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 312 Rosa L. Parks, 8th Floor Snodgrass/TN Tower
 Nashville, TN 37243
 Phone: 615.741.2650
 Fax: 615.741.5133
 Email: register.information@tn.gov

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Sequence Number: 08-10-13
 Notice ID(s): 2051
 File Date: 8/8/13

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
Address:	500 James Robertson Parkway, Nashville, Tennessee 37243
Phone:	(615) 741-3072
Email:	Julie.Cropp@tn.gov

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, Tennessee 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 :	11/06/13		
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-.16	Lapsed Errors and Omissions Insurance
1260-01-.17	Fingerprinting

Chapter 1260-01
Licensing

New Rules

- 1260-01-.16 Lapsed Errors and Omissions Insurance
- 1260-01-.17 Fingerprinting

1260-01-.16 Lapsed Errors and Omissions Insurance

(1) Licensees Who Fail to Maintain Errors & Omissions (E&O) Insurance

(a) Penalty fees for Reinstatement of a Suspended License: Any licensee whose license is suspended for more than thirty (30) days pursuant to T.C.A. § 62-13-112 for failure to maintain E&O insurance must provide proof of insurance that complies with the required terms and conditions of coverage to the Commission and must pay the following applicable penalty fee in order to reinstate the license:

1. For a license suspended due to a lapse in E&O coverage for more than thirty (30) days but within one hundred twenty (120) days:
 - (i) Two Hundred Dollars (\$200.00) if the licensee's insurance carrier back-dated the licensee's E&O insurance policy to indicate continuous coverage; or
 - (ii) Four Hundred Dollars (\$400.00) if the licensee's insurance carrier did not back-date the licensee's E&O insurance policy to indicate continuous coverage.
2. For a license suspended due to a lapse in E&O coverage for more than one hundred twenty (120+) days but less than six (6) months, a Five Hundred Dollar (\$500.00) penalty fee;
3. For a license suspended due to a lapse in E&O coverage for six (6) months up to one (1) year, a Five Hundred Dollar (\$500.00) penalty fee plus a penalty fee of One Hundred Dollars (\$100.00) per month, or portion thereof, for months six (6) through twelve (12).

(b) Conditions for Reissuance of a Revoked License: Upon revocation of a license pursuant to T.C.A. § 62-13-112 for failure to maintain E&O insurance, any individual seeking reissuance of such license shall:

1. Reapply for licensure, including payment of all fees for such application;
2. Pay the penalty fees outlined in subparagraph (a) above;
3. Pass all required examinations for licensure, unless the Commission waives such examinations; and
4. Meet any current education requirements for licensure, unless the Commission waives such education requirements.

(2) Principal Brokers of Licensees Who Fail to Maintain E&O Insurance:

(a) A principal broker shall ensure, at all times, that all licensees affiliated with that principal broker shall hold E&O insurance as required by law. A failure to do so shall constitute failing to exercise adequate supervision over the activities of a licensed affiliated broker.

(b) For any principal broker who has an affiliated licensee whose license is suspended pursuant to T.C.A. § 62-13-112 for failure to maintain E&O insurance, there shall be no penalty to the principal broker if either of the following two (2) circumstances occur within thirty (30) days of that affiliated licensee's license suspension:

1. The affiliated licensee has provided proof of insurance which complies with the required terms and conditions of coverage to the Commission; or

