

**Department of State
Division of Publications**

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For Department of State Use Only

Sequence Number: 03-07-13
Rule ID(s): 5390
File Date: 3/4/13
Effective Date: 6/2/13

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

| | |
|---------------------------------|--|
| Agency/Board/Commission: | Tennessee Real Estate Commission |
| Division: | Regulatory Boards |
| Contact Person: | Julie Cropp |
| Address: | 500 James Robertson Parkway, Nashville, TN |
| Zip: | 37243 |
| Phone: | (615) 741-3072 |
| Email: | julie.cropp@tn.gov |

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

| Chapter Number | Chapter Title |
|----------------|---|
| 1260-07 | Vacation Lodging Services |
| Rule Number | Rule Title |
| 1260-07-.01 | Scope |
| 1260-07-.02 | Designated Agent Qualifications |
| 1260-07-.03 | Designated Agent Responsibilities |
| 1260-07-.04 | Civil Penalties |
| 1260-07-.05 | Vacation Lodging Services Instructor Qualifications |
| 1260-07-.06 | Fees |

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 1260-07
Vacation Lodging Services

New Rules

- 1260-07-.01 Scope
- 1260-07-.02 Designated Agent Qualifications
- 1260-07-.03 Designated Agent Responsibilities
- 1260-07-.04 Civil Penalties
- 1260-07-.05 Vacation Lodging Services Instructor Qualifications
- 1260-07-.06 Fees

1260-07-.01 Scope. The rules in Chapter 1260-07 only apply to persons who perform vacation lodging services and vacation lodging service firms, as defined and governed under T.C.A. § 62-13-104(b).

Authority: T.C.A. §62-13-104.

1260-07-.02 Designated Agent Qualifications

To obtain a designated agent license, applicants must meet the following prerequisites:

- (1) Applicants must have obtained a high school diploma or general education diploma;
- (2) Applicants must have certified proof of completion of eight (8) hours of pre-licensing education; and
- (3) Applicants shall not be considered for licensure unless two (2) years have passed from the date of expiration of probation, parole or conviction, or from the date of release from incarceration, whichever is longer in time. This restriction shall apply to all felonies, and to misdemeanors which involve the theft of money, services, or property. An applicant who appears before the Commission requesting licensure and who is denied will not be eligible for reconsideration for six (6) months from the date of denial.

Authority: T.C.A. §62-13-104.

1260-07-.03 Designated Agent Responsibilities

- (1) The designated agent shall be responsible for supervising all employees of the firm.
- (2) Designated agents shall be reasonably available to manage and supervise each vacation lodging service office during regular business hours.
- (3) The designated agent shall be responsible for maintaining the vacation lodging service escrow account.

Authority: T.C.A. §62-13-104.

1260-07-.04 Civil Penalties.

- (1) The Commission may, in a lawful proceeding against any person required to have a designated agent license and/or a vacation lodging services license, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty for each separate violation of a statute, rule, or order pertaining to the Commission with the following schedule:

| Violation | Penalty |
|-----------------------------|------------------|
| T.C.A. § 62-13-104(b)(3)(C) | \$ 200 ---- 1000 |

| | |
|---------------------------------|---------------|
| T.C.A. § 62-13-104(b)(3)(D)(i) | 200 ---- 1000 |
| T.C.A. § 62-13-104(b)(7)(B) | |
| (i) | 250 ---- 1000 |
| (ii) | 250 ---- 1000 |
| (iii) | 300 ---- 1000 |
| (iv) | 100 ---- 1000 |
| (v) | 300 ---- 1000 |
| (vi) | 200 ---- 1000 |
| (vii) | 100 ---- 1000 |
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| (ix) | 300 ---- 1000 |
| (x) | 300 ---- 1000 |
| (xi) | 50 ---- 1000 |
| (xii) | 250 ---- 1000 |
| (xiii) | 200 ---- 1000 |
| T.C.A. § 62-13-104(b)(8)(A)(ii) | 200 ---- 1000 |
| T.C.A. § 62-13-104(b)(9) (A) | 25 ---- 1000 |
| (B) | 25 ---- 1000 |
| Any Commission Rule or Order | 50 ---- 1000 |

- (2) Each day of a continued violation may constitute a separate violation.
- (3) In determining the amount of a civil penalty, the Commission may consider such factors as the following:
- (a) whether the amount imposed will be a substantial economic deterrent to the violation;
 - (b) the circumstances leading to the violation;
 - (c) the severity of the violation and the risk of harm to the public;
 - (d) the economic benefits gained by the violator as a result of non-compliance; and
 - (e) the interest of the public.

