

TENNESSEE REAL ESTATE COMMISSION MINUTES

JULY 11 – 12, 2013

The Tennessee Real Estate Commission convened on Thursday, July 11, 2013 at 9:16 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 Michelle Haynes, Commissioner Grover Collins, Commissioner Janet DiChiara, Commissioner John Griess, Commissioner Isaac Northern, Commissioner Wendell Alexander and Commissioner Austin McMullen. Commissioner McMullen and Commissioner Stephenson left the meeting at 11:40 at lunch and did not return to the meeting. Commissioner 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 Wednesday, July 3, 2013. Also, this meeting has been noticed on the tn.gov website since Friday, July 5, 2013.

The first order of business was the adoption of the agenda for the July 2013 Commission meeting. Chairman Stephenson stated that Ms. Leslie Ostrander, Director, Government Consent Acquisition for Lexis Nexis was on the agenda for the afternoon but she had asked to be heard earlier in the meeting after she met with Assistant Commissioner Giannini (sometime mid-morning); **Commissioner McMullen made a motion to move Ms. Ostrander’s appearance to mid-morning when she arrives at the meeting and to adopt the July 2013 agenda as amended; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

ELECTION OF CHAIRMAN AND VICE-CHAIRMAN FOR 2013-2014

The Commission held the election of the Chairman and Vice-Chairman for the Fiscal Year 2013-2014.

Commissioner Griess nominated Commissioner William “Bear” Stephenson for Chairman; seconded by Commissioner DiChiara; Commissioner Collins nominated Commissioner Alexander; seconded by Commissioner Northern; Commissioner Alexander thanked them but declined the nomination; Commissioner Alexander made a motion that nominations cease and Commissioner Stephenson be elected Chairman by acclamation; seconded by Commissioner Haynes; Roll Call Vote: 7 yes, 0 no; Commissioner Stephenson abstained; motion carried and Commissioner Stephenson was elected Chairman for FY 2013-2014.

Commissioner Alexander nominated John Griess for Vice-Chairman; seconded by Commissioner Haynes; Commissioner Collins made a motion to elect Commissioner John Griess Vice-Chairman by acclamation; seconded by Commissioner McMullen; vote: 7 yes, 0 no; Commissioner Griess abstained. Commission John Griess was elected Vice-Chairman for FY 2013-2014.

EXECUTIVE DIRECTOR’S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

DISCUSSION OF ADVERTISING

Ms. Maxwell explained that she and Commissioner Griess had worked together to narrow down the primary advertising questions that may need to be clarified for licensees. Those concerns are listed below.

Advertising Questions/Considerations

All advertising shall conform to these requirements:

1. Licensees shall advertise under the firm name and shall list the firm name and firm telephone number as registered with TREC .(Rule 1260-02-.12(2)(b))
2. Licensees must have written authorization from the owner of the advertised property. (Rule 1260-02-.12(2)(d))
3. Licensees cannot advertise in a false, misleading, or deceptive manner. (Rule 1260-02-.12(2)(e))
4. Franchise or Cooperative Advertising Groups: (Rule 1260-02-.12(3))
 - a. When advertising specific properties, a licensee shall clearly and unmistakably include the licensee’s name, the broker or firm name and the firm telephone number next to any specific properties advertised in any media.
 - b. When advertising other than specific properties, the following legend must be included in a manner reasonably calculated to attract the attention of the public: “Each (Franchisee Trade Name or Cooperative Group) Office is Independently Owned and Operated.
 - c. Any licensee using a trade name on business cards, contracts or other documents related to real estate transaction shall clearly and unmistakably indicate:
 - i. His or her name and the firm telephone number (as registered with the Commission) and:

- ii. The fact that his or her office is independently owned and operated.
5. Licensees cannot post signs on any property unless the firm's name appears in letters the same size or larger than those spelling out the name of the licensee. (TCA 62-13-310(b))
 6. Each licensed broker shall conspicuously display a sign on the outside of the building of the broker's office which contains the name of the real estate firm as registered with the Commission. (TCA 62-13-309(1)(b)(1) and Rule 1260-02-.03(1))
 7. A Licensee can only advertise under the firm name with whom he/she is affiliated with the exception of a licensee who is the PB of two firms located in the same building. (no more than one license shall be issued to any broker or affiliate broker to be in effect at one time and the license of a broker and each affiliate broker under contract to such broker.... TCA 62-13-309(2) and (3)(e)and (4)(g))
 8. If an applicant for a broker's license maintains more than 1 place of business within the state, each office must have a principal broker and its own firm license. (TCA 62-13-309(d)) An office is deemed to be a branch if it advertises in any way to attract the public, has a mail drop or invites or solicits telephone calls (Rule 1260-02-.03)

Questions:

1. Does 2012-CPS-001 only apply to licensees associated with a Franchise or Cooperative Group? (Policy on Internet Advertising)
2. Can a company or franchise logo substitute for the firm's name as registered with TREC?
3. Regarding item 4 above, is the size requirement related to the franchise or group name, or, the franchisee name?
4. Regarding #1 above is there, or should there be, a policy related to the size relationship between the licensee's name and the firm's name?
5. Regarding #1 above, is there, or should there be, a policy related to the size relationship between a "Team, group, association or other collective descriptive name" and the firm's name?
6. Does 2000-CPS-002 preclude real estate firms from having the same name in the same proximity? (Duplicate or Confusingly Similar Names)
7. Can a licensee advertise within different divisions of a firm? For instance, can a licensee advertise a house for sale in a medium as a "member of the New Homes Division" and a

commercial property in a commercial information exchange as a “Commercial Division Member”?

8. Can an abbreviation be used in place of the licensed firm name?
9. Can a firm be a corporation or LLC inside another firm or in its firm name be affiliated with another firm?
10. Can a team use as part of its name “and Associates” or “Realty”
11. Can the company logo be used in place of the firm name as licensed with TREC?

Things you can’t do as a licensee:

1. Advertising under two or more firm names.
2. Substitute a team name or the like for the firm name.
3. Advertise with a variation of the firm’s name or a variation of the licensee name as registered with TREC.
4. Advertise without the firm phone number as registered with TREC.
5. Advertise a different company under the guise of a team name or acronym.

Run and advertise a property management business “off the firm books”

Ms. Maxwell stated that she had received from both Commissioner Griess and other sources as well, examples of advertising violations. After reviewing these advertisements with Ms. Cropp, it was determined that the Commission should not view the actual advertisements sent in because complaints could be opened against that specific person for violating the Broker’s Act.

Therefore, Ms. Maxwell mocked up ads, using fake license and company names that mirrored those actually seen in the submitted ads. The following three pages have examples of three signs that are being used by the same agent followed by an explanation of what is wrong with each advertisement.

Examples on next three pages....

FOR SALE

Abe Borsen

591 873 5478

Grouse Crow Realty

Durango Properties

The licensed firm name is Grouse Crow Realty d/b/a Durango Properties. The number listed in the cell number of the licensee. The licensee name is larger than letters in firm name.

Next example on next page...

Grouse Crow Commercial

591 8476538

AVAILABLE

Abe Borsen

591 873 5478 Cell

The licensed firm name is Grouse Crow Realty d/b/a Durango Properties. There is no licensed firm by the name of Crouse Crow Commercial. Abe Borsen is a licensed affiliate with Crouse Crow Realty d/b/a Durango Properties. The number listed as the firm number is not listed with TREC.

Next example on next page...



The licensed firm name is Grouse Crow Realty d/b/a Durango Properties. There is no licensed firm by the name of G-C Commercial. Abe Borsen is a licensed affiliate with Crouse Crow Realty d/b/a Durango Properties. The number listed is not listed with TREC. This licensee has three signs with three different firm names listed. His name is larger than the firm name in each example.

The Commissioners discussed the three signs and the violations included therein.

Chairman Stephenson asked the Commissioners to continue to think on this topic and they would return to it, but stated that the representative from Lexis Nexis had arrived at the meeting and, per the amended agenda; he was recognizing her to speak.

DISCUSSION OF MANUALS

Leslie Ostrander, of Lexis Nexis, Director of Government Consent Acquisition, addressed the Commission regarding the proposal for printing new TREC manuals. She gave the Commission a brief overview of the contract history with TREC. She presented the Commission with a proposal and the Commission discussed the various aspects of the proposal with Ms. Ostrander. Commissioner Haynes asked questions about the printing and time allowed between printings. She confirmed that the Publications could be in consecutive years or spaced up to three years

apart (i.e. it could be published in 2013 & 2014 or 2013 & 2016). She also asked for a provision to be included that if it is determined that a supplement needs to be done, then TREC would receive 50 supplements for the 50 books already printed and that is Lexis Nexis does not obtain renewal of the T.C.A., TREC will have no obligation to publish the second book with Lexis Nexis. There was some discussion about the various provisions of the proposal and the cost to licensees. Ms. Ostrander stated that she feels that the wave of the future is eBooks. She also stated that licensees could get access to the supplement for a fee.

Commissioner Collins made a motion that Ms. Maxwell meet with Assistant Commissioner Giananni and explain that the Commission is most interested in Option 3 of the proposal plus the items brought up by Commissioner Haynes; seconded by Commissioner McMullen; unanimous vote; motion carried.

After the meeting, Ms. Ostrander sent Ms. Maxwell the following proposal to present to the Administration.

Proposal: Official Manual of the Tennessee Real Estate Commission, 2013 Edition

Submitted to: Tennessee Real Estate Commission (TREC)

Specifications:

Cover: Polylam cover, color TBD by Commission (free upgrade to Lexotone if desired)

Title Page: Provided by LexisNexis

Preliminary Pages: Any updates to the existing roster page, telephone numbers, and/or "Frequently Asked Questions" to be supplied by the Commission. Proof of preliminary pages to be sent to the Commission for review.

Table of Contents: Provided by LexisNexis

Scope: Same statutory and regulatory scope as 2008 Edition, updated through the 2013 legislative session. Headings and Analysis to be included.

Annotations: Provided by LexisNexis; taken from the *Tennessee Code Annotated*, updated through the 2013 cumulative supplement.

Index: Comprehensive double-column Index provided by LexisNexis.

Book Format: Same as 2008 Edition; 6 ½" x 10" wide measure text. eBook code to be included with each book.

Prices (50 print & eBook):	Commodity/ Book Paper	Unit Price
Contract Price	\$21,350.50	\$427.01
Marketing Offset Price	\$13,000.00	\$260.00
Marketing Offset And 2 Year Contract	\$10,000.00	\$200.00

Contract Price

Price reflects calculations under LexisNexis's contract with the Tennessee Department of General Services. LexisNexis is guaranteeing a \$35 retail price to the all TREC licensees plus a free shipping offer valued at \$9.49 per book. Retail price guarantee and free shipping valid under all 3 LexisNexis offers.

Marketing Offset Price

In addition to the guaranteed retail price and free shipping, LexisNexis offers an additional 39% discount over contract pricing to TREC, a dollar amount of \$8,350.50. 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 copy and online.

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.

The figures quoted herein will remain in effect for 45 days from the date of this proposal (July 24, 2013).

DISCUSSION OF ADVERTISING

The Commissioners and Staff returned to the Advertising Discussion. They determined that, at this meeting, they would at least act on signs on property.

Commissioner Haynes made a motion that on signs on a property, the licensee's name cannot be any larger than the smallest font of the company name; seconded by Commissioner Northern; unanimous vote; motion carried.

Commissioner Alexander made a motion that the above apply to any sign on any land/property, including billboards; seconded by Commissioner McMullen; unanimous vote; motion carried.

TENN. CODE ANN. § 62-13-310(b) states: "Licensees may not post signs on any property advertising themselves as real estate agents unless the firm's name appears on the signs in letters the same size or larger than those spelling out the name of the licensee." The Commission's interpretation of the statute: The agent's name cannot be any larger than the smallest font of the firm name on any sign which is on property (including billboards). This includes signs advertising agents as well as specific property.

