

## TENNESSEE REAL ESTATE COMMISSION MINUTES

SEPTEMBER 11, 2013

The Tennessee Real Estate Commission convened on Wednesday, September 11, 2013 at 9:07 a.m. in Meeting Room 1A of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, Tennessee 37243. The following Commission Members were present: Chairman William "Bear" Stephenson, Vice-Chairman John Griess, Commissioner Janet DiChiara, Commissioner Michelle Haynes, Commissioner Wendell Alexander, Commissioner David Flitcroft and Commissioner Austin McMullen. Commissioner Grover Collins was absent from the meeting. Others present: Executive Director Eve Maxwell, Education Director Steve McDonald, Assistant General Counsel Julie Cropp and Administrative Secretary Kelly Hestand.

Ms. Maxwell read the following statement into the record: This meeting's date, time and location have been noticed on the TN Real Estate Commission's website, included as part of this year's meeting calendar, since September 7, 2012. Additionally, the agenda for this month's meeting has been posted on the TN Real Estate Commission's website since Thursday, September 5, 2013.

The first order of business was the adoption of the agenda for the September 2013 Commission meeting. Commissioner DiChiara stated that she believed that the agenda needs to be amended to allow Ms. Ryan to speak; **Commissioner Griess made a motion to adopt the agenda and allow Ms. Ryan to speak immediately following the adoption of the agenda; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

**Robyn Ryan, Assistant General Counsel, addressed the Commission regarding the formal hearing that was scheduled for the following day for Gary M. Griffey, license #6984, Docket # 12.18-122369A. She advised the Commission that Mr. Griffey had agreed to sign an order to surrender his license, #6984 in lieu of having a formal hearing. She recommended that the Commission accept the surrender. Commissioner Flitcroft made a motion to accept legal counsel's recommendation to accept the surrender of Mr. Griffey's license, #6984 plus costs in lieu of a formal hearing; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

The next order of business was the adoption of the August 2013 meeting minutes. Commissioner Alexander asked that a correction be made. He stated that he made a motion that was not reflected in the minutes and asked Ms. Hestand to go back and correct it. **Commissioner DiChiara made a motion to approve the June 2013 meeting minutes as amended; seconded by Commissioner Griess; vote: 6 yes, 0 no, Commissioner Flitcroft abstained as he was absent from the August meeting; motion carried.**

Ms. Cropp advised the Commission that they should further amend the agenda to remove the formal hearing for Mr. Griffey in light of the agreement that was reached regarding Mr. Griffey's license. Commissioner McMullen made a motion to further amend the agenda to remove the formal hearing for Mr. Griffey that was already resolved; seconded by Commissioner Griess; unanimous vote; motion carried.

#### **INFORMAL APPLICANT APPEARANCE**

Jacob Becker, appeared with his potential principal broker Pryor Bacon of The Pryor Bacon Company in Chattanooga, Tennessee to ask that he be approved to apply for an Affiliate Broker license. Mr. Becker disclosed the following convictions to the Commission: Theft in the First Degree & Violation of Drug Stamp Tax & Going Armed with Intent in 1998. **Commissioner Alexander made a motion to approve Mr. Becker's request; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

#### **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 August 30, 2013, TREC had a total of 120 open complaints. There were 29 new complaints in August 2013. There were 106 complaints in the legal department and 14 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2013-2014 is 54. The total civil penalties that were collected in August 2013 were \$28,600.00.
- **Licensing Statistics** – Ms. Maxwell presented licensing statistics for the month of August 2013. As of August 30, 2013, there were 23,826 active licensees, 1,068 inactive licensees and 8,346 retired licensees. There were 3,863 active firms and 214 retired firms. There were 305 new applications approved in August 2013. Further, she presented a comparison of total licensees for individuals (active, retired and inactive) and firms in August 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 Commissioners on the number of suspensions. She advised that there are 584 in E&O suspension. Of that 584, 33 are Principal Brokers and of those 33, 13 are in Tennessee and 20 are out of state. Ms. Maxwell confirmed that the local boards for these individuals have been notified.

Ms. Cropp introduced the new Deputy General Counsel for Regulatory Boards, Mr. Sam Payne. Mr. Payne briefly explained to the Commission where he worked prior to taking the position with the Department of Commerce & Insurance and thanked the Commission for their hard work.

## **TEAM ADVERTISING DISCUSSION**

The Commission began the discussion of Team Advertising. Commissioner Griess presented to the Commission the following proposed guidelines for discussion regarding team advertising that were compiled by he, Ms. Maxwell and Ms. Cropp through discussion and examining how other states handle team advertising. Commissioner Griess suggested that the Commission and Staff go through the proposed guideline below and say either yea or nay or make other remarks and give Staff input on how to take these suggestions and reference them back to existing rules and statutes. The Commission went through the list one by one and discussed possible ramifications and made suggestions for future, more concrete guidelines. ***The Commissioners' and Executive Director Maxwell and Assistant General Counsel Cropp remarks will be denoted in italics and bold font.***

## **ADVERTISING---REAL ESTATE TEAMS - PROPOSED GUIDELINES FOR DISCUSSION**

Prepared September 4, 2013

Discussion is limited to advertising and is broken down into 6 basic areas of consideration:

- (1) How is a team defined?
- (2) What may a team not do?
- (3) Are there certain words or designations that should not be permitted as part of a team name;
- (4) Does the use of a team name violate Rule 1260-02-.12(2)(e) which states that: No licensee shall advertise in a false, misleading, or deceptive manner;
- (5) Advertising of Team-what is the relationship of the size and/or conspicuous nature of the team name (including logo?) to the firm name (including logo?) and the names of the affiliated licensees;
- (6) Checklist Items to be considered in advertisements.

## 1) DEFINITION of TEAM:

The Commission recognizes that many licensees pool their resources and create teams. The term “team” shall be defined as any group of two or more associated real estate licensees affiliated with the same firm.

***Commissioner Griess stated that since no existing definition of a “team” exists in any current rule or law, that they move on to the next item and go back to possibly defining a team at a later time.***

## 2) 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 Griess again stated that TREC has not defined a team but stated that the above were taken from other states and that they seemed applicable in Tennessee as well. He asked for any comments. Commissioner DiChiara said she does not necessarily disagree but she does believe there will be some feedback from principal brokers. Commissioner McMullen asked if TREC was going to require that the names of persons on a team be given to TREC and Commissioner Griess stated that no; not under the above guidelines. Ms. Cropp stated that the ultimate goal is to look at the outline of suggestions and try to tie them back to an existing rule or statute (i.e. the current advertising rules state that a licensee shall not advertise in a false, misleading or deceptive manner). She stated that her hope is that the Commission can***

*take these guidelines and determine if they believe the actions fall under the current advertising guidelines so when a licensee has questions about whether they are in violation or not; they can refer back to these guidelines as tied to the rule. She stated that we would never be able to name every single thing but she wants to clarify what the Commission considers an actionable violation. She stated that the ultimate goal is to not define teams but to give guidance regarding guidelines to the licensees who make up the teams. Commissioner Alexander stated that the principal broker is responsible for ALL teams in his firm. Commissioner Griess stated that the purpose is to give guidance to licensees. Ms. Cropp stated that she would need to give more thought to how to connect #2 to a specific, existing rule. Commissioner Griess stated that the goal for the day is for the Commission to give feedback so Staff can come back with more formal guidelines for Commission review. Commissioner Griess, in reference to B), stated that he wants it to be understood that teams cannot work out of a separate office from their firm. Commissioner McMullen stated that he is concerned about getting to involved in how a firm runs the office on a day to day basis and asked that "real estate activities" be made more specific (i.e. is driving down the road, talking on your cell phone a real estate activity?). He stated that the wording could be interpreted in a different way. Commissioner Griess asked Ms. Maxwell and Mr. Cropp to make note of the comments and incorporate them into future proposals. Ms. Maxwell suggested that perhaps B) and C) could be combined. Commissioner Griess went on to discuss D) because he has been told that Team Leaders will collect the commission and then distribute the funds to the members of the team; not necessarily the pb. Ms. Cropp stated that D) would be a violation of existing statute T.C.A. 62-13-312(b)(11). Ms. Cropp explained that she means to try and tie each of these guidelines back to an existing rule. Commissioner Griess read E) and Commissioner McMullen stated that it is consistent with existing statute. Commissioner Griess read F) and stated that it is consistent with current law. Commissioner Griess read G) and stated that it is also consistent with current law.*

*Commissioner Griess asked that 3) and 4) be discussed simultaneously as it refers to team names.*

### **3) TEAM NAMES:**

A) Teams cannot advertise themselves using the terms Real Estate, Real Estate Brokerage, Realty, Company, Corporation, LLC, Corp., Inc., Associates, Group, or other similar terms that would lead the public to believe that the TEAM is offering real estate brokerage services independent of the firm and PB.

B) Teams members cannot refer to themselves as President, CEO, CFO, Vice-President, Founder— terms typically used with specific separate entities

***Commissioner McMullen and Commissioner DiChiara stated that they are less worried about this aspect but Ms. Maxwell stated that it is a bigger problem on websites.***

**4) USE OF TEAM NAME VIOLATES RULE 1260-02-.12(2) (e): NO LICENSEE SHALL ADVERTISE IN A FALSE, MISLEADING, OR DECEPTIVE MANNER.**

A) Advertisement includes, but is not limited to, oral, written, visual, TV ads, all websites, web pages, you-tube, all social media, email, stationery, bus shelters, bus stop benches, shopping carts, newspaper, yellow pages, magazines, brochures, flyers, sponsorship materials and signs, billboards, banners, stadium/arena signs, automobile signs, bus advertising, business cards, radio/other audio, signs, sign rider, telephone solicitation, internet voice-overs, fax cover sheet, promotional events and other similar materials.

Rule 1260-02-.12(2) (e) prohibits advertising in a false, misleading or deceptive manner, but does not define these terms. Below is a list of situations which the Commission considers potentially misleading. This list is not intended to be all inclusive, but notes the common violations seen.

