

Sunset Public Hearing Questions for
Real Estate Commission
Created by Section 62-13-201, *Tennessee Code Annotated*
(Sunset Termination June 2020)

Enabling Statute, Purpose, and Rules and Regulations

- 1. Provide a brief introduction to the commission, including information about its purpose, statutory duties, staff, and administrative attachment.**

Response:

The Tennessee Real Estate Commission (“the Commission”) is established by Tennessee Code Annotated §§ 62-13-101 *et seq.*, cited as the “Tennessee Real Estate Broker License Act of 1973.” These statutes are designed to protect the public from irresponsible or unscrupulous persons dealing in real estate.

Per T.C.A. § 62-13-203, the Commission is vested with the powers and duties necessary and proper to enable it to fully and effectively carry out the provisions and objectives of Chapter 13, including but not limited to: (1) the authority to promulgate and adopt rules and regulations pursuant to the UAPA; and (2) the authority to establish canons of ethics and minimum acceptable standards of practice for licensees.

The commission is attached to the Department of Commerce and Insurance in the Division of Regulatory Boards and employs an Education Director and an Executive Director, who serves at the pleasure of the commission and is responsible for the supervision of twelve (12) staff members who administer the activities associated with the disposition and performance of the required duties.

- 2. Has the commission promulgated rules and regulations? If yes, please cite the reference.**

Response:

Yes. The commission has promulgated rules which can be found under Tenn. Comp. R. & Regs. 1260-01, *et seq.*

Commission Organization

- 3. Provide a list of current members of the commission. For each member, please indicate who appointed the member, statutory member representation, the beginning and end of the member’s term, and whether the member is serving a consecutive term.**

Response:

Please see Attachment A.

4. Are there any vacancies on the commission? If so, please indicate how long the position has been vacant and explain steps that have been taken to fill any vacancies.

Response:

The Commission currently has one vacancy and one member with an expired term. The member with the expired term still regularly attends meetings and will continue to do so until the member is either reappointed or a new member is appointed. The vacant public member seat has been vacant since February 2019.

The Department is actively searching for replacements. Currently, individuals may complete an online form on the Department’s website if he or she is interested in a position on any of the Department’s regulatory boards. Additionally, the Commission will receive a new commission member beginning on August 14, 2019. This new position filled a previous member’s expired term.

5. How many times did the commission meet in Fiscal Years 2018 and 2019? How many members were present at each meeting? Please note meetings where the commission did not have a quorum.

Response:

The Commission met twelve (12) times in fiscal year 2018 and thirteen (13) times in fiscal year 2019.

Fiscal Year 2018		Fiscal Year 2019	
Meeting Date	Number of Members Present	Meeting Date	Number of Members Present
July 12, 2017	9	July 11, 2018	7
August 9, 2017	9	August 8, 2018	7
September 6, 2017	6	September 5, 2018	6
October 5, 2017	9	October 4, 2018	6
November 8, 2017	8	November 7, 2018	8
December 6, 2017	8	December 5, 2018	8
January 20, 2018	8	January 9, 2019	7
February 7, 2018	7	February 13, 2019	6
March 7, 2018	8	March 1, 2019	8
April 11, 2018	8	March 13, 2018	7
May 10, 2018	7	April 17, 2019	7
June 13, 2018	7	May 9, 2019	6
		June 12, 2019	6

All meetings in fiscal year 2018 and fiscal year 2019 to date had a quorum.

Financial Information

- 6. What were the commission’s revenues and expenditure for Fiscal Years 2018 and 2019? Does the commission carry a fund balance? If yes, please provide additional relevant information regarding the fund balance.**

Response:

Operating Account

Fiscal Year 2018

Revenue: \$2,456,598
Expenditure: \$1,993,679
Year End Reserve Balance: \$5,443,317

Fiscal Year 2019 (estimate through May 31, 2019)

Revenue: \$2,457,193
Expenditure: \$1,926,430
Year to Date Reserve Balance: \$5,974,079

Education and Recovery Fund

Fiscal Year 2018

Year End Balance: \$4,392,522

Fiscal Year 2019

Year to Date Balance \$4,561,348

- 7. What per diem or travel reimbursements do commission members receive? How much was paid to commission members in Fiscal Years 2018 and 2019?**

Response:

Commission members receive a stipend of fifty dollars (\$50.00) per day of service. They are reimbursed for travel expenses and lodging incurred up to \$179.00, mileage at the current reimbursement rate, per diem at the current reimbursement rate, and parking.

