

# **RANM 2018 LEGISLATIVE CONFERENCE**

## **LEGAL UPDATE**

Presented By:

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January, 2018

# TOPICS COVERED TODAY

- NM REC – NEW BROKER DUTIES
- NM REC – NEW QUALIFYING BROKER REQ.
- NEW/REVISED RANM FORMS
- UPDATE – DISTRIBUTED GENERATION DISCLOSURE ACT
- ADA DRIVE-BY LAW SUITS
- CFPB – SHARING OF CLOSING DISCLOSURE
- NAR MLS POLICY UPDATES
- RANM LEGAL HOTLINE ISSUES
- CASE LAW UPDATE

# BROKER DUTIES

BROKER DUTIES -  
16.61.9.8

RULES TOOK EFFECT  
JAN. 15, 2018

# NM BROKER'S ACT

- 61-29-10.2 Licensee's duties; disclosure
- Prior to a licensee generating or presenting 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 as established by REC
- Licensees shall perform all duties that are established for licensees by the commission.

# BROKER DUTIES

- Brokers owe specific broker duties to prospective buyers, sellers, landlords (owners), tenants.
- Disclose prior to the time the broker generates or presents any written document that has the potential to become an express written agreement.
- Obtain written acknowledgement
- In the case broker is not directly providing real estate services, such disclosure and acknowledgment shall be made through the broker who is directly providing real estate services to that buyer, seller, landlord (owner) or tenant.

# BROKER DUTIES

1. **honesty and reasonable care** and ethical and professional conduct; \*NEW \*
2. **compliance with local, state, and federal fair housing and anti-discrimination laws**, and the Real Estate Commission rules, the New Mexico Uniform Owner Resident Relations Act, and other applicable local, state, and federal laws and regulations;
3. **performance of any and all written agreements made with the prospective buyer/seller/owner/tenant**;



# BROKER DUTIES

- DEFINITIONS: \* NEW \*
- **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.

# BROKER DUTIES

- 4. written disclosure of any potential conflict of interest that the broker has in the transaction, including, but not limited:

- (a) Any written brokerage relationship the broker has with any other parties to the transaction or;
- (b) Any material interest or relationship of a business, personal, or family nature that the broker has in the transaction;



# BROKER DUTIES

- Written disclosure of any **adverse material facts actually known** by the associate broker or qualifying broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act.

# BROKER DUTIES

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

# BROKER DUTIES

- Assistance to the party in completing the transaction, unless otherwise agreed to in writing, including:
  - Timely presentation of and response to all offers or counter-offers; and
  - Active participation in assisting in complying with the terms and conditions of the contract and with the finalization of the transaction;

# BROKER DUTIES

- If the broker in the transaction is not providing the service, advice or assistance described in Paragraphs (a) and (b) of this Subsection B, the party must agree in writing that the broker is not expected to provide such service, advice or assistance;

# BROKER DUTIES

- acknowledgement by the broker that there may be matters related to the transaction that are outside the broker's knowledge or expertise...;
- *advice to consult with an attorney regarding the effectiveness, validity or consequences of any express written agreement entered into with the brokerage.* \* NEW \*

# BROKER DUTIES

- prompt accounting for all money received by broker;
- maintenance of any confidential information learned in the course of any prior agency relationship, unless the disclosure is with the former principal's written consent or is required by law;
- written disclosure of brokerage relationship options available in New Mexico;

# BROKER DUTIES

- Unless otherwise authorized in writing, a broker **who is directly providing real estate services to a seller/owner shall not disclose to the buyer/tenant in a transaction**
  - that the seller/owner has previously indicated they will accept a sales/lease price less than the asking or listed price
  - that the seller /owner will agree to financing terms other than those offered,
  - the seller/owner's motivations for selling/leasing or
  - any other information the seller/owner has requested in writing remain confidential, unless disclosure is required by law;

# BROKER DUTIES

- A broker who is directly providing real estate services to a buyer/tenant shall not disclose that buyer/tenant
  - has previously indicated they will pay a price greater than the price submitted in a written offer
  - the buyer/tenant's motivation for buying/leasing or
  - any other info the buyer/tenant has requested in writing remain confidential, unless disclosure is required by law.



# BROKER DUTIES

- In the event, the broker is working for the landlord (owner) as a residential property manager, the broker additionally owes to the landlord (owner) all duties owed under the law of agency.

# BROKER DUTIES

- In addition to the broker duties owed to prospective buyers, sellers, landlords (owners) and tenants as set forth in this Section 16.61.19.8(A), Brokers working as Property Managers for a landlord (owner) owe the following duties to tenants:

# BROKER DUTIES

- prompt accounting of all money or property received by broker from tenant, including issuance of a receipt for cash received;
- if a residential property manager, written disclosure that the broker is the AGENT OF THE OWNER of the property and not of the tenant; in the commercial property management context, written disclosure of the broker's relationship with the owner.

# BROKER OBLIGATIONS TO OTHER BROKERS

## NEW SECTION

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

# BROKER OBLIGATIONS TO OTHER BROKERS

- honesty, reasonable care, and ethical and professional conduct;
- timely presentation of offers or counter-offers and responses thereto;
- active participation in assisting the party to whom the broker is directly providing real estate services in complying with the terms and conditions of the contract and with the closing of the transaction, unless otherwise agreed to in writing between broker and that party

# BROKER OBLIGATIONS TO OTHER BROKERS

- compliance with local, state, federal fair housing and anti-discrimination laws, ...;
- written disclosure of any adverse material facts actually known by the broker about the property or the transaction...;
- written disclosure of any potential conflict of interest that the broker has in the transaction, including... AND

# BROKER OBLIGATIONS TO OTHER BROKERS

- non-interference with a purchase agreement or any express written agreement that another broker has with a buyer, seller, landlord (owner) or tenant.

# HOW WILL THIS WORK?

- Listing Broker -
  - To Seller: given to the seller at the time the listing agreement is signed same as it's happening now



**REALTORS® ASSOCIATION OF NEW MEXICO**  
**LISTING AGREEMENT – EXCLUSIVE RIGHT TO SELL – 2017**

**PART I – BROKERS DUTIES**

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

**Brokers owe the following broker duties to ALL prospective buyers, sellers, landlords (owners) and tenants.**

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

**In addition to the above duties, Brokers owe the following Broker Duties to the seller(s) to whom the broker is directly providing real estate services, regardless of the scope and nature of those services.**

1. Unless otherwise agreed to in writing by the party, assistance to the party in completing the transaction, including:
  - A. timely presentation of and response to all offers or counter-offers; and
  - B. active participation in assisting in complying with the terms and conditions of the contract and with the finalization of the transaction;
2. Acknowledgement by the broker that there may be matters related to the transaction that are outside the broker's knowledge or expertise and that the broker will suggest that the party seek expert advice on these matters;
3. Advice to consult with an attorney regarding the effectiveness, validity or consequences of any written document generated by the brokerage or presented to the party that has the potential to become an express written agreement;
4. Prompt accounting for all money or property received by the broker;
5. Maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former principal's written consent or is required by law;
6. Written disclosure of brokerage relationship options available in New Mexico which include but are not limited to:
  - A. **Exclusive agency:** an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interests of the person in a real estate transaction. Such agreements include buyer agency, seller agency, designated agency, and sub-agency agreements.
  - B. **Dual agency:** an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as a facilitator in a real estate transaction rather than as an exclusive agent for either party to the transaction.
  - C. **Transaction Broker:** The non-fiduciary relationship created by law, wherein a brokerage provides real estate services without entering into an agency relationship;
7. Unless otherwise authorized in writing, a broker who is directly providing real estate services to a seller shall not disclose the following to the buyer in a transaction:
  - A. that the seller(s) has previously indicated they will accept a sales price less than the asking or listed price;
  - B. that the seller will agree to financing terms other than those offered;
  - C. the seller's motivations for selling; or
  - D. any other information the seller has requested in writing remain confidential, unless disclosure is required by law.