B) FALSE—factually incorrect--simply not true either by inclusion of untrue statement or by omission of language that would make true;

C) MISLEADING or DECEPTIVE—Causes person to have wrong idea or impression; causes something to be easily mistaken for something else or believe something that is not true; imprecise representation, vague or incomplete manner in circumstances where specificity is required to understand)

i) Name of firm as licensed with TREC is missing (whether have portion of name or just logo not clearly indicating firm name) and firm phone number missing;

ii) Advertise franchise name alone without rest of firm name—complete licensed name required—not able to identify specific licensed firm;

iii) Makes representation or claim that is misleading—taken at face value and interpreted based on plain meaning;

iv) May be misleading even if consumer not actually misled-advertisement is capable of misleading reasonable consumer;

v) Can be result of inadvertence, negligence, incompetence, recklessness or intentional;

vi) Use of industry specific terms which might be confusing to general public— must present in way that general public will have clear understanding of what advertising means;

vii) Hold team out as a specialty team or compare to other team, firm or licensee;

viii) Promote team as single entity--give impression that entire team working as a unit for consumer—usually only one member represents consumer--team may actually represent buyer and seller in transaction –disclosure necessary as to team and firm—Confidential information issue

ix) Licensed firm name obscured so not readily apparent to public (whether by font size, color, juxtaposition, etc.--discussed in # 5 below)

x) Team internet sites do not conspicuously display firm name and phone number on each page

xi) Team internet sites link to unlicensed real estate business enterprises operated by one or more team members

***It was the consensus that 4) is well thought out and thorough and that it would provide guidance to licensees who are members of teams regarding what would be considered to be misleading or inaccurate information included in their advertising.***

#### **5) ADVERTISING OF TEAM:**

A) Always have firm name as licensed clearly and conspicuously contained in advertisement—no abbreviations, omissions and transposed words;

B) The team name cannot be any larger than the smallest font of the firm name as licensed with TREC;

C) Advertisement must use color, contrast, size or audibility to ensure that firm name is readily noticeable and understood and the name of the licensed firm shall appear at least as frequently as the name or names of any affiliated licensees Team members and/or the team name;

i) If driving by, can see firm name while driving at posted speed;

ii) If audio/video number of times licensed firm name is heard/seen compared to team name, point in advertisement firm name is used and speed with which name is mentioned;

D) Firm name and phone number must appear prominently on every web page and in all advertisements (no magnifying glass required to read)

E) Web page cannot lead to other websites of other companies with which one or more team members is affiliated and which appear to be engaged in real estate activities (property management, investor service, etc.) which require a license;

F) Regardless of font size, the firm name and phone number must be clear to consumer and not easily confused with other information—easily read;

G) Team photo must include all licensed members of team identified individually by name in which license is issued;

H) Firm name and phone number clearly and prominently displayed--cannot be obscured by shadows, gray out, graphics, style, thickness of font, pictures;

I) Cannot have juxtaposition of the firm name and phone number and the team name and phone number which makes it difficult to tell the team from the firm;

J) If the licensed firm is a franchise, the Team must advertise with the entire licensed name so as to distinguish the licensed franchise firm from other like names franchisees. "Franchise Brokerage" is not the same name as "Franchise Brokerage of Greater Atomic City, Tennessee".

***It was the consensus that 5) is well thought out and thorough and that it would provide guidance to licensees who are members of teams.***

## **6) TEAM ADVERTISING CONSIDERATIONS CHECKLIST**

Please note that the Tennessee Real Estate Commission cannot pre-approve advertising. All advertising is under the direct supervision of your PB. It is the responsibility of your PB to review all advertising to ensure that it is consistent with the Tennessee Real Estate Broker License Act of 1973 and the Rules and Regulations.

A) Considerations—

i) License law does not recognize "Team" and formation of team does not change the structure of the responsibilities of PB, firm and licensees to the public;

ii) Reasonable, average member of the public should be able to easily identify the licensed firm with whom it is dealing and a telephone number with which to

reach the licensed firm based only on the advertisement—should not have to go through team member(affiliated licensee) to reach firm or PB;

iii) Should never give impression that team is an entity separate from licensed real estate firm, that it can operate separately from the licensed firm, or that the team has any type of status with TREC independent of licensed firm;

iv) Advertising influences the purchasing decisions of the public—truthful advertising benefits consumers and enhances image of industry; misleading advertising can negatively affect consumers and the integrity of the profession;

v) Look at advertisements from perspective of “reasonable bystander”/average person—no specialized knowledge;

vi) The intent of the advertisement is not as relevant as the overall impression, the totality of the advertisement and its likely effect on the target audience—could the advertisement mislead a consumer acting reasonably in the circumstances;

vii) Does the team advertise its services or operate in a manner that creates the overall impression that the team is a separate licensed firm.

Commissioner Griess added a viii. He stated there is a firm in the state that has indicated, when recruiting, that the licensee would be their own boss.

viii) Firms advertising the benefits of teams to licensees should not imply or state that the leader of the team can compensate those team members without adhering to TREC guidelines on all compensation flowing through the principal broker.

***Commissioner McMullen stated that viii) seems to go in a different direction from just the focus on advertising. Commissioner DiChiara stated that she believes it is applicable. Commissioner Griess agreed that it is a different topic but that if a licensee who goes with one of these firms that makes this claim; then it is setting a precedent for future actions and potentially advertising.***

***Ms. Cropp stated that her understanding of all of the above discussion is so she can take these suggestions and discussions and put them in a usable format and then bring it back to the Commission for review and/or approval by the Commission. Commissioner Alexander suggested that the Commission break for lunch but leave the topic open for potential later discussion in the afternoon.***

**Chairman Stephenson recessed the meeting for lunch at 11:40 a.m. and reconvened the meeting at 1:03 p.m.**

#### **INFORMAL APPEARANCE/50 MILE WAIVER REQUEST**

Mr. David Carol, principal broker of RealEstateAuction.com appeared before the Commission without his potential affiliate Marva Wilson because Ms. Wilson had an unexpected life event occur and was unable to appear at the last minute. Commissioner Flitcroft made a motion to defer; no second; motion failed for lack of a second. Ms. Maxwell gave the Commission an overview of the structure of RealEstateAuctions.com and then turned the floor over to Mr. Carol to offer the Commission other information. He explained in detail his company structure and business model. He stated that he explained to the nationwide founder that having one office in charge of the entire state was not in step with Tennessee law and therefore he was appearing before him to request consideration of a waiver of the 50 mile rule for potential licensees. He stated that is his understanding that Brokers are exempt from the 50 mile rule and therefore, it is his goal to hire mostly brokers instead of affiliate brokers. However, he did want to discuss the possibility of having affiliate brokers outside the 50 mile waiver. He stated that he is not asking for a blanket waiver but dependent on what the Board says today, he would/may be back with as many as some 30 applicants/licensees. He stated that he believes their business model would enable him to supervise his licensees as well or better than some other principal brokers. The Commission asked Mr. Carol some questions regarding his license history and his business plan. Commissioner Alexander asked if he had passed his model past the Auctioneer's Commission. He stated that he had not done so yet. He assured Commissioner Alexander that he would follow all rules regarding his licensees referring to auctioneers. They discussed the business model. **Commissioner Alexander made a motion that after Mr. Carol goes before the Tennessee Auctioneer's Board and he gets their feedback and decision, then he may be put back on the agenda to speak with the Tennessee Real Estate Commission again; seconded by Commissioner Flitcroft; roll call vote: 7 yes, 0 no; motion carried.**

#### **OCTOBER 2013 MEETING**

Ms. Maxwell gave the information on the October meeting room and the hotel accommodations to the Commissioners. Ms. Hestand will send the info electronically to everyone. Commissioner Griess stated that the 40 year breakfast, hosted by Mortgage Investor's Group in conjunction with the Knoxville Association of REALTORS, on Thursday, October 11 at 8:00 a.m. **Commissioner DiChiara made a motion that the start time for the actual meeting being 10:00 a.m. at the Town Hall in Farragut; seconded by Commissioner Flitcroft; unanimous vote; motion carried. Commissioner Flitcroft made a motion that the Board goes on record that the 40 year breakfast honoring people who have been licensed for 40 or more years at the Fox**

**Den Country Club at 8:00 a.m. on October 10; seconded by Commissioner Alexander; unanimous vote; motion carried.**

**REQUEST FOR WAIVER OF THE E&O PENALTY**

Ms. Barbara “Bobbie” Lovreto, license # 242473, wrote a letter to the Commission requesting a medical waiver of the E&O suspension. Ms. Maxwell read the letter into the record. Ms. Lovreto was suspended July 1, 2013 for not having E&O in place. She purchased the policy within 30 days but did not make the policy take effect until August 1 but she should have had it start by July 30, 2013 in order to avoid the \$500.00 penalty fee. Ms. Cropp read the second paragraph of the policy and advised the Commission that they have the discretion to grant the waiver. **Commissioner Haynes made a motion to grant Ms. Lovreto a waiver of the \$500.00 penalty fee because she bought it in July even though she did not have it take effect until August 1, 2013; seconded by Commissioner DiChiara; opened to discussion; Ms. Maxwell advised that her doctor’s letter stated that she would have been incapacitated during the time period of renewal. Commissioner McMullen asked if it is possible to have a reduced penalty and Ms. Cropp advised him that the Commission has the right to act at variance. Commissioner McMullen moved to amend the original motion to reduce the penalty fee of \$500.00 to \$250.00 pursuant to the E&O statute and policy; seconded by Commissioner Alexander; amendment failed 2 yes, 5 no; vote on original motion made by Commissioner Haynes and Commissioner DiChiara was called for roll call vote; 4 yes, 3 no; motion carried.**

Commissioner DiChiara advised that she and Commissioner Haynes had both taken the proposed audit for the mail in audit of firms and she advised the rest of the board that they have given Ms. Maxwell some minor notes for adjustment before it goes into regular use in the office.

