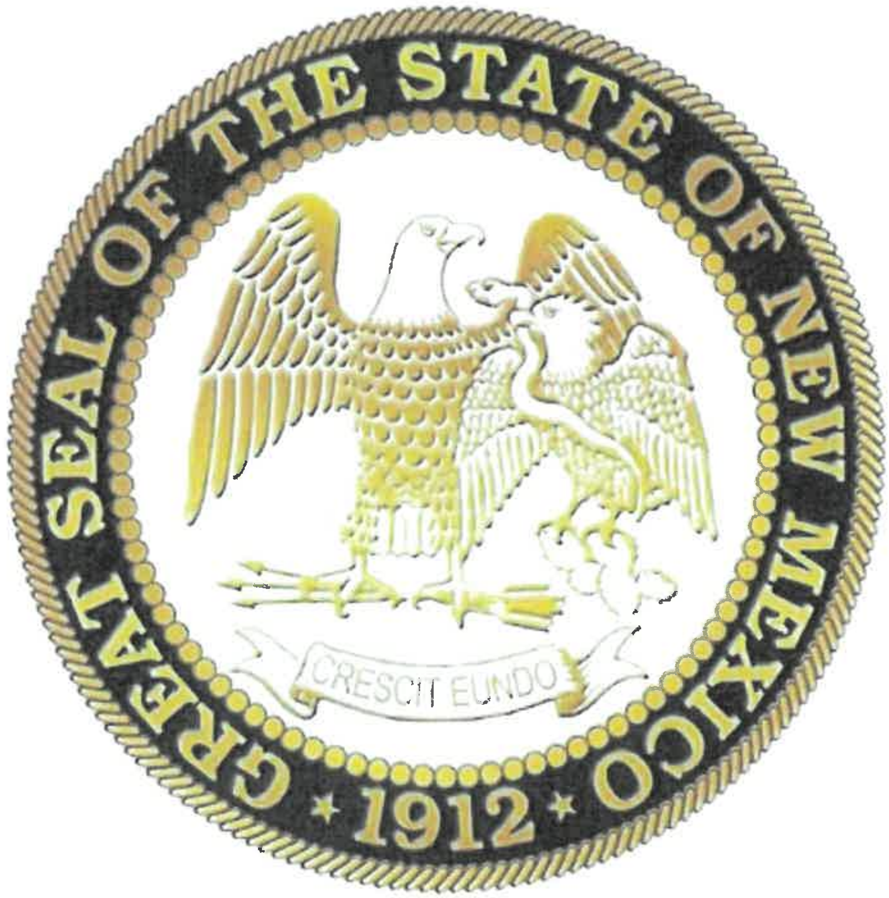
New Mexico

Real Estate Commission



Rules and Regulations

March 2025

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 61 REAL ESTATE BROKERS
PART 1 GENERAL PROVISIONS

16.61.1.1 ISSUING AGENCY: New Mexico Real Estate Commission.
[16.61.1.1 NMAC - Rp, 16.61.1.1 NMAC, 1/1/2012]

16.61.1.2 SCOPE: The provisions in Part 1 apply to all parts of Title 16, Chapter 61 and provide relevant information to brokers, applicants, other agencies, professional associations, and any member of the general public affected by or interested in Chapter 61 of Title 16.
[16.61.1.2 NMAC - Rp, 16.61.1.2 NMAC, 1/1/2012]

16.61.1.3 STATUTORY AUTHORITY: Part 1 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, Section 61-29-4 NMSA 1978.
[16.61.1.3 NMAC - Rp, 16.61.1.3 NMAC, 1/1/2012]

16.61.1.4 DURATION: Permanent.
[16.61.1.4 NMAC - Rp, 16.61.1.4 NMAC, 1/1/2012]

16.61.1.5 EFFECTIVE DATE: January 1, 2012, unless a later date is cited at the end of a section.
[16.61.1.5 NMAC - Rp, 16.61.1.5 NMAC, 1/1/2012]

16.61.1.6 OBJECTIVE: The objective of Part 1 of Chapter 61 is to set forth the provision, which apply to all of Chapter 61, and to all persons and entities affected by Chapter 61 of Title 16, and to define the terms and terminology related to real estate qualifying brokers and associate brokers used throughout Chapter 61 of Title 16.
[16.61.1.6 NMAC - Rp, 16.61.1.6 NMAC, 1/1/2012]

16.61.1.7 DEFINITIONS:

A. **"Acceptable financial institution":** is a federally insured bank, savings and loan or title company authorized to do business in the state of New Mexico.

B. **"Agency":** the fiduciary relationship created solely by the express written agency agreement between a person and a brokerage, authorizing the brokerage to act as agent for the person according to the scope of authority granted in that express written agreement for real estate services subject to the jurisdiction of the commission.

C. **"Agent":** the brokerage authorized solely, by means of an express written agreement, to act as a fiduciary for a person and to provide real estate services that are subject to the jurisdiction of the commission; in the case of an associate broker, "agent" means the person who has been authorized to act by that associate broker's qualifying broker. In the case of residential property management, the property manager is an agent of the owner(s) of the property for the purpose of performing the obligations of the owner(s) under the property management agreement. In the case of commercial property management, the property manager is an agent of the owner(s) of the property for the purpose of performing the obligations of the owner(s) pursuant to a property management agreement if the property management agreement specifically creates an agency relationship.

D. **"Associate broker":** a person holding a New Mexico associate broker's license who is affiliated with a New Mexico qualifying broker.

E. **"Broker":** any person holding a current New Mexico associate broker's or qualifying broker's real estate license.

F. **"Brokerage":** a person, corporation, partnership or association qualified by a New Mexico licensed qualifying broker to conduct real estate brokerage activity in New Mexico.

G. **"Brokerage relationship":** the relationship between a customer or client and a brokerage for the provision of services in connection with a real estate transaction.

H. **"Brokerage trust account":** an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money belonging to others received during a real estate sales transaction.

I. **"Broker duties":** certain duties owed by brokers to prospective buyers, sellers, owners and tenants, and broker obligation to other brokers as set forth in Part 16.61.19.8 NMAC.

J. **"Broker in charge":** a New Mexico licensed real estate broker qualified to be a qualifying broker who has been designated in writing by the qualifying broker to assume responsibility for the brokerage during a period of time when supervision by the qualifying broker is not possible.

K. **"Client":** a person who has entered into an express written agreement with a brokerage for real estate services subject to the jurisdiction of the commission.

L. **"Commercial real estate":** real estate that is zoned for business or commercial use by a city or county; or designated by a city or county to allow five or more multi-family units; provided that all units are located on a single parcel of land with a single legal description.

M. **"Core course":** the four-hour commission-approved continuing education course that all brokers are required to complete annually as a condition of license renewal.

N. **"Core elective course":** commission-approved advanced continuing education course in residential transactions, commercial transactions, property management transactions, or vacant land/ranch transactions required once during each three-year cycle, core elective courses advance the broker's practice of real estate by one or more of the following:

(1) improve broker transactional expertise focusing on, but not limited to, contractual and disclosure forms used in the practice of real estate, real estate title issues, contracts, and real estate transactional negotiating skills;

(2) improves broker business practices and professionalism focusing on, but not limited to, broker responsibilities and duties;

(3) improves broker awareness of issues that impact the public and real estate transactions focusing on, but not limited to, land development, jurisdictional taxation issues; or

(4) increases the broker knowledge of third party services within a transaction. The number of core elective hours required for both associate brokers and qualifying brokers is further defined at 16.61.13.8 NMAC.

O. **"Credit hours(s)":** credits toward education requirements as assigned by the real estate commission for each commission-approved course.

P. **"Custodial account":** an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of an owner. The account shall be established in the owner's name under the qualifying broker's control. This account may be interest bearing.

Q. **"Customer":** a person who uses real estate services without entering into an express written agreement with a brokerage subject to the jurisdiction of the commission.

R. **"Designated agent":** a broker who is designated in writing by their qualifying broker to represent a client of the brokerage as their exclusive agent in a real estate transaction.

S. **"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.

T. **"Distance education":** distance learning is education and training that takes place outside of the traditional classroom setting and in which other instructional media are used because the instructor, teaching materials, and student are separated by either distance or time.

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

V. **"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.

W. **Elective Course:** a commission approved elective course not considered as intensive in focus as a core elective course in a broad array of topics directly and indirectly related to the practice of real estate or the skills necessary to practice real estate including: real estate law and practice; real estate financing, mortgages and other financing techniques; material specific to the regulatory, technical and ethical practice of real estate; and all state and federal laws including but not limited to fair housing, the Americans with Disabilities Act (ADA), and lead-based paint disclosure. This broad category of courses also includes courses associated with various national and state designations and certifications not already categorized as core electives; courses in personal and property protection for the broker and clients; broker skills-related offerings in using the computer, the internet, business calculators, and other technologies to enhance the broker's service to the public; other skills offerings related to broker professional development, broker customer relations skills, broker sales promotion including salesmanship, negotiation, marketing techniques, servicing the client, or similar courses.

X. **"Employee":** for the purposes of Paragraph (1) of Subsection C of Section 61-29-2 NMSA 1978 of the real estate license law, a person employed by an owner of real property, or a person employed by the brokerage acting on behalf of the owner of real property. In determining whether a person is an employee, as opposed to an 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;

(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 and 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, including the national guard. For purposes of this definition, any dependent child must be a dependent for federal income tax purposes.

JJ. **"Owner or property owner":** a person who is recognized and held responsible by law as the owner of real property, including real property held by any legally recognized entity in which the owner has an interest of ten percent or more.

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

LL. **"Person":** any natural person, corporation, business trust, estate, trust, partnership, association, joint venture, governmental entity or other legal entity.

MM. **"Post-licensing course":** the commission-approved new broker business practices course required within the first year of licensure of brokers first licensed in New Mexico as associate brokers on or after January 1, 2009.

NN. **"Principal":** any person who authorizes or employs another to do certain acts on behalf of that person.

OO. **"Property ledger":** a record of deposits and disbursements within a trust account or custodial account that are associated with the same property or owner.

PP. **"Property management":** real estate services as specified by a written management agreement between a property owner and a third party property management company; which includes, but are not limited to, the marketing, showing, renting and leasing of real property; the collection and disbursement of funds on behalf of owners; the supervision of employees and vendors; the coordination of maintenance and repairs; the management of tenant relations; or the preparation of leases or rental agreements, financial reports, disclosure certificates, resale certificates, and other documents. In the course of listing and marketing properties for sale, inspections of the property, repairs and maintenance incident to the sale and authorized by the owner shall not be considered property management. Advertising and taking reservations for vacation rental properties shall not be considered property management.

QQ. **"Property management trust account":** an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money belonging to others received during the management of real property for others.

RR. **"Property manager":** a broker who, for a fee, salary, commission or other valuable consideration, is engaged in managing property for others. A residential property manager is an agent of the owner(s) of the property for the purpose of performing the obligations of the owner(s) under the Uniform Owner-Resident Relations Act and under the rental or lease agreement. A commercial property manager may be an agent of the owner(s) as determined by the contract with the owner(s).

SS. **"Qualifying broker":** a broker who has qualified a proprietorship, corporation, partnership or association to do business as a real estate brokerage in the state of New Mexico, and who discharges the responsibilities of a qualifying broker as set forth in 16.61.16.9 NMAC.

TT. **"Recent veteran":** a person who has received an honorable discharge or separation from military service within the three years immediately preceding the date the person applied for a real estate broker's license.

UU. **"Reconciliation":** the process by which the property ledgers within a trust account or custodial account are balanced with the trust account or custodial account and the account or custodial account is balanced with the bank statement.

VV. **"Referral":** the communication by one broker or brokerage to another broker or brokerage of the identity of a potential buyer/tenant or seller/lessor of real property available for sale, lease, rent or exchange.

WW. **"Responsible person":** the qualifying broker or associate broker for whom an unlicensed assistant works. If an unlicensed assistant works for more than one broker, each broker for whom the unlicensed assistant works is a responsible person. Each responsible person will be subject to the provisions of Paragraph (7) of Subsection A of Section 61-29-12 NMSA 1978.

XX. **"Residential real estate":** real estate which is zoned for private use as a living facility by a city or county; or designated by a city or county to allow four or less multi-family units on a single parcel of land with a single legal description.

YY. **"Scope of authority":** the range of authority granted by the principal to act on behalf of that principal.

ZZ. **"Special trust account":** an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of a named party to a transaction. This account may be interest bearing.

AAA. **"Sponsor":** an organization or entity approved by the real estate commission to offer courses approved by the real estate commission.

BBB. **"Subagent":** an agent of the agent, authorized to act for the agent in performing functions undertaken by the agent for his principal.

CCC. **"Transaction coordinator":** a person engaged by a broker who assists the broker in the processing of the real estate transaction, and whose services may include, but not be limited to, the following: gathering necessary information and paperwork for and from buyers and sellers, overseeing and organizing contractual deadlines, communicating and coordinating with lenders, title companies, inspectors, other brokers in the transaction and the parties to the contract to facilitate the closing of the real estate transaction, and assembling the final real estate transaction file for closing. A transaction coordinator involved in real estate transactions in New Mexico must have a New Mexico broker's license. A person assisting with real estate transactions who is not licensed is an unlicensed assistant.

DDD. **"Transaction":** any real estate activity subject to the jurisdiction of the commission.

EEE. **"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.

FFF. **"Trust account":** an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of others received by the qualifying broker in a transaction which includes a brokerage trust account, property management trust account or special trust account.

GGG. **"Unlicensed assistant":** a person who does not hold an active New Mexico broker's license and works under the supervision of a responsible person to perform duties for the brokerage as provided in 16.61.21 NMAC.

HHH. **"Vacation rental":** With the exception of hotels and motels, a vacation rental is the rental of real property by a renter who does not manifest an intent to make the real property a permanent residence. Evidence that the renter does not intend to make the real property a permanent residence includes, but is not limited to, the following: landlord/property manager supplies all furnishings, appliances, bedding, towels, utensils, plates, and silverware.

III. **"Virtual office":** A real estate brokerage office that provides communication and address services without providing dedicated office space.
[16.61.1.7 NMAC - Rp, 16.61.1.7 NMAC, 1/1/2012; A, 1/1/2017; A, 1/15/2018; A, 1/1/2019; A, 1/3/2021; A, 2/25/2022]

16.61.1.8 OFFICES: The offices of the New Mexico real estate commission will be located in Albuquerque, New Mexico.
[16.61.1.8 NMAC - Rp, 16.61.1.8 NMAC, 1/1/2012]

16.61.1.9 TELEPHONIC MEETING ATTENDANCE: Commission members may participate in a meeting of the commission by means of a conference telephone or similar communications equipment and participation by telephone may only occur when it is difficult or impossible for commission members to attend a meeting of the commission, i.e. when circumstances beyond the member's control would make attendance in person extremely burdensome.
[16.61.1.9 NMAC - Rp, 16.61.1.9 NMAC, 1/1/2012]

HISTORY of 16.61.1 NMAC:

Pre-NMAC History:
The material in this part was derived from that previously filed with the state records center and archives under: REC 73-1, Real Estate License Law Manual, filed 10/2/1973;
REC-1, (filed as Rule No. 1, Amendment No. 1) Purpose of Rules, Office Location, filed 6/15/1979;
REC 70-1, Purpose of Rules, Office Location, filed 10/6/1981;
REC 71-1, Purpose of Rules, Office Location, Definitions, filed 11/29/1982;
Rule No. 1, Purpose of Rules, Office Location, Definitions, filed 12/18/1987;
NMREC Rule 1, Purpose of Rules, Office Location, Definitions, filed 12/17/1991;
NMREC Rule 1, Purpose of Rules, Office Location, Definitions, filed 10/3/1994;
Rule No. 1, Purpose of Rules, Office Location, Definitions, filed 6/16/1995;
NMREC Rule 20, Telephonic Attendance by Commission Member, filed 10/3/1994.

History of Repealed Material:
16 NMAC 61.1, General Provisions (filed 12/17/1996) repealed 1/1/2000.
16.61.1 NMAC, General Provisions (filed 11/19/2003) repealed 1/1/2006.
16.61.1 NMAC, General Provisions (filed 11/16/2005) repealed 1/1/2012.

Other History:
Rule No. 1, Purpose of Rules, Office Location, Definitions (filed 6/16/1995) and NMREC Rule 20, Telephonic Attendance by Commission Member (filed 10/3/1994) both renumbered, reformatted, and replaced by 16 NMAC 61.1, General Provisions, effective 1/31/1997.
16 NMAC 61.1, General Provisions (filed 12/17/1996) was replaced by 16 NMAC 61.1, General Provisions, effective 1/1/2000.
16 NMAC 61.1, General Provisions (filed 12/10/1999) reformatted, amended, renumbered and replaced by 16.61.1 NMAC, General Provisions, effective 1/1/2002.
16.61.1 NMAC, General Provisions (filed 11/19/2003) was replaced by 16.61.1 NMAC, General Provisions, effective 1/1/2006.
16.61.1 NMAC, General Provisions (filed 11/16/2005) was replaced by 16.61.1 NMAC, General Provisions, effective 1/1/2012.

ARTICLE 29
Real Estate Brokers and Salesmen

61-29-1. Prohibition.

It is unlawful for a person to engage in the business or act in the capacity of real estate associate broker or qualifying broker within New Mexico without a license issued by the commission. A person who engages in the business or acts in the capacity of an associate broker or a qualifying broker in New Mexico, except as otherwise provided in Section 61-29-2 NMSA 1978, with or without a New Mexico real estate broker's license, has thereby submitted to the jurisdiction of the state and to the administrative jurisdiction of the commission and is subject to all penalties and remedies available for a violation of any provision of Chapter 61, Article 29 NMSA 1978.

History: 1953 Comp., § 67-24-19, enacted by Laws 1959, ch. 226, § 1; 1965, ch. 304, § 1; 2001, ch. 163, § 1; 2005, ch. 35, § 1; 2013, ch. 167, § 1.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, clarified the prohibited activities; in the first sentence, after "engage in the business", added "or", and after "act in the capacity of", deleted "advertise or display in any manner or otherwise assume to engage in the business of, or act as an", added "real estate" and in the second sentence, after "with or without a New Mexico" added "real estate broker's".

The 2005 amendment, effective January 1, 2006, prohibits a person from engaging in business or acting as an associate broker or a qualifying broker without a license.

The 2001 amendment, effective July 1, 2001, substituted "a person to engage" for "any person, business association or corporation to engage"; deleted "real estate" preceding "broker"; deleted "New Mexico real estate" preceding "commission"; and added the last sentence of the subsection.

Brokerage can encompass sale of interest in real estate contract. — Commission had jurisdiction over real estate broker's sale of an interest in a real estate contract since broker was a real estate broker as defined in Section 61-29-2A(4) NMSA 1978 and represented himself as such and acted in that capacity. *Elliott v. N.M. Real Estate Comm'n*, 1985-NMSC-078, 103 N.M. 273, 705 P.2d 679.

Payment of a finder's fee to an unlicensed real estate broker prohibited. — Where a Chapter 7 trustee filed a motion to sell debtors' house, and where the terms of the proposed sale included a proposed finder's fee for creditor, an unlicensed real estate broker who introduced the buyers of the house to the trustee, the proposed finder's fee was prohibited by this section, because the creditor, as an unlicensed broker in New Mexico, may not collect a finder's fee or any other compensation from the sale of real estate. *In re Waggoner*, 605 B.R. 222 (Bankr. D. N.M. 2019).

Generally, as to advertisements violating section. — It is a violation of this section for a person, business firm or corporation to advertise the disposition of real estate using the terms "Real Estate Agency," "Realty," "Agency" or "Broker" without first being licensed as a real estate broker as is defined in Section 61-29-2 NMSA 1978. It is not really important whether or not the person, business firm or corporation doing the advertising uses the terms "Real Estate Agency," "Realty," "Agency" or "Broker." The real question is: have they advertised themselves as offering a service which comes within the definition of a real estate broker and a real estate salesman? 1966 Op. Att'y Gen. No. 66-16.

A person who auctions the real estate of another person for compensation is acting as an associate or qualifying broker. — The Real Estate Brokers and Salesmen Act (act), 61-29-1 to 61-29-29 NMSA 1978, specifically lists auctioning or the offer to auction real estate, when performed for another and for compensation, as conduct that brings one within the definition of associate broker and qualifying broker, and therefore a person who auctions or offers for auction the real estate of another person for compensation is acting as an associate or qualifying broker under the act and must possess a broker's license issued by the New Mexico real estate commission, regardless of whether the auctioneer is hired by the seller or by a licensed broker. *Necessity of a Real Estate Broker's License to Auction Real Estate* (5/24/16), Att'y Gen. Adv. Ltr. 2016-05.

Rule governing advertisements applies to advertisements of real estate auctions. — The New Mexico real estate commission has adopted a rule governing real estate advertising that requires all real estate advertising be a true and factual representation of the property and real estate services being advertised, and because auctioning or offering for auction the real estate of another for compensation is a real estate service that requires a broker's license, it follows that advertisements regarding the sale of real estate by auction comes under this rule. *Necessity of a Real Estate Broker's License to Auction Real Estate* (5/24/16), Att'y Gen. Adv. Ltr. 2016-05.

Law reviews. — For note, "Vendor and Purchaser - Increased Risks of Forfeiture and Malpractice Resulting from the Use of Real Estate Contracts: Albuquerque National Bank v. Albuquerque Ranch Estates, Inc.," see 15 N.M.L. Rev. 99 (1985).

For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

For annual survey of New Mexico Law of Property, see 20 N.M.L. Rev. 373 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers §§ 6 to 12.

Validity of statute or ordinance requiring real estate brokers to procure license, 39 A.L.R.2d 606.

Application of state antitrust laws to activities or practices of real estate agents or associations, 22 A.L.R.4th 103.

Attorney's right to act as real estate broker without having been licensed as such, 23 A.L.R.4th 230.

Right to private action under state statutes or regulations governing real estate brokers or salesmen, 28 A.L.R.4th 199.

Real estate brokers: statute or regulation forbidding use of prizes, gifts, or premiums as inducement to secure customers, 62 A.L.R.4th 1044.

Broker's liability for fraud or misrepresentation concerning development or nondevelopment of nearby property, 71 A.L.R.4th 511.

Liability of vendor or real-estate broker for failure to disclose information concerning off-site conditions affecting value of property, 41 A.L.R.5th 157.

12 C.J.S. Brokers §§ 14, 18.

61-29-1.1. Recompiled.

ANNOTATIONS

Recompilations. — Former 61-29-1.1 NMSA 1978, relating to registration of time share projects and licensing of salespersons, enacted by Laws 1986, ch. 97, § 2, has been recompiled as 47-11-2.1 NMSA 1978.

61-29-2. Definitions and exceptions.

A. As used in Chapter 61, Article 29 NMSA 1978:

(1) "agency relationship" means the fiduciary relationship created solely by an 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;

(2) "agent" means the brokerage authorized, solely by means of an express written agreement, to act as a fiduciary for a person and to provide real estate services that are subject to the jurisdiction of the commission; in the case of an associate broker, "agent" means the person who has been authorized to act by that associate broker's qualifying broker;

(3) "associate broker" means a person who, for compensation or other valuable consideration, is associated with or engaged under contract by a qualifying broker to carry on the qualifying broker's business as a whole or partial vocation, and:

(a) lists, sells or offers to sell real estate; buys or offers to buy real estate; or negotiates the purchase, sale or exchange of real estate or options on real estate;

(b) is engaged in managing property for others;

(c) leases, rents or auctions or offers to lease, rent or auction real estate;

(d) advertises or makes any representation as being engaged in the business of buying, selling, exchanging, renting, leasing, auctioning or dealing with options on real estate for others as a whole or partial vocation; or

(e) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract under which the qualifying broker undertakes primarily to promote the sale of real estate through its listing in a publication issued primarily for that purpose or for the purpose of referral of information concerning real estate to other qualifying brokers or associate brokers;

(4) "auctioneer" means a person who auctions or offers to auction real property;

(5) "brokerage" means a licensed qualifying broker and the licensed real estate business represented by the qualifying broker and its affiliated licensees;

(6) "brokerage relationship" means the legal or contractual relationship between a person and a brokerage in a real estate transaction subject to the jurisdiction of the commission;

(7) "client" means a person who has entered into an express written agreement with a brokerage for real estate services subject to the jurisdiction of the commission;

(8) "commercial real estate" means real estate that is zoned:

(a) for business or commercial use by a city or county; or

(b) by a city or county to allow five or more multifamily units; provided that all units are located on a single parcel of land with a single legal description;

(9) "commission" means the New Mexico real estate commission;

(10) "customer" means a person who uses real estate services without entering into an express written agreement with a brokerage subject to the jurisdiction of the commission;

(11) "foreign broker" means a real estate broker who does not hold a real estate license issued by the 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;

(12) "license" means a qualifying broker's license or an associate broker's license issued by the commission;

(13) "licensee" means a person holding a valid qualifying broker's license or an associate broker's license subject to the jurisdiction of the commission;

(14) "nonresident licensee" means an associate or qualifying broker holding a real estate license issued by the commission and whose license application address is not within the state of New Mexico;

(15) "property management" means real estate services as specified by a management agreement that include marketing, showing, renting and leasing of real property; collection and disbursement of funds on behalf of the owner; supervision of employees and vendors; coordination of maintenance and repairs; management of tenant relations; and preparation of leases or rental agreements, financial reports and other documents. "Property management" does not mean inspections of property, repairs and maintenance incidental to the sale and marketing of property as authorized by the owner or the management of a condominium or homeowner association or advertising or taking reservations for vacation rental properties;

(16) "qualifying broker" means a licensed real estate broker who has qualified a proprietorship, corporation, partnership or association to do business as a real estate brokerage in the state of New Mexico, who discharges the responsibilities specific to a qualifying broker as defined by the commission and who for compensation or other consideration from another:

(a) lists, sells or offers to sell real estate; buys or offers to buy real estate; or negotiates the purchase, sale or exchange of real estate or options on real estate;

(b) is engaged in managing property for others;

(c) leases, rents or auctions or offers to lease, rent or auction real estate;

(d) advertises or makes any representation as being engaged in the business of buying, selling, exchanging, renting, leasing, auctioning or dealing with options on real estate for others as a whole or partial vocation; or

(e) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract under which the qualifying broker undertakes primarily to promote the sale of real estate through its listing in a publication issued primarily for that purpose or for the purpose of referral of information concerning real estate to other qualifying brokers or associate brokers;

(17) "real estate" means land, improvements, leaseholds and other interests in real property that are less than a fee simple ownership interest, whether tangible or intangible; and

(18) "transaction broker" means a qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship.

B. A single act of a person in performing or attempting to perform an activity described in Paragraph (16) of Subsection A of this section makes the person a qualifying broker. A single act of a person in performing or attempting to perform an activity described in Paragraph (3) of Subsection A of this section makes the person an associate broker.

C. The provisions of Chapter 61, Article 29 NMSA 1978 do not apply to:

(1) a person who as owner performs any of the activities included in this section with reference to property owned by the person, except when the sale or offering for sale of the property constitutes a subdivision containing one hundred or more parcels;

(2) the employees of the owner or the employees of a qualifying broker acting on behalf of the owner, with respect to the property owned, if the acts are performed in the regular course of or incident to the management of the property and the investments;

(3) isolated or sporadic transactions not exceeding two transactions annually in which a person acts as attorney-in-fact under a duly executed power of attorney delivered by an owner authorizing the person to finally consummate and to perform under any contract the sale, leasing or exchange of real estate on behalf of the owner; and the owner or attorney-in-fact has not used a power of attorney for the purpose of evading the provisions of Chapter 61, Article 29 NMSA 1978;

(4) transactions in which a person acts as attorney-in-fact under a duly executed power of attorney delivered by an owner related to the attorney-in-fact within the fourth degree of consanguinity or closer, authorizing the person to finally consummate and to perform under any contract for the sale, leasing or exchange of real estate on behalf of the owner;

(5) the services rendered by an attorney at law in the performance of the attorney's duties as an attorney at law;

(6) a person acting in the capacity of a receiver, trustee in bankruptcy, administrator or executor, a person selling real estate pursuant to an order of any court or a trustee acting under a trust agreement, deed of trust or will or the regular salaried employee of a trustee;

(7) the activities of a salaried employee of a governmental agency acting within the scope of employment;

(8) persons who deal exclusively in mineral leases or the sale or purchase of mineral rights or royalties in any case in which the fee to the land or the surface rights are in no way involved in the transaction; or

(9) an auctioneer; provided that payments to an auctioneer for services rendered in connection with an auction shall be made to the auctioneer by a qualifying broker, and prior to performing an auction of real

estate, the auctioneer shall enter into a transaction-specific written agreement with a qualifying broker that includes:

(a) a description of the parties, the real estate and any additional information necessary to identify the specific transaction governed by the agreement;

(b) the terms of compensation between the auctioneer and the qualifying broker;

(c) the effective date and definitive termination date of the agreement; and

(d) a statement that the auctioneer agrees to: 1) cooperate fully with the qualifying broker and all associate brokers designated by the qualifying broker; 2) conduct all contact with parties, including the general public and other brokers, in association with the qualifying broker or associate brokers designated by the qualifying broker; and 3) conduct all marketing and solicitations for business in the name of the qualifying broker.

History: 1978 Comp., § 61-29-2, enacted by Laws 1999, ch. 127, § 1; 2003, ch. 36, § 1; 2005, ch. 35, § 2; 2011, ch. 85, § 1; 2013, ch. 167, § 2; 2014, ch. 27, § 1; 2019, ch. 90, § 1; 2021, ch. 106, § 1.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, defined "property management" as used in Chapter 61, Article 29 NMSA 1978; and in Subsection A, added new Paragraph A(15) and redesignated the succeeding paragraphs accordingly.

The 2019 amendment, effective June 14, 2019, defined "auctioneer" as used in Chapter 61, Article 29 NMSA 1978, and exempted an auctioneer working under the control of a qualifying broker from the licensure requirements, and provided requirements for the agreement between the auctioneer and the qualifying broker; in Subsection A, added a new Paragraph A(4) and redesignated former Paragraphs A(4) through A(16) as Paragraphs A(5) through A(17), respectively; in Subsection B, after the first occurrence of "Paragraph", deleted "(14)" and added "(15)"; and in Subsection C, added Paragraph C(9).