**SELLER(S): PLEASE ACKNOWLEDGE RECEIPT OF THIS INFORMATION BY INITIALING BELOW.**

1106

REALTORS® ASSOCIATION OF NEW MEXICO  
LISTING AGREEMENT – EXCLUSIVE RIGHT TO SELL – 2017

**PART II – OTHER REQUIRED DISCLOSURES**

*Broker shall update these and all other required disclosures as needed.*

**1. BROKER RELATIONSHIP WITH OTHER PARTIES:** Does Broker have a written brokerage relationship with any other party(ies) to the transaction? \_\_\_ YES \_\_\_ NO If “YES”, explain: \_\_\_\_\_

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**2. MATERIAL INTEREST.** Does Broker have any material interest or relationship of a business, personal, or family nature in the transaction relationship? \_\_\_ YES \_\_\_ NO. If “YES”, describe that interest relationship: \_\_\_\_\_

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1106

# HOW THIS WILL WORK!

- TO BUYER : REMEMBER THIS IS HAS TO BE GIVEN PRIOR TO TIME BROKER GENERATES OR PRESENTS ANY WRITTEN DOCUMENT THAT HAS THE POTENTIAL TO BECOME AN EXPRESS WRITTEN AGREEMENT.
- So, Listing broker has to disclose to BUYER BEFORE LISTING BROKER PRESENTS OFFER TO SELLER
  - Honesty and reasonable care - ON PA
  - Compliance with local, state, and federal fair housing and anti-discrimination law - ON PA
  - Performance of any and all written agreements made with the prospective buyer/seller/owner/tenant - ON PA

**REALTORS® ASSOCIATION OF NEW MEXICO  
PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2018  
PART I – BROKER DUTIES DISCLOSURE**

Per New Mexico law, Brokers are required to disclose a specific set of applicable Broker Duties prior to the time the Broker generates or presents any written documents that has the potential to become an express written agreement and obtain from the applicable party, written acknowledgement that the Broker has made such disclosures.

**All Brokers in this transaction owe the following broker duties to ALL BUYERS AND SELLERS in this transaction, even if the broker is not representing the buyer or the seller in the transaction:**

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

**In addition to the above duties, Broker(s) owes the following Broker Duties TO THE BUYER(S) AND/OR SELLER(S) IN THIS TRANSACTION TO WHOM THE BROKER(S) IS/ARE DIRECTLY PROVIDING REAL ESTATE SERVICES, regardless of the scope and nature of those services.**

1. Unless otherwise agreed to in writing by the party, assistance to the party in completing the transaction including:
  - A. timely presentation of and response to all offers or counter-offers; and
  - B. active participation in assisting in complying with the terms and conditions of the contract and with the finalization of the transaction;
2. Acknowledgement by the broker that there may be matters related to the transaction that are outside the broker's knowledge or expertise and that the broker will suggest that the party seek expert advice on these matters;
3. Advice to consult with an attorney regarding the effectiveness, validity or consequences of any written document generated by the brokerage or presented to the party and that has the potential to become an express written agreement;
4. Prompt accounting for all money or property received by the broker;
5. Maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former principal's written consent or is required by law;
6. Written disclosure of brokerage relationship option available in New Mexico;
  - A. **Exclusive agency;** an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent then interest of the person in real estate transaction.
  - B. **Dual agency;** an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as facilitator in real estate transaction rather than as an exclusive agent for either party.
  - C. **Transaction Broker;** The non-fiduciary relationship created by law, wherein a brokerage provides real estate services without entering into an agency relationship.
7. Unless otherwise authorized in writing, a broker who is directly providing real estate services to a seller shall not disclose the following to the buyer in a transaction:
  - A. that the seller has previously indicated he/she will accept a sales price less than the asking or listed price;
  - B. that the seller will agree to financing terms other than those offered;
  - C. the seller motivations for selling/leasing; or
  - D. any other information the seller has requested in writing remain confidential, unless disclosure is required by law;
8. Unless otherwise authorized in writing, a broker who is directly providing real estate service to a buyer shall not disclose the following to the seller in the transaction:
  - A. that the buyer has previously indicated he/she will pay a price greater than the price submitted in a written offer;
  - B. the buyer's motivation for buying; or
  - C. any other information the buyer has requested in writing remain confidential, unless disclosure is required by law.

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

2104

REALTORS® ASSOCIATION OF NEW MEXICO  
PURCHASE AGREEMENT – RESIDENTIAL RESALE – 2018  
PART II – OTHER REQUIRED DISCLOSURES

Broker shall update these and all other required disclosures as needed.

1. \_\_\_\_\_ (“Buyer’s Broker”) is working with the Buyer in this transaction as a:
  - Transaction Broker without a written agreement.
  - Transaction Broker with a written agreement (RANM Form 1206, Buyer Broker Agreement).
  - Agent with a written agreement (RANM Form 1206, Buyer Broker Agreement with Agency Addendum).
2. **IN-HOUSE TRANSACTION:**
  - A. Buyer’s Broker is licensed under the same Qualifying Broker in the same Brokerage as Seller’s Broker. Seller’s Broker has a written listing agreement with the Seller as  Transaction Broker  Agent.
  - B. Buyer’s Broker is also Seller’s Broker for the property in this Transaction. Seller’s Broker has a written listing agreement with Seller as  Transaction Broker  Agent.
3.  **DUAL REPRESENTATION DISCLOSURE AND CONSENT:** Brokerage is representing both Buyer and Seller without creating Dual Agency. Buyer and Seller consent to this dual representation.
4.  **DUAL AGENCY DISCLOSURE:** Brokerage is representing both Buyer and Seller by means of written agency agreements with each of them and Designated Brokerage has not been chosen by the Qualifying Broker; Designated agency is a policy 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. When Designated Agency is NOT chosen, Dual Agency is created. In the case of Dual Agency, prior to writing or presenting this offer, Broker must obtain written consent from the Buyer Client and Seller Client (RANM Form 1301, Agency Agreement – Dual).
5. **MATERIAL INTEREST/REALTIONSHIP:** Disclosure of any material interest or relationship of a business, personal, or family nature in the transaction. If answer is “YES”, attach Broker Duties Supplemental Disclosure RANM Form 2100.
  - A. **BUYER’S BROKER, QUALIFYING BROKER OR BROKERAGE**  YES  NO
  - B. **SELLER’S BROKER, QUALIFYING BROKER OR BROKERAGE**  YES  NO
6. **ADVERSE MATERIAL FACTS:** If Broker(s) to this transaction actually knows of adverse material facts about the Property or Transaction, attach Broker Duties Supplemental Disclosure RANM Form 2100.

By their signatures below, the parties acknowledge the receipt of **BROKER DUTIES** and **BROKER DISCLOSURES:**

**BUYER**

**SELLER**

\_\_\_\_\_  
Buyer Signature Date Time

\_\_\_\_\_  
Seller Signature Date Time

\_\_\_\_\_  
Buyer Signature Date Time

\_\_\_\_\_  
Seller Signature Date Time

Check if Applicable:

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

Check if Applicable:

- Seller is a New Mexico Real Estate Broker

**BUYER’S BROKER**

\_\_\_\_\_  
Buyer’s Brokerage Firm

Broker  is  is not a REALTOR®

\_\_\_\_\_  
Broker Signature Date Time

**SELLER’S BROKER**

\_\_\_\_\_  
Seller’s Brokerage Firm

Broker  is  is not a REALTOR®

\_\_\_\_\_  
Broker Signature Date Time

2104

# HOW THIS WILL WORK!

- BUT HOW TO DISCLOSE THESE TO BUYER BEFORE PRESENTING OFFER TO SELLER:
  - Material defects in property or about financial ability of parties to complete transaction
  - Conflicts of interest or material interest/relationship
- NEW RANM FOR 2100

# HOW WILL THIS WORK?

- **Buyer's Broker** -
  - To Buyer: broker gets signed by buyer when broker prints out PA/offer- same as it happens now
  - To Seller: is sent over to listing broker with the offer for signature by the seller - returned with contract

REALTOR  
**REALTORS® ASSOCIATION OF NEW MEXICO  
SUPPLEMENTAL BROKER DUTIES DISCLOSURE - 2018**

**THIS BROKER DUTIES DISCLOSURE SUPPLEMENTS THE FOLLOWING (CHECK APPLICABLE):**

- Broker Duties Disclosures made previously by Broker on \_\_\_\_\_ (Date).
- Broker Duties Disclosures that will be made prior to the Applicable Party entering into an agreement that has the potential to become an express written agreement.
- Broker-to-Broker Disclosures required under 16.61.19.8(D) NMAC.