Authority: T.C.A. §62-13-104 and 56-1-308.

1260-07-.05 Vacation Lodging Services Instructor Qualifications

- (1) To obtain certification as an instructor of vacation lodging services, applicants must meet the following prerequisites:
- (a) Applicants must have obtained a high school diploma or general education diploma;
 - (b) Applicants must also:
 - 1. hold a license as a designated agent under the Vacation Lodging Services Act; or
 - 2. possess a minimum of three (3) years experience in vacation lodging services.
 - (i) If a course concerns any other field in which a degree, certification, or other recognized designation is commonly awarded then the instructor must have earned that degree or designation, or have at least three (3) years of relevant experience in the field.
- (2) The Commission may charge a fee of twenty-five dollars (\$25) for each instructor in an education cycle, in order to review that instructor's qualifications.

Authority: T.C.A. §62-13-104.

1260-07-.06 Fees. The following fees shall apply:

- (1) For the issuance of an original vacation lodging service firm or original designated agent license, a fee to be paid to the Commission of one hundred dollars (\$100.00);
- (2) For each renewal of a license, a fee to be paid to the Commission of eighty dollars (\$80.00);

Authority: T.C.A. §62-13-104.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---------------------|-----|----|---------|--------|-------------------------|
| Janet DiChiara | X | | | | |
| John Griess | X | | | | |
| David Flitcroft | X | | | | |
| Michelle Haynes | X | | | | |
| Isaac Northern, Jr. | X | | | | |
| Wendell Alexander | | | | X | |
| Grover Collins | | | | X | |
| Austin McMullen | | | | X | |
| Bear Stephenson | | | | X | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Real Estate Commission on 06/14/2012, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 04/20/12

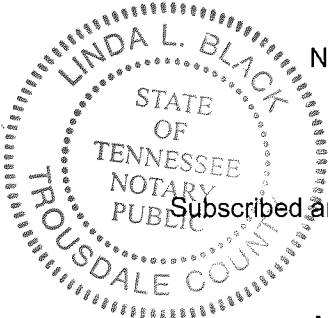
Rulemaking Hearing(s) Conducted on: (add more dates). 06/14/12

Date: 2/12/13

Signature: Julie Cropp

Name of Officer: Julie Cropp

Title of Officer: Assistant General Counsel



Subscribed and sworn to before me on: 2/12/13

Notary Public Signature: [Signature]

My commission expires on: 4/5/16

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Signature]
 Robert E. Cooper, Jr.
 Attorney General and Reporter
2-22-13
 Date

Department of State Use Only

Filed with the Department of State on: 3/4/13

Effective on: 6/2/13

[Signature]
 Tre Hargett
 Secretary of State

RECD
 2013 MAR - 14 PM 3:57
 DEPT OF STATE
 SECRETARY OF STATE

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

On June 14, 2012, the Tennessee Real Estate Commission conducted a Rulemaking Hearing regarding the proposed rules submitted in the public notice of hearing filed on 4/20/12. At that hearing, there were no public comments regarding the rules contained within this form, currently numbered 1260-07-.01 through 1260-07-.06. However, two individuals attended the rulemaking hearing to comment on a proposed Rule 1260-07-.05, titled Advertising, and there were sixteen (16) written comments sent regarding the advertising rule.

