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# Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

**Agency/Board/Commission:** Tennessee Real Estate Commission  
**Division:** Regulatory Boards  
**Contact Person:** Mallorie Kerby  
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**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
1260-01	Licensing
Rule Number	Rule Title
1260-01-.18	Duplicate or Confusingly Similar Firm Names
1260-01-.19	Appearances Before the Commission for the Purpose of Obtaining a License
1260-01-.20	Military Applicants
1260-01-.21	Reinstatement of an Expired License of a Broker, Affiliate Broker, Time-Share Salesperson or Acquisition Agent

Chapter Number	Chapter Title
1260-02	Rules of Conduct
Rule Number	Rule Title
1260-02-.02	Termination of Affiliation
1260-02-.09	Deposits and Earnest Money
1260-02-.12	Advertising
1260-02-.39	Commissions Earned by Affiliated Licensees
1260-02-.40	Electronic Records
1260-02-.41	Licensees Who Hold Themselves Out as a Team, Group, or Similar Entity Within a Firm

Chapter 1260-01  
Licensing

New Rules

1260-01-.18 Duplicate or Confusingly Similar Firm Names.

- (1) In order to protect the public from confusion regarding licensed real estate firms, the Tennessee Real Estate Commission reserves the right to refuse to issue a new firm license in a name that is the same or confusingly similar to another firm already issued.
- (2) The Commission staff shall review all applications for a firm name to determine whether the name is the same or confusingly similar to the name of another firm licensed with the Commission. If a name is rejected, the applicant will be notified. If the applicant does not agree with the decision, he or she may appeal to the Executive Director. Upon notification of an appeal, the Executive Director will either approve or reject the name and notify the applicant.
- (3) The applicant may then appeal, in writing, the Executive Director's decision to the Commission. The Commission's decision will be final.
- (4) The Commission expects that the applicant has researched any legal restriction regarding the use of a proposed firm name. The Commission will not attempt to determine ownership, trademark, copyright, or the validity of any other legal means to protect a name.

Authority: T.C.A. § 62-13-203.

1260-01-.19 Appearances Before the Commission for the Purpose of Obtaining a License.

Any applicant for licensure appearing before the Commission for the purpose of obtaining a license must also ensure the presence of his or her principal broker (or intended principal broker). No such appearance for the purpose of obtaining a license will be heard by the Commission without the presence of that principal broker.

Authority: T.C.A. § 62-13-203.

1260-01-.20 Military Applicants.

- (1) An applicant for licensure meeting the requirements of T.C.A. § 4-3-1304(d)(1) may:
  - (a) Be issued a license upon application and payment of all fees required for the issuance of a regular license of the same type if, in the opinion of the Commission, the requirements for licensure of such other state are substantially equivalent to that required in Tennessee; or
  - (b) Be issued a temporary permit as described herein if the Commission determines that the applicant's license does not meet the requirements for substantial equivalency, but that the applicant could perform additional acts, including – but not limited to – education, training, or experience, in order to meet the requirements for the license to be substantially equivalent. In that case, the Commission may issue a temporary permit upon application and payment of all fees required for issuance of a regular license of the same type which shall allow such person to perform services as if fully licensed for a set period of time that is determined to be sufficient by the Commission for the applicant to complete such requirements.
    1. After completing those additional requirements and providing the Commission with sufficient proof thereof as may be required, a full license shall be issued to the applicant with an issuance date of the date of the original issuance of the temporary permit and an expiration date as if the full license had been issued at that time.

2. A temporary permit shall be issued for a period that is less than the length of a renewal cycle for a full license.
  3. A temporary permit shall expire upon the date set by the Commission and shall not be subject to renewal except through the timely completion of the requirements for substantial equivalency as required by the Commission or by an extension of time granted for good cause by the Commission.
  4. Should an extension to a temporary permit cause the permit to be in effect longer than the renewal cycle of a full license, then the holder of the temporary permit shall file a renewal application with such documentation and fees, including completion of continuing education, as are required by the Commission for all other renewals of a full license of the same type.
- (2) Military education, training, or experience completed by a person described at T.C.A. § 4-3-1304(d)(1)(B)(ii)(a)-(c) shall be accepted toward the qualifications, in whole or in part, to receive any license issued by the Commission under the Division of Regulatory Boards if such military education, training or experience is determined by the Commission to be substantially equivalent to the education, training, or experience required for the issuance of such license.
- (3) Renewal:
- (a) Any licensee who is a member of the national guard or a reserve component of the armed forces of the United States called to active duty whose license expires during the period of activation shall be eligible to be renewed upon the licensee being released from active duty without:
    1. Payment of late fees or other penalties;
    2. Obtaining continuing education credits when:
      - (i) Circumstances associated with the person's military duty prevented the obtaining of continuing education credits and a waiver request has been submitted to the Commission; or
      - (ii) The person performs the licensed occupation as part of such person's military duties and provides documentation sufficient to demonstrate such to the Commission.
    3. Performing any other similar act typically required for the renewal of a license.
  - (b) The license shall be eligible for renewal pursuant to this paragraph for six (6) months from the person's release from active duty.
  - (c) Any person renewing under this paragraph shall provide the Commission such supporting documentation evidencing activation as may be required by the Commission prior to renewal of any license pursuant to this paragraph.

Authority: T.C.A. §§ 4-3-1304 and 62-13-203.

1260-01-.21 Reinstatement of an Expired License of a Broker, Affiliate Broker, Time-Share Salesperson, or Acquisition Agent.

- (1) Expired License Due to Health Issues or Medical Problems:
- (a) If a licensee fails to renew a license within sixty (60) days after expiration of the license because of personal or family health issues, and, as a result, wishes to request a medical waiver from the Commission, that licensee must:
    1. Provide a signed doctor's statement attesting to the nature and length of the illness; and

2. Submit a statement explaining the lapse, which must be signed by the person seeking reinstatement.
  - (b) If the Commission grants the medical waiver request, then renewal fees must be paid and all other conditions for licensure must be met, but late penalty fees will not be assessed.
  - (c) Information submitted will become public record unless otherwise prohibited by law.
- (2) Expired License due to Failure to Comply with Prerequisite to Licensure:
- (a) **Renewal of License Within Sixty (60) Days of Expiration:** If a licensee fails to comply with any prerequisite or condition to licensure or renewal and/or fails to pay a renewal fee before the expiration of the license but provides proof of compliance with all prerequisites or conditions for licensure, including payment of renewal fee, within sixty (60) days after the expiration date of the license, that licensee shall only be required to pay a penalty fee of fifty dollars (\$50.00) per thirty (30) day period, or portion thereof, from the time the license expired without the requirement of any further obligations.
  - (b) **Reinstatement After Sixty (60) Days of Expiration:** If a licensee fails to timely pay a renewal fee or comply with any prerequisite or condition to licensure or renewal and/or fails to pay a renewal fee within sixty (60) days after the expiration date of the license, that licensee must sign a Reinstatement Order agreeing to comply with the following requirements and complete each of the following requirements in order to obtain license reinstatement:
    1. Provide proof of compliance with all prerequisites or conditions for licensure, including payment of renewal fee; and
    2. Payment of Penalties in Accordance with the Following Schedule:
      - (i) For a license expired more than sixty (60) days, but within one hundred twenty (120) days, pay a penalty fee of fifty dollars (\$50.00) per thirty (30) day period, or portion thereof, from the time the license expired; or
      - (ii) For a license expired for more than one hundred twenty (120) days but within one (1) year, pay, in addition to the penalty fee described in subpart (i), a penalty fee of one hundred dollars (\$100.00) per thirty (30) day period, or portion thereof, beginning on the one hundred twenty first (121<sup>st</sup>) day; and
    3. Other Condition: Attend one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of the date of executing the Reinstatement Order.
    4. Penalty fees will begin accruing on the first (1<sup>st</sup>) day following the license expiration date and will be assessed every thirty (30) days, or portion thereof, at the above rates. Penalty fees accrue until a Reinstatement Order is signed, proof of compliance with all prerequisites or conditions for licensure is received, and the renewal fee and all prescribed penalty fees are paid.
    5. A reinstated license will be issued back to the original expiry date upon satisfaction of all requirements, including timely attending one (1) entire regularly scheduled Commission meeting.
- (3) **License Expired for More than One (1) Year:** if a license is expired for more than one (1) year, then that individual must reapply for licensure, meet current education requirements, and pass all required examinations.

Authority: T.C.A. §§ 62-13-203 and 62-13-319.

Chapter 1260-02  
Rules of Conduct

Amendments

Rule 1260-02-.02 Termination of Affiliation is amended by deleting the text of the rule in its entirety and substituting, instead, the following language so that, as amended, the rule shall read:

- (1) Any licensee or principal broker wishing to terminate the licensee's affiliation with a firm shall submit to the Commission a completed Transfer, Release and Change of Status Form (TREC Form 1). The form must be faxed, mailed, or e-mailed to the Commission to be effective. The principal broker's supervisory responsibility for the future acts of the licensee shall terminate upon the Commission's receipt of the release form. The principal broker shall retain a copy of the executed form.
- (2) Within ten (10) days after the date of release, the licensee shall complete the required administrative measures for either change of affiliation or retirement. The licensee shall not engage in any activities defined in § 62-13-102 until a change of affiliation is received and processed by the Commission.
- (3) With regard to firm transfer requests which are completed online, the Commission recognizes the transfer of an affiliated licensee to a new firm as having been completed at the time that said transfer request is completed online and the transfer confirmation is printed only if the following conditions are met:
  - (a) Prior to the submission of the online transfer request, the principal broker who is receiving the affiliated licensee into his or her firm has verified that the affiliated licensee has an active Tennessee license and current errors and omissions insurance; and
  - (b) A completed and signed TREC Form 1 is received by the Commission within five (5) business days of the date of the online transfer request. If the completed and signed TREC Form 1 is not received by the Commission within five (5) business days of the online submission, then the transfer shall not be considered by the Commission to be a valid transfer and the affiliated licensee will be placed into broker release status.
- (4) When a licensee terminates his affiliation with a firm, he shall neither take nor use any property listings or buyer representation agreements secured through the firm, unless specifically authorized by the principal broker in writing.
- (5) Upon demand by a licensee for his release from a firm, it shall be promptly granted by the principal broker and the principal broker shall return the license to the licensee. If the licensee cannot be located then the principal broker may return the license to the Commission.
- (6) If the principal broker is deceased or physically unable to sign the release, or refuses to sign a release, the licensee requesting termination of affiliation must submit to the Commission a notarized Affidavit for Release.
- (7) If the affiliated licensee is deceased or physically unable to sign a release, or refuses to sign a release, the principal broker requesting termination of affiliation must submit to the Commission a completed TREC Form 1.
- (8) The Commission will not intervene in the settlement of debts, loans, draws, or commission disputes between firms, brokers and/or affiliates.

Authority: T.C.A. §§ 62-13-203 and 62-13-310.

Rule 1260-02-.09 Deposits and Earnest Money is amended by deleting the name and text of the rule in its entirety and substituting, instead, the following language so that, as amended, the name and rule shall read:

1260-02-.09 Managing Escrow or Trustee Accounts.

- (1) Definitions: for purposes of this rule, the following definitions are applicable:
  - (a) "Commingling" is defined as the act of a licensee maintaining funds belonging to others in the same bank account that contains his or her personal or business funds.
  - (b) "Trust money" is defined as either of the following:
    1. Money belonging to others received by a licensee who is acting as an agent or facilitator in a real estate transaction; or
    2. Any money held by a licensee who acts as the temporary custodian of funds belonging to others.
- (2) Each principal broker shall maintain a separate escrow or trustee account for the purpose of holding any trust money which may be received in his fiduciary capacity.
- (3) An affiliated broker shall pay over to the principal broker with whom he is affiliated all trust money immediately upon receipt.
- (4) Principal brokers are responsible at all times for trust money accepted by them or their affiliated brokers, in accordance with the terms of the contract.
- (5) Where a contract authorizes a principal broker to place trust money in an escrow or trustee account, the principal broker shall clearly specify in the contract:
  - (a) the terms and conditions for disbursement of the trust money; and
  - (b) the name and address of the person or firm who will actually hold the trust money.
- (6) Where a contract authorizes an individual or entity other than the principal broker to hold trust money, the principal broker will be relieved of responsibility for the trust money upon receipt of the trust money by the specified escrow agent.
- (7) A principal broker may properly disburse trust money:
  - (a) upon a reasonable interpretation of the contract which authorizes him to hold the trust money;
  - (b) upon securing a written agreement which is signed by all parties having an interest in such and is separate from the contract which authorizes him to hold the trust money;
  - (c) at the closing of the transaction;
  - (d) upon the rejection of an offer to purchase, sell, rent, lease, exchange or option real estate;
  - (e) upon the withdrawal of an offer not yet accepted to purchase, sell, rent, lease, exchange or option real estate;
  - (f) upon filing an interpleader action in a court of competent jurisdiction; or
  - (g) upon the order of a court of competent jurisdiction.
- (8) Trust money shall be disbursed in a proper manner without unreasonable delay.
- (9) Absent a demonstration of a compelling reason, earnest money shall be disbursed, interpleaded, or turned over to an attorney with instructions to interplead the funds within twenty-one (21) calendar days from the date of receipt of a written request for disbursement.
- (10) No postdated check shall be accepted for payment of trust money unless otherwise provided in the offer.

