# QUESTIONS & ANSWERS

# FROM RANM HOTLINE ATTORNEY ASHLEY STRAUSS-MARTIN

**October, 2015**

## MANUFACTURED HOUSING

1Q: Can a real estate broker sell manufactured housing that is NOT permanently affixed to the real property without holding a manufactured housing broker or dealer license?

1A: Yes, as long as the real estate broker is selling real property along with the manufactured home, there is no limited to the number of manufactured homes that a real estate broker can sell; the manufactured home does NOT have to be permanently affixed to the real property, have a deactivated title or be taxed as real property. Please note that even though these are not factors for the purpose of the broker selling the manufactured home, these may be requirements for financing.

Real estate brokers may sell one manufactured home in a 12-month period where there is NO real property involved (for example, a manufactured home on leased land in a mobile/manufactured home park) without having to obtain a manufactured housing broker's license. If a real estate broker sells such a manufactured home, the transaction does NOT have to go through the brokerage; however, if it does run through the brokerage, it would "count" as the brokerage's 1-in-12 and the brokerage would not be able to sell any additional manufactured homes that did not include real estate for a 12-month period.

## BROKER PRICE OPINIONS

1Q: Can a real estate broker provide Broker Price Opinions (BPO) or Comparative Market Analysis (CMA) of the value of the property for a fee if the broker is not involved in the sale or lease of the property.

1A: Effective June 14, 2013, the Appraisal Act will allow brokers to receive compensation for providing an opinion of the price of real estate for the purpose of marketing, selling, purchasing, leasing or exchanging the real property or any interest therein or for the purpose of providing a financial institutions (lender/bank) with a collateral assessment of any real estate in which the financial institution has in an existing or potential security interest. The BPO may not be construed as an appraisal or appraisal report and may not be used as the primary basis to determine the value of the real estate for the purpose of loan origination.

## OUT-OF-STATE BROKERS AND RECIPROCITY

1Q: May an out-of-state broker conduct business in New Mexico?

1A: It depends on whether the out-of-state broker intends to conduct business involving residential or commercial property. An out-of-state broker wishing to sell or lease ***residential*** property in New Mexico must obtain a New Mexico real estate license. If an out-of-state broker does not also have a New Mexico real estate license, s/he may receive a referral fee, but may not conduct business involving

***residential*** property in New Mexico. However, an out-of-state broker wishing to sell or lease ***commercial*** property in New Mexico may do so provided he/she enters into a written agreement with a New Mexico broker that contains specific elements (See RANM Form 1107 – Co-op and Compensation Agreement – Commercial Real Estate Transactions – Foreign Brokers).

2Q: Does New Mexico have reciprocity with any other states so that an-out-of-state broker may obtain a New Mexico license without testing or so that I may obtain a license in another state without testing?

2A: New Mexico only has reciprocity with a small number of states. Contact the New Mexico Real Estate Commission to determine which states currently have reciprocity with New Mexico.

3Q; If a broker who has a license from another jurisdiction wishes to become licensed in New Mexico, what must they do?

3A: If a broker already has a license in good standing in another state, the New Mexico Real Estate Commission may only require the broker to take the New Mexico portion of the licensing exam and may waive some of the required pre-licensing hours. If the out-of-state broker obtains an associate broker's license, s/he will have to "hang" his/her license with a New Mexico qualifying broker. If the out-of-state broker gets a qualifying broker's license, the broker can "hang" his/her license in his/her out-of-state office. Once licensed, the broker will be required to satisfy all post-licensing education requirements and abide by all applicable New Mexico laws and regulations, just as all New Mexico licensees must do.

**FOR MORE INFORMATION, SEE RANM 1350 – INFORMATION SHEET - FOREIGN BROKERS**

**EARNEST MONEY DISPUTES**

1Q: The Buyer and Seller cannot agree to the earnest money distribution. What can I, as a broker do?

1A: First, it is not the role of the broker to resolve earnest money disputes for his/her customer/client. Very often the dispute is over an interpretation of the contract. You should advise your customer/client to seek legal advice on the validity of your customer/client's position.

With that said, there is a mediation provision in the RANM Residential Re-Sale Purchase Agreement. It requires the parties to attempt mediation prior to litigation. In a mediation situation, the parties will agree to a mediator and the time and place of the mediation. Per the Purchase Agreement, the parties will split the cost of mediation 50/50. If the parties cannot agree on a mediator or if mediation is unsuccessful, the next step is litigation. If the dollar amount at issue is $10,000 or less, the case may be heard in small claims court (Metro Court in Bernalillo County, Magistrate Court in all other counties in New Mexico). If the amount is greater than $10,000, the case must be heard in District Court.

**REBATES**

1Q: Are Brokers permitted under federal and state law to rebate all or part of their commission back to the buyer client?

1A: Yes. The federal law that governs rebates, referrals, kickbacks, among other settlement issues is the Real Estate Settlement Procedures Act (RESPA). The whole point of RESPA is to make sure the consumer is protected and receives the best deal possible on his/her federal insured mortgage. Consequently, RESPA allows rebates that put money back in the buyer's pocket. While some states have enacted anti-rebate statutes, New Mexico is NOT among them; there is no New Mexico statute or regulation that prohibits brokers from giving rebates to their buyers.

2Q: Are there any additional issues to consider when rebating part of a commission to a customer/client?

2A: All cash rebates must show up on the Closing Disclosure. Failure to disclose a cash rebate to a client

on the Closing Disclosure could be mortgage fraud. Gifts to customers (i.e., gift cards or other tangible items) do not have to show up on the Closing Disclosure.

3Q: I would like to offer a donation to a third party (i.e. charitable organization, school, church) of my client's choice if he/she does business with me. Is this legal?

3A: New Mexico law prohibits a broker from paying or receiving 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. The New Mexico Real Estate Commission has taken the position that such a "contribution" or "donation" falls within the above-stated provision of the law. Therefore, a broker may not make a donation as contemplated above. However, a broker may always make a donation of any part of his/her commission to any charitable organization that s/he wishes (as long as such donation is not based on the referral of business) and may advertise that she/he does so (for example, "I donate x% of every commission I receive to the Boys and Girls Club".)

**RESPA**

1Q: What kinds of transactions are covered under RESPA?

1A. RESPA covers transactions involving a federally related mortgage loan, which includes most loans secured by a lien (first or subordinate position) on residential property (i.e. FHA, VA or other government sponsored loans, as well as most conventional loans.) This includes: home purchase loans, refinances, lender approved assumptions, property improvement loans, equity lines of credit, and reverse mortgages. Time shares are covered under RESPA if the lender's interest is secured by a lien on residential property. A loan secured by a condominium unit or a cooperative share is covered under RESPA as long as the units are not used for business purposes. A loan secured by a manufactured home (mobile home) is covered under RESPA, ONLY if the manufactured home is located on real property on which the lender's interest is secured by a lien. Construction Loans on residential property are covered under RESPA: 1) if they may be converted to permanent financing by the same lender; or 2) if the lender issues a commitment for permanent financing; or 3) if the loan is used to finance a transfer of title to the first user; or 4) if the loan is for a term of two years or more, unless it is to a bona fide builder.