First, Mr. Bill Nolan, a lobbyist, went on the record as being in favor of the rules with the exception of the proposed rule regarding advertising. Mr. Nolan stated his belief that the Commission did not have the authority to pass the proposed advertising rule. Further, Mr. Nolan stated that the proposed advertising rule was stricter than the advertising rules for brokers and time shares, and the proposed advertising rule's requirement that the registered name of the VLS must appear on all advertising, would result in harm to the industry.

Secondly, Mr. Brad Ivens, President of the Smoky Mountain Vacation Lodging Association ("SMVLA"), appeared with Mr. Nolan and also discussed his opposition to the proposed advertising rule. Mr. Ivens specifically noted the cost of adding the firm number, as required by the proposed advertising rule, to all advertising, which Mr. Ivens noted is not required of brokers or time shares.

The Commission engaged Mr. Nolan and Mr. Ivens in discussion regarding the VLS industry's use of d/b/a names. Mr. Ivens stated that his VLS firm uses multiple d/b/a names on advertising, and the proposed advertising rule would result in unnecessary expense by requiring him to change all of his signage and other advertising to include both the d/b/a name as well as the VLS firm name which is registered with the Commission. It was discussed that brokers are permitted to use d/b/a names on their advertising if the d/b/a name is included in the registered firm name with the Commission.

It was further discussed that real estate brokers do not have to include their firm number on advertising. However, the Commission stated that the firm phone number, which is required on all advertising for real estate brokers, identifies the broker, whereas VLS firms utilize multiple numbers which are not all specifically tied to the VLS firm licensed with the Commission.

The Commission, Mr. Nolan, and Mr. Ivens then discussed the possibility of the VLS firms registering all d/b/a names utilized by the firm with the Commission and then allowing use of the d/b/a name on advertising. However, the problem was raised of the State's system's incapability of registering multiple d/b/a names to a single licensed VLS firm.

There were sixteen (16) written comments submitted prior to the hearing via e-mail, which were summarized as a group at the hearing and entered into the record as an exhibit. Two (2) of the written comments were made by Mr. Ivens, and the remainder of the comments endorsed Mr. Ivens' position regarding the proposed advertising rule, stating that the rule's requirements were unnecessary, overly burdensome, costly, and stricter than the advertising requirements of brokers and time shares and asking that the Commission delay or forego the proposed advertising rule and work with industry members to revise the proposed advertising rule.

The Commission then voted to withdraw and not adopt the proposed rule regarding advertising (formerly numbered Rule 1260-07-.05) at that time. Accordingly, the Commission voted to renumber the rules proposed as Rule 1260-07-.06, titled Vacation Lodging Services Instructor Qualifications, and Rule 1260-07-.07, titled Fees, to become Rule 1260-07-.05 and Rule 1260-07-.06 respectively.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

Economic Impact Statement:

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule;

All licensed vacation lodging services firms, regardless of size, within the State of Tennessee will be affected by the proposed rules. The estimated number of licensed vacation lodging service firms is 139.

- (2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record;

Any reported, recordkeeping and/or other administrative costs resulting from these proposed rules is necessary to protect the citizens of the State of Tennessee, which is accomplished by requiring proper education for licensees and instructors, maintaining updated information with the Commission, and instituting measures which help to ensure accountability for improper activity by licensees. These rules are not expected to create any additional reporting, recordkeeping and/or other administrative costs to what is already required by T.C.A. § 62-13-104.

- (3) A statement of the probable effect on impacted small businesses and consumers;

The proposed rules will economically impact all vacation lodging service firms, but these proposed rules are necessary in order to protect the welfare and safety of the citizens of the State of Tennessee.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business;

Although less burdensome, less intrusive, or less costly methods may exist to achieve the purpose and objectives of these proposed rules, those methods would not result in an equivalent level of protection for citizens of the State of Tennessee.

- (5) A comparison of the proposed rule with any federal or state counterparts; and

The proposed rules appear consistent with similar rules adopted by other boards as well as by the Tennessee Real Estate Commission with regard to its other licensees, and counsel is not aware of any federal or state counterparts.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Exemption of small businesses from these rules would result in less protection for the citizens of the State of Tennessee.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rules are not reasonably viewed as having a projected impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Rule 1260-07-.01 Scope is a new rule which states that all new rules in Chapter 1260-07 only apply to persons performing vacation lodging services and vacation lodging service firms.

