



2021-2022  
**TRECCORE**  
COMMERCIAL

*Developed for*  
**Tennessee Real Estate Education Foundation**  
*in Cooperation with*  
**Tennessee REALTORS®**

*Written by*  
**John M. Giffen**  
CRB, CRS, CDEI, CRI, BROKER





01012021-01



The material contained within this course, including this handout, was developed exclusively for the Tennessee Real Estate Education Foundation (TREEF) in cooperation with Tennessee REALTORS®. The material is for the sole use of course instructors approved by the Tennessee Real Estate Commission and TREEF. Any unauthorized use is strictly prohibited.

©2021 Tennessee Real Estate Education Foundation.



Tennessee Real Estate Education Foundation

# **2021-2022 TREC Commercial Core Course**

## **Course Outline**

### **Course Introduction**

### **Unit 1 TREC Law, Rules and Regulations**

- TREC's Complaint Process
- TREC Disciplinary Actions
- 21 Ways Your Real Estate License Can Be Suspended or Revoked by TREC
- Transferring Your Real Estate License Using the TREC-1 Form (New)
- Transferring Your Real Estate License Online
- Recent Changes to State Law and TREC Rules

### **Unit 2 License Recognition**

- Non-Resident Candidates Seeking Licensure
- Resident Candidates Who Are Were Licensed in Another State
- Minimum TREC Requirements for Licensure under License Recognition

### **Unit 3 Principal Broker Supervision of Affiliate Licensees**

- Managing Affiliate Brokers
- Termination of Affiliation
- Affiliate Broker Relationship to Principal Broker
- Designated Broker – Managing broker
- Unlicensed Branch Office
- TREC Rule on Offices
- Licenses
- Tennessee Attorney General Opinion – Exemptions to Licensure
- Advertising and Principal Broker Supervision
- Trust Money (Earnest Money)

### **Unit 4 Advertising**

- TREC Rules on Advertising
- Key Facts to Know Concerning Advertising
- Advertising as a Team
- Signage
- Internet Advertising
- Guarantees, Claims and Offers

- Rebates, Gifts and Prizes

## **Unit 5 Introduction to Investment Real Estate**

- The Investor
- Rate of Return or Yield
- Liquidity
- Risk
- Cash Flows
- Marketability
- Taxation
- Management Requirements

## **Unit 6 Real Estate Investment Analysis**

- Sources of Property Income
- Investment Real Estate Cash Flows
- Market Rent
- Estimating Net Operating Income
- Income Levels
- Annual Property Operating Data Sheet
- Cash Flow Before Taxes
- Cost Recovery (Depreciation)
- Taxable Income or Loss
- Tax Liability/Savings
- Cash Flow After Taxes
- Taxable Gain and Tax Due on Sale

## **Unit 7 Property Management**

- Property Management is Not For Everyone
- The Tennessee Uniform Residential Landlord and Tenant Act
- Some Key Points on Property Management in Tennessee
- E & O Coverage and Property Management
- Principal Broker Supervision of Property Management Activities
- Common Issues and Challenges
- Sanctions Imposed by TREC for Property Management Violations

## **Unit 8 Commercial Leasing / Common Lease Terminology**

- Gross Lease or Full Service Lease
- Net Lease
- Single Net Lease
- Double Net Lease
- Triple Net Lease
- Absolute Triple Net Lease
- Modified Gross Lease
- Summary of Leases

# Course Introduction

---

## Course Overview

The 2017-2018 TREC Commercial Core Course provides participants a better understanding of the rules, regulations and issues relating to practicing real estate in the state of Tennessee. It is important for the participant to know recent changes to the rules and regulations enacted by the Tennessee Real Estate Commission (TREC) as well as knowing state law and TREC's guidelines for agency, advertising, contracts and disclosures, license recognition from other states, property management and principal broker supervision. This course will include case studies on these topics as well as participatory exercises allowing students to learn practical application of the material within each section of the course.

## Learning Objectives

*After completing this course, participants will be able to:*

1. Know and understand the most recent rule changes enacted by TREC impacting all licensees in the state.
2. Understand agency laws in Tennessee and common violations in agency relationships.
3. Identify common violations of state law and rules on advertising including Internet advertising, false, misleading or deceptive advertising, broker and agent signage, guarantees, claims, offers, and gifts and prizes.
4. Recognize the importance of Errors and Omissions Insurance and how to reduce professional liability.
5. Identify the most common legal claims filed by consumers against licensees and how to void them.
6. Know various issues with residential contracts in Tennessee and how to avoid problems that might arise before and after the binding agreement date.
7. Understand state law and TREC rules regarding property disclosures and disclaimers as well as the requirements for providing them to purchasers and property owners.
8. Recognize TREC rules for license recognition from other states.
9. Properly recognize issues arising in the practice of residential property management including escrow accounts, TREC requirements and disciplinary action for violations.
10. Know Tennessee licensing laws and/or rules concerning Principal Broker supervision including branch offices, exemptions to licensure, advertising, and Earnest



**A Note on References to Tennessee State Law and TREC Rules in Course Content**

All references made in the content of this course regarding state law are from the Tennessee Code Annotated, Title 62, Chapter 23 (*Tennessee Real Estate Broker License Act of 1973*.) All rules referenced are from the *Rules of Tennessee Real Estate Commission* Chapters 1260-01 – 1260-07.

- The Tennessee Real Estate Commission (TREC) was created in 1951 with limited governing oversight. Its current regulatory authority was established with the passage of the **Tennessee Real Estate Broker License Act of 1973**. In addition to the laws outlined in the Broker's Act, the Commission adopted specific rules and regulations for licensees to follow to protect the consumer when selling or purchasing real estate.
- TREC is one of several regulatory agencies under the Division of Regulatory Boards within the **Tennessee Department of Commerce and Insurance**.
- The real estate commission is empowered to take disciplinary action—including revocation of licenses and assessment of civil penalties—against license holders found guilty of violating laws governing real estate in Tennessee.



TREC is responsible for enforcing both the laws under the Broker's Act as well as the rules of the Commission.

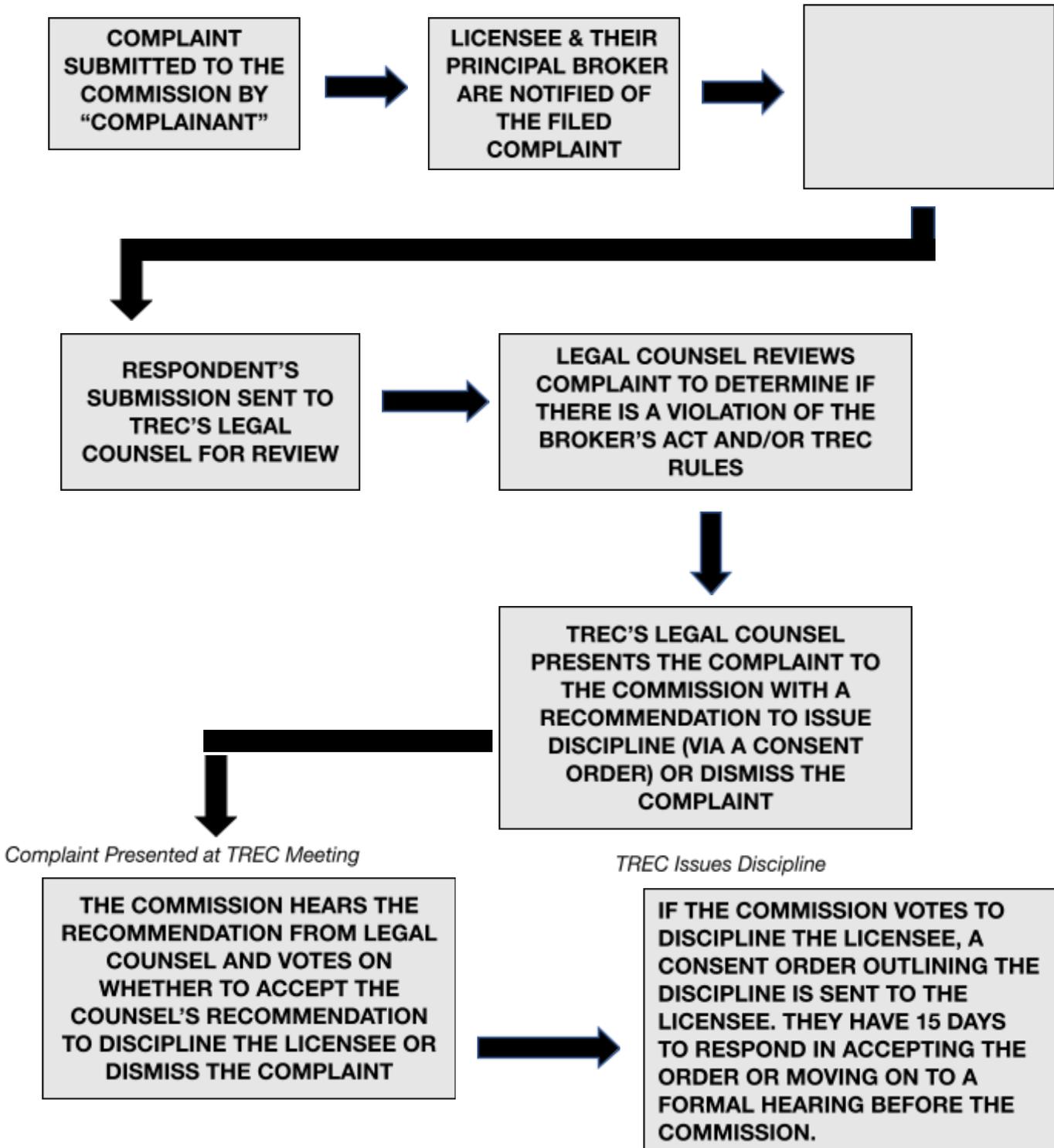
- **The Tennessee Real Estate Broker's License Act** established a formal and structured regulatory framework for legally brokering real estate in Tennessee.
- **TREC Rules** provide more detailed guidelines for the regular activities of licensees in the state. It is your responsibility for thoroughly knowing and obeying both state law and TREC rules. Remember, having a real estate license is a privilege, not a right.

## TREC's Complaint Process

1. When a consumer files a complaint against a licensee, TREC provides a copy of the complaint to the licensee (also known as the "respondent") and to the licensee's principal broker. **All complaints should be taken very seriously and reviewed very carefully by the respondent and his/her broker.** The respondent has ten (10) days to respond to a complaint. The licensee can request an extension by contacting TREC's complaint coordinator. This will permit the licensee's attorney to have additional time to assist them in responding to any complaint. The Commission does keep track of deadlines and the failure to respond to a complaint can lead to additional disciplinary action against the licensee.
2. It is important the respondent gather any and all information relating to the transaction(s) referenced in the complaint. Then, he/she should sit down with their principal broker to discuss a response. **You must respond to every allegation in the complaint, even if you think no response is required.**
3. If needed, a respondent can meet with legal counsel, however, the respondent's attorney should be with familiar with the Broker's Act, TREC rules, regulations and procedures. If the respondent is involved in a court action the response to the Commission should include a reference to the court file, file number, court information, etc.

4. **All responses should be notarized and any and all documentation should be included in the response.** It is best to send a response via certified mail and follow-up with TREC within two (2) to three (days) to ensure receipt. Responses may also be sent via email or online on TREC’s website.
5. Specific questions concerning the complaint process should be addressed to the complaint coordinator at TREC.

**COMPLAINT PROCESS AT TREC**



If Complaint is Dismissed



**LETTER TO COMPLAINANT AND RESPONDENT (LICENSEE) THAT THE COMPLAINT HAS BEEN DISMISSED**

Licensee Accepts Discipline

**AGREED CONSENT ORDER TO CLOSE COMPLAINT**

Licensee Rejects Consent Order

**FORMAL HEARING BEFORE THE COMMISSION**

## TREC Disciplinary Actions

Each month, the Commission reviews complaints submitted by consumers against licensees and brokers for various violations of state law and TREC rules. The Commission has increased the fines and disciplinary action for those found to be in violation of licensing rules and regulations. **Fines imposed by TREC in recent years have ranged from \$250 to several thousands of dollars. A few licensees had their license downgraded or revoked because of their actions.**

Every month, the Department of Commerce and Insurance publishes all disciplinary actions taken by the department's regulatory boards via the department's *Disciplinary Action Report*. TREC disciplinary actions are included in the list of licensees who received consent orders with monetary fines, additional continuing education requirements, or both. Results from formal hearings are also included in the report. In addition, names of real estate licensees suspended or revoked are included in the department's disciplinary action report.



### DISCIPLINARY ACTION REPORT

Kevin.Walters@tn.gov  
615-253-8941

Funeral Directors & Embalmers					
Geologists					
Home Inspectors					
Land Surveyors					
Locksmiths					
Motor Vehicle	Downtown Nashville Nissan	Nashville, TN	Issuing more temporary tags than allowed	\$2,000 civil penalty	5/15/2020
Motor Vehicle	Greenway Kia Hickory Hollow	Antioch, TN	Issuing more temporary tags than allowed	\$1,000 civil penalty	5/19/2020
Motor Vehicle	Sunrise Auto Sales	Knoxville, TN	Failure to maintain county business license	\$250 civil penalty	5/19/2020
Motor Vehicle	Budget Auto Sales of Memphis, Inc.	Memphis, TN	Unlicensed activity	\$500 civil penalty	5/21/2020
Motor Vehicle	Golden Auto Sales	Knoxville, TN	Failure to maintain temp tag log	\$1,500 civil penalty	5/27/2020
Motor Vehicle	Auto Car Inc.	Nashville, TN	Engaging in false, fraudulent, or deceptive practice(s)	\$10,000 civil penalty	5/28/2020
Motor Vehicle	Autos and More, Inc.	Knoxville, TN	Engaging in false, fraudulent, or deceptive practice(s)	\$1,000 civil penalty	5/28/2020
Motor Vehicle	United Auto Sales	Manchester, TN	Issuing more temporary tags than allowed	\$250 civil penalty	5/28/2020
Private Investigations & Polygraph					
Private Probation Service					
Private Protective Services					
Real Estate Appraisers					
Real Estate Commission	Kristle Trentham	Maryville, TN	Advertising violations	\$500 civil penalty	5/1/2020
Real Estate Commission	Ian Pete Galyon	Chattanooga, TN	Advertising violations	\$500 civil penalty	5/7/2020
Real Estate Commission	Justin Tate	Hixson, TN	Advertising violations	\$250 civil penalty	5/12/2020
Real Estate Commission	Janet Naseif Ibrahim	Nashville, TN	Advertising violations	\$500 civil penalty	5/12/2020
Real Estate Commission	Christopher Bawgus	Johnson City, TN	Failure to exercise reasonable skill and care	\$1,000 civil penalty	5/12/2020
Real Estate Commission	Edward Philip Huletz	Tacoma, WA	Continued and flagrant misrepresentation or fraud	\$1,000 civil penalty plus four hours of continuing education in contracts and license downgraded to Affiliate Broker status	5/12/2020
Real Estate Commission	Holly Vaezi	Brentwood, TN	Advertising violations	\$500 civil penalty	5/15/2020
Real Estate Commission	Tina Ledford	Cleveland, TN	Failure to supervise	\$400 civil penalty	5/18/2020
Real Estate Commission	Margaret Christmas	Mason, TN	Failure to provide copies of lease agreements	\$4,000 civil penalty	5/21/2020
Real Estate Commission	Erika Lawson Cooke	Cleveland, TN	Failure to exercise reasonable skill and care	\$500 civil penalty plus four hours of continuing education in contracts.	5/26/2020
Real Estate Commission	Jackson Mountain Homes, Inc.	Gatlinburg, TN	Failure to respond to a complaint	\$1,000 civil penalty	5/26/2020
Real Estate Commission	Christopher Dane Bradshaw	Chattanooga, TN	Unlicensed activity	\$1,000 civil penalty	5/28/2020
Real Estate Commission	Kimberly Kim Cargill-Wax	Caryville, TN	Failure to exercise reasonable skill and care	\$1,000 civil penalty plus four hours of continuing education in contracts	5/29/2020



