

TENNESSEE REAL ESTATE COMMISSION MINUTES

AUGUST 7–8, 2013

The Tennessee Real Estate Commission convened on Wednesday, August 7, 2013 at 9:10 a.m. in Meeting Room 1A of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, Tennessee 37243. The following Commission Members were present: Chairman William “Bear” Stephenson, Vice-Chairman John Griess, Commissioner Grover Collins, Commissioner Janet DiChiara, Commissioner Michelle Haynes, Commissioner Wendell Alexander and Commissioner Austin McMullen. Commissioner David Flitcroft was absent from the meeting. Others present: Executive Director Eve Maxwell, Education Director Steve McDonald, Assistant General Counsel Julie Cropp and Administrative Secretary Kelly Hestand.

Ms. Maxwell read the following statement into the record: This meeting’s date, time and location have been noticed on the TN Real Estate Commission’s website, included as part of this year’s meeting calendar, since September 7, 2012. Additionally, the agenda for this month’s meeting has been posted on the TN Real Estate Commission’s website since Thursday, August 1, 2013. Also, this meeting has been noticed on the tn.gov website since Friday, August 2, 2013.

The first order of business was the adoption of the agenda for the August 2013 Commission meeting. Ms. Maxwell stated that she needed to update the Board members on the Official Manual proposal and suggested it be added to her report between the discussion of the 2014 schedule and Complaint Report. **Commissioner Alexander made a motion to adopt the August 2013 agenda as amended; seconded by Commissioner McMullen; unanimous vote; motion carried.**

The next order of business was the adoption of the May, June and July meeting minutes. Each month was voted on individually.

Commissioner DiChiara made a motion to approve the minutes for the May 2013 minutes; seconded by Commissioner Collins; vote: 4 yes, 3 abstained (Commissioners Collins, McMullen and Griess abstained because they were not present at the May 2013 meeting.); motion carried.

Commissioner McMullen made a motion to approve the June 2013 meeting minutes; seconded by Commissioner DiChiara; unanimous vote; motion carried.

Commissioner DiChiara made a motion to approve the July minutes with the correction by Staff of one typographical error adjustment pointed out by Commissioner Griess; seconded by Commissioner McMullen; unanimous vote; motion carried.

INFORMAL APPLICANT APPEARANCE

Jason Moore, applicant, appeared with his potential principal broker Judd “Christian” Dyle of Crye-Leike, South in Cookeville to ask that he be approved to apply for an Affiliate Broker license. Mr. Moore disclosed the following convictions to the Commission: Prescription Fraud in 2001, Violation of Probation, Unauthorized Use of Vehicle, Driving on a Suspended License, Evading Arrest and Theft Under \$500.00 in 2002. **Commissioner DiChiara made a motion to approve Mr. Moore’s request; seconded by Commissioner Collins; unanimous vote; motion carried.**

EXECUTIVE DIRECTOR’S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

DISCUSSION OF ADVERTISING

Ms. Maxwell presented, on the overhead projector the following examples of advertising. The names in the advertisements are fake names but are based on ads that are actually in use in the market right now.

There are four examples that were presented and discussed. They follow on the next pages along with an explanation of the violations therein.

Continued on next page...

FOR SALE

ABE BORSEN

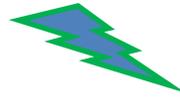
591-873-5478

JOBE BORSEN

**Grouse Crow
Realty**

591-873-5978

591-873-8500



**BORSEN
PROPERTIES-
PUTTING THE REAL
IN REAL ESTATE**

The licensed firm name is Grouse Crow Realty d/b/a Durango Properties. Abe and Jobe Borsen are affiliate brokers working as a husband and wife team for Grouse Crow Realty d/b/a Durango Properties. Borsen Properties is an unlicensed entity. The firm name is smaller than the licensee's names.

GROUSE CROW



ABE BORSEN

BIZZY WANSEN

591-873-5978

www.BorsenWansen.com

BIZZY WANSEN - ABE BORSEN TEAM

PUTTING THE REAL IN REAL ESTATE

Licensee's phone number; firm name not as licensed; team emphasis

FOR SALE

BIZZY WANSEN - ABE BORSEN TEAM

PUTTING THE REAL IN REAL ESTATE

BIZZY WANSEN

ABE BORSEN

591-873-5978

591-873-4785

NOTHING REPLACES EXPERIENCE

Licensee's phone number; no firm name; team emphasis

FOR LEASE

JQ REALTY SUPER TEAM

1 REAL ESTATE GROUP

591-647-BEST

JOE "JQ" QUINN

www.JQ#1.com

LEASED

No Firm Name; only team name; claim of #1; Phone Number is cell of affiliated licensee

The Commission discussed what name licensees should be required to include on their advertising. It was discussed that many firms have d/b/a names listed on their TREC files. As it stands right now, per Ms. Maxwell's explanation, a licensee must use the name as registered with TREC. Therefore, if someone was licensed as Crye-Leike South d/b/a Crye-Leike, then they could use the entire name or just the d/b/a portion but not just the first portion. The Commission discussed how this could be very important with large franchises. There may be several Keller Williams, ReMax or Crye-Leike, etc... offices in the larger markets and the average consumer needs to be able to differentiate between the different franchised offices. Commissioner Alexander stated that firms and licensees need a certain amount of time to get their houses in order because they may have invested a lot of money into advertising and they need some time to phase out the incorrect advertising.

Commissioner Griess made a motion that a policy be created that states that, at a minimum, the inclusion of the firm's d/b/a as licensed with TREC be required in all advertising; seconded by Commissioner DiChiara; vote: 6 yes, 1 no (Commissioner McMullen voted no.); motion carried.

Ms. Cropp asked that instead of handling the issue as a policy statement, that she recommended that it should be addressed as an interpretation of the Advertising Rule 1260-02-.12.

Commissioner Griess made a motion that the Commission's interpretation of Rule 1260-02-.12 is any mention of the term "firm name" with the advertising rule means, at a minimum, inclusion of the firm's d/b/a as licensed with TREC in ALL advertising; seconded by Commissioner Collins; discussion; vote: 6 yes, 1 no (Commissioner McMullen voted no.); motion carried.

Conclusion therefore follows:

TENN. COMP. R. & REGS. 1260-02-.12 – Advertising Rule

- Commission interpretation of rule: any mention of the term "firm name" within the Advertising rule means, at a minimum, inclusion of the firm's d/b/a as licensed with the Tennessee Real Estate Commission in said advertising.

Assistant General Counsel Robyn Ryan, Litigation Attorney entered the room and was recognized by Chairman Stephenson to address the Commission.

Ms. Ryan addressed the Commission regarding the special Summary Suspension Informal Hearing that was scheduled for the following day. She advised that she had just heard from the Respondent's attorney and he had told Counsel Ryan that Mr. Griffey, the Respondent, had a neurological appointment that conflicted with his need to be before the Board the next morning. She stated that Mr. Griffey had asked, through his attorney, if it was acceptable for the conference to be held at 1:30 the following day instead of 9:00 a.m. so that he could attend and participate. Ms. Ryan advised the Board that she told the attorney that she would bring the request before the Board so that they could formally decide and she could formally report back

to him on the Commission's decision. The Commission discussed the matter and there would not be a quorum available the following day at 1:30 p.m. so it could not be heard then.

Commissioner Stephenson asked what impact there would be if the Informal Hearing was postponed for another month. Ms. Ryan explained that a Summary Suspension Informal Hearing is held when it is determined that a licensee could be a danger to the public health, safety and welfare and it is therefore imperative that a license be summarily suspended immediately to protect the interests of the public. If the Informal Hearing were postponed, it would undermine legal counsels' opinion that he is an immediate danger to the public.

Commissioner Alexander made a motion that the Board move forward with the Summary Suspension Informal Hearing in the morning as scheduled; seconded by Commissioner Haynes; Commissioner Griess made a friendly amendment to ask the Respondent if he can appear during the current day's meeting in the afternoon and if he can then the agenda could be amended; Commissioner Alexander and Haynes accepted the friendly amendment; unanimous vote; motion carried.