- (11) Trust money shall be deposited into an escrow or trustee account promptly upon acceptance of the offer unless the offer contains a statement such as "Trust money to be deposited by:".
- (12) In addition to the escrow or trustee account referenced in paragraph (2), all trust money received and held which relates to the lease of property must be held in one (1) or more separate escrow or trustee accounts.
- (13) Commingling of funds contained within firm accounts is expressly prohibited.
- (14) Interest-bearing escrow or trustee accounts are neither required nor prohibited by the Commission. If utilized, however, the following provisions shall be observed:
  - (a) At the time of contract execution, the licensee shall disclose to the payor that his or her deposit will be placed in an interest-bearing escrow or trustee account, and the licensee and the payor shall execute a written agreement indicating the manner of disposition of any interest earned;
  - (b) As a depositor of the trust money, the licensee does not own the trust money or interest earned thereon until properly disbursed to the licensee; and
  - (c) The licensee shall keep a detailed and accurate accounting of the precise sum of the interest earned for each separate deposit.

Authority: T.C.A. §§ 62-13-203 and 62-13-321.

Rule 1260-02-.12 Advertising is amended by deleting the text of the rule in its entirety and substituting, instead, the following language so that, as amended, the rule shall read:

- (1) All advertising, regardless of its nature and the medium in which it appears, which promotes either a licensee or the sale or lease of real property, shall conform to the requirements of this rule. The term "advertising," for purposes of this rule, in addition to traditional print, radio, and television advertising, also includes, but is not limited to, sources of communication available to the public such as signs, flyers, letterheads, e-mail signatures, websites, social media communications, and video or audio recordings transmitted through internet or broadcast streaming. Advertising does not include promotional materials that advertise a licensee such as hats, pens, notepads, t-shirts, name tags, business cards, and the sponsorship of charitable and community events.
- (2) For purposes of this rule, the term "firm name" shall mean either of the following:
  - (a) The entire name of the real estate firm as licensed with the Commission; or
  - (b) The d/b/a name, if applicable, of the real estate firm as licensed with the Commission.
- (3) General Principles
  - (a) No licensee shall advertise to sell, purchase, exchange, rent, or lease property in a manner indicating that the licensee is not engaged in the real estate business.
  - (b) All advertising shall be under the direct supervision of the principal broker and shall list the firm name and the firm telephone number as listed on file with the Commission. With regard to the size and visibility of the firm name and firm telephone number, all of the following shall apply:
    - 1. The firm name must be the most prominent name featured within the advertising, whether it be by print or other media; and
    - 2. The firm's telephone number shall be the same size or larger than the telephone number of any individual licensee or group of licensees.

- (c) Any advertising which refers to an individual licensee must list that individual licensee's name as licensed with the Commission.
- (d) No licensee shall post a sign in any location advertising property for sale, purchase, exchange, rent or lease, without written authorization from the owner of the advertised property or the owner's agent.
- (e) No licensee shall advertise property listed by another licensee without written authorization from the property owner. Written authorization must be evidenced by a statement on the listing agreement or any other written statement signed by the owner.
- (f) No licensee shall advertise in a false, misleading, or deceptive manner. False, misleading, and/or deceptive advertising includes, but is not limited to, the following:
  1. Any licensee advertising that includes only the franchise name without including the firm name;
  2. Licensees who hold themselves out as a team, group, or similar entity within a firm who advertise themselves utilizing terms such as "Real Estate," "Real Estate Brokerage," "Realty," "Company," "Corporation," "LLC," "Corp.," "Inc.," "Associates," or other similar terms that would lead the public to believe that those licensees are offering real estate brokerage services independent of the firm and principal broker; or
  3. Any webpage that contains a link to an unlicensed entity's website where said entity is engaged or appears to be engaged in activities which require licensure by the Commission.

(4) Advertising for Franchise or Cooperative Advertising Groups

- (a) Any licensee using a franchise trade name or advertising as a member of a cooperative group shall clearly and unmistakably indicate in the advertisement his name, firm name and firm telephone number (all as registered with the Tennessee Real Estate Commission) adjacent to any specific properties advertised for sale or lease in any media.
- (b) Any licensee using a franchise trade name or advertising as a member of a cooperative group, when advertising other than specific properties for sale or lease, shall cause the following legend to appear in the advertisement in a manner reasonably calculated to attract the attention of the public: "Each [Franchise Trade Name or Cooperative Group] Office is Independently Owned and Operated."
- (c) Any licensee using a franchise trade name on business cards, contracts, or other documents relating to real estate transaction shall clearly and unmistakably indicate thereon:
  1. his name, firm name, and firm telephone number (all as registered with the Commission); and
  2. the fact that his office is independently owned and operated.

(5) Internet Advertising: in addition to all other advertising guidelines within this rule, the following requirements shall also apply with respect to internet advertising by licensees, including, but not limited to, social media:

- (a) The firm name and the firm telephone number listed on file with the Commission must conspicuously appear on each page of the website.
- (b) Each page of a website which displays listings from an outside database of available properties must include a statement that some or all of the listings may not belong to the firm whose website is being visited.
- (c) Listing information must be kept current and accurate. This requirement shall apply to "First Generation" advertising as it is placed by the licensee and does not refer to such advertising that

may be syndicated or aggregated advertising of the original by third parties outside of the licensee's control and ability to monitor.

(6) Guarantees, Claims and Offers

- (a) Unsubstantiated selling claims and misleading statements or inferences are strictly prohibited.
- (b) Any offer, guaranty, warranty or the like, made to induce an individual to enter into an agency relationship or contract, must be made in writing and must disclose all pertinent details on the face of such offer or advertisement.

Authority: T.C.A. §§ 62-13-203, 62-13-301, 62-13-310(b), and 62-13-312.

Chapter 1260-02  
Rules of Conduct

New Rules

1260-02-.39 Commissions Earned by Affiliated Licensees.

- (1) The commissions earned by an affiliated licensee while working under a principal broker can still be paid after one (1) or more of the following circumstances occur:
  - (a) the affiliated licensee transfers to a new broker;
  - (b) the affiliated licensee retires his or her license;
  - (c) the affiliated licensee is in broker release status;
  - (d) the affiliated licensee allows his or her license to expire; or
  - (e) the death of the affiliated licensee.

Authority: T.C.A. §62-13-203.

1260-02-.40 Electronic Records.

- (1) Pursuant to T.C.A. § 62-13-312(b)(6), real estate licensees must preserve records relating to any real estate transaction for three (3) years following the consummation of said real estate transaction. Real estate licensees may utilize electronic recordkeeping methods to comply with this requirement, provided that the following conditions are met:
  - (a) All documents required to be retained must be readily accessible in an organized format providing ease in document identification within twenty-four (24) hours of any request for inspection by representatives of the Commission.
  - (b) In order to ensure proper document retention, the principal broker of all real estate firms that use electronic recordkeeping methods must develop and utilize a retention schedule that safeguards the security, authenticity, and accuracy of the records for the entire required retention period and that also provides for the use of technology and hardware that ensures the accessibility of records in a readable format.

Authority: T.C.A. §§ 62-13-203 and 62-13-312.

1260-02-.41 Licensees Who Hold Themselves Out as a Team, Group, or Similar Entity Within a Firm.

- (1) Licensees who hold themselves out as a team, group, or similar entity within a firm must be affiliated with the same licensed firm and shall not establish a physical location for said team, group, or similar entity within a firm that is separate from the physical location of record of the firm with which they are affiliated.
- (2) No licensees who hold themselves out as a team, group, or similar entity within a firm shall receive compensation from anyone other than their principal broker for the performance of any acts specified in T.C.A. Title 62, Chapter 13.
- (3) The principal broker shall not delegate his or her supervisory responsibilities to any licensees who hold themselves out as a team, group, or similar entity within a firm, as the principal broker remains ultimately responsible for oversight of all licensees within the principal broker's firm.
- (4) No licensees who hold themselves out as a team, group, or similar entity within a firm shall represent themselves as a separate entity from the licensed firm.
- (5) No licensees who hold themselves out as a team, group, or similar entity within a firm shall designate members as designated firm agents, as this remains a responsibility of the licensed firm's principal broker.

Authority: T.C.A. §§ 62-13-203 and 62-13-312.

\* 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)
John Griess	X				
Janet DiChiara	X				
Wendell Alexander				X	
Grover Collins	X				
David Flitcroft				X	
Gary Blume				X	
Marcia Franks				X	
Diane Hills	X				
Austin McMullen	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 01/07/2015 (mm/dd/yyyy), 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: 08/04/2014

Rulemaking Hearing(s) Conducted on: (add more dates). 11/05/2014; 01/07/2015

Date: 6/23/15

Signature: Mallorie Kerby

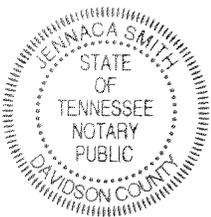
Name of Officer: Mallorie Kerby

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: 6/23/15

Notary Public Signature: Jennaca Smith

My commission expires on: 3/8/16



MY COMMISSION EXPIRES:  
March 8, 2016

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.

Herbert H. Slatery III  
Herbert H. Slatery III  
Attorney General and Reporter  
7/13/2015  
Date

**Department of State Use Only**

Filed with the Department of State on: 7/20/15

Effective on: 10/18/15

Tre Hargett  
Tre Hargett  
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.

### Rule 1260-02-.02: Termination of Affiliation

**Comment** as to 1260-02-.02(1): J. Russell Farrar ("Mr. Farrar"): Please establish what constitutes "receipt" by the Commission of the TREC 1 form and how this can be proven in the event that a dispute arises.

**Response:** The proposed rule, as drafted, sufficiently defines "receipt" and so no further amendment to the proposed rule is necessary.

**Comment** as to 1260-02-.02(3): Mr. Farrar: Please clarify what constitutes receipt by the Commission, i.e., as the date and time it was faxed or emailed by the broker or as the date and time the fax or email was received by the Commission? TAR maintains that it should be the date and time that the broker faxed or emailed the TREC 1 form. Also, it is unclear as to whether the affiliate who is attempting the transfer would be held liable during the five (5) day grace period in the event that the new broker fails to send in the completed TREC 1 form timely. TAR maintains that failure to timely submit the TREC 1 form lies with the principal broker and not the affiliate, and the principal broker should be the only agent subject to discipline [pp.42-43].

**Response:** The proposed rule, specifically subsections (1) and (3), defines what constitutes "receipt," and the rule is clear as to the effect of the five (5) day grace period so no further amendment to the proposed rule is necessary.

**Comment** as to 1260-02-.02(4): Mr. Farrar: Recommended amendment to include buyer's representation agreements secured by the firm. Also, please clarify what happens in the event that a principal broker terminates his affiliate with a firm. TAR avers that the departing principal broker should obtain permission from the firm owner prior to taking a listing or buyer's representation agreement with him.

**Comment** as to 1260-02-.02(4): David Watson ("Mr. Watson"): I would prefer it to be spelled out that the permission to take a listing is to be in writing.

**Response:** The Commission considered the two (2) comments and voted to amend proposed Rule 1260-02-.02(4) to state, "When a licensee terminates his affiliation with a firm, he shall neither take nor use any property listings or buyer representation agreements secured through the firm, unless specifically authorized by the principal broker in writing."

### Rule 1260-02-.09: Managing Escrow or Trustee Accounts

**Comment** as to 1260-02-.09(1)(b)(1): Mr. Farrar: Because agents accept funds from consumers when acting in a facilitator capacity, the Rule should be amended to read "Money belonging to others received by a licensee who is acting as an agent or facilitator in a real estate transaction; or"

**Response:** The Commission agreed with the comment and amended the provision accordingly.

**Comment** as to 1260-02-.09(5): Mr. Farrar: The Rule amendment appears that anytime a broker accepts earnest money, even if it is to pass it along to a third party escrow agent, the broker must state the terms and conditions under which the funds are to be distributed. However, it is more common that this would be addressed in an escrow agreement between the parties and the escrow agent. TAR recommends the following: "Where a contract authorizes a principal broker to place trust money in an escrow or trustee account, the broker shall clearly specify in the contract..."

