

Notice
Of
Rulemaking Hearing

Department of Commerce and Insurance
Tennessee Real Estate Commission

There will be a hearing before the Tennessee Real Estate Commission to consider the promulgation of rules and amendments to rules pursuant to T. C. A. § 62-13-203(a). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T. C. A. § 4-5-204, and will take place in Room 160 of the Davy Crockett Tower, located at 500 James Robertson Parkway in Nashville, Tennessee at 9:00 a.m. (Central Time) on Wednesday, November 2, 2005.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Commerce and Insurance to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Department to determine how it may reasonably provide such aid or service. Initial contact may be made with Don Coleman, the Department's ADA Coordinator, at 500 James Robertson Parkway, 5th Floor, Nashville, Tennessee 37243 at (615) 741-0481.

For a copy of this Notice of Rulemaking Hearing, contact the Tennessee Real Estate Commission, attention Bruce Lynn, Tennessee Real Estate Commission, 500 James Robertson Parkway, 1st Floor, Nashville, Tennessee 37243 at (615) 741-2273.

Substance of Proposed Rules

Chapter 1260-1
Licensing

Amendments

Paragraph (1) of rule 1260-1-.04 Licenses is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that as amended paragraph (1) shall read:

- (1) No principal broker shall permit a broker, affiliate broker or time-share salesperson under his supervision to engage in the real estate business unless the broker, affiliate broker or time-share salesperson has been issued a valid license and is covered by an errors and omissions insurance policy.

Authority: T. C. A. §§62-13-112, 62-13-203(a) and 62-13-301.

Chapter 1260-2
Rules of Conduct

Amendments

Paragraph (2) of rule 1260-2-.01 Supervision of Affiliate Brokers is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that as amended paragraph (2) shall read:

- (2) No principal broker shall engage a licensee (other than as a property manager) who lives more than fifty (50) miles by a straight line calculation from the firm office, unless the principal broker demonstrates in writing to the Tennessee Real Estate Commission's satisfaction that the distance

involved is not unreasonable and that adequate supervision can be provided. For purposes of this rule, a property manager is defined as a licensee who engages exclusively in leasing and otherwise managing rental properties.

Authority: T. C. A. §§62-13-203(a) and 62-13-312(b)(15).

Rule 1260-2-.03 Offices 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:

Rule 1260-2-.03 Offices.

- (1) Signs. Each licensed real estate firm shall conspicuously display on the outside of the firm's place of business a sign which contains the name of the real estate firm as registered with the Commission.
- (2) Zoning. An application for a license or change of location shall be accompanied by a written certification (from the proper governmental authority) of compliance with zoning laws and ordinances.
- (3) Branch Offices.
 - (a) For purposes of T. C. A. §62-13-309(d), a licensee is deemed to maintain a "branch" if the licensee:
 1. Advertises the office in any manner for the purpose of attracting the public;
 2. Has a mail drop at the office which is registered with and served by the United States Postal Service; or
 3. Invites or solicits telephone calls to the office (by such means as advertising or listing in a telephone directory).
 - (b) Model Homes and Modular Units. A model home may be utilized in a subdivision or on a commercial lot and a modular unit may be utilized in subdivisions which are under construction for purposes of soliciting business and will not be required to be licensed as a branch office as long as the model home or modular unit meets the following requirements:
 1. The model home or modular unit location and/or telephone number is only advertised in conjunction with advertising the main firm office and such advertising complies with the statutes, rules and regulations of the Commission;
 2. The model home or modular unit does not have a mail drop;
 3. The model home or modular unit is not the sole sales office for the firm;
 4. The model home or modular unit is not utilized to allow unlicensed activity by individuals in performing any of the acts requiring licensure under T. C. A. §62-13-101, et seq.; and
 5. The principal broker of the main firm office shall adequately supervise licensees operating from model homes or modular units as required by T. C. A. §62-13-312 and any rules promulgated thereunder.

Authority: T. C. A. §§62-13-203(a), 62-13-309 and 62-13-312.

Rule 1260-2-.08 Offers to Purchase is amended by adding the following sentence to the end of the existing language:

In the event an offer is rejected, the broker or affiliate broker shall request the seller to note the rejection on the offer and return the same to the offeror or the offeror's agent.

Authority: T. C. A. §62-13-203(a).

Paragraph (2) of rule 1260-2-.12 Advertising is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that as amended paragraph (2) shall read:

(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 without written authorization from the owner of the advertised property or the owner's agent.

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

Chapter 1260-2
Rules of Conduct

New Rules

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1260-2-.36 Exclusive Buyer Representation Agreements

1260-2-.36 Exclusive Buyer Representation Agreements. An exclusive buyer representation agreement is an agreement in which a licensee is engaged to represent a buyer in the purchase of a property to the exclusion of all other licensees. Prior to entering into any such agreement a licensee must advise and confirm in writing to such buyer the following:

- (1) that the buyer should make all arrangements to view or inspect a property through the licensee and should not directly contact other licensees;
- (2) that the buyer should immediately inform any other licensee the buyer may come into contact with (for example, at an open house) that he or she is represented by the licensee; and
- (3) whether the buyer will owe a commission in the event the buyer purchases a property without the assistance of the licensee through another licensee or directly from an owner.

Authority: T. C. A. §§62-13-203(a), 62-13-401 and 62-13-402.

Chapter 1260-5
Educational Requirements

Amendments

Paragraph (3) of rule 1260-5-.12 Affiliate Brokers is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that as amended paragraph (3) shall read:

- (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. However, 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) An affiliate broker will not receive continuing education credit for courses completed prior to licensure, or during a prior license period.

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

I certify that this is an accurate and complete representation of the intent and scope of the rulemaking proposed by the Tennessee Real Estate Commission.

[Signature]
J. Wayne Pugh
Staff Attorney
Department of Commerce and Insurance

Subscribed and sworn to before me this 30th day of August, 2005.



[Signature]
Notary Public

My Commission expires on the 15th day of March, 2008.

The notice of rulemaking hearing set out herein was properly filed in the Department of State on this the 30 day of August, 2005.

[Signature]
Riley C. Darnell
Secretary of State

By: [Signature]

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