In addition, this board also incurs expenses for participation in out-of-state industry based and leadership conferences. Board members are reimbursed for travel and per diem when attending the conference.

Fiscal Year 2018

Travel Reimbursement: \$35,936.05
Per Diem: \$4,650

Fiscal Year 2019 (estimate through May 31, 2019)

Travel Reimbursement: \$35,396.69
Per Diem: \$4,500

- 8. Please provide a list of fees collected and indicate whether these fees were established through rule or through state law.**

Response:

Please see Attachment B.

Sunshine Law, Public Meetings, and Conflict of Interest Policies

9. Is the commission subject to sunshine law requirements (Section 8-44-101 *et seq.*, Tennessee Code Annotated) for public notice of meetings, prompt and full recording of minutes, and public access to minutes? If so, what procedures does the commission have for informing the public of meetings and making minutes available to the public?

Response:

Yes. The Tennessee Real Estate Commission is subject to the sunshine law requirements found in Tennessee Code Annotated §§8-44-101 *et seq.* Meeting notices are published on the Commission's website, and the Commission meeting schedule is discussed when staff make presentations to the licensees. Commission meetings are recorded using video recording equipment, and the meetings are available for viewing on the Commission's website. In addition, minutes are transcribed and are available on the Commission's website for review after being approved at the subsequent Commission meeting. The agenda is also posted no later than five (5) business days prior to the meeting date, and is available on the Commission's website.

10. Does the commission allow for public comment at meetings? Is prior notice required for public comment to be heard? If public comment is not allowed, how does the commission obtain feedback from the public and those they regulate?

Response:

Yes. If an individual desires to speak before the Commission, then the individual should contact the Commission's Executive Director to be added to the agenda. Additionally, if an individual appears at the Commission and desires to make the comment, the Commission may allow the individual to speak. This information is also provided on the Commission's website.

11. Does the commission have policies to address potential conflict of interest by commission members, employees, or other state employees who work with the commission?

Response:

Upon appointment to the Commission, each commission member is required to attend a new member orientation. This orientation is conducted by the Director of Operations, the Executive Director, and the attorney for the Commission. During this orientation, commission members are reminded of the conflicts of interest policy. A brief refresher of this

policy takes place annually. Furthermore, the Department's Human Resources Division has specific disclosure forms on which each individual member must list any potential conflicts of interest before beginning to serve his or her term.

12. Does the commission have a website? If so, please provide the web address. What kind of public information is available on the website?

Response:

Yes. The Commission's website can be found at: <https://www.tn.gov/commerce/regboards/trec.html>. The website contains information on news, licensee/applicant resources, education requirements, education courses, public meeting information, rules, laws, consumer resources, and frequently asked questions. Additionally, the contact information for the Commission's staff is provided on the website. The Department of Commerce and Insurance also maintains a website at verify.tn.gov, which allows for license search and verification for those individuals who are licensed with the Department.

Real Estate Commission Education and Recovery Account

13. Section 62-13-208, Tennessee Code Annotated, establishes the Real Estate Commission Education and Recovery Account. As discussed in the September 2017 Performance Audit of the Regulatory Boards in the Department of Commerce and Insurance, the account had few, if any, claims to use the fund and had been used to fund few, if any, education events and programs. The audit recommended a legislative solution of either removing or modifying the related statute to reduce or eliminate fees associated with the fund or to eliminate the fund entirely. Please provide a brief update on the status of the Real Estate Commission Education and Recovery Act.

Response:

Following the 2017 Performance Audit, the Commission has taken several steps to reduce the amount of funds in the account. First, in August 2019, the Commission recently will file a set of rules with the Secretary of State's Office that are not only overall fee reductions, but reduce the amount of fees deposited into the account from \$10 to \$1. It is the Commission's hope that these rules will go into effect later this calendar year. Upon promulgation, the amount deposited into the account should significantly decrease.

