

TENNESSEE REAL ESTATE COMMISSION MINUTES
August 8, 2012

The Tennessee Real Estate Commission convened on August 8, 2012 at 9:10 a.m., in Room 160 of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, TN 37243. The following Commission Members were present: Chairman William "Bear" Stephenson, Commissioner Wendell Alexander, Commissioner Grover Collins, Commissioner Janet DiChiara and Commissioner John Griess were present. Commissioner Isaac Northern joined the meeting at 9:15 a.m. and Commissioner Austin McMullen joined the meeting at 9:53 a.m. Vice-Chairman Michelle Haynes and Commissioner David Flitcroft were absent. Others present: Executive Director Eve Maxwell, Education Director Steve McDonald, Assistant General Counsel Julie Cropp, Assistant General Counsel Robyn Ryan and Administrative Secretary Kelly McDermott.

The first order of business was the adoption of the agenda for the August 2012 Commission meeting. Commissioner DiChiara stated that she would like to add a discussion about the meeting agenda layout and order of topics. Commissioner Stephenson made a motion to add to the agenda a discussion about what occurs when a Broker does not complete the required 120 hours of broker education within three years. **Commissioner Alexander made a motion to adopt the agenda as amended for the August 2012 agenda; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

The next order of business was the approval of the July 2012 minutes. **Commissioner DiChiara made a motion to approve the July 2012 minutes; seconded by Commissioner Griess; vote: 4 yes, 0 no; Commissioner Collins abstained because he was absent from the July meeting; motion carried.** Commissioner Northern joined the meeting.

Ms. Ryan addressed the Commission regarding the formal hearing that was scheduled for the first day of the meeting but was cancelled. She advised the Commission that the Respondent had paid the consent order with a civil penalty of \$9,000.00 that had been previously issued by the Commission and therefore the matter was settled and the hearing cancelled. Commissioner DiChiara asked, per her request to have the matter added to the agenda, why the formal hearings are scheduled for the first day of the meeting and not the second day. Ms. Ryan stated that, in the case that a hearing takes a great deal of time, then it could be continued to the second day of the meeting instead of holding the hearings the second day of the meeting and potentially having them roll over to a third, unscheduled day. After some discussion regarding the pros and cons of holding the hearings on the first or the second day of the meetings, a motion was made to alter the current practice. **Commissioner Alexander made a motion to hold the hearings on the second day of the meeting beginning in January 2013; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

LEGAL REPORT, JULIE CROPP, ASSISTANT GENERAL COUNSEL

At the beginning of the text of each legal report (complaint report) the following text is inserted and Ms. Cropp read it into the record: "Any consent order authorized by the Commission should be signed by Respondent and returned within thirty (30) days. If said consent order is not signed and returned within the allotted time, the matter may proceed to a formal hearing."

- 1) 2012001941 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.
- 2) 2012006651 &
- 3) 2012006652 – Commissioner Griess made a motion to defer the complaints and have Commissioner DiChiara review the file and report back to the full Commission; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 4) 2012007861 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to issue a consent order with a civil penalty of \$500.00 for failure, within ten (10) days after being broker released, to complete the required administrative measures for either change in affiliation or retirement in violation of T.C.A. § 62-13-312(b)(14) and Rule 1260-02-.02(2), plus attendance at a two day meeting of the Commission within 180 days of Respondent’s execution of Consent Order; seconded by Commissioner Griess; unanimous vote; motion carried.
- 5) 2012008341 – Commissioner Northern made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.
- 6) 2012008361 – Commissioner Northern made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.
- 7) 2012008491 – Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Griess; unanimous vote; motion carried.
- 8) 2012008801 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carried.
- 9) 2012013821 &
- 10) 2012013801 - Commissioner Griess made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 11) 2012008571 –Commissioner Northern made a motion to accept legal counsel’s recommendation to issue a consent order with a civil penalty of \$1,000.00 for operating a property management firm without a license in violation of T.C.A. § 62-13-312(b)(14), T.C.A. § 62-13-309(a)(1)(A), which requires each office to have a real estate firm license, a principal broker, and a fixed location with adequate facilities for affiliated licensees, plus attendance at a two day meeting of the Commission within 180 days of Respondent’s execution of Consent Order plus flag the file; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 12) 2012008661 – Commissioner Collins made a motion to accept legal counsel’s recommendation to issue a Consent Order for denial of Respondent’s Broker license application and for voluntary revocation of Respondent’s Affiliate Broker license based on Respondent’s substantial and willful misrepresentations on Respondent’s three (3) license applications with the Commission in violation of T.C.A. § 62-13-312(b)(1) and Respondent’s failure to respond to a complaint filed with the Commission in violation of T.C.A. § 62-13-312(b)(14) and § 62-13-313(a)(2); seconded by Commissioner Northern; unanimous vote; motion carried.

- 13) 2012009481 – Commissioner McMullen made a motion to accept legal counsel’s recommendation to issue a consent order with a civil penalty of \$1,000.00 for unlicensed activity in violation of T.C.A. § 62-13-104(b)(2); seconded by Commissioner Collins; Commissioner Griess made a friendly amendment to also include in that consent order that Respondent shall cease and desist activity until properly licensed and the friendly amendment was accepted; motion as amended carried unanimously.
- 14) 2012009861 – Commissioner McMullen made a motion to accept legal counsel’s recommendation to refer the complaint to the District Attorney’s office and close and also to flag the file; seconded by Commissioner Northern; unanimous vote; motion carried.
- 15) 2012009701 – Commissioner McMullen made a motion to issue a consent order for voluntary surrender of Respondent’s license based on T.C.A. § 62-13-312(b)(12); seconded by Commissioner Northern; roll call vote: 5 yes, 2 no (Commissioners Stephenson and Griess vote no); motion carried.
- 16) 2012009771 &
- 17) 2012009781 – Commissioner Northern made a motion to accept legal counsel’s recommendation to issue a consent order with a civil penalty of \$1,500.00 for failure, within a reasonable time, to account for or to remit any moneys coming into the licensee’s possession that belong to others in violation of T.C.A. § 62-13-312(b)(5)(14) and § 62-13-403(6) and Rule 1260-02-.09(1) requiring that rental deposits must be held in separate account, and for operating a property management firm without a license in violation of T.C.A. § 62-13-312(b)(14), T.C.A. § 62-13-309(a)(1)(A) which requires each office to have a real estate firm license, a principal broker, and a fixed location with adequate facilities for affiliated licensees, and Rule 1260-02-.01(1) which states no licensee shall engage in any real estate activity in any office unless there is a principal broker who devotes his full time to the management of such office, plus attendance at a two day meeting of the Commission within 180 days of Respondent’s execution of Consent Order; seconded by Commissioner Griess; unanimous vote; motion carried.
- 18) 2012009801 - Commissioner Northern made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Griess; unanimous vote; motion carried.
- 19) 2012009881 - Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carried.
- 20) 2012010311 &
- 21) 2012010312 - Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Northern; unanimous vote; motion carried.
- 22) 2012010721 – Commissioner Alexander made a motion to accept legal counsel’s recommendation to issue a consent order for failure to timely complete administrative measures as required by the Commission for either change of affiliation or retirement in violation of T.C.A. § 62-13-312(b)(14)(16) and Rule 1260-02-.02(2) plus attendance by Respondent at a two day meeting of the Commission within one hundred eighty (180) days of Respondent’s execution of consent order but instead of levying the recommended civil penalty of \$300.00 levy a civil penalty of \$1,750.00;

- seconded by Commissioner Griess for discussion; after discussion, Commissioner McMullen made a motion to amend the civil penalty from \$1,750.00 to \$500.00; amendment seconded by Commissioner Northern; amendment carried unanimously and motion as amended carried unanimously.
- 23) 2012011791 &
 - 24) 2012011792 – Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.
 - 25) 2012011881 &
 - 26) 2012011882 &
 - 27) 2012011891 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Griess; unanimous vote; motion carried.
 - 28) 2012012771 &
 - 29) 2012012772 &
 - 30) 2012012811 – Commissioner Griess made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.
 - 31) 2012013981 &
 - 32) 2012013982 – Commissioner Northern made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.
 - 33) 2012012381 – Commissioner Griess made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carried.
 - 34) 2012012511 – Commissioner McMullen made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Griess; unanimous vote; motion carried.

Ms. Cropp presented the Commission with a copy of the Consent Order Log.

