

**Department of State  
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Sequence Number: 10-12-16  
Rule ID(s): 6339  
File Date: 10/18/16  
Effective Date: 1/16/17

## Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

<b>Agency/Board/Commission:</b>	Real Estate Commission
<b>Division:</b>	Regulatory Boards
<b>Contact Person:</b>	Mallorie Kerby
<b>Address:</b>	500 James Robertson Parkway
<b>Zip:</b>	37243
<b>Phone:</b>	615-532-6304
<b>Email:</b>	Mallorie.kerby@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 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-.21	Reinstatement of an Expired License of a Broker, Affiliate Broker, Time-Share Salesperson, or Acquisition Agent

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 Real Estate Commission  
 Rules of the Tennessee Real Estate Commission  
 Chapter 1260-01 Licensing  
 Rule .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				
Rick Douglass				x	
Diane Hills	x				
Marcia Franks	x				
Bobby Wood	x				
Fontaine Taylor	x				
Johnny Horne	x				
Gary Blume	x				
Austin McMullen	x				

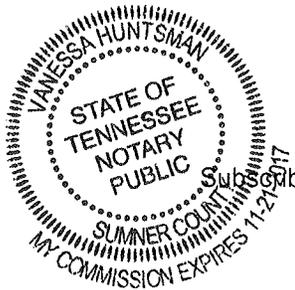
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Real Estate Commission on September 7, 2016 and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 9/30/16

Signature: Mallorie Kerby

Name of Officer: Mallorie Kerby

Title of Officer: Assistant General Counsel



Subscribed and sworn to before me on: Sept 30, 2016

Notary Public Signature: Vanessa Huntsman

My commission expires on: Nov 21, 2017

All proposed 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. Slaty III

Herbert H. Slaty III  
 Attorney General and Reporter

10/6/2016

Date

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Filed with the Department of State on: 10/18/16

Effective on: 1/16/17

  
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Tre Hargett  
Secretary of State

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## 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.

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;

This amendment would directly benefit the small businesses that are licensed as firms and as affiliate brokers, brokers and timeshare salespersons (working with firms as independent contractors) in the state of Tennessee in reducing compliance requirements for late renewal of a license after 60 days. Licensees with licenses expired one year or less will be able to reinstate their license by paying a late fee only. There are approximately 34,000 real estate licensees (firms or independent contractors) that are estimated to qualify as small business licensees that could potentially benefit.

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;

This rule does not create new reporting or recordkeeping requirements and, as such, there are no projected administrative costs as a result of this amendment. There will likely be a reduction in cost since licensees will no longer be required to travel and be away from their businesses in order to attend a meeting of the Commission.

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

The effect will be a faster and likely less costly process for reinstating a license expired one year or less.

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;

The Commission knows of no other alternative method to achieve the goals exhibited by these rules.

5. A comparison of the proposed rule with any federal or state counterparts;

Other state real estate commissions are expected to, in many cases, have similar laws and rules regarding reinstatement of licenses. For instance, Kentucky Real Estate Commission 324.090 requires a payment of a penalty up to \$200 for late renewal up to one year late. Georgia Administrative Code § 520-1-.04(1)(a)(3) provides a penalty of \$100 if a license is reinstated within four months of lapsing and \$25 per month or part of a month beyond six months for individual brokers.

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;

An exemption for small businesses to this rule would not be beneficial, as the amended rule removes a requirement.

## **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)

The Real Estate Commission foresees no impact on any 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;

The amended rule eliminates the requirement to attend a meeting of the Commission as a condition for reinstatement of a license expired one year or less.

- (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;

There is no known federal or state law mandating 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;

Any individual real estate broker licensee reinstating a license after it has expired for more than 60 days will be affected by this rule. There are no known objections to the amended rule.

- (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 relates to this 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 not expected to create a probable increase or decrease state and local government revenues and expenditures.

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

Malcolm Young, Executive Director  
500 James Robertson Parkway  
Davy Crockett Tower, 4<sup>th</sup> Floor  
Nashville, TN 37243  
615-741-3321

Mallorie Kerby, Assistant General Counsel  
500 James Robertson Parkway  
Davy Crockett Tower, 5th Floor  
Nashville, TN 37243  
615-741-3072

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

Malcolm Young, Executive Director, Real Estate Commission  
Mallorie Kerby, Assistant General Counsel

- (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

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Mallorie.kerby@tn.gov

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

There is no known additional relevant information.

Chapter 1260-01  
Licensing  
Amendments

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(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.