**Check Applicable:**

1.  **WRITTEN BROKERAGE RELATIONSHIPS WITH OTHER PARTIES.** Explain any written brokerage relationship the Broker has with any other parties to the transaction. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2.  **CONFLICT OF INTERESTS/MATERIAL INTEREST OR RELATIONSHIP.** Explain any conflicts of interest, including any material interest or relationship of a business, personal, or family nature Broker has in the transaction. \_\_\_\_\_  
\_\_\_\_\_
3.  **ADVERSE MATERIAL FACTS.** Explain any adverse material facts relating to the Property or Transaction about which the Broker actually knows. IT IS ***NOT*** NECESSARY FOR BROKER TO DISCLOSE ADVERSE MATERIAL FACTS THAT SELLER HAS PREVIOUSLY DISCLOSED IN WRITING TO BUYER. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PARTY ACKNOWLEDGMENT OF RECEIPT**

Signature \_\_\_\_\_ Printed Name \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_  
PARTY SIGNING:  SELLER  BUYER  LANDLORD (OWNER)  TENANT  BROKER

Signature \_\_\_\_\_ Printed Name \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_  
PARTY SIGNING:  SELLER  BUYER  LANDLORD (OWNER)  TENANT  BROKER

Signature \_\_\_\_\_ Printed Name \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_  
PARTY SIGNING:  SELLER  BUYER  LANDLORD (OWNER)  TENANT  BROKER

Signature \_\_\_\_\_ Printed Name \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_  
PARTY SIGNING:  SELLER  BUYER  LANDLORD (OWNER)  TENANT  BROKER

**DISCLOSING BROKER**

Broker Signature \_\_\_\_\_ Time \_\_\_\_\_ Date \_\_\_\_\_

2100



# HOW WILL THIS WORK?

- **PROPERTY MANAGER**
  - **TO OWNER:** gets broker duties owed to owner signed when broker enters into property management agreement with owner - same as now

**REALTORS® ASSOCIATION OF NEW MEXICO PROPERTY MANAGEMENT  
AGREEMENT - RESIDENTIAL - 2018  
PART I – BROKER DUTIES DISCLOSURE**

6102

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

**All Brokers in this transaction owe the following Broker duties to ALL landlords (owners) and tenants in this transaction.**

1. Honesty and reasonable care and ethical and professional conduct;
2. Compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico Real Estate License Law and the Real Estate Commission rules and other applicable local, state, and federal laws and regulations;
3. Performance of any and all written agreements made with the prospective buyer, seller, landlord (owner) or tenant;
4. Written disclosure of potential conflict of interests that the Broker has in the transaction, including, but not limited to:
  - A. any written Brokerage relationship the Broker has with any other parties to the transaction or;
  - B. any material interest or relationship of a business, personal, or family nature that the Broker has in the transaction;
5. Written disclosure of any adverse material facts actually known by the Broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act.
6. Prompt accounting for all money or property received by the broker; including issuance of a receipt to the tenant for cash received from the tenant;
7. Written disclosure to the tenant that the broker is the **agent of the owner of the property** and not the agent of the tenant.

**In addition to the above duties, the Broker(s) owes the following Broker Duties to the landlord/owner(s) in this transaction:**

1. Unless otherwise agreed to in writing by the party, assistance to the party in completing the transaction, including:
  - A. timely presentation of and response to all offers or counter-offers; and
  - B. active participation in assisting in complying with the terms and conditions of the contract and with the finalization of the transaction;
2. Acknowledgement by the Broker that there may be matters related to the transaction that are outside the Broker's knowledge or expertise and that the Broker will suggest that the party seek expert advice on these matters;
3. Advice to consult with an attorney regarding the effectiveness, validity or consequences of any written document generated by the Brokerage or presented to the party and that has the potential to become an express written agreement;
4. Maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former principal's written consent or is required by law;
5. Written disclosure of brokerage relationship options available in New Mexico (See Cover page 2);
6. Unless otherwise authorized in writing, a broker who is directly providing real estate services to a landlord (owner) shall not disclose the following to the tenant in a transaction:
  - A. that the landlord (owner) has previously indicated they will accept a lease price less than the asking or listed price of a property;
  - B. that the landlord (owner) will agree to financing terms other than those offered;
  - C. the landlord's (owner's) motivations for leasing; or
  - D. any other information the landlord (owner) has requested in writing remain confidential, unless disclosure is required by law.
7. All duties imposed by the law of agency.

**LANDLORD/OWNER(S): PLEASE ACKNOWLEDGE RECEIPT BY INITIALING BELOW**

**REALTORS® ASSOCIATION OF NEW MEXICO PROPERTY MANAGEMENT  
AGREEMENT - RESIDENTIAL - 2018**

**PART II –OTHER DISCLOSURES**

*Broker shall update these and all other required disclosures as needed.*

- 1. BROKERAGE RELATIONSHIP OPTIONS:** Brokerages working with consumers may do so through a variety of brokerage relationships, which include, **HOWEVER, UNDER THE NEW MEXICO UNIFORM OWNER-RESIDENT RELATIONS ACT, A RESIDENTIAL PROPERTY MANAGER IS AN AGENT OF THE OWNER.**
- 2. BROKER RELATIONSHIP WITH OTHER PARTIES:** Does Broker have a written brokerage relationship with any other party(ies) to the transaction? \_\_\_ YES \_\_\_ NO If “YES”, explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 3. MATERIAL INTEREST/REALATIONSHIP.** Does Broker have any material interest or relationship of a business, personal, or family nature in the transaction? \_\_\_ YES \_\_\_ NO. If “YES”, describe that relationship: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**LANDLORD (OWNER)**

\_\_\_\_\_  
Landlord (Owner) Signature                      Date                      Time

\_\_\_\_\_  
Landlord (Owner) Signature                      Date                      Time

Check if applicable:

- Landlord (Owner) is a New Mexico real estate Broker?
- Landlord (Owner) is a party to another Lease or Sales Listing Agreement?

**BROKER**

\_\_\_\_\_  
Seller's Brokerage Firm

Broker  is  is not a REALTOR®

\_\_\_\_\_  
Broker

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

6102

# HOW THIS WILL WORK

- **TO TENANT:** gets broker duties owed to tenant signed when broker enters into rental agreement with tenant - same as now, but different set of duties

**THESE BROKER DUTIES TO BE USED BY PROPERTY MANAGERS. IF BROKER IS NOT ACTING AS A PROPERTY MANAGER AND/OR IS ACTING AS THE TENANT'S BROKER, USE BROKER DUTIES, RANM FORM 6101A.**

**PART I – BROKER DUTIES DISCLOSURE**

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

**Brokers owe the following Broker duties to ALL prospective tenants:**

1. Honesty and reasonable care and ethical and professional conduct;
2. Compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico Real Estate License Law and the Real Estate Commission rules and other applicable local, state, and federal laws and regulations;
3. Performance of any and all written agreements made with the prospective buyer, seller, landlord (owner) or tenant;
4. Written disclosure of potential conflict of interests that the Broker has in the transaction, including, but not limited to:
  - A. any written Brokerage relationship the Broker has with any other parties to the transaction or;
  - B. any material interest or relationship of a business, personal, or family nature that the Broker has in the transaction;
5. Written disclosure of any adverse material facts actually known by the Broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act.
6. Prompt accounting for all money or property received by the Broker from the tenant, including issuance of a receipt for cash received;
7. Written disclosure that the Broker is the **AGENT OF THE OWNER OF THE PROPERTY AND NOT AN AGENT OF THE TENANT.**

**PART II – OTHER REQUIRED DISCLOSURES**

*Broker(s) shall update these and all other required disclosures as needed.*

1. **MATERIAL INTEREST/RELATIONSHIP.** Owner's Broker  does  does not have a material interest or relationship of a business, personal or family nature in the transaction, including compensation from more than one party. If applicable, explain: \_\_\_\_\_
2. **ADVERSE MATERIAL FACTS.** Adverse material facts actually known by the Broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction.  NONE or Explain: \_\_\_\_\_

TENANT(S)			BROKER(S)		
Tenant Signature	Date	Time	Broker Signature	Date	Time
Tenant Signature	Date	Time	Broker Signature	Date	Time

6101



# HOW THIS WILL WORK!

- IF NOT WORKING AS A PROPERTY MANAGER, OWE A DIFFERENT SET OF BROKER DUTIES TO OWNER, SO USE FORM 6101A

**THESE BROKER DUTIES TO BE USED BY OWNER'S BROKER IF NOT ACTING AS A PROPERTY MANAGER AND/OR IF BROKER IS REPRESENTING TENANT(S).**

## PART I – BROKER DUTIES DISCLOSURE

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

**Brokers owe the following Broker duties to all landlords (owners) and tenants.**

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

**In addition to the above duties, Brokers owe the following Broker Duties to the landlord (owner) and/or tenant to whom the Broker is directly providing real estate services, regardless of the scope and nature of those services.**

1. Unless otherwise agreed in writing with the applicable party, assistance to the party in completing the transaction, including:
  - A. timely presentation of and response to all offers or counter-offers; and
  - B. active participation in assisting in complying with the terms and conditions of the contract and with the finalization of the transaction;
2. Acknowledgement by the Broker that there may be matters related to the transaction that are outside the Broker's knowledge or expertise and that the Broker will suggest that the party seek expert advice on these matters;
3. Advice to consult with an attorney regarding the effectiveness, validity or consequences of any written document generated by the Brokerage or presented to the party and that has the potential to become an express written agreement.
4. Prompt accounting for all money or property received by the Broker;
5. Maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former principal's written consent or is required by law;
6. Written disclosure of Brokerage relationship options available in New Mexico, which include, but are not limited to:
  - A. **Exclusive agency:** an express written agreement between a person and a Brokerage wherein the Brokerage agrees to exclusively represent as an agent the interests of the person in a real estate transaction. Such agreements include buyer agency, seller agency, designated agency, and sub-agency agreements.
  - B. **Dual agency:** an express written agreement that modifies existing exclusive agency agreements to provide that the Brokerage agrees to act as a facilitator in a real estate transaction rather than as an exclusive agent for either party to the transaction.
  - C. **Transaction Broker:** The non-fiduciary relationship created by law, wherein a Brokerage provides real estate services without entering into an agency relationship.