The Commission returned to their discussion of advertising. They shifted their focus to team advertising and branding. Ms. Maxwell, when called upon for her suggestions, advised that every state seems to have problems with team advertising. She advised that some states have set up very specific guidelines on what words can be included in a team name (i.e. they cannot use "real estate", "realty" and so on). Commissioner Griess stated that he sees two primary issues with team advertising. One is the size of font allowable and whether TREC wants to follow the lead of other states and determine which words can be used when naming teams. Commissioner DiChiara stated that she believes that the team name would need to be the same size or smaller font than the firm name. Commissioner McMullen asked about slogans and what size requirements could be placed on the use of them. The Commission, by consensus, determined that because of the scope of the discussion, the remainder should be deferred until the following month. Commissioner Alexander recommended that Ms. Maxwell, Ms. Cropp and Commissioner Griess work together to put together some proposed guidelines and recommendations to present to the full Commission at the September meeting.

AUDITOR PROCESS

Ms. Maxwell had previously sent the Commissioners via email a copy of the revised mail-in audit form and it was also supplied to them via their iPads at the meeting. Commissioner DiChiara suggested that she and Commissioner Haynes, and whoever else would like to take part, could complete the audit themselves. They could report on how long it takes to complete the audit and what, if anything is confusing and that might be the best way to edit the audit form. Ms. Maxwell agreed that would be very useful. Commissioner Alexander stated that on Page 4 of 12 that the words trust account should instead say trust and/or escrow account. He asked where the Administration was on hiring someone to handle the audits. She stated that she thinks that when the form is approved and ready to go, the hiring process will be able to begin. It was determined that Commissioners DiChiara and Haynes would complete the audit form and report back to Ms. Maxwell. Commissioner Alexander stated that once that is done, it is his recommendation that they move forward with the new process.

2014 MEETING SCHEDULE

Commissioner Griess made a motion that the following schedule be adopted for the calendar year 2014; seconded by Commissioner McMullen; discussion regarding locations other than Nashville; Commissioner Alexander made a motion to amend and have the May 8-9, 2013 meeting in Jackson in conjunction with the 40 year breakfast for West Tennessee honorees; vote on amendment passed unanimously; motion as amended passed unanimously. The meeting schedule follows. The location for the October 2013 meeting in East Tennessee will be determined at a later date.

TENNESSEE REAL ESTATE COMMISSION 2014 COMMISSION MEETING DATES

Davy Crockett Tower
Meeting Room 1A
500 James Robertson Parkway
Nashville, Tennessee 37243
(Unless Noted Otherwise)

January 8 & 9, 2014 (Wednesday & Thursday)

February 5 & 6, 2014 (Wednesday & Thursday)

March 5 & 6, 2014 (Wednesday & Thursday)

April 2 & 3, 2014 (Wednesday & Thursday)

May 8 & 9, 2014 (Thursday & Friday) in Jackson

June 4 & 5, 2014 (Wednesday & Thursday)

July 2 & 3, 2014 (Wednesday & Thursday)

August 6 & 7, 2014 (Wednesday & Thursday)

September 10 & 11, 2014 (Wednesday & Thursday)

October 9 & 10, 2014 (Thursday & Friday) in East Tennessee

November 5 & 6, 2014 (Wednesday & Thursday)

December 3 & 4, 2014 (Wednesday & Thursday)

MANUAL UPDATED PROPOSAL

Ms. Ostrander, of Lexis Nexis, sent Ms. Maxwell the following proposal to present to the Administration and the Commission. Ms. Maxwell stated that she had presented the following information as discussed to the Administration and they had agreed.

Marketing Offset Price and 2 year Contract

In addition to the guaranteed retail price and free shipping, LexisNexis offers an additional 53% discount over contract pricing to TREC, a dollar amount of \$11,350.50. Furthermore, if TREC and LexisNexis mutually agree to publish a supplement(s), TREC to receive 50 paper and 50 eBook copies free of charge. In return, TREC to provide the following:

- A link meeting LexisNexis specifications on TREC website directing licensees to LexisNexis for purchase of Official Manual.
- Marketing mutually agreed upon between TREC and LexisNexis in all TREC newsletters, both hard and online.
- A two book contract. Publications may be in consecutive years or spaced up to three years apart. For example, Official Manual could be published in 2013 and 2014 or in 2013 and 2016. Same terms and conditions would apply to both publications including price to TREC. Retail price may be raised in a range of \$2 - \$4 for second publication. First book must be published no later than December 31, 2014.
- If LexisNexis does not obtain renewal of the Tennessee Code Annotated Contract, TREC will have no obligation to publish second book with LexisNexis.

Prices (50 print & eBook):	Commodity/ Book Paper Unit	
		Price
Marketing Offset		
And 2 Year Contract	\$10,000.00	\$200.00

Commissioner Alexander made a motion that TREC make the purchase as proposed; seconded by Commissioner Haynes; Commissioner McMullen clarified that it is \$10,000 for two printings and not \$20,000 for both; Ms. Maxwell stated she could clarify that with Ms. Ostrander; Commissioner Alexander clarified that the intent of his motion was \$10,000 for both books/printings; unanimous vote; motion carried.

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

- **Complaint Statistics Report** – Ms. Maxwell presented complaint statistics to the Commission. As of July 31, 2013 TREC had a total of 122 open complaints. There were 30 new complaints in July 2013. There were 106 complaints in the legal department and 16 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2012-2013 is 25. The total civil penalties that were collected in July 2013 were \$30,760.00.

- **ERRORS & OMISSIONS INSURANCE UPDATE**

Ms. Maxwell updated the Commissioners on the administrative measures that were taken to remove licensees, who did not have a current E&O policy, from Active or Broker Release to a Suspension status. She explained that the letter was sent on July 1, 2013 to notify the licensees that their license was suspended pursuant to the new statute that allows for automatic suspension of a licensee's license if they do not have current E&O in place. Ms. Maxwell and the Board discussed what action can be taken to contact Principal Brokers who are in a suspended status and may still be practicing. Ms. Maxwell advised that we cannot automatically suspend or revoke the principal broker's firm license but they can be placed in Problem Status. It was suggested that the firms be called and simply see if the firms are in operation. This is for those firms with principal brokers who are in a suspended status. This concluded the discussion for the month.

Ms. Ryan came back into the meeting room to follow up with the Commission on whether Mr. Griffey could come for the afternoon session of the meeting instead of the next day. She advised that he, the Respondent, could not attend the afternoon session but instead his legal counsel would be present in the morning if he cannot. Ms. Ryan advised the Chairman that the following day Chief Legal Counsel Mark Green would need about 10 minutes of the Commission's time to speak with them.

- **Licensing Statistics** – Ms. Maxwell presented licensing statistics for the month of July 2013. As of July 31, 2013, there were 23,678 active licensees, 1,116 inactive licensees and 8,381 retired licensees. There were 3,851 active firms and 220 retired firms. There were 254 new applications approved in July 2013. Further, she presented a comparison of total licensees for individuals (active, retired and inactive) and firms in July of 2008 – 2013. She reported on each state with a licensed Tennessee firm or firms and the number of those firms in each state. She presented a comparison chart of applications approved and examination taken. She also presented license renewal percentages and the average number of licenses issued per month in 1997 and 2000 – 2013, firms closed or retired from 2008 – 2013 and the applications approved from 2008 – 2013.

Chairman Stephenson recessed the meeting for lunch at 11:32 a.m. and reconvened the meeting at 1:15 p.m.

EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR

Mr. McDonald presented the Courses for Commission Evaluation for August 2013. **Commissioner McMullen made a motion to approve the Courses for Commission Evaluation A1 through A17; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

Mr. McDonald presented the following Instructor Review for the month of August 2013.