Ms. Cropp updated the Commission on the status of the E&O RPF. She advised that she had spoken with Mr. Dan Birdwell, the Department of Commerce and Insurance’s RFP Coordinator, and he stated that the RFP draft that was submitted had been approved by the Central Procurement Office and was currently waiting for final approval from the Comptroller’s Office. She stated that if that approval is obtained, then it will be issued.

She addressed two questions that had been asked of her at the previous month’s meeting by Commissioner Alexander. She explained that the first question was regarding a licensed broker representing and accepting a commission from an individual if that individual is buying or selling an option on a property. She advised that she had studied the statute and discussed the matter with General Counsel Wayne Pugh and Assistant General Counsel Robyn Ryan. She read into the record the content of T.C.A. § 62-13-102(4)(A): “Broker” means any person who, for a fee, commission, finder’s fee or any other valuable consideration or with the intent or expectation of receiving a fee, commission, finder’s fee or any other valuable consideration from another, solicits, negotiates or attempts to solicit or negotiate the listing, sale, purchase, exchange, lease

or option to buy, sell, rent or exchange for any real estate or of the improvements on the real estate or any time-share interval as defined in the Tennessee Time-Share Act, compiled in title 66, chapter 32, part 1, collects rents or attempts to collect rents, auctions or offers to auction or who advertises or holds out as engaged in any of the foregoing". She stated that therefore, based on the statute, a licensed broker would be permitted to represent someone on negotiating, listing or in the sale of an option as the action falls within the definition of the Broker's Act. She advised that the second question was regarding whether an unlicensed person who owns an option on a property can sell that option to someone else. She stated that is Legal Staff's opinion that is a person is buying or selling their own option that is not something that falls within the realm of unlicensed activity. She referenced T.C.A. § 62-13-102 and stated it would not fall under the definition of a broker because the person would not be selling it on behalf of another.

EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR

Mr. McDonald presented the Courses for Commission Evaluation and Discussion for August 2012. **Commissioner DiChiara made a motion to approve the Courses for Commission Evaluation (A1 – A16); seconded by Commissioner Griess; unanimous vote; motion carried.**

Mr. McDonald presented the following Instructor Review for the month of August 2012.

- Karen Czarnecki of Williamson County Association of REALTORS® (#1135) requested the approval of Susan Barnett to teach their Accredited Buyer Representative course (#6610).

Commissioner Griess made a motion to approve the above instructors; seconded by Commissioner DiChiara; unanimous vote; motion carried.

Commissioner Griess asked Mr. McDonald how he would handle a situation where information had been reported that an instructor was teaching content in a course that is contrary to TREC's statutes, rules or policies. Mr. McDonald stated if he receives such a claim, he would investigate thoroughly by asking for course handouts, talking to student and discussing the claim with the instructor. Commissioner Griess stated that his primary short term goal would be to speak directly with the instructor and steer them onto the right course. He advised Mr. McDonald that someone reported an instructor for such a matter to him and Mr. McDonald assured him that the particular matter had already been dealt with in house by him and Ms. Maxwell. Commissioner Collins asked Mr. McDonald to again notify members of the TAR staff that dual agency is permissible because he had seen some misinformation posted in the TAR Digest. Commissioner Northern advised the Commission that he had attended the afternoon session of the Education Seminar held in Memphis the previous month and that it was very well attended and well presented.

Chairman Stephenson recessed the meeting for lunch at 11:33 a.m. and reconvened the meeting at 1:09 p.m.

EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

Ms. Maxwell reported to the Commission on the electronic storage of documents and "paperless offices". She presented the following information to the Board members and they discussed how to educate and properly audit firms who are making the transition to electronic document storage.

From Ms. Maxwell's report:

T.C.A. § 62-13-312(b)(6) states: "The Commission shall have the power to refuse a license for cause or to suspend or revoke a license ...where a licensee, in performing or attempting to perform any of the acts mentioned herein, is found guilty of: Failing to preserve for three years following its consummation, records relating to any real estate transaction." This section also gives the director of the regulatory boards or the director's duly authorized representative, the authority to examine and copy all books, accounts, documents and records pertaining to any real estate transaction.

The Commission has been asked whether these records can be maintained in an electronic format and if so, what guidelines or policies will govern paperless transactions and the electronic storage of documents. The Commission intends to study and discuss the issues surrounding paperless transactions and the electronic storage of data, as it works to formulate policies for paperless transactions and the electronic storage of documents.

A record is a record regardless of the medium, so basic records management concepts and principles developed for paper records apply equally to electronic records. Electronic records, just like paper records, must be logically inventoried and organized for timely retrieval, effective storage and proper protection throughout the retention period. Documents stored electronically must be readily available to TREC auditors and must be in a format that is easily accessible and which can be reproduced, at the expense of the principal broker, in a legible, paper form ("hard copy"), if requested by Commission. Compliance with the TREC requirements must be a primary consideration of any PB that is deciding whether or not to implement an electronic data storage system. It is, and will remain, the responsibility of the PBs who use or intend to use electronic storage to make sure that any system selected is capable of full compliance with the requirements set forth in the Broker Act.

The decision to store records in an electronic format involves complete commitment to the system on the part of the Principal Broker and the affiliated licensees; without this commitment, the success of any electronic system implemented will be compromised. There are a multitude of services available and it is critical that the Principal Broker carefully consider what the system needs to accomplish, how the system needs to interact with all of its potential users, what short and long term storage capabilities are required, what accessibility is needed, how the files will be organized, what data can be generated from the files, what will the cost be, how secure the information will be and how often will the system need to be updated.

The ability to regularly update the system and the commitment to update is crucial to the long term viability of the system. There is a risk that a firm will elect to store its documents electronically, only to discover that compliance is too burdensome or the cost of maintaining and

updating the programs and systems is cost prohibitive, resulting in the abandonment of the system by the firm. If this were to happen, the firm would have to try to recreate files which were destroyed and that would present a possibly insurmountable challenge.

There is no doubt that the use of electronic records can streamline workflow, increase access and reduce the need for storage space. Implementing a system which can be used both in daily transactions and for storage of documents offers the greatest benefit to the firm. However, it is an investment with potentially high front end and maintenance costs. A PB considering implementing the electronic storage of records should be sure that such a system makes financial sense for his firm and that the system would not place an undue burden on his current resources. If the PB invests in a system or methodology that is too cumbersome to use or for which there is little user support or which has very few functions, then there is a high risk of noncompliance among the affiliated licensees, which will ultimately lead to the failure of the system, as it will no longer be able to be considered a reliable source to store documents. The PB must consider if the investment in a system for the use of electronic records make long term sense for his firm and the goals of the firm. The PB must be willing to commit the resources to educate and train all affiliated licensees and staff and to ensure that there are sufficient checks and balances on the system to safeguard the accuracy of the information entered and the documents stored.

Once a decision has been made to utilize electronic storage of records, the PB must devise an implementation strategy which will allow the normal workflow to continue, while the implementation takes place. The PB will need to analyze his business activities, inventory his records and then establish an organizational/classification system which allows the information and records to be entered, accessed and retained in a logical sequence. The electronic records must be identified, described comprehensively and linked or associated with the other records and must be able to be sorted in ways which are effective and efficient for the firm. This might mean that the system is set up so that the files can be sorted by pending sales, closed sales, by address, by year, by salesperson, by price or in other ways which might yield useful data to the firm. The system employed must be user friendly or it will be abandoned by those who it was anticipated would use it. There must be some flexibility in the system selected, so that the PB can make changes and/or upgrades as the need arises. This developmental stage, while time and resource consuming, is the cornerstone to the long term acceptance and viability of the program.

TREC requires that all documents be kept for a period of at least three years from the date of the transaction and that all documents required to be retained be readily accessible at all reasonable hours to representatives of TREC. Readily accessible means that the documents can be produced within no more than 24 hours after request and that once produced, the documents are organized such that TREC can easily identify files and documents. Concomitant with the accessibility of the documents is the retention of the documents. In order to ensure the efficient use of electronic storage and ensure the availability and use of the electronic records for the appropriate period of time, the PB must formulate a retention schedule. The integrity of the record must be retained for the entire retention period in a manner that makes it retrievable, process able (using available hardware and software) and accurately reproducible in a form that is readable. With rapidly changing and evolving technology, this becomes a crucial consideration when selecting a system for storage. The cost of ensuring that the records remain readily

retrievable and the reliability of the provider and the system must be factored into the cost of any decision to store records electronically and the PB must make a firm decision that he will take all steps necessary to keep his systems current. Any retention schedule and plan should take into consideration the security required to maintain the integrity of the documents and to guard against intentional tampering or unintentional alteration or deletion. One of the biggest dangers of electronic storage is document alteration and the PB needs to thoroughly investigate the security measures in place to protect the documents and to ensure their long term reliability.

