



**Tennessee Real Estate Commission Residential CORE
2015-2016**

6 Correspondence Continuing Education Hours

Tennessee Real Estate Commission Residential CORE

Final Exam

- 1) If Ollie Owner of a commercial building hires Adam Agent to negotiate lease terms with compensation and Ollie Owner sells to Betsy Buyer without notice of the agreement with Adam Agent, Betsy Buyer is not required to still pay Adam Agent.
 - a. True
 - b. False
- 2) If you are an active affiliate licensed with the state and upgrading to a Broker status you MUST get fingerprinted.
 - a. True
 - b. False
- 3) All agency agreements are between:
 - a. The firm and the client
 - b. The licensee and the client
 - c. The seller and the buyer
 - d. Both A and B
- 4) A property manager is defined as a licensee who engages over half their time in leasing and managing rental properties.
 - a. True
 - b. False
- 5) The status of Agent for Seller allows all agents within the firm to represent individual buyers on an in-house listing.
 - a. True
 - b. False
- 6) Under an Exclusive Buyer Representation Agreement a buyer agrees to:
 - a. Owe a commission to a licensee
 - b. To not contact other licensees directly
 - c. To notify any licensee they come in contact with that they are under contract
 - d. All of the above
- 7) When buying or selling property for themselves, all licensees shall:
 - a. Not disclose they are licensed
 - b. Identify themselves as a licensee
 - c. Disclose they are licensed if asked
 - d. Disclose only if there is another licensee involved

- 8) When is a licensed agent supposed to notify they are licensed in a transaction for a property they have a personal interest in?
- At closing
 - During the negotiation process
 - Never
 - First and prior to any activity of a transaction
- 9) What document does a licensee negotiate commission with a buyer on?
- Purchase and Sale Agreement
 - Notification
 - Personal Interest Disclosure
 - Exclusive Buyer Representation Agreement
- 10) A disclosure statement prepared by a seller is a written guarantee to a purchaser
- True
 - False
- 11) A disclaimer can only be permitted where the purchaser:
- Waves the required disclosure
 - The licensee recommends they do not read it
 - The seller declines to provide one
 - The buyer does know they have a right to one
- 12) A disclosure of agency with an unrepresented seller PRIOR to execution of a listing agreement or presentation of an offer to purchase. The licensee shall obtain a signed receipt which shall include:
- Statement acknowledging they were informed within statute of limitations
 - Address of the commission
 - Telephone number of the commission
 - All of the above
- 13) A licensee MUST disclose all adverse facts about real property.
- True
 - False
- 14) A seller can be held liable for not disclosing the following items that can be discovered professional or licensed third party inspections:
- Termite activity in a crawl space
 - A discrepancy in the lot size
 - The water heater not operating for the past 3 months
 - Missing shingles on the roof

- 15) The statute of limitations for misrepresentation or nondisclosure of items against a seller is:
- (1) year from date the seller filled out the disclosure
 - (3) years from date the seller filled out the disclosure
 - (3) years from date the disclosure was received or the date of closing or occupancy, whichever occurs first
 - (3) years from date the disclosure was received or the date of closing or occupancy, whichever occurs first
- 16) A licensee is also held liable for the Property Condition Disclosure form and all information included in it that the seller filled out.
- True
 - False
- 17) What type of transaction is EXEMPT from Property Condition Disclosure?
- Townhouse
 - Residential Real Property
 - Foreclosure transactions where the owner has never resided in the property
 - Planned Unit Development property
- 18) Transfers between spouses from a divorce or property settlement must have a property disclosure presented between the parties.
- True
 - False
- 19) Sellers must disclose:
- A sinkhole on the property
 - A party that had HIV in property
 - A felony occurred on property
 - A paranormal existence on property
- 20) Which of the following are exempt from agency disclosure laws:
- Commercial properties
 - Transfer of properties by auction
 - Transfer of residential properties of more than 4 units
 - All of the above
- 21) A seller does not have to disclose that a property has been moved from an existing foundation to another foundation if they are not aware of any foundation issues.
- True
 - False

- 22) One remedy for misrepresentation on a residential property disclosure statement can be an action for actual damages to the purchaser.
- True
 - False
- 23) If a property is transferred by court order:
- The court must order a home inspection
 - The court must supply a property disclosure statement
 - The court is exempt for supplying property disclosure statement
 - The court must sell the property for the tax records appraised it for
- 24) Licensed agents are obligated to discover and disclose:
- Latent defects
 - Adverse facts
 - Adversarial defects
 - Latent facts
- 25) An impact fee is:
- A fee imposed by county or municipal government to regulate new developments
 - A builder fee to a purchaser to cover the impact of his work involved
 - A fee imposed by the HOA to impact the development
 - A builder fee for his secretary
- 26) "Real Estate" means and includes leaseholds, as well as any other interest or estate in land.
- True
 - False
- 27) Principal brokers of real estate firms should utilize a retention schedule to safeguard record keeping for entire period of time required to store records.
- True
 - False
- 28) A licensee holding themselves out as a team or group can receive compensation from:
- Any firm directly
 - Any buyer or seller directly
 - The title company
 - The firm they are affiliated with
- 29) A licensee holding themselves out as a team or group can:
- Designate firm agents
 - Represent themselves as a separate entity from the firm
 - Perform principal broker duties
 - None of the above

- 30) Tammy Team Maker created a team of 10 agents with ABC Realty. Tammy advertising her properties for sale by "Tammy's Real Estate Group" with an independently owned cell phone number. Is she in violation of any rule(s)?
- No, she created a great team and they work as a group
 - Yes, she is not representing she is part of the ABC firm
 - Yes, she is not supplying the firm phone number
 - B and C
- 31) A net lease in commercial real estate:
- Is the most common lease
 - Spreads out the taxes and insurance based on space to tenants
 - Owner pays all taxes and insurance
 - Both A and B
- 32) The firm name used in advertising must include the entire name of the real estate firm as licensed with the Commission or the D/B/A as licensed with the Commission.
- True
 - False
- 33) An example of misleading or false advertising would be:
- A licensee advertising including franchise name and firm
 - A licensee advertising their team including the firm prominently
 - A business card with a franchise name, number and each office independently owned and operated
 - A webpage with link to an unlicensed entity's website appearing to be engaged in real estate
- 34) If a property is located in a planned unit development (PUD) a seller must make available:
- Restrictive covenants
 - PUD address and phone number
 - Written description of the PUD
 - Plat map
- 35) Any licensee using a franchise trade name on cards, contracts or other documents must include
- Licensee name and licensee phone number
 - Licensee name and firm number
 - Licensee name, firm number and fact that office is independently owned and operated
 - Fact that office is independently owned and operated
- 36) In internet advertising the firm name and phone number must appear on each page of a website.
- True
 - False

- 37) Internet advertising shall include:
- Firm name and firm phone number
 - Each page stating some or all listings may not belong to firm
 - Current and accurate listing information
 - All of the above
- 38) When a licensee chooses to move to another firm the present broker:
- Shall sign and date the change form within 48 hours
 - Shall sign and date the change form immediately
 - Shall sign and date the change form within 24 hours
 - Shall sign and date the change form within 12 hours
- 39) An officer of a corporation performing Real Estate as a vocation is exempt from licensure whether the corporation is exempt or not.
- True
 - False
- 40) In the state purchase and sale contract document the days for application for loan was modified from:
- 5 days to 3 days
 - 3 days to 5 days
 - 5 days to 7 days
 - 7 days to 5 days
- 41) The phrase "Buyer has instructed Lender to order and has paid for the appraisal and credit report" has been amended to "Buyer has instructed Lender to order and has paid for the credit report".
- True
 - False
- 42) Any contract that went into effect prior to October 3rd referencing Earnest Money versus Trust Money is grandfathered in and no additional documents are required.
- True
 - False
- 43) If a contract fails due to severed provisions the offending language shall:
- Be ignored
 - Be omitted
 - Amended to be in conformity with the state and federal law
 - Amended to be in conformity with the state law

- 44) An affiliate broker must turn over any deposits and trust money to the broker:
- Within a reasonable amount of time
 - Within 24 hours
 - Immediately upon receipt
 - Within 3 days
- 45) In Property Management it is acceptable to hold all deposits in an operating account.
- True
 - False
- 46) A Broker must maintain accounting records of trust accounts for at least (3) years showing:
- Deposit of funds
 - Payee of funds
 - Date of deposit
 - All of the above
- 47) Anyone that holds themselves out as a team or group:
- Can establish a physical location separate from the firm
 - Can take on principal broker duties
 - Cannot establish a physical location separate from the firm
 - Cannot advertise with the firm name and number
- 48) Who pays for the taxes, insurance and maintenance fees in a triple net commercial lease?
- Tenant
 - Owner
 - Property Manager out of their commissions
 - Split between the Tenants equally
- 49) The common commercial leases are:
- Net, Gross and Space
 - Triple Net, Gross and Space
 - Net, Triple Net and Space
 - Net, Gross and Triple Net
- 50) Upon initial contact with another licensee involved in the same prospective transaction, the licensee shall disclose the role in the transaction, including any agency relationship, to this other licensee:
- At closing
 - Immediately
 - Never, it is not necessary
 - Only to negotiate a commission

- 51) Reciprocity is an agreement to allow others to have the same rights; a reciprocal arrangement.
- True
 - False
- 52) Leased commercial properties, public auction properties, transfer of residential properties of more than four (4) units or lease or rental of residential properties are not subject to disclosure requirements.
- True
 - False
- 53) A licensee may be supervised by a Principal Broker as long as they live within a certain radius of the office. The accepted radius is:
- 50 miles
 - 75 miles
 - 25 miles
 - 100 miles
- 54) Contracts authorize brokers to place funds in an escrow or trustee account, the broker shall clearly specify in the contract:
- Terms and conditions for disbursement of such funds
 - Name and address of person who will hold funds
 - A only
 - A and B
- 55) A broker may properly disburse funds from an account:
- Upon written agreement signed by all parties
 - At close of transaction
 - Upon interpleader action in a court
 - All of the above
- 56) Funds should be disbursed within how many calendar days from receipt of written request?
- 15 calendar days
 - 7 calendar days
 - 21 calendar days
 - 30 calendar days
- 57) There are 17 reciprocal states for licensees with Tennessee.
- True
 - False

58) TREC requires the following in order to become a broker:

- a. Active license for 5 years
- b. Active license for 2 years
- c. Active license for 1 year
- d. Active license for 3 years

59) Any individual that negotiates leases in Property Management:

- a. Are not required to be licensed
- b. Are required to hold an affiliate license
- c. Are required to hold a Broker's license
- d. Are required to hold a special certificate of training

60) Until a licensee enters into a specific written agreement to establish agency relationship in a transaction the licensee is considered a:

- a. Designated Agent
- b. Agent for the party
- c. Dual agent
- d. None of the above

Tennessee Residential CORE Course Orientation

Course Objectives

At the end of the course the licensee will be able to describe, identify and apply laws and statutes; understand the responsibilities and role of the licensee; and recognize the impact on all entities and parties involved in Real Estate transactions relevant to the topics described below.

Licensees will cover the following learning objectives throughout the course:

- Differentiate between commercial and residential real estate
- Understand who is exempt from licensure
- Explain licensing procedural changes and the effects of E&O Suspension
- Discuss and describe agency, disclosure and liability
- Demonstrate advertising procedures including how to operate as a group within a firm and signage
- Review state contracts
- Examine setting up escrow accounts for property management and state requirements
- Define the basic terminology of commercial leases
- Recognize disclosures related to contract agreements
- Discuss principal broker supervision as it relates to licensees, advertising, earnest money and audits
- Explain license reciprocity

Important Information

To enhance comprehension, review questions will be asked throughout the course.

A final exam will be administered after the course is completed to check for mastery of the material.

If you do not pass the final exam, you can review the course material and retake the exam at no additional cost.

If assistance is needed with this course you can contact PDH Academy at 888-564-9098 or at pdhacademy@gmail.com.

After completing the course and final exam, we ask that you take our course survey to help us continue to provide high-quality continuing education.

I. TREC Law, Rule, Policy Update

The following definitions are important to better understand the subsequent information:

- **"Owner"** means the person or persons to whom the fee interest of real estate is titled and does not include a lessee or renter;
- **"Real estate"** means and includes leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold or non-freehold, situated in this state; and
- **"Subsequent owner"** means a transferee or purchaser of commercial real estate from the owner or from a previous subsequent owner, but will not include the transferee or purchaser of commercial real estate pursuant to a sale conducted pursuant to title 67, chapter 5, part 25.
- **"Broker"** means any person who, for a fee, commission, finders fee or any other valuable consideration or with the intent or expectation of receiving a fee, commission, finders 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;
- **"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 of 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;
- **"Commercial real estate"** means any real estate other than:
 - Real estate containing one (1) to four (4) residential units; or
 - Real estate on which no buildings or structures are located and is zoned for no more than one (1) to four (4) family residential units;
- **"Commercial real estate"** does not include single family residential units such as condominiums, town houses or homes in a subdivision when sold, leased or otherwise conveyed on a unit-by-unit basis even though these units may be a part of a larger building or parcel of real estate containing more than four (4) residential units;

Tennessee Code 62-13-501. Part definitions -- Form of notice.

There is a new form required for compensation for securing commercial tenants called Notice of Agreement to Pay Leasing Commission. The Notification Form only applies to commercial real estate transactions.

In order to be paid commissions or fees for securing a tenant on commercial real estate transactions a Notice of Agreement to Pay Leasing Commission form must be used. The change provides explanation for the commission or fee whereas previously it was “based on rental income”.