- Sally Cummings of TAR® (1110) requested the approval of Fred Goodwin to teach the TREC Core #7035.
- Van Duong of Courthouse Retrieval Services (1285) requested the approval of Amanda Jenkinson to teach Enhancing Customer Service (3552) and Enhancing Customer Service Communication (6475).
- Tara Hampton of River Counties Association of REALTORS® (1240) requested she be approved to teach Paragon 5 Basic (7006) and Paragon 5 Advanced Training (7007).
- Sally Cummings of TAR® (1110) requested the approval of Ingrid Prather to teach NAR Ethics (7286) and TREC Core Course (7035).
- Tara Hampton of River Counties Association of REALTORS® (1240) requested Melissa Lane be approved to teach Paragon 5 Basic (7006) and Paragon 5 Advanced Training (7007).
- Diane Cole of Institute of Real Estate Management- IREM (1089) requested the approval of Delia Cooke to be approved to teach Ethics for Real Estate Managers: ETH800 (6771).
- Diane Cole of Institute of Real Estate Management- IREM (1089) requested the approval of John Snyder to be approved to teach Ethics for Real Estate Managers; ETH800 (6771).

Commissioner Griess made a motion to approve the above seven instructors; seconded by Commissioner McMullen; vote; 6 yes, 1 no (Commissioner Collins voted no.); 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. Ryan 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."

Attached to the end of these minutes is a copy of the legal report with all decision indicated.

- 1) 2012007861 – Commissioner McMullen made a motion that the italicized text not be read into the record but for Ms. Cropp to begin with the new information regarding the complaint; seconded by Commissioner Collins; unanimous vote; motion carried. Commissioner Alexander made a motion to accept legal counsel's recommendation to Close and Flag the file of the Respondent; seconded by Commissioner Collins; unanimous vote; motion carried.**

- 2) 2013005181 – Commissioner Griess made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carried.
- 3) 2013005501 &
- 4) 2013005502 – Commissioner McMullen made a motion to accept legal counsel’s recommendation to issue a Letter of Warning to both Respondents regarding Rule 1260-02-.09 [Deposits and Earnest Money]; seconded by Commissioner Collins; unanimous vote; motion carried.
- 5) 2013005641 &
- 6) 2013005651 – Commissioner McMullen made a motion to accept legal counsel’s recommendation to dismiss as to Respondent 2 and as to Respondent 1, send a Letter of Instruction regarding Rule 1260-02-.12; seconded by Commissioner Griess; unanimous vote; motion carried.
- 7) 2013005671 – Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner McMullen; vote: 5 yes, 1 no (Commissioner Alexander voted no.), Commissioner Griess abstained; motion carried.
- 8) 2013005681 – Commissioner Alexander made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Griess; vote: 6 yes, 0 no (Commissioner DiChiara voted no.); motion carried.
- 9) 2013005691 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to issue a Letter of Warning regarding the definition of “broker” found at T.C.A. § 62-13-102(4)(A) and (B) and T.C.A. § 62-13-103; seconded by Commissioner Haynes; unanimous vote; motion carried.
- 10) 2013005701 &
- 11) 2013005702 – Commissioner Griess made a motion to dismiss but it was never seconded so the motion failed for lack of a second. Commissioner McMullen made a motion, with regard to Respondent 2, to issue a Consent Order with a civil penalty of \$500.00 for violations of T.C.A. §§ 62-13-312(b)(14) and 62-13-403(2); seconded by Commissioner DiChiara; 4 yes, 1 no (Commissioner Griess voted no.), Commissioner Stephenson and Commissioner Alexander abstained; motion carried. Commissioner McMullen made a motion to dismiss as to Respondent 1; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 12) 2013005721 – Commissioner Alexander made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carried.
- 13) 2013005791 – Commissioner McMullen made a motion to defer to complaint until the September meeting; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 14) 2013006131 – Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Haynes; unanimous vote; motion carried.
- 15) 2013007071 – Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.

- 16) 2013006221 – Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Haynes; unanimous vote; motion carried.
- 17) 2013006271 – Commissioner McMullen made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Haynes; unanimous vote; motion carried.
- 18) 2013008381 &
- 19) 2013008382 &
- 20) 2013008383 &
- 21) 2013008384 &
- 22) 2013008385 &
- 23) 2013008386 &
- 24) 2013008387 &
- 25) 2013008421 &
- 26) 2013008431 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.
- 27) 2013008731 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.
- 28) 2013009591 – Commissioner Griess made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.
- 29) 2013009721 – Commissioner Collins 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 the Consent Order Log and asked if the Commission had any questions and they did not. Therefore, she moved on to the next topic.

UPDATE ON SUSPENSIONS ORDERED BY TSAC AND DHS

At the previous month’s meeting, Commissioner Northern had expressed concern over whether the TREC should have any “rubber stamping” of the suspension of a licensee’s license for failure to pay student loans or failure to pay child support. Ms. Cropp advised them at that meeting that she would find the statutes that address the department’s authority to suspend these licenses without approval of TREC.

Regarding the requirement to suspend the licenses of those licensees who are delinquent on student loans and are therefore reported to Director Maxwell, Ms. Cropp specifically cited the following statute and section.

T.C.A. § 56-1-312. Default on student loans by members of regulated professions.

(a) Upon receiving a copy of a final order as provided in subsection (b) from the Tennessee student assistance corporation (TSAC), or a guarantee agency that has an agreement with the United States secretary of education, referred to as "guarantee agency" in this section, each board, commission or agency, referred to as the "licensing authority" in this section, attached to the division of regulatory boards shall suspend, deny or revoke the license of, or take other appropriate disciplinary action against, any person who has defaulted on a repayment or service obligation under any federal family education loan program, the federal Higher Education Act of 1965, as amended, a student loan guaranteed or administered by TSAC, or any other state or federal educational loan or service-conditional scholarship program.

Regarding the requirement to suspend the licenses of those licensees who are in arrears on child support payments and are therefore reported to Director Maxwell, Ms. Cropp specifically cited the following statute and sections.

T.C.A. § 36-5-706. Denial, suspension or revocation of license -- Refusal to reinstate or reissue -- Notice.

a) Notwithstanding any other law, rule or regulation to the contrary, the certification from the department under § 36-5-705 shall be a basis for the denial, suspension or revocation of a license, or for refusal to issue or reinstate a license by a licensing authority.

(b) The licensing authority shall notify, without undue delay, by regular mail, an obligor certified from the department under § 36-5-705, that the obligor's application for the issuance, renewal or reinstatement of a license has been denied or that the obligor's current license has been suspended or revoked because the obligor's name has been certified by the department as an obligor who is not in compliance with an order of support.

Ms. Cropp also cited the following statute regarding cooperation by the department.

T.C.A. § 36-5-709. Licensing authorities -- Cooperation with department -- Agreements.

The various licensing authorities shall cooperate with the department in any manner necessary to effectuate this part, and the department and the various licensing authorities shall enter into any necessary agreements to carry out the purposes of this part.

Ms. Cropp cited T.C.A. § 36-5-701 [Part definitions] to define the term "licensing authority" specifically subsection (6).

(6) "Licensing authority" means the board, commission, or agency, including the department of safety, that has been established by statute or state regulation to oversee the issuance and regulation of any license. Excluded from this definition is the supreme court, unless the supreme court acts in accordance with § 36-5-713, and any licensing authority established solely by the action and authority of a county or municipal government;

UPDATE ON ATTORNEY GENERAL'S OPINION

Ms. Cropp followed up with the Commission on a request made by them in May 2012 for an Attorney General's opinion regarding T.C.A. § 62-13-104(a)(1). She advised that legal counsel was recently contacted asking for clarification regarding the question which the Commission would like answered in the opinion. **Commissioner Haynes made a motion that since Commissioner Flitcroft was very interested in this topic and he was absent from the meeting that the matter be deferred until the September meeting when he would be present and able to participate in the discussion; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

Commissioner McMullen made a motion to recess for the day; seconded by Commissioner DiChiara; unanimous vote; motion carried.

Chairman Stephenson recessed the meeting on Wednesday, August 7, 2013 at 3:45 p.m.

AUGUST 8, 2013

The Tennessee Real Estate Commission convened on Thursday, August 8, 2013 at 9:00 a.m. in Meeting Room 1A of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, Tennessee 37243. The following Commission Members were present: Chairman William "Bear" Stephenson, Vice-Chairman John Griess, Commissioner Grover Collins, Commissioner Janet DiChiara, Commissioner Michelle Haynes and Commissioner Wendell Alexander. Commissioner Austin McMullen and Commissioner David Flitcroft were absent from the meeting. Other Staff Present: Assistant General Counsel Robyn Ryan (Litigation), Assistant General Counsel Julie Cropp, Executive Director Eve Maxwell, Education Director Steve McDonald and Administrative Secretary Kelly Hestand.

