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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:	Department of Commerce and Insurance
Division:	Tennessee Real Estate Commission
Contact Person:	Eve M. Maxwell
Address:	500 James Robertson Parkway, Nashville, Tennessee 37243
Phone:	615-741-2273
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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, 5th 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 Crocket Tower		
Address 2:	500 James Robertson Parkway, Room 160		
City:	Nashville		
Zip:	37243		
Hearing Date :	(04/02/09)		
Hearing Time:	9:00 AM	_x_CST ___EST	

Additional Hearing Information:

Revision Type (check all that apply):
_X_ Amendment
___ New
_X_ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only **ONE** Rule Number/RuleTitle per row.)

Chapter Number	**Chapter Title**
1260-02	Rules of Conduct
Rule Number	**Rule Title**
1260-02-.02	Termination of Affiliation

Chapter Number	Chapter Title
1260-02	Rules of Conduct
Rule Number	**Rule Title**
1260-02-.09	Deposits and Earnest Money

Chapter Number	Chapter Title
1260-02	Rules of Conduct
Rule Number	**Rule Title**
1260-02.12	Advertising

Chapter Number	Chapter Title
1260-05	Educational Requirements
Rule Number	**Rule Title**
1260-05.12	Continuing Education

Chapter Number	Chapter Title
1260-05	Educational Requirements
Rule Number	**Rule Title**
1260-05.15	Fee for Educational Course Application

Chapter Number	Chapter Title
1260-05	Educational Requirements
Rule Number	**Rule Title**
1260-05-.16	Course Approval Periods

Chapter Number	Chapter Title
1260-06	Time-Share Programs
Rule Number	**Rule Title**
1260-06-.04	Disclosure of Rescission Rights

Chapter Number	Chapter Title
1260-06	Time-Share Programs
Rule Number	**Rule Title**
1260-06-.11	Renewal of Registration

Rule 1260-02-.02 Termination of Affiliation 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:

(1) Any licensee or principal broker wishing to terminate the licensee's affiliation with a firm shall submit to the Commission a completed Transfer, Release and Change of Status Form (TREC Form 1). The form must be faxed, mailed, or emailed to the Commission to be effective. The principal broker's supervisory responsibility for the future acts of the licensee shall terminate upon the Commission's receipt of the release form. The principal broker shall retain a copy of the executed form.

(2) Within ten (10) days after the date of release, the licensee shall complete the required administrative measures for either change of affiliation or retirement. The licensee shall not engage in any activities defined in §62-13-102 until a change of affiliation is received and processed by the Commission.

(3) When a licensee terminates his affiliation with a firm, he shall neither take nor use any property listings secured through the firm, unless specifically authorized by the principal broker.

(4) Upon demand by a licensee for his release from a firm, it shall be promptly granted by the principal broker and the principal broker shall return the license to the licensee. If the licensee cannot be located then the principal broker may return the license to the Commission.

(5) If the principal broker is deceased or physically unable to sign a release, or refuses to sign a release, the licensee requesting termination of affiliation must submit to the Commission a notarized Affidavit for Release.

(6) If the affiliated licensee is deceased or physically unable to sign a release, or refuses to sign a release, the principal broker requesting termination of affiliation must submit to the Commission a completed TREC Form 1.

(7) The Commission will not intervene in the settlement of debts, loans, draws, or commission disputes between firms, brokers and/or affiliates.

Authority: T.C.A. §§62-13-203 and 62-13-310

Rule 1260-02-.09 Deposits and Earnest Money 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:

(1) Each broker shall maintain a separate escrow account for the purpose of holding any funds which may be received in his fiduciary capacity as deposits, earnest money, or the like.

(2) An affiliate broker shall pay over to the broker with whom he is under contract all deposits and earnest money immediately upon receipt.

(3) Brokers are responsible at all times for deposits and earnest money accepted by them or their affiliate brokers, in accordance with the terms of the contract.

(4) Where a contract authorizes a broker to place funds in an escrow or trustee account, the broker shall clearly specify in the contract:

(a) the terms and conditions for disbursement of such funds; and

(b) the name and address of the person who will actually hold such funds.

