

TENNESSEE REAL ESTATE COMMISSION MINUTES

OCTOBER 10, 2013

The Tennessee Real Estate Commission convened on Thursday, October 10, 2013 at 10:04 a.m. in the Farragut Town Hall, 11408 Municipal Center Drive, Farragut, Tennessee, 37934. The following Commission Members were present: Chairman William "Bear" Stephenson, Vice-Chairman John Griess, Commissioner Janet DiChiara, Commissioner Michelle Haynes, Commissioner Wendell Alexander, Commissioner David Flitcroft, Commissioner Grover Collins and newly appointed Commissioner Gary Blume. Commissioner Austin McMullen was absent. Others present: Executive Director Eve Maxwell, Education Director Steve McDonald, Assistant General Counsel Julie Cropp and Administrative Secretary Kelly Hestand.

Ms. Maxwell read the following statement into the record: This meeting's date, time and location have been noticed on the TN Real Estate Commission's website, included as part of this year's meeting calendar, since September 7, 2012. Additionally, the agenda for this month's meeting has been posted on the TN Real Estate Commission's website since Thursday, October 3, 2013. Also, this meeting has been noticed on the tn.gov website since Friday, October 4, 2013.

Mayor of Farragut, Ralph McGill, addressed the Commission, Staff and attendees. He talked to them for a bit about the town's history and current happenings and attractions and welcomed them to Farragut for the meeting.

The first order of business was the adoption of the agenda for the October 2013 Commission meeting. Commissioner Flitcroft asked that a discussion of Ms. Maxwell's salary/raise be added to the agenda. It was determined that discussion would follow the Legal Report. **Commissioner DiChiara made a motion to adopt the agenda as amended; seconded by Commissioner Haynes; unanimous vote; motion carried.**

The next order of business was the adoption of the September 2013 meeting minutes. **Commissioner Griess made a motion to defer the approval of the September 2013 minutes to allow more time for the Commissioners to read them since they were delivered via email at a late date; seconded by Commissioner Flitcroft; vote: 8 yes, 0 no; motion carried.**

The Commissioners welcomed newly appointed Commissioner Gary Blume. Commissioner Blume is from Bartlett, Tennessee and is the newest member of the Commission from the West Tennessee region of the State of Tennessee. The board members told him a bit about themselves and he, in turn, did the same.

INFORMAL APPEARANCE REGARDING COURSE APPROVAL

Mr. Bob Pitts is the owner of provider #1589 - Work Force Housing Alliance US and has approved courses #7340 [Work Force Housing Specialist Training] and #7341 [Real Estate Finance Training] and addressed the Commission regarding the course renewal for the above courses. Currently the Commission does not approve Reverse Mortgage courses but Mr. Pitts asked if he could appear and Chairman Stephenson agreed he could address the board.

Following is information for the previous minutes where reverse mortgages were discussed.

From the December 12, 2010 minutes: *“Commissioner Flitcroft asked Mr. McDonald about the content of the course “Reverse Mortgages for Senior Home Owners” at both Care+er Professional School of Real Estate as well as the Chattanooga Association of REALTORS®.*

Commissioner Flitcroft stated he believes, philosophically, reverse mortgages do not apply to the sale of property therefore he made a motion to amend the previous motion and not approve the course for either provider; seconded by Commissioner Alexander for discussion; unanimous vote; motion as amended carried.” From the September 12, 2012 minutes: *“Mr. McDonald presented the Courses for Commission Evaluation and Discussion for September 2012. Mr. McDonald presented the course, “The Reverse Mortgage Purchase Program” by provider American CE Institute, LLC. because said provider had asked that it be re-presented to the Board for approval.*

Commissioner Northern asked if there was any new information that merited the course being reconsidered and Mr. McDonald answered in the negative. Commissioner Northern made a motion to reject the request for reconsideration; seconded by Commissioner Griess; unanimous vote; motion carried.” Mr. Pitts provided an overview of his courses and a bio on himself as an instructor. The Commission and Mr. Pitts discussed the practice of reverse mortgages and Mr. Pitts explained why he believes it is beneficial for licensees to be well educated in how the process works and that he can teach them those skills through his courses.

Commissioner DiChiara made a motion that the commission should potentially approve courses, if they are submitted in the future, related to reverse mortgages; seconded for discussion by Commissioner Griess; Commissioner Flitcroft made a substitute motion to defer Commissioner DiChiara’s motion until Mr. Pitt’s course content is submitted; seconded by Commissioner Alexander; opened back up for further discussion where it was discussed whether the Commission will continue to maintain its current standard of not approving courses regarding reverse mortgages; the Commission voted on the motion to defer made by Commissioner Flitcroft; vote: 4 yes, 2 no; motion carried.

Commissioner DiChiara made a motion that the commission should potentially approve courses, if they are submitted in the future, related to reverse mortgages; seconded for discussion by Commissioner Griess; Commissioner Flitcroft made a substitute motion to defer Commissioner DiChiara’s motion until Mr. Pitt’s course content is submitted; seconded by Commissioner Alexander; opened back up for further discussion where it was discussed whether the Commission will continue to maintain its current standard of not approving courses regarding reverse mortgages; the Commission voted on the motion to defer made by Commissioner Flitcroft; vote: 4 yes, 2 no; motion carried.

EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR

Mr. McDonald presented the Courses for Commission Evaluation for October 2013. **Commissioner Collins made a motion to approve the Courses for Commission Evaluation O1 through O9; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

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

- Tom Hayman of Negotiation Expertise (1538) requested the approval of Scott Plum to instruct their approved courses Certified Negotiation Expert- 6756, Advanced Negotiation Techniques for Buyer's Agents- 7300, Advanced Negotiation Techniques for Listing Agents- 7301, Cultural Factors in Negotiating Real Estate- 7302, Mastering E-mail Negotiations in Real Estate- 7303 and Negotiation Across Generations in Real Estate- 7304.

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

TEAM ADVERTISING DISCUSSION

The Commission began the discussion of Team Advertising. Ms. Cropp, Assistant General Counsel, presented the Commission with some possible language for the advertising rule, Rule 1260-02-.12 and the Commission evaluated the content of the potential rule changes. The content of that information presented by Ms. Cropp is below. ***Please note: this was only a review and the following was not adopted by the Commission at the October 2013 meeting.***

Rule 1260-02-.12 ADVERTISING

(e) No licensee shall advertise in a false, misleading, or deceptive manner. False, misleading, and/or deceptive advertising includes, but is not limited to, the following:

1. Any advertising which does not conspicuously include the entire name of the real estate firm as licensed with the Commission and the firm telephone number as listed on file with the Commission;
2. Any advertising in which the firm's telephone number is not featured in greater size and/or prominence than the telephone number of any individual licensee or group of licensees;
3. Any advertising which refers to an individual licensee utilizing a nickname where that individual has not registered said nickname with the Commission;
4. Any advertising which includes only the franchise name without including the full firm name as licensed with the Commission;
5. Any advertising which includes the name of the real estate firm as licensed with the Commission which is featured in any manner such that the firm name is not readily apparent to the public based on the advertisement's style;

6. Any advertising in which the name of the real estate firm as licensed with the Commission is not the most prominent entity featured within the advertising, whether it be by print or other media;
7. Any advertising which displays a team name in a font larger than the smallest font of the real estate firm name as licensed with the Commission;
8. Teams and/or team members advertising themselves utilizing terms which would lead the public to believe that the team is offering real estate brokerage services independent of the firm and principal broker;
9. Any team advertising which utilizes pictures including both licensed and unlicensed team members but which does not clearly identify the licensed team members by name;
10. Any webpage which contains a link to an unlicensed entity's website where said entity is engaged or appears to be engaged in activities which require licensure;

Commissioner Griess also reviewed what a Team cannot do; set forth from a previous discussion of potential guidelines that would eventually need to become rules. Those guidelines follow:

A TEAM MAY NOT:

(A) Have a principal broker as a member;

(B) All licensed team members must be affiliated with the same licensed firm and must conduct all real estate activities from the location of record of the firm with which they are affiliated.