Additionally, the Commission has been utilizing the funds in the Education and Recovery Account for other educational efforts. This year, the Commission hosted its first education roundtable. This roundtable invited real estate course instructors from across the state to discuss the issues facing the real estate education industry. The Commission hopes to continue to host these types of forums to engage and grow real estate education. Furthermore, the Commission hopes to utilize the funds for outreach efforts for licensees. This includes, but is not limited to, traveling to different locations throughout the state discussing legislative updates, rule changes, and frequently asked questions. The Commission also hopes in the future to host webinars on various real estate-related topics.

Application and Licensure Process

14. Describe the criteria for issuing a license. How were these criteria determined? How long does the licensing process take? What are the established time goals for obtaining a license? Are those goals being met?

Response:

The criteria for issuing a license are determined by Tenn. Code Ann. § 62-13-303. Over the fiscal years 2018 and 2019, the Commission has processed initial applications for licensure in an average of nine (9) business days. The Departmental goal for licensure is to maintain or decrease the aggregate average licensing time for the Division of Regulatory Boards. Per this goal, the Commission has increased processing time and is currently processing at a rate of 132% compared to last year.

Please see the below requirements per license type:

Affiliate Broker Candidates:

- Application with picture
- Proof of high school graduation
- Proof of completion of Affiliate Broker examination
- Proof of completion of pre-license education (60 hours & 30 hours)
- Proof of errors and omissions insurance
- Payment of all fees due (\$110.00 total)
- Eligibility verification
- Electronic fingerprinting
- At least 18 years of age

Real Estate Broker Candidates:

- Application with picture
- Proof of completion of Broker examination
- Proof of completion of 30 hour Office Broker Management course
- Proof of errors and omissions insurance
- Eligibility verification
- Electronic fingerprinting
- At least 18 years of age
- Payment of all fees due (\$110.00 total)

Designated Agent License or Vacation Lodging Service Candidate:

- The required approved 8 hour pre- license course certificate of completion
- At least 18 years of age
- Proof which the Commission determines satisfactory, that they have a high school degree or a general educational development certificate (GED)
- Eligibility verification
- Electronic fingerprinting

- Payment of all fees due (\$100.00 total)

Timeshare Salesperson Candidate:

- Eligibility verification
- Payment of all fees due (\$110.00 total)
- Timeshare Salesperson Candidate Pre-license Verification form
- Electronic fingerprinting
- Proof of errors and omissions Insurance
- At least 18 years of age

Acquisition Agent Candidate:

- At least 18 years of age
- Payment of all fees due (\$100.00 total)
- Electronic fingerprinting
- Proof of examination

Non-resident Candidate:

- Proof of completion of state portion of the examination type of license in resident’s state
- Certificates showing completion of pre-license education
- Certificates showing completion of continuing education

Initial Firm License:

- Completion of application
- Bank escrow information or waiver of escrow
- Zoning letter
- Articles of Incorporation
- Active Principal Broker

Vacation Lodging Service Candidate:

- Completion of application

Timeshare Firm Registration Candidate:

- Completion of application

**15. How many individuals and/or businesses are currently licensed by the commission?
Please provide a list by category/type of license.**

Response:

Profession	Count
Acquisition Agent License	172
Acquisition Agent Registration	42
Acquisition Representative Registration	2,330
Affiliate Broker	29,985
Designated Agent	124

License Type	Status	Count
Individual	Active	35,384
Individual	Broker Release	2
Individual	Inactive	1
Individual	Retired	5,937
Individual	Suspended	1,061
Individual	Vol Surrendered	3,640
Firm	Active	4,498
Firm	Retired	65

RE Broker	7,520
Real Estate Firm	4,186
Time Share Exempt	158
Time Share Registration	33
Time Share Sale	1,188
Vacation Lodging Service	143

16. How many applications did the commission receive in Fiscal Years 2018 and 2019? By category, how many applications were approved and a license granted? How many applications were rejected? Of those rejected, what was the primary reason for rejection?