**Response:** The Commission agreed with the comment and amended the provision accordingly.

**Comment** as to 1260-02-.09(5)(b): Mr. Farrar: TAR suggests amending this to require the name and address of the firm holding the funds since most trustee and/or escrow accounts are in the name of the firm.

**Response:** The Commission voted to amend proposed Rule 1260-02-.09(5)(b) to state, "the name and address of the person or firm who will actually hold the trust money."

**Comment** as to 1260-02-.09(9): Mr. Farrar: TAR suggests amending this to require the funds be disbursed or turned over to an attorney for interpleader within twenty-one days. It is not under the control of a broker to require an attorney to timely file the interpleader

**Response:** The Commission voted to amend proposed Rule 1260-02-.09(9) to reflect the suggestions of the comment so that, as amended, it will state, "Absent a demonstration of a compelling reason, earnest money shall be disbursed, interpleaded, or turned over to an attorney with instructions to interplead the funds within twenty-one (21) calendar days from the date of receipt of a written request for disbursement."

**Comment** as to 1260-02-.09(12): Mr. Farrar: This Rule is confusing as to whether this applies to security deposits, rent payments, or both. Tenn. Code Ann. § 66-28-301(a) only applies to security deposits, and TAR avers that TREC Rules should not be more strict than that of state statutes. Without clarification, a firm may be required to have three (3) separate escrow or trustee accounts

**Response:** The proposed rule, as written, is not confusing, and the proposed rule does not impose any additional requirements inconsistent with the statute cited.

#### Rule 1260-02-.12: Advertising

**Comment** as to 1260-02-.12(1): Steve Black ("Mr. Black"): Suggestion to include sponsorship of charitable and committee events be added to the list of items not subject to the general terms of this rule

**Response:** The Commission agreed with the comment, and further amended proposed Rule 1260-02-.12(1) to include the sponsorship of charitable and community events within the list of materials which are not included within the term "advertising" for purposes of the proposed rule.

**Comment** as to 1260-02-.12(1): Todd Sholar ("Mr. Sholar"): What are the definitions of "incidentally" and "the like"? Also, several people have raised questions about specific things, e.g., a score board at the baseball park or sponsoring charity runs. At one point, there was a distinction between signature on property for sale and signs that are merely advertising the licensee, and we have gotten away from that distinction with the proposed rule

**Response:** The Commission agreed with the comments regarding the words "incidentally" and "the like" and removed the words from proposed Rule 1260-02-.12(1). Further, the Commission added sponsorship of charitable and community events to the list of materials which are not included within the term "advertising" for the purposes of the proposed rule.

**Comment** as to 1260-02-.12(1): Mr. Farrar: TAR suggests that this same exception to the Rule be made for agents who are sponsoring charitable or community events because an event coordinator will often limit what can be placed in an advertisement, banner, etc.

**Response:** The Commission agreed with the comment and added sponsorship of charitable and community events to the list of items which are not considered "advertising" for purposes of the proposed rule.

**Comment** as to 1260-02-.12(2): Julie Moss ("Ms. Moss"): Does TREC interpret this proposed rule to mean that the firm's d/b/a name as filed with TREC can be used in any advertising and any medium in full instead of the firm's legal corporate name? If, "Crye Leike" is the d/b/a name, would TREC find Crye Leike to be in compliance if it were to choose a distinction such as realtors, REO, or real estate services to allow the company to know which division they are working with

**Response:** The Commission made no further amendment as a result of this comment because it is the Commission's position that the proposed rule as written speaks for itself.

**Comment** as to 1260-02-.12(3): Mr. Farrar: Do all the subparts of section (3) apply to all advertising or just signage?

**Response:** As stated in paragraph (1), all advertising must conform to the requirements of the proposed rule.

**Comment** as to 1260-02-.12(3)(b)(1) and (2): Ms. Moss: What does "prominent" mean? Does it relate to size, position in advertising? Does it include a licensee's picture, and how would the firm name be more prominent than the picture?

**Response:** Prominence relates to the size and position in advertising. To address the question regarding prominence and a licensee's picture, the Commission voted to further amend proposed Rule 1260-02-.12(3)(b)(1) to state that the firm name must be the most prominent name instead of the most prominent entity.

**Comment** as to 1260-02-.12(3)(b)(1) and (2): Mr. Farrar: Please clarify to state exactly what prominent means. TREC could interpret this to mean that the firm name must be in a particular place or mentioned more times. TAR would suggest multiple examples of advertising which would be considered complaint as well as noncompliant examples with further explanation.

**Response:** Prominence relates to the size and position of the firm name within advertising. The Commission further amended proposed Rule 1260-02-.12(3)(b)(1) to state that the firm name must be the most prominent name featured within the advertising.

**Comment** as to 1260-02-.12(3)(b)(1) and (2): Phillip Cantrell ("Mr. Cantrell"): The current Rule seems adequate to address repeat offenders. The verbiage proposed would cause an undue hardship which would force replacement of many currently compliant signs, especially when the company name utilizes multiple font sizes

**Response:** The firm name can use multiple font sizes so long as that is the largest name on the sign.

**Comment** as to 1260-02-.12(3)(b)(2): Mr. Black: This is one of the most costly changes being proposed which financially impacts every agent and real estate firm in the state, with a \$50 minimum per yard sign alone. Recommend leaving the Rule as is in its current status

**Response:** The Commission understands the concern expressed in the comment, but, in the interest of protecting the public, the Commission believes the change outlined in the proposed rule is needed.

**Comment** as to 1260-02-.12(3)(b)(2): Ms. Moss: Must a firm's telephone number be on a "sold" sign? Currently, a licensee's name and phone number are attached on a rider below the sign. Can a firm have more than one phone number on file with TREC, e.g. Customer Service number and office number? If yes, can either number be used on advertising?

**Response:** A sign including riders is one sign. Some firms have an 800 number and an area code number on file with the Commission, and both numbers ring to the same place.

**Comment** as to 1260-02-.12(3)(b)(2): Mr. Sholar: What is "greater size and/or prominence," e.g., the biggest, the brightest, the first listed

**Response:** The Commission agreed that the phrase inquired about in the comment was unclear, and the Commission further amended proposed Rule 1260-02-.12(3)(b)(2) to state, "The firm's telephone number shall be the same size or larger than the telephone number of any individual licensee or group of licensees."

**Comment** as to 1260-02-.12(3)(b)(2): Mr. Farrar: Further, agents must be provided a grace period in order to budget for and procure new advertisements. TREC must understand that these items cost significant amounts of money and cannot be corrected overnight. Also, what is the meaning of "prominence?"

**Response:** The Commission does not have the latitude to extend a grace period, and proposed Rule 1260-02-.12(3)(b)(2) was amended to address the question regarding prominence to state that, "The firm's telephone number shall be the same size or larger than the telephone number of any individual licensee or group of licensees."

**Comment** as to 1260-02-.12(3)(c): Mr. Black: Southern Americans recognize products and companies in the simplest of terms possible (e.g., John Smith at ABC Realty versus John Smith at ABC Realty & Associates, LLC). The financial impact to agents and firms becomes overwhelming

**Response:** The Commission reviewed this comment and took it into consideration when voting to further amend proposed Rule 1260-02-.12(3)(c) by removing, "...and the individual licensee's name may not be any larger than the smallest font of the firm name."

**Comment** as to 1260-02-.12(3)(c): Ms. Moss: If "Crye Leike" is 3 inches tall and "Realtors" is 1 inch tall, can licenses have their name be 3 inches tall as to incorporate the d/b/a name versus the realtors or any other delineator chosen

**Response:** The Commission reviewed this comment and took it into consideration when voting to further amend proposed Rule 1260-02-.12(3)(c) by removing, "...and the individual licensee's name may not be any larger than the smallest font of the firm name."

**Comment** as to 1260-02-.12(3)(c): Mr. Farrar: TAR requests compromise that if the majority of the firm name (or the part of the firm name recognized by the community) is in a different size font than the remainder of the name, the agent's name should be the same size or smaller than the larger portion of the firm name

**Response:** The Commission took this comment into consideration and incorporated the comment in its decision to further amend proposed Rule 1260-02-.12(3)(c) to remove, "...and the individual licensee's name may not be any larger than the smallest font of the firm name."

**Comment** as to 1260-02-.12(3)(f)(2): Mr. Farrar: The requirement that such websites include each firm name would create a great hardship and a confusing website for large companies. This should only be a requirement for the individual office websites and not the franchise website

**Response:** The Commission reviewed the comment and incorporated this comment into further amending the proposed language of what is now Rule 1260-02-.12(3)(f)(1) to specify that it is only a licensee's advertisement to which the rule applies and not the franchise website.

**Comment** as to 1260-02-.12(3)(f)(3): Mr. Black: As long as it is clear that an entity is part of a particular firm, they should be permitted to use names such as team, group, real estate, realty or associates

**Response:** The Commission took this comment into consideration and further amended the proposed rule to eliminate the word "group" from the listing, but the remaining words have connotations of entities that the public might see as a separate real estate firm, and the Commission elected to retain those words.

**Comment** as to 1260-02-.12(3)(f)(3): Mr. Troxel: Restricting the naming and identity of teams is counter to established trends in the national real estate history. If rulemaking related to prominence of the firm name is effective, it should establish that teams are not independent entities or a brokerage, making this section redundant

**Response:** The Commission considered the comment and voted to eliminate the word "group" from the proposed rule. The Commission's decision was not based on national real estate history but what the Commission believes is relevant to the public in the State of Tennessee.

**Comment** as to 1260-02-.12(3)(f)(3): Mr. Farrar: TREC references "[l]icensees who hold themselves out as a team, group, or similar entity." However, in the same section, TREC prohibits these agents from using the word "group" in their name. This prohibition is inconsistent with other proposed rules and should be deleted completely. Further, many teams/groups/similar entities have existed for quite some time and have spent a significant amount of money and resources branding their team/group/similar entity and will have to essentially start over to brand a new entity because one of the prohibited words is in their name. They should be permitted to keep their name as long as it is clear that such entity is part of a particular firm. TAR recognizes the need to differentiate between a firm and team/group/similar entity, but suggests that some of the prohibited words ("real estate," "realty," and "group") should be deleted from this proposed rule. Further, the phrase "that would lead the public to believe that those licensees are

offering real estate brokerage services independent of the firm and principal broker” is vague and requests clarification and a detailed explanation. TREC should present several examples of advertisements that are both compliant and noncompliant so agents can understand.

**Response:** The Commission took these comments into consideration and agreed that removal of the word “group” from the proposed rule was appropriate but does not agree with the other comments made.

**Comment** as to 1260-02-.12(3)(f)(3): Mr. Cantrell: This would cause our teams to have to rebrand themselves, as we have allowed teams to name themselves within the current TREC guidelines and always require the team name to include, “of Benchmark Realty, LLC.” This will create an undue economic hardship

**Response:** The Commission considered this comment and removed the word “group” from the proposed rule. The Commission believes the remaining rule language is necessary for protection of the public, which the Commission places at the utmost importance.

**Comment** as to 1260-02-.12(3)(f)(4): Mr. Farrar: TAR opposes this Rule as it is believed to be extreme and does not accomplish anything in protecting the public and only places a burden on teams/groups/similar entities

**Response:** The Commission agreed with this comment and removed the provision from the proposed rule.

**Comment** as to 1260-02-.12(3)(f)(5): Mr. Farrar: Please provide a firm definition of what is being prohibited and/or examples of cases which would be considered to be a violation

**Response:** The provision requires no change as its meaning is apparent. The Commission declined to give examples because a list of examples would not be all inclusive as to what is prohibited by the proposed rule.

**Comment** as to 1260-02-.12(4): Mr. Farrar: The term “Cooperative Advertising Group” is not defined in the Broker’s Act or TREC Rules. TAR suggests this term be removed from the Rule as it creates confusion

**Response:** The term “cooperative advertising group” is not being added to the existing rule with the proposed amendments. It is an existing and long-time used term, and the Commission declined to amend the proposed rule by removing this existing provision.

**Comment** as to 1260-02-.12(4) and (5): Ms. Moss: Must a firm have its name and all of its phone numbers on each page of the website? Crye Leike has an office number for each branch office and has over 80 offices that are represented on its nationwide website. Does TREC expect the national franchisors of real estate offices to comply with this also?

**Comment** as to 1260-02-.12(5)(a): Mr. Farrar: This would be difficult for large franchises or companies, and the end result could create more confusion for the public. This should be considered so that these types of websites would be excluded from this rule and only make it applicable to individual offices, agents, and/or teams, groups and similar entities. Also, please clarify how this applies to social media and other emergent trends. The Commission has discussed that it might be sufficient to post a link wherein the firm name and number would be provided given the limited number of characters available in some avenues. If this is permissible, it should be made a part of the rule. Agents should be advised as to what will and will not comply with this rule.

