affecting less than six (6) square feet inside and less than twenty (20) square feet outside. The minor repairs and maintenance exception never includes restricted work practices (e.g. open flame burning), nor does it include demolition of surface areas or window replacements unless windows and/or surfaces have been tested, and there has been a written determination from an inspector or risk assessor who used a spot test kit recognized by the EPA that components affected are lead-free. These test results must be disclosed to the owner and tenant. In determining square footage affected, individuals must add together the square footage of all work performed in a thirty (30) day period (“30-Day Rule”).

PENALTIES AND COMPLIANCE

The penalty for violations of the program is up to \$37,500 per violation/per day. The EPA's small business compliance policy applies to businesses with 100 or fewer employees. The policy sets forth guidelines for the EPA to apply in reducing or waiving penalties for small businesses that come forward to disclose violations before the violations are identified by the EPA and that make a good faith effort to correct those violations.

FOR MORE INFORMATION

Visit www.epa.gov/lead to download versions of pamphlets and the Recordkeeping Checklist and to obtain the full text of the Program, interpretive guidance, detailed information on the Program requirements and the Small Business Compliance Policy.

NMAR FORM 2315 (2023 JAN) ©2022 NEW MEXICO ASSOCIATION OF REALTORS® REC'D BY BUYER(S) OR SELLER(S) _____

INITIALS SIGNIFY THAT THE BUYER(S) AND/OR SELLER(S) HAS RECEIVED AND REVIEWED THIS
INFORMATION SHEET.

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**NEW MEXICO ASSOCIATION OF REALTORS® — 2024
ADDENDUM NO. _____
LEAD-BASED PAINT, RENOVATION, REPAIR AND PAINTING
PROGRAM DISCLOSURE ADDENDUM**

This Addendum is to be used when the Property at issue was built prior to 1978 and has been renovated, as defined below, since April 22, 2010. The disclosures made herein are separate from and in addition to those disclosures required by the Lead-Based Paint Disclosure Rule (See NMAP Form 5112, Lead-Based Paint Addendum to Purchase Agreement and NMAP Form 5113, Lead-Based Paint Disclosure Before Lease).

The Lead-Based Paint Renovation, Repair and Painting Program ("Program") took effect April 22, 2010 and governs renovation activities in target housing and child-occupied facilities. Target housing is defined as any housing constructed prior to 1978, except zero-bedroom dwellings and housing for the elderly or persons with disabilities (unless any child who is less than six years of age resides or is expected to reside in such housing for the elderly or persons with disabilities). Please refer to NMAP Form 2315, Lead-Based Paint (LBP) Renovation Repair Information Sheet, for the definition of child-occupied facility. Renovation is defined under the Program as the modification of any existing structure, or portion thereof that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement. The term renovation includes, but is not limited to, the removal, modification or repair of painted surfaces or painted components.

Owners who perform their own renovations on their own owner-occupied housing are exempt from the Program. Please refer to NMAP Form 2315 for more information.

PLEASE NOTE: If you have contracted to have renovations performed on your owner-occupied housing since April 22, 2010, the contractor you hired must have completed renovations in compliance with Program requirements. If the contractor did not comply with Program requirements, the contractor may be subject to civil and criminal penalties up to \$37,500 for each violation, imprisonment or both.

IMPORTANT: IF YOU ARE THE OWNER OF RENTAL PROPERTY AND HAVE PERFORMED YOUR OWN RENOVATIONS ON THE RENTAL PROPERTY SINCE APRIL 22, 2010, YOU MUST HAVE COMPLETED RENOVATIONS IN COMPLIANCE WITH THE PROGRAM. IF YOU DID NOT COMPLETE RENOVATIONS IN COMPLIANCE WITH PROGRAM REQUIREMENTS, YOU MAY BE SUBJECT TO CIVIL AND CRIMINAL PENALTIES UP TO \$37,500 FOR EACH VIOLATION, IMPRISONMENT OR BOTH. IF YOU HAVE PERFORMED YOUR OWN RENOVATIONS ON YOUR RENTAL PROPERTY SINCE APRIL 22, 2010, DO NOT COMPLETE THIS FORM BEFORE REVIEWING NMAP FORM 2315, LEAD-BASED PAINT (LBP) RENOVATION REPAIR INFORMATION SHEET AND OBTAINING LEGAL ADVICE FROM AN ATTORNEY.

This Disclosure Addendum is made part of the Commercial Property Lease/Rental Agreement Seller's Property Disclosure Statement Purchase Agreement Property Management Agreement Residential Rental Agreement Other _____ dated _____ between the following parties: _____ and _____ and _____ and _____

relating to the following Property:

Address (Street, City, State, Zip Code)

Legal Description

Describe the nature of the renovations conducted on the Property: _____

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**NEW MEXICO ASSOCIATION OF REALTORS® — 2024
ADDENDUM NO. _____
LEAD-BASED PAINT, RENOVATION, REPAIR AND PAINTING
PROGRAM DISCLOSURE ADDENDUM**



1. When were renovations completed? _____
2. If known, name of person(s) and/or contractor(s) who and/or firm(s) that conducted renovations: _____

3. Was the contractor(s) certified under the Program? Yes No Don't Know
4. Were the renovations performed in compliance with the Program? Yes No Don't Know

PLEASE NOTE: PER THE LEAD-BASED PAINT DISCLOSURE RULE, THE OWNER MUST PROVIDE ALL AVAILABLE DOCUMENTATION PERTAINING TO LEAD-BASED PAINT AND/OR LEAD-BASED PAINT HAZARDS, INCLUDING, BUT NOT LIMITED TO ALL RECORDS, REPORTS, AND TEST RESULTS. AS APPLICABLE, SEE NMAR FORM 5112, LEAD-BASED PAINT ADDENDUM TO PURCHASE AGREEMENT, AND/OR NMAR FORM 5113, LEAD-BASED PAINT DISCLOSURE BEFORE LEASE.

For more information on the hazards of lead-based paint, lead-based paint regulations and lead-safe work practices, please visit www.epa.gov/lead and www.hud.gov/lead.

BUYER(S)/TENANT(S)

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

SELLER(S)/OWNER(S)

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

If additional signature lines are needed, please use NMAR Form 1150 – Signature Addendum