

Department of State
Division of Publications
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 Nashville, TN 37243
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For Department of State Use Only

Sequence Number: 12-01-12
 Rule ID(s): 5339-5340
 File Date: 12/3/12
 Effective Date: 3/3/13

Rulemaking Hearing Rule(s) Filing Form

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

| | |
|---------------------------------|--|
| Agency/Board/Commission: | Tennessee Real Estate Commission |
| Division: | Regulatory Boards |
| Contact Person: | Julie Cropp |
| Address: | 500 James Robertson Parkway, Nashville, TN |
| Zip: | 37243 |
| Phone: | (615) 741-3072 |
| Email: | julie.cropp@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-.12 | Fees. |

| Chapter Number | Chapter Title |
|----------------|---|
| 1260-02 | Rules of Conduct |
| Rule Number | Rule Title |
| 1260-02-.32 | Civil Penalties |
| 1260-02-.38 | Death or Extended Absence of Principal Broker |

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 1260-01
Licensing

Amendments

Rule 1260-01-.12 Fees is amended by adding the following language as a new subsection (6):

1260-01-.12 Fees

- (6) When any individual applies for an original license as a broker, affiliate broker or time-share salesperson, the applicant shall pay, in addition to the original license fee, a fee in the amount of ten dollars (\$10.00) for deposit into the real estate education and recovery account.

Authority: T.C.A. §§ 62-13-203 and 62-13-208(c)(1).

Chapter 1260-02
Rules of Conduct

Amendments

Rule 1260-02-.32 Civil Penalties 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:

1260-02-.32 Civil Penalties

- (1) The Commission may, in a lawful proceeding against any person required to be licensed by the Commission, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty for each separate violation of a statute, rule, or order pertaining to the Commission with the following schedule:

| Violation | Penalty |
|-----------------------|-----------------|
| T.C.A. § 62-13-103(b) | \$ 50 ---- 1000 |
| T.C.A. § 62-13-301 | 50 ---- 1000 |
| T.C.A. § 62-13-312(b) | |
| (1) | 250 ---- 1000 |
| (2) | 200 ---- 1000 |
| (3) | 300 ---- 1000 |
| (4) | 100 ---- 1000 |
| (5) | 300 ---- 1000 |
| (6) | 200 ---- 1000 |
| (7) | 300 ---- 1000 |
| (8) | 100 ---- 1000 |
| (9) | 200 ---- 1000 |
| (10) | 300 ---- 1000 |
| (11) | 250 ---- 1000 |
| (12) | 300 ---- 1000 |
| (13) | 300 ---- 1000 |
| (14) | 50 ---- 1000 |
| (15) | 250 ---- 1000 |
| (16) | 250 ---- 1000 |
| (17) | 200 ---- 1000 |
| (18) | 250 ---- 1000 |
| (19) | 250 ---- 1000 |
| (20) | 200 ---- 1000 |
| (21) | 100 ---- 1000 |
| T.C.A. § 62-25-103(a) | 50 ---- 1000 |

| | | |
|------------------------------|------|---------------|
| T.C.A. § 62-25-107(b) | (1) | 250 ---- 1000 |
| | (2) | 250 ---- 1000 |
| | (3) | 300 ---- 1000 |
| | (4) | 50 ---- 1000 |
| T.C.A. § 66-32-121(f) | (1) | 250 ---- 1000 |
| | (2) | 100 ---- 1000 |
| | (3) | 200 ---- 1000 |
| | (4) | 300 ---- 1000 |
| | (5) | 250 ---- 1000 |
| | (6) | 250 ---- 1000 |
| | (7) | 400 ---- 1000 |
| | (8) | 350 ---- 1000 |
| | (9) | 400 ---- 1000 |
| | (10) | 250 ---- 1000 |
| Any Commission Rule or Order | | 50 ---- 1000 |

(2) With respect to any person required to be licensed by the Commission as a real estate broker who is not licensed, the Commission may assess a civil penalty against such person for each separate violation of a statute in accordance with the following schedule:

| Violation | Penalty |
|--------------------|---------|
| T.C.A. § 62-13-102 | \$1000 |
| T.C.A. § 62-13-103 | \$1000 |
| T.C.A. § 62-13-105 | \$1000 |
| T.C.A. § 62-13-109 | \$1000 |
| T.C.A. § 62-13-110 | \$1000 |
| T.C.A. § 62-13-301 | \$1000 |
| T.C.A. § 62-13-312 | \$1000 |

(3) Each day of a continued violation may constitute a separate violation.

