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Sequence Number: 12-21-10
Notice ID(s): 1572
File Date: 12/21/2010

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.

| | |
|---------------------------------|---|
| Agency/Board/Commission: | Real Estate Commission |
| Division: | Regulatory Boards |
| Contact Person: | Eve Maxwell |
| Address: | 500 James Robertson Parkway, Nashville TN 37243 |
| Phone: | 615.741.7546 |
| Email: | eve.maxwell@tn.gov |

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

| | |
|---------------------|--|
| ADA Contact: | Don Coleman |
| Address: | 500 James Robertson Parkway, 5 th Floor, Nashville, Tennessee 37243 |
| Phone: | 615.741.0481 |
| Email: | don.coleman@state.tn.us |

Hearing Location(s) (for additional locations, copy and paste table)

| | | | |
|----------------|---|-----|--|
| Address 1: | Davy Crockett Tower, Room 160 | | |
| Address 2: | 500 James Robertson Parkway, Nashville TN 37243 | | |
| City: | Nashville | | |
| Zip: | 37243 | | |
| Hearing Date : | 02/09/11 | | |
| Hearing Time: | 9:00 A.M. | CST | |

Additional Hearing Information:

Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. 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-.32 | Civil Penalties |
| 1260-02-.38 | Death or Extended Absence of Principal Broker |
| Chapter Number | Chapter Title |

| | |
|--------------------|-----------------------------------|
| 1260-07 | Vacation Lodging Services |
| Rule Number | Rule Title |
| 1260-07-.01 | Scope |
| 1260-07-.02 | Designated Agent Qualifications |
| 1260-07-.03 | Designated Agent Responsibilities |
| 1260-07-.04 | Civil Penalties |
| 1260-07-.05 | Advertising |
| 1260-07-.06 | Instructor Qualifications |
| 1260-07-.07 | Fees |

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 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

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

- (1) The Commission must be notified within five (5) 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.
- (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 sixty (60) days, subject to conditions imposed by the Commission. A new principal broker must be in place no later than the sixty-first (61st) day of any continued operation period granted by the Commission.

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

Chapter 1260-07
Vacation Lodging Services

New Rules

- 1260-07-.01 Scope
- 1260-07-.02 Designated Agent Qualifications
- 1260-07-.03 Designated Agent Responsibilities
- 1260-07-.04 Civil Penalties
- 1260-07-.05 Advertising
- 1260-07-.06 Instructor Qualifications

1260-07-.01 Scope. The rules in Chapter 1260-07 only apply to persons who perform vacation lodging services and vacation lodging service firms, as defined and governed under T.C.A. § 62-13-104(b).

Authority: T.C.A. §62-13-104(b)(9) (effective 7/1/11).

1260-07-.02 Designated Agent Qualifications

- (1) To obtain a designated agent license, applicants must meet the following prerequisites:
 - (a) Applicants must have obtained a high school diploma or general education diploma;
 - (b) Applicants must have certified proof of completion of eight (8) hours of pre-licensing education; and
 - (c) Applicants must not have any previous criminal convictions involving crimes of dishonesty or false statement.
- (2) If an applicant fails to meet the requirements of subsection (1)(c), he or she may appear before the Commission to seek a waiver of this requirement.

Authority: T.C.A. §62-13-104(b)(9) (effective 7/1/11).

1260-07-.03 Designated Agent Responsibilities

- (1) The designated agent shall be responsible for supervising all employees of the firm.
- (2) Designated agents shall be reasonably available to manage and supervise each vacation lodging service office during regular business hours.
- (3) The designated agent shall maintain the vacation lodging service escrow account.

Authority: T.C.A. §62-13-104(b)(9) (effective 7/1/11).