2. The principal broker releases that affiliated licensee whose license is suspended for failure to maintain E&O insurance.
- (c) After the aforementioned thirty (30) day period, if the affiliated licensee has neither provided the required proof of insurance nor been released by the principal broker, the Commission authorizes a formal hearing on the matter of the principal broker's failure to exercise adequate supervision over an affiliated licensee who failed to maintain E&O insurance but also authorizes that a consent order shall be sent to the principal broker, offering that principal broker the opportunity to settle the matter informally, thereby making formal hearing proceedings unnecessary, according to the following schedule:
1. If the principal broker's affiliated licensee reinstated his or her license, or the principal broker releases the affiliated licensee, more than thirty (30) days after suspension but within one hundred twenty (120) days after suspension, the consent order shall contain the following civil penalties:
 - (i) Two Hundred Fifty Dollars (\$250.00) if the affiliated licensee's insurance carrier back-dated the licensee's E&O insurance policy to indicate continuous coverage; or
 - (ii) Five Hundred Dollars (\$500.00) if the affiliated licensee's insurance carrier did not back-date the licensee's E&O insurance policy to indicate continuous coverage.
 2. If the principal broker's affiliated licensee reinstates his or her license, or the principal broker releases the affiliated licensee, more than one hundred twenty (120+) days after suspension, the consent order referenced in subparagraph (b) above shall contain a civil penalty of one thousand dollars (\$1,000.00).
 3. Where a principal broker does not accept any authorized consent order for failure to supervise an affiliated licensee's E&O insurance, the hearing shall be held before an administrative law judge sitting alone, pursuant to the Uniform Administrative Procedures Act, compiled at title 4, chapter 5.
 4. Nothing in this rule shall be construed as limiting the Commission's authority to:
 - (i) Authorize a consent order in a different amount than listed herein;
 - (ii) Seek any other legal discipline – including revocation or suspension of a license – for a failure to supervise an affiliated licensee's E&O insurance;
 - (iii) Review an initial order under the Uniform Administrative Procedures Act; or
 - (iv) Not seek discipline against a principal broker for failure to supervise an affiliated broker's maintenance of E&O insurance if the Commission determines that such discipline is not appropriate under the facts of that matter.

Authority: T.C.A. §§ 62-13-203 and 62-13-112.

1260-01-.17 Fingerprinting

- (1) Any initial applicant who is required to submit a complete and legible set of fingerprints for the purpose of obtaining a criminal background check pursuant to T.C.A. § 62-13-303 shall submit said fingerprints in an electronic format.
 - (a) An initial applicant shall be deemed to have supplied the required set of fingerprints if that applicant causes a private company contracted by the State to electronically transmit that applicant's classifiable prints directly to the TBI and FBI to forward an electronic report based on that applicant's fingerprints to the Commission.

- (b) All sets of classifiable fingerprints required by this rule shall be furnished at the expense of the applicant.
 - (c) The applicant shall make the arrangements for the processing of his or her fingerprints with the company contracted by the State to provide electronic fingerprinting services directly and shall be responsible for the payment of any fees associated with processing of fingerprints to the respective agency.
 - (d) Applicants shall in all cases be responsible for paying application fees for licensure as established by the Commission.
 - (e) In addition to new applicants for a broker, affiliate broker, time-share salesperson, or acquisition agent license, the following are considered "initial applicants" for purposes of this rule and, therefore, are required to submit fingerprints in an electronic format for the purpose of obtaining a criminal background check:
 - 1. Any former licensee who must reapply in order to obtain reissuance of his or her license; and
 - 2. Any person who previously held an affiliate broker license but no longer holds said license at the time such person applies for a broker license.
- (2) In the event that an applicant furnishes unclassifiable fingerprints or fingerprints which are unclassifiable in nature, the Commission may refuse to issue the requested license.
- (a) For the purposes of this rule, "unclassifiable prints" means that the electronic scan or the print of the person's fingerprints cannot be read, and therefore cannot be used to identify the person.
 - (b) Should an applicant's fingerprints be rejected by the TBI or FBI, the applicant shall pay any fees assessed by the TBI or FBI for resubmission.

Authority: T.C.A. §§ 62-13-203 and 62-13-303.

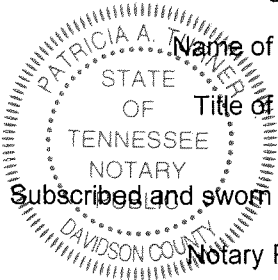
I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 8/8/13

Signature: Julie E. Cropp

Name of Officer: Julie E. Cropp

Title of Officer: Assistant General Counsel



Subscribed and sworn to before me on: 8-8-13

Notary Public Signature: Patricia A. Linnert

My commission expires on: 5-15-15

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Filed with the Department of State on: 8/8/13

Tre Hargett
Tre Hargett
Secretary of State

2013 AUG -8 PM 4:00
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