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Welcome Letter

Renew Your License in 3 Easy Steps

Course Outline

Course
Dear Licensed Agent:

As a licensee, you owe it to yourself to keep abreast of the changes in the Real Estate Industry. Some practices that were common in the past are now illegal. Others have become outdated and obsolete as changes continue to happen within our industry.

This 2019/2020 Tennessee Core Law Course has information updated from our previous courses plus new information concerning changes in laws and practices of the real estate business in Tennessee. The 2019/2020 Tennessee Core Law Course will also give you new insight into this ever-changing Real Estate Industry.

As part of your continuing education requirements, this course has been approved by the Tennessee Real Estate Commission. Simply follow the instructions enclosed to fulfill the necessary requirements for the state.

We, at D&D School of Real Estate, have spent numerous hours collecting the information and data assembled on these pages. It is our hope that you will find this course informative and helpful in your career. Any questions or comments will be most appreciated.

Thank you for using D&D School of Real Estate as your provider of Continuing Education.
RENEW YOUR REAL ESTATE LICENSE
IN 3 STEPS

1. Study the manual at your own pace, complete each quiz, and fill in your answer sheets.

2. Email or fax your answer sheets for grading and processing. We will email you a course completion report, along with your quiz results, and we will notify the state of your hours completed.

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2019 – 2020 TN 6 Hour Core Law Course

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1. LAW UPDATES

There have been no law changes in the past two years to Title 62 of the Tennessee code. The following link will take you to the T.R.E.C. website where you can review the law:

www.regboards.tn.gov

2. RULE CHANGES

There have been a number of recent rule changes that are listed below.

A. 1260-01-.15 ERRORS AND OMISSIONS INSURANCE COVERAGE

It shall be a requirement for an active licensee to carry Errors and Omissions Insurance (E&O) to cover all activities contemplated under the Tennessee Real Estate Broker License Act unless the Commission is unable to obtain coverage pursuant to T.C.A. §62-13-112(g) which would void the requirement of coverage under the applicable contract period.

(1) A licensee who places his license in an inactive or retired status is not required to carry E&O insurance until such time as his/her license is activated.

(2) New licensees, licensees who activate their license from an inactive or retired status, and licensees who reinstate their license from an expired status at a time other than the beginning of the licensing period shall pay a prorated premium in accordance with a schedule provided by the insurance provider.

(3) The Commission shall perform random audits to assure that licensees have met the requirements of this rule.

(4) Any independently obtained E&O insurance policy shall, at a minimum, be issued upon the same terms and conditions as the policy obtained by the Tennessee Real Estate Commission pursuant to T.C.A. § 62-13-112, including, but not limited to, the limits of coverage, the permissible deductible, the permissible exemptions and the term of the policy.

B. 1260-01-.16 Lapsed Errors and Omissions Insurance

(1) Licensees Who Fail to Maintain Errors & Omissions (E&O) Insurance:

(a) Penalty fees for Reinstatement of a Suspended License: Any licensee whose license is suspended for more than thirty (30) days pursuant to T.C.A. § 62-13-112 for failure to maintain E&O insurance must provide proof of insurance that complies with the required terms and conditions of coverage to the Commission and must pay the following applicable penalty fee in order to reinstate the license:

- For a license suspended due to a lapse in E&O coverage for more than thirty (30) days but within one hundred twenty (120) days:
  - Two Hundred Dollars ($200.00) if the licensee’s insurance carrier back-dated the licensee’s E&O insurance policy to indicate continuous coverage; or
  - Four Hundred Dollars ($400.00) if the licensee’s insurance carrier did not back-date the licensee’s E&O insurance policy to indicate continuous coverage.

- For a license suspended due to a lapse in E&O coverage for more than one hundred twenty (120) days but less than six (6) months, a Five Hundred Dollar ($500.00) penalty fee;

- For a license suspended due to a lapse in E&O coverage for six (6) months up to one (1) year, a Five Hundred Dollar ($500.00) penalty fee plus a penalty fee of One Hundred Dollars ($100.00) per month, or portion thereof, for months six (6) through twelve (12).

(b) Conditions for Reissuance of a Revoked License: Upon revocation of a license pursuant to T.C.A. § 62-13-112 for failure to maintain E&O insurance, any individual seeking reissuance of such license shall:

- Reapply for licensure, including payment of all fees for such application;
- Pay the penalty fees outlined in subparagraph (a) above;
- Pass all required examinations for licensure, unless the Commission waives such examinations; and
- Meet any current education requirements for licensure, unless the Commission waives such education requirements.

(2) Principal Brokers of Licensees Who Fail to Maintain E&O Insurance:

(a) A principal broker shall ensure at all times that all licensees affiliated with that principal broker shall hold E&O insurance as required by law. A failure to do so shall constitute failing to exercise adequate supervision over the activities of a licensed affiliate broker.

(b) For any principal broker who has an affiliated licensee whose license is suspended pursuant to T.C.A. § 62-13-112 for failure to maintain E&O insurance, there shall be no penalty to the principal broker if either of the following two (2) circumstances occur within thirty (30) days of that affiliated licensee’s license suspension:

   I. The affiliated licensee has provided proof of insurance which complies with the required terms and conditions of coverage to the Commission; or
   II. The principal broker releases that affiliated licensee whose license is suspended for failure to maintain E&O insurance.

(c) After the aforementioned thirty (30) day period, if the affiliated licensee has neither provided the required proof of insurance nor been released by the principal broker, the Commission authorizes a formal hearing on the matter of the principal broker’s failure to exercise adequate supervision over an affiliated licensee who failed to maintain E&O insurance but also authorizes that a consent order shall be sent to the principal broker, offering
that principal broker the opportunity to settle the matter informally, thereby making formal hearing proceedings unnecessary, according to the following schedule:

- Notwithstanding the provisions of Tenn. Comp. R. & Regs. 1260-02-.32, if the principal broker’s affiliated licensee reinstates his or her license, or the principal broker releases the affiliated licensee, more than thirty (30) days after suspension but within one hundred twenty (120) days after suspension, the consent order shall contain the following civil penalties:
  - Two Hundred Dollars ($200.00) if the affiliated licensee’s insurance carrier back-dated the licensee’s E&O insurance policy to indicate continuous coverage; or
  - Four Hundred Dollars ($400.00) if the affiliated licensee’s insurance carrier did not back-date the licensee’s E&O insurance policy to indicate continuous coverage.

- If the principal broker’s affiliated licensee reinstates his or her license, or the principal broker releases the affiliated licensee, more than one hundred twenty (120) days after suspension, the consent order referenced in this subparagraph (c) above shall contain a civil penalty of one thousand dollars ($1,000.00).

- Where a principal broker does not accept any authorized consent order for failure to supervise an affiliated licensee’s E&O insurance, the hearing shall be held before an administrative law judge sitting alone, pursuant to the Uniform Administrative Procedures Act, compiled at title 4, chapter 5.

Nothing in this rule shall be construed as limiting the Commission’s authority to:

- Authorize a consent order in a different amount than listed herein;
- Seek any other legal discipline – including revocation or suspension of a license – for a failure to supervise an affiliated licensee’s E&O insurance; LICENSING CHAPTER 1260-01
- Review an initial order under the Uniform Administrative Procedures Act; or
- Not seek discipline against a principal broker for failure to supervise an affiliated broker’s maintenance of E&O insurance if the Commission determines that such discipline is not appropriate under the facts of that matter.

C. 1260-01-.18 DUPLICATE OR CONFUSINGLY SIMILAR FIRM NAMES

(1) In order to protect the public from confusion regarding licensed real estate firms, the Tennessee Real Estate Commission reserves the right to refuse to issue a new firm license in a name that is the same or confusingly similar to another firm already issued.

(2) The Commission staff shall review all applications for a firm name to determine whether the name is the same or confusingly similar to the name of another firm licensed with the Commission. If a name is rejected, the applicant will be notified. If the applicant does not agree with the decision, he or she may appeal to the Executive Director. Upon notification of an appeal, the Executive Director will either approve or reject the name and notify the applicant.

(3) The applicant may then appeal, in writing, the Executive Director’s decision to the Commission. The Commission’s decision will be final.

(4) The Commission expects that the applicant has researched any legal restriction regarding the use of a proposed firm name. The Commission will not attempt to determine ownership, trademark, copyright, or the validity of any other legal means to protect a name.


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D. 1260-01-.19 APPEARANCES BEFORE THE COMMISSION FOR THE PURPOSE OF OBTAINING A LICENSE

Any applicant for licensure appearing before the Commission for the purpose of obtaining a license must also ensure the presence of his or her principal broker (or intended principal broker). No such appearance for the purpose of obtaining a license will be heard by the Commission without the presence of that principal broker.

Administrative History: Original rule filed July 20, 2015; effective October 18, 2015

E. 1260-01-.20 MILITARY APPLICANTS

(1) An applicant for licensure meeting the requirements of T.C.A. § 4-3-1304(d) (1) may:

(a) Be issued a license upon application and payment of all fees required for the issuance of a regular license of the same type if, in the opinion of the Commission, the requirements for licensure of such other state are substantially equivalent to that required in Tennessee; or

(b) Be issued a temporary permit as described herein if the Commission determines that the applicant’s license does not meet the requirements for substantial equivalency, but that the applicant could perform additional acts, including – but not limited to – education, training, or experience, in order to meet the requirements for the license to be substantially equivalent. In that case, the Commission may issue a temporary permit upon application and payment of all fees required for issuance of a regular license of the same type which shall allow such person to perform services as if fully licensed for a set period of time that is determined to be sufficient by the Commission for the applicant to complete such requirements.

   a. After completing those additional requirements and providing the Commission with sufficient proof thereof as may be required, a full license shall be issued to the applicant with an issuance date of the date of the original issuance of the temporary permit and an expiration date as if the full license had been issued at that time.

   b. A temporary permit shall be issued for a period that is less than the length of a renewal cycle for a full license.

   c. A temporary permit shall expire upon the date set by the Commission and shall not be subject to renewal except through the timely completion of the requirements for substantial equivalency as required by the Commission or by an extension of time granted for good cause by the Commission.

   d. Should an extension to a temporary permit cause the permit to be in effect longer than the renewal cycle of a full license, then the holder of the temporary permit shall file a renewal application with such documentation and fees, including completion of continuing education, as are required by the Commission for all other renewals of a full license of the same type.

(2) Military education, training, or experience completed by a person described at T.C.A. § 4-31304(d)(1)(B)(ii)(a)-(c) shall be accepted toward the qualifications, in whole or in part, to receive any license issued by the Commission under the Division of Regulatory Boards if such military education, training or experience is determined by the Division.
Commission to be substantially equivalent to the education, training, or experience required for the issuance of such license.

(3) Renewal:

(a) Any licensee who is a member of the National Guard or a reserve component of the armed forces of the United States called to active duty whose license expires during the period of activation shall be eligible to be renewed upon the licensee being released from active duty without:

1. Payment of late fees or other penalties;

2. Obtaining continuing education credits when:
   
   (i) Circumstances associated with the person’s military duty prevented the obtaining of continuing education credits and a waiver request has been submitted to the Commission; or

   (ii) The person performs the licensed occupation as part of such person’s military duties and provides documentation sufficient to demonstrate such to the Commission.

3. Performing any other similar act typically required for the renewal of a license.

(b) The license shall be eligible for renewal pursuant to this paragraph for six (6) months from the person’s release from active duty.

(c) Any person renewing under this paragraph shall provide the Commission such supporting documentation evidencing activation as may be required by the Commission prior to renewal of any license pursuant to this paragraph.


F. 1260-01-.21 REINSTATEMENT OF AN EXPIRED LICENSE OF A BROKER, AFFILIATE BROKER, TIME-SHARE SALESPERSON, OR ACQUISITION AGENT

(1) Expired License Due to Health Issues or Medical Problems:

- If a licensee fails to renew a license within sixty (60) days after expiration of the license because of personal or family health issues, and, as a result, wishes to request a medical waiver from the Commission, that licensee must:
  
  o Provide a signed doctor’s statement attesting to the nature and length of the illness; and
  
  o Submit a statement explaining the lapse, which must be signed by the person seeking reinstatement.

- If the Commission grants the medical waiver request, then renewal fees must be paid and all other conditions for licensure must be met, but late penalty fees will not be assessed.

- Information submitted will become public record unless otherwise prohibited by law.

(2) Expired License due to Failure to Comply with Prerequisite to Licensure:

- Renewal of License Within Sixty (60) Days of Expiration: If a licensee fails to comply with any prerequisite or condition to licensure or renewal and/or fails to pay a renewal fee before the expiration of the license but provides proof of compliance with all prerequisites or conditions for
licensure, including payment of renewal fee, within sixty (60) days after the expiration date of the license, that licensee shall only be required to pay a penalty fee of fifty dollars ($50.00) per thirty (30) day period, or portion thereof, from the time the license expired without the requirement of any further obligations.

- Reinstatement After Sixty (60) Days of Expiration: If a licensee fails to timely pay a renewal fee or comply with any prerequisite or condition to licensure or renewal and/or fails to pay a renewal fee within sixty (60) days after the expiration date of the license, that licensee must sign a Reinstatement Order agreeing to comply with the following requirements and complete each of the following requirements in order to obtain license reinstatement:
  - Provide proof of compliance with all prerequisites or conditions for licensure, including payment of renewal fee; and
  - Payment of Penalties in Accordance with the Following Schedule:
    - For a license expired more than sixty (60) days, but within one hundred twenty (120) days, pay a penalty fee of fifty dollars ($50.00) per thirty (30) day period, or portion thereof, from the time the license expired; or
    - For a license expired for more than one hundred twenty (120) days but within one (1) year, pay, in addition to the penalty fee described in subpart (i), a penalty fee of one hundred dollars ($100.00) per thirty (30) day period, or portion thereof, beginning on the one hundred twenty first (121st) day; and LICENSING CHAPTER 1260-01 (Rule 1260-01-.21, continued)

  September, 2016 (Revised) 12

- Penalty fees will begin accruing on the first (1st) day following the license expiration date and will be assessed every thirty (30) days, or portion thereof, at the above rates. Penalty fees accrue until a Reinstatement Order is signed, proof of compliance with all prerequisites or conditions for licensure is received, and the renewal fee and all prescribed penalty fees are paid.

- A reinstated license will be issued back to the original expiry date upon satisfaction of all requirements.

(3) License Expired for More than One (1) Year: if a license is expired for more than one (1) year, then that individual must reapply for licensure, meet current education requirements, and pass all required examinations.

G. 1260-02-.08 OFFERS TO PURCHASE

A broker or affiliate broker promptly shall tender every written offer to purchase or sell obtained on a property until a contract is signed by all parties. Upon obtaining a proper acceptance of an offer to purchase, or any counteroffer, a broker or affiliate broker promptly shall deliver true executed copies of same, signed by the seller, to both the purchaser and the seller.

Brokers and affiliate brokers shall make certain that all of the terms and conditions of the real estate transaction are included in the contract to purchase. In the event an offer is rejected, the broker or affiliate broker shall request the seller to note the rejection on the offer and return the same to the offeror or the offeror's agent.


H. 1260-02-.09 MANAGING ESCROW OR TRUSTEE ACCOUNTS

(1) Definitions: for purposes of this rule, the following definitions are applicable:
   (a) “Commingling” is defined as the act of a licensee maintaining funds belonging to others in the same bank account that contains his or her personal or business funds.
   (b) “Trust money” is defined as either of the following:
       1. Money belonging to others received by a licensee who is acting as an agent or facilitator in a real estate transaction; or
       2. Any money held by a licensee who acts as the temporary custodian of funds belonging to others.

(2) Each principal broker shall maintain a separate escrow or trustee account for the purpose of holding any trust money which may be received in his fiduciary capacity.

(3) An affiliated broker shall pay over to the principal broker with whom he is affiliated all trust money immediately upon receipt.

(4) Principal brokers are responsible at all times for trust money accepted by them or their affiliated brokers, in accordance with the terms of the contract.

(5) Where a contract authorizes a principal broker to place trust money in an escrow or trustee account, the principal broker shall clearly specify in the contract:
   (a) the terms and conditions for disbursement of the trust money; and
   (b) the name and address of the person or firm who will actually hold the trust money.

(6) Where a contract authorizes an individual or entity other than the principal broker to hold trust money, the principal broker will be relieved of responsibility for the trust money upon receipt of the trust money by the specified escrow agent.

(7) A principal broker may properly disburse trust money:
   (a) upon a reasonable interpretation of the contract which authorizes him to hold the trust money;
   (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 the trust money;
   (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 interpleader action in a court of competent jurisdiction; or
   (g) upon the order of a court of competent jurisdiction.

(8) Trust money shall be disbursed in a proper manner without unreasonable delay.

(9) Absent a demonstration of a compelling reason, earnest money shall be disbursed, interpleaded, or turned over to an attorney with instructions to interplead the funds within twenty-one (21) calendar days from the date of receipt of a written request for disbursement.

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(10) No postdated check shall be accepted for payment of trust money unless otherwise provided in the offer.

(11) Trust money shall be deposited into an escrow or trustee account promptly upon acceptance of the offer unless the offer contains a statement such as “Trust money to be deposited by:”.

(12) In addition to the escrow or trustee account referenced in paragraph (2), all trust money received and held which relates to the lease of property must be held in one (1) or more separate escrow or trustee accounts.

(13) Commingling of funds contained within firm accounts is expressly prohibited.

(14) Interest-bearing escrow or trustee accounts are neither required nor prohibited by the Commission. If utilized, however, the following provisions shall be observed:

(a) At the time of contract execution, the licensee shall disclose to the payer that his or her deposit will be placed in an interest-bearing escrow or trustee account, and the licensee and the payer shall execute a written agreement indicating the manner of disposition of any interest earned;

(b) As a depositor of the trust money, the licensee does not own the trust money or interest earned thereon until properly disbursed to the licensee; and

(c) The licensee shall keep a detailed and accurate accounting of the precise sum of the interest earned for each separate deposit.


I. 1260-02-.39 COMMISSIONS EARNED BY AFFILIATED LICENSEES

(1) The commissions earned by an affiliated licensee while working under a principal broker can still be paid after one (1) or more of the following circumstances occur:

- the affiliated licensee transfers to a new broker;
- the affiliated licensee retires his or her license;
- the affiliated licensee is in broker release status;
- the affiliated licensee allows his or her license to expire; or
- the death of the affiliated licensee.


J. 1260-02-.40 ELECTRONIC RECORDS

(1) Pursuant to T.C.A. § 62-13-312(b) (6), real estate licensees must preserve records relating to

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any real estate transaction for three (3) years following the consummation of said real estate transaction. Real estate licensees may utilize electronic recordkeeping methods to comply with this requirement, provided that the following conditions are met:

(a) All documents required to be retained must be readily accessible in an organized format providing ease in document identification within twenty-four (24) hours of any request for inspection by representatives of the Commission.

(b) In order to ensure proper document retention, the principal broker of all real estate firms that use electronic recordkeeping methods must develop and utilize a retention schedule that safeguards the security, authenticity, and accuracy of the records for the entire required retention period and that also provides for the use of technology and hardware that ensures the accessibility of records in a readable format.

K. 1260-02-.41 LICENSEES WHO HOLD THEMSELVES OUT AS A TEAM, GROUP, OR SIMILAR ENTITY WITHIN A FIRM

(1) Licensees who hold themselves out as a team, group, or similar entity within a firm must be affiliated with the same licensed firm and shall not establish a physical location for said team, group, or similar entity within a firm that is separate from the physical location of record of the firm with which they are affiliated.

(2) No licensees who hold themselves out as a team, group, or similar entity within a firm shall receive compensation from anyone other than their principal broker for the performance of any acts specified in T.C.A. Title 62, Chapter 13.

(3) The principal broker shall not delegate his or her supervisory responsibilities to any licensees who hold themselves out as a team, group, or similar entity within a firm, as the principal broker remains ultimately responsible for oversight of all licensees within the principal broker’s firm.

(4) No licensees who hold themselves out as a team, group, or similar entity within a firm shall represent themselves as a separate entity from the licensed firm.

(5) No licensees who hold themselves out as a team, group, or similar entity within a firm shall designate members as designated firm agents, as this remains a responsibility of the licensed firm’s principal broker.