(4) In determining the amount of a civil penalty, the Commission may consider such factors as the following:

- (a) whether the amount imposed will be a substantial economic deterrent to the violation;
- (b) the circumstances leading to the violation;
- (c) the severity of the violation and the risk of harm to the public;
- (d) the economic benefits gained by the violator as a result of non-compliance; and
- (e) the interest of the public.

Authority: T.C.A. §§ 56-1-308 and 62-13-203.

Chapter 1260-02
Rules of Conduct

New Rules

1260-02-.38 Death or Extended Absence of Principal Broker

(1) The Commission must be notified within ten (10) days of the death, resignation, termination, or incapacity of a principal broker. In the event of an unexplained extended absence of a principal broker, the Commission must be notified within a reasonable time period. At the time of notification, a plan must be submitted which addresses the continuation of operations without a principal broker.

- (2) The Commission may, in its discretion, based on the merits and circumstances of each case, permit a real estate firm to continue operating without a principal broker for a period of time not to exceed thirty (30) days from the date of death, resignation, termination, or incapacity of a principal broker, subject to conditions imposed by the Commission.
- (3) If, within the aforementioned thirty (30) day period, a real estate firm contacts the Commission demonstrating compliance with their initial approved plan and circumstances which require additional time to continue operating without a principal broker, the executive director shall have the authority to grant a thirty (30) day extension to the period originally allowed by the Commission. In the event that a thirty (30) day extension is granted, a new principal broker must be in place no later than the sixty-first (61st) day from the date of death, resignation, termination, or incapacity of a principal broker.

Authority: T.C.A. §§ 62-13-203 and 62-13-309.

* 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) |
|---------------------|-----|----|---------|--------|-------------------------|
| Wendell Alexander | X | | | | |
| Grover Collins | X | | | | |
| Janet DiChiara | X | | | | |
| John Griess | X | | | | |
| David Flitcroft | X | | | | |
| Michelle Haynes | X | | | | |
| Isaac Northern, Jr. | X | | | | |
| Austin McMullen | | | | X | |
| Bear Stephenson | | | | 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 06/14/2012, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 04/20/12

Rulemaking Hearing(s) Conducted on: (add more dates). 06/14/12



Date: 11/9/12

Signature: Julie Cropp

Name of Officer: Julie Cropp

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: November 9, 2012

Notary Public Signature: [Signature]

My commission expires on: 4/5/2016

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.

[Signature]
Robert E. Cooper, Jr.
Attorney General and Reporter

11-20-12
Date

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 PUBLIC AFFAIRS

Department of State Use Only

Filed with the Department of State on: 12/3/12

Effective on: 3/3/13

[Signature]
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.

There were no comments made at the public hearing and no written comments were submitted regarding these rules.

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.

(If applicable, insert Regulatory Flexibility Addendum here)

Economic Impact Statement:

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule;

Rule 1260-01-.12 [Fees] Amendment: Small businesses will not bear the cost of this rule, but instead this ten dollar (\$10.00) fee to be deposited into the real estate education and recovery account will be paid by individuals wishing to apply for licensure as a broker, affiliate broker, or time-share salesperson.

Rule 1260-02-.32 [Civil Penalties] Amendment: All licensed real estate firms, regardless of size, within the State of Tennessee will be affected by the proposed rule. The estimated number of active licensed real estate firms is 4,027.

Rule 1260-02-.38 [Death or Extended Absence of Principal Broker]: All licensed real estate firms, regardless of size, within the State of Tennessee will be affected by the proposed rule. The estimated number of active licensed real estate firms is 4,027.