## 21 Ways Your Real Estate License Can Be Suspended or Revoked by TREC

(Excerpted T.C.A. § 62-13-312)

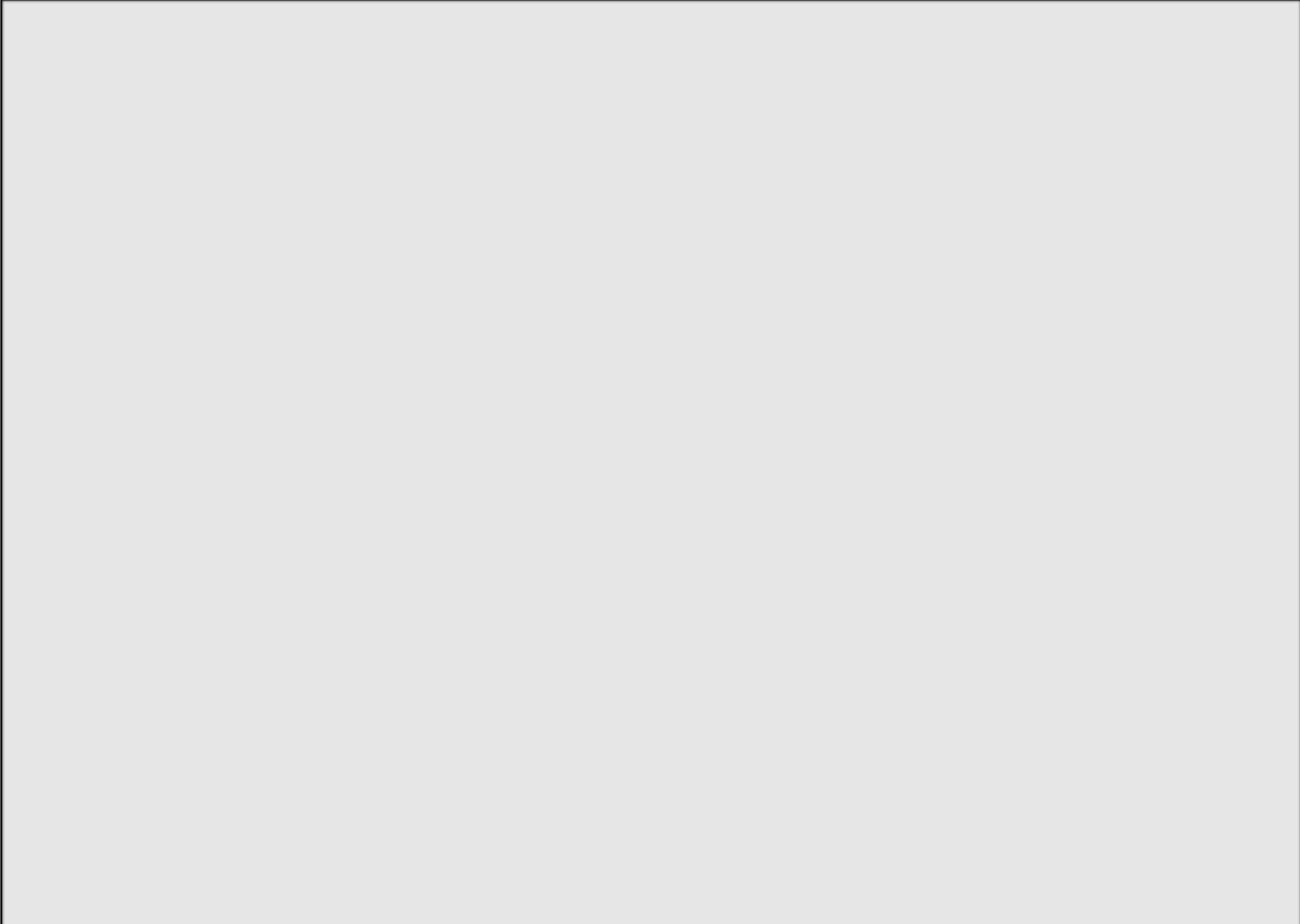
The Broker's Act contains twenty-one (21) ways a real estate licensee in Tennessee can have their license suspended or permanently revoked. This particular section of the state statute is the most referenced section of the Act when TREC's legal counsel presents a complaint to the Commission for consideration.



- (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 such promise;
- (3) Pursuing a continued and flagrant course of misrepresentation or making of false promises through affiliate brokers, other persons, or 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 or 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 which 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 thereof 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 which fails to specify a definite termination date;
- (10) Inducing any party to a contract, sale or lease to break such contract for the purpose of substitution  
in lieu thereof a new contract, where such 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 thereunder, 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 such administrative measures as 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 which 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 hereinbefore specified, which constitutes improper, fraudulent or dishonest dealing; or
- (21) Violating any provision of the Tennessee Time-Share Act, compiled in Title 66, Chapter 32, Part 1, or any rule duly promulgated thereunder.



## Recent TREC Disciplinary Action

- Failure to timely complete required continuing education
- Engaging in unlicensed activity
- Failing to diligently exercise reasonable skill and care
- Advertising violations
- Failure to adequately supervise the activities of affiliates
- Failure to be loyal to the interests of the client
- Failure to respond to a complaint filed with the Commission
- Violating the gifts and prizes rule
- Making substantial and willful misrepresentation
- Failing, within a reasonable time, to account for or to remit moneys belonging to others
- Failure to maintain Errors and Omissions insurance
- Failure to timely disburse or interplead earnest money
- Failure to furnish a copy of a listing, sale, lease or other contract relevant to a real estate transaction to all signatories of the contract at the time of execution
- An affiliate's acceptance of a commission from someone other than the broker with whom they are affiliated

- Failure to complete and obtain a signed written disclosure agency status form
- Failure to notify the Commission of conviction enumerated within chapter within 60 days of conviction
- Conducting business with an expired real estate firm license
- When a licensee terminates his/her affiliation with a firm, he/she shall neither take nor use any property listings secured through the firm
- Unlicensed vacation lodging service
- Unlicensed property management service

# Transferring Your Real Estate License Using the TREC-1 Form (New)

If you have seen the new **Transfer, Release, and Change of Status Form (TREC 1)**, for individuals, or the TREC 2, for firms, you know that it has a slightly different look. The Commission's goal was to simplify the form and get rid of many of the transactions that no longer require a fee.

There are also questions now associated with transaction to act as a reminder of the requirements prior to proceeding with the change. TREC removed the broker release option on both forms. This is because this transaction can now be done online through the Principal Broker's **core.tn.gov** account. This allows the broker to maintain a summary of the transaction. It also avoids the issues TREC was having with these applications getting lost in the mail. Since there is no money associated, it is difficult for the Commission staff to track. However, through core.tn.gov the principal broker can track the application and TREC can as well.



**Tennessee Real Estate Commission**  
**TRANSFER, RELEASE, AND CHANGE OF STATUS FORM**  
*Please complete the form in its entirety. If a section is not applicable, please mark as not applicable.*

Check the appropriate box below:	Action	Transaction	Fee	Questions	Answer (Yes/No)
<input type="checkbox"/>	Transfer to new firm	8080	\$25	Have both your releasing Broker and your new Broker signed your TRANSFER?	<input type="checkbox"/>
<input type="checkbox"/>	Change of status from RETIRED TO ACTIVE	8000	\$25	If you were in retirement status for more than one renewal cycle, have you completed all necessary education?	<input type="checkbox"/>
<input type="checkbox"/>	Change of status from ACTIVE to RETIRED	6070	\$25	Do you understand to stay in retired status you must continue to pay your license renewal fee?	<input type="checkbox"/>

Licensee Information

Name: \_\_\_\_\_ License Number: \_\_\_\_\_  
 Email: \_\_\_\_\_ Signature: \_\_\_\_\_

Releasing Firm Information

*If you are retiring or transferring your license, please ensure this section is completed.*

Firm Name: \_\_\_\_\_ Firm License Number: \_\_\_\_\_  
 PB License number: \_\_\_\_\_  
 PB Name: \_\_\_\_\_  
 PB Signature: \_\_\_\_\_

New Firm Information

*If you are reactivating or transferring your license, please ensure this section is completed.*

Firm Name: \_\_\_\_\_ Firm License Number: \_\_\_\_\_  
 PB License number: \_\_\_\_\_  
 PB Name: \_\_\_\_\_  
 PB Signature: \_\_\_\_\_

Notes: \_\_\_\_\_  
 \_\_\_\_\_

Davy Crocket Tower, 500 James Robertson Parkway, Nashville, TN 37243, www.core.tn.gov

**NOTE: Forms can be downloaded on TREC's website at:**  
<https://www.tn.gov/commerce/regboards/trec/licensee-applicant-resources/forms-and-downloads.html>

## Transferring Your Real Estate License Online

The Department of Commerce and Insurance provides an online portal for you to renew or transfer your license. Go to: <https://www.core.tn.gov> to register.

### The CORE System

Tennessee Department of Commerce and Insurance Online Licensing System  
C.O.R.E. (Comprehensive Online Regulatory & Enforcement)

**TN** Department of Commerce & Insurance

### Online Licensing Services

Need Help    Cont

#### Returning User

\* \* are required.

\*User ID:

\*Password:

[Forgot user ID?](#)    [Forgot password?](#)   

#### New User

[Register a new account](#)

**!** You must create a new online account even if you already use e-services. Your online account is separate from your e-Services account.

THIS SYSTEM IS FOR AUTHORIZED USE ONLY!

Use of this system constitutes consent to monitoring, interception, recording, reading, copying or capturing by authorized personnel of all activities. There is no right to privacy in this system. Unauthorized use of this system is prohibited and subject to criminal and civil penalties.

#### Sign-up and manage your licenses

Welcome to the Online Licensing System. If you are a new user and use this system please sign up to your online account.

If you are an existing user sign-in. If you have forgotten your user ID or password, please use the links in the 'Returning User' section to help you.

## Accessing TREC Online with C.O.R.E

- Initiate a Real Estate License
- Renew Your License
- Retire Your License
- Change Your Address
- Reactivate Your License
- Pay Fees online
- Initiate a Firm License
- Print Your License
- Reinstatement/Reapplication

**LICENSE PRINTING:** *You no longer need to wait for your new license in the mail. Available now through CORE, TREC's licensing system, you can print your license at home at your convenience. This new function allows you to obtain a new or renewed license once your application is approved. You can access this feature through your CORE licensing account under your quick start menu. You will obtain a PDF version of your license, ready to be printed. This can act as your official license.*

## **Recent Changes to State Law and TREC Rules**

### **Low Income Fee Waiver**

(Ref. T.C.A. § 62-76-105)

This new law requires all regulatory boards under the Tennessee Department of Commerce and Insurance, including the Tennessee Real Estate Commission (TREC), to waive initial licensing fees for applicants who demonstrate enrollment in TANF (temporary assistance for needy families), Medicaid, SNAP (supplemental nutrition assistance program), or other federal or state public assistance programs determined to qualify by the TDCI Commissioner. This fee waiver applies to applicants for initial individual licenses, and initial entity licenses where the owner-applicant qualifies for the fee waiver.

### **Principal Broker Complaints for Failure to Supervise**

TREC no longer automatically opens a corresponding complaint against Principal Brokers when a complaint is filed against an affiliated licensee effective May 1, 2018. Whenever a complaint is filed against a Principal Broker's affiliated licensee, the Principal Broker will receive notification of the complaint and then have the opportunity to respond and provide any information deemed necessary. Although an automatic complaint will not be opened against the Principal Broker, upon review of the complaint filed against the affiliated licensee, the Commission retains the discretion to open a complaint for failure to supervise against the Principal Broker under T.C.A. § 62-13-312(b)(15).

### **Fee Reduction Changes**

TREC approved proposed rules that eliminate and reduce certain licensing fees. Specifically, the new rules reduce the original license fee from \$100.00 to \$90.00 and the renewal license fee from \$80.00 to \$75.00. In addition, the rules eliminate fees for change of firm address, name change, duplicate licenses, commission manual, certified copy fees, printouts of licensee information, and printout of licensee information fees. Also, the initial \$10.00 fee that is deposited into the real estate commission education and recovery account is reduced to \$1.00. Furthermore, the rules revise the language for the handling of bad checks to comport with state law. Lastly, the rules reduce all educational course application fees by at least half.

### **Fresh Start Act**

(Ref. T.C.A. § 62-76-104 and § 63-1-120)

The Fresh Start Act requires that certain state departments, boards, commissions, or agencies, including TREC, not deny an application for a license, certificate, or registration or refuse to

renew a license due to a prior criminal conviction unless the conviction directly relates to the applicable profession.

This Act sets out notification requirements for the agencies that intend to use a conviction as the basis for a denial of licensure, factors that must be considered in determining whether to deny or refuse to renew the license on the basis of a criminal conviction, sets out that certain crimes create a rebuttable presumption of being related to a profession, provides information that must be contained in the notice of determination by the agency, and provides that a decision under the Act may be appealed to Davidson County Chancery Court within thirty (30) business days of receipt of the notice of a denial or refusal to renew. A potential applicant may also request a pre-application determination from the agency as to if a conviction will prevent the person from becoming licensed.

In addition, certain disciplinary actions regarding rental location agents by the Tennessee Real Estate Commission are subject to the factors and appeal process as set out in the Fresh Start Act and may also only be taken if the Tennessee Real Estate Commission determines that the criminal conviction directly relates to the applicable profession.

