

**Department of State
Division of Publications**

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For Department of State Use Only

Sequence Number: 02-06-14
Rule ID(s): 5067
File Date: 2/7/14
Effective Date: 5/8/14

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Tennessee Real Estate Commission
Division:	Regulatory Boards
Contact Person:	Julie Cropp
Address:	500 James Robertson Parkway, Nashville, Tennessee
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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-.16	Lapsed Errors and Omissions Insurance
1260-01-.17	Fingerprinting

Chapter 1260-01
Licensing

New Rules

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Through	1260-01-.16 Lapsed Errors and Omissions Insurance
1260-01-.10 Repealed	1260-01-.17 Fingerprinting

Rule 1260-01-.16 Lapsed Errors and Omissions Insurance is added to Chapter 1260-01, and shall read as follows:

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. Notwithstanding the provisions of Tenn. Comp. R. & Regs. 1260-02-.32, if the principal broker's affiliated licensee reinstates 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 Dollars (\$200.00) if the affiliated 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 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 this subparagraph (c) 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, 62-13-112, and 62-13-312.

Rule 1260-01-.17 Fingerprinting is added to Chapter 1260-01, and shall read as follows:

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 agent authorized by the TBI and FBI.
 - (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. This does not include any person who has an affiliate broker license which is inactive or retired at the time of application 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.

* 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)
Gary Blume	X				
Janet DiChiara	X				
John Griess	X				
Bear Stephenson	X				
Michelle Haynes	X				
Wendell Alexander	X				
Grover Collins	X				
Austin McMullen	X				
David Flitcroft				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 11/06/2013, 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: 08/08/13

Rulemaking Hearing(s) Conducted on: (add more dates). 11/06/13



Date: 1/21/14

Signature: Julie E. Cropp

Name of Officer: Julie E. Cropp

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: JANUARY 21, 2014

Notary Public Signature: Margaret Williams

My commission expires on: 11/6/17

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

Robert E. Cooper, Jr.
 Robert E. Cooper, Jr.
 Attorney General and Reporter
1-30-14
 Date

Department of State Use Only

Filed with the Department of State on: 2/7/14

Effective on: 5/8/14

Tre Hargett
 Tre Hargett
 Secretary of State

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 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.

Jim Gibbs commented before the Commission that he did not have any comments regarding the content of the proposed rules, but he did not believe that the proper analysis had been performed by the Commission during the rulemaking process with regard to complying with the statutes and Executive Order regarding the Regulatory Flexibility Act. Mr. Gibbs stated that he believed that both the analysis of impact on small businesses as well as the preparation of economic impact statement should be done prior to the rulemaking hearing.

The Commission responded by stating that they understand Mr. Gibbs' concerns, but the Commission believed that it had complied with the requirements of the Regulatory Flexibility Act by conducting a regulatory flexibility analysis of the impact on small businesses made by these rules at its July 2013 meeting and by preparing an economic impact statement at the rulemaking hearing.

Rule 1260-01-.16 Lapsed Errors and Omissions Insurance

A written comment was received from Ken Barnes stating that he does not believe that the Commission has the disciplinary authority to revoke or suspend a principal broker's license as referenced in 1260-01-.16(2)(c)(4) due to the statutory provision T.C.A. § 62-13-310(c), which states that an unlawful act or violation of Title 62, Chapter 13 by any affiliate broker may not be the cause for suspension or revocation of the broker with whom the affiliate broker is affiliated.

The Commission responded by stating that, after discussing the issue, the Commission believes that, pursuant to T.C.A. § 62-13-312(b)(15), the Commission does have the authority to suspend or revoke a principal broker's license for failure to exercise adequate supervision over the activities of licensed affiliate brokers, and this rule addresses possible revocation or suspension of a principal broker for failure to exercise adequate supervision over an affiliated licensee.

A written comment was also received from J. Russell Farrar, general counsel for the Tennessee Association of Realtors ("TAR"), which outlined TAR's concern regarding this rule and also referenced concerns with the Fingerprinting rule. Regarding the Lapsed Errors and Omissions Insurance rule, Mr. Farrar wrote that TAR was concerned that the civil penalty outlined for the principal brokers was greater than the penalty fee outlined for a licensee who allowed his or her errors and omissions insurance to lapse and asked that the Commission reconsider the civil penalty amounts and seek a lower amount to be imposed on the principal brokers.