- ***"Notice"** means a notice specifically referencing an agreement entered into after October 1, 1997, to pay commissions in any brokerage contract or lease or memorandum of the foregoing, sworn to and executed by the broker, identifying the subject real estate by lot and block number or by a metes and bounds description and in the form of notice set out in this subdivision and containing only the information provided for in the form, recorded as provided for in § 62-13-503(e), in the office of the register of deeds of the county in which the property is located, no less than ten (10) business days before the transfer of the commercial real estate that is the subject of the agreement.*

The form of the notice to be recorded shall be:

NOTICE OF AGREEMENT TO PAY LEASING COMMISSION

THIS NOTICE is made as of this _____ day of _____, _____, in accordance with the provisions of T.C.A. Section 62-13-501. The undersigned [Name of Broker][address] makes claim to fees or commissions with respect to the following real property located in the State of Tennessee [property must be identified below by County and City (if any) and by either lot and block or subdivision number, or metes and bounds description].

County: _____

City: _____

Lot And Block No. or Subdivision/Development Name: _____

Property (Metes and Bounds) Description (either fill in here or attach Exhibit):

[The Broker], is entitled to be paid certain leasing fees or commissions as a result of securing a tenant for the real property from the above-described real property pursuant to one or more provisions of the following written instrument (the "Instrument"):

Name/Title _____ of _____ Instrument: _____

Date of _____ Instrument: _____

Name of Parties to Instrument: _____

The _____ Owner _____ of _____ the _____ Property _____ Is: _____

[NOTE: Any party seeking details or any other information regarding the Instrument shall rely only on the Instrument. Without the express written consent of all parties to the Instrument, neither the Instrument nor any other information regarding the Instrument shall be included in this Notice.]

THIS NOTICE made for the purpose set out above to be effective as of the day and date first above written.

STATE OF _____

COUNTY OF _____

The Undersigned Broker, being first duly sworn, hereby certifies that the foregoing Notice of Agreement to Pay Leasing Commission is true and correct, and that the agreement to pay leasing fees or commissions remains in force and has not been terminated.

This the _____ day of _____, _____.

BROKER:

By: _____

Print Name: _____

Title: _____

[NOTE: Insert the appropriate acknowledgment form as required by law and have the broker's signature properly acknowledged.];

Tennessee Code 62-13-502. Enforcement of fee or commission contract against subsequent owners.

The following Law came into effect on March 12, 2014:

A broker who, pursuant to a contract in writing entered into after October 1, 1997, has earned and is owed a fee or commission with respect to a lease or upon the exercise of an option for renewal or expansion of the lease, whether payable over time or in a lump sum, from the owner of commercial real estate pursuant to such written contract for the broker's services in connection with a lease of commercial real estate, shall have a cause of action to enforce the contract with respect to the fee or commission against a subsequent owner, even though the subsequent owner is not a party to the contract, if and only if the subsequent owner has notice of the contract as provided in this part with respect to the fee before obtaining title to the commercial real estate. There shall be no prohibition against a broker giving the notice as required by this part, and any such prohibition is void and unenforceable.

For fees or commissions associated with leases in commercial agreements, the agreements will follow the property.

Real Life Example:

Oscar Owner of 123 Commercial Building has 5 units, and Adam Agent has written agreements for Oscar Owner for the units that includes any fee or commission structures. When Oscar Owner sells the building to Ollie Owner, the agreement automatically transfers with the property and Ollie Owner now is required to compensate Adam Agent under the terms of agreement as long as he was given notice of the agreement prior to closing on the purchase. If, however, the new owner Ollie was not given notice prior to closing, the agreement would not be enforceable. Anyone can give notice to the new purchaser, including the agent.

AG Opinion – Exemptions to the Real Estate Broker License Act

- *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.*
- *If an officer is performing Real Estate duties as a vocation they are not exempt from licensure even if the corporation is. 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.*
- *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.*

Case Study:

A complaint was filed alleging that the Respondent, Registered Agent for an LLC, engaged in unlicensed activity. The complainant stated that the LLC, along with its affiliated LLCs, acquired over 100 properties with the intent to redevelop the properties into detached duplexes. The complainant stated that the LLC hired unlicensed individuals, representing themselves as investors, to solicit and entice homeowners to sell their property. The complainant stated that the purchase contracts were very simple and were in favor of the buyer. The complainant further stated that licensed brokers also assisted in purchasing the properties below fair market value and received commissions between 6% and 200% of the seller’s sales price through illegal net listings. The complainant attached a website that included a listing of 51 properties and a description stating the company, “provides a full ranges of services to the residential community...contact us if you are interested in selling your land or house, or buying one of our available properties...”

The respondent submitted a response through an attorney and stated that the respondent did not receive a fee, commission, or valuable consideration arising from the purchase of real property, as would a broker. The respondent stated that in the respondent’s role as Principal and President of the LLC, the respondent acted solely in the capacity of a buyer. The respondent offered for the entity to purchase properties from the owner, and if the offer was accepted, the property was purchased, but at no time did the respondent act as broker. The

respondent denies employing unlicensed agents and states that the company dealt with independent third parties who were free to contract to sell to the company or to anyone else with whom they reached a deal. The respondent further states that the complainant did not provide any factual basis to support the allegation.

The office of legal counsel requested documentation regarding properties bought or sold on behalf of the LLC. The respondent provided the settlement statements for various transactions between deferent subsidiaries of the LLC. The respondent stated that the respondent is President and has a minority interest for one of the LLC's and is the Chief Manager of each subsidiary LLC. The respondent stated that often no brokerage was involved in the transactions. The respondent stated that in the absence of the broker, the respondent contracted for the purchase of the properties by the subsidiaries in the respondent's capacity as chief manager.

In addition, the respondent stated that as principal for the LLC, the respondent is responsible for the day-to-day execution of the operation of the LLC, a residential construction company. The respondent oversees the acquisitions, negotiates with the seller for the purchase price and the terms subject to the approval of the management committee, oversees the closing of all acquisitions, oversees the selection of tenants and lease negotiations for rentals, and various duties with regard to the construction. The respondent attached a letter from the LLC's CPA to describe how the respondent is paid through the LLC. The respondent has 50% interest in the profits and losses of the company as a member of the LLC. In addition, the respondent receives a monthly guaranteed payment for services of a fixed amount. Also, the respondent receives 5% interest in the profits and losses of the company as a member of that LLC and receives no other compensation from that LLC.

TREC Meeting February 4-5, 2015 Recommendation: Consent Order for \$2,000 for unlicensed activity in violation of T.C.A. §§ 62-13-102(4)(A), 62-13-103 and 62-13-301. The recommendation for said order was to also include a cease and desist of all unlicensed activity.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Commissioner DiChiara made a motion to accept the recommendation of the legal counsel for a Consent Order for \$2,000 for unlicensed activity in violation of T.C.A. §§ 62-13-102(4)(A), 62-13-103 and 62-13-301, and for said order to include a cease and desist of all unlicensed activity; Commissioner Hills seconded motion; vote of 6 yes and Commissioner Franks abstains; motion carries.

Tennessee Code 62-13-303 Fingerprinting

(1)(1) The commission shall require all applicants for initial licensure issued under this chapter, including but not limited to a time-share license, on or after January 1, 2014, to submit a complete and legible set of fingerprints, on a form prescribed by the commission or in such electronic format as the commission may require, to the commission or to the Tennessee bureau of investigation for the purpose of obtaining a criminal background check from the Tennessee bureau of investigation and the federal bureau of investigation.

(2) The commission shall refuse to issue a license to an applicant for initial licensure who does not comply with subdivision (1)(1); provided, a licensee who requests to renew an existing license issued under this chapter, or obtain a broker license after being licensed as an affiliate broker, shall not be required to submit a set of fingerprints pursuant to this subsection.

(3) The commission shall conduct a criminal background check of each applicant described in subdivision (1)(1) by using information:

(A) Provided by the applicant under this subsection (1); and

(B) Made available to the commission by the Tennessee bureau of investigation, the federal bureau of investigation and any other criminal justice agency.

(4) The commission may:

(A) Enter into an agreement with the Tennessee bureau of investigation to administer a criminal background check required under this subsection (1); and

(B) Authorize the Tennessee bureau of investigation to collect from the applicant the costs incurred by the department in conducting the criminal background check.

Effective January 1, 2014 TREC will require fingerprints for all initial applications. It isn't a requirement for testing but it is a requirement for anyone pursuing an initial license. Please note: fingerprints are not required of affiliates who test and upgrade to Broker.

Any new affiliate licensure in the state of Tennessee requires fingerprints to be sent in with the application to the state. A new affiliate can test for licensure without the fingerprinting, but will not be given a license without the fingerprint submission. Once licensed, fingerprinting is not required to upgrade to Broker status. Therefore existing agents prior to January 1, 2014 are exempt of fingerprinting if applying to upgrade to Broker. Existing agents already fingerprinted after January 1, 2014 are not required to submit fingerprints again to upgrade.

The instruction sheet for fingerprints can be found below or on the Tennessee Real Estate Commission's website:

http://www.tn.gov/assets/entities/commerce/attachments/RecFingerprintApplicantInstructions_003.pdf



STATE OF TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE
Division of Regulatory Boards
TENNESSEE REAL ESTATE COMMISSION
500 JAMES ROBERTSON PARKWAY NASHVILLE, TENNESSEE 37243
(615) 741-2273 Fax 615-741-0313
<http://regboards.tn.gov>

ELECTRONIC FINGERPRINT SUBMISSION **ATTENTION ALL APPLICANTS**

Real Estate Affiliate Broker, Broker, Timeshare Salesperson and Acquisition Agent

All applicants are requested to utilize electronic fingerprint submission. Applicants should submit payment for fingerprint processing directly to the provider. Attach a copy of the receipt for electronic fingerprint submission to the application.

Agency Name: Commerce and Insurance
Applicant Type: Affiliate Broker, Broker, Timeshare Salesperson or Acquisition Agent Agency
OIR#: TN920784Z

Option 1: L-1 Identity Solutions (MorphoTrust USA)
(Electronically scanned fingerprint submissions)
Morpho Trust USA will scan and transmit your fingerprints to the TBI and the FBI. You should make an appointment with MorphoTrust USA who will transmit the applicant's fingerprints to the TBI and FBI for processing. The report will be received by this office. You will submit payment for fingerprint processing directly to MorphoTrust USA. Applicants must take approved identification documents to the appointment with MorphoTrust USA. Please refer to the list of acceptable identification at:
www.L1enrollment.com

Online Scheduling:

- www.L1enrollment.com
- Click on the Tennessee map
- You will enter your applicant information as prompted online
- Enter required information
- Call Center Scheduling: Available Monday-Friday, 8:30 A.M.-4:30 P.M. (Central)
- If you do not have access to the internet you may call 855-226-2937
- Operators will collect required information and schedule your appointment

Option 2: Out of State Applicants: We encourage out of state applicants to utilize electronic fingerprinting. Please follow the instructions for MorphoTrust USA (L-1 Enrollment) Tennessee Card Scan Processing Procedures. Prints may be submitted electronically following the instructions for L-1 Tennessee Card Scan Processing Procedures "Pay for Ink Card Submissions". You will submit payment for fingerprinting processing directly to L-1. Instructions can be found at www.L1enrollment.com You must use standard FBI applicant cards (FD-258) and you must have correct ORI, agency and applicant information. Contact this office to request fingerprint cards that can be sent directly to L-1 for processing.

The required processing fee is approximately forty-two (\$42.00) per applicant.

E&O Suspension and Penalty Fees

Tennessee Rule 1260-01-.16 LAPSED ERRORS AND OMISSIONS INSURANCE.

Failure to timely renew coverage may result in license suspension, fines, and loss of prior acts coverage. Tennessee law requires principal brokers to adequately supervise all of their firm's affiliate brokers. Principal brokers who fail to ensure their affiliate brokers maintain insurance will be disciplined with a civil penalty up to \$1,000 per uninsured affiliate broker.

(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:

1. 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:

(i) Two Hundred Dollars (\$200.00) if the licensee's insurance carrier backdated the licensee's E&O insurance policy to indicate continuous coverage; or

(ii) 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.

2. 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;

3. 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:

1. Reapply for licensure, including payment of all fees for such application;

2. Pay the penalty fees outlined in subparagraph (a) above;

3. Pass all required examinations for licensure, unless the Commission waives such examinations; and

4. 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 affiliated 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:

- 1. The affiliated licensee has provided proof of insurance which complies with the required terms and conditions of coverage to the Commission; or*
- 2. 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:

1. 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:

(i) 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

(ii) 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.

2. 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).

3. 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.

Tennessee Rule 1260-02 -.39 Commissions Earned by Affiliated Licensees

A commission is generated at closing but is earned at time of a ratified contract. A licensee/affiliate can transfer to a new broker, retire their license, be in a release status by a current broker, have an expired license or even die and still be due and paid the commission that was earned through a ratified contract when it closes.

(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:

- (a) The affiliated licensee transfers to a new broker;*
- (b) The affiliated licensee retires his or her license;*
- (c) The affiliated licensee is in broker release status;*
- (d) The affiliated licensee allows his or her license to expire; or*
- (e) The death of the affiliated licensee*

Tennessee Rule 1260-02-.40 Electronic Records

With the green movement many licensees and firms are maintaining more records electronically. There are services such as DotLoop available that eliminate the need to print any paper contracts and all signatures and transfers can be done electronically.

The Commission has mandated that all records relating to a transaction must be kept for three years from the ratified date. There must be systems in place to maintain the files by the licensee and the firm that chooses to utilize electronic data keeping such as backup systems to assure there is no data loss. All files must be remain readily available and organized.

If a representative of the Commission requests an audit, review or inspection, the firm and licensee have 24 hours to produce the documents.

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

II. AGENCY

Tennessee Code 62-13-401. Creation.

Agency relationships were created in order to protect the public in real estate transactions. Any time a licensee is interacting with an individual or providing real estate services that individual is referred to as a customer and the licensee is referred to as a Facilitator. A Facilitator status is a general status.

Agency relationships cannot be implied. An agency relationship is not created until there is a written, bi-lateral agreement between the parties. The documents required to create agency relationships are an exclusive agency listing agreement or an exclusive right to sell listing agreement.