The 2014 amendment, effective May 21, 2014, added definitions of "commercial real estate", "foreign broker", and "nonresident licensee" to provide for foreign brokers acting as qualifying or associate brokers with respect to commercial real estate; and in Subsection A, added Paragraphs (7), (10) and (13).

The 2013 amendment, effective June 14, 2013, changed the definition of "associate broker" and added the definition of "qualifying broker"; in Paragraph (3) of Subsection A, in the introductory sentence, after "qualifying broker", deleted "to participate in an activity described in Paragraph (4) of this subsection or"; added Subparagraphs (a) through (e) of Paragraph (3) of Subsection A; deleted former Paragraph (4) of Subsection A, which defined "broker" and "qualifying broker"; in Paragraph (6) of Subsection A, after "means a", deleted "buyer, seller, landlord or tenant" and added "person"; in Paragraph (8) of Subsection A, after "means a", deleted "buyer, seller, landlord or tenant" and added "person"; added Paragraph (11) of Subsection A; deleted former Paragraph (13) of Subsection A, which defined "real estate salesperson"; and in Paragraph (2) of Subsection C, after "property and the investments", deleted "except when the sale or offering for sale of the property constitutes a subdivision containing one hundred or more parcels".

The 2011 amendment, effective July 1 2011, in Subsection A, included property managers in the definition of "broker"; and in Subsection C, provided that Chapter 61, Article 29 NMSA 1978 applies when a sale constitutes a subdivision of property containing one hundred or more parcels.

The 2005 amendment, effective January 1, 2006, redefines “agency relationship” to mean the fiduciary relationship created solely by a written agreement between a person and a brokerage; defines “agent” to mean the brokerage authorized solely by a written agreement; defines “associate broker” to mean a person who is associated with or engaged under contract by a qualifying broker; defines “brokerage relationship” as the legal or contractual relationship between a person and a brokerage in a real estate transaction; redefines “licensee” to mean a person holding a qualifying broker’s or associate broker’s license; and defines “transaction broker” to mean a qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship.

The 2003 amendment, effective January 1, 2004, substituted "contractual" for "contractural" following "means the legal or" near the middle of Paragraph A(1); deleted "created pursuant to Section 61-29-4 NMSA 1978" at the end of Paragraph A(5); inserted "or a real estate salesperson's license" following "real estate broker's license" in the middle of Paragraph A(7); substituted "a person" for "anyone" following "licensee means" near the beginning of Paragraph A(8); deleted Paragraph A(9) and redesignated the subsequent paragraphs accordingly; and substituted "(10)" for "(11)" following "Paragraph" near the end of Subsection B.

Texas broker was acting as a broker in New Mexico. — Where plaintiff, who was a licensed real estate broker in Texas, agreed to buy a ranch in New Mexico and the owners agreed to pay plaintiff a six percent commission; defendants, who were licensed brokers in New Mexico, assisted plaintiff conduct due diligence in connection with the purchase of the ranch; plaintiff and defendants subsequently agreed that if defendants found a third-party purchaser of the ranch, that plaintiff would not buy the ranch and plaintiff and defendants would share the sales commission; defendants told plaintiff about a possible buyer of the ranch and plaintiff directed defendants to contact the owner of the ranch about the prospective buyer; the ranch was not listed for sale; and the only way defendants knew the ranch was for sale was through their contact with plaintiff, plaintiff was a broker within the meaning of Section 61-29-2 NMSA 1978 because plaintiff was a finder or middleman who brought the ranch owner and the buyer together with the assistance of defendants. *PC Carter Co. v. Miller*, 2011-NMCA-052, 149 N.M. 660, 253 P.3d 950.

Broker buying or selling property for himself. — The commission lacks jurisdiction over a real estate broker who is buying or selling property for himself, unless he holds himself out as a broker. *Vihstadt v. Real Estate Comm'n*, 1988-NMSC-003, 106 N.M. 641, 748 P.2d 14.

Burden on broker when acting for himself. — A licensed broker has the burden of showing that there is no possibility of misunderstanding or confusion as to his status when he purports to act for himself. *Poorbaugh v. N.M. Real Estate Comm'n*, 1978-NMSC-033, 91 N.M. 622, 578 P.2d 323.

Hiring of note broker for sale of real estate contract. — Because the seller of a real estate contract, who hired a note broker to handle the sale, was not acting as a real estate broker during the sale, the commission lacked jurisdiction to revoke the seller's license for misrepresentation. *Vihstadt v. Real Estate Comm'n*, 1988-NMSC-003, 106 N.M. 641, 748 P.2d 14.

Whether landowner made representation as to being real estate broker is factual determination to be made by the trier of fact. *Poorbaugh v. N.M. Real Estate Comm'n*, 1978-NMSC-033, 91 N.M. 622, 578 P.2d 323.

Fiduciary duties of salesperson extended to broker. — Because a real estate salesperson must work under a broker, when a principal buyer or seller engages a real estate salesperson as an agent, the principal also engages the salesperson's qualifying broker as an agent, thus extending the fiduciary duty owed to the principal buyer or seller up the salesperson's chain of command to the broker. Although agency fiduciary obligations and liabilities may extend from a salesperson to the qualifying broker, the fiduciary duties of one real estate salesperson are not attributable to another salesperson operating under the same qualifying broker unless one salesperson is at fault in appointing, supervising or cooperating with the other. *Moser v. Bertram*, 1993-NMSC-040, 115 N.M. 766, 858 P.2d 854.

Broker status not changed by power of attorney. — Where a real estate broker entered into a real estate transaction as a broker, he was not exempt from the jurisdiction of the commission under the "attorney in fact" exception in Subsection D (now C(4)), even though he was given the power of attorney to enable him to complete the transaction without the owners being present. *Elliott v. N.M. Real Estate Comm'n*, 1985-NMSC-078, 103 N.M. 273, 705 P.2d 679.

Activities not excepted. — Activities did not fall within exception provided for in Subsection D (now C). *Bosque Farms Home Ctr., Inc. v. Tabet Lumber Co.*, 1988-NMSC-027, 107 N.M. 115, 753 P.2d 894.

No license required for arranging investments. — Arranging investments in real estate contracts is not a transaction for which a real estate broker's or salesperson's license is required. *Garcia v. N.M. Real Estate Comm'n*, 1989-NMCA-034, 108 N.M. 591, 775 P.2d 1308, cert. denied, 108 N.M. 624, 776 P.2d 846.

A person who auctions the real estate of another person for compensation is acting as an associate or qualifying broker. — The Real Estate Brokers and Salesmen Act (act), 61-29-1 to 61-29-29 NMSA 1978, specifically lists auctioning or the offer to auction real estate, when performed for another and for compensation, as conduct that brings one within in the definition of associate broker and qualifying broker, and therefore a person who auctions or offers for auction the real estate of another person for compensation is acting as an associate or qualifying broker under the act and must possess a broker's license issued by the New Mexico real estate commission, regardless of whether the auctioneer is hired by the seller or by a licensed broker. *Necessity of a Real Estate Broker's License to Auction Real Estate* (5/24/16), Att'y Gen. Adv. Ltr. 2016-05.

Rule governing advertisements applies to advertisements of real estate auctions. — The New Mexico real estate commission has adopted a rule governing real estate advertising that requires all real estate advertising be a true and factual representation of the property and real estate services being advertised, and because auctioning or offering for auction the real estate of another for compensation is a real estate service that requires a broker's license, it follows that advertisements regarding the sale of real estate by auction comes under this rule. *Necessity of a Real Estate Broker's License to Auction Real Estate* (5/24/16), Att'y Gen. Adv. Ltr. 2016-05.

Broker to supervise salespeople. — This section and Section 61-29-11 NMSA 1978 express a clear legislative mandate that brokers, as the persons principally responsible to the public, actually be in a position to supervise the actions of their salespeople. At the same time, the statutes do not require the broker himself to engage in business full-time. 1980 Op. Att'y Gen. No. 80-22.

The exemption contained in Subsection D (now C(4)) applies only to those persons holding the power of attorney and who are not engaged in business as real estate brokers. 1965 Op. Att'y Gen. No. 65-122.

Law reviews. — For article, "Attachment in New Mexico - Part I," see 1 Nat. Res. J. 303 (1961).

For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers § 1.

Who is real estate broker within meaning of statute, 167 A.L.R. 774.

Effect of statement of real estate broker to prospective purchaser that property may be bought for less than list price as breach of duty to vendor, 17 A.L.R.2d 904.

Duty of real estate broker to disclose that prospective purchaser is a relative, 26 A.L.R.2d 1307.

Payment to broker authorized to sell real property as payment to principal, 30 A.L.R.2d 805.

Power of real estate broker to execute contract of sale in behalf of principal, 43 A.L.R.2d 1014.

Liability of vendor's real-estate broker or agent to purchaser or prospect for misrepresenting or concealing offer or acceptance, 55 A.L.R.2d 342.

Power of real estate broker to bind principal by representations as to character, condition, location, quantity or title of property, 58 A.L.R.2d 10.

Liability of real estate broker for accepting note, check or property, rather than cash, as earnest money, 59 A.L.R.2d 1455.

Misrepresentation as basis of real estate broker's liability for damages or losses sustained by vendor responsible to vendee on account thereof, 61 A.L.R.2d 1237.

Modern view as to right of real estate broker to recover commission from seller-principal where buyer defaults under valid contract of sale, 12 A.L.R.4th 1083.

Right of attorney, as such, to act or become licensed to act as real estate broker, 23 A.L.R.4th 230.

Real-estate broker's liability to purchaser for misrepresentation or nondisclosure of physical defects in property sold, 46 A.L.R.4th 546.

12 C.J.S. Brokers § 2.

61-29-3. Criminal offender's character evaluation.

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by Sections 61-29-1 through 61-29-18 NMSA 1978.

History: 1953 Comp., § 67-24-20.1, enacted by Laws 1974, ch. 78, § 29.

ANNOTATIONS

Criminal Offender Employment Act to be followed in suspension or revocation action. — The provisions of the Criminal Offender Employment Act must be followed by the real estate commission in any action by the commission to suspend or revoke a broker's or salesperson's license because of a conviction of a felony or misdemeanor involving moral turpitude. 1982 Op. Att'y Gen. No. 82-02.

Convicted felon, while on parole, is under no disqualification that would prevent him from applying for a license to practice barbering or to practice as a real estate broker or any other trade, profession or occupation in this state. 1958 Op. Att'y Gen. No. 58-214 (rendered under former law).

61-29-4. Creation of commission; powers and duties.

A. The "New Mexico real estate commission" is created. The commission shall be appointed by the governor and shall consist of five members who shall have been residents of the state for three consecutive years immediately prior to their appointment, four of whom shall have been associate brokers or qualifying brokers licensed in New Mexico and one of whom shall be a member of the public who has never been licensed as an associate broker or a qualifying broker; provided that not more than one member shall be from any one county within the state. The members of the commission shall serve for a period of five years or until their successors are appointed and qualified. The governor may remove a member for cause. In the event of vacancies, the governor shall appoint members to complete unexpired terms.

B. The commission shall possess all the powers and perform all the duties prescribed by Chapter 61, Article 29 NMSA 1978 and as otherwise provided by law, and it is expressly vested with power and authority to promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] and enforce those rules to carry out the provisions of that article.

History: 1953 Comp., § 67-24-21, enacted by Laws 1959, ch. 226, § 3; 1978, ch. 203, § 1; 1983, ch. 261, § 1; 1987, ch. 90, § 2; 1990, ch. 75, § 25; 2003, ch. 22, § 1; 2003, ch. 408, § 30; 2005, ch. 35, § 3; 2022, ch. 39, § 96.

ANNOTATIONS

Cross references. — For Uniform Licensing Act, *see* 61-1-1 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the New Mexico real estate commission is required to follow the provisions of the State Rules Act when promulgating rules; and after "power and authority to", deleted "make" and added "promulgate rules in accordance with the State Rules Act", and deleted "Prior to a final action on a proposed change or amendment to the rules of the commission, the commission may publish notice of the proposed action in its official publication, distribute the publication to each active licensee and give the time and place for a public hearing on the proposed changes. The hearing shall be held at least thirty days prior to a proposed final action. Changes or amendments to the rules shall be filed in accordance with the procedures of the State Rules Act and shall become effective thirty days after notification to all active licensees of the filing of the changes or amendments.".

The 2005 amendment, effective January 1, 2006, requires that real estate commission members be a licensed associate broker or a qualifying broker; provides that in the event of vacancies, the governor shall appoint members to complete the unexpired terms; and provides authority to promulgate rules only.

2003 amendments. — Substantively identical amendments to this section were enacted by Laws 2003, ch. 22, § 1, effective June 20, 2003, and Laws 2003, ch. 408, § 30, effective July 1, 2003, deleting "called 'the commission' in Chapter 61, Article 29 NMSA 1978" following "real estate commission" at the end of the first sentence of the section; deleting "and regulations" following "amendments to the rules" near the beginning of the ninth sentence; and deleting "The commission may employ any staff it deems necessary to assist in carrying out its duties and in keeping its records" following "changes or amendments." at the end of the section. Chapter 408, § 30 also made minor grammatical changes. This section is set out as amended by Laws 2003, ch. 408, § 30. See 12-1-8 NMSA 1978.

The 1990 amendment, effective May 16, 1990, inserted "and as otherwise provided by law" following "Chapter 61, Article 29 NMSA 1978" in the sixth sentence.

Commission members subject to discretionary removal. — Since the governor may remove any person appointed by him or his predecessor, he can remove any member of the real estate commission at any time without notice or hearing. 1963 Op. Att'y Gen. No. 63-134.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 51.

53 C.J.S. Licenses § 9.

61-29-4.1. Additional powers of commission; continuing education programs; minimum requirements.

The commission shall adopt rules providing for continuing education courses in selling, leasing or managing residential, commercial and industrial property as well as courses in basic real estate law and practice and other courses prescribed by the commission. The regulations shall require that every licensee except licensees who were already exempted from continuing education requirements prior to July 1, 2011, as a condition of license renewal, successfully complete a minimum of thirty classroom hours of instruction every three years in courses approved by the commission. The rules may prescribe areas of specialty or expertise and may require that part of the classroom instruction be devoted to courses in the area of a licensee's specialty or expertise.

History: 1978 Comp., § 61-29-4.1, enacted by Laws 1985, ch. 89, § 1; 1993, ch. 253, § 1; 2005, ch. 35, § 4; 2011, ch. 85, § 2; 2013, ch. 167, § 3.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, clarified the continuing education requirements; and in the second sentence, after "requirements prior to", deleted "the effective date of this 2011 act" and added "July 1, 2011" and after "successfully complete", added "a minimum".

The 2011 amendment, effective July 1 2011, required licensees over the age of sixty-five who were not exempt from the requirement prior to the enactment of Laws 2011, ch. 85 to comply with continuing education requirements.

The 2005 amendment, effective January 1, 2006, requires the real estate commission to adopt rules to provide for continuing education courses and for areas of specialty or expertise, but did not change the second sentence that requires the real estate commission to promulgate regulations to require the completion of thirty six hours of instruction every three years.

The 1993 amendment, effective June 18, 1993, deleted the A designation from the beginning of the section.

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.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, increased the limit on liability insurance premiums; and in Subsection B, in the second sentence, after "shall not exceed", deleted "three hundred dollars ($300)" and added "five hundred dollars ($500)".

The 2008 amendment, effective July 1, 2008, increased the maximum annual premium from $200 to $300.

The 2005 amendment, effective January 1, 2006, increases the amount for the maximum annual premium that may be charged each licensee for coverage under a group professional liability insurance policy obtained by the real estate commission.

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.

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 only upon initial licensure 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 background check;

(2) pay the cost of obtaining the fingerprints and criminal history background checks; and

(3) have the right to inspect or challenge the validity of the records resulting from the background check if the applicant is denied licensure as established by commission rule.

B. Electronic live scans may be used for conducting criminal history background checks.

C. Criminal history records obtained by the commission pursuant to the provisions of this section are confidential. The commission is authorized to use criminal history records obtained from the federal bureau of investigation and the department of public safety to conduct background checks on applicants for certification as provided for in Chapter 61, Article 29 NMSA 1978.

D. Criminal history records obtained by the commission pursuant to the provisions of this section shall not be used for any purpose other than conducting background checks. Criminal history records obtained pursuant to the provisions of this section and the information contained in those records shall not be released or disclosed to any other person or agency, except pursuant to a court order or with the written consent of the person who is the subject of the records.

E. A person who releases or discloses the criminal history records or information contained in those records in violation of the provisions of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 2005, ch. 35, § 6; 2011, ch. 85, § 3; 2019, ch. 209, § 7.

ANNOTATIONS

The 2019 amendment, effective July 1, 2020, provided that applicants for licensure shall be required to provide fingerprints only upon initial licensure; in Subsection A, Paragraph A(1), after "provide fingerprints", added "only upon initial licensure", and after "criminal history", added "background".

The 2011 amendment, effective July 1 2011, rewrote the section to require fingerprinting and criminal history background checks of applicants for licensure.

61-29-5. Organization of commission.

The commission shall organize by electing a president, vice president and secretary from its members. A majority of the commission shall constitute a quorum and may exercise all powers and duties devolving upon it and do all things necessary to carry into effect the provisions of Chapter 61, Article 29 NMSA 1978. The secretary of the commission shall keep a record of its proceedings; a register of persons licensed as associate brokers and qualifying brokers, showing the name and place of business of each and the date and number of each person's license; and a record of all licenses issued, denied, suspended or revoked. This record shall be open to public inspection at all reasonable times.

History: 1953 Comp., § 67-24-22, enacted by Laws 1959, ch. 226, § 4; 2001, ch. 163, § 2; 2005, ch. 35, § 7.

ANNOTATIONS

The 2005 amendment, effective January 1, 2006, requires the secretary of the real estate commission to keep a register of persons licensed as associate brokers and qualifying brokers.

The 2001 amendment, effective July 1, 2001, substituted "Chapter 61, Article 29 NMSA 1978" for "this act" and "salespersons" for "salesmen".

61-29-5.1. Recompiled.

ANNOTATIONS

Recompilations. — Former 61-29-5.1 NMSA 1978, relating to a register of time share projects and applicants for certificates of registration, enacted by Laws 1986, ch. 97, § 13, has been recompiled as 47-11-11.1 NMSA 1978.

61-29-6. Meeting of the commission.

The commission shall meet at least once each quarter-year at such time and place as may be designated by the commission president, and special meetings may be held upon five days' written notice to each of the commission members by the commission president.

History: 1953 Comp., § 67-24-23, enacted by Laws 1959, ch. 226, § 5; 2005, ch. 35, § 8.

ANNOTATIONS

The 2005 amendment, effective January 1, 2006, made style changes.

61-29-7. Reimbursement and expenses.

Each member of the commission shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

History: 1953 Comp., § 67-24-24, enacted by Laws 1959, ch. 226, § 6; 1963, ch. 43, § 28; 1965, ch. 304, § 3; 2003, ch. 22, § 2; 2003, ch. 408, § 31.

ANNOTATIONS

2003 amendments. — Identical amendments to this section were enacted by Laws 2003, ch. 22, § 2, effective June 20, 2003, and Laws 2003, ch. 408, § 31, effective July 1, 2003, deleting the former second and third sentences concerning the appointment of an administrator, employment of staff and purchase of supplies. The section is set out as amended by Laws 2003, ch. 408, § 31. See NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 53 C.J.S. Licenses § 37.

61-29-8. License fees; disposition.

A. Except as provided in Section 61-1-34 NMSA 1978, the following fees shall be established and charged by the commission and paid into the real estate commission fund:

(1) for each examination, a fee established by the commission based on competitive bids for examination services submitted to the commission in response to a commission request for proposals, not to exceed ninety-five dollars ($95.00);

(2) for each qualifying broker's license issued, a fee not to exceed two hundred seventy dollars ($270) and for each renewal thereof, a fee not to exceed two hundred seventy dollars ($270);

(3) for each associate broker's license issued, a fee not to exceed two hundred seventy dollars ($270) and for each renewal thereof, a fee not to exceed two hundred seventy dollars ($270);

(4) subject to the provisions of Paragraph (10) of this subsection, for each change of place of business or change of employer or contractual associate, a transfer fee not to exceed twenty dollars ($20.00);

(5) for each duplicate license, where the license is lost or destroyed and affidavit is made thereof, a fee not to exceed twenty dollars ($20.00);

(6) for each license history, a fee not to exceed twenty-five dollars ($25.00);

(7) for copying of documents by the commission, a fee not to exceed one dollar ($1.00) per copy;

(8) for each license law and rules booklet, a fee not to exceed ten dollars ($10.00) per booklet;

(9) for each hard copy or electronic list of licensed associate brokers and qualifying brokers, a fee not to exceed actual costs up to fifty dollars ($50.00);

(10) for each license reissued for an associate broker because of change of address of the qualifying broker's office or death of the qualifying broker when a successor qualifying broker is replacing the decedent and the associate broker remains in the office or because of a change of name of the office or the entity of the qualifying broker, a fee in an amount not to exceed twenty dollars ($20.00) to be paid by the qualifying broker or successor qualifying broker as the case may be; but if there are eleven or more affected associate brokers in the qualifying broker's office, the total fee paid to effect reissuance of all of those licenses shall not exceed two hundred dollars ($200);

(11) for each application to the commission to become an approved sponsor of prelicensing and continuing education courses, a fee not to exceed five hundred dollars ($500) and for each renewal thereof, a fee not to exceed five hundred dollars ($500);

(12) for each application to the commission to become an approved instructor of prelicensing and continuing education courses, a fee not to exceed seventy dollars ($70.00) per course; and

(13) for each application to the commission to renew certification as a commission-approved instructor, a fee not to exceed one hundred dollars ($100).

B. All fees set by the commission shall be set by rule and only after all requirements have been met as prescribed by Chapter 61, Article 29 NMSA 1978. Any changes or amendments to the rules shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

C. The commission shall deposit all money received by it from fees in accordance with the provisions of Chapter 61, Article 29 NMSA 1978 with the state treasurer, who shall keep that money in a separate fund to be known as the "real estate commission fund", and money so deposited in that fund is appropriated to the commission for the purpose of carrying out the provisions of Section 61-29-4 NMSA 1978 or to maintain the real estate recovery fund as required by the Real Estate Recovery Fund Act [61-29-20 to 61-29-29 NMSA 1978] and shall be paid out of the fund upon the vouchers of the executive secretary of the commission or the executive secretary's designee; provided that the total fees and charges collected and paid into the state treasury and any money so deposited shall be expended only for the purposes authorized by Chapter 61, Article 29 NMSA 1978.

History: 1953 Comp., § 67-24-25, enacted by Laws 1959, ch. 226, § 7; 1977, ch. 295, § 1; 1983, ch. 261, § 2; 1987, ch. 90, § 3; 1990, ch. 75, § 26; 1992, ch. 21, § 1; 1995, ch. 143, § 1; 2001, ch. 163, § 3; 2003, ch. 22, § 3; 2005, ch. 35, § 9; 2011, ch. 85, § 4; 2020, ch. 6, § 56.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection A, in the introductory clause, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2011 amendment, effective July 1 2011, imposed a fee for examination services and changed the fee for a copy of the list of brokers from twenty dollars to the actual cost of the list, but not more than fifty dollars.

The 2005 amendment, effective January 1, 2006, specifies the fees for the issuance and re-issuance of qualifying broker's and associate broker's licenses and eliminates the provision for a proportionate refund of fees for the issuance and renewal of licenses for less that a three year period.

The 2003 amendment, effective June 20, 2003, substituted "two hundred seventy dollars ($270)" for "one hundred eighty dollars ($180)" in two places in Subsection A(2); in Subsection A(3) added "real estate" preceding "salesperson's license issued" near the beginning, substituted "two hundred seventy dollars ($270)" for "one hundred eighty dollars ($180)" in two places; in Subsection A(10), substituted "for each license reissued for a real estate salesperson" for "when a license must be reissued for a salesperson" at the beginning, deleted "the licensed broker or successor licensed broker as the case may be shall pay to the commission as the affected salesperson's license reissue" near the middle, and inserted "to be paid by the licensed broker or successor broker as the case may be" following "twenty dollars $20.00" near the middle; and added Paragraphs A(11), (12), and (13).

The 2001 amendment, effective July 1, 2001, substituted "a fee not to exceed" for "a fee of" throughout the section; in Subsection A, inserted "established and" in the preliminary language; increased the examination fee in Paragraph (1) from sixty dollars to ninety-five dollars; deleted "set by the commission" following "a fee" in Paragraphs (7) to (9); deleted "additional" preceding "license law" in Paragraph (8); substituted "hard copy or electronic list" for "additional directory"; deleted Paragraph (10), relating to the fee for supplements to the directory, and renumbered the remaining paragraph accordingly; inserted "an amount not to exceed" preceding "twenty dollars" in the present Paragraph (10); and substituted "executive secretary of the commission or his designee" for "president and secretary of the commission" in Subsection C.

The 1995 amendment, effective July 1, 1995, in Subsection A, increased the licensing fees from sixty dollars to one hundred and eighty dollars and deleted "annual" preceding "renewal" in Paragraphs (2) and (3), added the proviso at the beginning of Paragraph (4), added Paragraph (11), and made minor stylistic changes throughout the subsection; and added Subsection D.

The 1992 amendment, effective May 20, 1992, substituted the present section catchline for "License fees and disposition thereof "; substituted "sixty dollars ($60.00)" for "thirty dollars ($30.00)" in Subsection A(1); substituted "sixty dollars ($60.00)" for "forty dollars ($40.00)" in Subsections A(2) and A(3); substituted "twenty dollars ($20.00)" for "ten dollars ($10.00)" in Subsections A(4) and A(5); added Subsections A(6) to A(10); added present Subsection B; redesignated former Subsection B as present Subsection C; and in Subsection C, restructured the former four sentences as a single sentence, substituted "carrying out the provisions" for "paying the expenses of the commission incurred under the provisions" near the middle of the subsection, and made stylistic changes throughout the subsection.

The 1990 amendment, effective May 16, 1990, in Subsection B, divided the subsection into four sentences, deleted "special" before "fund" in the present second sentence and substituted "or as otherwise provided by law" for "and shall be paid out of the fund in the state treasury" at the end thereof and, in the present third sentence, added "Expenditures shall be made from the fund" at the beginning and deleted "provided that" at the end.

Cash balances not to revert to general fund. — Any possible or theoretical cash balances credited to the "real estate commission fund," which have accumulated pursuant to this section as the result of the collection of license fees and examination fees, should not revert to the general fund at the end of the licensing year. 1960 Op. Att'y Gen. No. 60-124.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers § 8.

Validity of statute or ordinance requiring real estate broker to procure license, 39 A.L.R.2d 606.

53 C.J.S. Licenses §§ 22, 71.

61-29-9. Qualifications for license.

A. Licenses shall be granted only to persons who meet the requirements for licensure prescribed by law and are deemed by the commission to be of good repute and competent to transact the business of a qualifying broker or an associate broker in a manner that safeguards the interests of the public.

B. An applicant for a qualifying broker's license or an associate broker's license shall have reached the age of majority. Each applicant for a qualifying broker's license or an associate broker's license shall have passed the real estate broker's examination approved by the commission and shall:

(1) furnish the commission with certificates of completion of ninety hours of classroom instruction consisting of commission-approved thirty-hour courses in real estate principles and practice, real estate law and broker basics; or

(2) in the case of an out-of-state applicant, furnish the commission with a certified license history from the real estate licensing jurisdiction in the state or states in which the applicant is currently or has been previously licensed as a real estate broker, or certificates of completion of those courses issued by the course sponsor or provider, certifying that the applicant has or had a license in that state and has completed the equivalent of sixty classroom hours of prelicensing education approved by that licensing jurisdiction in real estate principles and practice and real estate law. Upon receipt of such documentation, the commission may waive sixty hours of the ninety hours of prelicensing education required to take the New Mexico real estate broker's examination and may waive the national portion of the examination. The applicant shall complete the commission-approved thirty-hour broker basics class to be eligible to take the state portion of the New Mexico real estate broker's examination.

C. An applicant for a qualifying broker's license shall have passed the New Mexico real estate broker's examination and had an active associate broker's license or equivalent real estate license for at least two of the last five years immediately preceding application for a qualifying broker's license and shall furnish the commission with a certificate of completion of the commission-approved thirty-hour brokerage office administration course and any additional educational courses required by the commission by rule.

D. Notwithstanding Subsection C of this section, a qualifying broker shall not supervise associate brokers until the qualifying broker has had an active associate broker's or qualifying broker's license or equivalent real estate license for at least four years. Licensees who hold an active or inactive qualifying broker's license on January 1, 2018 are exempt from this subsection.

E. The commission shall require the information it deems necessary from every applicant to determine that applicant's honesty, trustworthiness and competency.

History: 1953 Comp., § 67-24-26, enacted by Laws 1959, ch. 226, § 8; 1965, ch. 304, § 4; 1973, ch. 40, § 1; 1977, ch. 295, § 2; 1979, ch. 94, § 1; 1983, ch. 261, § 3; 1999, ch. 272, § 35; 2001, ch. 163, § 4; 2003, ch. 22, § 4; 2003, ch. 329, § 1; 2005, ch. 35, § 10; 2011, ch. 85, § 5; 2013, ch. 167, § 5; 2017, ch. 131, § 1; 2021, ch. 70, § 12.

ANNOTATIONS

Cross references. — For age of majority, *see* 12-2A-3 and 28-6-1 NMSA 1978.

For the Parental Responsibility Act, *see* Chapter 40, Article 5A NMSA 1978.

The 2021 amendment, effective June 18, 2021, removed legal residency of the United States as a qualification for licensure as a qualifying broker or associate broker; and in Subsection B, after "license shall", deleted "be a legal resident of the United States and".

The 2017 amendment, effective January 1, 2018, authorized the real estate commission to require an applicant for a qualifying broker's license to complete additional educational courses, restricted a qualifying broker from supervising an associate broker until the qualifying broker has had an active associate or qualifying broker's license or equivalent real estate license for at least four years, and provided an exemption for certain licensees; in Subsection C, after "administration course", added "and any additional educational courses required by the commission by rule"; and added a new Subsection D and redesignated the succeeding subsection accordingly.

