

## TENNESSEE REAL ESTATE COMMISSION MINUTES

**May 8, 2014**

The Tennessee Real Estate Commission convened on Thursday May 8, 2014 at 9:02 a.m. in meeting room George A. Smith, 107 East Main Street Suite 107, Jackson, Tennessee 38305. The following Commission Members were present: Chairman William "Bear" Stephenson, Vice-Chairman John Griess, Commissioner Janet DiChiara, Commissioner Grover Collins, Commissioner Gary Blume, Commissioner Marcia Franks, Commissioner Wendell Alexander and Commissioner David Flitcroft. Commissioner Austin McMullen was absent from the meeting. Others present: Executive Director Eve Maxwell, Assistant General Counsel Julie Cropp and Licensing Technician Kimberly Smith.

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 August 9, 2013. Additionally, the agenda for this month's meeting has been posted on the TN Real Estate Commission's website since Friday May 2, 2014. Also, this meeting has been noticed on the tn.gov website since Friday, May 2, 2014.

The first order of business was the adoption of the agenda for the May 2014 Commission meeting. Commissioner DiChiara moved to add an invocation and discussion of car wraps to agenda; Commissioner Franks moved to add the pledge of allegiance after invocation. Commissioner Flitcroft moved to add a discussion of the Bobo case by Executive Director Eve Maxwell at the end of the Executive Director's report. Commissioner DiChiara made a motion to adopt the agenda as amended; seconded by Commissioner Franks; the motion carried. The next order of business was the adoption of the March 2014 meeting minutes. Commissioner Collins made a motion to adopt the minutes for the March 2014 meeting; seconded by Commissioner DiChiara; motion carried.

### INFORMAL APPLICANT APPEARANCE

#### **APPLICANT: ADRIAN SHAUN HARROD; PRINCIPAL BROKER: BRIAN FOSTER #272006**

Brian Foster is the Principal Broker of Landmark Realty and Auction (#259117) located in Paris, TN. Mr. Foster was first licensed as an affiliate broker on 6/14/1999 and was first licensed as a broker on 4/21/2004. Mr. Foster became the PB of Landmark Realty and Auction on 4/11/2006. The TREC records reflect that the firm currently has 7 affiliates and 3 brokers. Mr. Foster has had no disciplinary action taken against him by TREC. The Applicant Adrian Shaun Harrod #328632 has applied for a Tennessee affiliate broker license. Mr. Harrod has passed the licensing exams. Mr. Harrod answered "Yes" to Question 5 on the application for licensure and has revealed that in the past, he has had felony and misdemeanor convictions, primarily relating to issues surrounding controlled substances.

After discussion, **Commission Alexander made a motion to approve Adrian Shaun Harrod to move forward in the licensure process; seconded by Commissioner Collins, the Motion Passed Unanimously.**

## EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL

### I. EDUCATION REPORT

#### TREC CORE COURSE

Ms. Maxwell presented revised proposed topics for both the Commercial and Residential 2015-2016 TREC CORE courses based upon recommendations made at the April, 2014 Commission meeting. After discussion, the Commission requested that certain additional topics be included in each of the 2015-2016 TREC CORE courses and directed Ms. Maxwell to make the additions and bring the TREC CORE topics back for discussion at the June, 2014 Commission meeting.

#### COURSES

Ms Maxwell presented the Courses for Commission Evaluation for May 2014, prepared by Former Education Director Steve McDonald.. **Commissioner Collins made motion to approve the Courses for Commission Evaluation for May 2014, Courses M1-M8 as presented; seconded by Commissioner DiChiara; motion carried.**

#### INSTRUCTOR REVIEW

--Karen Czarnecki of the Williamson County Association of REALTORS (1135) requests the approval of Chip Kerr to teach Unethical or Bad Judgment (#6340). Mr. Kerr is a previously approved instructor and holds Broker license 270653.

**Commissioner DiChiara made a motion to approve the above instructor; seconded by Commissioner Franks; motion carried.**

There was a request by the Commission for an update on replacing the Education Director. Ms. Maxwell gave a brief update on the subject.

### II. COMPLAINT STATISTICS REPORT

Ms. Maxwell presented complaint statistics to the Commission. As of April 30, 2014, TREC had a total of 126 open complaints. There were 29 new complaints in April 2014. The total number of closed complaints for the current Fiscal Year 2013-2014 is 287. The total civil penalties that were collected in April 2014 were \$32,080.00.

### III. LICENSING STATISTICS

Ms. Maxwell presented licensing statistics for the month of April 2014. The statistics presented included tables which compared several years' number of licensees, firms, exams taken, applications approved and renewal percentages.

As of April 30, 2014, there were 24,231 active licensees, 1,111 inactive licensees and 7,900 retired licensees (these numbers include only brokers, affiliate brokers and timeshare salespersons). There were 3,869 active firms and 208 retired firms. There were 382 new applications approved in April 2014.

#### **IV. ERRORS & OMISSIONS CONTRACT AMENDMENT**

Pursuant to an RFP which was issued in 2012, Rice Insurance Services Company, LLC (RISC) was selected to be the state carrier for mandated E&O insurance for the period beginning 11/1/2012 and ending on 12/31/2014. Section B.2. of the current master E&O contract between RISC and the Department of Commerce and Insurance provides for a two year extension of the Contract at the election of the State, provided that the Contract extension is in place prior to contract expiration. The extension must be on terms, conditions and rates no less favorable to the licensees than the current Contract. New extension dates will be 1-1-15 - 12-31-16. Commissioner DiChiara made motion to extend the current Contract for an additional two year period (1/1/2015-12/31/2016; the policy issued to licensees would cover the period 1/1/2015-1/1/2017) by way of an Amendment; seconded by Commissioner Franks, motion carried.

Commissioner Blume raised the question of the State self-insuring the real estate licensees and suggested that this alternative be studied. Commissioner Collins stated that this had been previously tried and was not successful. There was no further discussion or requested action to be taken.

#### **V. ERRORS & OMISSIONS INSURANCE UPDATE**

Ms. Maxwell updated the Commissioners on the number of E&O suspensions and the number of licensees previously in suspension who have paid the statutory penalty fee and shown proof of E&O in order to be placed back into active status.

Commissioner Griess asked about timeshare salespersons and E&O. Ms Maxwell gave a brief overview of timeshare salespersons licensure requirements. Ms. Maxwell stated that timeshare salespersons are in the same profession code as the Affiliate Broker and Broker and are required to have E&O insurance. Timeshare salespersons have a limited license and can only sell timeshares and only when they are affiliated with a developer who originally sells timeshare. In order to engage in the resale of timeshares one must hold an active affiliate broker or broker license—timeshare salespersons cannot engage in the resale of timeshares. Timeshare salespersons must test for licensure, but the test which an applicant for a timeshare salesperson takes is completely different for the exams administered to applicants for affiliate broker or broker. The 30 hour pre-license course required for a timeshare salesperson is taught by the developer. And the developer certifies the timeshare salesperson applicant for testing. Timeshare salespersons are not required to get continuing education for renewal.

#### **VI. BROKERS GRANDFATHERED**

At the April, 2014 Commission meeting, the Commission requested that the issue of Grandfathered Brokers be included in the May, 2014 meeting agenda and requested that Ms. Maxwell compile the numbers pertinent to brokers licensed prior to 1/1/1988 and brokers licensed from 1/1/1988-12/31/2004. Brokers who are grandfathered are not required to complete CE in order to renew their license. All

brokers licensed from 1/1/2005 forward are required to complete 16 hours of CE each renewal period in order to renew their license. Ms. Maxwell presented information concerning the number, type, location and distribution of grandfathered brokers.

After discussion, the Commission deferred further consideration of this issue until a future meeting.