Real Life Example:

When Lester Lister went on a listing presentation to Sammy Seller's property he entered the meeting as a facilitator. After giving his listing presentation, Sammy Seller wanted to have him list his property for sale. Lester Lister and Sammy Seller agreed on the terms through an exclusive agency listing agreement and both signed the document. Upon signing, they created an agency relationship where both parties had duties and obligations to one another.

Signatures are the key factor in creating agency relationships. Without signed documentation there is no 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.

Tennessee Code 62-13-406. Designated broker -- Managing broker.

All agency agreements are between a licensed firm and the client or customer first. In order to relieve any other licensee within the firm from the agency agreement, the designated agent status must be added. Otherwise every licensee within the firm becomes a part of the agreement. Designated status allows for one licensee within the firm to represent the client or customer and allow all other licensee's the freedom to represent other clients or customers.

Real Life Example:

Licensee Sue lists Bob Smith's property located at 123 Main Street with an Exclusive Listing Agreement in the name of ABC Realty. Under this agency agreement, every licensee with ABC Realty became legally bound to represent Bob Smith as seller agents. They must put his interests before all others.

Licensee Linda with ABC Realty has contact with a buyer customer, Johnny McCoy, who is interested in the Smith's property. Linda is bound by Sue's agreement, and must act as a Seller Agent, which would leave Johnny as an unrepresented buyer. Johnny is not comfortable with this and decides to use an agent with XYZ Realty so he can have representation in the transaction.

If Licensee Linda with ABC Realty had an agency agreement with Johnny, the buyer interested in the Smith's house, she would have to get the agreement of both Mr. Smith and Johnny to change status to a Facilitator and not represent the interest of either party in the transaction.

You can see how things can get complicated very quickly!

In order for this situation to be corrected, Licensee Sue would have to amend the agreement with the Smith's to a Designated Agency Agreement and the firm designating Sue to represent them as a Seller Agent. This would then free Licensee Linda to represent buyer Johnny McCoy as a Designated BUYER Agent upon written and bi-lateral agreement.

(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.

Agency agreements do not affect the managing broker's duties to a property owner or buyer as they represent the firm first nor does it affect their oversight of the individual licensees. The managing broker still represents the client and is required to oversee the affiliates that they are conducting business appropriately.

It is imperative that all in the firm not share information about clients that would impede on confidentiality just because they are within the same firm.

(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.

Tennessee Rule 1260-02-.08 Offers to Purchase

All purchase offers must be presented between parties.

There is no limit on how many times parties can go back and forth in the negotiation of a contract. As long as both sides are continuing toward agreement, licensees MUST share the offer and counter offer terms. If an agreement is reached, the licensee must PROMPTLY deliver “true executed copies of same” to “Both the purchaser and the seller”. As counter offers can become quite cumbersome, it is essential that the licensee(s) make absolutely certain that the final terms include all of the items that were agreed upon during negotiations.

One aspect of offers that is often misunderstood is the area of offer rejections. The rule does not specify that offer rejections MUST be in writing. Licensees are required to REQUEST a note of rejection when a party does not wish to counter or accept. If a request has been made then the licensee has fulfilled their obligation under this rule with or without a response to the request.

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.

Tennessee Rule 1260-02-.11 Personal Interest

Any licensed individual must disclose they are licensed PRIOR to any offer in any real estate transaction. Additionally, if selling their own personal real property, licensees are to disclose they are licensed. The thought behind this rule is that licensed individuals carry more knowledge in real estate matters than the general public. This disclosure allows the opportunity for others to seek additional counsel or representation, if they desire, due to the fact that the licensee has more knowledge AND has a personal interest in the outcome of the transaction terms.

(1) No broker or affiliate broker shall, either directly or indirectly through a third party, purchase for himself or attempt to purchase or acquire any interest in or option to purchase property listed with him or with his company, or property regarding which he or his company has been approached by the owner to act as broker, without first making a full disclosure of his true position to the owner of the property or to any prospective purchaser for which he has acted for as a client or customer. After acquiring any such personal interest, either directly or indirectly, the broker or affiliate broker shall make a full disclosure of his true position to prospective purchasers who tender offers to buy the property.

(2) All licensees shall identify themselves as a licensee when buying or selling property for themselves.

Tennessee Rule 1260-02-.36 Exclusive Buyer Representation Agreements.

An Exclusive Buyer Representation Agreement is an agreement between a firm and a buyer of Real Property most typically with a Designated Agent assigned and singled out within the firm to represent the buyer exclusively. When a buyer goes into this agreement they are agreeing to several things. It is important that the licensee advise and receive confirmation in writing from the buyer of these terms:

1. The buyer is to make any and all arrangements to view or inspect properties through the licensee
2. The buyer should not directly contact other licensees
3. The buyer should notify immediately any licensee they come in contact with that they are under contract with another licensee
4. Whether or not the buyer is to owe a commission in the event they purchase without the assistance of the licensee, through another licensee, or directly from an owner

It is imperative that each item be addressed specifically when executing the Exclusive Buyer Representation Agreement. The licensee should assure that the buyer understands each item in order to avoid any misunderstandings, as well as to guide the buyer through the process of home searching.

The first three items cover how the buyer is to handle property interest, viewings, and communications throughout the process. These are the areas that most buyers do not understand and many will directly contact other licensees for information. This can create issues for themselves, other agents, firms, and yourself. Be sure you are covering them in depth upon the agreement signing.

An exclusive buyer representation agreement is an agreement in which a licensee is engaged to represent a buyer in 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:

- (1) That the buyer should make all arrangements to view or inspect a property through the licensee and should not directly contact other licensees;*
- (2) 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*
- (3) 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.*

Section 1 Review Questions: TREC Law, Rule, Policy Update & Agency

The following questions will be a review of the previous sections.

These questions will **not** be counted towards the final exam.

The answers can be found below.

1. Commercial real estate includes:
 - a. Ranch house in neighborhood with an office
 - b. 6 unit apartment complex
 - c. Warehouse with an office space
 - d. B & C

2. A licensee may negotiate a commission upfront with a buyer in a buyer presentation agreement.
 - a. True
 - b. False

3. A limited liability company (LLC) is exempt from licensure under the TENN. Code Ann. 62-13-104(a)(1)(F).
 - a. True
 - b. False

4. A managing broker is allowed to share information gained about clients and customers between agents and the firm.
 - a. True
 - b. False

5. A principal broker shall ensure their agents have E&O coverage:
 - a. Once a year
 - b. Every 6 months
 - c. At all times
 - d. Once every two years

6. A designated agency:
 - a. Diminishes the managing broker's rights to any listing agreement
 - b. Lessens the managing broker's responsibilities to oversee affiliates conduct
 - c. Releases the firm from any obligation to a property owner
 - d. None of the above

7. A broker can be fined if an affiliate operates without E&O insurance:
 - a. \$1,000
 - b. \$500
 - c. \$2,000

- d. \$400
8. Until a licensee enters into a specific written agreement to establish agency relationship in a transaction the licensee is considered a:
- a. Designated Agent
 - b. Agent for the party
 - c. Facilitator
 - d. Broker
9. If Ron Realtor enters into an exclusive agency agreement with a buyer then Ricky Realtor in the firm can represent them for the firm too.
- a. True
 - b. False
10. A licensee must provide notice they are licensed in all real estate transactions:
- a. If they are asked
 - b. If another agent is involved
 - c. Prior to entering into negotiations
 - d. If they are not paying full price in a purchase
11. A buyers representation agreement :
- a. Must be in writing
 - b. Restricts buyers from searching online
 - c. Restricts buyers from attending open houses alone
 - d. Restricts a licensee of working with other buyers in their price range
12. In an exclusive buyer representation agreement the buyer agrees to make all arrangements to view or inspect properties through the licensee and not contact other licensees directly.
- a. True
 - b. False
13. A commission earned cannot be paid once a licensee places their license into retirement.
- a. True
 - b. False
14. Any document required to be retained must be presented to the Commission upon request within:
- a. 72 hours
 - b. 48 hours
 - c. 24 hours
 - d. 12 hours

15. If a licensee transfers to another broker the commission earned:
- a. Must be forfeited by the licensee
 - b. Must be moved to the new broker
 - c. Must be paid to the licensee
 - d. Must be split between the new broker and previous broker

II. AGENCY Continued

Tennessee Code 66-5-201. General provisions.

It is a state law that all owners involved in any residential Real Estate transaction are required to make disclosures of their personal knowledge associated with the property. The disclosure is not a warranty about condition factors of a property. It does not exclude nor should it deter an interested party from conducting inspections either.

The disclosure is based on the fact that the owners have lived in the property and may be able to disclose items more readily, as well as that they have an obligation to disclose known items when selling to another party.

This statute only applies to residential property transactions of one (1) to (4) units, whether a licensee is involved in the transaction or not. Even if an owner is selling as a For Sale By Owner, the law still applies to them and they are required to complete and supply the disclosure to any interested party.

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 is only valid for the transaction that is being carried out currently. It cannot be used or relied on for future transactions as well as previous owners cannot be held liable in future transactions for their written disclosures. This eliminates any liability after transfers of property from one owner to another.

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.

The disclosure form can be found in the *Disclosure Form* section of this course.

Tennessee Code 66-5-202. Required disclosures or disclaimers

During a real estate transaction a seller is required to provide either a disclosure on condition factors or a disclaimer on condition factors. The residential property disclosure should only be filled out by an owner as it is the sole representation of the owner and not of a licensee.

This document should be presented to an owner and executed as part of a listing agreement as it is required by law that such information be made available to prospective purchasers.

Sellers are not required to have independent inspections done for the purpose of this disclosure statement. It is only for disclosing items that THEY are aware of, if any. Sellers cannot be held liable for items that they were NOT aware of or that they gain knowledge of in the future.

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

The disclosure form can be found in the *Disclosure Form* section of this course.

A purchaser has the right to waive disclosure during a transaction. A seller does not have the option of non-disclosure since it is a state law that sellers supply the disclosure. In the rare event that a buyer does waive their right for disclosure a residential property disclaimer must be provided and signed by the parties involved. This document protects the seller from future liability if there are issues found after closing.

(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.

Tennessee Code 66-5-203. Delivery of disclosure or disclaimer statement.

It is the sellers' obligation to deliver the disclosure statement to a buyer PRIOR to accepting the terms in a real estate purchase contract.

Real Life Example:

If Betty Broker has a buyer interested in the property located at 456 High Street, then it would be a best practice for Betty to contact Larry Lister and request the disclosure statement for the buyer to review. If this is not an option then Betty may prepare an offer and present it to Larry Lister. Upon presentation the seller, through their broker Larry Lister, must provide the disclosure statement to the buyer through Betty Broker for review. The seller cannot accept the offer without the buyer reviewing the disclosure documents.

However, if the parties do enter into an agreement and the seller does not provide the disclosure or disclaimer statement because the buyer waived the right to disclosure, then the buyer is NOT allowed to terminate the contract agreement based solely on this fact. They can, however, take legal action to require performance by the seller.

(a) The owner of residential real property subject to this part shall deliver to the purchaser the written disclosure or disclaimer statement, if agreed upon by the purchaser required by this part prior to the acceptance of a real estate purchase contract. For purposes of this part, a "real estate purchase contract" means a contract for the sale, exchange or lease with option to buy of real estate subject to this part, and "acceptance" means the full execution of a real estate purchase contract by all parties. The residential property disclaimer statement or residential property disclosure statement may be included in the real estate purchase contract, in an addendum to the contract, or in a separate document.

(b) Failure to provide the disclosure or disclaimer statement required by this part shall not permit a purchaser to terminate a real estate purchase contract; however, a purchaser shall not be restricted by this part from bringing such other actions at law or in equity that are otherwise permitted.

Tennessee Code 66-5-204. Liability for errors or omissions -- Experts' reports.

This statute protects the seller from liability for not disclosing information about a property. Several incidents may occur that could create an issue in a transaction and cause suspicion of non-disclosure and therefore question the liability of the seller.

Purchasers may uncover issues that a seller was not aware of during the inspection process, or someone with higher knowledge may discover an issue that a seller was unaware of. This statute covers the litmus test for liability for errors or omissions in disclosure.

Some areas of findings in expert reports are: termite, radon, lead based paint, home inspections, or appraisals. Experts in these fields may uncover items that a seller had no knowledge of and therefore there can be no liability or recourse for a purchaser to take against the seller.

Real Life Example:

Stanley Seller had hired a reputable surveyor two years prior to selling his property because he considered installing a fence but never did. Stanley Seller supplied the survey to Buck Buyer. Buck Buyer, after closing, built a fence from the supplied documentation that ended up being 2 feet onto the neighbors land. The neighbor took legal action against Buck Buyer for building the fence on their land; supplying his own survey results. The court ordered a third party survey to figure out who was correct, and it was proven that the neighbors' survey was correct. Buck Buyer had in fact built his fence on his neighbor's land. Buck Buyer then filed suit against Stanley Seller. The court did not find Stanley Seller liable because the surveyor was considered an expert on the lot lines, not Stanley Seller, and Stanley Seller relied on this expertise when sharing with Buck Buyer.

(a) The owner shall not be liable for any error, inaccuracy, or omission of any information delivered pursuant to this part if:

(1) The error, inaccuracy or omission was not within the actual knowledge of the owner or was based upon information provided by public agencies or by other persons providing information as specified in subsection (b) that is required to be disclosed pursuant to this part, or the owner reasonably believed the information to be correct; and

(2) The owner was not grossly negligent in obtaining the information from a third party and transmitting it.

(b) The delivery by a public agency or other person, as described in subsection (c), of any information required to be disclosed by this part to a prospective purchaser shall be deemed to comply with the requirements of this part, and shall relieve the owner of any further duty under this part with respect to that item of information.