**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) 2013005421 – Commissioner McMullen made a motion to accept legal counsel’s recommendation to Close; seconded by Commissioner Griess; unanimous vote; motion carried.**

- 2) 2013005791 - Commissioner McMullen made a motion to accept legal counsel's recommendation to issue a Consent Order with a civil penalty of \$1,000 for unlicensed activity in violation of T.C.A. § 62-13-102(4)(A)(B), § 62-13-103, and § 62-13-301, said order to also include order to cease and desist all unlicensed activity ; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 3) 2013006321 &
- 4) 2013006322 &
- 5) 2013006323 – Commissioner Griess made a motion to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 6) 2013006541 &
- 7) 2013006542 &
- 8) 2013006543 &
- 9) 2013006801 – Commissioner McMullen made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 10) 2013008221 – Commissioner McMullen made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Griess; unanimous vote; motion carried.
- 11) 2013012331 - Commissioner McMullen made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Griess; unanimous vote; motion carried.
- 12) 2013008231 – Commissioner DiChiara made a motion to accept legal counsel's recommendation to issue a Consent Order for Litigation Monitoring; seconded by Commissioner McMullen; unanimous vote; motion carried.
- 13) 2013008251 – Commissioner McMullen made a motion to accept legal counsel's recommendation to issue a Consent Order for voluntary termination of Respondent's license for failure, within a reasonable time, to account for or to remit any moneys coming into the licensee's possession that belong to others in violation of T.C.A. § 62-13-312(b)(5), failure to timely account for trust fund deposits and all other property received from any party to the transaction in violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-403(6) and failure to properly disburse funds from an escrow account in violation of Rule 1260-02-.09(3)(6); seconded by Commissioner Alexander; unanimous vote; motion carried.
- 14) 2013008271 – Commissioner Griess made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carried.
- 15) 2013008681 – Commissioner DiChiara made a motion to accept legal counsel's recommendation Consent Order for \$2,000.00 for failing to be loyal to the interests of the client in violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-404(2), for failing to diligently exercise reasonable skill and care in providing services to all parties to the transaction in violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-403(1), and failing to preserve for three (3) years records relating to any real estate transaction in violation of T.C.A. § 62-13-312(b)(6), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of

Respondent's execution of Consent Order; seconded by Commissioner McMullen ; unanimous vote; motion carried.

- 16) 2013008711 &
- 17) 2013008712 – Commissioner Flitcroft made a motion accept legal counsel's recommendation to Close as to Respondent 2 and as to Respondent 1, issue a Consent Order with a civil penalty of \$500.00 for violation of Rule 1260-02-.09, specifically referencing subsection (3) which states that brokers are responsible for deposits and earnest money accepted by them or their affiliate brokers, subsection (6) which lists a number of conditions which allows a broker to properly disburse funds from an escrow account, and subsection (7) which states that funds in escrow or trustee accounts must be disbursed in a proper manner without unreasonable delay and should be disbursed or interplead within twenty-one (21) calendar days from the date of receipt of a written request, plus attendance by Respondent 1 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 1's execution of Consent Order and Commissioner Flitcroft amended the recommendation to additionally require Respondent 1 to complete four (4) hours of continuing education in ethics within 180 days of executing the order; seconded by Commissioner Griess; unanimous vote; motion carried.
- 18) 2013008751 &
- 19) 2013008761 – Commissioner McMullen made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 20) Commissioner Griess made a motion to accept legal counsel's recommendation to issue a Consent Order with a civil penalty of \$1,000 for unlicensed activity in violation of T.C.A. § 62-13-102(4)(A)(B), § 62-13-103, and § 62-13-301, said order to also include order to cease and desist all unlicensed activity; seconded by Commissioner McMullen; unanimous vote; motion carried.
- 21) 2013009241 – Commissioner Griess made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 22) 2013009451 &
- 23) 2013009452 – Commissioner Griess made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carried.
- 24) 2013009491 – Commissioner McMullen made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Alexander; unanimous vote; unanimous vote; motion carried.
- 25) 2013009651 – Commissioner Griess made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carried.

- 26) 2013010341 – Commissioner Flicroft made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty of \$1,000 for unlicensed activity in violation of T.C.A. § 62-13-102(4)(A)(B), § 62-13-103, and § 62-13-301, said order to also include order to cease and desist all unlicensed activity; seconded by Commissioner Haynes; unanimous vote; motion carried.
- 27) 2013010351 – Commissioner Haynes made a motion to issue a Consent Order with a civil penalty of \$500.00 for violation of Rule 1260-02-.12, specifically noting subsections (2)(a) and (b) and subsection (4)(b), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent’s execution of Consent Order; seconded by Commissioner DiChiara; vote: 6 yes, 0 no, Commissioner Griess abstained; motion carried.
- 28) Commissioner McMullen made a motion to accept legal counsel recommendation to dismiss; seconded by Commissioner Haynes; unanimous vote; motion carried.
- 29) Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Griess; unanimous vote; motion carried.

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

#### **UPDATE ON ATTORNEY GENERAL’S OPINION**

Ms. Cropp followed up with the Commission on a request made by them in May 2012 for an Attorney General’s opinion regarding T.C.A. § 62-13-104(a)(1). She advised that legal counsel was recently contacted asking for clarification regarding the question which the Commission would like answered in the opinion. Following the original question is outlined and Ms. Cropp’s goal to clarify the question for the Assistant Attorney General and her possible proposals to provide that clarification.

#### **Request for Formal Attorney General Opinion:**

Regarding T.C.A. § 62-13-104(a)(1) which states “This chapter does not apply to:...”

(F) A corporation, foreign or domestic, acting through an officer duly authorized to engage in a real estate transaction, where the transaction occurs as an incident to the management, lease, sale or other disposition of real estate owned by the corporation; however, this exemption does not apply to a person who performs an act described in § 62-13-102(4)(A), either as a vocation or for compensation, if the amount of the compensation is dependent upon, or directly related to, the value of the real estate with respect to which the act is performed.

#### **Original Question in May 2012 Opinion Request:**

Is an individual who is a member/officer of a limited liability company or corporation required to be licensed under the Tennessee Real Estate Broker Act when the individual engages in the routine rental or sales of properties owned by the limited liability company or corporation when the primary function of the company or corporation is the purchase, sale and rental of real

estate? Is the individual required to be licensed if the individual's only compensation is based on his or her ownership interest in the Limited Liability Company or corporation?

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**Goal:** to clarify question in attempt to assist Attorney General in drafting an opinion which addresses the specific issues requested for interpretation by the Commission

**Possible Solution:** Break question into multiple parts:

1. Does the exemption provided in T.C.A. § 62-13-104(a)(1)(F) apply to limited liability companies?
2. If an individual who is a member or officer of an entity which may receive the exemption under T.C.A. § 62-13-104(a)(1)(F) has the primary responsibility of performing activities for which a license is required under T.C.A. § 62-13-102(4)(A) or (B) on behalf of such entity, does it matter whether or not the person's compensation is dependent upon, or directly related to, the value of the real estate to which the act is performed with regard to whether the exemption applies?
3. Is an individual who performs activities for which a license is required under T.C.A. § 62-13-102(4)(A) or (B) on behalf of an entity which may receive the exemption under T.C.A. § 62-13-104(a)(1)(F), but who does not do so as their vocation, exempt from licensure under the Tennessee Real Estate Broker License Act of 1973 if they receive payment based on a distribution of profits to the owners of the entity, which amount includes the money received by the entity for the sale of the property and is distributed to all owners based on a percentage of ownership in the entity or such other calculation not directly related to the sale or rental of the property?

Ms. Cropp asked if the approval proposed questions held true to what the Commission originally wanted to ask. **Commissioner Flitcroft made a motion to submit the breakdown as presented above by Ms. Cropp; seconded by Commissioner Griess; unanimous vote; motion carried.**

#### **EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR**

Mr. McDonald presented the Courses for Commission Evaluation for September 2013. **Commissioner Griess made a motion to approve the Courses for Commission Evaluation S1 through S33 per Mr. McDonald's recommendation to approve; seconded by Commissioner DiChiara; unanimous vote with the exception that Commissioner McMullen abstained as to S2; motion carried.**

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

- Sally Cummings of TAR® (1110) requested the approval of Karen Randolph to teach NAR Ethics- #7286. Ms. Randolph is a previously approved instructor.

- Sally Cummings of TAR® (1110) requested the approval of Ann Skiera to teach Transaction Desk Basic -# 5747 and Transaction Desk Advanced- #5748. Ms. Skiera is a previously approved instructor.

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

Commissioner Flitcroft asked Ms. Maxwell if she had received her raise. Mr. Stephenson advised that he would request an appointment to meet with Assistant Commissioner Giannini regarding Ms. Maxwell's raise.

Commissioner Alexander asked if a firm landline phone number is required in this day and age when most business is done via cell phone and he stated that he believes that there will come a day when businesses will not want to have a landline at all because of cost. Ms. Maxwell stated that as of now, licensees may advertise with their cell phone as long as they also include the firm landline in the advertising.

**Commissioner Alexander made a motion to adjourn; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

**Chairman Stephenson adjourned the meeting on Wednesday, September 11, 2013 at 4:19 p.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: SEPTEMBER LEGAL REPORT  
DATE: September 11-12, 2013

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

**1. 2013005421**

**Opened: 4/3/13**

**First License Obtained: 7/24/95**

**License Expiration: 12/21/13**

**E&O Expiration: 1/1/15**

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

TREC opened complaint based on information received by the TREC office on or about February 2013 which indicated that Respondent (affiliate broker) pled guilty and was convicted of a number of criminal offenses over the years of 2009 to 2011. The relevant plea/conviction was a misdemeanor theft plea and judgment from 2009. Respondent failed to report this plea/conviction to TREC as required by T.C.A. § 62-13-312(f), which requires that, whenever a licensee pleads guilty or is convicted of any offense enumerated in the chapter, the licensee must notify TREC of the conviction within sixty (60) days of the conviction. Without timely notification and a request for a hearing, the section provides that the licensee's license shall automatically be revoked. TREC had no records of Respondent ever notifying TREC of this misdemeanor theft conviction.

