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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	Real Estate Commission
Division:	
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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. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1260-02	Rules of Conduct
Rule Number	Rule Title
1260-02-.02	Termination of Affiliation
1260-02-.09	Deposits & Earnest Money
1260-02-.12	Advertising

Chapter Number	Chapter Title
1260-05	Education Requirements
Rule Number	Rule Title
1260-05-.12	Continuing Education
1260-05-.15	Fee for Education Course Application
1260-05-.16	Course Approval Periods
1260-05-.17	Course Intermission

Chapter Number	Chapter Title
1260-06	Time-Share Programs
Rule Number	Rule Title
1260-06-.04	Disclosure of Rescission Rights
1260-06-.11	Renewal of Registration

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 by substituting instead the following language so that, as amended, the rule shall read as follows:

Rule 1260-02-.02 Termination of Affiliation

- (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) 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.
- (4) Upon demand by a licensee for his release from a firm, it shall be promptly granted by the principal broker and the principal broker shall return the license to the licensee. If the licensee cannot be located then the principal broker may return the license to the Commission.
- (5) If the principal broker is deceased or physically unable to sign the release, or refuses to sign a release, the licensee requesting termination of affiliation must submit to the Commission a notarized Affidavit for Release.
- (6) If the affiliated licensee is deceased or physically unable to sign a release, or refuses to sign a release, the principal broker requesting termination of affiliation must submit to the Commission a completed TREC Form 1.
- (7) The Commission will not intervene in the settlement of debts, loans, draws, or commission disputes between firms, brokers and/or affiliates.

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

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

Rule 1260-02.09 Deposits and Earnest Money

- (1) Each broker shall maintain a separate escrow account for the purpose of holding any funds which may be received in his fiduciary capacity as deposits, earnest money, or the like. Rental deposits must be held in a separate account.
- (2) An affiliate broker shall pay over to the broker with whom he is under contract all deposits and earnest money immediately upon receipt.
- (3) Brokers are responsible at all times for deposits and earnest money accepted by them or their affiliate brokers, in accordance with the terms of the contract.
- (4) Where a contract authorizes a broker to place funds in an escrow or trustee account, the broker shall clearly specify in the contract:
 - (a) the terms and conditions for disbursement of such funds; and

- (b) the name and address of the person who will actually hold such funds.
- (5) Where a contract authorizes an individual or entity other than either broker to hold such funds in an escrow or trustee account, the broker will be relieved of responsibility for the funds upon receipt of the funds by the specified escrow agent.
- (6) A broker may properly disburse funds from an escrow account:
 - (a) upon a reasonable interpretation of the contract which authorizes him to hold such funds;
 - (b) upon securing a written agreement which is signed by all parties having an interest in such and is separate from the contract which authorizes him to hold such funds;
 - (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.
- (7) Funds in escrow or trustee accounts shall be disbursed in a proper manner without unreasonable delay. Funds should be disbursed or interplead within twenty-one (21) calendar days from the date of receipt of a written request for disbursement of earnest money.
- (8) No postdated check shall be accepted for payment of a deposit or earnest money, unless otherwise provided in the offer.
- (9) 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:".

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 as follows:

Rule 1260-02-.12 Advertising

- (1) All advertising, regardless of its nature and the medium in which it appears, which promotes the sale or lease of real property, shall conform to the requirements of this rule.
- (2) General Principles
 - (a) No licensee shall advertise to sell, purchase, exchange, rent, or lease property in a manner indicating that the licensee is not engaged in the real estate business.
 - (b) All advertising shall be under the direct supervision of the principal broker and shall list the firm name and telephone number.
 - (c) 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.
 - (d) No licensee shall advertise property listed by another licensee without written authorization from the property owner. Written authorization must be evidenced by a statement on the listing agreement or any other written statement signed by the owner.

(e) No licensee shall advertise in a false, misleading, or deceptive manner.

(3) Advertising for Franchise or Cooperative Advertising Groups

- (a) Any licensee using a franchise trade name or advertising as a member of a cooperative group shall clearly and unmistakably indicate in the advertisement his name, broker or firm name and firm telephone number (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 trade name on business cards, contracts, or other documents relating to real estate transaction shall clearly and unmistakably indicate thereon:
 - 1. his name and firm telephone number (as registered with the Commission); and
 - 2. the fact that his office is independently owned and operated.

(4) Internet Advertising

- (a) The listing firm name and telephone number 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.

(5) Guarantees, Claims and Offers

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

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

Chapter 1260-05
Educational Requirements

Amendments

Rule 1260-05-.12 Affiliate Brokers 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 as follows:

Rule 1260-05-.12 Continuing Education

- (1) The Commission may, in its discretion, designate that portion of the continuing real estate education required of licensees by T.C.A. §62-13-303 to be composed of specific topic(s).
- (2) The "office or brokerage management" course required of applicants for broker's licenses will not be approved as a post-licensing or continuing education course for affiliate brokers.
- (3) (a) An affiliate broker whose license was originally issued on or after July 1, 1980, will not be eligible for

renewal of the license unless, during the immediately preceding two-year license period, such affiliate broker satisfactorily completes at least sixteen (16) hours of continuing real estate education. This subparagraph shall not apply to an affiliate broker whose license was temporarily retired in accordance with T.C.A. §62-13-318 for the entire immediately preceding two-year period.

