

Supplement to the 2021-2022 TREC Residential Core Course

Highlighting the TREC Rule Changes from Previous Core Curriculum

UNIT 1 - TREC Law, Rules and Regulations

At the August 2020 Tennessee Real Estate Commission (TREC) monthly meeting, the Commissioners voted to retain the topics for the Core course found in the 2019-2020 TREC Residential Core Course. Included in the outline of topics are the rule changes that occurred in 2015 and 2017. These particular changes were highlighted in the previous Core material, but not included in the new 2021-2022 TREC Residential Core Course. Rule and statute changes over the past couple of years are, however, noted in the new Core course.

Previous Rule Changes

- New Termination of Affiliation
- Deposits and Earnest Money
- Advertising (*Topic covered in UNIT 6*)
- Commissions Earned by Affiliated Licensees
- Electronic Records
- Licensees who hold themselves out as a Team, Group, or Similar Entity Within a Firm
- Duplicate or Confusingly Similar Firm Names
- Appearances Before the Commission for the Purpose of Obtaining a License
- Military Applicants
- Reinstatement of an Expired License of a Broker, Affiliate Broker, Time-Share Salesperson or Acquisition Agent
- E & O Suspension and Penalty fees
- Out-of-state licensees must complete 16 hrs CE for renewal

New Termination of Affiliation (TREC Rule 1260-02-.02)

Highlights of the Rule Change

- A **completed TREC Form 1** must be submitted to the Commission to be effective.
- The **current principal broker's supervisory responsibilities end once the Commission receives the completed TREC Form 1.**
- The **licensee has ten (10) days after release** to either place his license with another broker or submit the license to TREC for retirement. The licensee cannot practice real estate until TREC receives the TREC Form 1.

- **Transfer of affiliation can be completed online on TREC's website.** The new principal broker must verify license status and the Commission must receive the TREC Form 1 within five (5) days of the online transfer. If not received, the license will be placed in "broker release" status. (*See Instructions on Transferring License Online*)
- **Licensee cannot take listings or buyer representation agreements** without written authorization by the releasing principal broker.
- **When a licensee requests their license, the principal broker must give it to the licensee immediately.** If the principal broker releases a licensee, the license must be returned to the Commission.
- TREC has a process in place when either the licensee or principal broker is unable to sign a release.
- TREC will not become involved in loans, debts, draws or commission disputes.

Deposits and Earnest Money (TREC Rule 1260-02-.09)

Highlights of the Rule Change

- New terms have been introduced in the new rule: **"Commingling" and "Trust Money"**:
- **"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.
- **"Trust money"** is defined as either: money belonging to others received by a licensee who is acting as an agent or facilitator in a real estate transaction; or any money held by a licensee who acts as the temporary custodian of funds belonging to others.
- **The principal broker is responsible for ALL trust money.** This is true regardless of whether the principal broker is the owner or if someone else owns the firm.
- **Each principal broker shall maintain a separate escrow account for the purpose of holding trust money** received in their fiduciary capacity. All trust money received and held which relates to the lease of property must be held in one or more separate escrow or trustee accounts. (For security deposits, the broker CANNOT keep security deposits in the same account as rent monies.)
- **An affiliate broker shall pay over to the principal broker all trust money immediately upon receipt.**

- The **principal broker shall clearly specify in the contract the terms and conditions for disbursement**, and the name and address of the person or firm who will actually hold the trust money.
- Where the contract authorizes an individual or entity other than the principal broker to hold the trust money, the specified agent relieves the principal broker of responsibility for the trust money.
- A **principal broker may disburse trust money**: pursuant to the contract authorizing him to hold the trust money; **by a written agreement** with all parties having an interest separate from the trust contract; **at the closing; upon the rejection of an offer to purchase, sell, rent, lease, exchange or option real estate**; upon **filing an interpleader action**; upon the order of a court.
- Trust money shall be **disbursed in a proper manner without unreasonable delay**.
- Absent a compelling reason **earnest money shall be disbursed, interpleaded, or turned over** to an attorney to interplead the funds **within 21 days from the date of receipt of a written request**.
- **No postdated check shall be accepted for payment of trust money** unless otherwise provided in the offer. Trust Money shall be deposited into an escrow or trustee account promptly upon acceptance of the offer, unless the offer contains a statement saying otherwise. **Commingling of funds contained within firm accounts is prohibited**.
- **Interest bearing escrow accounts are neither required nor prohibited**. If used there must be a written contract between the parties expressing that such exists, the manner of disposition, and a detailed accounting shall be kept by the licensee for each separate account.

