

September ____, 2014

Ms. Eve Maxwell
Tennessee Real Estate Commission
500 James Robertson Parkway
Nashville, TN 37243-1151

Re: Proposed Rules and Rules Amendment to be Discussed at the November 5, 2014 Rulemaking Hearing

Dear Ms. Maxwell,

I serve as General Counsel for the Tennessee Association of Realtors[®], Inc. (TAR), and we have had an opportunity to review the proposed rules and rule amendments to be discussed at the November 5, 2014 Rulemaking Hearing. As you are aware, TAR is a professional organization of over 20,000 members across the State of Tennessee. TAR, much like TREC, strives to strengthen the real estate industry in Tennessee and raise the standards of its agents.

Based upon the Commission's review of the proposed rules and rule amendments, TAR would like to ask for your consideration of the following comments. These comments should be considered as TAR's comments for the Rulemaking Hearing to take place November 5, 2014:

I. TREC Rule 1260-2-.02. Termination of Affiliation.

A. Section (1). Termination of principal broker's duty to supervise.

Within section (1) of this rule, a principal broker's liability for the supervision of an affiliate "terminate[s] upon the Commission's receipt of the release form." However, the rule does not define what constitutes receipt by the Commission of the TREC 1 form. This must be clarified by the Commission so that brokers fully understand when their liability ends. Furthermore, there will be inevitable computer glitches and fax machine malfunctions, and therefore, the Commission should establish what constitutes receipt by the Commission and how this can be proven in the event that a dispute arises.

B. Section (3).

1. Receipt of TREC 1 Form.

Within section (3), agents and their new principal brokers are permitted to transfer an agent's affiliation online. In part (3)(b), a licensee's transfer will be effective as of the date it is

completed online, as long as the new principal broker submits the completed and signed TREC 1 form and it is received within five (5) business days of the online submission. Again, TREC should clearly clarify what constitutes receipt by the Commission. This could be interpreted as the date and time it was faxed or emailed by the broker or it could be interpreted as the date and time the fax or email was received by the Commission. TAR maintains that it should be the date and time that the broker either faxed or emailed the TREC 1 form which can be verified via a fax confirmation page or via the date and time on the sent email.

2. Liability of affiliate in the event that TREC 1 Form is not timely submitted by broker.

Another issue arises within section (3)(b) of this rule. It is unclear as to whether the affiliate who is attempting to transfer firms would be held liable for practicing real estate during the five day grace period in the event that the new broker fails to send in the completed TREC 1 form timely. This would unfairly subject affiliates to sanctions by TREC when the failure to timely submit the TREC 1 form lies with the principal broker and not the affiliate. In the event that such occurs, the principal broker should be the only agent subject to discipline by TREC.

C. Listing and Buyer Representation Agreements Following Termination of Affiliation.

In section (4), a licensee is not permitted to take listings secured by the firm with him if he terminates his affiliation with a firm without the approval of the principal broker. The rule under consideration could be amended to include buyer's representation agreements secured by the firm. Another issue that could be clarified by the Commission is what happens in the event that it is the principal broker terminates his affiliation with a firm. TAR avers that in that situation, the departing principal broker must obtain the permission of the firm owner prior to taking a listing or buyer's representation agreement with him.

II. TREC Rule 1260-2-.09. Deposits and Earnest Money.

A. Definition of Trust Money.

Section (1)(b)(1) defines trust money as "[m]oney belonging to others received by a licensee who is acting as an agent in a real estate transaction". However, agents do accept funds from customers when acting in a facilitator capacity. Therefore, the rule should be amended to read "1. Money belonging to other received by a licensee who is acting as an agent or facilitator in a real estate transaction; or".

B. "Accept Trust Money"

In section (5), the use of the phrase "accept trust money" is troublesome. Currently, the rule reads as follows: "Where a contract authorizes a broker to place funds in an escrow or trustee account, the broker shall clearly specify in the contract..." By changing the verbiage, it appears that anytime a broker accepts earnest money, even if it is to pass it along to a third party escrow agent, the broker must state the terms and conditions under which the funds are to be distributed and the name and address of the person holding the funds. In situations where a third party escrow agent, as is being done more commonly now, especially in commercial transactions, this would be addressed in an escrow agreement between the parties and the escrow agent. TAR would ask TREC to recommend retaining the previous language with the substitution of "trust money" for "funds" such that the rule would read: (5) Where a contract authorizes a principal broker to place trust money in an escrow or trustee account, the broker shall clearly specify in the contract..."

C. Name and Address of Holder.

In the current and revised rule, Section (5)(b) requires the name and address of the person who will actually hold the funds. TAR would suggest amending this to require the name and address of the firm holding the funds since most trustee and/or escrow accounts are in the name of the firm.