Rule 1260-07-.02 Designated Agent Qualifications is a new rule which outlines the requirements for an applicant who wishes to obtain a designated agent license for a vacation lodging service firm.

Rule 1260-07-.03 Designated Agent Responsibilities is a new rule outlining the responsibilities of a designated agent of a vacation lodging service firm.

Rule 1260-07-.04 Civil Penalties is a new rule which sets forth the civil penalty ranges for violations of the various subsections of T.C.A. § 62-13-104 and any Commission rule or order by any person who is required to have a vacation lodging service license and/or a designated agent license. It also provides factors which the Commission may consider in imposing a civil penalty.

Rule 1260-07-.05 Vacation Lodging Services Instructor Qualifications is a new rule which outlines the qualifications for any individual wishing to obtain certification as a vacation lodging services instructor.

Rule 1260-07-.06 Fees is a new rule which outlines the fee schedule for all vacation lodging service licensees and designated agents.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tennessee Code Annotated § 62-13-104(b)(10) authorizes the Tennessee Real Estate Commission to promulgate rules and regulations in accordance with the Uniform Administrative Procedures Act to implement subsection (b) of § 62-13-104.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Those most directly affected by these rules are licensed vacation lodging services and their designated agents. Several individuals from the vacation lodging service industry submitted comments. All comments were in opposition to a proposed rule regarding advertising. In response to those comments, the Commission voted to withdraw and not adopt the advertising rule with these rules.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

There are no known opinions of the Attorney General and Reporter or any judicial ruling that directly relate to the rules.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There is no estimated fiscal impact by the promulgation of these rules due to the current practice of charging the fees addressed in these rules pursuant to the schedule outlined in Rule 1260-01-.12.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Julie Cropp, Assistant General Counsel, Department of Commerce and Insurance, Regulatory Boards Division
Eve Maxwell, Executive Director, Tennessee Real Estate Commission

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Julie Cropp, Assistant General Counsel, Department of Commerce and Insurance, Regulatory Boards Division
Eve Maxwell, Executive Director, Tennessee Real Estate Commission

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

500 James Robertson Parkway, Nashville, Tennessee 37243
Telephone: (615) 741-3072 or (615) 741-2273; E-mail: julie.cropp@tn.gov or eve.maxwell@tn.gov

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

No additional information with respect to these rules not already included herein.

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Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

| Chapter Number | Chapter Title |
|----------------|---|
| 1260-07 | Vacation Lodging Services |
| Rule Number | Rule Title |
| 1260-07-.01 | Scope |
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Chapter 1260-07
Vacation Lodging Services

New Rules

| | |
|--------------------|--|
| <u>1260-07-.01</u> | <u>Scope</u> |
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1260-07-.01 Scope. The rules in Chapter 1260-07 only apply to persons who perform vacation lodging services and vacation lodging service firms, as defined and governed under T.C.A. § 62-13-104(b).

Authority: T.C.A. §62-13-104.

1260-07-.02 Designated Agent Qualifications

To obtain a designated agent license, applicants must meet the following prerequisites:

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- (1) The Commission may, in a lawful proceeding against any person required to have a designated agent license and/or a vacation lodging services license, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty for each separate violation of a statute, rule, or order pertaining to the Commission with the following schedule:

| <u>Violation</u> | <u>Penalty</u> |
|------------------------------------|-------------------------|
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| | |
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- (2) Each day of a continued violation may constitute a separate violation.
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Authority: T.C.A. §62-13-104.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---------------------|-----|----|---------|--------|-------------------------|
| Janet DiChiara | X | | | | |
| John Griess | X | | | | |
| David Flitcroft | X | | | | |
| Michelle Haynes | X | | | | |
| Isaac Northern, Jr. | X | | | | |
| Wendell Alexander | | | | X | |
| Grover Collins | | | | X | |
| Austin McMullen | | | | X | |
| Bear Stephenson | | | | X | |