The special Summary Suspension Informal Hearing convened at 9:01 a.m. The matter was regarding the license of Mr. Gary M. Griffey, license #6984 and his firm license #11985. The associated complaint numbers are L13-REC-RBS-2013006231, L13-REC-RBS-2013006311, L13-REC-RBS-2013006951, L13-REC-RBS-2013012101, L13-REC-RBS-2013012102

Assistant General Counsel Robyn Ryan represented the State of Tennessee and Attorney Timothy Harvey represented the Respondent Mr. Gary M. Griffey, license #6984; who was not present. The purpose of the special Summary Suspension Informal Hearing was so the Commission could determine if the the public health, safety and welfare imperatively required that Mr. Griffey's license be summarily suspended. The Commission considered the facts and circumstances surrounding the complaints as well as the facts and issues presented by Mr. Harvey to support a denial of the summary suspension.

Commissioner DiChiara made a motion to summarily suspend both Mr. Griffey's broker license #6984 and also that of his firm, Griffey & Associates, Inc., license #11985; seconded by Commissioner Collins for discussion; Commissioner Griess made a motion that the two licenses be considered separately within the motion; seconded by Commissioner Haynes; motion to have the broker license and firm license considered separately passed unanimously. Chairman Stephenson went back to the original motion made by Commissioner DiChiara and seconded by Commissioner Collins with the change that the two licenses are voted on separately. He called for the vote on whether the license of Gary M. Griffey, license #6984, should be summarily suspended; unanimous vote that yes it should be summarily suspended; motion carried. Chairman Stephenson then called for the vote on whether the firm license of Griffey & Associates, Inc., license #11985 should be summarily suspended; roll call vote: 1 yes (Commissioner DiChiara voted yes.), 5 no (Commissioners Alexander, Collins, Griess, Haynes & Stephenson vote no.) that the firm license should be suspended; motion failed. Chairman Stephenson summarized that Mr. Griffey's license is suspended and the firm license is not suspended.

Commissioner Alexander made a motion to authorize a formal hearing at some point in the future on the firm of Mr. Griffey, Griffey & Associates, Inc., license #11985; seconded by Commissioner DiChiara; unanimous vote; motion carried.

The Summary Suspension Informal Hearing concluded at 10:25 a.m.

Following the special Summary Suspension Informal Hearing, Mr. Griffey was notified that his license was suspended and will remain suspended pending further action by the Commission. He was notified that he would have an opportunity for a full hearing on the matter. He was advised that after consideration of the Commission and agreement of the attorney, the hearing will be held at the September 12, 2013 meeting of the Tennessee Real Estate Commission and that a hearing and charges would be filed and a copy would be sent to him as well as Mr. Harvey.

After the Summary Suspension Informal Hearing concluded, Chief Legal Counsel Mark Green addressed the Commission briefly regarding a case that the Commission had heard at a formal hearing and the Respondent had appealed and the case had been heard in Chancery Court.

Chairman Stephenson adjourned the meeting on Thursday, August 8 at 10:42 a.m.



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE

OFFICE OF LEGAL COUNSEL

Davy Crockett Tower,
500 James Robertson Parkway
NASHVILLE, TENNESSEE 37243
(615) 741-3072 fax 615-532-4750

MEMORANDUM

TO: TENNESSEE REAL ESTATE COMMISSION
FROM: JULIE CROPP, Assistant General Counsel
SUBJECT: AUGUST LEGAL REPORT
DATE: August 7-8, 2013

***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.**

- 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**

August 2012 Meeting:

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.

After presentation to the Commission, Consent Orders were sent to Respondent at Respondent's address on file with the Commission which were first returned as "unclaimed" and then returned "not deliverable as addressed." Further, Respondent's time-share salesperson license expired on June 29, 2013. Then, Respondent's license was suspended on July 1, 2013 for failure to maintain

errors & omissions insurance. To date, Respondent has made no known attempts to contact TREC regarding this complaint matter or the status of Respondent's license.

New Recommendation: Close and flag.

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

2. 2013005181

Opened: 4/8/13

First License Obtained: 1/4/07

License Expiration: 6/14/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

The Complainant indicates that Complainant wants to fire (or did fire) Respondent (principal broker) as Complainant's broker for the sale of Complainant's short sale property. Complainant states that, when hired by Complainant, Respondent was with one firm but was fired for using outdated procedures. Complainant states that Respondent started with a new firm and took Complainant's listing with Respondent to the new firm and is advertising Complainant's property on the new firm's website. Complainant states that Complainant is unable to hire a new broker and is in danger of losing Complainant's home due to foreclosure. Complainant attached a copy of the executed Exclusive Right to Sell Listing Agreement, which was between Complainant and the alleged new firm to which Complainant alleges Respondent switched and took the listing; therefore, it does not appear the listing was taken to a new firm as alleged by Complainant. At the time Respondent began working with Complainant, Respondent was the principal broker of two (2) firms and then left one of the firms around the time of the complaint; however, to date, Respondent is still the principal broker of the firm which had the Listing Agreement with Complainant. Based on correspondence between the parties submitted by Complainant, it appears that Complainant became dissatisfied with the short sale process and Respondent, which resulted in Complainant wanting to end a sales contract with a potential buyer and terminate Respondent as Complainant's broker. Based on documents submitted by Complainant, it appears that, shortly after the complaint was filed, the sales contract with the potential buyer was cancelled and earnest money returned to the potential buyer and the working relationship was terminated between the parties, with Complainant and Respondent signing a Listing/Agency Mutual Release Agreement.

Respondent submitted a response stating that even though Respondent attempted to explain the short sale process to Complainant, Complainant did not understand the process. Respondent

states that Respondent was referred to Complainant and saved Complainant from foreclosure on the property. Respondent states that, at some point Complainant became dissatisfied and wanted to terminate the relationship, and Respondent does not know why. Respondent states that Respondent was willing to release Complainant from the listing, but Complainant would not respond to Respondent's attempts to discuss any issues. Respondent states that several offers were received on Complainant's property, and, at the time Respondent realized that Complainant wanted to stop working with Respondent, the property was under contract for sale. Respondent states that, when the sale fell through because Complainant decided to stop working with Respondent, Respondent worked diligently to obtain proper signatures for release of the earnest money to the buyer, execute the Mutual Release for the listing, and cancel the listing in the MLS. Respondent denies the allegations that Respondent uses outdated procedures and that Respondent was released from a firm and explained the Respondent was principal broker of two (2) firms for awhile and then left amicably to remain principal broker of one firm. Based on the information in the file, it appears that Respondent worked diligently, and there appears to be no violation by Respondent.

Recommendation: Dismiss.

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

3. **2013005501**
Opened: 3/26/13

First License Obtained: 11/1/93

License Expiration: 4/20/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: 201300105 – Closed \$250 Agreed Citation (escrow acct violation)
4. **2013005502**
Opened: 3/26/13

First License Obtained: 3/16/12

License Expiration: 3/15/14

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant was the seller of a property. Respondent 2 represented the buyer, and Respondent 1 is Respondent 2's principal broker. Complainant states that an offer was sent and accepted on December 19, with a closing to take place on December 31. Complainant states that the earnest money check was to be sent to Complainant's agent within seventy-two (72) hours which was not sent by Respondent 2, who had the check. Complainant states that Complainant made arrangements to move prior to closing, during which time Complainant states that the earnest money check had been mailed and the buyer was still buying the property. The sale ultimately fell through due to financing, Complainant states that Respondent 2 asked Complainant's agent to sign a release of the contract and did not present the earnest money check until January 4 (after the contract had expired).