D. Interpleader.

In section (9), the proposed rule requires distribution of the funds within twenty-one (21) days absent a compelling reason. TAR would suggest that this be amended so that the requirement is that the funds be disbursed or turned over to an attorney for interpleader within twenty-one days. Brokers cannot force an attorney to timely file the interpleader. Therefore, the requirement of the rule should mirror the actions which are under the control of the broker.

E. Rent and Security Deposits.

In section (12), the proposed rule requires that "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." The manner in which this is drafted creates confusion as to whether this applies to security deposits, rent payments, or both. The current version of the rule only applies to security deposits. This is the same as required pursuant to the Uniform Residential Landlord and Tenant Act, Tenn. Code Ann. § 66-28-301(a). TAR avers that the requirements of the TREC Rules should not be more strict than that of state statutes. Without clarification, the rule as drafted could result in requiring a firm to have at least three different escrow or trustee accounts - one

for escrow money, one for security deposits, and one for rent payments. TAR avers the rule should be clarified to only require that security deposits be held in a separate trust or escrow account as is required under the current rule.

III. TREC Rule 1260-2-.12. Advertising.

A. Section (1). Sponsoring of Community/Charitable Events.

In section (1), things such as promotional materials that incidentally advertise a licensee such as hats, pens, t-shirts, notepads, name tags, and the like do not constitute advertising. TAR would suggest that this same exception to the rule be made for agents who are sponsoring charitable or community events. Often, the event coordinator or organizations limit what can be placed in an advertisement, banner, etc. and the firm name and telephone number may not be included. TREC should not prevent sponsorship of these worthy events merely due to the difficulty in complying with TREC Rules.

B. Definition of "Prominent"

In section (2)(b), the proposed rule states that the firm name and telephone number must be conspicuously displayed and that "the firm name must be the most prominent entity featured within the advertising". This needs to be clarified to state exactly what "prominent" means. The Commission could interpret this to mean that the firm name must be in a particular place in the advertisement, mentioned more times in an audio or visual advertisement, mentioned more times in a magazine spread, etc. This must be clarified with specifics included so that agents can abide by the new rule. The same is true for the telephone number. TAR would suggest that multiple examples of advertising which would be considered compliant as well as noncompliant as further explanation.

C. Telephone Numbers.

In section (2)(b), there are additional requirements that have not previously been in force. For example, under the current rule, only the firm name had to be larger than that of the agent on signage only. However, under the proposed rule, the same is true for the firm telephone number. In addition, these requirements are being applied to all advertising, not just signage. This means that advertising which currently meets the requirements of the rules will be in violation. Agents must be provided a grace period in order to budget for and procure new signage, new television ads, new billboards, new car wraps, etc. TREC must understand that these items cost significant amounts of money and cannot be corrected overnight. To immediately require this will place large financial burdens on licensees currently in compliance.

TAR additionally raises the issue of the meaning of "prominence" as it pertains to telephone numbers. (See Section III.B. above).

D. Section 3

TAR requests that TREC clarifies whether all the subparts of section (3) apply to all advertising or if it only applies to signage.

E. Different Size Fonts in Utilized in Firm Name.

There is an issue with the interpretation of the font size requirement. There are many real estate firms that have different size fonts within their name as registered with TREC. For example, the firm name is ABC Realty & Associates, LLC as registered with TREC. The manner in which the name appears on signage is:

ABC Realty
& Associates, LLC

Under the proposed rules, the name of the agent must be the size of "& Associates, LLC". However, everyone in town recognizes the firm and often refers to it by the name "ABC Realty".

TAR asks if a compromise could be enacted to allow for such type of advertising. If the majority of the firm name (or at least the part of the firm name by which it is recognized in the community) is in a different size font than the remainder of the name, the agent's name should be the same size or smaller than that portion of the firm name.

F. Franchise Names

In section (3)(f)(2), there is a requirement that all advertising must include the firm name and not just the franchise name. This would be impossible for large franchise or companies with multiple offices. The requirement that such websites include each firm name would create a great hardship and a website that would be confusing. This should not be a requirement for the franchise website, only the individual office websites.

G. Use of the word "Group" in team/group/similar entity name.

In section (3)(f)(3) (as well as other places in the proposed rules), TREC references "[l]icensees who hold themselves out as a team, group, or similar entity". However, in that same section, TREC prohibits these agents from using the word "group" in their name. This prohibition is inconsistent with other proposed rules and should be deleted completely.

H. Existing Team Names.

Many teams/groups/similar entities have existed for quite some time and have spent a significant amount of cash and resources branding their team/group/similar entity. Now they will have to essentially start over to brand a new entity simply because one of the "prohibited words" such as "real estate", "realty", "associates", and "group" is in their name. As long as it is clear that such entity is part of a particular firm, they should be permitted to keep their name. Furthermore, while TAR recognizes the need to differentiate between a firm and a team/group/similar entity, several of the "prohibited words" should be considered for deletion from the rule. While the use of words such as corporation, limited liability company, incorporated, company, LLC, Corp., and Inc. convey a separate legal entity and could confuse the public into believing that this was a separate real estate firm, other words contained in that list would not necessarily do so, such as "real estate", "realty", and "group". As long as the advertisement is clear that the team/group/similar entity is part of ABC Real Estate Firm, these words should not be prohibited from the team/group/similar entity names.