## **VII. CITATION USE AND PENALTY AMOUNTS**

The Commission had requested at the April, 2014 meeting that Citation and Penalty Amounts be included on the May, 2014 meeting Agenda. Ms. Maxwell stated that the use of Citations for the seven enumerated violations and the penalty fees established for the citations issued by the TREC staff were originally voted upon and approved by the Commission at its meeting in June, 2006. Motion made by Commissioner Alexander to discuss each violation and fee separately; seconded by Commissioner DiChiara; motion carried.

The Commission discussed each item separately and determined the action to be taken as follows:

Currently for **Escrow Accounts** penalty range is \$250 - \$500. Motion made by Commissioner DiChiara to increase the penalty range to \$500 - \$1000; seconded by Commissioner Griess; motion carried.

Currently for **Signs in Office** penalty is \$250. Motion made by Commissioner Griess to increase penalty to \$500; seconded by Commissioner DiChiara; motion carried.

Currently **Agency Disclosure** penalty range is \$250 - \$500. Motion made by Commissioner Blume to increase penalty range to \$500 - \$1000; seconded by Commissioner DiChiara; motion carried.

Currently for **Failure to Complete Administrative Measures** - Transfers or Retire penalty range is \$250 - \$500. Motion made by Commissioner Alexander to increase penalty range to \$500 - \$750; seconded by Commissioner Griess; motion carried.

Currently **Change of Firm Address** penalty range is \$750 - \$1000. No motion made to change penalty range amounts--they will remain as currently in effect.

Currently for **Advertising** the penalties are 1st offense \$100, 2nd offense \$250, 3rd offense \$500. Motion made by Commissioner DiChiara to increase penalties as follows and apply to principal brokers and their affiliated licensee: 1st offense \$500; 2nd offense \$750; 3rd offense \$1000; seconded by Commissioner Franks, motion carried with Commissioner Flitcroft voting against the motion.

Motion made by Commissioner Griess to make the revised penalty amounts effective as of October 1st, 2014. Motion seconded by Commissioner DiChiara, motion carried.

## **VIII. PB BROKER AUDIT**

Ms. Maxwell updated the Commission on the new Mandatory Broker Audit which is scheduled to begin with the first Audit Forms going out by mail on May 19, 2014 to approximately 200 Principal Brokers. Audit form responses are to be returned completed with supporting documentation within 30 days of date of audit cover letter. TREC will have an auditor on site to look over audits. The plans are to ultimately send out 400 Mandatory Broker Audit packages each month. Ms. Maxwell asked the Commissioners to consider possible disciplinary actions to be taken if a Principal Broker fails to return the completed Mandatory Broker Audit form with all supporting documentation within the required time period. This issue will be placed on the agenda for the June, 2014 Commission Meeting.

## **IX. UPDATE ON FINGERPRINTS**

Ms. Maxwell reported since 1-1-14, 1,416 new applicants have had their fingerprints completed. 21% of the new applicants came back with an indication. 1074 of the new applicants did not have an indication, and 46 out of the 1,416 had to have the fingerprints redone.

## **X. ARELLO**

Commissioners DiChiara and Franks attended the Mid Year ARELLO conference in April, 2014. Ms. Maxwell and Assistant General Counsel Julie Cropp also attended the conference. Each attendee gave a brief report about what they had learned while attending the ARELLO conference and all reported that it was most informative and always extremely beneficial.. Ms. Maxwell outlined the dates for the ARELLO Annual Conference to be held in Philadelphia September 17-21, 2014 and asked the Commissioners to think about if they wanted to go, since the justification for the conference will be due in mid-July, 2014.

## **XI. BOBO CASE**

At the Commission's request, Ms. Cropp provided an update regarding the recent Tennessee Court of Appeals decision in the case Donna Bobo v. State of Tennessee Real Estate Commission, No. M2013-02037-COA-R3-CV.

## **XII. ADVERTISING CAR WRAP QUESTION**

The Commission discussed the issue of car wraps and whether or not the advertising rules apply to car wraps. The Commissioners were in agreement that the advertising rules as they currently stand, apply to all forms of advertising and therefore the advertising rules to apply to car warps.

## **XIII. BUDGET**

The March 31, 2014 Budget numbers had been previously sent to the Commissioners for their review. There were no questions concerning the March 31, 2014 budget information.

## **INFORMAL APPLICANT APPEARANCE**

**APPLICANT: GARY RHEA CARRIER #329185; PRINCIPAL BROKER: TERESA BURKHOLDER #23811**

Teresa Burkholder is the Principal Broker of the firm Teresa Burkholder, Inc. #237469 located in Bristol, Virginia. Ms. Burkholder was first licensed as broker in Tennessee on 11/12/1982. She was licensed through reciprocity with Virginia. Ms. Burkholder became the PB of Teresa Burkholder, Inc. in Tennessee on 2/11/1988. The TREC records reflect that the firm currently has 3 affiliates and 0 brokers. Ms. Burkholder has had no disciplinary action taken against her by TREC. Gary Rhea Carrier #329185 has applied for a Tennessee affiliate broker license. Mr. Carrier has passed the exams for licensure. Mr.

Carrier answered "Yes" to Question 5 on the application for licensure and has revealed that in the past, he had one felony conviction, relating to an incident which took place when he was 18 years old. After discussion, **Commission Franks made a motion to approve Gary Rhea Carrier to move forward in the licensure process; seconded by Commissioner Collins, the Motion Passed Unanimously.**

### **LEGAL REPORT, JULIE CROPP, ASSISTANT GENERAL COUNSEL**

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

- 1) **2013022191** – Commissioner Flitcroft made a motion to accept legal counsel's recommendation; seconded by Commissioner DiChiara. Motion carried.
- 2) **2013023651** – Commissioner Blume made a motion to reaffirm the original authorized Consent Order, authorized on April 2, 2014; seconded by Commissioner DiChiara. Seven votes in favor of the motion, Commissioner Flitcroft voted against the motion. Motion carried. Without a vote, the Commission confirmed that legal counsel could give Respondent an additional 21 days from initial receipt of the original authorized Consent Order to comply with its terms.
- 3) **2014005971**– Commissioner Alexander made a motion to authorize a Consent Order for \$250.00 for failure to exercise adequate supervision over the activities of a licensed affiliate, 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 Blume. Seven votes in favor of the motion, Commissioner Flitcroft voted against the motion. Motion carried.
- 4) **2013023751** – This case was deferred from the April 2, 2014 meeting to allow Commissioner Alexander to review the file. Commissioner Franks made a motion to accept the recommendation of legal counsel and Commissioner Alexander to dismiss; seconded by Commissioner Collins. Motion carried. Commissioner Alexander abstained.
- 5) **2013025371** – Commissioner Franks made a motion to accept the recommendation of legal counsel to dismiss; seconded by Commissioner DiChiara. Motion carried.
- 6) **2013025441** – Commissioner Blume made motion to accept the recommendation of legal counsel with the amendment that the Consent Order shall contain a civil penalty of \$1,000.00; seconded by Commissioner Franks. Motion carried.
- 7) **2013025471** – Commissioner DiChiara made motion to accept the recommendation of legal counsel; seconded by Commissioner Collins. Motion carried.