The following are kinds of transactions that are not covered by RESPA: an all cash sale; a sale where the individual home seller takes back the mortgage; a rental property transaction or other business purpose transaction.

2Q: Can a mortgage company and a broker advertise their services together, for example, on the same brochure or newspaper advertisement?

2A: Nothing in RESPA prevents joint advertising. However, if one party is paying less than a pro-rata share for the brochure or advertisement, there could be a RESPA violation.

3Q: Can a lender give a broker note pads with the lender's name on it?

3A: Yes. Such note pads with the lender's name on it would be allowable as normal promotional items. However, if the lender gives the broker note pads with the broker's name on it for the broker to use to market clients for its real estate business, then the note pads could be a thing of value given for referral of loan business, because it defrays a marketing expense that the broker would otherwise incur.

4Q: May a seller require that a buyer obtain a pre-qualification <u>letter</u> from a particular lender of the seller's choice?

4A: Yes.

5Q: May a seller require as a condition of sale that a buyer use a particular lender for the loan.
5A: No.

6Q: Assuming a federally-insured loan is involved and RESPA applies, who chooses the title company, the buyer or the seller?
6A: Under the Real Estate Settlement Procedures Act (RESPA), the seller may not require as a condition of sale that the buyer purchase title insurance from any particular company. This means that if the buyer is paying for any title insurance costs, the buyer gets to choose the title insurance company. In order for the seller to require that the buyer use a specific title insurance company, the seller would have to pay both the owner's and the lender's title insurance policies and all associated title policies fees.

**FOREIGN SELLERS/OWNERS**

1Q: What is FIRPTA?
1A: FIRPTA is an acronym for the Foreign Investment in Real Property Tax Act. Under FIRPTA, nonresident sellers are taxed similarly to U.S. real estate owners when selling their properties by placing the tax-remittance onus on the resident buyer. In transactions with foreign persons, the buyer **MUST** submit 10 percent of the net contract price to the IRS within 20 days of closing. The buyer must determine if the seller is a foreign person. If the seller is foreign, but an exemption applies, then the buyer must obtain proof of qualification to avoid IRS sanctions. If a seller asserts that he/she is a non-foreign person, the buyer should obtain a non-foreign affidavit (RANM Form 2303) or a Statement of Qualified Substitute (RANM Form 2303A).

2Q: What are the most common exceptions to FIRPTA?
2A: The following are the most common exceptions: 1) the property is purchased for less than $300,000 **AND** the buyer is using the property as a primary residence; 2) the seller has an IRS statement that specifies the seller is exempt from withholding, is entitled to a reduced withholding amount, has provided adequate security for payment or has made arrangements with the IRS for payment; 3) **the seller provides the buyer with a non-foreign affidavit (RANM Form 2303);** 4) the seller provides a Qualified Substitute with a Non-Foreign Seller Affidavit and the Qualified Substitute provides the buyer with a Statement of Qualified Substitute; or 5) the seller is participating in a **SIMULTANEOUS** Section 1031 Exchange. See the FIRPTA Information Sheet for more information (RANM Form 2304).

3Q: How do you determine if a seller is a "foreign person" under FIRPTA?
3A: A foreign person includes: an nonresident alien individual; a foreign corporation, partnership, trust, or estate; and any other person that is not a U.S. person. A nonresident alien is defined as an individual who is neither a U.S. citizen nor a resident of the U.S. within the meaning of section 7701(b) of the Internal Revenue Code. Two tests apply. Under the "green-card" test, an alien individual is a resident of the U.S. if he/she has been admitted for U.S. permanent residence (i.e., has a green card) at any time during the calendar year. Under the substantial- presence test, an alien individual is a resident for U.S. federal tax purposes if the alien is physically present in the U.S. for 183 days or more during the current calendar year. Alternatively, if the alien is physically present for at least 31 days during the current year, the alien may be treated as a U.S. tax resident in the current year under a three-year look-back test which requires an analysis of the alien's presence over the preceding three years. If the alien is from a country that has an income tax treaty with the United States, the treaty may act to change these results.

4Q: How does FIRPTA define primary residence?
4A: The buyer or a member of his/her family must have definite plans to reside at the property for at least

50% of the number of days the property is used by any person during each of the first two 12-month periods following the date of transfer. When counting the number of days the property is used, do not count the days the property will be vacant.

6Q Is there an alternative to the seller providing their tax identification number directly to the buyer?

6A: As of July 30, 2008, non-foreign sellers have an alternative to providing their tax identification number directly to the buyer. Section 3024 of the House and Economic Recovery Act of 2008 provides that the non-foreign affidavit may be furnished to a qualified substitute. In such case, the qualified substitute must furnish a statement to the buyer stating, under penalty of perjury, that the qualified substitute has the seller's non-foreign affidavit in his possession. In this context, a "qualified substitute" can be the buyer's agent and/or the person (including any attorney or title company) responsible for closing the transaction; however, a qualified substitute CAN NOT be the seller's agent.

7Q: If the Seller opts to use a Qualified Substitute, logistically, what is the process?

7A: In most cases, the Qualified Substitute will be the title company closing the transaction. RANM has worked with members of the state title association to develop a process; however, if the particular title association being used is not familiar with this process, it may be necessary for you to provide them with the documents that RANM has developed (Non-Foreign Seller Affidavit, Statement of Qualified Substitute and FIRPTA Information Sheet) and to ask that they discuss the document the Seller can deliver the completed non-foreign affidavit to the title company directly. It is not necessary for a listing broker to ever have a copy of the Seller's Non-Foreign Affidavit in his/her hands or file. The title company will safeguard the Seller's completed Non-Foreign Seller Affidavit with the Seller's file and provide to the Buyer a Statement of Qualified Substitute. Again, this Statement of Qualified Substitute does not have the Seller's tax identification number on it. It would be prudent for the Buyer's Broker to retain copy of the Statement of Qualified Substitute in his/her files.

8Q: If there is more than one party selling the property, must I get an affidavit of non-foreign seller from each party?

8A: Yes, from each party with an ownership interest in the property.

9Q: If the Seller asserts that he/she is not a foreign person, why must he/she also fill out the affidavit of non-foreign seller?

9A: Under FIRPTA, if the Seller asserts he/she is not subject to withholding because he/she is a not a foreign person, then the Seller must provide a sworn statement made under penalty of perjury which includes the Seller's tax identification number. If the Buyer fails to withhold 10% on the basis that the Seller was exempt from withholding because the Seller was non-foreign, this is the proof that the Buyer must have in order to avoid penalties. See Question 23 below for penalties.

10Q: If the seller refuses to comply, what are the IRS penalties for violations under FIRPTA?