(5) Where a contract authorizes an individual or entity other than either broker to hold funds in an escrow or trustee account, the broker will be relieved of responsibility for the funds upon receipt of the funds by the specified escrow agent.

(6) A broker may properly disburse funds from an escrow account:

(a) upon reasonable interpretation of the contract which authorizes him to hold such funds;

(b) upon securing a written agreement which is signed by all parties having an interest in such and is

separate from the contract which authorizes him to hold such funds;

(c) at the closing of the transaction;

(d) upon the rejection of an offer to purchase, sell, rent, lease, exchange or option real estate;

(e) upon the withdrawal of an offer not yet accepted to purchase, sell, rent, lease, exchange or option real estate;

(f) upon filing an interpleadeder action in a court of competent jurisdiction; or

(g) upon the order of a court of competent jurisdiction.

(7) Funds in escrow or trustee accounts shall be disbursed in a proper manner without unreasonable delay. Funds should be disbursed or interplead within fifteen (15) calendar days from the date of receipt of a written request for disbursement of earnest money.

(8) No postdated check shall be accepted for payment of a deposit or earnest money, unless otherwise provided in the offer.

(9) Earnest money shall be deposited into an escrow or trustee account promptly upon acceptance of the offer, unless the offer contains a statement such as "Earnest money to be deposited by:".

Authority: T.C.A. §62-13-203

Rule 1260-02-.12 Advertising is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read as follows:

(1) All advertising, regardless of its nature and the medium in which it appears, which promotes the sale or lease of real property, shall conform to the requirements of this rule.

(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 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.

(d) No licensee shall advertise property listed by another licensee without written authorization from the property owner. Written authorization must be evidenced by a statement on the listing agreement or any other written statement signed by the owner.

(e) No licensee shall advertise in a false, misleading, or deceptive manner.

(3) Advertising for Franchise or Cooperative Advertising Groups

(a) Any Licensee using a franchise trade name or advertising as a member of a cooperative group shall clearly and unmistakably indicate in the advertisement his name, broker or firm name and firm telephone number (as registered with the Tennessee Real Estate Commission) adjacent to any specific properties advertised for sale or lease in any media.

(b) Any licensee using a franchise trade name or advertising as a member of a cooperative group, when advertising other than specific properties for sale or lease, shall cause the following legend to appear in the advertisement in a manner reasonably calculated to attract the attention of the public: "Each [Franchise Trade Name or Cooperative Group] Office is Independently Owned and Operated."

(c) Any licensee using a trade name on business cards, contracts, or other documents relating to real estate transactions shall clearly and unmistakably indicate thereon:

1. his name and firm telephone number (as registered with the Commission); and

2. the fact that his office is independently owned and operated.

(4) Internet Advertising

(a) The listing firm name and telephone number must conspicuously appear on each page of the website.

(b) Each page of a website which displays listings from an outside database of available properties must include a statement that some or all of the listings may not belong to the firm whose website is being visited.

(c) Listing information must be kept current and accurate.

(5) Guarantees, Claims and Offers

(a) Unsubstantiated selling claims and misleading statements or inferences, including the use of superlatives, are strictly prohibited.

(b) Any offer, guaranty, warranty or the like, made to induce an individual to enter into an agency relationship or contract, must be made in writing and must disclose all pertinent details on the face of such offer or advertisement.

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

Rule 1260-05-.12 Affiliate Brokers is amended by deleting the text of the rule in its entirety and substituting instead the following so that as amended the rule shall read:

Rule 1260-05-.12 Continuing Education

(1) The Commission may, in its discretion, designate that a portion of the continuing real estate education required of licensees by T.C.A. §62-13-303 be composed of specific topic(s).

(2) The "office or brokerage management" course required of applicants for broker's licenses will not be approved as a post-licensing or continuing education course for affiliate brokers.

(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. 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) A broker whose license was originally issued on or after January 1, 2005, will not be eligible for renewal of the license unless, during the immediately preceding two-year license period, such broker satisfactorily completes at least sixteen (16) hours of continuing real estate education. This subparagraph shall not apply to a broker whose license was temporarily retired in accordance with T.C.A. §62-13-318 for the entire immediately preceding two-year license period.