Respondent 2 states that the accepted offer was sent by email to Respondent 2 late on December 19 but not opened until December 20. That day, Respondent 2 states that Complainant's agent called and sent an addendum to be signed by the buyer which changed the provision in the contract regarding who the earnest money check should be made out to from the closing company (the party specified in the contract) to Complainant's agent's firm. Respondent 2 states that Respondent 2 did agree to deliver the earnest money within three (3) days and admits that it was not done prior to the closing of the office for the holidays on December 22 and the holiday followed. That weekend, Respondent 2 states that the buyer was rejected for a loan. On the first business day following, Respondent 2 states that Respondent 2 contacted Complainant's agent informing of this and stating that Respondent 2 was going to send a termination letter and a copy of the denial letter from the lender. Respondent 2 states Complainant's agent insisted Respondent 2 wait until Complainant's agent and Complainant could discuss and Complainant's agent sent a contact for a new lender for Respondent 2 to pass onto the buyer. At this point, there were attempts of communication between the buyer and a new lender and communication from Complainant's agent that Complainant was aware all would have to be pushed back. Once past the December 31 deadline, the buyer decided not to pursue the sale, and documents were sent to Complainant's agent on January 4, requesting release of earnest money (although the check was still with Respondent 2), and Complainant's agent stated the check must be cashed before the funds could be released to the buyer. That check was delivered on January 5, and the check was returned to Respondent 2. Respondent 1 states that although Complainant states that Complainant contacted Respondent 1's agency, Respondent 1 did not have any communication with Complainant but did speak with Complainant's agent's principal broker on January 2 concerning the issue. Both agreed that a new earnest money check should be written to Complainant's agent's firm and delivered even though the contract had expired. Respondent 1 states that the check could have been delivered on time except that Complainant's agent wanted the check made out to Complainant's agent's firm instead of the closing company, and the buyer was out of state when the change was requested in the addendum. Therefore, the new check was not written until after expiration of the contract. Respondent 1 states that Respondent 1 spoke to Respondent 2 regarding the necessity of delivering earnest money per the dates in the contract.

Based on the circumstances of the sale including but not limited to the holidays, the short contract period, the out of state buyer, and the confusion regarding the lender, the check did not get delivered when seller expected, but the situation was ultimately resolved with the check going to Complainant's agent and being disbursed to buyer.

Recommendation: Letter of warning to both Respondents regarding Rule 1260-02-.09 regarding Deposits and Earnest Money.

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

5. **2013005641**
Opened: 4/1/13

First License Obtained: 9/28/12

License Expiration: 9/27/14

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action
6. **2013005651**
Opened: 4/1/13

First License Obtained: 1/17/96

License Expiration: 7/1/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant states that Complainant was looking for homes for sale and noticed listings for properties by Respondent 1 (affiliate broker; Respondent 2 is Respondent 1's principal broker) which were owned by a company solely owned by Respondent 1. Complainant states that Respondent 1 does not disclose on the listings for these properties that Respondent 1 is owner/agent, which Complainant believes is unethical. After the complaint was received by staff, a search of Respondent 1's company's website was performed, which included information about the company and the individuals involved with it which also stated on one page that the company was "...the fastest growing residential and commercial real estate firm..." in the city. Therefore, complaints were opened against Respondent 1 for a possible unlicensed branch office as well as Respondent 2 for failure to supervise Respondent 1.

Respondents each submitted responses to the complaint. Respondent 1 states that it was an oversight that Respondent 1's MLS listings did not state that Respondent 1 was owner/agent, but the issue has been corrected (and copies of MLS listings were provided to evidence this which all include Respondents' licensed firm as the listing firm). Further, Respondent 1 states that Respondent 1 always signs a personal interest disclosure. Respondent 1 states that confusion may have arisen regarding the company being an unlicensed branch office due to the above-referenced statement about the company being a growing firm. Respondent 1 states that the company is not a brokerage firm but is instead a rehab and development company, and Respondent 1 states that there had been IT problems but the issue was corrected on the website (and attached printouts of the website to show that the statement was removed and each page of the website now includes the name and telephone number of Respondents' licensed firm as well as a statement that Respondent 1 is a real estate licensee). Respondent 2 states that Respondent 1 was one of the first agents other than Respondent 2 to begin to buy investment properties, and Respondent 2 instructed Respondent 1 regarding the applicable rules and disclosures required for this activity. Respondent 2 states that Respondent 2 includes these types of rules as part of in-house trainings for affiliated licensees. Respondent 2 recognizes that Respondent 2 is responsible for the content and accuracy of firm listings, and Respondent 2 addressed the issues with the owner/agent designation on the MLS pages and also discovered the content of the Respondent 1's company's webpage and immediately worked with Respondent 1 to ensure that any misrepresentation was removed, that Respondent 1 disclosed that Respondent 1 was a real estate licensee, and that the name and phone number of Respondents' firm was on each page of the website. Respondent 2 states that these issues will again be addressed in the 2013 in-house training to ensure all affiliated licensees are aware of the rules and regulations. Though it appears that Respondents immediately took action to correct the issues on the website, Respondent 1 might benefit from a letter of instruction regarding TREC's advertising rule.

Recommendation: Dismiss as to Respondent 2. As to Respondent 1, letter of instruction regarding Rule 1260-02-.12.

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

7. 2013005671
Opened: 3/26/13

First License Obtained: 3/9/89

License Expiration: 2/1/14

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant was the seller of a property which was a short sale, and Respondent (affiliate broker) was the buyer's agent. Complainant states that Respondent and buyers came and entered Complainant's home without her permission. Complainant states that when Complainant arrived and told them to leave, Respondent and buyers replied that they would not leave until they were finished. Complainant states that Respondent told Complainant that they had every right to be there and that they would leave if police arrived and told them to leave. Complainant contacted the police and states that the police took their time to remove Respondent and buyers and allowed them to leave the cars parked in the driveway and stand in the yard as long as they wanted. Complainant also states that Goodwill was scheduled for a pick up and Respondent sent them away. Complainant also states that the buyer's inspector "vandalized" Complainant's water heater, as the inspector wrote on that heater with a sharpie.

Respondent submitted a response along with statements from the inspector, closing attorney, and buyers as well as other documentation, stating that a home inspection was originally scheduled for Sunday, but Respondent contacted Complainant's agent by phone regarding rescheduling the inspection for the day before (Saturday). Apparently, due to the fact that this was a short sale, there was also an issue about the closing date and attorneys were involved to assist in also scheduling the inspection. According to a letter from one of the attorneys, the attorneys spoke and determined that the inspection would take place over the weekend with the agents to work out the details. As stated in both the response and in the written statements of the buyer and the inspector, when the police arrived, Respondent and the buyers were outside the home and were told by the police that Complainant thought the inspection and walk through was to be the Sunday, and Complainant yelled and accused the inspector of vandalizing the home. Respondent, the buyers, and the inspector then prepared to leave after being so requested by the police, and both Respondent and the buyer state that the police told buyers that perhaps buyers should find another home as Complainant was being unreasonable. Concerning the Goodwill pick up, Respondent states that when Goodwill came to the door, Respondent would not allow them in and asked them to wait until Complainant was present or to come back, and when they returned, Complainant was still not present. In his statement, the inspector states the inspection was scheduled for that date and time, and that as he was in process of summarizing the findings, Complainant entered and demanded to know who everyone was, which the inspector states Respondent attempted to explain but Respondent called police. When accused of vandalism by Complainant, the inspector states that he explained that he had noted the presence of an open pilot light on a water heater and that this notation was a common practice during an inspection and a courtesy to the prospective buyer.

Complainant sent an additional response stating that the testimonies were lying statements. Complainant states that Complainant was scared when she realized people were in the home (after she had moved out) and that despite statements to the contrary, this was not a racial issue. Based on all documentation submitted, this appears to have been a misunderstanding or a

miscommunication regarding when the inspection was to take place; however, there does not appear to be a violation by Respondent.

Recommendation: Dismiss

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

8. 2013005681

Opened: 3/27/13

History: No Prior Disciplinary Action - Unlicensed

TREC opened complaint based on marketing materials submitted to the TREC office which were sent by Respondent (an unlicensed individual) in which Respondent encourages the recipients of the mailing to contact Respondent because Respondent wants to buy their house. The top of the mailing references the name of a business, but the mailing is signed by Respondent individually. The mailing states that Respondent is not a realtor and does not work for a real estate company, and Respondent does not want to list the person's house but instead wants to buy the house. In the mailing, Respondent states that Respondent is usually able to buy houses within a relatively short time period because Respondent works with private funds through Respondent's association with a group of private investors. Respondent's mailing indicates that Respondent intends to buy these houses in order to sell them later for a profit.