- (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;

Rule 1260-01-.12 [Fees] Amendment: There are no projected reporting, recordkeeping, or other administrative costs to small businesses in order to comply with this rule.

Rule 1260-02-.32 [Civil Penalties] Amendment: There are no projected reporting, recordkeeping, or other administrative costs required for compliance with this rule.

Rule 1260-02-.38 [Death or Extended Absence of Principal Broker]: There are no projected reporting, recordkeeping, or other administrative costs required for compliance with this rule.

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

Rule 1260-01-.12 [Fees] Amendment: This rule's reduction of the fee amount to be deposited into the real estate education and recovery account from the current practice of a thirty dollar (\$30.00) fee to a ten dollar (\$10.00) fee will not have a measurable impact on small businesses and consumers.

Rule 1260-02-.32 [Civil Penalties] Amendment: There is no projected effect on small businesses except for continuing to deter licensees from engaging in improper activity.

Rule 1260-02-.38 [Death or Extended Absence of Principal Broker]: This rule will affect only the minority of small real estate firms confronted with the death or other absence of its principal broker. In that situation, the proposed rule will result in a reporting requirement.

- (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;

Rule 1260-01-.12 [Fees] Amendment: There are no less burdensome, less intrusive, or less costly methods to achieve the purpose and objective of the proposed rule.

Rule 1260-02-.32 [Civil Penalties] Amendment: There are no less burdensome, less intrusive, or less costly methods to achieve the purpose and objective of the proposed rule.

Rule 1260-02-.38 [Death or Extended Absence of Principal Broker]: There are no less burdensome, less

intrusive, or less costly alternatives to ensure compliance and protect citizens.

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

Rule 1260-01-.12 [Fees] Amendment: There are no state or federal counterparts.

Rule 1260-02-.32 [Civil Penalties] Amendment: The proposed civil penalties appear consistent with those utilized by other boards, and there are no federal or state counterparts.

Rule 1260-02-.38 [Death or Extended Absence of Principal Broker]: There are no state or federal counterparts.

(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.

Rule 1260-01-.12 [Fees] Amendment: The requirements of this rule do not apply to small businesses, but instead establish a fee amount for individuals applying for licensure as a broker, affiliate broker, or time-share salesperson.

Rule 1260-02-.32 [Civil Penalties] Amendment: Exemption of small businesses from this rule would result in less protection for the citizens of the State of Tennessee.

Rule 1260-02-.38 [Death or Extended Absence of Principal Broker]: Exemption of small businesses from this rule would result in less protection for the citizens of the State of Tennessee.

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 rules are not reasonably viewed as having a 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;

Rule 1260-01-.12 Fees is amended by adding a new subsection (6) providing for the deposit of a ten dollar (\$10.00) fee into the real estate education and recovery account whenever an individual applies for a broker, affiliate broker, or time-share salesperson license.

Rule 1260-02-.32 Civil Penalties is amended to establish a uniform maximum penalty of one thousand dollars (\$1,000.00) for the violation of any listed statute within the rule. In addition, the amended rule provides for a civil penalty range for a violation of any Commission rule or order.

Rule 1260-02-.38 Death or Extended Absence of Principal Broker is a new rule providing time frames within which a firm must provide notification of the death, resignation, termination, incapacity, or extended absence of its principal broker. Further, the rule provides guidelines for the temporary operation of the firm without a principal broker until a new principal broker is placed.

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

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

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

Those most directly affected by these rules are licensed real estate brokers, affiliate brokers, and time-share salespersons. There were no public comments submitted and no one appearing at the rulemaking hearing to comment on these rules.

- (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 relate to the rules.

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

There is no estimated fiscal impact by the promulgation of these rules.