(c) The delivery by the owner of a report or opinion prepared by a licensed engineer, land surveyor, geologist, wood destroying insect control expert, contract or other home inspection expert, dealing with matters within the scope of the professional license or expertise, shall satisfy the requirements of subsection (a) if the information is provided to the owner pursuant to request therefor, whether written or oral. In responding to such a request, an expert may indicate, in writing, an understanding that the information provided will be used in fulfilling the requirements of this part and, if so, shall indicate the required disclosure or portions thereof, to which the information being furnished is applicable. Where such a statement is furnished, the expert shall not be responsible for any items of information, or portions thereof, other than those expressly set forth in this statement.

Tennessee Code 66-5-205. Liability for changed circumstances.

The seller is to update their disclosure statement to the purchaser prior to closing. This is done in order to protect both parties in the transaction. Any items that have been discovered and disclosed to the seller during inspections, appraisals etc., should be updated on the disclosure statement prior to closing as a change of circumstances because now the seller does have actual knowledge of the issue.

By adding this information it verifies that all parties know of the issues, and it protects the seller from any potential liability that a purchaser may attempt against the seller in the future.

Additionally, if conditions have changed and the seller is aware of the change since the initial disclosure, a seller must disclose at this time to allow the purchaser the right to determine if they will accept the change, investigate the change further with experts, or request a change of terms due to the circumstances changing.

If information disclosed in accordance with this part is subsequently rendered or discovered to be inaccurate as a result of any act, occurrence, information received, circumstance or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this part; provided, however, that at or before closing, the owner shall be required to disclose any material change in the physical condition of the property or certify to the purchaser at closing that the condition of the property is substantially the same as it was when the disclosure form was provided. If, at the time the disclosures are required to be made, an item of information required to be disclosed is unknown or not available to the owner, the owner may state that the information is unknown or may use an approximation of the information; provided, that the approximation is clearly identified as such, is reasonable, is based on the actual knowledge of the owner and is not used for the purpose of circumventing or evading this part.

Tennessee Code 66-5-206. Duties of real estate licensees.

Licensees must disclose all adverse facts about real property. An adverse fact is a condition or occurrence generally recognized by competent licensees that significantly reduces the structural integrity of, or improvements to real property, or presents a significant health risk to the occupants of the property.

Licensees can be held liable for not disclosing items they SHOULD be aware of due to their expertise in the real estate field. Once disclosure is made, there is no further liability on the part of the licensee. It is best to make sure that disclosures of this type are made in writing in order to protect all parties involved.

If it is found that a licensee purposefully misrepresented or defrauded a purchaser, they can personally be sued for damages.

A real estate licensee representing an owner of residential real property as the listing broker has a duty to inform each such owner represented by that licensee of the owner's rights and obligations under this part. A real estate licensee representing a purchaser of residential real property or, if the purchaser is not represented by a licensee, the real estate licensee representing an owner of residential real estate and dealing with the purchaser has a duty to inform each such purchaser of the purchaser's rights and obligations under this part. If a real estate licensee performs those duties, the licensee shall have no further duties to the parties to a residential real estate transaction under this part, and shall not be liable to any party to a residential real estate transaction for a violation of this part or for any failure to disclose any information regarding any real property subject to this part. However, a cause of action for damages or equitable remedies may be brought against a real estate licensee for intentionally misrepresenting or defrauding a purchaser. A real estate licensee will further be subject to a cause of action for damages or equitable relief for failing to disclose adverse facts of which the licensee has actual knowledge or notice. "Adverse facts" means conditions or occurrences generally recognized by competent licensees that significantly reduce the structural integrity of improvements to real property, or present a significant health risk to occupants of the property.

Tennessee Code 66-5-207. Liability for nondisclosure of communicable diseases or criminal acts on property.

Numerous items are required to be disclosed during real estate transactions, but what is not required to be disclosed?

Many people have superstitions as well as fears and phobias. In order to not stigmatize a property, the law does NOT require the disclosure of certain issues or events. The most relevant issue/event would be a human with HIV or other diseases that have been determined unlikely to be transmitted through occupancy of a dwelling. Other events that licensees do not have to disclose include a homicide, felony, or suicide in a property.

Notwithstanding any of the provisions of this part, or any other statute or regulation, no cause of action shall arise against an owner or a real estate licensee for failure to disclose that an occupant of the subject real property, whether or not such real property is subject to this part, was afflicted with human immunodeficiency virus (HIV) or other disease which has been determined by medical evidence to be highly unlikely to be transmitted through the occupancy of a dwelling place, or that the real property was the site of:

(1) An act or occurrence which had no effect on the physical structure of the real property, its physical environment or the improvements located thereon; or

(2) A homicide, felony or suicide.

Tennessee Code 66-5-208. Remedies for misrepresentation or nondisclosure.

If it is proven that an owner misrepresented or did not disclose known issues, there are remedies available to a purchaser. However, there is a one year statute of limitations from the date the disclosure document was received or the date of closing or occupancy, whichever occurs first, for a purchaser to take legal action of suing for actual damages from an owner. Upon revelation, a purchaser has the right to terminate the contract if it is discovered prior to closing.

A purchaser may not take legal action against a closing agent or attorney, naming them in lawsuit, for the failure of disclosure by an owner. Additionally, no legal action can be taken against a real estate licensee for information from third party inspections such as home or termite inspectors. A licensee is also exempt from the items disclosed on disclosure forms from an owner UNLESS the licensee actually signed the document. Because of this it is best practice to have the owner fill out the entire document on their own without assistance from the licensee.

The fact that a licensee cannot have legal action taken against them for the information or non-disclosure on the disclosure form does not release the licensee from disclosing items they ARE aware of. A licensee with actual knowledge MUST disclose even if an owner requests them not to do so. A licensee is to obey all LAWFUL instructions of their client. They are not allowed to break the law in order to cover up an issue on a property. Licensees have a legal and ethical obligation to the public that supersedes client relationships or desires.

Disclosures are not documents that are attached to the property or public records. Disclosure or lack of disclosures have no effect on the present or future marketable title of real estate.

(a) The purchaser's remedies for an owner's misrepresentation on a residential property disclosure statement shall be either:

(1) An action for actual damages suffered as a result of defects existing in the property as of the date of execution of the real estate purchase contract; provided, that the owner has actually presented to a purchaser the disclosure statement required by this part, and of which the purchaser was not aware at the earlier of closing or occupancy by the purchaser, in the event of a sale, or occupancy in the event of a lease with the option to purchase. Any action brought under this subsection (a) shall be commenced within one (1) year from the date the purchaser received the disclosure statement or the date of closing, or occupancy if a lease situation, whichever occurs first;

(2) In the event of a misrepresentation in any residential property disclosure statement required by this part, termination of the contract prior to closing, subject to § 66-5-204; or

(3) Such other remedies at law or equity otherwise available against an owner in the event of an owner's intentional or willful misrepresentation of the condition of the subject property.

(b) No cause of action may be instituted against an owner of residential real property subject to this part for the owner's failure to provide the disclosure or disclaimer statement required by this part. However, such owner would be subject to any other cause of action available in law or equity against an owner for misrepresentation or failure to disclose material facts regarding the subject property that exists on July 1, 1994.

(c) No cause of action may be instituted against a closing agent or closing attorney for the failure of an owner to provide the disclaimer or disclosure required by this part or for any misrepresentations made by a seller on the disclosure form supplied to the purchaser pursuant to this part.

(d) (1) No cause of action may be instituted against a real estate licensee for information contained in any reports or opinions prepared by an engineer, land surveyor, geologist, wood destroying inspection control expert, termite inspector, mortgage broker, home inspector, or other home inspection expert. A real estate licensee may not be the subject of any action and no action may be instituted against a real estate licensee for any information contained in the form prescribed by § 66-5-210, unless the real estate licensee is signatory to such.

(d) (2) Nothing in this subsection (d) shall be construed to exempt or excuse a real estate licensee from making any of the disclosures required by § 62-13-403, § 62-13-405 or § 66-5-206, nor shall it be construed to remove, limit or otherwise affect any remedy provided by law for such a failure to disclose.

(e) The failure of an owner to provide a purchaser the disclosure or disclaimer required by this part shall not have any effect on title to property subject to this part and the presence or absence of such disclosure or disclaimer is not a cloud on title and has no effect on title to such property.

Tennessee Code 66-5-209. Exempt property transfers.

Some transactions will have a property that is exempt from disclosure all together. The most commonly seen exemptions are: Foreclosures or REO properties, rental properties, or estate transactions where the current owner has not resided in the property for the last three (3) years.

Each circumstance carries a different reason for the exemption and the reason must be disclosed on the exemption form.

The following are specifically excluded from this part:

(1) Transfers pursuant to court order including, but not limited to, transfers ordered by a court in the administration of an estate, transfers pursuant to a writ of execution, transfers by foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain and transfers resulting from a decree of specific performance;

(2) Transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default; transfers by a trustee under a deed of trust pursuant to a foreclosure sale; or transfers by a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a foreclosure sale under a deed of trust or has acquired the real property by a deed in lieu of foreclosure;

(3) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship or trust;

(4) Transfers from one (1) or more co-owners solely to one (1) or more co-owners. This subdivision (4) is intended to apply and only does apply in situations where ownership is by a tenancy by the entirety, a joint tenancy or a tenancy in common and the transfer will be made from one (1) or more of the owners to another owner or co-owners holding property either as a joint tenancy, tenancy in common or tenancy by the entirety;

(5) Transfers made solely to any combination of a spouse or a person or persons in the lineal line of consanguinity of one (1) or more of the transferors;

(6) Transfers between spouses resulting from a decree of divorce or a property settlement stipulation;

(7) Transfers made by virtue of the record owner's failure to pay any federal, state or local taxes;

(8) Transfers to or from any governmental entity of public or quasi-public housing authority or agency;

(9) Transfers involving the first sale of a dwelling provided that the builder offers a written warranty;

(10) Any property sold at public auction;

(11) Any transfer of property where the owner has not resided on the property at any time within three (3) years prior to the date of transfer; and

(12) Any transfer from a debtor in a chapter 7 or a chapter 13 bankruptcy to a creditor or third party by a deed in lieu of foreclosure or by a quitclaim deed.

Tennessee Code 66-5-210. Disclosure form.

The statute for disclosure does not require the state prepared disclosure form be used in transactions. Different forms may be designed and used, however, ALL the items contained in the state form are required to be included at a minimum.

Following is the form prescribed by the general assembly which is necessary to comply with this part. The form used does not have to be the one included in this section, but it is the intent of the general assembly that any such form includes all items contained in the form below with all acknowledgement provisions of such form:

Tennessee Residential Property Condition Disclosure

The Tennessee Residential Property Disclosure Act states that anyone transferring title to residential real property must provide information about the condition of the property. This completed form constitutes that disclosure by the seller. This is not a warranty, or a substitute for any professional inspections or warranties that the purchasers may wish to obtain.

Buyers and sellers should be aware that any sales agreement executed between the parties will supersede this form as to any obligations on the part of the seller to repair items identified below and/or the obligation of the buyer to accept such items "as is."

Instructions to the Seller:

Complete this form yourself and answer each question to the best of your knowledge. If an answer is an estimate, clearly label it as such. The seller hereby authorizes any agent representing any party in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the subject property.

Property Address _____
 City _____
 Seller's Name(s) _____
 Property Age _____
 Date Seller Acquired the Property _____
 Do You Occupy the Property? _____
 If Not Owner-Occupied, How Long Has It Been Since the Seller Occupied the Property? _____

The property is a _____
 _____ site-built home
 _____ nonsite built-home

(Check the one that applies)

A. The Subject Property Includes the Items Checked Below:

- _____ Range
- _____ Oven
- _____ Microwave
- _____ Dishwasher
- _____ Garbage Disposal
- _____ Trash Compactor
- _____ Water Softener
- _____ 220 Volt Wiring
- _____ Washer/Dryer Hookups
- _____ Central Heating
- _____ Heat Pump
- _____ Central Air Conditioning
- _____ Wall/Window Air Conditioning
- _____ Window Screens
- _____ Rain Gutters
- _____ Fireplace(s) (Number _____)
- _____ Gas Starter for Fireplace
- _____ Smoke Detector/Fire Alarm
- _____ Burglar Alarm
- _____ Patio/Decking/Gazebo
- _____ Irrigation System
- _____ Sump Pump
- _____ Garage Door Opener(s) (Number of openers _____)
- _____ Intercom
- _____ TV Antenna/Satellite Dish
- _____ Pool
- _____ Spa/Whirlpool Tub
- _____ Hot Tub
- _____ Sauna
- _____ Current Termite Contract
- _____ Access to Public Streets
- _____ Other _____
- _____ Other _____

Garage:	_____ Attached	_____ Not Attached	_____ Carport	
Water Heater:	_____ Gas	_____ Solar	_____ Electric	
Water Supply:	_____ City	_____ Well	_____ Private	_____ Utility
Waste Disposal:	_____ City Sewer		_____ Septic Tank	_____ Other
Gas Supply:	_____ Utility	_____ Bottled	_____ Other	

Roof(s): Type _____ Age (approx.) _____

Other Items: _____

To the best of your knowledge, are any of the above NOT in operating condition?

_____YES _____NO

If YES, then describe (attach additional sheets if necessary):

A. Are You (Seller) Aware of Any Defects/Malfunctions in Any of the Following?

Interior Walls	YES	NO	UNKNOWN
Ceilings	YES	NO	UNKNOWN
Floors	YES	NO	UNKNOWN
Windows	YES	NO	UNKNOWN
Doors	YES	NO	UNKNOWN
Insulation	YES	NO	UNKNOWN
Plumbing	YES	NO	UNKNOWN
Sewer/Septic	YES	NO	UNKNOWN
Electrical System	YES	NO	UNKNOWN
Exterior Walls	YES	NO	UNKNOWN
Roof	YES	NO	UNKNOWN
Basement	YES	NO	UNKNOWN
Foundation	YES	NO	UNKNOWN
Slab	YES	NO	UNKNOWN
Driveway	YES	NO	UNKNOWN
Sidewalks	YES	NO	UNKNOWN
Central heating	YES	NO	UNKNOWN
Heat pump	YES	NO	UNKNOWN
Central air conditioning	YES	NO	UNKNOWN

If any of the above is/are marked YES, please explain: _____

B. Are You (Seller) Aware of Any of the Following?

1. Substances, materials or products which may be an environmental hazard such as, but not limited to: asbestos, radon gas, lead-based paint, fuel or chemical storage tanks and/or contaminated soil or water on the subject property?