**PLEASE ACKNOWLEDGE RECEIPT OF THIS INFORMATION BY INITIALING BELOW.**

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7. Unless otherwise authorized in writing, a Broker who is directly providing real estate services to an owner shall not disclose the following to the tenant in a transaction:
  - A. that the owner has previously indicated they will accept a sales/lease price less than the asking or listed price of a property;
  - B. that the owner will agree to financing terms other than those offered;
  - C. the owner's motivations for selling/leasing; or
  - D. any other information the seller/owner has requested in writing remain confidential, unless disclosure is required by law;
8. Unless otherwise authorized in writing, a Broker who is directly providing real estate services to a tenant shall not disclose the following to the owner in the transaction:
  - A. that the tenant has previously indicated they will pay a price greater than the price submitted in a written offer;
  - B. the tenant's motivation for buying/leasing; or
  - C. any other information the tenant has requested in writing remain confidential, unless disclosure is required by law.

**PART II – OTHER REQUIRED DISCLOSURES**  
**Broker(s) shall update required disclosures as needed.**

**1. OWNER'S BROKER**

- A. **RELATIONSHIP TO OWNER.** Owner's Broker name: \_\_\_\_\_ (check one):
  - Is working with Owner subject to a written Lease Listing Agreement as  a Transaction Broker  an Agent;
  - Broker is the owner of the Property;
- B. **MATERIAL INTEREST/RELATIONSHIP.** Material interest or relationship of a business, personal or family nature in the transaction, including compensation from more than one party. If applicable, explain: \_\_\_\_\_  
 \_\_\_\_\_
- C. **ADVERSE MATERIAL FACTS.** Adverse material facts actually known by the Broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction. If applicable, explain: \_\_\_\_\_  
 \_\_\_\_\_

**2. TENANT'S BROKER**

- A. **RELATIONSHIP TO TENANT:** Tenant's Broker name: \_\_\_\_\_ (check one):
    - Is working with Tenant as a transaction Broker without a written agreement;
    - Is working with Tenant as a transaction Broker with a written agreement (RANM Form 1202, Tenant Broker Agreement with Agency Addendum);
    - Is working with Tenant as an agent with a written agreement (RANM Form 1202, Tenant Broker Agreement with Agency Addendum);
  - B. **IN-HOUSE TRANSACTION.**
    - Tenant's Broker is licensed under the same Qualifying Broker or the same Brokerage as Owner's Broker.
    - Tenant's Broker is also Owner's Broker.
- DUAL REPRESENTATION DISCLOSURE AND CONSENT.** Brokerage is not acting as Property Manager of the Owner's Property, but Brokerage is representing both Tenant and Owner by means of written agreements with each of them, without creating Dual Agency. If there are two written agreements, Tenant and Owner hereby consent to this Dual Representation.

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**C. MATERIAL INTEREST/RELATIONSHIP.** Material interest or relationship of a business, personal or family nature in the transaction, including compensation from more than one party. If applicable, explain:

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**D. ADVERSE MATERIAL FACTS.** Adverse material facts actually known by the Broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction. If applicable, explain: \_\_\_\_\_

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**TENANT(S)**

**TENANT'S BROKER(S)**

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Tenant Signature                      Date                      Time

---

Broker Signature                      Date                      Time

---

Tenant Signature                      Date                      Time

---

Broker Signature                      Date                      Time

**OWNER(S)**

**OWNER'S BROKER(S)**

---

Owner Signature                      Date                      Time

---

Broker Signature                      Date                      Time

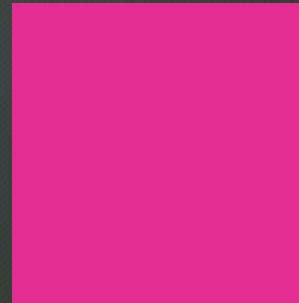
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Owner Signature                      Date                      Time

---

Broker Signature                      Date                      Time

6101A



**AND**

**1401**

**COVERS**

**IT ALL!**

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

**Brokers owe the following broker duties to all prospective buyers, sellers, landlords (owners) and tenants.**

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

**In addition to the above duties, Brokers owe the following Broker Duties to the buyer, seller, landlord (owner) and/or tenant to whom the broker is directly providing real estate services, regardless of the scope and nature of those services. Brokers working as Property Managers for a landlord (owner) are directly providing real estate services to the landlord (owner), not to the tenant:**

1. Unless otherwise agreed in writing with the applicable party, assistance to the party in completing the transaction, including:
  - A. timely presentation of and response to all offers or counter-offers; and
  - B. active participation in assisting in complying with the terms and conditions of the contract and with the finalization of the transaction;
2. Acknowledgement by the broker that there may be matters related to the transaction that are outside the broker's knowledge or expertise and that the broker will suggest that the party seek expert advice on these matters;
3. Advice to consult with an attorney regarding the effectiveness, validity or consequences of any written document generated by the brokerage or presented to the party and that has the potential to become an express written agreement;
4. Prompt accounting for all money or property received by the broker;
5. Maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former principal's written consent or is required by law;
6. Written disclosure of brokerage relationship options available in New Mexico which include, but are not limited to;
  - A. **Exclusive agency:** an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interests of the person in a real estate transaction. Such agreements include buyer agency, seller agency, designated agency, and sub-agency agreements.
  - B. **Dual agency:** an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as a facilitator in a real estate transaction rather than as an exclusive agent for either party to the transaction.
  - C. **Transaction Broker:** The non-fiduciary relationship created by law, wherein a brokerage provides real estate services without entering into an agency relationship.
7. Unless otherwise authorized in writing, a broker who is directly providing real estate services to a seller/owner shall not disclose the following to the buyer/tenant in a transaction:
  - A. that the seller/owner has previously indicated they will accept a sales/lease price less than the asking or listed price of a property;
  - B. that the seller/owner will agree to financing terms other than those offered;
  - C. the seller/owner's motivations for selling/leasing; or
  - D. any other information the seller/owner has requested in writing remain confidential, unless disclosure is required by law;

**APPLICABLE PARTY: PLEASE ACKNOWLEDGE RECEIPT OF THIS INFORMATION BY INITIALING BELOW**

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8. Unless otherwise authorized in writing, a broker who is directly providing real estate services to a buyer/tenant shall not disclose the following to the seller/owner in the transaction:
  - A. that the buyer/tenant has previously indicated they will pay a price greater than the price submitted in a written offer;
  - B. the buyer/tenant's motivation for buying/leasing; or
  - C. any other information the buyer has requested in writing remain confidential, unless disclosure is required by law.
9. In the event, the broker is working for the landlord (owner) as a residential property manager, the broker additionally owes to the landlord (owner) all duties owed under the law of agency.

**In addition to the broker duties owed to prospective buyers, sellers, landlords (owners) and tenants as set forth in the above sections, Brokers working as Property Managers for landlords (owners) owe the following duties to TENANTS:**

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

**PART II – OTHER REQUIRED DISCLOSURES**

*Broker shall update these and all other required disclosures as needed.*

1. **BROKERAGE RELATIONSHIPS WITH OTHER PARTIES:** Does Broker have a written brokerage relationship with any other party(ies) to the transaction?  
 YES  NO If "YES" explain: \_\_\_\_\_
2. **MATERIAL INTEREST/REALTIONSHIP:** Does Broker have any material interest or relationship of a business, personal, or family nature in the transaction?  YES  NO If "YES" describe that relationship: \_\_\_\_\_
3. **ADVERSE MATERIAL FACTS:** Written disclosure of any adverse material facts actually known by the broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act.  
 NONE OR explain adverse material facts: \_\_\_\_\_
4.  **PROPERTY MANAGEMENT ONLY.** Check if applicable. TO TENANT: If broker is working as a residential property manager, broker is working as the agent of the owner of the Property and not of the tenant. In the commercial property management context, broker is working with the landlord (owner) in the following capacity:  
 AGENT  TRANSACTION BROKER  OTHER. If "OTHER", explain: \_\_\_\_\_

**APPLICABLE PARTY:** PARTY IS A  SELLER  BUYER  LANDLORD (OWNER)  TENANT

\_\_\_\_\_  
Signature Date Time

\_\_\_\_\_  
Signature Date Time

**BROKER**

\_\_\_\_\_  
Broker Signature Broker's NMREC Lic #  Broker  is  is not a REALTOR®

\_\_\_\_\_  
Brokerage Firm Office Phone Email Address

1401

**AT LAST LEGISLATIVE SESSION**

**CHANGE TO  
NM REAL ESTATE  
BROKERS ACT  
61-29-9 NMSA**

# CHANGE TO BROKERS ACT

- **61-29-9 - QUALIFICATIONS FOR A LICENSE**

(C) An applicant for a QB's license shall have passed the New Mexico real estate broker's examination and had an active AB's license or equivalent real estate license for at least 2 of the last 5 years immediately preceding application for a QB's license and shall furnish the REC with a certificate of completion of the REC-approved 34 brokerage office administration course and any additional educational courses required by the commission by rule. (NEW! - Effective 1/1/18)

# CHANGE TO BROKERS ACT

- **61-29-9 - QUALIFICATIONS FOR A LICENSE**
- Notwithstanding Subsection C of this section, a QB shall not supervise ABs until the QB has had an active AB's or QB's license or equivalent real estate license **for at least 4 years (NEW!).** Licensees who hold an active or inactive QB's license on January 1, 2018 are exempt from this subsection.



