

PRINCIPAL BROKER GONE---WHAT TO DO

Rule 1260-02-.38 Death or Extended Absence of Principal Broker, (effective 3/3/2013) is not automatic!! Within 10 days of the departure of the principal broker, all firms must submit a written plan which addresses the continuation of the operations without a principal broker. TREC approval of the plan is required.

Rule 1260-02-.38 Death or Extended Absence of Principal Broker (effective 3/3/2013)

(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.**

The Death or Extended Absence of Principal Broker Notice form provides an easy method to notify TREC of the departure of a PB. The plan of continued operations required by Rule 1260-02-.38 should be attached to this form. If after review, TREC approves implementation of the firm's plan, the firm will be granted a period of time, not to exceed 30 days, in which to continue to operate while looking for a new principal broker or while winding down and closing the firm. The designated contact person must keep TREC updated regularly as to the progress

which is being made. If the firm contacts the Commission demonstrating compliance with its initial approved plan and circumstances which require additional time to continue operating without a principal broker, the Commission may 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. The firm may be placed in problem status if it does not comply with the provisions of the approved plan.

Under the Broker Act, a firm cannot be legally licensed in Tn. without a principal broker, but TREC realizes that, realistically, it would be very difficult for a firm to immediately cease its business operations. Any immediate termination of a firm could cause potential harm to the current clients of the firm in addition to the licensees. **It is the expectation of the Commission that licensees affiliated with the firm quickly move toward the creation and implementation of an approved plan of action to either replace the PB or close the firm and to then implement the plan as expeditiously as possible.**

TREC has included a list of some of the duties and circumstances which should be addressed by the Plan for Continued Operation submitted to TREC. The list is not inclusive and there could be other matters specific to your firm which should be addressed in your Plan for Continued Operation. **The licensee acting as the PB is responsible for the daily management and supervision of the firm and its business and for ensuring that the firm and its affiliated licensees all operate in accordance with the Tennessee Real Estate Broker License Act of 1973 and the rules and regulations promulgated thereunder.**

CONSIDERATIONS FOR FIRM PLAN FOR CONTINUED OPERATION:

What steps will be taken to locate a new PB and what will happen if one cannot be located;

Is there an affiliated broker who can immediately submit a TREC 1 and upgrade to principal broker. This might be a temporary solution, but will get a PB in place very quickly;

If there is no affiliated broker to file a TREC 1 to be the PB, then firm remaining affiliated licensees need a mechanism in place that allows one affiliated licensee (or estate administrator in the event of a deceased principal broker) to make decisions concerning the operations of the firm and to manage the activities and business of the firm in a timely and professional manner;

Is there an affiliated licensee who is willing and who meets the initial qualifications to be licensed as a broker;

What types of activity do affiliated licensees and/ or unlicensed personnel engage in—are there teams operating within the firm;

Does firm have established written or oral policies and procedures that will offer some guidance during the transition;

Payments to affiliated licensees for closings which have taken place or are already scheduled to take place in the future;

Execution and timely submission of all TREC 1s;

Firm renewal and receipt and disbursement of firm and affiliated licensee mail;

Submit response to any complaints received by firm and/or any affiliated licensee;

Licensees and the temporary PB can only complete (close or terminate) transactions that are in various stages of completion or termination at the time of the PB's departure;

No new business can be undertaken;

All advertising must be reviewed before publication or other use;

All documents must be reviewed, problems and questions addressed;

All listing and management clients should be notified and if firm closing, all listing and buyer rep agreements in which there were no offers or earnest money receipts should be terminated and individuals told that they can enter into new agreement with firm of their choice;

All negotiations between buyers and sellers, landlords and tenants should be completed as quickly as possible;

All accounts should be reviewed immediately and all monies must be accounted for and any problems or shortages documented and notification sent to TREC;

All trust accounts should be carefully maintained until all moneys have either been transferred to a third party escrow agent (bank, attorney, title company) for closing on a transaction, properly disbursed as agreed in writing by the parties in the contract, transferred to new firm as directed by landlord or other legally empowered authority. Keep receipts for transfer of funds in each transaction file.

If a new permanent PB is taking over, complete transfer of listings, contracts, affiliated licenses, escrow monies, leases and other firm agreements.

Notify TREC in writing of the location of all trust accounts and transaction files for which the PB was responsible. Records should be available for TREC audit for some period of time following closure (3 years). If firm closing--Name and address of custodian of files.

If firm closing--All advertising and signs should be removed and arrangements should be made to cancel all advertising in every medium