Due to the type of information received, in order to ensure that the information was correct and that this Respondent was the correct party who pled guilty and was convicted of the aforementioned theft charge and to ensure that there had been no expungement, this matter was opened as a complaint (thus giving Respondent an opportunity to respond before taking action) instead of immediately automatically revoking Respondent's license as specified by statute. Respondent's attorney submitted a response asking for ten (10) additional days to respond to the complaint but never submitted any additional information or response. Therefore, legal counsel obtained a certified copy of the plea and judgment regarding the theft offense from the court and it was determined that all personal information contained therein matched Respondent's personal information. Upon receipt of this information, Respondent's license was automatically revoked pursuant to T.C.A. § 62-13-312(f) and notice was sent to Respondent via certified mail. Therefore, there is no action necessary from the Commission.

**Recommendation: Close.**

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

2. **2013005791**

**Opened: 5/9/13**

**History: No Prior Disciplinary Action - Unlicensed**

***August 2013 Meeting:***

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

*A copy of the complaint was sent to Respondent at the address featured on the website, which was returned to TREC's office with a notation stating "attempted – not known" and "unable to forward." Legal counsel followed up with the Complainant, who stated that Complainant does not have any information regarding the property owner referenced in the complaint because Complainant did not ultimately begin managing the property. Further, Complainant stated that Complainant did not believe that Respondent was any longer in business. Legal counsel then attempted to call the telephone number on the website and reached a young woman who stated that she worked from her home in another state (and therefore could not provide a business address), but stated that they are involved with apartments and provided Respondent's cell phone number. Legal counsel obtained a possible alternate address through the internet for Respondent's company, and attempts were made to reach Respondent by telephone, by mail at the alternate address, and by fax to the fax number on the original website. In response to the fax, another business contacted legal counsel, stating that Respondent had not been at that location in over (3) years and had no forwarding address for Respondent. Further, the individual believed that Respondent was out of the real estate business altogether. Attempts to contact Respondent at the cell phone number were unsuccessful, and it appears that the alternate address obtained is that of a UPS Store. Based on the lack of information regarding Respondent's activities and inability to determine where Respondent is located, it is recommended that this matter be closed and reopened in the event that additional information is obtained.*

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

***Recommendation: Close.***

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

Since the time of original presentation of this matter to the Commission, Respondent sent a substantive response to the complaint regarding unlicensed activity. Respondent states that Respondent set up Respondent's management company in 2010, and, at that time, was managing full-time under the impression that Respondent did not have to be licensed. Respondents states that Respondent stopped managing full-time about a year and a half ago, passed off a number of clients, and has been working another full-time career since that time but continues "...to manage my own properties and the properties that I have an equity interest or partnership interest in" as well as one property owner who Respondent considers "a friend." Respondent states that the owner of the property referenced by the Complainant licensee was referred to Respondent, and Respondent managed the property from September 2012 to February 2013. Respondent states that, during that period, Respondent never negotiated a lease but did collect rents. Respondent states that Respondent now realizes the requirement to be licensed to manage properties in Tennessee and will be happy to do whatever is necessary to comply. Legal counsel was contacted separately by the owner of the property referenced in the complaint, who stated that

Respondent managed her properties and conducted activities such as showing the properties, locating tenants, and taking care of the properties. The owner provided a number of e-mails and some e-mail communications between the owner and Respondent. Among this was an unexecuted Property Management Agreement for the period of August 1, 2012 through August 31, 2014, which stated, in relevant part, that for a ten percent (10%) management fee, Respondent's company would make efforts to lease the property and negotiate with all tenants, enter into leases, maintain the property, and deposit revenues from the property into a trust account which would be used to pay expenses, compensate the agent, and return the balance to the owner. The owner stated that she did not sign this agreement because she did not believe Respondent was doing what the agreement specified.

**New Recommendation: Consent Order for \$1,000 for unlicensed activity in violation of T.C.A. § 62-13-102(4)(A)(B), § 62-13-103, and § 62-13-301, said order to also include order to cease and desist all unlicensed activity.**

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

3. **2013006321**  
**Opened: 3/26/13**  
  
**History: No Prior Disciplinary Action - Unlicensed**
4. **2013006322**  
**Opened: 3/26/13**  
  
**History: No Prior Disciplinary Action - Unlicensed**
5. **2013006323**  
**Opened: 3/26/13**  
  
**History: No Prior Disciplinary Action - Unlicensed**

Complainant, the designated agent of a vacation lodging services firm, states that Respondents (Respondent 1 is an unlicensed company, Respondents 2 and 3 are unlicensed individuals running unlicensed company) are utilizing the internet to advertise nightly cabin rentals in Tennessee. Complainant states that Respondents are not licensed as a vacation lodging service firm and that Respondents do not have an office in Tennessee.

Respondent 2 sent a response on behalf of all Respondents stating that Respondent 1 is a registered company in another state which operates an advertising platform only on the internet. Specifically, Respondent 2 states that Respondent 1 advertises the properties on its website, which are managed by licensed vacation lodging service firms located and licensed in Tennessee, and Respondent 1 performs no service other than advertising these properties on its website. Respondent 2 states that Respondent 1 does not collect any reservation money and does not own or manage any properties in Tennessee. Respondent 2 states that Respondent 1's website links to

the websites for the vacation lodging service firms who manage the nightly rentals of the properties listed on the website, and the booking is done directly with that vacation lodging service firm. Later, Respondent 1 is paid a commission by the various vacation lodging service firms advertising their properties on Respondent 1's website based on the number of reservations which were booked with the vacation lodging service firm through a customer's utilization of Respondent 1's advertising website. Respondent 2 provided the names of licensed vacation lodging service firms who utilize Respondent 1's advertising platform, who all confirmed in conversations with legal counsel that Respondent 2's representations were accurate. Respondent 2 suggests that Respondents and Complainant have a personal issue which was the reason for the complaint. Based on the information provided and obtained, it does not appear that Respondents' activities constitute unlicensed vacation lodging service activity.

**Recommendation: Dismiss.**

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

6. **2013006541**

**Opened: 4/24/13**

**First License Obtained: 9/14/05**

**License Expiration: 9/13/11**

**E&O Expiration: Uninsured**

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

*\*License expired on 9/13/11\**

7. **2013006542**

**Opened: 4/24/13**

**History: No Prior Disciplinary Action - Unlicensed**

8. **2013006543**

**Opened: 4/24/13**

**History: No Prior Disciplinary Action - Unlicensed**

9. **2013006801**

**Opened: 5/9/13**

**First License Obtained: 10/27/98**

**License Expiration: 10/19/14 (Inactive)**

**E&O Expiration: Uninsured**

**Type of License: Broker**

**History: No Prior Disciplinary Action**

***\*License is in Inactive Status\****

Complainant was the seller of a property. Complainant entered into a Lot/Land Purchase and Sale Agreement with a partnership consisting of Respondents 1, 2, and 3 (unlicensed individuals) in 2011. Respondent 1 was licensed for a brief period of time at the very initial stages of the transaction so a complaint was also opened on Respondent 1's principal broker at that time (Respondent 4 – now inactive). The issue at hand for TREC is whether unlicensed activity occurred on the part of Respondents 1, 2, and 3.

Complainant alleges a number of matters regarding Respondents 1, 2, and 3, including but not limited to breach of contract, failure to purchase the property, failure to account for monies held in an escrow account overseen by a third party attorney to be used for improvements to the property, and failing to respond to communication regarding the property and contract. Complainant states that Respondents 1, 2, and 3 are primaries of a partnership which entered into a purchase agreement in September 2011, which provided that the partnership would purchase Complainant's property before September 2012. The contract further provided that, during the intervening period, a tenant would occupy the property and eventually purchase the property from the partnership (with rent payments going to the partnership and being passed through to Complainant with the rent amounts being applied to the eventual purchase price of the property by the tenant. Also, an escrow account was to be set up with the oversight of a third party attorney to hold the purchaser partnership's funds, which would be used to make repairs to the property. Complainant states that, near the end of the contract period, Respondent 1 contacted Complainant on behalf of the partnership inquiring as to whether Complainant would be in agreement to extending the lease with the tenant for an additional six (6) months so that the tenant could get credit issues resolved, which Complainant accepted via e-mail. Complainant recognizes that there are no signed documents stipulating the extension (but argues that the e-mails are binding), and Complainant argues that the request was not made in good faith by the partnership since everyone associated with it has been non-communicative with Complainant or Complainant's broker since February 2013. Complainant states that all of these circumstances have harmed Complainant as the sale did not take place, Complainant has not received rents since the initial expiration period in the Lot/Land Purchase and Sale Agreement with the partnership, and the tenant is still in residence of the property (and from documents submitted appears to be paying rent directly to Complainant since April 2013). Complainant sent in documentation and e-mails relevant to the transaction, including the Lot/Land Purchase and Sale Agreement, a Memorandum of Purchase Agreement which states, in part, that, "Unless an extension is recorded, the terms of this Memorandum and Purchase Agreement shall expire either upon conveyance of Property by Seller to [the partnership] or upon the date of September 14, 2012."

Complainant states that the tenant is still in residence, but all repairs were not completed which would allow the tenant to obtain financing, and Complainant states that Complainant did not receive several months' rent to which Complainant was entitled.

Copies of the complaint were sent to all Respondents, with complaints sent to Respondents 1, 2, and 3 at the P.O. Box address of the partnership, which were received, but no response was sent by any of these Respondents. The complaint for failure to supervise against Respondent 4 (who is now inactive) was returned as not deliverable as addressed to the only address on file with the Commission. Based on all of the documentation submitted, this appears to be a possible contractual issue between Complainant as the seller and Respondents 1, 2, and 3 as the apparent individuals who are responsible for the partnership which was the buyer (and possibly other parties such as the tenant), but this does not appear to be unlicensed activity on the part of Respondents 1, 2, or 3, as they all appear to be tied to the partnership which entered into the agreement to purchase the subject property from Complainant. Therefore, there does not appear to be a failure to supervise on the part of Respondent 4.

