

From: [Ashley Strauss-Martin](#)
To: [Baca, Thomas, RLD](#)
Cc: [Ciddio, Wayne, RLD](#)
Subject: [EXT] RE: Comments from NMAR for the Upcoming Rule Hearing?
Date: Monday, October 19, 2020 5:38:31 PM
Attachments: [image001.png](#)
[A2394D783868475FE80B24003DD26C02C118971651.png](#)
[50D03D8F3B5342D7A7006517613A3CA3.png](#)

A few comments; they are all legal issues, so I would ask that the NMREC's attorney consider them.

16.61.17.19(Q) and 16.61.16.9(U):

New Mexico law states that the NMREC does not have jurisdiction over all things that a licensee does that relates to real estate. The NM Supreme Court has said that the NMREC has jurisdiction over a licensee if he/she is holding him/herself out as a broker. I have always found it slightly troubling that the NMREC requires a broker to identify him/herself as a broker when acting strictly as a principal (and not a broker) in a transaction. It almost appears as if the NMREC has created a regulation that requires a licensee to identify him/herself as such so that the NMREC can then say, "we have jurisdiction because you identified yourself as a broker", though I never thought that argument would succeed if it ended up in court. With that said, I recognize that such disclosure is arguably justified – so that the consumer knows he/she is dealing with someone who is more educated in the way of real estate transactions (so the consumer could seek expert assistance of their own if they were so inclined).

I have told brokers that if they are functioning as principals and not as brokers and not running the sale/purchase/rental through their brokerage, to not involve their brokerage -to go out of their way to distant themselves from their brokerage – so that the broker does not create liability for a brokerage under the theory of apparent agency. But then this revised rule requires the broker to not only identify the fact he/she is a broker, but also to identify his/her **company**. Was it intended for this disclosure requirement to only apply when the broker was **acting as a broker**? If so, it should be clarified, because it reads as if they have to identify their brokerage even if they are inquiring about purchasing, selling, renting as a principals and not running it through the brokerage. Again, I question the NMREC's jurisdiction to create such a requirement for a licensee who is not functioning as a broker, but equally as relevant, why create that kind of liability for the brokerage?

16.61.16.9(E):

This is a jurisdictional issue, too. The NMREC does not have jurisdiction over non-licensees except to the extent that they are acting as brokers without a license. Owners of brokerage firms who are not acting as brokers (see definition of QB and AB in NM Broker's Act) cannot be subjected to NMREC rules such as this.

16.61.24.10(B)

If the property manager, as an agent of the owner (so the agent has fiduciary duties to the owner), has a custodial account with only that client's money in it, under what circumstances could a property manager justify NOT giving the principal/client rights to view his account? I can't think of any.

Thank you for your consideration of these issues.

Ashley Strauss-Martin
General Counsel
New Mexico Association of Realtors®
549 S. Guadalupe
Santa Fe, NM 87501
Phone: (505) 821-1583
Fax: (505) 797-7720
E-mail: astrausmartin@nmrealtor.com
www.nmrealtor.com



From: [Ashley Strauss-Martin](#)
Sent: Friday, October 16, 2020 5:14 PM
To: [Baca, Thomas, RLD](#)
Cc: [Ciddio, Wayne, RLD](#)
Subject: Re: Comments from NMAR for the Upcoming Rule Hearing?

Yes. I will get them to you by Monday. Thank you for the reminder!
Have a good weekend.
Ashley

Get [Outlook for iOS](#)

From: Baca, Thomas, RLD <Thomas.Baca@state.nm.us>
Sent: Friday, October 16, 2020 4:44:25 PM
To: Ashley Strauss-Martin <astrausmartin@nmrealtor.com>
Cc: Ciddio, Wayne, RLD <Wayne.Ciddio@state.nm.us>
Subject: Comments from NMAR for the Upcoming Rule Hearing?

Hi Ashley:

Are you going to provide written comments for the upcoming Rule Hearing scheduled for next week, Tuesday October 20th? I want to make sure your comments are received in time and prior to the close of the comment period at the end of that meeting. Sorry to rush you but I would need them by Tuesday. You can view the proposed rule changes at http://www.rld.state.nm.us/boards/Real_Estate_Commission_Members_and_Meetings.aspx

Thomas P. Baca M.P.A.

New Mexico Real Estate Commission
5500 San Antonio Drive NE
Albuquerque, NM 87109