- (b) A broker whose license was originally issued on or after January 1, 2005, will not be eligible for renewal of the license unless, during the immediately preceding two-year license period, such broker satisfactorily completes at least sixteen (16) hours of continuing real estate education. This subparagraph shall not apply to a broker whose license was temporarily retired in accordance with T.C.A. §62-13-318 for the entire immediately preceding two-year license period.
 - (c) A licensee will not receive continuing education credit for classroom hours completed during a prior license period.
- (4) Continuing education credit will be given for approved classroom hours completed during the twelve (12) months immediately preceding the original date of licensure.

Authority: T.C.A. §§62-13-106, 62-13-203, and 62-13-303

Rule 1260-05-.15 Fee for Educational Course Application is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read as follows:

Rule 1260-05-.15 Fee for Educational Course Application

- (1) Before any educational course is reviewed for approval by the Commission, the following non-refundable fees shall be paid according to the following hourly credit schedule:
 - (a) any course not exceeding eight (8) hours a fee of twenty-five dollars (\$25.00);
 - (b) any course from nine (9) hours to thirty (30) hours a fee of fifty dollars (\$50.00);
 - (c) any course exceeding thirty (30) hours a fee of one hundred dollars (\$100.00).
- (2) In addition to the above fees, a twenty-five dollar (\$25.00) fee shall be paid for each course instructor.

Authority: T.C.A. §§62-13-106, 62-13-203, and 62-13-324

Rule 1260-05-.16 Course Approval Periods is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read as follows:

Rule 1260-05-.16 Course Approval Periods

- (1) The Commission will approve courses based upon a two (2) year review cycle of all courses. Each cycle will end on December 31st of the second year. The first period of approval will end December 31, 2010.
- (2) Each course approval shall remain effective until the end of the review cycle, notwithstanding the date upon which it was approved.
- (3) All course providers shall be required to resubmit their courses for approval at least one hundred twenty (120) days prior to the applicable expiration date. Failure to meet this deadline may result in non-approval of a course.

Authority: T.C.A. §§62-13-106, 62-13-203, and 62-13-303

Repeals

Rule 1260-05-.17 Course Intermission is repealed.

Authority: T.C.A. §§62-13-106, 62-13-203, and 62-13-303

Chapter 1260-06
Time-share Programs

Amendments

Rule 1260-06-.04 Disclosure of Rescission Rights is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read as follows:

Rule 1260-06-.04 Disclosure of Rescission Rights

The following statement shall appear in boldface and conspicuous type in:

- (1) Every public offering statement; and
- (2) Every contract for the sale of a timeshare interval, immediately above the space reserved for the signature of the purchaser.

"You May Cancel a Contract to Purchase a Time-Share Interval within Ten (10) Days from the Date of the Signing of the Contract, Where You Have Made an On-Site Inspection of the Time-Share Project Before Signing the Contract, and, if You Have Not Made Such an Inspection, within Fifteen (15) days from the Date of the Signing of the Contract. If You Elect to Cancel, You May Do So by Hand Delivering Notice to the Seller at [insert address] within the Designated Period, or by Mailing Notice to the Seller (or His Agent for Service of Process) by Prepaid United States Mail at [insert address] Postmarked Anytime within the Designated Period."

Authority: T.C.A. §§66-32-112, 66-32-114, and 66-32-121

Rule 1260-06-.11 Renewal of Registration is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read as follows:

Rule 1260-06-.11 Renewal of Registration

- (1) All registration of time-share programs shall expire one (1) year from the date the registration was approved, and shall be invalid after that date unless renewed.
- (2) At least one (1) month in advance of the date of expiration of a registration, the Executive Director of the Commission shall notify the registrant by mail of the deadline and fee for renewal of the registration.
- (3) An application for renewal of registration must be filed on or before the expiration date of the registration. The application shall explain any changes in information or documents previously filed with the Commission; provided, however, that this paragraph shall not be construed to obviate rule 1260-6-.05.
- (4) If an application for renewal of registration of a time-share program is not timely filed, the developer must submit a new application in order to reinstate the registration.