YES NO UNKNOWN

2. Features shared in common with adjoining land owners, such as walls, but not limited to, fences, and/or driveways, with joint rights and obligations for use and maintenance?

YES NO UNKNOWN

3. Any authorized changes in roads, drainage or utilities affecting the property, or contiguous to the property?

YES NO UNKNOWN

4. Any changes since the most recent survey of the property was done?

YES NO UNKNOWN

Most recent survey of the property: _____ (check here if unknown.) _____

5. Any encroachments, easements, or similar items that may affect your ownership interest in the property?

YES NO UNKNOWN

6. Room additions, structural modifications or other alterations or repairs made without necessary permits?

YES NO UNKNOWN

7. Room additions, structural modifications or other alterations or repairs not in compliance with building codes?

YES NO UNKNOWN

8. Landfill (compacted or otherwise) on the property or any portion thereof?

YES NO UNKNOWN

9. Any settling from any cause, or slippage, sliding or other soil problems?

YES NO UNKNOWN

10. Flooding, drainage or grading problems?

YESNO UNKNOWN

11. Any requirement that flood insurance be maintained on the property?

YES NO UNKNOWN

12. Property or structural damage from fire, earthquake, floods or landslides?

YESNO UNKNOWN

If yes, has such damage been repaired? _____

13. Any zoning violations, nonconforming uses and/or violations of "setback" requirements?

YESNO UNKNOWN

14. Neighborhood noise problems or other nuisances?

YESNO UNKNOWN

15. Subdivision and/or deed restrictions or obligations?

YESNO UNKNOWN

16. A Homeowners Association (HOA) which has any authority over the subject property?

YESNO UNKNOWN

Name of HOA: _____
HOA Address: _____
Monthly Dues: _____ Special Assessments: _____

1. Any "common area" (facilities such as, but not limited to, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?

YES NO UNKNOWN

2. Any notices of abatement or citations against the property?

YES NO UNKNOWN

3. Any lawsuits or proposed lawsuits by or against the seller which affects or will affect the property?

YES NO UNKNOWN

4. Is any system, equipment or part of the property being leased?

YES NO UNKNOWN

If yes, please explain, and include a written statement regarding payment information. _____

5. Any exterior wall covering of the structures covered with exterior insulation and finish systems (EIFS), also known as "synthetic stucco"?

YES NO UNKNOWN

If yes, has there been a recent inspection to determine whether the structure has excessive moisture accumulation and/or moisture related damage? (The Tennessee Real Estate Commission urges any buyer or seller who encounters this product to have a qualified professional inspect the structure in question for the preceding concern and provide a written report of the professional's finding.)

YES NO UNKNOWN

If yes, please explain. If necessary, please attach an additional sheet. _____

B. Certification: I/We certify that the information herein, concerning the real property located at _____, is true and correct to the best of my/our knowledge as of the date signed. Should any of these conditions change prior to conveyance of title to this property, these changes will be disclosed in addendum to this document.

Transferor (Buyer)

Date

Transferor (Buyer)

Date

Parties may wish to obtain professional advice and/or inspections of the property and to negotiate appropriate provisions in the purchase agreement regarding advice, inspections or defects.

Transferee/Buyer's Acknowledgement:

I/We understand that this disclosure statement is not intended as a substitute for any inspection, and that I/we have a responsibility to pay diligent attention to and inquire about those material defects which are evident by careful observation.

I/We acknowledge receipt of a copy of this disclosure.

Transferee (Buyer)

Date

Transferee (Buyer)

Date

If the property being purchased is a condominium, the transferee/buyer is hereby given notice that the transferee/buyer is entitled, upon request, to receive certain information regarding the administration of the condominium from the developer or the condominium association, as applicable, pursuant to Tennessee Code Annotated, § 66-27-502.

Tennessee Code 66-5-211. Disclosure of impact fees or adequate facilities taxes -- Definitions.

Whenever there is a first sale of any dwelling the owner must disclose any fees and taxes to the purchaser.

(a) In transfers involving the first sale of a dwelling, the owner of residential property shall furnish to the purchaser a statement disclosing the amount of any impact fees or adequate facilities taxes paid to any city or county on any parcel of land subject to transfer by sale, exchange, installment land sales contract, or lease with an option to buy.

(b) For the purpose of this section, unless the context otherwise requires:

(1) "Adequate facilities tax" means any privilege tax that is a development tax, by whatever name, imposed by a county or city, pursuant to any act of general or local application, on engaging in the act of development;

(2) "Development" means the construction, building, reconstruction, erection, extension, betterment, or improvement of land providing a building or structure, or the addition to any building or structure or any part of any building or structure that provides, adds to, or increases the floor area of a residential or nonresidential use; and

(3) "Impact fee" means a monetary charge imposed by a county or municipal government pursuant to any act of general or local application, to regulate new development on real property. The amount of impact fees are related to the costs resulting from the new development and the revenues for this fee are earmarked for investment in the area of the new development.

Section 2 Review Questions: Agency

The following questions will be a review of the previous sections.

These questions will **not** be counted towards the final exam.

The answers can be found below.

1. Disclosure requirements of sellers in residential real estate transactions:
 - a. Required only on transactions that a licensed agent are involved in
 - b. Is a warranty by a seller
 - c. Is not a substitute for inspections
 - d. Is to be relied upon by subsequent transfers for the original purchaser

2. A purchaser has a right to waive disclosure from a seller by executing the following:
 - a. Disclaimer
 - b. Refusal to accept disclosure
 - c. Amendment to contract
 - d. Addendum to contract

3. The owner shall not be liable for any error, inaccuracy or omission of any information prepared by a licensed engineer, land surveyor, geologist, wood destroying insect control expert, contract or other home inspection expert.
 - a. True
 - b. False

4. A landlord must present a property condition disclosure to a tenant in a commercial lease.
 - a. True
 - b. False

5. An owner and licensee must disclose of known:
 - a. Adverse effects
 - b. HIV occupant
 - c. Felony on property
 - d. Paranormal activity on property

6. If a purchaser is not represented by a licensee, and licensee representing an owner and dealing with a purchaser the licensee must inform the purchaser what their rights are.
 - a. True
 - b. False

7. If a seller misrepresents information on a property disclosure form the following can be held liable:
 - a. Title Company
 - b. Licensee
 - c. Seller

- d. All of the above
8. A licensee is exempt from all disclosures even if they have information or knowledge.
- a. True
 - b. False
9. If a seller refuses to provide a property disclosure statement:
- a. It automatically terminates a contract
 - b. It allows for a purchaser to terminate a contract
 - c. The licensee must fill one out and present it
 - d. The broker can be held liable
10. A property transferred at public auction is exempt from disclosures.
- a. True
 - b. False
11. If a builder is transferring a property for a first time and offering a home warranty:
- a. The builder must present a disclosure statement to the purchaser
 - b. The builder must present a home inspection to the purchaser
 - c. The builder is exempt from disclosure to the purchaser
 - d. The builder is exempt from a home inspection to the purchaser
12. If an owner misrepresents on a disclosure statement and purchaser may:
- a. Actual damages
 - b. Termination of contract prior to closing
 - c. Other remedies at law
 - d. All of the above
13. What is an Impact Fee?
- a. Real estate fee impacting a seller
 - b. New construction builder fee passed on to buyer
 - c. Charge imposed by municipal government
 - d. B & C

III. ADVERTISING

Rule 1260-02-.12 Advertising

Advertising is an area that is highly policed by the Tennessee Real Estate Commission. Local agents and the public will also submit licensees and firms for advertising violations. Any exclusions from advertising rules apply only to promotional items such as t-shirts hats, business cards, etc. Advertising regulations DO apply to items such as radio, print, television, yard signs, flyers, letter head, e-mail signatures, websites, social media communications, video or audio advertisements sent on the internet or broadcasted.

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

(1) All advertising, regardless of its nature and the medium in which it appears, which promotes either a licensee or the sale or lease of real property, shall conform to the requirements of this rule. The term "advertising," for purposes of this rule, in addition to traditional print, radio, and television advertising, also includes, but is not limited to, sources of communication available to the public such as signs, flyers, letterheads, e-mail signatures, websites, social media communications, and video or audio recordings transmitted through internet or broadcast streaming. Advertising does not include promotional materials that advertise a licensee such as hats, pens, notepads, t-shirts, name tags, business cards, and the sponsorship of charitable and community events.

(2) For purposes of this rule, the term "firm name" shall mean either of the following:

- (a) The entire name of the real estate firm as licensed with the Commission; or*
- (b) The d/b/a name, if applicable, of the real estate firm as licensed with the Commission.*

In all advertising it must be very clear that the licensee is in the real estate industry.

Real Life Example:

If Sally Smith lists a property and posts on her social media account: 123 Main Street is for sale for \$209,900! She is in violation of the advertising rules. She MUST include the firm name and phone number of which she is affiliated in this post. This additional information shows anyone viewing her post that the property is listed with a real estate firm and who that firm is.

(3) 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 the firm telephone number as listed on file with the Commission. With regard to the size and visibility of the firm name and firm telephone number, all of the following shall apply:

- 1. The firm name must be the most prominent name featured within the advertising, whether it be by print or other media; and*
- 2. The firm's telephone number shall be the same size or larger than the telephone number of any individual licensee or group of licensees.*

The principal broker of the firm is responsible to supervise all advertising. When preparing your advertising have your broker review and approve it to assure it complies with the state rules. This includes something as small as your email signature.

Trade names are very common among agents. It is imperative that any licensee have their name registered properly with the Commission so that the name matches that which is on file.

Real Life Example:

If an agent's name is Sally Smith and her nick name that she uses in real estate is Sally "Slick" Smith, her name must include "Slick" when she registers with the Commission. If an agent's name is Anthony Burns but he goes by Tony, then he must register his name as Anthony "Tony" Burns. This is so any complaints or licensee searches with the Commission can link back directly to the agent.

(c) Any advertising which refers to an individual licensee must list that individual licensee's name as licensed with the Commission.

No signs are allowed on a property for advertising without the written consent of the owner. The listing agreement typically includes this authorization. However there is one area many agents overlook, and that is for directional signs. It is best to get written permission to place a directional sign in the yard of the owner prior to placing the signage as it is a form of advertising.

(d) 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.

No one can advertise a listing by another licensee without the WRITTEN authorization of the seller. Verbal or written permission of the licensee does not cover the requirements of this rule.

(e) 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.

(f) No licensee shall advertise in a false, misleading, or deceptive manner. False, misleading, and/or deceptive advertising includes, but is not limited to, the following:

- 1. Any licensee advertising that includes only the franchise name without including the firm name;*
- 2. Licensees who hold themselves out as a team, group, or similar entity within a firm who advertise themselves utilizing terms such as "Real Estate," "Real Estate Brokerage," "Realty," "Company," "Corporation," "LLC," "Corp.," "Inc.," "Associates," or other similar terms that would lead the public to believe that those licensees are offering real estate brokerage services independent of the firm and principal broker; or*
- 3. Any webpage that contains a link to an unlicensed entity's website where said entity is engaged or appears to be engaged in activities which require licensure by the Commission.*

The best rule of practice in advertising is clarity. If a licensee takes the time to be clear in what they are representing and have the broker sign off on final advertising measures, they should be safe. Be cautious of vague, misleading or deceptive advertising. Be sure to include the firm name in all advertising.

Teams and Groups have become a new trend in the Real Estate industry. It has created great confusion in advertising to the general public. Due to the confusion, there are new rules that apply to teams and groups in reference to advertising. They can no longer advertise with the following terms: as "Real Estate," "Real Estate Brokerage," "Realty," "Company," "Corporation," "LLC," "Corp.," "Inc.," "Associates," because it appears (which means it is misleading) that they are independent of any other firm. The key to remember is that any team or group is still operating under the firm and it must remain clear that the FIRM is the actual real estate company, not the team or group. The public must be able to decipher who the firm is in all advertising.

(4) 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, firm name and firm telephone number (all 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 franchise trade name on business cards, contracts, or other documents relating to real estate transaction shall clearly and unmistakably indicate thereon:

- 1. His name, firm name, and firm telephone number (all as registered with the Commission); and*
- 2. The fact that his office is independently owned and operated*

(5) Internet Advertising

In addition to all other advertising guidelines within this rule, the following requirements shall also apply with respect to internet advertising by licensees, including, but not limited to, social media:

(a) The firm name and the firm telephone number listed on file with the Commission 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. This requirement shall apply to "First Generation" advertising as it is placed by the licensee and does not refer to such advertising that SS-7039 (November 2014) 8 RDA 1693 may be syndicated or aggregated advertising of the original by third parties outside of the licensee's control and ability to monitor.

Internet advertising is a requirement of our time. We have so many advertising medias including but not limited to social media sites. This is an area that often gets overlooked by licensees as they get more relaxed being among “friends”. If you are posting a listing on Facebook, Twitter or the like, be sure you include the listing firm name and phone number with the listing as it is a requirement.

Websites have specific requirements for the firm name and number to appear on each and every page. Most websites offer IDX services where there is a feed of listings from the MLS system to the individual website. Since not all the listings on the website will be that of the firm or agent, an additional statement must be present disclosing that the listings may not belong to the firm.

(6) 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.

When advertising, all licensees want to represent they are #1! But be careful with this. Other licensees and firms are watching and will become offended if someone is claiming to be #1 if they are not. You have to be able to back it up.