Electronic records cannot be substituted for paper records unless and until it is shown that the electronic records are authentic and can be deemed to be reliable, trustworthy and accurate. If electronic documents cannot pass this test, then the electronic documents cannot be accepted as unaltered versions of the original. One of the criteria of this initial requirement is that the electronic record be captured very close in time to the event or transaction and that the documents are complete and are available for retrieval upon TREC' request. The PB must be assured that the system preserves the content and structure of the documents for the entire required retention period, even if the PB later decides to switch systems and therefore must migrate the documents from one system to another. If the underlying system of retention contains weaknesses, then the entire system of retention is called into question and undermines the reliability of the records.

The decision to store documents electronically is one which must be made with caution and deliberation, as each component step is crucial to the overall functionality of the system. The advent and rapid growth of electronic storage has brought a number of challenges which must be carefully and realistically analyzed in light of the firm as a whole and its goals for the future.

Commissioner Northern suggested that information be provided to industry members, in light of the changes taking place regarding document storage, to the licensees via the TREC News Journal or the TREC website. **Commissioner Alexander made a motion that Staff work with Legal and create a policy on Commission requirements for electronic document storage; seconded by Commissioner Northern; opened to discussion.** Ms. Maxwell had also presented the board with an overview of what some other states were using as policy regarding electronic document storage. Cindy Rice Grissom, CEO of Rice Insurance who is the current state insurance E&O carrier, addressed the Commission regarding how document storage can affect E&O litigation. She stated that if an E&O claim occurs and it goes to court, the ability to produce written documents is crucial. She stated that she believes it to be very important for the Commission to address electronic document storage from a regulatory point of view. She said that if a person has a hard copy or a computer file that is also backed up, it is much easier to defend a case in court. **After Ms. Rice's comments the Commission voted on the previous motion made by Commissioner Alexander and seconded by Commissioner Northern and the motion carried unanimously.**

Ms. Maxwell presented the following information to the Commission for review:

- **Complaint Statistics Report** (Exhibit 3) – Ms. Maxwell presented complaint statistics to the Commission. As of July 31, 2012, TREC had a total of 103 open complaints. There were 33 new complaints in July 2012. There were 98 complaints in the legal

department and 5 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2012-2013 is 31. Total Civil Penalties paid in July 2012 were \$22,090.00

The Commission discussed the Agreed Citations that are listed on the Disciplinary Action Report and whether those licensees who are disciplined for those matters are also required to attend a two TREC Commission meeting as part of their civil penalty. **Commissioner Alexander made a motion that if someone is sent an Agreed Citation then they should also be required to attend the two day Commission meeting within six months of the date they sign the order; seconded by Commissioner DiChiara; opened to discussion.** Ms. Cropp asked the Commission to consider deferring the discussion so she can do some additional research before a vote. She advised the Commission that Agreed Citations are not officially opened as complaints and are therefore not on the complaint report. She said that when she sends a Consent Order the language regarding automatic suspension if the person does not comply is included but that in the case of Agreed Citation, it is not included. She stated that she needs to do some research on how she would enforce the requirement for Agreed Citations. **Commissioner Griess made a motion to supersede Commissioner Alexander's motion that the matter be deferred to allow Ms. Cropp time to do the needed research; seconded by Commissioner McMullen; unanimous vote; motion carried.**

- **Licensing Statistics** (Exhibit 4) – Ms. Maxwell presented licensing statistics for the month of June 2012. As of July 31, 2012, there were 23,684 active licensees, 904 inactive licensees and 9,858 retired licensees. There were 4,069 active firms and 314 retired firms. There were 209 new applications approved in July 2012. Further, she presented a comparison of total licensees for individuals (active, retired and inactive) and firms in July of 2008, 2009, 2010 and 2011. She also presented license renewal percentages and the average number of licenses issued per month in 1997 and 2000 – 2012, firms closed or retired from 2008 – 2012 and the applications approved from 2008 – 2012.

The Commission discussed the upcoming 2013 meeting schedule. At the July meeting, the Commission had asked the Staff to look into using state parks as a venue for out of town meetings. Ms. Maxwell and Ms. McDermott advised the Commission that after researching the state parks, they had determined that they would not be a feasible venue because the parks do not have equipment to record the meetings which is a requirement by law. Different areas and towns across the state were discussed and facilities were suggested. **Commissioner Griess made a motion to approve the proposed dates for the April 2013 through December 2013 dates; seconded by Commissioner McMullen; opened to further discussion; Commissioner McMullen made a motion to amend to hold the May 9 – 10, 2013 meeting at a to be determined West Tennessee location, to hold the meeting on July 11 – 12, 2013 in Cookeville and to hold the October 10 – 11, 2013 meeting in Knoxville in conjunction with the 40 Year Longevity Breakfast; amendment seconded by Commissioner DiChiara; motion as amended passed unanimously. Therefore, the Commission voted to adopt the following schedule for the year 2013.**

**TENNESSEE REAL ESTATE COMMISSION
2013 COMMISSION MEETING DATES**

Room 160, Davy Crockett Tower
500 James Robertson Parkway
Nashville, Tennessee 37243
(Unless Noted Otherwise)

Wednesday, January 9 and Thursday, January 10, 2013

Wednesday, February 6 and Thursday 7, 2013

Wednesday, March 6 and Thursday, March 7, 2013

Wednesday, April 3 and Thursday, April 4, 2013

**Thursday, May 9 and Friday, May 10, 2013
t.b.d. in West Tennessee location**

Wednesday, June 5 and Thursday, June 6, 2013

**Thursday, July 11 and Friday, July 12, 2013
in Cookeville**

Wednesday, August 7 and Thursday, August 8, 2013

Wednesday, September 11 and Thursday, September 12, 2013

**Thursday, October 10 and Friday, October 11, 2012
in Knoxville**

Wednesday, November 6 and Thursday, November 7, 2013

Wednesday, December 4 and Thursday, December 5, 2013

Ms. Cropp presented the Commission copies of polices that had been updated per their requests at the previous month's meeting. Following are the previous policy numbers and names and the updated and revised policy numbers and names and the corresponding motion by the Commission regarding each policy change. All updated policies are available on the TREC website under the Policies link under the subheading Rules and Laws.

- **Previous Policy: 1989-CPS-005** – Commissions Earned by Affiliate Brokers
- **Revised Policy: 2012-CPS-003** – Commissions Earned by Affiliated Licensees
 - **Commissioner Alexander made a motion to replace Policy 1989-CPS-005 with Policy 2012-CPS-003; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

- **Previous Policy: 2001-CPS-001** – Interest Bearing Escrow Accounts
- **Revised Policy: 2012-CPS-004** – Interest Bearing Escrow Accounts
 - **Commissioner Alexander made a motion to replace Policy 2001-CPS-001 with Policy 2012-CPS-004; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

- **Previous Policy: 2008-CPS-001** – Reinstatement of an Expired License
- **Revised Policy: 2012-CPS-005** – Reinstatement of an Expired License
 - **Commissioner McMullen made a motion to replace Policy 2008-CPS-001 with Policy 2012-CPS-005; seconded by Commissioner Griess; unanimous vote; motion carried.**

- **Previous Policy: 2009-CPS-003** – Certified Copy of Conviction Required
- **Revised Policy: 2012-CPS-006** – Certified Copy of Conviction Required
 - **Commissioner McMullen made a motion to replace Policy 2009-CPS-003 with Policy 2012-CPS-006 but to also add the language “ or document evidencing plea” after the words “a CERTIFIED copy of the conviction and before the words “or other documentation as required by the Commission”; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

- **Previous Policy: 2010-CPS-001** – Principal Broker Required to Appear for Informal Conferences
- **Revised Policy: 2012-CPS-007** – Principal Broker Required to Appear for Informal Appearances
 - **Commissioner McMullen made a motion to replace Policy 2010-CPS-001 with Policy 2012-CPS-007; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

Ms. Maxwell advised the Commission that she had handed out some information regarding the budget. She also provided some historical data regarding past balances and budgets and an outline of the process the Department follows for charging cost backs. She advised that the storage of files is going to be moved off site which should save money for that cost back. She advised the Commission that, after meeting with the Administration, she can confirm that it is their stance that the Education and Recovery Fund cannot be used to pay for educational conference travel. **Commissioner Northern made a motion to ask for an Attorney General's**

opinion asking if the interest portion of the Education and Recovery Fund may be used to fund education conference and meeting travel for the staff and board members and further for the Administration to vigorously pursue the opinion; seconded by Commissioner DiChiara; vote: 6 yes, 1 no (Commissioner McMullen voted no.); motion carried.

