

16.61.16.9. Responsibilities.

The qualifying broker shall, in addition to all other requirements imposed by law, comply with the following:

- A. conduct the real estate brokerage business under the trade name and from the brokerage address or addresses registered with the commission;
- B. prominently display in the brokerage office, the qualifying broker's own license and the licenses of all other affiliated associate brokers conducting real estate brokerage business from the brokerage office;
- C. have in the brokerage office and available to all affiliated associate brokers and qualifying brokers a current copy of the state of the New Mexico real estate license law and rules manual;
- D. supervise all real estate related activities to include advertising of real estate or real estate services conducted on behalf of others by associate brokers affiliated with the brokerage and execute and maintain current written employment or independent contractor agreements with them; such agreements should specify the relationship and responsibilities of the associate broker and the qualifying broker, and the scope of authority of the associate broker to act on behalf of the brokerage;

**E. maintain full and complete records wherein the qualifying broker and affiliated associate broker(s) are engaged on behalf of others, or on their own behalf, in real estate related matters processed through the brokerage;**  
**(1) such records shall include but are not limited to a record and receipt of all deposits to a title company trust account, purchases, offers to purchase, counter offers, sales, lead-based paint disclosures and other disclosures required by law, seller's disclosure statements if provided by the seller, options, leases, rentals, letters of intent, brokerage relationship agreements and disclosures, and current, expired, and cancelled listings;**  
**(2) the names of all principals or parties to the transaction;**  
**(3) clear and correct dates of transactions;**  
**(4) the names of persons to whom compensation was paid;**  
**(5) the required records shall be available to the commission or any duly authorized commission representative at the place of business of the qualifying broker or at the commission office; all such records whether in paper or electronic format shall be retained for a period not less than three (3) years. In the case of a property manager, all records shall be retained for the full term of any agreement and for three (3) years from the close of the transaction;**

F. deposit all money received on behalf of others in the proper trust account as soon after receipt as is practicably possible after securing signatures of all parties to the transaction;

G. receive and disburse all commissions, referral fees, and/or other considerations to any associate broker affiliated with the qualifying broker or any other entity entitled by law to receive same, including to a partnership, corporation, or limited liability company (llc ) wholly owned by an associate

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broker and their spouse, or authorize and direct the disbursement thereof, and maintain complete records thereof; such partnership, corporation, or llc shall not be required to have a qualifying broker for purposes of this sub-part;

H. assure that when the brokerage cooperates with or makes a referral to, or

receives a referral from any broker, sign a transaction specific written co-brokerage or referral agreement;

I. not permit the use of the qualifying broker's license to enable an affiliated associate broker to establish and carry on transactions outside the knowledge and supervision of the qualifying broker;

J. in the event actual supervision by the qualifying broker is not possible for a time exceeding seven (7) consecutive days, including but not limited to circumstances in which supervision of affiliated associate brokers is not possible because the qualifying broker is consistently and regularly absent from the office designate a broker in charge and inform the commission in writing of the designation; during this period of time the broker in charge shall assume all of the responsibilities of the qualifying broker for the brokerage;

K. upon termination or discharge of an associate broker return the associate broker's license to the commission within forty-eight (48) hours; although the license may be delivered to the commission by an associate broker, the responsibility for the delivery of the license to the commission remains that of the qualifying broker;

L. if employed as qualifying broker for others, have a written agreement of such employment maintained in the office of the brokerage;

M. ensure that each qualifying broker and associate broker affiliated with the brokerage obtain and maintain a current errors and omissions insurance policy as provided in NMSA 1978 Section 61-29-4.2 of the real estate license law and 16.61.5 NMAC of the commission rules;

N. successfully complete as a condition of license renewal a commission approved minimum four (4) hour qualifying broker refresher course;

[16.61.16.9 NMAC - Rp, 16 NMAC 61.16.9, 1-1-2002; A, 01-01-2004; A, 1-1-2006; A, 12-31-2008]

#### 16.61.23.9. Record Maintenance.

Every qualifying broker shall keep bank and office records of all funds related to all trust accounts of the brokerage. All such records shall be maintained and retained in the New Mexico office of the qualifying broker at the location as registered with the commission, or at the bank, savings and loan institution, or title company where the trust account is maintained. In a multi-office company, or in a circumstance in which the trust account is maintained at a bank, savings and loan institution, or title company, trust account records may be maintained and retained at the main corporate office, or at the main or branch office of the bank, savings and loan institution or title company where the trust account is maintained, provided that the commission is notified in writing of the location of the trust account records and the qualifying broker who is responsible for the trust account records. All such records shall be subject to inspection by the commission or its duly authorized representative at the designated location of such records or at the offices of the commission. The records shall include, as a minimum, clear indication of all funds received and disbursed on behalf of others in all real estate transactions wherein the qualifying broker is involved. The qualifying broker shall be ultimately responsible for the maintenance and safe-keeping of trust account records.

A. Trust account control. A check numbering system with a check register shall be used for control purposes. Voided checks shall be retained. All trust account bank records and office records shall be reconciled monthly.

B. Trust account receipts and disbursements.

(1) Timeliness. All funds of others that come into the possession of the qualifying broker shall be deposited into the proper trust account as soon as practicably possible after securing signatures of all parties to the transaction.

(2) All funds held in any trust account for each transaction shall be disbursed as soon as practicably possible upon complete closing of the transaction; or, according to written agreement signed by all parties to the transaction; or, upon court order.

(3) Receipt records. A detailed record of all funds received, including copies of receipts, shall be maintained by the qualifying broker and shall clearly indicate the following:

(a) date received;

(b) date deposited;

(c) from whom received;

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(d) the related property transaction; and,

(e) the nature of the funds, i.e., earnest money deposit, rents, security deposit, owner's funds, etc.

(f) amount of deposit.

(4) Disbursement records. A detailed record of all funds disbursed shall be maintained by the qualifying broker and shall clearly indicate the following:

(a) check number;

(b) date of payment;

(c) payee;

(d) purpose of payment;

(e) amount of payment;

(f) the related property transaction.

C. Retention of records. The qualifying broker shall retain all trust account records for a minimum of three (3) years.

D. Commingling. Commingling shall include, but is not limited to, the following actions involving a trust account on the part of a qualifying broker or the qualifying broker's designee:

(1) placing funds of others directly into any account that is not a properly designated trust account;

(2) placing non-trust account funds into a trust account; the qualifying broker may deposit nontrust funds in an amount not to exceed the required minimum balance in each trust account so as to meet the minimum balance requirements of a bank or savings and loan institution necessary to maintain the account and avoid charges;

(3) allowing an owner's fund within a trust account to be in deficit. (see Part 24, property management);

(4) placing funds derived from the management of the qualifying broker's own properties in a trust account containing funds of others;

(5) failing to withdraw from the trust account within a reasonable time funds to which the qualifying broker is entitled;

(6) allowing money designated to one property to be used for the benefit of another property; however, if a written agreement exists between the qualifying broker and the property owner, allowing the commingling of funds of more than one property owned by that property owner, the commingling of funds for those designated properties is allowed.

[8-15-97; 16.61.23.9 NMAC - Rn & A, 16 NMAC 61.23.9, 1-1-2002; A, 1-1-2006]