3. POLICIES

On August 3th, 2015 the Tennessee Real Estate Commission adopted the following policy:

COMMISSION POLICY STATEMENT

NUMBER 2015-CPS-001

EFFECTIVE DATE OF NEW LICENSE

(1) A Licensee may participate in the acts regulated by the Tennessee Real Estate Broker License act of 1973 so long as the license shows “active” on http://verify.tn.gov, even if the licensee does not yet have possession of the paper license.

(2) License recognition from another state:
In addition to these above policy changes the Commission is requiring any person licensed in another state to take the state law portion of the Tennessee test, and pass that portion, before a Tennessee license will be issued. This results in ending any reciprocal licensing agreements which are currently in place between Tennessee other states. This change in reciprocity agreements went into effect on September 30, 2012. Reciprocity has been replaced with the new term license recognition. Licensees currently active in another state desiring to obtain a Tennessee license now have the following requirements:

1. Affiliate Broker license requirements
2. Minimum education requirements are 30 hours principles of Real Estate education; 30 hours of new affiliate course education and 30 additional elective courses.
3. Broker license requirements
4. 120 hours of post license education, including 30 hours of broker office management education.
5. The licensee must also have 3 years of active licensure plus a grade of 75% or greater when they passed their broker license exam.
Unit One
Quiz

1. On Friday Amy completed all the paper work to apply for her license. She has purchased her E&O Insurance and sent in the paper work plus the fees to the Real Estate Commission. After waiting a week she has not received her license back from the state. She checked online and found herself registered with T.R.E.C. Which of the following procedures is correct for her to follow?

A. Amy checked with her new broker and the broker said she could start practicing since seven working days had passed since her application was sent in.
B. Amy may not start practicing until she receives her physical license.
C. Since she is registered with T.R.E.C. on the state website she may start practicing.
D. She must receive E&O Insurance confirmation prior to beginning practice.

2. Tim E. has been very successful with his team at Waldorf Realty. His team has outgrown the space available for him in the office. Two doors down from the office in the shopping center they are currently in, is an empty space that Tim is considering leasing to move his team members to. This would give his Broker Betty J. room in the office to bring in additional agents. What options are there available to Tim and Betty?

A. Betty J. as the principal broker would need to approve this move.
B. Since the new quarters are in the same shopping center it would be O.K. for Tim to move his team two doors down.
C. Tim would become the managing broker in the new office space.
D. Tim and Betty would have to get another broker to act as the principal broker of the new location.

3. Dana’s renewal date for her Errors and Omissions insure is different from her license renewal date and she forgot to renew the insurance. She didn’t discover the nonrenewal for 11 months. Which of the following statements is true?

A. Since the renewal dates for the license and the insurance are different the Real Estate Commission will waive all penalty fees until August 1st 2018.
B. The maximum fee Dana may face is $1600.00
C. Dana’s supervising broker is responsible for making sure all agents keep their insurance up to date so Dana would have no responsibility since the broker did not inform her of the due date.
D. The maximum fee Dana may face is $500.00

4. Kaylyn’s Errors and Omissions insurance lapsed on June 25th, 2017. On March 10th 2018, Kaylyn’s Broker Lane realized her insurance was lapsed and promptly released her. What will be the fine, if any, to broker Lane?
   A. Lane will pay a penalty of $400.00 since he released Kaylyn.
   B. Due to the time frame that Kaylyn was without insurance the broker will pay a civil penalty of $1000.00.
   C. Lane will have the same penalty as his agent of $1500.00
   D. Brokers are not liable for their agent’s forgetfulness.

5. Henry, an agent with River and Ridge Realty, had an automobile accident and was in a coma for seven months. During this period Henry’s affiliate broker’s license lapsed. Once Henry was out of the coma and went through a series of rehab programs, he was again able to function and wanted to get back into real estate. Which of the following statements is true?
   A. Henry may request a medical waiver form T.R.E.C. and provide them with a signed Doctor’s statement attesting to the nature and length of his condition and a statement explaining the lapse in licensure which must be signed by Henry.
   B. Henry must submit the forms mentioned above plus renewal fees and all other conditions of licensure plus half of the penalty fees normally assessed with a late renewal request.
   C. Because of the severity of his injury and the possible repercussions from a coma, Henry must retake the licensing course and pass the state exam again.
   D. The state does not address this issue in either the laws or the rules of the Commission.

6. Meara wrote an offer to purchase on a property that was listed by Regan who worked in a different firm than Meara. Regan presented the offer to the seller and the seller accepted the offer and signed it. On the very next day Regan received another offer on the property from a different agent in a different office. What are Regan’s responsibilities to her seller?
   A. Regan must present all offers to the seller until the accepted offer closed.
   B. If the second offer is better than the first Regan should advise her seller to accept it as a backup and then work hard to get the first offer defaulted on.
   C. Regan is not obligated under the rules of the Commission to present any offers after an offer has been accepted.
   D. Both A and B are correct.

7. Laura is the principal broker of River and Ridge Realty. She has decided to release one of her agents, Cindy, because of poor performance. One of Cindy’s two listings is her mother-in-law’s house that is overpriced and in very poor condition. Which of the following scenarios is correct?
   A. Because the seller is a relative the listing would go with the agent.
B. The agent has the right to take listings when they leave because they were the procuring cause of the contractual agreement.

C. All listings belong to the broker so both listings will stay at Laura’s office.

D. It is up to the seller if they choose to stay or move their listing when an agent leaves an office for any reason.

Unit Two
Agency

1. Terms to become familiar with:

*Client* or *Principal* – is a person who has signed a bilateral agreement to be represented by a real estate broker.

*Customer* – is a party to a contract other than the client.

2. What is an agency relationship?

It is defined as a legal relationship in which one person, the agent, acts for and on behalf of another, the employer, otherwise known as the principal. The agency relationship is founded on an expressed or implied contract between the parties. Tennessee law requires a signed bilateral contract between the parties to create an agency relationship.


A real estate licensee may provide real estate services to any party in a prospective transaction, with or without an agency relationship to one (1) or more parties to the transaction. Until such time as a licensee enters into a specific written agreement to establish an agency relationship with one (1) or more parties to a transaction, the licensee shall be considered a facilitator and shall not be considered an agent or advocate of any party to the transaction. An agency or subagency relationship shall not be assumed, implied or created without a written bilateral agreement that establishes the terms and conditions of the agency or subagency relationship. The negotiation and execution of either an exclusive agency listing agreement or an exclusive right to sell listing agreement with a prospective seller shall establish an agency relationship with the seller.

(a) If a licensee personally assists a prospective buyer or seller in the purchase or sale of a property and the buyer or seller is not represented by this or any other licensee, the licensee shall verbally disclose to the buyer or seller the licensee's facilitator, agent, subagent or designated agent status in the transaction before any real estate services are provided. Known adverse facts about a property must also be disclosed under the laws governing residential property disclosure, compiled in title 66, chapter 5, part 2, but licensees shall not be obligated to discover or disclose latent defects in a property or to advise on matters outside the scope of their real estate license.

(b) The disclosure of agency status pursuant to subsection (a) must be confirmed in writing with an unrepresented buyer prior to the preparation of an offer to purchase. The disclosure of agency status must be confirmed in writing with an unrepresented seller prior to execution of a listing agreement or presentation of an offer to purchase, whichever comes first. Following delivery of the written disclosure, the licensee shall obtain a signed receipt for the disclosure from the party to whom it was provided. The signed receipt shall contain a statement acknowledging that the buyer or seller, as applicable, was informed that any complaints alleging a violation or violations of § 62-13-312 must be filed within the applicable statute of limitations for the violation set out in § 62-13-313(e). The acknowledgment shall also include the address and telephone number of the commission.

(c) The disclosure of agency or facilitator status, as provided in subsection (a), shall not be construed as or be considered a substitute for a written agreement to establish an agency relationship between the broker and a party to a transaction as referenced in § 62-13-406.

(d) Upon initial contact with any other licensee involved in the same prospective transaction, the licensee shall immediately disclose the licensee's role in the transaction, including any agency relationship, to this other licensee. If the licensee's role changes at any subsequent date, the licensee shall immediately notify any other licensees and any parties to the transaction relative to the change in status.

(e) Real estate transactions involving the transfer or lease of commercial properties, the transfer of property by public auction, the transfer of residential properties of more than four (4) units or the lease or rental of residential properties shall not be subject to the disclosure requirements of §§ 62-13-403, 62-13-404 and this section.


For example: If an owner requests you to list their property for sale the contract would be created between the seller, which is the principal, and the broker of your office, which is the agent. You would be a sub agent of your broker. A listing agreement would be considered an “express” agreement, which is, expressed in writing. In the state of Tennessee all agreements in real estate transactions must be in writing to be enforceable so, implied agreements really do not apply here in the state of Tennessee – so,
GET IT WRITING! An agency relationship is one of trust and confidence between the two parties, a fiduciary relationship.

3. Why is agency law so important?

Agency law identifies the “roles” of each person(s) in a transaction. A clear understanding of your role in a transaction will help you “act” efficiently and effectively for all parties involved.

The concept of agency gives the real estate agent his/her identity and the identity of the other parties involved, making the rights, the duties, and liabilities of all three parties expressed in plain sight for all to see: The Principal, (or employer); The Agent, (or broker); and a third party, The Customer.

The National Association of Realtors Code of Ethics describes the agency relationship this way:

“When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client. This obligation of absolute fidelity to the client’s interests is primary, but it does not relieve REALTORS® of their obligation to treat all parties to a transaction honestly and fairly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS® remain obligated to treat all parties honestly.”

The National Association of Realtors (NAR) has introduced the word “client”. In general terms, the NAR is speaking about the principal. Tennessee law has more specific description of the word “client” as indicated below from the law:

4. Agency Relationships

How are agency relationships created?

When the principal gives authority to the broker to act or perform as his special agent, and the broker agrees to the delegation of authority to act, an agency relationship has been created.

For example, a listing contract is a broker’s employment contract and gives him/her the primary responsibility to find a “ready, willing and able buyer” for the property. If the agency agreement is...
incorporated in the listing contract, this contractual relationship creates a “special agency.” The agency relationship does require a written contract but that’s NOT a guarantee of compensation by the principal. That would be in a different part of the listing contract. In Tennessee, since an agency relationship can only happen with a written bilateral agreement, implied relationships either orally or by actions do not establish any relationship.

Showing listed properties that meet the buyer’s criteria concerning size, location, or price does not create an agency relationship.

Describing the amenities of a property and making factual representations pertaining to its condition does not create an agency relationship.

An agency relationship is not created by preparing a standard “Offer to Purchase” form by inserting the terms of the buyer’s offer into the blank spaces on the form.

An agency relationship is not created by promptly transmitting any and all offers made by the buyer to the seller or the seller’s broker or agent.

All of the above are required by law in a real estate transaction but do not create an agency relationship.

**An agency relationship is created only through a written agreement.**

Implied agency does not create the relationship according to the Tennessee law.

A. **62-13-401. Creation.**

A real estate licensee may provide real estate services to any party in a prospective transaction, with or without an agency relationship to one (1) or more parties to the transaction. Until such time as a licensee enters into a specific written agreement to establish an agency relationship with one (1) or more parties to a transaction, the licensee shall be considered a facilitator and shall not be considered an agent or advocate of any party to the transaction. An agency or subagency relationship shall not be assumed, implied or created without a written bilateral agreement that establishes the terms and conditions of the agency or subagency relationship. The negotiation and execution of either an exclusive agency listing agreement or an exclusive right to sell listing agreement with a prospective seller shall establish an agency relationship with the seller.

When an agency relationship has been created, the real estate practitioner owes a specific set of duties to the client. At this point, it will be helpful to clarify the difference between clients and customers.

A **customer** is a person who is a party to a real estate transaction with the assistance of a real estate practitioner who is not his/her agent. The **customer** is not being represented and does not have the protection of the fiduciary relationship. The agent owes the customer honesty and fairness in dealing.
A **client**, however, is the person who has “**employed**” the agent to perform a service, usually for a fee. Your initial contact with the potential customer or client can determine what sort of relationship will be most beneficial to all parties. The following categories of buyers should become clients:

- Business associates
- Friends and relatives
- Previous clients
- Buyers with whom the agent has a planned future business relationship
- Buyers who desire representation as clients

Buyers met through an open house or who call for information on a listing must be given customer-level service. To help you recognize agency relationships, remember that you can give **advice** to clients but only **information** to customers.

Your firm should have a “developed policy” that specifies all the alternative agency relationships it intends to provide to the public.

## 5. Single Agency

**Single Agency** is the practice of representing either the seller or buyer, but never both in the same transaction. The **seller agency relationship** - where all sellers are clients and all buyers are customers - is the **most common**. Because the broker is trying to find a “ready, willing and able buyer” for the seller, the buyer must understand that the sales associate showing properties represents the seller. The broker cannot advise the buyer. The broker is representing the seller in a **fiduciary capacity**. It is the broker’s responsibility to inform the prospective buyer verbally prior to any real estate services being rendered. This is the nature of the relationship he/she has with the seller. The **priority** of a seller agency agreement is to market the property for your client, the seller. In a true single agency firm, agents do not normally work with buyers as anything but as customers, and do not offer dual agency.

There have been scores of lawsuits brought against real estate practitioners who have had their licenses “revoked” because buying customers believed the seller-agent was “on their side”.

Tennessee law requires disclosure verbally when you first come in contact with a potential buyer plus an explanation of agency options available.


(a) If a licensee personally assists a prospective buyer or seller in the purchase or sale of a property and the buyer or seller is not represented by this or any other licensee, the licensee shall verbally
Prior to the buyer signing a contract the law further requires that a disclosure form be signed by the buyer disclosing that he/she is aware that you are representing the seller. Buyers have a right to expect professional service from the agent and have their requests for public information promptly fulfilled.

The exclusive buyer representation agreement would be a single agency relationship with a buyer. 1260-02-.36 in the TREC law rules lists three items that such an agreement must advise and confirm in writing with a buyer.

B. 1260-02-.36 EXCLUSIVE BUYER REPRESENTATION AGREEMENTS.

An exclusive buyer representation agreement is an agreement in which a licensee is engaged to represent a buyer in the purchase of a property to the exclusion of all other licensees. When entering into any such agreement a licensee must advise and confirm in writing to such buyer the following:

a) that the buyer should make all arrangements to view or inspect a property through the licensee and should not directly contact other licensees;
b) that the buyer should immediately inform any other licensee the buyer may come into contact with (for example, at an open house) that he or she is represented by the licensee; and
c) whether the buyer will owe a commission in the event the buyer purchases a property without the assistance of the licensee through another licensee or directly from an owner.


This rule does not indicate these requirements with other buyer agency relationships, but only with exclusive buyer agency relationships. With single agency relationships with the buyer, the agent’s primary duty is to find property suitable for the buyers needs while their fiduciary responsibility is to the buyer. 62-13-405 above would apply to buyer representation the same as it does to seller agency representation.

There are a few agencies in Tennessee that offer only representation of buyers and no representation to sellers.

6. Sub Agency

This is the practice of acting as the cooperating agent of another agent in a real estate transaction.

It the past, it used to be “common practice” for the listing contract to authorize the appointment of sub-agents through the use of the Multiple Listing Service of the local real estate board or association. By making listed properties available through the MLS system, all participants had the opportunity to show
the property to potential purchasers. With the unilateral agreement of sub agency the seller knew that
the practitioner showing his property was, in fact, representing him. This system was great for sellers
because it allowed a much broader market of buyers who might be interested in purchasing their
property.

In 1992 the National Association of Realtors changed its MLS policy to read:

**NAR’s multiple listing policy shall be modified to delete the mandatory offer of sub agency and make
offers of sub agency “optional”. Participants submitting listings to the MLS must, however, offer
cooperation to other MLS participants in the form of sub agency or cooperation with buyer agents or
both. All offers of sub agency or cooperation made through an MLS must include an offer of
compensation.**

Although not everyone is a member of NAR, this policy is available in today’s market. Many Agencies have
now made the decision that sub agency offers to agents of participating MLS offices may open too many
opportunities for liability to the listing broker and their company, and are therefore not offering sub
agency unilaterally through the MLS system.

7. Dual Agency

The practice of representing both the seller and buyer in the same transaction with the “knowledge
and consent” of all parties prior to representation (services being rendered) is called **dual agency**. This
practice is **allowable** under Tennessee Real Estate Law as indicated in 620-13-401 below.

If the broker acts for both the seller and the buyer without knowledge or consent of both parties,
he/she is an **undisclosed dual agent** and may considered to be in **breach** of the license law.

Undisclosed dual agency can result from any one of the following:

- A cooperating broker, who is a subagent and owes fiduciary duties to the seller, represents the
  buyer in the transaction.

- A broker purchases property listed with his/her firm without the knowledge and consent of
  his/her principal.

- An in-house sale, in which different salespersons from the listing office represent the seller and
  buyer. (Each state has, in some cases, different interpretations of dual agency. Be sure to
  consult your state law book for the interpretation in your area.)
The above definitions cover the different types of undisclosed dual agency but you must remember that in Tennessee, because of how the law was written, undisclosed dual agency seems to be an impossibility.

Real estate practitioners must be careful not to make statements that, in the heat of the deal, might be taken as advice. This, under some circumstances, could breach any existing agreements or in-fact create legal situations that may void the rights to any commissions by leading the buyer into believing there is representation.

Additionally, the law requires verbal disclosure of agency relationships available prior to any real estate services being offered. In paragraph (a) below it clearly spells out the duties of an agent when first coming in contact with a possible client or customer.

**Written disclosure** is required prior to any contract being signed by either party to the contract in paragraph (b) below. 62-13-401. Creation.

A real estate licensee may provide real estate services to any party in a prospective transaction, with or without an agency relationship to one (1) or more parties to the transaction. Until such time as a licensee enters into a specific written agreement to establish an agency relationship with one (1) or more parties to a transaction, the licensee shall be considered a facilitator and shall not be considered an agent or advocate of any party to the transaction. An agency or subagency relationship shall not be assumed, implied or created without a written bilateral agreement that establishes the terms and conditions of the agency or subagency relationship. The negotiation and execution of either an exclusive agency listing agreement or an exclusive right to sell listing agreement with a prospective seller shall establish an agency relationship with the seller.


Paragraph (c) further distinguishes the difference in the first 2 paragraphs. Paragraph (d) further spells out the agents’ responsibility at initial contact with other licensees or if the agent’s role changes during the transaction period. Paragraph (e) limits these disclosures by the type of transaction an agent is involved in.

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62-13-405.  Written disclosure.

(a) If a licensee personally assists a prospective buyer or seller in the purchase or sale of a property and the buyer or seller is not represented by this or any other licensee, the licensee shall verbally disclose to the buyer or seller the licensee’s facilitator, agent, subagent or designated agent status in the transaction before any real estate services are provided. Known adverse facts about a property must also be disclosed.
under the laws governing residential property disclosure, compiled in title 66, chapter 5, part 2, but licensees shall not be obligated to discover or disclose latent defects in a property or to advise on matters outside the scope of their real estate license.

(b) The disclosure of agency status pursuant to subsection (a) must be confirmed in writing with an unrepresented buyer prior to the preparation of an offer to purchase. The disclosure of agency status must be confirmed in writing with an unrepresented seller prior to execution of a listing agreement or presentation of an offer to purchase, whichever comes first. Following delivery of the written disclosure, the licensee shall obtain a signed receipt for the disclosure from the party to whom it was provided. The signed receipt shall contain a statement acknowledging that the buyer or seller, as applicable, was informed that any complaints alleging a violation or violations of § 62-13-312 must be filed within the applicable statute of limitations for the violation set out in § 62-13-313(e). The acknowledgment shall also include the address and telephone number of the commission.

(c) The disclosure of agency or facilitator status, as provided in subsection (a), shall not be construed as or be considered a substitute for a written agreement to establish an agency relationship between the broker and a party to a transaction as referenced in § 62-13-406.

(d) Upon initial contact with any other licensee involved in the same prospective transaction, the licensee shall immediately disclose the licensee’s role in the transaction, including any agency relationship, to this other licensee. If the licensee’s role changes at any subsequent date, the licensee shall immediately notify any other licensees and any parties to the transaction relative to the change in status.