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

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

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

Julie Cropp, Assistant General Counsel, Department of Commerce and Insurance, Regulatory Boards Division
SS-7039 (October 2011) 10 RDA 1693

Eve Maxwell, Executive Director, Tennessee Real Estate Commission

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

500 James Robertson Parkway, Nashville, Tennessee 37243

Telephone: (615) 741-3072 or (615) 741-2273; E-mail: julie.cropp@tn.gov or eve.maxwell@tn.gov

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

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

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| Agency/Board/Commission: | Tennessee Real Estate Commission |
| Division: | Regulatory Boards |
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| Address: | 500 James Robertson Parkway, Nashville, TN |
| Zip: | 37243 |
| Phone: | (615) 741-3072 |
| Email: | julie.cropp@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-.12 | Fees. |

| Chapter Number | Chapter Title |
|----------------|---|
| 1260-02 | Rules of Conduct |
| Rule Number | Rule Title |
| 1260-02-.32 | Civil Penalties |
| 1260-02-.38 | Death or Extended Absence of Principal Broker |

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 1260-01
Licensing

Amendments

Rule 1260-01-.12 Fees is amended by adding the following language as a new subsection (6):

1260-01-.12 Fees

(6) When any individual applies for an original license as a broker, affiliate broker or time-share salesperson, the applicant shall pay, in addition to the original license fee, a fee in the amount of ten dollars (\$10.00) for deposit into the real estate education and recovery account.

Authority: T.C.A. §§ 62-13-203 and 62-13-208(c)(1).

Chapter 1260-02
Rules of Conduct

Amendments

Rule 1260-02-.32 Civil Penalties 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:

1260-02-.32 Civil Penalties

(1) The Commission may, in a lawful proceeding against respecting any person required to be licensed by the Commission, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty for each separate violation of a statute, rule, or order pertaining to the Commission with the following schedule:

| <u>Violation</u> | <u>Penalty</u> |
|-----------------------|---|
| T.C.A. § 62-13-103(b) | \$ 50 ---- 1000 |
| T.C.A. § 62-13-301 | 50 ---- 1000 |
| T.C.A. § 62-13-312(b) | |
| (1) | 250 ---- 1000 |
| (2) | <u>200 ---- 1000</u> 200-900 |
| (3) | 300 ---- 1000 |
| (4) | 100 ---- 1000 100-800 |
| (5) | 300 ---- 1000 (Deleted by 1988 Amendment) |
| (6) | <u>200 ---- 1000</u> 300-1000 |
| (7) | 300 ---- 1000 200-900 |
| (8) | 100 ---- 1000 300-1000 |
| (9) | 200 ---- 1000 100-800 |
| (10) | 300 ---- 1000 200-900 |
| (11) | 250 ---- 1000 300-1000 |
| (12) | 300 ---- 1000 250-1000 |
| (13) | 300 ---- 1000 |
| (14) | 50 ---- 1000 300-1000 |
| (15) | 250 ---- 1000 50-1000 |
| (16) | 250 ---- 1000 |
| (17) | 200 ---- 1000 250-750 |
| (18) | 250 ---- 1000 200-900 |
| (19) | 250 ---- 1000 200-950 |
| (20) | 200 ---- 1000 250-1000 |
| (21) | 100 ---- 1000 250-1000 |
| (22) | 200 ---- 1000 |

(23) _____ 100 ---- 1000

| <u>Violation</u> | <u>Penalty</u> |
|-------------------------------------|----------------|
| T.C.A. § 62-25-103(a) | 50 ---- 1000 |
| T.C.A. § 62-25-107(b) | |
| (1) | 250 ---- 1000 |
| (2) | 250 ---- 1000 |
| (3) | 300 ---- 1000 |
| (4) | 50 ---- 1000 |
| T.C.A. § 66-32-121(f) | |
| (1) | 250 ---- 1000 |
| (2) | 100 ---- 1000 |
| (3) | 200 ---- 1000 |
| (4) | 300 ---- 1000 |
| (5) | 250 ---- 1000 |
| (6) | 250 ---- 1000 |
| (7) | 400 ---- 1000 |
| (8) | 350 ---- 1000 |
| (9) | 400 ---- 1000 |
| (10) | 250 ---- 1000 |
| <u>Any Commission Rule or Order</u> | 50 ---- 1000 |