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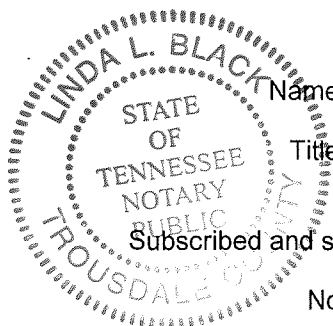
Rulemaking Hearing(s) Conducted on: (add more dates). 06/14/12

Date: 2/12/13

Signature: Julie Cropp

Name of Officer: Julie Cropp

Title of Officer: Assistant General Counsel



Subscribed and sworn to before me on: 2/12/13

Notary Public Signature: [Signature]

My commission expires on: 4/5/16

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

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One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

On June 14, 2012, the Tennessee Real Estate Commission conducted a Rulemaking Hearing regarding the proposed rules submitted in the public notice of hearing filed on 4/20/12. At that hearing, there were no public comments regarding the rules contained within this form, currently numbered 1260-07-.01 through 1260-07-.06. However, two individuals attended the rulemaking hearing to comment on a proposed Rule 1260-07-.05, titled Advertising, and there were sixteen (16) written comments sent regarding the advertising rule.

First, Mr. Bill Nolan, a lobbyist, went on the record as being in favor of the rules with the exception of the proposed rule regarding advertising. Mr. Nolan stated his belief that the Commission did not have the authority to pass the proposed advertising rule. Further, Mr. Nolan stated that the proposed advertising rule was stricter than the advertising rules for brokers and time shares, and the proposed advertising rule's requirement that the registered name of the VLS must appear on all advertising, would result in harm to the industry.

Secondly, Mr. Brad Ivens, President of the Smoky Mountain Vacation Lodging Association ("SMVLA"), appeared with Mr. Nolan and also discussed his opposition to the proposed advertising rule. Mr. Ivens specifically noted the cost of adding the firm number, as required by the proposed advertising rule, to all advertising, which Mr. Ivens noted is not required of brokers or time shares.

The Commission engaged Mr. Nolan and Mr. Ivens in discussion regarding the VLS industry's use of d/b/a names. Mr. Ivens stated that his VLS firm uses multiple d/b/a names on advertising, and the proposed advertising rule would result in unnecessary expense by requiring him to change all of his signage and other advertising to include both the d/b/a name as well as the VLS firm name which is registered with the Commission. It was discussed that brokers are permitted to use d/b/a names on their advertising if the d/b/a name is included in the registered firm name with the Commission.

It was further discussed that real estate brokers do not have to include their firm number on advertising. However, the Commission stated that the firm phone number, which is required on all advertising for real estate brokers, identifies the broker, whereas VLS firms utilize multiple numbers which are not all specifically tied to the VLS firm licensed with the Commission.

The Commission, Mr. Nolan, and Mr. Ivens then discussed the possibility of the VLS firms registering all d/b/a names utilized by the firm with the Commission and then allowing use of the d/b/a name on advertising. However, the problem was raised of the State's system's incapability of registering multiple d/b/a names to a single licensed VLS firm.

There were sixteen (16) written comments submitted prior to the hearing via e-mail, which were summarized as a group at the hearing and entered into the record as an exhibit. Two (2) of the written comments were made by Mr. Ivens, and the remainder of the comments endorsed Mr. Ivens' position regarding the proposed advertising rule, stating that the rule's requirements were unnecessary, overly burdensome, costly, and stricter than the advertising requirements of brokers and time shares and asking that the Commission delay or forego the proposed advertising rule and work with industry members to revise the proposed advertising rule.

The Commission then voted to withdraw and not adopt the proposed rule regarding advertising (formerly numbered Rule 1260-07-.05) at that time. Accordingly, the Commission voted to renumber the rules proposed as Rule 1260-07-.06, titled Vacation Lodging Services Instructor Qualifications, and Rule 1260-07-.07, titled Fees, to become Rule 1260-07-.05 and Rule 1260-07-.06 respectively.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

Economic Impact Statement:

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule;

All licensed vacation lodging services firms, regardless of size, within the State of Tennessee will be affected by the proposed rules. The estimated number of licensed vacation lodging service firms is 139.