(e) Real estate transactions involving the transfer or lease of commercial properties, the transfer of property by public auction, the transfer of residential properties of more than four (4) units or the lease or rental of residential properties shall not be subject to the disclosure requirements of §§ 62-13-403, 62-13-404 and this section.


8. No Agency

No Agency is the practice of acting as a middleman or consultant to render certain specific services in a real estate transaction without an agency relationship with any party (facilitator concept). The practitioner’s task is to bring both parties to the table and get an agreement.

The practitioner must be cautious to not unduly influence either party or otherwise facilitate the transaction. This concept may also be referred to as a transaction broker. Both titles are mentioned in the law and rules. As stated above, requirement of disclosure is required prior to any contract being signed by either party.
9. Designated Agency

Tennessee law allows the use of Designated Agency. This practice allows the broker to ‘designate’ an agent to represent a party to a transaction as the sole representing agent and to the exclusion of other agents in the same office. This makes room for both the buyer and the seller to be represented in a single transaction by different agents in the same office.

The broker can create a company policy that establishes these types of relationships or on an individual basis in a case-by-case situation. The law further states that the broker is not considered a dual agent in designated agency cases but it also states that duties to the prospective clients are not reduced because of the designated agency practice. This rule further deletes any common law references to imputed knowledge rules for the managing broker.


(a) A licensee entering into a written agreement to represent any party in the buying, selling, exchanging, renting or leasing of real estate may be appointed as the designated and individual agent of this party by the licensee's managing broker, to the exclusion of all other licensees employed by or affiliated with the managing broker. A managing broker providing services under this chapter shall not be considered a dual agent if any individual licensee so appointed as designated agent in a transaction, by specific appointment or by written company policy, does not represent interests of any other party to the same transaction.

(b) The use of a designated agency does not abolish or diminish the managing broker's contractual rights to any listing or advertising agreement between the firm and a property owner, nor does this section lessen the managing broker's responsibilities to ensure that all licensees affiliated with or employed by the broker conduct business in accordance with appropriate laws, rules and regulations.

(c) There shall be no imputation of knowledge or information among or between clients, the managing broker and any designated agent or agents in a designated agency situation.


10. Duties to your Client and Customer

The duties of reasonable care, disclosure of adverse facts, accounting, confidentiality, honesty and good faith, disclosure of accurate information and accounting are owed to all parties of the transaction.
A real estate practitioner who becomes an agent of a seller or buyer is considered a fiduciary, which is a person who holds something in trust for another, and owes seven specific duties to the client: those mentioned below plus loyalty and obedience.

Any failure on the part of the agent to faithfully perform these duties can constitute fraudulent and dishonest dealings (63-13-312(b). Below is the actual description as written in the law:


A licensee who provides real estate services in a real estate transaction shall owe all parties to the transaction the following duties, except as provided otherwise by § 62-13-405, in addition to other duties specifically set forth in this chapter or the rules of the commission:

(1) Diligently exercise reasonable skill and care in providing services to all parties to the transaction;

(2) Disclose to each party to the transaction any adverse facts of which the licensee has actual notice or knowledge;

(3) Maintain for each party to a transaction the confidentiality of any information obtained by a licensee prior to disclosure to all parties of a written agency or subagency agreement entered into by the licensee to represent either or both of the parties in a transaction. This duty of confidentiality extends to any information that the party would reasonably expect to be held in confidence, except for information that the party has authorized for disclosure, information required to be disclosed under this part and information otherwise required to be disclosed pursuant to this chapter. This duty survives both the subsequent establishment of an agency relationship and the closing of the transaction;

(4) Provide services to each party to the transaction with honesty and good faith;

(5) Disclose to each party to the transaction timely and accurate information regarding market conditions that might affect the transaction only when the information is available through public records and when the information is requested by a party.

(6) Timely account for trust fund deposits and all other property received from any party to the transaction; and

(7) (A) Not engage in self-dealing nor act on behalf of licensee’s immediate family or on behalf of any other individual, organization or business entity in which the licensee has a personal interest without prior disclosure of the interest and the timely written consent of all parties to the transaction; and

(B) Not recommend to any party to the transaction the use of services of another individual, organization or business entity in which the licensee has an interest or from whom the licensee may receive a referral fee or other compensation for the referral, other than referrals to other licensees to provide real estate services under this chapter, without timely disclosing to the party who receives the referral the licensee’s interest in the referral or the fact that a referral fee may be received.


Any licensee who acts as an agent in a transaction regulated by this chapter owes to the licensee's client in that transaction the following duties, to:

(1) Obey all lawful instructions of the client when the instructions are within the scope of the agency agreement between licensee and licensee's client;

(2) Be loyal to the interests of the client. A licensee must place the interests of the client before all others in negotiation of a transaction and in other activities, except where the loyalty duty would violate licensee's duties to a customer under § 62-13-402 or a licensee's duties to another client in a dual agency; and

(3) (A) Unless the following duties are specifically and individually waived, in writing by a client, a licensee shall assist the client by:

(i) Scheduling all property showings on behalf of the client;

(ii) Receiving all offers and counter offers and forwarding them promptly to the client;

(iii) Answering any questions that the client may have in negotiation of a successful purchase agreement within the scope of the licensee's expertise; and

(iv) Advising the client as to whatever forms, procedures and steps are needed after execution of the purchase agreement for a successful closing of the transaction.

(B) Upon waiver of any of the duties in subdivision (3)(A), a consumer shall be advised in writing by the consumer's agent that the consumer may not expect or seek assistance from any other licensees in the transaction for the performance of the duties in subdivision (3)(A).

Unit Two

Quiz

1. Which of the following creates an agency relationship?
   a. None of the below.
   b. Preparing a standard “offer to purchase” form by inserting the terms of the buyer’s offer into the blank spaces.
   c. Transmitting any and all offers made by the buyer to the seller or the seller’s agent.
   d. Signing a written, bilateral agreement between the principal and the principal broker.

2. Which of the following should be given customer level services?
   b. Friends and relatives.
   c. Previous clients.
   d. Buyer met at an open house.

3. Which of the following portions of chapter 13, title 62 of the Tennessee law requires the agent to disclose agency relationships when first contact is made with a potential customer or client?
   a. 62-13-312(b)
   b. 62-13-404
   c. 62-13-312(a)
   d. 62-13-405

4. What duties are owed only to a principal in an agency agreement?
   a. Loyalty, obedience and disclosure
b. Obedience and loyalty
c. Disclosure, confidentiality and loyalty
d. Reasonable care, accounting and disclosure

5. Acting as the cooperating agent of another agent in a real estate transaction is known as?
   a. Sub agency
   b. Cooperative agency
   c. Buyer agency
   d. Dual agency

6. When entering into an exclusive buyer agency agreement a licensee must advise the buyer of which of the following?
   a. That the buyer should make all arrangements to view or inspect property through the licensee and not directly contact other licensees
   b. The buyer should immediately inform any other licensee the buyer may come into contact with that he or she is represented by the licensee
   c. Whether the buyer will owe a commission in the event the buyer purchases a property without the assistance of the licensee through another licensee or directly from an owner
   d. All of the above

7. The practice of representing either the buyer or the seller in a single transaction is known as?
   a. Dual agency
   b. Single agency
   c. Documented agency
   d. Limited agency
Unit Three
Advertising Review

In today’s real estate world practices have changed with the increasing use of electronic media. Our ability to communicate with others has drastically changed with the advent of social media, call capture programs and various lead generation software programs. The use of different media has made it possible to be in touch with a greater number current and potential clients and customers with far greater regularity than our capabilities were in the past.

The use of the internet for advertising purposes has certainly affected not only the way we advertise but has also required a shift in planning for our marketing expenses. As some may remember, when the National Realtor™ Association first put residential listed properties on the internet for all to see, we did not feel an impact. As this practice grew and additional services became available, more and more people were looking to the internet for information including real estate information.

From there, we found ourselves in the awkward position of speaking to people that had acquired information about our local market that could match or exceed our personal knowledge. This changed the real estate industry. We went from keepers of the market knowledge (and the only outlet available to find this knowledge) to a more equal position of knowledge bearers shared with those interested in our markets. Those who made the effort understood our market before they ever stepped foot on our common geographical grounds. This proved to be a real boon for those moving to new markets. This was due to the continually increasing transience of our society that also required a new level of professionalism among real estate agents.
No longer could we sit in the office with total control of market information that forced real estate buyers to come to us to find suitable housing. As an instructor for over 20 years I have heard countless horror stories from people that moved to a new market only to be faced with the dilemma of working with sales people whose knowledge seemed limited to their own listings or to just those of their firm. One story that sticks with me is of an agent not promptly presenting offers – this case had a potential buyer who waited for over a week just to find out the agent was holding their offer until another offer could come in so that both could be presented at the same time. I’m sure all of us could add to these stories of unprofessional services rendered in the real estate market. Although this required change, it also required an essential growth in professionalism within our industry. This is now looked on as a needed improvement in the industry.

With this change came new ideas and new electronic challenges in the market. These challenges also required our Real Estate Commission to look at regulations in marketing and advertising. This was to assure the public was properly aware of changes and were not lead astray by errant practices and procedures. Rules have changed and policies have been put in place.

Below we will look at these changes.

1. Advertising rules of the Real Estate Commission


(a) Whenever the contractual relationship between a broker and affiliate broker is terminated, the present broker shall immediately sign and date the change of affiliation form prescribed by the commission. The affiliate broker may act under a contract with another broker upon completion and transmittal to the commission of the form, accompanied by the fee established pursuant to § 62-13-308. The affiliate broker shall assure that the completed form and fee are promptly transmitted and that the affiliate broker’s license is prominently displayed in the new broker’s principal place of business.

(b) Licensees may not post signs on any property advertising themselves as real estate agents unless the firm’s name appears on the signs in letters the same size or larger than those spelling out the name of the licensee.

This mention in the law in part (b) shows requirements for agents advertising themselves. The law requires that all advertising must have the firm name in the advertisement and be the same size font, or larger, than the agent’s name or any other part of the advertisement.

62-13-301 which covers licensing also mentions advertising and that you may not advertise without first obtaining a license.

The rules of the Commission are listed below:
B. 1260-02-.12 ADVERTISING.

(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, purchase, exchange, rent or lease, 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 transaction 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 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.


2. General Principals

Under the general principals of advertising there are a number of things to review. We may not advertise in any manner that does not indicate that we are in the real estate business. All advertising is under the direct supervision of the principal broker and must include the firm name and the telephone. This broker’s responsibility is important. In the event of a breach of the rule, the broker is the responsible party. In such an instance the agent is also liable, but T.R.E.C. does hold the principal broker of a firm responsible and liable for all real estate activities carried out by agents licensed under them.

Rule 1260-02-.12(c) above, points out that we must have a written agreement from the property owner to advertise the property. Although this rule has been in force for years, there are still times that we see the rule broken when we look at the disciplinary actions taken by the Commission.

(d) Is a relatively new rule with the addition of internet advertising. In order to advertise listings belonging to another, you must have authority from the property owner. This must be in writing and within the listing agreement or on a separate written document.

(e) Enforces the law contained in 62-13-312 (1), (2), (3) and (4).

3. Advertising franchises and cooperative groups
Advertising for franchise’s or trade names has not changed in recent history. You must indicate in all advertising the company name and phone number as registered with the Commission and clearly state that “each office is independently owned and operated” so that it can be easily found in the ad.

It also states in this section that cooperatives must adhere to the rules as do franchises. Some teams will fall under this rule the same as the franchise. There are additional regulations for teams that we will discuss below.

Internet advertising of listings must have the name of the listing office and phone number on each page of the information. It must also state that some, if not all, of the listings advertised may not belong to the company that is advertising. The information must be kept current and accurate however 2012-CPS-001 as discussed in chapter one requires the accuracy of the information is the responsibility of the listing office that owns the listing.

The last section of this rule (5) deals with Guarantees, Claims and Offers. Section (a) prohibits such claims and offers and section (b) requires 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. These pertinent details are further listed in 1260-2-.33 of this rules section. This certainly may increase your advertising costs to add this additional information.

The rules further address any gifts or prizes offered as an incentive for purchasing real estate. The following rule addresses the issue.

A. 1260-02-.33 ADVERTISING – Gifts and Prizes

- A licensee may offer a gift, prize or other valuable consideration as an inducement to the purchase, listing, or lease of real estate only if the offer is made:
- Under the sponsorship and with the approval of the firm with whom the licensee is affiliated; and
- In writing, signed by the licensee, with disclosure of all pertinent details, including but not limited to:
  - Accurate specifications of the gift, prize, or other valuable consideration offered;
  - Fair market value;
  - The time and place of delivery; and
  - Any requirements which must be satisfied by the prospective purchaser or lessor.


4. Team participation in the real estate field

With the advent of teams in our industry, additional situations require correct advertising and activities by team members. Team members that are performing any of the acts covered in 62-13-102(4)(A) and
(B), namely list, sell, purchase, exchange, lease or option to buy, sell, rent or exchange real estate or the improvements thereon, or any time share interval for another for a fee. When a person falls into these situations they must be licensed. Other positions on the team may not require licensing. It is imperative to be sure those activities are being carried out by the properly licensed persons.

Unlicensed members may not:

- A). make cold calls by phone or in person
- B). show properties for sale or lease to perspective purchasers
- C). host open houses, home show booths at fairs
- D). discuss or explain listings, offers, contracts, or other similar matters with persons outside the firm
- E). negotiate any terms of a real estate transaction
- F). negotiate or agree to any commission split or referral fee on behalf of a licensee
- G). be paid compensation which is dependent upon, or directly related to, a real estate transaction.

Unlicensed members may be paid by a licensee for clerical and secretarial activities conducted. They cannot be paid for activities that require a license. So the activities that may be carried out by unlicensed member of a team are:

1. Answer the phone, forward calls and give information contained on the listing agreement as limited by the broker
2. Fill out and submit listings and changes to any MLS service
3. Follow up on loan commitments after a contract has been negotiated and generally secure status reports on the loan progress
4. Assemble documents for closing
5. Secure public information from courthouses, utility districts, etc.
6. Have keys made for listings
7. Place ads which have been approved by the Principal Broker (this is not the team leader but the office Principal Broker)
8. Receive, record, and deposit earnest money, security deposits and advance rents under the direct supervision of the Principal Broker
9. Type contract forms for approval by licensee and Principal Broker
10. Monitor licenses and personnel files
11. Calculate, print or distribute commission checks
12. Place signs on property
13. Order repairs as directed by licensee
14. Prepare for distribution fliers and promotional information which have been approved by Principal Broker
15. Deliver documents and pick up keys
16. Place routine telephone calls on late rent payments
17. Gather information for a CMA
18. Unlock property under the direction of a licensee
19. Disclose the current sales status of a listed property

These activities are listed as actions that may be completed by unlicensed assistants and would apply the same to team members. You must be extremely careful of the activities performed by unlicensed members. Those actions can cause the loss of your license.

Unit Three

Quiz

1. Who is ultimately responsible for the accuracy of advertising in real estate?
   a. The listing agent
   b. The team leader
   c. The Principal Broker of the office
   d. Both a and c

2. In order to advertise a listing listed by a different brokerage than your own, whose permission must be obtained in writing?
   a. Property owner
   b. Principal Broker of your office
   c. The listing agent
   d. All of the above

3. In the Rules of the Commission Chapter 1260-2-.33, what are the four minimum details agents must provide prospective recipients of a gift or prize?
   a. Accurate specifications, fair market value, time and place of delivery and any additional requirements that must be satisfied

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D&D School of Real Estate
www.ddschoolofrealstate.com
800-282-9375
b. There are no minimum details  
c. Actual value, supplier of gift or prize, any affiliation with the supplier and place of delivery  
d. Actual value, additional requirements to receive gift or prize, company name and phone number and place of delivery

4. A team leader asked an unlicensed member of the team to sit an open house next Sunday afternoon. This team member has which of the following options?  
a. The team member can refuse because they are an independent contractor and can choose if they want to spend their Sunday at an open house  
b. They can sit the open house even without a license as long as they only hand out information sheets but do not answer any question about the property  
c. They cannot sit the open house without first obtaining a license  
d. none of the above

5. When advertising a team which of the following is permissible?  
a. The team name can be substituted for the office name as long as the licensed team leader is a broker  
b. The company name and phone number must be part of the advertising  
c. The company name only has to appear on the front page of the advertising as long as the team name is clearly displayed on all other pages of the advertisement  
d. Team leaders and licensed members only can be displayed in the advertising

6. A team has a professional marketing person on board. The duties of this person are to write, edit, layout and produce all the teams advertising. Which of the following is true?  
a. These are not all duties allowed under the rules for an unlicensed team member to do  
b. This team member must be licensed under Tennessee law  
c. As long as the advertising is approved by the team leader this is permissible  
d. This is only permissible if the Principal Broker approves the advertising prior to its public display

7. Under Tennessee law who is able to gather information for a CMA  
a. Any licensed team member  
b. Agents that are making the listing presentation  
c. Gathering information may be performed by any team member in this situation  
d. Agents with experience must be involved in this process
Unit Four

Review of Listing Contract Basics

(The example contract used in this unit is for reference purposes only. This unit is designed to assist the Agent in understanding the different tenets of a listing contract, not “how to” or “which particular” contract to use in the market place.)

1. Contract Law Basics

A contract is a voluntary agreement or promise between legally competent parties “to perform” or to “refrain from” performing some legal act and it must be supported by legal consideration. Contracts are expressed in writing or orally, or they are implied. For our purposes in real estate we will only discuss express contracts and only those expressed in writing since the statute of frauds requires all listing contracts to be in writing to be enforceable in court.

(a) No action shall be brought:

(1) To charge any executor or administrator upon any special promise to answer any debt or damages out of such person's own estate;

(2) To charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person;

3) To charge any person upon any agreement made upon consideration of marriage:

(4) Upon any contract for the sale of lands, tenements, or hereditaments, or the making of any lease thereof for a longer term than one (1) year; or

(5) Upon any agreement or contract which is not to be performed within the space of one (1) year from the making of the agreement or contract; unless the promise or agreement, upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person lawfully authorized by such party. In a contract for the sale of lands, tenements, or hereditaments, the party to be charged is the party against whom enforcement of the contract is sought.

The above excerpt from Tennessee Code, particularly paragraph (4), supports the necessity for real estate contracts to be in writing to be enforceable in court.

Contracts are bilateral or unilateral. In most cases our contracts in today’s real estate business are bilateral, meaning that all parties to the contract have made promises to the other party in exchange for a return promise. We will only deal with bilateral contracts in the context of this lesson.

Contracts are either executory or executed. A contract becomes a contract when the parties have agreed to all the tenants of the contract in writing. This can be most easily described as that time of acceptance, when all parties have signed the contract. Now the contract is said to be executory or in the executory period. The parties have agreed to all the promises but they are not yet fulfilled. Performance by one or more of the parties is required to complete the promises in the contract. Once all the promises are accomplished the contract is ready to be completed. Once completed, it becomes an executed contract. The contract is fully performed, and in the case of a sale of real estate, the deed has been exchanged for whatever the valuable consideration was promised in the contract.

There are elements necessary to assure we have a valid contract. Those elements are:

1. **Offer and Acceptance**

*OFFER* made by one party (offeror) with a request for something in exchange for the promises made in the offer.
**Acceptance** is a promise by the second party (offeree) to be bound by the exact terms proposed by the offeror.

2. Rejection

The offer may be rejected, revoked or not answered (failure to accept) within the time frame allowed by the contract. Remember, a counter offer is a rejection of the original offer by the offeree and therefore relieves the offeror from any obligation that may have been promised in the offer.

3. Consideration

Contracts must have some sort of consideration to be valid. Valuable consideration is something of value. In real estate contracts we normally receive an earnest money deposit from the original offeror in the form of a check or possibly cash. We must realize that anything of value can and must be accepted from the offeror. A watch, car title or even livestock would be considered ‘valuable consideration’ and could validate a contract under this necessary element. It would be wise to further explain how the consideration will be cared for during the executory period of the contract. Most real estate practitioners are not prepared to handle valuable consideration other than that which can be deposited in an escrow account.