The 2013 amendment, effective June 14, 2013, provided for nonresident broker licensing; in Paragraph (1) of Subsection B, after "furnish the commission with", deleted "a certificate of completion of", after "ninety", deleted "classroom", after "hours of", added "classroom", and after "classroom instruction", deleted "in basic real estate courses approved by the commission, thirty hours of which shall have been a broker basics course" and added the remainder of the sentence; in Paragraph (2) of Subsection B, in the first sentence, added "in the case of an out-of-state applicant", after "commission with a", deleted language which provided for minimum continuing education requirements for out-of-state applicants and added the remainder of the sentence and added the second and third sentences; in Subsection C, after "broker's license shall have", deleted "been actively engaged in the real estate business as an associate broker or real estate salesperson" and added "passed the New Mexico real estate broker's examination and had an active associate broker's license or equivalent real estate license", and after "shall furnish the commission", deleted the remainder to the sentence which required the applicant to provide proof that the applicant had competed one hundred twenty hours of prelicensing courses and added "with a certificate of completion of the commission-approved thirty-hour brokerage office administration course"; and deleted former Subsection D, which provided the requirements for a salesperson to qualify for an associate broker's license.

The 2011 amendment, effective July 1 2011, removed corporations, partnerships and associations from broker licensing.

The 2005 amendment, effective January 1, 2006, specifies the qualifications for qualifying and associate broker licenses; eliminates the requirement that an applicant shall have been a real estate sales person; and requires that applicants complete ninety classroom hours of instruction, thirty hours of which are broker basic courses or provide a certificate that the applicant is a licensed real estate broker in another state and has completed ninety classroom hours in basic real estate courses; eliminates the requirements that the applicant furnish proof of equivalent experience; eliminates provisions for the real estate salesperson's license; requires that an applicant for a qualifying broker's license shall have been engaged in the real estate business as an associate broker or salespersons fro two years and have completed one hundred twenty hours of real estate courses; provides that the holder of a salesperson's license shall automatically qualify for an associate broker's license; and provides that to be eligible for a qualifying broker's license, a salesperson who automatically obtains an associate broker's license must pass a real estate broker's examination.

The 2003 amendment, effective July 1, 2003, deleted "and, except as provided in Section 61-29-14 NMSA 1978, be a resident of New Mexico" following "age of majority" near the middle of Subsection B; and added Subsection B(5).

The 2001 amendment, effective July 1, 2001, in Subsection B, deleted "real estate" preceding "broker's license" and inserted "have passed the real estate examination approved by the commission and shall" in the introductory language; substituted "a broker basics course" for "ninety classroom hours of instruction in basic real estate courses" in Paragraph (1); inserted "thirty hours of which shall have been a broker basics course" at the end of Paragraphs (3) and (4); inserted "have passed the real estate examination approved by the commission" in Subsection C; and substituted "may" for "shall be entitled to" in the second sentence of Subsection D.

The 1999 amendment, effective June 18, 1999, in the introductory language of Subsection B, substituted "and, except as provided in Section 61-29-14 NMSA 1978, be a resident of New Mexico" for "and have been an actual bona fide resident of New Mexico for six months next preceding the filing of application"; deleted "in New Mexico" following "salesperson" in Subsection B(1); and deleted "and be a resident of New Mexico preceding the filing of application" following "age of majority" in Subsection C.

Persons of "good repute". — The "good repute" requirement is interpreted to relate to honesty and trustworthiness. *Padilla v. Real Estate Comm'n*, 1987-NMSC-056, 106 N.M. 96, 739 P.2d 965 .

Suit for commission to be in name of licensed broker. — As an action to recover a real estate commission may only be brought in the name of the licensed broker, evidence showing corporation may be entitled to a license, or that an officer thereof had a license, was insufficient to enable corporation to bring suit in its own name. The corporation itself must be licensed to bring suit. *Star Realty Co. v. Sellers*, 1963-NMSC-140, 73 N.M. 207, 387 P.2d 319.

Section expressly authorizes broker to hold more than one license, provided that person is actively engaged in the real estate business of the partnership, corporation or other business association for which he is the qualifying party. The statute does not authorize an individual to have more than one license in an individual capacity. 1980 Op. Att'y Gen. No. 80-22.

Apprenticeship not necessary. — There is nothing in this article requiring that an apprenticeship be served before an applicant can apply for a broker's license; to the contrary, Section 61-29-10 NMSA 1978 specifically sets out the means to be used by the commission in determining applicant's reputation and competency. 1963 Op. Att'y Gen. No. 63-110.

When license under Mobile Housing Act (now Manufactured Housing Act) required. — When a real estate broker or salesperson acts as the agent for another person in the sale, exchange, lease or purchase of a mobile housing unit which is not attached to real property he is no longer engaging in the real estate business as defined in the Real Estate Licensing Act. Rather, he is engaged in the business of acting as an agent for another in the sale of a mobile housing unit and must be licensed as a dealer under the Mobile Housing Act (now Manufactured Housing Act). 1982 Op. Att'y Gen. No. 82-12.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers § 12.

12 C.J.S. Brokers § 19.

61-29-10. Application for license and examination.

A. All applications for licenses to act as qualifying brokers and associate brokers shall be made in writing to the commission and shall contain such data and information as may be required upon a form to be prescribed and furnished by the commission. The application shall be accompanied by:

(1) the recommendation of two reputable citizens who own real estate in the county in which the applicant resides, which recommendation shall certify that the applicant is of good moral character, honest and trustworthy; and

(2) the triennial license fee prescribed by the commission.

B. In addition to proof of honesty, trustworthiness and good reputation, an applicant shall pass a written examination approved by the commission. The examination shall be given at the time and places within the state as the commission shall prescribe; however, the examination shall be given not less than two times during each calendar year. The examination shall include business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisals, a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency and brokerage and the provisions of Chapter 61, Article 29 NMSA 1978.

C. An applicant is not permitted to engage in the real estate business until the applicant has passed the approved examination, complied with the other requirements of Chapter 61, Article 29 NMSA 1978, and until a license has been issued to the applicant.

D. Notice of passing or failing to pass the examination shall be given to an applicant not later than three weeks following the date of the examination.

E. The commission may establish educational programs and procure qualified personnel, facilities and materials for the instruction of persons desiring to become qualifying brokers or associate brokers or desiring to improve their proficiency as qualifying brokers or associate brokers. The commission may inspect and accredit educational programs and courses of study and may establish standards of accreditation for educational programs conducted in this state. The expenses incurred by the commission in activities authorized pursuant to this subsection shall not exceed the total revenues received and accumulated by the commission.

History: 1953 Comp., § 67-24-27, enacted by Laws 1959, ch. 226, § 9; 1965, ch. 304, § 5; 1979, ch. 94, § 2; 1981, ch. 22, § 1; 2001, ch. 163, § 5; 2005, ch. 35, § 11.

ANNOTATIONS

Cross references. — For age of majority, see 28-6-1 NMSA 1978.

The 2005 amendment, effective January 1, 2006, provides for applications and examinations of applicants for licenses to act as qualifying broker and as associate broker.

The 2001 amendment, effective July 1, 2001, in Subsection A, deleted "New Mexico real estate" preceding "commission"; deleted "or has his place of business" following "resides" in Paragraph (1); in Paragraph (2), substituted "triennial" for "annual", deleted "which shall not be refunded in any event" from the end of the paragraph; in Subsection B, substituted "approved by" for "prepared by or under the supervision of" in the first sentence; removed the distinction between examinations for brokers and those for salesmen and deleted provisions that only applied to one examination or the other; in Subsection C, deleted "either as a broker or salesman" following "real estate business", inserted "approved" preceding "examination"; in Subsection E, substituted "brokers or salespersons" for "real estate brokers or salesmen" in two places, and substituted "activities authorized pursuant to" for "enabled under the provisions of" in the last sentence.

License required to sue for commission. — A person who simply brings two parties together in a real estate transaction must be licensed to sue for the recovery of a commission. To rule otherwise would be to violate the clear intent of the legislature in requiring that real estate "brokers" or salespersons be licensed. *Watts v. Andrews*, 1982-NMSC-080, 98 N.M. 404, 649 P.2d 472.

Apprenticeship not necessary. — There is nothing in this article requiring that an apprenticeship be served before an applicant can apply for a broker's license; to the contrary, this section specifically sets out the means to be used by the commission in determining applicant's reputation and competency. 1963 Op. Att'y Gen. No. 63-110.

Relicensing of out-of-state broker returning to state. — An individual who has been licensed as a resident real estate broker in the state of New Mexico, and who has established a residence in another state or country may subsequently return to New Mexico and be relicensed as a real estate broker upon payment of the necessary fee and filing of the required bond and meeting any other needed requirements without applying for and taking a broker's examination as required of applicants who have not previously been licensed as real estate brokers, provided that the real estate board in its discretion desires to waive the examination. 1958 Op. Att'y Gen. No. 58-186.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers § 12.

12 C.J.S. Brokers § 19.

61-29-10.1. Brokerage relationships; creation.

A. For all regulated real estate transactions first executed on or after January 1, 2000, no agency relationship between a buyer, seller, landlord or tenant and a brokerage shall exist unless the buyer, seller, landlord or tenant and the brokerage agree, in writing, to the agency relationship. No type of agency relationship may be assumed by a buyer, seller, landlord, tenant or licensee, or created orally or by implication.

B. A brokerage may provide real estate services to a client pursuant to an express written agreement that does not create an agency relationship and no agency duties will be imposed on the brokerage.

C. A brokerage may provide real estate services to a customer without entering into an express written agreement and without creating an agency relationship and no agency duties will be imposed on the brokerage.

D. The commission shall promulgate rules governing the rights of clients or customers and the rights, responsibilities and duties of a brokerage in those brokerage relationships that are subject to the jurisdiction of the commission.

History: Laws 1999, ch. 127, § 2; 2003, ch. 36, § 2.

ANNOTATIONS

The 2003 amendment, effective January 1, 2004, inserted present Subsections B and C and redesignated former Subsection B as present Subsection D; in present Subsection D deleted "and responsibilities" following "governing the rights" near the beginning and substituted "a brokerage in those brokerage relationships that are subject to the jurisdiction of the commission" for "the brokerage in an agency relationship" at the end.

61-29-10.2. Licensee's duties; disclosure.

A. Prior to the time a licensee generates or presents any written document that has the potential to become an express written agreement, the licensee shall give to a prospective buyer, seller, landlord or tenant a list of the licensee's duties that are in accordance with requirements established by the commission.

B. Licensees shall perform all duties that are established for licensees by the commission.

History: Laws 1999, ch. 127, § 3; 2003, ch. 36, § 3; 2005, ch. 35, § 12.

ANNOTATIONS

The 2005 amendment, effective January 1, 2006, provides that prior to the time a licensee prepares or presents a document that will be a written agreement, the licensee must provide a list of the licensee's duties.

The 2003 amendment, effective January 1, 2004, substituted "Licensee's Duties - Disclosure" for "Brokerage Relationship; Disclosure" in the heading; designated the former first paragraph as Subsection A and added Subsection B; and substituted "at the time when the parties enter into an express written agreement, a list of the licensee's duties that are in accordance with requirements established by the commission" for "at the first substantive contact a brokerage relationship disclosure in accordance with requirements established by the commission" at the end of Subsection A.

Transaction brokers duty of care includes disclosing the licensing status of recommended contractors. — Where defendant signed a listing agreement with plaintiffs to be their transaction broker for the sale of their home, and where, after a home inspection revealed problems with portions of the roof, defendant volunteered to find a roofer to perform the work, and where the roofer, who was not licensed or insured, performed the work negligently, causing a fire that destroyed plaintiffs' home, the district court did not err in concluding that defendant owed statutory duties independent of the listing agreement regarding the recommendation and procurement of the roofer or in concluding that the fire and plaintiffs' damages were a natural and continuous result from defendant's recommendation of an unqualified roofer, because the New Mexico real estate commission's established reasonable care as a duty for transaction brokers; this duty includes disclosing the licensing status for recommended contractors. *LM Insurance v. I Do ABQ*, 2023-NMCA-021.

District judge did not err in awarding attorney fees where there was a connection between negligence claims and listing agreement. — Where defendant signed a listing agreement with plaintiffs to be their transaction broker for the sale of their home, and where, after a home inspection revealed problems with portions of the roof, defendant volunteered to find a roofer to perform the work, and where the roofer, who was not licensed or insured, performed the work negligently, causing a fire that destroyed plaintiffs' home, and where the district court concluded that defendant owed statutory duties independent of the listing agreement regarding the recommendation and procurement of the roofer and that the fire and plaintiffs' damages were a natural and continuous result from defendant's recommendation of an unqualified roofer, the district court did not err in awarding attorney fees based on the listing agreement's attorney fee provision, because plaintiffs' negligence claims were related to the parties listing agreement and resulted in litigation, as contemplated by the attorney fees provision. *LM Insurance v. I Do ABQ*, 2023-NMCA-021.

61-29-10.3. Repealed.

ANNOTATIONS

Repeals. — Laws 2003, ch. 36, § 4 repealed 61-29-10.3, as enacted by Laws 1999, ch. 127, § 4, relating to brokerage nonagency relationships, effective January 1, 2004. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

61-29-11. Issuance, renewal and surrender of licenses.

A. The commission shall issue to each qualified applicant a license in the form and size prescribed by the commission.

B. The license shall show the name and address of the licensee. An associate broker's license shall show the name of the qualifying broker by whom the associate broker is engaged. The commission shall deliver or mail the license of the associate broker to the qualifying broker by whom the associate broker is engaged, and the qualifying broker shall display the license at the brokerage from which the associate broker will be conducting real estate business on behalf of the brokerage. The license of the associate broker shall remain in the custody and control of the qualifying broker as long as the associate broker is engaged by that qualifying broker.

C. Any qualifying broker's or associate broker's license suspended or revoked by an order, stipulated agreement or settlement agreement approved by the commission shall be surrendered to the commission by the broker upon the delivery of the order to the broker by the commission, or on the effective date of the order. All real-estate-related activity conducted under such license shall cease for the duration of the license suspension or revocation, and any associate broker licenses hanging with a qualifying broker whose license is suspended or revoked shall be automatically placed on inactive status until a new qualifying broker or a qualifying broker in charge is designated.

D. Every license shall be renewed every three years on or before the last day of the month following the licensee's month of birth. Upon written request for renewal by the licensee, the commission shall certify renewal of a license if there is no reason or condition that might warrant the refusal of the renewal of a license. The licensee shall provide proof of compliance with continuing education requirements and pay the renewal fee. If a licensee has not made application for renewal of license, furnished proof of compliance with continuing education requirements and paid the renewal fee by the license renewal date, the license shall expire. The commission may require a person whose license has expired to apply for a license as if the person had not been previously licensed under Chapter 61, Article 29 NMSA 1978 and further require that the person be reexamined. The commission shall require a person whose license has expired to pay when the person applies for a license, in addition to any other fee, a late fee. If during a period of one year from the date the license expires the person or the person's spouse is either absent from this state on active duty military service or the person is suffering from an illness or injury of such severity that the person is physically or mentally incapable of making application for a license, payment of the late fee and reexamination shall not be required by the commission if, within three months of the person's permanent return to this state or sufficient recovery from illness or injury to allow the person to make an application, the person makes application to the commission for a license. A copy of that person's or that person's spouse's military orders or a certificate from the applicant's physician shall accompany the application. A person excused by reason of active duty military service, illness or injury as provided for in this subsection may make application for a license without imposition of the late fee. All fees collected pursuant to this subsection shall be disposed of in accordance with the provisions of Section 61-29-8 NMSA 1978. The revocation of a qualifying broker's license automatically suspends every associate broker's license granted to any person by virtue of association with the qualifying broker whose license has been revoked, pending a change of qualifying broker. Upon the naming of a new qualifying broker, the suspended license shall be reactivated without charge if granted during the three-year renewal cycle.

E. A qualifying broker shall conduct brokerage business under the trade name and from the brokerage address registered with the commission. Every brokerage shall have a qualifying broker in charge. The license of the qualifying broker and each associate broker associated with that qualifying broker shall be prominently displayed in each brokerage office. The address of the office shall be designated in the qualifying broker's license, and a license issued shall not authorize the licensee to transact real estate business at any other address. In case of removal from the designated address, the licensee shall make application to the commission before the removal or within ten days thereafter, designating the new location of the licensee's office and paying the required fee, whereupon the commission shall issue a license for the new location if the new location complies with the terms of Chapter 61, Article 29 NMSA 1978. A qualifying broker shall maintain a sign at the brokerage office of such size and content as the commission prescribes.

F. When an associate broker is discharged or terminates association or employment with the qualifying broker with whom the associate broker is associated, the qualifying broker shall deliver or mail the associate broker's license to the commission within forty-eight hours. The commission shall hold the license on inactive status. It is unlawful for an associate broker to perform any of the acts authorized by Chapter 61, Article 29 NMSA 1978 either directly or indirectly under authority of an inactive license after the associate broker's association with a qualifying broker has been terminated and the associate broker's license has been returned to the commission until the appropriate fee has been paid and the license has been reissued and reactivated by the commission.

History: 1953 Comp., § 67-24-28, enacted by Laws 1959, ch. 226, § 10; 1965, ch. 304, § 6; 1977, ch. 295, § 3; 1979, ch. 94, § 3; 1980, ch. 82, § 11; 1981, ch. 22, § 2; 1983, ch. 261, § 4; 1985, ch. 89, § 2; 1987, ch. 90, § 4; 1993, ch. 253, § 2; 1995, ch. 143, § 2; 2001, ch. 163, § 7; 2003, ch. 22, § 5; 2005, ch. 35, § 13; 2013, ch. 167, § 6.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, provided for the surrender of suspended and revoked licenses; and added Subsection C.

The 2005 amendment, effective January 1, 2006, requires that an associate broker's license show the name of the qualifying broker by whom the associate broker is engaged; requires the real estate commission to send the associate broker's license to the qualifying broker by which the associate broker is engaged; requires the qualifying broker to display the associate broker's license at the brokerage; provides that the associate broker's license remains in the custody of the qualifying broker as long as the associate broker is engaged by the qualifying broker; provides that the revocation of a qualifying broker's license suspends the license of every associate broker engaged by the qualifying broker; requires qualifying brokers to conduct brokerage business under the trade name and at the address registered with the real estate commission; requires that the qualifying broker's license and the licenses of associate brokers be displayed at the brokerage office; and provides that if an associate broker ceases to be engaged by the qualifying broker, the qualifying broker must send the associate broker's license to the real estate commission to be held in inactive status.

The 2003 amendment, effective June 20, 2003, in Subsection C, deleted "of one hundred dollars ($100)" at the end of the sixth sentence; in Subsection D, substituted "within this state a fixed office that conforms" for "a fixed office within this state which shall be so located as to conform" following "broker shall maintain" near the beginning of the first sentence, and inserted "real estate" preceding "salesperson" near the middle of the third sentence.

The 2001 amendment, effective July 1, 2001, deleted "permanent" preceding "license" in Subsection A; in Subsection B, deleted "real estate" preceding "broker" in two places; in Subsection C, substituted the reactivation provision and conditions thereto for suspended licenses for the provision that a new license will be issued in the event that the real estate salesperson's license is suspended, and will be free if re-issued in the same year it was granted; in Subsection D, deleted "under Chapter 61, Article 29 NMSA 1978" following "operated by a licensed broker", inserted "who is a natural person", deleted "or under contract to" following "associated with", deleted "except a licensed branch office" following "any other address", in Subsection E, deleted "immediately" preceding "deliver" and inserted "within forty-eight hours" in the first sentence, substituted "an inactive license" for "such license" in the second sentence; and deleted Subsection F, concerning the renewal of licenses within a certain time period in order to coordinate certain requirements.

The 1995 amendment, effective July 1, 1995, in Subsection C, rewrote the first sentence which read "Every license shall be subject to annual renewal on the last day of the licensee's month of birth", made a related change in the third sentence, and deleted "annual" and "annually" preceding "renewal" throughout the subsection; made a stylistic change in Subsection D; and added Subsection F.

The 1993 amendment, effective June 18, 1993, inserted "or his spouse" and "the person" preceding "is suffering" in the sixth sentence and substituted "that person or his spouse's" for "the person's" in the seventh sentence, in Subsection C; deleted "for cancellation" from the end of the first sentence, inserted the second sentence, and substituted "to the commission" for "for a cancellation" in the last sentence, in Subsection E; and made stylistic changes in Subsections C and D.

Fiduciary duties of salesperson extended to broker. — Because a real estate salesperson must work under a broker, when a principal buyer or seller engages a real estate salesperson as an agent, the principal also engages the salesperson's qualifying broker as an agent, thus extending the fiduciary duty owed to the principal buyer or seller up the salesperson's chain of command to the broker. Although agency fiduciary obligations and liabilities may extend from a salesperson to the qualifying broker, the fiduciary duties of one real estate salesperson are not attributable to another salesperson operating under the same qualifying broker unless one salesperson is at fault in appointing, supervising or cooperating with the other. *Moser v. Bertram*, 1993-NMSC-040, 115 N.M. 766, 858 P.2d 854.

Brokers must supervise their salespeople. — Section 61-29-2 NMSA 1978 and this section express a clear legislative mandate that brokers, the persons principally responsible to the public, actually be in a position to supervise the actions of their salespeople. At the same time, the statutes do not require the broker himself to engage in business full-time. 1980 Op. Att'y Gen. No. 80-22.

Relicensing of out-of-state broker returning to state. — An individual who has been licensed as a resident real estate broker in the state of New Mexico, and who has established a residence in another state or country may subsequently return to New Mexico and be relicensed as a real estate broker upon payment of the necessary fee and filing of the required bond and meeting any other needed requirements without applying for and taking a broker's examination as required of applicants who have not previously been licensed as real estate brokers, provided that the real estate board in its discretion desires to waive the examination. 1958 Op. Att'y Gen. No. 58-186.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers §§ 21, 24, 26, 27, 29.

12 C.J.S. Brokers §§ 16, 20.

61-29-12. Refusal, suspension or revocation of license for causes enumerated.

A. In accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978], the commission may refuse to issue a license or may suspend, revoke, limit or condition a license if the applicant or licensee has, by false or fraudulent representations, obtained a license or, in performing or attempting to perform any of the actions specified in Chapter 61, Article 29 NMSA 1978, an applicant or licensee has:

(1) made a substantial misrepresentation;

(2) pursued a continued and flagrant course of misrepresentation; made false promises through agents, salespersons, advertising or otherwise; or used any trade name or insignia of membership in any real estate organization of which the licensee is not a member;

(3) paid or received a rebate, profit, compensation or commission to or from any unlicensed person, except the licensee's principal or other party to the transaction, and then only with that principal's written consent;

(4) represented or attempted to represent a qualifying broker other than a qualifying broker with whom the licensee is associated without the express knowledge and consent of that qualifying broker;

(5) failed, within a reasonable time, to account for or to remit any money coming into the licensee's possession that belongs to others, commingled funds of others with the licensee's own or failed to keep funds of others in an escrow or trustee account or failed to furnish legible copies of all listing and sales contracts to all parties executing them;

(6) been convicted in any court of competent jurisdiction of a felony or any offense involving moral turpitude;

(7) employed or compensated, directly or indirectly, a person for performing any of the acts regulated by Chapter 61, Article 29 NMSA 1978 who is not a licensed qualifying broker or an associate broker;

provided, however, that a qualifying broker may pay a commission to a qualifying broker of another state as provided in Section 61-29-16.1 NMSA 1978;

(8) failed, if a qualifying broker, to place as soon after receipt as is practicably possible, after securing signatures of all parties to the transaction, any deposit money or other money received by the qualifying broker in a real estate transaction in a custodial, trust or escrow account, maintained by the qualifying broker in a bank or savings and loan institution or title company authorized to do business in this state, in which the funds shall be kept until the transaction is consummated or otherwise terminated, at which time a full accounting of the funds shall be made by the qualifying broker. Records relative to the deposit, maintenance and withdrawal of the funds shall contain information as may be prescribed by the rules of the commission. Nothing in this paragraph prohibits a qualifying broker from depositing 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 the bank necessary to maintain the account and avoid charges. The minimum balance deposit shall not be considered commingling and shall not be subject to levy, attachment or garnishment. This paragraph does not prohibit a qualifying broker from depositing any deposit money or other money received by the qualifying broker in a real estate transaction with another cooperating broker who shall in turn comply with this paragraph;

(9) failed, if an associate broker, to place as soon after receipt as is practicably possible in the custody of the associate broker's qualifying broker, after securing signatures of all parties to the transaction, any deposit money or other money entrusted to the associate broker by any person dealing with the associate broker as the representative of the qualifying broker;

(10) violated a provision of Chapter 61, Article 29 NMSA 1978 or a rule promulgated by the commission;

(11) committed an act, whether of the same or different character from that specified in this subsection, that is related to dealings as a qualifying broker or an associate broker and that constitutes or demonstrates bad faith, incompetency, untrustworthiness, impropriety, fraud, dishonesty, negligence or any unlawful act; or

(12) been the subject of disciplinary action as a licensee while licensed to practice real estate in another jurisdiction, territory or possession of the United States or another country.

B. An unlawful act or violation of Chapter 61, Article 29 NMSA 1978 by an associate broker, employee, partner or associate of a qualifying broker shall not be cause for the revocation of a license of the qualifying broker unless it appears to the satisfaction of the commission that the qualifying broker had guilty knowledge of the unlawful act or violation.

History: 1953 Comp., § 67-24-29, enacted by Laws 1959, ch. 226, § 11; 1965, ch. 304, § 7; 1981, ch. 22, § 3; 1983, ch. 261, § 5; 1984, ch. 56, § 1; 1987, ch. 90, § 5; 1991, ch. 13, § 1; 2001, ch. 163, § 8; 2005, ch. 35, § 14; 2011, ch. 85, § 6; 2022, ch. 39, § 97.

ANNOTATIONS

The 2022 amendment, effective May 18, 2022, clarified that the New Mexico real estate commission is required to follow the provisions of the Uniform Licensing Act for disciplinary matters; and in Subsection A, added "In accordance with the Uniform Licensing Act".

The 2011 amendment, effective July 1 2011, permitted the payment of a commission to a qualified broker or another state if, pursuant to Section 61-29-16.1 NMSA 1978, the nonresident broker has entered in to a transaction-specific contract with a resident broker and has consented to being sued in New Mexico.

The 2005 amendment, effective January 1, 2006, permits the real estate commission to issue license with limitations or conditions if the applicant or licensee has obtained a license by false or fraudulent representations or performed or attempted to perform the prescribed acts specified in this section and provides that an unlawful act or violation of Chapter 61, Article 29 NMSA 1978 by an associate broker is not cause for revocation of a qualifying broker's license unless the qualifying broker had guilty knowledge of the act.

The 2001 amendment, effective July 1, 2001, inserted the Subsection A and B designations and redesignated former Subsections A to K as Paragraphs A(1) to A(11); deleted "real estate" preceding "broker" throughout the section; in Subsection A, substituted "refuse to issue or may suspend" for "refuse a license for cause or suspend", and "an applicant or licensee has:" for "is deemed to be guilty of:" in the introductory language; substituted "with whom he is associated" for "with whom he is licensed" in Paragraph (4), inserted "after securing signatures of all parties to the transaction" in Paragraphs (8) and (9); deleted "in the interests of the public and in conformance with the provisions of Chapter 61, Article 29 NMSA 1978" from the end of Paragraph (10); substituted "committed an act" for "any other conduct" in Paragraph (11); and added Paragraph (12).

The 1991 amendment, effective June 14, 1991, substituted "in Chapter 61, Article 29 NMSA 1978" for "herein" in the introductory paragraph; substituted the language beginning with "unlicensed person" for "person other than his principal" at the end of Subsection C; and made minor stylistic changes in Subsections E and K.

Revocation for "substantial misrepresentations". — The commission may suspend a license on the grounds that the licensee misrepresented to prospective buyers both the size of the property in question and the age of the roof. *Wolfley v. Real Estate Comm'n*, 1983-NMSC-064, 100 N.M. 187, 668 P.2d 303.

If the subjects of misrepresentations on application forms are material, i.e., "substantial misrepresentations", the real estate commission can, absent intervening equities, revoke the license even though there is no actual or intentional fraud. *Padilla v. Real Estate Comm'n*, 1987-NMSC-056, 106 N.M. 96, 739 P.2d 965.

The test of whether a misrepresentation is substantial is if it operates as an inducement to the real estate commission to do that which it should not otherwise have done. *Padilla v. Real Estate Comm'n*, 1987-NMSC-056, 106 N.M. 96, 739 P.2d 965.

Where a license to sell real estate was revoked for false or fraudulent representations in applications with respect to unpaid liens or judgments, but the real estate commission's findings and conclusions did not resolve in any meaningful way whether licensee intended to deceive and to induce the commission to act in reliance upon a misrepresentation of fact known by him to be untrue, and there were no specific findings and conclusions by the commission to afford the supreme court a clear understanding that the decision was based upon false representations relevant and material to facts bearing upon the good repute and competence of the licensee in the public interest, the cause was remanded to the commission with express directions to enter proper findings of fact and conclusions of law, together with a final order. *Padilla v. Real Estate Comm'n*, 1987-NMSC-056, 106 N.M. 96, 739 P.2d 965.

Substantial evidence to support commission's suspension of broker's license based on Paragraph A(5). *Elliott v. N.M. Real Estate Comm'n*, 1985-NMSC-078, 103 N.M. 273, 705 P.2d 679.

Broker to have knowledge of building code and zoning ordinances. — It is incumbent upon the broker to have a general knowledge of the building code and the zoning ordinances which deal with the particular property being offered for sale or which is being purchased. *Amato v. Rathbun Realty, Inc.*, 1982-NMCA-095, 98 N.M. 231, 647 P.2d 433.

Nonresident broker may share in commission. — This section modifies Sections 61-29-1 and 61-29-16 NMSA 1978 to the extent that a nonresident broker may, in a limited situation, share in a commission. He may only do so, however, through cooperation with a New Mexico licensed broker. *Hayes v. Reeves*, 1977-NMSC-092, 91 N.M. 174, 571 P.2d 1177.