- (2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record;

Any reported, recordkeeping and/or other administrative costs resulting from these proposed rules is necessary to protect the citizens of the State of Tennessee, which is accomplished by requiring proper education for licensees and instructors, maintaining updated information with the Commission, and instituting measures which help to ensure accountability for improper activity by licensees. These rules are not expected to create any additional reporting, recordkeeping and/or other administrative costs to what is already required by T.C.A. § 62-13-104.

- (3) A statement of the probable effect on impacted small businesses and consumers;

The proposed rules will economically impact all vacation lodging service firms, but these proposed rules are necessary in order to protect the welfare and safety of the citizens of the State of Tennessee.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business;

Although less burdensome, less intrusive, or less costly methods may exist to achieve the purpose and objectives of these proposed rules, those methods would not result in an equivalent level of protection for citizens of the State of Tennessee.

- (5) A comparison of the proposed rule with any federal or state counterparts; and

The proposed rules appear consistent with similar rules adopted by other boards as well as by the Tennessee Real Estate Commission with regard to its other licensees, and counsel is not aware of any federal or state counterparts.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Exemption of small businesses from these rules would result in less protection for the citizens of the State of Tennessee.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rules are not reasonably viewed as having a projected impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Rule 1260-07-.01 Scope is a new rule which states that all new rules in Chapter 1260-07 only apply to persons performing vacation lodging services and vacation lodging service firms.

Rule 1260-07-.02 Designated Agent Qualifications is a new rule which outlines the requirements for an applicant who wishes to obtain a designated agent license for a vacation lodging service firm.

Rule 1260-07-.03 Designated Agent Responsibilities is a new rule outlining the responsibilities of a designated agent of a vacation lodging service firm.

Rule 1260-07-.04 Civil Penalties is a new rule which sets forth the civil penalty ranges for violations of the various subsections of T.C.A. § 62-13-104 and any Commission rule or order by any person who is required to have a vacation lodging service license and/or a designated agent license. It also provides factors which the Commission may consider in imposing a civil penalty.

Rule 1260-07-.05 Vacation Lodging Services Instructor Qualifications is a new rule which outlines the qualifications for any individual wishing to obtain certification as a vacation lodging services instructor.

Rule 1260-07-.06 Fees is a new rule which outlines the fee schedule for all vacation lodging service licensees and designated agents.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tennessee Code Annotated § 62-13-104(b)(10) authorizes the Tennessee Real Estate Commission to promulgate rules and regulations in accordance with the Uniform Administrative Procedures Act to implement subsection (b) of § 62-13-104.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Those most directly affected by these rules are licensed vacation lodging services and their designated agents. Several individuals from the vacation lodging service industry submitted comments. All comments were in opposition to a proposed rule regarding advertising. In response to those comments, the Commission voted to withdraw and not adopt the advertising rule with these rules.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

There are no known opinions of the Attorney General and Reporter or any judicial ruling that directly relate to the rules.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There is no estimated fiscal impact by the promulgation of these rules due to the current practice of charging the fees addressed in these rules pursuant to the schedule outlined in Rule 1260-01-.12.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Julie Cropp, Assistant General Counsel, Department of Commerce and Insurance, Regulatory Boards Division
Eve Maxwell, Executive Director, Tennessee Real Estate Commission

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Julie Cropp, Assistant General Counsel, Department of Commerce and Insurance, Regulatory Boards Division
Eve Maxwell, Executive Director, Tennessee Real Estate Commission

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

500 James Robertson Parkway, Nashville, Tennessee 37243
Telephone: (615) 741-3072 or (615) 741-2273; E-mail: julie.cropp@tn.gov or eve.maxwell@tn.gov

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

No additional information with respect to these rules not already included herein.