Respondent submitted a response through an attorney which stated that Respondent is not engaged in any of the activities covered by the definition of "broker" within the Broker Act, and Respondent does not broker real estate or act as an agent for or on behalf of any other third party. The attorney states that Respondent is the only principal for the business referenced on the mailings (which is not currently registered as a business entity with the Secretary of State's office), and the mailing's reference to private investors is merely used with respect to Respondent arranging financing for Respondent's purchase of the property and not because of any ownership of the acquired property by those investors. Further, the attorney states that Respondent contacts third parties for the sole purpose of notifying those parties that Respondent may be interested in purchasing those parties' properties if agreeable terms for the sale are met. Based on this information, it does not appear that Respondent is engaged in unlicensed activity.

Recommendation: Dismiss.

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

9. 2013005691

Opened: 4/3/13

History: No Prior Disciplinary Action – Unlicensed

Complainant alleges that Respondent (unlicensed company located out of state) is neither a licensed real estate firm nor a licensed auction firm and is conducting an auction of multiple properties located in Tennessee. Specifically, Complainant alleges that Respondent has sent out numerous sales packages to prospective purchasers soliciting sealed bids for the sale of several properties and that Respondent is requiring earnest money to be submitted to Respondent in another state (where Respondent is located). Complainant alleges that Respondent is misrepresenting itself in Respondent's advertising, which states that Respondent's auction is being conducted in conjunction with an individual who is a licensed broker and auctioneer.

Respondent submitted a response through an attorney stating that the complaint and allegations are not clear and appear to be a "blanket-type" complaint submitted to TREC, the Auctioneer Commission, and possibly more regulatory agencies. With regard to the allegation that Respondent is acting as a real estate broker in Tennessee without a license, Respondent's attorney states that Respondent previously employed and was working with an individual who is a properly licensed real estate broker and auctioneer with regard to taking the sealed bids. After receiving the complaint, in order to avoid any confusion, Respondent's attorney states that Respondent has immediately ceased the current sales process of taking sealed bids and is in the process of having the owner work directly with a properly licensed broker/auctioneer in Tennessee. Respondent's attorney submitted additional information stating that, as soon as complaints were filed against Respondent, Respondent obtained Tennessee counsel, and, after discussing the matter with legal counsel took a number of steps, including terminating Respondent's sealed bid agreement with the property owner (and the property owner engaged a licensed auction firm/real estate firm as broker for the sale), removing all advertisements for Respondent conducting the sale from Respondent's website and reflecting the auction firm/real estate firm as broker in advertisements, all bids were sent to the property owner with bid deposit checks made to the owner's title company, and the bid deadline was pushed back slightly to ensure a smooth transition for the broker/auctioneer and his firm who handled the sale. Respondent's attorney states that Respondent expended significant effort and cost in ensuring that Respondent did everything necessary to address the complaint allegations and ensure that they are compliant with Tennessee law in the future. Respondent's attorney states that any wrongdoing was not intentional and has been corrected.

Recommendation: Letter of warning regarding definition of "broker" found at T.C.A. § 62-13-102(4)(A) and (B), and T.C.A. § 62-13-103.

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

10. 2013005701

Opened: 3/25/13

First License Obtained: 8/30/96

License Expiration: 6/21/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: 2012004361 – Closed \$500 Consent Order (escrow acct violation)

11. 2013005702

Opened: 3/25/13

First License Obtained: 2/20/03

License Expiration: 6/2/14

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant was the buyer of a property, and Respondent 2 (affiliate broker) was the seller's agent. Respondent 1 is Respondent 2's principal broker. Complainant states that they purchased the home, and when cold weather came, Complainant attempted to use the heated bathroom floor and found that the floor did not work. Complainant states that Complainant attempted to contact the seller's contractor, and the contractor would not return their calls so Complainant hired an electrician who found a short in the wiring which required a full replacement. After removal of the floor, it was discovered the subfloor had no support and new subfloors had to be installed. Complainant states Complainant's agent contacted Respondent 2 and asked for information about the floor, and, in an e-mail exchange, Respondent 2 stated that, at the last minute, the seller mentioned to Respondent 2 that the floors did not work and Respondent 2 forgot to convey that information. Complainant states this issue was not included on property disclosure by the seller. The seller also apparently included a statement regarding the improvements done as part of the sale information, but did not indicate any problem with the floor.

Respondent 2 submitted a response stating that the seller did not mention the inoperative floors when the property disclosure was filed out. Later, Respondent 2 did question seller, who then admitted the floor heater did not work, and Respondent 2 forgot to mention it. The inspection did not reveal the problem either. Respondent 2 states this was an oversight on Respondent 2's part and that it occurred during the time Respondent 2 was dealing with the passing of Respondent 2's father. Respondent 2 states that, after review with Respondent 1, Respondents turned the matter over to the errors and omission's carrier to settle the claim. Respondent 2 also states that Respondent 2 sent a letter of apology and offered to assist in getting the floors fixed. Respondent 1 states that Respondent 2 did fail to mention the floors were not working but that after the disclosure statement was completed and just prior to the closing, the seller only then mentioned the issue to Respondent 2 after Respondent 2 asked about a switch in the bathroom. Respondent 1

states that Respondent 2 sent an email stating that Respondent 2 would assist in getting the floors fixed but did not receive any response. Respondent 2 states that, due to the failure of the seller to mention the problem in the property disclosure or at closing, Respondents did contact the errors and omission insurance company and the matter was resolved for the Complainants. Respondent 1 states that Respondent 1 was not aware of the problem until a letter was sent to Respondent 2 by an attorney and that this was addressed through the E&O carrier during the time period after the complaint was filed.

Completion of the property disclosure is the responsibility of the seller. However, while Respondent 2 was told that the floors did not work shortly before the closing, it would appear that Respondent 2 simply forgot due to the timing around Respondent 2's father's passing and family issues. T.C.A. § 62-13-403(2) states that a licensee has the duty to all parties to disclose any adverse facts of which the licensee has actual notice or knowledge; however, T.C.A. § 66-5-206 defines "adverse facts" as "...conditions or occurrences generally recognized by competent licensees that significantly reduce the structural integrity of improvements to real property, or present a significant health risk to occupants of the property." Further, the E&O carrier ultimately addressed the issue with Respondent 2 having to pay a one thousand dollar (\$1,000.00) damage deductible.

Recommendation: Dismiss.

DECISION: The Commission voted to dismiss the complaint against Respondent 1. With regard to Respondent 2, the Commission voted to send a Consent Order with a civil penalty of \$500.00 for violations of T.C.A. §§ 62-13-312(b)(14) and 62-13-403(2).

12. 2013005721

Opened: 3/21/13

First License Obtained: 12/6/91

License Expiration: 1/19/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant is a property owner who alleges that Respondent (principal broker) breached the parties' property management agreement by failing to carry out the duties specified under the agreement. Complainant listed a number of breaches including, but not limited to, failing to supervise repairs, failing to properly handle a mold problem in the unit, that Respondent did not see the property during the initial three (3) years of the management agreement, and that Respondent sent repairmen out to the property to handle issues and merely sent the owner a bill

without proactively getting involved in the issue. Complainant included a copy of a demand letter sent to Respondent by Complainant's attorney, which demands termination of the management agreement and the return of all keys as well as sending the current tenant's deposit.

Respondent submitted a response stating that Complainant cancelled the management agreement. Respondent denies Complainant's allegations with regard to Respondent's management of the property, stating that Respondent approved and supervised all repairs and paid the invoices and that Respondent visited the property whenever there was a complaint and also to ensure all repairs were performed correctly. As to the mold problem, Respondent states that when this occurred in 2011, Respondent was notified by the tenant and sent a handyman to take a look and Respondent personally inspected the unit with a plumbing technician and a leak was repaired and all necessary repairs were made to rid the mold, paint the unit, and have it ready to show for a new tenant in a short period of time. When the most recent tenant vacated the property, Respondent performed the walk through to view the property's condition and determined that the deposit was due to Complainant so that check was mailed to Complainant and all paint colors and keys were given to the new property manager as requested. It does not appear that there was any violation of TREC's laws and/or rules by Respondent.