**Recommendation: Dismiss.**

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

**10. 2013008221**

**Opened: 5/2/13**

**First License Obtained: 9/22/88**

**License Expiration: 11/26/14**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: 2013012331 – Under review by legal**

Complainant was the seller of a property, and Respondent (principal broker) was hired by Complainant to list the home through a MLS limited service contract. Complainant states that the home was not listed with Complainant's name on the MLS and did not have "For Sale By Owner" listed. Complainant states that Complainant did not want realtors involved, and Complainant made this clear, but the only calls received regarding the property were from realtors. Complainant also states that the ad did not have Complainant's name and number – only Respondent's. Complainant states that Complainant called a computer service who accessed an ad and said the ad did not have "For Sale By Owner" and Complainant's name. Complainant further states that Complainant was adamant about not wanting a middle man and suggests Respondent attempted to take advantage of Complainant's age. A printout provided by Complainant had some pictures and Complainant's phone number but not Complainant's name or

“For Sale by Owner.” A listing from realtor.com did not have Complainant’s name and number but states that it is brokered by Respondent’s firm with the firm phone number.

Respondent states that Respondent was hired to list Complainant’s home on the MLS, and Respondent spent hours explaining the process, after which Complainant signed the permission statement indicating that Complainant understood the process. Respondent states that Complainant was told that other realtors could not be excluded, so Complainant provided only a one dollar (\$1.00) commission to discourage agents from contacting Complainant. After the home was listed, Respondent states that agents called Respondent, due to being unable to access Complainant’s answering machine, and Respondent states that Respondent had the same issue. Respondent states that Respondent started receiving notice from other agents stating that Complainant would not let them show the home at all because it was “For Sale By Owner” only. Due to this problem, Respondent states that Complainant instructed Respondent to remove the listing immediately. Respondent included the signed contract for permission to market which outlined the terms. Respondent states that the MLS listing was exactly as explained to Complainant and included a copy of the MLS listing showing Complainant’s name, number, and noting to call Complainant directly. There does not appear to be a violation by Respondent.

**Recommendation: Dismiss.**

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

**11. 2013012331**

**Opened: 7/8/13**

**First License Obtained: 9/22/88**

**License Expiration: 11/26/14**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: 2013008221 – Under review by legal**

Complainant states that Respondent (principal broker – same as previous Respondent) met with Complainant regarding listing Complainant’s home. At that time, they discussed listing traditionally and also discussed listing the home through a MLS limited service contract. At that time, Complainant paid the amount for the limited services contract. Complainant states that Complainant understood that Complainant could pay this upfront limited services fee, which would be all that would be paid if the home sold only because it was on the MLS, or that Complainant had the option of later changing to the traditional route with Respondent earning a commission with the upfront limited fee being returned, but Complainant never thought that

Complainant's money would not be refunded if Complainant no longer decided to list the home on MLS. Since the home did not sell, Complainant believes that Complainant is owed a refund.

Respondent states that Respondent was contacted by Complainant to assist Complainant by putting Complainant's home on the MLS. Respondent states that the two met in person and went through an explanation of the process, examples of listings and the related forms and documents. Respondent states that Complainant needed to ask considerably more for the home than others in the neighborhood. Respondent states that the home was marketed for approximately four (4) weeks, and Complainant decided to take the house off the market, requesting a return of the fee which Complainant had paid for the limited MLS listing. Respondent states that Respondent reminded Complainant that there was no refund for the listing fee. Respondent attached a copy of the signed MLS Limited Service Contract with Complainant, which outlined the terms of the service and specified that the seller could terminate at any time but there would be no refund made. It does not appear that there was any violation by Respondent.

**Recommendation: Dismiss.**

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

**12. 2013008231**

**Opened: 5/24/13**

**First License Obtained: 1/24/89**

**License Expiration: 12/25/14**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: 2011012391 – Closed \$1,000 CO (failure to supervise/E&O)**

Complainants (who were represented by a broker) entered into a Purchase and Sale Contract to purchase a property under a lease-purchase arrangement due to Complainants needing to sell another home, and Respondent (principal broker) represented the seller. Complainants state that the home was listed as a modular home on the MLS listing. Complainants state that, after their home sold in another state, and after Complainants had been leasing the home for several months prior to closing, Complainants' lender informed Complainants the home was a mobile home - not a modular home – and thus would not qualify for the loan. Complainants state that they invested a large amount of money into the home during the time Complainants were leasing the property to make improvements, which Complainants state were necessary as the home was not livable. Complainants state that they never would have entered into a contract to purchase a mobile home. Complainants state that they were told that the home was reclassified by the county where the home was located, which Complainants state is not possible. Complainants have since purchased

another home and placed a lien on the subject property for the repairs/modifications which were done by Complainants. Complainants believe that Respondent knew the home was a mobile home and not a modular home, and the MLS listing was a misrepresentation. Complainants included a copy of a complaint which they filed *pro se* against Respondent, Respondent's firm, and the seller in court, which is currently pending.

Respondent, through an attorney and by Respondent's own affidavit, states that Respondent, as the listing agent, did not believe that the designation was incorrect when it was entered into the MLS, and further, Complainants had access to the property before making the offer and before making repairs and modifications to the home. When Respondent listed the property, Respondent was aware that the property was a mobile home at one time (because Respondent was the listing agent when the seller purchased the home). However, Respondent was also aware that, while the seller owned the home, the seller refinanced the home, and the mobile home was "de-titled" and was considered a fixture to the property. Respondent states that Respondent did not look into the crawl space, but Respondent observed brick at the home's foundation area and believed a block foundation was behind the brick. Based on this information, the designation on the MLS was listed as modular, and Respondent's attorney argues that the RealTracs definitions of a mobile home and a modular home are not entirely clear, and Respondent's attorney further states that the MLS listing states that the information is believed to be accurate but not guaranteed and encourages buyers to independently verify all information before making an offer. Respondent states that the Purchase and Sale Agreement provided that Complainants would lease the property for about six (6) months before the property would close. Respondent further states that Complainants included a list of costly repairs in the Purchase and Sale Agreement, which Complainants requested credit for in the sale, which Respondent states shows that Complainants had inspected the home in order to know what repairs were necessary. Further, Respondent states that Complainants e-mailed the seller approximately (1) month after moving in, and part of the e-mail stated that one of the Complainants had replaced duct work (which Respondent states is in the crawl space) and had jacked up portions of the home. Approximately one (1) month before closing, Complainants listed additional repairs for which Complainants wanted credit in the sale, and the seller did not agree. In an e-mail from Complainants to Respondent, Complainants stated that one of the Complainants had been in the contracting business, and the repairs were necessary, which Respondent states evidences that Complainants were aware that the home was a mobile home. Respondent further states that, after Complainants received notice that their mortgage company would not give a loan, the insurance company issued a check to Complainants for damage to the roof, which was cashed by Complainants shortly before Complainants terminated the contract and was never returned to the seller after Complainants vacated the property.

Based on the circumstances, the modular vs. mobile issue appears unclear. Nor does it appear clear that Respondent knew the home was mobile vs. modular. However, there is a pending lawsuit. Often facts are revealed throughout litigation process that could have a bearing on the ultimate issue.

**Recommendation: Consent Order for Litigation Monitoring.**

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

**13. 2013008251**

**Opened: 5/17/13**

**First License Obtained: 7/24/69**

**License Expiration: 2/23/15**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: 942100 – Closed CO (downgrade to affil., 1 yr. probation, 30 hr. course)**

TREC opened complaint based audit of Respondent's (principal broker) firm in April 2013. The auditor's report indicated a shortage in the firm escrow account (which only held one earnest money deposit) when comparing accountings to the most current bank statement. Based on the escrow account shortage, a complaint was opened.

Respondent submitted a response admitting the escrow account shortage due to obligations which led to Respondent utilize funds from the firm's escrow account, which Respondent states Respondent used due to expected income in the near future which did not come to fruition. Respondent acknowledged in the response that Respondent's action was a clear violation but expressed regret and stated that the account would be fully funded by June 2013, and Respondent would furnish proof of same.

Based on Respondent's statement that the account would be fully funded by June 2013, legal counsel contacted Respondent in August 2013 inquiring as to the current status of the escrow account. Respondent stated that the single deposit in the account is the same earnest money deposit referenced in the audit, as the sale is still pending. With regard to the current shortage, Respondent stated that the shortage is worse now than it was at the time of the auditor visit. A current statement of the firm escrow account shows a severe shortage. Respondent admits the violation but states that it was not done for personal gain, and Respondent expressed regret and inability to rectify the situation.

**Recommendation: Consent Order for voluntary termination of Respondent's license for failure, within a reasonable time, to account for or to remit any moneys coming into the licensee's possession that belong to others in violation of T.C.A. § 62-13-312(b)(5), failure to timely account for trust fund deposits and all other property received from any party to the transaction in violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-403(6) and failure to properly disburse funds from an escrow account in violation of Rule 1260-02-.09(3)(6).**

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

**14. 2013008271**

**Opened: 4/30/13**

**First License Obtained: 2/13/95**

**License Expiration: 11/22/13**

**E&O Expiration: 1/1/15**

**Type of License: Broker**

**History: No Prior Disciplinary Action**

Complainants were the sellers of a home, and Respondent (broker) was the listing broker. Complainants state that, in April 2011, Complainants had a contract with a VA loan contingency. Complainants state that Respondent told them that Complainants would have to pay closing costs and told Complainants that they would have to be out of the home by the closing date. Complainants state that Complainants made an offer on a house that was a short sale but lacked storage or a garage, and Complainants state that they told Respondent that Complainants needed two (2) weeks in their home so as to do work on the new home and get rid of tools and equipment that had to be sold before moving. In order not to lose the sale, Complainants state that they hired an auctioneer to sell all of the items. Complainants state that Respondent told Complainants that the sale was a “go” and that all that was left on the sale of Complainants’ home was the appraisal. Complainants state that a problem arose with the appraisal. Specifically, the bank turned down the loan due to the appraisal reflecting problems with Complainants’ home’s foundation. Complainants state that Complainants had a letter from 2009 from an engineer approving the foundation, and this letter was given to Respondent and the appraiser. Complainants state that Complainants do not know why the loan was not approved except for what was told to him by Respondent, and Complainants do not trust Respondent.