- (2) With respect to any person required to be licensed by the Commission as a real estate broker who is not licensed, the Commission may assess a civil penalty against such person for each separate violation of a statute in accordance with the following schedule:

| <u>Violation</u> | <u>Penalty</u> |
|--------------------|----------------|
| T.C.A. § 62-13-102 | \$1000 |
| T.C.A. § 62-13-103 | \$1000 |
| T.C.A. § 62-13-105 | \$1000 |
| T.C.A. § 62-13-109 | \$1000 |
| T.C.A. § 62-13-110 | \$1000 |
| T.C.A. § 62-13-301 | \$1000 |
| T.C.A. § 62-13-312 | \$1000 |

- (3) Each day of a continued violation may constitute a separate violation.
- (4) In determining the amount of a civil penalty, the Commission may consider such factors as the following:
- (a) whether the amount imposed will be a substantial economic deterrent to the violation;
 - (b) the circumstances leading to the violation;
 - (c) the severity of the violation and the risk of harm to the public;
 - (d) the economic benefits gained by the violator as a result of non-compliance; and
 - (e) the interest of the public.

Authority: T.C.A. §§ 56-1-308 and 62-13-203.

Chapter 1260-02
Rules of Conduct

New Rules

1260-02-.38 Death or Extended Absence of Principal Broker

- (1) The Commission must be notified within ten (10) days of the death, resignation, termination, or incapacity of a principal broker. In the event of an unexplained extended absence of a principal broker, the Commission must be notified within a reasonable time period. At the time of notification, a plan must be submitted which addresses the continuation of operations without a principal broker.
- (2) The Commission may, in its discretion, based on the merits and circumstances of each case, permit a real estate firm to continue operating without a principal broker for a period of time not to exceed thirty (30) days from the date of death, resignation, termination, or incapacity of a principal broker, subject to conditions imposed by the Commission.
- (3) If, within the aforementioned thirty (30) day period, a real estate firm contacts the Commission demonstrating compliance with their initial approved plan and circumstances which require additional time to continue operating without a principal broker, the executive director shall have the authority to grant a thirty (30) day extension to the period originally allowed by the Commission. In the event that a thirty (30) day extension is granted, a new principal broker must be in place no later than the sixty-first (61st) day from the date of death, resignation, termination, or incapacity of a principal broker.

Authority: T.C.A. §§ 62-13-203 and 62-13-309.

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

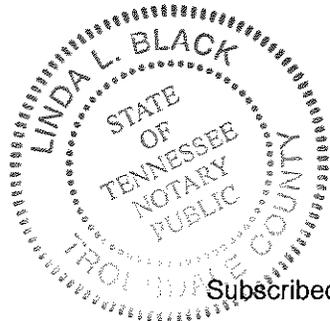
| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---------------------|-----|----|---------|--------|-------------------------|
| Wendell Alexander | X | | | | |
| Grover Collins | X | | | | |
| Janet DiChiara | X | | | | |
| John Griess | X | | | | |
| David Flitcroft | X | | | | |
| Michelle Haynes | X | | | | |
| Isaac Northern, Jr. | X | | | | |
| Austin McMullen | | | | X | |
| Bear Stephenson | | | | 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 06/14/2012, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 04/20/12

Rulemaking Hearing(s) Conducted on: (add more dates). 06/14/12



Date: 11/9/12

Signature: Julie Cropp

Name of Officer: Julie Cropp

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: November 9, 2012

Notary Public Signature: [Signature]

My commission expires on: 4/5/2016

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

Robert E. Cooper, Jr.
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

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 SECRETARY OF STATE
 REGULATIONS

Public Hearing Comments

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Economic Impact Statement:

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule;

Rule 1260-01-.12 [Fees] Amendment: Small businesses will not bear the cost of this rule, but instead this ten dollar (\$10.00) fee to be deposited into the real estate education and recovery account will be paid by individuals wishing to apply for licensure as a broker, affiliate broker, or time-share salesperson.

Rule 1260-02-.32 [Civil Penalties] Amendment: All licensed real estate firms, regardless of size, within the State of Tennessee will be affected by the proposed rule. The estimated number of active licensed real estate firms is 4,027.