10A: In the event the seller is a foreign person as defined by FIRPTA and the buyer fails to obtain the required 10% tax and remit it to the IRS within the required time frame, the buyer will be held liable for the tax. If a broker has actual knowledge that the seller's affidavit or statement of qualified substitute is false, he/she may be fined an amount equal to his/her compensation. Interest and other civil and criminal penalties may also apply. Brokers should advise their buyer customers of the penalties and weigh the consequences of purchasing a property from a seller who is not willing to comply with the FIRPTA requirements.

11Q: My Customer/Seller is a Non-Foreign trust/estate, how does the trustee/executor fill out the Non-Foreign Affidavit?

11A: The trust /estate should already have a Federal taxpayer identification number (sometimes known as a TIN) and also known as an employer identification number (or EIN) which is issued by the Internal

Revenue Service. If not, application for a TIN or EIN is made to the IRS through a form SS-4. Application can also be made by telephone or online through the I.R.S. website. The trustee/executor should have an accountant or other professional familiar with the process assist him/her; the form is short, but requires some knowledge of the issues.

12Q: I'm managing a rental property for a foreign owner, are there any special concerns that I should consider?

12A: Yes, you may be responsible for retaining proceeds from the rental to pay the owner's taxes on the rental income. In addition, there may be special reporting requirements.

**FOR MORE INFORMATION, SEE RANM FORM 2304 – INFORMATION SHEET – FIRPTA AND TAXATION OF FOREIGN PERSONS RECEIVING INCOME FROM US PROPERTIES**

**DOMESTIC WELLS**

1Q: How do I determine if a domestic well is permitted in the current owner's name and if it is not, what must the owner do?

1A: The seller must contact the Office of State Engineer to determine if the well is currently permitted in his/her name. If a well is not permitted in the current owner's name, the current owner of the property on which the well is located must retrieve warranty deeds or other instruments of conveyance from the county clerk's office for each transfer of the property from the time beginning with the last owner of the domestic well as recorded with the Office of State Engineer to the present. These deeds or other instruments of conveyance must be submitted to the Office of State Engineer, along with change of ownership notification, in order for the well to be permitted in the current property owner's name.

2Q: Does a buyer have any filing obligations after he/she purchases a property on which a domestic well is located?

2A: Yes, under New Mexico law, new owners of a property with a domestic well must file a change of ownership notification with the Office of State Engineer. The form must contain all information conforming to water rights of record filed with the Office of State Engineer and must be accompanied by a copy of the warranty deed or other instrument of conveyance. The new owner must also record a copy of the "change of ownership" form filed with the Office of State Engineer with the clerk of the county in which the water right is located.

3Q: How much water can be used from a domestic well?

3A: For wells drilled on or after August 15, 2006, the maximum household usage per domestic well is one-acre-foot. For wells serving a single household permitted and drilled prior to the effective date, the maximum household usage per well is three-acre feet. The maximum usage for wells serving multi-households is one-acre foot per household with a cumulative maximum of three-acre-feet per shared well. While not required by state regulations, some counties have ordinances that require that single-household wells be metered. Please note that the drilling of a domestic well and the amount of use of water permitted are subject to such additional or more restrictive limitations imposed by a court, by lawful municipal or county ordinance, or by the State Engineer, such as but not limited to by the State Engineer's orders or administrative guidelines.

4Q: What considerations apply for wells serving multiple households?

4A: A well serving multiple households must be permitted in the name of the person who owns the property on which the well is located. The permit holder must place a meter on the well and must file quarterly meter readings with the State Engineer's Office. The permit holder of a well serving

multiple households is also required to provide notice to the Office of the State Engineer of the following: the number of households being served by the well; the owners' contact information for each household being served by the well; and, a description of the legal-lot of record for each household being served by the well. A copy of the well-share agreement may be filed to support a claim that a well is serving more than one household. A copy of the well-share agreement should be filed with the county clerk's office in the county where the well is located.

5Q: What are the penalties for failure to file a change of ownership form?

5A: The State Engineer may cancel a domestic well permit upon failure of a permit holder to comply with ANY permit condition of approval or any applicable provision of the regulations**;** this includes, but is not limited to, the failure to file a change of ownership at the time of transfer that meets the requirements set forth under New Mexico law. The State Engineer may cancel a domestic well permit and proceed with enforcement action if a permit holder diverts water in excess of the authorized maximum amount and fails to repay the over-diversion in a time and manner acceptable to the State Engineer.

NOTE: THERE MAY BE ADDITIONAL DOMESTIC WELL REQUIREMENTS ESTABLISHED BY THE COUNTY IN WHICH THE PROPERTY IS LOCATED.

**FOR MORE INFORMATION, SEE RANM FORM 2307 – INFORMATION SHEET - WATER RIGHTS AND DOMESTIC WELLS**

**SEPTIC SYSTEMS**

1Q: What is required of a seller whose property has a septic system?

1A**:** The owner of an on-site liquid waste system is responsible for properly operating and maintaining the system in accordance with the recommendations of the manufacturer or designer of the system. Prior to the transfer of a property with an existing on-site liquid waste system, the seller shall have the system inspected and evaluated by an inspector utilizing a NM Environmental Department approved form. A property transfer evaluation is NOT required if a final evaluation with final approval for a new or modified system or property transfer evaluation for an existing system has been performed with 180 days of the transfer.

2Q: Are banks who are selling bank-owned property exempt from having to comply with the evaluation-prior-to-transfer requirement?

2A: No

3Q: If the inspection indicates the septic needs repair, must the repairs be done before the property can be sold?

3A: No. The property may be conveyed prior to the repairs being done; however, the evaluator will submit his/her findings within 15 days of the evaluation and the New Mexico Environmental Department (NMED) will look to the "owner" to repair any deficiencies in the system. If the property transfers, the buyer will be the owner and the Department will look to the buyer to remedy the defects in the system even if the seller agreed to satisfy repairs after closing.

4Q: How soon after closing will a buyer be required to remedy defects in the system?

4A: If the system requires repairs or a variance, the person who will own the property 15 days after the evaluation will be required to request such permit for repairs or a variance within 15 days of the evaluation.

5Q: When property is sold via seller financing using a real estate contract, who is considered the "owner"

for purposes of the septic regulations?

5A: When using a real estate contract (REC) in a seller financing sale, the NMED considers the buyer the owner of the property from the time of signing of the REC.

6Q: What are the penalties for failing to conduct an inspection of the septic prior to transfer.

6A: Failure to conduct a inspection prior to transfer carries with it both civil fines and criminal penalties. The NMED may issue a compliance order stating the nature of the violation requiring compliance immediately or within a specific time period and assess a civil penalty for any past or current violation or both; or commence a civil action in district court for appropriate relief, including a temporary or permanent injunction. Any penalty assessed in the compliance order for residential on-site liquid waste systems shall not exceed one hundred dollars ($100) for each violation. Any penalty assessed in the compliance order for non-residential on-site liquid waste systems shall not exceed one thousand dollars ($1000) for each violation. If a violator fails to achieve compliance within the time specified in the compliance order, the secretary shall assess civil penalties of not more than one thousand dollars ($1000) for each noncompliance with the order. In addition, the violation may be criminally prosecuted as a petty misdemeanor, which carries with it potential jail time for a definite term not to exceed six months and/or a fine of not more than five hundred dollars ($500).