Commissioner Griess made reference to Question #6 "Does 2000-CPS-002 preclude real estate firms from having the same name in the same proximity? (Duplicate or Confusingly Similar Names). He asked the Commission to address whether Policy 2000-CPS-002 is still relevant.

It was determined that the other advertising issues would be discussed the following month.

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 June 28, 2013 TREC had a total of 106 open complaints. There were 41 new complaints in June 2013. There were 88 complaints in the legal department and 18 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2012-2013 is 270. The total civil penalties that were collected in June 2013 were \$15,610.00.

- **Licensing Statistics** (Exhibit 4) – Ms. Maxwell presented licensing statistics for the month of May 2013. As of June 28, 2013, there were 23,656 active licensees, 1,207 inactive licensees and 8,454 retired licensees. There were 3,841 active firms and 224 retired firms. There were 264 new applications approved in June 2013. Further, she presented a comparison of total licensees for individuals (active, retired and inactive) and firms in June 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.

ERRORS & OMISSIONS INSURANCE UPDATE

Ms. Maxwell explained to the Commission how the suspensions, dictated by Public Act 84, were instituted administratively and she gave them the following statistics on who was suspended and sent suspension letters and where those letters were sent.

E&O UNINSURED ALL SUSPENDED 7/1/2013

Active/Uninsured

Notice was sent to licensee mailing address (firm address), home address and also to licensee's principal broker at the firm address.

- Affiliate Broker – 99
- Broker – 16
- Principal Broker – 74
- Timeshare Salesperson – 3

Total Active Uninsured – 192

Broker Released/Uninsured

Notice was sent to the licensee at his/her mailing address (which is their home address) and also to the principal broker at the last known firm with whom the licensee was affiliated.

- Affiliate Broker – 205
- Broker – 13
- Timeshare Salesperson – 176

Total Broker Released Uninsured – 394

Grand Total Active & Broker Released = 586

She advised that 67 licensees had come into compliance and been taken out of suspension.

Commissioner Alexander asked that a list of all of the Principal Brokers who are in suspension be sent to all of the Commissioners. Commissioner Collins also asked that the Association and MLS be notified as well so they can shut them down until they are no longer suspended.

There was discussion regarding whether licensees who are suspended for not paying child support payments or not paying their student loans or privilege tax should not also be reviewed by the Commission. Ms. Cropp advised that the suspensions are not dictated by the Broker's Act but by another statute which she can get for the Commission at lunch. She stated that this statute supersedes the Commission's power and that Staff has no option but to suspend when told to so by the TSAC (student loans) and DHS (child support) or the Department of Revenue (privilege tax). Ms. Maxwell explained that she receives a notice when the person comes into compliance and she is to take them out of suspension. Ms. Cropp advised she would get more information and report back to the Commission.

Chairman Stephenson recessed the meeting for lunch at 11:40 after advising that he would not be returning for the afternoon session because of prior obligation and he was turning over the running of the meeting to newly elected Vice-Chairman Griess.

EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR

Mr. McDonald presented the Courses for Commission Evaluation for July 2013. **Commissioner DiChiara made a motion to approve the Courses for Commission Evaluation J1 through J25; seconded by Commissioner Northern; unanimous vote; motion carried.**

Mr. McDonald presented the Course for Commission Discussion (J26), "Basic Real Estate Principles (I) at Success Real Estate School. The proposed instructor of the course, Von Richcreek, is asking the Commission of a waiver of the requirement to be an instructor for the pre-licensing courses based on his past experience and education requirements. The applicant instructor provided transcripts, explanations of his past education, letters of recommendation and a resume, etc... **Commissioner Collins made a motion to deny the course J26 "Basic Real Estate Principles (I) at Success School of Real Estate based on the fact that the instructor does not meet the qualifications; seconded by Commissioner DiChiara; discussion; Ms. Cropp advised that she had spoken with former Chief Legal Counsel and that they had determined that the statute seems to delineate education and experience in a number of areas. She stated that subsection 3 talks about a Master's Degree and three years of experience and it seems to contemplate education and experience as two separate things and to intermingle those two things for this applicant instructor does not seem to comport with the rest of the**

statute. Therefore, she believes that the required experience has not been met; Commissioner Alexander called for the question; unanimous vote to deny the course J26; motion carried.

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

- Sally Cummings of TAR (1110) requested the approval of Robert Morris to instruct the TREC Core course (#7035). Mr. Morris is an approved instructor and has courses approved with TREC under provider #1235- Advanced Training Seminars, LLC.

Commissioner DiChiara made a motion to approve Mr. Robert Morris; seconded by Commissioner Northern; vote: 4 yes, 1 no (Commissioner Collins voted no); motion carried.

- Von Richcreek of Success Real Estate School (1585) requested the approval of himself to the previously approved 60 Hour Basic Principles of Real Estate (# 7254). Marty Calfee is currently the Instructor. Mr. Richcreek has submitted a request in writing which is included in July 2013 Education materials. Mr. Richcreek also would like to be approved for courses J17 and J18 referenced on the July 2013 Education Report.

Commissioner DiChiara made a motion to deny Mr. Von Richcreek; seconded by Commissioner Northern; unanimous vote; motion carried.

INFORMAL APPLICANT APPEARANCE

Alice Renee Flatt, applicant, appeared with her potential principal broker James Pratt of Pratt Homes in Chattanooga, Tennessee. Ms. Flatt disclosed to the Commission the following convictions: 9 counts of Passing or Offering a Forged Instrument Value Less Than \$200.00 on 12/12/1984, one count of Forgery and/or Passing or Offering to Pass a Forged Instrument on 2/18/1986, Third Degree Burglary, Forgery-Grand and Receiving Stolen Property on 10/20/1987. **Commissioner Alexander made a motion to approve Ms. Flatt's request; seconded by Commissioner Northern; unanimous vote; motion carried.**

Michael Driver, Chief Counsel, joined Ms. Cropp in addressing the Commission about the earlier question brought up about what, if any, role the Commission plays or should play in the suspension of licensees who are behind on their child support or student loans. Commissioner Northern stated that his concern is that the Board should have some sort of secondary approval when these suspension orders are sent. He stated that he does not believe that such an action should be approved without input from the Board of Commissioners. Chief Counsel Driver stated that because of the infrequency of the board meetings, it would make it difficult to effectuate the federal mandate to take these licensees in and out of suspension as they come in and out of compliance. He stated that this is a statutorily required notification that is sent to staff and they must comply by taking licensees in and out of suspension (which could just be a matter of a few days). He stated that since the topic was just brought up at the current meeting

that perhaps more information could be obtained and brought back to the Board the following month.

AUDITOR PROCESS

Ms. Maxwell gave the Commissioners several different documents regarding revamping the auditing process. She presented them with another draft of the proposed mail-in audit and the following outline of how she proposes the process could potentially run.

TREC Investigative Auditor-Job Duties/Description

I have further defined and refined the proposed TREC investigative auditor process and position and revised the Mail In Audit (MIA) form. The MIA form will serve as a threshold document, an investigative tool and would not generally be the sole factor upon which disciplinary determinations would be made. The MIA questions are designed to get a picture of the manner in which a firm is managing its trust accounts (all types). The investigative auditor (IA) will analyze the answers and determine if further clarification and/or investigation is warranted. If the IA determines that is the case, then the IA would contact the PB and either request additional documentation, make an unannounced visit to the firm, or make a scheduled visit to the firm. The type of contact and/or action would be a function of the seriousness of the problems and the risk which those problems might pose to the public. Once implemented, the MIA process will need to be carefully monitored and will need to remain flexible and adaptable so that we can act quickly, if necessary, to solve problems which might threaten its integrity or mission to protect the public. Hopefully, at some point the MIA will become a completely electronic audit review which can be distributed, received and reviewed online. At this time, we could request that the information be scanned or submitted to TREC on a CD, thereby decreasing the amount of paperwork coming into the office.

I have outlined the proposed specifics and implementation plans for your review and suggestions:

1. Selection of Firms

a. The initial MIA firms will consist of firms previously the subject of a disciplinary action (citation, consent order or final order) involving any aspect of trust fund maintenance, accounting and/or disbursement. In the last two years, there have been about 22 citations issued for escrow violations and about 30 complaints in which disciplinary action was taken as the result of an escrow violation.

b. The next focus of the MIA would be firms engaged in property management. While TREC does not issue a specific license for property management, the firm application does currently ask if the firm will engage in property management. We can track these responses going forward, but until that time, we are aware of certain geographic areas in which a large number of the firms engage in property management. Those firms can be identified by TREC. Additionally each month a number of the letters will be randomly generated. In order to facilitate any onsite visits which may be necessary following the

review of the MIA, each month the randomly generated batches of letters will be pulled from several counties in one area of the state.¹ The following month, the random letters will go out to a different area of the state. When possible, the MIA letters will pull from the three categories mentioned above plus the nonresident firms, but there will be months when all the letters will be randomly generated.

c. There are currently 649 nonresident firms, which the auditors were not previously able to audit because of their out of state location. These firms will be included in the early MIA process so that TREC can verify that the firms are in compliance with the Broker Act.

d. On 6/13/2013, there were 3,847 active licensed firms. The average audit cycle in most states is 3-5 years. With our current total, an every 3 year cycle would be 107 MIAs per month; on a 3.5 year cycle, 92 a month; on a 4 year cycle, 81 a month; and on a 5 year cycle, 65 a month. I think that an IA should be able to average 75- 80 MIA reviews a month—from initial return of the package to completion and closure of the MIA file. I would anticipate that the accompanying documents will take longer than the form to review. Some of the reviews will require further action which might not be able to be completed in a 30 day cycle, but I hope those would be the exception.

e. I calculated that an MIA package review should take an average of 65-70 minutes from start to closure. If the IA spends 90 hours per month on some aspect of the MIA, then the IA should be able to complete approximately 75-80 MIA reviews per month. Since 2006, the average time spent on the ground performing the audits was about 1.5-2 hours and the average drive time per audit to the audit location was 1 hour. The auditors averaged about 30 hours per month in their home work stations filling out paperwork, making appointments and reviewing documents. The MIA process should result in less unproductive time and a better check and balance on time spent.

f. The IA employee would be scheduled to work 150 hours each month (37.5 X 4). If the IA spends 90 hours per month reviewing and completing the MIA packages, he will have 60 hours each month available to travel to firms to conduct necessary onsite audits, to gather information needed for complaints, to follow up on information received regarding unlicensed activity, advertising and other possible violations of the Broker Act which have been reported to TREC. There will be groundwork which can be done at the office, so that when the IA does have to go onsite, he is informed concerning the possible issues. Hopefully any prep time spent will put the IA in a better position to ask insightful follow up questions and gather the pertinent information. Every effort will be made to consolidate trips the IA makes, but I know that such will not always be feasible.

The amount of time allotted for the additional IA tasks might need to be adjusted once the program is operational.

g. We would set the MIA letters to go out by post (or email transmission if a viable option) on the 10th or 15th of the month in order to give the PB an opportunity to reconcile his trust accounts as of the end of the preceding month. The MIA package would be due no later than 30 days after the date of the MIA letter. Depending on the number which go out, there should be a relatively steady flow of MIA packages returned, which the IA must thoroughly review and determine if any need further clarification or investigation and if so what type and in what time frame.

h. Several states have found that publishing an Audit Honor Roll listing firms audited with no violations to be a positive influence on compliance. While I was not very receptive to this idea initially, as I have talked with other states and given it more thought, I think it would be beneficial to TREC. It would be positive reinforcement and I think it would encourage or inspire other firms to strive for a violation free audit so that their firm name would appear on the list. It is a small item which would cost TREC very little to include in the newsletter or on the website or ultimately to include in regular email updates to licensees.