(C) A Team cannot establish a separate office or location from which to conduct its business—it must operate out of the main office of the firm with which the team members are affiliated.

(D) The PB and not the “team leader” must pay every licensee on the team.

(E) The PB cannot delegate his supervisory responsibilities to the “team leader.” The PB remains ultimately responsible for oversight of the team and its licensed members.

(F) The team cannot be, or present itself as, an entity operating separate and apart from the licensed firm. The team's business is the business of the firm—it cannot have a business, an identity or an existence separate from the licensed firm.

(G) The “team leader” cannot designate team members as designated firm agents—only the PB can make such designation.

Commissioner Flitcroft made a motion to suspend the rules to allow members of the audience to address the Commission and make comments; seconded by Commissioner Griess; unanimous vote; motion carried.

Licensees Pam Zachary, license #292309, Patricia Shepherd, license #273961 & Hope Cudd, license #315258 all addressed the Commission about advertising and asked the Commission some questions and voiced concerns.

Chairman Stephenson recessed the meeting for lunch at 12:00 p.m. and reconvened the meeting at 1:37 p.m.

INFORMAL APPLICANT APPEARANCE

Robert “Bob” Osteen, applicant, appeared with his potential principal broker Pamela Sheehan of Wallace & Wallace, Inc. DBA Coldwell Banker Wallace & Wallace in Alcoa, Tennessee to ask that he be approved to apply for an Affiliate Broker license. Mr. Osteen disclosed that a complaint had been filed against him by the Board of Medicine for diverting fentanyl for his personal use and he was required to obtain and maintain the advocacy of the Tennessee Medical Association (TMF). On 6/29/2011, Mr. Osteen tested positive for fentanyl and on 8/11/2011, TMF withdrew its advocacy. Therefore, the State found that he violated T.C.A. § 63-6-214(b)(2) for violating a board order and violation of T.C.A. § 63-6-214(b)(5) for misuse of drugs. Mr. Osteen neither admitted nor denied the allegations and desired to discontinue the practice of medicine and further desired to voluntarily surrender his Tennessee medical license; understanding that surrender has the same effect as revocation. Therefore, Mr. Osteen voluntarily surrendered his medical license, #24118 on 9/20/2011. **Commissioner Collins made a motion to approve Mr. Osteen’s request to apply for an Affiliate Broker license; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

ARELLO REPORT

Commissioner DiChiara, Executive Director Maxwell and Education Director Steve McDonald attended the ARELLO Annual Conference and reported to the Commission on sessions that they found interesting and shared things they had learned.

TESTING CONTACT

Ms. Maxwell presented the Commission with the below information regarding the Request for Proposal (RFP) for the testing contract. The Commission reviewed the information and discussed what they would like to see included in the Testing RFP.

TESTING VENDOR CONTRACT

Prepared 9-30-2013

1. A new Request for Proposal (RFP) will be required for the testing vendor, as the current contract expires on 6/30/2014.
2. A new testing contract with PSI became effective 7/1/2009. The initial term of the PSI testing contract was from 7/1/2009-7/1/2011. (Section B.1)
3. The State exercised all term extensions provided for in the contract and therefore the contract will expire on 6/30/2014. (Section B.2)
4. The RFP process usually takes several months from the time the first draft of the RFP contract is drafted by the legal department and submitted to the State Agency Servicing Contracting Coordinator (SASCC). The SASCC is responsible for completing the RFP and related documents and ensuring that all portions of the RFP are in compliance with state and Federal laws, rules and policies and that it fulfills the requirements established by the agency. The RFP usually will require further review by the Central Procurement Office (CPO) (formerly the Office of Contract Review (OCR). CPO reviews the proposed RFP contract, makes comments and returns it to the SASCC and the legal department for changes—this part of the process can take some time. Once the RFP is approved, it is posted on the state Central Procurement website. In order to submit a bid, a vendor must first register through the Central Procurement website. Once the RFP is posted, it is usually 40-45 business days until the contract is awarded and executed by all parties. A timetable, which is included in the RFP, establishes the time in which certain items must be submitted by a potential bidding party.
5. Once a contractor is selected through the RFP process and all documents fully executed, the contractor begins the process of implementing the terms of the contract and developing the exams, in order to be ready to administer the exams July 1, 2014.
6. Our current testing provider is PSI. PSI currently provides real estate testing for 21 states and 1 territory. The two other primary providers are Pearson-Vue, which provides real estate testing in 14 states and AMP which provides real estate testing in 12 states. (The states for which each provide real estate testing is attached hereto)
7. In Tennessee, PSI operates eight testing locations. From 10/1/2012-10/1/2013, PSI has tested a total of 4,530 individuals. The testing is broken down as follows:

Acquisition Agent	49
Affiliate Broker	3,557
Broker	410
Time Share	514

The number of testers by exam center 10/1/2012-10/1/2013:

Chattanooga	331
Clarksville	142
Dyersburg	2
Jackson	138
Johnson City	193
Knoxville	1,271
Memphis	477
Nashville	1,960
Misc. Other	16

TESTING LOCATIONS, DAYS and TIMES

Site	Mon	Tues	Wed	Thurs	Fri	Sat
Chattanooga		9 am	9 am	9 am		9 am
Clarksville		8:30 am	8:30 am	8:30 am		
Dyersburg					1:00 pm	
Jackson		9:00 am	9:00 am			9:00 am
Johnson City		9:00 am/ 1:00 pm	9:00 am	9:00 am/ 1:30 pm		9:00 am
Knoxville			9:00 am/ 1:30 pm	9:00 am/ 1:30 pm	9:00 am/ 1:30 pm	9:00 am
Memphis	8:30 am	5:30 pm	8:30 am	5:30 pm		8:30 am
Nashville	8:30 am	8:30 am/ 1:30 pm	8:30 am/ 1:30 pm	8:30 am/ 1:30 pm	8:30 am	8:30 am

CONTRACT BETWEEN STATE OF TENNESSEE and TESTING VENDOR

There is a form RFP form provided by the State which contains a number of State required terms and conditions to which all vendors supplying services directly to customers on behalf of the State must comply. The testing vendor is the direct supplier of the services. The potential applicant schedules his or her own test directly with the vendor and deals directly with the vendor in the administration of the services. Individuals who wish to take the broker exam must first be certified to the testing vendor by TREC. TREC must verify the potential applicant's experience and education to ensure compliance with TCA 62-13-303. Once certified, the applicant schedules the exam directly with the vendor. The exam may be scheduled online, by fax, or by phone.

CONTRACT PROVISIONS:

A.1.6.1---Testing Centers. In 2009, during discussions about number of testing centers, the Commission suggested that the number of testing sites be increased to ten, with a review after 6 months to determine if all ten sites should maintain a regular schedule. In early 2011, the testing data indicated that at least three of the testing centers had tested fewer than 50 people since the 7/1/2009 contract start(Cookeville=49; Dyersburg=0; Lewisburg=6). At that time, the Commission granted permission to the vendor to operate the low performing testing centers as needed to accommodate those wishing to test.