Recommendation: Dismiss.

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

13. 2013005791

Opened: 5/9/13

History: No Prior Disciplinary Action – Unlicensed

Complainant is a licensee who states that a property owner contacted Complainant regarding managing the owner's property which had been handled by Respondent (unlicensed individual) with an unlicensed company. Complainant states in the complaint that the property was in disrepair and Complainant did not believe that it had been managed by a licensed professional. Based on the complaint, a search was conducted of Respondent's company's website, which showed three (3) property listings and indicated that it performed property management services.

A copy of the complaint was sent to Respondent at the address featured on the website, which was returned to TREC's office with a notation stating "attempted – not known" and "unable to forward." Legal counsel followed up with the Complainant, who stated that Complainant does not have any information regarding the property owner referenced in the complaint because Complainant did not ultimately begin managing the property. Further, Complainant stated that Complainant did not believe that Respondent was any longer in business. Legal counsel then attempted to call the telephone number on the website and reached a young woman who stated that she worked from her home in another state (and therefore could not provide a business address), but stated that they are involved with apartments and provided Respondent's cell phone

number. Legal counsel obtained a possible alternate address through the internet for Respondent's company, and attempts were made to reach Respondent by telephone, by mail at the alternate address, and by fax to the fax number on the original website. In response to the fax, another business contacted legal counsel, stating that Respondent had not been at that location in over (3) years and had no forwarding address for Respondent. Further, the individual believed that Respondent was out of the real estate business altogether. Attempts to contact Respondent at the cell phone number were unsuccessful, and it appears that the alternate address obtained is that of a UPS Store. Based on the lack of information regarding Respondent's activities and inability to determine where Respondent is located, it is recommended that this matter be closed and reopened in the event that additional information is obtained.

*It was verbally updated to the Commission that, on the morning of the meeting, legal counsel received an e-mail from Respondent indicating that Respondent would send a response.

Recommendation: Close.

DECISION: In light of the new information received on the date of the meeting, the Commission voted to defer determination of this matter until the next meeting.

14. 2013006131
Opened: 3/27/13

History: 2013007071 – Under review by legal - Unlicensed

Complainant signed a contract with Respondent (unlicensed company) for discounted travel, lodging, air, and car services. Within a few days, Complainant states that Complainant contacted Respondent's office by phone to rescind the contract but was unable to reach the appropriate individual. Complainant states that Complainant discovered that there is a ten (10) day right of rescission and not a three (3) day right of rescission, so Complainant sent certified letters, e-mails and faxes to Respondent informing them of the contract rescission. Complainant states that Complainant received correspondence from an attorney stating that Respondent was not a time-share or vacation club, and Complainant could not cancel the contract after the three (3) days. Complainant believes that Complainant falls under the definition of "vacation club" and a ten (10) day right of rescission exists.

Respondent submitted a response stating that the Time-Share Act of 1981 does not apply to Respondent's program. Respondent states that it is not a "vacation club" as defined in the Time-Share Act and points to its own terms and conditions, which state that the agreement constitutes an agreement for services, but is not an acquisition of any interest in real estate and membership does not provide the purchaser with ownership in or the recurring right to use any accommodation or facility. Respondent states that Respondent was allowed a discount on membership with a referral to a third party company where Respondent could be assisted with getting rid of an unwanted time-share. Further, Respondent states that Complainant was aware of

the cancellation period (although it appears Complainant signed an addendum acknowledging there was no rescission period). Respondent also attached and referenced a letter from its attorney stating that it is inaccurate to apply the terms of the Time-Share Act and denies any wrongdoing. Respondent's attorney outlines why Respondent is not a "vacation club" as defined in the Time-Share Act, stating that there are no particular accommodations, facilities or sites at which a participant is granted a recurring right of use, but instead the participant can seek reservations at a variety of destinations, which are satisfied on a first-come, first-serve, availability basis. Respondent states that it has tried to contact Complainant to work with Complainant but has received no response. Based on this information, it does not appear that Respondent is engaged in unlicensed activity.

Recommendation: Dismiss.

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

15. 2013007071

Opened: 4/18/13

History: 2013006131 – Under review by legal - Unlicensed

Complainants attended a sales presentation given by Respondent (unlicensed company – same Respondent as above) where Complainants purchased a membership into Respondent's vacation travel program for discounted travel and lodging services. At the presentation, Complainants traded in their existing time-share and received a discounted price for Respondent's vacation travel program. Complainants submitted documentation that they signed up and paid for the membership with Respondent and traded Complainant's time-share directly to a third party time-share transfer company. Complainants also question the three (3) day rescission period with Respondent and another addendum, which states there is no rescission period. After signing an agreement which stated that Complainants were transferring their time-share to the third-party transfer company in exchange for equity credit, Complainants decided not to sign over any of their information regarding their time-share to the third-party transfer program due to concerns over the possible transfer, and Complainants state that the third party transfer company has not been responsive, and Respondent will assume no responsibility for the transfer.

Respondent submitted a response stating that Complainants wanted to become members of Respondent's program and get rid of Complainants' time-share. Therefore, Complainants became members, and, as a courtesy, Respondent referred Complainants to a third-party company to conduct the time-share transfer while informing Complainants that the time-share transfer would be strictly between the third-party company and Complainants, as Respondent does not and never has taken in time-share ownerships. Respondent states that it has breached no duty or agreement with Complainants and states that the focus of the complaint appears to be based on the third-party transfer company. As addressed in the previous complaint, it appears that Respondent is not engaged in unlicensed activity, as it appears by all evidence shown that

Respondent does not fall within the Time-Share Act. Additionally, it was discussed in a conversation with Respondent's sales manager that Respondent has no involvement with the time-share transfers and Respondent is not compensated for the transfers that take place with the third-party transfer company, but Respondent only gives equity credit toward membership in Respondent's program as a marketing technique. Based on the documentation provided and obtained, it does not appear that Respondent is engaged in unlicensed activity.

Recommendation: Dismiss.

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

16. 2013006221

Opened: 4/2/13

First License Obtained: 6/9/77

License Expiration: 10/31/13

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant is a homeowner who states that Respondent (affiliate broker) was introduced at an annual Homeowners Association meeting as the new managing agent. Complainant states that it was not mentioned that Respondent was affiliated with a licensed real estate firm, but Respondent's résumé which was handed out listed Respondent as an affiliate broker with a licensed firm. Complainant states that Respondent does not live in the subdivision but uses Respondent's home address as the office of the HOA. Complainant states that money was paid to Respondent for property management fees instead of being paid to Respondent's firm.

Respondent submitted a response stating that Respondent was employed by the developer of the subdivision at the time of its development. In 2005, the developer entered into a management agreement with the subdivision which was assigned by the developer to Respondent in 2011. As managing agent for the subdivision, Respondent states that Respondent's duties include assisting with the preparation of an annual operating budget, sending annual dues statements to owners, depositing the annual dues into the HOA bank account, paying invoices to maintain common spaces, notifying owners when covenants have been violated, coordinating the maintenance of the common spaces, and providing a financial report to the Board of Directors, and Respondent is compensated for performing those duties. Respondent states that Respondent's duties do not include the listing, selling, or leasing of any property. Respondent states that Respondent's firm is not involved with Respondent's independent management services because Respondent is not renting or selling property nor is Respondent collecting rents or mortgage payments or handling

rental properties. Respondent states that Respondent's acts for the HOA do not fall under the acts defined within the Broker Act (specifically within the definition of "broker" found at T.C.A. § 62-13-102(4)(A) and (B)) which Respondent states was also the opinion of two (2) attorneys consulted by Respondent. It does not appear that Respondent is in violation of TREC's laws and/or rules.

Recommendation: Dismiss.