**Response:** The Commission took these two (2) comments into consideration and amended the proposed Rule 1260-02-.12(5) to state that the requirements, “...shall also apply with respect to internet advertising by licensees...”

**Comment** as to 1260-02-.12(5)(c): Ms. Moss: We commend the Commission’s efforts to protect the public from misinformation by getting brokers to keep their web pages and advertising clear, but it doesn’t seem to do any good if we allow syndicated listings to go out to portals where they can then be confusing to the public

**Response:** The Commission considered this comment but does not believe that there is action that the Commission can take to correct this issue.

**Comment** as to 1260-02-.12: Mr. Brown: Most advertising complaints are agent to agent complaints, which generally stem from a bad transaction and rarely deal with protecting the consumer—the intent of the advertising

Rule

**Response:** The Commission acknowledged receipt of the comment but did not see that there was any action requested or necessary.

Rule 1260-02-.39: Commissions Earned by Affiliated Licensees

**Comment:** Mr. Farrar: Please consider amending this Rule to clarify TREC's unwritten position that it considers a commission to be earned by a licensee at the time that the property goes under contract

**Response:** The Commission responded that the comment is not pertinent to the proposed rule and voted to make no amendment.

Rule 1260-02-.41: Licensees Who Hold Themselves Out as a Team, Group, or Similar Entity Within a Firm

**Comment** as to 1260-02-.41(1): Bradley Scott Troxel ("Mr. Troxel"): Agencies are not required to have their agents on site, and yet this rule requires that a team or group has to be on site

**Response:** The requirement that a licensee must have his or her license at the location of his or her principal broker has not changed, and no further amendment of this provision is necessary.

**Comment** as to 1260-02-.41(1): Aaron Armstrong ("Mr. Armstrong"): Request that TREC amend this rule and allow agents at different licensed firms to advertise and market as being part of the same Team or Group so long as they adhere to all advertising Rules and they have permission to do so from their own Principal Broker. For example, if a team or group from Nashville generates significant leads from Murfreesboro consumers, it is common practice that a team or group might refer the consumer to an agent at the Murfreesboro office of their same franchise company, and those agents may want to formalize an ongoing referral relationship. By not allowing this, it would encourage agents to work further outside their general service area.

**Response:** Each principal broker is responsible for the advertisements of his or her agents within his or her firm, and opening the proposed rule to allow agents at different licensed firms to advertise and market as being part of the same team or group is impossible. Therefore, there will be no further amendment to the proposed rule.

**Comment** as to 1260-02-.41(2): Mr. Farrar: It should be made clear that a licensed assistant does not have to be compensated via the principal broker when that licensed assistant is paid a salary as an employee. The licensed assistant can be paid by the licensee for whom the assistant works

**Response:** The Commission does not disagree with the comment but believes that the issue referenced in the comment is already established within the statutes, and there is no reason to amend the language of this particular proposed rule.

**Comment:** Mr. Black: Teams and groups are developed for economic and business growth, customer service, and many other reasons. All teams are paid directly from their principal broker as requested in 1260-02-.41(2)

**Response:** The Commission agreed with the comment, but no change to the rule's proposed language is necessary despite the Commission's agreement.

**Comment:** Mr. Troxel: Agents that lead teams continue to seek training and pursue higher levels of learning than most individual agents do, and their training benefits the consumer and the agent on the other side of the transaction. I encourage TREC not to take a step backwards as it relates to teams and groups

**Response:** The Commission disagreed with the comment as it is still the responsibility of the principal broker to provide supervision, and no change to the proposed rule will be made.

**Comment:** Mr. Brown: I understand if you want to regulate or have supervision of teams, and I understand the education requirements because I believe in education. Most of the time, civil penalties for complaints include the principal broker. Are there better defined rules on "supervision"? For example, if I hold five (5) different classes a month, but I have independent contracts that I can't require to be there, am I supervising my agents

**Response:** Supervision is still the responsibility of the principal broker, and the Commission's statutes and rules define supervision. There is no need to change the proposed rule language further.

**Comment:** Mr. Farrar: If a firm has different divisions within it, can it advertise as such, e.g., commercial division, property management division, residential division, REO division, etc.? Would these divisions fall under the same rules as teams/groups/similar entities? TAR hopes that a company be permitted to have different departments or divisions without being required to register a new firm for each division. Classifying them as specific divisions or departments would not mislead the public but would assist the public in knowing how to reach the agent and/or department that will meet their needs as quickly as possible. TAR requests clarification within the Rules

**Response:** Whatever licenses are affiliated with a principal broker's firm are to be supervised by the principal broker. It does not matter how something is categorized. The principal broker is responsible for every license inside that principal broker's firm. No further amendment to the proposed rule is necessary.

## 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.

### 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;

The proposed rule that is expected to result in a potential cost to small businesses is the proposed amended Rule 1260-02-.12 regarding advertising. According to the Tennessee Code §4-5-102(13), the term "small business" is defined as, "...a business entity, including its affiliates, that employs fifty (50) or fewer full-time employees." It is estimated that there are 3,898 licensed active real estate firms in the State of Tennessee and that most of these firms are, in fact, small businesses under that definition. However, it is recognized that, in many cases, individual licensees rather than the firm bear the cost of advertising. It is estimated that there are 24,429 licensed active affiliate brokers and brokers in the State of Tennessee who could be impacted by the potential cost of this rule change.

- (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;

It is not anticipated that compliance with the proposed rules will result in costs which are reporting, recordkeeping, or administrative in nature.

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

As stated in response to consideration (1) above, the proposed amended Rule 1260-02-.12 regarding advertising is expected to result in a potential cost to small businesses. The proposed rules are expected to assist with the protection of 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;

The Commission has considered the burden and cost alternatives and does not believe that there are less burdensome, less intrusive, or less costly alternative methods known at this time to achieve the purposes and objectives of proposed rules but will consider the comments that have been made and determine if the same objectives can be achieved in a less costly way.

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

There are no known federal counterparts to these rules. For many of the rules, there are no known state counterparts, as well. Other states are known to have regulations or rules containing provisions that are similar in nature to the provisions that are included within the proposed amended Rule 1260-02-.12 regarding advertising, and those include Georgia (Rule 520-1-.09), Louisiana (§ 2501), Nevada (NAC 645.610 and NRS 645.315), North Dakota (Rule 70-02-03-02.1), and Washington (WAC 308-124B-210).

- (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.

Any possible exemption of small businesses from these rules would result in significantly less protection for the citizens of the State of Tennessee based on the definition of "small businesses" as provided under the Tennessee Code Annotated.

### **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)

These rules are not reasonably viewed as having a projected financial 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;

**New Rule 1260-01-.18 Duplicate or Confusingly Similar Names:** This rule states that the Commission reserves the right to refuse to issue a new firm license in a name which is the same or confusingly similar to another firm license already issued and outlines the process for review of an application for a determination regarding the name.

**New Rule 1260-01-.19 Appearances Before the Commission for the Purpose of Obtaining a License:** This rule states that any applicant for licensure appearing before the Commission for an informal appearance must also ensure the presence of his or her principal broker or intended principal broker. Informal appearances are often utilized in the case of an applicant who has disclosed circumstances in his or her background which would call into question whether the person has a good reputation of honesty, trustworthiness, integrity and competence to transact the business of broker, affiliate broker, or time-share salesperson referenced in T.C.A. § 62-13-303(a)(1). In certain cases, those individuals arrive for an informal appearance where the Commission considers the circumstances and determines whether satisfactory proof of honesty, trustworthiness, integrity and competence to transact the business of broker, affiliate broker, or time-share salesperson has been presented to warrant granting licensure. As the supervising individual over licensees affiliated within a particular firm, the principal broker's presence and participation is important in this dialogue and determination.

**New Rule 1260-01-.20 Military Applicants:** This rule provides for the expedited processing of applications for certain military personnel and their spouses, the recognition of education earned through military service, and the allowance of license renewal for six (6) months from the release from active duty without penalty when certain specified circumstances are met.

**New Rule 1260-01-.21 Reinstatement of an Expired License of a Broker, Affiliate Broker, Time-Share Salesperson, or Acquisition Agent:** This rule clarifies certain discretionary provisions regarding reinstatement of a license which are found within T.C.A. § 62-13-319. This rule outlines the possibility of a medical waiver request, the requirements for renewal of a license within sixty (60) days of expiration by way of providing proof of compliance and payment of specified penalty fees, the requirements for reinstatement of a license after sixty (60) days of expiration by way of executing a Reinstatement Order, providing proof of compliance, payment of specified penalty fees and attendance at a Commission meeting, and the requirement for reapplication for licensure when a license is expired for more than one (1) year.

**Amendment to Rule 1260-02-.02 Termination of Affiliation:** This amendment will add an additional paragraph to the existing rule which provides for circumstances where a firm transfer request is submitted online. The amendment states that the transfer of an affiliated licensee to a new firm is recognized as completed at the time of the online transfer request if certain conditions are met, including but not limited to, receipt by the Commission of a completed and signed TREC Form 1 within five (5) business days of the date of the online transfer request.

**Amendment to Rule 1260-02-.09 Deposits and Earnest Money:** This amendment will rename the rule to "Managing Escrow or Trustee Accounts" and provide some clarification as well as multiple new provisions relating to the management of a real estate firm's escrow or trustee account(s). The amendment includes definitions of the terms "commingling" and "trust money" as used within the rule and attempts to clarify multiple existing provisions of the rule and utilizes definitions to assist in the clarification. In addition, the amendment adds a provision specifically stating that commingling of funds within firm accounts is prohibited, which was not directly specified in the existing rule. Finally, the amendment adds an additional paragraph outlining the management of interest-bearing escrow or trustee accounts if said accounts are utilized by a firm.

**Amendment to Rule 1260-02-.12 Advertising:** This amendment includes a number of new provisions, which are intended to clarify the Commission's position on advertising. The amendment defines the terms "advertising" and "firm name" for purposes of the rule. Additionally, the amendment specifies the conspicuousness of the firm name in relation to any other entities featured in the advertising and the size of the firm telephone number in relation to other telephone numbers listed. Also, the amendment adds examples of false, misleading and/or deceptive advertising, which is already prohibited by the existing rule. Most examples refer to issues which

have arisen with regard to licensees who hold themselves out as a team, group, or similar entity within a firm and the confusion which has arisen as a result of inclusion of these entities in advertising.

**New Rule 1260-02-.39 Commissions Earned by Affiliated Licensees:** This rule attempts to provide clarification for the payment of commissions earned by an affiliated licensee while working under a principal broker after a number of circumstances occur which result in payment being remitted after the affiliated licensee has ceased his or her affiliation with that principal broker. It is an attempt to provide guidance to individuals finding themselves in these situations and facing concerns of potential discipline from the Commission.

**New Rule 1260-02-.40 Electronic Records:** This rule outlines the procedures that a real estate firm must follow in order to comply with statutory requirements for preserving records in the event that a firm utilizes electronic recordkeeping.

**New Rule 1260-02-.41 Licensees Who Hold Themselves Out as a Team, Group, or Similar Entity Within a Firm:** This rule provides guidelines for licensees who hold themselves out as a team, group, or similar entity within a firm and attempts to specifically reinforce issues already included within existing law but clarify those issues more specifically, particularly with regard to licensees who operate in this manner, (as it appears to be an increasingly common practice) in order to ensure compliance with the Commission's statutes and rules.

- (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;

T.C.A. § 4-3-1304 requires each state regulatory board attached to the division of regulatory boards (which includes the Tennessee Real Estate Commission) to promulgate rules and regulations to establish an expedited process for issuance and/or renewal of a license for certain members of the military. The proposed new Rule 1260-01-.20 is promulgated in response to T.C.A. § 4-3-1304.

- (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;

The proposed rules and rule amendments of the Tennessee Real Estate Commission will affect real estate affiliate brokers and brokers as well as real estate firms licensed by the Commission. Although there were public comments received as part of this rulemaking hearing process (most relating to certain provisions amending the current advertising rule), it does not appear that there is substantial opposition to these proposed rule changes as a whole.

- (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 rulings 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;

The anticipated fiscal impact to state and local government revenues and expenditures resulting from the promulgation of these rules is anticipated to be minimal.

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

Mallorie Kerby, Assistant General Counsel, Department of Commerce & 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;

Mallorie Kerby, Assistant General Counsel, Department of Commerce & 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: [Mallorie.Kerby@tn.gov](mailto:Mallorie.Kerby@tn.gov) or [Eve.Maxwell@tn.gov](mailto: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.