-----The current vendor administers the following tests for other Tennessee Regulatory Boards at the same site as the real estate tests are administered: Appraisers; Auctioneers; Barber; Contractors; Cosmetology; Home Inspectors; Locksmiths; and Pyrotechnics.

A.1.6.7---Provide electronic upload currently system so that schools and TREC can certify candidates with vendor. Schools certify to TREC and vendor that applicant has successfully completed required pre-license education. Allows for more expedient and efficient registration and testing process. Immediate electronic access to basic test results.

---Put provisions in place to allow for electronic transmission of application itself?

B.1 TERM—Current contract was initial two year with three one year renewals on same terms and conditions as base contract—at the state's option.

C.1 FEES---Fees remain constant throughout base term and any renewals. Fee set by vendors who bid pursuant RFP. The current fee is \$55.00 for one or both tests and for retakes for one or both tests. State does not set or request specific fee in RFP.

CANDIDATE INFORMATION BULLETIN

Part of Contract Requirement is the compilation, update, maintenance and distribution of the Candidate Information Bulletin (the Handbook). There is a link to the Handbook on the TREC site and on the testing vendor's site. This handbook contains all of the pertinent information about the exam—the location of the testing centers, the hours for the testing centers, the passing

scores, the fingerprint requirement, the qualifying questions, the time between exams, sample questions, the testing process and other miscellaneous information about test particulars.

Immediately upon notification, the Vendor makes changes to the Handbook provisions as required by statute, rule or policy.

TESTING VENDORS BY STATES

PSI	Pearson-Vue	AMP	Write/Administer Own Test
Colorado	Alaska	Alabama	New York
Connecticut	Arizona	Georgia	California
Hawaii	Arkansas	Illinois	West Virginia
Iowa	Delaware	Missouri	
Kentucky	DC	Nebraska	
Louisiana	Florida	New Hampshire	
Maryland	Idaho	North Carolina	
Michigan	Indiana	North Dakota	
Minnesota	Kansas	South Dakota	
Mississippi	Maine	Vermont	
Nevada	Massachusetts	Washington	
New Jersey	Rhode Island	Wyoming	
New Mexico	Utah		
Ohio	Wisconsin		
Oklahoma			
Oregon			
Pennsylvania			
South Carolina			
Tennessee			

Virginia			
Virgin Islands			

Commissioner DiChiara made a motion that the following definitely be included in the RPF for testing: 1) a two year base term with three one year options to renew the contract; 2) there must be testing centers, at a minimum, in Knoxville, Nashville, Chattanooga, Memphis and Jackson; seconded by Commissioner Flitcroft; 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) **2013010421 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.**
- 2) **2013010591 – Commissioner Griess made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner DiChiara; vote: 7 yes, 0 no, Commissioner Flitcroft abstained; motion carried.**
- 3) **2013010621 &**
- 4) **2013010622 - Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Griess; unanimous vote; motion carried.**
- 5) **2013012291 &**
- 6) **2013012301 - Commissioner Griess made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.**
- 7) **2013012431 &**
- 8) **2013012432 - Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Flitcroft; unanimous vote; motion carried.**
- 9) **2013012501 &**
- 10) **2013012502 - Commissioner Flitcroft made a motion to accept legal counsel’s recommendation to dismiss but he also moved that it be referred to Consumer Affairs; seconded by Commissioner Alexander; unanimous vote; motion carried.**

- 11) 2013012521 &
- 12) 2013012522 &
- 13) 2013012551 - Commissioner DiChiara made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Griess; unanimous vote; motion carried.
- 14) 2013012561 &
- 15) 2013012562 &
- 16) 2013012563 &
- 17) 2013012571 - Commissioner Flitcroft made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.
- 18) 2013013011 - Commissioner Griess made a motion to accept legal counsel's recommendation to issue a Consent Order for litigation monitoring; seconded by Commissioner Haynes; vote: 7 yes, 0 no, Commissioner Stephenson abstained; motion carried.
- 19) 2013013021 - Commissioner Griess made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Haynes; unanimous vote; motion carried.
- 20) 2013013461 &
- 21) 2013013462 &
- 22) 2013013463 &
- 23) 2013013464 &
- 24) 2013013491 - Commissioner DiChiara made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Flitcroft; unanimous vote; motion carried.
- 25) 2013013711 &
- 26) 2013013712 &
- 27) 2013013713 &
- 28) 2013013721 &
- 29) 2013013731 - Commissioner DiChiara made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Flitcroft; unanimous vote; motion carried.
- 30) 2013015661 – Commissioner Flitcroft made a motion to accept legal counsel's recommendation to close without reading the entire synopsis into the record; seconded by Commissioner Collins; vote: 2 yes, 6 no; motion failed. Commissioner DiChiara made a motion accept legal counsel's recommendation to Close; seconded by Commissioner Blume; unanimous vote; motion carried.

Ms. Cropp presented the Commission with the Consent Order Log and asked if the Commission had any questions and they did not. Therefore, she moved on to the next topic.

Ms. Cropp reviewed the Rulemaking Notice for the November 6, 2013 Rulemaking Hearing with the full Board. The Notice follows:

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

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:

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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

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.

EXECUTIVE DIRECTOR’S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

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 September 30, 2013, TREC had a total of 123 open complaints. There were 28 new complaints in September 2013. There were 107 complaints in the legal department and 16 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2013-2014 is 83. The total civil penalties that were collected in September 2013 were \$15,970.00.
- **Licensing Statistics** – Ms. Maxwell presented licensing statistics for the month of September 2013. As of September 30, 2013, there were 23,986 active licensees, 995 inactive licensees and 8,274 retired licensees. There were 3,867 active firms and 209 retired firms. There were 337 new applications approved in September 2013. Further, she presented a comparison of total licensees for individuals (active, retired and inactive) and firms in September 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 updated the Commission on the number of uninsured licensees and principal brokers that are still uninsured. She advised that the process of suspension and reinstatement when proof is provided is ongoing.

Commissioner Flitcroft again addressed the issue of Ms. Maxwell’s raise not being granted. He suggested that Chairman Stephenson again arrange a meeting with Assistant Commissioner of Regulatory Boards Bill Giannini. He further stated that if no progress is made towards Ms. Maxwell receiving the raise in salary, then the Commission should request an AG’s opinion regarding T.C.A. 62-13-207 which states “the commission shall fix the compensation to be paid

to the executive director, the administrator and staff of the commission, subject to applicable rules, regulations and laws.”

Chairman Stephenson called for Commissioner Reports and the Commissioners reported on matters of concern to them and thanked the people of Farragut for their hospitality.

Chairman Stephenson recessed the meeting on Thursday, October 10, 2013 at 4:17 p.m.

OCTOBER 11, 2013

On Friday, October 11, 2013, the following members of the Commission and Staff were present at the Farragut Town Hall, 11408 Municipal Center Drive, Farragut, Tennessee 37934 for a telephonic conference regarding a case that has been appealed: Chairman William “Bear” Stephenson, Vice-Chairman John Griess, Commissioner Janet DiChiara, Commissioner Michelle Haynes, Commissioner Wendell Alexander, Commissioner David Flitcroft, Commissioner Grover Collins and Commissioner Gary Blume, Executive Director Eve Maxwell, Education Director Steve McDonald, Assistant General Counsel Julie Cropp and Administrative Secretary Kelly Hestand. Commissioner Austin McMullen participated in the teleconference from another location. Also taking part from the Legal Division of the Department of Commerce & Insurance was Assistant General Counsel Robyn Ryan, Chief Legal Counsel Mark Green and Deputy General Counsel Sam Payne. There were also two attendees, who had attended the meeting the day before that returned to Farragut Town Hall to hear the telephonic conference.