- 8) **2013025541** – Commissioner Franks made a motion to accept the recommendation of legal counsel; seconded by Commissioner Collins. Motion carried.
- 9) **2013025621** – Commissioner Stephenson made a motion to accept the recommendation of legal counsel; seconded by Commissioner DiChiara. Motion carried.
- 10) **2013025651** – Commissioner Blume made a motion to accept legal counsel’s recommendation; seconded by Commissioner Collins. Motion carried.
- 11) **2013025661** – Commissioner Franks made a motion to accept legal counsel’s recommendation; seconded by Commissioner Flitcroft; Motion carried.
- 12) **2013025681** – Commissioner Alexander made a motion to accept legal counsel’s recommendation; seconded by Commissioner DiChiara. Motion carried.
- 13) **2013025701** – Commissioner Flitcroft made a motion to accept legal counsel’s recommendation; seconded by Commissioner Franks. Motion carried.
- 14) **2014000231** – Commissioner Stephenson made a motion to accept legal counsel’s recommendation; seconded by Commissioner DiChiara. Motion carried.
- 15) **2014000291**– Commissioner DiChiara made a motion to accept legal counsel’s recommendation to close and refer to real estate commission where respondent is licensed; seconded by Commissioner Franks. Motion carried.
- 16) **2014000541** – Commissioner Flitcroft made a motion to accept legal counsel’s recommendation; seconded by Commissioner DiChiara. Motion carried.
- 17) **2014000631** – Commissioner Franks made a motion to accept legal counsel’s recommendation; seconded by Commissioner Collins. Motion carried.
- 18) **2014000632** – Commissioner Franks made a motion to accept legal counsel’s recommendation; seconded by Commissioner Collins. Motion carried.
- 19) **2014000681** – Commissioner Franks made a motion to accept legal counsel’s recommendation; seconded by Commissioner Collins. Motion carried.
- 20) **2014000781** – Commissioner DiChiara made a motion to accept legal counsel’s recommendation; seconded by Commissioner Collins. Motion carried.
- 21) **2014000782** – Commissioner DiChiara made a motion to accept legal counsel’s recommendation; seconded by Commissioner Collins. Motion carried.
- 22) **2014000951** – Commissioner DiChiara made a motion to accept legal counsel’s recommendation; seconded by Commissioner Alexander. Motion carried.

23) **2014001001** – Commissioner DiChiara made a motion to accept legal counsel’s recommendation; seconded by Commissioner Stephenson. Motion carried.

24) **2014001121** – Commissioner DiChiara made a motion to accept legal counsel’s recommendation; seconded by Commissioner Alexander. Motion carried.

25) **2014003241** – Commissioner Flitcroft made a motion to accept legal counsel’s recommendation; seconded by Commissioner Blume. Motion carried.

26) **2014003242** – Commissioner Flitcroft made a motion to accept legal counsel’s recommendation; seconded by Commissioner Blume. Motion carried.

### **FINGERPRINT and E&O RULES**

Ms. Cropp discussed Rule 1260-01-.16 Lapsed Errors and Omissions Insurance and Rule 1260-01-.17 Fingerprint which became effective March 8, 2014.

Ms. Cropp noted that Rule 1260-01-.16 Lapsed Errors and Omissions Insurance repealed by implication Commission Policy 2013-CPS-003 Lapsed E & O Insurance, but Ms. Cropp suggested that the Commission could repeal 2013-CPS-003. **Motion was made by Commissioner Griess to repeal Commission Policy 2013-CPS-003 Lapsed E & O Insurance; seconded by Commissioner Stephenson. Motion carried.**

### **TESTING CONTRACT**

Executive Director Maxwell reported to the Commission that PSI was awarded the testing contact for the next 5 years, beginning July 1, 2014 and ending on June 30, 2019.

Chairman Stephenson adjourned the meeting on Thursday, May 8, 2014 at 3:37 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: MAY LEGAL REPORT

DATE: May 8-9, 2014

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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. 2013022191**

**Opened: 11/8/13**

**First License Obtained: 1/4/07**

**License Expiration: 9/1/15**

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

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

***March 2014 Meeting:***

*Complainant was the seller of a property, and Respondent (principal broker) was the buyers' agent. After entering into a Purchase and Sale Agreement (a copy of which was attached along with other documentation provided by Complainant) and having the appraisal, Complainant states that Complainant started packing and making preparations to move. The Purchase and Sale Agreement was contingent on the buyers receiving a VA loan. Complainant states that throughout the contract period, as Complainant made preparations to move, Complainant was concerned that the deal would not close but states that Complainant's agent told Complainant that Respondent was telling Complainant's agent that everything was moving along as planned on schedule. Just before closing, Complainant states that Complainant was informed that the buyers had not been approved for the VA loan. Complainant alleges that Respondent made misrepresentations concerning the status of the buyers' loan application to Complainant's monetary detriment. Complainant states that Complainant's agent suggested that the buyers try for another loan and two (2) extensions were signed. Complainant then states that the buyers were approved for another loan but wanted money from Complainant in order to make the closing occur. Complainant states that Complainant's agent then found out that the buyers had not been approved. Complainant states that, pursuant to the Purchase and Sale Agreement, possession was to be given at closing, and Complainant was never told of any reason why the*

loan may not be approved. Complainant states that Complainant would have never moved out and incurred such extensive expenses in that process had Complainant had any idea that the loan would not go through, and Complainant believes that Respondent had reason to know of the problems with the loan.

Respondent submitted a response and documentation through an attorney stating that Respondent never made any misrepresentations about the loan. Respondent states that Respondent never said that the loan had been approved, and, at no time, did Respondent tell Complainant's agent that the financial contingency had been satisfied. Respondent states that after the home and termite inspections were completed and the Buyer Inspection Contingency Removal Notification was signed, Complainant's agent prematurely changed the listing status of the home from "Active" to "Pending," although the appraisal had not been conducted, the buyer had not been approved for financing, the home inspection contingency removal had not been signed by the sellers, and the septic system had not been inspected. Later, Respondent states all contingencies except the financing contingency were satisfied, which was when Complainant stated that Complainant started packing. Respondent states that it appears that Complainant incorrectly believed that, with the appraisal contingency removed, this was a go-ahead to start packing the house. Respondent states that it is the responsibility of the Complainant's agent to make sure Complainant understands what a financial contingency means and that Complainant's agent should have advised Complainant against making expenditures until all the contingencies were met. Respondent states that the VA loan application took longer than anticipated, and Respondent asked to extend the closing date in case the loan did not come through by closing, but Respondent's request was ignored. Respondent states that, on the date agreed to as the closing date, the lender denied the buyer's loan application. Respondent states that, until that point, it was impossible to know that underwriting would deny the buyer's loan based on prior tax returns and debt to income ratio. When Respondent informed Complainant's agent that Respondent would be submitting the earnest money release form and loan denial letter, Respondent states that Complainant's agent stated that the sellers would not agree to return the money and threatened legal action. Respondent states that Complainant's agent pushed for the buyers to apply for another loan, and the parties agreed to extend the contract closing date. During this time, Respondent states that the interest rates had increased, and, on information from the second lender, Respondent told Complainant's agent that it was possible that the loan could be made if Complainant could contribute more to "buy down" the interest rate and the agents could contribute some of their commissions. Respondent states that Complainant's agent immediately rejected the proposal. After this rejection, Respondent states, at her client's request, that Respondent again requested a return of the buyers' earnest money. Respondent states that Complainant's agent again renewed threats of legal action and also threatened to call the owners of Respondent's firm and report Respondent's inappropriate conduct. Respondent states that Complainant's agent and principal broker refused to return the earnest money and demanded that the buyers continue with the second loan application, even after the lender told them that it would be denied. The parties agreed to another extension. After official denial from the second lender, Respondent states that Respondent again requested the earnest money. Complainant and Complainant's agent filed a lawsuit against Respondent and the buyers in September 2013.

In preparing this matter for presentation to the Commission, legal counsel contacted Respondent's attorney to request information regarding the status of the civil litigation. Respondent's attorney stated that the matter is settling with the documents being currently circulated for all signatures and the matter would then be dismissed. Respondent's attorney anticipated that the matter would be settled at any time when the required signatures were received. Respondent's attorney states that, in the settlement, Respondent will be explicitly denying liability and paying nothing. While, based on all of the information and documentation provided, it does not appear that there is any violation by Respondent, a litigation monitoring consent order is recommended due to the fact that the litigation is technically still active and there remains a slight possibility that other information could be uncovered which might be pertinent to the Commission's determination if the matter continues in litigation. Therefore, it is recommended that the Commission authorize a litigation monitoring consent order but also authorize dismissal of the matter if the lawsuit settles as described by Respondent's attorney.