*Note: TREC is considering new rules related to the Fresh Start Act; however, as of September 1, 2020, they have not been enacted.*

## ***UNIT 2 – License Recognition***

---

### **Non-Resident Candidates (Licensing Real Estate Candidates Currently Licensed in Another State Seeking a Tennessee License)**

An applicant for a Tennessee real estate license who is currently licensed in another state must pass the Tennessee (state law) portion of the examination for the same type of license they hold in their resident state. TREC provides additional information on their website that will assist an applicant in determining the requirements for seeking a Tennessee real estate license. Information required by the Commission include certificates showing the completion of pre-licensing education and completion of continuing education. The firm and principal broker where the applicant is affiliated must also hold an active Tennessee real estate license.

### **Resident Candidates Who Are or Were Licensed in Another State**

An applicant for a Tennessee real estate license who are or were licensed in another state and are now a resident of the Tennessee may still qualify under Tennessee statute to have their real estate education, the national portion of the examination and/or their experience (if applying for a broker license) substitute for Tennessee's education, national portion of the examination and/or experience. TREC provides additional information on their website that will assist an applicant in determining the requirements for seeking a Tennessee real estate license. Information required by the Commission includes certificates showing the completion of pre-licensing education and completion of continuing education. The firm and principal broker where the applicant is affiliated must also hold an active Tennessee real estate license.

### **Minimum TREC Requirements for Licensure under License Recognition**

Licensee applicants active in another state desiring to obtain a Tennessee real estate license must meet the following requirements:

#### ***Affiliate Broker License***

Provide proof of a minimum of ninety (90) hours of real estate education that includes at least thirty (30) hours of real estate principles and the Tennessee thirty (30) hour Course for New Affiliates (CNA). The remaining thirty (30) hours can be approved electives. Education hours must be accepted for credit by the resident state of licensure before being considered for credit by TREC.

#### ***Real Estate Broker License***

Provide proof of satisfactory completion of one hundred twenty (120) hours of real estate education including at least thirty (30) hours of *Real Estate Office and Brokerage Management* or equivalent. . Education hours must be accepted for credit by the resident state of licensure before being considered for credit by TREC.

The licensee must also provide proof of having an active real estate license for at least three (3) years.

Broker license candidates must provide proof of passing a national real estate examination since June 30, 1980 with a minimum passing score of seventy-five percent (75%) on the national or uniform section of the examination in order to be granted a waiver of the uniform section.

All broker license candidates must pass the Tennessee law section of the Tennessee examination with a minimum passing score of seventy-five percent (75%).

Note: All license applications are subject to the approval of the Tennessee Real Estate Commission pursuant to the Tennessee Real Estate Broker License Act of 1973 and the Rules and Regulations of TREC.

## **Out-of-State Licensee Continuing Education Requirement for License Renewal**

Non-resident licensees are required to submit sixteen (16) hours of real estate education in order to renew their Tennessee real estate affiliate broker or real estate broker license. Out-of-state licensees must follow the same rules as Tennessee residents who hold a license.

### ***Affiliate Broker Licenses***

Per T.C.A. § 62-13-303(g), "Every two (2) years, as a requisite for the re-issuance of an affiliate broker's license originally issued on or after July 1, 1980, the affiliate broker shall furnish certification of satisfactory completion of sixteen (16) classroom hours in real estate courses at any school, college or university approved by the commission.

### ***Real Estate Broker Licenses***

Per T.C.A. § 62-13-303(h), "..Beginning with the license period immediately following the license period in which the licensee completes the one hundred twenty (120) hours of education specified in this subsection (h), the licensee of a broker's license originally issued after January 1, 2005, every two (2) years shall furnish certification of satisfactory completion of sixteen (16) classroom hours in real estate courses at any school, college or university approved by the commission as a requisite for the re-issuance of the license.

On June 14, 2017, the Commission voted to grant a waiver of the continuing education requirements in T.C.A. § 62-13-303(g) & (h) above, for non-resident licensees whose license is due for renewal prior to September 1, 2017. Starting September 1, 2017, if a non-resident licensee does not submit satisfactory completion of sixteen (16) hours in real estate courses approved by the Commission, the licensee's real estate license will not be renewed.

## ***UNIT 3 – Principal Broker Supervision of Affiliated Licensees***

---

### **Managing Licensees**



#### *Key Points to Remember:*

- **Licenses renew every two (2) years.** When the license is issued either the firm or the licensee needs to develop a reminder on their calendars or develop a process to know when the license needs to be renewed.
- **Errors and Omissions Insurance** – Licensees receive a reminder thirty (30) days prior to the licensee's renewal. Remember, proof of insurance is required by TREC for license renewal.
- **Education** – TREC requires sixteen (16) hours every two (2) years, of which six (6) hours must be the TREC Core course and ten (10) hours of elective courses. The Commission will send a reminder of education requirements six (6) months prior to expiration of license with the expiration date listed in the letter.

### **Principal Broker Responsibilities to Agents**

The following is just a few of the responsibilities of a principal broker:

- Supervision of Affiliate Broker and Real Estate Broker licensees
- Offices
- Maintaining Good Communication
- Offers to Purchase
- Agency Agreements

- Escrow Accounts
- Personal Interest Disclosure
- Advertising Responsibilities
- Commissions Earned by Licensees
- Records (Electronic and traditional paper records)
- Principal Broker Responsibility of Teams

## **Managing Affiliate Brokers** (TREC Rule 1260-02-.01)

- In Tennessee, in order for an affiliate broker to be engaged in any real estate activity **he or she must be under the direct supervision of a principal broker.**
- The broker must be engaged primarily in the real estate business and **must be accessible to his agents during normal working hours.**
- **The principal broker is responsible for ALL of the activities of the licensee** and, as such, must be able to ensure a licensee is practicing real estate within the regulations outlined in the Tennessee Broker's License Act of 1973 and the Rules of the Tennessee Real Estate Commission.
- The principal broker should be competent in instructing licensees on client and transaction management, real estate contracts and disclosures, handling of trust money, resolution of disputes between clients and agents and well-versed on the latest changes taking place in the real estate industry.
- **The broker should be the one a licensee can turn to for answers** to their questions as well as advice on how to grow their real estate practice.

**In Tennessee, the affiliate broker is an independent contractor – not an employee.** As such, the licensee is self-employed and is compensated by the broker for their efforts in assisting a consumer in purchasing or selling a piece of real property. Even though licensees are independent contractors they are still held responsible to the principal broker for any and all activity in their business including advertising and marketing, listing and contract documents, the handling of trust money and guiding the client/customer through the entire process of a real estate transaction.

## **Termination of Affiliation** (TREC Rule 1260-02.02)

When a licensee wishes to terminate their affiliation with a firm the principal broker shall immediately release the licensee from the firm and return the license to the licensee. If the licensee cannot be located the license can be returned to the Commission. Under TREC rules, the licensee has ten (10) days to place his license with another broker or place it in retirement status.

## **Affiliate Broker Relationship to Principal Broker** (T.C.A. § 62-13-310)

- 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.

### **T.C.A. § 62-13-406 Designated broker - Managing broker**

- (a) A licensee entering into a written agreement to represent any party in the buying, selling, exchanging, renting or leasing of real estate may be appointed as the designated and individual agent of this party by the licensee's managing broker, to the exclusion of all other licensees employed by or affiliated with the managing broker. A managing broker providing services under this chapter shall not be considered a dual agent if any individual licensee so appointed as designated agent in a transaction, by specific appointment or by written company policy, does not represent interests of any other party to the same transaction.
- (b) The use of a designated agency does not abolish or diminish the managing broker's contractual rights to any listing or advertising agreement between the firm and a property owner, nor does this section lessen the managing broker's responsibilities to ensure that all licensees affiliated with or employed by the broker conduct business in accordance with appropriate laws, rules and regulations.
- (c) There shall be no imputation of knowledge or information among or between clients, the managing broker and any designated agent or agents in a designated agency situation.

### **TREC Rule 1260-02-.03 Offices**

(a) For purposes of T.C.A. § 62-13-309(d), a licensee is deemed to maintain a "branch" if the licensee:

1. Advertises the office in any manner for the purpose of attracting the public;
2. Has a mail drop at the office which is registered with and served by the United States Postal Service; or
3. Invites or solicits telephone calls to the office (by such means as advertising or listing in a telephone directory). *Note: No broker shall post his license at a telephone answering service.*

(b) Model Homes and Modular Units. A model home may be utilized in a subdivision or on a commercial lot and a modular unit may be utilized in subdivisions which are under construction for purposes of soliciting business and will not be required to be licensed as a branch office as long as the model home or modular unit meets the following requirements:

1. The model home or modular unit location and/or telephone number is only advertised in conjunction with advertising the main firm office and such advertising complies with the statutes, rules and regulations of the Commission;
2. The model home or modular unit does not have a mail drop;
3. The model home or modular unit is not the sole sales office for the firm;
4. The model home or modular unit is not utilized to allow unlicensed activity by individuals in performing any of the acts requiring licensure under T.C.A. § 62-13-101, et seq.; and
5. The principal broker of the main firm office shall adequately supervise licensees operating from model homes or modular units as required by T.C.A. §62-13-312 and any rules promulgated thereunder.

**Licenses** (Ref. TREC Rule 1260-01-.04)

(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 timeshare salesperson has been issued a valid license and is covered by an errors and omissions insurance policy.

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

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

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

(5) A time-share salesperson shall only participate in time-share transactions when he is affiliated with a firm which is affiliated with a registered time-share project.

**Tennessee Attorney General Opinion – Exemptions to licensure**

On March 6, 2014 the Office of the Attorney General issued Opinion No. 14-27 concerning questions about Exemptions from the Real Estate Broker License Act.

1. Does the exemption from licensure under the Tennessee Real Estate Broker License Act of 1973 provided to “corporation, foreign or domestic” in Tenn. Code Ann. 62-13-104(a)(1)(F) apply to a limited liability company?
  
2. If an individual who is a member of an entity (Corp) that qualifies for the exemption under Tenn. Code Ann. 62-13-104(a)(1)(F) has the primary responsibility of performing activities on behalf of such entity for which a license is otherwise required under Tenn. Code Ann. 62-13-102(4)(A) or (B), does it matter for purposes of the exemption whether the individual’s compensation is dependent upon or directly related to the value of the real estate as to which the actions are performed?
  
3. If an individual performs activities for which a license is required under Tenn. Code Ann. 62-13-102(4)(A) or (B) on behalf of an entity that qualifies for the exemption under Tenn. Code Ann. 62-13-104(a)(1)(A-F) but not perform such activities as a vocation does the exemption apply to that person if his or her compensation is based on a distribution of profits to the owners of the entity from the in the entity or some other calculation not directly related to the sale or rental of the property.

### **Advertising and Principal Broker Supervision** (Ref. 1260-02-.12(3)(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. The firm name must appear in letters the same size or larger than those spelling out the name of a licensee or the name of any team, group or similar entity.

### **Trust Money (Earnest Money)**

#### **TREC Rule 1260-02-.09 Managing Escrow or Trust 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.

## **If Something Happens to the Principal Broker**

The Commission has rules in place in the event a principal broker becomes incapacitated, leaves his/her responsibilities for an extended period of time (with a valid reason) or dies.

### **TREC Rule 1260-02-.38 Death or Extended Absence of Principal Broker**

(1) The Commission must be notified within ten (10) days of the death, resignation, termination, or incapacity of a principal broker. In the event of an unexplained extended absence of a principal broker, the Commission must be notified within a reasonable time period. At the time of notification, a plan must be submitted which addresses the continuation of operations without a principal broker.

(2) The Commission may, in its discretion, based on the merits and circumstances of each case, permit a real estate firm to continue operating without a principal broker for a period of time not to exceed thirty (30) days from the date of death, resignation, termination, or incapacity of a principal broker, subject to conditions imposed by the Commission.

(3) If, within the aforementioned thirty (30) day period, a real estate firm contacts the Commission demonstrating compliance with their initial approved plan and circumstances which require additional time to continue operating without a principal broker, the executive director shall have the authority to grant a thirty (30) day extension to the period originally allowed by the Commission. In the event that a thirty (30) day extension is granted, a new principal broker must be in place no later than the sixty-first (61st) day from the date of death, resignation, termination, or incapacity of a principal broker.

## Let's Review

1. In Tennessee, in order for an affiliate broker to be engaged in any real estate activity he or she must be under the direct supervision of a principal broker. True or False?
2. How often do real estate licenses renew?
3. TREC requires \_\_\_\_\_ hours every \_\_\_\_\_ years, of which \_\_\_\_\_ must be in the \_\_\_\_\_ and \_\_\_\_\_ hours of elective courses.
4. The principal broker is responsible for all the activities of the licensee? True or False?
5. If a licensee wants to transfer their license to another firm how long should the licensee expect the license to be released by their current broker?
6. How many days does a licensee have to place his license with another firm?
7. Who "owns" the listings and contracts of the firm?
8. Is a principal broker considered a dual agent under designated agency?
9. Under TREC Rule 1260-02-.03 (Offices), what are the three (3) conditions a licensee when a licensee may be considered operating a "branch" office?
10. Does the Tennessee Attorney General's opinion concerning exemptions to licensure allow an employee of a company to perform real estate activities on behalf of the company?
11. What happens if the principal broker dies?

## **A Word on Risk Reduction and Errors and Omissions**

### ***Why Are Real Estate Agents Getting Sued or Having TREC Complaints Filed Against Them?***

#### **What We Know:**

- Today's real estate market has turned into a legal battlefield.
- Even though the real estate licensee might not be the reason a lawsuit is filed, they will probably find themselves caught in the crossfire.
- The trend in agent-related lawsuits and complaints has increased dramatically since the 1990's.

### ***Why is the trend for suing an agent and their broker increasing?***

#### **Complexity of the Real Estate Transaction**

There are more and more complex real estate transactions than in the past such as property trades, assignment or transactions involving alternative financing. Whenever you have a complicated transaction, you increase the likelihood that something will go wrong and that the practitioner will end up getting sued.

#### **Lack of Adequate Agent Training**

Many real estate firms are not providing the type of training and coaching needed to ensure their real estate licensees are doing everything that can to minimize the risk of being sued or having a TREC complaint filed against them.

#### **Everyone Seems to be “Lawyering-Up”**

Society as a whole is growing more litigious. People are more willing to file a lawsuit against a licensee and/or brokerage today than ever before. This trend is affecting a broad spectrum of business, not just the real estate industry. Studies have shown we are becoming a less trusting society and some people question “everything and everyone.”

#### **Increasing Government Regulations for Real Estate Licensees**

Federal, state, and local governments are passing more laws that are expanding the duties and obligations of real estate practitioners. From following the guidelines in the Real Estate Settlement Procedures Act (RESPA) to the most recent regulations enforced by the Consumer Financial Protection Bureau (CFPB) agents are finding themselves navigating through a fairly treacherous regulatory environment. The more duties that licensees have, the greater the opportunity that they'll make a mistake somewhere along the line.

***The Bottom Line:*** You can't prevent someone from filing a lawsuit or complaint against you. However, you can be proactive and reduce the chances of seeing one come across your desk.