The telephonic conference convened at 9:42 a.m. EST regarding the matter of the appeal of Donna Bobo, license #270338. Chairman Stephenson stated that based on the telephonic pre-conference that the board members had just held with members of the legal staff of the Department of Commerce & Insurance, Division of Regulatory Boards, the discussion of the appeal and subsequent ruling in Chancery Court could begin.

Commissioner McMullen made a motion that in lieu of moving forward with the pending appeal, the Commission go on the record as willing to compromise on the matter and proposed the following terms: 1) the order/opinion entered by the Chancery Court be withdrawn; 2) Ms. Bobo’s license go into a suspended status for two years; thereafter to return to a retired status; 3) and each party bear its own attorney fees but court costs be split between the parties; seconded by Commissioner Flitcroft. Commissioner McMullen asked to speak in support of his motion. He stated that when the Commission decided to appeal the decision of the Chancery Court, the Board had two goals in mind: 1) they were very concerned about some of the language in the Chancellor’s opinion that would put at risk the commission’s ability to enforce the rules given to the commission, by the legislature, to enforce and that by appealing the Chancellor’s order/opinion, it would allow the Board to continue to enforce the

statutory law that they have been charged with enforcing and; 2) the Board was concerned about Ms. Bobo continuing to practice in the profession of real estate. He stated that he believes this motion address both of these concerns by taking away the Chancellor's opinion and ensuring that Ms. Bobo would not be practicing real estate for a period of at least two years. It also takes into account the risks that are always inherent in litigation and that the Board is mindful of those risks and do not want a worse result to come out of the situation and secondly, there are always the costs that are present as a result of litigation. Therefore, he stated, he believes that if the Commission, the Chancellor and Ms. Bobo can agree on the above terms then it would reduce the risks and costs associated with further litigation. Commissioner DiChiara spoke about the proposed length of the suspension. She had concerns that the suspension time should be longer. Commissioner McMullen stated that he is not wedded to the two year suspension if someone wished to make an amendment. Commissioner DiChiara called on Legal Counsel, participating telephonically, for their opinion. Chief Legal Counsel Green stated that he believes that Ms. Bobo's attorney would ask that "time served" be taken into account if she is on suspension for two years and therefore asking for three years might better meet the intent of the Commission to have Ms. Bobo not practicing real estate. Commissioner Haynes said she would like to see a minimum of a five year suspension. Ms. Ryan stated that she believes the three years is a good compromise point to encourage an agreement. Commissioner Collins stated that he believes the initial motion should stand. **Commissioner DiChiara made a friendly amendment to change the suspension period from two years to three years; seconded by Commissioner Haynes; roll call vote on amendment: vote: 5 yes (Commissioners Haynes, Alexander, McMullen, DiChiara and Stephenson), 2 no (Commissioners Blume and Griess), 2 abstained (Commissioners Flitcroft and Collins); amendment carried. The Commission then voted on the motion as amended. The roll call vote on the motion as amended was: 8 yes, 0 no, 1 abstained (Commissioner Flitcroft); motion as amended carried.**

Commissioner Griess asked of the Legal Staff, if the Solicitor General is the negotiator, will he have to come back to the board if any of the terms are changed that were passed. Counsel Green affirmed that yes, it would come back to the full board; hopefully in a fairly short amount of time.

Commissioner Collins made a motion to adjourn; seconded by Commissioner Flitcroft; unanimous vote; motion carried.

Chairman Stephenson adjourned the meeting on Friday, October 11, 2013 at 9:58 a.m.



**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE**

OFFICE OF LEGAL COUNSEL

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

MEMORANDUM

TO: TENNESSEE REAL ESTATE COMMISSION
FROM: JULIE CROPP, Assistant General Counsel
SUBJECT: OCTOBER LEGAL REPORT
DATE: October 10-11, 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.**

- 2013010421**
Opened: 6/12/13
First License Obtained: 10/26/10
License Expiration: 10/25/14
E&O Expiration: 1/1/15
Type of License: Affiliate Broker

TREC Meeting
October 10 - 11, 2013
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History: No Prior Disciplinary Action

Complainant listed Complainant's home with Respondent (affiliate broker). After the home was on the market for a while vacant and did not sell, Complainant states that Respondent suggested staging the home with furniture. Complainant then decided to move back into the house with Complainant's family and Complainant's furniture. All of the following took place over four (4) days. Complainant states that Complainant contacted Respondent and requested that the property listing be changed to reflect viewings as "by appointment only" and requested the code so that Complainant could remove the lockbox from the door when Complainant was at the home. Complainant states that Respondent agreed to change the listing, but Respondent told Complainant that the lock box could only be removed by Respondent and only gave Complainant limited access to the lock box and did not give any indication that full unrestricted access to the lock box was possible. The same night, another real estate licensee attempted to enter Complainant's home very late in the evening, but the key was not in the lock box and the family was asleep. Complainant discovered the attempted entry on the following evening when Respondent asked Complainant if Complainant had shown the home on the previous night. When Complainant discovered the attempted entry, Complainant states that Complainant asked Respondent who the agent was and why Complainant was not immediately notified. When Complainant asked for an explanation from the agent who attempted to access the property at night, Complainant states that Complainant was puzzled with the response and decided to remove the home from the market due to security concerns. According to copies of e-mails submitted by Complainant, the agent who attempted to access the property late at night stated that he had previously viewed the property for clients, but later thought it would work for that agent's parents (who were possibly looking for a second home in the area). The agent stated that he had never gone to a property without permission but was leaving town the next morning and thought that the property was vacant and so the agent and his wife drove by Complainant's home, since it was close to the agent's home, and tried to access it.

Respondent states that Respondent had the house listed for over a year, during which time Respondent conducted multiple open houses and showings and the property was vacant with utilities and alarm system active, and the listing was set up such that the showing agent had to contact Respondent for the alarm code. Respondent states that, on occasion throughout the listing, a few agents forgot to get the code and set off the alarm, and Respondent would verify that the home was secure. When Complainant e-mailed Respondent about changing the listing and the lockbox, Respondent states that Respondent immediately changed the listing and told Complainant that Complainant could not remove the lock box (only Respondent could do that) but Respondent could give access through a contractor's code and later program the lock box to allow Complainant access at any time. When Respondent discovered that another licensee had attempted to access the property late on a Saturday night, Respondent states that Respondent e-mailed the agent to attempt to obtain an explanation. When Respondent received the explanation, Respondent states that Respondent told Complainant about the situation. Respondent states that Respondent forwarded the agent's explanation to Complainant and also attempted to address all

of Complainant's concerns over the situation and notified the agent's broker of the agent's activities. Respondent states that, when Complainant requested the house be removed from the market, Respondent complied by removing the listing and sending a Listing/Agency Mutual Release Agreement to Complainant. After, Respondent states that Complainant called and verbally assaulted Respondent, to which Respondent sent an e-mail trying to explain, and after Complainant's reply, had no further contact with Complainant.

Based on the information in the file, which included documents relating to the listing and e-mail correspondence, it appears that Respondent did everything possible to attempt to accommodate Complainant, and there does not appear to be a violation by Respondent.

Recommendation: Dismiss.