NOTE: THERE MAY BE ADDITIONAL SEPTIC REQUIREMENTS ESTABLISHED BY THE COUNTY IN WHICH THE PROPERTY IS LOCATED.

**FOR MORE INFORMATION, SEE RANM FORM 2308 INFORMATION SHEET – SEPTIC SYSTEMS**

**PROPERTY TAX DISCLOSURE LAW**

1Q: Under the Estimate Property Tax Disclosure Law, what is required of the Seller?

1A: Prior to accepting an offer to purchase, the property Seller or the Seller's Broker must request from the county assessor of the county in which the Property at issue is located the estimated amount of property tax levy with respect to the property and provide a copy of the assessor's response in writing to the prospective Buyer or Buyer's broker.

2Q: What amount should be used when requesting the Estimated Property Tax Levy from the County Assessor's Office?

2A: The listed price shall be used as the value of the property for purposes of calculating the estimated amount of property tax levy. If the list price changes, a new calculation based on the new list price must be generated. However, the Seller is not required to provide a new estimate based on actual sales price or on any of the proposed sales prices during the negotiation process.

3Q: What are my obligations as a Buyer's Broker?

3A: A Buyer's Broker must provide the estimated amount of property tax levy to the prospective Buyer immediately upon receiving the estimate from the property Seller or Seller's Broker and receive in writing the prospective Buyer's acknowledgment of receipt of the estimated amount of property tax levy. RANM Form 3250 can be used for this purpose.

4Q: What if the Estimated Property Tax Levy is not readily available? May a Buyer still make an offer?

4A: The prospective Buyer may waive the disclosure requirements by signing a written document prior to the time the offer to purchase is to be made in which the Buyer acknowledges that the required estimated amount of property tax levy is not readily available and waives disclosure of the estimated amount of property tax levy.

5Q: How much time does the County Assessor have to comply with a Seller's or Listing Broker's request?

5A: Upon request, the county assessor shall furnish in writing an estimated amount of property tax levy by the close of business of the business day following the day the request is received.

6Q: My Customer/Seller is concerned that by making the request for the Estimated Property Tax Levy to the County Assessor's Office, he/she may trigger a reassessment of his/her property.

6A: A document associated with the request is not a public record or a valuation record. County Assessors are prohibited from using the information provided with a request, including the specified value, to assess the valuation of the property.

7Q: Is the County bound to the Estimated Property Tax Levy provided?

7A: Neither the County nor any jurisdiction levying a tax against residential property in the county is bound in any way by the estimate given.

8Q: What must the Estimated Property Tax Levy received from the County Assessor's Office Contain?

8A: The county assessor's estimated amount of property tax levy must contain the following: 1) the actual amount of property tax levied for the property for the current calendar year if the tax rates for the current year have been imposed or in all other cases, the amount of property tax levied with respect to the property for the prior calendar year; 2) the estimated amount of property tax levy for the calendar year following the year in which the transaction takes place; and 3) a disclaimer similar to the following.

"The estimated amount of property tax levy is calculated using the stated price and estimates of the applicable tax rates. The county assessor is required by law to value the property at its current and correct value, which may differ from the listed price. Further the estimated tax rates may be higher or lower than those that will actually be imposed. Accordingly, the actual tax levy may be higher or lower than the estimated amount. New Mexico law requires your real estate broker or agent to provide you an estimate of the property tax levy on the property on which you have submitted or intend to submit an offer to purchase. All real estate brokers and agents who have complied with these disclosure requirements shall be immune from liability arising from suit relating to the estimated amount of property tax levy."

9Q: How is "residential property" defined under the law that requires that the estimated property tax be provided to the buyer?

9A: Under the above-law, residential property is defined as property consisting of up to four dwellings together with appurtenant structures, the land underlying both the dwellings and the appurtenant structures and a quantity of land reasonably necessary for parking and other uses that facilitate the use of the dwellings and appurtenant structures; as used in this subsection, "dwellings" includes both manufactured homes and other structures when used primarily for permanent human habitation, but the term does not include structures when used primarily for temporary or transient human habitation such as hotels, motels and similar structures.

10Q: The County in which the property is located has a website on which you can access the Estimated Property Tax Levy, may I use the information from the website or do I still have to present the request to the County Assessor's Office?

10A; A county may satisfy this obligation through an internet site or other automated format that allows a user to print the requested information set forth in Paragraph 39 above. The print outs will satisfy the provisions of the law; it is NOT necessary to obtain the County Assessor's signature on the print-outs of the Estimated Property Tax Levy. The printouts can be attached to RANM Form

3250 (Certification of Delivery and Acknowledgment of Receipt).

11Q: Will a Buyer's property taxes be automatically adjusted to the amount of the Estimated Property Tax Levy provided to him/her before he/she submitted the offer on the property?

11A: Not necessarily. The County Assessor must value the property at its current and correct value. One of the factors considered in determining current and correct value is the market price, as often evidenced by sales price, of the property. The transfer of the property will likely trigger a reassessment of the property, but how quickly this reassessment is conducted depends on several factors.

If a reassessment occurs upon or shortly after transfer, the Buyer's taxes will adjust accordingly and be reflected on the Assessor's valuation of the property at the beginning of year after the sale takes place. This amount should be closely equal to the amount provided for in the Estimated Tax Levy.

If a reassessment does not take place prior to the Assessor's valuation being sent, the valuation will be based on some prior assessment of the property and may not equal the Estimated Property Tax Levy provided to the Buyer. If the actual property tax is less than the Estimated Property Tax Levy, I do not anticipate the new owner will object; however, if the actual property tax is more than the Estimated Property Tax Levy provided to the Buyer, I anticipate the new owner will take issue. If this occurs, the new home owner may have to protest the Assessor's valuation. The buyer should be aware of the time frames for filing of protests provided on the notice of valuation. Failure to adhere to this deadlines will require that buyer to pay the property taxes indicated and then request a refund of overpayment through a district court proceeding. It is imperative that the homeowner be aware of the deadlines for filing for a refund with the district court. January 9th is the last day to file a claim for a refund in district court on values that were set on January 1st of the prior tax year. Also note, to be eligible to file a claim for refund, the owner must pay the tax billed prior to the delinquency date.

12Q: What is a Notice of Valuation?

12A: Once a year, the Owner receives a Notice of Value from the County Assessor informing him/her of the full, taxable, and net taxable values on his/her property for that year. It is an advance notification of what the Assessor believes the property is worth. The Notice of Value is not a tax bill, but the net taxable value on the notice will result in a tax bill from the County Treasurer's Office.

13A: What is my liability as a Broker if the County Assessor provides an inaccurate Estimated Property Tax Levy?