Chairman Stephenson asked Ms. Maxwell to report on what the standard operating procedure is for a Broker that is at the end of their first three years of being licensed as a Broker and have not completed their required 120 hours of post broker education. Ms. Maxwell explained that if a Broker has not completed his or her 120 post broker education hours, then prior to the end of the third year, the licensee must make an election as to whether he or she is going to downgrade back down to Affiliate Broker, via written request, or sign a Consent Order and have 12 months to complete the education with an additional \$50.00 per month civil penalty until the education is complete. She stated that it is statutory that a Broker complete these 120 hours within three years but the Commission did elect to have the option of issuing the Consent Order with the civil penalty for the fourth year (or the time until the second two year renewal cycle expires). Ms. Maxwell explained however that the Commission could technically, by statute, open complaints against any Broker who does not complete the 120 hours in the first three years of being licensed as a Broker but they have, thus far, not elected to do so.

Commissioner Griess asked Chris Sexton of the Tennessee Association of Realtors, who was in attendance, what the status was of the legislation regarding suspensions for those licensees who do not obtain E&O insurance in a timely manner. Mr. Sexton stated that there seems to have been a misunderstanding as to who would draft the legislation and he thought that TREC was drafting the legislation. Ms. Cropp advised that TREC cannot draft the legislation and that TAR would need to do so as discussed with Mr. Russ Farrar at the June 2012 meeting. Mr. Sexton stated that he would speak with Mr. Russ Farrar about the matter.

Chairman Stephenson adjourned the meeting on Wednesday, August 8, 2012 at 2:48 p.m.



**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
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MEMORANDUM

TO: TENNESSEE REAL ESTATE COMMISSION

FROM: JULIE CROPP, Assistant General Counsel

SUBJECT: AUGUST LEGAL REPORT

DATE: August 8-9, 2012

***Any consent order authorized by the Commission should be signed by Respondent and returned within thirty (30) days. If said consent order is not signed and returned within the allotted time, the matter may proceed to a formal hearing.**

- 1. 2012001941**
 - Opened: 2/13/12**
 - First License Obtained: 3/12/93**
 - License Expiration: 11/8/13**
 - E&O Expiration: N/A**
 - Type of License: Affiliate Broker (Retired)**
 - History: 2011010861 – Payment plan \$4,000 CP**

Complaint opened against Respondent (retired affiliate broker) based on original complaint received against a time-share registration. Based on the information received from Complainant, Complainant paid Respondent's company to transfer an out-of-state time-share out of their names in 2010 and the transfer has not been completed.

Respondent submitted a reply stating that Respondent's company began the process of transferring Complainant's time-share in 2010. Respondent claims that the resort at which the time-share is located has changed their transfer policy and requires a higher transfer fee (which Respondent was not aware of). Respondent states that Respondent requested the additional amount from Complainant but has not received it, and so the transfer of the property has not been completed. Based on information obtained by TREC auditors, it appears that time-share owners contact Respondent and pay transfer fees to Respondent to be relieved of their time-shares. In some cases, where there are unpaid maintenance fees on the time-shares, it appears that Respondent takes over the ownership and pays outstanding maintenance fees. Though Complainant may certainly have contractual issues with Respondent, the documentation

contained within the file does not evidence unlicensed activity on the part of Respondent with regard to this transaction.

Recommendation: Dismiss.

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

2. **2012006651**
Opened: 4/17/12
History: No Prior Disciplinary Action - Unlicensed

3. **2012006652**
Opened: 4/17/12
History: No Prior Disciplinary Action – Unlicensed

Complainants state that they leased a home from Respondents (both unlicensed). Complainants were relocating to Tennessee from another area of the country and selected the home to rent which was shown on Respondents' website. Complainants state that the photos that were provided of the property on Respondents' website were not the actual home Complainants rented. Complainants state that the home was very dirty and unfit to live in. It appears that Respondent 1 was a licensee whose license has expired.

Respondents submitted a response stating that they are married and Respondent 2 entered into a lease option agreement with the owner of the subject property rented by Complainants (copy of lease option agreement was provided by Respondents). Then, Respondent 2 personally entered into a rental agreement with Complainants, which did not involve Respondent 1 or their company. It appears that the maintenance and cleanliness issues addressed in the complaint were handled by attorneys for the parties. Respondent 1 states that, upon realizing that Respondent 1's real estate license had expired, Respondent 1 shut down their company and has ceased operations. Respondent 1 is in the process of taking the exam and obtaining proper licensure, at which time Respondent 1 plans to affiliate with a firm. With regard to the property that was rented by Complainants, it appears from the documentation provided that Respondent 2 was renting the property to Complainants personally pursuant to the rights granted to Respondent 2 by a lease option agreement with the property owner.

Recommendation: Dismiss.

DECISION: The Commission voted to defer this matter to allow Commissioner DiChiara to review the file and report at the September meeting.

4. **2012007861**
Opened: 4/19/12
First License Obtained: 6/30/09
License Expiration: 6/29/13

E&O Expiration: 1/1/13
Type of License: Time-Share Salesperson
History: No Prior Disciplinary Action
***Broker Released 5/25/12**

Complainant states that Respondent (time-share salesperson) forged two (2) signatures (both Complainant's signature and the signature of the other owner of the time-share) on a warranty deed executed in Tennessee which transferred ownership of Complainant's out-of-state time-share to Respondent. Complainant realized this when Complainant (resident of another state) inquired about maintenance fees and found the address had been changed. Complainant states that the sale was not authorized.

Respondent states that a title transfer company transferred the time-share title into Respondent's name. To Respondent's understanding, Complainant signed a contract with a company and paid them to have the time-share transferred out of Complainant's name. Then, that company used the title transfer company to transfer the time-share out of Complainant's name.

Complainant made an additional response appearing to admit to signing a consent form, but says that the process was contingent upon the other owner's signature, and Complainant says that Complainant had asked to cancel the process. Complainant says that the title transfer company offered to put the time-share back into Complainant's name, but Complainant does not want the property back and only wants the original purchase price. Based on documentation received from the title company, it appears that the time-share was deeded back to Complainant. Additionally, the company which Complainant met with in Texas and whom Complainant contracted with and paid to rid Complainant of Complainant's time-share obligation provided documentation of the meeting and payment and stated that Complainant was refunded the money paid for the time-share transfer.

Based on all documentation received from the parties, it appears that Respondent's only involvement was taking over the time-share. However, Respondent was broker released from Respondent's previous broker in May 2012, and, to date, Respondent has failed to either affiliate with a new broker or retire Respondent's license.

Recommendation: Consent Order for \$500.00 for failure, within ten (10) days after being broker released, to complete the required administrative measures for either change in affiliation or retirement in violation of T.C.A. § 62-13-312(b)(14) and Rule 1260-02-.02(2), plus attendance at a two day meeting of the Commission within 180 days of Respondent's execution of Consent Order.

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

5. 2012008341
Opened: 4/24/12
History: No Prior Disciplinary Action - Unlicensed

Complainant states that Respondent (an unlicensed individual from another state) operates a website which sells MLS broker packages to Tennessee residents. After an individual purchases a package, Complainant states that Respondent's site shares a portion of the fee with local real estate brokers to list the property on MLS. It appears, from examining the website, that Respondent's site offers this type of service in all states.

Respondent submitted a response stating that Respondent has evidence that the Complainant is a relative of a disgruntled licensed real estate broker in another state who used to do business with Respondent and is now filing complaints with regulators in every state to harm competitors and retaliate against Respondent. Respondent states that Respondent's site does not hold itself out as a broker in Tennessee, but instead provides real estate sellers with advertising services similar to newspaper listings. Respondent states that Respondent provides homeowners with web pages for advertising properties and "provide licensed real estate agents who offer discounted listing services with an advertising and marketing venue to reach sellers." Respondent states that the site provides advertising and marketing services and does not offer real estate brokerage services or receive fees conditioned on closing or calculated based on sales or offer prices. Based on the information contained within the file, there does not appear to be evidence of unlicensed activity on the part of Respondent.