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

- 2. 2013010591**
Opened: 6/19/13
- First License Obtained: 1/17/02**
- License Expiration: 8/10/13**
- E&O Expiration: 1/1/15**
- Type of License: Principal Broker**
- History: No Prior Disciplinary Action**

Complainant was the owner of a condo unit which had two (2) parking spaces and a storage closet. Respondent (principal broker) located a buyer, and the parties entered into a Purchase and Sale Agreement which did not specifically include the storage unit. On the day of closing, Complainant states that Respondent informed Complainant that the HOA would not allow Complainant to hold the storage unit after Complainant transferred ownership of the condo unit to the buyer, which Respondent was unaware of until that date. Because the buyer was going overseas, the closing could not be delayed, so Complainant and the buyer signed an Assignment of Storage Space form with the agreement that the buyer would hold the storage unit for Complainant until it was sold. The condo buyer was utilizing the storage unit until it was sold. Complainant located someone who was interested in the unit, but Complainant states that Complainant told Respondent that if the condo buyer wanted the storage unit, Complainant would sell it to the condo buyer. Complainant was then informed by the HOA that the storage unit transferred automatically with the condo unit. Complainant never received any money from the condo buyer for the storage unit.

Respondent submitted a response stating that Respondent had closed many sales in the condo building where Complainant's condo was located but had never encountered a situation where the

seller wanted to sell the storage unit separately from the condo unit and the storage unit was not sold prior to the sale of the actual condo. Therefore, Respondent states that Respondent was not aware of the HOA's requirement that once a condo unit transfers, all storage units and parking lot spaces automatically transfer whether or not that was the intent of the parties. Respondent states that, two (2) weeks after the closing of the condo unit, the condo buyer agreed via text to compensate Complainant for the storage unit and agreed to get in touch with Respondent when the condo buyer returned to the country. Respondent states that Respondent communicated with the condo buyer several times about this before the buyer ceased communication. Respondent states that, around the same time, Respondent received an e-mail from the condo building's property management which stated that any storage unit or parking space that had not transferred to a separate owner prior to a condo closing was the property of the new condo owner. Upon speaking with a representative from the property management group, Respondent states that Respondent was told that this was the rule and it would not be bent. Respondent believes that, once the HOA property management sent the notification to all parties, the buyer did not feel compelled to comply with the earlier promise to pay for the storage unit. Respondent expressed regret that this occurred but states that Respondent did not know about the HOA rule prior to closing and this building is the only one of its type that has this kind of rule.

Legal counsel spoke with a representative for the HOA's property manager who stated that she remembered this transaction, that this was not the first time that something of this type had occurred, and that the master deed for the building states that any time there is a sale of a condo unit, unless it is conveyed prior to sale, the parking and storage automatically transfer with the unit to the new buyer. Legal counsel obtained copies of the deed for the subject unit as well as the master deed, which was very lengthy. The representative of the HOA's property manager then referred legal counsel to an attorney, who the representative stated was familiar with the master deed, in order to determine which section addressed the transfer issue. The attorney stated that the only relevant provision in the master deed referenced an owner's ability to purchase the right to use parking spaces and/or storage units and a unit owner's ability to assign the use of the parking and/or storage to another owner with notice to the HOA. Legal counsel was informed by that attorney that the parking and storage does not transfer automatically with the unit (these are separate), and the attorney had advised the HOA not to get involved with disputes between sellers/purchasers or in the determination of who is the appropriate party to hold the parking spaces/storage units. Based on this information, there does not appear to be a violation by Respondent.

Recommendation: Dismiss.

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

Commissioner Flitcroft abstained from the vote on this matter

**3. 2013010621
Opened: 6/28/13**

First License Obtained: 2/28/05

License Expiration: 7/23/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

4. 2013010622

Opened: 6/28/13

First License Obtained: 3/12/13

License Expiration: 3/11/15

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainants contracted with Respondents' firm (Respondent 1 is a principal broker; Respondent 2 is an affiliate broker) to handle the property management services for Complainants' home. Complainants allege that Respondents took days to respond to telephone calls from Complainants. Further, as of the date of the complaint, Complainants allege that the house had been listed for over a month, that Respondents had failed to lease the property, and that there had only been one (1) showing. Complainants state that they placed their own house on several websites, and Complainants have forwarded multiple interested parties, but Respondents are using the referrals to place the individuals in other houses. Complainants state that due to the lack of showings, Complainants requested cancellation of the contract with Respondents' firm, but Respondent 1 refused to release the property.

Respondents each submitted responses denying that Respondents did not make their best efforts to rent Complainants' property. Respondents state that the property was very messy which made it difficult to photograph for marketing and difficult to show to prospective renters. During the first weeks of listing, Respondents state that both Complainants would contact Respondents with the same questions, and Respondents would get back with one of the Complainants, but Complainants did not communicate with each other. Respondents stated that Complainants called often and Respondents always answered the phone or got back to Complainants quickly. At one point, Respondents state that an interested party wanted to rent the property for less than the list price, so Respondents contacted Complainants, and by the time Respondents got a response from Complainants, the individual had moved on. Respondents state that Complainants would call every day asking why the property was not rented, and Respondents would explain

that there was a large market of homes in the same price range. Respondents state that Complainants did send a few leads which were mere inquiries that Respondents followed up on, but Respondents deny that they used any contact information provided by Complainants to rent other homes. Respondents state that Complainants refused to believe that Respondents were trying to rent Complainants' property. Respondent 1 states that Respondent 1 initially refused to release the property because Respondents had done nothing wrong to justify cancellation, but Respondent 1 states that Respondent 1 did release the contract (which was listed a total of fifty-seven (57) days) before this complaint was received by Respondents. It does not appear that there was any violation by Respondents.

Recommendation: Dismiss.

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

5. **2013012291**
Opened: 7/8/13

First License Obtained: 3/11/92

License Expiration: 1/3/10 (expired)

E&O Expiration: Uninsured

Type of License: Principal Broker

History: 200706035 – Closed by \$350 Agreed Citation (escrow acct. violation)

**Respondent's license expired on 1/3/10*
6. **2013012301**
Opened: 7/8/13

First License Obtained: 9/22/88

License Expiration: 1/10/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: 201100435 – Closed by \$1,000 Consent Order (escrow acct. violation)

Complainant, a licensee, states that Respondent 1 (unlicensed) is operating as an unlicensed assistant to Respondent 2 (principal broker) and is scheduling showings and showing properties without a license. E-mails from another licensee state that Respondent 1 called that licensee requesting a showing and was told where the lock box was located. While that showing did not

take place, an additional call from Respondent 1 to the licensee again requested a showing. After the showing, the licensee called Respondent 1 and was told the people were interested. The licensee then checked the Sentrilock notification, which listed the firm of Respondent 2 as showing the property, and the licensee knew Respondent 1 worked at that office. The licensee states that Respondent 2's name (not Respondent 1's name) was on the notification and states that Respondent 1 must have then accessed the property through Respondent 2's entry card.

Respondent 1 states that Respondent 1 never scheduled showings for Respondent 1 but only for Respondent 2, for whom Respondent 1 works as an assistant. Respondent 1 states that Respondent 1 never showed a home and has only assisted Respondent 2 on a showing. Respondent 2 states that Respondent 1 works as an assistant in the office and has made calls on behalf of Respondent 2 for showings. Respondent 2 states that Respondent 1 has never met with any potential buyers without Respondent 2 being present and that, at no time, did Respondent 1 use the lock box. Respondent 2 states that the lockbox issue in question was a verbal error by Respondent 1, and Respondent 1 has been advised to always state Respondent 1 is calling on behalf of Respondent 2 so as to avoid future communication errors of this type.