4. Legally competent parties

Parties to the contract must be of legal age and of sufficient mental capacity to understand the actions and consequences of said contract. Sufficient mental capacity includes that the party is not under the influence of drugs or any chemical substances as well as any mental health condition that would prohibit them from making an informative decision. *Reality of consent* is a legal term meaning that the party is able to make a prudent and knowledgeable decision and that they weren’t deprived by a mistake, misrepresentation, fraud, duress or undue influence. Any of these situations could render the contract as invalid or voidable by one of the parties.

Contracts are further affected by the following conditions:

5. Discharge of Contracts

Contracts may be discharged or terminated by any of the following:

*Performance of the contract*: Our best choice, meaning the deal will be closing.
**Assignment:** Contracts may be assigned or the rights may be transferred to another party (Assignee).

**Breach of a contract:** Default by either the buyer or the seller. If there is a breach the other party have three options.

1. *Rescind the contract and give the valuable consideration back to the party that deposited it.*
2. *Sue the other party for specific performance, that is force them to complete the contract.*
3. *Sue the other party for compensatory damages*

In the case of a seller in a real estate transaction there is an additional option and that is to *declare the contract forfeited and retain the earnest money.*

**Statute of Limitations:** This is a time frame in which to enforce the terms of the contract. This will vary under state law from contract to contract.

### 6. Listing Contracts

The listing contract is the beginning of a transaction, which we all hope leads to the consummation of a sale and the paying of a commission. We will use the enclosed listing contract as our example for discussion. There is no specific form contract required under Tennessee Real Estate law. The enclosed contract is an example only and is similar to most listing contracts in the market place. Since this contract is between the broker and the seller, there is no need to have a standardized contract in a given area. However, having a standardized contract does limit the need for interpretations throughout the industry.

First we will look at the different types of listing contracts:

**A. Exclusive right to sell listing contract:**

This is an exclusive contract meaning that the seller has hired one broker to market the seller’s property. In the event of a sale, regardless where the buyer came from, the broker is entitled to a commission. The sale must be accepted during the time of the contract. The closing may not occur until after the contract time has expired but the acceptance happened within the time frame so the commission was earned. Most listing contracts indicate the commission is earned by the broker for producing a ready, willing and able buyer, at terms acceptable to the seller. Tradition is such that we wait until the closing to collect the commission even though it is actually earned at an earlier date. This is the **best** listing contract for both the seller and the broker as it commits both parties to work towards the closing of a sale. The broker will work hard since he/she knows that their hard work will be rewarded in the event of a sale no matter who
produces the buyer. The seller can also have more confidence in their broker and expect the marketing effort to be a 100% effort since the commission is assured in the event of a sale.

B. Exclusive agency listing contract:
In this listing agreement there is one broker hired to market the property and is entitled to a commission if the buyer is procured by the broker or any other broker. However, the seller reserves the right to procure the buyer themselves and not pay a commission. The use of this contract has grown in the recent past even though it restricts the efforts of the broker. The seller may feel they can out sell the professional but the odds are against them and the marketing effort may be limited due to the competition the seller represents.

C. Open listing:
This is not really a contract. The seller agrees to pay a commission to whoever produces a buyer. There is no marketing effort on the part of any broker, which is certainly a detriment to the seller. Our primary work in the real estate industry is to market properties. In my opinion, not taking advantage of the professional approach to marketing but still agree to pay a commission is not a reasonable position for a seller to put their self in. In the event an agent does work in this area it would be wise to get a commission payment agreement from a seller prior to presenting their property to a prospective purchaser.

D. Contract terms:
A few more basics from contract law are covered here.

Contract law and Tennessee law require all listing contracts to have a beginning and ending date with no automatic renewal clauses.

1. 62-312-(9)

(9) Using or promoting the use of any real estate listing agreement form, real estate sales contract form, or offer to purchase real estate form which fails to specify a definite termination date;

Contract law further requires that in order for a contract to be valid all the parties to the contract must sign it. This requires the principal broker of the office and the sellers to sign the contract to be valid. This is not a standard practice in Tennessee but it should be for the protection of the broker and the broker’s agent.

Statute of frauds requires the contract to be in writing.

State and Federal law requires certain disclosures; lead base paint, property condition report, synthetic stucco, septic tank, exterior injection well and others.

State law further requires agents to disclose any adverse conditions that may be present.
8. Working with the Listing Contract:

Using the Exclusive Right to Sell listing contract attached, the following discussion will go line by line through the contract. At this point in the course you need to take the time to review each area of the contract and assure yourself you completely understand the content.

Lines 1 through 4

Here we list the broker (listing company) and address; the seller/owner (should be all names on the deed) and the address.

Lines 5 through 10

A seller grants the broker the exclusive right to sell the described property; the property address (sufficient legal description in Tennessee) and additionally the deed book and page the property is recorded in the county it is located in.

Line 11

The listing price.

Line 12

Term or length of the contract. Contracts must have a beginning and ending date to be valid.

Lines 13 through 19

This is commonly referred to as the “broker protection clause”. This paragraph insures the broker’s commission if the property is sold during the time agreed to (fill in on line 13) to any party directly or indirectly introduced to the party during the listing period. There are no limits as to how the proof of introduction is to be obtained or if there is a need for any records to prove introduction. To prove the introduction, it would be wise for an agent to keep a list of all parties the property was shown to during the listing period. This may be the proof needed to enforce this paragraph in a court of law. There is further a cancellation fee the broker may charge to
release the seller from this agreement. The last sentence negates the entire clause should the property be listed with another licensed broker.

Line 20

Predetermined delivery date of the property by the seller.

Line 21

Financial terms acceptable to the seller i.e. type of financing seller would accept. Any financing not preprinted must be added on line 22 such as owner financing.

Lines 23 through 41

This clause covers fixtures and personal property included in the sale of the property. The preprinted list in this clause is fairly extensive and inclusive of those articles normally included in the sale of property. Additional items may be added on lines 33 and 34 and items that will not be included should be listed on lines 36 and 37. To assure no ambiguity any items listed in lines 23 through 31 should be stricken as well as listed on lines 36 and 37. Lines 38 through 41 cover any leased items that may be on the property. It is important the agent be sure this list is accurate as to any leased items for the benefit of both the seller and the buyer. Line 41 clearly makes it the responsibility of the seller to pay the balance on any items where the lease is not assumable. This also then assumes that if assumable the seller will have no additional responsibility to the leasing company for any item leased that is assumed by the buyer. It would be a wise agent that directs sellers to assure themselves as to the ability to assume any leases they may intend to transfer and if they would have any responsibility after the assumption.

Lines 42 through 59

Compensation is covered in this clause. This makes it a very important clause for most agents. First, there are blanks for the amount of commission and whether it will be a percentage of the sales price or a flat fee. Both types of payment are legally accepted. The reason the blanks are there is to show that the commission was negotiated between the parties to the contract that assures compliance with anti-trust laws. There can also be an additional fee paid at closing to the broker. The next sentence explains that the seller consents to compensation from both parties in an exchange based on the value of both properties. Lines 46 through 48 are agreement from the seller to convey the property with a warranty deed. Lines 48, 49, 50 and 51 state that the compensation is not set in any manner other than agreement between the parties, further anti-trust language, clearly state fair housing practices and no discrimination will occur and that a request from the seller to observe discriminatory practices will not be granted since it is a violation of the law.

Lines 52 through 55
These lines set the record straight that in the event the seller unlawfully fails to close due to a breach that the commission is still due and payable equal to what would be due if the sale had closed. Also that the commission will be payable without demand, this should avoid the need for a lawsuit.

**Lines 55 through 59**

These lines obligate the seller to pay all costs incurred in the marketing process should the seller want to terminate before the natural closing of the contract plus reasonable attorney’s fees and court costs.

**Lines 60 through 79**

The responsibilities of the parties to the contract are here and listed.

**Broker agrees:**

- File listing in MLS
- Timely notice to MLS of status changes
- Use best efforts to produce a buyer
- Divide compensation with other brokers in the sale if applicable
- Place a **For Sale** sign on property (written agreement as required by TN Code) and a lock box
- Remove all other real estate signs
- Disseminate info from Residential Property Condition Disclosure or exemption form and the MLS profile sheet
- Disseminate lead based paint disclosure, exterior injection well percolation test and soil absorption rate disclosure
- Exhibit property to any prospective buyer
- Have interior and exterior photographs, videos or audio recordings created for advertising, as broker deems appropriate.

**Seller agrees to:**

- Assist broker in any reasonable way to sell property
- Refer all inquiries to broker
- Authorize broker to provide final sales info to MLS
- Allow property to be shown at all reasonable hours
- Authorize broker to receive on sellers behalf; notices, offers, other documents incidental to the offering and sale
- Keep broker informed as to their whereabouts in order for broker to promptly forward all notices mentioned above

**Lines 80 through 96**

The hold harmless clause is important for the agent, broker and the real estate office. Starting in line 88 the seller agrees to be solely responsible for any misrepresentations or mistakes in
information supplied by them. Seller further agrees to hold the agent, firm and broker harmless and indemnify them from any claim, demand action, liability or proceedings resulting from any omission or alleged omission by seller on the forms mentioned in this clause or any material fact that is known or should have been known by the seller concerning the property and that is not disclosed to agents and to provide defense costs for agents and firm.

Lines 97 through 99
These lines reiterate permission given to broker and agents from sellers that are mentioned in lines 74 and 75 above.

Lines 100 through 102
Seller represents that adequate insurance will be kept in force for any claims of damage, loss or liability arising from the showing of the property.

Lines 103 through 124
Agency definitions are explained for broker, agent for the seller, facilitator or transaction broker.

Lines 125 through 148
The rights owed to all parties to a transaction are explained as outlined in the Tennessee Code.

Lines 149 through 166
Duties owed to a client under a written agency agreement as outlined in the Tennessee Code.

Lines 167 through 178
Seller authorizes broker to appoint a designated agent if the broker deems it necessary and further explains the necessity to default to a facilitator as explained under Tennessee Code 62-13-102(9)(B).

Lines 179 through 181
Seller authorizes broker to accept earnest money (valuable consideration) to be applied to the purchase price. The broker is further authorized to hold the money in an escrow account until disbursed at closing as determined by the purchase offer.

Line 181 and 182
Seller warrants that he/she has marketable title with full authority to execute this agreement and shall convey property with a general warranty deed.
Lines 184 through 189

Seller may or may not agree to provide a home protection plan. One or the other of the ‘boxes’ must be checked.

Lines 190 through 195

Disclaimer as to the fact that this is a legal document, which the agent is not qualified or authorized to give legal advice and that seller is certifying that they have read the contract, accept the terms and received a copy of said contract.

Lines 195 through 204

List any and all information the seller authorizes the broker to disclose that may be deemed to be confidential.

Lines 205 through 217

List all exhibits and addenda attached to the contract.

Line 218 through 257

List any special provisions if conflicting with any paragraph above. The provisions listed will take precedence over the printed paragraph.

Lines 260 through 266

Signature line for the broker should always be signed by the principal broker of the firm, dated and the name of the broker printed. There is no place on the contract for the listing agent to sign since said agent is not a party to the contract. If the agent signs for a broker there should be a properly executed power of attorney recorded in the county records to support the authorization. There is no provision in the Tennessee Code to allow this duty of the principal broker to be passed on to agents under their licensure.

Lines 267 through 277

Signature line for the sellers. All parties listed on the deed must sign this listing contract for it to be a valid contract. If it is not signed by all parties (in most cases both husband and wife) there is a question as to the validity of the contract and therefore a question as to the ability of the broker to enforce the payment of the commission.
EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT
(Seller Agency)

BROKER (listing company):

ADDRESS OF COMPANY:

OWNER / SELLER:

ADDRESS OF OWNER / SELLER:

In consideration of Broker's Agreement to find a ready, willing, and able Buyer, the undersigned Seller hereby grants Broker the Exclusive Right to Sell the hereinafter described Property in accordance with the following terms and conditions:

1. PROPERTY ADDRESS / LEGAL:

_________________________ (City), __________ (State), ___________ (Zip), as recorded in _____________ and further described as:

County Register Office, deed book(s), ___________ page(s), ___________ and further described as:

2. THE LISTING PRICE $_________ (_________ Dollars.)

3. TERM: LISTING DATE ___________ LISTING EXPIRATION DATE ___________

Should the Seller contract to sell or exchange, or contract to lease with option to buy the Property within _______ days after the expiration of this Agreement to any Buyer (or anyone acting on Buyer’s behalf) who has been introduced to the Property, directly or indirectly, during the term hereof, as extended, the Seller agrees to pay the compensation as set forth below. If a contract to purchase is signed before this Agreement expires, the term hereof shall continue until final disposition of Purchase and Sales Agreement. Seller agrees to pay all costs incurred to market the Property as a cancellation fee should Broker consent to release the listing prior to the expiration date. This paragraph shall not apply if the Property is listed with another licensed real estate Broker at the time of such contract.

4. POSSESSION OF PROPERTY to be delivered:

5. TERMS of sale acceptable to Seller (such as FHA, VA, Conventional, etc.):

6. FIXTURES and PERSONAL PROPERTY:

All fixtures, landscaping, improvements, and appurtenances are hereinafter collectively referred to as the “Property.” Property included (if present): all attached light fixtures and bulbs including ceiling fans; permanently attached plate glass mirrors; heating, cooling, and plumbing fixtures and equipment; all doors, storm doors and windows; all window treatments and hardware; all wall-to-wall carpet; range; all built-in kitchen appliances; all bathroom fixtures and mirrors; all gas logs, fireplace doors and attached screens; all security system components and controls; garage door opener(s) and all (at least _______) remote controls; swimming pool and its equipment; awnings; permanently installed outdoor cooking grills; all landscaping and all outdoor lighting; mail boxes; attached basketball goals and backboards; TV antennae and satellite dishes (excluding components); central vacuum systems and attachments.

Other items that remain with the Property at no additional cost to Buyer:

Items that will NOT remain with the Property:

Leased Items: Leased items that remain with the Property are (e.g. security systems, water softener systems, etc.):

If leases are not assumable, it will be Seller’s responsibility to pay balance.

7. COMPENSATION: A total of $_______, or ______% compensation based on the total sales price and an additional _______ fee of $_______ shall be paid by Seller to Broker in readily available funds on the date of Closing of Property as evidenced by delivery of warranty deed and payment of purchase price. In any exchange of the Property, Seller consents to Broker receiving a compensation from both parties based upon the value of both properties.
In the event a Buyer is found for said Property during the period above set out, on the terms and at the price specified herein,
or for a price and upon terms agreeable to Seller, Seller further agrees to convey said Property by warranty deed to such Buyer,
free from all assessments, liens and encumbrances, but subject to all restrictions of record, if any. The compensation payable
for the sale of Property is not set in any manner other than between the Broker and the Seller. The Property is offered without
regard to race, color, religion, sex, handicap, familial status or national origin. A request from a Seller to observe
discriminatory requirements in the sale of the Property will not be granted since it is a violation of the law.

In the event that a ready, willing, and able Buyer is produced and a contract results, the Seller is obligated to compensate the
Broker in the event that Seller unlawfully fails to close by Seller's breach of the Purchase and Sales Agreement. In the event
this occurs, Seller agrees to compensate Broker in an amount equal to the compensation which would have been due and owing
Broker had the transaction closed. Such compensation will be payable without demand. In the event that the Seller terminates
this Agreement before its natural expiration, the Seller agrees to pay all costs incurred to market the Property as a cancellation
fee should the Broker consent to release the listing prior to the expiration date. Seller agrees to pay all reasonable attorneys'fees together with any court costs and expenses which Broker incurs in enforcing any of Seller's obligations under this listing
agreement.

8. RESPONSIBILITIES AND RIGHTS OF THE PARTIES

Broker is hereby granted the authority to file this listing with any Multiple Listing Services (MLS) of which Broker is a
member. Broker shall provide timely notice to MLS of status changes, shall use best efforts to produce a Buyer, and may
divide compensation with other real estate licensees for cooperation in connection with the sale of the Property. Broker shall
offer a cooperative compensation in the amount of ________% of Selling Price or $________ to a Selling Agent or
Facilitator. Seller will assist the Broker in any reasonable way in selling Property and will refer to Broker all inquiries
regarding this Property during the term of the Agreement, and any extensions or renewals thereof, and authorize Broker to
provide final sales information to the MLS for purposes of compiling comparable sales data reports.

Broker is authorized to place a real estate sign and lock box on the Property and to remove all other real estate signs; to
disseminate the Tennessee Residential Property Condition Disclosure, Disclaimer or Exemption form and the Multiple Listing
Profile Sheet as well as the Lead-Based Paint Disclosure form and the Exterior Injection Well, Perculation Test and Soil
Absorption Rate Disclosure form (if either is required by law); to exhibit said Property to any prospective Buyer; and to have
interior/external photographs/videos taken, and/or audio recorded for the creation of any advertising materials of said property to
be used and distributed in promoting the sale and to use same to advertise the Property on the Internet or other broadcast media;
and to do such advertising as Broker deems appropriate. Seller shall allow the Property to be shown at all reasonable hours and
otherwise cooperate with Broker.

Seller agrees that Broker is authorized to receive on behalf of Seller, all notices, offers, and other documents incidental to the
offering and sale of the Property which is covered by this agreement. Seller agrees that such receipt by Broker may be deemed
to be receipt by Seller if such documents so provide or if the law so requires. Seller agrees to keep Broker informed of Seller's
 whereabouts in order for Broker to promptly forward all such notices, offers and other information to Seller.

9. HOLD HARMLESS

Seller agrees to carefully review the information on the Multiple Listing Profile Sheet and to complete either the Tennessee
Residential Property Condition Disclosure, Disclaimer, or Exemption form and to sign said documents. Seller also agrees to
complete the Lead-Based Paint Disclosure and the Exterior Injection Well, Perculation Test and Soil Absorption Rate
Disclosure if required by law. Seller has not advised Broker and/or his affiliated Licensees (hereinafter “agents”) of any defects in
the Property or the improvements located thereon, except as shall be noted on the Multiple Listing Profile Sheet and the
Tennessee Residential Property Condition Disclosure, Disclaimer, or Exemption form signed by the Seller. Seller is not aware
of any other defect or environmental factor which would affect the value or structural integrity of the Property or the health of
future occupants. Seller agrees that Seller shall be solely responsible for any misrepresentations or mistakes on the listing data
wherein Seller has supplied such information on the attached Multiple Listing Profile Sheet, Tennessee Residential Property
Condition Disclosure, Disclaimer, or Exemption form; the Lead-Based Paint Disclosure (if required by law); and the Exterior
Injection Well, Perculation Test and Soil Absorption Rate Disclosure (if required by law). Seller further agrees to hold agents
and firm harmless and indemnify them from any claim, demand, action, liability or proceedings resulting from any omission or
alleged omission by Seller on said forms and/or for any material fact that is known or should be known by Seller concerning
the Property and that is not disclosed to agents and to provide for defense costs including reasonable attorney’s fees for agents
and firm in such an event. Seller is not aware of any other defect, environmental factors or adverse facts (as defined in Tenn.

Seller authorizes Broker and/or his affiliated Licensees to conduct or to allow cooperating brokers to conduct key-entry
showings or “Open Houses” of the Property. Seller also authorizes Broker and/or his affiliated Licensees to place a lock box on

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800-282-9375
said Property for the purpose of conducting or allowing cooperating brokers to conduct key-entry showings of this Property.

Seller represents that adequate insurance will be kept in force to protect Seller in the event of any damage, losses or claims arising from entry to Property by persons through the above use of the key and agrees to hold Broker, its licensees, salespersons and employees harmless from any loss, theft, or damage incurred as a result thereof.

10. AGENCY

A. Definitions.

1. Broker:
   In this Agreement, the term “Broker” shall mean a licensed Tennessee real estate broker or brokerage firm and where the context would indicate, the Broker’s affiliated licensees.

2. Agent for the Seller:
   The Licensee’s company is working as an agent for the Property Seller and owes primary loyalty to the Seller. Even if the Licensee is working with a prospective Buyer to locate property for sale, rent, or lease, the Licensee and his/her company are legally bound to work in the best interests of any Property Owners whose Property is shown to this prospective Buyer. An agency relationship of this type cannot, by law, be established without a written consent.