**Department of State  
Division of Publications**

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Effective Date: 10-18-15

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

**Agency/Board/Commission:** Tennessee Real Estate Commission  
**Division:** Regulatory Boards  
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**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
1260-01	Licensing
Rule Number	Rule Title
1260-01-.18	Duplicate or Confusingly Similar Firm Names
1260-01-.19	Appearances Before the Commission for the Purpose of Obtaining a License
1260-01-.20	Military Applicants
1260-01-.21	Reinstatement of an Expired License of a Broker, Affiliate Broker, Time-Share Salesperson or Acquisition Agent

Chapter Number	Chapter Title
1260-02	Rules of Conduct
Rule Number	Rule Title
1260-02-.02	Termination of Affiliation
1260-02-.09	Deposits and Earnest Money
1260-02-.12	Advertising
1260-02-.39	Commissions Earned by Affiliated Licensees
1260-02-.40	Electronic Records
1260-02-.41	Licensees Who Hold Themselves Out as a Team, Group, or Similar Entity Within a Firm

Chapter 1260-01  
Licensing

New Rules

1260-01-.18 Duplicate or Confusingly Similar Firm Names.

- (1) In order to protect the public from confusion regarding licensed real estate firms, the Tennessee Real Estate Commission reserves the right to refuse to issue a new firm license in a name that is the same or confusingly similar to another firm already issued.
- (2) The Commission staff shall review all applications for a firm name to determine whether the name is the same or confusingly similar to the name of another firm licensed with the Commission. If a name is rejected, the applicant will be notified. If the applicant does not agree with the decision, he or she may appeal to the Executive Director. Upon notification of an appeal, the Executive Director will either approve or reject the name and notify the applicant.
- (3) The applicant may then appeal, in writing, the Executive Director's decision to the Commission. The Commission's decision will be final.
- (4) The Commission expects that the applicant has researched any legal restriction regarding the use of a proposed firm name. The Commission will not attempt to determine ownership, trademark, copyright, or the validity of any other legal means to protect a name.

Authority: T.C.A. § 62-13-203.

1260-01-.19 Appearances Before the Commission for the Purpose of Obtaining a License.

Any applicant for licensure appearing before the Commission for the purpose of obtaining a license must also ensure the presence of his or her principal broker (or intended principal broker). No such appearance for the purpose of obtaining a license will be heard by the Commission without the presence of that principal broker.

Authority: T.C.A. § 62-13-203.

1260-01-.20 Military Applicants.

- (1) An applicant for licensure meeting the requirements of T.C.A. § 4-3-1304(d)(1) may:
  - (a) Be issued a license upon application and payment of all fees required for the issuance of a regular license of the same type if, in the opinion of the Commission, the requirements for licensure of such other state are substantially equivalent to that required in Tennessee; or
  - (b) Be issued a temporary permit as described herein if the Commission determines that the applicant's license does not meet the requirements for substantial equivalency, but that the applicant could perform additional acts, including – but not limited to – education, training, or experience, in order to meet the requirements for the license to be substantially equivalent. In that case, the Commission may issue a temporary permit upon application and payment of all fees required for issuance of a regular license of the same type which shall allow such person to perform services as if fully licensed for a set period of time that is determined to be sufficient by the Commission for the applicant to complete such requirements.
    1. After completing those additional requirements and providing the Commission with sufficient proof thereof as may be required, a full license shall be issued to the applicant with an issuance date of the date of the original issuance of the temporary permit and an expiration date as if the full license had been issued at that time.

2. A temporary permit shall be issued for a period that is less than the length of a renewal cycle for a full license.
  3. A temporary permit shall expire upon the date set by the Commission and shall not be subject to renewal except through the timely completion of the requirements for substantial equivalency as required by the Commission or by an extension of time granted for good cause by the Commission.
  4. Should an extension to a temporary permit cause the permit to be in effect longer than the renewal cycle of a full license, then the holder of the temporary permit shall file a renewal application with such documentation and fees, including completion of continuing education, as are required by the Commission for all other renewals of a full license of the same type.
- (2) Military education, training, or experience completed by a person described at T.C.A. § 4-3-1304(d)(1)(B)(ii)(a)-(c) shall be accepted toward the qualifications, in whole or in part, to receive any license issued by the Commission under the Division of Regulatory Boards if such military education, training or experience is determined by the Commission to be substantially equivalent to the education, training, or experience required for the issuance of such license.
- (3) Renewal:
- (a) Any licensee who is a member of the national guard or a reserve component of the armed forces of the United States called to active duty whose license expires during the period of activation shall be eligible to be renewed upon the licensee being released from active duty without:
    1. Payment of late fees or other penalties;
    2. Obtaining continuing education credits when:
      - (i) Circumstances associated with the person's military duty prevented the obtaining of continuing education credits and a waiver request has been submitted to the Commission;  
or
      - (ii) The person performs the licensed occupation as part of such person's military duties and provides documentation sufficient to demonstrate such to the Commission.
    3. Performing any other similar act typically required for the renewal of a license.
  - (b) The license shall be eligible for renewal pursuant to this paragraph for six (6) months from the person's release from active duty.
  - (c) Any person renewing under this paragraph shall provide the Commission such supporting documentation evidencing activation as may be required by the Commission prior to renewal of any license pursuant to this paragraph.

Authority: T.C.A. §§ 4-3-1304 and 62-13-203.

1260-01-.21 Reinstatement of an Expired License of a Broker, Affiliate Broker, Time-Share Salesperson, or Acquisition Agent.

(1) Expired License Due to Health Issues or Medical Problems:

- (a) If a licensee fails to renew a license within sixty (60) days after expiration of the license because of personal or family health issues, and, as a result, wishes to request a medical waiver from the Commission, that licensee must:
  1. Provide a signed doctor's statement attesting to the nature and length of the illness; and

2. Submit a statement explaining the lapse, which must be signed by the person seeking reinstatement.

(b) If the Commission grants the medical waiver request, then renewal fees must be paid and all other conditions for licensure must be met, but late penalty fees will not be assessed.

(c) Information submitted will become public record unless otherwise prohibited by law.

(2) Expired License due to Failure to Comply with Prerequisite to Licensure:

(a) Renewal of License Within Sixty (60) Days of Expiration: If a licensee fails to comply with any prerequisite or condition to licensure or renewal and/or fails to pay a renewal fee before the expiration of the license but provides proof of compliance with all prerequisites or conditions for licensure, including payment of renewal fee, within sixty (60) days after the expiration date of the license, that licensee shall only be required to pay a penalty fee of fifty dollars (\$50.00) per thirty (30) day period, or portion thereof, from the time the license expired without the requirement of any further obligations.

(b) Reinstatement After Sixty (60) Days of Expiration: If a licensee fails to timely pay a renewal fee or comply with any prerequisite or condition to licensure or renewal and/or fails to pay a renewal fee within sixty (60) days after the expiration date of the license, that licensee must sign a Reinstatement Order agreeing to comply with the following requirements and complete each of the following requirements in order to obtain license reinstatement:

1. Provide proof of compliance with all prerequisites or conditions for licensure, including payment of renewal fee; and

2. Payment of Penalties in Accordance with the Following Schedule:

(i) For a license expired more than sixty (60) days, but within one hundred twenty (120) days, pay a penalty fee of fifty dollars (\$50.00) per thirty (30) day period, or portion thereof, from the time the license expired; or

(ii) For a license expired for more than one hundred twenty (120) days but within one (1) year, pay, in addition to the penalty fee described in subpart (i), a penalty fee of one hundred dollars (\$100.00) per thirty (30) day period, or portion thereof, beginning on the one hundred twenty first (121<sup>st</sup>) day; and

3. Other Condition: Attend one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of the date of executing the Reinstatement Order.

4. Penalty fees will begin accruing on the first (1<sup>st</sup>) day following the license expiration date and will be assessed every thirty (30) days, or portion thereof, at the above rates. Penalty fees accrue until a Reinstatement Order is signed, proof of compliance with all prerequisites or conditions for licensure is received, and the renewal fee and all prescribed penalty fees are paid.

5. A reinstated license will be issued back to the original expiry date upon satisfaction of all requirements, including timely attending one (1) entire regularly scheduled Commission meeting.

(3) License Expired for More than One (1) Year: if a license is expired for more than one (1) year, then that individual must reapply for licensure, meet current education requirements, and pass all required examinations.

Authority: T.C.A. §§ 62-13-203 and 62-13-319.

Chapter 1260-02  
Rules of Conduct

Amendments

Rule 1260-02-.02 Termination of Affiliation is amended by deleting the text of the rule in its entirety and substituting, instead, the following language so that, as amended, the rule shall read:

- (1) Any licensee or principal broker wishing to terminate the licensee's affiliation with a firm shall submit to the Commission a completed Transfer, Release and Change of Status Form (TREC Form 1). The form must be faxed, mailed, or e-mailed to the Commission to be effective. The principal broker's supervisory responsibility for the future acts of the licensee shall terminate upon the Commission's receipt of the release form. The principal broker shall retain a copy of the executed form.
- (2) Within ten (10) days after the date of release, the licensee shall complete the required administrative measures for either change of affiliation or retirement. The licensee shall not engage in any activities defined in § 62-13-102 until a change of affiliation is received and processed by the Commission.
- (3) With regard to firm transfer requests which are completed online, the Commission recognizes the transfer of an affiliated licensee to a new firm as having been completed at the time that said transfer request is completed online and the transfer confirmation is printed only if the following conditions are met:
  - (a) Prior to the submission of the online transfer request, the principal broker who is receiving the affiliated licensee into his or her firm has verified that the affiliated licensee has an active Tennessee license and current errors and omissions insurance; and
  - (b) A completed and signed TREC Form 1 is received by the Commission within five (5) business days of the date of the online transfer request. If the completed and signed TREC Form 1 is not received by the Commission within five (5) business days of the online submission, then the transfer shall not be considered by the Commission to be a valid transfer and the affiliated licensee will be placed into broker release status.
- (4) ~~(3)~~ When a licensee terminates his affiliation with a firm, he shall neither take nor use any property listings or buyer representation agreements secured through the firm, unless specifically authorized by the principal broker in writing.
- (5) (4) Upon demand by a licensee for his release from a firm, it shall be promptly granted by the principal broker and the principal broker shall return the license to the licensee. If the licensee cannot be located then the principal broker may return the license to the Commission.
- (6) (5) If the principal broker is deceased or physically unable to sign the release, or refuses to sign a release, the licensee requesting termination of affiliation must submit to the Commission a notarized Affidavit for Release.
- (7) (6) If the affiliated licensee is deceased or physically unable to sign a release, or refuses to sign a release, the principal broker requesting termination of affiliation must submit to the Commission a completed TREC Form 1.
- (8) (7) The Commission will not intervene in the settlement of debts, loans, draws, or commission disputes between firms, brokers and/or affiliates.

Authority: T.C.A. §§ 62-13-203 and 62-13-310.

Rule 1260-02-.09 Deposits and Earnest Money is amended by deleting the name and text of the rule in its entirety and substituting, instead, the following language so that, as amended, the name and rule shall read:

1260-02-.09 Managing Escrow or Trustee Accounts. DEPOSITS AND EARNEST MONEY.

(1) Definitions: for purposes of this rule, the following definitions are applicable:

(a) "Commingling" is defined as the act of a licensee maintaining funds belonging to others in the same bank account that contains his or her personal or business funds.

(b) "Trust money" is defined as either of the following:

1. Money belonging to others received by a licensee who is acting as an agent or facilitator in a real estate transaction; or

2. Any money held by a licensee who acts as the temporary custodian of funds belonging to others.

(2) ~~(1)~~ Each principal broker shall maintain a separate escrow or trustee account for the purpose of holding any ~~funds~~ trust money which may be received in his fiduciary capacity as ~~deposits, earnest money, or the like. Rental deposits must be held in a separate account.~~

(3) ~~(2)~~ An affiliated broker shall pay over to the principal broker with whom he is ~~under contract~~ affiliated all ~~deposits and earnest money~~ trust money immediately upon receipt.

(4) ~~(3)~~ Principal ~~B~~brokers are responsible at all times for ~~deposits and earnest money~~ trust money accepted by them or their affiliated brokers, in accordance with the terms of the contract.

(5) ~~(4)~~ Where a contract authorizes a principal broker to place ~~funds~~ trust money in an escrow or trustee account, the principal broker shall clearly specify in the contract:

(a) the terms and conditions for disbursement of ~~such funds~~ the trust money; and

(b) the name and address of the person or firm who will actually hold ~~such funds~~ the trust money.

(6) ~~(5)~~ Where a contract authorizes an individual or entity other than ~~either~~ the principal broker to hold ~~such funds in an escrow or trustee account~~ trust money, the principal broker will be relieved of responsibility for the ~~funds~~ trust money upon receipt of the ~~funds~~ trust money by the specified escrow agent.