Rule 1260-02-.38 [Death or Extended Absence of Principal Broker]: All licensed real estate firms, regardless of size, within the State of Tennessee will be affected by the proposed rule. The estimated number of active licensed real estate firms is 4,027.

- (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;

Rule 1260-01-.12 [Fees] Amendment: There are no projected reporting, recordkeeping, or other administrative costs to small businesses in order to comply with this rule.

Rule 1260-02-.32 [Civil Penalties] Amendment: There are no projected reporting, recordkeeping, or other administrative costs required for compliance with this rule.

Rule 1260-02-.38 [Death or Extended Absence of Principal Broker]: There are no projected reporting, recordkeeping, or other administrative costs required for compliance with this rule.

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

Rule 1260-01-.12 [Fees] Amendment: This rule's reduction of the fee amount to be deposited into the real estate education and recovery account from the current practice of a thirty dollar (\$30.00) fee to a ten dollar (\$10.00) fee will not have a measurable impact on small businesses and consumers.

Rule 1260-02-.32 [Civil Penalties] Amendment: There is no projected effect on small businesses except for continuing to deter licensees from engaging in improper activity.

Rule 1260-02-.38 [Death or Extended Absence of Principal Broker]: This rule will affect only the minority of small real estate firms confronted with the death or other absence of its principal broker. In that situation, the proposed rule will result in a reporting requirement.

- (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;

Rule 1260-01-.12 [Fees] Amendment: There are no less burdensome, less intrusive, or less costly methods to achieve the purpose and objective of the proposed rule.

Rule 1260-02-.32 [Civil Penalties] Amendment: There are no less burdensome, less intrusive, or less costly methods to achieve the purpose and objective of the proposed rule.

Rule 1260-02-.38 [Death or Extended Absence of Principal Broker]: There are no less burdensome, less

intrusive, or less costly alternatives to ensure compliance and protect citizens.

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

Rule 1260-01-.12 [Fees] Amendment: There are no state or federal counterparts.

Rule 1260-02-.32 [Civil Penalties] Amendment: The proposed civil penalties appear consistent with those utilized by other boards, and there are no federal or state counterparts.

Rule 1260-02-.38 [Death or Extended Absence of Principal Broker]: There are no state or federal counterparts.

(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.

Rule 1260-01-.12 [Fees] Amendment: The requirements of this rule do not apply to small businesses, but instead establish a fee amount for individuals applying for licensure as a broker, affiliate broker, or time-share salesperson.

Rule 1260-02-.32 [Civil Penalties] Amendment: Exemption of small businesses from this rule would result in less protection for the citizens of the State of Tennessee.

Rule 1260-02-.38 [Death or Extended Absence of Principal Broker]: Exemption of small businesses from this rule would result in less protection for the citizens of the State of Tennessee.

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 rules are not reasonably viewed as having a 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;

Rule 1260-01-.12 Fees is amended by adding a new subsection (6) providing for the deposit of a ten dollar (\$10.00) fee into the real estate education and recovery account whenever an individual applies for a broker, affiliate broker, or time-share salesperson license.

Rule 1260-02-.32 Civil Penalties is amended to establish a uniform maximum penalty of one thousand dollars (\$1,000.00) for the violation of any listed statute within the rule. In addition, the amended rule provides for a civil penalty range for a violation of any Commission rule or order.

Rule 1260-02-.38 Death or Extended Absence of Principal Broker is a new rule providing time frames within which a firm must provide notification of the death, resignation, termination, incapacity, or extended absence of its principal broker. Further, the rule provides guidelines for the temporary operation of the firm without a principal broker until a new principal broker is placed.

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

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

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

Those most directly affected by these rules are licensed real estate brokers, affiliate brokers, and time-share salespersons. There were no public comments submitted and no one appearing at the rulemaking hearing to comment on these rules.

- (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 relate to the rules.

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

There is no estimated fiscal impact by the promulgation of these rules.

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

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

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

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

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

500 James Robertson Parkway, Nashville, Tennessee 37243

Telephone: (615) 741-3072 or (615) 741-2273; E-mail: julie.cropp@tn.gov or eve.maxwell@tn.gov

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

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