Recommendation: Dismiss.

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

6. **2012008361**
Opened: 4/24/12
First License Obtained: 1/11/07
License Expiration: 3/31/14
E&O Expiration: 1/1/13
Type of License: Principal Broker
History: No Prior Disciplinary Action

This is the same complaint/Complainant as the previous matter. This matter was opened against Respondent (principal broker) who was also referenced in the complaint. Several of the properties featured on the previous Respondent's website also have listings on realtor.com with this Respondent's name on them.

Respondent submitted a response stating that the Complainant is a proxy for a licensed real estate broker in another state who previously had the same relationship with the site as this Respondent. Respondent also states that the previous Respondent's site operates a website for individuals wanting to sell their homes by owner where those sellers can advertise their properties. Respondent states that, for those sellers who want to feature their home on the MLS, the previous Respondent offers a service to match the individuals with a licensed broker in the state to list the properties on the MLS for a fixed fee. Respondent states that the previous Respondent is never paid any kind of payment contingent on closing or as a function of real estate sales or offering prices. Based on information obtained by a TREC auditor, it appears that

Respondent enters into a Listing Contract with an interested for sale by owner seller and is paid a flat fee for listing the property. It appears that Respondent pays a referral fee for these listings to a real estate firm, which is licensed in another state and is connected with the previous Respondent's website. Based on the information contained in the file, there does not appear to be a violation of TREC's statutes and/or rules by Respondent.

Recommendation: Dismiss.

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

7. 2012008491

Opened: 4/24/12

History: No Prior Disciplinary Action - Unlicensed

This is another complaint submitted by the same Complainant as the previous two matters against Respondent (broker in another state – unlicensed in TN). Complainant states that several websites sell a realtor.com package to Tennessee residents and then pay this Respondent to list the property on the MLS system.

Respondent submitted a response stating that the Complainant is a fake name made up by a real estate broker from another state, whom Respondent states is involved in an ongoing criminal and civil matter. Respondent states that Respondent is licensed in another state, and provides for sale by owner sellers with an MLS listing for the purposes of advertising the home on realtor.com. Respondent says that Respondent inputs the home on realtor.com, and then forwards all calls and e-mails to the seller, and no commission is being offered. Respondent states that Respondent does not provide real estate services outside of the state in which Respondent is licensed. Based on the information contained within the file, there does not appear to be evidence of unlicensed activity on the part of Respondent.

Recommendation: Dismiss.

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

8. 2012008801

Opened: 5/9/12

History: 2012013821 – Under review by legal - Unlicensed

Complainant is with a resort in Florida who is inquiring about Respondent (unlicensed LLC) and its involvement in the sale of a time-share to two (2) different parties. Complainant states that Complainant has a recorded deed stating that Respondent handled a sale through a limited power of attorney transferring the time-share to an individual who allegedly resided in Missouri. Complainant states that mail to this individual was returned to sender as “unable to forward.” When Complainant contacted Respondent to ask for another address, Complainant states that Complainant received another recorded deed through a power of attorney transferring the

property to different individuals, allegedly residing in Pennsylvania. Mail to those individuals was also returned. Complainant would like to know who owns the time-share and obtain a correct address so that Complainant can be paid past-due maintenance fees. Complainant provided copies of both power of attorneys and copies of the deeds prepared by Respondent.

Legal counsel contacted the original owners of the time-share, who stated that they dealt with and paid a company from another state to release them from their time-share, and Respondent handled the title transfer. It appears that the original owners executed a power of attorney and the time-share was transferred to the first individual and later executed another power of attorney and the time-share was transferred to the second individual. Respondent replied, stating that the two deeds were mistakenly prepared to deed both weeks to the two different individuals, and one week should have been transferred to the individual from Missouri and the other week to the couple from Pennsylvania. Respondent has indicated that it is working to resolve this mistake.

Based on the information contained within the file, it appears that the original owners arranged and paid the out of state company to relieve them of their time-share and Respondent only handled the title transfer paperwork, and, while Complainant may have a private action against Respondent for the mistake in the deeds, the information in the file does not appear to contain evidence of unlicensed activity on the part of Respondent.

Recommendation: Dismiss.

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

9. **2012013821**
Opened: 7/5/12
History: 2012008801 – Under review by legal – Unlicensed

10. **2012013801**
Opened: 7/13/12
First License Obtained: 6/21/11
License Expiration: 6/20/13
E&O Expiration: N/A
Type of License: Firm
History: No Prior Disciplinary Action

Complainants purchased a time-share in another state with the condition that a transfer of title would take place to release Complainants from their existing time-share. Complainants state that Respondent 1 (unlicensed entity – same Respondent as previous matter) was to facilitate the transfer. After several months, the required information to complete the transfer was received from the resort for Complainants' existing time-share and a quitclaim deed was filed by Respondent 2 (firm). Complainants state that Respondent 2 did not make payment to the resort for their existing time-share, resulting in that resort's refusal to acknowledge the transfer, and Complainants continue to be billed for maintenance fees, resulting in the matter being turned over to a debt collection agency. Apparently, representatives from Respondent 1 have been in

contact with the collection agency and promised that payment would be made, but it was not received by the collection agency.

Respondents submitted replies stating that Respondents are in agreement with the resort where Complainants purchased their new time-share for Respondents to help transfer properties taken in by that resort as trade-ins. Respondents deny that they have any contract with Complainants but state that Complainants' exchange contract is with the resort where they purchased their new time-share. Respondents state that the resort for Complainants' old time-share has changed its transfer requirements six (6) times in the last seven (7) months, resulting in deeds "constantly being kicked back" despite Respondents' attempts to transfer the properties. Respondents state that a refund was given to Complainants for the transfer fee to the resort for Complainants' old time-share. Respondent 2 attached copies of a letter from the resort where Complainants purchased their new time-share instructing Complainants on what to send to Respondent 2 to complete the transfer and the fee for same. Additionally, Respondent 2 included a time-share sales agreement signed only by Complainants wherein Respondent 2 was to buy Complainants' old time-share with no money to go to Complainants and Complainants to pay a transfer fee which was to go to the resort where the old time-share was held. Finally, Respondent 2 provided signed copies of a consent form, a power of attorney, and copies of a check from Complainants to Respondent 2 for the transfer fee and a check from Respondent 2 back to Complainants reimbursing the transfer fee. The information in the file does not evidence unlicensed activity on the part of Respondent 1, and any dispute that Complainants may have with Respondent 2 appears to be contractual in nature.

Recommendation: Dismiss.

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

11. 2012008571

Opened: 4/30/12

First License Obtained: 4/30/08

License Expiration: 4/29/14

E&O Expiration: Uninsured

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Respondent's license was inactive then placed into retirement status on 4/23/12

Complainant is a tenant in a property that is managed by a company owned by Respondent (retired affiliate broker). Complainant lists a number of issues with the management of the property, such as the company's utilization of a portal through which tenants can pay rent due to the fact that the company has a "digital office." Further, Complainant states that Respondent's license is not active, that the company is unlicensed with TREC (and has never been licensed) with no principal broker, and that unlicensed employees of the company are performing acts which require licensure.

Respondent submitted a response stating that Respondent's company is an LLC registered with the state with Respondent and one other member. Respondent claims that the company manages property that the owners of the company "either own entirely or have a substantial ownership interest." Respondent states that the company has never been represented as a real estate firm or being licensed by TREC and uses independent contractors to help with managing its properties. Additionally, Respondent states that the company does not have a principal broker and has never been licensed because it does not hold itself out as a company involved in real estate brokerage.

Complainant submitted an additional response with documentation. In response to Respondent's statements regarding owning or having a substantial ownership interest in all the properties they manage, Complainant researched the title and deed of trust for the property which Complainant is renting, and all documentation references ownership by another individual with no mention of Respondent, the company, or the company's other member. Complainant also attached printouts from the company's website and pointed to language that states that the company "...is a full-service real estate company that manages residential properties..." Further, the page states "Whether you are looking for your next place to call home or for someone to manage your real estate investment, you can trust in the experience of..." Upon researching several of the featured rentals from the printout on that state tax assessment website, the ownership information does not include the names of Respondent, the other member of the LLC, or the company. Respondent did not provide any proof to support any ownership interest that Respondent, the other member of the company, or the company may have in the subject property or any other property managed by the company.

