



**NEW MEXICO ASSOCIATION OF REALTORS®
BROKER DUTIES - 2020
PART I – BROKER DUTIES**

Per New Mexico law, Brokers are required to perform 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, he/she must disclose such duties and obtain 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 interest or any other written agreement 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;
 - C. any written agreement the Broker has with a licensed Transaction Coordinator who will be providing service related to 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 written 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.

If any of the following apply, attach Broker Duties Supplemental Disclosure NMAR Form 2100 or other disclosure document.

- 1. Broker has a written brokerage relationship with any other party(ies) to the transaction.
- 2. Broker(s) has any **CONFLICT OF INTEREST** (including any material interest or relationship of a business, personal, or family nature in the transaction).
- 3. Broker(s) knows of **ADVERSE MATERIAL FACTS** about the Property or Transaction.
- 4. Broker(s) has a written agreement with a licensed **TRANSACTION COORDINATOR** who will be providing services related to the transaction.
- 5. **PROPERTY MANAGEMENT ONLY. TO TENANT:** If Broker is working as a residential property manager Broker is working as the agent of the owner of the Property. In the commercial property management context, broker is working with the owner of the Property 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