Generally, as to establishing custodial, trust or escrow accounts. — No regulation of the real estate commission requires a custodial, trust or escrow account prior to the receipt of funds appropriate for deposit in such account. *McCaughtry v. N.M. Real Estate Comm'n*, 1970-NMSC-143, 82 N.M. 116, 477 P.2d 292.

Jurisdiction where landowner claims acting as broker. — Under Section 61-29-2 NMSA 1978 if a landowner represents to either the buyer or seller that he is acting as a broker, the real estate commission has jurisdiction over the transaction. *Poorbaugh v. N.M. Real Estate Comm'n*, 1978-NMSC-033, 91 N.M. 622, 578 P.2d 323.

Hiring of note broker for sale of real estate contract. — Because the seller of a real estate contract, who hired a note broker to handle the sale, was not acting as a real estate broker during the sale, the commission lacked jurisdiction to revoke the seller's license for misrepresentation. *Vihstadt v. Real Estate Comm'n*, 1988-NMSC-003, 106 N.M. 641, 748 P.2d 14.

Applicability of Paragraph A(3) prohibition. — The prohibition of Subsection C (now Paragraph A(3)) is applicable to a broker or salesman representing the seller of real estate giving the purchaser trading stamps, free down payments on the property, moving costs, etc., when it can be shown that the real estate broker or salesman gave one or more of the items listed to the purchaser of the property as an integral part of a transaction involving the purchase and sale of the property. 1963 Op. Att'y Gen. No. 63-28 (rendered prior to 1991 amendment).

Payment of commission to buyer who is not principal prohibited. — Subsection C (now Paragraph A(3)) precludes a licensed salesman or broker from paying any portion of his commission to a buyer who is not his principal, regardless of disclosure to the principal of the arrangement. 1981 Op. Att'y Gen. No. 81-25 (rendered prior to 1991 amendment).

In order to properly make sense of the reference in Subsection C (now Paragraph A(3)) to "paying," and to give effect to the legislative intent indicated by that reference, the words "to or" may be read into that subsection preceding "from any person." 1981 Op. Att'y Gen. No. 81-25 (rendered prior to 1991 amendment).

Criminal Offender Employment Act to be followed in suspension or revocation action. — The provisions of the Criminal Offender Employment Act must be followed by the real estate commission in any action by the commission to suspend or revoke a broker's or salesperson's license because of a conviction of a felony or misdemeanor involving moral turpitude. 1982 Op. Att'y Gen. No. 82-02.

Law reviews. — For article, " 'To Purify the Bar': A Constitutional Approach to Non-Professional Misconduct," see 5 Nat. Res. J. 299 (1965).

For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers §§ 10, 21 to 29.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

Suspension or revocation of real estate broker's license on ground of discrimination, 42 A.L.R.3d 1099.

Revocation or suspension of real estate broker's license for violation of statutes or regulations prohibiting use of unlicensed personnel in carrying out duties, 68 A.L.R.3d 530.

Real estate broker's liability for misrepresentations as to income from, or earnings of, property, 81 A.L.R.3d 717.

Validity and application of regulation prohibiting licensed real-estate broker from negotiating sale or lease with owner known to have exclusive listing agreement with another broker, 17 A.L.R.4th 763.

Real-estate broker's rights and liabilities as affected by failure to disclose agreement to loan purchase money to purchaser, 17 A.L.R.4th 788.

Revocation or suspension of real estate broker's license for conduct not connected with business as broker, 22 A.L.R.4th 136.

Real estate broker's or agent's misrepresentation to, or failure to inform, vendor regarding value of vendor's real property, 33 A.L.R.4th 944.

Grounds for revocation or suspension of license of real-estate broker or salesperson, 7 A.L.R.5th 474.

12 C.J.S. Brokers §§ 16, 19, 21 to 24.

61-29-13. Provision for hearing before suspension or revocation of license.

The commission shall, before suspending or revoking any license, set the matter down for a hearing pursuant to the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

History: 1953 Comp., § 67-24-30, enacted by Laws 1959, ch. 226, § 12; 1979, ch. 94, § 4.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 60, 61.

53 C.J.S. Licenses § 50 et seq.

61-29-14. Repealed.

ANNOTATIONS

Repeals. — Laws 2003, ch. 22, § 7 repealed 61-29-14 NMSA 1978, as enacted by Laws 1959, ch. 226, § 13, relating to nonresident brokers, effective June 20, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

61-29-15. Maintenance of list of licensees.

The commission shall maintain a list of the names and addresses of all licensees licensed by it under the provisions of Chapter 61, Article 29 NMSA 1978, and of all persons whose license has been suspended or revoked within that year, together with such other information relative to the enforcement of the provisions of

Chapter 61, Article 29 NMSA 1978 as it may deem of interest to the public. The commission shall also maintain a statement of all funds received and a statement of all disbursements, and copies of the statements shall be mailed by the commission to any person in this state upon request.

History: 1953 Comp., § 67-24-32, enacted by Laws 1959, ch. 226, § 14; 2001, ch. 163, § 10.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, substituted "Maintenance" for "Publication" in the section heading; substituted "The commission shall maintain a list" for "The commission shall, at least annually, publish"; and substituted "maintain" for "prepare" in the last sentence.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 C.J.S. Brokers § 14.

61-29-16. Suit by qualifying or associate broker.

No action for the collection of a commission or compensation earned by any person as a qualifying broker or an associate broker required to be licensed under the provisions of Chapter 61, Article 29 NMSA 1978 shall be maintained in the courts of the state unless such person was a duly licensed qualifying broker or associate broker at the time the alleged cause of action arose. In any event, suit against a member of the public as distinguished from any person licensed under Chapter 61, Article 29 NMSA 1978 shall be maintained only in the name of the qualifying broker.

History: 1953 Comp., § 67-24-33, enacted by Laws 1959, ch. 226, § 15. 2005, ch. 35, § 16.

ANNOTATIONS

The 2005 amendment, effective January 1, 2006, provides that no action to collect a commission or compensation by a person as a qualifying broker or an associate broker shall be maintained unless the person was licensed as a qualifying broker or an associate broker on the date cause of action arose and requires that suits against a member of the public be in the name of the qualifying broker.

Section upholds legislative intent that brokers be licensed. — A person who simply brings two parties together in a real estate transaction must be licensed to sue for the recovery of a commission. To rule otherwise would be to violate the clear intent of the legislature in requiring that real estate "brokers" or salespersons be licensed. *Watts v. Andrews*, 1982-NMSC-080, 98 N.M. 404, 649 P.2d 472.

Texas broker barred from collecting a commission. — Where plaintiff, who was a licensed real estate broker in Texas, knew that an unlisted ranch was for sale; plaintiff and defendants, who were licensed real estate brokers in New Mexico, orally agreed to work together as co-brokers in the sale of the ranch and to share the commission on the purchase price; plaintiff and defendants never entered into a transaction-specific written agreement to share the commission; and plaintiff brought the sellers and the buyers together with the assistance of defendants, plaintiff was barred from collecting a real estate commission, because plaintiff was acting as a broker without a valid New Mexico broker's license or a written, foreign broker's agreement in violation of Section 61-29-16 NMSA 1978. *PC Carter Co. v. Miller*, 2011-NMCA-052, 149 N.M. 660, 253 P.3d 950.

Meaning of "arose". — The word "arose" used in this statute is used in its usual and ordinary meaning and denotes past completed action, not past continuing action. *Lakeview Invs., Inc. v. Alamogordo Lake Vill.,* *Inc.*, 1974-NMSC-027, 86 N.M. 151, 520 P.2d 1096.

Person claiming commission must prove license. — The statute casts no burden upon a defendant to prove absence of a license but does place upon one claiming a real estate commission the burden of establishing that he was duly licensed when the alleged cause of action arose and the inadvertent statement relative to the burden of proof in *Southwest Motel Brokers, Inc. v. Alamo Hotels, Inc.*, 1963-NMSC-091, 72 N.M. 227, 382 P.2d 707, *overruled by Star Realty Co. v. Sellers*, 1963-NMSC-140, 73 N.M. 207, 387 P.2d 319.

Finding that plaintiff held license required. — A judgment for recovery of a real estate commission without a finding that the plaintiff held either a broker's or salesman's license when the cause of action arose is erroneous. *Watts v. Andrews*, 1982-NMSC-080, 98 N.M. 404, 649 P.2d 472.

Section did not apply where plaintiff was not acting as a real estate broker. — A judgment for recovery of a real estate commission without a finding that the plaintiff held either a broker's or salesman's license when the cause of action arose is erroneous, but if the real estate commission is not derived from the sale of real property, or if the person was not acting as a real estate broker, then this provision does not apply, and therefore where plaintiff, a business consulting company, brought an action against the owner of property for breach of contract, fraudulent inducement and unjust enrichment based on services plaintiff rendered in the sale of property and in the sale of water from the property, summary judgment for the property owner was not warranted, because plaintiff had no role in the negotiations, did not introduce the buyers to the sellers, and had no first-hand knowledge of the deal's details. Plaintiff was therefore not acting as a real estate broker during the sale of the property or during the water sale negotiations. *Tyler Group Partners, LLC v. Madera*, 543 F. Supp. 3d 1184 (D. N.M. 2021).

Section prohibits action in quantum meruit to recover value of services rendered by person who is required to have license, in the absence of such license. *Bank of N.M. v. Freedom Homes, Inc.*, 1980-NMCA-064, 94 N.M. 532, 612 P.2d 1343.

An unlicensed real estate broker or salesperson cannot recover a commission in an action in quantum meruit. *Watts v. Andrews*, 1982-NMSC-080, 98 N.M. 404, 649 P.2d 472.

Suit by corporation. — Since an action to recover a real estate commission may only be brought in the name of the licensed broker, evidence showing corporation may be entitled to a license, and that an officer thereof had a license, was insufficient to enable corporation to bring suit in its own name. *Star Realty Co. v. Sellers*, 1963-NMSC-140, 73 N.M. 207, 387 P.2d 319.

Action for breach of contract. — This section did not prevent real estate broker from maintaining action for breach of contract where broker was not licensed at time he entered into exclusive sales representation agreement with defendant but became licensed prior to breach of this agreement by defendant. *Lakeview Invs., Inc. v. Alamogordo Lake Vill., Inc.*, 1974-NMSC-027, 86 N.M. 151, 520 P.2d 1096.

In estimating the commission on an exchange of real estate the actual and not the trade value of the property received in exchange should be taken as the basis, unless the contract of employment provides for some other basis, such as a fixed and agreed valuation of the property given in exchange. *Maine v. Garvin*, 1966-NMSC-140, 76 N.M. 546, 417 P.2d 40.

Allegation of licensing effective against motion to dismiss. — Allegation that the party seeking relief was licensed at the time the work or service was performed satisfies the requirements of this section as against a motion to dismiss. *Lakeview Invs., Inc. v. Alamogordo Lake Vill., Inc.*, 1974-NMSC-027, 86 N.M. 151, 520 P.2d 1096.

In order to satisfy the requirements of this section as against a motion to dismiss, the party seeking relief must allege that he was licensed at the time the work or service was performed. *Bosque Farms Home Ctr.,* Conveyance of real property to mortgagee or lien holder as constituting "sale or exchange" rendering owner liable for commissions to broker having exclusive agency or exclusive right to sell, 46 A.L.R.2d 1116.

Broker's right to commission for selling part of property, 47 A.L.R.2d 680.

Liability of vendor's real-estate broker or agent to purchaser or prospect for misrepresenting or concealing offer or acceptance, 55 A.L.R.2d 342.

Broker's return of deposit to purchaser as waiver of right to demand commission from seller, 69 A.L.R.2d 1244.

Commission on sale rejected by principal because of buyer's fraud or misrepresentation, 79 A.L.R.2d 1055.

Licensed real estate broker's right to compensation as affected by lack of license on the part of partners, co-adventurers, employees, or other associates, 8 A.L.R.3d 523.

Real estate broker's right to compensation as affected by failure or refusal of principal's spouse to join in contract of sale, 10 A.L.R.3d 665.

Broker's right to commission from principal upon procuring third party taking an option, 32 A.L.R.3d 321.

Right of real estate broker to commission where listing contract is for sale of property and it is subsequently leased to one with whom broker had negotiated, 42 A.L.R.3d 1430.

Construction of provision in real estate broker's listing contract that broker shall receive commission on sale after expiration of listing period to one with whom broker has "negotiated" during listing period, 51 A.L.R.3d 1149.

Real estate broker's right to commission for procuring lessee where lease terminates before contemplated term, 54 A.L.R.3d 1171.

Necessity of having real estate broker's license in order to recover commission as affected by fact that business sold includes real property, 82 A.L.R.3d 1139.

Right of real estate broker to recover commission from seller-principal where buyer defaults under valid contract of sale, 12 A.L.R.4th 1083.

Real estate broker's right to recover commission from seller where sale fails because of seller's failure to deliver good title - modern cases, 28 A.L.R.4th 1007.

Real estate broker's rights and liabilities as affected by failure to disclose financial information concerning purchaser, 34 A.L.R.4th 191.

What constitutes financial ability to perform within rule entitling broker to commission for producing ready, willing, and able purchaser of real property, 87 A.L.R.4th 11.

12 C.J.S. Brokers §§ 132 to 135.

61-29-16.1. Foreign brokers; consent to service; referral fees.

A. A foreign broker may act in the capacity of a qualifying or associate broker with respect to commercial real estate located in New Mexico; provided that prior to performing any of the real estate activities of a

Inc. v. Tabet Lumber Co., 1988-NMSC-027, 107 N.M. 115, 753 P.2d 894.

Parol evidence rule is fully applicable together with all the exceptions recognized in connection with any other writing in connection with written listing agreements. Parol evidence may not be received when its purpose and effect is to contradict, vary, modify or add to a written agreement, but is generally admissible to supply terms not in the written contract, to explain ambiguities in the written agreement, or to show fraud, misrepresentations or mistake. *Maine v. Garvin*, 1966-NMSC-140, 76 N.M. 546, 417 P.2d 40.

Compensation rule distinguished from that in fraud. — The rule applicable in determining the right of an agent to recover compensation from his principal differs from that which is applied when fraud is claimed as between a vendor and purchaser. *Maine v. Garvin*, 1966-NMSC-140, 76 N.M. 546, 417 P.2d 40.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers §§ 217 to 222.

Failure, when refusing offer to purchase land, to state, as ground therefor, broker's failure to introduce or disclose name of customer, as affecting right to assert such ground in defense of broker's action for compensation, 156 A.L.R. 605.

Rights and obligations of real estate broker employed to sell property as affected by option to purchase for himself, 164 A.L.R. 1378.

Real estate broker's right to commission on sale, exchange or lease of property listed without statement of price or other terms, 169 A.L.R. 380.

Want of license as affecting broker's recovery of compensation for services, 169 A.L.R. 767.

Condemnation of property as affecting broker's right to compensation, 170 A.L.R. 1422.

Subagent, right of broker as against employer to commission on sale by, 3 A.L.R.2d 532.

Relative rights and liabilities of vendor and his broker to down payment or earnest money forfeited by vendee for default under real estate contract, 9 A.L.R.2d 495.

Real estate broker's right to commission where purchaser refuses to go through with the executory contract because of reckless misrepresentation made to him by broker respecting property, 9 A.L.R.2d 504.

Right of real estate broker to commission where customer repudiates or fails to complete contract or promise which is oral or not specifically enforceable, 12 A.L.R.2d 1410.

Effect of statement of real estate broker to prospective purchaser that property may be bought for less than list price as breach of duty to vendor, so as to bar claim for commission, 17 A.L.R.2d 904.

What deviation in prospective vendee's proposal from vendor's terms precludes broker from recovering commission for producing a ready, willing, and able vendee, 18 A.L.R.2d 376.

Broker's right to commission on sales consummated after termination of employment, 27 A.L.R.2d 1348.

Nondisclosure or misrepresentation of sale price of other property as affecting broker's rights as against principal, 32 A.L.R.2d 728.

Liability of broker to prospective purchaser for refund of deposit or earnest money where contract fails because of defects in vendor's title, 38 A.L.R.2d 1382.

Broker's right to commission where owner sells property to broker's customer at less than stipulated price, 46 A.L.R.2d 848.

qualifying or associate broker, the foreign broker enters into a transaction-specific written agreement with a New Mexico qualifying broker that includes, at a minimum:

(1) a description of the parties, the commercial real estate and any additional information necessary to identify the specific transaction governed by the agreement;

(2) the terms of compensation between the foreign broker and the New Mexico qualifying broker;

(3) the effective date and definitive termination date of the agreement; and

(4) a statement that the foreign broker agrees to:

(a) cooperate fully with the New Mexico qualifying broker and all associate brokers designated by the New Mexico qualifying broker;

(b) except for the foreign broker's interaction with the foreign broker's client, conduct all contact with parties, including the general public and other brokers, in association with the New Mexico qualifying broker or associate broker designated by the New Mexico qualifying broker;

(c) conduct all marketing and solicitations for business in the name of the New Mexico qualifying broker;

(d) timely furnish to the New Mexico qualifying broker copies of all documents related to the transaction that are required by the laws of New Mexico to be retained by its licensees, including without limitation, agency disclosure, offers, counteroffers, purchase and sale contracts, leases and closing statements;

(e) comply with and be bound by and subject to New Mexico law and the regulations of the commission; and

(f) submit to the jurisdiction of the courts of New Mexico with respect to the transaction and any and all claims related thereto by service of process upon the secretary of state of New Mexico and upon the appropriate official of the state, province or nation of the foreign broker's real estate licensure.

B. When a New Mexico associate broker or qualifying broker makes a referral to or receives a referral from a foreign broker for the purpose of receiving a fee, commission or any other consideration, the qualifying broker of the New Mexico brokerage and the foreign broker shall execute a written, transaction-specific referral agreement at the time of the referral.

History: Laws 2005, ch. 35, § 15; 2011, ch. 85, § 7; 2013, ch. 167, § 7; 2014, ch. 27, § 2.

ANNOTATIONS

The 2014 amendment, effective May 21, 2014, provided for foreign brokers acting as qualifying or associate brokers with respect to commercial real estate; in the catchline, deleted "nonresident" and added "foreign"; in Subsection A, deleted the entire former language of the subsection which provided for service of process on associate brokers and qualifying brokers who had license application addresses outside New Mexico; added a new Subsection A; in Subsection B, after "a referral from a", deleted "nonresident" and added "foreign", and after "brokerage and the", deleted "nonresident" and added "foreign".

The 2013 amendment, effective June 14, 2013, required transaction-specific referral agreements at the time of referral; in the title, deleted "Foreign brokers; nonresident licensees", and added "Nonresident brokers; consent to service; referral fees"; deleted former Subsection A, which required nonresident brokers to enter into transaction-specific contracts with New Mexico brokers prior to commencing real estate activity; and added Subsection B.

61-29-16.2. Nonresident licensees; consent to service.

A. A nonresident licensee shall file with the commission an irrevocable consent that lawsuits and actions may be commenced against the associate broker or qualifying broker in the proper court of any county of New Mexico in which a cause of action may arise or in which the plaintiff may reside, by service on the commission of any process or pleadings authorized by the laws of New Mexico, the consent stipulating and agreeing that such service of process or pleadings on the commission is as valid and binding as if personal service had been made upon the associate broker or qualifying broker in New Mexico.

B. Service of process or pleadings shall be served in duplicate upon the commission; one shall be filed in the office of the commission and the other immediately forwarded by certified mail to the main office of the associate broker or qualifying broker against whom the process or pleadings are directed.

History: Laws 2014, ch. 27, § 4.

ANNOTATIONS

Effective dates. — Laws 2014, ch. 27 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 21, 2014, 90 days after the adjournment of the legislature.

61-29-17. Penalty; injunctive relief.

A. Any person who engages in the business or acts in the capacity of an associate broker or a qualifying broker within New Mexico without a license issued by the commission or pursuant to Section 61-29-16.1 NMSA 1978 is guilty of a fourth degree felony. Any person who violates any other provision of Chapter 61, Article 29 NMSA 1978 is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars ($500) or imprisonment for not more than six months, or both.

B. In the event any person has engaged or proposes to engage in any act or practice violative of a provision of Chapter 61, Article 29 NMSA 1978, the attorney general or the district attorney of the judicial district in which the person resides or the judicial district in which the violation has occurred or will occur may, upon application of the commission, maintain an action in the name of the state to prosecute the violation or to enjoin the proposed act or practice.

C. In any action brought under Subsection B of this section, if the court finds that a person is engaged or has willfully engaged in any act or practice violative of a provision of Sections 61-29-1 through 61-29-18 NMSA 1978, the attorney general or the district attorney of the judicial district in which the person resides or the judicial district in which the violation has occurred or is occurring may, upon petition to the court, recover on behalf of the state a civil penalty not exceeding five thousand dollars ($5,000) per violation and attorney fees and costs.

History: 1953 Comp., § 67-24-34, enacted by Laws 1965, ch. 304, § 8; 1993, ch. 192, § 2; 2011, ch. 85, § 8; 2013, ch. 167, § 8; 2014, ch. 27, § 3.

ANNOTATIONS

Repeals and reenactments. — Laws 1965, ch. 304, § 8, repeals 67-24-34, 1953 Comp., relating to penalties for violations by brokers, and enacts the above section.

The 2014 amendment, effective May 21, 2014, provided that foreign brokers conducting business in New Mexico are not in violation of Article 61, Chapter 29 NMSA 1978 if they have entered into transaction-specific agreements; and in Subsection A, in the first sentence, after "license issued by the commission", added "or pursuant to Section 61-29-16.1 NMSA 1978".

The 2013 amendment, effective June 14, 2013, revised the penalties for violations of the licensure requirements; in Subsection A, in the first sentence, after "Any person who", deleted "violates any provision of Chapter 61, Article 29 NMSA 1978 is guilty of a fourth degree felony and shall be punished by a fine of not more than five thousand dollars ($5,000) or by imprisonment for a definite term of eighteen months, or both" and added the remainder of the sentence and added the second sentence; in Subsection B, after "occurred or will occur", deleted "shall" and added "may"; and in Subsection B, after "occurred or is occurring", deleted "shall" and added "may".

The 2011 amendment, effective July 1 2011, changed a violation from a misdemeanor offense to a fourth degree felony and changed the fine from five hundred dollars to five thousand dollars and the term of imprisonment from a term of not more than six months to a definite term of eighteen months.

The 1993 amendment, effective June 18, 1993, substituted "Chapter 61, Article 29 NMSA 1978" for "Sections 67-24-19 through 67-24-35 New Mexico Statutes Annotated, 1953 Compilation" in two places in Subsection A and in Subsection B; and added Subsection C.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 72, 73.

Right to private action under state statutes or regulations governing real estate brokers or salesmen, 28 A.L.R.4th 199.

53 C.J.S. Licenses § 82.

61-29-17.1. Recompiled.

ANNOTATIONS

Recompilations. — Former 61-29-17.1 NMSA 1978, relating to disciplinary action by the New Mexico real estate commission concerning time share projects, enacted by Laws 1986, ch. 97, § 14, has been recompiled as 47-11-11.2 NMSA 1978.

61-29-17.2. Unlicensed activity; civil penalty; administrative costs.

The commission may impose a civil penalty on any person who is found, through a court or administrative proceeding, to have acted in violation of Chapter 61, Article 29 NMSA 1978 in an amount not to exceed one thousand dollars ($1,000) for each violation or, if the commission can so determine, in the amount of the total commissions received by the person for the unlicensed activity. The commission may assess administrative costs for any investigation and administrative or other proceedings against any such person. Any money collected by the commission under the provisions of this section shall be deposited into the real estate recovery fund.

History: Laws 2001, ch. 163, § 11; 2011, ch. 85, § 9.

ANNOTATIONS

The 2011 amendment, effective July 1 2011, permitted the commission to impose a civil penalty in the amount of the total commissions received for an unlicensed activity and required civil penalties to be deposited into the real estate recovery fund.

61-29-18. Interpretation of act.

Nothing contained in Chapter 61, Article 29 NMSA 1978 shall affect the power of cities and villages to tax, license and regulate qualifying brokers or associate brokers. The requirements hereof shall be in addition to the requirements of an existing or future ordinance of any city or village so taxing, licensing or regulating qualifying brokers or associate brokers.

History: 1953 Comp., § 67-24-35, enacted by Laws 1959, ch. 226, § 18; 2005, ch. 35, § 17.

ANNOTATIONS

The 2005 amendment, effective January 1, 2006, provides that nothing in Chapter 61, Article 29 NMSA 1978 shall affect the power of municipalities to license and regulate qualifying brokers and associate brokers.

Severability. — Laws 1959, ch. 226, § 19, provides for the severability of the act if any part or application thereof is held invalid.

Meaning of "this act". — See same catchline in notes to 61-29-7 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers §§ 6 to 8.

53 C.J.S. Licenses §§ 10, 11.

61-29-19. Repealed.

History: 1953 Comp., § 67-24-36, enacted by Laws 1978, ch. 203, § 2; 1981, ch. 241, § 33; 1983, ch. 261, § 7; 1987, ch. 333, § 12; 1993, ch. 83, § 7; 1993, ch. 253, § 3; 2000, ch. 4, § 17; 2005, ch. 208, § 21; 2011, ch. 30, § 8; repealed by Laws 2011, ch. 85, § 11.

ANNOTATIONS

Repeals. — Laws 2011, ch. 85, § 11 repealed 61-29-19 NMSA 1978, as enacted by Laws 1978, ch. 203, § 2, relating to the termination of agency life, effective July 1, 2011. For provisions of former section, *see* the

2010 NMSA 1978 on *NMOneSource.com.*

Laws 2011, ch. 30, § 8, effective June 17, 2011, also amended 61-29-19 NMSA 1978 by changing the termination, operation and repeal dates. The section was set out as repealed by Laws 2011, ch. 85, § 11. *See* 12-1-8 NMSA 1978.

61-29-19.1. Real estate education and training fund created; purpose; appropriation.

A. The "real estate education and training fund" is created in the state treasury. The fund shall consist of an initial transfer of the balance in the real estate recovery fund as provided in Subsection C of this section; legislative appropriations to the fund; fees charged by the commission for approval of real estate education sponsors, courses and instructors; gifts, grants, donations and bequests to the fund; and income from investment of the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year.

B. The fund shall be administered by the commission, and money in the fund is subject to appropriation by the legislature to the commission to improve real estate education and to train real estate instructors. The commission shall promulgate rules specifying the manner in which the fund shall be administered.

C. Notwithstanding the provisions of Sections 61-29-21 and 61-29-22 NMSA 1978, on July 1, 2005, the balance in excess of two hundred fifty thousand dollars ($250,000) in the real estate recovery fund shall be transferred to the real estate education and training fund.

History: Laws 2005, ch. 35, § 20.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 35, § 21 makes the act effective January 1, 2006.

61-29-20. Short title.

Sections 61-29-20 through 61-29-29 NMSA 1978 may be cited as the "Real Estate Recovery Fund Act".

History: Laws 1980, ch. 82, § 1; 2022, ch. 39, § 98.

ANNOTATIONS

The 2022 amendment, effective May 18, 2022, after "Section" changed "1 through 10 of this act" to "61-29-20 through 61-29-29 NMSA 1978".

Law reviews. — For article, "Survey of New Mexico Law, 1979-80: Property," see 11 N.M.L. Rev. 203 (1981).

For annual survey of New Mexico Law of Property, see 20 N.M.L. Rev. 373 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 C.J.S. Brokers §§ 11, 12.

61-29-21. Fund created.

There is created in the state treasury a fund which shall be known as the "real estate recovery fund" to be administered by the real estate commission in accordance with the provisions of the Real Estate Recovery Fund Act [61-29-20 to 61-29-29 NMSA 1978]. All money received by the real estate commission pursuant to the Real Estate Recovery Fund Act shall be credited to the real estate recovery fund. The state treasurer may invest money in the real estate recovery fund in United States bonds or treasury certificates under such rules and regulations as may be prescribed by the state board of finance, provided that no investments shall be made which will impair the necessary liquidity required to satisfy judgment payments awarded pursuant to the Real Estate Recovery Fund Act. All interest earned from such investments shall be credited to the fund to pay any future judgments only.

History: Laws 1980, ch. 82, § 2.

ANNOTATIONS

61-29-22. Additional fees.

A. The commission shall collect an annual fee not in excess of ten dollars ($10.00) from each real estate licensee prior to the issuance of the next license.

B. The commission shall collect from each successful applicant for an original real estate license, in addition to the original license fee, a fee not in excess of ten dollars ($10.00).

C. The additional fees provided by this section shall be credited to the real estate recovery fund. The amount of the real estate recovery fund shall be maintained at one hundred fifty thousand dollars ($150,000). If the real estate recovery fund falls below this amount, the commission shall have authority to adjust the annual amount of additional fees to be charged licensees or to draw on the real estate commission fund in order to maintain the fund level as required in this section. If on July 1 of any year, the balance in the fund exceeds four hundred thousand dollars ($400,000), the amount over four hundred thousand dollars ($400,000) shall be transferred to the real estate commission fund to be used for the purposes of carrying out the provisions of Chapter 61, Article 29 NMSA 1978.

History: Laws 1980, ch. 82, § 3; 1987, ch. 90, § 6; 1993, ch. 253, § 4; 2003, ch. 22, § 6; 2011, ch. 85, § 10.

ANNOTATIONS

The 2011 amendment, effective July 1 2011, lowered the minimum balance of the real estate recovery fund from two hundred fifty thousand dollars to one hundred fifty thousand dollars.

The 2003 amendment, effective June 20, 2003, deleted "On and after the effective date of the Real Estate Recovery Fund Act" from the beginning of Subsections A and B; and added the last sentence of Subsection C.

The 1993 amendment, effective June 18, 1993, purported to amend this section but made no change.

61-29-23. Judgment against qualifying or associate broker; petition; requirements; recovery limitations.