Based on the documentation in the file, there does not appear to be anything which proves that Respondent 1 made any statements or implications that Respondent 1 was licensed or that Respondent 1 accessed or showed homes - only that Respondent 1 made telephone calls and scheduled appointments.

Recommendation: Dismiss.

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

7. **2013012431**
Opened: 7/19/13

First License Obtained: 7/28/98

License Expiration: 4/10/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action
8. **2013012432**
Opened: 7/19/13

First License Obtained: 1/25/02

License Expiration: 5/22/14

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant was the purchaser of a property, and Respondents (Respondent 1 is principal broker; Respondent 2 is affiliate broker) were the seller's agents. Complainant states that a termite contract with a particular company was listed on the seller's Property Disclosure statement. Months after closing, Complainant states that Complainant attempted to renew the contract, but Complainant was told that no contract ever existed. Complainant states that Complainant then contacted Complainant's agent for assistance and information on the seller, but that contact revealed nothing. Complainant states that Complainant then contacted Respondents and requested copies of the seller's termite contract. Complainant states that Respondents would not provide the documents, and that Respondents had the seller's Power of Attorney and should know how and where to contact the seller. Complainant states that Respondents' suggestions of contacting the seller directly, contacting the closing agency for seller's information or the Federal Government for the same are not Complainant's responsibilities as a buyer. Complainant suggests that if Respondents do not have updated address information for the seller, then Respondents are negligent in record keeping.

Respondents state that they spoke with Complainant several times and explained that Respondents had no forwarding contact information for the seller, who Respondents believe moved out of state. Respondents state that they suggested that Complainant contact the closing attorney in hopes that the attorney could provide a forwarding address. Respondents state that they attempted to assist Complainant in suggesting methods by which Complainant could locate the seller by recommending contacting the closing attorney or the IRS. Respondents state that the seller completed the property disclosure statement and checked that there was a termite contract with a certain company but did not reference any business information or office address for the termite contract in question. There does not appear to be a violation by Respondents.

Recommendation: Dismiss.

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

9. 2013012501

Opened: 7/8/13

First License Obtained: 3/10/98

License Expiration: 1/13/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

10. 2013012502

Opened: 7/8/13

First License Obtained: 2/21/95

License Expiration: 6/7/15

E&O Expiration: 1/1/15

Type of License: Broker

History: No Prior Disciplinary Action

Complainant was a potential renter who was relocating to Tennessee from another state. After finding a property on Craigslist in mid-April 2013, Complainant contacted Respondents (Respondent 1 is principal broker; Respondent 2 is broker) but determined that the property was not suitable. Soon after, Respondents notified Complainant about another property. Complainant states that Complainant was told over the phone that the rent would be \$750.00/month, plus a \$750.00 security deposit, plus a \$100.00 pet fee. Complainant states that Complainant was told that the security deposit could be returned at the end of the lease if Complainant had the property cleaned. Complainant states that, at that time, Complainant was asked and agreed "...to go ahead and pay the deposit to hold the house..." so Complainant charged the \$750.00 deposit, plus an application fee and processing fee to Complainant's credit card. Complainant states that Complainant was then sent a contract labeled Agreement to Hold Dwelling off Market, which stated that the \$750.00 paid was a non-refundable fee. Complainant states that the document also provided for a lease appointment between May 1 and May 7. Complainant states that, on May 6, Complainant was contacted and asked to meet at the house to sign the lease on May 10. Complainant states that Complainant also discovered that the pet fee would be \$200.00. Complainant states, at this point, Complainant did not trust that the monies would be returned, so, on May 10, Complainant e-mailed Respondents, stating that Complainant was no longer interested and requesting return of Complainant's money, which was denied. Complainant also states that Complainant was told by Respondent 2 that everything in real estate must be in writing, and this statement was an attempt to practice law by Respondent 2.

Respondents state that, around April 11, 2013, Complainant did call about a property, but, after discussion, that property was not a good fit, and Complainant was contacted the following day regarding the property in question and was also informed that its availability would depend upon the shape of the property after the current tenant vacated. Respondents state that Complainant was informed about the rent, the security deposit, and the pet fee, but state that the minimum pet fee is \$200.00 (but can vary based on breed, etc., and is set by the owner per management agreement). Therefore, Respondents deny that Complainant was told that the pet fee would be \$100, and Respondents state this was also spelled out on Respondents' website, to which

Complainant was referred for review. Respondents state that, in that phone call, Complainant gave Complainant's credit card for the deposit and application fee, and, after approval, the credit card receipt as well as the hold property agreement was sent to Complainant by e-mail on April 12. Respondents state that this agreement and the credit card receipt were not signed by Complainant until April 19, and Respondents did not receive the materials until April 23, although Respondents did take the property off the market on April 12. Respondents state that, at that time, Complainant expressed no concern to Respondents. Respondents further state that the money given to take the property off the market would have become the security deposit at lease signing, and Complainant was told that the security deposit would be returned at lease end if the property was in as good as or better shape at termination of the lease. Beginning May 3, Respondents state that daily calls and e-mails went to Complainant regarding the status and informing Complainant that the house would be available in the afternoon of May 7. Respondents state that Respondents did not receive any communication from Complainant until May 10 when Complainant first began expressing concerns. Respondents state that all contracts such as leases are signed in the office, and parties are given a copy then at the signing. Respondents state that, although Respondent 2 did state that all real estate transactions must be in writing, such statement is not the practice of law.

The Agreement to Hold Dwelling off the Market was signed by Respondents on April 12. A copy (together with the credit card receipt) was sent on April 12 and both were signed by Complainant on or about April 18 or 19 and received by Respondents on or about April 23. The Agreement specifically states that the \$750.00 fee was non-refundable as it was to be held for holding the property off the market, and the fee would be used as a security deposit upon the signing of the lease. The pet policy explained on Respondents' website states the pet fee was a minimum of \$200.00 per pet, but the amount could vary depending on breed, size, etc. After a full review of all documents provided, there does not appear to be any documentation/information substantiating a violation by Respondents.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel to dismiss with the addition that the matter be referred to Consumer Affairs.

11. 2013012521
Opened: 8/20/13

First License Obtained: 3/24/08

License Expiration: 3/23/14

E&O Expiration: N/A

Type of License: Time-Share Registration

History: 2013013461 – Under review by legal

2013013711 – Under review by legal

2013014261 – Under review by legal

12. 2013012522

Opened: 8/20/13

First License Obtained: 10/31/07

License Expiration: 10/30/13

E&O Expiration: 7/13/15

Type of License: Time-Share Salesperson

History: No Prior Disciplinary Action

13. 2013012551

Opened: 8/20/13

First License Obtained: 5/26/00

License Expiration: 11/6/14

E&O Expiration: 7/13/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainants were time-share owners who made subsequent purchases in 2008 and 2011 and attended an owners' meeting in 2012 where Complainants met with Respondent 2 (time-share salesperson; Respondent 1 is time-share registration; Respondent 3 is Respondent 2's principal broker). Complainants state that they told Respondent 2 that they wanted out of their time-share but instead state that they purchased more points through signing an additional contract because Complainants were told that the time-share could be bought back through a buyback program which Complainants state does not exist. Complainants want the contract cancelled.

Respondents submitted a response confirming that Complainants made an additional purchase of more points through a new contract in 2012, and the contract documents disclose the terms of the agreement. Respondents deny that any misrepresentations were made regarding rescission or a buyback program. Further, Respondents state that Complainants signed and received a Statement of Understanding outline specific disclosures regarding buyback programs or resale assistance, and Complainants signed a document stating that their decision to purchase was not based on

resale assistance, rental income, investment, or tax benefits. Though Respondents deny any wrongdoing, Respondents state that Complainants have been long-time owners and Respondents have agreed to cancel the last 2012 upgrade contract. The documentation within the file does not appear to substantiate a violation by Respondents.