The Commission voted to change the civil penalties outlined in the rule for the principal broker to reflect the same penalty fee amounts outlined in the rule for affiliated licensees suspended for more than thirty (30) days but within one hundred twenty (120) days.

Rule 1260-01-.17 Fingerprinting

Mr. Farrar's written comment also stated that TAR requested that, as a point of clarification, the rule be amended to clarify that any affiliate broker who is reactivating an inactive license or bringing a license out of retirement to apply for a broker license is not included in the requirement to submit fingerprints in an electronic format for the purpose of obtaining a criminal background check.

The Commission voted to amend the rule's language to include the clarification that the fingerprint requirement will not apply to someone who is reactivating an inactive affiliate broker license or bringing an affiliate broker license out of retirement to apply for a broker license.

Finally, Mr. Farrar's written comment also stated that the rule provides that the applicant shall be responsible for arranging the processing of the electronic fingerprints with the company contracted by the State to provide

electronic fingerprinting services, and the applicant shall be responsible for the payment of any fees associated with the processing of fingerprints to the respective agency, but TAR believes that the statute only authorizes the Tennessee bureau of investigation to collect the costs associated with the background check and not a third party company.

The Commission discussed that the company contracted by the State to provide electronic fingerprinting services is an agent of the TBI and FBI, and the Commission voted to amend the rule's language to clarify that the applicant shall be responsible for the payment of any fees associated with processing of fingerprints to the respective agent authorized by the TBI and FBI.

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.

Regulatory Flexibility Analysis - Methods of Reducing Impact of Rules on Small Businesses:

- (1) The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules:

There is no overlap, duplication, or conflict with other federal, state, or local governmental rules.

- (2) Clarity, conciseness, and lack of ambiguity in the rule:

The rules are clear, concise, and unambiguous.

- (3) The establishment of flexible compliance and reporting requirements for small businesses:

These rules provide uniform and reasonable requirements, both for those individuals who are licensed and required by statute to maintain errors and omissions insurance, as well as those individuals who wish to be licensed with the Commission who are required by statute to provide fingerprints for the purpose of a background check. These requirements assist with ensuring the health, safety, and welfare of the citizens of Tennessee.

- (4) The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses:

These rules have no impact on reporting requirements for small businesses.

- (5) The consolidation or simplification of compliance or reporting requirements for small businesses:

These rules do not complicate compliance or reporting requirements for small businesses in any respect.

- (6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule:

There are no performance standards for small businesses as a result of these rules.

- (7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

These rules do not result in the unnecessary creation of entry barriers or other effects that will stifle entrepreneurial activity, curb innovation, or increase costs.

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 types of small businesses that would be impacted by the rule would be real estate licensees that do not timely renew their E&O insurance, which is approximately three hundred (300) per year and initial applicants for real estate licenses who are required to get fingerprinted, which is approximately two thousand five hundred (2,500) per year. The rules are not expected to have a measurable impact on small businesses with respect to the E&O rule. Any cost is relatively de minimis and is avoidable by the small business. With respect to the fingerprinting rule, the rule is actually a cost saving measure that will benefit applicants.

- (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;

There are no projected reporting, recordkeeping or other administrative costs required for these proposed rules.

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

There is no expected material adverse impact on small businesses or consumers as a result of these proposed rules. These proposed rules are expected to assist with the protection of the welfare and safety of the citizens of the State of Tennessee by helping to ensure that all licensees who are required to maintain errors and omissions insurance will do so and by further outlining the procedure for the collection of fingerprints for the purpose of obtaining a criminal background check for initial applicants for licensure, which will further benefit consumers. The electronic fingerprinting procedure will economically benefit small businesses.

(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;

There are no less burdensome, less intrusive, or less costly alternative methods known which will achieve the purpose and objectives of these proposed rules.

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

There are no known federal or state counterparts to these rules.

(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 less protection for the citizens of the State of Tennessee and would not be feasible given that many licensees are small businesses.

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;

Rule 1260-01-.16 Lapsed Errors and Omissions Insurance is a new rule which specifies certain provisions of Tenn. Code Ann. § 62-13-112 (as amended by Public Chapter No. 84) which allow the Tennessee Real Estate Commission ("the Commission") discretion regarding penalty fees for reinstatement of a license which was statutorily suspended for failure to maintain errors and omissions (E&O) insurance as well as regarding conditions for reissuance of a license which was statutorily revoked for failure to maintain E&O insurance. This rule specifies the penalty fees for reinstatement as well as the conditions for reissuance of a revoked license. In addition, this rule specifies that failure of a principal broker to ensure that all licensees affiliated with that principal broker hold E&O insurance constitutes a failure to exercise adequate supervision and outlines the disciplinary action applicable to a principal broker whose affiliated licensee(s) failed to maintain E&O insurance as required by statute.