(7) ~~(6)~~ A principal broker may properly disburse ~~funds from an escrow account~~ trust money:

(a) upon a reasonable interpretation of the contract which authorizes him to hold ~~such funds~~ the trust money;

(b) upon securing a written agreement which is signed by all parties having an interest in such and is separate from the contract which authorizes him to hold ~~such funds~~ the trust money;

(c) at the closing of the transaction;

(d) upon the rejection of an offer to purchase, sell, rent, lease, exchange or option real estate;

(e) upon the withdrawal of an offer not yet accepted to purchase, sell, rent, lease, exchange or option real estate;

(f) upon filing an interpleader action in a court of competent jurisdiction; or

(g) upon the order of a court of competent jurisdiction.

(8) ~~(7)~~ ~~Funds in escrow or trustee accounts~~ Trust money shall be disbursed in a proper manner without unreasonable delay. ~~Funds should be disbursed or interplead within twenty-one (21) calendar days from the date of receipt of a written request of a written request for disbursement of earnest money.~~

- (9) Absent a demonstration of a compelling reason, earnest money shall be disbursed, interpleaded, or turned over to an attorney with instructions to interplead the funds within twenty-one (21) calendar days from the date of receipt of a written request for disbursement.
- (10) ~~(8)~~ No postdated check shall be accepted for payment of trust money ~~a deposit or earnest money~~, unless otherwise provided in the offer.
- (11) ~~(9)~~ Earnest Trust money shall be deposited into an escrow or trustee account promptly upon acceptance of the offer, unless the offer contains a statement such as "Earnest Trust money to be deposited by:".
- (12) In addition to the escrow or trustee account referenced in paragraph (2), all trust money received and held which relates to the lease of property must be held in one (1) or more separate escrow or trustee accounts.
- (13) Commingling of funds contained within firm accounts is expressly prohibited.
- (14) Interest-bearing escrow or trustee accounts are neither required nor prohibited by the Commission. If utilized, however, the following provisions shall be observed:
- (a) At the time of contract execution, the licensee shall disclose to the payor that his or her deposit will be placed in an interest-bearing escrow or trustee account, and the licensee and the payor shall execute a written agreement indicating the manner of disposition of any interest earned;
- (b) As a depositor of the trust money, the licensee does not own the trust money or interest earned thereon until properly disbursed to the licensee; and
- (c) The licensee shall keep a detailed and accurate accounting of the precise sum of the interest earned for each separate deposit.

Authority: T.C.A. §§ 62-13-203 and 62-13-321.

Rule 1260-02-.12 Advertising is amended by deleting the text of the rule in its entirety and substituting, instead, the following language so that, as amended, the rule shall read:

- (1) All advertising, regardless of its nature and the medium in which it appears, which promotes either a licensee or the sale or lease of real property, shall conform to the requirements of this rule. The term "advertising," for purposes of this rule, in addition to traditional print, radio, and television advertising, also includes, but is not limited to, sources of communication available to the public such as signs, flyers, letterheads, e-mail signatures, websites, social media communications, and video or audio recordings transmitted through internet or broadcast streaming. Advertising does not include promotional materials that advertise a licensee such as hats, pens, notepads, t-shirts, name tags, business cards, and the sponsorship of charitable and community events.
- (2) For purposes of this rule, the term "firm name" shall mean either of the following:
- (a) The entire name of the real estate firm as licensed with the Commission; or
- (b) The d/b/a name, if applicable, of the real estate firm as licensed with the Commission.
- (3) ~~(2)~~ General Principles
- (a) No licensee shall advertise to sell, purchase, exchange, rent, or lease property in a manner indicating that the licensee is not engaged in the real estate business.
- (b) All advertising shall be under the direct supervision of the principal broker and shall list the firm name and the firm telephone number as listed on file with the Commission. With regard to the size and visibility of the firm name and firm telephone number, all of the following shall apply:

1. The firm name must be the most prominent name featured within the advertising, whether it be by print or other media; and

2. The firm's telephone number shall be the same size or larger than the telephone number of any individual licensee or group of licensees.

(c) Any advertising which refers to an individual licensee must list that individual licensee's name as licensed with the Commission.

(d) (e) No licensee shall post a sign in any location advertising property for sale, purchase, exchange, rent or lease, without written authorization from the owner of the advertised property or the owner's agent.

(e) (d) No licensee shall advertise property listed by another licensee without written authorization from the property owner. Written authorization must be evidenced by a statement on the listing agreement or any other written statement signed by the owner.

(f) (e) No licensee shall advertise in a false, misleading, or deceptive manner. False, misleading, and/or deceptive advertising includes, but is not limited to, the following:

1. Any licensee advertising that includes only the franchise name without including the firm name;

2. Licensees who hold themselves out as a team, group, or similar entity within a firm who advertise themselves utilizing terms such as "Real Estate," "Real Estate Brokerage," "Realty," "Company," "Corporation," "LLC," "Corp.," "Inc.," "Associates," or other similar terms that would lead the public to believe that those licensees are offering real estate brokerage services independent of the firm and principal broker; or

3. Any webpage that contains a link to an unlicensed entity's website where said entity is engaged or appears to be engaged in activities which require licensure by the Commission.

(4) (3) Advertising for Franchise or Cooperative Advertising Groups

(a) Any licensee using a franchise trade name or advertising as a member of a cooperative group shall clearly and unmistakably indicate in the advertisement his name, ~~broker or~~ firm name and firm telephone number (all as registered with the Tennessee Real Estate Commission) adjacent to any specific properties advertised for sale or lease in any media.

(b) Any licensee using a franchise trade name or advertising as a member of a cooperative group, when advertising other than specific properties for sale or lease, shall cause the following legend to appear in the advertisement in a manner reasonably calculated to attract the attention of the public: "Each [Franchise Trade Name or Cooperative Group] Office is Independently Owned and Operated."

(c) Any licensee using a franchise trade name on business cards, contracts, or other documents relating to real estate transaction shall clearly and unmistakably indicate thereon:

1. his name, firm name, and firm telephone number (all as registered with the Commission); and

2. the fact that his office is independently owned and operated.

(5) (4) Internet Advertising: in addition to all other advertising guidelines within this rule, the following requirements shall also apply with respect to internet advertising by licensees, including, but not limited to, social media:

(a) The ~~listing~~ firm name and the firm telephone number listed on file with the Commission must conspicuously appear on each page of the website.

- (b) Each page of a website which displays listings from an outside database of available properties must include a statement that some or all of the listings may not belong to the firm whose website is being visited.
- (c) Listing information must be kept current and accurate. This requirement shall apply to "First Generation" advertising as it is placed by the licensee and does not refer to such advertising that may be syndicated or aggregated advertising of the original by third parties outside of the licensee's control and ability to monitor.

(6)(5) Guarantees, Claims and Offers

- (a) Unsubstantiated selling claims and misleading statements or inferences are strictly prohibited.
- (b) Any offer, guaranty, warranty or the like, made to induce an individual to enter into an agency relationship or contract, must be made in writing and must disclose all pertinent details on the face of such offer or advertisement.

Authority: T.C.A. §§ 62-13-203, 62-13-301, 62-13-310(b), and 62-13-312.

Chapter 1260-02  
Rules of Conduct

New Rules

1260-02-.39 Commissions Earned by Affiliated Licensees.

- (1) The commissions earned by an affiliated licensee while working under a principal broker can still be paid after one (1) or more of the following circumstances occur:
  - (a) the affiliated licensee transfers to a new broker;
  - (b) the affiliated licensee retires his or her license;
  - (c) the affiliated licensee is in broker release status;
  - (d) the affiliated licensee allows his or her license to expire; or
  - (e) the death of the affiliated licensee.

Authority: T.C.A. §62-13-203.

1260-02-.40 Electronic Records.

- (1) Pursuant to T.C.A. § 62-13-312(b)(6), real estate licensees must preserve records relating to any real estate transaction for three (3) years following the consummation of said real estate transaction. Real estate licensees may utilize electronic recordkeeping methods to comply with this requirement, provided that the following conditions are met:
  - (a) All documents required to be retained must be readily accessible in an organized format providing ease in document identification within twenty-four (24) hours of any request for inspection by representatives of the Commission.
  - (b) In order to ensure proper document retention, the principal broker of all real estate firms that use electronic recordkeeping methods must develop and utilize a retention schedule that safeguards the security, authenticity, and accuracy of the records for the entire required retention period and that also provides for the use of technology and hardware that ensures the accessibility of records in a readable format.

Authority: T.C.A. §§ 62-13-203 and 62-13-312.

1260-02-.41 Licensees Who Hold Themselves Out as a Team, Group, or Similar Entity Within a Firm.

- (1) Licensees who hold themselves out as a team, group, or similar entity within a firm must be affiliated with the same licensed firm and shall not establish a physical location for said team, group, or similar entity within a firm that is separate from the physical location of record of the firm with which they are affiliated.
- (2) No licensees who hold themselves out as a team, group, or similar entity within a firm shall receive compensation from anyone other than their principal broker for the performance of any acts specified in T.C.A. Title 62, Chapter 13.
- (3) The principal broker shall not delegate his or her supervisory responsibilities to any licensees who hold themselves out as a team, group, or similar entity within a firm, as the principal broker remains ultimately responsible for oversight of all licensees within the principal broker's firm.
- (4) No licensees who hold themselves out as a team, group, or similar entity within a firm shall represent themselves as a separate entity from the licensed firm.
- (5) No licensees who hold themselves out as a team, group, or similar entity within a firm shall designate members as designated firm agents, as this remains a responsibility of the licensed firm's principal broker.

Authority: T.C.A. §§ 62-13-203 and 62-13-312.

\* 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)
John Griess	X				
Janet DiChiara	X				
Wendell Alexander				X	
Grover Collins	X				
David Flitcroft				X	
Gary Blume				X	
Marcia Franks				X	
Diane Hills	X				
Austin McMullen	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 01/07/2015 (mm/dd/yyyy), 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: 08/04/2014

Rulemaking Hearing(s) Conducted on: (add more dates). 11/05/2014; 01/07/2015

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Officer: \_\_\_\_\_

Title of Officer: \_\_\_\_\_

Subscribed and sworn to before me on: \_\_\_\_\_

Notary Public Signature: \_\_\_\_\_

My commission expires on: \_\_\_\_\_

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.

\_\_\_\_\_  
Herbert H. Slatery III  
Attorney General and Reporter

\_\_\_\_\_  
Date

**Department of State Use Only**

Filed with the Department of State on: 7/20/15

Effective on: 10/18/15

\_\_\_\_\_  
Tre Hargett  
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.

### Rule 1260-02-.02: Termination of Affiliation

**Comment** as to 1260-02-.02(1): J. Russell Farrar ("Mr. Farrar"): Please establish what constitutes "receipt" by the Commission of the TREC 1 form and how this can be proven in the event that a dispute arises.

**Response:** The proposed rule, as drafted, sufficiently defines "receipt" and so no further amendment to the proposed rule is necessary.

**Comment** as to 1260-02-.02(3): Mr. Farrar: Please clarify what constitutes receipt by the Commission, i.e., as the date and time it was faxed or emailed by the broker or as the date and time the fax or email was received by the Commission? TAR maintains that it should be the date and time that the broker faxed or emailed the TREC 1 form. Also, it is unclear as to whether the affiliate who is attempting the transfer would be held liable during the five (5) day grace period in the event that the new broker fails to send in the completed TREC 1 form timely. TAR maintains that failure to timely submit the TREC 1 form lies with the principal broker and not the affiliate, and the principal broker should be the only agent subject to discipline [pp.42-43].

**Response:** The proposed rule, specifically subsections (1) and (3), defines what constitutes "receipt," and the rule is clear as to the effect of the five (5) day grace period so no further amendment to the proposed rule is necessary.

**Comment** as to 1260-02-.02(4): Mr. Farrar: Recommended amendment to include buyer's representation agreements secured by the firm. Also, please clarify what happens in the event that a principal broker terminates his affiliate with a firm. TAR avers that the departing principal broker should obtain permission from the firm owner prior to taking a listing or buyer's representation agreement with him.

**Comment** as to 1260-02-.02(4): David Watson ("Mr. Watson"): I would prefer it to be spelled out that the permission to take a listing is to be in writing.

**Response:** The Commission considered the two (2) comments and voted to amend proposed Rule 1260-02-.02(4) to state, "When a licensee terminates his affiliation with a firm, he shall neither take nor use any property listings or buyer representation agreements secured through the firm, unless specifically authorized by the principal broker in writing."

### Rule 1260-02-.09: Managing Escrow or Trustee Accounts

**Comment** as to 1260-02-.09(1)(b)(1): Mr. Farrar: Because agents accept funds from consumers when acting in a facilitator capacity, the Rule should be amended to read "Money belonging to others received by a licensee who is acting as an agent or facilitator in a real estate transaction; or"

**Response:** The Commission agreed with the comment and amended the provision accordingly.

**Comment** as to 1260-02-.09(5): Mr. Farrar: The Rule amendment appears that anytime a broker accepts earnest money, even if it is to pass it along to a third party escrow agent, the broker must state the terms and conditions under which the funds are to be distributed. However, it is more common that this would be addressed in an escrow agreement between the parties and the escrow agent. TAR recommends the following: "Where a contract authorizes a principal broker to place trust money in an escrow or trustee account, the broker shall clearly specify in the contract..."