Recommendation: Consent Order with civil penalty of \$1,000.00 for operating a property management firm without a license in violation of T.C.A. § 62-13-312(b)(14), T.C.A. § 62-13-309(a)(1)(A), which requires each office to have a real estate firm license, a principal broker, and a fixed location with adequate facilities for affiliated licensees, plus attendance at a two day meeting of the Commission within 180 days of Respondent's execution of Consent Order.

DECISION: The Commission voted to accept the recommendation of legal counsel and also include in Consent Order that Respondent shall cease and desist activity until properly licensed.

12. 2012008661
Opened: 5/17/12
First License Obtained: 3/26/08
License Expiration: 3/25/14
E&O Expiration: 1/1/13
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

Complaint opened by TREC based on information received soon after Respondent (affiliate broker) submitted an application for broker license. In Respondent's 2012 application for a broker license, Respondent responded "no" to the question of "have you ever been refused a

license or had a license revoked, suspended, reprimanded, or fined by any federal, state, or local government? (do not include motor vehicle license.),” and also answered “no” to the question of “have you ever had a complaint filed against you with any regulatory agency or with any court?” Respondent also responded “no” to these questions when Respondent applied for Respondent’s affiliate broker license in 2008 and in 2005. TREC received information that, in 2004, Respondent entered into a consent order with a regulatory agency within the state whereby Respondent’s pending application for registration with that agency was denied based on dishonest or unethical business practices, and Respondent was ordered to cease and desist Respondent’s activities, was permanently prohibited from applying or seeking registration through that agency, and was prohibited from applying for licensure administered by and/or handled through the Department of Commerce and Insurance.

Via e-mail, Respondent acknowledged receipt of complaint but did not submit a response. At this time, Respondent has passed the broker exam and has submitted an application for a broker’s license, which is on hold due to Respondent’s failure to disclose this information.

Recommendation: Consent Order for denial of Respondent’s broker license application and for voluntary revocation of Respondent’s affiliate broker license based on Respondent’s substantial and willful misrepresentations on Respondent’s three (3) license applications with the Commission in violation of T.C.A. § 62-13-312(b)(1) and Respondent’s failure to respond to a complaint filed with the Commission in violation of T.C.A. § 62-13-312(b)(14) and § 62-13-313(a)(2).

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

13. 2012009481

Opened: 5/17/12

History: No Prior Disciplinary Action - Unlicensed

Complainants are the owners of a property who entered in to a rental management agreement with Respondent (unlicensed entity). Complainants state that Respondent failed to provide accounting statements or rent checks for a period of several months. Complainants state that, upon researching Respondent, Complainants found that Respondent does not hold a firm license with TREC and is not licensed with the state as an LLC as is stated in Complainants’ rental management contract with Respondent. Complainants attached a copy of the contract as well as a letter from Complainants to Respondent terminating the rental management contract and copies of the rental calendar for Complainants’ property showing the rental bookings for the months for which Complainants have not received rental payments.

Respondents submitted a reply in May 2012, stating that a check has been sent to Complainants for the rental proceeds owed to them. Respondent also states that it is an “out of town company” that manages hotels that was asked to take over the management of the resort, and Respondent was unaware of the new VLS laws and received incorrect information from an attorney, resulting in Respondent not being “filed correctly with the proper authorities.” The individual responding for Respondent states that he has taken the class to be the designated agent, and all employees

mentioned in the complaint have been released and training of a new management team is in place. Respondent asked for thirty (30) days to fix the problems. As of July 25, 2012, it does not appear that Respondent has applied for a VLS firm license.

Recommendation: Consent Order for \$1,000.00 for unlicensed activity in violation of TCA § 62-13-104(b)(2).

DECISION: The Commission voted to accept the recommendation of legal counsel and also include in Consent Order that Respondent shall cease and desist activity until properly licensed.

14. 2012009861

Opened: 5/17/12

History: No Prior Disciplinary Action - Unlicensed

Complainant is a licensee who was contacted by an individual from another state, notifying Complainant that the individual suspected that a scammer was using Complainant's name and license number (and directing people to search the license online) to solicit time-share purchases. Complainant attached a copy of an e-mail from Respondent referencing the process and including Complainant's name and license number as well as the name and license number of another licensee. Complainant also attached a copy of the letter guaranteeing to the recipient a purchase of the recipient's time-share. It includes a signature, which is supposed to be that of Complainant and includes an address and phone number in Tennessee.

A copy of the complaint was sent to Respondent via certified mail at the address provided on correspondence from Respondent, which was returned with the notation of "Return to Sender, No Such Number, Unable to Forward." A TREC auditor confirmed that there is no office at the address provided on Respondent's materials.

Recommendation: Refer to District Attorney's office and close.

DECISION: The Commission voted to accept the recommendation of legal counsel and to close and flag Respondent's file.

15. 2012009701

Opened: 5/14/12

First License Obtained: 6/22/06

License Expiration: 6/21/12

E&O Expiration: 1/1/13

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant submitted a copy of an indictment against Respondent (affiliate broker) from a federal court in another state and stated that Respondent pled guilty in 2011 to one of the charges. Complainant says that Respondent's license should be revoked based on the guilty plea.

Respondent submitted a response stating that the parties are currently in litigation, which is the reason for Complainant's complaint. Respondent denies that Respondent has been (or will be) convicted of a felony and, therefore, sees no reason for discipline of Respondent's license.

Based on information received from the U.S. Attorney involved in Respondent's case, Respondent entered a guilty plea to a felony charge, but Respondent has not been convicted and will not be convicted until sentencing after the trial of the remaining defendants, at which Respondent is supposed to testify. Until after the trial and sentencing, Respondent's guilty plea can be withdrawn if Respondent elects to do so. Based on the fact that Respondent has not yet been convicted of this felony charge, there does not appear to be, at this time, a basis to discipline Respondent's license under the provisions of the Broker Act.

Recommendation: Dismiss.

DECISION: The Commission voted to issue a Consent Order for voluntary surrender of Respondent's license based on T.C.A. § 62-13-312(b)(12)

16. 2012009771

Opened: 5/14/12

First License Obtained: 8/21/97

License Expiration: 3/21/14

E&O Expiration: 1/1/13

Type of License: Affiliate Broker

History: 2012009781 – Under review by legal

17. 2012009781

Opened: 5/14/12

First License Obtained: 8/21/97

License Expiration: 3/21/14

E&O Expiration: 1/1/13

Type of License: Affiliate Broker

History: 2012009771 – Under review by legal

Both complaints are opened against this Respondent (affiliate broker) based on the complaint of an individual who entered into a lease agreement with Respondent. Complainant alleges that Complainant gave Respondent a security deposit check at move-in, and after moving out with no walk through, Complainant never received a return of the security deposit. Complainant states that, when asked about the deposit, Respondent stated that Respondent had given the deposit money to the owner and the owner had decided to keep the deposit due to alleged damages. Complainant disputes any damages and states that Respondent has not explained why the deposit was not kept in an escrow account or explained exactly why the owner decided not to return the

deposit. The second complaint was opened because, based on the complaint and the lease agreement provided by Complainant, it appears that Respondent, while affiliated with a real estate firm, was also managing residential property through another company on the side.

Respondent submitted a response stating that the owner of the subject property had listed the home with Respondent's real estate firm for a period before deciding to rent. Then Complainant entered into a lease agreement with Respondent through Respondent's other company and paid the security deposit to Respondent. Respondent states that the owner then instructed Respondent to give the security deposit to the owner. The lease agreement does not state that the security deposit was to go to the owner. Respondent states that Respondent collected rent and passed it all on to the owner and was merely "trying to help out a client with, hopefully, a later reward of listing the home for sale." At move-out, the owner did a walk through and told Respondent there were damages greater than the security deposit amount, and the owner was keeping the deposit. The owner prepared a damages list, but would not give Respondent permission to provide the list to Complainant due to litigation threats. Respondent provided the list, and also stated that Complainant had a dog on the property without owner's knowledge and no pet fee was paid. Respondent states that Complainant did not ask about the damages list or walk through but only threatened litigation.