3. Designated Agent for the Seller:
   The individual Licensee that has been assigned by his/her Managing Broker and is working as an agent for the Seller or Property Owner in this consumer’s prospective transaction, to the exclusion of all other Licensees in his/her company, Even if someone else in the Licensee’s company represents a possible Buyer for this Seller’s Property, the Designated Agent for the Seller will continue to work as an advocate for the best interests of the Seller or Property Owner. An agency relationship of this type cannot, by law, be established without a written agency agreement.

4. Facilitator / Transaction Broker (not an agent for either party):
   The Licensee is not working as an agent for either party in this consumer’s prospective transaction. A Facilitator may advise either or both of the parties to a transaction but cannot be considered a representative or advocate of either party. “Transaction Broker” may be used synonymously with, or in lieu of, “Facilitator” as used in any disclosures, forms or agreements. [By law, any Licensee or company who has not entered into a written agency agreement with either party in the transaction is considered a Facilitator or Transaction Broker until such time as an agency agreement is established.]

B. Rights owed to all Parties to a Transaction.

Pursuant to the Tennessee Real Estate Broker License Act, every Real Estate Licensee owes the following duties to every Buyer and Seller, Tenant and Landlord (collectively “Buyers” and “Sellers”):

1. To diligently exercise reasonable skill and care in providing services to all parties to the transaction;
2. To disclose to each party to the transaction any Adverse Facts of which Licensee has actual notice or knowledge;
3. To maintain for each party in a transaction the confidentiality of any information obtained by a Licensee prior to disclosure to all parties of a written agency agreement entered into by the Licensee to represent either or both parties in the transaction. This duty of confidentiality extends to any information which the party would reasonably expect to be held in confidence, except for information which the party has authorized for disclosure or information required by law to be disclosed. This duty survives both the subsequent establishment of an agency relationship and the closing of the transaction.
4. To provide services to each party to the transaction with honesty and good faith;
5. To disclose to each party to the transaction timely and accurate information regarding market conditions that might affect such transaction only when such information is available through public records and when such information is requested by a party;
6. To timely account for earnest money deposits and all other property received from any party to a transaction; and
7. A) To refrain from engaging in self-dealing or acting on behalf of Licensee’s immediate family, or on behalf of any other individual, organization or business entity in which Licensee has a personal interest without prior disclosure of such personal interest and the timely written consent of all parties to the transaction; and
   B) To refrain from recommending to any party to the transaction the use of services of another individual, organization or business entity in which the Licensee has an interest or from whom the Licensee may receive a referral fee or other compensation for the referral, other than referrals to other Licensees to provide real estate services, without timely disclosure to the party who receives the referral, the Licensee’s interest in such referral or the fact that a referral fee may be received.

C. Duties owed to client.

In addition to the above, the Licensee has the following duties to his/her Client if the Licensee has become an Agent or Designated Agent in a transaction:

1. Obey all lawful instructions of the client when such instructions are within the scope of the agency agreement between the
Licensee and Licensee’s client; and

2. Be loyal to the interests of the client. Licensee must place the interests of the client before all others in negotiation of a transaction and in other activities, except where such loyalty/duty would violate Licensee’s duties to a customer in the transaction.

3. Unless the following duties are specifically and individually waived in writing by a client, Licensee shall assist the client by:

   A) Scheduling all Property showings on behalf of the client;

   B) Receiving all offers and counter offers and forwarding them promptly to the client;

   C) Answering any questions that the client may have in negotiation of a successful purchase agreement within the scope of the Licensee’s expertise; and

   D) Advising the client as to whatever forms, procedures and steps are needed after execution of the purchase agreement for a successful closing of the transaction.

Upon waiver of any of the above duties, a consumer must be advised in writing by such consumer’s agent that the consumer may not expect or seek assistance from any other licensees in the transaction for the performance of the above.

D. Seller’s Authorizations

1. Assignment of Designated Agent. Seller hereby authorizes the Listing Licensee to become Designated Agent for the Seller, to the exclusion of any other Licensee associated with Broker, in the event another Licensee affiliated with the Broker represents the Buyer. A Designated Agent for the Seller can and will continue to advocate Seller’s interests in a transaction even if an Agent or Designated Agent for the Buyer (other than the Licensee below) is also associated with Broker.

2. Default to Facilitator. Seller hereby authorizes Broker and Listing Licensee to default to Facilitator status (representing the interests of neither the Seller nor the Buyer) in any Property showings, negotiations, or transaction, in which the Listing Licensee may also have a representation agreement with the Buyer. In such event, Agent shall immediately notify (verbally) both the Buyer and the Seller of the need to default to this Facilitator status and notification shall be confirmed in writing prior to the execution of the contract. As a Facilitator, Broker and Broker’s licensee may assist the parties and provide information in subsequent negotiations in that transaction.

11.EARNEST MONEY: Broker is authorized to accept from Buyer a deposit as earnest money to be applied to the purchase price for the Property. Such deposit is to be held by Broker in an escrow account until disbursed in accordance with the terms of the Purchase and Sale Agreement.

12.TITLE: Seller warrants he is vested with good and marketable title to the Property with full authority to execute this Agreement and to sell the Property. Seller shall convey the Property by a good and sufficient general warranty deed.

13.HOME PROTECTION PLAN:

☐ Seller agrees to provide a limited Home Protection Plan at a cost of $_______________ to be funded at closing.

Plan company: ________________________________________________________________

Deductible $______________, Seller understands that an administrative fee may be paid to the Broker by the Plan company.

OR

☐ Home Protection Plan waived.

14.LEGAL DOCUMENTS: THIS IS AN IMPORTANT LEGAL DOCUMENT CREATING VALUABLE RIGHTS AND OBLIGATIONS. IF YOU HAVE QUESTIONS ABOUT IT, YOU SHOULD REVIEW IT WITH YOUR ATTORNEY. NEITHER THE BROKER NOR ANY AGENT OR FACILITATOR IS AUTHORIZED OR QUALIFIED TO GIVE YOU ANY ADVICE ABOUT THE ADVISABILITY OR LEGAL EFFECT OF ITS PROVISIONS. BY SIGNING THIS DOCUMENT, YOU ARE CERTIFYING THAT YOU HAVE READ AND ACCEPT THESE TERMS AND ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT.

15.CONFIDENTIALITY: Information which the Seller authorizes Broker and his affiliated Licensees to disclose which might otherwise be confidential:

____________________________________________________________________________

____________________________________________________________________________

____________________________________________________________________________

____________________________________________________________________________

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____________________________________________________________________________
16. EXHIBITS AND ADDENDA: All exhibits and/or addenda attached hereto, listed below, or referenced herein are made a part of this Agreement:

17. SPECIAL STIPULATIONS: The following Special Stipulations, if conflicting with any preceding paragraph, shall control:
NOTE: Any provisions of this Agreement which are proceeded by a box “☐” must be marked if a part of this Agreement.

The party(ies) below have signed and acknowledge receipt of a copy.

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Unit Four

Quiz

1. Which of the following requires a contract to be in writing to be enforceable by a court?
   a. Parole evidence rule  
   b. Statute of limitations  
   c. Fraudulent contract rule T.C.A. 29-2-101(a)(4)  
   d. Statute of Frauds

2. Which of the following is correct concerning a listing contract?
   a. Listing contracts are unilateral employment contracts.  
   b. Listing contracts are executory, bilateral contracts.  
   c. Listing contracts are bilateral, executed employment contracts.  
   d. Listing contracts are bilateral option contracts.

3. A contract may be discharged by which of the following actions?
   a. Performance of the contract  
   b. Breach of the contract  
   c. Both a. and b.  
   d. Parole evidence rules

4. Which of the following is correct concerning an exclusive right to sell listing contract?
   a. The listing broker is entitled to a commission regardless of who procures the buyer.  
   b. The Seller retains the right to sell the property himself without paying a commission  
   c. The party that sells the property is the only one entitled to a commission.  
   d. The contract may have an automatic extension date inserted with the seller’s permission.
5. Who are the parties to a listing contract?
   a. The sellers and the listing agent.
   b. Any of the owners named on the deed may sign on behalf of the other parties on the deed and the real estate company.
   c. The designated agent and the sellers
   d. The parties on the deed to the property and the listing broker.

6. Lines 23 through 41 of the example-listing contract describe personal property and fixtures. Which of the following statements is true?
   a. The list of personal property and fixtures as printed must remain a part of the contract.
   b. No item may be stricken from the contract, however; if the seller desires to change them they may use a different contract.
   c. If the sellers desire to change any of the printed items listed in lines 23 through 31 they should list the items they desire to not include on lines 36 and 37 and strike them out on lines 23 through 31.
   d. Contract law does not address a proper way to strike preprinted words in a contract so the sellers would need to get guidance from their attorney.

7. Which of the following is not a responsibility of the listing broker?
   a. To know the whereabouts of the seller at all reasonable hours.
   b. Notify all county offices of the potential sale of the property if their jurisdiction covers the sale of real and personal property.
   c. Disseminate information as to any injection wells that are or may have been on the property.
   d. Have interior and exterior photographs created for advertising purposes.
8. Agent Phyllis lists a property for sale. The seller fills out the property disclosure report for Phyllis and she adds it to her marketing information. The property is sold within the original listing period and the buyer finds that there was previous terminate damage that was not disclosed. The buyer sues the listing broker, agent Phyllis and the seller. Under the terms of our example listing contract, who is responsible for the legal expenses and any judgments that may be handed down?

a. All the parties mentioned are equally responsible.
b. It is the agent’s responsibility to assure the buyer the seller has properly reported any previous damage.
c. The principal broker is responsible.
d. The seller since he/she agreed to hold the agent, broker and the company harmless for any misrepresentations they may make.
Unit Five

Property Management

Property Management is a large part of the real estate industry in Tennessee. Approximately one third of the licensees in the state are involved in property management. Managing properties from individually owned residential properties to industrial parks, warehousing, office buildings, shopping centers, apartment complexes, condominiums, time shares and other types of properties are all considered property management in Tennessee. Most of the professionals involved in this type of management fall under the Tennessee Real Estate Commission’s jurisdiction. The laws and the rules cover some of the actions of property managers and Title 66 of the Tennessee Code covers other actions of property managers. For our purposes here we will discuss two areas, the Real Estate Commission’s position on escrow accounts and Title 66 Chapter 28, the Landlord and Tenant act for our state.

First let’s look at Title 62 chapter 13 as to what is specifically covered by real estate law.

1. License Requirements


   As used in this chapter, unless the context otherwise requires:

   (4)(A) "Broker" means any person who, for a fee, commission, finder’s fee or any other valuable consideration or with the intent or expectation of receiving a fee, commission, finder’s fee or any other valuable consideration from another, solicits, negotiates or attempts to solicit or negotiate the listing, sale, purchase, exchange, lease or option to buy, sell, rent or exchange for any real estate or of the improvements on the real estate or any time-share interval as defined in the Tennessee Time-Share Act, compiled in title 66, chapter 32, part 1, collects rents or attempts to collect rents, auctions or offers to auction or who advertises or holds out as engaged in any of the foregoing:

   Described here are the actions covered by the real estate law. As you can see, leasing property is one of the actions requiring a license to participate. Additionally under this part of the law is the following:

   B. 62-13-104. Exemptions
(E) A resident manager for a broker or an owner, or employee of a broker, who manages an apartment building, duplex or residential complex where the person’s duties are limited to supervision, exhibition of residential units, leasing or collection of security deposits and rentals from the property. The resident manager or employee shall not negotiate the amounts of security deposits or rentals and shall not negotiate any leases on behalf of the broker; or

(F) A corporation, foreign or domestic, acting through an officer duly authorized to engage in a real estate transaction, where the transaction occurs as an incident to the management, lease, sale or other disposition of real estate owned by the corporation; however, this exemption does not apply to a person who performs an act described in § 62-13-102(4)(A), either as a vocation or for compensation, if the amount of the compensation is dependent upon, or directly related to, the value of the real estate with respect to which the act is performed.

As described here, there is an exception for licensing for resident managers. They may not negotiate leases on behalf of the broker (E) or if they are handling real estate business for a corporation where the real estate transaction is an incident to the management, lease, sale or other disposition of real estate owned by the corporation (F). These paragraphs we believe are fine and over compensation towards licensing would be the best policy for all.

2. Excerpts from Tennessee Landlord Tenant Act


(a) This chapter applies only in counties having a population of more than seventy-five thousand (75,000), according to the 2010 federal census or any subsequent federal census.

(b) This chapter applies to rental agreements entered into or extended or renewed after July 1, 1975. Transactions entered into before July 1, 1975, and not extended or renewed after that date, and the rights, duties and interests flowing from them remain valid and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by this chapter as though the amendment or repeal has not occurred.

(c) Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

(1) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service;
(2) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to the purchaser’s interest;

(3) Transient occupancy in a hotel, or motel or lodgings subject to city, state, transient lodgings or room occupancy under the Excise Tax Act, compiled in title 67, chapter 4, part 20;

(4) Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative; or

(5) Occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.

d This chapter shall not apply to any occupancy in a public housing unit or other housing unit that is subject to regulation by the department of housing and urban development and owned by a governmental entity or non-profit corporation to the extent such regulation conflicts with state law, but shall apply to the extent that any such regulations defer to the application of state law.


(a) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(b) Underlying purposes and policies of this chapter are to:

(1) Simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of landlord and tenant;

(2) Encourage landlord and tenant to maintain and improve the quality of housing;

(3) Promote equal protection to all parties; and

(4) Make uniform the law in Tennessee.

(c) Unless displaced by this chapter, the principles of law and equity, including the law relating to capacity to contract, health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.

(d) This chapter, being a general chapter intended as a unified coverage of its subject matter, no part of it is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

66-28-104. Chapter definitions.

Subject to additional definitions contained in this chapter, which apply to specific portions of this chapter, and unless the context otherwise requires, in this chapter:
(1) "Action" means recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined, including an action for possession;

(2) "Building and housing codes" means any law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of any premises, or dwelling unit;

(3) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one (1) person who maintains a household or by two (2) or more persons who maintain a common household;

(4) "Good faith" means honesty in fact in the conduct of the transaction concerned;

(5) "Landlord" means the owner, lessor, or sub lessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by § 66-28-302;

(6) "Nuisance vehicle" means any vehicle that is incapable of operating under its own power and is detrimental to the health, welfare or safety of persons in the community;

(7) "Organization" means a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, and any other legal or commercial entity;

(8) (A) "Owner" means one (1) or more persons, jointly or severally, in whom is vested:

   (i) All or part of the legal title to property; or

   (ii) All or part of the beneficial ownership and a right to the present use and enjoyment of the premises;

   (B) "Owner" also means a mortgagee in possession;

(9) "Person" means an individual or organization;

(10) "Premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant;

(11) "Rental agreement" means all agreements, written or oral, and valid rules and regulations adopted under § 66-28-402 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises;

(12) "Rents" means all payments to be made to the landlord under the rental agreement;
"Security deposit" means an escrow payment made to the landlord under the rental agreement for the purpose of securing the landlord against financial loss due to damage to the premises occasioned by the tenant's occupancy other than ordinary wear and tear and any monetary damage due to the tenant's breach of the rental agreement;

"Security deposit" shall in no way infer that the landlord is providing any service for the personal protection or safety of the tenant beyond that prescribed by law;

"Substantially impaired" means that a dwelling unit or premises has been deemed unfit for human habitation by a governmental authority;

"Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others;

"Unauthorized vehicle" means a vehicle that is not registered to a tenant, an occupant or a tenant's known guest, and has remained for more than seven (7) consecutive days on real property leased or rented by a landlord for residential purposes;

"Utilities" means the provision of water, electricity, sewer or natural gas; and

"Vehicle" means any device for carrying passengers, livestock, goods or equipment that moves on wheels and/or runners.

66-28-201. Terms and conditions.

(a) The landlord and tenant may include in a rental agreement, terms and conditions not prohibited by this chapter or other rule of law including rent, term of the agreement, and other provisions governing the rights and obligations of parties. A rental agreement cannot provide that the tenant agrees to waive or forego rights or remedies under this chapter. The landlord or the landlord's agent shall advise in writing that the landlord is not responsible for, and will not provide, fire or casualty insurance for the tenant's personal property.

(b) In absence of a lease agreement, the tenant shall pay the reasonable value for the use and occupancy of the dwelling unit.

(c) Rent shall be payable without demand at the time and place agreed upon by the parties. Notice is specifically waived upon the nonpayment of rent by the tenant only if such a waiver is provided for in a written rental agreement. Unless otherwise agreed, rent is payable at the dwelling unit and periodic rent is payable at the beginning of any term of one (1) month or less and otherwise in equal monthly installments at the beginning of each month. Upon agreement, rent shall be uniformly apportioned from day to day.

(d) There shall be a five-day grace period beginning the day the rent was due to the day a fee for the late payment of rent may be charged. The date the rent was due shall be included in the calculation of the five-day grace period. If the last day of the five-day grace period occurs on a Sunday or legal holiday, as defined in § 15-1-101, the landlord shall not impose any charge or fee for the late payment of rent; provided, that
the rent is paid on the next business day. Any charge or fee, however described, which is charged by the landlord for the late payment of rent, shall not exceed ten percent (10%) of the amount of rent past due.


(a) No rental agreement may provide that the tenant:

(1) Authorizes any person to confess judgment on a claim arising out of the rental agreement;

(2) Agrees to the exculpation or limitation of any liability of the landlord to the tenant arising under law or to indemnify the landlord for that liability or the costs connected with such liability.

(b) A provision prohibited by subsection (a) included in an agreement is unenforceable. Should a landlord willfully provide a rental agreement containing provisions known by the landlord to be prohibited by this chapter, the tenant may recover actual damages sustained. The tenant cannot agree to waive or forego rights or remedies under this chapter.


(a) All landlords of residential property requiring security deposits prior to occupancy are required to deposit all tenants' security deposits in an account used only for that purpose, in any bank or other lending institution subject to regulation by the state or any agency of the United States government.

(b) Except as otherwise provided in subdivision (b)(2)(B), the tenant shall have the right to inspect the premises to determine the tenant's liability for physical damages that are the basis for any charge against the security deposit. An inspection of the premises to determine the tenant's liability for physical damages that are the basis for any charge against the security deposit and the landlord's estimated costs to repair such damage shall be conducted as follows:

(1)(A) Upon request by the landlord for a tenant to vacate or within five (5) days after receipt by the landlord of written notice of the tenant's intent to vacate, the landlord may provide notice to the tenant of the tenant's right to be present at the inspection of the premises. Such notice may advise the tenant that the tenant may request a time of inspection to be set by the landlord during normal working hours. The landlord may require the inspection to be after the tenant has completely vacated the premises and is ready to surrender possession and return all means of access to the entire premises; provided, that the inspection shall be either on the day the tenant completely vacates the premises or within four (4) calendar days of the tenant vacating the premises. If the landlord provides written notice of the tenant's right to be present at the landlord's inspection and the tenant schedules an inspection, but fails to attend such inspection, the tenant waives the right to contest any damages found by the landlord as a result of such inspection by the landlord; provided, that notice of the tenant's waiver upon such circumstances is set out in the rental agreement.
If a tenant requests a mutual inspection as provided in subdivision (b)(1)(A), the landlord and tenant shall then inspect the premises and compile a comprehensive listing of any presently ascertainable damage to the unit that is the basis for any charge against the security deposit and the estimated dollar cost of repairing the damage. The landlord and tenant shall sign the listing. Except as provided in subsection (g), the signatures of the landlord and the tenant on the listing shall be conclusive evidence of the accuracy of the listing. If the tenant refuses to sign the listing, the tenant shall state specifically in writing the items on the list to which the tenant dissents.

If the tenant has acted in any manner set out in subdivisions (b)(2)(B)(i)-(vi), the landlord may inspect the premises and compile a comprehensive listing of any presently ascertainable damage to the unit that is the basis for any charge against the security deposit and the estimated dollar cost of repairing the damage without providing the tenant an opportunity to inspect the premises; provided, that the landlord provides a written copy, sent by certificate of mailing to the tenant, of the listing of any damages and estimated cost of repairs to the tenant upon the tenant’s written request.