A. When an aggrieved person claims a pecuniary loss caused by a state-licensed qualifying broker or associate broker based upon fraud, knowing or willful misrepresentation or wrongful conversion of funds entrusted to the qualifying broker or associate broker, involving a transaction for which a qualifying broker's or an associate broker's license is required and which arose out of or during the course of a transaction involving the sale, lease, exchange or other disposition of real estate or property management, where the cause of action arose on or after July 1, 1980, that person may, within two years after obtaining a final judgment based upon fraud, knowing or willful misrepresentation or wrongful conversion of funds entrusted to the qualifying broker or associate broker from a court of competent jurisdiction, file a verified petition with the commission for recovery pursuant to the Real Estate Recovery Fund Act. The real estate recovery fund reimburses the claimant for unpaid actual damages included in the judgment, but not more than fifty thousand dollars ($50,000) per judgment regardless of the number of persons aggrieved or parcels of real estate involved in the transaction. The aggregate amount recoverable by all claimants for losses against any one licensee during one calendar year shall not exceed one hundred thousand dollars ($100,000).

B. A copy of the verified petition with the judgment attached shall be served upon the commission by United States postal service certified return receipt or in the manner provided by law for service of a civil summons.

C. The commission shall serve the petition and notice of hearing on the licensee in substantially the same manner as required pursuant to the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

D. The commission shall conduct a hearing on the petition after service of the petition upon the commission and the licensee. At the hearing, the petitioner shall be required to show that the petitioner:

(1) is not the spouse of the judgment debtor, the personal representative of the spouse or related to the third degree of consanguinity or affinity to the licensee whose conduct is alleged to have caused the loss;

(2) has complied with all the requirements of the Real Estate Recovery Fund Act; and

(3) has a judgment that is not covered by a bond, insurance, surety agreement or indemnity agreement.

E. At the hearing, the licensee shall be permitted to raise all affirmative defenses.

History: Laws 1980, ch. 82, § 4; 1987, ch. 90, § 7; 2005, ch. 35, § 18; 2021, ch. 106, § 2.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, clarified the procedures for recovery pursuant to the Real Estate Recovery Fund Act, and increased recovery limits; in Subsection A, after "disposition of real estate", added "or property management", after "qualifying broker or associate broker", deleted "and the termination of all proceedings, including appeals in connection with the judgment, file a verified petition with the commission for payment", after "from", added "a court of competent jurisdiction, file a verified petition with the commission for recovery pursuant to the Real Estate Recovery Fund Act", after "The real estate recovery fund", added "reimburses the claimant", after "for", added "unpaid", after "included in the judgment", deleted "and unpaid", after "but not more than", deleted "ten thousand dollars ($10,000)" and added "fifty thousand dollars ($50,000)", after "licensee", added "during one calendar year", and after "shall not exceed", changed "thirty thousand dollars ($30,000)" to "one hundred thousand dollars ($100,000)"; in Subsection B, after "A copy of the", added "verified", after "petition", added "with the judgment attached", and after "upon the commission", added "by the United States postal service certified return receipt or"; added new Subsection C and redesignated former Subsection C as Subsection D; in Subsection D, after "upon the commission", added "and the licensee", deleted former Paragraphs C(3) through C(5) and redesignated former Paragraph C(6) as Paragraph D(3), in Paragraph D(3), deleted subsection designation "(a)" and deleted former Subparagraphs C(6)(b) and C(6)(c); and added Subsection E.

The 2005 amendment, effective January 1, 2006, provides that a person who has obtained a judgment against a qualifying broker or an associate broker under this section may petition the real estate commission for payment from the real estate recover fund.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Real estate broker's rights and liabilities as affected by failure to disclose financial information concerning purchaser, 34 A.L.R.4th 191.

Real-estate broker's liability to purchaser for misrepresentation or nondisclosure of physical defects in property sold, 46 A.L.R.4th 546.

61-29-24. Commission; compromise.

Upon receipt of a petition as required by Section 61-29-23 NMSA 1978, the commission shall conduct a hearing in substantially the same manner and with the same authority as set forth in the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978]. The commission may compromise a claim based upon the application of a petitioner.

History: Laws 1980, ch. 82, § 5; 1987, ch. 90, § 8; 2021, ch. 106, § 3.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, revised procedures related to hearings on petitions for recovery pursuant to the Real Estate Recovery Fund Act; in the section heading, after "Commission", deleted "review"; after "the same manner", added "and with the same authority", and after "Uniform Licensing Act", deleted "including Sections 61-1-9 through 61-1-11 NMSA 1978. Review of the commission's decision shall be in the manner provided by Section 61-1-20 NMSA 1978".

61-29-25. Commission finding.

If the commission makes a specific finding of the items enumerated in Section 61-29-23 NMSA 1978 and determines that a claim should be levied against the real estate recovery fund, the commission shall enter an order requiring payment from the fund of that portion of the petitioner's claim that is payable from the fund pursuant to the provisions of and in accordance with the limitations contained in Section 61-29-23 NMSA 1978.

History: Laws 1980, ch. 82, § 6; 1987, ch. 90, § 9.

ANNOTATIONS

61-29-26. Insufficient funds.

If at any time the money deposited in the real estate recovery fund is insufficient to satisfy any authorized claim for payment from the fund, the real estate commission shall, when sufficient money has been deposited in the fund, satisfy such unpaid claims in the order that they were originally filed, together with accumulated interest at the rate of eight percent per year.

History: Laws 1980, ch. 82, § 7.

ANNOTATIONS

61-29-27. Subrogation.

When the commission makes any payment from the real estate recovery fund to a judgment creditor, the commission shall be subrogated to all rights of the judgment creditor for the amounts paid out of the fund and any amount and interest so recovered by the commission shall be deposited in the fund. The commission may, pursuant to the provisions of the Uniform Licensing Act [61-1-1 NMSA 1978], revoke, suspend or refuse to renew the license of any qualifying broker or associate broker for whom payment from the fund has been made in accordance with the provisions of the Real Estate Recovery Fund Act [61-29-20 to 61-29-29 NMSA 1978]. Further, the commission may refuse to issue or renew the license of any person for whom payment from the real estate recovery fund has been made, until that person reimburses the fund for all payments made on that person's behalf.

History: Laws 1980, ch. 82, § 8; 1987, ch. 90, § 10; 2005, ch. 35, § 19.

ANNOTATIONS

The 2005 amendment, effective January 1, 2006, provides that of the real estate commission pays a judgment against a qualifying broker or an associate broker from the real estate recovery fund, the real estate commission may revoke, suspend or refuse to renew the license of the qualifying or associate broker.

61-29-28. Waiver.

The failure of any person to comply with all of the provisions of the Real Estate Recovery Fund Act [61-29-20 to 61-29-29 NMSA 1978] shall constitute a waiver of any rights pursuant to that act.

History: Laws 1980, ch. 82, § 9.

ANNOTATIONS

61-29-29. Disciplinary action not limited.

Nothing contained in the Real Estate Recovery Fund Act [61-29-20 to 61-29-29 NMSA 1978] shall limit the authority of the real estate commission to take disciplinary action against a licensee for a violation of any of the provisions of Section 61-29-12 NMSA 1978 or of the rules and regulations of the real estate commission, nor shall the repayment in full of all obligations to the real estate recovery fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to the provisions of Section 61-29-12 NMSA 1978 or the rules and regulations promulgated by the commission.

History: Laws 1980, ch. 82, § 10.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Grounds for revocation or suspension of license of real estate broker or salesperson, 7 A.L.R.5th 474.

ARTICLE 8
Owner-Resident Relations

47-8-1. Short title.

Sections 47-8-1 through 47-8-51 [47-8-52] NMSA 1978 may be cited as the "Uniform Owner-Resident Relations Act".

History: 1953 Comp., § 70-7-1, enacted by Laws 1975, ch. 38, § 1; 1995, ch. 195, § 1.

ANNOTATIONS

Cross references. — For provisions on human rights, *see* 28-1-1 NMSA 1978 et seq.

The 1995 amendment, effective July 1, 1995, substituted "Sections 47-8-1 to 47-8-51 NMSA 1978" for "Sections 1 through 52 of this act [47-8-1 to 47-8-51 NMSA 1978]".

Uniform Owner-Resident Relations Act. — Laws 1975, ch. 38, §§ 1 to 51 appear as 47-8-1 to 47-8-51 NMSA 1978. Section 52 of that act is an uncodified severability provision. Additionally, Laws 1989, ch. 253, § 3 enacted 47-8-52 NMSA 1978 as part of the Uniform Owner-Resident Relations Act. The bracketed material was inserted by the compiler; it was not enacted by the legislature, and it is not part of the law.

Article is remedial and in derogation of common law. Its application must be liberally construed. *T.W.I.W., Inc. v. Rhudy*, 1981-NMSC-062, 96 N.M. 354, 630 P.2d 753.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

For annual survey of New Mexico law relating to property, see 13 N.M.L. Rev. 435 (1983).

For article, "Survey of New Mexico Law, 1982-83: Property Law," see 14 N.M.L. Rev. 189 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Inability to obtain license, permit, or charter required for tenant's business as defense to enforcement of lease, 89 A.L.R.3d 329.

Children's day-care use as violation of restrictive covenant, 29 A.L.R.4th 730.

Sufficiency as to method of giving oral or written notice exercising option to renew or extend lease, 29 A.L.R.4th 903.

What constitutes timely notice of exercise of option to renew or extend lease, 29 A.L.R.4th 956.

Sufficiency as to parties giving or receiving notice of exercise of option to renew or extend lease, 34 A.L.R.4th 857.

Death of lessee as terminating lease, 42 A.L.R.4th 963.

Express or implied restriction on lessee's use of residential property for business purposes, 46 A.L.R.4th 496.

Strict liability of landlord for injury or death of tenant or third person caused by defect in premises leased for residential use, 48 A.L.R.4th 638.

Air-conditioning appliance, equipment, or apparatus as fixture, 69 A.L.R.4th 359.

Implied warranty of fitness or suitability in commercial leases - modern status, 76 A.L.R.4th 928.

Provision in lease as to purpose for which premises are to be used as excluding other uses, 86 A.L.R.4th 259.

Landlord's liability to third person for injury resulting from attack off leased premises by dangerous or vicious animal kept by tenant, 89 A.L.R.4th 374.

Coverage of leases under state consumer protection statutes, 89 A.L.R.4th 854.

Landlord's liability for failure to protect tenant from criminal acts of third person, 43 A.L.R.5th 207.

Landlord's liability to third party for repairs authorized by tenant, 46 A.L.R.5th 1.

Apportionment of liability between landowners and assailants for injuries to crime victims, 54 A.L.R.5th 379.

Liability of landlord for injury or death occasioned by swimming pool maintained for tenants, 62 A.L.R.5th 475.

47-8-2. Purpose.

The purpose of the Uniform Owner-Resident Relations Act is to simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of owner and resident, and to encourage the owners and the residents to maintain and improve the quality of housing in New Mexico.

History: 1953 Comp., § 70-7-2, enacted by Laws 1975, ch. 38, § 2.

ANNOTATIONS

Cross reference. — For the Mobile Home Park Act, *see* 47-10-1 NMSA 1978.

Acts linked. — Although the Uniform Owner-Resident Relations Act governs the rights and obligations of owners and residents of "dwelling units", and the Mobile Home Park Act [Section 47-10-1 NMSA 1978 et seq.], governs tenancy in a "mobile home park", the legislature has linked the two acts in that the latter provides that an action for termination shall be commenced and prosecuted in the manner described in the former. *Martinez v. Sedillo*, 2005-NMCA-029, 137 N.M. 103, 107 P.3d 543.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

47-8-3. Definitions.

As used in the Uniform Owner-Resident Relations Act:

A. “abandonment" means absence of the resident from the dwelling, without notice to the owner, in excess of seven continuous days; providing such absence occurs only after rent for the dwelling unit is delinquent;

B. “action" includes recoupment, counterclaim, set-off, suit in equity and any other proceeding in which rights are determined, including an action for possession;

C. “amenity" means a facility appurtenance or area supplied by the owner and the absence of which would not materially affect the health and safety of the resident or the habitability of the dwelling unit;

D. “applicant" means a person who submits an application to rent a dwelling unit to the owner or who agrees to act as a guarantor or cosigner on a rental agreement;

E. “codes" includes building codes, housing codes, health and safety codes, sanitation codes and any law, ordinance or governmental regulation concerning fitness for habitation or the construction, maintenance, operation, occupancy or use of a dwelling unit;

F. “deposit" means an amount of currency or instrument delivered to the owner by the resident as a pledge to abide by terms and conditions of the rental agreement;

G. “dwelling unit" means a structure, mobile home or the part of a structure, including a hotel or motel, that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household and includes a parcel of land leased by its owner for use as a site for the parking of a mobile home;

H. “eviction" means any action initiated by the owner to regain possession of a dwelling unit and use of the premises pursuant to the terms of the Uniform Owner-Resident Relations Act;

I. “fair rental value" is that value that is comparable to the value established in the market place;

J. “good faith" means honesty in fact in the conduct of the transaction concerned as evidenced by all surrounding circumstances;

K. “normal wear and tear" means deterioration that occurs based upon the use for which the rental unit is intended, without negligence, carelessness, accident, abuse or intentional damage of the premises, equipment or chattels of the owner by the residents or by any other person in the dwelling unit or on the premises with the resident's consent; however, uncleanliness does not constitute normal wear and tear;

L. “organization" includes a corporation, government, governmental subdivision or agency thereof, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest or any other legal or commercial entity;

M. “owner" means one or more persons, jointly or severally, in whom is vested:

(1) all or part of the legal title to property, but shall not include the limited partner in an association regulated pursuant to the Uniform Limited Partnership Act [repealed]; or

(2) all or part of the beneficial ownership and a right to present use and enjoyment of the premises and agents thereof and includes a mortgagee in possession and the lessors, but shall not include a person or persons, jointly or severally, who as owner leases the entire premises to a lessee of vacant land for apartment use;

N. “person" includes an individual, corporation, entity or organization;

O. “premises" means facilities, facilities and appurtenances, areas and other facilities held out for use of the resident or whose use is promised to the resident coincidental with occupancy of a dwelling unit;

P. “rent" means payments in currency or in-kind pursuant to terms and conditions of the rental agreement for use of a dwelling unit or premises, to be made to the owner by the resident, but does not include deposits;

Q. “rental agreement" means all agreements between an owner and resident and valid rules and regulations adopted under Section 47-8-23 NMSA 1978 embodying the terms and conditions concerning the use and occupancy of a dwelling unit or premises;

R. “resident" means a person entitled pursuant to a rental agreement to occupy a dwelling unit in peaceful possession to the exclusion of others and includes the owner of a mobile home renting premises, other than a lot or parcel in a mobile home park, for use as a site for the location of the mobile home;

S. “roomer" means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility in a structure where one or more major facilities are used in common by occupants of the dwelling units. As referred to in this subsection, "major facility", in the case of a bathroom, means toilet and either a bath or shower and, in the case of a kitchen, means refrigerator, stove or sink;

T. “screening fee" means a one-time charge that is charged to an applicant by an owner to recoup the owner's cost of purchasing a consumer credit report or reference check or the assistance of a screening service to validate, review or otherwise process an application for renting a dwelling unit;

U. “single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment nor any other essential facility or service with any other dwelling unit;

V. “substantial violation" means a violation of the rental agreement or rules and regulations by the resident or occurring with the resident's consent that occurs in the dwelling unit, on the premises or within three hundred feet of the premises and that includes the following conduct, which shall be the sole grounds for a substantial violation:

(1) possession, use, sale, distribution or manufacture of a controlled substance, excluding misdemeanor possession and use;

(2) unlawful use of a deadly weapon;

(3) unlawful action causing serious physical harm to another person;

(4) sexual assault or sexual molestation of another person;

(5) entry into the dwelling unit or vehicle of another person without that person's permission and with intent to commit theft or assault;

(6) theft or attempted theft of the property of another person by use or threatened use of force; or

(7) intentional or reckless damage to property in excess of one thousand dollars ($1,000);

W. “term" is the period of occupancy specified in the rental agreement; and

X. “transient occupancy" means occupancy of a dwelling unit for which rent is paid on less than a weekly basis or where the resident has not manifested an intent to make the dwelling unit a residence or household.

History: 1953 Comp., § 70-7-3, enacted by Laws 1975, ch. 38, § 3; 1977, ch. 55, § 1; 1983, ch. 122, § 18; 1985, ch. 146, § 1; 1989, ch. 340, § 1; 1995, ch. 195, § 2; 1997, ch. 39, § 1; 1999, ch. 91, § 1; 2025, ch. 122, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 2007, ch. 129, § 1206 repealed the Uniform Limited Partnership Act, effective January 1, 2009. For comparable provisions, *see* the Uniform Revised Limited Partnership Act, Chapter 54, Article 2A NMSA 1978.

Cross references. — For the Mobile Home Park Act, *see* 47-10-1 NMSA 1978.

The 2025 amendment, effective June 20, 2025, defined the terms "applicant" and "screening fee" as used in the Uniform Owner-Resident Relations Act; added new Subsection D and redesignated former Subsections D through R as Subsections E through S, respectively; and added new Subsection T and redesignated former Subsections S through V as Subsections U through X, respectively.

The 1999 amendment, effective June 18, 1999, added present Subsection C, and redesignated the subsequent subsections accordingly; deleted "written" following "means all" in Subsection P; and rewrote Subsection T.

The 1997 amendment, effective June 20, 1997, substituted "in excess of seven continuous days" for "for one full rental period or in excess of seven days, whichever is less" in Subsection A, deleted "other than a mobile home lot" following "land" in Subsection E, and made stylistic changes in Subsection S.

The 1995 amendment, effective July 1, 1995, deleted "as referred to in the Uniform Owner-Resident Relations Act" preceding "includes" in Subsection C; inserted "including a hotel or motel" following "part of a structure" in Subsection E; in Subsection I, substituted "that" for "which" and substituted "residents or any other person in the dwelling unit or on the premises with the resident's consent" for "tenant, members of the tenant's household or by his invitees or guests"; substituted "the Uniform Limited Partnership Act" for "Sections 54-2-1 through 54-2-30 NMSA 1978" in Paragraph (1) of Subsection K; inserted "corporation, entity" in Subsection L; added Subsection S, redesignated former Subsection S as Subsection T; added Subsection U; and made minor stylistic changes throughout the section.

The 1989 amendment, effective June 16, 1989, in Subsection O, substituted "all written agreements" for "all agreements written or oral".

The 1985 amendment added Subsection I and redesignated former Subsections I through R as Subsections J through S, respectively.

The 1983 amendment inserted "other than a mobile home lot" in Subsection E, deleted "or of vacant land for a mobile home park or court" at the end of Paragraph (2) of Subsection J and inserted "other than a lot or parcel in a mobile home park" in Subsection O.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Recovery of expected profits lost by lessor's breach of lease, 92 A.L.R.3d 1286.

What constitutes abandonment of residential or commercial lease - modern cases, 84 A.L.R.4th 183.

47-8-4. Principles of law and equity.

Unless displaced by the provisions of the Uniform Owner-Resident Relations Act, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, equitable abatement, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy or other validating or invalidating cause supplement its provisions.

History: 1953 Comp., § 70-7-4, enacted by Laws 1975, ch. 38, § 4; 1995, ch. 195, § 3.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, inserted "equitable abatement" near the middle of the section.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Housing Laws and Urban Redevelopment § 17.

Farmland cultivation arrangement as creating status of landlord-tenant or landowner-cropper, 95 A.L.R.3d 1013.

47-8-5. General act.

The Uniform Owner-Resident Relations Act being a general act is intended as a unified coverage of its subject matter, and no part of it is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

History: 1953 Comp., § 70-7-5, enacted by Laws 1975, ch. 38, § 5.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Housing Laws and Urban Redevelopment § 2.

47-8-6. Recovery of damages.

A. The remedies provided by the Uniform Owner-Resident Relations Act shall be so administered that the aggrieved party may recover damages as provided in the Uniform Owner-Resident Relations Act. The aggrieved party has a duty to mitigate damages.

B. Any right or obligation declared by the Uniform Owner-Resident Relations Act is enforceable by action unless the provision declaring it specifies a different and limited effect.

History: 1953 Comp., § 70-7-6, enacted by Laws 1975, ch. 38, § 6.

ANNOTATIONS

Cross references. — For inapplicability of general forcible entry or detainer provisions to actions by landlord, *see* 35-10-2 NMSA 1978.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Housing Laws and Urban Development § 17.

Right and duty of lessor of advertising space to relet in order to minimize damages from lessee's breach, 35 A.L.R. 1536.

Recovery of expected profits lost by lessor's breach of lease, 92 A.L.R.3d 1286.

Tenant's recovery of damages for emotional distress under Uniform Residential Landlord and Tenant Act, 6 A.L.R.4th 528.

What constitutes willfulness or malice justifying landlord's collection of statutory multiple damages for tenant's wrongful retention of possession, 7 A.L.R.4th 589.

Respective rights in excess rent when landlord relets at higher rent during lessee's term, 50 A.L.R.4th 403.

Landlord's duty, on tenant's failure to occupy, or abandonment of, premises, to mitigate damages by accepting or procuring another tenant, 75 A.L.R.5th 1.

51C C.J.S. Landlord and Tenant §§ 247(2), 250(2).

47-8-7. Provision for agreement.

A claim or right arising under the Uniform Owner-Resident Relations Act or on a rental agreement may be settled by agreement.

History: 1953 Comp., § 70-7-7, enacted by Laws 1975, ch. 38, § 7.

ANNOTATIONS

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 49 Am. Jur. 2d Landlord and Tenant §§ 77, 690.

47-8-8. Rights, obligations and remedies.

The Uniform Owner-Resident Relations Act applies to, regulates and determines rights, obligations and remedies under a rental agreement, wherever made, for a dwelling unit located within this state.

History: 1953 Comp., § 70-7-8, enacted by Laws 1975, ch. 38, § 8.

ANNOTATIONS

Cross references. — For inapplicability of forcible entry or detainer provisions, *see* 35-10-2 NMSA 1978.

For landlord's lien on tenant's personalty, *see* 48-3-5 and 48-3-6 NMSA 1978.

Magistrate court had subject matter jurisdiction when it decided claim for possession. — Where the parties entered into a lease option contract pursuant to which plaintiff agreed to lease and defendant agreed to rent a residential property in Vanderwagen, New Mexico for sixty months, and where the lease option contract included an option to purchase the residence at any time during the contract's terms, and where defendant paid plaintiff $10,000 that defendant claimed to be a down payment toward the purchase price of the property but which was not mentioned in the lease option contract, and where defendant stopped making monthly payments on the property after two years, and where plaintiff filed a petition for restitution seeking possession of the property in magistrate court, and where the magistrate court granted the writ of restitution and awarded damages, past-due rent, and attorney fees, and where, on appeal, defendant claimed that the magistrate court did not have subject matter jurisdiction because defendant was not occupying the property pursuant to a rental agreement but pursuant to a contract for the sale of the real property, the magistrate court did not err in exercising jurisdiction because the plain language of the parties' lease option contract demonstrates that the parties entered into a rental agreement as defined in NMSA 1978 § 47-8-3 and subject to the Uniform Owner-Resident Relations Act (UORRA), and the plain language of NMSA 1978 § 47-8-10(A) demonstrates that the legislature has endowed magistrate courts with subject matter jurisdiction over claims arising from any conduct in this state governed by the UORRA or with respect to any claim arising from a transaction subject to UORRA for a dwelling located within its jurisdictional boundaries. *White v. Farris*, 2021-NMCA-014.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Housing Laws and Urban Development § 17.

What constitutes willfulness or malice justifying landlord's collection of statutory multiple damages for tenant's wrongful retention of possession, 7 A.L.R.4th 589.

Specificity of description of premises as affecting enforceability of lease, 73 A.L.R.4th 236.

47-8-9. Exemptions.

Unless created to avoid the application of the Uniform Owner-Resident Relations Act, the following arrangements are exempted by that act:

A. residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, counseling, religious, educational when room and board are an entity or similar service;

B. occupancy under a contract of sale of a dwelling unit or the property of which it is part, if the occupant is the purchaser or a person who succeeds to his interest;

C. occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

D. transient occupancy in a hotel or motel;

E. occupancy by an employee of an owner pursuant to a written rental or employment agreement that specifies the employee's right to occupancy is conditional upon employment in and about the premises; and

F. occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.

History: 1953 Comp., § 70-7-9, enacted by Laws 1975, ch. 38, § 9; 1995, ch. 195, § 4.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, substituted "that" for "which" in the introductory sentence, and substituted "pursuant to a written rental or employment agreement that specifies the employee's" for "whose" in Subsection E.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

47-8-10. Judicial jurisdiction.

A. The district or magistrate court of this state may exercise jurisdiction over any person with respect to any conduct in this state governed by the Uniform Owner-Resident Relations Act or with respect to any claim arising from a transaction subject to this act for a dwelling unit located within its jurisdictional boundaries. In addition to any other method provided by rule or by statute, personal jurisdiction over a person may be acquired in a civil action or proceeding instituted in the district or magistrate court by the service of process in the manner provided by this section.

B. If a person is not a resident of this state or is a corporation not authorized to do business in this state and engages in any conduct in this state governed by the Uniform Owner-Resident Relations Act, or engages in a transaction subject to this act, he may designate an agent upon whom service of process may be made in this state. The agent shall be a resident of this state or a corporation authorized to do business in this state. The designation shall be in writing and shall be filed with the secretary of state. If no designation is made and filed or if process cannot be served in this state upon the designated agent, process may be served upon the secretary of state, but service upon him is not effective unless the plaintiff or petitioner immediately mails a copy of the process and pleading by registered or certified mail to the defendant or respondent at his last reasonably ascertainable address. An affidavit of compliance with this section shall be filed with the clerk of the court on or before the return day of the process, if any, or within any further time the court allows.

History: 1953 Comp., § 70-7-10, enacted by Laws 1975, ch. 38, § 10.

ANNOTATIONS

Magistrate court had subject matter jurisdiction when it decided claim for possession. — Where the parties entered into a lease option contract pursuant to which plaintiff agreed to lease and defendant agreed to rent a residential property in Vanderwagen, New Mexico for sixty months, and where the lease option contract included an option to purchase the residence at any time during the contract's terms, and where defendant paid plaintiff $10,000 that defendant claimed to be a down payment toward the purchase price of the property but which was not mentioned in the lease option contract, and where defendant stopped making monthly payments on the property after two years, and where plaintiff filed a petition for restitution seeking possession of the property in magistrate court, and where the magistrate court granted the writ of restitution and awarded damages, past-due rent, and attorney fees, and where, on appeal, defendant claimed that the magistrate court did not have subject matter jurisdiction because defendant was not occupying the property pursuant to a rental agreement but pursuant to a contract for the sale of the real property, the magistrate court did not err in exercising jurisdiction because the plain language of the parties' lease option contract demonstrates that the parties entered into a rental agreement as defined in NMSA 1978 § 47-8-3 and subject to the Uniform Owner-Resident Relations Act (UORRA), and the plain language of NMSA 1978 § 47-8-10(A) demonstrates that the legislature has endowed magistrate courts with subject matter jurisdiction over claims arising from any conduct in this state governed by the UORRA or with respect to any claim arising from a transaction subject to UORRA for a dwelling located within its jurisdictional boundaries. *White v. Farris*, 2021-NMCA-014.

District court had subject matter jurisdiction over Plaintiff's claim for damages pursuant to its original jurisdiction. — Where the parties entered into a lease option contract pursuant to which plaintiff agreed to lease and defendant agreed to rent a residential property in Vanderwagen, New Mexico for sixty months, and where the lease option contract included an option to purchase the residence at any time during the contract's terms, and where defendant paid plaintiff $10,000, which was not mentioned in the lease option contract but which defendant claimed to be a down payment toward the purchase price of the property, and where defendant stopped making monthly payments on the property after two years, and where plaintiff filed a petition for restitution seeking possession of the property in magistrate court, and where the magistrate court granted the writ of restitution and awarded damages, past-due rent, and attorney fees, and where, on de novo appeal, the district court ruled in plaintiff's favor on all issues and awarded plaintiff back-rent, damages over $10,000, and attorney fees, and where defendant argued that the district court did not have subject matter jurisdiction, arguing that the grant of authority to magistrate courts would have prevented the district court, on de novo appeal, from awarding more than $10,000 in damages, the district court did not err in exercising jurisdiction because the district court decided plaintiff's claim for damages pursuant to its original jurisdiction and therefore any limits on the district court's de novo appellate jurisdiction did not apply here. *White v. Farris*, 2021-NMCA-014.

47-8-11. Obligation of good faith.

Every duty under the Uniform Owner-Resident Relations Act and every act which must be performed as a condition precedent to the exercise of a right or remedy under the Uniform Owner-Resident Relations Act imposes an obligation of good faith in its performance or enforcement.

History: 1953 Comp., § 70-7-11, enacted by Laws 1975, ch. 38, § 11.

ANNOTATIONS

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 49 Am. Jur. 2d Landlord and Tenant § 109 et seq.

When lessor may withhold consent under unqualified provision in lease prohibiting assignment or subletting of leased premises without lessor's consent, 21 A.L.R.4th 188.

51C C.J.S. Landlord and Tenant § 2(1).

47-8-12. Inequitable agreement provision.

A. If the court, as a matter of law, finds that any provision of a rental agreement was inequitable when made, the court may limit the application of such inequitable provisions to avoid an inequitable result.

B. If inequitability is put into issue by a party to the rental agreement, the parties to the rental agreement shall be afforded a reasonable opportunity to present evidence as to the setting, purpose and effect of the rental agreement, or settlement, to aid the court in making determination.

History: 1953 Comp., § 70-7-12, enacted by Laws 1975, ch. 38, § 12.

ANNOTATIONS

Purpose of section. — This section modifies common-law principles by allowing the court to make a determination of the underlying fairness of the rental agreement when made and allowing selective enforcement of the contract to bring about an equitable result. *Ramirez-Eames v. Hover*, 1989-NMSC-038, 108 N.M. 520, 775 P.2d 722.

Review on appeal. — The determination of whether a rental agreement is inequitable should not be made de novo on review. Appellate courts should not be de novo courts of equity in landlord-tenant disputes. *Ramirez-Eames v. Hover*, 1989-NMSC-038, 108 N.M. 520, 775 P.2d 722.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Application of usury laws to transactions characterized as "leases," 94 A.L.R.3d 640.

47-8-13. Service of notice.

A. A person has notice of a fact if:

(1) he has actual knowledge of it;

(2) he has received a notice or notification of it; or

(3) from all facts and circumstances known to him at the time in question he has reason to know that it exists.

B. A person notifies or gives a notice or notification to another by taking steps reasonably calculated to inform the other in ordinary course, whether or not the other actually comes to know of it.