Advertising (TREC Rule 1260-02-.12)

Note: Changes to TREC Rule 1260-02-.12 will be reviewed in Unit 6 - Advertising

Commissions Earned by Affiliated Licensees (TREC Rule 1260-02-.39)

Highlights of the Rule Change

- Commissions earned while working under a principal broker can still be paid after one or more of these circumstances occur:
 - the licensee transfers to a new broker;
 - retires their license;

- is in broker release status;
 - allows their license to expire, or
 - the death of the affiliated licensee.
- These commissions can be paid directly to the agent rather than the new firm as long as the contract was signed WHILE the agent's license was affiliated with the real estate firm.

Electronic Records (TREC Rule 1260-02.40)

Highlights of the Rule Change

- Per the law real estate licensees **must preserve records relating to any real estate transaction for 3 years**. Electronic recordkeeping is allowed if:
 - all documents **must be readily accessible in an organized format** within 24 hours of any request for inspection by TREC; and
 - the **principal broker must utilize a retention schedule** and security format that ensures accessibility in a readable format.

NOTE: Tennessee REALTORS® recommends that records be kept for a minimum of seven (7) years. This is because the statute of limitations for breach of contract (default) is six (6) years. Records include the following (from TREC's website): Listings, offers (even offers that did not become contracts), contracts, closing statements, agency agreements, agency disclosure documents, property disclosure forms, correspondence and notes.

Licensees Who Hold Themselves out as a Team, Group, or Similar Entity Within a Firm (TREC Rule 1260-02-.41)

Highlights of the Rule Change

- **Licensee who hold themselves out as a team, group or similar entity must be affiliated with the same licensed firm and shall not establish a physical location for said team or group that is separate from the physical location of the firm.**
- **No compensation shall be received from anyone other than their principal broker.**
- **The principal broker shall not delegate their supervisory role** to any licensees in the team or group.
- **Designated Agents shall not represent themselves as a separate entity from the firm, nor shall they designate members as agents as this remains a responsibility of the principal broker.**

Duplicate or Confusingly Similar Firm Names (TREC Rule 1260-01-.18)

Highlights of the Rule Change

- TREC will not issue a new firm license in a name that is the **same or confusingly similar to another firm** already issued. The applicant may appeal a decision not to issue first to the Executive Director, and then to the Commission.

Appearances Before the Commission for the Purpose of Obtaining a License (TREC Rule 1260-01-.19)

Highlights of the Rule Change

- When a licensure applicant appears before the Commission, **they must also ensure the presence of their principal broker (or intended principal broker).**

Military Applicants (TREC Rule 1260-01-.20)

Highlights of the Rule Change

- An applicant serving in the military may be issued a license upon application and payment of all fees if the Commission decides the requirements for licensure from another state are substantially equivalent to Tennessee. Or, a military applicant may obtain a temporary permit until they have completed the additional requirements necessary to become equivalent in the opinion of the Commission. Also, military education, training or experience shall be acceptable for equivalent qualifications as determined by the Commission.
- Any licensee who is a member of the National Guard or a reservist called to active duty whose license expires during that time shall be eligible to be renewed upon the licensee being released from active duty without payment of late fees, or penalties; or obtaining CE credits.

Reinstatement of an Expired License of a Broker, Affiliate Broker, Time-Share Salesperson or Acquisition Agent (TREC Rule 1260-01-.21)

(NOTE: TREC Rule 1260-01-.21 was amended in October 2016 by TREC and the changes became effective on January 16, 2017)

Highlights of the Rule Change

- **Expired license due to health issues or medical problems:** If a licensee fails to renew within 60 days after expiration due to personal or family health issues, **they can**

request a medical waiver from the Commission with a signed doctor's statement. Also, renewal fees must be paid but late penalties are waived.

- **Expired license due to failure to comply with prerequisites to licensure:** If a licensee fails to comply with their conditions to licensure or renewal, but successfully completes same within 60 days of expiration, the penalty fee will be \$50 per 30-day period in addition to their renewal fees.
- **If a licensee fails to comply with their conditions to licensure or renewal after 60 days of expiration,** the licensee must sign a **Reinstatement Order**, complete all prerequisites or conditions, pay renewal fees, and pay \$50 penalty fees per 30-day period (if within 120 days); or if more than 120 days (but less than 1 year) they must pay \$100 per 30 days period beginning on the 121st day.
- **If a license is expired for more than 1 year,** the individual **must reapply for licensure, meet current education requirements, and pass all required exams.**

Retired Tennessee Real Estate Licenses

Highlights of the Rule Change

- T.C.A. § 62-13-318 has been amended and eliminates the requirement that all education requirements specified in § 62-13-303 must be completed as a condition to temporary retirement of a license in Section 10 of the bill. Instead, **the licensee must complete the education requirements prior to reactivation within the current license renewal period in which they are seeking reactivation.** This change, enacted in July 2016, eliminates the need for an inactive license status, thus T.C.A. § 62-13-322 was deleted in its entirety.