**Recommendation:** *Consent Order for litigation monitoring, or, if the matter settles as described by Respondent's attorney, dismiss the complaint.*

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

*After the Consent Order for Litigation Monitoring was signed, Complainant submitted additional information stating again that Respondent failed to tell Complainant/Complainant's agent that there may be a problem with the loan may not be approved. Complainant states that, had Complainant known that there may be a problem, Complainant would have waited to move out. Respondent submitted an additional response stating that Respondent communicated the information given to Respondent by the loan officer, and Respondent had no indication that the loan would be denied until the day Respondent notified Complainant's agent. Respondent's attorney also provided a copy of the Order of Settlement dismissing the complaint and counter-complaint with prejudice as well as a copy of the release indicating that the earnest money was released by Complainant to the potential buyer, and the parties released each other. The documentation in the file does not appear to evidence a violation by Respondent.*

**New Recommendation:** **Dismiss.**

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

**2. 2013023651**

**Opened:** 12/12/13

**First License Obtained:** 7/24/07

**License Expiration:** 7/23/15

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

**Type of License:** Affiliate Broker

**History:** No Prior Disciplinary Action

**April 2014 Meeting:**

*Complainant was a prospective purchaser who states that Complainant contacted Respondent (affiliate broker) about purchasing a home. Complainant states that Respondent spoke with Complainant about building a home, sold Complainant a piece of land, and introduced Complainant to a builder. Complainant states that Respondent then prepared a Purchase and Sale Agreement between Complainant and the builder, which included a schedule of payments. Complainant states that Complainant fulfilled Complainant's obligation under the contract, but the builder has not finished the house or given possession and continues to demand advance payments. Complainant retained a lawyer, who advised Complainant to hire another company to finish construction, file complaints with the State, and then file a civil lawsuit to recoup costs.*

*Respondent submitted a response through an attorney stating that the dispute is with the builder and not Respondent. Respondent states that Complainant paid the first and second installments to the builder as agreed but did not want to fulfill the agreement when the third installment came due. Respondent states that Complainant later paid the third installment to the builder, but the builder would not complete construction due to differences between Complainant and the builder, and Respondent recommended that Complainant contact an attorney. Respondent states that Complainant employed an attorney to assist in working toward completion of the home, and the attorney re-negotiated the final payment terms of the Purchase and Sale Agreement with the builder. Further, Respondent states that the attorney told Respondent that Complainant would communicate with the builder, sub-contractors and Respondent through Complainant's attorney, but Respondent states that*

*Complainant continued contacting Respondent asking questions about sub-contractors and completion deadlines. Respondent states that Respondent told Complainant that Complainant should be working through the attorney.*

*Respondent's attorney attached documentation from the land sale of the lot between Complainant and another party which resulted in a commission. It appears that, in that transaction, Respondent represented Complainant with the parties executing a Buyer Agency Agreement and the parties signing a Confirmation of Agency Status form with Respondent as Complainant's designated agent and another licensee as the designated agent of the seller. With regard to the transaction between the builder (who was not the seller of the lot in the first transaction) and Complainant, it appears that there is only a Purchase and Sale Agreement in the transaction file and no Confirmation of Agency Status form to outline Respondent's role in that transaction. Although Respondent's firm and name are listed as the Selling Company and Independent Licensee on the Purchase and Sale Agreement, Respondent's attorney states that the transaction was a contract to build a house between the Complainant and builder, and there was no commission or listing agreement, and Respondent was acting as a middle man or interpreter who simply felt that the builder could build the size house Complainant wanted at a good price. Based on the documentation submitted, it appears that Respondent's failure to execute a written disclosure of agency status with the parties to the contract regarding construction of the home would appear to violate T.C.A. § 62-13-405(a) and (b).*

***Recommendation: Consent Order with \$500.00 civil penalty for violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-405(a) and (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.***

***DECISION: The Commission voted to authorize a Consent Order with \$1,000.00 civil penalty for violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-405(a) and (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.***

*After the Consent Order was sent for this matter, legal counsel was contacted by Respondent's attorney, who attached information describing the land sale and the subsequent Purchase and Sale Agreement with the builder. The information pointed out that, in the first transaction, Complainant's father (not Complainant, as originally presented above) executed the Buyer Agency Agreement with Respondent, signed a Confirmation of Agency Status form with Respondent as the designated agent for Complainant's father and another licensee as the designated agent for the seller of the land, and a Lot/Land Purchase and Sale Agreement between Complainant's father and the seller of the land. The information also stated that Respondent arranged a meeting with Complainant's father and the builder, where the price of constructing a home on the property by Complainant's father was negotiated between Complainant's father and the builder. On the day of closing for the lot, the information provided indicates that the Purchase and Sale Agreement was prepared by Respondent with Complainant as the buyer, the builder as the seller, and Respondent's firm and name listed as the Selling Company and Independent Licensee on the last page of the Purchase and Sale Agreement. It is stated in the information that Respondent prepared the agreement at the direction of Complainant's father, who remained involved in the construction process and paid the construction payments, but Complainant was the sole buyer listed in the Purchase and Sale Agreement regarding the construction of the home with the builder, and the agreement contained the terms previously negotiated by Complainant's father and the builder. The information states that Respondent represented Complainant's father only, that Respondent only earned a commission on the sale of the land between Complainant's father and the seller of the lot, that, in the second transaction where Complainant was the buyer and the builder was the seller in the Purchase and Sale Agreement, there was no commission or listing agreement, and that Respondent was acting as a "...gratuitous middle man or interpreter."*

*In light of these clarified circumstances, it is recommended that the Commission discuss, based on these facts, whether there is a violation by Respondent for failing to execute a written disclosure of agency status with Complainant regarding the*

transaction relating to the Purchase and Sale Agreement between Complainant and the builder relating to construction of the home – taking into consideration the provisions found at T.C.A. §§ 62-13-401, 62-13-405(a) and (b) and the definitions of “broker” and “facilitator” found within T.C.A. § 62-13-102.

**Recommendation:** Discuss.

**DECISION:** The Commission voted to reaffirm the original authorized Consent Order.

3. 2014005971

**Opened:** 4/21/14

**First License Obtained:** 3/23/94

**License Expiration:** 4/15/15

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

**Type of License:** Principal Broker

**History:** No Prior Disciplinary Action

When the previous complaint (2013023651) was presented, the Commission made a motion to open a complaint against this Respondent, who is the principal broker of the Respondent in complaint 2013023651 (hereinafter referenced as “affiliate broker”).

Respondent submitted a response stating that Respondent devotes Respondent’s full time to office management and is accessible in the office and before and after working hours, evenings, weekends, and holidays. Respondent states that the affiliate broker has a history of providing proper documents to customers/clients. Respondent states that the affiliate broker was contacted by the previous Complainant’s father, and the two signed a Buyer Agency Agreement, the affiliate broker showed properties, and the affiliate broker showed a building lot which was listed for sale by another licensee. Respondent states that the previous Complainant’s father liked the lot, and the affiliate broker mentioned a builder and arranged a meeting with the builder. There, Respondent states that the builder and the previous Complainant’s father negotiated the house to be built and the price, and the affiliate broker prepared an offer to purchase the lot at the previous Complainant’s father’s request. On the day of the lot closing, Respondent states that the previous Complainant arrived, and the previous Complainant’s father asked the affiliate broker to prepare a construction service agreement detailing the terms discussed by the previous Complainant’s father and the builder but listing the previous Complainant as the only buyer to the contract. Respondent states that Respondent was not aware that the affiliate broker prepared the construction agreement (which was on a Purchase and Sale Agreement form) until several months later when the dispute between the previous Complainant and the builder began. Respondent states that, when Respondent became aware, Respondent told the affiliate broker not to provide this type of service without bringing it to Respondent’s attention first. Respondent states that the builder built the house on a lot owned by the previous Complainant’s father and his family, and the only real estate transaction was when the lot was purchased. Respondent states that the affiliate broker only earned a commission from the purchase of the lot. Respondent then outlines the dispute between the previous Complainant/Complainant’s father and the builder, the involvement of an attorney, the filing of complaints, and the fact that the previous Complainant’s father and his family are now living in the house.