Authority: T.C.A. §§62-13-121 and 66-32-123

* 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)
Charles Haynes	X				
Bear Stephenson	X				
Grover Collins	X				
David Flitcroft	X				
Isaac Northern, Jr.	X				
Carol Tate	X				
Wendell Alexander	X				
Valerie E. Joh	X				
Allen Woods	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 04/02/2009, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: (01/30/2009)
 Notice published in the Tennessee Administrative Register on: (02/2009)
 Rulemaking Hearing(s) Conducted on: (add more dates). (04/02/09)



My Commission Expires September 25, 2010

Date: 01-14-2010

Signature: Kathryn Wiseman

Name of Officer: Kathryn M. Wiseman

Title of Officer: Chief Counsel for Regulatory Boards

Subscribed and sworn to before me on: 1/14/10

Notary Public Signature: Nicole Carter

My commission expires on: 9/25/10

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
3-9-10
 Date

Department of State Use Only

Filed with the Department of State on: 3/16/10

Effective on: 6/14/10

Tre Hargett by John Hart, POA
 Tre Hargett
 Secretary of State

Public Hearing Comments

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

Rule 1260-05-.15 Fee for Educational Course Application

Jules Wade, executive vice president of the Memphis Area Association of Realtors (MAAR), addressed the Commission at the rulemaking hearing. Mr. Wade stated that raising course renewal fees is a barrier to education. MAAR does not offer education as a profit center and only charges the necessary fees to cover the cost of the course. In 2008, MAAR's renewal fees were \$2,700 for four years. If the proposed rule were adopted, their fees would increase to \$27,000 for two years.

Mike Nichols, president of the Greater Nashville Association of Realtors (GNAR), addressed the Commission at the rulemaking hearing. Mr. Nichols stated that the proposed changes to Rules 1260-05-.15 and 1260-05-.16 would effectively quadruple the cost of course approvals for GNAR. The proposed instructor fee of \$200 per instructor would cost an additional \$20,800 for a two-year period, plus an additional \$3,400 for courses that have more than one instructor. This increase in fees would have a negative impact on the availability of quality real estate education in Tennessee.

Jim Gibbs, a Realtor and the operator of the Career Institute, addressed the Commission at the rulemaking hearing. Mr. Gibbs informed the Commission that he requested that the rulemaking hearing be stopped because he did not think the proper procedures had been followed. Mr. Gibbs stated that he concurs with the previous comments and believes that there is no justification for any type of fee increase.

Alice Walker, regulatory affairs chairperson for the Tennessee Association of Realtors (TAR), addressed the Commission at the rulemaking hearing. Ms. Walker expressed concerns about the financial burden that would be added to TAR's budget by the proposed fee increases. TAR is strongly opposed to the \$200 instructor fee.

D & D School of Real Estate submitted a written comment which consisted of a 148-page Excel spreadsheet detailing the additional costs the school would incur as a result of the proposed rule changes. D & D commented that the instructor fee would "eliminate the school's ability to offer additional instructors that may have expertise in a field" and would "restrict the number of instructors a school can afford to have on staff". D & D further commented that the reduction of the approval period from four years to two years benefits neither the public welfare nor the licensees of the State of Tennessee.

Ray Boudier addressed the Commission at the rulemaking hearing. Mr. Boudier stated that his real estate school has been operating at a loss since December and the proposed \$200 instructor fee would exceed the price of the course.

In response to these comments, the Commission voted not to change the course fees in Rule 1260-05-.15 and to reduce the instructor fee from two hundred dollars (\$200.00) to twenty-five dollars (\$25.00). In response to Mr. Gibbs' request that the rulemaking hearing be stopped, legal counsel assured Mr. Gibbs that all proper procedures had been followed and the requirements of the Regulatory Flexibility Act had been met.

Rule 1260-05-.16 Course Approval Periods

Theresa Wilson, executive vice president of the Williamson County Association of Realtors, addressed the Commission at the rulemaking hearing. Ms. Wilson asked the Commission to reconsider reducing the course approval period from four (4) years to two (2) years. Ms. Wilson stated that the shorter time period eliminates any incentive to develop new courses during the second year of approval. Ms. Wilson suggested a three (3) year approval period or a staggered approval.

Jim Gibbs, a Realtor and the operator of the Career Institute, addressed the Commission at the rulemaking hearing. Mr. Gibbs asked the Commission to consider the economic impact on small schools as a result of reducing the course approval period from four (4) years to two (2) years. Mr. Gibbs opined that courses are kept

current within the four (4) year approval period and that keeping the four (4) year period would be less troublesome for the Commission. Mr. Gibbs also stated for the record that he believes that, by changing Rule 1260-05-.16, the Commission is essentially violating a contract with the schools whose courses have been previously approved.

J. A. Bucy, lobbyist for the Tennessee Association of Realtors, spoke in support of Ms. Wilson's suggestion of a three (3) year approval period or a staggered approval period.

In response to these comments, Commissioner Collins stated that the Commission's intention in reducing the approval period is to improve communication with the schools and to gather course information more frequently. The Commission voted to approve the proposed change to Rule 1260-05-.16 as published in the Notice of Rulemaking.

Rule 1260-02-.02 Termination of Affiliation

Ray Boudier addressed the Commission regarding proposed paragraph (1) which provides that a principal broker's supervisory responsibility ends upon the Commission's receipt of the appropriate form. Mr. Boudier stated that he did not think a principal broker should be responsible for the actions of a former affiliate once the decision has been made to release that affiliate, regardless of when the form is received by the Commission. Mr. Boudier suggested that the Commission specify on the form the deadline by which the principal broker must submit the form.