C. A person receives a notice or notification:

(1) when it comes to his attention;

(2) where written notice to the owner is required, when it is mailed or otherwise delivered at the place of business of the owner through which the rental agreement was made or at any place held out by him as the place for receipt of the communication; or

(3) if written notice to the resident is required, when it is delivered in hand to the resident or mailed to him at the place held out by him as the place for receipt of the communication, or in the absence of such designation, to his last known place of residence.

D. Notwithstanding any other provisions of this section, notice to a resident for nonpayment of rent shall be effective only when hand delivered or mailed to the resident or posted on an exterior door of the dwelling unit. In all other cases where written notice to the resident is required, even if there is a notice by posting, there must also be a mailing of the notice by first class mail or hand delivery of the notice to the resident. The date of a posting shall be included in any notice posted, mailed or hand delivered, and shall constitute the effective date of the notice. A posted notice shall be affixed to a door by taping all sides or placed in a fixture or receptacle designed for notices or mail.

E. Notice, knowledge or a notice or notification received by the resident or person is effective for a particular transaction from the time it is brought to the attention of the resident or person conducting that transaction, and in any event from the time it would have been brought to the resident's or person's attention if the resident or person had exercised reasonable diligence.

F. Where service of notice is required under the Uniform Owner-Resident Relations Act, and the item is mailed but returned as undeliverable, or where the last known address is the vacated dwelling unit, the owner shall serve at least one additional notice if an alternative address has been provided to the owner by the resident.

History: 1953 Comp., § 70-7-13, enacted by Laws 1975, ch. 38, § 13; 1995, ch. 195, § 5.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, divided Subsection B to form Subsection C; in Subsection C, substituted "where written notice to the owner is required, when" for "in the case of the owner", and inserted "mailed or otherwise" preceding "delivered" in Paragraph (2), substituted "if written notice to the resident is required, when" for "in the case of the resident" in Paragraph (3); added Subsections D and F; and redesignated former Subsection C as Subsection E.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Right of tenant holding over after termination of definite term to notice to quit, 19 A.L.R. 1405, 156 A.L.R. 1310.

Notice by landlord of change in rent or other modification of tenancy as affecting rights and liabilities incident to tenant's holding over after expiration of term or rent period or time fixed by notice, 109 A.L.R. 197.

Sufficiency as to parties giving or receiving notice of exercise of option to renew or extend lease, 34 A.L.R.4th 857.

47-8-14. Terms and conditions of agreement.

The owner and resident may include in a rental agreement terms and conditions not prohibited by the Uniform Owner-Resident Relations Act or other rule of law including rent, term of the agreement or other provisions governing the rights and obligations of the parties.

History: 1953 Comp., § 70-7-14, enacted by Laws 1975, ch. 38, § 14.

ANNOTATIONS

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 49 Am. Jur. 2d Landlord and Tenant § 45 et seq.

Application of usury laws to transactions characterized as "leases," 94 A.L.R.3d 640.

Sufficiency of provision of lease to effect second or perpetual right of renewal, 29 A.L.R.4th 172.

51C C.J.S. Landlord and Tenant §§ 235 to 243.

47-8-15. Payment of rent.

A. The resident shall pay rent in accordance with the rental agreement. In the absence of an agreement, the resident shall pay as rent the fair rental value for the use of the premises and occupancy of the dwelling unit.

B. Rent is payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit. Unless otherwise agreed, periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly installments at the beginning of each monthly period. The date of one month to the same date of the following month shall constitute a term of one month.

C. Unless the rental agreement fixes a definite term, the residency is week-to-week in the case of a person who pays weekly rent and in all other cases month-to-month.

D. If the rental agreement provides for the charging of a late fee and if the resident does not pay rent in accordance with the rental agreement, the owner may charge the resident a late fee in an amount not to exceed five percent of the rent for each rental period that the resident is in default. Late fees shall be calculated only based on rent. Rent calculations to determine late fees shall not include deposits, additional fees or utilities. To assess a late fee, the owner shall provide notice of the late fee charged no later than the last day of the next rental period immediately following the period in which the default occurred.

E. An owner may not assess a fee from the resident for occupancy of the dwelling unit by a reasonable number of guests for a reasonable length of time. This shall not preclude charges for use of premises or facilities other than the dwelling unit by guests.

F. An owner may increase the rent payable by the resident in a month-to-month residency by providing written notice to the resident of the proposed increase at least thirty days prior to the periodic rental date specified in the rental agreement or, in the case of a fixed term residency, at least thirty days prior to the end of the term. In the case of a periodic residency of less than one month, written notice shall be provided at least one rental period in advance of the first rental payment to be increased.

G. Unless agreed upon in writing by the owner and the resident, a resident's payment of rent may not be allocated to any deposits or damages.

History: 1953 Comp., § 70-7-15, enacted by Laws 1975, ch. 38, § 15; 1995, ch. 195, § 6; 2025, ch. 122, § 6.

ANNOTATIONS

The 2025 amendment, effective June 20, 2025, reduced the maximum amount that an owner may charge a resident for a late fee, and provided that late fees can be calculated only based on rent; in Subsection D, after "not to exceed" changed "ten" to "five", and after "default" added "Late fees shall be calculated only based on rent. Rent calculations to determine late fees shall not include deposits, additional fees or utilities".

The 1995 amendment, effective July 1, 1995, inserted "the" preceding "case" in Subsection C, and added Subsections D to G.

Notice of late fees required. — Landlords failed to give notice of late fees in any month in which they claimed they intended to collect late fees; as such, the trial court did not err in ruling that the landlords were not entitled to collect late fees because they did not comply with the New Mexico Uniform Owner-Resident Relations Act. *Hedicke v. Gunville*, 2003-NMCA-032, 133 N.M. 335, 62 P.3d 1217, cert. denied, 133 N.M. 413, 63 P.3d 516.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 49 Am. Jur. 2d Landlord and Tenant § 711 et seq.

Inability to obtain license, permit, or charter required for tenant's business as defense to enforcement of lease, 89 A.L.R.3d 329.

52 C.J.S Landlord and Tenant §§ 534 to 546.

47-8-16. Waiver of rights prohibited.

No rental agreement may provide that the resident or owner agrees to waive or to forego rights or remedies under the law.

History: 1953 Comp., § 70-7-16, enacted by Laws 1975, ch. 38, § 16.

ANNOTATIONS

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

47-8-17. Unlawful agreement provision.

If an owner deliberately uses a rental agreement containing provisions known by him to be prohibited by law, the resident may recover damages sustained by him resulting from application of the illegal provision and reasonable attorney's fees.

History: 1953 Comp., § 70-7-17, enacted by Laws 1975, ch. 38, § 17.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Application of usury laws to transactions characterized as "leases," 94 A.L.R.3d 640.

51C C.J.S. Landlord and Tenant § 304.

47-8-18. Deposits.

A. An owner is permitted to demand from the resident a reasonable deposit to be applied by the owner to recover damages, if any, caused to the premises by the resident during his term of residency.

(1) Under the terms of an annual rental agreement, if the owner demands or receives of the resident such a deposit in an amount greater than one month's rent, the owner shall be required to pay to the resident annually an interest equal to the passbook interest permitted to savings and loan associations in this state by the federal home loan bank board on such deposit.

(2) Under the terms of a rental agreement of a duration less than one year, an owner shall not demand or receive from the resident such a deposit in an amount in excess of one month's rent.

B. It is not the intention of this section to include the last month's prepaid rent, which may be required by the rental agreement as a deposit as defined in Subsection D [E] of Section 47-8-3 NMSA 1978. Any deposit as defined in Paragraph (1) of Subsection A of this section shall not be construed as prepaid rent.

C. Upon termination of the residency, property or money held by the owner as deposits may be applied by the owner to the payment of rent and the amount of damages which the owner has suffered by reason of the resident's noncompliance with the rental agreement or Section 47-8-22 NMSA 1978. No deposit shall be retained to cover normal wear and tear. In the event actual cause exists for retaining any portion of the deposit, the owner shall provide the resident with an itemized written list of the deductions from the deposit and the balance of the deposit, if any, within thirty days of the date of termination of the rental agreement or resident departure, whichever is later. The owner is deemed to have complied with this section by mailing the statement and any payment required to the last known address of the resident. Nothing in this section shall preclude the owner from retaining portions of the deposit for nonpayment of rent or utilities, repair work or other legitimate damages.

D. If the owner fails to provide the resident with a written statement of deductions from the deposit and the balance shown by the statement to be due, within thirty days of the termination of the tenancy, the owner:

(1) shall forfeit the right to withhold any portion of the deposit;

(2) shall forfeit the right to assert any counterclaim in any action brought to recover that deposit;

(3) shall be liable to the resident for court costs and reasonable attorneys' fees; and

(4) shall forfeit the right to assert an independent action against the resident for damages to the rental property.

E. An owner who in bad faith retains a deposit in violation of this section is liable for a civil penalty in the amount of two hundred fifty dollars ($250) payable to the resident.

History: 1953 Comp., § 70-7-18, enacted by Laws 1975, ch. 38, § 18; 1985, ch. 146, § 2; 1989, ch. 340, § 2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Subsection D of 47-8-3 NMSA 1978 was redesignated Subsection E by Laws 1999, ch. 99, § 1.

The 1989 amendment, effective June 16, 1989, in Subsection D, added Paragraph (4); and added Subsection E.

The 1985 amendment substituted "Section 47-8-3 NMSA 1978" for "Section 3 of the Uniform Owner-Resident Regulations Act" at the end of the first sentence and inserted "of Subsection A" following "Paragraph (1)" in the second sentence of Subsection B, substituted "Section 47-8-22 NMSA 1978" for "Section 22 of the Uniform Owner-Resident Relations Act" at the end of the first sentence, deleted the former second sentence, relating to delivering the balance of the deposit and prepaid rent to the resident, and added the second, third, and fourth sentences of Subsection C and deleted the former provisions of Subsection D which read as set out in the 1982 Replacement Pamphlet.

Duty to provide list of damages. — When the landlord failed to provide her tenant with an itemized list of damage deductions as required by Subsection C, she forfeited her right to withhold any portion of the deposit or to file suit for damages as provided by Subsection D, and the tenant was entitled to an award of attorney's fees. *Garcia v. Thong*, 1995-NMSC-030, 119 N.M. 704, 895 P.2d 226.

Landlord was not prohibited from filing an action for previously unidentified damages to rental property. — Where tenants signed a lease agreement with landlord to rent the subject property for a term of sixteen months, and where the parties subsequently agreed to end the lease several months early, and where landlord sent tenants an accounting that itemized deductions from tenants' damage deposit, and where tenants filed a complaint contesting the amount landlord deducted from their damage deposit and landlord filed a cross-claim stating that she was entitled to additional damages beyond those itemized in the deductions, and where tenants claimed that, 47-8-18(C) and 47-8-18(D) NMSA 1978 require a landlord to provide a tenant with an itemized listing of all damages to property within thirty days of the date the lease ends, and any claim for damages not then identified is forfeited, the district court did not err in rejecting tenants' argument, because the plain language of 47-8-18(C) and 47-8-18(D) NMSA 1978 establishes that only if a landlord fails to identify and itemize all deductions from a tenant's damage deposit and send the remaining balance, if any, to the tenant within thirty days, do they forfeit the right to assert any counterclaim in any action brought to recover the deposit. The landlord in this case fully complied with 47-8-18(C) and 47-8-18(D) NMSA 1978, and therefore was not prohibited from filing the cross-claim for damages to her property. *Stodgell v. Weissman*, 2025-NMCA-003, cert. denied.

Itemization not required when deposit used to cover deficient rent. — A landlord was entitled to apply the security deposit to the tenant's deficient rent payment without sending a written itemization. *Bruce v. Attaway*, 1996-NMSC-030, 121 N.M. 755, 918 P.2d 341.

Unreasonable deposit. — The tenants' $50,000 was not a security deposit, and therefore there could be no interest due on it and no conversion as a matter of law; a deposit under the statute was required to be reasonable and most deposits were limited to one month's rent, or, if not, be somewhat greater, but not by a multiple of 32. *Hedicke v. Gunville*, 2003-NMCA-032, 133 N.M. 335, 62 P.3d 1217, cert. denied, 133 N.M. 413, 63 P.3d 516.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 49 Am. Jur. 2d Landlord and Tenant § 119 et seq.

Landlord and tenant: violation of statute or ordinance requiring landlord to furnish specified facilities or services as ground of liability for injury resulting from tenant's attempt to deal with deficiency, 63 A.L.R.4th 883.

Landlord-tenant security deposit legislation, 63 A.L.R.4th 901.

52 C.J.S. Landlord and Tenant §§ 472(1) to 476.

47-8-19. Owner disclosure.

A. The owner or any person authorized to enter into a rental agreement on his behalf shall disclose to the resident in writing at or before the commencement of the residency the name, address and telephone number of:

(1) the person authorized to manage the premises; and

(2) an owner of the premises or a person authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands.

B. The information required to be furnished by this section shall be kept current, and this section extends to and is enforceable against any successor, owner or manager.

C. A person designated under Paragraph (2) of Subsection A of this section becomes an agent of each person who is an owner for the purpose of service of process and receiving and receipting for notices and demands. A person designated under Paragraph (1) of Subsection A of this section becomes an agent of each person who is an owner for the purpose of performing the obligations of the owner under the Uniform Owner-Resident Relations Act and under the rental agreement.

D. Failure of the owner to comply with this section shall relieve the resident from the obligation to provide notice to the owner as required by the Uniform Owner-Resident Relations Act.

History: 1953 Comp., § 70-7-19, enacted by Laws 1975, ch. 38, § 19; 1995, ch. 195, § 7.

ANNOTATIONS

Cross references. — For the Real Estate Disclosure Act, *see* 47-13-1 NMSA 1978.

The 1995 amendment, effective July 1, 1995, substituted "name, address and telephone number" for "name and address" in Subsection A, and added Subsection D.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51C C.J.S. Landlord and Tenant § 307.

47-8-19.1. Owner disclosure to applicants.

An owner shall disclose to applicants in plain language all costs of a rental agreement in a published listing of the dwelling unit, including the base rent that will be assessed and a description of all fees or charges that will be assessed during the residency, which shall be itemized and readily identifiable in the listing. An owner shall not be liable for violating the provisions of the Uniform Owner-Resident Relations Act for a third-party website's failure to represent all costs provided by the owner.

History: Laws 2025, ch. 122, § 2.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 122 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

47-8-19.2. Dwelling unit applicant screening fee; prohibited fees.

A. An owner may charge an applicant a screening fee that shall not exceed fifty dollars ($50.00) to cover the cost of obtaining information about the applicant, including the cost of a consumer credit report, a reference check or a screening service; provided that the owner:

(1) provides the applicant with written or digital notice of the screening fee and the applicant agrees in writing to pay the screening fee;

(2) shall not charge the applicant a screening fee when the owner knows or should know that a dwelling unit is not available for rent at that time or will not be available at the beginning of the residency;

(3) provides the applicant with a written or digital receipt for the screening fee paid by the applicant;

(4) shall place a hold on a credit card or wait to deposit cash or checks for an applicant's screening fee until all prior applicants have either been screened and rejected or offered the dwelling unit and declined to enter into a rental agreement; and

(5) shall not charge any other fees to process an application.

B. An owner shall return the screening fee within thirty calendar days to an applicant if:

(1) a prior applicant is offered the dwelling unit and agrees to enter into a rental agreement; or

(2) the owner does not:

(a) obtain a consumer credit report;

(b) perform a reference check;

(c) use a screening service to obtain information about the applicant; or

(d) process the application.

C. A screening fee that is returned as provided in Subsection B of this section shall be:

(1) returned by certified mail;

(2) destroyed upon the applicant's request if paid by check; or

(3) made available for the applicant to retrieve.

History: Laws 2025, ch. 122, § 3.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 122 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

47-8-19.3. Background checks.

A. An owner may require a background check of an applicant before entering a rental agreement. An owner shall not charge more than one screening fee to the same applicant if the screening was completed within ninety calendar days of the application date for any properties under the same ownership.

B. An owner shall provide the applicant with a copy of any reports used to screen the applicant.

History: Laws 2025, ch. 122, § 4.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 122 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

47-8-19.4. Notice of fee changes required.

An owner may increase a fee that is provided pursuant to the terms of a rental agreement by providing written notice at least sixty days prior to the periodic rental date specified in the rental agreement or at least sixty days prior to the end of the term of a fixed term residency. In the case of a periodic residency of less than one month, written notice shall be provided at least one rental period in advance of the first fee payment to be increased.

History: Laws 2025, ch. 122, § 5.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 122 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

47-8-20. Obligations of owner.

A. The owner shall:

(1) substantially comply with requirements of the applicable minimum housing codes materially affecting health and safety;

(2) make repairs and do whatever is necessary to put and keep the premises in a safe condition as provided by applicable law and rules and regulations as provided in Section 47-8-23 NMSA 1978;

(3) keep common areas of the premises in a safe condition;

(4) maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators, if any, supplied or required to be supplied by him;

(5) provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish and other waste incidental to the occupancy of the dwelling unit and arrange for their removal from the appropriate receptacle; and

(6) supply running water and a reasonable amount of hot water at all times and reasonable heat, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the resident and supplied by a direct public utility connection.

B. If there exists a minimum housing code applicable to the premises, the owner's maximum duty under this section shall be determined by Paragraph (1) of Subsection A of this section. The obligations imposed by this section are not intended to change existing tort law in the state.

C. The owner and resident of a single family residence may agree that the resident perform the owner's duties specified in Paragraphs (5) and (6) of Subsection A of this section and also specified repairs, maintenance tasks, alterations and remodeling, but only if the transaction is in writing, for consideration, entered into in good faith and not for the purpose of evading the obligations of the owner.

D. The owner and resident of a dwelling unit other than a single family residence may agree that the resident is to perform specified repairs, maintenance tasks, alterations or remodeling only if:

(1) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the owner and is set forth in a separate writing signed by the parties and supported by consideration; and

(2) the agreement does not diminish or affect the obligation of the owner to other residents in the premises.

E. Notwithstanding any provision of this section, an owner may arrange with a resident to perform the obligations of the owner. Any such arrangement between the owner and the resident will not serve to diminish the owner's obligations as set forth in this section, nor shall the failure of the resident to perform the obligations of the owner serve as a basis for eviction or in any way be considered a material breach by the resident of his obligations under the Uniform Owner-Resident Relations Act or the rental agreement.

F. In multi-unit housing, if there is separate utility metering for each unit, the resident shall receive a copy of the utility bill for his unit upon request made to the owner or his agent. If the unit is submetered, the resident shall then be entitled to receive a copy of the apartment's utility bill. When utility bills for common areas are separately apportioned between units and the costs are passed on to the residents of each unit, each resident may, upon request, receive a copy of all utility bills being apportioned. The calculations used as the basis for apportioning the cost of utilities for common areas and submetered apartments shall be made available to any resident upon request. The portion of the common area cost that would be allocated to an empty unit if it were occupied shall not be allocated to the remaining residents. It is solely the owner's responsibility to supply the items and information in this subsection to the resident upon request. The owner may charge an administrative fee not to exceed five dollars ($5.00) for each monthly request of the items in this subsection.

G. The owner shall provide a written rental agreement to each resident prior to the beginning of occupancy.

History: 1953 Comp., § 70-7-20, enacted by Laws 1975, ch. 38, § 20; 1987, ch. 297, § 1; 1989, ch. 340, § 3; 1999, ch. 91, § 2.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, in Subsection F substituted "resident" for "tenant" in the next-to-last sentence and "five dollars ($5.00)" for "two dollars ($2.00)" in the last sentence; and substituted "resident" for "tenant" in Subsection G.

The 1989 amendment, effective June 16, 1989, added Subsection G.

The 1987 amendment, effective June 19, 1987, substituted "Section 47-8-23 NMSA 1978" for "Section 23 of the Uniform Owner-Resident Relations Act" in Subsection A(2) and added Subsection F.

Loss of use damages are available for reparable property, but not for completely destroyed property. *Behrens v. Gateway Court, L.L.C.*, 2013-NMCA-097, cert. granted, 2013-NMCERT-009.

Loss of use damages are not available for completely destroyed property. — Where plaintiff rented a mobile home unit from defendant; a fire destroyed the mobile home and its contents; and the fire was caused by an electrical short in the wiring of an old air conditioner that had been left under the porch of the mobile home when defendant installed a new air conditioner in the mobile home, plaintiff was not entitled to loss of use damages for plaintiff's completely destroyed property. *Behrens v. Gateway Court, L.L.C.*, 2013-NMCA-097, cert. granted, 2013-NMCERT-009.

Owners required to supply heat, unless specific legal objection. — The legislature intended to require owners to provide reasonable heat, unless they could show some specific law exempting them from the requirement. *T.W.I.W., Inc. v. Rhudy*, 1981-NMSC-062, 96 N.M. 354, 630 P.2d 753.

Subsection (A)(6) places burden upon owner to show that a law exists which exempts him from providing reasonable heat for the resident. *T.W.I.W., Inc. v. Rhudy*, 1981-NMSC-062, 96 N.M. 354, 630 P.2d 753.

Loose dogs as unsafe condition. — Under the right circumstances, dogs roaming loose upon the common grounds of a government-operated residential complex could represent an unsafe condition. *Castillo v. County of Santa Fe*, 1988-NMSC-037, 107 N.M. 204, 755 P.2d 48.

Unsafe condition of common area. — Where a child went through a hole in the fence around his apartment complex playground and was struck by a car and killed, the landlord, who undertook to provide a playground for children in a potentially hazardous area, was under a legal obligation to maintain the playground in a reasonably safe condition, so that children playing on the playground would be unable to escape from the playground and potentially be injured beyond its confines. *Calkins v. Cox Estates*, 1990-NMSC-044, 110 N.M. 59, 792 P.2d 36.

No right to complain about neighbors. — Section 47-8-39A(3) NMSA 1978 does not bar an owner's otherwise proper action for possession of the premises after termination of a month-to-month residency, where the owner is retaliating against the resident for complaining about noisy neighbors. *Casa Blanca Mobile Home Park v. Hill*, 1998-NMCA-094, 125 N.M. 465, 963 P.2d 542.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

For annual survey of New Mexico law relating to property, see 13 N.M.L. Rev. 435 (1983).

For survey of 1990-91 tort law, see 22 N.M.L. Rev. 799 (1992).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Failure of landlord to make, or permit tenant to make, repairs or alterations required by public authority as constructive eviction, 86 A.L.R.3d 352.

Measure of damages for landlord's breach of implied warranty of habitability, 1 A.L.R.4th 1182.

Liability of owner or occupant of premises to fireman coming thereon in discharge of his duty, 11 A.L.R.4th 597.

Applicability of exculpatory clause in lease to lessee's damages resulting from defective original design or construction, 30 A.L.R.4th 971.

Strict liability of landlord for injury or death of tenant or third person caused by defect in premises leased for residential use, 48 A.L.R.4th 638.

Legal aspects of speed bumps, 60 A.L.R.4th 1249.

Liability of landlord for injury or death occasioned by swimming pool maintained for tenants, 62 A.L.R.5th 475.

47-8-21. Relief of owner liability.

A. Unless otherwise agreed, upon termination of the owner's interest in the dwelling unit, including but not limited to terminations of interest by sale, assignment, death, bankruptcy, appointment of receiver or otherwise, the owner is relieved of all liability under the rental agreement and of all obligations under the Uniform Owner-Resident Relations Act as to events occurring subsequent to written notice to the resident of the termination of the owner's interest. The successor in interest to the owner shall be liable for all obligations under the rental agreement or under the Uniform Owner-Resident Relations Act. Upon receipt by the resident of written notice of the termination of the owner's interest in the dwelling unit, the resident shall pay all future rental payments, when due, to the successor in interest to the owner.

B. Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and the Uniform Owner-Resident Relations Act as to events occurring after written notice to the resident of the termination of his management.

History: 1953 Comp., § 70-7-21, enacted by Laws 1975, ch. 38, § 21.

ANNOTATIONS

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

47-8-22. Obligations of resident.

The resident shall:

A. comply with obligations imposed upon residents by applicable minimum standards of housing codes materially affecting health or safety;

B. keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit, and, upon termination of the residency, place the dwelling unit in as clean condition, excepting ordinary wear and tear, as when residency commenced;

C. dispose from his dwelling unit all ashes, rubbish, garbage and other waste in a clean and safe manner;

D. keep all plumbing fixtures in the dwelling unit or used by the resident as clean as their condition permits;

E. use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilation, air conditioning and other facilities and appliances including elevators, if any, in the premises;

F. not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so;

G. conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises;

H. abide by all bylaws, covenants, rules or regulations of any applicable condominium regime, cooperative housing agreement or neighborhood association not inconsistent with owner's rights or duties; and

I. not knowingly commit or consent to any other person knowingly committing a substantial violation.

History: 1953 Comp., § 70-7-22, enacted by Laws 1975, ch. 38, § 22; 1995, ch. 195, § 8.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, added Subsection I and made minor stylistic changes throughout the section.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 49 Am. Jur. 2d Landlord and Tenant §§ 507, 538 et seq.

Liability of lessee to persons injured by defects in premises or property after surrender of possession by lessee, 11 A.L.R.4th 579.

Liability of owner or occupant of premises to fireman coming thereon in discharge of his duty, 11 A.L.R.4th 597.

Measure and elements of Damages for Lessee's breach of covenant as to repairs, 45 A.L.R.5th 251.

51C C.J.S. Landlord and Tenant §§ 235 to 243.

47-8-23. Application of rules or regulations.

An owner, from time to time, may adopt rules or regulations, however described, concerning the resident's use and occupancy of the premises. They are enforceable as provided in Section 47-8-33 NMSA 1978 against the resident only if:

A. their purpose is to promote the appearance, convenience, safety or welfare of the residents in the premises, preserve the owner's property from abusive use or make a fair distribution of services and facilities held out for the residents generally;

B. they are reasonably related to the purpose for which they are adopted;

C. they apply to all residents in the premises in a fair manner;

D. they are sufficiently explicit in their prohibition, direction or limitation of the resident's conduct to fairly inform him of what he must or must not do to comply;

E. they are not for the purpose of evading the obligations of the owner; and

F. the resident is presented with copies of existing rules and regulations at the time he enters into the rental agreement and is presented notice of amendments to the rules and regulations and rules and regulations adopted subsequent to the time he enters into the rental agreement. A rule or regulation adopted after the resident enters into the rental agreement is enforceable against the resident if reasonable notice of its adoption is given to the resident and it does not work a substantial modification of his bargain.

History: 1953 Comp., § 70-7-23, enacted by Laws 1975, ch. 38, § 23; 1995, ch. 195, § 9.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, made minor stylistic changes throughout the section.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 49 Am. Jur. 2d Landlord and Tenant §§ 507, 538 et seq.

51C C.J.S. Landlord and Tenant §§ 235 to 243.

47-8-24. Right of entry.

A. The resident shall, in accordance with provisions of the rental agreement and notice provisions as provided in this section, consent to the owner to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, prospective residents, workmen or contractors; provided that:

(1) unless otherwise agreed upon by the owner and resident, the owner may enter the resident's dwelling unit pursuant to this subsection only after giving the resident twenty-four hours written notification of his intent to enter, the purpose for entry and the date and reasonable estimate of the time frame of the entry;

(2) this subsection is not applicable to entry by the owner to perform repairs or services within seven days of a request by the resident or when the owner is accompanied by a public official conducting an inspection or a cable television, electric, gas or telephone company representative; and

(3) where the resident gives reasonable prior notice and alternate times or dates for entry and it is practicable or will not result in economic detriment to the owner, then the owner shall attempt to reasonably accommodate the alternate time of entry.

B. The owner may enter the dwelling unit without consent of the resident in case of an emergency.

C. The owner shall not abuse the right of access.

D. The owner has no other right of access except by court order, as permitted by this section if the resident has abandoned or surrendered the premises or if the resident has been absent from the premises more than seven days, as permitted in Section 47-8-34 NMSA 1978.

E. If the resident refuses to allow lawful access, the owner may obtain injunctive relief to compel access or terminate the rental agreement. In either case, the owner may recover damages.

F. If the owner makes an unlawful entry, or a lawful entry in an unreasonable manner, or makes repeated demands for entry that are otherwise lawful but that have the effect of unreasonably interfering with the resident's quiet enjoyment of the dwelling unit, the resident may obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case, the resident may recover damages.

History: 1953 Comp., § 70-7-24, enacted by Laws 1975, ch. 38, § 24; 1995, ch. 195, § 10.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, in Subsection A, inserted "and notice provisions as provided in this section" near the beginning, substituted "; provided that:" for a period at the end of the introductory paragraph, added Paragraphs (1) to (3); in Subsection D, added "or if the resident has been absent from the premises more than seven days, as permitted in Section 47-8-34 NMSA 1978" at the end and made minor stylistic changes; and added Subsections E and F.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51C C.J.S. Landlord and Tenant § 318.

47-8-25. Use of dwelling unit limited.

Unless otherwise agreed, the resident shall occupy his dwelling unit only as a dwelling unit and in compliance with terms and conditions of the rental agreement. The rental agreement may require that the resident notify the owner of any anticipated extended absence from the premises in excess of seven days no later than the first day of the extended absence.

History: 1953 Comp., § 70-7-25, enacted by Laws 1975, ch. 38, § 25.

ANNOTATIONS

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Provision in lease as to purpose for which premises are to be used, as excluding use for other purpose, 148 A.L.R. 583.

51C C.J.S. Landlord and Tenant § 327.

47-8-26. Delivery of possession.

A. At the time specified in the rental agreement for the commencement of occupancy, the owner shall deliver possession of the premises to the resident in compliance with the rental agreement and Section 47-8-20 NMSA 1978. The owner may bring an action for possession against the resident or any person wrongfully in possession and may recover the damages provided in Subsection F of Section 47-8-33 NMSA 1978.

B. If the owner fails to deliver possession of the premises to the prospective resident as provided in Subsection A of this section, one hundred percent of the rent abates until possession is delivered and the prospective resident may:

(1) upon written notice to the owner, terminate the rental agreement effective immediately. Upon termination the owner shall return all prepaid rent and deposits; or

(2) demand performance of the rental agreement by the owner and, if the prospective resident elects, maintain an action for possession of the premises against any person wrongfully withholding possession and recover the damages sustained by him and seek the remedies provided in Section 47-8-48 NMSA 1978.

