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Sequence Number: 09-13-16
Rule ID(s): 6300
File Date (effective date): 9/12/16
End Effective Date: 3/11/17

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	Real Estate Commission
Division:	Tennessee Department of Commerce and Insurance, Regulatory Boards
Contact Person:	Mallorie Kerby
Address:	500 James Robertson Parkway
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Rule Type:

Emergency Rule

Revision Type (check all that apply):

Amendment

New

Repeal

Statement of Necessity:

An immediate danger to the public welfare exists and the nature of this danger is such that the use of any other form of rulemaking authorized by Tennessee Code Annotated Title 4, Chapter 5 would not adequately protect the public. The current rules of the Tennessee Real Estate Commission require that any person seeking the reinstatement of their license after it has been expired for more than 60 days but less than one year attend an entire meeting of the Commission. Although the Tennessee Real Estate Commission has voted to move forward with the rulemaking process to adopt a rule to eliminate the meeting attendance requirement for reinstatement, the new rule is not yet effective. An imminent danger to the public welfare also exists from the continued enforcement of the meeting attendance requirement because expired licensees are unable to complete transactions. Members of the public, thus, are put in extreme financial and logistical hardship by the inability to complete these significant transactions that are, for most people, the largest and most consequential transactions they will enter into in their lifetimes.

This finding is further supported by the difficulties that enforcement of the present rule creates for the Commission, the brokers, and the public. The Commission must accommodate and track the average of 46 brokers (based on a four-month average) who are required to attend each meeting to qualify for license reinstatement. Moreover, the present rule requires brokers from outside of Middle Tennessee to incur substantial travel expenses and disruption of their schedules, since most Commission meetings are held in Nashville. Additionally, brokers may have to wait at least a month in order to attend a meeting of the Commission. This could result in a broker who has complied with all other requirements for reinstatement of a license being unable to complete their clients' real estate transactions, which may be very time-sensitive, creating a potential dislocation in the real estate market generally.

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 make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1260-01	Licensing
Rule Number	Rule Title
.21	Reinstatement of an Expired License of a Broker, Affiliate Broker, Time-Share Salesperson, or Acquisition Agent

(Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to http://tn.gov/sos/pub/Rulemaking%20Guidelines_July2014.pdf)

Chapter 1260-01
Licensing
Amendments

Rule 1260-01-.21 is amended by deleting part (2)(b)3. in its entirety, deleting from part (2)(b)5. a reference to a requirement set forth in the deleted part (2)(b)3., and renumbering part (2)(b)4. as part (2)(b)3. and part (2)(b)5. as part (2)(b)4., so that, as amended, paragraph (2) shall read:

(2) Expired License due to Failure to Comply with Prerequisite to Licensure:

(a) Renewal of License Within Sixty (60) Days of Expiration: If a licensee fails to comply with any prerequisite or condition to licensure or renewal and/or fails to pay a renewal fee before the expiration of the license but provides proof of compliance with all prerequisites or conditions for licensure, including payment of renewal fee, within sixty (60) days after the expiration date of the license, that licensee shall only be required to pay a penalty fee of fifty dollars (\$50.00) per thirty (30) day period, or portion thereof, from the time the license expired without the requirement of any further obligations.

(b) Reinstatement After Sixty (60) Days of Expiration: If a licensee fails to timely pay a renewal fee or comply with any prerequisite or condition to licensure or renewal and/or fails to pay a renewal fee within sixty (60) days after the expiration date of the license, that licensee must sign a Reinstatement Order agreeing to comply with the following requirements and complete each of the following requirements in order to obtain license reinstatement:

1. Provide proof of compliance with all prerequisites or conditions for licensure, including payment of renewal fee; and

2. Payment of Penalties in Accordance with the Following Schedule:

(i) For a license expired more than sixty (60) days, but within one hundred twenty (120) days, pay a penalty fee of fifty dollars (\$50.00) per thirty (30) day period, or portion thereof, from the time the license expired; or

(ii) For a license expired for more than one hundred twenty (120) days but within one (1) year, pay, in addition to the penalty fee described in subpart (i), a penalty fee of one hundred dollars (\$100.00) per thirty (30) day period, or portion thereof, beginning on the one hundred twenty first (121st) day; and

3. Penalty fees will begin accruing on the first (1st) day following the license expiration date and will be assessed every thirty (30) days, or portion thereof, at the above rates. Penalty fees accrue until a Reinstatement Order is signed, proof of compliance with all prerequisites or conditions for licensure is received, and the renewal fee and all prescribed penalty fees are paid.

