

**BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF NEW MEXICO**

IN THE MATTER OF:

DENNIS E. DEFOOR
Broker License No.: 6887 (Expired)

NMREC CASE NO. 15-09-05-087

Respondent.

DEFAULT ORDER

THIS MATTER, having come before the Real Estate Commission (the "Commission"), on Monday, November 20, 2017, the Commission finds the following:

1. A Notice of Contemplated Action ("NCA") was issued by the Commission on September 1, 2017.
2. The NCA was sent certified mail return receipt (No. 7016 2710 0000 3046 4456) to the Respondent's address on file with the Commission on September 1, 2017.
3. The certified return receipt for the envelope containing the NCA was returned signed by Dennis E. Defoor to the Commission on September 6, 2017.
4. The NCA was issued to the Respondent in compliance with the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 *et seq.*
5. The NCA informed the Respondent of his right to a hearing and that the Respondent must respond to the Commission in writing requesting a hearing within twenty (20) days after service of the NCA. NMSA 1978, Section 61-1-4(D).
6. The NCA informed the Respondent that failure to respond to the NCA will result in the Commission taking the contemplated action. NMSA 1978, Section 61-1-4(E).
7. Respondent did not mail a request for hearing within the time and manner required by NMSA 1978, Sections 61-1-4(D) and (E).

8. The Commission is "expressly vested with the power and authority to make and enforce rules to carry out the provisions of [Chapter 61, Article 29 NMSA 1978]. NMSA 1978, Section 61-29-4. The Commission can "impose a civil penalty on any person who is found, through a court or administrative proceeding, to have acted in violation of Chapter 61, Article 29 NMSA 1978. NMSA 1978, Section 61-29-17.2. Such action may include the imposition of fines, costs or any other penalty authorized by NMSA 1978, Sections 61-1-3 and 61-29-17.2 and may be subject to payment of all costs of disciplinary proceedings pursuant to NMSA 1978, Section 61-1-3.2.
9. Licensees shall perform all duties that are established for licensees by the commission.
10. The Commission has the authority, pursuant to NMSA 1978, Section 61-29-12 to:
 - A. Refuse to issue a license or may suspend, revoke, limit or condition a license if the applicant or licensee has by false or fraudulent representation obtained a license or, in performing or attempting to perform any of the actions specified in Chapter 61, Article 29 NMSA 1978, an applicant or licensee has:
 - (1) Made a substantial misrepresentation;
 - (2) Pursued a continued and flagrant course of misrepresentation; made false promises through agents, salespersons, advertising or otherwise
 - (5) Failed, within a reasonable time, to account for or to remit any money coming into the licensee's possession that belongs to others, commingled funds of others with the licensee's own or failed to keep funds of others in an escrow or trustee account; . . .
 - (8) Failed, if a qualifying broker, to place as soon after receipt as is practicably possible, after securing signatures of all parties to the transaction, any deposit money or other money received by the qualifying broker in a real estate transaction in a custodial, trust or escrow account, maintained by the qualifying broker in a bank or savings and loan institution or title company authorized to do business in this state in which the funds shall be kept until the transaction is consummated or otherwise terminated, at which time a full accounting of the funds shall be made by the qualifying broker. Records relative to the deposit, maintenance and withdrawal of the funds shall contain information as may be prescribed by the rules of the commission
 - (10) Violated a provision of Chapter 61, Article 29 NMSA 1978 or a rule promulgated by the commission; and
 - (11) Committed an act, whether of the same or different character from that specified in this subsection, that is related to dealings as a qualifying broker or an

associate broker and that constitutes or demonstrates bad faith, incompetency, untrustworthiness, impropriety, fraud, dishonesty, negligence or any unlawful act.

11. No person shall engage in business as an escrow company unless that person is licensed by the director as an escrow company. NMSA 1978, Section 58-22-7.
12. Violation of any provisions of the real estate license law or commission rules may be cause for disciplinary action against any person who engages in the business or acts in the capacity of a real estate broker in New Mexico with or without a New Mexico real estate license, up to and including license suspension or revocation if the person is licensed in New Mexico, and other penalties as provided by law, commission rules, or policies.
16.61.12.8 NMAC.
13. A qualifying broker is responsible for all real estate activities within the brokerage. A qualifying broker may serve concurrently as a qualifying broker for more than one brokerage. A qualifying broker may by written agreement engage the services of associate brokers and qualifying brokers, provided that the terms of such agreements are consistent with the responsibilities of associate brokers and qualifying brokers as set forth in parts 16.61.16.9 NMAC and 16.61.17.9 NMAC. 16.61.16.8 NMAC.
14. A qualifying broker shall, in addition to all other requirements imposed by law, comply with the following: Deposit all money received on behalf of others in the proper trust account as soon after receipt as is practicably possible after securing signatures of all parties to the transaction documents 16.61.16.9(G) NMAC.
15. Before the time a broker generates or presents any written document that has the potential to become an express written agreement, the broker shall disclose in writing to their prospective customer or client, and obtain a written acknowledgement from their

prospective customer or client, showing the delivery of the disclosure of the following broker duties:

- 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 other applicable local, state and federal laws and regulations;
- C. Performance of any and all written agreements made with the 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 the transaction is not providing the service, advice or assistance described in Paragraphs (1) and (2) of Subsection D. of 16.61.19.8 NMAC, 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 the existence of 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 associate broker's or qualifying broker's knowledge or expertise and that the associate broker or qualifying broker will suggest that the customer or client seek expert advice on these matters;
- F. prompt account for all money or property received by the broker.
- G. Written disclosure to their client or customer and to other brokers involved in the transaction of any potential conflict of interest that the broker has in the transaction including but not limited to: (1) any written brokerage relationship the broker has with any other parties to the transaction or; (2) any material interest or relationship or business, personal, or family nature that the broker has in the transaction . . .

16.61.19.8 NMAC

16. 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 a transaction broker relationship, and exclusive agency relationship or a dual agency relationship. For all regulated real estate transactions, a customer or client 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. 16.61.19.9 NMAC.

17. All trust account deposits shall conform to the following requirements. (1) Timeliness.

All funds of others pertaining a real estate transaction shall be deposited in to the proper trust account per written agreement of the parties to the transaction. (2) Receipt records.

A detailed record of all funds received shall be maintained by the qualifying broker and shall clearly indicate the following: (a) date received; (b) date deposited; (c) from whom received; (d) amount of deposit; (e) property address or legal description including unit number (if unit number is applicable); and (f) category or purpose of receipt (e.g. earnest money, rent, security deposit, funds from owner, etc.). 16.61.23.11(A) NMAC.

18. All transactions shall be documented and signed by all parties to the transaction.

16.61.33.8 NMAC.

19. Except as otherwise provided by law, in all circumstances it shall be the responsibility of each broker engaged in a transaction to assure that all parties to the transaction receive legible copies of any and all documents they have signed and any documents that pertain to their respective interest in the transaction as soon as practicably possible, and copies of all fully executed documents thereafter. 16.61.33.9 NMAC.

20. The Commission's Decision and Order are final and not subject to judicial review.

NMSA 1978, Section 61-1-4(E).

IT IS FURTHER ORDERED THAT Respondent Dennis E. Defoor may not apply for or receive a New Mexico real estate broker or associate broker license until the NCA has been answered and resolved.

President Gretchen Koether is designated by the Commission to sign this Order on behalf of the Real Estate Commission

IT IS SO ORDERED.

Signed: _____

12-4-17

**REAL ESTATE COMMISSION
OF NEW MEXICO**

Gretchen Koether

President Gretchen Koehler