(c) A licensee will not receive continuing education credit for classroom hours completed during a prior license period.

(4) Continuing education credit will be given for approved classroom hours completed during the twelve (12) months immediately preceding the original date of licensure.

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

Rule 1260-05-.15 Fee for Educational Course Application is amended by deleting the text of the rule in its entirety and substituting instead the following so that as amended the rule shall read:

Before any educational course is reviewed for approval by the Commission, the following non-refundable fees shall be paid according to the following schedule:

(1) Any course not exceeding eight (8) hours a fee of fifty dollars ($50.00);

(2) Any course from nine (9) hours to thirty (30) hours a fee of one hundred dollars ($100.00);

(3) Any course exceeding thirty (30) hours a fee of two hundred dollars ($200.00);

(4) A two hundred dollar ($200.00) fee shall be paid for each course instructor per topic area. This fee shall not apply to courses which are provided to the public free of charge.

Authority: T.C.A. §§62-13-106 and 62-13-203.

Rule 1260-05-.16 Course Approval Periods is amended by deleting the text of the rule in its entirety and substituting instead the following so that as amended the rule shall read:

(1) The Commission will approve courses based upon a two (2) year review cycle of all courses. Each cycle will end on December 31st of the second year. The first period of approval will end December 31, 2010.

(2) Each course approval shall remain effective until the end of the review cycle, notwithstanding the date upon which it was approved.

(3) All course providers shall be required to resubmit their courses for approval at least one hundred twenty (120) days prior to the applicable expiration date. Failure to meet this deadline may result in the non-approval of a course.

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

Rule 1260-05-.17 Course Intermission is repealed.

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

Rule 1260-06-.04 Disclosure of Rescission Rights is amended by deleting the text of the rule in its entirety and substituting instead the following so that as amended the rule shall read:

The following statement shall appear in boldface and conspicuous type in:

(1) Every public offering statement; and

(2) Every contract for the sale of a timeshare interval, immediately above the space reserved for the signature of the purchaser.

"You May Cancel a Contract to Purchase a Time-Share Interval within Ten (10) Days from the Date of the Contract, Where You Have Made an On-Site Inspection of the Time-Share Project Before Signing the Contract, AND, if You Have Not Made Such an Inspection, within Fifteen (15) days from the Date of the Contract. If you Elect to Cancel, You May Do So by Hand Delivering Notice to The Seller at [INSERT ADDRESS] within the Designated Period, or by Mailing Notice to the Seller (or His Agent for Service of Process) by Prepaid United States Mail at [INSERT ADDRESS] Postmarked Anytime within the Designated Period."

Authority: T.C.A. §§66-32-112, 62-32-114 and 62-32-121

Rule 1260-06-.11 Renewal of Registration is amended by deleting the text of the rule in its entirety and

substituting instead the following so that as amended the rule shall read:

(1) All registration of Time-share programs shall expire one (1) year from the date the registration was approved, and shall be invalid after that date unless renewed.

(2) At least one (1) month in advance of the date of expiration of a registration, the Executive Director of the Commission shall notify the registrant by mail of the deadline and fee for renewal of the registration.

(3) An application for renewal of registration must be filed on or before the expiration date of the registration. The application shall explain any changes in information or documents previously filed with the Commission; provided, however, that this paragraph shall not be construed to obviate rule 1260-6-.05.

(4) If an application for renewal of registration of a time-share program is not timely filed, the developer must submit a new application in order to reinstate the registration.

Authority: T.C.A. §§66-32-121 and 66-32-123

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.

Date: Jan. 29, 2009

Signature: Kathryn Wiseman

Name of Officer: Kathryn M. Wiseman

Title of Officer: Assistant General Counsel

LINDA L. BLACK STATE OF TENNESSEE NOTARY PUBLIC TROUSDALE COUNTY

Subscribed and sworn to before me on: 1/29/09

Notary Public Signature: [signature]

My commission expires on: 5/6/2012

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Filed with the Department of State on: 1/30/09

Tre Hargett

Tre Hargett
Secretary of State

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