Rule 1260-01-.17 Fingerprinting is a new rule which expands upon Tenn. Code Ann. § 62-13-303 (as amended by Public Chapter No. 420) which provides that all applicants for initial licensure on or after January 1, 2014 shall submit a set of fingerprints for the purpose of obtaining a criminal background check. This rule specifies that all fingerprints submitted shall be submitted in an electronic format which is classifiable, with said fingerprints to be taken by a company contracted by the State, which transmits the fingerprints to the TBI and FBI and submits an electronic report to the Commission. Finally, the rule defines initial applicants as including new applicants for a broker, affiliate broker, time-share salesperson, or acquisition agent license as well as any former licensee who must reapply for reissuance of his/her license as well as any individual who previously held an affiliate broker's license but no longer holds that license who applies for licensure as a broker.

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

Tennessee Code Annotated § 62-13-203(a) provides, in part, that the Tennessee Real Estate Commission may promulgate and adopt bylaws, rules and regulations (pursuant to the Uniform Administrative Procedures Act) that are reasonably necessary to do all things necessary and proper for carrying out the Tennessee Real Estate Broker License Act of 1973 that are not inconsistent with the laws of the State of Tennessee.

Section 2 of Public Chapter No. 420 authorized the Tennessee Real Estate Commission to promulgate rules and regulations to effectuate the purposes of the act.

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

Those most directly affected by the Lapsed Errors and Omissions Insurance rule are actively licensed real estate brokers, affiliate brokers, and time-share salespersons as well as their principal brokers. Those most directly affected by the Fingerprinting rule are applicants for initial licensure as a broker, affiliate broker, time-share salesperson, or acquisition agent on or after January 1, 2014. There were comments regarding certain portions of each rule, but no comments requesting rejection of either rule due to their content.

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

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

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

There is no known fiscal impact to state and local governments with the promulgation of these rules.

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

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

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

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

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

500 James Robertson Parkway, Nashville, Tennessee 37243
Telephone: (615) 741-3072 or (615) 741-2273; E-mail: Julie.Cropp@tn.gov or Eve.Maxwell@tn.gov

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

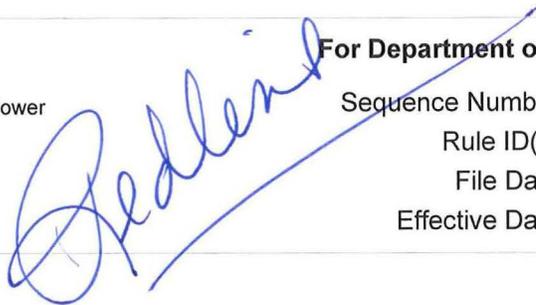
No additional information with respect to these rules not already included herein.

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Chapter 1260-01
Licensing

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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. Notwithstanding the provisions of Tenn. Comp. R. & Regs. 1260-02-.32, if the principal broker's affiliated licensee reinstates 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 Dollars (\$200.00) if the affiliated 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 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 this subparagraph (c) 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, 62-13-112, and 62-13-312.

Rule 1260-01-.17 Fingerprinting is added to Chapter 1260-01, and shall read as follows:

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 agent authorized by the TBI and FBI.
 - (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. This does not include any person who has an affiliate broker license which is inactive or retired at the time of application 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.

* 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)
Gary Blume	X				
Janet DiChiara	X				
John Griess	X				
Bear Stephenson	X				
Michelle Haynes	X				
Wendell Alexander	X				
Grover Collins	X				
Austin McMullen	X				
David Flitcroft				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 11/06/2013, 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: 08/08/13

Rulemaking Hearing(s) Conducted on: (add more dates). 11/06/13



Date: 1/21/14

Signature: Julie E. Cropp

Name of Officer: Julie E. Cropp

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: JANUARY 21, 2014

Notary Public Signature: Margaret Williams

My commission expires on: 11/6/17

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

Robert E. Cooper, Jr.
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

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 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.