# CHANGES TO REC REGULATION

16.61.3.10

EFFECTIVE

JAN. 15, 2018



## 16.61.3.10 - QB LIC. REQ.

1. Passage of the broker's examination
2. In the case of a QB who will be supervising ABs, at least 4 years' active experience in NM as a licensed AB during the 60-month period immediately preceding the filing of the application

## 16.61.3.10 - QB LIC. REQ.

- 3. In the case of a QB who *will not be* supervising or managing other brokers, at least two years of active experience as a licensed AB during the 60-month period immediately preceding the filing of the application.

## 16.61.3.10 - QB LIC. REQ.

- 4. Qualifying brokers who have qualified for QB status under the exception provided in paragraph (3), must document at least four years of active experience as an associate broker **and** qualifying broker *before being eligible to supervise other brokers.*

## 16.61.3.10 - QB LIC. REQ.

- 5. If licensed in another state, not less than four years' experience as the equivalent of an AB during the 60-month period immediately preceding the filing of the application with verification in writing by the applicant's QB or the state's applicable equivalent to a QB.
- A candidate for a QB license from another state will, in all circumstances, be required to fulfill all the remaining requirements, including experience, education and acknowledgement of responsibilities.

# PLUS

Documented qualifying  
transactional  
experience  
totaling  
100 points



# 16.61.3.10 - QB LIC. REQ.

- With at least one transaction accomplished during each of the 4 years prior to filing of the application
- Transactions are to be verified in writing by the applicant's QB
- Transactions involving property owned by the applicant do not count toward the required total

# HOW TO SCORE POINTS:

- Each sale/lease transaction is deemed to have two sides; a buyer/tenant side and a seller/owner side. Both sides get points.
- In the event of transactions handled by teams comprised of more than one AB, the QB shall monitor the transactions to determine which AB earns the points allowed, or the division of the allowable points among team members

# RESIDENTIAL REAL ESTATE

Total points available per transaction side:

- SALES - 5 PTS
- LOTS - 3 PTS
- LEASE - 4 PTS





# COMMERCIAL REAL ESTATE

Total points available per transaction side:

- IMPROVED
  - 8 PTS
- UNIMPROVED
  - 6 PTS
- LEASE
  - 6 PTS



# PROPERTY MANAGEMENT (PM)

- Awarded for each location for which a broker has direct responsibility. Direct responsibility means acting as an agent for the owner and *not just collecting rent*.
- Residential Property Management:
  - Each property receives three points,
  - Plus one point for each additional unit in that property
  - To a maximum of 25 points per property per year
  - “Unit”: a separate residence with its own postal address.

# PROPERTY MANAGEMENT (PM)

- **Commercial Property Management:**
  - Each property receives 4 points
  - Plus one point for each individual tenant space in that property
  - For a maximum of 25 points per property per year.
- **A space is defined as a commercial location that has its own postal address.**

# FARM AND RANCH

Farm and Ranch/Vacant Land - For the purposes of this paragraph a farm or a ranch is defined as a property which is used for commercial/agricultural purposes.

Farm and Ranch points are awarded as follows:

Less than 100 acres:

**8 PTS.**

100 acres or more:

**10 PTS**



# LIMITED WAIVER

- May be granted by the REC to an AB who can demonstrate that their particular circumstance, i.e. size of market, lack of property types, health issues, force majeure, make it very difficult to obtain 100 PTS
- REC may waive up to 30 PTS and the transaction-per-year requirement.
- Written documentation and statements of proof shall be submitted with the application

# EDUCATION

- **BROKERAGE OFFICE ADMINISTRATION COURSE**, a 4 day course with an in-course instructor created exam administered by the instructor at the end of course.
- **8-HOUR UNDERSTANDING AND USING RANM FORMS** course or at least eight hours of other Commission-approved contract course(s).
- **MINIMUM OF 8 HOURS OF ELECTIVE COURSES IN THE PROFESSIONAL TRACK OF THE APPLICANT**; residential, commercial, property management or ranch and/or vacant land transactions. AND

# FINAL RULES FOR QB LICENSE

- Attendance at one New Mexico REC meeting, public hearing, or disciplinary hearing.
- In the event of broker hardship, approved by the REC, the REC may authorize an equivalent to the attendance at a REC meeting by either an online download, attendance at any approved equivalent, or by other approved participation.

# AFFIDAVIT

- QB Application Requirements
  - A notarized affidavit of the applicant's acknowledgement of the responsibilities of a QB, including the direct supervision of all brokers affiliated with the QB. Supervision is defined in the affidavit as follows:
    - Review and maintain all records and documents required for real estate related matters processed by personnel supervised by the QB.



# FINAL RULES FOR QB LICENSE

- Provide or promote appropriate training of all brokers and staff affiliated with the QB for compliance with the Real Estate License Law and REC Rules.
- Supervise advertising of real estate or real estate services conducted on behalf of others by anyone affiliated with the QB
- Execute and maintain current written employment agreements or IC agreements with AB affiliated with the QB

# FINAL RULES FOR QB LICENSE

- A supervisory plan which will outline the QB'S schedule of training and education provided or promoted.
- The supervisory plan will be applicable to the broker applying to be a QB and to all other brokers affiliated with them, if any.
- A broker applying to be licensed as a QB supervised by another QB is NOT required to submit a supervisory plan.

# EDUCATION

- QB refresher course
- A minimum of 36 hrs of REC approved course, incl:
  - The **4-HOUR CORE COURSE** in each year of the broker's licensing cycle;
  - A minimum of **8 HOURS** of courses from the QB's professional track, including REC-approved courses in **residential transactions; commercial transactions**, including courses offered by CCIM, SIOR, and CBI; **property management transactions**, including courses offered by IREM; and **vacant land and/or farm and ranch sales**.

# QB LICENSE RENEWAL

- Attendance at one NMREC meeting, rule hearing, or disciplinary hearing.
- In the event of broker hardship, approved by the REC, the REC may authorize an equivalent to the attendance of a REC meeting either by an online download, attendance at any approved equivalent, or by other approved participation.

# AFFIDAVIT

- An application for renewal of a QB's license shall include a notarized affidavit of the applicant's acknowledgement of the responsibilities of a QB, including the direct supervision of all brokers affiliated with the QB, including, but not limited to:
- Not required if QB is being supervised by another QB.

# AFFIDAVIT

- Maintain full and complete records
- Provide or promote appropriate training
- Supervise advertising of real estate or real estate services
- Execute and maintain current written employment or independent contractor agreements
- Supervise trust account management by brokerage owners

# APPLICATION

- Application for renewal of QB's license shall include:
  - a statement affirming that the QB substantially fulfilled the **SUPERVISORY PLAN** filed with the initial application, and
  - a plan outlining the schedule of **training and education** to be provided or promoted and the policies for supervision in the next licensing cycle.
  - **unless you're a QB being supervised by another QB**

# NEW/REVISED RANM FORMS





# NEW/REVISED RANM FORMS

- RELEASED IN NOVEMBER, 2017- REVISED FORMS
  - LISTING AGREEMENT - RANM FORM 1106
  - SEPTIC SYSTEM ADDENDUM - RANM FORM 5120A
  - OCCUPANCY - BUYER - RANM FORM 2201
  - OCCUPANCY- SELLER - RANM FORM 2202
- RELEASED JANUARY 15, 2018
  - BROKER DUTIES - ALL REVISED
  - \*\*\*NEW\*\*\* SUPPLEMENTAL BROKER DUTY DISCLOSURE - RANM FROM 2100

# NEW/REVISED RANM FORMS

- **TO BE RELEASED FEBRUARY 1, 2018** 
  - OWR AMENDMENT – RANM FORM 5109 – REVISED
  - PRICE ADJUSTMENT/SELLER CONCESSION AMENDMENT TO PA RANM FORM 2101.  
**\*\*\*NEW\*\*\*** -
  - REC ADDENDUM – RANM FORM 2402 – REVISED
  - REC- RANM FORM 2401 – REVISED
- REMINDE THEM ABOUT RANM POLICY RE:  
REC FORM!!**

# LISTING AGREEMENT

- PARA. 1 - Re-wording to further clarify that unless the Agreement is otherwise amended, Broker is working as a Transaction Broker for the Seller and not as an Agent and that as a Transaction Broker, the Broker **OWES BROKER DUTIES, NOT FIDUCIARY DUTIES.**
- PARA. 8(A) -**Seller Listing Content (SLC) and Grant of License.** Language moved, but remains the same. **WHICH BRINGS ME TO THIS....**

# SELLER GRANTS TO BROKER

- **NON-EXCLUSIVE** - you are not the only one who is permitted to use it!
- **IRREVOCABLE** - can't take it back!
- **WORLDWIDE** - can be used ANYWHERE!