Real Life Example:

If Sally Smith is the #1 listing agent in the Gulf Shores neighborhood, she certainly can advertise such. It would be best to add a time frame that she has been #1 in that neighborhood. A time frame that can be substantiated by the local MLS. This way no one can argue with her claim.

Any inducement to attract clients must be fully disclosed and detailed in writing as well as disclosure of any monetary value in order to be a legal offering.

Real Life Example:

If Jim Jones, Realtor[®], offers to pay for a Home Warranty with any closing, he must disclose, in writing, the name of the warranty company, the level of warranty offered and the amount of the warranty in the inducement advertising. “I will pay for a Home Warranty with ANY closing! Home Warranty company to be ABC Warranty; Standard Coverage in amount of \$450”

1260-02-.33 Gifts and Prizes.

All gifts and prizes must be in writing, signed by the licensee with full disclosure of all details including: description, what the “fair market value” would be, time and means of delivery and any requirements in order to win or receive the gift or prize.

(1) 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:

(a) Under the sponsorship and with the approval of the firm with whom the licensee is affiliated; and

(b) In writing, signed by the licensee, with disclosure of all pertinent details, including but not limited to:

- 1. Accurate specifications of the gift, prize, or other valuable consideration offered;*
- 2. Fair market value;*
- 3. The time and place of delivery; and*
- 4. Any requirements which must be satisfied by the prospective purchaser or lessor.*

Tennessee Rule 1260-02-.41 Licensees Who Hold Themselves Out as a Team, Group, or Similar Entity within a Firm

For clarity purposes to the general public, the Commission has implemented limitations on any licensee acting as a group, team or the like within a firm. They must maintain a physical location at the same physical location, may not receive compensation from anyone but their firm, cannot be delegated principal broker supervisory responsibilities, and must always represent that they are a part of the firm and not separate. The main purpose of this rule, again, is to protect the general public from being misled as to the association or independence of a licensee and the firm of which they are affiliated.

(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.

Tennessee Code 62-13-310. Affiliate broker relationship to broker

Many licensees transfer between firms at some point in their career. The licensee is to present a transfer form and the present broker is to IMMEDIATELY sign and date the form upon presentation. A broker cannot hold a licensee from transferring firms.

(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.

(c) Any unlawful act or violation 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.

All property signage must include the firm's name. Additionally the firm's name must be same size or larger than the licensee name.

Although a broker is to oversee their licensees, affiliate brokers, they are not immediately subject to suspension or license being revoked if a licensee were to violate advertising statutes.

Section 3 Review Questions: Advertising

The following questions will be a review of the previous sections.

These questions will **not** be counted towards the final exam.

The answers can be found below.

1. Any advertising on social media must include:
 - a. Firm name
 - b. Firm number
 - c. Clear representation that licensee is engaged in real estate industry
 - d. All of the above

2. The term "firm name" means:
 - a. The entire name of the firm as on file with the Commission
 - b. The entire name of the firm as on file with the Commission including any D/B/A
 - c. The D/B/A/ name of the firm as on file with the Commission
 - d. A & C

3. Any licensee making misleading statements in their advertising is in violation.
 - a. True
 - b. False

4. Every website page must include:
 - a. Firm name and address
 - b. Links to mortgage calculators
 - c. Link to the Commission
 - d. Link to individual agents

5. Anyone that establishes themselves as a group or team can establish a separate location as long as they can afford it and the principal broker approves it.
 - a. True
 - b. False

6. Every page of a website must state that all of the listings may not belong to the firm whose website is being visited.
 - a. True
 - b. False

7. What should be the most prominent thing in a licensee's advertising?
 - a. Licensee name
 - b. Licensee phone number
 - c. Property
 - d. Firm name

8. When a broker and affiliate broker relationship is terminated, the present broker:
 - a. The broker can refuse to sign a transfer
 - b. The broker shall sign a transfer immediately
 - c. The broker can hold for up to one week
 - d. The broker can hold for up to three (3) days

9. A licensee may offer a gift as long as there is disclosure of all:
 - a. Accurate specifications, time and place of delivery and requirements of prospect
 - b. Accurate specifications, fair market value, time and place of delivery and requirements of prospect
 - c. Accurate specifications, fair market value and requirements of prospect
 - d. Accurate specifications, fair market value and requirements of prospect

IV. Contracts

On October 3, 2015 the state contract changes went into effect. The prior contracts are no longer available through TAR.NET systems; they have been disabled.

Some of the changes made to the contracts include: eliminating wordiness or cleaning up the wording for ease of understanding. For example, Line 88 of the Purchase and Sale Agreement: *Buyer to receive benefit of simultaneous issue. Simultaneous issue rates shall apply.* We will not cover these types of changes in depth. Rather, we will go over the changes that affect a licensee's daily transactions, or changes to verbiage that is commonly used by licensees.

Nonetheless, please do take the time to read each line item in this section, and make note of the many changes.

Purchase and Sale Agreement changes:

-Line 85-86 Edited:

Cost of title ~~or abstract~~, mortgagee's policy and owner's policy (rates to be as filed with Tennessee Department of Commerce and Insurance) shall be paid as follows

-Line 88 Edited:

~~Buyer to receive benefit of simultaneous issue.~~ Simultaneous issue rates shall apply.

-Line 100 Edited:

faith and in accordance with the terms below, is unable to obtain financing by the Closing Date,

-Line 102 Edited:

Upon termination, Buyer is entitled to a refund of the Trust Money.

- The verbiage of Earnest Money has been changed to Trust Money throughout all contract documents. In our conversations we need to carry this through and switch from using Earnest Money to Trust Money.

-Line 113-114 Edited:

Within ~~five~~ three (5-3) days after the Binding Agreement Date, Buyer shall make application for the loan and shall pay for credit report

- The time line for the buyer loan application date has been lowered from 5 days to 3 days from binding agreement dates. With the ease of application processes three (3) days is an ample amount of time for this action of an intended participant in a real estate purchase.

-Line 116 Edited:

Lender to order credit report. ~~And has paid for same, and appraisal Buyer~~ Such certifications shall be made

-Line 120-124 Edited

- a. Buyer has secured evidence of hazard insurance which will be effective at Closing and Buyer shall notify Seller of the name of the hazard insurance company;
- b. Buyer has notified Lender of an Intent to Proceed and has available funds to Close per the signed Loan Estimate; and
- c. Buyer has requested that the appraisal be ordered and affirms that the appraisal fee has been paid. ~~All required Lender deposits, including appraisal cost and Credit report has, have~~

~~been paid, as evidenced by supporting documentation (e.g. cancelled check, receipt from Lender, letter from loan originator, etc.); and~~

~~d. Buyer has available funds to Close per estimates of Lender/loan originator.~~

-Line 144 Edited

~~Earnest Trust Money~~

-Line 146-47 Edited

a ~~Earnest~~ Trust Money deposit of \$; (“~~Earnest~~ Trust Money”)

-Line 148 Edited

Failure to Receive ~~Earnest~~ Trust Money. In the event ~~Earnest~~ Trust Money is not timely received by Holder or Trust Money check

-Line 150 Edited

Buyer and Seller of the Buyer’s failure to deposit the agreed upon ~~Earnest~~ Trust Money

- The seller has the right to terminate the contract for not depositing Trust Money on time.

-Line 152 Edited

~~Seller shall have the right to declare that Buyer is in default and Seller shall have the right to terminate this~~

-Line 154 Edited

Trust Money

-Line 156-158 Edited

Handling of ~~Earnest~~ Trust Money upon Receipt by Holder, ~~Earnest~~ Trust Money is to be deposited promptly after the Binding Agreement Date or the agreed upon delivery date in this ~~Earnest~~ Trust Money only as follows:

-Line 161 Edited

(c) upon order of a court or arbitrator having jurisdiction over any dispute involving the Trust Money;

-Line 168 Edited

For any matter arising out of or related to the performance of Holder’s duties under this Trust

-Line 294 Edited

Mutual written resolution during such Resolution Period –a mutually agreeable written extension

-Line 361-363 Edited

In the event that any party exercises its right to terminate due to the default of the other pursuant to the terms of this Agreement, the terminating party retains the right to pursue any and all legal rights and remedies against the defaulting party following termination.

-Line 419-421 Edited

In the event that the contract fails due to the severed provisions, then the offending language shall be amended to be in conformity with state and federal law.

-Line 431-432 Edited

If Seller has any knowledge of an exterior injection well, a sinkhole as defined pursuant to Tenn. Code Ann. 66-5-212(c),

- This section on purchase contracts has been expanded and additional line items added for more information to be a part of the contract including, but not limited to, HOA and Property Management contact information.

-Line 493+ Edited

Listing Firm Address; Selling Firm Address; Firm License No.; Firm License No.; Firm Telephone No.; Firm Telephone No.; Licensee License Number; Licensee License Number; Home Owner's/Condominium Association ("HOA/COA"); HOA/COA Phone; HOA/COA Email; Property Management Company; Phone; Email

RF (403) New Construction Purchase and Sale Agreement

-Line 43 Edited

Upon Termination, Buyer is entitled to refund of the ~~Earnest~~ Trust Money

-Line 68-69 Edited

Title Expenses. Cost of title search ~~or abstract~~, mortgagee's policy and owner's policy (rates to be as filed with the Tennessee Department of Commerce and Insurance)

-Line 71 Edited

~~Buyer to receive benefit of simultaneous issue.~~ Simultaneous issue rates shall apply.

-Line 83 Edited

Is unable to obtain financing by the Closing Date

-Line 85 Edited

Upon termination, Buyer is entitled to a refund of the ~~Earnest~~ Trust Money

-Line 96-99 Edited

With ~~five~~ three (53) days after the Binding Agreement Date, Buyer shall make application for the loan and shall pay for ~~instruct Lender to order~~ credit report ~~and appraisal~~. Buyer shall immediately notify Seller or Seller's representative of having applied for the loan and provide Lender's name and contact information and that Buyer has instructed Lender to order credit report. ~~and appraisal~~ Such certifications shall be made

-Line 103-107 Edited

~~All required lender deposits, including appraisal cost and credit report have been paid as evidenced by supporting documentation (e.g., cancelled check, receipt from Lender, letter from loan originator, etc.) and~~

~~a. Buyer has available funds to Close per estimates of Lender/loan originator.~~

b. Buyer has secured evidence of hazard insurance which will be effective at Closing and Buyer shall notify Seller of the name of the hazard insurance company;

c. Buyer has notified Lender of an Intent to Proceed with Lender and has available funds to Close per the signed Loan Estimate; and

d. Buyer has requested that the appraisal be ordered and affirms that the appraisal fee has been paid.

- Line 128 Edited

Earnest-Trust Money

-Line 132 Edited

(“~~Earnest~~ Trust Money”),

-Line 133 Edited

Holder of the ~~Earnest~~ Trust Money

-Line 134-140 Edited

Failure to Receive ~~Earnest~~ Trust Money. In the event ~~Earnest~~ Trust Money is not timely received by Holder or ~~Earnest~~ Trust Money check or other instrument is not honored for any reason by the bank upon which it is drawn, Holder shall promptly notify Buyer and Seller of Buyer’s failure to deposit the agreed upon ~~Earnest~~-Trust Money. Buyer shall have then one (1) days to delivery ~~Earnest~~ Trust Money in immediately available funds to Holder. In the event Buyer does not deliver such funds, Buyer is in default and Seller shall have the right to terminate this Agreement by delivering to Buyer or Buyer’s representative written notice via the Notification form or equivalent written notice. In the event Buyer delivers the ~~Earnest~~-Trust Money.

-Line 142-145 Edited

Handling of ~~Earnest~~ Trust Money upon Receipt by Holder. ~~Earnest~~-Trust Money is to be deposited promptly after the Binding Agreement Date or the agreed upon delivery date in this ~~Earnest~~ Trust Money paragraph or as specified in the Special Stipulations paragraph contained at paragraph 28 herein. Holder shall disburse ~~Earnest~~ Trust Money only as follows unless used by Seller in construction if ~~Earnest~~-Trust Money is held by Seller

-Line 148 Edited

upon order of a court or arbitrator having jurisdiction over any dispute involving the ~~Earnest~~ Trust Money

-Line 155-156 Edited

Holder’s duties under this ~~Earnest~~ Trust Money paragraph, ~~Earnest~~ Trust Money shall not be disbursed prior to fourteen (14)

-Line 306 Edited

terminate this Agreement with a full refund of ~~Earnest~~ Trust Money

-Line 313-314 Edited

a sinkhole as defined pursuant to Tenn. Code Ann. 66-5-2(c)

-Line 367 Edited

the ~~Earnest~~ Trust Money shall be forfeited

-Line 369 Edited

Should Seller default, Buyer's ~~Earnest~~ Trust Money

-Line 373-375 Edited

In the event that any party exercises its right to terminate due to the default of the other pursuant to the terms of this Agreement, the terminating party retains the right to pursue any and all legal rights and remedies against the defaulting party following termination

-Line 419 Edited

Agreement with a refund of ~~Earnest~~ Trust Money to Buyer

-Line 424-426 Edited

In the event that the contract fails due to the severed provisions,
the offending language shall be amended to be in conformity with state and federal law.

-Line 493+

Listing Firm Address; Selling Firm Address; Firm License No.; Firm License No.; Firm Telephone No.; Firm Telephone No.; Licensee License Number; Licensee License Number; Home Owner's/Condominium Association ("HOA/COA"); HOA/COA Phone; HOA/COA Email; Property Management Company; Phone; Email

RF (404) Lot/Land Purchase and Sale Agreement

-Line 56 Edited

Upon termination, Buyer is entitled to a refund of the ~~Earnest~~ Trust Money

-Line 78-79 Edited

Cost of title search ~~or abstract~~, mortgagee's policy and owner's policy (rates to be as filed with the Tennessee Department of Commerce and Insurance)

-Line 81 Edited

~~Buyer to receive benefit of simultaneous issue.~~ Simultaneous issue rates shall apply.