C. If the owner makes reasonable efforts to obtain possession of the premises and returns prepaid rents, deposits and fees within seven days of receiving a prospective resident's notice of termination, the owner shall not be liable for damages under this section.

History: 1953 Comp., § 70-7-26, enacted by Laws 1975, ch. 38, § 26; 1999, ch. 91, § 3.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, added the Subsection A designation and substituted "At the time specified in the rental agreement for the commencement of occupancy" for "At the commencement of the rental period as specified in the rental agreement", deleted the former last sentence, which read "If the owner makes reasonable efforts to obtain possession of the premises, he shall not be liable for an action under this section"; added Subsections B and C; and updated statutory references.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Implied covenant or obligation to provide lessee with actual possession, 96 A.L.R.3d 1155.

What constitutes willfulness or malice justifying landlord's collection of statutory multiple damages for tenant's wrongful retention of possession, 7 A.L.R.4th 589.

What constitutes tenant's holding over of leased premises, 13 A.L.R.5th 169.

51C C.J.S. Landlord and Tenant §§ 308 to 310.

47-8-27. Repealed.

ANNOTATIONS

Repeals. — Laws 1995, ch. 195, § 27, repealed 47-8-27 NMSA 1978, as enacted by Laws 1975, ch. 38, § 27, relating to noncompliance by the owner to rental agreement or matters affecting health and safety, effective July 1, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

47-8-27.1. Breach of agreement by owner and relief by resident.

A. Upon the failure of the owner to perform his obligations as required by Section 47-8-20 NMSA 1978, the resident shall give written notice to the owner specifying the breach and:

(1) if there is a material noncompliance by the owner with the rental agreement or a noncompliance with the Uniform Owner-Resident Relations Act materially affecting health and safety, the resident shall deliver a written notice to the owner specifying the acts and omissions constituting the breach. The notice shall state that the rental agreement will terminate upon a date not less than seven days after receipt of the notice if a reasonable attempt to remedy the breach is not made in seven days, and the rental agreement shall terminate as provided in the notice. If the owner makes a reasonable attempt to adequately remedy the breach prior to the date specified in the notice, the rental agreement shall not terminate. If the rental agreement is terminated by the resident and possession restored to the owner, the owner shall return the balance, if any, of prepaid rent and deposit to which the resident is entitled pursuant to the rental agreement or Section 47-8-18 NMSA 1978; or

(2) the resident may be entitled to abatement of the rent as provided in Section 47-8-27.2 NMSA 1978.

B. The rights provided under this section do not arise if the condition was caused by the deliberate or negligent act or omission of the resident, a member of his family or other person on the premises with his consent. If the noncompliance with the rental agreement or with Section 47-8-20 NMSA 1978 results solely from circumstances beyond the owner's control, the resident is entitled only to those remedies set forth in Paragraph (1) or (2) of this subsection and is not entitled to an action for damages or injunctive relief against the owner.

C. The resident may also recover damages and obtain injunctive relief for any material noncompliance by the owner with the rental agreement or the provisions of Section 47-8-20 NMSA 1978. The remedy provided in this subsection is in addition to any right of the resident arising under Subsection A of this section.

D. If the resident proceeds under Paragraph (1) of Subsection A of this section, he shall not proceed under Paragraph (2) of Subsection A of this section in the same rental period for the same violation. If the resident proceeds under Paragraph (2) of Subsection A of this section, he shall not proceed under Paragraph (1) of Subsection A of this section in the same rental period for the same violation. A resident may, however, proceed under another paragraph of Subsection A of this section for a subsequent violation or the same violation that occurs in subsequent rental periods.

E. When the last day for remedying any breach pursuant to the written notice required under the Uniform Owner-Resident Relations Act occurs on a weekend or federal holiday, the period to remedy shall be extended until the next day that is not a weekend or federal holiday.

History: 1978 Comp., § 47-8-27.1, enacted by Laws 1995, ch. 195, § 11.

ANNOTATIONS

Effective dates. — Laws 1995, ch. 195, § 28 made Laws 1995, ch. 195, § 11 effective July 1, 1995.

47-8-27.2. Abatement.

A. If there is a violation of Subsection A of Section 47-8-20 NMSA 1978, other than a failure or defect in an amenity, the resident shall give written notice to the owner of the conditions needing repair. If the owner does not remedy the conditions set out in the notice within seven days of the notice, the resident is entitled to abate rent as set forth below:

(1) one-third of the pro-rata daily rent for each day from the date the resident notified the owner of the conditions needing repair, through the day the conditions in the notice are remedied. If the conditions complained of continue to exist without remedy through any portion of a subsequent rental period, the resident may abate at the same rate for each day that the conditions are not remedied; and

(2) one hundred percent of the rent for each day from the date the resident notified the owner of the conditions needing repair until the date the breach is cured if the dwelling is uninhabitable and the resident does not inhabit the dwelling unit as a result of the condition.

B. For each rental period in which there is a violation under Subsection A of this section, the resident may abate the rent or may choose an alternate remedy in accordance with the Uniform Owner-Resident Relations Act. The choice of one remedy shall not preclude the use of an alternate remedy for the same violation in a subsequent rental period.

C. If the resident's rent is subsidized in whole or in part by a government agency, the abatement limitation of one month's rent shall mean the total monthly rent paid for the dwelling and not the portion of the rent that the resident alone pays. Where there is a third party payor, either the payor or the resident may authorize the remedy and may abate rent payments as provided in this section.

D. Nothing in this section shall limit a court in its discretion to apply equitable abatement.

E. Nothing in this section shall entitle the resident to abate rent for the unavailability of an amenity.

History: 1978 Comp., § 47-8-27.2, enacted by Laws 1995, ch. 195, § 12; 1999, ch. 91, § 4.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, in Subsection A in the first sentence inserted "other than a failure or defect in an amenity" and updated a statutory reference and in the second sentence inserted "set out in the notice within seven days of the notice"; and added Subsection E.

Tenant was not entitled to abatement for repairs. — Where, in 2017, tenant and landlord entered into a lease agreement that specified that rent was $450 and was due the first day of each month and that landlord would assess a $50 fee to rent paid more than three days late, that tenant would pay a $400 security deposit, and that landlord would make all necessary repairs to the common areas of the building, and where, in 2018, landlord asked tenant to begin paying $10 a month for water, to which tenant agreed, and where, months later, tenant withheld $40 from his rent after reviewing his lease and discovering that there was no written obligation for him to pay for water, and where, the following day, landlord delivered a notice of nonpayment requiring tenant to pay $450 in rent plus a late fee of $50 for a total of $500, and where landlord filed a petition for restitution three days after the notice of nonpayment was delivered, and where tenant counterclaimed that he was entitled to abatement of his rent for repairs not made, the district court did not err in determining that tenant was not entitled to abatement for repairs, because tenant did not give landlord any written notice of the needed repairs until the notice of nonpayment was delivered and did not ask for any abatement or reimbursement in writing. The Uniform Owner Resident Relations Act, 47-8-1 to 47-8-51 NMSA 1978, requires written notice of conditions needing repair and the passage of seven days before a resident can withhold rent. *Cheng v. Rabey*, 2023-NMCA-013.

Abatement not allowed. — Tenants were not entitled to abate rent where the tenants were living on the premises continuously until the fire and the premises were not uninhabitable for any of the 17 months the tenants had not paid rent; moreover, the trial court did not err in granting a directed verdict on the claim of retaliation because there was no issue of retaliation in response to rent abatement if there was no right to abate. *Hedicke v. Gunville*, 2003-NMCA-032, 133 N.M. 335, 62 P.3d 1217, cert. denied, 133 N.M. 413, 63 P.3d 516.

47-8-28. Repealed.

ANNOTATIONS

Repeals. — Laws 1999, ch. 91, § 8 repealed 47-8-28 NMSA 1978, as enacted by Laws 1975, ch. 38, § 28, relating to failure to deliver possession of premises, effective June 18, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 47-8-26 NMSA 1978.

47-8-29. Repealed.

ANNOTATIONS

Repeals. — Laws 1995, ch. 195, § 27, repealed 47-8-29 NMSA 1978, as enacted by Laws 1975, ch. 38, § 29, relating to resident rights in event of breach by owner, effective July 1, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

47-8-30. Action for counterclaim for resident.

A. In an action for possession based upon nonpayment of rent or in an action for rent where the resident is in possession, the resident may counterclaim for any amount which he may recover under the rental agreement or the Uniform Owner-Resident Relations Act, providing that the resident shall be responsible for payment to the owner of the rent specified in the rental agreement during his period of possession. Judgment shall be entered in accordance with the facts of the case.

B. If the defense or counterclaim by the resident is without merit and is not raised in good faith, the owner may recover reasonable attorney's fees and his court costs.

C. If the action or reply to the counterclaim is without merit and is not in good faith, the resident may recover reasonable attorney's fees and his court costs.

History: 1953 Comp., § 70-7-30, enacted by Laws 1975, ch. 38, § 30.

ANNOTATIONS

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Setoff or counterclaim in action by tenant against landlord for restitution under Federal Housing and Rent Act of 1947 and amendments, 10 A.L.R.2d 249.

Rights and remedies of tenant upon landlord's breach of covenant to repair, 28 A.L.R.2d 446.

Respective rights in excess rent when landlord relets at higher rent during lessee's term, 50 A.L.R.4th 403.

47-8-31. Resident rights following fire or casualty.

A. If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the resident may:

(1) vacate the premises and notify the owner in writing within seven days thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

(2) if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the resident's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

B. If the rental agreement is terminated, the owner shall return the balance, if any, [of] prepaid rent and deposits recoverable under Section 18 [47-8-18 NMSA 1978] of the Uniform Owner-Resident Relations Act. Accounting for rent, in the event of termination or apportionment, is to occur as of the date of the vacation. Notwithstanding the provisions of this section, the resident is responsible for damage caused by his negligence.

History: 1953 Comp., § 70-7-31, enacted by Laws 1975, ch. 38, § 31.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 49 Am. Jur. 2d Landlord and Tenant § 759 et seq.

Condition of premises within the contemplation of provision of lease or statute for cessation of rent or termination of lease in event of destruction of or damage to property as result of fire, 118 A.L.R. 106, 61 A.L.R.2d 1445.

Modern status of rule as to tenant's rent liability after injury to or destruction of demised premises, 99 A.L.R.3d 738.

Liability of owner or occupant of premises to fireman coming thereon in discharge of his duty, 11 A.L.R.4th 597.

52A C.J.S. Landlord and Tenant § 991.

47-8-32. Repealed.

ANNOTATIONS

Repeals. — Laws 1995, ch. 195, § 27, repealed 47-8-32 NMSA 1978, as enacted by Laws 1975, ch. 38, § 32, relating to unlawful removal and penalty to owner, effective July 1, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

47-8-33. Breach of agreement by resident and relief by owner.

A. Except as provided in the Uniform Owner-Resident Relations Act, if there is noncompliance with Section 47-8-22 NMSA 1978 materially affecting health and safety or upon the initial material noncompliance by the resident with the rental agreement or any separate agreement, the owner shall deliver a written notice to the resident specifying the acts and omissions constituting the breach, including the dates and specific facts describing the nature of the alleged breach, and stating that the rental agreement will terminate upon a date not less than seven days after receipt of the notice if the breach is not remedied in seven days.

B. Upon the second material noncompliance with the rental agreement or any separate agreement by the resident, within six months of the initial breach, the owner shall deliver a written notice to the resident specifying the acts and omissions constituting the breach, including the dates and specific facts describing the nature of the alleged breach, and stating that the rental agreement shall terminate upon a date not less than seven days after receipt of the notice. If the subsequent breach occurs more than six months after the initial breach, it shall constitute an initial breach for purposes of applying the provisions of this section.

C. The initial notice provided in this section shall state that the rental agreement will terminate upon the second material noncompliance with the rental agreement or any separate agreement by the resident, within six months of the initial breach. To be effective, any notice pursuant to this subsection shall be given within thirty days of the breach or knowledge thereof.

D. If rent is unpaid when due and the resident fails to pay rent within three days after written notice from the owner of nonpayment and his intention to terminate the rental agreement, the owner may terminate the rental agreement and the resident shall immediately deliver possession of the dwelling unit; provided that tender of the full amount due, in the manner stated in the notice, prior to the expiration of the three-day notice shall bar any action for nonpayment of rent.

E. In any court action for possession for nonpayment of rent or other charges where the resident disputes the amount owed because:

(1) the resident has abated rent pursuant to Section 47-8-27.2 or 47-8-4 NMSA 1978; or

(2) the owner has allocated rent paid by the resident as payment for damages to the premises, then, if the owner is the prevailing party, the court shall enter a writ of restitution conditioned upon the right of the resident to remedy within three days of entry of judgment. If the resident has satisfied the judgment within three days, the writ shall be dismissed. If the resident has not satisfied the judgment within three days, the owner may execute upon the writ without further order of the court.

F. Except as provided in the Uniform Owner-Resident Relations Act, the owner may recover damages and obtain injunctive or other relief for any noncompliance by the resident with the rental agreement or this section or Section 47-8-22 NMSA 1978.

G. In a judicial action to enforce a remedy for which prior written notice is required, relief may be granted based only upon the grounds set forth in the written notice served; provided, however, that this shall not bar a defendant from raising any and all defenses or counterclaims for which written notice is not otherwise required by the Uniform Owner-Resident Relations Act.

H. When the last day for remedying any breach pursuant to written notice required under the Uniform Owner-Resident Relations Act occurs on a weekend or federal holiday, the period to remedy shall be extended until the next day that is not a weekend or federal holiday.

I. If the resident knowingly commits or consents to another person in the dwelling unit or on the premises knowingly committing a substantial violation, the owner shall deliver a written notice to the resident specifying the time, place and nature of the act constituting the substantial violation and that the rental agreement will terminate upon a date not less than three days after receipt of the notice.

J. In any action for possession under Subsection I of this section, it shall be a defense that the resident is a victim of domestic violence. If the resident has filed for or secured a temporary domestic violence restraining order as a result of the incident that is the basis for the termination notice or as a result of a prior incident, the writ of restitution shall not issue. In all other cases where domestic violence is raised as a defense, the court shall have the discretion to evict the resident accused of the violation, while allowing the tenancy of the remainder of the residents to continue undisturbed.

K. In any action for possession under Subsection I of this section, it shall be a defense that the resident did not know of, and could not have reasonably known of or prevented, the commission of a substantial violation by any other person in the dwelling unit or on the premises.

L. In an action for possession under Subsection I of this section, it shall be a defense that the resident took reasonable and lawful actions in defense of himself, others or his property.

M. In any action for possession under Subsection I of this section, if the court finds that the action was frivolous or brought in bad faith, the petitioner shall be subject to a civil penalty equal to two times the amount of the monthly rent, plus damages and costs.

History: 1953 Comp., § 70-7-33, enacted by Laws 1975, ch. 38, § 33; 1977, ch. 130, § 1; 1995, ch. 195, § 14; 1999, ch. 91, § 5.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, substituted "the Uniform Owner-Resident Relations Act" for "this Act" in Subsection H; added present Subsection L, redesignating the subsequent subsection accordingly; and made minor stylistic changes.

The 1995 amendment, effective July 1, 1995, redesignated a former part of Subsection A as Subsection B, inserted "including the dates and specific facts describing the nature of the alleged breach" and "stating" in Subsections A and B, substituted "more than six months" for "six months" in Subsection B, added Subsection C, redesignated former Subsection B as Subsection D, added the last part in Subsection D beginning "provided that tender", added Subsection E, redesignated former Subsection C as Subsection F, deleted "If the resident's noncompliance is willful, the owner may recover reasonable attorney's fees and his court costs." from the end in Subsection F, added Subsections G to L, and made minor stylistic changes throughout the section.

Section 8 housing agreement. — Where the tenant rented a residential property from the landlord pursuant to the federal Section 8 housing program which paid the majority of the tenant's rent; in addition to rent, the lease required the tenant to pay a security deposit; the lease permitted the landlord to terminate the lease during the first year's term if the tenant committed a serious violation of the lease; the tenant failed to pay the full amount of the security deposit on the first day of the term; the tenant failed to pay rent for July and August on the first day of the month as required by the lease because the tenant did not receive public assistance checks for July and August until after the first day of the month; the tenant mailed rent payments for July and August when the tenant received the public assistance checks; the lease did not specify any date when the security deposit was due or whether partial payments could be made; the amount of the security deposit exceeded the amount of monthly rent contrary to the express terms of the lease; the failure to pay the security deposit on the first day of the term did not have a materially adverse effect on the landlord; and by October 2009, the tenant had fully paid the security deposit and was current on all monthly rent payments, tenant's late payments of rent and the security deposit did not constitute a serious violation of the lease. *Serna v. Gutierrez*, 2013-NMCA-026, 297 P.3d 1238.

Petition for restitution filed prematurely. — Where, in 2017, tenant and landlord entered into a lease agreement that specified that rent was $450 and was due the first day of each month and that landlord would assess a $50 fee to rent paid more than three days late, that tenant would pay a $400 security deposit, and that landlord would make all necessary repairs to the common areas of the building, and where, in 2018, landlord asked tenant to begin paying $10 a month for water, to which tenant agreed, and where, months later, tenant withheld $40 from his rent after reviewing his lease and discovering that there was no written obligation for him to pay for water, and where, the following day, landlord delivered a notice of nonpayment requiring tenant to pay $450 in rent plus a late fee of $50 for a total of $500, and where landlord filed a petition for restitution three days after the notice of nonpayment was delivered, and where tenant argued that landlord filed his petition for restitution prematurely because the three-day notice period had not elapsed at the time of filing, the landlord's petition should have been dismissed as untimely filed, because an owner cannot file a petition for restitution or otherwise terminate the rental agreement and seek possession of the premises until the day following the third day. Allowing an owner to file before the third day has elapsed would defeat the remedial purpose of Subsection D of this section. *Cheng v. Rabey*, 2023-NMCA-013.

Landlord and tenant orally modified the lease to include water payments. — Where, in 2017, tenant and landlord entered into a lease agreement that specified that rent was $450 and was due the first day of each month and that landlord would assess a $50 fee to rent paid more than three days late, that tenant would pay a $400 security deposit, and that landlord would make all necessary repairs to the common areas of the building, and where, in 2018, landlord asked tenant to begin paying $10 a month for water, to which tenant agreed, and where, months later, tenant withheld $40 from his rent after reviewing his lease and discovering that there was no written obligation for him to pay for water, and where, the following day, landlord delivered a notice of nonpayment requiring tenant to pay $450 in rent plus a late fee of $50 for a total of $500, and where landlord filed a petition for restitution three days after the notice of nonpayment was delivered, and where tenant argued that because the lease was silent as to who pays for water, landlord retained the obligation to pay for water, the district court did not err in denying tenant's requested offset for water, because the parties conduct clearly demonstrated an oral modification of the lease agreement requiring tenant to pay for water. In the absence of a prohibiting statute, a written agreement which specifies it may only be amended in writing may nevertheless be changed by the parties' words or conduct that signify an intention to change the prior agreement. *Cheng v. Rabey*, 2023-NMCA-013.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 49 Am. Jur. 2d Landlord and Tenant § 228 et seq.

What constitutes willfulness or malice justifying landlord's collection of statutory multiple damages for tenant's wrongful retention of possession, 7 A.L.R.4th 589.

Right to exercise option to renew or extend lease as affected by tenant's breach of other covenants or conditions, 23 A.L.R.4th 908.

Children's day-care use as violation of restrictive covenant, 29 A.L.R.4th 730.

Express or implied restriction on lessee's use of residential property for business purposes, 46 A.L.R.4th 496.

Commercial leases: application of rule that lease may be canceled only for "material" breach, 54 A.L.R.4th 595.

Provision in lease as to purpose for which premises are to be used as excluding other uses, 86 A.L.R.4th 259.

51C C.J.S. Landlord and Tenant §§ 250(1) to 250(3).

47-8-34. Notice of extended absence.

A. If the rental agreement requires the resident to give notice to the owner of an anticipated extended absence in excess of seven days as required in Subsection A of Section 3 [47-8-3 NMSA 1978] of the Uniform Owner-Resident Relations Act and the resident willfully fails to do so, the owner may recover damages from the resident.

B. During any absence of the resident in excess of seven days, the owner may enter the dwelling unit at times reasonably necessary.

C. If the resident abandons the dwelling unit as defined in Subsection A of Section 3 of the Uniform Owner-Resident Relations Act, the owner shall be entitled to take immediate possession of the dwelling unit. The owner shall, in such cases, be responsible for the removing and storing of the personal property for such periods as are provided by law. Upon abandonment, the owner may make reasonable efforts to rent the dwelling unit and premises at a fair rental. If the owner rents the dwelling unit for a term beginning prior to the expiration of the rental agreement, it is deemed to be terminated as of the date the new tenancy begins.

History: 1953 Comp., § 70-7-34, enacted by Laws 1975, ch. 38, § 34.

ANNOTATIONS

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — What constitutes abandonment of residential or commercial lease - modern cases, 84 A.L.R.4th 183.

47-8-34.1. Disposition of property left on the premises.

A. Where the rental agreement terminates by abandonment pursuant to Section 47-8-34 NMSA 1978:

(1) the owner shall store all personal property of the resident left on the premises for not less than thirty days;

(2) the owner shall serve the resident with written notice stating the owner's intent to dispose of the personal property on a date not less than thirty days from the date of the notice. The notice shall also contain a telephone number and address where the resident can reasonably contact the owner to retrieve the property prior to the disposition date in the notice;

(3) the notice of intent to dispose of personal property shall be personally delivered to the resident or be sent by first class mail, postage prepaid, to the resident at his last known address. If the notice is returned as undeliverable, or where the resident's last known address is the vacated dwelling unit, the owner shall also serve at least one notice to such other address as has been provided to the owner by the resident, including the address of the resident's place of employment, or of a family member or emergency contact for which the owner has a record;

(4) the resident may contact the owner to retrieve the property at any time prior to the date specified in the notice for disposition of the property;

(5) the owner shall provide reasonable access and adequate opportunities for the resident to retrieve all of the property stored prior to any disposition; and

(6) if the resident does not claim or make attempt to retrieve the stored personal property prior to the date specified in the notice of disposition of the property, the owner may dispose of the stored personal property.

B. Where the rental agreement terminates by the resident's voluntary surrender of the premises, the owner shall store any personal property on the premises for a minimum of fourteen days from the date of surrender of the premises. The owner shall provide reasonable access to the resident for the purpose of the resident obtaining possession of the personal property stored. If after fourteen days from surrender of the premises, the resident has not retrieved all the stored personal property, the owner may dispose of the stored personal property.

C. Where the rental agreement terminates by a writ of restitution, the owner shall have no obligation to store any personal property left on the premises after three days following execution of writ of restitution, unless otherwise agreed by the owner and resident. The owner may thereafter dispose of the personal property in any manner without further notice or liability.

D. Where the property has a market value of less than one hundred dollars ($100), the owner has the right to dispose of the property in any manner.

E. Where the property has a market value of more than one hundred dollars ($100), the owner may:

(1) sell the personal property under any provisions herein, and the proceeds of the sale, if in excess of money due and owing to the owner, shall be mailed to the resident at his last known address along with an itemized statement of the amounts received and amounts allocated to other costs, within fifteen days of the sale; or

(2) retain the property for his own use or the use of others, in which case the owner shall credit the account of the resident for the fair market value of the property against any money due and owing to the owner, and any value in excess of money due and owing shall be mailed to the resident at his last known address along with an itemized statement of the value allocated to the property and the amount allocated to costs within fifteen days of the retention of the property.

F. If the last known address is the dwelling unit, the owner shall also mail at least one copy of the accounting and notice of the sums for distribution, to the other address, if provided to the owner by the resident, such as, place of employment, family members, or emergency contact on record with the owner.

G. An owner may charge the resident reasonable storage fees for any time that the owner provided storage for the resident's personal property and the prevailing rate of moving fees. The owner may require payment of storage and moving costs prior to the release of the property.

H. The owner may not hold the property for any other debts claimed due or owning or for judgments for which an application for writ of execution has not previously been filed. The owner may not retain exempt property where an application for a writ of execution has been granted.

History: 1978 Comp., § 47-8-34.1, enacted by Laws 1995, ch. 195, § 15.

ANNOTATIONS

Effective dates. — Laws 1995, ch. 195, § 28 made Laws 1995, ch. 195, § 15 effective July 1, 1995.

Owners must provide residents with a reasonable opportunity to recover left-behind personal property. — The Uniform Owner-Resident Relations Act requires owners to provide residents with a reasonable opportunity to recover left-behind personal property as a matter of right, upon payment of reasonable moving and storage fees if sought by the owner, within three days of the execution of a writ of restitution or at a later agreed-to date. *White v. Farris*, 2021-NMCA-014.

47-8-34.2. Personal property and security deposit of deceased resident; contact person.

A. As used in this section, "contact person" means the person designated by a resident in writing as the person to contact and release property to in the event of the resident's death.

B. The owner may request in writing, including by a requirement in the rental agreement, that the resident:

(1) provide the owner with the name, address and telephone number of a contact person; and

(2) sign a statement authorizing the owner in the event of the resident's death to:

(a) grant the contact person access to the dwelling unit at a reasonable time and in the presence of the owner or the owner's agent;

(b) allow the contact person to remove the resident's property from the dwelling unit; and

(c) refund the resident's security deposit, less lawful deductions, to the contact person.

C. A resident may, without request from the owner, provide the owner with the name, address and telephone number of a contact person.

D. Except as provided in Subsection E of this section, in the event of the death of a resident who is the sole occupant of a rental dwelling, the owner:

(1) shall turn over possession of property in the dwelling unit to the contact person or to any other person lawfully entitled to the property if the request is made prior to the property being discarded pursuant to Paragraph (5) of this subsection;

(2) shall refund the resident's security deposit, less lawful deductions, including the cost of removing and storing the property, to the contact person or to any other person lawfully entitled to the refund;

(3) may remove and store all property found in the dwelling unit;

(4) may require any person who removes property from the resident's dwelling unit to sign an inventory of the property being removed; and

(5) may discard property removed by the owner from the resident's dwelling unit if:

(a) the owner has mailed a written request by certified mail, return receipt requested, to the contact person, requesting that the property be removed;

(b) the contact person failed to remove the property within thirty days after the request is mailed; and

(c) the owner, prior to the date of discarding the property, has not been contacted by anyone claiming the property.

E. An owner and a resident may agree to a procedure different than the procedure in this section for removing, storing or disposing of property in the dwelling unit of a deceased resident in a written rental agreement or other agreement.

F. If, after a written request by an owner, a resident does not provide the owner with the name, address and telephone number of a contact person, the owner shall have no responsibility after the resident's death for removal, storage, disappearance, damage or disposition of property in the resident's dwelling.

G. An owner who violates Subsection D of this section shall be liable to the estate of the deceased resident for actual damages.

History: Laws 2007, ch. 169, § 1.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 169, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

47-8-35. Claim for rent and damages.

If the rental agreement is terminated, the owner is entitled to possession and may have a claim for rent and a separate claim for damages for breach of the rental agreement and reasonable attorney's fees as provided in Subsection C of Section 33 [47-8-33 NMSA 1978] of the Uniform Owner-Resident Relations Act.

History: 1953 Comp., § 70-7-35, enacted by Laws 1975, ch. 38, § 35.

ANNOTATIONS

Compiler's notes. — The reference to Subsection C of 47-8-33 NMSA 1978 was a reference to former Subsection C and should now be a reference to Subsection F following the 1995 amendment to that section. Effective July 1, 1995, attorney's fees are no longer authorized by that section. See 47-8-48 NMSA 1978 for payment of attorney's fees to the prevailing party in a suit brought to enforce the terms and conditions of a rental agreement or the provisions of the Uniform Owner-Resident Relations Act.

District court did not err in awarding plaintiff damages for property damage and unpaid rent, but erred in failing to credit defendant for the cost of repairs to the property. — Where the parties entered into a lease option contract pursuant to which plaintiff agreed to lease and defendant agreed to rent a residential property in Vanderwagen, New Mexico for sixty months, and where the lease option contract included an option to purchase the residence at any time during the contract's terms, and where defendant paid plaintiff $10,000, which was not mentioned in the lease option contract but which defendant claimed to be a down payment toward the purchase price of the property, and where defendant stopped making monthly payments on the property after two years, and where plaintiff filed a petition for restitution seeking possession of the property in magistrate court, and where the magistrate court granted the writ of restitution and awarded damages, past-due rent, and attorney fees, and where, on de novo appeal, the district court ruled in plaintiff's favor on all issues and awarded plaintiff back-rent and damages over $10,000, and where defendant argued that plaintiff should have been barred from recovering damages and rent at all because plaintiff retained defendant's initial $10,000 payment and that the district court failed to credit defendant for the full value of the repairs he made to the property during his occupancy, despite evidence that defendant spent $900 repairing faucets and replacing a fuse box on the property, the district court did not err in determining that plaintiff was entitled to damages for past-due rent and property damage because the district court credited defendant with the $10,000 in calculating plaintiff's damages, in effect ruling that plaintiff was not entitled to retain the payment, but the district court erred to the extent that it determined that defendant's evidence was insufficient evidence of other repairs as a matter of law. *White v. Farris*, 2021-NMCA-014.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 49 Am. Jur. 2d Landlord and Tenant § 786 et seq.

What constitutes willfulness or malice justifying landlord's collection of statutory multiple damages for tenant's wrongful retention of possession, 7 A.L.R.4th 589.

What constitutes tenant's holding over of leased premises, 13 A.L.R.5th 169.

52 C.J.S. Landlord and Tenant § 568.

47-8-36. Unlawful removal and diminution of services prohibited.