## **The Most Frequent Claims Made Against Real Estate Licensees**

According to Rice Insurance, the following are the ten (10) most common claims made against licensees:

1. Fraud
2. Breach of Duty
3. Breach of Contract
4. Bodily Injury / Property Damage
5. Negligence
6. Misrepresentation regarding the Condition of the Property
7. Consumer Protection Act
8. Trust / Earnest Money Dispute
9. Misrepresentation regarding Flooding or Leaks
10. Misrepresentation regarding the Value of the Property.

## **Tips to Avoid Real Estate Errors and Omissions Claims**

While even the most diligent licensee may be the victim of a frivolous claim, diligent business practices help decrease risk. Even if these procedures do not prevent a claim, they may greatly enhance the chance of a successful defense.

1. **Resolve problems far before the closing date.** Don't wait until the last minute to address problem issues. When people are rushed to resolve matters, they are more likely to make mistakes or overlook items.
2. **Don't try to be an expert at everything.** Involve key professionals, such as attorneys, home inspectors, termite inspectors, appraisers, lenders, and surveyors when needed. Provide a list of several names or a copy of the yellow page listings but do not recommend a specific individual or firm! Keep a copy of the list you provide.
3. **It is generally a good idea to require agency disclosure on every transaction.** Be familiar with Tennessee laws regarding when a written agency disclosure is required, at what stage it must be completed, and who must be provided with signed copies. Typically, agency relationships should be disclosed as soon as possible, but in any event, prior to providing specific assistance to the client. For example, buyers should be advised if the licensee showing them the house is the seller's agent.

4. **Document conversations, recommendations, and activities in a log.** It is also often helpful to document conversations by sending a brief follow up email. Keep organized, detailed records of all real estate transactions. This is often required by state law, will assist you in recalling details, and will be helpful to an attorney if a defense is needed in the future.
  
5. **Brokers should have regular meetings with their firm licensees and remain informed as to their activities.** Establish consistent guidelines and make sure everyone in the firm understands and complies with them.
  
6. **Listing agents should have the seller complete any required property disclosure form.** This form should never be filled out by the real estate licensee. Additionally, if any issues arise while the property is listed, advise the seller to update the disclosure form accordingly.
  
7. **Recommend that buyers obtain a home warranty** and retain written evidence of the recommendation.
  
8. **Recommend that buyers obtain a home inspection.** If they decline, have them sign a form confirming this decision.
  
9. **Utilize state and/or association standard contract forms (i.e. Tennessee REALTOR® forms).** It is wise to address items that are outside of standard form language with the client's legal counsel, or else the real estate licensee risks the unauthorized practice of law.
  
10. **Be a "source of the source."** When information is obtained from a third party, it is often a good idea to disclose the source when making representations, because sometimes information from what appears to be a valid source turns out to be inaccurate. For example, if you believe a property is on city sewer based on a prior listing or a statement by the city utility office, disclose the source of your representation.

## **TREC E & O Suspension and Penalty Fees**

- TREC has instituted comprehensive rules on Tennessee licensees maintaining Errors and Omissions insurance coverage.
- Disciplinary action and monetary fines can be imposed on licensees and principal brokers who fail to maintain E & O coverage while holding an active real estate license.

## **TREC Rule 1260-01-.16 Lapsed Errors and Omissions Insurance**

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

- (a) Penalty fees for Reinstatement of a Suspended License: Any licensee whose license is

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

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 the licensee's E&O insurance policy to indicate continuous coverage.
2. For a licensee 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 the affiliated licensee's 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:

1. Notwithstanding the provisions of Rule 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.
4. Nothing in this rule shall be construed as limiting the Commission's authority to:
  - (i) Authorize a consent order in a different amount than listed herein;
  - (ii) Seek any other legal discipline - including revocation or suspension of a license - for a failure to supervise an affiliated licensee's E&O insurance;
  - (iii) Review an initial order under the Uniform Administrative Procedures Act; or

- (iv) Not seek discipline against a principal broker for failure to supervise an affiliated broker's maintenance of E&O insurance if the Commission determines that such discipline is not appropriate under the facts of that matter.

## ***UNIT 4 – Advertising***

---

## Understanding TREC Rules on Advertising:

- The **primary mission of the Tennessee Real Estate Commission (TREC) is to protect the consumer** by ensuring real estate licensees in the state are practicing in an honest, ethical and professional manner. Part of this protection includes the oversight of advertising by a licensee and his/her principal broker.
- All advertising by a licensee in Tennessee should conform to TREC rules and policies. **Since all advertising is under the supervision of the principal broker, he/she is responsible for approving your advertising and marketing materials.**
- It is imperative that every licensee in the state complies with TREC rules and state law on advertising, no matter the medium. Since the implementation of the October 2015 rule changes, the Commission has increased the review of licensee and firm advertising to ensure it complies with the new rules.
- **Failure to follow these rules will result in disciplinary action against you and your broker** including citations and consent orders with substantial fines and the possibility of license suspension, downgrading or revocation.

### TREC Rules on Advertising (TREC Rule 1260-02-.12)

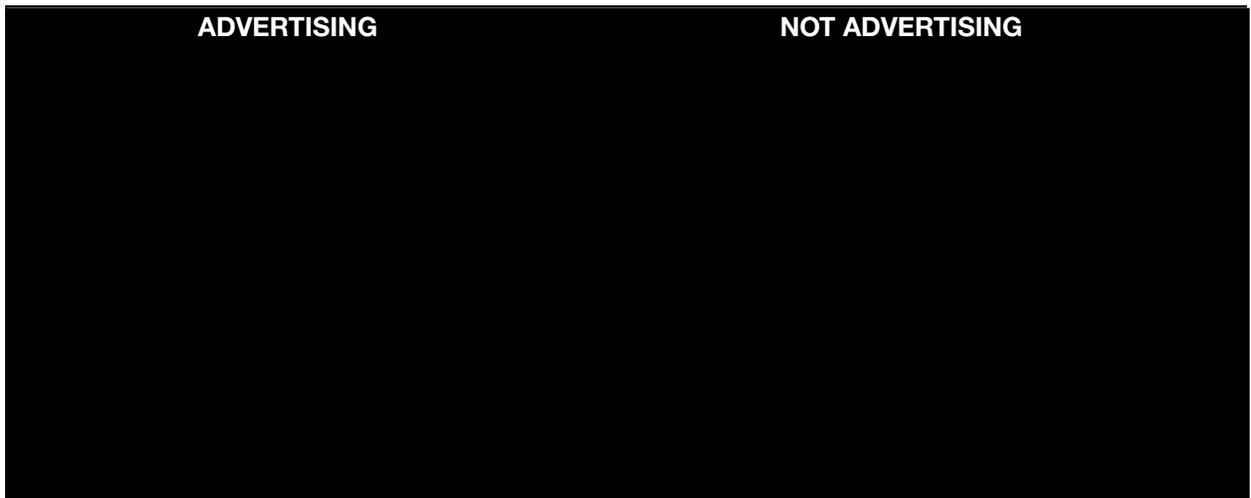
In the past, one of the challenges for licensees and their brokers was to determine how to meet the Commission's rules on advertising on various marketing and promotional materials including signs, flyers, TV and Radio ads, websites, branded giveaways, as well as agent-sponsored charitable and community events. The rule changes in 2015 and 2017 clarified what is considered advertising and what is not.

#### What Constitutes Advertising?

Summary of What IS and What IS NOT considered advertising under TREC Rules

**ADVERTISING**

**NOT ADVERTISING**



Print Advertising (Newspapers, Magazines, etc.)	Promotional Material
Radio Advertising	Hats
Television Advertising	Pens
Signs (All Kinds)	Business Cards
Flyers	T-shirts and Clothing
Letterhead	Notepads
E-mail Signatures	Name Tags
Websites	Sponsorship of Charitable & Community Events
Social Media (Facebook, Twitter, LinkedIn, etc.)	
Video or Audio Recordings (includes Podcasting, YouTube, Vines, etc.)	

### *Key Facts to Know Concerning TREC's Rules on Advertising:*

#### **Principal Broker Supervisory Responsibility**

**The firm's principal broker is responsible for all activities of their licensees and this includes advertising.** If you have any questions on whether or not your marketing/advertising materials meet TREC rules contact your principal broker or TREC directly. *Remember, the Commission does not accept lack of knowledge as an excuse for not following state law and TREC rules.*

#### **Firm Telephone Number and Size of Licensee and Firm Names in Advertising**

TREC Rule 1260-02-.12(3)(b) states "**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.**" This rule is also specific on the size of a licensee and firm name on advertising. The rule states "**the firm name must be appear in letters the same size or larger than those spelling out the name of a licensee or the name of any team, group or similar entity.**" The size of the firm's telephone number is no longer applicable per the rule changes in 2015 and 2017. Remember, this rule applies to all advertising whether it be print or digital media.

#### **Licensee Name in Advertising Must Be the Name Registered with TREC**

Any advertising, which refers to an individual licensee, must list that individual licensee's name as licensed with the Commission. However, TREC has provided additional clarification to this rule [TREC Rule 1260-02-.12(3)(c)] by stating **nicknames currently registered with the Commission can be used in all forms of advertising.** Also, middle initials, middle names and suffixes included in a licensee's name as registered with TREC do not have to be used when advertising.

#### **Deceptive and Misleading Advertising**

A licensee cannot advertise in way that would mislead or deceive the public. By doing so, a licensee will most definitely put their real estate license at risk. Examples of false, misleading or deceptive advertising include:

- Using a franchise name without including the name of the firm.
- Advertising as a team using similar names as a licensed real estate firm (i.e. using the terms “Real Estate”, “Real Estate Brokerage”, “Realty”, “Company”, “LLC”, “Corp.”, “Inc.”, “Associates”, or any other similar terms which would lead the public to believe that those licensees are offering real estate brokerage services independent of the firm and principal broker.)

### **Discussion: False and Deceptive Advertising**

Provide examples in the following categories of advertising that could be considered misleading:

**Radio and Television Advertising**

**Craigslist and Other Internet Marketing / “For Sale” Sites**

**Ad Offers & Guarantees**

**Signage**

**Social Media (Facebook, Instagram, LinkedIn, YouTube, etc.)**

**Vehicle Advertising (Car Wraps)**

**Truth in Lending (Regulation Z)**

**Others**

**A Word About “Coming Soon” and “Pocket Listings”**

### Key Points

- Misrepresentation – is property legitimately coming on market or ploy to build buzz about the property. TREC will bring disciplinary action against a licensee if there is any misrepresentation.
- Signage – signed written authorization from property owner allowing a sign to be put on property. (Ref. TREC Rule 1260-02-.12(2)(c))
- Seller understands minimal options for exposure of property even with the Internet, as not all sites will pick up the listing. As a result, the seller may not get the best price possible.

## From the Tennessee REALTORS® Legal & Ethics Hotline

### Underprice to Draw More Offers?

**QUESTION: Should I market my property at a price below market value in hopes of getting multiple offers and starting a bidding war?**

ANSWER: This practice is not recommended. Several provisions of the Code of Ethics and Broker's Act could be interpreted to prohibit this. First, Article 12 of the Code of Ethics states: *"REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations. REALTORS® shall ensure that their status as real estate professionals is readily apparent in their advertising, marketing, and other presentations, and that the recipients of all real estate communications are, or have been, notified that those communications are from a real estate professional."*

The local board could view underpricing as encouraging a seller to be untruthful in setting a list price that they know full well they would not take.

Second, the Broker's Act would likely not permit this. Tenn. Code Ann. § 62-13-312(b)(1, 3, 4) states that an agent can be disciplined for:

- (1) Making any substantial and willful misrepresentation;
- (2) Pursuing a continued and flagrant course of misrepresentation or making of false promises through affiliate brokers, other persons, any medium of advertising or otherwise;
- (3) 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.

### Advertising as a Team

- **Real estate teams** have become more and more popular in Tennessee.



- Teams offer agents the **opportunity to work under an experienced team leader(s)** who can provide the guidance and direction needed to be successful in marketing and selling properties.
- They also **provide both new and experienced agents training and support in focusing on a particular segment of their real estate business** such as working with buyers or marketing properties for sale.
- However, advertising as a team can be somewhat challenging not only for the team members, but also for the principal broker. Clearly seeing how the team operates within a brokerage and under a managing broker has become problematic for TREC.

The Commission has received multiple complaints from consumers who felt they were misled by a team advertising themselves as a “stand alone” entity and not affiliated with a broker.

**Many times, the client is unaware the team is part of a real estate firm and there is a principal broker who has responsibility over the team and their activities.**

TREC rules make it very specific about how a team should identify itself in all advertising in order not to mislead the consumer. Terms such as **“Real Estate,” “Real Estate Brokerage,” “Realty,” “Company,” “Corporation,” “LLC,” “Corp.,” “Inc.,” and “Associates”** *cannot* be used within a team name

The rule also says the use of 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 is prohibited.**

For example, if “The John Smith Real Estate Team” licensed with Hilltop Realty noted the team name as the most prominent one in their advertising they would be in violation of TREC rules. Furthermore, usage of “Real Estate” within the team name is prohibited. The firm name must be the most prominent one in all advertising allowing the consumer to see the team is part of the firm and not appearing as a separate entity apart from the firm.

## **Signage**

Real estate signage is one of the most widely used forms of advertising for real estate agents. Various signage used by agents includes “For Sale” and “Open House” yard signs, billboards, bus bench advertising and public wall placards. How the firm and licensee name should appear on the sign has always been addressed under TREC rules and state law but was revised in TREC’s rules on how names should be displayed in all advertising, including signs.

In 2013, Tennessee’s real estate law (specifically T.C.A. § 62-13-310(b)) had been interpreted by the Commission to mean that a licensee’s name on a sign or billboard could not be any larger than the smallest font in the firm name as licensed with TREC. However, in the October 2015

rule changes **the firm name must appear in letters the same size or larger than those spelling out the name of the licensee or the name of any team, group or similar entity.**

### Signs on Properties

(Ref. TREC Rule 1260-02-.12(3)(d)(e))

- **Any sign promoting the sale of a property (i.e. “For Sale”, “Coming Soon”, etc.) cannot be placed on a property without the written authorization of the property owner.** Notice the word “written.” Licensees should be cautioned to not place any signage prior to the written permission from the property owner. The TAR Residential Exclusive Right to Sell Listing Agreements (RF101 and RF102) and the Land/Lot Exclusive Right to Sell Listing Agreements (RF131 and RF132) authorizes the Broker to place a sign and lock box on the property.
- TREC rules also state that 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.

**Would these “For Sale” signs meet TREC rules?**





## Internet Advertising

TREC says in addition to all other advertising guidelines specified in their rules, the following requirements shall also be applicable to Internet advertising, **including, but not limited to, social media:**

- The firm name and firm telephone number listed on file with the Commission must **conspicuously appear** on each page of the website.
- 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.
- **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 may be syndicated or aggregated advertising of the original by third parties outside of the licensee's control and ability to monitor.