13Q: All property sellers and real estate brokers and agents who have complied with the provisions of the law are immune from suit and liability arising from or relating to the estimated amount of property tax levy.

**FOR MORE INFORMATION, SEE RANM FORM 3275 – ESTIMATED PROPERTY TAX DISCLOSURE**

**RELEVANT DATES FOR PROPERTY TAX PURPOSES**

14Q: What are relevant dates for property tax purposes?

14A: **January 1:** January 1st determines the taxable status of all property in the state of New Mexico. If property is destroyed or improved during the year, any resulting increase or decrease will not be reflected until January 1 of the next year.

**February:** By the last day of this month, all new improvements, decreases in value, mobile homes, livestock, and claims for any applicable exemptions must be made. This is a reporting period that begins January 1 and ends on the last day of February.

**April 1:** On or before April 1, county assessors must mail notices of value to property owners. There are two methods for protesting values, denial of exemptions, classification, allocation of taxes to a governmental unit or limitation in value increase as provide by state law. There is no provision under the property tax code to protest taxes (dollar amount). The first method is to file a petition of protest with the county assessor within thirty days of receiving your notice of value (post mark date). The second method is file for a claim of refund in district court after paying your property taxes before the delinquent date. Property owners cannot use both methods on the same property in the same year.

J**une 15:** County assessors certify total net taxable values in the county to the Property Tax Division. After this date, valuation changes become increasingly difficult and will generally require a court order.

**November 1:** The finance division mails the tax bills based on the values set as of January 1st of this tax year.

**November 10:** First half of taxes are due based on values set January 1st of this tax year. After paying their first installment of taxes due, property owners who feel that their assessments are too high have sixty days from this date to file a claim for refund in district court, if they had not exercised the option of filing a Petition of protest with the county assessor. Property owners cannot file a petition of protest and a claim for refund in the same year.

**December 10:** First half property taxes unpaid at this date are delinquent. On this date penalty and interest began to accrue. This date also controls a property owner's right to file a claim for refund, the second method for protesting assessments. To be eligible to file a claim for refund, the owner must pay the tax billed prior to the delinquency date.

**January 9:** Last day to file a claim for refund based on values that were set on January 1st of the prior tax year.

**April 10:** Second half of tax bills are due based on values set January 1st of the previous year.

**May 10:** Delinquent dates for second half of taxes.

**SHORT SALES**

1Q: How is a "short sale" defined?

1A: A "Short Sale" is a sale where: 1) the Purchase Price is or may be insufficient to enable Seller to pay the costs of sale, which include but are not limited to the closing costs and all loans or debts secured by the Property that must be paid to Lienholders upon closing; 2) Seller does not have other resources to pay the costs of sale; and 3) the Lienholder(s) agree to release or discharge their liens upon payment of an amount less than the amount secured by their liens with or without the Seller being released from any further liability.

2Q: How do I determine if a sale meets the above-criteria for a "short sale"?

2A**:** The Seller should conduct a title search to determine the amounts of the property's liens and have a comparative market analysis (CMA) or property appraisal performed. If the lien amounts exceed the property's value, the home may need to be sold for less than the liens against it. Property

transferred in this manner is sold "short."

3Q: Are there alternatives to a "short sale"?

3A: The most common alternative to a short sale is a loan modification. In a loan modification, the Lienholder(s) refinances at a lower interest rate, provides a new payment plan to bring payments current, or provides a forbearance period if the Seller's situation is temporary. The Seller should contact the Lienholder(s) to determine available options.

4Q: Why does the Seller have to provide financial documents to the Lienholder in a short sale situation?

4A: Because the Seller is asserting that he/she is financially unable maintain current payments on the property and/or to satisfy the lender's lien on the property, the Lienholder(s) need to know the Seller's current financial situation. The Seller should be prepared to provide tax returns, bank statements and other proof of income. If Seller has cash to pay off loans, or significant assets, a Lienholder may not accept a short sale offer. Lienholders will likely want an explanation of why the Seller needs to sell the home at a loss (a hardship letter), *e.g.*, loss of job, medical bills. Lienholders will also likely want to know if the Seller is able to contribute to closing costs. Warning: knowingly relaying incorrect information to a Lienholder is fraud and is a crime. Confirm that data provided to Lienholders is accurate.

5Q: What happens to junior Lienholders in a short-sale situation?

5A: It depends on several factors, including the amount of the senior lien and the value of the property. Often, in a short sale situation there is no money left for junior Lienholders which gives them little incentive to participate in the short-sale process. Some senior Lienholders will want the Seller to negotiate with Junior Lienholders; others will negotiate themselves. Protocol for negotiations with Junior Lienholders should be determined early. The Senior Lienholder should be told of prior negotiations between Seller and Junior Lienholders. It is important to remember that all Lienholders will need to agree to the short sale.

6Q: Is the property sold "as-is" in a short sale?

6A: The Seller is usually unable to afford repairs to the Property and the Lienholder(s) refuse to make repairs. Generally, a Buyer has the right to terminate the Purchase Agreement based on results of inspections. Each Purchase Agreement should be evaluated to determine specific rights. Seller should be aware that even if the property is sold "as-is", Seller may still be held liable to Buyer for failure to disclose material defects in the property.

7Q: What can my Client/Buyer do to expedite the short-sale process?

7A: The Buyer should gather the following documents before submitting the offer to the Lienholder(s): proof of pre-approval from a reputable lender; credit reports; and proof of an arms-length transaction, *i.e.*, Seller has not colluded with the Buyer (e.g., his brother) to manufacture a short sale. Without proof of an arms- length transaction, a Lienholder may suspect fraud. Affidavits signed by the Buyer and Seller satisfy most Lienholders. Falsifying this affidavit is mortgage fraud. Lienholders may require additional documentation.

8Q: Can the Lienholder "counteroffer"?

8A: Yes, a Lienholder may propose additional terms to its acceptance of the short sale, e.g. Seller must sign a promissory note for any deficiency or Buyer agrees to close quickly. Most Purchase Agreements for short sales provide that the Seller and Buyer are not obligated to accept any of the changes requested by the Lienholders and that the Purchase Agreement is contingent on the Buyer and Seller agreeing to any Lienholder terms and/or conditions.

9Q: When does the time for inspections, earnest money deposit and other performance obligations begin in a

short sale?

9A: The RANM Short Sale Contingency Addendum allows the parties to agree to a time frame for inspections, earnest money and other performance obligations to begin. Typically, earnest money is still required shortly after the parties fully execute the Purchase Agreement; however, the time frame to begin inspections, order reports etc. does not typically begin until the seller receives approval from the lienholder(s).

10Q: What is the typical short-sale process?

10A: Typically, the loan servicer reviews the short sale package, determines if investor or mortgage insurance company approval is involved, and negotiates Seller's participation. If investor or mortgage insurer approval is required, they review the package. The Lienholder and/or servicer may or may not deal with Junior Lienholders. Regardless, all parties must approve the sale.