# LISTING AGREEMENT

- Sublicense through multiple tiers - I can give it to MLS, which can give it to Zillow, which can give it to ..... (you get the idea)
- Publish, display, and reproduce the SLC
- To prepare derivative works of the SLC - I can make charts, graphs, ect. I can transform it and adapt it!



# LISTING AGREEMENT

- PARA. 10 - "COMPENSATION FOR SALE/TRANSACTION"
- (A) - Addresses only THE SALE of the Property;
- (B) - Addresses all other scenarios- "Transaction Commission" (TC) - LET'S TALK ABOUT THIS!
  - Enter a \$\$ or % owed to Broker if one of the listed events should occur and
  - If compensation is a %, sets forth the amount on which the % will be based
  - Listed events did not change.
- (D) - When commission or TC is due

# SEPTIC SYSTEM ADDENDUM

- PARA 1 - Reorganized and broken down into A and B;
- 1(A) - Clarifies -evaluation not required if a prior evaluation was conducted **within 180 days prior** to closing - **PRIOR LANGUAGE MADE NO SENSE!**
- 1(B) - Explains that if an evaluation is conducted and property does not close for more than 180 after evaluation, **NMED may require an additional evaluation prior to transfer.**
- 1(B)(i) - Reiterates language from the PA that even if seller is paying for and/or ordering the septic evaluation, **Buyer still gets to choose the evaluator.**

# Occupancy Agreement - Seller

- 4(A) - Deposit. Clarifies when Deposit will be refunded if there is NO damage to the Property;
- 4(B) - Occupancy Fee. Defines the compensation paid as a "fee" and not "rent". The term "rent" created issues with the buyer's lender on the Buyer's Occupancy Agreement, so it was changed.



# Occupancy Agreement - SELLER

- 4(C) - New Term "Holdover Charge". In an attempt to clarify **the significance and consequences** of Seller remaining in the Property past the agreed upon term.
- 4(D) - Sets forth when deposits, the Occupancy Fees and the Holdover Fees are due.
- PARA. 6(A) - Added language advising buyer to check with his/her **insurance company** regarding coverage after closing, but before seller vacates.

# Occupancy Agreement - BUYER

- SAME AS OCCUPANCY - SELLER WITH THE ADDITION OF:
- PARA. 5 -  
Clarifies that Buyer shall place utilities in Buyer's name **if it is allowed.**



# OWR AMENDMENT – REVISED

- Now a stand-alone document
- No longer an amendment to PA
- **WHY YOU ASK?????**
- OWR's intended use will be for buyers and sellers to negotiate repair issues
- Not be used for price reductions or seller credits; the revised OWR has instructions that an amendment to the PA must be used for these purposes.
- Additionally, the form has been re-formatted.
- **SO WHAT'S IT GOING TO LOOK LIKE?**

**REALTORS® ASSOCIATION OF NEW MEXICO  
OBJECTION, RESOLUTION, AND WAIVER NOTICE  
AND AGREEMENT - 2018**

This Objection, Resolution and Waiver Notice and Agreement (“Notice and Agreement”) is between \_\_\_\_\_ (“Buyer”) and \_\_\_\_\_ (“Seller”) and relates to the following Property (which is hereinafter referred to as the “Property:”)

Address \_\_\_\_\_ City \_\_\_\_\_ Zip Code \_\_\_\_\_

Legal Description \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_

*This Notice and Agreement is subject to all existing deadlines in the Purchase Agreement dated \_\_\_\_\_ relating to the Property (“Purchase Agreement”).*

**1. DEFINITIONS.** The below terms used herein have the following meanings:

- A. WAIVES/WAIVER.** Buyer requested inspections and/or documents as outlined in the Purchase Agreement, but Buyer now waives his right to have the following requested inspections conducted and/or documents provided.
- B. SATISFIED/SATISFACTION.** Buyer has had the following inspections conducted and/or has reviewed the following documents provided per the Purchase Agreement and Buyer is satisfied with the results of the following inspections and/or documents and has NO objections.
- C. OBJECTS/OBJECTIONS:** Buyer objects to the following items on the inspection reports, survey/ILR, or documents and requests a cure of said objections as set forth in Paragraph 3.

**2. INSPECTIONS / DOCUMENTS.** Buyer either waives, is satisfied with or objects to the following inspections/ documents. If Buyer has objections, Buyer to complete Paragraphs 3.

TYPE OF INSPECTIONS/DOCUMENTS	WAIVE(S)	SATISFIED	OBJECT(S)

Buyer Signature \_\_\_\_\_

Date \_\_\_\_\_

Buyer Signature \_\_\_\_\_

Date \_\_\_\_\_

**NEW ORW**

3. **BUYER'S REQUESTED CURES.** Buyer requests the following cures to objections as set forth in Paragraph 2. Per the Purchase Agreement, copies of the inspection report(s), survey/ILR or document(s) on which Buyer's objections are based must be attached hereto.

**THIS NOTICE AND AGREEMENT IS NOT AN AMENDMENT TO THE PURCHASE AGREEMENT. PARTIES MUST USE AN AMENDMENT TO THE PURCHASE AGREEMENT TO REDUCE PURCHASE PRICE OR CREDIT FUNDS AT CLOSING; THIS NOTICE AND AGREEMENT IS NOT TO BE USED FOR THAT PURPOSE.**

4. **AGREEMENT TO RESOLVE OBJECTIONS. (check all applicable)**

- A. Seller agrees to cure ALL of Buyer's objections as requested in Paragraph 3 above.
- B. Seller agrees to cure ONLY the following of Buyer's objections as requested in Paragraph 3.
- C. Seller agrees to the following; (check all applicable)
- To reduce the purchase price of the Property as set forth in an Amendment to the Purchase Agreement.
- To credit funds to Buyer at Closing as allowable by the lender and as set forth in an Amendment to the Purchase Agreement.

Seller Signature

Date

Seller Signature

Date

5. **BUYER'S ACCEPTANCE. (check all applicable)**

- A. Buyer accepts the provisions of Paragraph 4(A) or 4(B) as marked above without changes.
- B. Buyer accepts the provisions of Paragraph 4(B) as marked above with the following changes:

NEW ORW

REALTORS® ASSOCIATION OF NEW MEXICO  
AMENDMENT TO PURCHASE AGREEMENT - PRICE REDUCTION/SELLER CREDITS  
AMENDMENT NO. \_\_\_\_\_

OPPORTUNITY

This Amendment is part of the  Residential  Commercial  Vacant Land  Farm and Ranch Purchase Agreement dated \_\_\_\_\_ between \_\_\_\_\_ (“Buyer”) and \_\_\_\_\_ (“Seller”) and relating to the following Property:

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Legal Description \_\_\_\_\_

Check All That Apply:

1.  **PRICE REDUCTION:** Buyer and Seller agree to reduce the Purchase Price of the Property to \$ \_\_\_\_\_.
2.  **SELLER CREDITS:** Seller agrees to credit \$ \_\_\_\_\_ (“Credit”) to Buyer at Closing. In the event Buyer is obtaining a loan for the purchase of the Property, Credit is subject to approval by Buyer’s lender and shall be reflected on the Closing Disclosure.

If there is any conflict between the provisions of the Purchase Agreement and this Amendment, the provisions of this Amendment will control. The remaining provisions of the Agreement will remain in effect.

**BUYER SIGNATURE**

Signature \_\_\_\_\_

Date \_\_\_\_\_

Time \_\_\_\_\_

NEW ORW

# REC AND REC ADDENDUM

## **Real Estate Contract Addendum - RANM Form 2402**

Title Insurance Paragraph from Real Estate Contract was added (Para. 7) and a warning paragraph that requires initials. Warning paragraph alerts buyers and sellers to the importance of title insurance and a search on the buyer prior to closing on the REC. Initial spaces next to various paragraphs were relocated. For rationale for changes, see [RANM Voice Legal Corner](#).

**Real Estate Contract - RANM Form 2401** - Same warning language added to REC Addendum was added to Para. 7. Initial spaces next to various paragraphs were relocated.

**AMENDMENT TO ESCROW AC???????**

# DISTRIBUTED GENERATION DISCLOSURE STATEMENT

- RELEASED JAN. 5, 2018 - AT BACK OF PACKET
- The AG is looking to help New Mexicans who feel they have been misled about the installation of solar panels on their homes
- Is especially interested in hearing from consumers whose primary language is other than English, on their experience in buying or leasing solar power systems or entering into purchase power agreements.
- Call AG - AG's Consumer Protection Advocates  
(505) 717-3500.