**Response:** The Commission agreed with the comment and amended the provision accordingly.

**Comment** as to 1260-02-.09(5)(b): Mr. Farrar: TAR suggests amending this to require the name and address of the firm holding the funds since most trustee and/or escrow accounts are in the name of the firm.

**Response:** The Commission voted to amend proposed Rule 1260-02-.09(5)(b) to state, "the name and address of the person or firm who will actually hold the trust money."

**Comment** as to 1260-02-.09(9): Mr. Farrar: TAR suggests amending this to require the funds be disbursed or turned over to an attorney for interpleader within twenty-one days. It is not under the control of a broker to require an attorney to timely file the interpleader

**Response:** The Commission voted to amend proposed Rule 1260-02-.09(9) to reflect the suggestions of the comment so that, as amended, it will state, "Absent a demonstration of a compelling reason, earnest money shall be disbursed, interpleaded, or turned over to an attorney with instructions to interplead the funds within twenty-one (21) calendar days from the date of receipt of a written request for disbursement."

**Comment** as to 1260-02-.09(12): Mr. Farrar: This Rule is confusing as to whether this applies to security deposits, rent payments, or both. Tenn. Code Ann. § 66-28-301(a) only applies to security deposits, and TAR avers that TREC Rules should not be more strict than that of state statutes. Without clarification, a firm may be required to have three (3) separate escrow or trustee accounts

**Response:** The proposed rule, as written, is not confusing, and the proposed rule does not impose any additional requirements inconsistent with the statute cited.

#### Rule 1260-02-.12: Advertising

**Comment** as to 1260-02-.12(1): Steve Black ("Mr. Black"): Suggestion to include sponsorship of charitable and committee events be added to the list of items not subject to the general terms of this rule

**Response:** The Commission agreed with the comment, and further amended proposed Rule 1260-02-.12(1) to include the sponsorship of charitable and community events within the list of materials which are not included within the term "advertising" for purposes of the proposed rule.

**Comment** as to 1260-02-.12(1): Todd Sholar ("Mr. Sholar"): What are the definitions of "incidentally" and "the like"? Also, several people have raised questions about specific things, e.g., a score board at the baseball park or sponsoring charity runs. At one point, there was a distinction between signature on property for sale and signs that are merely advertising the licensee, and we have gotten away from that distinction with the proposed rule

**Response:** The Commission agreed with the comments regarding the words "incidentally" and "the like" and removed the words from proposed Rule 1260-02-.12(1). Further, the Commission added sponsorship of charitable and community events to the list of materials which are not included within the term "advertising" for the purposes of the proposed rule.

**Comment** as to 1260-02-.12(1): Mr. Farrar: TAR suggests that this same exception to the Rule be made for agents who are sponsoring charitable or community events because an event coordinator will often limit what can be placed in an advertisement, banner, etc.

**Response:** The Commission agreed with the comment and added sponsorship of charitable and community events to the list of items which are not considered "advertising" for purposes of the proposed rule.

**Comment** as to 1260-02-.12(2): Julie Moss ("Ms. Moss"): Does TREC interpret this proposed rule to mean that the firm's d/b/a name as filed with TREC can be used in any advertising and any medium in full instead of the firm's legal corporate name? If, "Crye Leike" is the d/b/a name, would TREC find Crye Leike to be in compliance if it were to choose a distinction such as realtors, REO, or real estate services to allow the company to know which division they are working with

**Response:** The Commission made no further amendment as a result of this comment because it is the Commission's position that the proposed rule as written speaks for itself.

**Comment** as to 1260-02-.12(3): Mr. Farrar: Do all the subparts of section (3) apply to all advertising or just signage?

**Response:** As stated in paragraph (1), all advertising must conform to the requirements of the proposed rule.

**Comment** as to 1260-02-.12(3)(b)(1) and (2): Ms. Moss: What does "prominent" mean? Does it relate to size, position in advertising? Does it include a licensee's picture, and how would the firm name be more prominent than the picture?

**Response:** Prominence relates to the size and position in advertising. To address the question regarding prominence and a licensee's picture, the Commission voted to further amend proposed Rule 1260-02-.12(3)(b)(1) to state that the firm name must be the most prominent name instead of the most prominent entity.

**Comment** as to 1260-02-.12(3)(b)(1) and (2): Mr. Farrar: Please clarify to state exactly what prominent means. TREC could interpret this to mean that the firm name must be in a particular place or mentioned more times. TAR would suggest multiple examples of advertising which would be considered complaint as well as noncompliant examples with further explanation.

**Response:** Prominence relates to the size and position of the firm name within advertising. The Commission further amended proposed Rule 1260-02-.12(3)(b)(1) to state that the firm name must be the most prominent name featured within the advertising.

**Comment** as to 1260-02-.12(3)(b)(1) and (2): Phillip Cantrell ("Mr. Cantrell"): The current Rule seems adequate to address repeat offenders. The verbiage proposed would cause an undue hardship which would force replacement of many currently compliant signs, especially when the company name utilizes multiple font sizes

**Response:** The firm name can use multiple font sizes so long as that is the largest name on the sign.

**Comment** as to 1260-02-.12(3)(b)(2): Mr. Black: This is one of the most costly changes being proposed which financially impacts every agent and real estate firm in the state, with a \$50 minimum per yard sign alone. Recommend leaving the Rule as is in its current status

**Response:** The Commission understands the concern expressed in the comment, but, in the interest of protecting the public, the Commission believes the change outlined in the proposed rule is needed.

**Comment** as to 1260-02-.12(3)(b)(2): Ms. Moss: Must a firm's telephone number be on a "sold" sign? Currently, a licensee's name and phone number are attached on a rider below the sign. Can a firm have more than one phone number on file with TREC, e.g. Customer Service number and office number? If yes, can either number be used on advertising?

**Response:** A sign including riders is one sign. Some firms have an 800 number and an area code number on file with the Commission, and both numbers ring to the same place.

**Comment** as to 1260-02-.12(3)(b)(2): Mr. Sholar: What is "greater size and/or prominence," e.g., the biggest, the brightest, the first listed

**Response:** The Commission agreed that the phrase inquired about in the comment was unclear, and the Commission further amended proposed Rule 1260-02-.12(3)(b)(2) to state, "The firm's telephone number shall be the same size or larger than the telephone number of any individual licensee or group of licensees."

**Comment** as to 1260-02-.12(3)(b)(2): Mr. Farrar: Further, agents must be provided a grace period in order to budget for and procure new advertisements. TREC must understand that these items cost significant amounts of money and cannot be corrected overnight. Also, what is the meaning of "prominence?"

**Response:** The Commission does not have the latitude to extend a grace period, and proposed Rule 1260-02-.12(3)(b)(2) was amended to address the question regarding prominence to state that, "The firm's telephone number shall be the same size or larger than the telephone number of any individual licensee or group of licensees."

**Comment** as to 1260-02-.12(3)(c): Mr. Black: Southern Americans recognize products and companies in the simplest of terms possible (e.g., John Smith at ABC Realty versus John Smith at ABC Realty & Associates, LLC). The financial impact to agents and firms becomes overwhelming

**Response:** The Commission reviewed this comment and took it into consideration when voting to further amend proposed Rule 1260-02-.12(3)(c) by removing, "...and the individual licensee's name may not be any larger than the smallest font of the firm name."

**Comment** as to 1260-02-.12(3)(c): Ms. Moss: If "Crye Leike" is 3 inches tall and "Realtors" is 1 inch tall, can licenses have their name be 3 inches tall as to incorporate the d/b/a name versus the realtors or any other delineator chosen

**Response:** The Commission reviewed this comment and took it into consideration when voting to further amend proposed Rule 1260-02-.12(3)(c) by removing, "...and the individual licensee's name may not be any larger than the smallest font of the firm name."

**Comment** as to 1260-02-.12(3)(c): Mr. Farrar: TAR requests compromise that if the majority of the firm name (or the part of the firm name recognized by the community) is in a different size font than the remainder of the name, the agent's name should be the same size or smaller than the larger portion of the firm name

**Response:** The Commission took this comment into consideration and incorporated the comment in its decision to further amend proposed Rule 1260-02-.12(3)(c) to remove, "...and the individual licensee's name may not be any larger than the smallest font of the firm name."

**Comment** as to 1260-02-.12(3)(f)(2): Mr. Farrar: The requirement that such websites include each firm name would create a great hardship and a confusing website for large companies. This should only be a requirement for the individual office websites and not the franchise website

**Response:** The Commission reviewed the comment and incorporated this comment into further amending the proposed language of what is now Rule 1260-02-.12(3)(f)(1) to specify that it is only a licensee's advertisement to which the rule applies and not the franchise website.

**Comment** as to 1260-02-.12(3)(f)(3): Mr. Black: As long as it is clear that an entity is part of a particular firm, they should be permitted to use names such as team, group, real estate, realty or associates

**Response:** The Commission took this comment into consideration and further amended the proposed rule to eliminate the word "group" from the listing, but the remaining words have connotations of entities that the public might see as a separate real estate firm, and the Commission elected to retain those words.

**Comment** as to 1260-02-.12(3)(f)(3): Mr. Troxel: Restricting the naming and identity of teams is counter to established trends in the national real estate history. If rulemaking related to prominence of the firm name is effective, it should establish that teams are not independent entities or a brokerage, making this section redundant

**Response:** The Commission considered the comment and voted to eliminate the word "group" from the proposed rule. The Commission's decision was not based on national real estate history but what the Commission believes is relevant to the public in the State of Tennessee.

**Comment** as to 1260-02-.12(3)(f)(3): Mr. Farrar: TREC references "[l]icensees who hold themselves out as a team, group, or similar entity." However, in the same section, TREC prohibits these agents from using the word "group" in their name. This prohibition is inconsistent with other proposed rules and should be deleted completely. Further, many teams/groups/similar entities have existed for quite some time and have spent a significant amount of money and resources branding their team/group/similar entity and will have to essentially start over to brand a new entity because one of the prohibited words is in their name. They should be permitted to keep their name as long as it is clear that such entity is part of a particular firm. TAR recognizes the need to differentiate between a firm and team/group/similar entity, but suggests that some of the prohibited words ("real estate," "realty," and "group") should be deleted from this proposed rule. Further, the phrase "that would lead the public to believe that those licensees are

offering real estate brokerage services independent of the firm and principal broker" is vague and requests clarification and a detailed explanation. TREC should present several examples of advertisements that are both compliant and noncompliant so agents can understand.

**Response:** The Commission took these comments into consideration and agreed that removal of the word "group" from the proposed rule was appropriate but does not agree with the other comments made.

**Comment** as to 1260-02-.12(3)(f)(3): Mr. Cantrell: This would cause our teams to have to rebrand themselves, as we have allowed teams to name themselves within the current TREC guidelines and always require the team name to include, "of Benchmark Realty, LLC." This will create an undue economic hardship

**Response:** The Commission considered this comment and removed the word "group" from the proposed rule. The Commission believes the remaining rule language is necessary for protection of the public, which the Commission places at the utmost importance.

**Comment** as to 1260-02-.12(3)(f)(4): Mr. Farrar: TAR opposes this Rule as it is believed to be extreme and does not accomplish anything in protecting the public and only places a burden on teams/groups/similar entities

**Response:** The Commission agreed with this comment and removed the provision from the proposed rule.

**Comment** as to 1260-02-.12(3)(f)(5): Mr. Farrar: Please provide a firm definition of what is being prohibited and/or examples of cases which would be considered to be a violation

**Response:** The provision requires no change as its meaning is apparent. The Commission declined to give examples because a list of examples would not be all inclusive as to what is prohibited by the proposed rule.

**Comment** as to 1260-02-.12(4): Mr. Farrar: The term "Cooperative Advertising Group" is not defined in the Broker's Act or TREC Rules. TAR suggests this term be removed from the Rule as it creates confusion

**Response:** The term "cooperative advertising group" is not being added to the existing rule with the proposed amendments. It is an existing and long-time used term, and the Commission declined to amend the proposed rule by removing this existing provision.

**Comment** as to 1260-02-.12(4) and (5): Ms. Moss: Must a firm have its name and all of its phone numbers on each page of the website? Crye Leike has an office number for each branch office and has over 80 offices that are represented on its nationwide website. Does TREC expect the national franchisors of real estate offices to comply with this also?