Jim Gibbs commented before the Commission that he did not have any comments regarding the content of the proposed rules, but he did not believe that the proper analysis had been performed by the Commission during the rulemaking process with regard to complying with the statutes and Executive Order regarding the Regulatory Flexibility Act. Mr. Gibbs stated that he believed that both the analysis of impact on small businesses as well as the preparation of economic impact statement should be done prior to the rulemaking hearing.

The Commission responded by stating that they understand Mr. Gibbs' concerns, but the Commission believed that it had complied with the requirements of the Regulatory Flexibility Act by conducting a regulatory flexibility analysis of the impact on small businesses made by these rules at its July 2013 meeting and by preparing an economic impact statement at the rulemaking hearing.

Rule 1260-01-.16 Lapsed Errors and Omissions Insurance

A written comment was received from Ken Barnes stating that he does not believe that the Commission has the disciplinary authority to revoke or suspend a principal broker's license as referenced in 1260-01-.16(2)(c)(4) due to the statutory provision T.C.A. § 62-13-310(c), which states that an unlawful act or violation of Title 62, Chapter 13 by any affiliate broker may not be the cause for suspension or revocation of the broker with whom the affiliate broker is affiliated.

The Commission responded by stating that, after discussing the issue, the Commission believes that, pursuant to T.C.A. § 62-13-312(b)(15), the Commission does have the authority to suspend or revoke a principal broker's license for failure to exercise adequate supervision over the activities of licensed affiliate brokers, and this rule addresses possible revocation or suspension of a principal broker for failure to exercise adequate supervision over an affiliated licensee.

A written comment was also received from J. Russell Farrar, general counsel for the Tennessee Association of Realtors ("TAR"), which outlined TAR's concern regarding this rule and also referenced concerns with the Fingerprinting rule. Regarding the Lapsed Errors and Omissions Insurance rule, Mr. Farrar wrote that TAR was concerned that the civil penalty outlined for the principal brokers was greater than the penalty fee outlined for a licensee who allowed his or her errors and omissions insurance to lapse and asked that the Commission reconsider the civil penalty amounts and seek a lower amount to be imposed on the principal brokers.

The Commission voted to change the civil penalties outlined in the rule for the principal broker to reflect the same penalty fee amounts outlined in the rule for affiliated licensees suspended for more than thirty (30) days but within one hundred twenty (120) days.

Rule 1260-01-.17 Fingerprinting

Mr. Farrar's written comment also stated that TAR requested that, as a point of clarification, the rule be amended to clarify that any affiliate broker who is reactivating an inactive license or bringing a license out of retirement to apply for a broker license is not included in the requirement to submit fingerprints in an electronic format for the purpose of obtaining a criminal background check.

The Commission voted to amend the rule's language to include the clarification that the fingerprint requirement will not apply to someone who is reactivating an inactive affiliate broker license or bringing an affiliate broker license out of retirement to apply for a broker license.

Finally, Mr. Farrar's written comment also stated that the rule provides that the applicant shall be responsible for arranging the processing of the electronic fingerprints with the company contracted by the State to provide

electronic fingerprinting services, and the applicant shall be responsible for the payment of any fees associated with the processing of fingerprints to the respective agency, but TAR believes that the statute only authorizes the Tennessee bureau of investigation to collect the costs associated with the background check and not a third party company.

The Commission discussed that the company contracted by the State to provide electronic fingerprinting services is an agent of the TBI and FBI, and the Commission voted to amend the rule's language to clarify that the applicant shall be responsible for the payment of any fees associated with processing of fingerprints to the respective agent authorized by the TBI and FBI.

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.

Regulatory Flexibility Analysis - Methods of Reducing Impact of Rules on Small Businesses:

- (1) The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules:

There is no overlap, duplication, or conflict with other federal, state, or local governmental rules.

- (2) Clarity, conciseness, and lack of ambiguity in the rule:

The rules are clear, concise, and unambiguous.

- (3) The establishment of flexible compliance and reporting requirements for small businesses:

These rules provide uniform and reasonable requirements, both for those individuals who are licensed and required by statute to maintain errors and omissions insurance, as well as those individuals who wish to be licensed with the Commission who are required by statute to provide fingerprints for the purpose of a background check. These requirements assist with ensuring the health, safety, and welfare of the citizens of Tennessee.

- (4) The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses:

These rules have no impact on reporting requirements for small businesses.

- (5) The consolidation or simplification of compliance or reporting requirements for small businesses:

These rules do not complicate compliance or reporting requirements for small businesses in any respect.

- (6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule:

There are no performance standards for small businesses as a result of these rules.