The tenant shall not have a right to inspect the premises as provided in this section if the tenant
has:

(i) Vacated the rental premises without giving written notice;

(ii) Abandoned the premises;

(iii) Been judicially removed from the premises;

(iv) Not contacted the landlord after the landlord’s notice of right to mutual inspection of the
premises;

(v) Failed to appear at the arranged time of inspection as provided in subdivision (b)(1); or

(vi) If the tenant has not requested a mutual inspection pursuant to subsection (b) or is otherwise
inaccessible to the landlord.

No landlord shall be entitled to retain any portion of a security deposit if the security deposit was
not deposited in an account as required by subsection (a) and a listing of damages is not provided as
required by subsection (b).

A tenant who disputes the accuracy of the final damage listing given pursuant to subsection (b)
may bring an action in a circuit or general sessions court of competent jurisdiction of this state. The
tenant’s claim shall be limited to those items from which the tenant specifically dissented in accordance
with the listing or specifically dissented in accordance with subsection (b); otherwise the tenant shall not
be entitled to recover any damages under this section.

Should a tenant vacate the premises with unpaid rent or other amounts due and owing, the
landlord may remove the deposit from the account and apply the monies to the unpaid debt.
(f) In the event the tenant leaves not owing rent and having any refund due, the landlord shall send notification to the last known or reasonably determinable address, of the amount of any refund due the tenant. In the event the landlord shall not have received a response from the tenant within sixty (60) days from the sending of such notification, the landlord may remove the deposit from the account and retain it free from any claim of the tenant or any person claiming in the tenant’s behalf.

(g) Nothing in this section precludes the landlord from recovering the costs of any and all contractual damages to which the landlord may be entitled, plus the cost of any additional physical damages to the premises that are discovered after an inspection that has been completed pursuant to subsection (b); provided, however, that costs of any physical damage to the premises may only be recovered if the damage was discovered by the landlord prior to the earlier of:

1. Thirty (30) days after the tenant vacated or abandoned the premises; or
2. Seven (7) days after a new tenant takes possession of the premises.

(h) Notwithstanding subsection (a), all landlords of residential property shall be required to notify their tenants at the time such persons sign the lease and submit the security deposit, of the location of the account required to be maintained pursuant to this section, but shall not be required to provide the account number to such persons.


66-28-506. Failure of tenant to maintain dwelling.

If there is noncompliance by the tenant with § 66-28-401 materially affecting health and safety that can be remedied by repair, replacement of a damaged item or cleaning, and the tenant fails to comply as promptly as conditions require in case of emergency or within fourteen (14) days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit an itemized bill for the actual and reasonable cost or the fair and reasonable value thereof as rent on the next date when periodic rent is due, or if the rental agreement has terminated, for immediate payment.


66-28-517. Termination by landlord for violence or threats to health, safety, or welfare of persons or property.

(a) A landlord may terminate a rental agreement within three (3) days from the date written notice is received by the tenant if the tenant or any other person on the premises with the tenant’s consent:
(1) Willfully or intentionally commits a violent act;

(2) Behaves in a manner which constitutes or threatens to be a real and present danger to the health, safety or welfare of the life or property of other tenants or persons on the premises; or

(3) Creates a hazardous or unsanitary condition on the property that affects the health, safety or welfare or the life or property of other tenants or persons on the premises.

(b) The notice required by this section shall specifically detail the violation which has been committed and shall be effective only from the date of receipt of the notice by the tenant.

(c) Upon receipt of such written notice, the tenant shall be entitled to immediate access to any court of competent jurisdiction for the purpose of obtaining a temporary or permanent injunction against such termination by the landlord.

(d) Nothing in this section shall be construed to allow a landlord to recover or take possession of the dwelling unit by action or otherwise including willful diminution of services to the tenant by interrupting or causing interruption of electric, gas or other essential service to the tenant except in the case of abandonment or surrender.

(e) If the landlord's action in terminating the lease under this provision is willful and not in good faith, the tenant may in addition recover actual damages sustained by the tenant plus reasonable attorney's fees.

(f) The failure to bring an action for or to obtain an injunction may not be used as evidence in any action to recover possession of the dwelling unit.

(g) (1) If domestic abuse, as defined in §36-3-601, is the underlying offense for which a tenancy is terminated, only the perpetrator may be evicted. The landlord shall not evict the victims, minor children under eighteen (18) years of age, or innocent occupants, any of whom occupy the subject premises under a lease agreement, based solely on the domestic abuse. Even if evicted or removed from the lease, the perpetrator shall remain financially liable for all amounts due under all terms and conditions of the present lease agreement.

(2) If a lease agreement is in effect at the time that the domestic abuse is committed, the landlord may remove the perpetrator from the lease agreement and require the remaining adult tenants to qualify for and enter into a new agreement for the remainder of the present lease term. The landlord shall not be responsible for any and all damages suffered by the perpetrator due to the bifurcation and termination of the lease agreement in accordance with this section.

(3) If domestic abuse, as defined in §36-3-601, is the underlying offense for which tenancy could be terminated, the victim and all adult tenants shall agree, in writing, not to allow the perpetrator to return to the subject premises or any part of the community property, and to immediately report the perpetrator's return to the proper authority, for the remainder of the tenancy. A violation of such agreement shall be cause to terminate tenancy as to any victim and all other tenants.

(4) The rights under this section shall not apply until the victim has been judicially granted an order of protection against the perpetrator for the specific incident for which tenancy is being terminated, a copy of such order has been provided to the landlord, and the order:

(A) Provides for the perpetrator to move out or vacate immediately;

(B) Prohibits the perpetrator from coming by or to a shared residence;
(C) Requires that the perpetrator stay away from the victim’s residence; or

(D) Finds that the perpetrator’s continuing to reside in the rented or leased premises may jeopardize the life, health, and safety of the victim or the victim’s minor children.

(5) Failure to comply with this section, or dismissal of an order of protection that allows application of this section, abrogates the rights provided to the victim, minor children, and innocent occupants under this section.

(6) The rights granted in this section shall not apply in any situation where the perpetrator is a child or dependent of any tenant.

(7) Nothing in this section shall prohibit the eviction of a victim of domestic abuse for non-payment of rent, a lease violation, or any violation of this chapter.


66-28-521. Termination of utility services.
If a written rental agreement requires the tenant to have utility services placed in the tenant’s name and the tenant fails to do so within three (3) days of occupancy of the rented premises, the landlord may have such utility services terminated if the existing utility service is in the name of the landlord.

Rules of the Tennessee Real Estate Commission

E. 1260-3-.01 RENTAL LOCATION AGENCY LICENSE.
Each individual or firm (partnership, corporation, or association) other than licensed real estate brokers or real estate salesmen employed by licensed real estate brokers is hereby required to obtain a special license to operate in the State of Tennessee as a Rental Location Agency and furnish proof to the Commission of honesty, integrity, and business organization by supplying information on a special application designed for this purpose before beginning operations as a “Rental Location Agent.” The Tennessee Real Estate Commission may require the applicant to personally appear before the Commission for an oral examination or interview.

F. 1260-3-.02 RENTAL LOCATION AGENT’S LICENSES.
Each individual employee of a licensed rental location agency will be required to obtain a separate license and complete a similar license application before beginning employment in a rental location agency. This individual license shall be issued, renewed, or transferred on the same basis as all other licenses issued by the Tennessee Real Estate Commission. Changes of business address will be considered transfers of license and retirements will not be allowed.

G. 1260-3-.03 INVESTIGATIONS AND OFFICE INSPECTIONS.
Agency license applicants or individual applicants for license shall be subject to a credit, criminal, and background investigation by the authorized agents of the Tennessee Real Estate Commission before each license is approved. Office inspections will be made periodically to assure compliance with Chapter 663 of the Public Act of 1978.
H. 1260-3-.04 REQUIREMENT OF CONTRACT OR RECEIPT. Every Rental Location Agent shall give to each customer who pays full or partial consideration for the services of the Agent a contract or receipt conforming to the requirements of Rule 1260-3-.05.

I. 1260-3-.05 TERMS OF CONTRACT OR RECEIPT.

(1) Every contract or receipt provided pursuant to Rule 1260-3-.04 shall contain the legends set forth in paragraphs (2), (3) and (4) hereof, and shall provide blanks for insertion of the information required by paragraph (5) hereof. The legends shall be set in boldface type of at least the greater of 10 points or the largest size type in the remainder of the contract or receipt. If the contract or receipt is not printed, the legends shall be in all capital letters, and no other part of the contract or receipt other than the name of the Rental Location Agent shall be in all capital letters.

(2) The contract or receipt shall include the following legend regarding the services to be provided to the customer:

NOTICE: THIS IS AN INFORMATION SERVICE ONLY. NO ATTEMPT IS MADE TO SECURE HOUSING FOR YOU. THE SERVICE OFFERS ONLY COMPILED INFORMATION CONCERNING AVAILABLE RENTAL HOUSING UNITS.

(3) The contract or receipt shall include the following legend regarding the services to be provided to the customer, with the blank filled in with the name of the Rental Location Agent.

A representative of ( ) must mark one of the following boxes after checking the current listings of rental property.

Rental property meeting your needs as described herein has been verified as available within the last 72 hours.

No property meeting your needs or described above can be verified as currently available.

(4) The contract or receipt shall include the following legend, with the blanks filled in with the correct names and addresses:

You are entitled to a refund of all but $10.00 if after a bonafide effort you fail to find a rental through our services. To qualify you must make contact either in person or by telephone with (name) at least once each day for at least 10 days, and attempt to contact each landlord whose telephone number is given to you as soon as possible. If you find a rental other than through (name) prior to the expiration of 10 days you will also receive the refund. To obtain your refund write to (name) stating the amount owed and the address to which is to be sent. Letters should be mailed or delivered to: (name) (address). Your refund will be mailed within 10 days of receipt.
(5) The contract or receipt shall provide spaces for insertion of at least the following specifications as to property sought by the customer.
   (a) maximum rent per month
   (b) number of bedrooms
   (c) number of children
   (d) pets
   (e) general location

For purposes of sub paragraph (e), the Rental Location Agent shall show to each customer a map dividing the area served by the Rental Location Agent into numbered districts not larger than zip code areas, and which may provide special districts relating to universities or colleges or other areas of high density population of renters. The number or numbers of districts acceptable to the customer shall be set forth in the space provided for “general location.”

J. 1260-3-.06 STANDARDS FOR ORAL OR WRITTEN REPRESENTATIONS OF AVAILABILITY.

(1) No rental housing shall be advertised in any medium unless its availability for rental has been verified by the Rental Location Agent on the day the request for advertising is made to the medium.

(2) The availability for rental of all advertised property shall be verified daily so long as the advertisements shall continue to be published. Upon learning that advertised property is no longer available, the Rental Location Agent shall immediately take all possible steps to cause cancellation of the advertisement. Persons who advise the Rental Location Agent by telephone or otherwise that they are responding to an advertisement for property which the Rental Location Agent knows is no longer available for rent shall be advised immediately that such property is not available. These provisions shall not prohibit the Rental Location Agent from advising such person of the existence of any other similar listed property which has been verified as to availability as required by paragraphs (1), (2) and (3) hereof.

(3) With respect to any property not being advertised, the Rental Location Agent shall not represent that it is available for rental unless availability shall have been verified within 72 hours of the time at which a representation of availability is made. If such verification cannot be made within such time, the property shall be removed from the listings until it has been verified as available and no representation of availability shall be made by the Rental Location Agent.

(4) The following information shall be fully, accurately and clearly disclosed with respect to any property as to which a representation of availability is made:
   (a) The date of availability for occupancy of the property if not currently available.
   (b) The monthly rent.
   (c) The existence (and the amount, if known) of any damage deposit, security deposit, clean-up fees, rent prepayment, or similar charges over and above the monthly rent.
   (d) The number of bedrooms.
(e) Whether a lease is required.

(f) Restrictions on the property, such as no pets, except restrictions imposed by federal, state or local law.

(g) The types of housing, such as single family, duplex or trailer.

(h) The location of the rental housing by reference to the areas required to be established in accordance with Section 1260-3-.02(5)(e) or otherwise.

(i) The utilities paid for, if any.

(j) The telephone number of the landlord.

Notwithstanding the foregoing, in the case of advertising, only the information in subparagraphs (a), (b) and (h) must be disclosed.

(5) No representation shall be made to any person that rental property meeting the needs of such person is contained in the Rental Location Agent’s listings unless such is the fact and unless the availability of such property shall have been verified as required by paragraphs (1), (2) and (3) hereof as applicable.

(6) For purposes of this Rule 1260-3-.06, the term “Rental Location Agent” shall include the licensed Rental Location Agent, all employees and agents of such Rental Location Agent.

The above rule is explicitly for those operating as Rental Location Agency if you are not licensed as a Real Estate Broker. If you have a license you must operate under the regulations required by the law for licensed agents. You must work under a licensed real estate Broker.

Please follow the links below to review the Tennessee Real Estate Landlord Tenant Act.

www.regboards.tn.gov

Go to the Real Estate Commission tab near the bottom of the page

Click on the law tab in the left hand column:

Click on the LexisNexis website link:

After agreeing to the page rules go to Title 66 Chapter 28 for the Landlord Tenant Act

3. Commercial Leasing Terms

D&D School of Real Estate
www.ddschoolofrealestate.com
800-282-9375
Lease types: Traditionally there are many differences in commercial leases than with residential leases. Commercial lease payments are generally expressed as an annual dollar amount per square foot of rented space. For example, if you were renting a 1000 square foot space and the rent was $15.00 per square foot, your annual rent would be $15,000.00 dollars. In most cases, this would be paid over a year in equal monthly payments.

Because most commercial leases are NET LEASES, meaning the actual rental fees would be net income to the landlord, there are additional charges added to the rental amount. These additional fees would be based on the building expenses and then spread over all the leased spaces and an additional charge. These expenses are expressed as net, double net, or triple net expenses. Generally, the expenses covered are real estate taxes, maintenance of the building and insurance. If all three expenses are charged to the tenants this would be a triple net lease. If only one expense is passed on, it would be a net lease. If only two expenses were passed to the tenants, it would then be a double net lease.

Most landlords have gone away from the above method and are now using what is known as a Common Area Maintenance Fee (CAM charges). This fee would cover the charges already discussed and possibly additional fees as well. By using the CAM methods instead of the net method, the landlord can add additional fees as they come up without having to change the existing lease. CAM charges are usually changed annually as expenses rise or fall, or additional items necessary could be added.

The net leasing method is much more preferable in commercial leasing whereas gross leasing is the traditional method used for residential leasing. With the gross leasing model, the landlord charges a rental amount that is gross income to him and then the expenses are paid by the landlord out of that gross rent collected. The landlord’s net is then calculated as gross rents collected minus his expenses paid equals his net income.

Since families rent residential properties, the gross rent method is preferable to them as tenants. Tenants are better able to budget their living expenses with a level payment just as they would if they were making a mortgage payment.
Unit Five

Quiz

1. What law or rule requires an individual to be licensed to manage property for another?
   a. 62-13-102 (4) (A)
   b. 66-28-102 (B)
   c. 1260-02-.09 (1)
   d. 62-13-323

2. Which of the following does the Real Estate Commission require a real estate company handling rental properties to comply with.
   a. Have a specific staff versed in property management to handle the property management business of the firm
   b. Be sure deposits are deposited for rental contracts immediately in the escrow account
   c. Have a separate escrow account for the property management department.
   d. Both b. and c.

3. The Uniform Residential Landlord and Tenant Act applies to which of the following?
   a. Applies to counties with less than 75,000 population.
   b. Applies to counties with greater the 75,000 population.
   c. Applies to all counties in the state of Tennessee.
   d. Applies to occupancy hotels or motels when the stay is longer than ten (10) consecutive days.

4. Which of the following best describes a security deposit as defined by 66-28?
a. Monies held by landlords to secure the safety of the tenants.
b. To secure the tenant against financial loss
c. To secure the landlord against financial loss
d. Escrow payment made to secure the last month’s rent

5. Landlords have a right to charge a late fee for rents not paid after a minimum period of 5 days. Which of the following statements are not true?

   a. The five day period starts with the day the rent is due
   b. The last day of the grace period may not be a Sunday or a legal holiday if the rent is paid the next day
   c. The fee charged may exceed 10% of the rent amount past due
   d. The late fee must be agreed to in the rental contract by the parties to the contract

6. If the tenant fails to pay the rent, the landlord may do which of the following?

   a. Notify the tenant in writing of the unpaid amount plus the late fees due and bar the tenant from entry to the premises.
   b. Remove the tenants belongings from the premises but landlord may not sell said belongings to recoup last rent and damages
   c. The landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement shall terminate 14 days from the receipt of the notice
   d. Landlord may give verbal notice to the tenant as a 48 hour notice for the tenant to vacate the premises

7. Which of the following is correct according to 66-28-517?

   Landlord may terminate a rental agreement within 3 days for
   a. Willful or intentional violent acts by the tenant
   b. Receiving more than 2 insufficient funds checks from the tenant
   c. Unruly minors under the age of 19
   d. Raucous activities of a tenant within their own unit
Unit Six
Principal Broker Supervision and Disclosures

1. Excerpts from Tennessee Law

Almost every portion of the law affects the day-to-day operation of a real estate company and the responsibilities of the principal broker. In this chapter we will discuss specific areas that directly affect decisions made daily by a principal broker. Supervising affiliate brokers and brokers who have placed their licenses under the leadership of a principal broker has grave responsibilities under Tennessee law. By its definition, an independent contractor has freedoms unlike an employee. Even with these freedoms of activity the principal broker is directly responsible for the real estate activities of the licensees that are registered under his/her care. The Real Estate Commission holds these principal brokers accountable for the actions of the licensees under them.

Principal brokers are not specifically defined in the Tennessee code in any of the chapters referring to real estate brokers. However, the term ‘principal broker’ is used 23 times in the text and the term ‘managing broker’ is referred to 9 times in the text. By a study of these terms as they are used in the law and the rules of the commission we will be able to determine the responsibilities and duties assigned to a principal broker by the real estate commission of our great state.
Please remember this is a study of and an interpretation of the law as understood by the author and is not meant to be a legal interpretation or legal advice as to the interpretation of the law. Please contact your attorney for any and all legal advice as to this set of laws presented here.

Now let’s look at the laws in the order they appear in the Tennessee code.

We will start with 62-13-102 (4); the definition of a broker:

**A. 62-13-102(4)**

(4)(A) “Broker” means any person who for a fee, commission, finders’ fee or any other valuable consideration, or with the intent or expectation of receiving the same from another, solicits, negotiates or attempts to solicit or negotiate the listing, sale, purchase, exchange, lease or option to buy, sell, rent or exchange any real estate or of the improvements thereon or any time-share interval as defined in the Tennessee Time-Share Act, compiled in title 66, chapter 32, part 1, collects rents or attempts to collect rents, auctions or offers to auction, or who advertises or holds out as engaged in any of the foregoing;

(B) “Broker” also includes any person employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a salary, fee, commission, or any other valuable consideration, to sell such real estate or any part thereof, in lots or parcels or other disposition thereof. It also includes any person who engages in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby the person undertakes primarily to promote the sale of real estate either through its listing in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both;

This paragraph shows us a number of important things. First, the paragraph defines the actions taken that require a real estate license to receive a fee, commission, finder’s fee or any other valuable consideration or with the intent of receiving said from another. Those actions are: listing, sale, purchase, exchange, lease or option to buy, sell, rent or exchange any real estate or the improvements thereon. Additionally, time share intervals, collecting of rents or the attempt to collect rents, auctions, offers to auction, or advertises or holds out as engaged in any of the foregoing. It is necessary to obtain a real estate license to be involved in any of these activities with the expectation of receiving compensation.

It is also important to notice that you must be a broker, not an affiliate broker to receive a fee for these actions. The definition of an affiliate broker as noted in 62-13-102 (3) is a person engaged under contract by or on behalf of a licensed broker to participate in any activity included in subdivision (4).