2. Follow Up to MIA

a. When the MIA package is returned, the IA will review it. If the MIA package does not raise any red flags, if all the trust accounts appear to be in order, then the IA will prepare an inspection report which will be sent back to the PB. If there are deficiencies in the MIA package (supporting items not sent, questions unanswered or not completely answered, or if any of the answers raise red flags), then the IA will note these, discuss any questions regarding the MIA package with the Executive Director and contact the PB to discuss the concerns noted. After contact is made if the IA is not satisfied with the PB response and/or the PB does not send in additional requested documentation, then the IA would probably make an onsite visit as the next step.

b. If while completing the MIA, the PB reveals that the firm recognizes that it does have issues with the trust fund accounts, then the MIA asks the PB to outline the corrective action he has taken or plans to take to rectify the issues. The purpose of this is to get the PB to focus on the problems and hopefully to realize the steps which must be implemented to correct the problems. TREC cannot approve any corrective plan and the corrective plan would not absolve the licensee from discipline but the danger to the public should decrease the sooner the licensee begins the process of correcting problems.

c. Another tool which is used by about 22 states is a form of consent to examine trust account document which is part of the firm and/or PB application. This document, signed by the PB and the financial institution, authorizes the Commission to examine the trust account(s) identified in the document and the financial institution agrees that it will permit such examination. This is generally viewed as a last resort tool by most states rather than one which is regularly used. If a PB refuses to supply bank statements, then those states which have these consent documents in place exercise the right to ask the financial institution to allow their examination. As long as the access is restricted to named representatives and the process is carefully monitored, it can act as a further safeguard to the public. Although I think that this is a useful tool to have available, many PBs will probably be very resistant to granting this type of access to their trust accounts. With all of the changes to the audit program, this might be something that we research further and consider at a later time.

3. Enforcement

a. If the PB does not respond with the completed MIA package within 30 days of receipt of the MIA or does not respond at all, some enforcement action will be required. There are two basic approaches that could be taken—immediate disciplinary action could be instituted or a second letter could be sent giving the PB an additional 30 days from the date of the letter to respond. If the completed MIA package is not received or no response is received within the second thirty day period, then the IA will prepare a written report outlining the PB's failure to respond and/or submit the completed MIA package and a complaint will be opened pursuant to TCA 62-13-312(d) for refusal to permit access and disobedience to any lawful agency requirement for information.

b. The goal is to get 100% compliance rather than have to pursue disciplinary action against licensees for not responding or not responding with a completed MIA package. It may be that there will be more effective ways to achieve compliance than through the filing of complaints, but if no action is taken in regard to those who are non-compliant, then the chances of achieving acceptance, credibility and compliance decrease.

4. Education

a. The primary keys to long term success of the MIA are the education of the licensees about the process and the qualifications and training (initial and ongoing) of the IA. The licensees must buy into and see the benefits of the process and trust the process in order for it to become an effective, efficient and productive approach to the audit process. It is crucial that the licensees understand, among other things, the reasons for the MIA audit, the goals of the process, that it will eliminate the "overauditing" of

certain easily accessible firms and what information TREC expects to receive from the licensees when the MIA is completed and returned to TREC. TREC will need to assure the licensees that even though the primary emphasis of the audit process has shifted, the continued enforcement of all provisions of the Broker Act and the rules and regulations promulgated thereunder remains a priority for TREC.

5. IA Job Description

a. While the proposed work activities of the IA do not match up exactly with any current state job classification, I think that the investigator qualifications and description offer a better fit than the auditor classification and would give us more flexibility in establishing the work activities for the IA. The Reg Board Investigator minimum qualifications would offer us a broader range of candidates from which to choose as opposed to the auditor minimum qualifications which require graduation from an accredited college or university with a four year accounting degree or a public accountant in good standing or graduation from an accredited college or university with a BA, including 36 quarter hours in accounting.

6. Conclusion

I have researched and compiled a number of other items for consideration, but many of those items can be addressed in detail once the restructure approach is implemented. I wanted to focus here on the steps we are prepared to take to get the new approach operational. The Commission has discussed the structure of the MIA and has made some suggestions which I have incorporated into the implementation plan. I think that this restructured approach will save TREC money and will result in a more efficient and effective audit process that will benefit the public, the licensees and the State.

The following is a proposed notice to principal brokers that would be sent with the mail-in audit.

NOTICE FROM TENNESSEE REAL ESTATE COMMISSION

Mandatory Mail In Audit

Month, Day, Year

To: Principal Broker with license number
Firm Name with license number
Address
Principal Broker email address

Re: Trust Account Name
Account Number
Bank Name and address:

The above referenced firm trust account has been randomly selected for an audit by the Tennessee Real Estate Commission. There is a separate notice for each firm trust account currently reflected on the records of the Tennessee Real Estate Commission. If you have additional firm trust accounts, please include the name, account number, bank name and date opened for each trust account. Please note that you are required to notify TREC of the account name and number and the bank name and address of all firm trust accounts. All questions contained in the Mail In Audit should be answered in regard to any and all firm trust accounts. (TCA 62-13-312(d) and TCA 62-13-321)

Please copy this letter, complete the following questions and return the completed copy of this letter, along with all requested documentation, within thirty (30) days from the date of this letter. You may transmit this letter, the completed Mail In Audit form and all supporting information by email, fax, post, courier or hand delivery.

(1) Name, phone number and email address of a contact person for any questions which we may have.

Name: _____ Phone Number: _____

Email Address: _____

(2) Is this account closed? __No __Yes_____ (date closed)

(3) Is this account maintained for:

- ___ Real Estate Transactions—Earnest Money
- ___ Property Management—Clients’ Trust Account
- ___ Property Management—Security Deposit Accounts
- ___ Property Management—Repair/Maintenance Account
- ___ Other Trust Purposes

If you do not have any escrow/trust accounts open and therefore hold no money that belongs to others, please sign the Certification of Waiver of Escrow/Trust Account found at the end of this form and return all of the enclosed documents, along with a copy of the firm’s Request for Waiver of Escrow Account signed by TREC granting the firm’s Waiver of Escrow Request. (TCA 62-13-323)

There was discussion regarding the above process. Commissioner Northern expressed concern that he believes that the audit is more focused on Property Management companies than firms in general. He stated that he thought what they were trying to do, in light of there being no auditors in the field, was come up with a program that would be somewhat helpful to the companies that TREC is policing. He suggested that emphasis should be placed on firms that have had previous issues. He also explained that in the larger counties, Property Management firms are liable under the Landlord Tenant Act as well. Commissioner Alexander stated that smaller counties, such as his, are not held liable under the Landlord Tenant Act and therefore, when a firm is audited and they do both regular real estate and property management then those two facets of the company should be audited. He also said that if the auditor was going to do 60 audits a month then they should be divided evenly among the three grand divisions of the State of Tennessee. As also suggested by Commissioner Northern, Commissioner Alexander agreed that new firms should be audited so that they get off to a good start and on the right track. Commissioner Alexander stated that there should be some kind of penalty for those who do not comply. Vice-Chairman Griess asked Ms. Maxwell if she had received enough feedback to move forward with working on the audit form again. She stated that the audit could be used as an educational tool; not just an audit. She wants to present the questions in a manner that makes the principal broker think through the processes they use. Commissioner Alexander asked Mr. McDonald to pass the information along, when complete, to the education providers. She stated that she had enough information at that time but at the next month's meeting, she can clarify additional points, such as the definition of trust accounts.

Commissioner Northern made a motion that no particular section/faction of the real estate industry be singled out when either selecting firms to audit or who receives the mail-in audit form; seconded by Commissioner Alexander; unanimous vote; motion carried.

2014 PROPOSED MEETING SCHEDULE

The Commission was presented with a proposed 2014 meeting schedule. Ms. Hestand stated that she would email the Commissioners a copy so they can check their calendars for conflicts. Ms. Maxwell stated that the matter would be added to the agenda for the next month's meeting.

ARELLO ANNUAL CONFERENCE

Commissioner Collins went on record and made a motion that it be requested that Commissioner John Griess and Commissioner Janet DiChiara (along with Staff Eve Maxwell and Steve McDonald) attend the 2013 ARELLO Annual Conference; seconded by Commissioner Alexander; 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. 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) **2011027201 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to Close and Flag the Respondent’s file; seconded by Commissioner Haynes; unanimous vote; motion carried.**
- 2) **2012025711 &**
- 3) **2012025721 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to Letter of Instruction to Respondent 1 regarding T.C.A. § 62-13-312(b)(16) and Rule 1260-02-.02(2) regarding the required administrative measures for change of affiliation or retirement of a license; seconded by Commissioner Northern; discussion; vote: 5 yes, 1 no (Commissioner Alexander voted no.); motion carried.**
- 4) **2013006401 – Commissioner DiChiara had previously reviewed the file and reported to the full Commission and recommended the complaint be dismissed. Commissioner Northern made a motion to accept Commissioner DiChiara’s recommendation to dismiss; seconded by Commissioner Collins; vote: 4 yes, 1 no (Commissioner Alexander vote no.), Commissioner DiChiara abstained; motion carried.**
- 5) **2013002391 &**
- 6) **2013002392 – Commissioner Collins made a motion to accept legal counsel’s recommendation before Ms. Cropp read the entire synopsis; seconded by Commissioner Northern; Roll Call Vote: 2 yes (Collins & Northern), 4 no (Alexander, DiChiara, Griess and Haynes); Ms. Cropp read the remainder of the synopsis into the record; Commissioner Alexander made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.**
- 7) **2013002631 – Commissioner Alexander made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.**
- 8) **2013003711 – Commissioner Northern made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.**
- 9) **2013003811 &**
- 10) **2013003812 – Commissioner Alexander made a motion to dismiss as to both Respondents; seconded by Commissioner DiChiara; unanimous vote; motion carried.**
- 11) **2013004001 &**
- 12) **2013004002 &**
- 13) **2013004003 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to issue a Consent Order for both Respondent 2 and Respondent 3 for \$500 each 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 and a principal broker, and Rule 1260-02-.01(1), which states that no licensee shall engage in any real estate activity in any office unless there is a principal broker who devotes his full time to management of such office, plus attendance by Respondents at an entire meeting of the Commission within 180 days of Respondents' execution of their Consent Orders. As to Respondent 1, Consent Order for \$500 for failing to exercise adequate supervision over the activities of any licensed affiliate brokers in violation of T.C.A. § 62-13-312(b)(15) plus attendance at an entire meeting of the Commission within 180 days of Respondent 1's execution of Consent Order; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 14) 2013004121 &
- 15) 2013004122 – Commissioner Northern made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 16) 2013004321 – Commissioner Northern made a motion to dismiss; seconded by Commissioner Haynes; vote: 4 yes, 1 abstained (Collins); motion carried.
- 17) 2013004451 – Commissioner Northern made a motion to accept legal counsel's recommendation to dismiss before Ms. Cropp read the entire synopsis; seconded by Commissioner Haynes; Roll Call Vote: 3 yes, 3 no; motion failed; Ms. Cropp read the rest of the synopsis into the record; Commissioner Alexander made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Haynes; unanimous vote; motion carried.
- 18) 2013004601 &
- 19) 2013004602 – Commissioner DiChiara made a motion to accept legal counsel's recommendation to refer to the District Attorney's office and Close; seconded by Commissioner Northern; unanimous vote; motion carried.
- 20) 2013005271 - Commissioner Northern made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 21) 2013005281 – Commissioner DiChiara made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Haynes; unanimous vote; motion carried.
- 22) 2013005411 – Commissioner Northern made a motion to issue a Consent Order for \$200.00 for any conduct that constitutes improper, fraudulent or dishonest dealing in violation of T.C.A. § 62-13-312(b)(20), plus attendance at an entire meeting of the Commission within 180 days of Respondent's execution of Consent Order; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 23) 2013006051 &
- 24) 2013006052 &
- 25) 2013006121 – Commissioner DiChiara made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Haynes; unanimous vote; motion carried.

Ms. Cropp asked if there were any questions regarding the Consent Order Log and there were none.

REVISED ERRORS & OMISSIONS INSURANCE POLICY PENDING RULEMAKING

Ms. Cropp advised the Commission that Public Act 84 outlines a penalty fee section that is discretionary and therefore, for the sake of clarity for the staff when licensees come into compliance after the initial 30 days, presented them with a proposed policy, Policy 2013-CPS-003 [Policy on Lapsed E&O Insurance] to replace the existing policy. She explained that she also has proposed rules drafted but, in the meantime, she also prepared the following policy language for the Board's consideration for adoption.