4. A reinstated license will be issued back to the original expiry date upon satisfaction of all requirements.

Authority: T.C.A. §§ 62-13-203 and 62-13-319

Rules of the Tennessee Real Estate Commission

Chapter 1260-01 Licensing

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

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
John Griess				x	
Austin McMullen	x				
Marcia Franks	x				
Gary Blume	x				
Diane Hills	x				
Bobby Wood Jr.				x	
Fontaine Taylor	x				
Johnny Horne	x				
Rick Douglass	x				

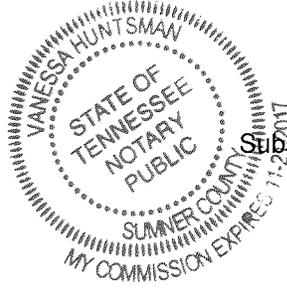
I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: 9/1/10

Signature: Mallorie Kerby

Name of Officer: Mallorie Kerby

Title of Officer: Attorney



Subscribed and sworn to before me on: Sept 1, 2016

Notary Public Signature: Vanessa Huntsman

My commission expires on: Nov 21, 2017

All emergency 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.

Herbert H. Slatery III
 Herbert H. Slatery III
 Attorney General and Reporter
9/9/2016
 Date

Department of State Use Only

Filed with the Department of State on: 9/12/16

Effective for: 180 days

Effective through: 3/11/17

* Emergency rule(s) may be effective for up to 180 days from the date of filing.



Tre Hargett
Secretary of State

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2016 SEP 12 PM 1:23
SECRETARY OF STATE
REGISTRARS

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)

This rule has no projected 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;

This rule removes the requirement that those reinstating a license expired for more than 60 days attend a meeting of the Tennessee Real Estate Commission.

- (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;

No law or regulation mandates the promulgation of this rule.

- (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;

Real Estate Brokers whose licenses have been expired for more than 60 days are most directly affected by this rule. It is expected that such persons would urge adoption of the rule, as it lowers the barrier to re-entry.

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

There are no known opinions of the attorney general and reporter nor any judicial rulings that directly relate to the rule or the necessity to promulgate the rule.

- (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;

This rule is estimated to cause no probable increase or decrease in state and local government revenues and expenditures.

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

Mallorie Kerby, Assistant General Counsel, Tennessee Real Estate Commission

Malcolm Young, 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;

Mallorie Kerby, Assistant General Counsel, Tennessee Real Estate Commission

Malcolm Young, 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

Mallorie Kerby, Assistant General Counsel, Tennessee Real Estate Commission
Mallorie.kerby@tn.gov
500 James Robertson Parkway,
Nashville, TN 37243
615-741-3072

Malcolm Young, Executive Director, Tennessee Real Estate Commission
Malcolm.young@tn.gov
500 James Robertson Parkway,
Nashville, TN 37243
615-741-7546

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

None.

**Redline – 2016 Proposed Rules
Tennessee Real Estate Commission**

Chapter 1260-01
Licensing Amendments

Rule 1260-01-.21 is amended by deleting part (2)(b)3. in its entirety, deleting from part (2)(b)5. a reference to a requirement set forth in the deleted part (2)(b)3., and renumbering part (2)(b)4. as part (2)(b)3. and part (2)(b)5. as part (2)(b)4., so that, as amended, paragraph (2) shall read:

(2) Expired License due to Failure to Comply with Prerequisite to Licensure:

(a) **Renewal of License Within Sixty (60) Days of Expiration:** If a licensee fails to comply with any prerequisite or condition to licensure or renewal and/or fails to pay a renewal fee before the expiration of the license but provides proof of compliance with all prerequisites or conditions for licensure, including payment of renewal fee, within sixty (60) days after the expiration date of the license, that licensee shall only be required to pay a penalty fee of fifty dollars (\$50.00) per thirty (30) day period, or portion thereof, from the time the license expired without the requirement of any further obligations.

(b) **Reinstatement After Sixty (60) Days of Expiration:** If a licensee fails to timely pay a renewal fee or comply with any prerequisite or condition to licensure or renewal and/or fails to pay a renewal fee within sixty (60) days after the expiration date of the license, that licensee must sign a Reinstatement Order agreeing to comply with the following requirements and complete each of the following requirements in order to obtain license reinstatement:

1. Provide proof of compliance with all prerequisites or conditions for licensure, including payment of renewal fee; and

2. Payment of Penalties in Accordance with the Following Schedule:

(i) For a license expired more than sixty (60) days, but within one hundred twenty (120) days, pay a penalty fee of fifty dollars (\$50.00) per thirty (30) day period, or portion thereof, from the time the license expired; or

(ii) For a license expired for more than one hundred twenty (120) days but within one (1) year, pay, in addition to the penalty fee described in subpart (i), a penalty fee of one hundred dollars (\$100.00) per thirty (30) day period, or portion thereof, beginning on the one hundred twenty first (121st) day; and

~~3. Other Condition: Attend one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of the date of executing the Reinstatement Order.~~

~~4. 3. Penalty fees will begin accruing on the first (1st) day following the license expiration date and will be assessed every thirty (30) days, or portion thereof, at the above rates. Penalty fees accrue until a Reinstatement Order is signed, proof of compliance with all prerequisites or conditions for licensure is received, and the renewal fee and all prescribed penalty fees are paid.~~

~~5. 4. A reinstated license will be issued back to the original expiry date upon satisfaction of all requirements, including timely attending one (1) entire regularly scheduled Commission meeting.~~

Authority: T.C.A. §§ 62-13-203 and 62-13-319