11Q: How long does it take to receive Lienholder approval?

11A**:** Lienholders' responses to a proposed short sale take months and no one can guarantee the timeliness of Lienholders' approval or rejection. Generally, a typical short sale with one lien takes two months; two liens by one Lienholder, three months; and multiple liens by multiple Lienholders, four or more months. Most Purchase Agreements require written approval by Lienholders by a date certain and allow Buyer to terminate if the date is not met. Absolutely no one involved in a proposed short sale has any control over the timing of Lienholders' responses or their final decisions.

12Q: Can the Seller accept other offers while awaiting Lienholder approval?

12A: The Seller should confirm with the Lienholder how the Lienholder wishes the Seller to handle additional offers. Some lienholders will only wish to receive one offer at a time; others may wish for the Seller to submit all offers as they are received by the Seller. The Seller should inform potential purchasers of the Lienholder's position on this issue. Both Buyer and Seller should consult an attorney for their rights and obligations.

13Q: What is a deficiency judgment and how does it affect the Seller?

13A: A deficiency judgment may be entered against, and ultimately collected from, the Seller personally (e.g., by wage garnishment) for the difference between the amount received by the Lienholder in the short sale and the amount originally owed. While Lienholder(s) may approve the short sale and release the lien(s), Lienholder(s) may refuse to waive rights under the mortgage to pursue the deficiency against the Seller personally. In addition, a deficiency judgment may adversely affect Seller's credit score. **SELLER SHOULD CONSULT AN ATTORNEY ABOUT EXPOSURE TO, AND LONG-TERM CONSEQUENCES OF, A DEFICIENCY JUDGMENT.**

14Q: If using our RANM Forms, when are the parties to a short sale "under contract"?

14A: If using our RANM Forms, the buyer and seller are under contract when the Purchase Agreement is fully executed (signed by both parties). Our RANM Short Sales Contingency Addendum sets forth a condition subsequent. In other words, the contract is formed when fully executed by the parties, but neither party has to perform under the contract (except as provided in the contract) until such time as the condition subsequent (lienholder(s) approval) is satisfied/met. Because the parties are under contract, when the contract is fully executed by buyer and seller, until either the lienholder(s) denies the short sale or the lienholder's approval deadline as specified in the Addendum has past, the buyer and seller are obligated under the contract and neither can unilaterally terminate. In other words, neither party can "walk away" without the other party's consent.

15Q: Are there any tax consequences for the Seller associated with a short sale?

15A: "Excused debt" results when Lienholder(s) discharge lien(s) for less than full payment and do not pursue a Deficiency Judgment. Seller should consult a CPA or tax attorney because Excused Debt

may constitute taxable income if not handled properly. In a short sale, the Lienholder is usually required to report the amount of the cancelled debt to the Seller and to the IRS on a form 1099-C, "Cancellation of Debt."

16Q: What status in the MLS should be used when a property goes under contract subject to short-sale approval by the lienholder(s)?

16A: MLSs have varying policies on this issue. Please check with your local MLS for the correct status.

17Q: If a listing broker does not receive his/her full commission on a short-sale transaction may the listing broker reduce the cooperative broker commission that was offered in the MLS accordingly?

17A: MLSs have the option of allowing the listing broker to identify the property as a short sale and to explain that the co-operative broker commission offered in the MLS may be reduced if the lienholder is unwilling to pay the listing broker's full commission. However, some MLSs have adopted the policy that there can be no reduction of the co-operative broker commission in the event of short sales wherein the lienholder(s) has reduced the listing broker's commission. Listing brokers belonging to an MLS that has adopted this policy are obligated to pay the co-operative broker commission offered in the MLS regardless of what commissions s/he receives from the lienholder(s). Brokers should check with their MLS to determine which policy their MLS has adopted on this issue.

**FOR MORE INFORMATION, SEE RANM FORM 2107 – SHORT SALES**

**GROSS RECEIPTS TAX**

1Q: Does a seller, buyer, owner or tenant have to pay Gross Receipts Tax (GRT) on a broker's commission/fee?

1A: No. It is the obligation of the person/entity receiving the funds (payee) to pay the GRT to the New Mexico Tax and Revenue Department, not the person/entity paying the funds. There is no legal obligation for the person who pays a fee/commission (payor) to also pay the GRT unless it is in the contract. Such a term in a contract is negotiable like any other term of a contract. Unless the payee qualifies for an exemption, they must pay the GRT regardless of whether he/she can collect it from the payor. Our RANM personal services contracts (listing agreement, buyer broker agreement, property management agreement) all require the party paying the commission/fee to also pay GRT. However, if the contract signed by the parties does not require the payor to pay GRT, there is no law that requires him/her to do so. If using a non-RANM personal services contract, please note whether the contract includes a GRT provision. If there is no contractual obligation for the payor to pay GRT, the broker must "back-out" the GRT from commission/fee and remit it to the New Mexico Tax and Revenue Department.

2Q: Is a broker who offers a co-op broker commission through the MLS required to pay Gross Receipts Tax (GRT) on top of the co-op broker commission?

2A: Some MLSs have addressed this issue by adding a field that generally defaults to the GRT being paid on top of the co-op broker commission. If the listing broker does not intend on paying GRT on the co-op broker commission, s/he will have to change the field to indicate no GRT will be paid. Other MLSs are silent on the issue. It is good practice for the listing broker to "note" in the agent remarks section if s/he does not intend on paying GRT on the co-op broker commission, as generally, is assumed that the listing broker will pay GRT on the co-op broker commission. Failure to disclose that GRT will not be

paid may result in the co-op broker filing a Request for Arbitration on the matter.

3Q: If I am receiving a referral fee to an out-of-state broker, do I need to collect/pay GRT?
3A: An in-state broker who receives a referral fee from an out-of-state broker is exempt from paying GRT because the money is received for the performance of a service out of state (no sale occurred in NM). Brokers are advised to report and deduct the commission, so the total GR on their CRS-1s is equal to the total report on their Schedule C.

**FOR MORE INFORMATION ON GRT REPORTING AND HOW TO DETERMINE YOUR BROKERAGE'S REPORTING LOCATION, CLICK HERE**

**REFERRAL FEES**

**PURCHASING PROPERTY ANONYMOUSLY**

1Q: The buyer I represent would like to make an offer on a property, but remain anonymous. How can s/he do this?

1A: There must be a person/entity named in the purchase agreement against whom the contract can be enforced. With that said, there are two ways that a buyer can purchase anonymously. First, they can purchase in the name of an entity. For example, they could set up an LLC, corporation or trust and purchase in the name of that LLC, corporation or trust. The organizational documents would set forth the party having the authority to sign on behalf of the entity which would not have to be the person who wishes to remain anonymous.

Secondly, another buyer (the nominee) could contract for the purchase and then the nominee could assign his rights in the contract to the actual purchaser (principal) just before or after closing. Assignment just before closing is less complicated, but it would require the principal to have funds available and would alert the seller to the principal just before closing.