# DRIVE-BY LAWSUITS - ADA

- At first glance, this real estate brokerage in ABQ, NM, appears to be in compliance with the Americans with Disabilities Act (ADA).
- There is a parking space for the disabled, and an access ramp to the brokerage.
- But the space is NOT the right dimensions. It needs to be a van space, not a car space. And the ramp is all wrong. And the disabled parking sign is in the wrong spot and it doesn't say "van accessible."
- But the ADA has thousands of very technical regulations, and this brokerage is in violation.

# DRIVE-BY LAWSUITS - ADA

Joanne Broker, who has owned the brokerage for 18 years, says no disabled customer has ever complained about the ramp, the sign, or the parking space, but that didn't stop her being sued for violations of the ADA.



# DRIVE-BY LAWSUITS - ADA

- The the guy who brought the lawsuit wasn't a customer; he just drove by or stopped outside
- And that's why it's called a "DRIVE-BY LAWSUIT."
- When a lawyer or a disabled person notices violations outside a business and files suit.
- <https://www.cbsnews.com/news/60-minutes-americans-with-disabilities-act-lawsuits-anderson-cooper/>



# CFPB -SHARING CDs

- On July 7, 2017, CFPB announced final rule amending the mortgage disclosure rule.
- Clarifies the ability to share the Closing Disclosure (CD) with 3<sup>rd</sup> parties
- Recognizes that the CD is “informative to real estate agents and others representing both the consumer credit and real estate portions of residential real estate sales transactions.”
- The final rule will be effective 60 days from publication in the Federal Register.

# NAR MLS POLICY UPDATES - MLS OF CHOICE!!!

- *While associations are encouraged to work cooperatively to establish market area MLSs, the absence of such an agreement shall not preclude any association from establishing and maintaining a MLS whose service area exceeds that of the parent association(s) jurisdiction*
- *MLSs may not require other offices of a firm to participate in the MLS if any office of that firm participates in that MLS. M*

# NAR MLS POLICY UPDATES - MLS OF CHOICE!!!

- MLS “jurisdiction” or “territory” changed to “service area” to reflect the true nature of the location, and help eliminate confusion over the jurisdiction of shareholder association(s).
- For Rational, FAQs and Waiver Examples:  
<https://www.nar.realtor/about-nar/policies/changes-to-mls-policy-statements-742-and-743-mls-of-choice>

# WAIVERS OF MLS FEES, DUES, AND CHARGES

- *Recurring MLS fees, dues, and charges may be based upon the total number of real estate brokers, sales licensees, and licensed or certified real estate appraisers affiliated with or employed by an MLS participant.*
- FOR ALL CHANGES TO MLS POLICY, VISIT <https://www.nar.realtor/about-nar/policies/summary-of-2018-mls-changes>

# HOWEVER

- *MLSs MUST provide participants the option of a no-cost waiver of MLS fees, dues and charges for any licensee or licensed or certified appraiser who can demonstrate subscription to a different MLS where the principal broker participates.*
- *MLSs MAY require waiver recipients and their participants to sign a certification for nonuse of its MLS services, which can include penalties and termination of the waiver if violated.*



# IDX POLICY CHANGE

- An MLS participant's IDX display *must identify the listing agent in a reasonably prominent location and in a readily visible color and typeface not smaller than the median used in the display of listing data.* M
- *FOR MORE CHANGES TO IDX POLICY, VISIT:*  
*<https://www.nar.realtor/about-nar/policies/internet-data-exchange-idx/may-2017-revisions-to-idx-policy-effective-jan-2018>*

# HOT LINE ISSUES

- PRE-MARKETING TITLE SEARCHES
- BUYER'S BROKER NOT COMING TO INSPECTIONS
- REC DEFAULTS –  
DEFAULT PROCESS VS.  
MUTUAL TERMINATION
- DEFINITION OF "DAYS"  
UNDER NMORRA



# COMPUTATION OF TIME - ORRA

- A. if the period is expressed in days, the 1st day is excluded and the last day is included;
- E. if the period is less than 11 days, a Saturday, Sunday or legal holiday is excluded from the computation;
- F. if the last day of the period is a Saturday, Sunday or legal holiday, the period ends on the next day that is not a Saturday, Sunday or legal holiday;
- G. a day begins immediately after midnight and ends at the next midnight.

# CASE LAW UPDATE



**WHAT  
ARE THE  
COURTS  
SAYING?**

# COURT ROOM TRIVIA



# IMPROPERLY PREPARED CONTINGENCY CLAUSE

- Owners of a dog day care business began searching for a property to accommodate the kennels.



- Buyers entered into a buyer representation agreement with a brokerage (“Buyer’s Rep”) and explained that they were searching for a property to accommodate their kennels.

# IMPROPERLY PREPARED CONTINGENCY CLAUSE

- Buyer's Rep located a property that had a barn on it; barn would accommodate their kennels.
- Buyers negotiated a purchase price with the sellers and then measured the property to ascertain whether the kennels would meet the town's zoning ordinances.
- After discovering the barn did not meet the 200-foot setback requirement for the kennels, the Buyers expressed concern.

# IMPROPERLY PREPARED CONTINGENCY CLAUSE

- One of the sellers was a township supervisor and told the Buyers that he would help them obtain a zoning variance for the barn and that the barn DID meet the zoning requirements because the steps that extended into the barn brought the barn within the setback requirement.



# IMPROPERLY PREPARED CONTINGENCY CLAUSE

- Before entering into PA, the Buyers asked the Buyer's Rep to draft a contingency clause allowing the Buyers to void the agreement if the barn could not be used as a kennel.
- Buyer's Rep drafted a contingency that allowed the Buyers to cancel the **agreement if the property could not be used as a kennel without specifying the barn**, and the language was approved by the firm's managing broker.
- Buyers expressed concern that the contingency was not specific enough, but the Buyer's Representative assured them that the language was sufficient.

# IMPROPERLY PREPARED CONTINGENCY CLAUSE

- Buyers got a zoning variance from the town and completed their purchase of the property.
- Following purchase, town informed the Buyers that town would not issue the permit allowing the Buyers to use the BARN as a kennel.
- Buyers filed a lawsuit against the Buyer's Rep, claiming that the Buyer's Rep was negligent in drafting the contract contingency because it did not allow them to cancel the agreement when they couldn't use the BARN as a kennel.

# IMPROPERLY PREPARED CONTINGENCY CLAUSE

- Jury found that the Buyer's Rep was negligent and awarded the Buyer damages of \$200,000. Buyer's Rep appealed.
- Buyer's Buyer's Rep argued that the court should have granted its motion for judgment after the verdict because the evidence did not support the jury's determination - **because he/she did not owe a duty to the Buyers to draft a contingency clause.**

# IMPROPERLY PREPARED CONTINGENCY CLAUSE

- Court said - *when the Buyer's Rep authored the contingency clause, they assumed the duty to properly craft the clause to protect the Buyers* - court rejected the Buyer's Rep's argument
- The Superior Court of Pennsylvania affirmed the verdict against the Buyer's Representative and remanded the matter back to the trial court for an award of attorney fees and interest to the Buyers.

# COPYRIGHT INFRINGEMENT??

- Brokerage ("Copyright Holder") received a Copyright for photos of a property entitled "Staged Photos"
- Copyright Holder entered into a listing agreement with the owner ("Owner")
- Copyright Holder entered the property into the MLS with 20 of the copyrighted photos with a copyright registration symbol affixed to each of the Photos.
- Owner later canceled the listing agreement and entered into a listing agreement with a new brokerage ("Brokerage").

# COPYRIGHT INFRINGEMENT??

- Member of the Brokerage downloaded the Photos from the MLS and removed the copyright symbol.
- Brokerage then gave the photos to the Salesperson and told her to use the Photos in the MLS listing
- She did AND the Owner posted five of the Photos on its website.
- Copyright Holder filed a lawsuit against the Salesperson, Brokerage and the Owner, alleging copyright infringement for its unauthorized use of the Photos.

# COPYRIGHT INFRINGEMENT??

- In order to establish a claim for copyright infringement, party must show ownership of a valid copyright and that the other party violated one of the copyright holder's exclusive rights.
- A court has wide discretion in awarding damages for infringement, with statutory damages ranging from \$750 to \$30,000 per work. However, if the infringement was innocent, the court may award damages as low as \$200.
- There was no dispute that the copyrights were valid and the Copyright Holder's copyrights had been infringed.

# COPYRIGHT INFRINGEMENT??

- The trial court ruled that the Salesperson was an innocent infringer because the copyright symbol had been removed from the Photos and there was no other evidence that the Salesperson knew about the copyright.
- The court awarded the Copyright Holder \$250, finding that \$250 was the approximate cost for having a property photographed and the Salesperson's use of the Photos constituted a single infringement by the Salesperson because the photos were all part of the same marketing campaign.