I. Team Names.

The phrase "that would lead the public to believe that those licensees are offering real estate brokerage services independent of the firm and principal broker" in section (3)(f)(3) is vague. TAR respectfully requests that this be clarified and explained in detail so that agents across the state understand the requirements of the rule, as our licensees do not intend to change the perception to the public. TREC should present several sample advertisements that are both compliant and noncompliant so that agents can understand what will be acceptable, especially since there are so many changes under these proposed rules.

J. Photographs of Teams.

Section (3)(f)(4) seems extreme and is not needed and accomplishes nothing. It does nothing to protect the public. It places a burden on teams/groups/similar entities to redo any existing advertising they may have, which includes photographs. TAR opposes this addition to the rule.

K. Website Links.

Section (3)(f)(5) appears unclear. Please provide a firm definition of what is being prohibited and/or examples of cases which would be considered by TREC to be in violation. This will assist both the public and real estate licensees.

L. Cooperative Advertising Group.

Section (4) makes reference to cooperative advertising groups. However, cooperative advertising group is not defined in the Broker's Act or TREC Rules. If the Commission cannot provide a definition to this "entity", TAR would suggest that the reference to cooperative advertising groups be removed from the rule as all it does is create confusion among licensees.

M. Internet Advertising.

Section (5)(a) requires that the firm name and telephone number appear on each page of the website. As previously discussed, this will be very difficult for large franchises or large companies which have many offices in Tennessee. If there is a single franchise or company website, it will be very difficult to put every firm name and telephone number on every page. The end result could create more confusion on the part of the public. This should be considered so that these types of websites would be excluded from this rule and only make it applicable to individual offices, agents, and/or teams, groups, and similar entities.

N. Social Media.

Another area where TAR asks for clarification is how section (5)(a) applies to social media and other emergent trends. In the past, the Commission discussed that it might be sufficient to post a link wherein the firm name and telephone number would be provided given the limited number of characters available in some social media and applicable avenues. If this is permissible, this should be made part of the rule. Agents must be advised as to what will and will not comply with the revised rules.

IV. TREC Rule 1260-2-.39. Commissions Earned by Affiliated Licensees.

A. When a Commission is Earned.

TAR hopes TREC will consider that this Rule could be amended to clarify TREC's long held, unwritten position that it considers a commission to be "earned" by a licensee at the time that the property goes under contract. This is not clearly stated anywhere in the TREC Rules or the Broker's Act.

V. TREC Rule 1260-2-.41. Licensees Who Hold Themselves as a Team, Group, or Similar Entity within a Firm.

A. Licensed assistant.

In section (2), it needs to be clear in the rule that a licensed assistant does not have to be compensated via the principal broker when that licensed assistant is paid a salary as an employee. The licensed assistant can be paid by the licensee for whom the assistant works.

IV. General Question Concerning Teams/Groups/Similar Entities

1. TAR asks if a firm have different divisions within it and advertise as such? For example, can a firm have a commercial division, a property management division, a residential division, an REO division, etc.? If so, would these divisions fall under the same rules as teams, groups, or similar entities?

TAR would hope that a real estate company be permitted to have different department or divisions within it according to the strengths of its agents without having to register a new firm for each division. For example, there may be agents whose specialty is property management or commercial real estate. These agents should be able to fall under one company's umbrella with those agents specializing in a particular type of real estate. Classifying them as the commercial division or department would not mislead the public. In fact, it would assist the public in knowing how to reach the agent and/or department that will meet their particular needs as quickly as possible. It would be similar to that of a bank which has different departments, i.e., one for personal banking, one for commercial banking, one for home loans, one for auto loans, etc. All of these departments would make up one firm under the supervision of a principal broker. TAR requests that this be clarified within the rules as this has been an issue for licensees in the past.

TAR would like to thank the Commission for taking the time to consider these suggestions and comments. In addressing these and the other comments and suggestions offered, the Commission will be able to fulfill its goals of protecting the public as well as provide clear guidance to its licensees. Together, we can continue to serve the real estate community and the public with honor and strive toward excellence.

Sincerely,

J. Russell Farrar
General Counsel
Tennessee Association of Realtors®

cc: The Honorable John Griess, TREC Commission Chairman
The Honorable Janet DiChiara, TREC Commission Vice Chairman
The Honorable Wendell Alexander, Commissioner
The Honorable Grover Collins, Commissioner
The Honorable David Flitcroft, Commissioner
The Honorable Gary Blume, Commissioner
The Honorable Marcia Franks, Commissioner
The Honorable Diane Hills, Commissioner
The Honorable Austin McMullen, Commissioner
The Honorable Julie Cropp, TREC Assistant General Counsel