Affiliate brokers always act on behalf of their broker. The broker receives the fee and then shares with the affiliate broker or broker licensed under the principal broker (this is not specifically noted in the law) as has been agreed to by these parties.

Section (B) of the definition covers persons that may be employed on behalf of an owner of real estate that may receive valuable consideration of some sort for the sale of said real estate. It is important to understand this definition in the law to begin our study of a principal broker. From here we will look at
the portions of the law and the rules of the Commission that specifically mention ‘principal broker’ and then ‘managing broker’.

B. Use of Principal Broker in the law


(a)(1)(A) Each office shall have a real estate firm license, a principal broker, and a fixed location with adequate facilities for affiliated licensees, located to conform with zoning laws and ordinances.

Part three of the law is entitled “QUALIFICATIONS AND LICENSING” and this particular paragraph refers to location of offices and display of signs. The pertinent reference for our study is that each office must have a principal broker. Again the duties of the principal broker are not spelled out here or prior to this mandate for an office but will be as we move through the law.

C. 62-13-321. Escrow or trustee account of deposited funds

Every broker shall, in accordance with rules promulgated by the commission under § 62-13-203, keep an escrow or trustee account of funds deposited with the broker relating to a real estate transaction. The broker shall maintain for a period of at least (3) years accurate records of such account showing:

(1) The depositor of the funds
(2) The date of deposit;
(3) The date of withdrawal;
(4) The payee of the funds; and
(5) Such other pertinent information as the commission may require.

This tenant of the law does not use either of the terms principal broker or managing broker but just the term broker. Based on the contents it is fair to assume that the law is referring to the principal broker of the office. The instructions are clear as to the responsibility of the principal broker for escrow funds and records. Additionally the rules of the Commission further clarify responsibilities of the principal broker.

D. 1260-2-.09 DEPOSITS AND EARNEST MONEY.

(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. Rental deposits must be held in a separate account.

(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 such 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 account:

(a) upon a 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 funds, 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 interpleader 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 twenty-one (21) 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:”.

This rule is of utmost importance to the principal broker even though it does not single out the principal broker or the managing broker in the text. This responsibility is the task of the principal broker. Paragraph (2) instructs the affiliate brokers and brokers licensed under the principal broker to “immediately” turn funds over to the principal broker. This does not leave any room for an agent to hold funds for any period of time, including overnight. The earnest money is to be immediately turned over to the principal broker. If an offer is written after normal business hours, every principal broker should have a policy in place for agents to turn over deposits and earnest monies to the principal broker. The policy could be as simple as to go the broker’s house and turn the money over to her/him or have a policy in place for an agent to leave the earnest monies or deposits in possibly a deposit safe with instructions as to the contract the deposit refers to in the office. Regardless of the policy or procedure the rule does require this to take place regardless of the time of day or the day of the week.

Paragraph (3) addresses the responsibility of the funds during the executory period of the contract. Clearly the responsibility for the funds is the principal brokers of the firm that accepted the earnest money or deposit. If the deposit is a check and made out to another real estate firm, or the escrow account of the closing agent, the rule does not shift the responsibility to this other person unless so stated in the contract as an agent other than the brokers involved. Let’s look at a scenario: in your marketplace it is the local custom for the listing broker to hold all deposits that come with offers to purchase on their listings so the selling office gives the earnest monies over to the listing office. Through the process the deal falls through and the listing broker determines under paragraph (6)(a) of this rule that the purchaser has defaulted and turns the deposit over to the seller that listed the property with him/her. The buyer does not agree with this move and has but one option under this rule, which is to sue the selling broker that accepted the original check. This broker will then need to sue the listing broker who actually disbursed the funds. Seems the best policy would be to hold all funds that are accepted by you as the principal broker or accepted by any of your sub-agents until closing.


(a) The principal broker of a real estate firm that does not engage in activities that require the acceptance of any funds belonging to others may receive from the Tennessee real estate commission a waiver from the provisions of § 62-13-321.

(b) Upon receipt of a waiver by the Tennessee real estate commission pursuant to subsection (a), a principal broker may close the real estate firm’s escrow account.

(c) The principal broker of a real estate firm authorized pursuant to this section to operate without an escrow account may accept funds belonging to others subject to the following:

(1) The principal broker shall open an escrow account within one (1) business day of accepting such deposit, and deposit such funds into the newly opened escrow account on the same day; and
(2) The principal broker shall notify the Tennessee real estate commission within one (1) business day after opening a new escrow account and shall provide the following information:

(A) The name and address of the bank where the new escrow account was opened;

(B) The name of the new escrow account; and

(C) The account identification number of the new escrow account.

(D) A principal broker who opens an escrow account pursuant to subsection (c) shall acknowledge responsibility to operate under all the requirements of § 62-13-321.

(E) No principal broker may obtain a waiver pursuant to subsection (a) for the same real estate firm more than once each license renewal period. [Acts 2002, ch. 553, §1]

The principal broker is mentioned in sections, A, B, C, D, and E of this portion of the code. Specifically this section is referring to a waiver from the commission if the office is not accepting funds belonging to another. The principal broker can close the escrow account once the waiver is obtained. It further instructs the principal broker as to the process necessary in the event the accepting of funds becomes necessary after receiving the waiver.

Again we are finding and uncovering the duties of the principal broker.

Now we will move from the law to the rules of the commission and their mention of a principal broker.

**F. 1260-01-.04 LICENSES.**

(1) No principal broker shall permit an affiliate broker (or broker) under his supervision to engage in the real estate business unless the affiliate broker (or broker) has been issued a valid license.

(2) Each licensee is individually responsible for satisfying all legal requirements for retention of his license, including, but not limited to, paying appropriate fees; and completing real estate education.

(3) Each licensee in a firm must obtain any desired change of affiliation or status through the firm’s principal broker.

(4) All Tennessee licensees holding nonresident licenses issued in other states shall file copies of such licenses in the Office of the Tennessee Real Estate Commission and with their principal broker.

First, we see here the mention of supervision of affiliate brokers and brokers. This of course refers back to the definition of affiliate brokers and brokers above. First the principal broker must assure the agent has a valid license. Paragraph (2) places the responsibility of satisfying the legal requirements of license retention on the individual licensee. This may seem to be a conflict of responsibilities between the agent and their broker but once the broker is assured the licensee has a valid license and they hire them, it then is the individual’s responsibility to maintain the license. Most correspondence from the Commission pertaining to license retention will come through the broker’s office.
Paragraph (3) places responsibility for any change of licensure on the principal broker and paragraph (4) requires all nonresident licensees to file copies of their out-of-state license with their principal broker and the Tennessee real estate commission. We can additionally glean from this section that the records of licensure are the responsibility of the principal broker as far as the real estate commission is concerned. All other records are also the principal broker’s responsibility.

G. 1260-01-.12 FEES.

The following fees shall apply:

1. For each examination, a fee to be paid to the testing vendor as set by state contract;

2. For the issuance of an original license, a fee to be paid to the Commission of one hundred dollars ($100.00);

3. For each renewal of a license, a fee to be paid to the Commission of eighty dollars ($80.00);

4. A fee to be paid to the Commission for the following:
   
   (a) Change of firm address, fifty dollars ($50.00);

   (b) Change of Principal Broker, twenty-five dollars ($25.00).

This rule applies to fees due to the commission and in paragraph (4) specifically refers to the fee for changing the principal broker of a firm.

H. 1260-02-.01 SUPERVISION OF AFFILIATE BROKERS.

1. No licensee shall engage in any real estate activity in any office unless there is a principal broker who devotes his fulltime to the management of such office.

2. No principal broker shall engage a licensee who lives more than fifty (50) miles from the firm office, unless the principal broker demonstrates in writing to the Tennessee Real Estate Commission’s satisfaction that the distance involved is not unreasonable and that adequate supervision can be provided.

3. A licensee may be engaged only by a principal broker who is:
   
   (a) engaged primarily in the real estate business; and

   (b) accessible during normal daytime working hours.

The rules are now getting to the meat of the law and spelling out the principal broker’s responsibilities as to supervision of licensees working under his authority. First, an office must have a ‘full time’ principal broker. This broker must devote fulltime to managing the office. Next, the principal broker may not hire a licensee that lives more than 50 miles from the office without demonstrating in writing to the commission that supervision can be provided over this distance. It seems that the Commission is becoming more lenient on this rule. There have been a number of cases in the past year where the
Commission has allowed an agent to live outside of this limit when they have come before the Commission with their principal broker and shown that supervision will not be limited by the distance lived from the office. Thirdly, a licensee can only be under contract to one principal broker at a time that is primarily engaged in the real estate business and is accessible during normal working hours.

I. 1260-02-.02 TERMINATION OF AFFILIATION.

(1) Any licensee wishing to terminate his affiliation with a firm shall secure his release from the firm. The principal broker’s supervisory responsibility shall terminate upon his signing of the release form. Within ten (10) days after the date of release, the licensee shall complete the required administrative measures for change of affiliation, temporary retirement, or (if ineligible for temporary retirement) placement in ‘inactive’ status. Upon the signing of a release by the principal broker for a change of affiliation, the licensee shall not engage in any real estate transactions nor shall he act under a contract with another firm until completion and transmittal to the commission of the change of affiliation form, accompanied by the proper fee.

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

(3) The Commission will not intervene in the settlement of debts, loans, draws, or commission disputes between firms, brokers and affiliates. Upon demand by a licensee for his release from a firm, it shall be properly and promptly granted by the principal broker.

This section spells out the specific requirements for terminating a licensee. First, the licensee must secure a release from the principal broker. The principal broker’s supervisory responsibility terminates on the signing of the release form. Section (2) clearly spells out that all listings are the property of the principal broker and that they stay with the principal broker unless he/she chooses to release them. Paragraph (3) relieves the real estate commission of duties of intervention in disputes over commissions, fees debts loans etc. between the principal broker and the licensee. If these disagreements cannot be settled between the parties then they must be taken to the proper courts in the state, not the Real Estate Commission.

J. 1260-02-.12 ADVERTISING.

(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 advertiser 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, purchase, rent or lease, 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.

1260-02-.12 covers responsibilities in advertising. Paragraph (2)(b) states advertising must be under the direct supervision of the principal broker. The Real Estate Commission will hold the principal broker responsible for misrepresentative advertising according to this section of the commission’s rules. According to the “Frequently asked questions” section of the official manual of the Commission, section J the company name must appear on all pages of any advertising including the company name, and the firm phone number. This includes Internet advertising. As the changes above indicate, this or newly written rules would supersede the frequently asked questions portion of the Commission’s manual.


The time-share instruments for a time-share estate program shall prescribe reasonable arrangements for management and operation of the time-share program and for the maintenance, repair and furnishing of units, which shall ordinarily include, but need not be limited to, provisions for the following:

(14) The managing agent shall be a licensed real estate firm or bonded agent. The principal broker/agent of the firm shall have control of the accounts required in subdivision (12), and shall enter into a tri-party agreement by and between the commission, the managing agent, and the depository institution, providing for the authority of the commission to access and inspect the account records at all times on behalf of the condominium homeowners’ association.

66-32-107 is part of the time share regulations put forth by the commission. Paragraph (14) states the principal broker/agent shall control accounts required in paragraph (12). Those accounts are, the escrow and reserve accounts.

2. Use of “Managing Broker” in the law

The term managing broker is mentioned 9 times in the code. Below are the references to those areas.

A. 62-13-102 Chapter definitions. As used in this chapter, unless the context otherwise requires:

(7) “Designated agent” refers to a licensee who has been chosen by such licensee’s managing broker to serve as the agent of an actual or prospective party to a transaction, to the exclusion of other licensees employed by or affiliated with such broker.
Since there is no definition of ‘managing broker’ or ‘principal broker’ we must assume that this use of the term ‘managing broker’ refers to the principal broker as mentioned in 62-13-309 above.

Part four of the law, is titled ‘REPRESENTATION BY REAL ESTATE AGENTS’. Section 62-13-102 are definitions and (7) defines a designated agent and that said designated agent can only be so designated by his/her managing broker (principal broker).

**B. 62-13-406. Designated broker — Managing Broker. —**

(a) A licensee entering into a written agreement to represent any party in the buying, selling, exchanging, renting or leasing of real estate may be appointed as the designated and individual agent of this party by the licensee’s managing broker, to the exclusion of all other licensees employed by or affiliated with such managing broker. A managing broker providing services under the provisions of the Tennessee Real Estate Broker License Act of 1973 shall not be considered a dual agent if any individual licensee so appointed as designated agent in a transaction, by specific appointment or by written company policy, does not represent interests of any other party to the same transaction.

(b) The use of a designated agency does not abolish or diminish the managing broker’s contractual rights to any listing or advertising agreement between the firm and a property owner, nor does this section lessen the managing broker’s responsibilities to ensure that all licensees affiliated with or employed by such broker conduct business in accordance with appropriate laws, rules and regulations.

(c) There shall be no imputation of knowledge or information among or between clients, managing broker and any designated agent(s) in a designated agency situation.

Under this section of the code the managing broker’s (principal broker) specific relationships under designated agency are spelled out. In the above section 62-13-102(7) we learned a designated agent is appointed by the managing broker. In this section we find that that appointment may happen in one of two ways, by specific appointment or by company policy. In each individual situation the managing broker may appoint a designated agent. The other situation would be covered in the company policy manual where designated agency is addressed. The policy may be that all listing agents are designated agents of the seller. The policy could be that all agents that have a buyer are specifically designated as buyer agents. Whatever the policy may be the law clearly addresses the legality of the situation.

The next point made is that the managing broker (principal broker) is not considered a dual agent when agents under his/her licensure are appointed as designated agents. The managing broker is not relieved of any of their responsibilities to clients even though they are not considered duel agents. The managing broker is further addressed as responsible for the actions of licensees under their employ as to the laws, rules and regulations.

The rule then addresses a very important policy as to imputed knowledge. Imputed knowledge is a legal term that generally says that any knowledge known by a sub-agent is imputed to the broker; the broker knows everything the agent knows whether it has been relayed to the broker or not. Under Tennessee
law there is no imputation of knowledge or information between the agent, broker or clients in a designated agency situation. Because of this ruling the broker can have an agent representing a buyer and a seller in the same transaction and not be guilty of passing knowledge known or supposedly known because of imputation, between parties. This law allows licensees in Tennessee much broader access to buyers and sellers than other states allow. Tennessee is a leader in this type of representation. This not only helps the agents in Tennessee but also allows better service to buyers and sellers in residential transactions.

C. 62-13-407. Liability. — A client or other party to whom a real estate licensee provides services as an agent, subagent or facilitator shall not be liable for damages for the misrepresentations of the licensee arising out of such licensee’s services unless the client or party knew, or had reason to know, of the misrepresentation. This section shall not limit the liability of a licensee’s managing broker for the misrepresentations of the managing broker’s licensees.

Licensees providing services here protect client or customer liability from misrepresentations. This protection is only if the client or customer did not know of the misrepresentations or had no reason to know of the misrepresentation.

This protection is offered only to the client or customer, not the managing broker (principal broker) under these circumstances. The managing broker will be held liable for the actions of licensees under their employment. There is however mention of this in 62-13-310(c) stating;

   c) Any unlawful act or violation of any of the provisions of this chapter by any affiliate broker may not be cause for the suspension or revocation of the license of the broker with whom the affiliate broker is affiliated

There is no further explanation of this segment of the code. However below in section 62-13-312(15):

In the case of a licensee, failing to exercise adequate supervision over the activities of any licensed affiliate brokers within the scope of this chapter;

   A principal broker is liable for revocation, suspension or reprimand; have their license downgraded to affiliate broker, or be fined by the commission (rule 1260-2-.32 civil penalties) due to acts of the licensees employed by them. The maximum fine is $1,000.00 per violation of the sections of 62-13-312. This section shows the areas and the disciplinary actions available to the real estate commission. The principal broker of the office should be keenly aware of the tenets in this section and the potential actions that can be taken.

There are other areas of the law that a principal broker must be familiar with as well. He/she should be familiar with the whole law and other laws that have to do with the daily operation of a real estate office in this state. For example, in the past few years the legislature passed law that deals with the operation of a real estate company. Below is a copy of that legislature.
3. Chapter No. 671] PUBLIC ACTS, 2006

CHAPTER NO. 671

SENATE BILL NO. 3667

By Fowler

Substituted for: House Bill No. 2603

By Russell Johnson

AN ACT to amend Tennessee Code Annotated, Title 47, Chapter 18 and Title 66, Chapter 5, relative to sales of residences.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 47-18-104(b), is amended by adding the following language as a new, appropriately designated subdivision:

(A) Knowingly advertising or marketing for sale a residence as having more bedrooms than are permitted by the residence’s subsurface sewage disposal system permit, as defined in § 68-221-402, unless prior to the execution of any sales agreement the permitted number of bedrooms is disclosed in writing to the buyer.

(B) If a residence is marketed for sale as having more bedrooms than are permitted by the subsurface sewage disposal system permit and no disclosure of the actual number of bedrooms permitted occurs prior to the execution of a sales agreement, then the buyer shall have the right to rescind the sales agreement and may recover treble damages as provided in § 47-18-109.

(C) A subsurface sewage disposal system permit issued in the name of the owner of the residence shall serve as constructive notice to that owner of the residence and that owner’s real estate agent for the purpose of establishing knowledge as to the number of bedrooms of the residence for the purpose of finding a violation of this subdivision.

SECTION 2. This act shall take effect July 1, 2006, the public welfare requiring it.

As is mentioned in section (C) above, the disposal system permit may serve as constructive notice to the owner or the owner’s real estate agent for establishing knowledge as to the number of bedrooms for this purpose. It does not specifically give the responsibility of establishment to the real estate agent but in the event of a suit there is a good chance the real estate agent will be liable. This may fall under the definition of ‘adverse facts’ in section 62-13-102(2).

A. 62-13-102(2) Chapter definitions. — As used in this chapter, unless the context otherwise requires:
(2) “Adverse facts” means conditions or occurrences generally recognized by competent licensees that have negative impact on the value of the real estate, significantly reduce the structural integrity of improvements to real property or present a significant health risk to occupants of the property; 

This law section may further fall under knowledge that an agent ‘should have known’ as a professional if taken to the courts.

The below rule change by the Commission became effective February 16, 2008 addressed this law as enacted by the legislature.

B. 1260-2-.37 SEPTIC SYSTEM INSPECTION LETTERS. A licensee preparing an offer to buy shall provide in the offer and make the buyer aware that, for a fee, a septic system inspection letter is available through the Tennessee Department of Environment and Conservation, Division of Ground Water Protection.


As we have seen in this section the duties of the principal broker are far reaching. The liability falls directly on the principal broker so knowledge is a most valuable tool for the principal broker. Information from the Real Estate Commission is readily available. A real estate attorney should be engaged on a regular basis and information from other sources such as Tennessee Association of Realtors, federal agencies like Fair Housing and ADA are available and should be referenced on a regular timetable. Principal brokers should regularly check the Tennessee Real Estate Commissions website for law changes, rule changes and policies that have been passed by the Commission so they are up-to-date on current laws, rules and policies.

3. Agency Disclosure

Below are excerpts from Tennessee law having to do with disclosures. The first reference (62-13-405) comes from the portion of real estate law having to do with agency requirements. Please read this section carefully before moving to the next laws. There are requirements necessary that are probably not being adhered to by licensees on a regular basis.

Title 62  Professions, Businesses and Trades
Chapter 13  Tennessee Real Estate Broker License Act of 1973
Part 4  Representation by Real Estate Agents


(a) If a licensee personally assists a prospective buyer or seller in the purchase or sale of a property and the buyer or seller is not represented by this or any other licensee, the licensee shall verbally disclose to the
buyer or seller the licensee’s facilitator, agent, subagent or designated agent status in the transaction before any real estate services are provided. Known adverse facts about a property must also be disclosed under the laws governing residential property disclosure, compiled in title 66, chapter 5, part 2, but licensees shall not be obligated to discover or disclose latent defects in a property or to advise on matters outside the scope of their real estate license.