Assignment after closing is more complicated. While the principal can lend the purchase money to the nominee, this loan is more complicated to document when the principal is also borrowing the purchase money. Further, both the nominee and the principal must be confident that the other will close on their respective purchase. Also, the nominee can inherit environmental liability for contamination of the property merely by being in the chain of title.

Please note that notions of agency law that protect an agent from contract breaches by a disclosed principal do not protect a stealth nominee. Also, contracts are assignable unless otherwise noted in the contract or due to the nature of the contract (such as a personal services contract). While language in the contract that specifically allows for assignment is preferred, adding such language may put the seller on notice that there is something going on. Under either scenario, the buyer should speak with his/her own attorney.

**LANDLORD/TENANT ISSUES**

1Q: On a month-to-month tenancy without a written agreement, how much notice must either party give to terminate the tenancy?

1A: Both parties are required to give at least 30 days from the date that the rent is normally due. For example, if rent is normally due on the 1st, notice would have to be given 30 days prior to the first. For months with 30 days, notice would have to be given no later than the 1st day of the previous month. For months with 31 days, notice must be given by the 2nd day of the previous month.

2Q:. The tenant is late with rent, what can I do?

2A: When a tenant is late with the rent, the landlord may serve the tenant with the 3-day notice of non-compliance which requires the tenant to either pay the rent due within 3 days or to vacate the property. If the tenant pays the rent within the 3-day period, the landlord may not take any further action on this issue.

3Q: The tenant breached the rental agreement, what can I do?

3A: For breaches of the rental agreement other than failure to pay rent (see 68Q) or a substantial violation (see 70Q), the landlord may serve the tenant with a 7-day notice of non-compliance which requires the tenant to "cure" the breach within 7-days or to vacate the property. If the tenant "cures" the breach within the 7-day period, the landlord may not take any further action on the issue. However, if the tenant breaches the rental agreement again within 6 months from the first breach, the landlord may serve the tenant with a 7-day notice to vacate. The landlord is not required to give a tenant an opportunity to cure the second breach (again, provided the second breach occurs within 6 months of the first). Note: the landlord must have properly served the tenant with notice of both breaches in order to evict the tenant for the second breach.

4Q: Are there any circumstances under which a landlord could immediately terminate a rental agreement?

4A: A rental agreement is a contract and cannot be unilaterally terminated; however, if the tenant fails to meet his/her obligations under the rental agreement, the landlord may take action. Furthermore, if a tenant commits a "substantial violation", the landlord may terminate the rental agreement. A substantial violation is defined as follows: 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); In the case of a "substantial violation", the landlord must serve the tenant with notice and give the tenant at least 7 days to vacate.

5Q: What if the tenant is served with a notice to vacate, but fails to do so?

5A:. If tenant fails to vacate required whether it be the end of the rental term or due to a 3 or 7-day notice of non-compliance that was not timely cured, the landlord must petition court for a Writ of Restitution. Such petition can be filed small claims court (Metropolitan Court in Bernalillo County and Magistrate

Court in all other counties in New Mexico). The tenant must be served with the Petition for Writ and the Summons. A court date will be set.

At the hearing, the judge will issue the Writ. The landlord must arrange for the Sherriff's office to serve the Writ. If the tenant refuses to vacate, the tenant will be removed from the property.

6Q: What do I do with personal property that the tenant left behind?

6A: It depends on how the tenant vacated the property (in accordance with lease provisions, abandonment, by a Writ of Restitution). Where the rental agreement terminates by abandonment, the owner/landlord must do the following: 1) store all personal property of the resident left on the premises for not less than thirty days; and (2) serve the resident with written notice stating the owner/landlord's intent to dispose of the personal property on a date not less than thirty days from the date of the notice. The notice must 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. The owner/landlord must personally deliver to the resident or send 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/landlord shall also serve at least one notice to such other address as has been provided to the owner/landlord 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/landlord has a record.

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 and the owner/landlord shall provide reasonable access and adequate opportunities for the resident to retrieve all of the property stored prior to any disposition. 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/landlord may dispose of the stored personal property.

Where the rental agreement terminates by the resident's voluntary surrender of the premises, the owner/landlord must store any personal property on the premises for a minimum of fourteen days from the date of surrender of the premises. The owner/landlord must 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/landlord may dispose of the stored personal property.

When the rental agreement terminates by a Writ of Restitution, the owner/landlord 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/landlord and resident. The owner/landlord may thereafter dispose of the personal property in any manner without further notice or liability.

Where the property has a market value of less than one hundred dollars ($100), the owner/landlord has the right to dispose of the property in any manner. However, where the property has a market value of more than one hundred dollars ($100), the owner may do the following: (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. 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.

An owner/landlord 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 and require payment of storage and moving costs prior to the release of the property. However, the owner/landlord 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 and may not retain exempt property where an application for a writ of execution has been granted.

7Q: Can I charge a tenant a pet deposit?

7A: The New Mexico Owner-Resident Relations Act (NMORRA) does not differentiate between damage deposits for tenant damage and pet deposits for damages caused by pets. Under the NMORRA, there is only one type of deposit. On leases with a term in access of 30 days, the NMORA, allows a landlord to charge more than one month's rent for a damage deposit; however, if the landlord does charge more than month's rent, the landlord must pay the tenant interest on the ENTIRE deposit. Consequently, if landlord charges one month's rent as a damage deposit and then charges a separate deposit for the pet, the landlord is charging in excess of one month's rent for damages to the property and would be required to pay interest on the ENTIRE deposit amount. The NMORRA does not address pet fees or pet rent, either of which could be charged if agreed to between the parties.

8Q: We have a no-pet policy. A tenant claims to have a disability that requires him/her to have a service pet. Must we allow this pet and if so, can we charge a pet deposit?

8A: Service animals are not considered pets. Consequently, a landlord must allow a service animal even if s/he has a no-pet policy. Additionally, the landlord may not charge a pet deposit for the service animal. If the disability and/or the need for the service animal is not obvious, the landlord may require that the tenant provide documentation from a health care provider that the tenant suffers from a disability and that the service animal is needed because of the disability; there must a direct correlation between the disability and the need for the service animal. If there are common areas on the property, the landlord may place restrictions on where the service animal is allowed and can require, in the case of a dog, for example, that the service animal be leashed if in the common areas on the property.

9A: How much time do I have after the tenant vacates the property to return the tenant’s security deposit?

9Q. Upon termination of the residency, property or money held by the owner/landlord 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. 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 must 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.

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 forfeits the right to withhold any portion of the deposit, to assert any counterclaim in any action brought to recover that depositor any independent action against the resident for damages to the rental property. In addition, the owner will be liable to the resident for court costs and reasonable attorneys' fees. 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.

10Q. What if the tenant's deposit is inadequate to cover damages and/or rent due?