-Line 93 Edited

is unable to obtain financing by the Closing Date

-Line 95 Edited

Upon termination, Buyer is entitled to a refund of the ~~Earnest~~ Trust Money

-Line 106-107 Edited

Within ~~five~~ three (53) days after the Binding Agreement Date. Buyer shall make application for the loan and shall pay for credit report

-Line 109 Edited

Lender to order credit report. ~~and has paid for same, and appraisal Buyer~~ Such certifications shall be made

-Line 113-117 Edited

a. Buyer has secured evidence of hazard insurance which will be effective at Closing and Buyer shall notify Seller of the name of the hazard insurance company;

b. Buyer has notified Lender of an Intent to Proceed and has available funds to Close per the signed Loan Estimate; and

c. Buyer has requested that the appraisal be ordered and affirms that the appraisal fee has been paid. ~~all required Lender deposits, including appraisal cost and Credit Report has, have been paid, as evidenced by supporting documentation (e.g., cancelled check, receipt from Lender, letter from loan originator, etc.); and~~

d. ~~Buyer has available funds to Close per estimates of Lender/loan originator.~~

-Line 138 Edited

Earnest Trust Money.

-Line 141-142 Edited

~~Earnest~~ Trust Money deposit of \$_____ by check (OR _____) ("~~Earnest~~ Trust Money").

-Line 143-147 Edited

Failure to Receive ~~Earnest~~ Trust Money. In the event ~~Earnest~~ Trust Money is not timely received by Holder or ~~Earnest~~ Trust Money check or other instruments is not honored, for any reason by the bank upon which it is drawn, Holder shall promptly notify Buyer and Seller of the Buyer's failure to deposit the agreed upon ~~Earnest~~ Trust Money in immediately available funds to Holder. In the event Buyer does not deliver such funds, Buyer is in default and Seller

-Line 149 Edited

In the event Buyer delivers the ~~Earnest~~ Trust Money

-Line 151-153 Edited

Handling of ~~Earnest~~ Trust Money upon Receipt by Holder. ~~Earnest~~ Trust Money is to be deposited promptly after the Binding Agreement Date or the agreed upon delivery date in this ~~Earnest~~ Money paragraph or as specified in the Special Stipulations paragraph contained at paragraph 15 herein. Holder shall disburse ~~Earnest~~ Trust Money only as follows:

-Line 156 Edited

~~upon order of a court or arbitrator having jurisdiction over any dispute involving the Earnest Trust Money;~~

-Line 163-164 Edited

Holder's duties under this ~~Earnest~~ Trust Money paragraph. ~~Earnest~~ Trust Money

-Line 210 Edited

Buyer shall be entitled to a refund of ~~Earnest~~ Trust Money.

-Line 232 Edited

Broker shall promptly refund the ~~Earnest~~ Trust Money to Buyer

-Line 244 Edited

Holder shall promptly refund the ~~Earnest~~ Trust Money to Buyer

-Line 252 Edited

Agreement is voidable to Buyer and ~~Earnest~~ Trust Money refunded

-Line 261 Edited

Holder shall promptly refund the ~~Earnest~~ Trust Money to Buyer

-Line 270 Edited

~~Earnest~~ Trust Money to Buyer

-Line 330 Edited

Should Buyer default hereunder, the ~~Earnest~~ Trust Money

-Line 332 Edited

Should Seller default, Buyer's ~~Earnest~~ Trust Money

-Line 336-338 Edited

In the event that any party exercises its right to terminate due to the default of the other pursuant to the terms of this Agreement, the terminating party retains the right to pursue any and all legal rights and remedies against the defaulting party following termination.

-Line 382 Edited

Agreement with a refund of ~~Earnest~~ Trust Money to Buyer

-Line 387-389 Edited

In the event that the contract fails due to the severed provisions, then the offending language shall be amended to be in conformity with state and federal law.

-Line 460+ Edited

Listing Firm Address; Selling Firm Address; Firm License No.; Firm License No.; Firm Telephone No.; Firm Telephone No.; Licensee License Number; Licensee License Number; Home Owner's/Condominium Association ("HOA/COA"); HOA/COA Phone; HOA/COA Email; Property Management Company; Phone; Email

RF (481) ~~Earnest~~ Trust Money Disbursement and Mutual Release of Purchase and Sale Agreement

-Line 4 Edited

~~Earnest~~ Trust Money Amount

-Line 5 Edited

Holder of ~~Earnest~~ Trust Money

-Line 16 Edited

~~EARNEST~~ TRUST MONEY IS BEING DISBURSED AS FOLLOWS

RF (656) Notification

-Line 7 Edited

and hereby requests refund of ~~Earnest~~ Trust Money

-Line 11 Edited

and hereby requests refund of ~~Earnest~~ Trust Money

-Line 13-14 Edited

Buyer has also instructed Lender to order and has paid for the ~~appraisal and~~ credit report.

-Line 21 Edited

that Buyer has instructed Lender to order and has paid for the ~~appraisal and~~ credit report.

-Line 22-24 Edited

Seller has made written demand for Buyer to provide the name and contact information of the Lender and that Buyer has instructed Lender to order and has paid for the ~~appraisal and~~ credit report and Buyer failed to do so within two (2) days, thereby terminating the Agreement.

-Line 26-30 Edited

Buyer has secured evidence of hazard insurance which will be effective at Closing. The name of the hazard insurance company is: _____.
~~all required Lender deposits, including appraisal cost and credit report, have been paid and Buyer has provided the attached supporting documentation (e.g. cancelled check, receipt from Lender, letter from loan originator, etc.); and or~~

- Buyer has notified Lender of an Intent to Proceed and has available funds to Close per the signed Loan Estimate; and

Buyer has requested that the appraisal be ordered and affirms that the appraisal fee has been paid. ~~Buyer has available funds to close per Lender and/or loan originator estimates (e.g. the Good Faith Estimate).~~

-Line 32-36 Edited

Buyer has secured evidence of hazard insurance which will be effective at Closing. The name of the hazard insurance company is: _____.

- Buyer has notified Lender of an Intent to Proceed with Lender and has available funds to Close per the signed Loan Estimate; and
- Buyer has requested that the appraisal be ordered and affirms that the appraisal fee has been paid.

~~☐ all required Lender deposits, including appraisal cost and credit report, have been paid and Buyer to provide the attached supporting documentation (e.g. cancelled check, receipt from Lender, letter from loan originator, etc.);~~

~~☐ Buyer has available funds to close per Lender and/or loan originator estimates (e.g. the Good Faith Estimate).~~

-Line 37-40 Edited

Seller has made written demand for Buyer to warrant and represent that he has secured evidence of hazard insurance and provided the name of insurance company; has provided Lender with an Intent to Proceed; and has requested that the appraisal be ordered and has paid appraisal fee. However Buyer failed to do so with two (2) days, thereby terminating the Agreement.

-Line 50 Edited

Holder has advised that the ~~Earnest~~ Trust Money Check

-Line 53 Edited

Holder has advised that the ~~Earnest~~ Trust Money has not been timely received as required pursuant to the ~~Earnest~~ Trust

-Line 65 Edited

Requesting refund of ~~Earnest~~ Trust Money

-Line 68 Edited

Agreement with all ~~Earnest~~ Trust Money

-Line 70 Edited

DISTRIBUTION OF ~~EARNEST~~ TRUST MONEY

Additional documents must be added to contracts that were in place prior to October 3, 2015, but not closed as of October 3, 2015.

RF (707) Contract Language for Special Stipulations (Language to be inserted in Special Stipulations, Addendum, or Amendment)

-Line 249-276 Edited

RF401 – Residential Purchase and Sale Agreement for TRID Changes for Loan Applications Prior to October 3, 2015.

Lines 122-123 are replaced with the following language:

b. Buyer has notified Lender/loan originator of an Intent to Proceed and has available funds to Close per estimates of Lender/loan originator; and

RF403 – New Construction Purchase and Sale Agreement for TRID Changes for Loan Applications prior to October 3 2015.

Lines 105-106 are replaced with the following language:

a. Buyer has notified Lender/loan originator of an Intent to Proceed and has available funds to Close per estimates of Lender/loan originator; and

RF 656 – Notification Form for TRID Changes for Loan Applications Prior to October 3, 2015.

DO NOT USE LINES 28-29 FOR LOANS APPLIED FOR BEFORE October 3rd;

Instead, check the box in front of 21 and insert the following:

Buyer has notified Lender/loan originator of an Intent to Proceed and has available funds to Close per estimates of Lender/loan originator; and

DO NOT USE LINES 35-36 FOR LOANS APPLIED FOR BEFORE October 3rd; Instead, check the box in front of 21 and insert the following:

Buyer has notified Lender/loan originator of an Intent to Proceed and has available funds to Close per estimates of Lender/loan originator; and

RF (707) Purchase and Sale Agreement Timeline Checklist

-Line 9 Edited

EARNEST TRUST MONEY

-Line 11 Edited

Holder of ~~Earnest~~ Trust Money

-Line 15-16 Edited

Within ~~5~~ 3 days of BAD, verify that Loan Application has been made and Lender has been instructed to order credit report and Buyer has paid for credit report ~~and appraisal.~~

-Line 18-26 Edited

~~instructed to order appraisal and credit report and Buyer has paid for report. (within 5 3 days of BAD) Within 14 days of BAD, Buyer order and pay for any required Lender deposits, including appraisal costs and credit report. Provide Seller with representation and warranty of securing evidence of hazard insurance nad has notified Lender of an Intent to Proceed and paying required Lender deposits with supporting documentation and that buyer has available funds to close per the Loan Estimate. Lender and/or loan originator estimates, (14 days of BAD) Seller's Written Demand for Compliance if no Loan Application information is provided and that Buyer has instructed Lender to order and has paid for appraisal and credit report. Seller's Written Demand for Compliance if Buyer has not provided representations and warranties of securing evidence of hazard insurance and signing an Intent to Proceed with Lender and paying required Lender deposits with supporting documentation and that Buyer has available funds to Close per the Loan Estimate. Lender and/or loan originator estimates.~~

V. Property Management

Property management is the operation, control and oversight of commercial, industrial and residential properties.

Tennessee Rule 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.

(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 payor that his or her deposit will be placed in an interest-bearing escrow or trustee account, and the licensee and the payor 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.

Tennessee Code 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 the 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) Other pertinent information that the commission may require.*

TREC Requirements

A Broker license (or supervision from a broker as a salesperson) is required for property managers who do any of the following:

- lease or list properties for lease,
- assist in negotiations,
- are in involved with rent collections

A community association manager or condo association manager does not have to hold a broker's license. However, they may not negotiate leases.

The following is a list of requirements in order to be a Broker:

- Be at least 18 years old
- Have held an active license for 3 years, or have held an active license for 2 years with a Bachelor's degree majoring in Real Estate
- 120 hours Continuing Education approved through TREC
- Application submission to TREC
- Passing of broker examination

VI. Common Commercial Lease Terminology

There are several differences between residential and commercial leases. These differences include terminology specific to commercial leases, and it is important to understand the common terms. Commercial properties under leases have additional fees besides the actual space being occupied. The fees are insurance, maintenance, and taxes.

Net Lease

In multiple unit buildings this is the most common lease. It spreads out the additional fees based on the space, and then is applied to the tenant as an additional fee above and beyond the space rent.

For instance, a 2 unit commercial building has 1,000 square feet. Each unit has an equal 500 square feet. The rate per square feet is \$10.00. The taxes, insurance and maintenance on an annual basis is \$8,000. The lease amount for each tenant would be \$5,000 per year with additional fees of \$4,000 per year.

Triple Net Lease

A triple net lease typically applies to one property being occupied by one tenant. The tenant is responsible for all of the taxes, insurance and maintenance fees.

Gross Lease; Modified Gross Lease

A Gross lease typically applies to one property being occupied by one tenant, and where the tenant is responsible for their base space rent. The owner of the property pays the taxes, insurance and maintenance fees.

In a Modified Gross lease the tenant typically pays for their own utilities either directly to the landlord/owner or to the utility company.

CAM

CAM stands for Common Area Maintenance. These are charges associated in a triple net lease. They are paid to the landlord or owner.

Section 4 Review Questions: Contracts, Property Management, and Common Commercial Lease Terminology

The following questions will be a review of the previous sections.

These questions will **not** be counted towards the final exam.

The answers can be found below.

1. Earnest money has been replaced with Trust money in all state contracts.
 - a. True
 - b. False

2. Property managers must:
 - a. Maintain separate escrow account for purpose of holding funds for rental deposits
 - b. Maintain one escrow account for purpose of holding funds for rental deposits
 - c. Maintain one account for operating and rental deposits
 - d. Maintain one escrow and one operating account for each rental property

3. Contracts have eliminated what terminology:
 - a. Earnest Money
 - b. Buyer has paid for credit report
 - c. Buyer has paid for appraisal
 - d. Both A and C

4. An extension must be done:
 - a. In writing and mutually agreed upon by all parties
 - b. By the agreement between the licensees only
 - c. By the insistence of the Broker
 - d. By the insistence of the Title Company

5. To be a broker one must:
 - a. Be at least 21 years of age
 - b. Maintain an affiliate license for 3 years
 - c. Complete 120 hours of continuing education
 - d. B & C

6. A broker must maintain, at a minimum, which of the following on trust deposits:
 - a. Name of depositor
 - b. Date of deposit
 - c. Date of withdrawal
 - d. All of the above

7. A Property Manager must hold a Broker license.
 - a. True
 - b. False

8. A buyer is now required to make application for a loan in:
 - a. 7 days
 - b. 5 days
 - c. 3 days
 - d. 10 days

9. The firm and licensee numbers are to be added to the purchase and sale agreement on the last page.
 - a. True
 - b. False

10. Many of the contract changes are due to the new regulations known as:
 - a. TRIP
 - b. TRIP
 - c. TRID
 - d. TRED

11. The common commercial leases are:
 - a. Net, Gross and Space
 - b. Triple Net, Gross and Space
 - c. Net, Triple Net and Space
 - d. Net, Gross and Triple Net

VII. Disclosures

Tennessee Code 62-13-405. Written disclosure

Disclosures of agency status are to be done PRIOR to any services being provided such as showing a property to a buyer. The first disclosure is not required to be in writing. Verbal disclosure is a valid disclosure. Licensees are also required to disclose any adverse facts on a property. "Adverse facts" means conditions or occurrences generally recognized by competent licensees that significantly reduce the structural integrity of improvements to real property, or present a significant health risk to occupants of the property.