1260-07-.04 Civil Penalties. The Commission may, in a lawful proceeding against any person required to have a designated agent license and/or a vacation lodging services license, 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. § 62-13-104(b)(3)(C) | \$ 200 ---- 1000 |
| T.C.A. § 62-13-104(b)(3)(D)(i) | 200 ---- 1000 |
| T.C.A. § 62-13-104(b)(7)(B) | |
| (i) | 250 ---- 1000 |
| (ii) | 250 ---- 1000 |
| (iii) | 300 ---- 1000 |
| (iv) | 100 ---- 1000 |

| | |
|--------------------------------|---------------|
| (v) | 300 ---- 1000 |
| (vi) | 200 ---- 1000 |
| (vii) | 100 ---- 1000 |
| (viii) | 200 ---- 1000 |
| (ix) | 300 ---- 1000 |
| (x) | 300 ---- 1000 |
| (xi) | 50 ---- 1000 |
| (xii) | 250 ---- 1000 |
| (xiii) | 200 ---- 1000 |
| T.C.A. § 62-13-104(b)(8)(A)(i) | 200 ---- 1000 |
| T.C.A. § 62-13-104(b)(10) (A) | 25 ---- 1000 |
| (B) | 25 ---- 1000 |
| Any Commission Rule or Order | 50 ---- 1000 |

Authority: T.C.A. §62-13-104(b)(9) (effective 7/1/11).

1260-07-.05 Advertising

- (1) All advertising, regardless of its nature or medium, promoting vacation lodging service rentals shall prominently display the following information:
 - (a) The firm name of the vacation lodging service, as registered with the Commission;
 - (b) The telephone number of the vacation lodging service firm office; and
 - (c) The vacation lodging service firm license number.
- (2) All internet advertising must include the vacation lodging service firm name, as registered with the Commission, and the vacation lodging service firm license number on each page of the website.

Authority: T.C.A. §62-13-104(b)(9) (effective 7/1/11).

1260-07-.06 Vacation Lodging Services Instructor Qualifications

- (1) To obtain certification as an instructor of vacation lodging services, applicants must meet the following prerequisites:
 - (a) Applicants must have obtained a high school diploma or general education diploma;
 - (b) Applicants must not have any previous criminal convictions involving crimes of dishonesty or false statement;
 - (c) Applicants must also:
 1. hold a license as a designated agent under the Vacation Lodging Services Act; or
 2. possess a minimum of three (3) years experience in vacation lodging services.
 - i. If a course concerns any other field in which a degree, certification, or other recognized designation is commonly awarded then the instructor must have earned that degree or designation, or have at least three (3) years of relevant experience in the field.
- (2) The Commission may charge a fee of twenty-five dollars (\$25) for each instructor in an education cycle, in order to review that instructor's qualifications.

Authority: T.C.A. §62-13-104(b)(9) (effective 7/1/11).

1260-07-.07 Fees. The following fees shall apply:

- (1) For the issuance of an original vacation lodging service firm or original designated agent license, a fee to be paid to the Commission of one hundred dollars (\$100.00);
- (2) For each renewal of a license, a fee to be paid to the Commission of eighty dollars (\$80.00);
- (3) A fee to be paid to the Commission for the following:
 - (a) Change of firm address, fifty dollars (\$50.00);
 - (b) Change of Designated Agent, twenty-five dollars (\$25.00);
 - (c) Commission manual, ten dollars (\$10.00);
 - (d) Certified copies, one dollar (\$1.00) per page;
 - (e) Copies, twenty-five cents (\$0.25) per page;
 - (f) Printouts of licensee information, charges will be based upon the cost of producing the printout;
 - (g) Certification of licensure, twenty-five dollars (\$25.00);
 - (h) Change of name, ten dollars (\$10.00);
 - (i) Duplicate license, ten dollars (\$10.00);
 - (j) Bad checks must be made good within five (5) days after the licensee is notified. Any bad check not made good within sixty (60) days of the notification will be subject to a one hundred dollar (\$100.00) fee for collection.

Authority: T.C.A. §62-13-104(b)(9) (effective 7/1/11).

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.



My Commission Expires JAN. 3, 2011

Date: 12/20/10

Signature: [Handwritten Signature]

Name of Officer: E. Alex Dickerson

Title of Officer: Asst. General Counsel

Subscribed and sworn to before me on: Dec. 20, 2010

Notary Public Signature: Judy F. Elmore

My commission expires on: Jan. 3, 2011

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Filed with the Department of State on: 12/21/10

[Handwritten Signature]

Tre Hargett
Secretary of State

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