Respondent submitted a reply stating that Respondent warned Complainants prospectively that a manufactured home in a yard with a partial flood plain was a difficult sale and that appraisals are generally difficult with manufactured housing. Respondent denies that Respondent tried to get Complainants to pay anything for the buyers to purchase the home but instead states that Respondent told Complainants only that, when the offer involved a VA loan, it was customary to pay closing costs. Respondent states that Respondent told Complainants that the buyers were pushed to move but did not tell Complainants to hire an auctioneer to sell their personal items. Respondent states that Complainants countered the offer with a two (2) week possession after closing for Complainants, and this was accepted by the buyer. Respondent states that Respondent gave the 2009 engineer letter provided by Complainants to the appraiser, but the letter did not

impact the appraiser's professional opinion of the foundation, and the foundation was not approved. Respondent states that the loan was denied because of the appraisal, and, although Respondent states Respondent had no involvement in the appraisal and wanted the deal to close as much as the Complainants, Complainants pulled the listing from Respondent. Based on the information within the file, there does not appear to be a violation by Respondent.

**Recommendation: Dismiss.**

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

**15. 2013008681**

**Opened: 5/23/13**

**First License Obtained: 3/10/95**

**License Expiration: 12/7/14**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainant's son is a property owner, and Complainant has a power of attorney. Complainant states that Complainant contacted Respondent (principal broker) regarding the possible sale or lease of Complainant's son's home, and Respondent agreed to inspect the property. Complainant states that Respondent arranged for re-keying the locks, arranged for boxing and removal of remaining personal items in the unit, and for a cleaning service, which Complainant states surprised Complainant because the parties had no written agreement. Complainant states that Respondent told Complainant there was an interested party, and this party was going to put utilities in their name, and there was to be a contract. Complainant states that Respondent informed Complainant that the interested parties were waiting to get married and not yet ready to move. Complainant states that, a few months later, Complainant was informed by the HOA manager that there was some activity at the property which was causing problems with other owners. Complainant was informed by Respondent that all was fine and there was no one residing in the property, but that the interested party was only "storing" some items in the unit. Later, Complainant states, upon requesting an update from Respondent, that Respondent notified Complainant that the interested party was no longer interested, and the party would be removing the furniture stored there. Complainant states that Complainant again received notice from the HOA that the "tenants" living at the property were causing problems and again Respondent denied that anyone was residing there, but stated that Respondent had given the party who was storing items there notice to vacate (proof of this notice was never provided, according to Complainant). Complainant states that Respondent began eviction proceedings, but ultimately Complainant's attorney caused the persons to be moved from the property, and Complainant

states that the property was damaged through the unauthorized rental. Complainant further states that the son's property was put to the curb and thus destroyed, that Respondent gave a key to this "tenant" with no lease agreement, that there was no written lease, that no rental income was received by Complainant, that there was no signed contract to put the property on the market, and Respondent allowed someone to store items in the property without permission of Complainant.

Respondent states that Respondent was contacted by Complainant to get the subject property on the market. Respondent states that Respondent sent the necessary paperwork to Complainant for signatures via e-mail and regular mail. Respondent states that Complainant said that, with the power of attorney, Respondent could do whatever was necessary to get the home ready and on the market. Respondent states that Respondent hired a cleaning service and had the property rekeyed (for which Respondent states Respondent was not reimbursed), and Respondent packed up what was left behind, but there were only a few items, which Respondent attempted to arrange for the owner's friend to pick up, but ultimately the items were placed in the attic. Respondent states that the property was placed on the market at the end of June, but Complainant also expressed interest in renting the property. Respondent states that, soon after, Respondent was contacted by an interested party, Respondent showed the property, and the interested party, who was planning to get married, wanted to occupy in November. Respondent states that interested party had to move soon and needed a place to store property before the November date. Respondent states that this situation was discussed with Complainant. Respondent states that a hold harmless document was drafted for the potential buyer's signature and the utilities were switched to the potential buyer's name. Respondent states that Respondent was checking on the property, and the property was in great condition. After receiving an email about suspicious activity at the property, Respondent discovered that it was the potential buyer, who had access to the property due to the locksmith making a key for the potential buyer. Respondent states that Respondent told the potential buyer that she could not have a key until the Purchase and Sales Agreement was signed, but the key was never returned. Respondent met with the potential buyer to sign a Purchase and Sale Agreement, and Respondent states that the potential buyer determined that she wanted her own agent. Respondent states that Respondent then sent the documents to that agent. Respondent states that the agent could not get the potential buyer to cooperate, and, a few months later, Respondent states that Respondent spoke with the potential buyer, who now stated that she was planning on moving her furniture out and would not be buying. Respondent then discovered that the potential buyer had the locks rekeyed in order to gain access to the property. Respondent states that Respondent drove by the property on several occasions, spoke to a neighbor, and did not know that there was anyone living in the property. Respondent states that Respondent did knock on the door and was threatened by a male at the property. Respondent states that Respondent posted a "3-Day notice" and began instituting proceedings for eviction but was called by an attorney who was then going to handle the proceedings in court. Respondent further states that Respondent did not instruct anyone to throw out Complainant's son's personal property, that there was never a lease (only a Purchase and Sales Agreement with Temporary Occupancy Agreement - which was never signed by the buyer despite Respondent's attempts) and there was

no rent money collected since it was not a rental situation but a purchase which was to take place. Respondent also states that Respondent did not give any key to the potential buyer, that Respondent did have a signed listing document for the listing, and that Complainant did not pay the invoices paid by Respondent which were sent to Complainant.

Respondent included a Purchase and Sales Agreement, Temporary Occupancy Agreement, and Amendment all dated November 8, with no signatures. Respondent also included a copy of the Power of Attorney and letter from Complainant stating Respondent had permission to deliver a utility check and to sign forms for water activation. Respondent states that when Respondent moved offices, the office owners shredded files, and, therefore, Respondent does not have the signed listing document or the hold harmless document.

A review of the emails, and other matter would seem to indicate that there may have been an agreement to sell the property but there is no document to support this. There is also no document or email to support any agreement with Complainant to allow furniture to be moved in the property pending sale nor is there any agreement outlining the terms of the storage/access.

**Recommendation: Consent Order for \$2,000.00 for failing to be loyal to the interests of the client in violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-404(2), for failing to diligently exercise reasonable skill and care in providing services to all parties to the transaction in violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-403(1), and failing to preserve for three (3) years records relating to any real estate transaction in violation of T.C.A. § 62-13-312(b)(6), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.**

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

**16. 2013008711**  
**Opened: 5/7/13**

**First License Obtained: 10/4/04**

**License Expiration: 6/15/15**

**E&O Expiration: 1/1/15**

**Type of License: Broker**

**History: No Prior Disciplinary Action**

**17. 2013008712**  
**Opened: 5/7/13**

**First License Obtained: 3/5/07**

**License Expiration: 9/19/14**

**E&O Expiration: 1/1/15**

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

Complainant made an offer to purchase a property which was listed for sale by Respondent 2 (affiliate broker; Respondent 1 is now a broker but was Respondent 2's principal broker at the time during which the subject incidents took place). Complainant included a copy of the MLS listing for the property which stated that the property had been vacant, needed repairs to water damage and mold remediation, and stated that the property had city water and a septic tank. Complainant states the parties negotiated a contract for Complainant's purchase of the property (which had a binding agreement date which was approximately eight (8) days before the closing date specified in the contract). Shortly after the contract was fully executed, Complainant states that, while inspecting the property, Complainant could not locate a water meter and contacted the city and learned that the water lines at the road do not extend to the property and the property had well water. Shortly thereafter, Complainant states that Complainant was asked to sign several forms, including a Subsurface Sewage Disposal System Permit Disclosure, which Complainant states Complainant refused to sign because of the discovery regarding the well water. Complainant states that said refusal to sign made the contract null and void as far as Complainant was concerned. Complainant states that, on that date, Complainant told Complainant's agent about the water situation and that Complainant wanted the contract cancelled and the earnest money returned. After the closing date passed, Complainant states that Complainant received an Earnest Money Disbursement and Mutual Release of Purchase and Sale Agreement signed by the sellers and stating that the earnest money would be forfeited to the sellers. Complainant changed the form to state that the earnest money would be returned to Complainant, signed the form, and returned it. Complainant also sent a Notification form after the closing date which stated that Complainant did not want septic tank, that the MLS showed city water, and that there was no city water. Complainant states that Complainant was approached with an offer to split the earnest money, but Complainant refused.

Respondents state that the overall response to the complaint is that Complainant was out of contract with the passing of the closing date and the inspection period before any communication or proper notification was given regarding Complainant's cancellation of the contract. Respondents state that the only notification received from Complainant's agent prior to the closing date was several e-mails (which were included with the response) indicating that there "...may be an issue concerning the septic system..." (which Respondents state was clear in the MLS listing) and stating that Complainant "...implies this could be a deal breaker..." and that the deal may be dead due to the home being on septic, but there was never any mention of city water or any formal notification or confirmation or termination prior to or on the closing date. Further, Respondents state that the MLS had been initially entered as city water based on a previous MLS

listing which was an initial oversight by the sellers (Respondents attached the initial MLS listing indicating city water which had been initialed for approval by the sellers) which was later updated to indicate well water well before Complainant sent the written Notification form after the closing date. Respondents state that Complainant was not in regular contact with Complainant's agent in the final days of the contract period until the termination of agreement was sent, and telephone calls with Complainant's agent during that period indicated that Complainant had walked away from the deal. Then, Complainants state that, after the closing date, Complainant signed the Earnest Money Release, which was sent to Complainant from the sellers, requesting the earnest money back to Complainant and sent the Notification regarding the city water and the MLS listing, which Respondents state was the first time that city water was ever mentioned to Respondents or that it was communicated to Respondents that Complainant wished to terminate the agreement (and there was no documentation presented by any party to contradict this statement).

The responses did not specify the current status of the earnest money which was in dispute, so legal counsel contacted Respondent 1 (because Respondent 1 was principal broker throughout the transaction until well after the complaint and answers were filed) who submitted a response by e-mail stating that the earnest money was still being held in Respondents' firm trust account due to the dispute. Respondent 1 stated that Respondents had told Complainant and Complainant's agent that the money should be interplead, but then Respondents received the TREC complaint, and the money is being held until instruction is received on how to proceed. It appears that a written request for return of the earnest money was submitted in writing by Complainant via Complainant's alteration to the Earnest Money Release form on March 5.