Jim Gibbs suggested that the principal broker's supervisory responsibilities end immediately upon execution of the form, provided that the form be submitted to the Commission in a timely manner.

Russ Farrar with the Tennessee Association of Realtors commented that he believes the proposed rule changes are reasonable in light of the Commission's duty to protect the public.

D & D School of Real Estate submitted a written comment pertaining to the proposed changes to Rule 1260-02-.02. D & D suggested that paragraph (2) should mention inactive status as an additional choice for a licensee. D & D also stated that the Commission should develop an Affidavit for Release as referenced in the proposed rule.

In response to this comment, legal counsel explained that inactive status is an administrative designation which applies to a licensee who attempts to retire his license but has not met the education requirements. A licensee may not choose to place his license in inactive status. Legal counsel stated that there is an Affidavit for Release form available on the Commission's website, but clarified that an affidavit is not required to be submitted on a particular form as long as the document submitted meets the commonly accepted definition of affidavit.

The Commission stated that the process of releasing an individual is not complete until you notify the Commission and submit the appropriate form. The Commission voted to adopt Rule 1260-02.02 as published in the Notice of Rulemaking.

Rule 1260-02-.09 Deposits and Earnest Money

D & D School of Real Estate submitted a written comment recommending amendments to the rule. The first recommendation was to define "promptly upon acceptance" as either "no later than one day", or "within 24 hours of the date and time of the acceptance of the contract". The second recommendation was to explain the meaning of "reasonable interpretation".

Alice Walker with the Tennessee Association of Realtors addressed the Commission at the rulemaking hearing. Ms. Walker commented that current Rule 1260-02-.09(7) has been in place since 1985 and has been effective. Ms. Walker stated that TAR is concerned that fifteen (15) calendar days is not enough time to make sure that earnest money has cleared the bank before disbursing the earnest money to either party. Ms. Walker suggested that the period be increased to thirty (30) days.

Richard Lechleiter, managing broker for Zeitlin & Co., supported Ms. Walker's suggestion that the period of time in which to disburse earnest money be increased to thirty (30) days.

Russ Farrar suggested that the Commission agree to extend the period to fifteen (15) business days rather than fifteen (15) calendar days.

In response to these comments, the Commission voted to increase the period to twenty-one (21) days. The Commission also voted to add the provision that rental deposits must be kept in a separate account.

Rule 1260-02-.12 Advertising

D & D School of Real Estate submitted a written comment relative to Rule 1260-02-.12. D & D recommended that the Commission strike from the rule the provision that no licensee shall advertise property listed by another licensee without written authorization from the property owner. D & D commented that it is a nationally recognized practice and agents who advertise the listings of other agents already have agreements for this. D & D commented that requiring listing information to be kept "current and accurate" is vague and provides no direction to licensees.

Jules Wade agreed with D & D's comment that agents already advertise listings of other agents by mutual agreement.

Alice Walker and Lucy Smith addressed the Commission regarding proposed Rule 1260-02-.12(5). Ms. Walker and Ms. Smith asked that the Commission strike the portion of the rule that prohibits the use of superlatives.

Colleen Edwards of the Upper Cumberland Association of Realtors in Cookeville addressed the Commission at the rulemaking hearing. Ms. Edwards commented that the current multiple listing service is not capable of restricting a listing to one website.

In response to these comments, the Commission voted to remove the prohibition on the use of superlatives.

Rule 1260-05-.12 Continuing Education

D & D School of Real Estate submitted a written comment relative to Rule 1260-05-.12. D & D recommended that the Commission clarify the language in proposed Rule 1260-05-.12(4) because, as written, it is confusing. In the alternative, D & D recommended that the subsection be stricken because "education prior to licensure does not have any bearing on the continuing education requirement for licensing renewal".

D & D also asked for clarification on the process for reactivating a license that has been in retirement for longer than the preceding two-year license period.

Ray Boudier addressed the Commission regarding proposed Rule 1260-05-.12. Mr. Boudier asked whether the 120 hours of post-licensing education required of new brokers by Tenn. Code Ann. 62-13-303 includes the 16 hours required by Rule 1260-05-.12. Mr. Boudier also stated that he was not sure whether the proposed rule would allow licensees to bank education hours.

The Commission responded that the rule clearly states that an applicant may receive credit for continuing education hours completed in the one year period immediately preceding the initial date of licensure. After that initial one year period, licensees will not be allowed to bank or rollover education hours.

The Commission clarified that the 120 hours of post-licensing education required of new brokers by Tenn. Code Ann. 62-13-303 includes the 16 hours required by Rule 1260-05-.12.

The Commission also clarified that the process for reactivating a retired license is the same, no matter how long that license has been in retirement.

There were no comments made on Rule 1260-06-.04 or Rule 1260-06-.11.

Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105th General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Description of Proposed Rule:

Rule 1260-02-.02 Termination of Affiliation is amended to clearly outline the procedure for terminating the relationship between a broker and an affiliate. Rule 1260-02-.09 Deposits and Earnest Money is amended to clarify what is considered a reasonable time in which to disburse earnest money. Rule 1260-02-.12 Advertising is amended to specifically address internet advertising and to prohibit the use of misleading guarantees. Rule 1260-05-.12 Affiliate Brokers is amended to include the continuing education requirement for brokers licensed after January 1, 2005. Rule 1260-05-.15 Fee for Educational Course Application is amended to impose a new fee on course instructors. Rule 1260-05-.16 Course Approval Periods is amended to reduce the approval period from four years to two years. Rule 1260-05-.17 Course Intermission is repealed. Rule 1260-06-.04 Disclosure of Rescission Rights is amended to require time shares to provide purchasers with a physical address. Rule 1260-06-.11 Renewal of Registration is amended to reflect that license expiration dates are now staggered.

Regulatory Flexibility Analysis – Method of Reducing Impact of Rules on Small Businesses:

1. Overlap, duplicate, or conflict with other federal, state and local governmental rules:

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

2. Clarity, conciseness and lack of ambiguity in the rule or rules:

The proposed amendments are clear, concise and unambiguous.

3. Flexible compliance and/or reporting requirements for small businesses:

Any compliance or reporting requirements for small businesses as a result of these rules are mandated by statute.

4. Friendly schedules or deadlines for compliance and/or reporting requirements:

Any schedules or deadlines for compliance and reporting requirements are mandated by statute.

5. Consolidation or simplification of compliance or reporting requirements:

Any compliance or reporting requirements are mandated by statute.

6. Performances standards for small businesses:

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

7. Barriers or other effects that stifle entrepreneurial activity, curb innovation or increase costs:

The proposed rule changes will have an economic impact on real estate schools, education providers, and instructors. The increased cost of doing business may be passed on to the licensees who are required to complete education. The average economic impact on small businesses and licensees is expected to be minimal.

The amendments to Rules 1260-05-.15 Fee for Educational Course Application and 1260-05-.16 Course Approval Periods effectively double the cost of offering continuing real estate education in the State of Tennessee. A new twenty-five dollar (\$25.00) fee for course instructors has also been added. The Commission determined that the increased fees do not have an undue adverse impact on small businesses. The Commission further determined that the fee increases are reasonable given the fact that the fees have not been increased since 1989.

Economic Impact Statement:

1. Types of small businesses directly affected:

All small businesses that offer real estate education within the State of Tennessee will be affected by these rules. The Tennessee Real Estate Commission currently licenses 190 schools.

2. Projected reporting, recordkeeping, and other administrative costs:

There is no foreseeable alteration in small business reporting or recordkeeping requirements that will result from the promulgation of these rules.

3. Probable effect on small businesses and consumers:

The proposed rule changes will have an economic impact on real estate schools, education providers, and instructors. The increased cost of doing business may be passed on to the licensees who are required to complete education. The average economic impact on small businesses and licensees is expected to be minimal.

The amendments to Rules 1260-05-.15 Fee for Educational Course Application and 1260-05-.16 Course Approval Periods effectively double the cost of offering continuing real estate education in the State of Tennessee. A new twenty-five dollar (\$25.00) fee for course instructors has also been added.

4. Less burdensome, intrusive, or costly alternative methods:

The proposed changes to the existing rules are minimally burdensome or intrusive to small businesses. The necessary costs to small businesses to implement the changes required by the proposed changes and additions to the rules are offset by the protections provided to citizens of Tennessee. The Department has worked to keep all fees at the minimum level necessary to operate the program and maintain its self sufficiency.

5. Comparison with federal and state counterparts:

There are no federal counterparts to the issues addressed by these rules.

6. Effect of possible exemption of small businesses:

In order to ensure the health, safety and welfare of the citizens of Tennessee, it is imperative that small businesses are held to the same standards as larger businesses in offering real estate services and real estate education. A majority of the program's licensees are considered small businesses and exempting them would result in having standards that cannot be enforced.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 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 1260-02-.02 Termination of Affiliation is amended to clarify the process for terminating affiliation between a principal broker and an affiliate broker. Either party may terminate the affiliation at any time by notifying the Real Estate Commission. The termination is effective after TREC has received and processed the termination form or affidavit. The rule also provides that a licensee must complete the administrative measures for either change of affiliation or retirement within ten (10) days of the date of release.

Rule 1260-02-.09 Deposits and Earnest Money provides guidelines for the receipt and disposition of earnest money by brokers. Brokers are responsible at all times for deposits and earnest money accepted by them or their affiliates, in accordance with the terms of the contract. The broker may disburse funds upon a reasonable interpretation of the contract; upon the written agreement of all parties; upon filing an interpleader action; or, at the closing of the transaction, rejection of an offer, or withdrawal of an offer. The rule is amended to require earnest money to be disbursed or interpleaded within twenty-one (21) days from the date of receipt of a written

request for disbursement.