**Guarantees, Claims and Offers..."It's Too Good to Be True!"**

(Ref. TREC Rule 1260-02-.12(5))

Unsubstantiated selling claims and misleading statements or inferences are strictly prohibited by TREC. TREC Rule 1260-02-.12(6)(b) says “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.” **The consumer needs to clearly understand the terms and conditions that must be met in order to receive the guarantee, claim or offer made by the licensee.**

Take note...TREC will discipline any licensee who violates this rule as this is a serious violation impacting consumers. Historically, the Commission has levied large civil penalties as well as suspending, downgrading and revoking a real estate license as a result of a listing agent or buyer’s representative attempting to persuade a consumer to do business with them by offering a guarantee, claim or offer that “sounds too good to be true.” Any special offer or guarantee must clearly explain the details in the advertisement (or offer) so the consumer knows exactly what the terms and conditions that must be met to receive the offer or guarantee.

## Rebates, Gifts and Prizes

- Cash rebates/refunds by a real estate licensee are strictly prohibited in Tennessee. Per T.C.A. § 62-13-302(b) *“A real estate licensee shall not give or pay cash rebates, cash gifts or cash prizes in conjunction with any real estate transaction. As part of the Tennessee real estate commission’s general rulemaking authority the commission may regulate the practices of real estate licensees regarding gifts, prizes or rebates that are not otherwise prohibited by law.”*
- In other words, **you cannot give some of your compensation to a buyer or seller as a refund or rebate.**
- **You cannot pay for your client’s closing costs;** however, you can reduce your commission allowing the client to make concessions in the transaction such as lowering the purchase price, increasing seller paid closing costs for the buyer, etc.

## Inducement for Business

A licensee can give a non-licensee a gift in order to induce them in doing business with them. This gift, however, must be an inducement for THEM to do business with you...not their friends, family, etc. which would make it a referral fee.

### **TREC Rule 1260-02-.33 - Gifts and Prizes**

- (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.

Pursuant to this rule, **any gift offered CANNOT take the form of cash.** Gift cards may be given, but they cannot be convertible to cash. In addition, you cannot pay closing costs for your client. Please consult with your principal broker prior to offering any gift or prize.



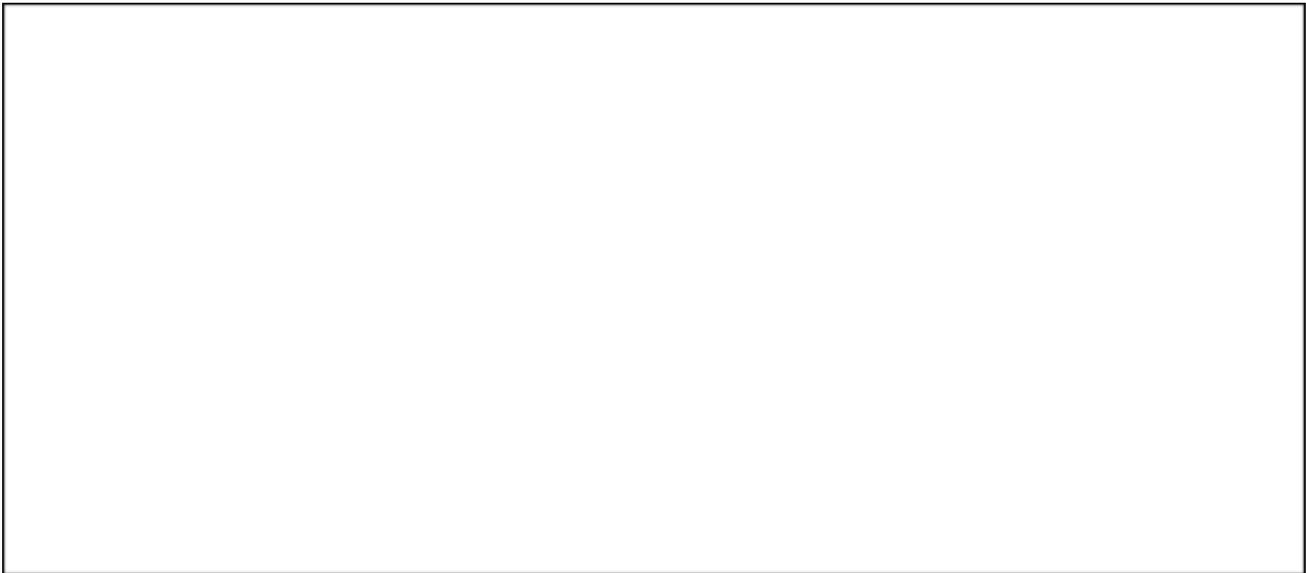
## From the Tennessee REALTORS® Legal & Ethics Hotline

### A Rebate to the Buyer?

**QUESTION: An out-of-state company wants to partner with our agents for referrals. The commission would be split 70/30, with 15% of the 30% going to the company being given to the buyer. Is this legal?**

ANSWER: NO, this is not permitted under Tennessee law. The statute states: "A real estate licensee shall not give or pay cash rebates, cash gifts or cash prizes in conjunction with any real estate transaction. As part of the Tennessee Real Estate Commission's general rulemaking authority the commission may regulate the practices of real estate licensees in regard to gifts, prizes or rebates that are not otherwise prohibited by law." — Tenn. Code Ann. 62-13-302(b).

Therefore, the 15% could NOT be remitted back to the buyer.



### **For Discussion - Advertising Misrepresentation**

Broker Harold Smith recently placed a full-page advertisement in the local newspaper containing the following statement in large letters: **“List with me and, if I can’t sell your home in 90 days...I will buy it!”** In addition to this headline, the ad contained multiple pictures of properties Bob sold over the past year, a couple of testimonials from his clients, his real estate firm name and telephone number as well as her picture and contact information. There was no additional information concerning the 90-day “buyout” claim.

**Would TREC have an issue with Harold’s claim in her advertising? If so, discuss the reasons a complaint could be filed against him?**





## Let's Review

1. You and your assistant are preparing in-house brochures and box flyers for a new listing. Do these materials need to be reviewed by your principal broker?
2. Under the TREC advertising rules what must be most prominent and visible in all advertising?
3. A new team has just been formed at your firm and you have been asked to join them. The team leader says the name of the new team will be "James Smith Real Estate Associates." Is this name compliant with TREC rules on teams?
4. You are visiting with a sign company in order to have a new "For Sale" yard sign produced. They ask you for specifics on how the sign should look. Under TREC rules, what information will the sign company need in order to provide you a sign that is TREC compliant?
5. According to TREC, what must appear on each page of your website?
6. You want to create a new marketing plan for the listing side of your business. After thinking about it for a few days, you decide to offer a new program for listing clients with the following tag line: "If I don't sell your home in 90 days I will buy it!" What will you need to do in order to make this offer legal under TREC rules?
7. This Sunday, you are holding an open house at one of your listings. You decide to hold a door prize consisting of a \$50 Visa gift card for the first drawing and a \$75 MasterCard gift card for the second drawing. Can you offer these gift cards as a prize?
8. What four (4) requirements must be met under TREC's Gifts and Prizes rule?

## UNIT 5 – Introduction to Investment Real Estate

---

### The Investor

An investor is any person who commits capital with the expectation of financial returns. Investors utilize investments in order to grow their money and/or provide an income during retirement, such as with an annuity. In commercial real estate, the individuals or companies acquiring property as a commodity to be converted into cash flows and future wealth are investors. Investors buy the properties that the tenants rent. Ultimately, all properties must have a current or potential use to be of value.

It is not enough to have a thorough understanding of the fundamentals and characteristics of real estate investments—an understanding of the motivations and risk tolerance of investors also is needed. Users and investors do not function and interact in a vacuum. The opportunity for them to consummate a transaction is influenced by a wide variety of factors.

### Rate of Return or Yield

**The investment rate of return is a useful and quantifiable value for comparison of different investments. Investors will strive for the maximum rate of return for each dollar invested.** The yield will usually be commensurate with the risk associated with the investment and is expressed as a percentage returned on each dollar invested. An investor's total yield consists of both a return of the capital invested plus a return on the capital invested during the holding period. In the case of real estate, the full return of the amount invested usually does not occur until the property is sold.

#### *Example:*

An investor places \$50,000 in a savings that earns \$2,500 per year. What is the yield?

Income earned	\$ 2,500	expressed as a Rate of Return or yield = 5%
Investment	\$ 50,000	

This example shows a rate of return on an investment of 5% each year as long as the investment continues to earn \$2,500 a year. This also presumes a return of the initial investment of \$50,000 at the

end of the investment period. Should the initial investment not be returned, then the rate of return on the investment will be less and possibly even negative.

*Example:*

An investor buys a bond with an initial investment of \$10,000. At the end of the first year the investor receives interest of \$600 and then sells the instrument for \$9,800. What is the total rate of return on his investment?

Return on investment = \$600 as interest

Return of investment = (\$200) shortfall

Total return =  $\$400 \div \$10,000$  (investment) = 4% yield

Investors use several different methods to compare one real estate investment to another.

### **Liquidity**

**Liquidity refers to the ability to convert an asset into cash quickly with little, if any, discount to the value of the investment.** Different types of investments vary substantially in how quickly they can be converted to cash at their full value. A savings account is highly liquid because the entire balance of the investment could be withdrawn in cash immediately upon demand. In contrast, real estate is much less liquid. A property owner may be required to suffer a substantial discount in order to convert a property into cash quickly.

### **Risk**

**Risk is the uncertainty associated with the expected performance of an investment.** There is no risk if the outcome is certain. For example, if an investor chooses to keep cash in a cookie jar, the rate of return will be zero. There is no risk associated with this investment since the outcome is known. In contrast, a salesperson may present an investment property with an estimated rate of return of at least 12% and a possible maximum of 18%. There is much more risk associated with this investment since the exact outcome is not known. The factors that affect uncertainty, or risk, in investment real estate include: tenant's credit, resale price of the property in the future, future vacancies, unexpected repair costs or other expenses and leverage.

## **Cash Flows**

Cash flows may vary greatly among alternative investments, even though the rate of return could be the same. There are up to three basic cash flows involved in a typical investment:

1. At Acquisition - the initial outlay of cash invested is made at the time of purchasing the investment.
2. From Operations - *Annual Net Income* which is received from rents less the payment of all expenses. In the case of real estate the cash flow from operations could be negative or positive. Additionally, these incomes could be evaluated before tax or after tax.
3. Disposition- the net proceeds received upon the sale of an investment.

## **Marketability**

Marketability refers to the time it would take to sell an asset with the certainty of the price. Most stocks and bonds are highly marketable because there is an active market with many buyers and sellers. In such a market, assets can be sold quickly. Although prices may fluctuate widely, a specific price may be quoted during market operations. The sale price of an asset may be less than the purchase price, however it can be converted to cash more quickly. Marketability refers to how quickly an asset can be sold at a specific price set by an active market.

## **Taxation**

Taxes significantly influence an investment's rate of return. Some investment vehicles may be tax-exempt, not subject to taxation, such as municipal bonds. Some may be tax-deferred; meaning taxes are due at a later period such as earnings from Individual Retirement Accounts, which are not taxed until withdrawn. Profits from the sale of stocks, real estate, etc. may qualify for preferential long-term capital gains treatment. Other investments may receive no preferential tax treatment, and are taxed at ordinary income tax rates. Examples of investments that do not receive preferential treatment are savings and money market accounts.

Acquisition of certain assets may allow special deductions from taxable income or even credits against tax liability. The impact of taxation depends on the taxpayer's individual circumstances and the type of investment. The profound impact of the taxation, both positively and negatively, should be a key consideration to an investor.

## **Management Requirements**

Each investment requires some management effort. Investment management refers to financial decisions by the investor. Financial management issues include strategy decisions about the type of investment to acquire, when to sell an asset, how much cash should be invested, and cash flow requirements from investments.

Real estate, among other investment vehicles, requires some direct property management to make loan payments, find tenants, maintain the property and perform other jobs to ensure desirable investment results. In contrast, a savings certificate requires almost no management effort. Investors may employ professional managers to manage their property or other investments.

### **Other Considerations for Real Estate Investment (Class Discussion)**

## ***UNIT - 6 – Real Estate Investment Analysis***

---

Cash flows into and out of a real estate investment and the timing of those cash flows are critical to understanding any real estate investment. These cash flows break down into the equity needed to purchase the property (initial investment), the periodic cash flows the property generates after expenses (net operating income, or NOI), and the amount of cash the property will generate when sold (the reversion).

### **Sources of Property Income**

A real estate investor is not only buying the land and building, but more importantly the future income streams from a property. Real estate investors look closely at the annual cash flows to see if estimates of income and expense are realistic and if those estimates will remain stable in the future. Will the market continue to support the level of rent that is being asked? Will the rent increase or decrease? Does the property require any repairs or improvements to keep it viable? Are there any anticipated changes in the local or national tax codes that will alter the cash flow that is generated by the property?

For example, consider a multi-tenant office building with leases that were written when office space was in short supply and rents were at an all-time high. These leases will expire two years from today. Last year, several new buildings were added to the market, causing an oversupply of office space. Rental rates have declined. Will the investor's tenants renew their leases in that building, and if so, at what rental rate?

### **Investment Real Estate Cash Flows**

There are 3 basic cash flows that impact the value of commercial real estate.

1. Cash flows at acquisition
2. Cash flows from annual operations
3. Cash flows from sale of the property

Cash flows can represent the past performance of a property, or its projected future performance. When projecting, cash flows are estimates because they forecast future income and reflect expected changes in market conditions. Cash flows from operations occur throughout the ownership period. The proceeds to the investor from the sale of a property occurs only once at the end of the holding period. Cash flow from the sale of the property is called the reversion.

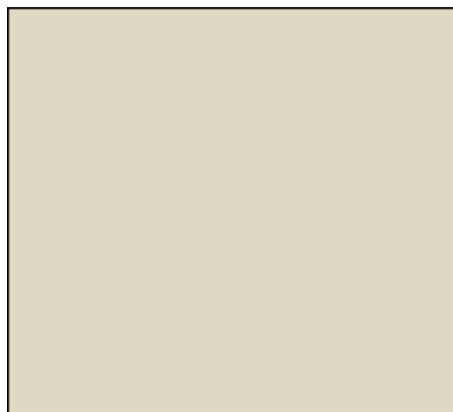
### **Market Rent**

Market Rent is the rent being paid for comparable properties in the market. Comparable properties are those that directly compete with the subject property. These are comparable to the subject in the minds of the market. Size, amenities, downtown or suburban locations, length of lease, level of service, and other features may affect comparability. The most comparable properties are the ones that are most similar to the subject property and are usually in a nearby location. In commercial real estate, highway access or drive time may allow properties farther away to be considered comparable. This information is found by going directly out into the market or through Internet or published sources. The same method is used to determine vacancy rates and trends.