(b) The disclosure of agency status pursuant to subsection (a) must be confirmed in writing with an unrepresented buyer prior to the preparation of an offer to purchase. The disclosure of agency status must be confirmed in writing with an unrepresented seller prior to execution of a listing agreement or presentation of an offer to purchase, whichever comes first. Following delivery of the written disclosure, the licensee shall obtain a signed receipt for the disclosure from the party to whom it was provided. The signed receipt shall contain a statement acknowledging that the buyer or seller, as applicable, was informed that any complaints alleging a violation or violations of § 62-13-312 must be filed within the applicable statute of limitations for the violation set out in § 62-13-313(e). The acknowledgment shall also include the address and telephone number of the commission.

(c) The disclosure of agency or facilitator status, as provided in subsection (a), shall not be construed as or be considered a substitute for a written agreement to establish an agency relationship between the broker and a party to a transaction as referenced in § 62-13-406.

(d) Upon initial contact with any other licensee involved in the same prospective transaction, the licensee shall immediately disclose the licensee’s role in the transaction, including any agency relationship, to this other licensee. If the licensee’s role changes at any subsequent date, the licensee shall immediately notify any other licensees and any parties to the transaction relative to the change in status.

(e) Real estate transactions involving the transfer or lease of commercial properties, the transfer of property by public auction, the transfer of residential properties of more than four (4) units or the lease or rental of residential properties shall not be subject to the disclosure requirements of §§ 62-13-403, 62-13-404 and this section.


4. Property Disclosures

These next laws come from Title 66 chapter 5. They are not part of the real estate chapter but have to do with ‘Conveyances of Property’ so they additionally require our understanding.


This part applies only with respect to transfers by sale, exchange, installment land sales contract or lease with option to buy residential real property consisting of not less than one (1) nor more than four (4) dwelling units, including site-built and non-site built homes, whether or not the transaction is consummated with the assistance of a licensed real estate broker or salesperson. The disclosure statement referenced in § 66-5-202 is not a warranty of any kind by a seller and is not a substitute for inspections either by the individual purchasers or by a professional home inspector. The disclosure required by this part shall be provided to potential buyers for their exclusive use and may not be relied upon by purchasers in subsequent transfers from the original purchaser who received the property disclosure. The required disclosure shall be given in good faith by the owner or owners of property that is being transferred and shall be subject to the requirements of this part.

D&D School of Real Estate
www.ddschoolofrealestate.com
800-282-9375

B. 66-5-202. Required disclosures or disclaimers.

With regard to transfers described in § 66-5-201, the owner of the residential property shall furnish to a purchaser one of the following:

(1) A residential property disclosure statement in the form provided in this part regarding the condition of the property, including any material defects known to the owner. Such disclosure form may be as included in this part and must include all items listed on the disclosure form required pursuant to this part. The disclosure form shall contain a notice to prospective purchasers and owners that the prospective purchaser and the owner may wish to obtain professional advice or inspections of the property. The disclosure form shall also contain a notice to purchasers that the information contained in the disclosure are the representations of the owner and are not the representations of the real estate licensee or sales person, if any. The owner shall not be required to undertake or provide any independent investigation or inspection of the property in order to make the disclosures required by this part; or

(2) A residential property disclaimer statement stating that the owner makes no representations or warranties as to the condition of the real property or any improvements thereon and that purchaser will be receiving the real property "as is," that is, with all defects which may exist, if any, except as otherwise provided in the real estate purchase contract. A disclaimer statement may only be permitted where the purchaser waives the required disclosure under subdivision (1). If the purchaser does not waive the required disclosure under this part, the disclosure statement described in subdivision (1) shall be provided in accordance with the requirements of this part.


(a) In addition to any other disclosure required by this part, the seller shall, prior to entering into a contract with a buyer, disclose in the contract itself or in writing, including acknowledgement of receipt, the presence of any known exterior injection well and the results of any known percolation test or soil absorption rate performed on the property that is determined or accepted by the department of environment and conservation.

(b) Prior to entering into a contract with a buyer on or after May 20, 2009, the seller shall, where such information is known to the seller, also disclose in the same manner whether any single family residence located on the property has been moved from an existing foundation to another foundation.

(c) (1) In addition to any other disclosure required by this part, the seller shall, prior to entering into a contract with a buyer, disclose in the contract or in writing, including acknowledgment of receipt, the presence of a known sinkhole on the property.

(2) For purposes of this section, "sinkhole":

(i) Means a subterranean void created by the dissolution of limestone or dolostone strata resulting from groundwater erosion, causing a surface subsidence of soil, sediment, or rock; and

(ii) Is indicated through the contour lines on the property's recorded plat map.
D. **66-5-213. Disclosure requirement where property is located in a planned unit development.**

(a) As used in this section, unless the context otherwise requires:

1. "Bylaws" mean guidelines for the operation of a homeowner's association that define the duties of the various offices of the board of directors, the terms of the directors, the membership's voting rights, required meetings and notices of meetings and the principal office of the association, as well as other specific items that are necessary to run the homeowner's association as a business;

2. "Planned unit development (PUD)" means an area of land, controlled by one (1) or more landowners, to be developed under unified control or unified plan of development for a number of dwelling units, commercial, educational, recreational or industrial uses, or any combination of these, the plan for which does not correspond in lot size, bulk or type of use, density, lot coverage, open space or other restrictions to the existing land use regulations; and

3. "Restrictive covenant" means any written provision that places limitations or conditions on some aspect of use of the property, such as size, location or height of structures, materials to be used in structure exterior, activities carried out on the property or restrictions on future subdivision or land development.

(b) In addition to any other disclosures required in this part with regard to transfers described in § 66-5-201, the owner of the residential property shall, prior to entering a contract with a buyer, disclose in the contract itself or in writing, including acknowledgement, if the property is located in a PUD, and make available to the buyer a copy of the development's restrictive covenants, homeowner bylaws and master deed upon request.

E. **STATE OF TENNESSEE OFFICE OF THE ATTORNEY GENERAL**

March 6, 2014

Opinion No. 14-27

Exemption from the Real Estate Broker License Act

**QUESTIONS**

1. Does the exemption from licensure under the Tennessee Real Estate Broker License Act of 1973 provided to a “corporation, foreign or domestic” in Tenn. Code Ann. § 62-13-104(a)(1)(F) apply to a limited liability company?

2. If an individual who is a member or officer of an entity that qualifies for the exemption under Tenn. Code Ann. § 62-13-104(a)(1)(F) has the primary responsibility of performing activities on behalf of such entity for which a license is otherwise required under Tenn. Code Ann. § 62-13-102(4)(A) or (B), does it matter for purposes of the exemption whether the individual’s compensation is
dependent upon or directly related to the value of the real estate as to which the actions are performed?

3. If an individual performs activities for which a license is required under Tenn. Code Ann. § 62-13-102(4)(A) or (B) on behalf of an entity that qualifies for the exemption under Tenn. Code Ann. § 62-13-104(a)(1)(F) but does not perform such activities as a vocation, does the exemption apply to that person if his or her compensation is based on a distribution of profits to the owners of the entity, where the amount of the distribution includes the money received by the entity from the sale of the property and is distributed to all owners based on a percentage of ownership in the entity or some other calculation not directly related to the sale or rental of the property?

**OPINIONS**

1. No. A limited liability company must be licensed under the Act because the exemption provided by Tenn. Code Ann. § 62-13-104(a)(1)(F) is limited to “a corporation, foreign or domestic.” A limited liability company is not a corporation.

2. No, it does not matter; the exemption does not apply. The corporate exemption under Tenn. Code Ann. § 62-13-104(a)(1)(F) expressly does not apply to a person who performs an act described in Tenn. Code Ann. § 62-13-102(4)(A) as a vocation, and a person who performs such acts as his or her primary responsibility does so as a vocation.

3. No. The corporate exemption under Tenn. Code Ann. § 62-13-104(a)(1)(F) expressly does not apply to a person who performs an act described in Tenn. Code Ann. § 62-13-102(4)(A) for compensation if the compensation is dependent upon the value of the real estate with respect to which the act is performed. If the person’s compensation is based on a distribution of the corporation’s profits that includes money from the sale of property transacted by the person, the amount of the person’s compensation is dependent upon the value of the property sold.

**ANALYSIS**

1. Under the Tennessee Real Estate Broker License Act of 1973 (the “Act”), a “broker” is required to obtain a license from the Tennessee Real Estate Commission. Tenn. Code Ann. §§ 62-13-103 and -301. The term “broker” is broadly defined as follows:

   (4)(A) “Broker” means any person who, for a fee, commission . . . or any other valuable consideration or with the intent or expectation of receiving . . . valuable consideration from
another, solicits, negotiates or attempts to solicit or negotiate the listing, sale, purchase, exchange, lease or option to buy, sell, rent or exchange for any real estate or of the improvements on the real estate or any time-share interval as defined in the Tennessee Time-Share Act, compiled in title 66, chapter 32, part 1, collects rents or attempts to collect rents, auctions or offers to auction or who advertises or holds out as engaged in any of the foregoing;

(4)(B) “Broker” also includes any person employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a salary, fee, commission, or any other valuable consideration, to sell the real estate or any part of the real estate, in lots or parcels or other disposition of the real estate. It also includes any person who engages in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby the person undertakes primarily to promote the sale real estate either through its listing in a publication issued primarily for that purpose or for referral of information concerning the real estate to brokers, or both.

Tenn. Code Ann. § 62-13-102. The Act, however, includes exemptions; one of these exemptions applies to:

A corporation, foreign or domestic, acting through an officer duly authorized to engage in a real estate transaction, where the transaction occurs as an incident to the management, lease, sale or other disposition of real estate owned by the corporation; however, this exemption does not apply to a person who performs an act described in § 62-13-102(4)(A), either as a vocation or for compensation, if the amount of the compensation is dependent upon, or directly related to, the value of the real estate with respect to which the act is performed.

Tenn. Code Ann. § 62-13-104(a)(1)(F). This exemption is limited to both foreign and domestic corporations, and as this Office has previously opined in other contexts, a limited liability company is not a corporation. See Tenn. Attorney Gen. Op. 11-83 (Dec. 29, 2011) (“An examination of the Tennessee Limited Liability Company Act . . . reveals these business entities are intended to be separate and distinct from corporations.”). See also Tenn. Atty. Gen. Op. 98-053 (March 2, 1998) (opining that a criminal statute that prohibits the use of funds of a “corporation” for certain political purposes does not apply to a limited liability company). The exemption under Tenn. Code Ann. § 62-13-104(a)(1)(F), therefore, does not apply to limited liability companies.

2. For the exemption to apply, the real estate transaction must “occur[] as an incident to the . . . disposition of real estate owned by the corporation,” and the corporation must be acting through an officer who is “duly authorized” by the corporation to engage in the transaction.

Tenn. Code Ann. § 62-13-104(a)(1)(F); see Bowden Bldg. Corp. v. Tenn. Real Estate Commission, 15 S.W.3d 434, 441 (Tenn. Ct. App. 1999). Furthermore, if the officer “performs an act described in § 62-13-102(4)(A),” the officer is not entitled to the exemption if he or she performs such act as a “vocation” or for “compensation [that] is
dependent upon, or directly related to, the value of the real estate.” Tenn. Code Ann. § 62-13-104(a)(1)(F); see Bowden Bldg., 15 S.W.3d at 441.

The term “vocation” is not defined by the Act. “In seeking to determine the ‘natural and ordinary meaning’ of statutory language, the usual and accepted source for such information is a dictionary.” English Mtn. Spring Water v. Chumley, 196 S.W.3d 144, 148 (Tenn. Ct. App. 2005). “Vocation” is a “person’s regular calling or business; one’s occupation or profession.” Black’s Law Dictionary 1604 (8th ed. 2004). If an officer has the primary responsibility of performing activities that constitute acts described in § 62-13-102(4)(A), then the officer is performing such acts as a vocation.1 Because the officer has not satisfied the exemption’s vocation requirement, the exemption does not apply to the officer regardless of the kind of compensation received. See Bowden Bldg., 15 S.W. 3d at 441 (to satisfy the exemption requirement, corporate officers “must not perform such real estate services as a vocation”).

1 The acts described in Tenn. Code Ann. § 62-13-102(4)(A) include soliciting, negotiating, or attempting to negotiate the listing, sale, purchase, exchange, or lease of real estate, when those acts are performed for valuable consideration from another. A person who would be required to have a license solely on the basis of the definition of “broker” in Tenn. Code Ann. § 62-13-102(4)(B) but did not perform any act described in § 62-13-102(4)(A) would not be excluded from the exemption.

3. To be exempt, an officer performing activities that constitute acts described in Tenn. Code Ann. § 62-13-102(4)(A) must also not perform such acts for “compensation, if the amount of the compensation is dependent upon, or directly related to, the value of the real estate with respect to which the act is performed.” Tenn. Code Ann. § 62-13-104(a)(1)(F). Salaried officers (not performing the acts as a vocation) would satisfy this requirement because they are paid the same amount regardless of the sales price, while officers paid on commission would not be exempt because their commission would be directly related to the value of the property. Bowden Bldg. Corp., 15 S.W.3d at 441.

The phrase “dependent upon” is broader than “directly related.” If an officer is compensated through a distribution of profits tied to his ownership interest in the corporation and those profits include money from the sale of the property transacted by the officer, the “amount of the compensation is dependent upon . . . the value of the real estate” sold. The sales price would affect the amount of the distribution made to the officer because a higher sales price would result in greater profits to be distributed. Conversely, a lower sales price would result in a smaller distribution. The exemption does not apply to an officer performing acts described in § 62-13-102(4)(A) unless he receives compensation unaffected by sales volume and prices.2

2 See supra note 1.
This is an interesting read describing parts of the law under 62-13-102 and 104. It does clarify payment for actions under the law in regards to who must be licensed and the collecting of compensation by corporate officers. Although this is a very narrow area in our chosen profession it certainly is important to understand the actual law and to recognize that the law matters. Our industry cannot afford broad or ambiguous regulations, professionalism requires adherence to specific rules and regulations.

1260-02-.41 LICENSEES WHO HOLD THEMSELVES OUT AS A TEAM, GROUP, OR SIMILAR ENTITY WITHIN A FIRM.

(1) Licensees who hold themselves out as a team, group, or similar entity within a firm must be affiliated with the same licensed firm and shall not establish a physical location for said team, group, or similar entity within a firm that is separate from the physical location of record of the firm with which they are affiliated.

(2) No licensees who hold themselves out as a team, group, or similar entity within a firm shall receive compensation from anyone other than their principal broker for the performance of any acts specified in T.C.A. Title 62, Chapter 13.

(3) The principal broker shall not delegate his or her supervisory responsibilities to any licensees who hold themselves out as a team, group, or similar entity within a firm, as the principal broker remains ultimately responsible for oversight of all licensees within the principal broker’s firm.

(4) No licensees who hold themselves out as a team, group, or similar entity within a firm shall represent themselves as a separate entity from the licensed firm.

(5) No licensees who hold themselves out as a team, group, or similar entity within a firm shall designate members as designated firm agents, as this remains a responsibility of the licensed firm’s principal broker.


A licensee who provides real estate services in a real estate transaction shall owe all parties to the transaction the following duties, except as provided otherwise by § 62-13-405, in addition to other duties specifically set forth in this chapter or the rules of the commission:

(1) Diligently exercise reasonable skill and care in providing services to all parties to the transaction;

(2) Disclose to each party to the transaction any adverse facts of which the licensee has actual notice or knowledge;

(3) Maintain for each party to a transaction the confidentiality of any information obtained by a licensee prior to disclosure to all parties of a written agency or subagency agreement entered into by the licensee to represent either or both of the parties in a transaction. This duty of confidentiality extends to any information that the party would reasonably expect to be held in confidence, except for information that the party has authorized for disclosure, information required to be disclosed under this part and information otherwise required to be disclosed pursuant to this chapter. This duty survives both the subsequent establishment of an agency relationship and the closing of the transaction;

(4) Provide services to each party to the transaction with honesty and good faith;

(5) Disclose to each party to the transaction timely and accurate information regarding market conditions that might affect the transaction only when the information is available through public records and when the information is requested by a party.

(6) Timely account for trust fund deposits and all other property received from any party to the transaction; and

(7)

(A) Not engage in self-dealing nor act on behalf of licensee's immediate family or on behalf of any other individual, organization or business entity in which the licensee has a personal interest without prior disclosure of the interest and the timely written consent of all parties to the transaction; and

(B) Not recommend to any party to the transaction the use of services of another individual, organization or business entity in which the licensee has an interest or from whom the licensee may receive a referral fee or other compensation for the referral, other than referrals to other licensees to provide real estate services under this chapter, without timely disclosing to the party who receives the referral the licensee's interest in the referral or the fact that a referral fee may be received.
Unit Six

Quiz

1. What are the actions covered by the Tennessee law that require an agent to be licensed to receive a fee for their services?
   a. Listing, sale, purchase, exchange, lease or option to buy, sell, rent or exchange any real estate or the improvements thereon with the intent of receiving a fee for said services.
   b. Listing, sale, purchase, exchange, lease or option to buy, rent any real property for another with the intent of receiving a fee for said services.
   c. Any transaction that would transfer the deed to real property from one unrelated party to another.
   d. All of the above.
2. Under T.C.A. 62-13-102(4) who is entitled to receive a fee for services
   a. All licensed practitioners.
   b. The principal broker of the office as registered with T.R.E.C.
   c. Both brokers and affiliate brokers.
   d. Brokers only unless specific direction by the principal broker to allow another licensee to receive a commission.

3. Affiliate broke Sue just wrote a contract for the sale of a listing that was listed by an agent in a different office. She completed the contract at 4:30 P.M. and was 30 minutes from the listing office and 45 minutes from her own office. She wanted to get the offer to the listing agent A.S.A.P. so she decided to head that direction first. After presenting the offer to the listing agent she went to her own office knowing it was closed. What should she do with the earnest money check she collected from the buyer?
   a. She can hold the check until her office opens tomorrow and then turn it in to the broker.
   b. If the listing agent requested that his office hold the earnest money then she should give it to the listing agent and get a copy of the check.
   c. If her office has no policy as to how to pay over earnest money deposits after office hours she should take it to her broker’s house so she can turn it over to her.
   d. In most cases she will keep the check in the file until the offer is accepted.

4. Affiliate broker Bob wrote an offer on a listing from another office. Bob called the listing agent to let her know he was writing the offer and she told Bob that the policy of her office was to hold the earnest money deposit on contracts on their listings. Bob had the buyer make the check out to the listing office and delivered it to that office along with the offer. After the offer was accepted, it subsequently fell through. The broker of the listing office determined that under the contract the buyer was in default and passed the earnest money to the seller. The buyer did not agree with this interpretation and is intending to sue. Which of the following is most liable under the law?
   a. The listing broker that disbursed the funds.
   b. The selling agent that received the funds
   c. The listing broker and the selling broker equally
   d. The selling broker whose agent accepted the funds on his/her behalf.

5. Under what circumstances, if any, does a principal broker of a firm not have to have an escrow account?
   a. Upon receiving a waiver from T.R.E.C.
b. There is no provision for eliminating the necessity for an escrow account for principal brokers.
c. In certain conditional circumstances as directed by the Rules of the Commission.
d. A broker principally engaged in residential real estate can appoint a closing company to be the escrow agent in all transactions thereby deferring the need for an escrow account.

6. ABC Real Estate Services is a small company owned by Sally Smith who does not have a broker’s license. Sally hires Janet Johnson, her close friend as the principal broker of her small office. Janet is a full time employee of the U.S. Postal Service located right next to Sally’s real estate office. Sally has no intention of hiring any additional agents, her business works quite well for her working alone. Is the arrangement between Sally and Janet recognized as acceptable under the law?

a. This fulfills all the tenants of the law.
b. This is a breach of the rules under 1260-2-.01(1)
c. Due to the office location being in close proximity to the Post Office the Commission would accept this arrangement.
d. As long as Sally does not hire more than 4 agents the broker may be a part time person.

7. Which of the below statements is the correct definition of designated agent?

a. The listing or selling agent that represents a single party in a transaction.
b. An agent ‘designated’ by the principal broker to represent both parties in a transaction.
c. A self-appointed broker representing a party to a transaction

d. A licensee who has been chosen by the managing broker to serve as the agent of an actual or prospective party to a transaction to the exclusion of other licensees affiliated with such broker.