COMMISSION POLICY STATEMENT

NUMBER 2013-CPS-003

EFFECTIVE DATE: July 11, 2013

REPLACES: 2012-CPS-008

POLICY ON LAPSED E&O INSURANCE

The Commission will accept payment of a penalty fee in the maximum amount allowable under Tenn. Code Ann. § 62-13-112, in addition to proof of insurance that complies with the required terms and conditions of coverage, in order to reinstate any license suspended pursuant to Tenn. Code Ann. § 62-13-112 for failure to maintain errors and omissions (E&O) insurance. Any request by a licensee to pay a lesser penalty fee must first be presented to and approved by the Commission.

This policy is intended for the use and guidance of the staff of the Tennessee Real Estate Commission. This document is not intended to create any substantive or procedural rights, enforceable by any party in administrative and judicial litigation with the State of Tennessee. The Tennessee Real Estate Commission reserves the right to act at variance with these guidelines.

Commissioner Haynes made a motion to adopt the proposed policy, Policy 2013-CPS-003 [Policy on Lapsed Errors & Omissions Insurance]; seconded by Commissioner Collins; unanimous vote; motion carried.

PROPOSED RULES/RULEMAKING NOTICE

Ms. Cropp explained to the Commission that because the rulemaking process can be quite lengthy and because of the immediacy of needing to have new rules in place for E&O and Fingerprinting, she went ahead and put the content of the proposed rules in the format in which they would go to the AG's office for review. She advised the Commission that they had been

sent these proposed rules previously but stated that they could take time to review them and suggest any changes they deemed fit. The content of the proposed rules, as presented, follows:

Department of State	
Division of Publications	For Department of State Use Only
312 Rosa L. Parks, 8th Floor Snodgrass/TN Tower	Sequence Number: _____
Nashville, TN 37243	Notice ID(s): _____
Phone: 615.741.2650	File Date: _____
Fax: 615.741.5133	
Email: register.information@tn.gov	

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Tennessee Real Estate Commission
Division:	Regulatory Boards
Contact Person:	Julie Cropp
Address:	500 James Robertson Parkway, Nashville, Tennessee 37243
Phone:	(615) 741-3072
Email:	Julie.Cropp@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Don Coleman
Address:	500 James Robertson Parkway, 12 th Floor, Nashville, Tennessee 37243
Phone:	(615) 741-6500

Email:	Don.Coleman@tn.gov
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Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Davy Crockett Tower, Room 1-A		
Address 2:	500 James Robertson Parkway		
City:	Nashville, TN		
Zip:	37243		
Hearing Date :	11/06/13		
Hearing Time:	9:00 a.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

--

Revision Type (check all that apply):

Amendment

New

Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only ONE Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
1260-01	Licensing
Rule Number	Rule Title
1260-01-.16	Lapsed Errors and Omissions Insurance

1260-01-.17	Fingerprinting
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Chapter 1260-01

Licensing

New Rules

1260-01-.16 Lapsed Errors and Omissions Insurance

1260-01-.17 Fingerprinting

1260-01-.16 Lapsed Errors and Omissions Insurance

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

(a) Penalty fees for Reinstatement of a Suspended License: Any licensee whose license is suspended for more than thirty (30) days pursuant to Tenn. Code Ann. § 62-13-112 for failure to maintain E&O insurance must provide proof of insurance that complies with the required terms and conditions of coverage to the Commission and must pay the following applicable penalty fee in order to reinstate the license:

1. For a license suspended due to a lapse in E&O coverage for more than thirty (30) days but within one hundred twenty (120) days:
 - (i) Two Hundred Dollars (\$200.00) if the licensee's insurance carrier back-dated the licensee's E&O insurance policy to indicate continuous coverage; or
 - (ii) Four Hundred Dollars (\$400.00) if the licensee's insurance carrier did not back-date the licensee's E&O insurance policy to indicate continuous coverage.
2. For a license suspended due to a lapse in E&O coverage for more than one hundred twenty (120+) days but less than six (6) months, a Five Hundred Dollar (\$500.00) penalty fee;
3. For a license suspended due to a lapse in E&O coverage for six (6) months up to one (1) year, a Five Hundred Dollar (\$500.00) penalty fee plus a penalty fee of One Hundred Dollars (\$100.00) per month, or portion thereof, for months six (6) through twelve (12).

(b) Conditions for Reissuance of a Revoked License: Upon revocation of a license pursuant to Tenn. Code Ann. § 62-13-112 for failure to maintain E&O insurance, any individual seeking reissuance of such license shall:

1. Reapply for licensure, including payment of all fees for such application;
2. Pay the penalty fees outlined in subparagraph (a) above;
3. Pass all required examinations for licensure, unless the Commission waives such examinations; and
4. Meet any current education requirements for licensure, unless the Commission waives such education requirements.

(2) Principal Brokers of Licensees Who Fail to Maintain E&O Insurance:

(a) A principal broker shall ensure, at all times, that all licensees affiliated with that principal broker shall hold E&O insurance as required by law. A failure to do so shall constitute failing to exercise adequate supervision over the activities of a licensed affiliated broker.

(b) For any principal broker who has an affiliated licensee whose license is suspended pursuant to Tenn. Code Ann. § 62-13-112 for failure to maintain E&O insurance, there shall be no penalty to the principal broker if either of the following two (2) circumstances occur within thirty (30) days of that affiliated licensee's license suspension:

1. The affiliated licensee has provided proof of insurance which complies with the required terms and conditions of coverage to the Commission;
or
2. The principal broker releases that affiliated licensee whose license is suspended for failure to maintain E&O insurance.

(c) After the aforementioned thirty (30) day period, if the affiliated licensee has neither provided the required proof of insurance nor been released by the principal broker, the Commission authorizes a formal hearing on the matter of the principal broker's failure to exercise adequate supervision over an affiliated licensee who failed to maintain E&O insurance but also authorizes that a consent order shall be sent to the principal broker, offering that principal broker the opportunity to settle the matter informally, thereby making formal hearing proceedings unnecessary, according to the following schedule:

1. If the principal broker's affiliated licensee reinstated his or her license, or the principal broker releases the affiliated licensee, more than thirty (30) days after suspension but within one hundred twenty (120) days after suspension, the consent order shall contain the following civil penalties:

- (i) Two Hundred Fifty Dollars (\$250.00) if the affiliated licensee's insurance carrier back-dated the licensee's E&O insurance policy to indicate continuous coverage; or
 - (ii) Five Hundred Dollars (\$500.00) if the affiliated licensee's insurance carrier did not back-date the licensee's E&O insurance policy to indicate continuous coverage.
- 2. If the principal broker's affiliated licensee reinstates his or her license, or the principal broker releases the affiliated licensee, more than one hundred twenty (120+) days after suspension, the consent order referenced in subparagraph (b) above shall contain a civil penalty of one thousand dollars (\$1,000.00).
- 3. Where a principal broker does not accept any authorized consent order for failure to supervise an affiliated licensee's E&O insurance, the hearing shall be held before an administrative law judge sitting alone, pursuant to the Uniform Administrative Procedures Act, compiled at title 4, chapter 5.
- 4. Nothing in this rule shall be construed as limiting the Commission's authority to:
 - (i) Authorize a consent order in a different amount than listed herein;
 - (ii) Seek any other legal discipline – including revocation or suspension of a license – for a failure to supervise an affiliated licensee's E&O insurance;
 - (iii) Review an initial order under the Uniform Administrative Procedures Act; or
 - (iv) Not seek discipline against a principal broker for failure to supervise an affiliated broker's maintenance of E&O insurance if the Commission determines that such discipline is not appropriate under the facts of that matter.

Authority: T.C.A. §§ 62-13-203 and 62-13-112.

1260-01-.17 Fingerprinting

- (1) Any initial applicant who is required to submit a complete and legible set of fingerprints for the purpose of obtaining a criminal background check pursuant to Tenn. Code Ann. § 62-13-303 shall submit said fingerprints in an electronic format.

(a) An initial applicant shall be deemed to have supplied the required set of fingerprints if that applicant causes a private company contracted by the State to electronically transmit that applicant's classifiable prints directly to the TBI and FBI to forward an electronic report based on that applicant's fingerprints to the Commission.

(b) All sets of classifiable fingerprints required by this rule shall be furnished at the expense of the applicant.

(c) The applicant shall make the arrangements for the processing of his or her fingerprints with the company contracted by the State to provide electronic fingerprinting services directly and shall be responsible for the payment of any fees associated with processing of fingerprints to the respective agency.

(d) Applicants shall in all cases be responsible for paying application fees for licensure as established by the Commission.

(e) In addition to new applicants for a broker, affiliate broker, time-share salesperson, or acquisition agent license, the following are considered "initial applicants" for purposes of this rule and, therefore, are required to submit fingerprints in an electronic format for the purpose of obtaining a criminal background check:

1. Any former licensee who must reapply in order to obtain reissuance of his or her license; and
2. Any person who previously held an affiliate broker license but no longer holds said license at the time such person applies for a broker license.

(2) In the event that an applicant furnishes unclassifiable fingerprints or fingerprints which are unclassifiable in nature, the Commission may refuse to issue the requested license.

(a) For the purposes of this rule, "unclassifiable prints" means that the electronic scan or the print of the person's fingerprints cannot be read, and therefore cannot be used to identify the person.

(b) Should an applicant's fingerprints be rejected by the TBI or FBI, the applicant shall pay any fees assessed by the TBI or FBI for resubmission.

Authority: T.C.A. §§ 62-13-203 and 62-13-303.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date:

Signature:

Name of Officer:

Title of Officer:

Subscribed and sworn to before me on:

Notary Public Signature:

My commission expires on:

Department of State Use Only

Filed with the Department of State on:

Tre Hargett

Secretary of State

The Commission discussed the various rules and then moved on to the review of the Regulatory Flexibility Act with Ms. Cropp. The content of that discussion is below:

The Regulatory Flexibility Act, Tenn. Code Ann. §§ 4-5-401 et seq. requires that prior to initiating the rulemaking process pursuant to Tenn. Code Ann. §§4-5-202(a)(3) and 4-5-203(a), all agencies shall review all proposed rules and the effect that the proposed rule has on small businesses. The Act requires that “each agency shall employ a regulatory flexibility analysis utilizing regulatory methods that accomplish the objectives of applicable statutes while minimizing any adverse impact on small business.”

The Act further provides that the agency shall consider, without limitation, certain methods of reducing the impact of the proposed rule on small businesses while remaining consistent with health, safety and well-being and those methods are as follows: the extent to which the rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules; the clarity, conciseness, and lack of ambiguity in the rule or rules; the establishment of flexible compliance and/or reporting requirements for small businesses; the establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses; the consolidation of simplification of compliance or reporting requirements for small businesses; the establishment of performance standards for small businesses as opposed to design or

operational standards required in the proposed rule; and the unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

Description of Proposed Rule:

Proposed Rule 1260-01-.16: This rule specifies certain provisions of Tenn. Code Ann. § 62-13-112 (as amended by Public Chapter No. 84) which allow the Tennessee Real Estate Commission (“the Commission”) discretion regarding penalty fees for reinstatement of a license which was statutorily suspended for failure to maintain errors and omissions (E&O) insurance as well as regarding conditions for reissuance of a license which was statutorily revoked for failure to maintain E&O insurance. This rule specifies the penalty fees for reinstatement as well as the conditions for reissuance of a revoked license. In addition, this rule specifies that failure of a principal broker to ensure that all licensees affiliated with that principal broker hold E&O insurance constitutes a failure to exercise adequate supervision and outlines the disciplinary action applicable to a principal broker whose affiliated licensee(s) failed to maintain E&O insurance as required by statute.