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

17. 2013006271

Opened: 4/11/13

First License Obtained: 10/2/03

License Expiration: 12/31/13

E&O Expiration: N/A

Type of License: Time-Share Registration

History: No Prior Disciplinary Action

Complainants attended a presentation and purchased a time-share from Respondent (time-share registration). Complainants state that there were verbal misrepresentations from the salespeople including that their maintenance fees would not have to be paid and would be covered by points, and Complainants were not allowed to closely read the documents they were signing and did not know of the cancellation period. Further, Complainants state they were not allowed to view the unit they purchased and later learned that they could not use the unit until 2013.

Respondent submitted a response denying Complainants' allegations of misrepresentation. Respondent states that Complainants purchased a time-share interest for which they are currently in default for non-payment. Respondent denies that Complainants were told that they would not have to pay maintenance fees, which are specified in writing and were signed by Complainants. Further, Respondent states that the Contract for Purchase and Sale signed by Complainants states that the first occupancy date is in 2013. Further, Respondent states that all prospective buyers are given the opportunity to read and review documents and ask questions and are given a packet of all documents which contains a signed provision regarding the rescission period. Respondent provided copies of the referenced documentation. It appears that the sales presentation took place in another state for the sale of a time-share interest located in another state; therefore, it does not appear that this particular transaction falls within TREC's jurisdiction. Despite this fact, the information provided does not evidence a violation by Respondent.

Recommendation: Dismiss.

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

18. 2013008381
Opened: 5/16/13

Type of License: Time-Share Registration

History: No Prior Disciplinary Action

19. 2013008382
Opened: 5/16/13

First License Obtained: 3/20/08

License Expiration: 3/19/14

E&O Expiration: 10/30/14

Type of License: Time-Share Salesperson

History: No Prior Disciplinary Action

20. 2013008383
Opened: 5/16/13

First License Obtained: 2/14/12

License Expiration: 2/13/14

E&O Expiration: Uninsured (Retired)

Type of License: Time-Share Salesperson

History: No Prior Disciplinary Action

21. 2013008384
Opened: 5/16/13

First License Obtained: 3/6/02

License Expiration: 7/5/14

E&O Expiration: 10/30/14

Type of License: Time-Share Salesperson

- History: No Prior Disciplinary Action**
22. **2013008385**
Opened: 5/16/13
- First License Obtained: 5/12/11**
- License Expiration: 5/11/15**
- E&O Expiration: 10/30/14**
- Type of License: Time-Share Salesperson**
- History: No Prior Disciplinary Action**
23. **2013008386**
Opened: 5/16/13
- First License Obtained: 5/25/10**
- License Expiration: 5/24/14**
- E&O Expiration: 10/30/14**
- Type of License: Time-Share Salesperson**
- History: No Prior Disciplinary Action**
24. **2013008387**
Opened: 5/16/13
- First License Obtained: 6/4/08**
- License Expiration: 6/3/14**
- E&O Expiration: 10/30/14**
- Type of License: Time-Share Salesperson**
- History: No Prior Disciplinary Action**
25. **2013008421**
Opened: 6/4/13
- First License Obtained: 3/7/90**
- License Expiration: 4/5/15**

E&O Expiration: 10/30/14

Type of License: Principal Broker

History: No Prior Disciplinary Action

26. 2013008431

Opened: 6/4/13

First License Obtained: 3/9/95

License Expiration: 11/20/14

E&O Expiration: 10/30/14

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainants were the purchasers of time-shares from Respondents (Respondent 1 is a time-share registration, Respondents 2 through 7 are time-share salespeople, Respondent 8 is the principal broker of Respondents 5 and 6, and Respondent 9 is or was the principal broker of Respondents 2, 3, 4, and 7). Complainants state that they purchased a time-share first in October 2012 with the assistance of Respondents 2, 3, and 4, with a subsequent upgrade purchase in January 2013 with the assistance of Respondents 5, 6, and 7. It appears that Complainants' second contract from January 2013 was cancelled during the rescission period, but Complainants would like to cancel their first contract from October 2012 because Complainants state they were victims of fraud and told many lies during the sale including but not limited to issues regarding resale, use and exchange of points, maintenance fees, refinancing the loan, and that Complainants were not explained the rescission provision in October nor were documents explained to Complainants.

Respondents submitted a response confirming that Complainants made two (2) purchases, with the second purchase being cancelled by Complainants during the rescission period. Respondents deny that any of the alleged misrepresentations alleged by Complainants were made during the October 2012 purchase, which appears to be at issue here. Specifically, Respondents state that Complainants were informed of the details of their purchase, including usage and financial obligations as well as the fact that Respondent 1 does not offer a buyback program and there were no guarantees made regarding refinancing or resale. In addition, Respondents state that Complainants signed documentation explaining the terms of the purchase. However, though Respondents state that they believe there was no wrongdoing, in the interest of customer goodwill, Respondent 1 agreed to release Complainants from the second contract. The documentation within the file does not appear to substantiate a violation by Respondents.

Recommendation: Dismiss.

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

27. 2013008731

Opened: 5/24/13

Type of License: Time-Share Registration

History: No Prior Disciplinary Action

Complainants purchased a time-share from Respondent (time-share registration) and allege that sales representatives during the sales presentation made a variety of verbal misrepresentations, including but not limited to representations regarding the investment value of the property, the cost of visiting other resorts, the future addition of attractions to the resort, availability of accommodations, the size of the unit purchased, maintenance fees, and tax advantages of the purchase. Further, Complainants state that they were kept at the presentation longer than they were originally told, that the sale was high pressured, and Complainants were rushed through the closing process and not told of the rescission period.

Respondent submitted a response through an attorney stating that Complainants initially purchased a time-share interest from Respondent in 2008 with two (2) upgrades through mail out contracts since that time. Respondent's attorney states that the misrepresentations alleged by Complainants arise out of the 2008 sales presentation. Respondent denies that the alleged verbal misrepresentations were made with regard to issues such as investment or resale potential, the cost of visiting other resorts, adding amenities to the resort, the availability of accommodations, or tax advantages of the purchase. Respondent's attorney attached documents signed by Complainants acknowledging several of these issues such as the resale/investment potential, the type of unit purchased, and the availability of units. Finally, Respondent's attorney states that Respondent has no record of complaints by Complainants until Complainants advised Respondent they could no longer afford the time-share. It appears that this transaction occurred outside TREC's statute of limitations. Despite that, however, there does not appear to be evidence of a violation by Respondent.

Recommendation: Dismiss.

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

28. 2013009591

Opened: 6/24/13

History: No Prior Disciplinary Action (Unlicensed)

Complainants attended a sales presentation given by Respondent (unlicensed entity) for membership into a vacation travel club which offers unlimited access to discounted travel pricing

for its members for condos, cabins, hotels, cruises, and airfare. Complainants state that they received a credit toward the price of membership into Respondent's club by trading in Complainant's time-share (which appears to have been handled by a separate company). Complainants claim misrepresentation in that they were promised a free flight and cruise for attending the presentation, which turned out to include fees and which Complainants were unable to book, and that Complainants are now being charged a yearly fee for family members to use the membership which Complainants were not told about during the presentation. Complainants state that, since they purchased the membership in 2011, they have only used it once to travel to what was supposed to be a 4 or 5 star all inclusive hotel in another country with transportation to the resort, but the resort was low-quality and there was no transportation provided. Respondent submitted no response to the complaint. Though it appears that Complainants may have a number of issues with Respondent, the issue at hand is whether Respondent (who is unlicensed) should be licensed with TREC. Based on the information provided, it does not appear that Respondent is engaged in unlicensed activity.

Recommendation: Dismiss.

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

29. 2013009721

Opened: 7/16/13

First License Obtained: 3/9/87

License Expiration: 12/10/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complaint opened by TREC against Respondent (principal broker) based on Respondent's failure to satisfy an Agreed Citation sent to Respondent. Respondent was sent an Agreed Citation, which included a civil penalty for an advertising violation discovered during an audit of Respondent's firm involving the use of some advertising which did not include Respondent's firm name as licensed with TREC. Because Respondent had not signed and returned said Agreed Citation, the matter was opened in legal as a complaint.

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

Recommendation: Dismiss.

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