## Estimating Net Operating Income

Net operating income (NOI) is a crucial figure throughout all phases of commercial property ownership. NOI is the amount of income left after paying operating expenses. It is the amount of funds we have left to make mortgage payments and capital improvements. At acquisition it is used to establish a purchase price for the property. It is also the figure that lenders will use when determining the size of the loan they will make available for the purchase a property. NOI must more than cover annual debt service (1 year's total mortgage payments) for a lender to be comfortable with the size of the loan they give. NOI provides a return measure for the investment during the holding period.

*The general formula for calculating NOI follows:*



Potential Rental Income  
– Vacancy and Credit Losses  
= Effective Rental Income  
+ Other Income  
= Gross Operating Income  
– Operating Expenses  
= Net Operating Income

## Income Levels

A commercial real estate property has four levels of income. They are potential rental income (PRI), effective rental income, gross operating income (GOI), and Net Operating Income (NOI).

### Potential Rental Income (PRI)

PRI is the total rental income a property could produce ~it were 100 percent occupied at market rental rates. If there are current tenants in-place, PRI is the sum of the rent paid by those tenants plus market rent applied to the unoccupied space. In multi-tenant properties, PRI is almost always a combination of contract rent (the rent being paid by existing tenants), plus market rent for the vacant space.

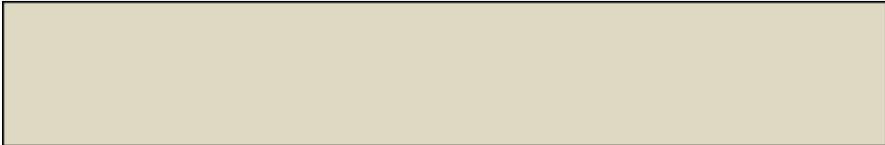
In commercial properties, market rent is typically expressed as dollars per square foot (psf) usually per year. Apartment income is expressed as dollars per month per apartment unit and dollars per square foot. Income information for apartment units is often broken down by the number of bedrooms per unit.

**Effective Rental Income**

A deduction is made from PRI to account for lost income due to vacancy and credit losses. Vacancy and credit loss is the income not received from a combination of two elements, credit loss for tenants that do not pay their rent and the rent not received from space that is unoccupied.

Vacancy and credit losses vary depending on the quality of management, type of tenant, length of lease, and turnover in tenants. Lenders use vacancy in their underwriting. They use the greater of either the existing properties vacancy loss or the vacancy rate information based on "market vacancy rates" determined by surveys. For convenience, the loss of income, (vacancy) is normally calculated as a percentage of the PRI.

For instance, if the market vacancy rate for a multi tenant office building is 12% and the building has a Potential Rental Income of \$100,000, then the Effective rental income is:

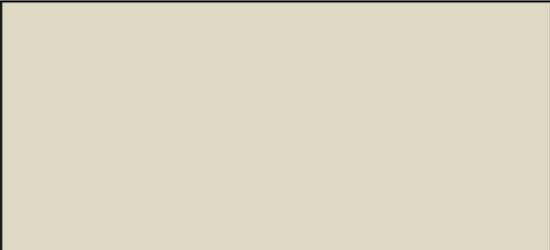
Potential Rental		Income \$100,000
		-
Vacancy and Credit Losses (12%)	\$12,000	
=	\$88,000	

The resulting income is called **effective rental income**.

**Gross Operating Income**

Investment real estate can also provide revenue from other services available at the property. Additional income can be received from a coin laundry operation on the property, vending machines, parking facilities, cable services, rental of roof space for satellite or high tech installations, billboards, business service centers, billable repairs, or storage space rental.

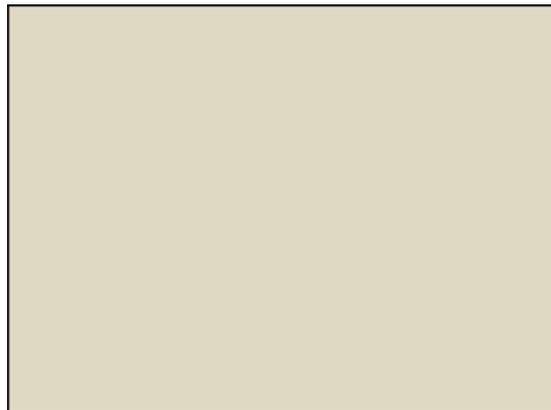
When other income is added to effective rental income, the result is **Gross Operating Income (GOI)**.



Potential Rental Income  
– Vacancy and Credit Losses  
= Effective Rental Income  
+ Other Income  
=  
– Operating Expenses  
= Net Operating Income

### Net Operating Income

NOI is the income that the property will produce when all expenses required to operate the property are deducted from the GOI of the property. Operating expenses are the total cash outlays necessary to operate the property. Financing is not considered an operating expense.



– Vacancy and Credit Losses  
= Effective Rental Income  
+ Other Income  
= Gross Operating Income  
– Operating Expenses  
=

The Annual Property Operating Data sheet on the next page can be used to assemble all the relevant data to achieve NOI.

## Annual Property Operating Data

Property Name \_\_\_\_\_  
 Location \_\_\_\_\_  
 Type of Property \_\_\_\_\_  
 Size of Property \_\_\_\_\_ (sf/Units)

Purchase Price \_\_\_\_\_  
 Plus Acquisition Costs \_\_\_\_\_  
 Plus Loan Fees/Costs \_\_\_\_\_  
 Less Mortgages \_\_\_\_\_  
 Equals Initial Investment \_\_\_\_\_

Purpose of Analysis \_\_\_\_\_

Assessed/Appraised Values  
 Land \_\_\_\_\_  
 Improvements \_\_\_\_\_  
 Personal Property \_\_\_\_\_  
 Total \_\_\_\_\_

Adjusted Basis as of \_\_\_\_\_

	Balance	Periodic Payment	Pmts/ Yr	Interest	Amort Period	Loan Term
1st	_____	_____	_____	_____	_____	_____
2nd	_____	_____	_____	_____	_____	_____

ALL FIGURES ARE ANNUAL	\$/sf or \$/Unit	% of GOI		COMMENTS/FOOTNOTES
1 POTENTIAL RENTAL INCOME	_____			
2 Less: Vacancy & Cr. Losses	_____	( _____ % of PRI)		
3 EFFECTIVE RENTAL INCOME	_____			
4 Plus: Other Income (Collectable)	_____			
5 GROSS OPERATING INCOME	_____			
6 OPERATING EXPENSES:				
7 Real Estate Taxes	_____			
8 Personal Property Taxes	_____			
9 Property Insurance	_____			
10 Off Site Management	_____			
11 Payroll	_____			
12 Expenses/Benefits	_____			
13 Taxes/Workers' Compensation	_____			
14 Repairs and Maintenance	_____			
Utilities:				
15 _____	_____			
16 _____	_____			
17 _____	_____			
18 _____	_____			
19 Accounting and Legal	_____			
20 Licenses/Permits	_____			
21 Advertising	_____			
22 Supplies	_____			
23 Miscellaneous Contract Services:				
24 _____	_____			
25 _____	_____			
26 _____	_____			
27 _____	_____			
28 _____	_____			
29 TOTAL OPERATING EXPENSES	_____			
30 NET OPERATING INCOME	_____			
31 Less: Annual Debt Service	_____			
32 Less: Participation Payments	_____			
33 Less: Leasing Commissions	_____			
34 Less: Funded Reserves	_____			
35 CASH FLOW BEFORE TAXES	_____			

NOI is a key to value throughout all phases of ownership. At acquisition it is used to determine a purchase price and to determine the amount of debt service available to the buyer.

Debt service and tax liability on the property are paid from NOI, leaving a balance that provides the return on equity investment. At the time of sale, NOI is important in determining the sale price at the end of the holding period.

### Cash Flow Before Taxes

Cash Flow Before Taxes is the cash flow actually received by the investor during the year after he has paid the principal and interest portion of the mortgage payment, but prior to considering the impact of taxation.



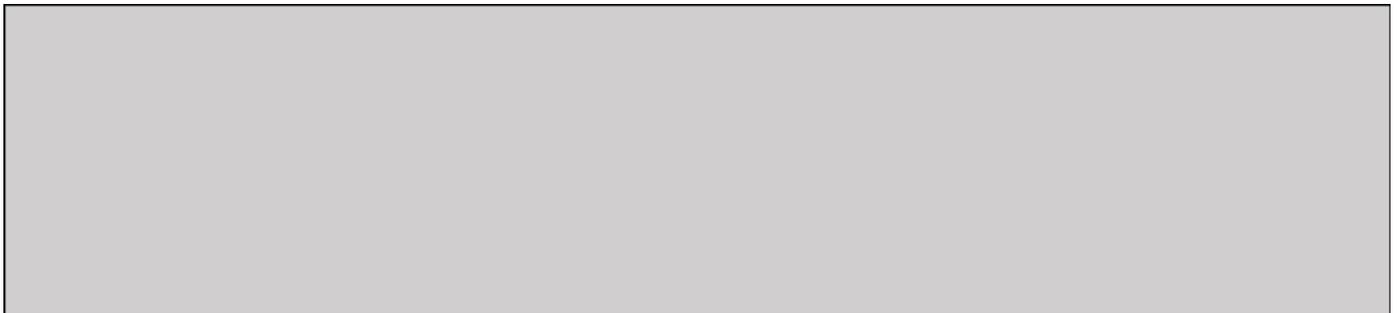
Net Operating Income (NOI)  
– Annual Debt Service (ADS)  
= Cash Flow before Taxes (CFBT)

### Net Operating Income

Net Operating Income is the net income that the property will generate before financing is considered.

### Annual Debt Service

Annual Debt Service is the total of loan payments per year, including principal and interest made on the loan used to finance the property. Loan payments are a negative cash flow paid by the owner before taxes.



*Example:*

A property has a net operating income of \$6,380 and a monthly debt service of \$600. What is the cash flow before taxes?

NOI	\$6,380
ADS	7,200 (600 X 12)
CFBT	( \$ 820 ) Negative Cash Flow before Taxes

## Cost Recovery (Depreciation)

Cost Recovery is a non-cash deduction from taxable income that represents the loss of utility due to the wear and tear (depreciation) of the property. It is the cost recovery that creates the tax shelter often referred to in real estate.

## Taxable Income or Loss

The owner is required to pay taxes on the amount of taxable income generated by a property that is rented, or may realize tax savings based on the taxable loss generated by such property.

Taxable Income is the accounting value used to calculate tax liability. It is not a cash flow amount.

Income		Net Operating
(Positive Number) or		- Interest
		- Cost Recovery
	= Taxable Loss (Negative Number)	= <b>Taxable Income</b>

## Interest

Interest is the interest expense each year on the amount borrowed to buy the property. It is usually a substantial portion of annual debt service during the early years of the loan.

## Cost Recovery

Cost Recovery (formerly Depreciation) is a non-cash deductible expense that is allowed under federal income tax laws.

## Tax Liability/Savings

The amount of tax due as a result of rental income property operations is equal to the taxable income from the property times the marginal tax rate. The amount of tax savings is equal to the taxable loss times the owner's marginal tax rate.

Taxable income from an investment will create additional tax liability. Taxable loss from an investment will create a tax savings, since the owner will pay less tax than if the investment were not owned.

(Loss)		Taxable Income
tax rate		– Owner's marginal
	= Tax Liability (Savings)	

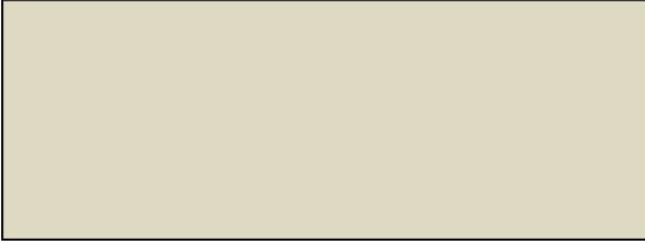
**Cash Flow After-Taxes**

Cash Flow After-Taxes (CFAT) are equal to the Cash Flow Before-Taxes less the Tax Liability or plus the tax savings from the real estate operations.

Before Cash Flow		Cash Flows Taxes Before Taxes
		– Tax Liability
	OR + Tax Savings	

**Adjusted Basis**

The adjusted basis is the original purchase price, plus acquisition costs plus capital improvements, less total cost recovery taken. It is an accounting number used by the Internal Revenue Service. To calculate the gain on the sale of a property, a taxpayer would subtract the adjusted basis from the selling price less sales cost.

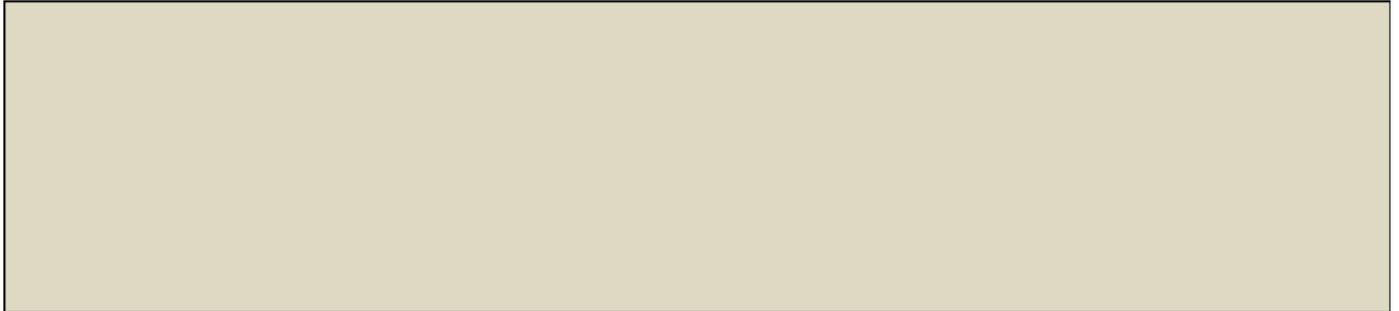
Purchase Price		Original
Costs (at Time of Purchase)		+ Acquisition
Improvements		+ Capital
	– Total Cost Recovery Taken	
	=	

**Acquisition Costs**

Acquisition Costs are those additional costs that the investor paid at the time of taking title to the property. Costs incurred with the origination of the mortgage are amortized over the life of the mortgage.

## Total Cost Recovery

Total cost recovery is the annual amount of cost recovery multiplied by the holding period.



### Example:

A property with an original purchase price of \$90,000 and \$1,500 in acquisition costs has an annual cost recovery of \$2,764. What is the adjusted basis at the end of year five?