Proposed Rule 1260-01-.17: This rule expands upon Tenn. Code Ann. § 62-13-303 (as amended by Public Chapter No. 420) which provides that all applicants for initial licensure after January 1, 2014 shall submit a set of fingerprints for the purpose of obtaining a criminal background check. This rule specifies that all fingerprints submitted shall be submitted in an electronic format which is classifiable (or able to be read), with said fingerprints to be taken by a private company contracted by the State, which transmits the fingerprints to the TBI and FBI and submits an electronic report to the Commission. Finally, the rule defines initial applicants as including new applicants for a broker, affiliate broker, time-share salesperson, or acquisition agent license as well as any former licensee who must reapply for reissuance of his/her license or the former holder of an affiliate broker’s license who applies for licensure as a broker.

Regulatory Flexibility Analysis - Methods of Reducing Impact of Rules on Small Businesses:

1. The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules:

Commissioner Northern made a motion that there is no overlap, duplication, or conflict with other federal, state, or local governmental rules; seconded by Commissioner Alexander; unanimous vote; motion carried.

2. Clarity, conciseness, and lack of ambiguity in the rule:

Commissioner Northern made a motion that the rules are clear, concise, and unambiguous; seconded by Commissioner DiChiara; unanimous vote; motion carried.

3. The establishment of flexible compliance and reporting requirements for small businesses:

Commissioner DiChiara made a motion that these rules provide uniform and reasonable requirements, both for those individuals who are licensed and required by statute to maintain errors and omissions insurance, as well as those individuals who wish to be licensed with the Commission who are required by statute to provide fingerprints for the purpose of a background check and that these requirements assist with ensuring the health, safety, and welfare of the citizens of Tennessee; seconded by Commissioner Alexander; unanimous vote; motion carried.

4. The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses:

Commissioner Northern made a motion that these rules have no impact on reporting requirements for small businesses; seconded by Commissioner Alexander; unanimous vote; motion carried.

5. The consolidation or simplification of compliance or reporting requirements for small businesses:

Commissioner Northern made a motion that these rules do not complicate compliance or reporting requirements for small businesses in any respect; seconded by Commissioner Alexander; unanimous vote; motion carried.

6. The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule:

Commissioner Alexander made a motion that there are no performance standards for small businesses as a result of these rules; seconded by Commissioner DiChiara; unanimous vote; motion carried.

7. The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

Commissioner DiChiara made a motion that these rules do not result in the unnecessary creation of entry barriers or other effects that will stifle entrepreneurial activity, curb innovation, or increase costs; seconded by Commissioner Alexander; unanimous vote; motion carried.

Additional questions posed by the Governor's office:

1. Does the rule make it better to do business in Tennessee?

Commissioner DiChiara made a motion that these proposed rules will make it better to do business in Tennessee; seconded by Commissioner Alexander; unanimous vote; motion carried.

2. Does the rule make it easier to create jobs in Tennessee?

Commissioner DiChiara made a motion that these rules are unlikely to have a foreseeable impact on job creation in Tennessee; seconded by Commissioner Alexander; unanimous vote; motion carried.

3. Is it essential and effective?

Commissioner DiChiara made a motion that the proposed rules are essential and effective, as they clarify certain discretionary provisions within a statutory amendment regarding suspension and/or revocation of a license as a result of failing to maintain errors and omissions insurance as well as specify the procedure regarding a statutory amendment which requires initial applicants to submit fingerprints for the purpose of a background check; seconded by Commissioner Alexander; unanimous vote; motion carried.

4. Who does it affect?

Commissioner DiChiara made a motion that Rule 1260-01-.16 regarding lapsed errors and omissions insurance will affect all licensees who are required to maintain errors and omissions insurance as well as the principal brokers of those licensees and Rule 1260-01-.17 regarding fingerprinting will affect all initial applicants for licensure who are required by statute to submit a set of fingerprints for the purpose of a criminal background check; seconded by Commissioner Alexander; unanimous vote; motion carried.

5. Is the rule a positive move?

Commissioner DiChiara made a motion that these rules seek to eliminate confusion regarding discretionary portions of recent statutory amendments which require certain outcomes but also allow the Commission discretion regarding necessary steps for reinstatement of a suspended license or reissuance of a revoked license and the process for an initial applicant submitting fingerprints for a background check; seconded by Commissioner Alexander; unanimous vote; motion carried.

6. Is it outcome-based (i.e., does it have a measurable, positive outcome)?

Commissioner DiChiara made a motion that the Commission expects to receive fewer questions regarding the requirements for reinstatement or reissuance of a suspended or revoked license as well as provide clarification regarding the process of an initial applicant

submitting fingerprints for a background check; seconded by Commissioner Alexander; unanimous vote; motion carried.

Commissioner Collins made a motion to adopt the proposed rules and Rulemaking Hearing notice, as drafted by Mr. Cropp, and move forward with the Rulemaking Process; seconded by Commissioner Alexander; unanimous vote; motion carried.

Vice-Chairman Griess recessed the meeting on Thursday, July 11, 2013 at 4:33 p.m.

JULY 12, 2013

The Tennessee Real Estate Commission convened on Friday, July 12, 2013 at 9:31 a.m. in Meeting Room 6A/B of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, Tennessee 37243. The following Commission Members were present: Chairman William "Bear" Stephenson, Vice-Chairman Michelle Haynes, Commissioner Grover Collins, Commissioner Janet DiChiara, Commissioner John Griess, Commissioner Isaac Northern, Commissioner Wendell Alexander and Commissioner Austin McMullen. Commissioner Flitcroft was absent from the meeting. Others present: Executive Director Eve Maxwell, Education Director Steve McDonald, Assistant General Counsel, Robyn Ryan, Assistant General Counsel Julie Cropp and Administrative Secretary Kelly Hestand.

The formal hearing, in the matter of Robert O. Hyde, Jr., license #210144, Docket # 12.18-121273A, Complaint # 2012022411, convened at 9:32 a.m.

Below is the entered Final Order in the matter:

FINAL ORDER

This matter came to be heard on July 12, 2013 before the Tennessee Real Estate Commission in Nashville, Tennessee, upon the Notice of Hearing and Charges issued May 20, 2013. Present at the hearing were Commission members Chairman William "Bear" Stephenson, Vice-Chairman John Griess, Michelle Haynes, Isaac Northern, Wendell Alexander, Janet DiChiara, Austin McMullen and Grover Collins. The Honorable J. Randall LaFevor, Administrative Law Judge, presided at the hearing. The State was represented by Robyn Lynne Ryan, Counsel for the Division of Regulatory Boards, Department of Commerce and Insurance. The Respondent appeared and represented himself.

Prior to the matter going forward, Commissioner Isaac Northern recused himself and did not participate in the discussions or deliberations.

As a preliminary matter, Respondent presented that he had a cashier's check with him in the amount of \$6,800.00 and relayed that, in addition, he had completed all required

continuing education hours as required by the July 6, 2011 Final Order of this Commission. Respondent then requested that the Commission accept the \$6,800.00 cashier's check and the completion of the continuing education hours as satisfaction of the 2011 Order and that this matter be dismissed.

This Commission then considered the request and it is ORDERED, ADJUDGED AND DECREED the following:

1. With the payment of the \$6,800.00 cashier's check, Respondent paid the total previous penalty of \$6,056.86. Additionally, Respondent shall pay all court costs associated with this hearing and the excess of the cashier's check in the amount of \$6,800.00 shall be applied towards those court costs.
2. The remaining court costs as referenced above are \$470.00 which include court costs of \$320.00 and court reporter fees of \$150.00 for a total amount owed of \$6,526.86.
3. There shall be no refund of any monies paid with the \$6,800.00.
4. Respondent accepted all terms outlined here.

It is, therefore, ORDERED, ADJUDGED AND DECREED that this matter is Dismissed pursuant to the terms outlined herein.

The formal hearing adjourned at 9:56 a.m. and Chairman Stephenson also adjourned the meeting.



**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: JULY LEGAL REPORT
DATE: July 11-12, 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.**

- 2011027201**
Opened: 11/4/11
First License Obtained: 8/4/93
License Expiration: 7/10/12
E&O Expiration: 1/1/11
Type of License: Broker
History: No Prior Disciplinary Action
*****Respondent's license expired on 7/10/12*****

January 2012 Meeting:

Complaint filed by licensee (Complainant) against Respondent for advertising as the "Managing Broker" of a firm when he is not the managing/ principal broker of the firm.

Respondent states that the advertisement was done on "LinkedIn" a business social network site. He does not deny that he had listed himself as the "Managing Broker" but states that he has removed such from anywhere it is posted.

Upon review, Respondent was broker released on 4/18/11 by this firm and as of the date of this review, Respondent has yet to complete administrative measures.

Recommendation: Consent Order with a \$250.00 Civil Penalty for false and misleading advertising under 62-13-312(b)(4)(14) and \$1000.00 for failing to take administrative measures under 62-13-312(b)(16). Additionally, attendance of a two day regularly scheduled meeting of the Commission within six months.

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

Since the time that this matter was originally presented to the Commission in January 2012, Respondent's license expired on July 10, 2012. To date, Respondent has not attempted to contact TREC regarding Respondent's license/reinstatement.

New Recommendation: Close and flag Respondent's file.

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

2. **2012025711**
Opened: 12/13/12
First License Obtained: 6/30/08
License Expiration: 6/29/14
E&O Expiration: Uninsured
Type of License: Affiliate Broker
History: No Prior Disciplinary Action
****Respondent was broker released on or about 12/10/12****

3. **2012025721**
Opened: 12/14/12
First License Obtained: 6/20/94
License Expiration: 6/3/15
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

April 2013 Meeting:

Complainant is the owner of a vacation home which is located near a number of homes which are being rented by an LLC of which Complainant states Respondent 1 (affiliate broker) is a partner and contact for potential renters. Respondent 2 is Respondent 1's principal broker. Complainant states that Respondent 1 and Respondent 1's brother have rented, "...all of these homes listed on their web site for years, packing in as many

young kids as possible, and hurting the property values.” Complainant states that Respondent 1 is running a property management company without a broker because Complainant has contacted the firm at which Respondent 1 is affiliated and was told that the firm is not connected with Respondent 1’s LLC. Complainant states that Respondent 1 is required to advertise the firm name and number where Respondent 1 is affiliated when Respondent 1 advertises vacation rentals for Respondent 1’s LLC.

Respondent 1 submitted a response stating that Respondent 1 is licensed and in good standing with Respondent 1’s association. Respondent 1 states that Respondent 1 and Respondent 1’s brother are affiliated with several LLCs, one of which is the LLC referenced by Complainant (Respondent 1 and Respondent 1’s brother are also the developers of the development where the properties are located). Respondent 1 states that Respondent 1 is associated with a broker, and the LLC was a licensed vacation lodging service firm for which the firm license had lapsed without Respondent 1’s awareness because the renewal information was mailed to an address other than the office address, and Respondent 1 was in the process of correcting this at the time that the complaint was submitted by reapplying for the vacation lodging firm license. With regard to the advertising complaint, Respondent 1 states that Respondent 1 was unaware that Respondent 1 needed to include Respondent 1’s firm information for advertising for the vacation rentals. Respondent 2 submitted a response to the failure to supervise complaint stating that Respondent 2 knew that Respondent 1 owned some vacation properties with Respondent 1’s brother that were leased on an overnight basis under a vacation lodging firm license and those did not go through the firm. Respondent 2 states that Respondent 1 wanted to maintain a license for properties that Respondent 1 might want to list or sell and in the past had some properties listed with Respondent 2’s firm, which were displayed on the firm website at the time with the firm name and phone number. With regard to the advertising complaint, Respondent 2 states that Respondent 2 made the determination that the vacation lodging service LLC’s website could be seen as confusing to the public without the firm information included along with Respondent 1’s name and made the decision ultimately, after receiving this complaint, to ask Respondent 1 to transfer Respondent 1’s license to another firm. Respondent 2 states that, upon receiving the complaint and verifying a possible problem, Respondent 2 took action and Respondent 1’s license was amicably released to TREC.