Response:

Fiscal Year 2018:

Total Applications received by TREC	44,751
Initial Applications received	6,293
Initial Applications approved	5,832
Initial Applications denied	0

Fiscal Year 2019:

Total Applications received by TREC	54,203
Initial Applications received	6,608
Initial Applications approved	5,548
Initial Applications denied	0

17. How many licenses were revoked during the same time period? What were the primary reasons for revocation? Please provide information by type of license.

Response:

Fiscal Year 2018

Real Estate Agents: 7
Real Estate Firms: 5
Total: 12

Fiscal Year 2019 to Date

Real Estate Agents: 6
Real Estate Firm: 1
Total: 7

The majority of revoked licenses were due to a lack of statutorily required errors and omissions insurance. However, other licensees were revoked for disciplinary reasons.

Complaint Handling Process

18. Describe the complaint handling process. Please explain how consumers are made aware of the process for filing a complaint, how complaints are taken and investigated, how complaints are resolved and what actions may be taken as a result.

Response:

Once a complaint is received by the Commission, it is submitted to the Respondent, otherwise known as the individual or company the complaint was filed against for response. The response from the Respondent is then sent to the Complainant. The Complainant then has the opportunity to respond and include any additional information. The complaint, Respondent's response, and any additional correspondence are then forwarded to the Commission's legal counsel.

Respondents are given ten (10) days to file their response. The legal counsel then reviews the file and all documentation and creates a summary and recommendation to present before the Commission at their regularly scheduled meetings. The legal report is presented anonymously as to not prejudice the Commission on reaching a decision. Upon hearing the summary, the Commission will vote on whether or not they believe the facts of the matter are grounds for discipline under the Tennessee Real Estate Broker License Act of 1973 ("the Act") and the promulgated rules. If the Commission determines there has not been a violation under the Act, then the Commission will often dismiss the matter. However, if the Commission determines that the facts warrant discipline, the Commission may authorize a formal hearing but first give an option for the Respondent to settle via a Consent Order. Discipline types include letters of instruction, letters of warning, continuing education, civil penalties, suspension, and revocation. If the Respondent is sent a Consent Order and decides against settlement, then the matter may be set by legal counsel for a formal hearing between the Department and the Respondent.

All of the information provided to consumers for filing a complaint is found at <https://core.tn.gov/datamart/mainMenu.do;jsessionid=dOZ3PdDAsgzl6Tf6kMdaWIHV.undefined>. If consumers have any additional questions or concerns, they can visit the Commission's website and contact the Commission staff via telephone or email. Also, the Department's Customer Service Center provides assistance to consumers. Once a complaint is received by the Department's Centralized Complaints Division, the consumer is provided additional information concerning their complaint that will help aid in the process.

19. What are the time goals for resolving complaints and are those goals being met?

Response:

The Commission has a goal of resolving or referring complaints to a formal hearing within one hundred eighty (180) days from their initial processing beginning with the date of receipt of the complaint. This goal is assessed by a percentage each month. For the month of June 2019, a report produced on July 2, 2019, stated the Commission's metric is at 95.92%.

20. How many complaints were received in Fiscal Years 2018 and 2019? What types of complaints were received? What, if any, enforcement actions did the commission take as a result of complaints filed?

Response:

In fiscal year 2018, the Commission received 834 complaints. For fiscal year 2019, the Commission received 895 complaints. These complaints varied in nature. The Commission has received complaints for unlicensed activity, advertising violations, escrow violations, failure of the principal broker to supervise their affiliate broker, failure to exercise reasonable skill and care, failure to disclose personal interest, and failure to execute duties owed to all parties and a client in a transaction.

The Commission issues several different types of enforcement actions. These include, but are not limited to, letters of instruction, letters of warning, consent orders assessing civil penalties, consent orders requiring continuing education courses, suspension, and revocation.

Reports, Major Accomplishments, and Proposed Legislative Changes

21. What reports does the commission prepare concerning its activities, operations, and accomplishments? Who receives copies of these reports? Please provide a link to any such reports issued in Fiscal Years 2018 and 2019.

Response:

Fiscal Year 2018

TREC produced a Spring, Fall, and Winter newsletter. The newsletters were posted to TREC's website and available for viewing. These are sent out to all licensees signed up for the Department's E-Notify program via e-mail.