Respondent included the transaction file for the lot/land purchase referenced above as well as the transaction file for a separate transaction (provided in order to show the affiliate broker’s good work and demonstrating supervision by

Respondent), which is unrelated to the complaint other than that the Complainant in 2013023651 was the buyer in that transaction, as well.

In light of the Commission discussing complaint 2013023651 during the meeting with regard to the clarified information regarding the transactions, it is recommended that the Commission discuss whether this Respondent failed to supervise the Respondent in complaint 2013023651.

**Recommendation: Discuss.**

**DECISION: The Commission voted to authorize a Consent Order for \$250.00 for failure to exercise adequate supervision over the activities of a licensed affiliate in violation of T.C.A. § 62-13-312(b)(15), 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.**

**4. 2013023751**

**Opened: 12/6/14**

**First License Obtained: 10/6/03**

**License Expiration: 8/13/15**

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

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

**April 2014 Meeting:**

Complainant was a potential buyer, and Respondent (principal broker) was seller's agent. Complainant states that Complainant made an offer on the subject property, and Complainant and Complainant's agent measured the square footage and found it to be less than what was in the listing. Complainant states that Complainant then wanted to renegotiate the offer, and Respondent refused, stating that any new negotiations would be after an inspection. Complainant states that Respondent refused to lower the price and would not admit the square footage error until after an appraisal. The appraisal indicated that the home had fewer square feet than what was listed but more than Complainant and agent's calculation, and Complainant withdrew Complainant's offer. Complainant states that Complainant later had a conversation with the appraiser, and the appraiser stated that the appraiser was trying to get the house to the value that was offered. Complainant states that, after Complainant terminated the offer, the house was re-listed with the same square footage discrepancy. Complainant states that it was Respondent's false advertising and unwillingness to correct the situation that prevented Complainant from purchasing the property.

Respondent states that the property was listed with the same square footage information as was used from the listing when Respondent's clients purchased the property. Respondent states that there were multiple offers on the property, but Complainant's offer was accepted as it was above the full asking price and the financing appeared most solid. After the inspection, Respondent states that Complainant's agent called and stated that inspector thought that the home was less square footage than the listing stated. Respondent states that Respondent told Complainant's agent that they had not measured the property and it would need to be professionally measured, but it would not change the price, which was only partially made on the square footage. Respondent states that nothing formal was ever presented with regard to the square footage. Respondent states that Complainant's agent again indicated that Complainant wanted to lower the price. Respondent states that Respondent conveyed, after speaking with the seller, that the seller had no interest in lowering the

price and that, if Complainant did not want to go forward with the sale, Complainant should send an earnest money release form and withdrawal letter. Respondent states that Complainant went forward with the appraisal. Respondent states that the appraisal was the first time that there was formal evidence of the square footage being less, and again Complainant's agent stated that Complainant wanted lower price, which was refused. After the release of earnest money, Respondent states that Complainant called Respondent's office and the seller directly to say that Respondent was working with the appraiser to get the value to the appraised amount. Respondent states that the house was removed from pending back to active, the square footage was ultimately corrected, and the second contract was ultimately closed with additional appraisals. Respondent states that there was no intention to misrepresent the square footage, and the MLS sheet clearly states that the information is believed to be accurate but not guaranteed, and buyers should independently verify all information prior to submitting an offer to purchase. Respondent attached the MLS listing from when the house was listed earlier with the same square footage as advertised when first listed by Respondent as well as the updated MLS listing for Respondent with the corrected square footage based on the appraisal.

**Recommendation: Dismiss.**

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

**New Recommendation: Commissioner Alexander to report.**

**DECISION: The Commission voted to accept the recommendation of legal counsel and Commissioner Alexander to dismiss.**

**\*Commissioner Alexander abstained from the vote on this matter.\***

5. 2013025371

**Opened: 1/8/14**

**First License Obtained: 7/11/90**

**License Expiration: 4/29/15**

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

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainant is an in-law of the sellers in a transaction who were represented by Respondent (principal broker). Complainant alleges that Respondent allowed the buyers to move into the subject property without permission before the closing occurred. The closing was delayed due to inspection/financing issues, and Complainant believes that Respondent did not perform to the standards expected and did not protect the sellers' interests because the Temporary Occupancy Agreement did not include rent payment and was signed by the parties after the stated occupancy date. Complainant attached a copy of a Temporary Occupancy Agreement which was executed by both the buyers and sellers after the Purchase and Sale Agreement but before closing which provided that the buyers would be allowed occupancy prior to the closing date.

Respondent submitted a response through an attorney stating that Complainant was not an owner of the property and was not a party to the transaction. Respondent states that the sellers agreed to allow the buyers to move into the residence prior to closing, and the sellers were outside of the state so documents had to be mailed back and forth which resulted in the delay in signing of documentation at times. Respondent states that Complainant attempted to contact Respondent numerous times

regarding the transaction, and the sellers instructed Respondent to ignore Complainant and deal with sellers directly on matters relating to the transaction. It appears from the documentation that Complainant was not a party to the transaction. There does not appear to be a violation by Respondent.

**Recommendation: Dismiss.**

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

**6. 2013025441**

**Opened: 1/8/14**

**First License Obtained: 12/20/01**

**License Expiration: 10/17/15**

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

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainant attempted to purchase a property for which Respondent (principal broker) represented the seller. Complainant states that Complainant was unable to obtain financing and states that Respondent has been asking for return of the earnest money since September 2013. Complainant furnished an Earnest Money Disbursement and Mutual Release of Purchase and Sale Agreement, which was electronically signed by Complainant in September 2013 and is unsigned by the seller, and this form appears to have been sent via e-mail to Respondent from Complainant's agent in September 2013. Complainant's agent states in emails that Complainant did not qualify for the loan because there were governmental programs which were involved with the financing, and Complainant made too much money.

Respondent submitted a response stating that the government restrictions were discussed with Complainant's agent from the beginning. Respondent further states that, soon after the property was under contract for sale, Complainant's agent told Respondent that Complainant may not be able to purchase the property. Later, Respondent states that Respondent was notified that Complainant no longer wanted to purchase the condo, and Respondent requested a copy of the loan denial letter. Respondent states that a loan denial letter was received from one of the recommended mortgage companies. Respondent states that Respondent then notified Complainant's agent that the seller did not want to return the earnest money. During the next thirty (30) days, Respondent states that attempts were made to resolve the issue, and the seller originally wanted Respondent to interplead the matter, but Respondent suggested a 50/50 split between the buyer and seller, which was communicated to Complainant's agent but was rejected in late October 2013. Respondent states that this complaint was filed about a month later.

Complainant states that, after speaking with one of the recommended mortgage brokers, Complainant realized that a loan would not be approved due to government restrictions. Complainant states that there was a delay in receiving the loan denial letter because their contact moved companies, and Complainant had to wait on the underwriter to deny the loan.

Respondent, when contacted regarding the earnest money, indicated that the earnest money was returned to Complainant with seller permission in March 2013; however, no documentation was provided to show if/when exactly the money was returned. It appears that the earnest money disbursement form was sent by Complainant's agent in September 2013. Therefore, it appears that Respondent, as principal broker of the firm, did not disburse or interplead the earnest money until approximately six (6) months after the request was transmitted despite the fact that Respondent states in the response that the

seller originally wanted the matter interplead, Respondent suggested a 50/50 split, and that was rejected by Complainant in October 2013.