Complainant submitted a number of additional letters stating that Respondent 1 and Respondent 1’s brother continue to operate what Complainant calls “a large scale property management company” without any involvement from the firm where Respondent 1’s affiliate broker license is held. Complainant also included photos of properties near Complainant’s home for which Respondent 1’s LLC handles the vacation rentals. Complainant states that the renters are out of control, that the renters trash the homes they are renting, and that renters park too many cars in the roadway which blocks access. Complainant states that Complainant is frustrated at having spent a large amount of money on a vacation home where there are out of control renters and an

illegally managed property management company. Further, Complainant states that Respondent 1 advertises vacation rentals in the development on a national vacation rentals website in which Respondent 1 calls himself the owner of the home (the website has a link to "e-mail owner" which e-mails Respondent 1). These national websites for vacation rentals state that they are used both for owner vacation rentals as well as privately owned properties offered through rental managers (which is what Respondent 1 appears to be doing). The website profile for one of the properties states that Respondent 1 is a realtor in Tennessee, and, at this point, Respondent 1 was released by Respondent 1's broker.

Based on the materials provided by Complainant and accessed on Respondent 1's website, it appears that Respondent 1 is not operating a property management company as Complainant calls it, but is operating a vacation lodging service firm. As Respondent 1 stated, the vacation lodging service firm license had lapsed, but currently, the LLC is actively licensed as a vacation lodging service firm, and Respondent 1 is its designated agent. Additionally, it would not appear that Respondent 1 would have to include a firm name and telephone number on advertisements for vacation rentals through the vacation lodging service firm. However, Respondent 1 was broker released on or about December 10, 2012 and, as of April 1, 2013, has not retired Respondent 1's affiliate broker license or affiliated with another firm.

Recommendation: As to Respondent 1, Consent Order for \$500.00 based on failure to complete administrative measures as required by § 62-13-312(b)(14)(16) and Rule 1260-02-.02(2) plus attendance at one (1) entire meeting of the Commission within 180 days of Respondent 1's execution of Consent Order. As to Respondent 2, dismiss.

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

May 2013 Meeting:

New Recommendation: It was suggested to legal counsel that the above-referenced authorized Consent Order for Respondent 1 should also specify a date range within which Respondent 1 must complete the required administrative measures for either change of affiliation or retirement of Respondent 1's license. It is recommended that, in addition to the above referenced \$500 amount and meeting attendance requirement, that the Consent Order to Respondent 1 should require that Respondent 1 must complete the required administrative measures for either change of affiliation or retirement of Respondent 1's license within ten (10) days of the date of Respondent 1's execution of the Consent Order.

DECISION: The Commission voted to accept the recommended addition to the Consent Order for Respondent 1.

Since the time that this matter was presented to the Commission (last presented in May 2013) Respondent 1 voluntarily terminated Respondent 1's license due to the fact that Respondent 1 is not selling and does not plan to sell real estate in this state.

New Recommendation: Letter of instruction to Respondent 1 regarding T.C.A. § 62-13-312(b)(16) and Rule 1260-02-.02(2) regarding the required administrative measures for change of affiliation or retirement of a license.

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

4. 2013006401
Opened: 4/24/13
First License Obtained: 7/24/96
License Expiration: 5/16/15
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

June 2013 Meeting:

This complaint was opened at the direction of the Commission. Respondent is the principal broker of the firm referenced in a complaint which was filed against an unlicensed individual and was presented as follows:

March 2013 Meeting:

Complainant entered into a Pre-Sale Agreement and a Joint Venture Agreement with an LLC with Respondent (unlicensed) as its managing member. Complainant and Respondent also entered into a Commercial Purchase and Sale Agreement (on a TAR form). Complainant states that Complainant paid \$40,000.00 earnest money to Respondent (which the TAR form states will be held in a real estate firm escrow account). Complainant states that Respondent is the president of the real estate firm. Complainant states that Respondent represented the LLC in the transaction. After the LLC did not complete the acquisition of the property referenced in the agreements by the agreed-upon date, Complainant determined that the deal was not going to go through in the near future and made requests for return of the earnest money, which Complainant states have been ignored. Based on copies of the documents provided, it appears that Complainant entered into the Joint Venture Agreement with the LLC, wherein the LLC was acquiring a number of units which were to be renovated, and Complainant agreed to pay an up-front cost for ten (10) units to be acquired by the LLC with the balance due when the units became ready for occupancy. The Joint Venture Agreement specified that the expected initial lease rate, the expected monthly costs, and explained that disbursements of profits to joint venture partners would be based on the gross profit. The agreement specified the LLC as the managing member and stated that the real estate firm would be the property manager.

Respondent submitted a reply stating that Respondent is not a real estate agent and has not been licensed in approximately ten (10) years, and Respondent has not represented himself as such. Respondent states that Respondent is the managing and sole member of the LLC which owns the real estate firm referenced on the TAR purchase and sale agreement as the holder of the earnest money. Respondent states that the contracts between Complainant and the LLC relate to a separate operating unit from the real estate firm, and the real estate firm was to be retained as the property management company for the project but was not otherwise involved in the transaction between the LLC and Complainant. Respondent states that the LLC entered into a Pre-Sale Agreement with Complainant for ten (10) units, and the real estate firm was not involved in the transaction. Respondent points to the TAR Purchase and Sale Agreement which does not include a listing or selling company to show a lack of agency relationship. Respondent states that Complainant wired a down payment to the real estate firm's escrow account in two separate wires. Respondents states that this was not earnest money as referenced in the TAR form but was instead a down payment, and the only reason that the money was sent to the real estate firm was to use as an account for receipt and disbursement of the money, and the joint venture agreement controlled the contract. Further, Respondent states that the money was not to be held in escrow by the real estate firm but only received and disbursed to the LLC, to be returned by the LLC to Complainant only upon certain contractual circumstances. According to Respondent, the money was wired into the real estate firm's account, and Respondent transferred the money to utilize it for the project for items such as appraisals, etc. Respondent states that Respondent has replied to Complainant's requests for return of the money, but there was never earnest money involved, and the money has been utilized for the project so the LLC no longer has the money. Further, Respondent states that Complainant's request for the return of the down payment was instrumental in causing the LLC's purchase of the units to fail, and therefore Respondent states that the LLC does not plan to return Complainant's payment.

Complainant submitted an additional response through an attorney, which stated that Complainant was lead to believe that Respondent was licensed since Respondent was the owner of the real estate firm, and Respondent never informed Complainant otherwise. Complainant states that Respondent chose the real estate firm to hold the money, and the real estate firm should not have relinquished control of the money to the LLC without Complainant's permission. Complainant states that the money was not a down payment, but, even if it was, the deal failed and the money is owed back to Complainant.

Based on the documents submitted, it is unclear whether the money was a down payment, earnest money, or an investment, and this is likely a determination for a court of law. However, Respondent's use of TAR contracts creates the appearance of unlicensed activity on the part of Respondent.

June 2013 Meeting:

The Commission authorized a Consent Order for the unlicensed individual and directed that a complaint should also be opened against the principal broker of the real estate firm (this Respondent).

Respondent submitted a response stating that Respondent is the principal broker of the real estate firm, and Respondent's son (the unlicensed individual) owns an LLC which does business as the real estate firm. Respondent states that the unlicensed individual serves as President of the firm and handles administrative duties. Respondent states that there is one (1) escrow account at the real estate firm, and the unlicensed individual is a signatory on the account, a fact which this Respondent states the Commission is aware due to previous audits of the escrow account. Respondent states that the unlicensed individual's LLC entered into a joint venture with an individual, and pursuant to that agreement and a Commercial Purchase and Sale Agreement, forty thousand dollars (\$40,000.00) was deposited into the escrow account. Respondent states that "upon information and belief said money was released and utilized in furtherance of the subject project," and Respondent believes that release of the funds was reasonable.

Recommendation: Discuss.

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

New Recommendation: Commissioner DiChiara to discuss.

DECISION: **The Commission voted to dismiss this complaint.**

Commissioner DiChiara abstained from the vote on this matter

- 5. **2013002391**
Opened: 2/21/13
History: No Prior Disciplinary Action - Unlicensed

- 6. **2013002392**
Opened: 2/21/13
History: No Prior Disciplinary Action - Unlicensed

Complaint submitted by anonymous complainant which states that Respondent 2 (unlicensed company; Respondent 1 is an unlicensed individual who is president of Respondent 2) is not operating in an honest and ethical manner by advertising homes for sale and paying referral fees to anyone (even without a real estate license) and flipping homes for an increased value with no substantial repairs completed on the homes.

Respondent 1 submitted a response on behalf of Respondents stating that it is Respondent 1's understanding that "...a person is permitted to sell, lease, option to buy, rent or

exchange his or it's *[sic]* own property," and that is what Respondent 2 is doing. Respondent 1 states that no one involved with Respondent 2 is involved in any of those activities with property belonging to other people or entities. Respondent 1 states that Respondent 2 buys homes at low prices which need extensive renovations, and after closing on the home, Respondent 2 does any necessary renovations before selling to a buyer.

Because it appeared from Respondents' website that Respondent 2 was involved in buying, selling, and management of properties, additional information was requested from Respondent 1 regarding proof of ownership for homes which are listed for sale on the website as well as information regarding property management services. Respondent 1 provided proof of ownership for the homes listed on the website for sale and provided information that a licensed firm handles the property management activities. The property management firm recently went through a name change, but, prior to that name change, was audited by a TREC auditor in late 2012, with the results of said audit being satisfactory. Based on the information obtained, it does not appear that Respondents are engaged in unlicensed activity.

Recommendation: Dismiss.

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

7. 2013002631

Opened: 2/15/13

First License Obtained: 3/14/94

License Expiration: 1/19/14

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Respondent (affiliate broker) listed the property which was located next to property owned by Complainant's deceased father (Complainant is also the father's executor). Complainant states that Respondent contacted Complainant stating that Complainant had property as well as part of a building located on Respondent's seller's property. Complainant states that, by contacting Complainant in this manner, Respondent engaged in the unauthorized practice of law, and Complainant should have instead been contacted by the seller or the seller's attorney. It appears, based on the correspondence and documentation provided, that the communication between Complainant and Respondent began with a dispute regarding where Respondent initially placed the for sale sign, but then the correspondence turned toward the discovery, based on maps of the property, that Complainant's father had erected a small building on the seller's property and items were still being stored on the property.

Respondent states that Respondent was contacted by the owner (who resides out of state) of the land adjoining Complainant's family's land, regarding selling the property. The property went under contract, and, while Respondent states that the county survey indicated that there were buildings on the seller's property which were erected by Complainant's father, Respondent states that Respondent contacted a surveyor to perform a survey in order to close the sale. Based on a copy of a survey submitted by Complainant, it appears that there are several buildings located on the seller's property. Complainant states that, even if this is true, Respondent was out of line in contacting Complainant instead of the sellers or the sellers' attorney. A statement from the sellers said they hired Respondent to sell the property, that a survey was conducted, that they did not feel that it was necessary to contact Complainant's family, and that they believed that Respondent acted in good faith. It appears that the property/buildings on the seller's property amounts to a dispute between the property owners, and Respondent was attempting to notify Complainant of possible issues regarding the property which Respondent was trying to sell, but it does not appear that Respondent acted in a way amounting to a violation or engaging in the unauthorized practice of law.

Recommendation: Dismiss.

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

8. 2013003711

Opened: 3/5/13

First License Obtained: 12/14/94

License Expiration: 12/7/14

E&O Expiration: 1/1/15

Type of License: Broker

History: No Prior Disciplinary Action

Complainant had divorced Complainant's spouse and was the resident of the former marital property, which was listed for sale by Respondent (broker) who had entered into a listing agreement with Complainant's spouse, who was the homeowner. Complainant alleges that Respondent harassed Complainant on multiple occasions when Complainant was absent from the property regarding making Complainant's property available for showings and for inspectors. Complainant provided text messages regarding communications involving showing the property. Complainant states that, on one occasion when Complainant was absent from the home, Complainant refused access, and Respondent gained access anyway.