Original Purchase Price	\$ 90,000
Acquisition Costs	+ 1,500
Total Cost Recovery Taken (\$2,764 x 5)	- <u>13,820</u>
Adjusted Basis	\$ 77,680

## Taxable Gain and Tax Due on Sale

The tax on sale is first calculated by determining the amount of taxable gain on the sale. The amount is then separated, first to the amount that is the Recapture of Cost Recovery which is taxed at a maximum of 25% (for those tax brackets of 25% and above). The remaining balance of the Capital Gain is then taxed either at the maximum rate of 15% or as low as 5%. The sum of the recapture tax and the capital gains tax equals the total tax due on the sale.

**Taxable Gain** on sale is equal to:

$$\begin{aligned} & \text{Sales Price} \\ & - \text{Sales Costs} \\ & - \text{Adjusted Basis} \\ & = \text{Taxable Gain on Sale} \end{aligned}$$

Sales Costs include brokerage commission, legal fees, and other disposition costs.

## UNIT 7 – Property Management

---

### Introduction

- If you are going to engage in property management (i.e. you are going to lease, list or manage **real estate**, or promote the rental of **real estate**, **you will need a broker's license**. [Ref. T.C.A. § 62-13-102(4)] The Broker's Act defines "Broker" under this rule as *"any person for a fee, commission, finder's fee or any other valuable consideration from another who solicits, negotiates, or attempts to solicit or negotiate the listing, sale, purchase, exchange, lease or option to buy, sell, rent or exchange any real estate...collects rents or attempts to collect rents."*
- Many firms in Tennessee have created property management divisions within their companies to address the growing number of property owners who want to lease their properties and manage the income and expenses associated with the rental. However, property management can be challenging for those who do not practice it on a regular basis.



### Property Management is Not for Everyone!

Before providing property management services, you must be aware of what lies ahead for you.

- **Property management is considerably different from residential real estate transactions.** Overseeing properties on a regular basis requires a considerable amount of time and effort.
- A couple of questions you must ask yourself before entering property management are: Is this something I want to do on a part-time or full-time basis? Is the return on investment worth my time, energy and financial resources? Maybe yes, maybe no. It really depends on you and the goals you established for this component of your business.
- Many times, the owner of the property is relying on you, the property manager, to ensure his investment is protected and is properly overseen to ensure costs are kept within budget, the tenants are paying their bills, maintenance items are resolved quickly, etc.
- Prior to adding property management to your business mix and revenue stream you must first consult your principal broker and you must be aware of the Tennessee Landlord & Tenant laws and IF the county where the property is located is obligated to these rules.
- In addition, taking several courses and seminars on property management should be a top priority if you plan on becoming a property manager. Courses are offered through real estate schools, local REALTOR® associations or professional associations such as The Institute of Real Estate Management, an affiliate of the National Association of REALTORS® (<http://www.irem.org>)

- You should also consult with your E & O provider to ensure that you have the proper insurance coverage for property management or whether an additional rider will be required.

## The Tennessee Uniform Residential Landlord and Tenant Act

There are specific laws concerning property management including the Tennessee Uniform Residential Landlord and Tenant Act, Title 66, Chapter 28. This statute only applies in the following counties with a population of more than 75,000:

**Anderson, Blount, Bradley, Davidson, Hamilton, Knox, Madison, Maury, Montgomery, Rutherford, Sevier, Shelby, Sullivan, Sumner, Washington, Williamson and Wilson.**

This act provides specific information on the rights of both the landlord and the tenant, required disclosures, handling of security deposits, late fees, legal procedures for lease termination and tenant eviction, etc. It is important anyone who engages in property management familiarizes themselves with this law and how it might impact the manner in which they manage properties.

The law applies only to counties with a population of at least 75,000.

## Some Key Points on Property Management in Tennessee

### Management Agreements

- It is imperative a property manager and owner establish a *Management Agreement*.
- **This agreement creates the general agency relationship between the owner and the property manager and defines the duties and responsibilities of each party.**
- The agreement should cover ***all*** the duties and responsibilities of the property manager and the owner including who is responsible for handling setting up and paying for any repairs as needed.

### Escrow Accounts and the Proper Handling of Security Deposits

TREC requires each broker to maintain a separate escrow account for the purpose of holding any funds which may be received in this fiduciary capacity as deposits, earnest money, or the like. **Rental deposits must be held in a separate account.** [Ref. TREC Rule 1260-02-.09(2)]

- The Tennessee Uniform Residential Landlord and Tenant Act specifies how security deposits are handled when received by the property manager as well as distribution upon vacating the property:

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

government.

- The act also is specific as to the process followed prior to vacating the property including timeframes, rights of the parties, written documentation for recovery of damages and a security deposit statement. (Many agents turn over security deposits to owners directly who do not perform proper move outs, or the agent does not, which leads to litigation of security deposits.)
- If a property is located in a county **not** subject to the Landlord and Tenant Act, TREC requires a separate account for security deposits. TREC Rule 1260-2-.09 (12) states, *“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.”* Therefore, this would need to be in a separate account from any earnest money or rent money.

## From the Tennessee REALTORS® Legal & Ethics Hotline

**QUESTION: I’m the managing broker and I have agents who want to do property management. I want no part of this activity. Is there a way they can have their own escrow account for this that will not involve our firm financially other than insurance is concerned?**

**ANSWER: NO. The agents cannot have their own escrow account.** Under the Broker’s Act, the Broker is responsible for any funds that come into the company which belong to third parties and is ultimately responsible for ensuring that they are deposited into the escrow account. Brokers are responsible for opening the escrow accounts.

## Common Exemptions from Licensure for Persons Working in Licensed Property Management (Ref. T.C.A. 62-13-104)

A person working in licensed property management can:

1. Collect rent payments
2. Order maintenance requests of tenants
3. Show apartments
4. Procure standardized leases (cannot negotiate)

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

Also....

- You may manage without a license **if you own the properties solely as the individual.**

- If an officer of a Corporation (that is not in the rental business) has been granted permission as noted in Board of Directors meeting minutes to dispose of real estate this rule will not apply. (Note: This exemption will not apply if the officer is receiving additional compensation directly related to the value of the real estate being disposed [i.e. a commission.]

## **E & O Coverage and Property Management**

**Many E & O carriers do not provide coverage for property management in their standard E & O policies.** If you are involved in property management in any way you will need to have adequate protection from your insurance company. Contact your carrier for additional information on how to add a property management rider to your current policy.

## **Principal Broker Supervision of Property Management Activities**

- Under the Broker's Act T.C.A. § 62-13-312(15) it states a principal broker may be disciplined by the Commission for "failing to exercise adequate supervision over the activities of any licensed affiliate brokers within the scope of this chapter." **Brokers are responsible for ALL activities their affiliates are engaged in – including property management.**
- Brokers need to be aware of the management agreements signed between their licensees and property owners.
- All firms should have written policies concerning the expectations the broker has with his affiliates who are engaged in property management.
- Agency agreements should be written in a way that provides protection between the agent and the landlord. In these agreements, it should (1) be clear as to who is responsible for collecting the rental deposits, negotiate tenant rental and lease agreements, check applicant or tenant references, including credit reference; (2) who will physically maintain the condition of the property; conduct tenant relations; collect rent and other payments; (3) conduct tenant policies; supervise on-site manager, and discuss financial matters relating to management of the real estate with owners.
- Brokers also need to ensure their licensees who are engaged in property management are within TREC rules on agency and fiduciary responsibilities, advertising, lease contracts and disclosures as well as fair housing guidelines.
- A written company policy on property management should be in place and should clearly outline the expectations of the broker for any agent who manages properties.

## **Area of Emphasis for Property Management – Reconciliation & Tenant Ledger**

### **Reconciliation**

- Firms should complete a monthly reconciliation that shows the internal bank account record agrees with the actual bank statement balance.
- Any discrepancies should be explained and the records should be corrected to reflect the correct bank balance.

### **Tenant Ledger**

- Firms should maintain individual tenant ledgers that show the chronological sequence of transactions that have taken place over the course of the year.

## **Common Issues and Challenges in Property Management in Tennessee**

1. People not knowing if the Landlord & Tenant Act applies to their area.
2. The Property Manager not generating monthly reports showing income and expenses for each property.
3. Owners who can't afford or are unwilling to maintain their property.
4. Owners who want to screen tenants with the agent.
5. The worst thing from a legal standpoint is eviction of a tenant.

## **Sanctions Imposed by TREC for Property Management Violations**

- In 2015, approximately thirteen-percent (13%) of the total number of complaints received by the Tennessee Real Estate Commission were associated with property management.
- Many of these complaints are from consumers who feel the property management company and/or their representative(s) have not conducted themselves under in a legal, professional and/or ethical manner.
- Many of the complaints reviewed by the Commissioners involve unlicensed activity. In Tennessee, you **MUST** have a real estate license if you are engaging in property management activities that involve the consumer.

**Be aware that TREC is serious about violations of the Broker's Act and TREC rules when it comes to property management. Recent disciplinary action by the Commission confirms this fact. With the increase in rental activity over the past couple of years more and more scrutiny by TREC of how licensees and their brokers are overseeing property management.**

Civil penalties and other administrative enforcement actions recently imposed by the Commission include:

- Activity requiring a Tennessee real estate license (T.C.A. § 62-13-102(4) and (TREC Rule 1260-02-.32))
- Mismanagement of tenants' rental monies, separate escrow accounts and security deposits (TREC Rule 1260-02-.09)
- Misrepresentation
- Advertising violations

## ***Unit 8 - Commercial Leasing / Common Lease Terminology***

---

### **Introduction**

Renting commercial space is a big responsibility -- the success or failure of a business may ride on certain terms of the lease. Before a business owner approaches a landlord, they should understand how commercial leases differ from the more common residential variety, and before they sign anything, make sure they understand and agree with the basic terms of the lease, such as the amount of rent, the length of the lease and the configuration of the physical space.

There are three basic types of commercial real estate leases. These leases are organized around two rent calculation methods: "**net**" and "**gross**." The gross lease typically means a tenant pays one lump sum for rent, from which the landlord pays his expenses. The net lease has a smaller base rent, with other expenses paid for by the tenant. The modified gross lease is a happy marriage between the two. While terms vary widely building by building, this basic overview will help businesses shop for the best deal possible.

### **Gross Lease or Full-Service Lease**

In a gross lease, **the rent is all-inclusive**. The landlord pays all or most expenses associated with the property, including taxes, insurance, and maintenance out of the rents received from tenants. Utilities and janitorial services are included within one easy, tenant-friendly rent payment.

When negotiating a gross lease, the tenant should ask which janitorial services are provided, and how often they are offered. Excess utility consumption beyond building standards is sometimes charged

back to tenant; so if the tenant is a big consumer of electricity, this point should be clarified in the lease as well. The tenant pays his own property insurance and taxes.

A benefit of this type of lease is that it is supremely easy for the tenant, which can forecast expenses without worrying about an unexpected lobby maintenance charge, for example. The landlord assumes all responsibility for the building, while tenants concentrate on growing their businesses.

## **Net Lease**

In a net lease, **the landlord charges a lower base rent for the commercial space, plus some or all of "usual costs," which are expenses associated with operations, maintenance, and use that the landlord pays.** These can include real estate taxes; property insurance; and common area maintenance items (CAMS), which include janitorial services, property management fees, sewer, water, trash collection, landscaping, parking lots, fire sprinklers, and any commonly shared area or service.

*There are several types of net leases:*

### **Single Net Lease**

In this lease, the tenant pays base rent plus a pro-rata share of the building's property tax (meaning a portion of the total bill based on the proportion of total building space leased by the tenant); the landlord covers all other building expenses. The tenant also pays utilities and janitorial services.

### **Double Net Lease**

The tenant is responsible for base rent plus a pro-rata share of property taxes and property insurance. The landlord covers expenses for structural repairs and common area maintenance. The tenant once again is responsible for their own janitorial and utility expenses.

### **Triple Net Lease**

This is the most popular type of net lease for commercial freestanding buildings and retail space. It is known as the net, net, net lease, or *Triple Net lease*, where the tenant pays all or part of the three "nets"--property taxes, insurance, and CAMS--on top of a base monthly rent. Common area utilities and operating expenses are usually lumped in as well; for example, the cost for staffing a lobby attendant would be part of the triple net fees. Of course, tenants also pay the costs of their own occupancy, including janitorial services, utilities, and their own insurance and taxes.

Landlords typically estimate expenses and charge tenants a portion of these expenses based on their proportionate, or pro-rata share. A tenant who leases 1,000 square feet of a 10,000 square foot building would be expected to pay 10% of the building's taxes, insurance, and CAMS, for example.

Triple net leases tend to be more landlord-friendly, and tenants should carefully review triple net fees and negotiate caps on the amounts they can be raised annually. A triple net lease can also fluctuate from month to month and year to year as operating expenses increase or decrease, making the company's expense forecasting tricky and sometimes frustrating.

There are tenant benefits in the triple net leases, however. Transparency is an excellent perk, since tenants can see business-operating expenses in relation to what they are charged. Cost savings in operating expenses are passed on to the tenant rather than to the landlord. In addition, the monthly rent in a triple net lease is potentially lower than in a gross lease, as tenants have a higher level of responsibility for the building.

### **Absolute Triple Net Lease**

This is a less common option that is more rigid and binding than the triple net lease, where tenants carry every imaginable real estate risk, for example, being responsible for construction expenses to rebuild after a catastrophe, or for continuing to pay rent even after the building has been condemned. A aptly called the "hell-or-high-water lease," tenants have ultimate responsibility for the building no matter what.

### **Modified Gross Lease**

As the gross lease is more tenant-friendly, and the net lease tends to be more landlord-friendly, there exists a compromise lease for the convenience of both parties. The modified gross lease (sometimes called the modified net lease) is similar to a gross lease in that the rent is requested in one lump sum, which can include any or all of the "nets"--property taxes, insurance, and CAMS. Utilities and janitorial services are typically excluded from the rent, and covered by the tenant. Tenants and landlords negotiate which "nets" are included in the base rental rate.

The modified gross lease is more popular with tenants, because its flexibility translates into an easier agreement between tenant and landlord. Unlike the triple net lease, if insurance, taxes or CAM charges increase, the lease rate would not change. Of course, if those expenses decrease, the cost savings is passed on to the landlord. As janitorial service and electricity are not covered, tenants can better control how much they spend compared to a gross lease.

### **Summary of Triple Net Lease, Modified Gross, or Full Service Commercial Leases**

When evaluating options for office space lease, it is important to compare the different lease options with an eye toward all expenses, and not just the base rental rates. Triple net base rental rates tend to be much lower, with additional expenses added for the real monthly rate.

Market forces will tend to even out rental rates for comparable properties, regardless of type of lease. Tenants should expect to pay roughly the same amount with a triple net, modified gross, or full service lease for similar quality office spaces in the same area.

The most important rule of commercial leases is for tenants to read their leases carefully, and clarify exactly what expenses they have responsibility for. Circumstances under which additional charges will occur should be identified and caps negotiated.