A. Except in case of abandonment, surrender or as otherwise permitted in the Uniform Owner-Resident Relations Act, an owner or any person acting on behalf of the owner shall not knowingly exclude the resident, remove, threaten or attempt to remove or dispossess a resident from the dwelling unit without a court order by:

(1) fraud;

(2) plugging, changing, adding or removing any lock or latching device;

(3) blocking any entrance into the dwelling unit;

(4) interfering with services or normal and necessary utilities to the unit pursuant to Section 47-8-32 NMSA 1978, including but not limited to electricity, gas, hot or cold water, plumbing, heat or telephone service, provided that this section shall not impose a duty upon the owner to make utility payments or otherwise prevent utility interruptions resulting from nonpayment of utility charges by the resident;

(5) removing the resident's personal property from the dwelling unit or its premises;

(6) removing or incapacitating appliances or fixtures, except for making necessary and legitimate repairs; or

(7) any willful act rendering a dwelling unit or any personal property located in the dwelling unit or on the premises inaccessible or uninhabitable.

B. The provisions of Subsection A of this section shall not apply if an owner temporarily interferes with possession while making legitimate repairs or inspections as provided for in the Uniform Owner-Resident Relations Act.

C. If an owner commits any of the acts stated in Subsection A of this section, the resident may:

(1) abate one hundred percent of the rent for each day in which the resident is denied possession of the premises for any portion of the day or each day where the owner caused termination or diminishment of any service for any portion of the day;

(2) be entitled to civil penalties as provided in Subsection B of Section 47-8-48 NMSA 1978;

(3) seek restitution of the premises pursuant to Sections 47-8-41 and Section 47-8-42 NMSA 1978 or terminate the rental agreement; and

(4) be entitled to damages.

History: 1953 Comp., § 70-7-36, enacted by Laws 1975, ch. 38, § 36; 1995, ch. 195, § 16.

ANNOTATIONS

Compiler's notes. — Section 47-8-32 NMSA 1978, referred to in Paragraph A(4), was repealed in 1995.

The 1995 amendment, effective July 1, 1995, rewrote this section to such an extent that a detailed comparison would be impracticable.

Judgment of restitution of possession of premises does not constitute a court order to end water services. — Where plaintiffs brought a petition for restitution of possession of premises against resident based on unpaid rent and property damage, and where the magistrate court entered a judgment for restitution in favor of plaintiffs and issued a corresponding writ of restitution, ordering the sheriff to remove resident within seven days of entry of the judgment, and where, prior to the execution of the writ of restitution, plaintiffs had resident's water shut off for unpaid water charges, and where, on appeal to the district court, resident filed a counterclaim for unlawful diminution of services and seeking abatement of rent for the days resident was without water service, the district court erred in denying resident's claim for unlawful diminution of services, because 47-8-36(A) NMSA 1978, prohibits an owner from acting to recover possession of a dwelling unit that a resident has not surrendered or abandoned, such as directing a utility to shut off water to the premises, unless a "court order" authorizes the owner to take such action, and the plain language of Subsection A of this section indicates that the legislature did not intend that a judgment for restitution, for which a writ of restitution has been issued, constitutes a "court order". *Roser v. Hufstedler*, 2023-NMCA-040.

Duty exemption clause did not permit owners to direct utility to shut off water services. — Where Plaintiffs brought a petition for restitution of possession of premises against Resident based on unpaid rent and property damage, and where the magistrate court entered a judgment for restitution in favor of plaintiffs and issued a corresponding writ of restitution, ordering the sheriff to remove resident within seven days of entry of the judgment, and where, prior to the execution of the writ of restitution, plaintiffs had resident's water shut off for unpaid water charges, and where, on appeal to the district court, resident filed a counterclaim for unlawful diminution of services and seeking abatement of rent for the days resident was without water service, the district court erred in concluding that, because the utility was holding plaintiffs responsible for resident's unpaid water bill, the duty exemption clause, set forth in 47-8-36(A)(4) NMSA 1978, permitted plaintiffs to direct the utility to shut off the dwelling unit's water services, because, in this case, the utility had not acted to interrupt utility services before plaintiffs directed the utility to do so. The duty exemption clause does not apply. *Roser v. Hufstedler*, 2023-NMCA-040.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 49 Am. Jur. 2d Landlord and Tenant § 637 et seq.

Landlord and tenant: violation of statute or ordinance requiring landlord to furnish specified facilities or services as ground of liability for injury resulting from tenant's attempt to deal with deficiency, 63 A.L.R.4th 883.

51C C.J.S. Landlord and Tenant §§ 297, 298.

47-8-36.1. Landlord lien.

A. There shall be no landlord's lien arising out of the rental of a dwelling unit to which the Uniform Owner-Resident [Relations] Act applies.

B. Nothing in this section shall prohibit the owner from levy and execution on a judgment arising out of a claim for rent or damages.

History: 1978 Comp., § 47-8-36.1, enacted by Laws 1995, ch. 195, § 17.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For landlords' liens on personal property, *see* 48-3-5 NMSA 1978.

For liens of owners and operators of public accommodations on personal property, *see* 48-3-16 NMSA 1978.

Effective dates. — Laws 1995, ch. 195, § 28 made Laws 1995, ch. 195, § 17 effective July 1, 1995.

47-8-37. Notice of termination and damages.

A. The owner or the resident may terminate a week-to-week residency by a written notice given to the other at least seven days prior to the termination date specified in the notice.

B. The owner or the resident may terminate a month-to-month residency by a written notice given to the other at least thirty days prior to the periodic rental date specified in the notice.

C. If the resident remains in possession without the owner's consent after expiration of the term of the rental agreement or its termination, the owner may bring an action for possession and if the resident's holdover is willful and not in good faith the owner, in addition, may recover the damages sustained by him and reasonable attorney's fees. If the owner consents to the resident's continued occupancy, Subsection C of Section 15 [47-8-15 NMSA 1978] of the Uniform Owner-Resident Relations Act applies.

History: 1953 Comp., § 70-7-37, enacted by Laws 1975, ch. 38, § 37.

ANNOTATIONS

Tenant holding over formerly entitled to six-months' notice to vacate. — Since the tenant did not endorse the extensions of the lease, they were not binding upon him, and, therefore, he then became a tenant holding over after a term with the consent of the landlord. This would make him a tenant from year-to-year and entitle him to six-months' notice to vacate. *Baker v. Storie*, 1960-NMSC-037, 67 N.M. 27, 350 P.2d 1039 (1960) (decided under former law).

To be effective, notice must be sufficiently definite to inform the tenant of the landlord's desire that the tenant vacate the premises. *T.W.I.W., Inc. v. Rhudy*, 1981-NMSC-062, 96 N.M. 354, 630 P.2d 753.

Notice coupled with option to remain insufficient. — Where a notice to quit is coupled with an option to the tenant to remain at an increased rental, it is insufficient to terminate the tenancy. *T.W.I.W., Inc. v. Rhudy*, 1981-NMSC-062, 96 N.M. 354, 630 P.2d 753.

Notice not given within requisite time period effective for next rental date. — A notice to quit which is ineffective because it does not give the month-to-month tenant the requisite 30 days prior to the periodic rental date is nonetheless effective for the next ensuing rental date. *T.W.I.W., Inc. v. Rhudy*, 1981-NMSC-062, 96 N.M. 354, 630 P.2d 753.

Failure to comply with Subsection B forfeits security deposit. — A landlord was entitled to apply the security deposit to the tenant's deficient rent payment without sending a written itemization since it was undisputed that the tenant failed to comply with the thirty-day notice requirement of Subsection B upon vacating the unit. *Bruce v. Attaway*, 1996-NMSC-030, 121 N.M. 755, 918 P.2d 341.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

For annual survey of New Mexico law relating to property, see 13 N.M.L. Rev. 435 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Tenant's liability in damages for holding over after expiration of terms as effected by reason or excuse for so doing, 122 A.L.R. 280.

Measure of damages for tenant's failure to surrender possession of rented premises, 32 A.L.R.2d 582.

What constitutes willfulness or malice justifying landlord's collection of statutory multiple damages for tenant's wrongful retention of possession, 7 A.L.R.4th 589.

Waiver of statutory demand-for-rent due or of notice-to-quit prerequisite of summary eviction of lessee for nonpayment of rent - modern cases, 31 A.L.R.4th 1254.

Waiver or estoppel as to notice requirement for exercising option to renew or extend lease, 32 A.L.R.4th 452.

Lessor's retention of past-due rental payments as precluding termination of lease and dispossession of lessee for nonpayment of rent, 39 A.L.R.4th 1204.

52A C.J.S. Landlord and Tenant § 758.

47-8-38. Injunctive relief.

A. If the resident refuses to allow lawful access, the owner may obtain injunctive relief to compel access or terminate the rental agreement. In either case, the owner may recover damages, reasonable attorney's fees and court costs.

B. If the owner makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the resident, the resident may obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case, the resident may recover damages and reasonable attorney's fees.

History: 1953 Comp., § 70-7-38, enacted by Laws 1975, ch. 38, § 38.

ANNOTATIONS

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Injunction to prevent tenant in arrears for rent from removing chattels or improvements not constituting fixtures, 53 A.L.R. 294.

Right to specific performance, or injunction against breach, of lease or sublease or of contract to make lease as affected by right of complainant to cancel lease before expiration of term for which other party is bound, 117 A.L.R. 256.

Injunction in respect of property as covering action for rent or for use or occupation, 155 A.L.R. 844.

52A C.J.S. Landlord and Tenant § 774.

47-8-39. Owner retaliation prohibited.

A. An owner may not retaliate against a resident who is in compliance with the rental agreement and not otherwise in violation of any provision of the Uniform Owner-Resident Relations Act by increasing rent, decreasing services or by bringing or threatening to bring an action for possession because the resident has within the previous six months:

(1) complained to a government agency charged with responsibility for enforcement of a minimum building or housing code of a violation applicable to the premises materially affecting health and safety;

(2) organized or become a member of a residents' union, association or similar organization;

(3) acted in good faith to exercise his rights provided under the Uniform Owner-Resident Relations Act, including when the resident makes a written request or complaint to the owner to make repairs to comply with the owner's obligations under Section 47-8-20 NMSA 1978;

(4) made a fair housing complaint to a government agency charged with authority for enforcement of laws or regulations prohibiting discrimination in rental housing;

(5) prevailed in a lawsuit as either plaintiff or defendant or has a lawsuit pending against the owner relating to the residency;

(6) testified on behalf of another resident; or

(7) abated rent in accordance with the provisions of Section 47-8-27.1 or 47-8-27.2 NMSA 1978.

B. If the owner acts in violation of Subsection A of this section, the resident is entitled to the remedies provided in Section 47-8-48 NMSA 1978 and the violation shall be a defense in any action against him for possession.

C. Notwithstanding the provisions of Subsection A of this section, the owner may increase the rent or change services upon appropriate notice at the end of the term of the rental agreement or as provided under the terms of the rental agreement if the owner can establish that the increased rent or changes in services are consistent with those imposed on other residents of similar rental units and are not directed at the particular resident, but are uniform.

History: 1953 Comp., § 70-7-39, enacted by Laws 1975, ch. 38, § 39; 1989, ch. 253, § 1; 1995, ch. 195, § 18; 1999, ch. 91, § 6.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, substituted "six months" for "three months" near the end of the introductory language of Subsection A and made a minor stylistic change.

The 1995 amendment, effective July 1, 1995, in subsection A, deleted "Except as provided in this section" from the beginning, added "the resident has within the previous three months:" to the end, deleted "the resident, who is in compliance with the rental agreement and not otherwise in violation of any provision of that act, has" from the beginning of Paragraph (1), inserted "association" following "union" in Paragraph (2), substituted all the language at the end of Paragraph (3) beginning "the Uniform Owner-Resident Relations Act" for "that act", and added Paragraphs (4) to (7); in Subsection B, substituted "remedies provided in 47-8-48" for "remedies provided in 47-8-29", substituted "the violation shall be a defense in any action" for "has a defense in action", and deleted "Nothing in this section shall be construed as prohibiting reasonable rent increases or changes in services notwithstanding the occurence of acts specified in Subsection A of this section" from the end of Subsection B; added Subsection C; and made minor stylistic changes throughout the section.

The 1989 amendment, effective June 16, 1989, added Subsection A(3), and made minor stylistic changes throughout the section.

Action uniform to all tenants. — Where the owner's decision to discontinue participation in the housing program was to be uniformly applied to all of the low-income tenants as their leases expired, the tenant could not base her retaliation defense on the owner's decision to discontinue the program. *Carol Rickert & Assocs. v. Law*, 2002-NMCA-096, 132 N.M. 687, 54 P.3d 91.

No right to complain about neighbors. — Subsection A(3) does not bar an owner's otherwise proper action for possession of the premises after termination of a month-to-month residency, where the owner is retaliating against the resident for complaining about noisy neighbors. *Casa Blanca Mobile Home Park v. Hill*, 1998-NMCA-094, 125 N.M. 465, 963 P.2d 542.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Retaliatory eviction of tenant for reporting landlord's violation of law, 23 A.L.R.5th 140.

47-8-40. Action for possession by owner.

A. Notwithstanding Subsections A and B of Section 47-8-39 NMSA 1978, an owner may bring an action for possession if:

(1) the violation of the applicable minimum building or housing code was caused primarily by lack of reasonable care by the resident or other person in his household or upon the premises with the resident's consent;

(2) the resident is in default in rent;

(3) there is a material noncompliance with the rental agreement that would otherwise give rise to the owner's right to terminate the rental agreement;

(4) a resident knowingly commits or consents to any other person in the dwelling unit or on the premises knowingly committing a substantial violation; or

(5) compliance with the applicable building or housing code requires alteration, remodeling or demolition that would effectively deprive the resident of use of the dwelling unit.

B. The maintenance of an action under Subsection A of this section does not release the owner from liability under Section 47-8-20 NMSA 1978.

History: 1953 Comp., § 70-7-40, enacted by Laws 1975, ch. 38, § 40; 1995, ch. 195, § 19.

ANNOTATIONS

Compiler's notes. — The reference to Subsections A and B of Section 38 of the Uniform Owner-Resident Relations Act in Subsection A of this section probably should be to Subsections A and B of Section 39 of the Uniform Owner-Resident Relations Act.

Cross references. — For unlawful and forcible entry provision, *see* 47-8-49 NMSA 1978.

For inapplicability of general forcible entry or detainer provisions to actions by landlord, *see* 35-10-2 NMSA 1978.

The 1995 amendment, effective July 1, 1995, in Subsection A, inserted Paragraphs (3) and (4), and redesignated former Paragraph (3) as Paragraph (5), and made minor stylistic changes throughout the section.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Tenant's recovery of damages for emotional distress under Uniform Residential Landlord and Tenant Act, 6 A.L.R.4th 528.

What constitutes willfulness or malice justifying landlord's collection of statutory multiple damages for tenant's wrongful retention of possession, 7 A.L.R.4th 589.

Landlord's permitting third party to occupy premises rent-free as acceptance of tenant's surrender of premises, 18 A.L.R.5th 437.

52A C.J.S. Landlord and Tenant §§ 729 to 751.

47-8-41. Action for possession by owner or resident.

An action for possession of any premises subject to the provisions of the Uniform Owner-Resident Relations Act shall be commenced in the manner prescribed by the Uniform Owner-Resident Relations Act.

History: 1953 Comp., § 70-7-41, enacted by Laws 1975, ch. 38, § 41.

ANNOTATIONS

Eviction subject to equitable defenses. — A court may find that a qualified indigent tenant of public housing need not be evicted solely because adjudged liable for back rent. Equitable principles may be applied to prevent eviction. *City of Albuquerque v. Brooks*, 1992-NMSC-069, 114 N.M. 572, 844 P.2d 822.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51C C.J.S. Landlord and Tenant § 320.

47-8-42. Petition for restitution.

The person seeking possession shall file a petition for restitution with the clerk of the district or magistrate court. The petition shall contain:

A. the facts, with particularity, on which he seeks to recover;

B. a reasonably accurate description of the premises; and

C. the requisite compliance with the notice provisions of the Uniform Owner-Resident Relations Act.

The petition may also contain other causes of action relating to the residency, but such causes of action shall be answered and tried separately, if requested by either party in writing.

History: 1953 Comp., § 70-7-42, enacted by Laws 1975, ch. 38, § 42.

ANNOTATIONS

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Setoff or counterclaim in action by tenant against landlord for restitution under Federal Housing and Rent Act of 1947 and amendments, 10 A.L.R.2d 249.

52A C.J.S. Landlord and Tenant § 762.

47-8-43. Issuance of summons.

A. The summons shall be issued and directed, with a copy of the petition attached to the summons, and shall state the cause of the complaint, the answer day for other causes of action and notice that if the defendant fails to appear, judgment shall be entered against him. The summons may be served pursuant to the New Mexico rules of civil procedure and returned as in other cases. Trial of the action for possession shall be set as follows:

(1) for any matter brought by the owner for possession, not less than seven or more than ten days after the service of summons; or

(2) for any matter brought by the resident for possession, not less than three or more than five days after the service of summons.

B. Upon finding of good cause, the court may continue the date of hearing on the action for possession for up to seven days from the date of the initial hearing.

History: 1953 Comp., § 70-7-43, enacted by Laws 1975, ch. 38, § 43; 1995, ch. 195, § 20.

ANNOTATIONS

Cross references. — For the Rules of Procedure for the District Courts, *see* Rule 1-001 NMRA et seq.

The 1995 amendment, effective July 1, 1995, designated the existing language as Subsection A; in Subsection A, in the second sentence inserted "pursuant to the New Mexico rules of civil procedure" following "served" and deleted "or by any authorized person" from the end, deleted the former third sentence which read "The person making the service shall file with the court an affidavit stating with particularity the manner in which he made the service", substituted "shall be set as follows" for "shall be not less than seven nor more than ten days after the service of summons" at the end of the fourth sentence, added Paragraphs (1) and (2), and made minor stylistic changes throughout the subsection; and added Subsection B.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Landlord and Tenant § 741.

47-8-44. Absence from court of defendant.

If the defendant shall not appear in response to the summons, and it shall have been properly served, the court shall try the cause as though he were present.

History: 1953 Comp., § 70-7-44, enacted by Laws 1975, ch. 38, § 44.

ANNOTATIONS

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

47-8-45. Legal or equitable defense.

On or before the day fixed for his appearance, the defendant may appear and answer and assert any legal or equitable defense, setoff or counterclaim.

History: 1953 Comp., § 70-7-45, enacted by Laws 1975, ch. 38, § 45.

ANNOTATIONS

Eviction subject to equitable defenses. — A court may find that a qualified indigent tenant of public housing need not be evicted solely because adjudged liable for back rent. Equitable principles may be applied to prevent eviction. *City of Albuquerque v. Brooks*, 1992-NMSC-069, 114 N.M. 572, 844 P.2d 822.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Rights and remedies of tenant upon landlord's breach of covenant to repair, 28 A.L.R.2d 446.

47-8-46. Writ of restitution.

A. Upon petition for restitution filed by the owner if judgment is rendered against the defendant for restitution of the premises, the court shall declare the forfeiture of the rental agreement and shall, at the request of the plaintiff or his attorney, issue a writ of restitution directing the sheriff to restore possession of the premises to the plaintiff on a specified date not less than three nor more than seven days after entry of judgment.

B. Upon a petition for restitution filed by the resident, if judgment is rendered against the defendant for restitution of the premises, the court shall, at the request of the plaintiff or his attorney, issue a writ of restitution directing the sheriff to restore possession of the premises to the plaintiff within twenty-four hours after entry of judgment.

History: 1953 Comp., § 70-7-46, enacted by Laws 1975, ch. 38, § 46; 1995, ch. 195, § 21.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, added Subsection A; designated the existing language as Subsection B, and in that subsection, substituted "Upon a petition for restitution filed by the resident" for "Trial shall be had on the date or dates set as in all other cases, and" at the beginning, deleted "declare the forfeiture of the rental agreement and shall" following "the court shall", substituted "within twenty-four hours" for "specified date not more than seven days" near the end, and made minor stylistic changes throughout the subsection.

Restitution not mandatory in back rent actions. — This section does not require that a court issue a writ of restitution if it renders a money judgment against a tenant based on causes of action such as back rent. *City of Albuquerque v. Brooks*, 1992-NMSC-069, 114 N.M. 572, 844 P.2d 822.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Setoff or counterclaim in action by tenant against landlord for restitution under Federal Housing and Rent Act of 1947 and amendments, 10 A.L.R.2d 249.

52A C.J.S. Landlord and Tenant § 762.

47-8-47. Appeal stays execution.

A. If either party feels aggrieved by the judgment, that party may appeal as in other civil actions. An appeal by the defendant shall stay the execution of any writ of restitution; provided that in cases in which the resident is the appellant, the execution of the writ of restitution shall not be stayed unless the resident, within five days of the filing of the notice of appeal, pays to the owner or into an escrow account with a professional escrow agent an amount equal to the rental amount that shall come due from the day following the judgment through the end of that rental period. The resident shall continue to pay the monthly rent established by the rental agreement at the time the complaint was filed, on a monthly basis on the date rent would otherwise become due. Payments pursuant to this subsection by a subsidized resident shall not exceed the actual amount of monthly rent paid by that resident. When the resident pays the owner directly, the owner shall immediately provide a written receipt to the resident upon demand. When the resident pays into an escrow account the resident shall cause such amounts to be paid over to the owner immediately upon receipt unless otherwise ordered by the court. Upon the failure of the resident or the escrow agent to make a monthly rent payment on the first day rent would otherwise be due, the owner may serve a three-day written notice on the resident pursuant to Subsection D of Section 47-8-33 NMSA 1978. If the resident or the resident's escrow agent fails to pay the rent within the three days, a hearing on the issue shall be scheduled within ten days from the date the court is notified of the failure to pay rent. In the case of an appeal de novo, the hearing shall be in the court in which the appeal will be heard. If, at the hearing, the court finds that rent has not been paid, the court shall immediately lift the stay and issue the writ of restitution unless the resident demonstrates a legal justification for failing to comply with the rent payment requirement.

B. In order to stay the execution of a money judgment, the trial court, within its discretion, may require an appellant to deposit with the clerk of the trial court the amount of judgment and costs or to give a supersedeas bond in the amount of judgment and costs with or without surety. Any bond or deposit shall not be refundable during the pendency of any appeal.

History: 1953 Comp., § 70-7-47, enacted by Laws 1975, ch. 38, § 47; 1989, ch. 253, § 2; 1995, ch. 195, § 22; 1999, ch. 91, § 7.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, rewrote Subsection A.

The 1995 amendment, effective July 1, 1995, added the subsection designations and rewrote this section to such an extent that a detailed comparison would be impracticable.

The 1989 amendment, effective June 16, 1989, made minor stylistic changes in the second sentence, and inserted the fourth and fifth sentences.

Effect of violation of stay of execution. — This section does not explicitly or implicitly require that a property owner either do or not do a specific act after the court has issued a writ of restitution, nor does the statute provide a standard of conduct for a reasonable person under circumstances where an appeal has been taken. Accordingly, violation of the statute does not establish negligence per se. *Runge v. Fox*, 1990-NMCA-086, 110 N.M. 447, 796 P.2d 1143.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Landlord and Tenant § 784.

47-8-48. Prevailing party rights in lawsuit; private enforcement.

A. If suit is brought by an applicant or any party to the rental agreement to enforce the terms and conditions of the rental agreement or to enforce any provisions of the Uniform Owner-Resident Relations Act, the prevailing party shall be entitled to reasonable attorneys' fees and court costs to be assessed by the court.

B. An owner who charges an unauthorized screening fee shall be liable for two hundred fifty dollars ($250) and shall return all fees paid by the applicant.

C. An owner who violates a provision of Section 47-8-36 or 47-8-39 NMSA 1978 shall be liable for two times the amount of the monthly rent.

D. A resident who intentionally violates a provision of Subsection F of Section 47-8-22 NMSA 1978 shall be liable for two times the amount of the monthly rent.

History: 1953 Comp., § 70-7-48, enacted by Laws 1975, ch. 38, § 48; 1995, ch. 195, § 23; 2025, ch. 122, § 7.

ANNOTATIONS

The 2025 amendment, effective June 20, 2025, expanded private remedies; in the section heading, deleted "civil penalties" and added "private enforcement"; added new Subsection B and redesignated former Subsections B and C as Subsections C and D, respectively; in Subsection C, after "shall be" deleted "subject to a civil penalty equal to" and added "liable for"; and in Subsection D, after "shall be" deleted "subject to a civil penalty equal to" and added "liable for".

The 1995 amendment, effective July 1, 1995, designated the existing language as Subsection A, and in that subsection, substituted "or to enforce any provisions" for "entered into pursuant to the terms", and substituted "attorneys' " for "attorney's"; and added Subsections B and C.

Determination of reasonable attorney fees. — Where a fire, that was negligently caused by defendant, destroyed plaintiff's personal property in a mobile home that plaintiff rented from defendant; the jury awarded plaintiff $25,000 in compensatory damages; plaintiff sought $70,318 in attorney fees based on the lodestar calculation of time spent on the case and the hourly rate charged by plaintiff's counsel; and on the grounds that plaintiff's attorney fees were almost three times the jury award and that the case involved only property damage and no broader public policy, the district court applied a proportional test and awarded plaintiff $10,000 in attorney fees with an offset of $5,000 for defendant's successful defense of plaintiff's claims for punitive damages, emotional stress damages, and civil penalty damages, the district court abused its discretion because the district court failed to consider the public policy goals of the Uniform Owner-Resident Relations Act to encourage compliance with the act and because the district court failed to consider a lodestar analysis or any objective analysis of the facts in determining attorney fees. *Behrens v. Gateway Court, L.L.C.*, 2013-NMCA-097, cert. granted, 2013-NMCERT-009.

Prevailing party. — The "prevailing party" is the party who wins on the merits or on the main issue of the case. *Hedicke v. Gunville*, 2003-NMCA-032, 133 N.M. 335, 62 P.3d 1217, cert. denied, 133 N.M. 413, 63 P.3d 516.

Landlord, as the prevailing party, was entitled to attorney fees and costs. — Where tenants signed a lease agreement with landlord to rent the subject property for a term of sixteen months, and where the parties subsequently agreed to end the lease several months early, and where landlord sent tenants an accounting that itemized deductions from tenants' damage deposit, and where tenants filed a complaint contesting the amount landlord deducted from their damage deposit and landlord filed a cross-claim stating that she was entitled to additional damages beyond those itemized in the deductions, and where tenants claimed that, 47-8-18(C) and 47-8-18(D) NMSA 1978 require a landlord to provide a tenant with an itemized listing of all damages to property within thirty days of the date the lease ends, and any claim for damages not then identified is forfeited, and where the district rejected tenants' argument, concluding that the plain meaning of 47-8-18 NMSA 1978 only prohibits a landlord from filing an independent claim for damages if the landlord failed to comply with the statute's terms regarding return of the damage deposit, and awarded landlord, as the prevailing party, attorney fees and costs, the district court did not abuse its discretion in finding that landlord was the prevailing party, because landlord prevailed on the main issue in her cross-claim and tenants were found liable for over $2,300 in damages to landlord's property. *Stodgell v. Weissman*, 2025-NMCA-003, cert. denied.

Assessing attorneys' fees. — Assessing attorneys' fees need not be mechanistic or formalistic, but as governed by, and should be apportioned according to, the facts and circumstances of the case and the extent to which the parties, in fact, prevailed. *Hedicke v. Gunville*, 2003-NMCA-032, 133 N.M. 335, 62 P.3d 1217, cert. denied, 133 N.M. 413, 63 P.3d 516.

Prevailing parties are entitled to award of reasonable attorney fees. — Where tenants brought action against apartment owner and manager for violations of the New Mexico Unfair Practices Act (UPA), §§ 57-

12-1 through § 57-12-26 NMSA 1978, and the New Mexico Uniform Owner-Resident Relations Act (UORRA), §§ 47-8-1 through § 47-8-52 NMSA 1978, and where the parties reached a settlement agreement on all issues except attorney fees, plaintiffs were entitled to reasonable attorney fees, notwithstanding the fact that the damage award was small, because plaintiffs successfully prosecuted their UPA and UORRA claims; the amount involved and the results obtained are only one factor among several the court may consider to determine a reasonable attorney fee. *Fallen v. GREP Southwest, LLC*, 247 F.Supp.3d 1165 (2017).

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51C C.J.S. Landlord and Tenant §§ 247(2), 250(2).

47-8-49. Unlawful and forcible entry.

The laws and procedures of New Mexico pertaining to complaints of unlawful and forcible entry shall apply to actions for possession of any premises not subject to the provisions of the Uniform Owner-Resident Relations Act or the Mobile Home Park Act [Chapter 47, Article 10 NMSA 1978].

History: 1953 Comp., § 70-7-49, enacted by Laws 1975, ch. 38, § 49; 1995, ch. 195, § 24.

ANNOTATIONS

Cross references. — For action for possession by owner, *see* 47-8-40 NMSA 1978.

For inapplicability of general forcible entry or detainer provisions to actions by landlord, *see* 35-10-2 NMSA 1978.

The 1995 amendment, effective July 1, 1995, rewrote the section to such an extent that a detailed comparison would be impracticable.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 52A C.J.S. Landlord and Tenant §§ 720, 752 to 792.

47-8-50. Prior transactions valid.

Transactions entered into before the effective date of the Uniform Owner-Resident Relations Act, and not extended or renewed after that date, and the rights, duties and interests flowing from them remain valid and may be terminated, completed, consummated or enforced as required or permitted prior to the effective date of the Uniform Owner-Resident Relations Act.

History: 1953 Comp., § 70-7-50, enacted by Laws 1975, ch. 38, § 50.

ANNOTATIONS

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

47-8-51. Applicability.

The provisions of the Uniform Owner-Resident Relations Act are applicable to rental agreements entered into or extended or renewed after the effective date and shall not be applicable to any agreements or conditions entered into between the owner and resident which provisions may alter agreements or conditions existing prior to the effective date of the provisions of the Uniform Owner-Resident Relations Act.

History: 1953 Comp., § 70-7-51, enacted by Laws 1975, ch. 38, § 51.

ANNOTATIONS

Severability. — Laws 1975, ch. 38, § 52 provided for the severability of the act if any part or application thereof is held invalid.

Law reviews. — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

47-8-52. Conflicts; applicability of law.

Unless a provision of the Mobile Home Park Act [Chapter 47, Article 10 NMSA 1978] directly conflicts with the provisions of the Uniform Owner-Resident Relations Act, the provisions of the Uniform Owner-Resident Relations Act shall apply to mobile home park owners and residents.

History: Laws 1989, ch. 253, § 3.