**Recommendation: Close as to Respondent 2. As to Respondent 1, Consent Order for \$500.00 for violation of Rule 1260-02-.09, specifically referencing subsection (3) which states that brokers are responsible for deposits and earnest money accepted by them or their affiliate brokers, subsection (6) which lists a number of conditions which allows a broker to properly disburse funds from an escrow account, and subsection (7) which states that funds in escrow or trustee accounts must be disbursed in a proper manner without unreasonable delay and should be disbursed or interplead within twenty-one (21) calendar days from the date of receipt of a written request, plus attendance by Respondent 1 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 1's execution of Consent Order.**

**DECISION: The Commission voted to accept the recommendation of legal counsel with the addition that Respondent 1's Consent Order also include the requirement that Respondent 1 must also complete four (4) hours of continuing education in ethics within 180 days of executing the Consent Order.**

18. 2013008751  
Opened: 5/14/13

**First License Obtained: 11/17/00**

**License Expiration: 8/26/15**

**E&O Expiration: 1/1/15**

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

**19. 2013008761**

**Opened: 5/14/13**

**First License Obtained: 12/13/02**

**License Expiration: 1/18/14**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainants were the buyers of a property, and Respondent 1 (affiliate broker) acted as facilitator to the transaction. Complaint was also opened against Respondent 2 (principal broker) for failure to supervise. Complainants allege that Respondent 1 told Complainants that the property had a septic system. After purchasing the property and purchasing a manufactured home to be placed on the property, Complainants state that Complainants discovered that there was no septic system (only a septic tank) and no way to put a system on the property. Complainants state that Respondent 1 did not check the land before Complainants purchased it.

Respondent 1 states that Respondent 1 was introduced to Complainants, who Respondent 1 was told wanted to purchase the subject property and needed assistance in writing an offer. Respondent 1 states that Complainants intended on putting a mobile home on that property. While meeting with Complainants, Respondent 1 states that Respondent 1 pulled the listing (this was a foreclosure property) as well as the tax card and stated that the listing represented that the property had a septic tank and that there was an older home on the property. Respondent 1 further states that Respondent 1 explained that the county would not have any records on the septic system due to the age of the home on the property, and due to the foreclosure status, Complainants would have to purchase "as is, where is." Respondent 1 states that Respondent 1 told Complainants not to tear down the existing house until getting a repair permit on the existing home for the septic (Complainant denies this statement). After closing, Respondent 1 states that Complainants contacted Respondent 1, stating that there was only a tank, and Complainants could not get a repair permit (at this point, Respondent 1 states that Respondent 1 learned that the existing home had been torn down). Respondent 1 states that Respondent 1 made calls and

informed Complainant that if Complainant could find evidence of field lines the repair permit could still be issued (Complainant states this information was not received from Respondent 1). Respondent 1 further states that Respondent 1 set up a meeting for Complainants with a soil scientist to look for suitable soil area for a system, but there was none. Learning that Complainants had obtained a building permit and placed a mobile home on the property, Respondent 1 states that Respondent 1 then assisted Complainants in contacting the adjoining property owners to ascertain whether one of the property owners would grant an easement, which was denied. Respondent 2 confirmed the information in Respondent 1's response, stating that neither Respondent did anything wrong and instead worked together to assist Complainants with the issue. Further, Respondent 2 states that Respondent 1 never viewed the property and was never asked to view the property by Complainants, as they knew this was the property they wanted. Further, Respondent 2 states that Complainants signed numerous documents accepting this bank-owned property in "as is where is" condition with no express or implied warranties.

The documents specifically state that Respondent 1 was a facilitator for Complainants, and this foreclosure property was listed by another licensee. The contracts further state that the property was purchased "as is where is" with all conditions and exceptions waived. An addendum to the contract, a disclosure and hold harmless agreement, also states the property is sold as is with no warranties or representations regarding the structure on the property. There does not appear to be a violation by Respondents.

**Recommendation: Dismiss.**

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

**20. 2013009101**  
**Opened: 5/24/13**

**History: No Prior Disciplinary Action - Unlicensed**

Complainant is a property owner, and Respondent (unlicensed individual) was hired to provide property management services for two (2) properties owned by Complainant. Complainant terminated the contract with the property management company owned by Respondent after learning that the company was not licensed. In an e-mail exchange, Respondent stated to Complainant that Respondent was a licensed business entity through the IRS.

In response to this complaint, Respondent stated that Respondent is CEO of the unlicensed property management company, and that Respondent's father had been manager of another management company but had died. Respondent stated that the property owners wanted to continue with the father's company so Respondent completed a real estate course and applied for a business license. Respondent stated Respondent did not negotiate any lease on behalf of Complainant but only collected rent on the properties and sent that rent (minus a 10%

management fee) to Complainant. Respondent states that the management contract sent to Complainant was the same contract Complainant had signed with the previous company.

The contract provided is a management contract and bears the name of the unlicensed property management company now run by Respondent. Respondent provided a form indicating that Respondent had completed the course for new affiliates in January 2013, but, as of the date of the Commission's review of this matter, there was no application for a license and no license.

**Recommendation: Consent Order for \$1,000 for unlicensed activity in violation of T.C.A. § 62-13-102(4)(A)(B), § 62-13-103, and § 62-13-301, said order to also include order to cease and desist all unlicensed activity.**

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

**21. 2013009241**

**Opened: 5/24/13**

**First License Obtained: 3/10/11**

**License Expiration: 2/28/15**

**E&O Expiration: 1/1/15**

**Type of License: Broker**

**History: No Prior Disciplinary Action**

Complainants allege that they made an offer for a house which was listed as a short sale. Respondent (broker) was the listing broker/seller's agent. Initially, Complainants drove by the house, and the sellers allowed Complainants to view the home. After calling Respondent to ask if offers were still being taken, when Complainants were informed by Respondent that there was one (1) offer on the house but Respondent was not sure what the bank would do with the offer, Complainants state that they contacted their broker to schedule an "official showing" and placed a written offer on the property. Later, Complainants state that they were contacted by Respondent, who informed that the sellers planned to bring funds to closing to avoid a short sale (since there was a first and second lien on the home), and Complainants would need to submit a higher offer to accomplish a sale. Complainants state that they then contacted their broker to get the offer in writing and submitted but state that Respondent never contacted their broker directly regarding this matter. Complainants state that an offer was submitted to Respondent, and, that weekend, Complainants saw the sellers in the yard and an inspection truck. The following week, Complainants state that they contacted their broker and received news that the sellers were out of town and would sign the deal on the following day. Two days later, Complainants state that they were told by their broker that the house had been sold to someone else. Complainants' broker submitted a statement, as well, stating that Complainants' broker was upset that Respondent had

talked directly to Complainants and not dealing with Complainants' broker regarding the increased offer. Complainants' broker and Complainants state that, during the process of the home going out of short sale status, they were all lead to believe by Respondent's statements that Complainants were going to get the house. Complainants and their broker believe they were misled by Respondent during the process.

Respondent submitted a response confirming the initial contact Respondent received from Complainants regarding whether offers were still being taken, and Respondent confirms that Respondent allowed Complainants' broker to show them the home and spoke with Complainants' broker regarding submitting an offer because Respondent was not confident that the bank would accept the already-pending offer. Respondent states that Respondent received notice of the bank's rejection of the initial pending offer on the same day that Complainants submitted their offer through their broker. According to Respondent, due to a health issue with Complainants' broker which had him out of the office, Complainants' broker's assistant got Respondent the additional short sale documents a few days later to begin to process the short sale. Respondent states that Respondent was contacted by Complainants directly three (3) times, once to check the status of the short sale, the second time to discuss the fact that the offer covered the first lien but not the second lien and the typical timeline, and the third time to discuss Complainants' current living situation and the fact that they could not get news from Complainants' broker (whom Respondent states Respondent could also not reach due to the aforementioned health issue). Later, Respondent states that Respondent got written notice that the first loan holder had rejected Complainants' offer, and the sellers instructed Respondent to stop the short sale process, stating they were going to bring money to the table but would also need a higher offer than Complainants'. Respondent states this information was conveyed to Complainants, and Complainants were instructed to discuss writing a new offer with their broker. Respondent states that Respondent then sent (and Complainants signed and returned) a written Mutual Release of Complainants' earnest money. Respondent states that Respondent never received a second written offer from Complainants. Several days later, Respondent states that Respondent notified Complainants' broker that the sellers had received another offer. Respondent states that, with regard to contacting Complainants, Complainants' broker was not always available due to the health issue, and Respondent denies making representations that Complainants "had" the house.

The matter regarding Respondent contacting Complainants on a few occasions instead of their broker would appear to be an ethics issue. Further, with regard to the second offer which Complainants state their broker submitted and Respondent claims was never received, there was no proof submitted that this offer was ever transmitted to Respondent. Based on the information within the file, there does not appear to be a violation by Respondent.

**Recommendation: Dismiss.**

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

**22. 2013009451**

**Opened: 5/30/13**

**First License Obtained: 1/26/88**

**License Expiration: 10/20/13**

**E&O Expiration: 1/1/15**

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

**23. 2013009452**

**Opened: 5/30/13**

**First License Obtained: 2/17/05**

**License Expiration: 9/1/14**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainant purchased a home in December 2008, and Respondent 1 (affiliate broker) represented Complainant in the transaction. Respondent 2 is Respondent 1's principal broker. Complainant states that Complainant discovered mold and standing water in the crawlspace of the home in November 2012. Complainant states that Complainant's homeowner's insurance will not cover the damage because the issue is due to grading. At the time the home was purchased in 2008, Complainant states that there was a grading issue which was raised during the home inspection, and the seller's representative, in communications with Respondent 1, assured that the issue would be resolved prior to closing. Complainant states that, due to assurances that the issue was taken care of, Complainant proceeded with the closing in December 2008. When the insurance company informed Complainant that the issue was not covered in November 2012, Complainant contacted Respondents, and Complainant states that both were of no assistance. Complainant feels that Respondents' firm and Respondent 1 are responsible for the repair costs. Complainant included documentation from the seller dated from the month of closing in December 2008 outlining the irrigation and drainage improvements which were made to the property. Complainant also attached the 2012 denial letter from Complainant's insurance company, which appears to outline a number of reasons why the loss is excluded from coverage, with grading being one of multiple exclusions outlined. Complainant also included a report on the damage and moisture intrusion completed by an engineer, which indicated extensive moisture conditions, wood decay, and microbial growth, which the report opined occurred over a period of time greater than one (1) year, as a result of groundwater seeping into and standing in the

crawlspace, lack of adequate moisture control/damp-proofing, and lack of adequate crawlspace ventilation.