Spring 2018:

https://www.tn.gov/content/dam/tn/commerce/documents/regboards/trec/newsletters/TREC_Newsletter_6-12-18.pdf

Fall 2018:

https://www.tn.gov/content/dam/tn/commerce/documents/regboards/trec/newsletters/TREC-Newsletter_Issue-2.pdf

Winter 2018:

<https://www.tn.gov/content/dam/tn/commerce/documents/regboards/trec/newsletters/TRECNewsletterDecember2018.pdf>

Fiscal Year 2019

TREC produced a Spring newsletter. This newsletter is posted on TREC's website and available for viewing. Also, this newsletter is sent out to all licensees signed up for the Department's E-Notify program via email.

Spring 2019:

https://www.tn.gov/content/dam/tn/commerce/documents/regboards/trec/newsletters/TREC_Newsletter_Spring2019.pdf

22. What were the commission's major accomplishments during Fiscal Years 2018 and 2019?

Response:

The major accomplishments during Fiscal Years 2018 and 2019 are improved processing times, successfully hosting an education roundtable for providers, publishing results for provider testing online, requirement of non-resident continuing education for licensure after September 1, 2017, improved process for errors and omission regulation, and one stop licensing application. In September of 2018, the commission awarded EMTAR's CEO the Bill Tune Award. The Bill Tune award is a prestigious award given only to individuals who represent the highest ideals of dedicated service and professionalism in Real Estate Education.

Additionally, on the licensing side we have seen significant strides. Licenses are processed on an average of nine (9) days. The response resolution time for inquiries to the Commission is averaging six (6) minutes.

23. Please describe any items related to the commission that require legislative attention and your proposed legislative changes.

Response:

The Commission does not foresee any legislative changes at this time.

24. Should the commission be continued? To what extent and in what ways would the absence of the commission affect the public health, safety, or welfare of the citizens of Tennessee?

Response:

Yes, the Tennessee Real Estate Commission should be continued. Purchasing a home or real property is the single largest purchase consumers will make in their lifetime. Furthermore, at a time where the real estate industry is robust not only across the United States, but especially so in the state of Tennessee, it is paramount to ensure that Tennesseans are

properly protected. It is essential to ensure that only properly qualified individuals engage in the practice of buying and selling real estate. All fifty (50) states regulate the real estate industry as it is vital to protect the public's health, safety, and welfare. Terminating the Commission would negatively impact the public health, safety, and welfare of the citizens of Tennessee. Deregulating the real estate industry leaves Tennesseans susceptible to misleading information, susceptible to fraud and deceptive business practices, and without the assurance of purchasing a home, real property, or time-share from a licensed, qualified, and trained professional.

Attachment A – Board Member Roster

Board Member	Appointer	Statutory Member Representation	Beginning Date	End Date	Consecutive Term?
John Griess Knoxville, TN	Governor Haslam	T.C.A. § 62-13-201(b) T.C.A. § 62-13-201(d)(5) – East, TN	6/30/2012	6/30/2022	Consecutive Term
Marcia Franks Franklin, TN	Governor Haslam	T.C.A. § 62-13-201(b) T.C.A. § 62-13-201(d)(5) – Middle, TN	6/30/2016	6/30/2023	Consecutive Term
Bobby Wood Jr. Mt. Juliet, TN	Governor Haslam	T.C.A. § 62-13-201(b) T.C.A. § 62-13-201(d)(5) – Middle, TN	6/30/2015	6/30/2020	First Term
Fontaine Taylor Memphis, TN	Governor Haslam	T.C.A. § 62-13-201(b) T.C.A. § 62-13-201(d)(5) – West, TN	6/30/2015	6/30/2020	First Term
Geoffrey Diaz Germantown, TN	Governor Haslam	T.C.A. § 62-13-201(b) T.C.A. § 62-13-201(d)(5) – West, TN	6/30/2018	6/30/2023	First Term
Rick Douglass Bartlett, TN	Governor Haslam	T.C.A. § 62-13-201(b) T.C.A. § 62-13-201(d)(5) – West, TN	6/30/2016	6/30/2021	First Term
Diane Hills Kingsport, TN	Governor Haslam	T.C.A. § 62-13-201(b) T.C.A. § 62-13-201(d)(5) – East, TN	6/20/2014	6/30/2019	First Term
Jon A. Moffett Lancaster, TN	Governor Lee	T.C.A. § 62-13-201(c) T.C.A. § 62-13-201(d)(5) – Middle, TN	7/8/2019	6/30/2023	First Term
Vacant					