- (7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

These rules do not result in the unnecessary creation of entry barriers or other effects that will stifle entrepreneurial activity, curb innovation, or increase costs.

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 types of small businesses that would be impacted by the rule would be real estate licensees that do not timely renew their E&O insurance, which is approximately three hundred (300) per year and initial applicants for real estate licenses who are required to get fingerprinted, which is approximately two thousand five hundred (2,500) per year. The rules are not expected to have a measurable impact on small businesses with respect to the E&O rule. Any cost is relatively de minimis and is avoidable by the small business. With respect to the fingerprinting rule, the rule is actually a cost saving measure that will benefit applicants.

- (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:

There are no projected reporting, recordkeeping or other administrative costs required for these proposed rules.

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

There is no expected material adverse impact on small businesses or consumers as a result of these proposed rules. These proposed rules are expected to assist with the protection of the welfare and safety of the citizens of the State of Tennessee by helping to ensure that all licensees who are required to maintain errors and omissions insurance will do so and by further outlining the procedure for the collection of fingerprints for the purpose of obtaining a criminal background check for initial applicants for licensure, which will further benefit consumers. The electronic fingerprinting procedure will economically benefit small businesses.

(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;

There are no less burdensome, less intrusive, or less costly alternative methods known which will achieve the purpose and objectives of these proposed rules.

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

There are no known federal or state counterparts to these rules.

(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 less protection for the citizens of the State of Tennessee and would not be feasible given that many licensees are small businesses.

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;

Rule 1260-01-.16 Lapsed Errors and Omissions Insurance is a new rule which specifies certain provisions of Tenn. Code Ann. § 62-13-112 (as amended by Public Chapter No. 84) which allow the Tennessee Real Estate Commission ("the Commission") discretion regarding penalty fees for reinstatement of a license which was statutorily suspended for failure to maintain errors and omissions (E&O) insurance as well as regarding conditions for reissuance of a license which was statutorily revoked for failure to maintain E&O insurance. This rule specifies the penalty fees for reinstatement as well as the conditions for reissuance of a revoked license. In addition, this rule specifies that failure of a principal broker to ensure that all licensees affiliated with that principal broker hold E&O insurance constitutes a failure to exercise adequate supervision and outlines the disciplinary action applicable to a principal broker whose affiliated licensee(s) failed to maintain E&O insurance as required by statute.

Rule 1260-01-.17 Fingerprinting is a new rule which expands upon Tenn. Code Ann. § 62-13-303 (as amended by Public Chapter No. 420) which provides that all applicants for initial licensure on or after January 1, 2014 shall submit a set of fingerprints for the purpose of obtaining a criminal background check. This rule specifies that all fingerprints submitted shall be submitted in an electronic format which is classifiable, with said fingerprints to be taken by a company contracted by the State, which transmits the fingerprints to the TBI and FBI and submits an electronic report to the Commission. Finally, the rule defines initial applicants as including new applicants for a broker, affiliate broker, time-share salesperson, or acquisition agent license as well as any former licensee who must reapply for reissuance of his/her license as well as any individual who previously held an affiliate broker's license but no longer holds that license who applies for licensure as a broker.

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

Tennessee Code Annotated § 62-13-203(a) provides, in part, that the Tennessee Real Estate Commission may promulgate and adopt bylaws, rules and regulations (pursuant to the Uniform Administrative Procedures Act) that are reasonably necessary to do all things necessary and proper for carrying out the Tennessee Real Estate Broker License Act of 1973 that are not inconsistent with the laws of the State of Tennessee.

Section 2 of Public Chapter No. 420 authorized the Tennessee Real Estate Commission to promulgate rules and regulations to effectuate the purposes of the act.

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

Those most directly affected by the Lapsed Errors and Omissions Insurance rule are actively licensed real estate brokers, affiliate brokers, and time-share salespersons as well as their principal brokers. Those most directly affected by the Fingerprinting rule are applicants for initial licensure as a broker, affiliate broker, time-share salesperson, or acquisition agent on or after January 1, 2014. There were comments regarding certain portions of each rule, but no comments requesting rejection of either rule due to their content.

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

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

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

There is no known fiscal impact to state and local governments with the promulgation of these rules.

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

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

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

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

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

500 James Robertson Parkway, Nashville, Tennessee 37243
Telephone: (615) 741-3072 or (615) 741-2273; E-mail: Julie.Cropp@tn.gov or Eve.Maxwell@tn.gov

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

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