As to the complaint regarding an unlicensed property management firm, Respondent admits acting as a property manager for a small number of clients over the years, but states that most of these services were performed without any direct fees or consideration for the services other than the hope of a future listing. As a result of the complaint, Respondent states that all future security deposits will be held with Respondent's broker and all current security deposits will be transferred to Respondent's broker, all rents made payable to Respondent's firm, and all documents will reference Respondent as an affiliate broker with Respondent's firm.

Complainant submitted an additional response that disputes the list of damages prepared by the owner, the statement regarding the owner's knowledge of the dog, and Complainant re-states that Complainant did ask about the walk through and the damages list.

Recommendation: Consent Order with civil penalty of \$1,500.00 for failure, within a reasonable time, to account for or to remit any moneys coming into the licensee's possession that belong to others in violation of T.C.A. § 62-13-312(b)(5)(14) and § 62-13-403(6) and Rule 1260-02-.09(1) requiring that rental deposits must be held in separate account, and for operating a property management firm without a license in violation of T.C.A. § 62-13-312(b)(14), T.C.A. § 62-13-309(a)(1)(A) which requires each office to have a real estate firm license, a principal broker, and a fixed location with adequate facilities for affiliated licensees, and Rule 1260-02-.01(1) which states no licensee shall engage in any real estate activity in any office unless there is a principal broker who devotes his full time to the management of such office, plus attendance at a two day meeting of the Commission within 180 days of Respondent's execution of Consent Order.

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

18. 2012009801
Opened: 5/14/12
First License Obtained: 7/21/10
License Expiration: 7/20/14
E&O Expiration: 1/1/13
Type of License: Principal Broker
History: No Prior Disciplinary Action

TREC opened complaint against Respondent (principal broker of the previous Respondent) for failure to supervise based on the facts above.

Respondent submitted a response stating that, until a copy of the complaint was received, this Respondent had no knowledge of the previous Respondent's residential rental activities, as these activities were not conducted through this Respondent's firm (and no security deposits or commissions from this rental activity was received by this Respondent's firm), but through the previous Respondent's side business. This Respondent submitted a copy of the independent contractor agreement between the previous Respondent and this Respondent's real estate firm, which stated that the previous Respondent was to conduct all real estate business through the firm. This Respondent states that, when the complaint was received, this Respondent instructed the previous Respondent to cease and desist these rental activities unless done through this Respondent's firm. Based on this information, it appears that the previous Respondent's rental activities were concealed from this Respondent, and upon learning of those activities, this Respondent instructed the previous Respondent to cease these activities unless performed through this Respondent's firm under Respondent's supervision.

Recommendation: Dismiss.

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

19. 2012009881
Opened: 5/14/12
First License Obtained: 2/17/09
License Expiration: 2/16/13
E&O Expiration: 1/1/13
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

Complainant was a potential buyer of a property listed by Respondent (affiliate broker). Complainant states that, after viewing the property, Complainant's agent called Respondent to inform of an offer and e-mailed the offer that afternoon "before 5:30." Complainant states that Respondent informed the next morning that the property was already under contract. Complainant states that Respondent's spouse's client was the purchaser. Complainant states that neither Complainant nor Complainant's agent were aware that there were multiple offers or Complainant would have made a full price offer.

Respondent submitted a response with documentation. Respondent denies that Respondent's spouse's client was the purchaser of the home and states that none of the potential buyers were brought by Respondent's spouse. Respondent attached copies of all three (3) offers received on the property to confirm this. Respondent also provided copies of e-mails confirming that all offers (including Complainant's) were presented to the sellers. Respondent states that, though Complainant's offer came first, it had multiple contingencies, and the second offer received was an all cash offer with no stipulations. Respondent states that Respondent was instructed by the sellers to decline Complainant's offer and proceed on negotiating with the second offer, and Respondent attached an e-mail to Complainant's agent reflecting this. Said e-mail did not state that the property was under contract, but said that the seller had chosen to "work with" and negotiate with the other offer based on its strength. Respondent states that, in the end, the potential buyer with the second all cash offer and the seller were not able to come to an agreement, and the offer was terminated with sellers choosing to accept a third written offer which was closer to list price with no stipulations. Respondent included a letter from the seller confirming Respondent's version of the events. Based on the information contained within the file, there appears to be no violation of TREC's statutes and/or rules by Respondent.

Recommendation: Dismiss.

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

20. 2012010311

Opened: 5/23/12
First License Obtained: 3/18/08
License Expiration: 3/17/14
E&O Expiration: 1/1/13
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

21. 2012010312

Opened: 5/23/12
First License Obtained: 7/31/03
License Expiration: 10/30/13
E&O Expiration: 1/1/13
Type of License: Principal Broker
History: No Prior Disciplinary Action

Complainant met with Respondent 1 (affiliate broker) and states that Complainant signed a 1 page form authorizing Respondent 1 to act as Complainant's agent. Complainant states that Respondent 1 submitted an offer on a property on behalf of Complainant. Complainant states that Complainant was never provided with copies of the documents that Complainant had signed. Complainant's offer was not accepted, and Complainant made 2 subsequent offers on other properties. Complainant states that, after becoming dissatisfied with Respondent 1's services, Complainant contacted Respondent 2 (principal broker) to ask for a copy of the buyer's representation agreement, which was sent. Complainant states that it is not Complainant's

signature on the buyer's representation agreement. Complainant wants to be released from the buyer's representation agreement.

Respondents submitted a reply stating that Complainant was looking to purchase a HUD owned home, and Respondent 1 put Complainant in touch with a lender and showed Complainant a number of homes. Respondent 1 supplied documentation showing that Respondent 1 stayed in closed communication by e-mail with Complainant and submitted a number of offers on behalf of Complainant (none of the offers appear to have been accepted) in the weeks that Respondent 1 represented Complainant. Respondent 1 states that copies of documents were provided to Complainant. Respondents state that Respondent 1 represented Complainant to the best of Respondent 1's ability and did nothing improper, but Respondents determined that it was best to release Complainant from the buyer's agreement. Respondent 1 composed an e-mail to Complainant (sent one day after Complainant filed this complaint with TREC) with a release agreement, which was signed and returned. Based on the information contained within the file, there does not appear to be a violation of TREC's statutes and/or rules by Respondents.

Recommendation: Dismiss.

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

22. 2012010721

Opened: 6/4/12

First License Obtained: 7/11/08

License Expiration: 7/10/14

E&O Expiration: 1/1/13

Type of License: Affiliate Broker

History: 2011014781 – Closed \$1,000 CO (E&O)

Complaint opened by TREC against Respondent (affiliate broker) for Respondent's failure to satisfy an Agreed Citation sent to Respondent for failure to timely complete administrative steps. Based on the information in the file, it appears that Respondent was broker released by Respondent's previous broker in August 2011, as shown in a completed TREC 1 form received in August 2011. At that time, Respondent was sent a letter advising that Respondent had 10 days to either retire Respondent's license or transfer to another firm. Respondent submitted a TREC 1 form affiliating with Respondent's current firm in May 2012. Respondent was sent a copy of an Agreed Citation for failure to timely take administrative steps, which Respondent signed for in May 2012. To date, Respondent has not responded to or paid the Agreed Citation.

Recommendation: Consent Order for \$300.00 for failure to timely complete administrative measures as required by the Commission for either change of affiliation or retirement in violation of T.C.A. § 62-13-312(b)(14)(16) and Rule 1260-02-.02(2) plus attendance by Respondent at a two day meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.

DECISION: The Commission voted to accept the recommendation of legal counsel with the alteration that the Consent Order amount be \$500.00 instead of \$300.00.

23. 2012011791
Opened: 6/4/12
First License Obtained: 7/21/00
License Expiration: 2/7/13
E&O Expiration: 7/13/13
Type of License: Firm
History: 201001012 – Closed \$1,000 CO

24. 2012011792
Opened: 6/4/12
First License Obtained: 3/24/08
License Expiration: 3/23/13
E&O Expiration: N/A
Type of License: Time-Share Registration
History: 2012011882 – Under review by legal
2012012771 – Under review by legal
2012013981 – Under review by legal

Complainant attended a time share presentation and purchased a time-share with Respondents (Respondent 1 is a firm and Respondent 2 is a time-share registration). Complainant alleges a number of verbal misrepresentations on the part of Respondents' representatives, including the length of the presentation, the length of the cruise which was promised for attending the sales presentation, selling the time-share back, the time-share increasing in value, payment for attendance at an orientation would be reimbursed (later found that reimbursement was dependent upon bringing a guest), and failure to notify of the contract cancellation period. Complainant provided contracts and related documentation and wants time-share contract cancelled.