Recommendation: Dismiss.

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

14. **2013012561**
Opened: 7/30/13

Type of License: Time-Share Registration

History: 2013014241 – Under review by legal
2013015461 – Under review by legal

15. **2013012562**
Opened: 7/30/13

First License Obtained: 10/6/08

License Expiration: 10/5/14

E&O Expiration: 10/30/14

Type of License: Time-Share Salesperson

History: No Prior Disciplinary Action

16. **2013012563**
Opened: 7/30/13

First License Obtained: 6/9/03

License Expiration: 11/13/14

E&O Expiration: 10/30/14

Type of License: Time-Share Salesperson

History: No Prior Disciplinary Action

17. **2013012571**
Opened: 8/22/13

First License Obtained: 10/2/02

License Expiration: 11/26/14

E&O Expiration: 10/30/14

Type of License: No Prior Disciplinary Action

History: No Prior Disciplinary Action

Complainants were existing time-share owners who attended a time-share presentation given by Respondents in May 2013 (Respondent 1 is the time-share registration; Respondents 2 and 3 are time-share salespersons; Respondent 4 is the principal broker for Respondents 2 and 3). Complainants met with Respondents 2 and 3, who Complainants state urged Complainants to upgrade their membership. Complainants state that Respondent 2 told Complainants that Respondent 2 could give Complainants a discounted price on points as well as a certificate for additional usage for a certain number of years. Complainants state that, when Complainants reviewed the written materials in the closing packet on the following day, Complainants discovered that the terms of usage for the certificate for additional usage were not as Respondent 2 had explained to Complainants, and there were multiple restrictions. On the following day, Complainants state that they went to the sales office with a letter providing written notice of cancellation of the contract. Complainants state that they were met with resistance in trying to hand deliver the notice of cancellation until an individual agreed to take a copy of the notice and fax it to the corporate headquarters in another state. Complainants then took the notice to the post office and sent the notice via certified mail to corporate headquarters.

Respondents submitted a response stating that Complainants' additional purchase in 2013 was cancelled within the statutory rescission period and all money was refunded to Complainants' credit card which they used to make the additional purchase (which was confirmed in subsequent correspondence from Complainants). Respondents deny that Complainants were misled regarding the terms of the certificates Complainants received. Respondents state that the certificates are promotional gift incentives provided by the exchange program to Respondents, and Respondents inform purchasers as to the rules and regulations with regard to exchanging use periods through the exchange program. Respondents also deny that Respondents were met with hostility when trying to hand-deliver cancellation notice. Respondents state that Respondents' sales documents allow the option to hand deliver cancellation or mail notice pursuant to state law, and Respondents accept cancellation notices at sales sites but encourage purchasers to send the notification via certified mail so there is proper documentation if the notification is misplaced or lost. The documentation within the file does not appear to substantiate a violation by Respondents.

Recommendation: Dismiss.

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

18. 2013013011

Opened: 7/24/13

First License Obtained: 2/6/04

License Expiration: 3/29/14

E&O Expiration: 1/1/15

Type of License: Broker

History: No Prior Disciplinary Action

Complainant attended an auction for farm land property that was advertised by Respondent (broker) as an absolute auction. Complainant states that, before the auction began, Respondent told attendees that it was a confirmation sale and the advertisement had included a mistake. Complainant states that only one bid was made during the auction over the phone, but the bid was not accepted by the owner because it did not reach the reserve. Complainant states that, after the auction was over, Respondent approached Complainant about buying a tract of the property. Complainant alleges that this was a sale agreement and not auction proceedings. Complainant alleges that Complainant and Respondent came to an agreement about price and the back of the contract described where the property line was to be located. Complainant alleges a contract was signed and was contingent on when the land was surveyed if property line would be as Complainant had requested. Complainant states that Complainant gave Respondent a deposit check with the agreement that once the property was surveyed and the property line could not be worked out as Complainant wanted it, then deal would be off and the deposit money would be returned. Complainant states that Complainant did sign a contract but was not given a copy immediately. Complainant went back to property a few days later and was told by a neighbor that fencing around the property was not included in the sale because the fence was actually put on the neighbor's property and did not belong to the owner. Complainant alleges that Complainant was told that the fencing was part of the owner's property by Respondent. Complainant alleges that the surveying pins on the property did not match what Complainant was told by Respondent. Complainant states that Complainant confronted Respondent with inconsistencies concerning the property. Complainant states that Respondent admitted the inconsistencies and states that Respondent claimed to have forgotten about these details. Complainant states, at that time, Complainant asked Respondent for Complainant's deposit money to be returned. Complainant states that Complainant was told by Respondent that Respondent could not return the deposit check because the owner of the property told Respondent not to do so. Complainant alleges that Respondent and the property owner misrepresented details of the auction in advertisements and misrepresented details of the property that was to be auctioned. Complainant also attached a copy of a civil complaint which Complainant filed against the property owner, Respondent, and Respondent's auction firm.

Respondent submitted a response through an attorney stating that the Complainant previously filed an identical complaint with the Tennessee Auctioneer Commission. Respondent states that, although Respondent is both a licensed real estate broker and auctioneer, the transaction at issue was an auction sale, and Respondent was acting at all relevant times as an auctioneer and states that this complaint filed with TREC was improper. Respondent attached a copy of the Real Estate Auction Contract between Respondent and the property owner as well as the Real Estate Auction Purchase and Sale Agreement. Respondent states that the auction started with one bid and after several minutes of requesting bids, Respondent received no higher bids, therefore the reserve had not been met. With the owner's consent, Respondent then offered to parcel the property for the purpose of trying to auction off at least part of the property, but there were no bids made and the auction was adjourned with Respondent offering for attendees to meet with Respondent personally later if they were interested in making a bid. Respondent states that during the auction, it was made clear that any sale was subject to owner confirmation. Respondent states that, with regard to the advertisement referenced by Complainant listing the auction as absolute, said advertisement was never approved by Respondent, and the newspaper wrote a letter indicating that the running of the ad was due to the newspaper's inadvertence. Respondent states that after the initial open bidding session was adjourned, Complainant approached Respondent about purchasing a smaller tract of land. Respondent states that, after discussions between Complainant, the property owner, and Respondent, that Complainant and the property owner entered into a Real Estate Auction Purchase and Sale Agreement, and Complainant gave a "non-refundable deposit." Respondent states that Complainant has participated in multiple auctions and is aware that virtually every auction sale includes a non-refundable deposit and in fact has purchased property from Respondent at auctions in the past. Respondent states that the property was surveyed twice to come to the agreement of what Complainant wanted as far as the property line. Respondent states Respondent and the property owner met all terms of the contract, but Complainant was not satisfied with the surveys and refused to finalize the purchase. The response states that Respondent never told Complainant that the deposit money would be returned to Complainant if the agreement was not finalized. The response states that Respondent and the property owner complied with all obligations in relation to the sale, and Complainant refused to abide by the sale agreement.

Currently, there is active litigation between Complainant, the property owner, Respondent, and Respondent's auction firm regarding the subject matter of this complaint. Although this appears to be more closely tied to an auction situation, the civil complaint alleges violations of the Broker Act on the part of Respondent. It is likely that more information will be uncovered through the course of the civil litigation which could be pertinent to the Commission's determination of this matter.