An example of an adverse fact from a licensee would be of possible mold in a basement or structural damage evidence. Since a licensee is not a structural engineer or mold specialist they would state that they noticed the possibility of the issue or can state that it is evident there is an issue. However, the licensee's extent of knowledge would cease at this disclosure level. The licensee should recommend that their customer acquire services of professionals in the specific area to obtain further information on the specific issue.

(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.

Agency disclosure must come prior to preparing an offer to purchase or a listing agreement. At this point an action is being taken to enter into an agreement for services, and the level of agency must be in writing prior to moving forward.

Real Life Example:

If Lilly Lister has an appointment to show Betty Buyer the property at 123 Main Street, she is to disclose, verbally, that she is representing Oscar Owner as a Designated Agent for the Owner. If Betty Buyer decides she wants to make an offer, then Lilly Lister must have Betty Buyer sign a disclosure form stating she recognizes and understands that Lilly Lister is representing Oscar Owner and that she, Betty Buyer, is unrepresented in the transaction prior to preparing the offer.

This step protects Betty Buyer and allows her an opportunity to acquire her own representation, if she desires, prior to entering into a negotiation with Oscar Owner as an unrepresented party. The document will also advise Betty Buyer on how to file a complaint and provide her with the contact information to do so in the event she feels the need to so in the future.

(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.

When dealing with another licensee it is required to disclose the roles in the transaction to one another. If there is a change in status, this must also be updated with the other licensee.

(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.

The only transactions where disclosure is exempt is in commercial transactions, public auctions, or multi-unit residential properties involving four (4) or more units.

(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.

Tennessee Code 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.

**Tennessee Code 66-5-212. Disclosure of known percolation tests or soil absorption rates -
- Disclosure of foundation move -- Disclosure of presence of sinkhole**

(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.

(c) (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.

Tennessee Code 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.

VIII. Principal Broker Supervision

Each state licensed firm must have a principal broker. The principal broker is to supervise the activities of each licensed associate with the firm including time-share salespersons, affiliate brokers, property managers or brokers. They cannot allow anyone to engage in any real estate activity until they have received a valid license and errors and omissions coverage.

There is also a distance parameter in place in order to protect the ability for supervision. Principal brokers must live within 50 miles of the firm. It is 50 miles as the crow flies. The only exception for this is property managers. They may supervise a property manager over 50 miles in distance.

Tennessee Code 62-13-312 Discipline- Refusal, revocation or suspension of license

(a) The commission may, upon its own motion, and shall, upon the verified complaint in writing of any person setting forth a cause of action under this section, ascertain the facts and, if warranted, hold a hearing for reprimand or for the suspension or revocation of a license.

(b) The commission shall have the power to refuse a license for cause or to suspend or revoke a license where it has been obtained by false representation or by fraudulent act or conduct, or where a licensee, in performing or attempting to perform any of the acts mentioned herein, is found guilty of:

(1) Making any substantial and willful misrepresentation;

(2) Making any promise of a character likely to influence, persuade or induce any person to enter into any contract or agreement when the licensee could not or did not intend to keep the promise;

(3) Pursuing a continued and flagrant course of misrepresentation or making of false promises through affiliate brokers, other persons, any medium of advertising or otherwise;

(4) Misleading or untruthful advertising, including use of the term "realtor" by a person not authorized to do so, or using any other trade name, insignia or membership in any real estate association or organization of which the licensee is not a member;

(5) Failing, within a reasonable time, to account for or to remit any moneys coming into the licensee's possession that belong to others;

(6) Failing to preserve for three (3) years following its consummation records relating to any real estate transaction;

(7) Acting for more than one (1) party in a transaction without the knowledge and consent in writing of all parties for whom the licensee acts;

(8) Failing to furnish a copy of any listing, sale, lease or other contract relevant to a real estate transaction to all signatories of the contract at the time of execution;

(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 that fails to specify a definite termination date;

(10) Inducing any party to a contract, sale or lease to break the contract for the purpose of substitution in lieu of the contract a new contract, where the substitution is malicious or is motivated by the personal gain of the licensee;

(11) Accepting a commission or any valuable consideration by an affiliate broker for the performance of any acts specified in this chapter, from any person, except the licensed real estate broker with whom the licensee is affiliated;

(12) Being convicted in a court of competent jurisdiction of this or any other state or federal court of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud or any crime or any similar offense or offenses, or pleading guilty or nolo contendere to any such offense or offenses;

(13) Violating any federal, state or municipal law prohibiting discrimination in the sale or rental of real estate because of race, color, religion, sex or national origin;

(14) Violating any provision of this chapter, any rule duly promulgated and adopted under this chapter or the terms of any lawful order entered by the commission;

(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;

(16) In the case of a licensee, failing within a reasonable time to complete administrative measures that may be required by the commission upon the transfer or termination of any affiliate broker employed by the broker;

(17) Paying or accepting, giving or charging any undisclosed commission, rebate, compensation or profit or expenditures for a principal or in violation of this chapter;

(18) Failing to disclose to an owner the licensee's intention or true position if the licensee, directly or indirectly through a third party, purchases for itself or acquires or intends to acquire any interest in or any option to purchase property that has been listed with the licensee's office to sell or lease;

(19) Engaging in the unauthorized practice of law;

(20) Any conduct, whether of the same or a different character from that specified in this subsection (b), that constitutes improper, fraudulent or dishonest dealing; or

(21) Violating any provision of the Tennessee Time-Share Act of 1981, compiled in title 66, chapter 32, part 1 or any rule duly promulgated under the Tennessee Time-Share Act of 1981.

(c) The commission may, in addition to or in lieu of any other lawful disciplinary action against a broker pursuant to this section, order that the broker be downgraded to affiliate broker status.

Case Study:

TREC opened a complaint against the respondent (principal broker) for failure to supervise previous the respondent in a previous case (hereinafter "affiliate broker"). The respondent states that TREC sent two (2) letters notifying the affiliate broker that additional CE credits were needed prior to license renewal, and the affiliate broker told the respondent that they were in progress.

The respondent stated that the affiliate broker completed CE courses by February 2014 in anticipation of the April 2014 renewal. The respondent stated that no additional correspondence was received by TREC regarding the affiliate broker's renewal. The respondent states that licenses are on display by the office door and nobody noticed the expiration date on the affiliate broker's license, and it was an unintentional mistake. The respondent stated that the affiliate broker's work is overseen by the respondent and the owners of the company and apologizes for missing the renewal date and intends to enter expiration dates for all licensees and E&O insurance on the master calendar in an effort to prevent any similar occurrence.

Recommendation: Consent Order with a civil penalty in the amount of \$250 for failure to supervise in violation of T.C.A. § 62-13-312(b)(15), plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of the respondents' execution of Consent Order.

DECISION: The Board accepted the recommendation of legal counsel.

Tennessee Rule 1260-1-.04 Licenses

(1) No principal broker shall permit a broker, affiliate broker or time-share salesperson under his supervision to engage in the real estate business unless the broker, affiliate broker or time-share salesperson has been issued a valid license and is covered by an errors and omissions insurance policy.

Tennessee Rule 1260-2-.01 Supervision of Affiliate Brokers

(2) No principal broker shall engage a licensee (other than as a property manager) who lives more than fifty (50) miles by a straight line calculation 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. For purposes of this rule, a property manager is defined as a licensee who engages exclusively in leasing and otherwise managing rental properties.

Tennessee Rule 1260-02-.12 Advertising.

All advertising is done under the direct supervision of the Principal Broker. The Commission will hold the Broker responsible for advertising violations.

(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.

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

Principal Brokers are to oversee and manage escrow and trustee accounts. Agents do not have authority to hold, release or make decisions on these monies.

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.*

Tennessee Rule 1260-2-.09 Deposits and Earnest Money

(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.

(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 payor that his or her deposit will be placed in an interest-bearing escrow or trustee account, and the licensee and the payor 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.

New Mandatory Real Estate Firm Audit

All non-resident firms with Tennessee firm licenses are required to complete a mandatory audit form that will be received via mail. A new auditor position was created in order to review these forms. This decision was made in 2014.

IX. License Recognition

Tennessee Code 62-13-314. Reciprocity -- Service of process on nonresidents.

The Webster definition of reciprocity is a situation or relationship in which two people or groups agree to do something similar for each other, to allow each other to have the same rights, etc.: a reciprocal arrangement or relationship. In Real Estate this means that several states will recognize licensure with and for Tennessee. Tennessee has reciprocity with 13 states:

1. Arkansas
2. Connecticut
3. Georgia
4. Iowa
5. Louisiana
6. Massachusetts
7. Mississippi
8. New Mexico
9. North Carolina
10. North Dakota
11. South Dakota
12. Virginia
13. West Virginia

The following are the requirements to have a reciprocal license in the state of Tennessee:

(a) (1) A nonresident of this state who is a licensed broker, affiliate broker or time-share salesperson or equivalent real estate licensee in another state may apply for a license as a broker or affiliate broker in this state by submitting appropriate application to the commission.

(a)(2) The nonresident applicant need not maintain a place of business within this state; provided, that the applicant is regularly engaged in the real estate business and maintains a place of business in the other state.

(a)(3) The commission may issue the appropriate license to the nonresident applicant if:

(A) The applicant has qualified for the license held in the applicant's state of residence by written examination;

(B) The applicant meets or exceeds each of the qualifications for licensure in this state;

(C) The applicant certifies that the applicant has read this chapter and the rules and regulations promulgated under this chapter; and

(D) The applicant's state of residence permits the issuance of licenses without written examination to brokers, affiliate brokers and time share salespersons resident in and licensed by this state.

(a) (4) The commission may, in its discretion, refuse to issue, renew or reinstate a broker's, affiliate broker's or time share salesperson's license if the applicant for, or holder of, the license is not a resident of this state.

(b) (1) Every nonresident applicant shall file an irrevocable consent that legal actions may be commenced against the nonresident applicant in the proper court of any county of this state in which a cause of action may arise or in which the plaintiff may reside by service of process or pleading authorized by the laws of this state or by any member of the commission or the director of the commission, the consent stipulating that the service of process or pleading shall be taken in all courts to be valid and binding as if personal service had been made upon the nonresident licensee in this state.

(b) (2) The consent shall be duly acknowledged and, if made by a corporation, shall be authenticated by its seal.

(b) (3) Any service of process or pleading shall be served on the executive director of the commission by filing duplicate copies, one (1) of which shall be filed in the office of the commission and the other forwarded by registered mail to the last known principal address of the nonresident licensee against whom the process or pleading is directed; and no default in any such action shall be taken except upon affidavit certification of the commission or the director of the commission, that a copy of the process or pleading was mailed to the defendant as provided in this subdivision (b)(3), and no default judgment shall be taken in any such action or proceeding until thirty (30) days after the day of mailing of process or pleading to the defendant.

(c) Notwithstanding any law to the contrary, the Tennessee real estate commission has the authority to enter into reciprocity agreements with another state, if in the judgment of the commission that state has meaningful requirements for licensure. The reciprocity agreement may authorize the licensure of Tennessee licensees in that state and for the licensure of licensees of that state in this state.

Section 5 Review Questions: Disclosures, Principle Broker Supervision, and License Recognition

The following questions will be a review of the previous sections.

These questions will **not** be counted towards the final exam.

The answers can be found below.

1. A sinkhole is 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 is indicated through the contour lines of the property's recorded plat map.
 - a. True
 - b. False
2. Trust money should be disbursed no later than 30 days.
 - a. True
 - b. False
3. Which state is not a reciprocal state with Tennessee?
 - a. Georgia
 - b. North Dakota
 - c. Vermont
 - d. Virginia
4. A restrictive covenant example may be:
 - a. Written provision placing limitations or conditions of use of property
 - b. Written provision placing limitations of size of structure
 - c. Written provision placing limitations of exterior building materials
 - d. All of the above
5. Principal brokers shall not allow anyone to engage in real estate unless they have a:
 - a. Valid license and E&O insurance
 - b. A valid license only
 - c. E&O insurance only
 - d. Valid license, E&O insurance and they live within 50 miles of the firm
6. Upon request in a transaction with a PUD a seller is to supply which of the following:
 - a. Impact Fee Notice
 - b. Sinkhole Disclosure
 - c. Restrictive Covenants
 - d. CAM Fee Notice

7. An applicant can qualify for a reciprocal license as a nonresident as long as:
 - a. Applicant has qualified for license held in their state by written exam
 - b. Applicant meets or exceeds qualifications for Tennessee
 - c. Applicant has read Tennessee chapter and rules
 - d. All of the above

8. Licensed agents are not obligated to discover and disclose latent defects.
 - a. True
 - b. False

9. A seller must disclose that a property has been moved to a new foundation.
 - a. True
 - b. False

10. A property manager is defined as:
 - a. a licensee who engages exclusively in leasing and managing rental properties
 - b. a licensee who engages half their time in leasing and managing rental properties
 - c. a licensee who engages in over 30% of their time in leasing and managing rental properties
 - d. an unlicensed individual who collects rent for leased or rented properties

11. Any non-resident firm with a Tennessee firm license are required to complete a mandatory audit every year via mail.
 - a. True
 - b. False

12. How many states offer Reciprocity with Tennessee:
 - a. 10
 - b. 15
 - c. 13
 - d. 18