### **Common Area Maintenance (CAM) Charges**

A Common Area Maintenance (**CAM**) **charge** is an additional rent, **charged** on top of base rent, and is mainly composed of maintenance fees for work performed on the common area of a property. Typical CAM fees would cover parking lot maintenance, landscaping, snow removal, etc.

CAM fees can be structured as a fixed cost, or a variable expense that can increase or decrease according to other factors (like traffic, revenue, etc.). There are advantages and disadvantages to each arrangement, for both the business and the commercial leasing company. What's especially important is to know how these fees are going to be computed, when they are going to be due, and how often they are subject to change.

### **Other Considerations for Commercial Leasing (Class Discussion)**

# Tennessee Real Estate Commission (TREC) Frequently Asked Questions

## **Firm FAQ's**

### ***How should Deposits and Earnest Money be handled?***

Brokers are responsible at all times for deposits and earnest money accepted by them or their affiliate brokers, in accordance with the terms of the contract. 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.

(See: TCA § 62-13-321)

Rental deposits must be held in a separate account.

Funds should be disbursed or interplead within twenty-one (21) calendar days from the date of receipt of a written request for disbursement of earnest money. (See: TCA §1260-02-.09)

### ***What documents must a principal broker maintain as a part of the firm's records?***

Firms are required to keep records of all real estate transactions for a period of three years. These files must contain, at a minimum, the following:

- Listings
- Offers (Even offers that did not become contracts)
- Contracts
- Closing Statements
- Agency Agreements
- Agency Disclosure Documents
- Property Disclosure Forms
- Correspondence
- Notes

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

### ***What information must appear in all advertising?***

Rule 1260-2-.12 ADVERTISING, provides the minimum information that must appear in all advertising including Internet advertising. The firm name and firm phone number must appear in all advertising as well as every page of a website.

***May a Principal Broker act as a Principal Broker for two (2) firms?***

YES. T. C. A. § 62-13-309(g) A principal broker may act as a principal broker for two (2) firms as long as both firms are in the same location. As used in this subsection (g), “the same location” means that both firms are located at and use the same physical address.

***Does TREC allow home offices?***

A licensee may have the main office or branch office of a firm in his home if the zoning allows a real estate office at that location. The office must have a firm license and Principal Broker. Refer to TREC Rule 1260-02-.03.

***How do I make changes to my firm’s name?***

Firm and Branch name changes may be completed online at [core.tn.gov](http://core.tn.gov) or by mailing in a [Firm or Branch Name Change Application](#). Escrow Account information must be submitted with the name change application, even if it was submitted with the original firm application. If your firm is a Corporation (INC) or Limited Liability Company (LLC), you will need to submit a copy of your Letter of Good Standing from the Secretary of State (SOS) listed under your new name. There is NO fee charged for a Firm Name Change application.

**Education FAQ’s**

***What is the TREC Core Course?***

The TREC Core Course is a specific six (6) hour course designated by the Commission which is required to be taken by licensees who must complete the 16 hour continuing education requirement. Licensees should remember that a failure to complete the TREC Core Course will prevent renewal of the license even if the licensee completes a total of 16 hours of education. (The Commission could increase the number of hours in the required Core Course)

***I want to take an education course in another state for a designation I am working on. Will I automatically get credit because it was given by the national association?***

No, all courses must be pre-approved by the Commission. You are responsible for ensuring that the courses you complete are approved by the Commission. The sponsor must apply for course approval prior to the course being given. TREC does not give retroactive credit.

***Where can I check my Education Credits on file with TREC?***

Please visit, <http://verify.tn.gov>.

***When are Continuing Education (CE) Classes Due?***

Successful completion of 16 hours of CE (10 elective and 6 mandatory TREC CORE) is a condition precedent to renewal and must be completed on or before the expiration date of the license. All CE must be loaded into the TREC System by the sponsor. By Rule, the sponsors have 10 business days to upload the CE attendance rosters. Please note- there is a 60 day grace period from the expiration date to receive Education Hours. You will accrue a late fee if you do not pay your renewal fee on time. Always pay your renewal fee even if you are missing education hrs. this will allow you 60 days GRACE to complete education without fee.

***Do you recommend any continuing education/coursework classes and companies?***

Tennessee Real Estate Commission (TREC) does not recommend schools, classes or instructors. All classes and instructions listed on the TREC website under approved schools and courses have been approved by the Commission for CE credit. A Complete Listing of Schools/Courses can be found under Education within the TREC website (<http://www.tn.gov/commerce/topic/rec-education>). Under Education, you will also find the link for application packets and the TREC Instructor Training manual.

***I have finished my Continuing Education (CE), who do I send my certificates to?***

The CE provider is responsible for sending the certificates. They have up to 10 working days to send the Tennessee Real Estate Commission (TREC) the certificates. As soon as we receive the certificates the information will be posted to our website. You can verify your continued education at <http://verify.tn.gov/>.

***What are my education requirements (Affiliate Brokers/Brokers/Timeshare Sales Person)?***

Affiliate Brokers:

Pre-license: 60 Classroom Principles Course and 30 Hour Course for New Affiliates.

Continuing Education: 16 hours total. The "TREC Core" course is a MANDATORY course.

Brokers:

Pre-license: 120 hours including the 30 classroom hour "Office and Brokerage Management" course.

Post-license: 120 hours during the first 3 years of licensure.

Continuing Education:

Brokers licensed as Brokers after January 1, 2005, must complete continuing education requirements after completing post-license education, including the TREC Core course.

Timeshare Salespersons:

Pre-license: 30 hours of classroom training

Post-license: None

Continuing Education: None

**Unlicensed Activity FAQ's**

***What activities require a license?***

Any person who performs or offers, attempts or agrees to perform any single act defined in TCA § 62-13-102, is required to be licensed.

***What may an unlicensed employee, assistant or secretary do?***

- Answer the phone, forward calls and give information contained only on the listing agreement as limited by the broker.
- Fill out and submit listings and changes to any multiple-listing-service.
- Follow up on loan commitments after a contract has been negotiated and generally secure status reports on the loan progress.
- Assemble documents for closing.
- Secure public information from courthouses, utility districts, etc.
- Have keys made for listings.
- Place ads that have been approved by the Principal Broker.
- Receive, record and deposit earnest money, security deposits and advance rents under the direct supervision of the Principal Broker.
- Type contract forms for approval by licensee and Principal Broker.
- Monitor licenses and personnel files.
- Calculate, print or distribute commission checks.
- Place signs on property.
- Order repairs as directed by the licensee.
- Prepare for distribution fliers and promotional information that have been approved by the Principal Broker.
- Deliver documents and pick up keys.
- Place routine telephone calls on late rent payments.
- Gather information for a comparative market analysis (CMA).

- Unlock property under the direction of a licensee.
- Disclose the current sales status of a listed property.

***What can't an unlicensed employee, assistant or secretary do?***

- Make cold calls by telephone or in person to potential clients.
- Show properties for sale and/or lease to prospective purchasers.
- Host open houses, home show booths or fairs.
- Discuss or explain listings, offers, contracts, or other similar matters with persons outside the firm.
- Negotiate any terms of a real estate transaction.
- Negotiate or agree to any commission split or referral fee on behalf of a licensee.
- Be paid any compensation which is dependent upon, or directly related to, a real estate transaction

***May I pay an unlicensed assistant?***

Unlicensed assistants can be paid by the licensee for all clerical and secretarial activities conducted on behalf of the licensee. An unlicensed assistant cannot be compensated for the performance of duties that require a license. (See: TCA § 62-13-301)

Special Note from Author: Furthermore, unlicensed assistants should be paid on a regular basis – such as weekly, bi-monthly, etc. They should NOT be paid per transaction as that creates the impression that they are being paid a commission.

***I have a licensed assistant. How can I pay them for activities that require a license?***

A person engaged in activities that require a license must have a valid active license and be affiliated with a licensed real estate firm. Compensation received for activities that require a license must be paid by the licensed real estate firm where the assistant is affiliated.

***Can I sell real property at auction using my real estate license and my auction firm license?***

No, you can only sell real property through the licensed real estate firm where you are affiliated. Your licensed auction firm could sell real property only if it obtained a real estate firm license. A real estate firm must have a principal broker. You would then need to transfer your license to the new real estate firm in order to be able to act as a real estate agent for the auction company.

***I am licensed in another state. Can I visit Tennessee to list or sell real estate and “partner” or “cooperate” with a Tennessee licensee in order to avoid obtaining a Tennessee real estate license?***

No. A real estate licensee from another state or jurisdiction cannot “cooperate” or “partner” with a Tennessee licensee in order to conduct business that requires a real estate license in this state without obtaining a license issued by the Tennessee Real Estate Commission (TREC). A licensed Tennessee broker may pay a commission to a licensed broker of another state provided such non-resident broker does not conduct in this state any of the negotiations for which a commission is paid. (See: TCA § 62-13-302)

***A lawyer has contacted me and wants to send a referral and receive a referral fee from my firm. Can I pay him a referral fee?***

No. A lawyer can only receive a referral fee or commission if they are properly licensed as a real estate broker or affiliate and the compensation is paid to them by the licensed real estate firm where they are affiliated.

## **Licensee FAQ**

***After I pass the required licensing examination, how long do I have to apply for my license?***

Once you have passed the exam, you have 6 months to apply for your license. You must send everything to the Commission in one package within 6 months of passing the exam. All required deadlines must be met. (See: TCA 62-13-304)

***Are attorneys exempt from pre-license requirements?***

No, attorneys must complete the same requirements as all other applicants. If the attorney completed certain classes these hours may be used to fulfill their education requirements for the initial affiliate license. The applicant will need to obtain a transcript from law school to provide to the Commission.

***How often do I need to renew my license?***

Every two (2) years the affiliate broker shall provide certification of satisfactory completion of sixteen (16) classroom hours in real estate courses at any school, college or university approved by the commission. All documentation and fees that are a prerequisite to the renewal of a license or registration shall be delivered to the commission prior to the expiration date of the license. Renewal

fee of \$75 is due prior to the expiry date. After expiry date agent will have 60 days GRACE, however the agent will accrue \$50 per 30 days. You can renew your license on CORE.

***How do I change my firm affiliation?***

In order to change your firm affiliation your new principal broker will need to create an account on CORE. Once he or she has created an account your new principal broker will be able to change your firm affiliation by completing the form as directed and submitting the fee by credit card. The confirmation of payment generated upon completion of the form must be retained to confirm that the transaction has been successfully completed. You may also complete and send in a TREC 1 form with the required fee to TREC.

***What are the requirements for licensure if actively licensed and residing in another state?***

You will need to complete and submit a "Worksheet A" form so that we can evaluate your education and your examination history.

You will need to submit a certified license history from each state in which you have previously been licensed.

After the above items are sent, the Tennessee Real Estate Commission will review your application and a staff member will contact you with the next steps.

(See: TCA 62-13-302)

***How do I obtain a new Affiliate Broker License?***

In order to apply for a Real Estate Affiliate Broker license, you will need to complete the following: Affiliate broker candidates must complete sixty (60) hours of real estate education in real estate principles/fundamentals before they take the examination and an additional approved 30 hour course for new affiliates prior to a license being approved and issued.

Proof that the education described above has been completed will be forwarded by the school where the education was completed to a PSI examination center.

You may not register for the examination until the school has provided that information to PSI. The school will also provide you a certificate or letter of course completion that you must submit to Tennessee Real Estate Commission (TREC) with your application for a license.

A letter or certificate of completion of the "Course for New Affiliates" must also be submitted with the license application.

All applicants must be fingerprinted in accordance with the instructions set forth on the TREC site. (See: TCA §62-13-303)

***What could keep me from obtaining a Tennessee Real Estate License?***

The Commission very carefully examines all applications. Applicants who have been convicted of, pled nolo contendere to, pled guilty to or been granted first offender treatment upon being charged with any criminal offense other than a traffic violation or applicants who have held professional licenses which have been disciplined are thoroughly scrutinized. If you have a history of any of the above, you may seek a preliminary decision from the Commission prior to spending time and money taking the pre-licensing course and the examination by completing the "Application for Decision Regarding Prior Criminal Conviction (s) and/or Disciplinary Sanction(s)" and submitting it to Tennessee Real Estate Commission (TREC) with required backup documentation. (See: TCA 62-13-303)

### ***What do I need to send the Commission along with my application?***

Documents required for an affiliate broker's license:

- Application with picture - this is obtained at the testing center upon successful completion of the examination
- Proof of High School Graduation
- Proof of completion of pre-license education
- Proof of errors and omissions insurance policy
- Payment of all fees due.
- Fingerprinting done prior to application submission
- Documents required for a broker's license:
  - Application with picture - this is obtained at the testing center upon successful completion of the Tennessee Broker's examination.
  - Proof of errors and omissions insurance policy.
  - Payment of all fees due.

(See: TCA §62-13-303)

### ***How do I retire my license?***

If you wish to stop practicing real estate for any reason, but do not want to give up your real estate license, you may place your license in retirement. In order to retire your license you must complete a TREC Form 1 and submit it to TREC along with any fees. While in retirement, you cannot participate in any real estate transactions; however, you may receive commissions from transactions completed prior to retirement.

YOU MUST CONTINUE TO RENEW YOUR LICENSE AND PAY THE RENEWAL FEE.

(See: Rule 1260-02-02)

### ***How do I request a license certification?***

The Certification Request form must be completed in its entirety and mailed to TREC with the appropriate fee.

### ***How do I make changes to my name?***

In order to change your name, you will need to complete a TREC 1 form and submit that, along with the required documentation (for example: marriage license, court order, SS card, or government issued id) that evidences the name change and the required fee to TREC.

***When I Transfer to A New Firm, What Happens To My License?***

Upon transferring to a new firm, you are responsible for taking your physical wall license from your previous firm to the new firm you will be working with. If your license is sent in with the TREC 1 form to transfer, you will be responsible for submitting a new TREC 1 form to request a duplicate license and a \$10.00 fee will incur.

*Source: This information was obtained from the TREC website.*

## **About the Author**

**JOHN M. GIFFEN ABR, CRB, CRS, CDEI, GRI, SRES, SFR, e-PRO, CRESC, BROKER**

**John Giffen** is an award-winning real estate broker, manager, coach, multi-million dollar REALTOR<sup>®</sup>, author, and real estate educator. He is Director of Broker Operations for Benchmark Realty, LLC in Franklin, Tennessee - one of the fastest-growing independent real estate companies in North America. He oversees the brokerage operations for over 1,250 Benchmark affiliate and real estate broker licensees. In 2014, John was named "*REALTOR<sup>®</sup> of the Year*" by the Williamson County Association of REALTORS<sup>®</sup>. He is recognized as a subject matter expert by law firms representing real estate licensees and principal brokers in litigation and regulatory complaints as well as TREC approved education course providers and PSI, the testing company for Tennessee state real estate licensure.