Rule 1260-02-.12 Advertising sets forth the requirements for all advertising which promotes the sale or lease of real property. The rule is amended to prohibit a licensee from advertising property listed by another licensee without written authorization from the property owner. The rule is amended by adding paragraph (4) which addresses internet advertising. The new paragraph states that each page of a website must include the listing firm name and phone number as well as a disclaimer which says that some or all of the listing advertised may not belong to the firm whose website is being visited. The rule is amended by adding paragraph (5) which provides that any offer, guaranty, warranty or the like must be made in writing and must disclose all pertinent details on the face of the offer.

Rule 1260-05-.12 Affiliate Brokers is amended by changing the title to Continuing Education. The language of the rule is changed to reflect the fact that, as of January 1, 2005, brokers as well as affiliate brokers are required to complete sixteen (16) hours of continuing education during each license period. The rule is amended by adding paragraph (4) which states that continuing education credit will be given for approved classroom hours completed during the twelve (12) months immediately preceding the original date of licensure.

Rule 1260-05.15 Fee for Educational Course application is amended by adding a twenty-five dollar (\$25.00) fee for each course instructor.

Rule 1260-05-.16 Course Approval Periods is amended by reducing the course approval period from four (4) years to two (2) years. The first approval period will end December 31, 2010.

Rule 1260-05-.17 Court Intermission is repealed. The rule limited pre-licensing courses to six (6) hours and required an eight (8) hour intermission between sessions.

Rule 1260-06-.04 Disclosure of Rescission Rights prescribes the disclosure statement that must appear on every contract to purchase a time share interval. The rule is amended by adding the requirement that a mailing address be included in the statement.

Rule 1260-06-.11 Renewal of Registration stated that all time share registrations expire on December 31 of each year. The rule is amended to state that all registrations of time share programs expire one (1) year from the date the registration was approved.

- (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 provides that the Tennessee Real Estate Commission "may promulgate and adopt such bylaws, rules and regulations as are reasonably necessary" for the purpose of carrying out the provisions of the Tennessee Real Estate Broker License Act of 1973 as amended.

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

The Tennessee Association of Realtors and those who provide continuing education will be most affected by these rules.

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

An opinion regarding some of these rule changes has been issued by the Attorney General.

- (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 will be minimal fiscal impact resulting from the promulgation of these rules. The Commission estimates

that there are currently 540 continuing education instructors. The proposed change to Rule 1260-05-.15, imposing a \$25.00 fee per instructor, would increase revenues by \$13,500.00 every two years, or \$6,750 per year. The Commission currently receives approximately \$58,200.00 in course renewal fees every four years, or \$14,550.00 per year. Reducing the approval period from four years to two years, as proposed in Rule 1260-05-.16, would increase revenue by \$58,200.00 every two years, or \$29,100.00 per year. If the number of courses and instructors remain constant, the total revenue generated by the proposed changes is \$35,850.00 per year. The annual budget of the Tennessee Real Estate Commission is \$2,300,000.

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

Eve Maxwell, Executive Director, Tennessee Real Estate Commission
Kathryn Wiseman, Chief Counsel for Regulatory Boards, Department of Commerce and Insurance

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

Eve Maxwell, Executive Director, Tennessee Real Estate Commission
Kathryn Wiseman, Chief Counsel for Regulatory Boards, Department of Commerce and Insurance

- (H) Office address and telephone number 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
(615) 741-3072

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

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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	Real Estate Commission
Division:	
Contact Person:	Eve M. Maxwell
Address:	500 James Robertson Parkway, Nashville, Tennessee
Zip:	37243
Phone:	615-741-2273
Email:	Eve.Maxwell@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
1260-02	Rules of Conduct
Rule Number	Rule Title
1260-02-.02	Termination of Affiliation
1260-02-.09	Deposits & Earnest Money
1260-02-.12	Advertising

Chapter Number	Chapter Title
1260-05	Education Requirements
Rule Number	Rule Title
1260-05-.12	Continuing Education
1260-05-.15	Fee for Education Course Application
1260-05-.16	Course Approval Periods
1260-05-.17	Course Intermission

Chapter Number	Chapter Title
1260-06	Time-Share Programs
Rule Number	Rule Title
1260-06-.04	Disclosure of Rescission Rights
1260-06-.11	Renewal of Registration

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 by substituting instead the following language so that, as amended, the rule shall read as follows:

Rule 1260-02-.02 Termination of Affiliation

- (1) Any licensee **or principal broker** wishing to terminate ~~his~~ **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 emailed to the Commission to be effective.** The principal broker's supervisory responsibility **for the future acts of the licensee** shall terminate upon ~~his signing~~ **the Commission's receipt of the release form. The principal broker shall retain a copy of the executed form.** ~~Within ten (10) days after the date of release, the licensee shall complete the required administrative measures for change of affiliation, temporary retirement, or (if ineligible for temporary retirement) placement in "inactive" status. Upon the signing of a release by the principal broker for a change of affiliation, the licensee shall not engage in any real estate transactions nor shall he act under a contract with another firm until completion and transmittal to the commission of the change of affiliation form, accompanied by the proper fee.~~
- (2) Within ten (10) days after the date of release, the licensee shall complete the required administrative measures for **either change of affiliation or temporary 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) When a licensee terminates his affiliation with a ~~former~~ firm, he shall neither take nor use any property listings secured through the firm, unless specifically authorized by the principal broker.
- (4) Upon demand by a licensee for his release from a firm, it shall be ~~properly and 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.**
- (5) **If the principal broker is deceased or physically unable to sign a release, or refuses to sign a release, the licensee requesting termination of affiliation must submit to the Commission a notarized Affidavit for Release.**
- (6) **If the affiliated licensee is deceased or physically unable to sign a release, or refuses to sign a release, the principal broker requesting termination of affiliation must submit to the Commission a completed TREC Form 1.**
- (7) The Commission will not intervene in the settlement of debts, loans, draws, or commission disputes between firms, brokers and/or affiliates. ~~Upon demand by a licensee for his release from a firm, it shall be properly and promptly granted by the principal broker.~~

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

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

Rule 1260-02.09 Deposits and Earnest Money

- (1) Each broker shall maintain a separate escrow account for the purpose of holding any funds which may be received in his fiduciary capacity as deposits, earnest money, or the like.
- (2) An affiliate broker shall pay over to the broker with whom he is under contract all deposits and earnest money immediately upon receipt.
- (3) Brokers are responsible at all times for deposits and earnest money accepted by them or their affiliate

brokers, ~~regardless of whether such funds are actually held by some other person or firm in accordance with the terms of the contract.~~

- (4) Where a contract authorizes a broker to place funds in an escrow or trustee account, the broker shall clearly specify in the contract:
 - (a) the terms and conditions for disbursement of such funds; and
 - (b) the name and address of the person who will actually hold such funds.
- (5) **Where a contract authorizes an individual or entity other than either broker to hold such funds in an escrow or trustee account, the broker will be relieved of responsibility for the funds upon receipt of the funds by the specified escrow agent.**
- (6) A broker may properly disburse funds from an escrow account:
 - (a) upon reasonable interpretation of the contract which authorizes him to hold such funds;
 - (b) upon securing a written agreement which is signed by all parties having an interest in such funds, and is separate from the contract which authorizes him to hold such funds;
 - (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.
- (7) Funds in escrow or trustee accounts shall be disbursed in a proper manner without unreasonable delay. **Funds should be disbursed or interplead within twenty-one (21) calendar days from the date of receipt of a written request for disbursement of earnest money.**
- (8) No postdated check shall be accepted for payment of a deposit or earnest money, unless otherwise provided in the offer.
- (9) 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:".

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 as follows:

Rule 1260-02-.12 Advertising

- (1) All advertising, regardless of its nature and the medium in which it appears, which promotes the sale or lease of real property, shall conform to the requirements of this rule.
- (2) General Principles
 - (a) No licensee shall advertise to sell, purchase, exchange, rent, or lease property in a manner indicating that the licensee is not engaged in the real estate business.
 - (b) ~~All licensees shall advertise under the firm name offers to purchase, sell, rent, or lease any property.~~ All advertising shall be under the direct supervision of the principal broker and shall list the firm name and telephone number.

- (c) 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.
- (d) **No licensee shall advertise property listed by another licensee without written authorization from the property owner. Written authorization must be evidenced by a statement on the listing agreement or any other written statement signed by the owner.**
- (e) **No licensee shall advertise in a false, misleading, or deceptive manner.**

~~(3) A licensee is exempt from paragraph (2) of this rule if the licensee's advertising includes the designation "owner/agent" and the property is not listed.~~

(3) Advertising for Franchise or Cooperative Advertising Groups

- (a) Any Licensee using a franchise trade name or advertising as a member of a cooperative group shall clearly and unmistakably indicate in the advertisement his name, broker or firm name and firm telephone number (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 trade name on business cards, contracts, or other documents relating to real estate transactions shall clearly and unmistakably indicate thereon:
 1. his name and firm telephone number (as registered with the Commission); and
 2. the fact that his office is independently owned and operated.