Attachment B – Fee Schedule*

Title of Fee	Fee Amount	Statute or Rule
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Application for Vacation lodging services (VLS)	\$100.00	62-13-104(b)(2)
Renewal for VLS	\$80.00	62-13-104(b)(4)
Application for educational courses*	\$25 (1-8 hours) \$50 (9-30) \$100 (30+)	62-13-106(a)
Reinstatement – lack of Errors & Omissions (“E&O”) Insurance	\$500	62-13-112(k)(2)(A)
Reinstatement of suspended license – lack of E&O more than 120 days	\$500 to \$1200	62-13-112(k)(2)(B)
Reinstatement of revoked licensed for lack of E&O Insurance	\$100 per month	62-13-112(k)(4)
Education & Recovery Account*	\$10.00	62-13-208(c)(1)
Affiliate Broker license application*	\$100	62-13-303(b)(1)
Broker License application*	\$100	62-13-303(c)(1)
Time-Share Salesperson application and examination	\$110	62-13-303(j)(1)
Acquisition Agent license application and examination	\$100	62-13-303(k)(1)
License renewal within sixty (60) of expiration	\$50 per month	62-13-307(b)
Change of firm address**	\$50	62-13-309(a)(3)
Affiliate Broker transfer	\$25	62-13-310(a)
Status change to retired	\$25	62-13-318(a)(1)
Status change from retired to active	\$25	62-13-318(b)(1)
Reinstatement of expired license	\$100 per month	62-13-319(a)
Education Instructors	\$25	62-13-324(b)
Original license fee*	\$100.00	1260-01-.12(2)
Renewal fee*	\$80.00	1260-01-.12(3)
Change of firm address**	\$50.00	1260-01-.12(4)(a)
Change of Principal Broker	\$25.00	1260-01-.12(4)(b)
Transfer of Affiliation or transfer in/out of retirement	\$25.00	1260-01-.12(4)(c)
Commission manual**	\$10.00	1260-01-.12(4)(d)
Certified copies per page**	\$1.00	1260-01-.12(4)(e)
Copies per page**	\$0.25	1260-01-.12(4)(f)
Printouts of licensee information**	Based upon cost of producing said printout	1260-01-.12(4)(g)
Certification of licensure	\$25.00	1260-01-.12(4)(h)
Printouts of licensee continuing education**	\$10.00	1260-01-.12(4)(i)
Change of name**	\$10.00	1260-01-.12(4)(j)
Duplicate license**	\$10.00	1260-01-.12(4)(k)
Bad check **	\$100.00	1260-01-.12(4)(l)

Failing to timely renew license	\$50.00	1260-01-.12(5)
Real estate and recovery account fee*	\$10.00	1260-01-.12(6)
Lapsed E&O – back-dated	\$200.00	1260-01-.16(1)(a)(1)(i)
Lapsed E&O – not back-dated	\$400.00	1260-01-.16(1)(a)(1)(ii)
Lapsed E&O – suspension more than 120 days	\$500.00	1260-01-.16(1)(a)(2)
Lapsed E&O – suspension for six months to one year	\$500 + \$100/month for 6 months	1260-01-.16(1)(a)(3)
Lapsed E&O – PB’s affiliate is back-dated	\$200.00	1260-01-.16(2)(c)1(i)
Lapsed E&O – PB’s affiliate not back-dated	\$400.00	1260-01-.16(2)(c)(1)(ii)
Affiliate released or reinstates license – more than 120 days	\$1,000.00	1260-01-.16(2)(c)(2)
Late license renewal	\$50/month	1260-01-.21(2)(b)(2)(i)
Late license renewal – after 121 days to 1 year.	\$100/month	1260-01-.21(2)(b)(2)(ii)

* These fees will be reduced upon successful promulgation of rules recently sent to the Secretary of State’s Office.

** These fees will be eliminated upon successful promulgation of rules recently sent to the Secretary of State’s Office.