10A. The owner/landlord may file a complaint for civil damages for the difference between the damage deposit and the amount due in the court of appropriate jurisdiction. If the amount is $10,000 or less, the complaint may be filed in small claims court (metropolitan court in Bernalillo County or magistrate court in all other counties). If the amount exceeds $10,000, the complaint must be filed in district court. Please note that if the owner fails to provide an accounting to the tenant in the required time-frame, the owner forfeits both his/her right to retain the damage deposit and any right to additional damages not covered by the damage deposit.

11Q: Where can I obtain the necessary forms to be used in Landlord/Tenant matters?

11A: For Magistrate Court Forms (all counties in New Mexico except Bernalillo County), https://nmsupremecourt.nmcourts.gov/legal-forms/vmag_civil_code.php
For Metropolitan Court Forms (Bernalillo County), https://nmsupremecourt.nmcourts.gov/legal-forms/vmetro_civil_code.php

12Q: If an owner has a “no-pet” policy, can a property manager deny a tenant’s request for a service or therapy animal?

12A: Assistance animals are covered under the *Fair Housing Amendments Act, Americans with Disabilities Act* and the *Rehab Act Section 504.* There are four important points to keep in mind when renting to a disabled individual with a service/assistant/comfort animal:

1) Service animals, therapy animals, or animal aides all fall into the same category under federal housing law;
2) Assistance/comfort animals may be any kind of animal, not just dogs, and assistant/comfort animals need NO special training or certifications;
3) Service and assistant animals are NOT pets and therefore may not be considered as such. Therefore, landlords who have strict no-pet policies may not enforce them with regards to service/assistant animals and they may not charge additional rent, additional security deposit funds, or other additional funds in connection with the animal;
4) A landlord may not deny a reasonable accommodation request because he or she is uncertain whether or not the person seeking the accommodation has a disability or a disability related need for an assistance animal.

Landlords may ask individuals who have disabilities that are not readily apparent or known to the provider to submit reliable documentation of a disability and their disability-related need for an assistance animal. If the disability is readily apparent or known, but the disability-related need for the assistance animal is not, the housing provider may ask the individual to provide documentation of the disability related need for an assistance animal. To be an individual protected under the Fair Housing Act; that person must have a physical or mental disability as defined by the act; the service animal must have a direct function related to the individual’s disability and the request to have the service animal must be reasonable.

**LEAD-BASED PAINT**

1Q: Are banks that own bank-owed property acquired through foreclosure exempt from the Lead-Based Paint Disclosure Requirements?

1A: No, the exemption for foreclosures applies to the foreclosure sale on the court house steps, not to the sale by the bank once the property is back in the bank's portfolio.

**SELLERS' DISCLOSURES**

1Q: Is it required under New Mexico law that a seller provides a seller's disclosure statement to a buyer?

1A: No. What is required is for the seller to disclosure all known material defects to the buyer. With that said, both the RANM Residential and commercial purchase agreements address seller's disclosure. In the residential purchase agreement, there is a delivery deadline for production in the Documents Grid. If the buyer has placed a deadline in that space and the seller signs the purchase agreement, the seller is agreeing to provide some type of seller's disclosure. In the commercial purchase agreement, the parties agree to whether the purchase agreement will include a property disclosure statement. In other words, if the parties agree via contract a seller's disclosure statement will be provided, then the seller is obligated to provide a seller's disclosure statement. However, even if the seller has not contractually agreed to provide a seller's disclosure statement, the seller is required by law to disclose all known material defects in the property.

2Q: If a buyer elects to terminate a contract based on inspections and as required by the contract, provides the seller with a copy of that inspection report, does that seller have the *right/authority* to provide the report to a subsequent buyer? Is the seller ***required*** to provide that report to a subsequent buyer?

2A: As to the first question, yes. The parties agree per the contract that the buyer will provide the seller with a copy of the inspection report on which the buyer's objections/termination is based. Once provided to the seller, it becomes the seller's report. As to the second question, as stated above, the seller is required to disclose known material defects in the property. The seller may review the report and make a decision as to what constitutes a material defect and then disclose that to the buyer; however, the problem with doing so is that the buyer and the seller may have different opinions as to what constitutes a material defect – the seller may omit something that the buyer feels is a material defect. Consequently, the more prudent approach is for the seller to provide the entire report to the buyer along with any reports/invoices on repairs made to those items listed in the inspection report.

**OTHER INFORMATION SHEETS IN THE RANM FORMS LIBRARY – ALL INFORMATION SHEETS CAN BE LOCATED EITHER BY FORM NUMBER OR ALPHABETICALLY UNDER "I" IN THE RANM FORMS LIBRARY**

| | | |
|---|---|---|
| Information Sheet – Foreign Broker | 1350 | 2014 MAY |
| Information Sheet - AFIDA | 2304 A | 2011 |
| Information Sheet - Clandestine Drug Laboratory Remediation | 2306 | 2009 |
| Information Sheet – Commercial Real Estate Broker Lien Act | 1600 | 2014 JULY |
| Information Sheet - Earnest Money Dispute | 2310 | 2006 |
| Information Sheet - FIRPTA & Taxation of Foreign Persons Receiving Rental Income from U.S. Property | 2304 | 2012 |
| Information Sheet - Foreclosure | 6125 | 2011 |

| | | |
|---|---|---|
| Information Sheet - Lead Based Paint (LBP) Renovation Repair & Painting Program | 2315 | 2011 |
| Information Sheet - Manufactured Housing | 2305 | 2005 |
| Information Sheet - Mediation Information for Clients and Customers | 5118 | 2005 |
| Information Sheet - Mold - General Information | 2309 | 2005 |
| Information Sheet – Multiple Listing Service | 1820 | 2014 OCT |
| Information Sheet - Option / Lease Options / Lease Purchases | 6200 | 2009 |
| Information Sheet - Public Improvement District | 4500 | 2013 |
| Information Sheet - Homeowner's Association Act | 4600 | 2014 APR |
| Information Sheet - Residential New Construction | 2400 | 2009 |
| Information Sheet – Seller Financing Under the Truth in Lending Act | 2405 | 2014 FEB |
| Information Sheet - Septic Systems - Important General Information and Disclaimer | 2308 | 2014 JAN |
| Information Sheet - Service-Members Civil Relief Act | 6104 | 2014 JAN |
| Information Sheet - Short Sale | 2107 | 2009 |
| Information Sheet - Taos Association Of REALTORS® - Land Grant Disclosure | 2320 | 2011 |
| Information Sheet - Tenant Rights in Event of Foreclosure | 6120 | 2011 |
| Information Sheet – TILA & RESPA Integrated Disclosures (TRID) | 2350 | 2015 SEPT |
| Information Sheet - Water Rights and Domestic Wells - Important General Information and Disclaimer | 2307 | 2011 |

**THE FOLLOWING LINKS WILL TAKE YOU TO RANM VOICE ARTICLES ON THE NOTED SUBJECT MATTER:**

**What Broker Duties Do I Owe Under Law?**
**Pocket Listings**
**FTC Issues – New Guidance on MARS**
**What it Means to be a Non-Disclosure State**