(4) Internet Advertising

- (a) **The listing firm name and telephone number 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.**

(5) Guarantees, Claims and Offers

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

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

Chapter 1260-05
Educational Requirements

Amendments

Rule 1260-05-.12 Affiliate Brokers 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 as follows:

Rule 1260-05-.12 ~~Affiliate Brokers~~ **Continuing Education**

- (1) The Commission may, in its discretion, designate that a portion of the continuing real estate education required of ~~affiliate brokers licensees~~ by T.C.A. §62-13-303 be composed of specific topic(s).
- (2) The "office or brokerage management" course required of applicants for broker's licenses will not be approved as a post-licensing or continuing education course for affiliate brokers.
- (3)
 - (a) An affiliate broker whose license was originally issued on or after July 1, 1980, will not be eligible for renewal of the license unless, during the immediately preceding two-year license period, such affiliate broker satisfactorily completes at least sixteen (16) hours of continuing real estate education. This subparagraph shall not apply to an affiliate broker whose license was temporarily retired in accordance with T.C.A. §62-13-318 for the entire immediately preceding two-year license period.
 - (b) A broker whose license was originally issued on or after January 1, 2005, will not be eligible for renewal of the license unless, during the immediately preceding two-year license period, such broker satisfactorily completes at least sixteen (16) hours of continuing real estate education. This subparagraph shall not apply to a broker whose license was temporarily retired in accordance with T.C.A. §62-13-318 for the entire immediately preceding two-year license period.**
 - (c) ~~An affiliate broker~~ **A licensee** will not receive continuing education credit for classroom hours completed ~~prior to licensure or during a prior license period.~~
- (4) Continuing education credit will be given for approved classroom hours completed during the twelve (12) months immediately preceding the original date of licensure.**

Authority: T.C.A. §§62-13-106, 62-13-203 and 62-13-303

Rule 1260-05-.15 Fee for Educational Course Application is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read as follows:

Rule 1260-05-.15 Fee for Educational Course Application

- (1) Before any educational course is reviewed for approval by the Commission, the following non-refundable fees shall be paid according to the following hourly credit schedule:
 - (a) Any course not exceeding eight (8) hours a fee of twenty-five dollars (\$25.00);
 - (b) Any course from nine (9) hours to thirty (30) hours a fee of fifty dollars (\$50.00);
 - (c) Any course exceeding thirty (30) hours a fee of one hundred dollars (\$100.00);
- (2) In addition to the above fees, a twenty-five dollar (\$25.00) fee shall be paid for each course instructor.**

Authority: T.C.A. §§62-13-106, 62-13-203 and 62-13-324

Rule 1260-05-.16 Course Approval Periods is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read as follows:

Rule 1260-05-.16 Course Approval Periods

- (1) ~~Effective January 1, 1993, the~~ The Commission will approve courses based upon a ~~four (4)~~ **two (2)** year review cycle of all courses. Each cycle will end on December 31st of the ~~fourth~~ second year. The first ~~four (4)~~ year period of approval will end December 31, ~~1996~~ **2010**.
- (2) Each course approval shall remain effective until the end of the review cycle, notwithstanding the date upon which it was approved.

- (3) All course providers shall be required to resubmit their courses for approval at least one hundred twenty (120) days prior to the applicable expiration date. Failure to meet this deadline may result in the non-approval of a course.

Authority: T.C.A. §§62-13-106, 62-13-203 and 62-13-303.

Repeals

Rule 1260-05-.17 Course Intermission is repealed.

Authority: T.C.A. §§62-13-106, 62-13-203, and 62-13-303

Chapter 1260-06 Time-share Programs

Amendments

Rule 1260-06-.04 Disclosure of Rescission Rights is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read as follows:

Rule 1260-06-.04 Disclosure of Rescission Rights

The following statement shall appear in boldface and conspicuous type in:

- (1) Every public offering statement; and
- (2) Every contract for the sale of a timeshare interval, immediately above the space reserved for the signature of the purchaser.

“You May Cancel a Contract to Purchase a Time-Share Interval within Ten (10) Days from the Date of the Signing of the Contract, Where You Have Made an On-Site Inspection of the Time-Share Project Before Signing the Contract, and, if You Have Not Made Such an Inspection, within Fifteen (15) days from the Date of the Signing of the Contract. If you Elect to Cancel, You May Do So by Hand Delivering Notice to The Seller **at [insert address]** within the Designated Period, or by Mailing Notice to the Seller (or His Agent for Service of Process) by Prepaid United States Mail **at [insert address]** Postmarked Anytime within the Designated Period.”

Authority: T.C.A. §§66-32-112, 62-32-114 and 62-32-121

Rule 1260-06-.11 Renewal of Registration is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, the rule shall read as follows:

Rule 1260-06-.11 Renewal of Registration

- (1) All registration of time-share programs shall expire ~~on December 31 of each year~~ **one (1) year from the date the registration was approved**, and shall be invalid after that date unless renewed.
- (2) At least one (1) month in advance of the date of expiration of a registration, the Executive Director of the Commission shall notify the registrant by mail of the deadline and fee for renewal of the registration.
- (3) An application for renewal of registration must be filed on or before the expiration date of the registration. The application shall explain any changes in information or documents previously filed with the Commission; provided, however, that this paragraph shall not be construed to obviate rule 1260-6-.05.
- (4) If an application for renewal of registration of a time-share program is not timely filed, the developer must submit a new application in order to reinstate the registration.

Authority: T.C.A. §§66-32-121 and 66-32-123