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Effective Date: _____

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	Real Estate Commission
Division:	Regulatory Boards
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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
1260-02	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 (Reserved)
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 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:

<i>Violation</i>	<i>Penalty</i>
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(b).

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 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 (Reserved)

1260-07-.06 Instructor Qualifications
1260-07-.07 Fees

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 (Reserved)

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).

* 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)
Isaac Northern, Jr.	X				
Allen Woods	X				
Bear Stephenson	X				
Grover Collins	X				
David Flitcroft	X				
Valerie Joh	X				
Wendell Alexander	X				
Carol Tate				X	
Michelle Haynes				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 02/09/2011, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12/21/10

Rulemaking Hearing(s) Conducted on: (add more dates). 2/9/11

Date: _____

Signature: _____

Name of Officer: _____

Title of Officer: _____

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

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

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.

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.

Economic Impact Statement Addendum:

1. Types of small businesses directly affected:

All small licensed real estate firms and vacation lodging service firms doing business in Tennessee will be affected by these rules.

2. Projected reporting, recordkeeping, and other administrative costs:

- a. Civil Penalties Rule Amendment: There should be no reporting, recordkeeping, and other administrative costs required by the amendment of this rule.
- b. Principal Broker Death or Extended Absence Rule: The only cost that will be associated with the addition of this rule will be the administrative fee to change the designation of a principal broker. However, this fee would have to be incurred even if the rule were not in place.
- c. Vacation Lodging Service Rules: These rules are designed to establish reporting, recordkeeping, and other administrative costs. These costs are necessary for the health and safety of the citizens of Tennessee, to ensure that there is proper education for licensees, updated information on file with the Commission, and accountability for improper activity by licensees.

3. Probable effect on small businesses:

- a. Civil Penalties Rule Amendment: This amendment should not affect small businesses, other than to continue to deter them from improper activity.
- b. Principal Broker Death or Extended Absence Rule: This rule will only affect a small minority of small real estate firms, and only to the effect that a major incident must be reported in a timely fashion.
- c. Vacation Lodging Service Rules: These rules will have a significant effect on small vacation lodging firms by requirement them to adhere to qualifications for operation, education requirements, responsibilities, and a schedule of fees and penalties. These requirements are necessary for the health and safety of the citizens of Tennessee.

4. Less burdensome, intrusive, or costly alternative methods:

- a. Civil Penalties Rule Amendment: There are no less burdensome, intrusive, or costly alternative methods to ensuring compliance.
- b. Principal Broker Death or Extended Absence Rule: There are no less burdensome, intrusive, or costly alternative methods to ensuring compliance yet protecting the citizens of Tennessee.
- c. Vacation Lodging Service Rules: While less burdensome, intrusive, or costly alternatives may exist, there are none that would provide the same protection to the citizens of Tennessee and reimburse the Commission for the expenses incurred in processing the appropriate paperwork.

5. Comparison with federal and state counterparts:

- a. Civil Penalties Rule Amendment: These penalty maximums are not above the penalties of many other regulatory boards in Tennessee. There are no federal counterparts to this rule. This amendment is consistent with existing Tennessee law.
- b. Principal Broker Death or Extended Absence Rule: There are no state or federal counterparts to this rule that I am aware of.

- c. Vacation Lodging Service Rules: These rules are essentially identical to the rules for other real estate licensees in Tennessee.
6. Effect of possible exemption of small businesses:
- a. Civil Penalties Rule Amendment: To exempt small businesses would be to establish less protection for the citizens of Tennessee based on the size of the business. This amendment is consistent with existing Tennessee law.
 - b. Principal Broker Death or Extended Absence Rule: To exempt small businesses would prohibit the Commission from having accountability for small businesses that have lost their principal brokers to death or extended absence.
 - c. Vacation Lodging Service Rules: To exempt small businesses would be to establish less protection for the citizens of Tennessee based on the size of the business.

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 passed by the commission can not reasonably be 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 TCA 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;

Civil Penalties Rule Amendment: Updates and changes the civil penalties within the rule chapter in accordance to existing law.

Principal Broker Death or Extended Absence Rule: Provides procedures for real estate firms to follow in the event of death or extended illness of the managing principal broker within the firm.

Vacation Lodging Service Rules: This new rule sets procedures for the regulation of vacation lodging businesses within the state of Tennessee specifically, for the duties and responsibilities of licensed firms and designated agents within those firms.

- (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;

T.C.A. 62-13-101, et seq. "The Tennessee Real Estate Broker License Act of 1973", grants authority to the Real Estate Commission to promulgate and adopt bylaws, rules and regulations pursuant to the Uniform Administrative Procedures Act of Title 4, Chapter 5.

- (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;

The persons affected by the rules are all licensed brokers and affiliate brokers. Specifically, the Tennessee Association of Realtors have agreed with the passing of the rules contained herein and specifically made no public comment in opposition during the rule making process with respect to any of the rules as passed by the Commission. Additionally, the rules with regard to the Vacation Lodging Services businesses were commented on by various associations of Vacation Lodging Service members who did not oppose the rules specific to that industry as passed by the Commission.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

There are no specific opinions of the Attorney General and Reporter or any judicial ruling known that directly relate to the 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;

There is no estimated fiscal impact by the promulgation of these rules that would lead to a decrease or increase in revenue and expenditures.

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

Mark K. Green, Assistant General Counsel, Department of Commerce and Insurance, Regulatory Boards
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;

Mark K. Green, Assistant General Counsel, Department of Commerce and Insurance, Regulatory Boards
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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

710 James Robertson Parkway, Andrew Johnson Building, Nashville Tennessee, 37243
615-741-7546 or 615 532-7617

- (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.