# COPYRIGHT INFRINGEMENT??

- Owner never entered an appearance and so the court entered a default judgment of \$2000 against Owner. The Copyright Holder appealed.
- The United States Court of Appeal for the Ninth Circuit affirmed the trial court.

# BROKER LIABLE FOR INJURIES

- Brokerage marketed for sale a bank-owned, vacant property. In the MLS, the salesperson handling the listing had placed the following note: *"Please use CAUTION around the empty pool."*
- A contractor ("Contractor") and his wife visited the property with their representative, as they were considering purchasing an investment property.
- Contractor testified that he regularly worked around pools.
- After touring, couple went outside and the rep opened the latched gate to the pool area

# BROKER LIABLE FOR INJURIES

- Contractor examined the pool, and then walked out onto the diving board over the pool to see how accessible the pool was from a nearby road.
- Within 30 seconds of walking out onto the diving board, the diving board collapsed and the Contractor fell into the empty pool, suffering serious injuries.
- The Contractor brought a lawsuit against the Brokerage, alleging that the Brokerage was negligent because it failed to warn him that the diving board posed a danger to visitors

# BROKER LIABLE FOR INJURIES

- Brokerage filed a motion for judgment in its favor, arguing that the Brokerage did not owe a duty to the Contractor and had no knowledge that the diving board posed a danger.
- Trial court found there was no evidence that the Brokerage had knowledge that the diving board was defective and entered judgment in favor of the Brokerage. The Contractor appealed.
- The California Court of Appeal, Second District, affirmed the judgment of the trial court.

# BROKER LIABLE FOR INJURIES

- The court stated that there was **no duty to warn about an open and obvious danger** like an empty pool.
- The danger of the empty pool would be obvious to any visitor of the property and so the Brokerage would have no reason to expect visitors to not realize the danger of the empty pool.
- AND **Brokerage did not invite the Contractor to approach the pool**; in fact, the Brokerage had placed a **warning in the MLS** about the pool.
- Court affirmed judgment in favor of the Brokerage.

# FAILURE TO DISCLOSE SEWER ACCESS

- Buyers sought to purchase an investment property. The Buyers learned about an empty lot available in a development from the developer's ("Developer") exclusive listing firm ("Listing Broker").
- While there was a dispute over whether the Buyers discussed sewer access with the Listing Broker while visiting the property, the MLS listing for the property stated that utilities were available near each property but it was the owner's responsibility to connect the property to the utilities. There were also sewer grates on the street in front of the property.

# FAILURE TO DISCLOSE SEWER ACCESS

- Local health officials issued a certificate on June 8, 2006 that stated the maximum building size that could be built on the property for sewage purposes was a two-bedroom house ("Certificate").
- Buyers signed a contract to purchase the property on June 16, 2006, **but were never given the Certificate.**
- In the seller's disclosures, **the Developer checked "no" to indicate there was no public sewer.**
- Agency disclosure form identified Listing Broker as the Buyers' representative, but Listing Broker also signed the purchase agreement on behalf of Developer.

# FAILURE TO DISCLOSE SEWER ACCESS

- Transaction closed on June 30, 2006.
- Buyers immediately listed the property for sale and found a buyer in 2009. However, the deal fell apart when the buyer discovered the Certificate and its limitations on building.
- Buyers then filed a lawsuit against the Listing Broker and Developer claiming breach of contract and seeking attorney's fees pursuant to the state's consumer fraud act.



# FAILURE TO DISCLOSE SEWER ACCESS

- The trial court ruled the Buyers could rescind the purchase agreement because of a material misrepresentation about the property's sewer access.
- Court also awarded the Buyers their attorney's fees because the Listing Broker had failed to disclose to the Buyers that he was a member of the entity selling the property.
- Listing Broker and the Developer appealed.

# FAILURE TO DISCLOSE SEWER ACCESS

- The Court of Appeals of Tennessee affirmed the trial court.
- Court agreed that the evidence showed that the Buyers were led to believe that the property would have public sewer access.
- Both the Developer's website and the MLS listing stated that the sewer would be available, and there were sewer grates in front of the property.
- And seller disclosure form stating that there would not be sewer access for the property was signed on 3 months prior to sharing with the Buyers.

# FAILURE TO DISCLOSE SEWER ACCESS

- Court found that sewer access was a material factor in the Buyers' decision to purchase the property and the access was misrepresented to them.
- Court affirmed the rescission of the contract and ordered the return of the Buyers' purchase price.
- Next, Listing Broker argued that it should not be liable for attorney's fees because the Listing Broker was not a party to the purchase contract.

# FAILURE TO DISCLOSE SEWER ACCESS

- Tennessee's consumer fraud act allows for the award of attorney fees if an individual engages in a deceptive trade practice while in commerce with consumers in the state.
- The court agreed Broker had engaged in a deceptive trade practice when it misrepresented the sewer access and therefore the Buyers could collect attorney's fees pursuant to the statute.
- Court also found that the Listing Broker's failure to disclose his affiliation with the developer constituted a misrepresentation in violation of the consumer fraud act. And affirmed trial court.

# SPECIAL ACCOMMODATION FOR AGGRESSIVE PET?

- A tenant (“Tenant”) received an eviction notice for violating two provisions in her lease: the lease’s “no-smoking” policy and “no-pets” policy.
- The “no-pets” provision prohibited residents from having pets unless the landlord consented or the tenant qualified for a reasonable accommodation because of a disability.
- Tenant’s son moved with his dog Dutchess into the Tenant’s apartment.





# SPECIAL ACCOMMODATION FOR AGGRESSIVE PET?

- While Dutchess never attacked another person or animal, she barked and lunged at people as well as other dogs.
- Dutchess's aggressive behavior caused other residents to stay in their apartments if they knew Dutchess was outdoors.
- Tenant's son moved out, but Dutchess remained with the Tenant.
- Landlord questioned the Tenant about Dutchess.



# SPECIAL ACCOMMODATION FOR AGGRESSIVE PET?

- Tenant explained that she needed Dutchess as a support animal for her disability, but failed to provide a doctor's note.
- Landlord served the Tenant with an eviction notice, Tenant provided a note from a health professional that stated Tenant needed a pet to help relieve her anxiety.
- Landlord approved Tenant's request for an accommodation, but did NOT approve Dutchess as the specific animal because of the dog's aggressive behavior and complaints from other residents about the dog's behavior.

# SPECIAL ACCOMMODATION FOR AGGRESSIVE PET?

- Judge agreed with Landlord that the Tenant was entitled to an accommodation but was not entitled to keep Dutchess due to the dog's behavior.
- Because the Tenant had violated the terms of the lease, the judge granted the Landlord's request to terminate the lease. Tenant appealed.
- The Supreme Court of Vermont affirmed the lower court's ruling that the Landlord's duty to provide a reasonable accommodation to the Tenant did not extend to Dutchess.

# SPECIAL ACCOMMODATION FOR AGGRESSIVE PET?

- The federal Fair Housing Act (“FHA”) prohibits handicap discrimination by landlords against tenants and may require accommodations by the landlords for the tenant’s disability.
- Such accommodation requests may include a “no-pets” policy or similar restrictions on the types of animals that residents may have in their housing units.
- A reasonable request for reasonable accommodation to a housing provider must meet the following criteria:

# SPECIAL ACCOMMODATION FOR AGGRESSIVE PET?

- The person making the request must have a disability, which is a physical or mental impairment that substantially limits one or more major life activities; and
- The person has a disability-related need for the assistance animal.
- However, even if a tenant demonstrates the need for an accommodation, the accommodation request can be denied in two instances

# SPECIAL ACCOMMODATION FOR AGGRESSIVE PET?

- 1) the specific animal poses a direct threat to the health or safety of others; or
- 2) the specific assistance animal in question would cause substantial physical damage to the property of others.
- This determination is fact specific and cannot be based on factors such as the dog's breed.
- The court found that the evidence supported the finding that Dutchess posed a potential threat to the safety of the residents.

# SPECIAL ACCOMMODATION FOR AGGRESSIVE PET?

- The court also noted that the Tenant had attempted to mitigate the risks posed by Dutchess such as only allowing Dutchess outside for limited times each day but these attempts had not altered Dutchess's behavior.
- Therefore, the court affirmed the lower court ruling that the Landlord did not have to make an accommodation for Dutchess in the Tenant's apartment.
- SEE INFO SHEET - RANM FORM 6111

# RANM LEGAL HOT LINE

1-877-699-7266

[LEGALHOTLINE@NMREALTOR.COM](mailto:LEGALHOTLINE@NMREALTOR.COM)



MONDAY – FRIDAY  
9:00 TO 1:00 PM



RANM LEGAL HOT LINE

*THANK YOU!*

*AND*

*HAVE A GREAT  
WEEKEND!*