Respondent states that no fiduciary duty was breached nor was there any intentional harm done. Respondent states that Respondent's client was Complainant's spouse, who was the homeowner and was responsible for all payments for the property as of the date of the divorce decree, and Complainant was allowed to remain in the property. Respondent

states that Respondent was diligent in attempting to work around Complainant's schedule regarding showings, but often ran into difficulties gaining reasonable access to show the property to buyers. When a contract was received, Respondent states that the contract was presented to Complainant's spouse, Complainant, and their attorneys, at which point (approximately two (2) years after the divorce decree and listing of the property) the lenders were provided with the information because the home was a short sale. Respondent states that one of the lenders required Complainant's signatures on short sale documents because Complainant was on the liens (but not on the deed/title), and Respondent had difficulty obtaining cooperation from Complainant with regard to signatures, allowing access for inspections, etc. Respondent states that the first transaction did not close when the buyer walked away due to problems, including what Respondent states was the poor condition in which the property was left when Complainant vacated (Respondent provided photographs). It does not appear that Respondent violated TREC's laws and/or rules.

Recommendation: Dismiss.

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

9. **2013003811**
Opened: 2/27/13
First License Obtained: 4/11/90
License Expiration: 4/6/15
E&O Expiration: 1/1/15
Type of License: Broker
History: No Prior Disciplinary Action

10. **2013003812**
Opened: 2/27/13
First License Obtained: 12/3/86
License Expiration: 5/14/15
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

Complainant, who was the purchaser of a home which was a short sale, states that Complainant's request for earnest money was not timely addressed by Respondent 1 (broker) who represented the seller (Respondent 2 is Respondent 1's principal broker), and earnest money was not disbursed within a reasonable time. Complainant states that, after issues arose during an inspection of the property, Complainant decided not to go forward with the purchase, and a written request for return of earnest money was sent to Respondent 1 on December 23 with an Earnest Money Disbursement and Mutual Release of Purchase and Sale Agreement form which was signed by Complainant and spouse as

the buyers. Complainant states that Respondent 1 did not obtain a signed release from the seller until January 23 and a check until a few days after that. Complainant states that Respondent 1 did not timely address the issue, but that Respondent 2 did everything to expedite the return of Complainant's earnest money.

Respondent 1 states that Respondent 1 saw the e-mail with the request for return of earnest money late on December 24, but that, due to the holidays, Respondent 1 did not try to contact the seller until December 26 and finally reached the seller at the end of that week. Respondent 1 told the seller that Complainant was terminating the contract due to the inspection report, and the seller initially refused to sign the release due to the house being a short sale, arguing issues with the way the inspection was conducted, and stating that the seller should be given an opportunity to repair the issues. Respondent 1 states that Respondent 1 worked diligently to get the seller to sign the release, pointing out the paragraphs in the contract providing for the inspection contingency, but the seller continued to refuse to sign the release. Later, once another offer was made on house, the seller agreed to sign the release under protest. Respondent 1 states that the process took longer than it should have due to the holidays, Respondent 1's flu, and an obstinate seller. Respondent 2 states that Respondent 2 was notified of the issue on January 21 and immediately contacted Respondent 1, who explained that Respondent 1 had been sick with the flu and that the seller had refused to cooperate and sign the release. Respondent 2 states that Respondent 1 said that Respondent 1 had worked to get the signature and that Respondent 1 felt that working on the seller would enable Complainant to receive the earnest money more quickly than filing an interpleader. Respondent 2 states that Respondent 2 communicated with Complainant's broker immediately and that within 24 hours of being notified, took action.

While the earnest money was not disbursed within twenty-one (21) calendar days, it does not appear that there was unreasonable delay because it appears that Respondent 1 did work diligently to get the matter resolved and was hampered by the holidays, illness, and the seller.

Recommendation: Close as to Respondent 2. As to Respondent 1, letter of instruction regarding Rule 1260-02-.09 subsection (7) which, in part, states that funds should be disbursed or interplead within twenty-one (21) calendar days from the date of receipt of a written request.

DECISION: The Commission voted to dismiss the complaints against both Respondents.

11. **2013004001**
Opened: 3/4/13
First License Obtained: 1/13/99
License Expiration: 10/15/14

E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

12. 2013004002
Opened: 3/4/13
First License Obtained: 11/14/11
License Expiration: 11/13/13
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

13. 2013004003
Opened: 3/4/13
First License Obtained: 9/22/05
License Expiration: 9/21/13
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

This complaint originated from an anonymous complaint which simply stated that an unlicensed property management company was operating without a firm license or a broker of record. Based on the anonymous complaint, a complaint was opened against the unlicensed property management company, and later it was discovered from the response received that the unlicensed property management company was being operated by licensees (who were affiliated with a firm). Specifically, Respondent 3 stated in the response to the original complaint that Respondents 2 and 3 were licensed affiliates and working under the supervision of Respondent 1 (who is principal broker of the real estate firm where Respondents 2 and 3 were affiliated and was located in the same office as the unlicensed property management company). In the original response, Respondent 3 stated that Respondent 3 planned to take the broker's exam and get the unlicensed property management company licensed separately, as Respondent 3 was not aware that a separate license was required. However, several months later, at the time of presentation to the Commission, Respondent 3 had not upgraded to a broker and the unlicensed property management company remained unlicensed. Therefore, the Commission voted to dismiss the complaint against the unlicensed property management company and open complaints against the two affiliate brokers (Respondents 2 and 3) who were operating the unlicensed property management company as well as the affiliates' principal broker (Respondent 1).

Shortly after the original matter was presented to the Commission, the unlicensed property management company obtained a firm license and Respondent 1 is now principal broker of both firms at the same location. In the response to this complaint,

Respondents state that, at the time of the original complaint, Respondents 2 and 3 were affiliated with Respondent 1's firm and did not realize that they needed a separate firm license and a principal broker for the property management company, and that Respondents took steps to get the unlicensed property management company licensed. Also, Respondents state that they have sought the advice of an attorney to insure that no further errors are made. Respondent 1 states that, at the time of the original complaint against the unlicensed property management company, Respondent 1 was not overseeing any of the property management business for that company, but now Respondent 1 is the principal broker for both firms.

Recommendation: Consent Order for both Respondent 2 and Respondent 3 for \$500 each 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 and a principal broker, and Rule 1260-02-.01(1), which states that no licensee shall engage in any real estate activity in any office unless there is a principal broker who devotes his full time to management of such office, plus attendance by Respondents at an entire meeting of the Commission within 180 days of Respondents' execution of their Consent Orders. As to Respondent 1, Consent Order for \$500 for failing to exercise adequate supervision over the activities of any licensed affiliate brokers in violation of T.C.A. § 62-13-312(b)(15) plus attendance at an entire meeting of the Commission within 180 days of Respondent 1's execution of Consent Order.

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

14. 2013004121
Opened: 3/11/13
First License Obtained: 7/20/95
License Expiration: 5/1/15
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

15. 2013004122
Opened: 3/11/13
First License Obtained: 5/20/02
License Expiration: 6/3/14
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

Complainant was the purchaser of a property which was to be built. Respondent 2 (affiliate broker) was originally the listing agent and then defaulted to facilitator status.

Respondent 1 is Respondent 2's principal broker. Respondent 2 set up a meeting between Complainant and the builder for the property, and Complainant signed a General Contractor's Agreement with the builder for a condo. Complainant states that Complainant paid an initial down payment of ten thousand dollars (\$10,000.00) directly to the builder and later made two (2) additional payments, for a total of fifty thousand dollars (\$50,000.00). Later, Complainant became dissatisfied with the workmanship of the builder and cancelled the contract on that basis (informing the builder of this by e-mail). Then, Complainant states that Complainant contacted Respondent 2, who sent Complainant an Earnest Money Disbursement and Mutual Release of Purchase and Sale Agreement, which Complainant states Complainant signed and returned. Complainant states that Complainant contacted Respondent 1, who assured Complainant that Complainant would receive a return of the money, but the builder was out of town. Complainant then was told that Respondents' real estate office did not have anything to do with the issue. Complainant does not understand why Respondent 2 set up the initial meeting for a commission, why Respondents' firm sent a release form to Complainant, and why the property was subsequently put up for sale by Respondents' firm when Complainant has yet to receive a return of money paid to the builder.

Respondents and the builder provided responses. Respondents state that Respondent 2 was originally the listing agent, and Respondent 2 introduced Complainant to the builder. Then, the builder and Complainant negotiated a General Contractor's Agreement (with the \$10,000.00 down payment made at that time), and this contract was incorporated with a New Construction Purchase and Sale Agreement. Respondents state that no earnest money was paid to Respondents' real estate company. The builder states that no funds were collected or received by Respondents, and the first money paid by Complainant was the down payment, with subsequent payments made to the builder pursuant to a schedule in the General Contractor's Agreement. The builder states that Complainant requested modifications in the contract which required special work, and, after the Complainant cancelled the contract, the builder's company tried to work with Complainant to refund part of the money (a fact which the builder states Respondent 1 was aware when Respondent 1 was attempting to work with Complainant to get a return of the money). It appears that the property was re-listed for sale, and the builder and Complainant have retained attorneys regarding the dispute over money paid by Complainant to the builder. The initial ten thousand dollars (\$10,000.00) is referenced in contracts as a construction deposit, which Complainant states was paid directly to the builder, and the subsequent two (2) payments by Complainant are referenced in the payment schedule found within the General Contractor's Agreement. It does not appear that Respondents violated TREC's statutes and/or rules.

Recommendation: Dismiss.

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

16. 2013004321

Opened: 3/21/13

First License Obtained: 10/30/97

License Expiration: 9/16/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: 201003290 – Closed \$250 Agreed Citation (E&O)

Complainant is a property owner and Respondent (principal broker) was the property manager for Complainant's property. Complainant and Respondent entered into a Property Management Agreement, and approximately two and a half (2 ½) months later, a tenant was placed into the property. Complainant states that Respondent found the tenant. Complainant states that Respondent did not always send monthly rent checks to Complainant in a timely manner (by the fifteenth of the month when Complainant's mortgage was due), thus causing problems with Complainant paying Complainant's mortgage. Therefore, approximately five (5) months after the tenant was placed into the property, Complainant attempted to terminate the management contract with Respondent due to the fact Complainant did not receive all monthly rent checks when expected. However, Complainant then spoke with Respondent, and Complainant chose to continue the management contract until the end of the contract period. At the end of the management contract period, Complainant states that the tenants chose to stay in the property and that Complainant sent a letter of non-renewal of the management agreement to Respondent. Complainant states Respondent caused financial problems by sending several months' rent late to Complainant.

Respondent states that Respondent, not Complainant, found the tenant. Respondent provided many emails to show the work done by Respondent to secure the tenant. Respondent further states that there were problems with the property that required repairs and that Respondent diligently worked to resolve all repair and other issues. Respondent acknowledges that sometimes rent payments were not sent until later in the month due to various issues including but not limited to repairs and mail issues, but Respondent states that Complainant was paid every month within that month. Respondent states that, on the following month after Complainant first attempted to cancel the management agreement, at the apparent direction of Complainant, the tenants sent the rent check directly to Complainant. After discussion with Complainant, Respondent agreed to attempt to get rent checks to Complainant sooner. Respondent further states that at the end of the management agreement term, Complainant contacted Respondent by e-mail, stating that Complainant was considering putting the property back on the market, and Respondent attempted to call and email Complainant to clarify. Meanwhile, the tenants contacted Respondent and stated that the lease expired on the following month, that the tenants were staying, and that Complainant was taking over the management of the property.

Complainant claims that Complainant is still owed money from the final month's rent paid by the tenants to Respondent. Respondent points to a provision in the management contract executed between Respondent and Complainant which states that the owner shall not create or join in a lease with a tenant placed by Respondent without full payment of management fees to Respondent for the period in which the tenant occupies the property. Respondent states that the reason for this clause is due to the problems Respondent had in the past with Respondent securing good tenants only to then lose the property management contract to owners taking over the responsibility themselves. Complainant states that termination of Respondent's services was due to lack of receiving monthly rent payments in a timely manner (after the fifteenth of the month). Respondent believes that Complainant fired Respondent and firm for no good reason for the purpose of taking over managing the property for the tenant without having to pay a management fee to Respondent. Monthly statements show the rent money paid to Respondent was paid to Complainant at different times, with some months later than others for various reasons, but it appears rent money was always sent to Complainant before the end of the month during which the rent was due. There was no provision in the management contract between Complainant and Respondent specifying a deadline of when rent money was to be paid to Complainant each month. After fees and commissions were deducted from the final month's rent received from the tenants by Respondent, Respondent held the balance due to Respondent's belief that, under the provisions of the management contract, Respondent is owed a commission for the time period in which the tenant occupies the property. This issue appears to be a contractual dispute between Complainant and Respondent.