**Comment** as to 1260-02-.12(5)(a): Mr. Farrar: This would be difficult for large franchises or companies, and the end result could create more confusion for the public. This should be considered so that these types of websites would be excluded from this rule and only make it applicable to individual offices, agents, and/or teams, groups and similar entities. Also, please clarify how this applies to social media and other emergent trends. The Commission has discussed that it might be sufficient to post a link wherein the firm name and number would be provided given the limited number of characters available in some avenues. If this is permissible, it should be made a part of the rule. Agents should be advised as to what will and will not comply with this rule.

**Response:** The Commission took these two (2) comments into consideration and amended the proposed Rule 1260-02-.12(5) to state that the requirements, "...shall also apply with respect to internet advertising by licensees..."

**Comment** as to 1260-02-.12(5)(c): Ms. Moss: We commend the Commission's efforts to protect the public from misinformation by getting brokers to keep their web pages and advertising clear, but it doesn't seem to do any good if we allow syndicated listings to go out to portals where they can then be confusing to the public

**Response:** The Commission considered this comment but does not believe that there is action that the Commission can take to correct this issue.

**Comment** as to 1260-02-.12: Mr. Brown: Most advertising complaints are agent to agent complaints, which generally stem from a bad transaction and rarely deal with protecting the consumer—the intent of the advertising

Rule

**Response:** The Commission acknowledged receipt of the comment but did not see that there was any action requested or necessary.

Rule 1260-02-.39: Commissions Earned by Affiliated Licensees

**Comment:** Mr. Farrar: Please consider amending this Rule to clarify TREC's unwritten position that it considers a commission to be earned by a licensee at the time that the property goes under contract

**Response:** The Commission responded that the comment is not pertinent to the proposed rule and voted to make no amendment.

Rule 1260-02-.41: Licensees Who Hold Themselves Out as a Team, Group, or Similar Entity Within a Firm

**Comment** as to 1260-02-.41(1): Bradley Scott Troxel ("Mr. Troxel"): Agencies are not required to have their agents on site, and yet this rule requires that a team or group has to be on site

**Response:** The requirement that a licensee must have his or her license at the location of his or her principal broker has not changed, and no further amendment of this provision is necessary.

**Comment** as to 1260-02-.41(1): Aaron Armstrong ("Mr. Armstrong"): Request that TREC amend this rule and allow agents at different licensed firms to advertise and market as being part of the same Team or Group so long as they adhere to all advertising Rules and they have permission to do so from their own Principal Broker. For example, if a team or group from Nashville generates significant leads from Murfreesboro consumers, it is common practice that a team or group might refer the consumer to an agent at the Murfreesboro office of their same franchise company, and those agents may want to formalize an ongoing referral relationship. By not allowing this, it would encourage agents to work further outside their general service area.

**Response:** Each principal broker is responsible for the advertisements of his or her agents within his or her firm, and opening the proposed rule to allow agents at different licensed firms to advertise and market as being part of the same team or group is impossible. Therefore, there will be no further amendment to the proposed rule.

**Comment** as to 1260-02-.41(2): Mr. Farrar: It should be made clear that a licensed assistant does not have to be compensated via the principal broker when that licensed assistant is paid a salary as an employee. The licensed assistant can be paid by the licensee for whom the assistant works

**Response:** The Commission does not disagree with the comment but believes that the issue referenced in the comment is already established within the statutes, and there is no reason to amend the language of this particular proposed rule.

**Comment:** Mr. Black: Teams and groups are developed for economic and business growth, customer service, and many other reasons. All teams are paid directly from their principal broker as requested in 1260-02-.41(2)

**Response:** The Commission agreed with the comment, but no change to the rule's proposed language is necessary despite the Commission's agreement.

**Comment:** Mr. Troxel: Agents that lead teams continue to seek training and pursue higher levels of learning than most individual agents do, and their training benefits the consumer and the agent on the other side of the transaction. I encourage TREC not to take a step backwards as it relates to teams and groups

**Response:** The Commission disagreed with the comment as it is still the responsibility of the principal broker to provide supervision, and no change to the proposed rule will be made.

**Comment:** Mr. Brown: I understand if you want to regulate or have supervision of teams, and I understand the education requirements because I believe in education. Most of the time, civil penalties for complaints include the principal broker. Are there better defined rules on "supervision"? For example, if I hold five (5) different classes a month, but I have independent contracts that I can't require to be there, am I supervising my agents

**Response:** Supervision is still the responsibility of the principal broker, and the Commission's statutes and rules define supervision. There is no need to change the proposed rule language further.

**Comment:** Mr. Farrar: If a firm has different divisions within it, can it advertise as such, e.g., commercial division, property management division, residential division, REO division, etc.? Would these divisions fall under the same rules as teams/groups/similar entities? TAR hopes that a company be permitted to have different departments or divisions without being required to register a new firm for each division. Classifying them as specific divisions or departments would not mislead the public but would assist the public in knowing how to reach the agent and/or department that will meet their needs as quickly as possible. TAR requests clarification within the Rules

**Response:** Whatever licenses are affiliated with a principal broker's firm are to be supervised by the principal broker. It does not matter how something is categorized. The principal broker is responsible for every license inside that principal broker's firm. No further amendment to the proposed rule is necessary.

### 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.

### 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;

The proposed rule that is expected to result in a potential cost to small businesses is the proposed amended Rule 1260-02-.12 regarding advertising. According to the Tennessee Code §4-5-102(13), the term "small business" is defined as, "...a business entity, including its affiliates, that employs fifty (50) or fewer full-time employees." It is estimated that there are 3,898 licensed active real estate firms in the State of Tennessee and that most of these firms are, in fact, small businesses under that definition. However, it is recognized that, in many cases, individual licensees rather than the firm bear the cost of advertising. It is estimated that there are 24,429 licensed active affiliate brokers and brokers in the State of Tennessee who could be impacted by the potential cost of this rule change.

- (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;

It is not anticipated that compliance with the proposed rules will result in costs which are reporting, recordkeeping, or administrative in nature.

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

As stated in response to consideration (1) above, the proposed amended Rule 1260-02-.12 regarding advertising is expected to result in a potential cost to small businesses. The proposed rules are expected to assist with the protection of 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;

The Commission has considered the burden and cost alternatives and does not believe that there are less burdensome, less intrusive, or less costly alternative methods known at this time to achieve the purposes and objectives of proposed rules but will consider the comments that have been made and determine if the same objectives can be achieved in a less costly way.

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

There are no known federal counterparts to these rules. For many of the rules, there are no known state counterparts, as well. Other states are known to have regulations or rules containing provisions that are similar in nature to the provisions that are included within the proposed amended Rule 1260-02-.12 regarding advertising, and those include Georgia (Rule 520-1-.09), Louisiana (§ 2501), Nevada (NAC 645.610 and NRS 645.315), North Dakota (Rule 70-02-03-02.1), and Washington (WAC 308-124B-210).

- (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.

Any possible exemption of small businesses from these rules would result in significantly less protection for the citizens of the State of Tennessee based on the definition of "small businesses" as provided under the Tennessee Code Annotated.

### **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)

These rules are not reasonably viewed as having a projected financial 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;

**New Rule 1260-01-.18 Duplicate or Confusingly Similar Names:** This rule states that the Commission reserves the right to refuse to issue a new firm license in a name which is the same or confusingly similar to another firm license already issued and outlines the process for review of an application for a determination regarding the name.

**New Rule 1260-01-.19 Appearances Before the Commission for the Purpose of Obtaining a License:** This rule states that any applicant for licensure appearing before the Commission for an informal appearance must also ensure the presence of his or her principal broker or intended principal broker. Informal appearances are often utilized in the case of an applicant who has disclosed circumstances in his or her background which would call into question whether the person has a good reputation of honesty, trustworthiness, integrity and competence to transact the business of broker, affiliate broker, or time-share salesperson referenced in T.C.A. § 62-13-303(a)(1). In certain cases, those individuals arrive for an informal appearance where the Commission considers the circumstances and determines whether satisfactory proof of honesty, trustworthiness, integrity and competence to transact the business of broker, affiliate broker, or time-share salesperson has been presented to warrant granting licensure. As the supervising individual over licensees affiliated within a particular firm, the principal broker's presence and participation is important in this dialogue and determination.

**New Rule 1260-01-.20 Military Applicants:** This rule provides for the expedited processing of applications for certain military personnel and their spouses, the recognition of education earned through military service, and the allowance of license renewal for six (6) months from the release from active duty without penalty when certain specified circumstances are met.

**New Rule 1260-01-.21 Reinstatement of an Expired License of a Broker, Affiliate Broker, Time-Share Salesperson, or Acquisition Agent:** This rule clarifies certain discretionary provisions regarding reinstatement of a license which are found within T.C.A. § 62-13-319. This rule outlines the possibility of a medical waiver request, the requirements for renewal of a license within sixty (60) days of expiration by way of providing proof of compliance and payment of specified penalty fees, the requirements for reinstatement of a license after sixty (60) days of expiration by way of executing a Reinstatement Order, providing proof of compliance, payment of specified penalty fees and attendance at a Commission meeting, and the requirement for reapplication for licensure when a license is expired for more than one (1) year.

**Amendment to Rule 1260-02-.02 Termination of Affiliation:** This amendment will add an additional paragraph to the existing rule which provides for circumstances where a firm transfer request is submitted online. The amendment states that the transfer of an affiliated licensee to a new firm is recognized as completed at the time of the online transfer request if certain conditions are met, including but not limited to, receipt by the Commission of a completed and signed TREC Form 1 within five (5) business days of the date of the online transfer request.

**Amendment to Rule 1260-02-.09 Deposits and Earnest Money:** This amendment will rename the rule to "Managing Escrow or Trustee Accounts" and provide some clarification as well as multiple new provisions relating to the management of a real estate firm's escrow or trustee account(s). The amendment includes definitions of the terms "commingling" and "trust money" as used within the rule and attempts to clarify multiple existing provisions of the rule and utilizes definitions to assist in the clarification. In addition, the amendment adds a provision specifically stating that commingling of funds within firm accounts is prohibited, which was not directly specified in the existing rule. Finally, the amendment adds an additional paragraph outlining the management of interest-bearing escrow or trustee accounts if said accounts are utilized by a firm.

**Amendment to Rule 1260-02-.12 Advertising:** This amendment includes a number of new provisions, which are intended to clarify the Commission's position on advertising. The amendment defines the terms "advertising" and "firm name" for purposes of the rule. Additionally, the amendment specifies the conspicuousness of the firm name in relation to any other entities featured in the advertising and the size of the firm telephone number in relation to other telephone numbers listed. Also, the amendment adds examples of false, misleading and/or deceptive advertising, which is already prohibited by the existing rule. Most examples refer to issues which

have arisen with regard to licensees who hold themselves out as a team, group, or similar entity within a firm and the confusion which has arisen as a result of inclusion of these entities in advertising.

**New Rule 1260-02-.39 Commissions Earned by Affiliated Licensees:** This rule attempts to provide clarification for the payment of commissions earned by an affiliated licensee while working under a principal broker after a number of circumstances occur which result in payment being remitted after the affiliated licensee has ceased his or her affiliation with that principal broker. It is an attempt to provide guidance to individuals finding themselves in these situations and facing concerns of potential discipline from the Commission.

**New Rule 1260-02-.40 Electronic Records:** This rule outlines the procedures that a real estate firm must follow in order to comply with statutory requirements for preserving records in the event that a firm utilizes electronic recordkeeping.

**New Rule 1260-02-.41 Licensees Who Hold Themselves Out as a Team, Group, or Similar Entity Within a Firm:** This rule provides guidelines for licensees who hold themselves out as a team, group, or similar entity within a firm and attempts to specifically reinforce issues already included within existing law but clarify those issues more specifically, particularly with regard to licensees who operate in this manner, (as it appears to be an increasingly common practice) in order to ensure compliance with the Commission's statutes and rules.

- (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;

T.C.A. § 4-3-1304 requires each state regulatory board attached to the division of regulatory boards (which includes the Tennessee Real Estate Commission) to promulgate rules and regulations to establish an expedited process for issuance and/or renewal of a license for certain members of the military. The proposed new Rule 1260-01-.20 is promulgated in response to T.C.A. § 4-3-1304.

- (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;

The proposed rules and rule amendments of the Tennessee Real Estate Commission will affect real estate affiliate brokers and brokers as well as real estate firms licensed by the Commission. Although there were public comments received as part of this rulemaking hearing process (most relating to certain provisions amending the current advertising rule), it does not appear that there is substantial opposition to these proposed rule changes as a whole.

- (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 rulings 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;

The anticipated fiscal impact to state and local government revenues and expenditures resulting from the promulgation of these rules is anticipated to be minimal.

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

Mallorie Kerby, Assistant General Counsel, Department of Commerce & 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;

Mallorie Kerby, Assistant General Counsel, Department of Commerce & 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: [Mallorie.Kerby@tn.gov](mailto:Mallorie.Kerby@tn.gov) or [Eve.Maxwell@tn.gov](mailto: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.