Respondent 1 states that Respondent 1 was Complainant's agent for the 2008 sale. Respondent 1 states that Complainant had a home inspection during the contract period prior to closing, and the inspector noted an issue with water runoff behind the property. The home had never been lived in by the seller, who had bought the home and later re-sold it that year. When the water issue arose in the inspection, Respondent 1 states that Respondent 1 contacted the seller's representative, who sent a contractor to remedy the problem. Respondent 1 states that Complainant was made aware of what was being done prior to closing, and Complainant agreed to close. When contacted by Complainant in 2012, Respondent states that Respondent tried to contact the seller to no avail. Respondent 2 states that Respondent 2 spoke with Complainant about the issues with the home, and Respondent 2 told Complainant that Respondent 2 would speak with Respondent 1 and the seller's representative in the transaction. When the seller's representative was non-responsive, Respondent 2 states that Respondent 2 called Complainant and stated that the seller's representative was non-responsive and suggested that Complainant might call an attorney. It does not appear that there was any violation by Respondents; instead, if anything, this appears to be a possible dispute between the seller and Complainant.

**Recommendation: Dismiss.**

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

**24. 2013009491**

**Opened: 5/23/13**

**First License Obtained: 12/15/92**

**License Expiration: 6/11/15**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainant states that Respondent (principal broker and principal auctioneer for a real estate/auction firm) conducted an auction on a property which Complainant attended. Complainant states that Complainant was competing against another bidder and was the winning bidder, but Complainant then heard that the second bidder worked for Respondent's firm and was there solely to increase the bid price. Complainant states that Complainant told Respondent to have the second bidder buy the property, but states that Respondent said no. Complainant states that, now, Respondent continues to attempt to get the deposit money from Complainant even though the property later sold to another person.

Respondent submitted a reply stating that the auction was properly conducted with the firm recording all people who had an interest in purchasing the property, and Respondent calling the auction. Respondent states that, initially, there were four (4) bidders, but later, only two (2) individuals, Complainant and another individual, who is a real estate broker, were the final two bidders. When Complainant won the bid, and after Complainant had signed the contract and given Respondent the deposit check, Respondent states that Complainant later contacted Respondent stating that Complainant did not want the property and instructing Respondent to give the property to the second bidder, at which time Respondent states that Respondent informed Complainant again that Complainant had purchased the property. Respondent denies that anyone was running up the bid, and states that the property did later sell to the second bidder. Respondent states that an attorney is currently attempting to serve Complainant regarding an action in court for writing the deposit check and then stopping payment on it. It does not appear that there was a violation by Respondent.

**Recommendation: Dismiss.**

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

**25. 2013009651**

**Opened: 6/10/13**

**First License Obtained: 8/1/77**

**License Expiration: 1/16/15**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complaint opened by TREC against Respondent (principal broker) based on Respondent's failure to satisfy an Agreed Citation sent to Respondent. Respondent was sent an Agreed Citation, which contained a civil penalty for an escrow violation discovered during an audit of Respondent's firm regarding an earnest money check which the auditor stated was not timely deposited into the firm's escrow account pursuant to the terms of the contract. Because Respondent had not signed and returned the Agreed Citation, this matter was opened in legal as a complaint.

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

**Recommendation: Dismiss.**

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

**26. 2013010341**

**Opened: 7/16/13**

**First License Obtained: 11/4/04**

**License Expiration: 2/9/12**

**E&O Expiration: Uninsured**

**Type of License: Affiliate Broker**

**History: 2007062902 – Closed \$1,000 CO**

*\*License expired on 2/9/12\**

Complainant (expired licensee) previously had two (2) complaints for which Consent Orders had been sent and which Respondent had not resolved, resulting in the two (2) matters being forwarded to litigation. Due to the nature of the violations contained within the Consent Order and the fact that Respondent was no longer licensed, it was determined by the litigation attorney that litigation could not proceed with the facts as presented. Additionally, an investigation yielded information that, despite Respondent's license expiration in February 2012, it appeared that Respondent/Respondent's business may be engaged in unlicensed activity. Based on this information, the Commission voted to close the two (2) previous matters and open this complaint against Respondent, based on the information obtained during the investigation, for unlicensed activity. This complaint is based on an investigation wherein it appears that Respondent and/or Respondent's business is advertising homes for sale. Some of the listed homes are owned by Respondent and/or Respondent's business (it appears that Respondent is the sole member of the business), but the investigation yielded information that other listings on the advertisement were not owned by Respondent or Respondent's business. Neither Respondent nor Respondent's business have any current license that would allow Respondent to list these properties, which indicates unlicensed activity. Respondent submitted to response to this complaint.

**Recommendation: Consent Order for \$1,000 for unlicensed activity in violation of T.C.A. § 62-13-102(4)(A)(B), § 62-13-103, and § 62-13-301, said order to also include order to cease and desist all unlicensed activity.**

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

**27. 2013010351**

**Opened: 6/5/13**

**First License Obtained: 11/25/86**

**License Expiration: 12/13/14**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainant states that Respondent (principal broker) advertises listings on Craigslist which are not Respondent's listings. Based on the information submitted by Complainant, which consisted of multiple MLS listings of HUD properties along with Respondent's Craigslist advertisements of the same properties, it appears that Respondent fails to mention the listing agents for the properties and fails to include the proper identifying information as required by TREC's advertising rule.

Respondent submitted a response expressing confusion with regard to why a complaint was filed against Respondent for these ads. Respondent states that the properties are all HUD properties which can be advertised by all HUD-approved brokers (which Respondent states is encouraged), and Respondent states that Respondent is a registered HUD broker. Respondent states that Respondent believes that all advertisements were done correctly but indicates that Respondent has stopped placing these types of ads since receiving the complaint and would appreciate advisement "...as to the correctness or error..." of Respondent's actions. In light of the format of these ads, the connection to HUD properties, and the provisions of the TREC advertising rule, it is recommended that the Commission discuss this complaint to determine what action is appropriate.

**Recommendation: Discuss.**

**DECISION: The Commission voted to send a Consent Order with a civil penalty of \$500.00 for violation of Rule 1260-02-.12, specifically noting subsections (2)(a) and (b) and subsection (4)(b), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.**

**28. 2013011001**

**Opened: 7/8/13**

**First License Obtained: 3/24/08**

**License Expiration: 3/23/14**

**E&O Expiration: N/A**

**Type of License: Time-Share Registration**

**History: No Prior Disciplinary Action**

Complainants have been long-time time-share owners with Respondent (time-share registration). Complainants state that they were victims of misleading and deceptive statements by salespeople and were held for long periods of time for sales presentations. In 2009, Complainants decided to purchase an upgrade, and were not pleased with the product they received. Therefore, Complainants complained to Respondent wanting a contract cancellation, and Respondent did cancel the 2009 contract, but Complainants also want the remaining contract owned by Respondents cancelled and a refund of the down payment (stating that Complainants owe only maintenance fees, which Complainants now refuse to pay).

Respondent submitted a response stating that Complainants have made numerous additional purchases since their initial time-share purchase in 1994. In 2001, Respondent states that Complainants traded in a number of contracts to utilize the equity to purchase a single contract. In 2009, Respondent states that Complainants traded another contract to utilize the equity to purchase a new contract. Respondents states that Complainants signed the Statement of Understanding and Purchaser's Summary, outlining the terms of the product which was purchased and disclosing issues regarding ownerships, assessments and programs and containing rescission rights. Respondent confirms that Complainant's 2009 contract was cancelled due to delinquent amounts owed. Respondent denies the allegations contained within the complaint, but states that, as a gesture of goodwill, Respondent will agree to cancel Complainants' remaining contract with no further financial obligations. It appears that these subject transactions occurred outside TREC's statute of limitations. Despite that, however, there does not appear to be evidence of a violation by Respondent.

**Recommendation: Dismiss.**

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

**29. 2013012271**

**Opened: 7/9/13**

**History: No Prior Disciplinary Action - Unlicensed**

**30. 2013012272**

**Opened: 7/9/13**

**History: No Prior Disciplinary Action - Unlicensed**

This complaint was originally filed with the Consumer Affairs Division in 2012 but was recently forwarded to TREC by Consumer Affairs. Complainants allege that they attended Respondent 1's (unlicensed entity) sales presentation (Respondent 2 appears to be an individual who works as an administrative director of Respondent 1). Complainants state that they were promised greatly

discounted vacation resorts, hotels, cruises, and airfares by purchasing a membership with Respondent 1, which is a vacation travel club. Complainants state that vacations were not cheaper as a result of Complainant's membership, and discounts were, in reality, very small. As a result, Complainants state that they are entitled to a refund. Based on the documents received from Consumer Affairs with the original complaint, it appears that Complainants received a return of their money from their credit card company and did not pursue the matter further. A response was submitted on behalf of Respondents which states that the travel discounts marketed for hotels, condominiums, cruises, rental cars, etc. are true and accurate but savings can vary depending upon what type of booking a member chooses to make.

The issue for TREC is whether or not Respondents are engaged in unlicensed activity. From all documents and contracts submitted regarding the sale of the vacation membership, it appears that Respondents are merely selling travel memberships which allow members discounts on travel for condos, hotels, airfare, cruises, etc., and based on this information, it does not appear that Respondents are engaged in unlicensed activity.

**Recommendation: Dismiss.**

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