Recommendation: Consent Order for litigation monitoring.

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

Chairman Stephenson abstained from the vote on this matter

19. 2013013021
Opened: 7/18/13

First License Obtained: 12/12/75

License Expiration: 9/6/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

TREC opened complaint against Respondent (principal broker) for failure to supervise the previous Respondent. It appears that this Respondent was Respondent's principal broker prior to the time of the subject sale. Currently, Respondent is the principal broker of another commercial firm located at the same address. Respondent submitted a response stating that Respondent's auction firm is a separate entity from this Respondent's firm. Respondent states that Respondent does not have any authority over the previous Respondent, and the transaction is an auction transaction governed by a "Real Estate Auction Purchase and Sale Agreement." Respondent states that Respondent is thus not a proper party to the complaint. Neither this Respondent nor this Respondent's firm is referenced in the complaint or the civil complaint. This Respondent was not the previous Respondent's principal broker when the subject sale occurred, and it does not appear that there was any failure to supervise on the part of this Respondent.

Recommendation: Dismiss.

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

20. 2013013461
Opened: 8/7/13

First License Obtained: 3/24/08

License Expiration: 3/23/14

E&O Expiration: N/A

Type of License: Time-Share Registration

History: 2013012521 – Under review by legal

2013013711 – Under review by legal

2013014261 – Under review by legal

21. 2013013462
Opened: 8/7/13

First License Obtained: 9/13/10

License Expiration: 9/12/14

E&O Expiration: 7/13/15

Type of License: Time-Share Salesperson

History:

22. 2013013463
Opened: 8/7/13

First License Obtained: 7/6/12

License Expiration: 7/5/14

E&O Expiration: None – in suspension

Type of License: Time-Share Salesperson

History:

23. 2013013464
Opened: 8/7/13

First License Obtained: 1/13/95

License Expiration: 7/2/14

E&O Expiration: 7/13/15

Type of License: Principal Broker

History:

24. 2013013491
Opened: 8/7/13

First License Obtained: 6/9/97

License Expiration: 10/2/14

E&O Expiration: 7/13/15

Type of License: Principal Broker

History:

Complainants are long-time time-share owners who made an upgraded purchase in 2012 with Respondents (Respondent 1 is time-share registration; Respondents 2 and 3 are time-share salespersons; Respondent 4 is a principal broker; and Respondent 5 is a principal broker). Complainants state that they met with Respondents 2, 3, and 4, and Complainants feel that several items were misrepresented to them, including the fact that the new contract deed went into a trust and the process regarding the right of first refusal. Complainants state that they found out the information regarding the trust when a time-share resale company contacted Complainants by telephone and told them. Complainants want to terminate the 2012 contract.

Respondents submitted a response confirming that in 2012, Complainants traded an existing contract and upgraded to a new contract with additional points. Respondents deny that any misrepresentations were made during the presentation. Respondents state that the Security Agreement for the purchase disclosed that Complainants would receive an ownership certificate with information regarding their points and disclosed and outlined the right of first refusal for the contract. Respondents also state that other documentation signed by Complainants and provided to them outline disclosures regarding the ownership, fees, rental, and resale. Respondents state that, when Complainants talked to the third-party resale company, it is likely that Complainants were given misleading information by the resale company to help Complainants try to seek contract cancellation. Respondents deny any wrongdoing, but state that, since Complainants have been long-time owners, Respondents agree to cancel the 2012 upgraded purchase. The documentation within the file does not appear to substantiate a violation by Respondents.

Recommendation: Dismiss.

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

25. 2013013711

Opened: 8/7/13

First License Obtained: 3/24/08

License Expiration: 3/23/14

E&O Expiration: N/A

Type of License: Time-Share Registration

History: 2013012521 – Under review by legal

2013013461 – Under review by legal

2013014261 – Under review by legal

26. **2013013712**
Opened: 8/7/13
First License Obtained: 2/22/13
License Expiration: 2/21/15
E&O Expiration: 7/13/15
Type of License: Time-Share Salesperson
History: No Prior Disciplinary Action
27. **2013013713**
Opened: 8/7/13
First License Obtained: 4/10/08
License Expiration: 4/9/14
E&O Expiration: None - suspended
Type of License: Time-Share Salesperson
History: No Prior Disciplinary Action
28. **2013013721**
Opened: 9/11/13
First License Obtained: 12/14/84
License Expiration: 12/5/14
E&O Expiration: 7/13/15
Type of License: Principal Broker
History: No Prior Disciplinary Action
29. **2013013731**
Opened: 8/7/13
First License Obtained: 6/9/97
License Expiration: 10/2/14
E&O Expiration: 7/13/15
Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainants are time-share owners who made an additional purchase in 2013 with Respondents (Respondent 1 is time-share registration; Respondents 2 and 3 are time-share salespersons; Respondents 4 and 5 are principal brokers). Specifically, Complainants state that Respondent 2 encouraged Complainants to attend a presentation regarding a new program. Complainants then met with Respondents 2 and 3. Complainants state that Respondents 2 and 3 told Complainants that they could do a new lateral contract which would cost less than Complainants' current contract. Later, Complainants attempted to contact Respondents 2 and 3 by phone and were again assured it was a lateral contract. Complainants state that they later found out there was no such thing as a lateral contract. Complainants would like a cancellation of the new contract.

Respondents submitted a response confirming that Complainants traded an existing contract and used the equity to purchase additional points for a new contract. Respondents state that Complainants were interested in the new program due to a variety of benefits, and it was fully disclosed that, by applying for a credit card and bill me later, no money would be paid out of pocket that day. Further, Respondents state that Complainants wanted to buy into the program and understood they were purchasing points to do so. Respondents state that there was no mention of a lateral movement and no misrepresentations were made. Respondents state that Complainants' Security Agreement outlined Complainants' financial obligations, and Complainants signed and received an acknowledgement regarding a bill me later account and signed a sale charge receipt for the related charges. Additionally, Respondents state that Complainants reviewed and signed a Statement of Understanding and an Ownership Review which explain the product which is being purchased. Though Respondents deny any wrongdoing, due to Complainants' long time ownership, Respondents agreed to cancel the 2013 purchase and reinstate the previous contract. The documentation within the file does not appear to substantiate a violation by Respondents.

Recommendation: Dismiss.

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

30. 2013015661

Opened: 9/11/13

First License Obtained: 11/23/71

License Expiration: 7/30/14

E&O Expiration: 1/1/15

Type of License: Principal Broker (license surrendered)

History: 2011019971 and 2011024061 – Closed CO \$5,000 and 12 mos. Suspension (FTA and improper conduct)

201306231, 201306311, 2013006951, 2013012101 – Closed by Agreed Final Order – voluntary license termination & payment of \$200 costs

Complainant is a property owner who states that Respondent (principal broker) has been handling the property management services for Complainant's property since April 2013. Complainant states that Respondent has failed to deposit rent money in a timely manner and is behind in payments to Complainant. Complainant states that Complainant cannot get a receipt from Respondent to evidence expenses/revenue but has only been met with excuses. Complainant states that Complainant's attempts to contact Respondent have been unsuccessful.

Respondent submitted no response to the complaint. Respondent had several previous complaints of a similar nature which were in litigation at the time this complaint was sent to TREC. Soon after this complaint was opened, the Respondent signed an Agreed Final Order which provided that Respondent would immediately and permanently surrender Respondent's license, cease and desist further activity requiring real estate licensure and pay the court costs for the matter.

Recommendation: Close.

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