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 File Date: 8/4/14

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Tennessee Real Estate Commission
Division:	Regulatory Boards
Contact Person:	Julie Cropp
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Don Coleman
Address:	500 James Robertson Parkway, 12 th Floor, Nashville, TN 37243
Phone:	(615) 741-6500
Email:	Don.Coleman@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Davy Crockett Tower, Room 1-A		
Address 2:	500 James Robertson Parkway		
City:	Nashville, TN		
Zip:	37243		
Hearing Date :	11/05/14		
Hearing Time:	9:30 a.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

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Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. 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	Informal Appearances Before the Commission
1260-01-.20	Military Applicants

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

(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 (121st) 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 (1st) 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 secured through the firm, unless specifically authorized by the principal broker.
- (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 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 accept trust money, 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 who will actually hold the trust money.
- (6) Where a contract authorizes an individual or entity other than either 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 or interpleaded 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 a deposit or earnest money unless otherwise provided in the offer.
- (11) Earnest 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 money to be deposited by:".
- (12) In addition to the escrow or trustee account referenced in paragraph two (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, business cards, 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 incidentally advertise a licensee such as hats, pens, notepads, t-shirts, name tags, and the like.
- (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 conspicuously 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 entity featured within the advertising, whether it be by print or other media; and
 2. The firm's telephone number shall be featured in greater size and/or prominence 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, and the individual licensee's name may not be any larger than the smallest font of the firm name.
- (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 advertising that refers to an individual licensee utilizing a nickname where that nickname is not included within the licensee's name as licensed with the Commission;
 - 2. Any advertising that includes only the franchise name without including the firm name;
 - 3. 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," "Group," 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;
 - 4. Any advertising that utilizes pictures including both licensed and unlicensed members of a team, group, or similar entity within a firm but which does not clearly identify the licensed individuals by name; or
 - 5. 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, 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 and 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

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 8/4/14

Signature: Julie E. Cropp

Name of Officer: Julie E. Cropp

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: 8/4/14

Notary Public Signature: Jennaca Smith

My commission expires on: 3/8/16



MY COMMISSION EXPIRES:
March 8, 2016

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Filed with the Department of State on: 8/4/14

Tre Hargett
Tre Hargett
Secretary of State

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