

## New Mexico Brokerage Relationship

Every licensed New Mexico real estate Broker is obligated to disclose Broker Duties. Disclosure: The following brokerage relationships are available in the State of New Mexico: (1) transaction broker, (2) exclusive agency, and (3) dual agency (see RANM Form 1401, p. 2).

Prior to the time an Associate Broker or Qualifying Broker generates or presents any written document that has the potential to become an express written agreement, the Broker shall disclose in writing to a prospective buyer, seller, landlord or tenant, the following list of Broker Duties that are owed to all Customers and Clients by all Brokers regardless of the brokerage relationship:

- (A) Honesty and reasonable care; as set forth in the provisions of this section;
- (B) 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 Regulations, and other applicable local, state, and federal laws and regulations;
- (C) Performance of any and all oral or written agreements made with the Broker's Customer or Client;
- (D) Assistance to the Broker's Customer or Client in completing the Transaction, unless otherwise agreed to in writing by the Customer or Client, including (1) Presentation of all offers or counter-offers in a timely manner, and (2) Assistance in complying with the terms and conditions of the contract and with the closing of the Transaction; If the Broker in a Transaction is not providing the service, advice or assistance described in paragraphs D(1) and D(2), the Customer or Client must agree in writing that the Broker is not expected to provide such service, advice or assistance, and the Broker shall disclose such agreement in writing to the other Brokers involved in the Transaction;
- (E) Acknowledgment 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 Customer or Client seek expert advice on these matters;
- (F) Prompt accounting for all monies or property received by the Broker;
- (G) Prior to the time the Associate Broker or Qualifying Broker generates or presents any written document that has the potential to become an express written agreement, written disclosure of (1) any written Brokerage Relationship the Broker has with any other Parties to the Transaction; (2) any material interest or relationship of a business, personal, or family nature that the Broker has in the Transaction; and (3) other Brokerage Relationship options available in New Mexico;
- (H) 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 data from a sex offender registry or the existence of group homes;
- (I) Maintenance of any confidential information learned in the course of any prior Agency relationship unless the disclosure is with the former Client's consent or is required by law;
- (J) Unless otherwise authorized in writing, a Broker shall not disclose to their Customer or Client during the transaction that their Seller Client or Customer has previously indicated they will accept a sales price

less than the asking or listed price of a property; that their Buyer Client or Customer has previously indicated they will pay a sales price greater than the price submitted in a written offer; the motivation of their Client or Customer for selling or buying property; that their Seller Client or Customer or their Buyer Client or Customer will agree to financing terms other than those offered; or any other information requested in writing by the Broker's Customer or Client to remain confidential, unless disclosure is required by law.

Effective January 1, 2007, the New Mexico Real Estate Commission requires the disclosure of the following brokerage relationships (as quoted from 16.61.19.9 NMAC, 1-1-2005):

16.61-19.0 Brokerage Relationships: Brokerages working with consumers either as customers or clients may do so through a variety of brokerage relationships. These relationships include but are not limited to an exclusive agency relationship, a dual agency relationship, or a transaction broker relationship. For all regulated real estate transactions, a buyer, seller, landlord or tenant may enter into an express written agreement to become a client of a brokerage without creating an agency relationship, and no agency duties will be imposed.

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 subagency 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: a brokerage that provides real estate services without entering into an agency relationship.