On facts and documents presented, it does not appear that there is any violation of TREC's statutes/rules. While Respondent did provide a written response well before this matter was presented to the Commission, that response was provided well outside of the ten (10) day period; however, Respondent states that this was due to Respondent compiling e-mails and many pages of documentation to fully address the complaint's allegations.

Recommendation: Letter of warning regarding T.C.A. § 62-13-313(a)(2), which states that a response to a complaint must be filed with the Commission within ten (10) days.

DECISION: The Commission voted to dismiss this complaint.

Commissioner Collins abstained from the vote on this matter.

17. 2013004451

Opened: 3/14/13

First License Obtained: 11/12/98

License Expiration: 11/5/13

E&O Expiration: 1/1/15

Type of License: Affiliate Broker
History: No Prior Disciplinary Action

Complainant alleges that Complainant made a low offer on a commercial building based on information told to Complainant by Respondent (affiliate broker who was the listing broker for the property) regarding what Respondent believed the seller would accept. Prior to making the offer, Complainant states that Respondent met with Complainant several times as well as representatives from a construction company examining ways to make the building work for Complainant. Complainant's offer was rejected by the seller. Complainant then states that Complainant filled out a written counter offer, which included a higher offer with the hope of negotiating a price with the seller, and gave it to Respondent. While Complainant was waiting on a response, Complainant's existing facility was destroyed in an accident and a new space was needed. However, during this time, Complainant states that Respondent told Complainant that Respondent had received and the seller had accepted a higher offer on the building which was submitted by another individual, who Complainant alleges that Respondent knew personally because the two belong to the same church and live in the same town. Therefore, Complainant thinks the sale of the building to this individual was due to a personal motivation of Respondent and constituted improper conduct by Respondent. Complainant also states that the seller went to the same church.

Respondent submitted a response through an attorney which stated that the property in question was a commercial building and not a residential property; therefore, the disclosure requirements contained within T.C.A. §§ 62-13-403, 62-13-404, and 62-13-405 are not applicable. Respondent's attorney states that Complainant knew (and admits knowledge in the complaint) of the seller's bottom line and that Complainant submitted an offer well below that bottom line which was rejected by the seller after it was presented by Respondent. Specifically, when Complainant and Respondent met to discuss an initial offer, Respondent's attorney states that Respondent brought a preassembled packet of TAR forms, and Complainant instructed Respondent to leave the documents for review then Complainant later filled out the TAR Purchase and Sale Agreement and gave it to Respondent for presentation to the seller. Later, after said offer was rejected, Respondent's attorney states that Complainant wrote the written Counter Offer form referenced in the complaint without any knowledge or assistance by Respondent (a blank form was included in the preassembled packet), but the form was never given to Respondent. Respondent's attorney also notes that a counter offer would not have been possible since the original offer had been rejected. On the same day as the Counter Offer was written by Complainant, Respondent's attorney states that the ultimate buyer met with Respondent regarding his interest in buying and submitted an offer which the seller accepted. Respondent's attorney states that Respondent was familiar with the ultimate buyer, along with most other people in the town, but states that there was no personal or business relationship between the ultimate buyer and Respondent nor was there any relation between the two or anything stood to be gained by Respondent for the

sale of the property to the ultimate buyer. Based on the information provided, it does not appear that Respondent violated TREC's statutes and/or rules.

Recommendation: Dismiss.

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

- 18. **2013004601**
Opened: 3/12/13
History: No Prior Disciplinary Action - Unlicensed
- 19. **2013004602**
Opened: 3/12/13
History: No Prior Disciplinary Action - Unlicensed

Complainants were contacted by an individual affiliated with Respondent 2 (an unlicensed company; Respondent 1 is an unlicensed individual who is Respondent 2's Sales Director) regarding selling Complainants' time-share, which is located in Mexico, to a third party. Then Respondent 2 requested that Complainants wire money up front for Respondent 2 to sell Complainants' time-share and provided Complainants with a forged TREC license. Complainants contacted an attorney, who located information indicating that this was a scam and contacted TREC.

A copy of the complaint was sent to Respondents via certified mail at Respondents' purported address, which was returned as insufficient address and unable to forward. It appears that this address is not good and Respondents were likely never located at that address.

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

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

- 20. **2013005271**
Opened: 3/26/13
First License Obtained: 10/3/11
License Expiration: 10/2/13
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: 200800619 – Closed by CO w/ 8 hrs of CE
201001330 – Closed w/ \$100 civil penalty (E&O)

Complainant is a property owner and Respondent (principal broker) was managing Complainant's property. Complainant alleges that Complainant has not received copies

of the lease agreement between the tenant and the property management company. Complainant states that the tenant has been late paying rent and Respondent has failed to assign late fees. Additionally, Complainant states that there is a conflict of interest due to Respondent and the tenant being friends and the tenant performing work for Respondent.

Respondent submitted a response stating that Respondent has not violated the management agreement. As to the claims of a conflict of interest, Respondent states that the tenant had been in another management property. Moreover, Respondent states that the tenant had already been approved via a credit report, and the tenant paid on time while at the previous property. Although, Respondent states that the management agreement between Complainant and Respondent does not require Respondent to send a copy of the lease agreement to Complainant, Respondent states that Respondent did so when Respondent received a letter from Complainant's attorney requesting same. Because the tenant paid on time, Respondent states that no late fees were ever collected. Respondent states that it is Respondent's belief that Complainant is upset because the property was rented to a minority tenant. After being contacted from Complainant's attorney and providing the requested lease agreement, Respondent states there was no further contact but Complainant and Respondent mutually agreed to terminate the management agreement, the tenant moved out of the property, and the security deposit was forfeited to Complainant. It does not appear that Respondent violated TREC's statutes and/or rules.

Recommendation: Dismiss.

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

21. 2013005281

Opened: 3/21/13

First License Obtained: 6/14/99

License Expiration: 9/11/14

E&O Expiration: 4/1/14

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant had a home listed for sale by owner prior to an accident which resulted in Complainant moving out of state. Complainant directed Complainant's son to return and list the house for sale with an affiliate broker at Respondent's firm (Respondent is principal broker). Complainant states that Complainant never signed any paperwork, and Complainant's son did not have a power of attorney. When Complainant returned home, Complainant asked that the listing be withdrawn from the market due to the season. A few months later, the affiliate approached Complainant to list the property because there was a potentially-interested party. At that point, Complainant states that Complainant

signed a Confirmation of Agency Status form. Complainant indicates that Complainant disagrees with the percentage of commission to be paid from the sale.

Respondent submitted a reply stating that Respondent's first interaction with Complainant was on the day before closing when the affiliate broker told Respondent that Complainant was refusing to pay the six percent (6%) commission. Respondent states that Respondent spoke with Complainant, who said he was not going to close, but, in fact, the sale did close. Respondent provided a time-line of events along with documentation. Respondent also states that, before Respondent's firm listed the home at the time that Complainant's home was listed for sale by owner, the affiliate broker offered that if the affiliate found a buyer, it would be a three percent (3%) commission. However, when the home became listed with Respondent's firm, it was made very clear that there would be a six percent (6%) commission. Respondent states that the affiliate broker told Respondent that Complainant signed all documents in spite of Complainant's claims – with the first listing agreement, confirmation of agency, and related documents being signed in another state with Complainant's son and signing the second set of listing agreements, confirmation of agency and other agreements in the affiliate broker's presence. Respondent believes that Complainant was confused regarding the commission percentage despite numerous explanations and states that Complainant did pay the six percent (6%) commission at closing. Based on the information submitted, it does not appear that Respondent committed a violation.

Recommendation: Dismiss.

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

22. 2013005411

Opened: 3/26/13

First License Obtained: 2/7/92

License Expiration: 10/6/13

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

TREC opened complaint based on information provided to TREC by Respondent (affiliate broker) regarding Respondent's recent criminal convictions. Respondent pled guilty and was convicted of a number of counts involving marijuana as well as two (2) counts involving money laundering. According to Respondent's self-report of the convictions, Respondent was arrested on a number of charges, bond was set, and Respondent was unable to make bail. Respondent, who states that Respondent has never been in trouble before, stated that Respondent's jail experience was "unbearable," partially due to Respondent's health problems. Respondent states that Respondent was offered a plea deal (which included only six (6) months served with probation,

community service, and fines) and was advised to take it and did based on health issues and family issues. Respondent states that Respondent has never been in trouble with the Real Estate Commission despite being licensed for approximately twenty-one (21) years.

In response to this complaint, which was opened after Respondent self-reported the felony convictions, Respondent stated that, during the real estate market decline, it was necessary for Respondent to take on part-time jobs to make ends meet but was having difficulty. Respondent was approached by a previous client with a potential job wherein Respondent would take deliveries of packages. Respondent states that Respondent never asked what was in the packages, but later got the feeling that something was amiss and attempted to stop doing the job. However, the police had been monitoring the operation, and Respondent was arrested as part of a drug bust and charged with the counts referenced above.

Respondent stated that Respondent did not fully understand the two (2) money laundering charges (Respondent states that it involved two payments of one hundred dollars (\$100.00) each), which are the convictions at issue here. Legal counsel contacted Respondent's attorney for the criminal matters who confirmed the information provided by Respondent as accurate. Respondent's criminal attorney stated that the reason for the money laundering charges was that Respondent cashed two (2) checks which were given to Respondent as payment for the packages, which gave rise to the money laundering charges.

Recommendation: Consent Order for \$200.00 for any conduct that constitutes improper, fraudulent or dishonest dealing in violation of T.C.A. § 62-13-312(b)(20), plus attendance at an entire 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.

- 23. **2013006051**
Opened: 4/3/13
E&O Expiration: N/A
Type of License: Time-Share Registration
History: No Prior Disciplinary Action

- 24. **2013006052**
Opened: 4/3/13
First License Obtained: 2/24/11
License Expiration: 2/23/15
E&O Expiration: 1/1/15
Type of License: Time-Share Salesperson
History: No Prior Disciplinary Action

25. 2013006121
Opened: 4/3/13
First License Obtained: 2/29/96
License Expiration: 10/2/14
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

Complainants state that they attended a time-share presentation which was much longer than what they were originally told and where Complainants allege that there were verbal misrepresentations made by Respondent 2 (time-share salesperson; Respondent 1 is time-share registration and Respondent 3 is Respondent 2's principal broker). Among the verbal misrepresentations alleged by Complainants were that Complainants were told that the time-share would be an investment that would gain value, that rates would change if Complainants did not lock in that day's rate, that Complainants could refinance their loan through their bank, and that Complainants could book "short notice" reservations. Complainants demanded contract cancellation and all money paid by Complainants to be refunded.

A response was submitted on behalf of Respondents stating that sometimes the presentations are longer when a potential purchaser is showing interest in purchasing a time-share, but no one is obligated to stay longer than the original presentation time, and prices vary each day depending upon available inventory. As to the alleged verbal misrepresentations, Respondents state that all terms of the purchase were explained to Complainants, and an Owner Clarification form signed by Complainants includes acknowledgements regarding the purchase for personal use and not under the expectation of profit as well as the short-notice vacations being subject to limited availability. The response states that Respondent 2 denied making the statements alleged by Complainants, and Respondents do not believe any verbal misrepresentations were made. The response notes that Complainants are in arrears on amounts owed and offered to work out a payment plan or another option to assist Complainants with that issue. The documentation contained within the file does not appear to evidence a violation by Respondents.

Recommendation: Dismiss.

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