**Recommendation:** *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 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 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 with the amendment that the Consent Order shall contain a civil penalty of \$1,000.00.*

7. 2013025471

**Opened:** 1/15/14

**First License Obtained:** 7/9/96

**License Expiration:** 11/2/14

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

**Type of License:** Principal Broker

**History:** No Prior Disciplinary Action

Complainants are property owners who signed a Property Management Agreement with Respondent (principal broker). Complainants state that Respondent soon leased the property to tenants. The Residential Lease Agreement was for a period of one (1) year and provided that a security deposit would be paid to Respondent, and, under no circumstances, shall the security deposit be construed as rent, and the tenant shall not have the right to withhold payment of the last month's rent on the grounds that the security deposit serves as security for unpaid rent. The lease also included a clause stating that smoking is strictly forbidden in the unit, and if a tenant smokes in the premises, the tenant will immediately forfeit the security deposit. The lease was subsequently renewed for an additional twelve (12) months. Later, Complainants say that they discussed listing the property with Respondent, but the listing violated the terms of the lease, and the property was taken off the market. When the last month's rent had not arrived, Complainants inquired about the rent and state that they received an e-mail from Respondent stating that the tenants would not be paying the last month's rent and would be applying the security deposit to the last month's rent. Complainants attached a copy of the e-mail, which stated that the tenants were going to use the security deposit as the last month's rent due to Complainants disregarding the lease on several occasions, tenants not feeling as though they should pay for normal wear and tear, and the tenants not trusting they will have a fair review of the property's condition. In the e-mail submitted, Respondent also reminded Complainants that the tenants paid a security deposit and a non-refundable pet deposit. Respondent also stated that Complainants had treated Respondent's staff terribly over the years. Complainants state that they traveled to inspect the property and toured the home with one of Respondent's representatives, and Complainants state that there was damage to the home including scratched hard wood floors, which Complainants state were inconsistent with normal wear and tear, and a strong smell of cigarette smoke. Complainants state that they requested collection of the last month's rent and release of the security deposit. Complainants state that Respondent replied, stating that the security deposit could not be released until Complainants provided copies of the expenses incurred to have the cigarette smoke cleaned from the home, and Respondent was unable to collect the final rent payment. Complainants received the security deposit but state that they have not received the final rent payment.

*Complainants state that Respondent declined taking action against the tenants for the rent payment, and Complainants have had difficulty proceeding because the lease agreement was between Respondent and the tenants.*

*Respondent submitted a response stating that, after the lease renewal, Complainants wanted to list the property. Respondent states that there was nothing in the lease prohibiting Complainants from selling the property, but only a prohibition regarding placement of signs, and the sign was removed once the tenants contacted Respondent. Respondent states that, when the tenants were contacted regarding the payment of the last month's rent, they responded by e-mail stating why they wanted to apply their security deposit to their last month's rent. After the smell of cigarette smoke was discovered when the tenants moved out, Respondent states that Respondent contacted the tenants regarding the findings and told the tenants that Complainants wanted them to pay the last month's rent. Respondent states that Respondent also received an estimate for smoke removal, but Complainant opted out of some of the items listed in the estimate. Respondent also states that the scratches on the hardwood floor constitute normal wear and tear over the two (2) years that the tenants resided in the property, and Respondent never received receipts from Complainants regarding repairs to the hardwood floors. Respondent states that, to file a judgment, financial loss must be proven, and Respondent states that Complainants had very little financial loss based on the amount of deposits paid and the amount of repairs made on the property by Complainants. Respondent further states that the firm continued to contact the tenants about the final month's rent payment even after Respondent was fired by Complainants, but attempts were not successful; however, after being terminated, Respondent states that Respondent's firm was not compelled to provide further services under the agreement.*

*Complainants submitted an additional response stating that after evidence of smoking was discovered, the security deposit should have been refunded immediately due to the lease provision. Complainants also attached invoices and checks regarding the costs associated with repairs to the property after the tenants vacated.*

*Based on the documentation within the file, including e-mails between Respondent and the tenants and e-mails between Respondent and Complainants, it appears that Respondent's initial reaction of merely e-mailing Complainants to notify them of the tenants' apparent decision to apply the deposit to rent (despite the fact that the lease prohibited this) without attempting first to insist on payment and only attempting to collect the last month's rent payment after Complainants insisted on payment would appear to constitute a failure to be loyal to the interests of the client.*

***Recommendation: Consent Order with \$500.00 civil penalty 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), 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.***

**8. 2013025541**

**Opened: 1/15/14**

**First License Obtained: 5/4/74**

**License Expiration: 7/13/16**

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

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainant filed separate complaints against this Respondent and the following three (3) Respondents which are based on the same transaction, but Complainant makes different allegations against each. This Respondent is a principal broker of another firm but is involved in this complaint through this Respondent's role as owner of the firm where the following two (2) Respondents (of complaints 2013025621 and 2013025651 were principal broker and broker). Complainant filed a complaint against Respondent for Respondent's inaction after being notified of the problem. Complainant alleges that Respondent was made aware of the behavior of the broker in complaint 2013025651 ("broker") with regard to mishandling the sale of Complainant's property and the broker's use of the unlicensed assistant in complaint 2013025661 ("unlicensed assistant") to perform the broker's duties. Complainant states that, despite this notification, Respondent has done nothing. Complainant also states that Respondent was notified of fraudulent behavior by the principal broker in complaint 2013025621 ("principal broker") regarding the principal broker's mishandling of the sale of Complainant's property. Complainant states that the principal broker repeatedly missed deadlines in the short sale agreement and nearly caused the home to go into foreclosure. Complainant states that Respondent did not intervene but instead directed corporate counsel to investigate the matter. Complainant states that corporate counsel stated everything was fine and covered up crucial facts regarding delays which Complainant states were caused by the principal broker hiding the fact that the buyer had been rejected by the buyer's lender. Complainant also states that Respondent and the principal broker received a certified request for a letter promised to Complainant stating that the damage caused to Complainant's credit history was the fault of the broker and the unlicensed assistant, which Complainant states was not written as promised. Complainant states that the acts of all resulted in Complainant's house going into foreclosure status numerous times.

Respondent submitted a response stating that Respondent did not have personal firsthand knowledge of Complainant's issues, and Complainant dealt with one of the firm's branch offices, that office's principal broker, and corporate counsel. Respondent states that Respondent was copied on many, but not all, e-mails. Respondent states that Complainant's property was being sold as a short sale, and short sales are difficult to handle and often take a long time to complete. Respondent states that the sale of the property and Complainant were difficult, which resulted in the broker getting the principal broker involved. Respondent states that the principal broker worked tirelessly to get the sale closed while working with the bank. Respondent states that corporate counsel attempted to answer Complainant's questions/concerns at the request of the principal broker, but Complainant continued to harass and threaten action against all parties. Respondent states that the broker, principal broker, and corporate counsel all treated Complainant with respect and worked diligently to close a difficult short sale transaction.

Complainant submitted additional information stating that Respondent and the others involved are being deceitful, and Complainant informed Respondent of the inappropriate activities of the broker and principal broker, but Respondent did nothing. Complainant states that Respondent's claim that Respondent had no personal knowledge of Complainant's files is false. Complainant claims that the principal broker stated that regular updates were given to Respondent, and Complainant provided emails sent by Complainant to Respondent as well as e-mails to which Respondent was copied. Based on the information in the file, there does not appear to be a violation of TREC's statutes and/or rules by Respondent.