Respondent submitted a reply stating that potential purchasers are only required to stay the stated period of time, but sometimes stay longer based on interest in buying. Further, Respondents deny any verbal misrepresentations and point to documents signed/initialed by Complainant which address the various issues raised by Complainant. As to the orientation, Respondents claim that there were no misrepresentations regarding bringing a friend and payment to Complainant for doing so, and point to materials outlining the offer. Respondents denied Complainant's request for contract cancellation due to the request being outside of the period specified within the contract that Complainant signed. Based on the information contained within the file, there is no evidence to substantiate a violation of TREC's statutes and/or rules by Respondents.

Recommendation: Dismiss.

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

25. **2012011881**
Opened: 7/2/12
First License Obtained: 8/16/11
License Expiration: 8/15/13
E&O Expiration: 7/13/13
Type of License: Time-Share Salesperson
History: No Prior Disciplinary Action
26. **2012011882**
Opened: 7/2/12
First License Obtained: 3/24/08
License Expiration: 3/23/13
E&O Expiration: N/A
Type of License: Time-Share Registration
History: 2012011792 – Under review by legal
2012012771 – Under review by legal
2012013981 – Under review by legal
27. **2012011891**
Opened: 7/2/12
First License Obtained: 8/18/06
License Expiration: 4/12/14
E&O Expiration: 7/13/13
Type of License: Principal Broker
History: 201201281 – Under review by legal

Complainants were owners of a time-share in another state and met with Respondent 1 (time-share salesperson) while on vacation at a resort in Tennessee. Respondent 2 is the time-share registration, and Respondent 3 is the principal broker. Complainants state that Respondent 1 made verbal misrepresentations, including telling Complainants that they could switch their week system to a points system with Respondents, that their existing time-share would switch to the resort Complainants were staying at in Tennessee, and that Complainants would get back their maintenance fee for the year paid for their existing time-share and their transfer fee. Further, Complainants allege that Respondent 1 verbally misrepresented the perks of Respondents' rewards program. Complainants allege that after the presentation, Respondent 1 did not answer their telephone calls. Additionally, Complainants allege that they were unaware of the contract cancellation period.

Respondents submitted a reply attaching signed documents relating to the subject sale. Respondents deny any verbal misrepresentations, pointing to documentation signed/initialed by Complainants indicating understanding regarding Respondents' points program, which states that it is a one-time annual exchange and does not represent a time-share ownership conveyance, as well as the rewards program, which states that the discounts and benefits are subject to the conditions of the suppliers of the benefits. Respondents also reference the signed/initialed statement of understanding. The contract includes a provision regarding the cancellation period.

While Respondents denied any inappropriate activity, Respondents stated that they are in agreement with cancellation of Complainants' contract due to apparent misunderstanding. Based on the information contained within the file, there is no evidence to substantiate a violation of TREC's statutes and/or rules by Respondents.

Recommendation: Dismiss.

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

28. 20120112771

Opened: 7/6/12

First License Obtained: 3/24/08

License Expiration: 3/23/13

E&O Expiration: N/A

Type of License: Time-Share Registration

History: 2012011792 – Under review by legal

2012011881 – Under review by legal

2012013981 – Under review by legal

29. 2012012772

Opened: 7/6/12

First License Obtained: 9/28/94

License Expiration: 6/18/13

E&O Expiration: N/A

Type of License: Firm

History: 2012013982 – Under review by legal

30. 2012012811

Opened: 7/6/12

First License Obtained: 8/18/06

License Expiration: 4/12/14

E&O Expiration: 7/13/13

Type of License: Principal Broker

History: 2012011891 – Under review by legal

Complainants were time-share owners who met with representatives for Respondents (Respondent 1 is a time-share registration, Respondent 2 is a firm, and Respondent 3 is the principal broker). Complainants want a contract cancellation based on alleged misrepresentations on the part of Respondents' representatives, including purchasing a program to upgrade Complainants' points level whereby maintenance fees would stabilize, Complainants would not have to pay high property taxes, and no special assessments. Complainants also state that they were told that they would have a personal account manager, that they would have no payments the following month and could refinance with their bank.

Respondents submitted a reply stating that Complainants have been owners since 1989 and have made six (6) additional purchases prior to the subject purchase in 2011 in Tennessee. According to Respondent, Complainants traded their existing contracts to upgrade to an ownership plan providing Complainants with VIP status. Respondents point to documentation signed/initialed by Complainants to show that the date of the first payment was specified and the terms of the membership Complainants purchased. Respondents deny any misrepresentations and state that the terms of the purchase were specified in the documents signed by Complainants. Further, Respondents state that Complainants have continued to use their ownership.

Based on the information contained within the file, there is no evidence to substantiate a violation of TREC's statutes and/or rules by Respondents.

Recommendation: Dismiss.

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

31. 2012013981

Opened: 7/6/12

First License Obtained: 3/24/08

License Expiration: 3/23/13

E&O Expiration: N/A

Type of License: Time-Share Registration

History: 2012011792 – Under review by legal

2012011881 – Under review by legal

2012012771 – Under review by legal

32. 2012013982

Opened: 7/6/12

First License Obtained: 9/28/94

License Expiration: 6/18/13

E&O Expiration: N/A

Type of License: Firm

History: 2012012772 – Under review by legal

Complainant was an existing time-share owner who attended a sales presentation in Tennessee in 2011 with Respondents (Respondent 1 is a time-share registration and Respondent 2 is a firm). Complainant and friends listened to the sales presentation and indicated frustration with the monthly costs and use of points. Complainant alleges that Respondent told Complainant about a program which at no cost would provide a "personal representative" to oversee the account and would reduce maintenance fees, so Complainant signed a contract. Several months later, dissatisfied with the assistance provided in the program, Complainant requested cancellation and refund, which was denied. Soon after, Complainant and friends attended a presentation in another state where Complainant again indicated dissatisfaction with the costs and program, and Complainant was persuaded to sign up for a second program for more points with a Bill Me

Later option. Later, due to dissatisfaction with the second program, Complainant asked about cancelling the contract and was told no. Complainant wants cancellation of both contracts.

Respondents submitted a reply stating that Complainant has been an owner since 2005 and has made multiple purchases since that time. Respondents deny any misrepresentations or wrongful conduct and attaching documents signed/initialed by Complainant outlining the terms of these additional purchases. Respondents state that Complainant is given a contract rescission period, which Complainant did not utilize, and the documentation does not justify contract cancellation. It appears, from the information within the complaint as well as the documentation relating to the second sale, the second sale took place outside of Tennessee for a time-share interest outside of Tennessee. Further, based on the information contained within the file, there is no evidence to substantiate a violation of TREC's statutes and/or rules by Respondents.

Recommendation: Dismiss.

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

33. 2012012381

Opened: 7/10/12

First License Obtained: 8/5/04

License Expiration: 6/22/13

E&O Expiration: 1/1/13

Type of License: Time-Share Salesperson

History: No Prior Disciplinary Action

Complaint opened by TREC against Respondent (time-share salesperson) for failure to timely complete administrative measures. It appears that Respondent was broker released and did not affiliate with a new broker until almost five (5) months later. Respondent was sent an Agreed Citation, which included a civil penalty for this violation, and because Respondent had not signed and returned said Agreed Citation, this matter was opened in legal.

Soon after this matter was opened in legal, in response to the complaint, Respondent executed the Agreed Citation and paid the civil penalty included therein.

Recommendation: Dismiss.

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

34. 2012012511

Opened: 7/6/12

First License Obtained: 10/2/06

License Expiration: 10/1/12

E&O Expiration: 1/1/13

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complaint opened by TREC against Respondent (affiliate broker) for failure to timely complete administrative measures. It appears that, after being broker released, Respondent did not affiliate with a new broker for almost five (5) months. Respondent was sent an Agreed Citation, which included a civil penalty for this violation.

Because Respondent had not signed and returned said Agreed Citation, this matter was opened in legal. Soon after this matter was opened in legal, Respondent executed the Agreed Citation and paid the civil penalty included therein.

Recommendation: Dismiss.

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