**Recommendation: Dismiss.**

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

**9. 2013025621**

**Opened: 1/15/14**

**First License Obtained: 7/3/85**

**License Expiration:** 8/11/14  
**E&O Expiration:** 1/15/15  
**Type of License:** Principal Broker  
**History:** No Prior Disciplinary Action

*This is the same Complainant and transaction as described in the previous complaint. The complaint against this Respondent (principal broker) alleges misrepresentation, failing twice to inform Complainant that the purchase agreement had failed, failing to meet deadlines and requirements of the short sale in a timely manner, and failing to identify that buyers were not prepared or qualified for purchase. Complainant states that Respondent's failures resulted in Complainant's property going into foreclosure status and harm to Complainant's credit history. Complainant states that the broker Respondent in complaint 201302565 ("broker") had multiple failed purchase attempts with the same buyer which prompted Complainant to complain to Respondent, who was the broker's principal broker, and Respondent removed the broker from Complainant's listing and took over. Complainant states that Complainant promptly provided requested documents, but Respondent was not prompt in fulfilling the bank's document requests. Complainant states that the bank closed any file older than sixty (60) days, and the file was closed and reopened twice then placed into foreclosure status, which Complainant states was due to Respondent's failure to provide documents. Complainant states that Respondent became aware that the buyers did not have money for a down payment and were under the impression that Complainant was going to pay a certain amount in closing costs, which resulted in a denial from the buyer's lender and the second short sale file closure. Complainant states that Respondent helped the buyers locate a grant that could pay closing costs, and the short sale file was reopened and the short sale offer accepted by the bank. Complainant states that Respondent then wasted more time because the buyers split up, and Complainant states that Respondent knew about this but did not tell Complainant right away. Then, the short sale offer was withdrawn and a foreclosure sale was set. Complainant states that a different buyer then signed a new Purchase Agreement for \$100,000, and the file was reopened and the foreclosure delayed, but the short sale offer was rejected and countered by the bank with \$115,000. The buyer then countered with \$102,000. Complainant states that Respondent e-mailed the bank stating that the buyer was willing to pay \$110,000, and Respondent requested that the bank keep the file open, to "...reconsider this offer and encourage the investor to approve a short sale and accept the offer of \$110,000.00." Complainant states that Complainant never saw that offer in writing, and Respondent e-mailed Complainant stating that Respondent did not know what made Complainant think that Respondent had a \$110,000 offer because Respondent did not have an offer in that amount but hoped to get one, and the buyer told Respondent that the buyer would not go over \$110,000 to the \$115,000 countered by the bank. Complainant states that the \$110,000 short sale offer was ultimately accepted by the bank, and Respondent repeatedly set closing dates which were outside of the deadlines in the short sale agreement, which required multiple extensions being granted. Complainant believes that Respondent purposely tried to miss deadlines so the house would be sold at foreclosure auction for a better price to the buyer.*

*Respondent submitted a response stating that Complainant blamed others for Complainant's financial problems, which Respondent states began years before the attempted sales began, and Complainant was confused and ignorant of how the system worked. Respondent states that, after the transaction closed, Complainant sent a certified letter attempting to coerce the firm to give Complainant a letter stating the firm and the broker were responsible for Complainant's credit problems, which Respondent states is not true, and Respondent states that no such letter was promised to Complainant. Respondent states that an e-mail was received from Complainant complaining about the broker, and Respondent took over the listing. Respondent states that the first attempted sale did not go through because the buyer's loan was denied, which was no fault of the broker or Respondent. Respondent states that Complainant then attempted a lease purchase arrangement with the same buyers while the buyers attempted to improve their finances, but one of the buyers lost their job. Respondent states that a total of four (4) closings fell through due to financial issues before Respondent began working with Complainant. Respondent states that the goal was to obtain short sale approval from Complainant's bank, and in attempting to get the buyers qualified, there was an attempt for a first time home buyer's grant, but, before the closing, the buyers separated.*

*Respondent states that Complainant was immediately notified of the buyers' separation. Respondent states that a foreclosure auction was scheduled, but there was a second potential buyer, and Respondent sought assistance from the Federal Court Settlement program, and the foreclosure auction was postponed. Respondent states that the Complainant's bank counter-offered the second buyer's offer at \$115,000, but the second buyer told Respondent that the buyer would only pay up to \$110,000. Respondent states that the buyer waited until the bank agreed to accept the \$110,000 before submitting the buyer's acceptance of the amount. Respondent states that Respondent knew the buyer would pay this amount, but did not have the offer and did not tell Complainant or anyone else that Respondent had the offer. Respondent states that Respondent was aware of all the scheduled foreclosure and closing dates and was never confused regarding responsibilities.*

*Complainant states that all Respondents are being deceitful, and Respondent promised to write Complainant a letter addressed to creditors stating that the broker's illegal activities caused harm to Complainant's credit. Complainant further states that Respondent failed to provide paperwork to Complainant's bank in a timely manner, which could have caused Complainant's home to go into foreclosure. Complainant claims that Respondent acted fraudulently by telling Complainant's bank that there was an offer on the home from the second buyer but later telling Complainant that there never was an offer. Complainant further states that Respondent continued to miss deadlines, including extension of the closing deadline multiple times.*

*There were many allegations and a wealth of documents and e-mail correspondence provided. Though this appears to have been a very difficult transaction which involved many delays, it does not appear to legal counsel that there is evidence of a violation of TREC's statutes and/or rules by Respondent.*

***Recommendation: Dismiss.***

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

**10. 2013025651**

***Opened: 1/15/14***

***First License Obtained: 3/21/90***

***License Expiration: 9/7/14***

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

***Type of License: Broker***

***History: No Prior Disciplinary Action***

*This is the same Complainant/transaction as the transaction described in the previous two (2) complaints. Complainant makes a number of allegations against Respondent (broker) including breach of contract, negligence, criminal behavior/negligence, employing an out of state secretary (the Respondent in complaint 2013025661 ("unlicensed assistant")) to perform Respondent's duties, and Respondent misrepresenting himself as broker and Vice President of the firm. Complainant states that Respondent's negligence caused Complainant's home to go into foreclosure status numerous times as well as money loss and credit damage. Complainant states that Complainant did not communicate with Respondent often, and the vast majority of communication was with the unlicensed assistant. Complainant signed a Listing Agreement with Respondent, and a Purchase Agreement was signed with potential buyers, but Complainant states that Respondent wrote the contract in a way that the buyer's underwriters did not approve the sale. Complainant states that a second appraisal was done, and the contract was resubmitted and again rejected. Complainant states that the unlicensed assistant told Complainant that the home had to be placed back on the market for 30 days, and, if there were no other offers, the buyers*

could enter into another purchase agreement. Then, Complainant states that both buyers encountered employment problems which further delayed the process. Complainant alleges that Complainant was now unable to pay the house note and asked the unlicensed assistant if the buyers could rent the home until they could purchase, and Complainant was told of a lease to own program. Complainant believes that the failure to notify Complainant about the lease to own program prior to that time was breach of contract. Complainant states that a lease purchase arrangement was made, and the buyers gave Respondent a down payment check to mail to Complainant, which Complainant states was supposedly mailed but never received, resulting in the buyers stopping payment on the check and re-sending a new check to Complainant. Complainant further states that the buyers' loan was denied because one of the buyers had a temporary position and states that Respondent was also working as the buyers' agent and did not oversee that the buyer was working a proper job and failed to inform the buyers on how to be ready to close the sale (documentation shows that Respondent was a facilitator). The loan denial terminated the lease purchase arrangement, and Complainant notified the unlicensed assistant that Complainant could no longer pay the note. Complainant also wrote Respondent's principal broker, and the principal broker took over the listing.

Respondent submitted a response denying Complainant's allegations. Respondent denies breach of contract stating that there was a listing agreement, every contractual agreement was followed, and fiduciary responsibilities to Complainant were performed at all times. Respondent denies negligence stating that the file was on top of Respondent's desk every day for over a year, and Respondent and the unlicensed assistant discussed the file daily and sometimes hourly. Respondent also states that Complainant was advised that the unlicensed assistant (who Respondent states is not licensed and lives out of state) was one of Respondent's assistants working under Respondent's direct supervision, and Complainant was never told that the unlicensed assistant was a broker or licensed. Respondent states that the unlicensed assistant is trained in what can and cannot be performed by an unlicensed assistant. Respondent states that Respondent knows what the unlicensed assistant is doing regarding transactions, and Respondent approved all discussions between the unlicensed assistant and Complainant. In response to the criminal behavior/negligence allegations, Respondent states that Complainant fails to state any crime committed, and Respondent states no crimes have been committed. Respondent states that Respondent never misrepresented himself as a broker or Vice President of the firm, as Respondent has earned the title of honorary vice president and is licensed as a broker. Respondent states that Respondent was not responsible for the circumstances of Complainant's unemployment or financial issues, and Respondent was likewise not responsible for the buyers' job problems. Respondent states that Respondent acted appropriately and professionally to resolve any issues to try to close the transaction. Respondent states that Complainant was demanding regarding issues which were often outside Respondent's control, and negotiations were difficult with financing underwriters consistently wanting more information, which Respondent attempted to assist in acting as facilitator. Respondent states that the buyers ultimately did not qualify, but Respondent was not negligent.

Complainant states that all Respondents are being deceitful, and Respondent employed the unlicensed assistant to perform Respondent's broker duties. Complainant provided correspondence between Complainant and the unlicensed assistant regarding the transaction. Complainant states that Complainant always responded to their requests for documentation in a timely manner and even took the pictures for Respondent to list the home.

There were many allegations and a wealth of documents and e-mail correspondence provided. Though this appears to have been a very difficult transaction which involved many delays, it does not appear to legal counsel that there is evidence of a violation of TREC's statutes and/or rules by Respondent.

**Recommendation: Dismiss.**

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

**11. 2013025661**

**Opened: 1/15/14**

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

*This is the same Complainant/transaction as the previous three (3) complaints. Complainant filed a complaint against Respondent (unlicensed individual) alleging unlicensed activity while being neither a resident nor licensed and alleging civil/criminal negligence for misrepresentation as a broker. This complaint reads virtually the same as the complaint against the previous Respondent broker in complaint 2013025651 ("broker") because Complainant states that Respondent and the broker acted as a team to cause irreparable damage. The complaint does appear essentially identical to the complaint outlined for 2013025651, so that information will not be re-summarized here. Complainant alleges that the e-mails provided by Complainant demonstrate that Respondent was the primary contract negotiator, that Respondent was acting as a broker, and that Complainant was misled to believe that Respondent was a broker.*

*Respondent submitted a response denying all allegations made by Complainant. Respondent admits that Respondent is not a licensed real estate agent and states that Respondent does not practice real estate. Respondent admits to living outside of the state and states that Respondent has been the broker's personal assistant for nine (9) years. Respondent further states that Respondent follows all guidelines set by the Commission for unlicensed assistants. Respondent states that there is a group of assistants who are employed by the broker and whose duties mainly consist of closing coordination, scheduling showings, inspections, repairs and appraisals as well as working incomplete real estate transaction files and moving them through the process to closure as well as forwarding contracts to lenders, appraisals, and title companies and inputting data for new buyers and listing prospects while answering phones, taking messages and coordinating the broker's appointments. Respondent states that Complainant was made aware that Respondent was an unlicensed assistant when Complainant hired the broker to sell the home and states that Respondent's email signature line states same. Respondent denies that Respondent represented herself as a negotiator or broker to Complainant and states that no negotiations were performed by Respondent. Respondent denies responsibility for Complainant's lengthy unemployment, relocation, financial issues or lender guidelines that caused trouble for the buyers. Respondent states that Respondent's actions under the supervision of the broker were appropriate and professional in attempts to resolve the issues that arose while trying to close the transaction.*

*Complainant states that all Respondents are being deceitful. Complainant alleges that the broker employed an unlicensed assistant, Respondent, to perform broker duties. Further, Complainant attached correspondence between Complainant and Respondent to corroborate Complainant's allegations that contract negotiations were being made by Respondent.*

*Though there appears to be a wealth of correspondence between Complainant and Respondent regarding the transaction, it does not appear to legal counsel that, from the information submitted, Respondent was engaged in unlicensed real estate activity.*

**Recommendation: Dismiss.**

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

**12. 2013025681**

**Opened:** 1/8/14  
**First License Obtained:** 2/4/05  
**License Expiration:** 3/17/15  
**E&O Expiration:** 1/1/15  
**Type of License:** Affiliate Broker  
**History:** No Prior Disciplinary Action

*Complainants leased a condo unit which was listed for sale. Respondent (affiliate broker) was the listing agent. Complainants state that Respondent told Complainants that the unit was listed as a short sale and state that the MLS listing referenced this. Complainants' lease allowed showings during the lease term and contained a right of first refusal to purchase the unit if an offer to purchase was tendered by someone else during Complainants' lease period. Complainants began thinking of buying and were told there were multiple liens as well as money owed to the HOA. Complainants received pre-approval for a loan through a lender where Respondent's spouse worked. Complainants state that they met with Respondent, who told them that the seller had recently inherited money and may not be qualified for short sale any longer. During that discussion, Complainants state that they discussed what the seller might accept, and Respondent gave an opinion of what Respondent thought would be acceptable to the seller. Complainants state that Respondent offered to represent Complainants as well as the seller, but Complainants state that they got their own agent. After looking at properties, Complainants made an offer to purchase the unit they were renting through their agent. Approximately a day later, another offer to purchase was received from a different buyer, and a multiple offer disclosure was sent. Complainants asserted their right of first refusal but state that Respondent initially refused to provide the competing offer. After multiple discussions, Complainants state that Respondent provided Complainants with a copy of the other offer, which was higher. Complainants then worked with their agent to match the other offer's price, payment of costs, and earnest money amount. Complainants state that they were initially told that their offer was still not the best offer because the other buyer offered to pay more money down, but then it was determined that the down payment was not relevant and Complainants' offer was accepted. Complainants ultimately purchased and closed on the unit. Complainants feel that that Respondent misrepresented that the property was in a short sale situation when it was not. Complainants also feel that Respondent was made privy to their finances through their loan application through Respondent's spouse. Further, Complainants believe that Respondent's initial refusal to share the other offer was wrongful, and Complainants feel that the other offer (presented by another agent in Respondent's firm) was not real.*

*Respondent submitted a response stating that the unit was listed for sale at the time Complainants began renting, and Respondent did tell Complainants that, according to the seller, the seller qualified, and it might be a possibility to purchase as a short sale contingent upon short sale approval by the lender. Respondent states that Respondent had authority from the seller to discuss the mortgage and HOA arrearages. Respondent states that Respondent had no knowledge of Complainants' financial situation other than the tenant application for rental of the unit and the pre-approval letter provided. When meeting about a possible offer, Respondent states that Respondent did tell Complainants that the seller may not qualify for a short sale anymore due to an inheritance. Respondent denies offering to represent Complainants as well as the seller in a purchase, stating that it is against Respondent's firm policy to act as a dual agent. Respondent states that, although Respondent represented the seller, Respondent did offer to assist Complainants in writing their offer or stated that Complainants could get a buyers' agent. Respondent states that Respondent answered questions about what the seller might consider depending upon what money was actually due at closing by the seller. Respondent states that, when there were two (2) offers, Respondent sent the multiple offer notification to both. Respondent states that it was Respondent's broker's opinion that Complainants voided their right of first refusal by making the first offer, and the situation was a true multiple offer situation excluding any obligation to provide the other offer to Complainants; however, after numerous conversations between parties, including the firm's attorney, the seller agreed to provide the other offer to Complainants.*

*Respondent states that Complainants did not match the other offer in its entirety in terms of the money down, inspection periods, and closing date, but it was determined that the seller would decide, and the seller accepted Complainants' offer. Respondent states that the other offer was real and provided e-mail communications with the other agent and real estate documentation relating to the other offer. Based on the documentation 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.**

**13. 2013025701**

**Opened: 1/8/14**

**First License Obtained: 1/4/00**

**License Expiration: 1/25/15**

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

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

*A complaint was opened against this Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 2013025681 ("affiliate broker").*

*Respondent states that the affiliate broker and Respondent acted appropriately regarding the transaction, seeking advice from the company attorney, submitting all paperwork in a timely manner and disclosing all information as requested. Respondent states that the seller told the affiliate broker that the seller's financial situation at the time qualified the seller for a possible short sale depending upon the lender's approval, and Respondent states that the MLS remarks indicate this situation, and the property was not "listed" as a short sale in the MLS. Respondent states that dual agency is prohibited at the firm. Respondent states that a multiple offer disclosure was sent to both potential buyers, and the right of first refusal in the lease stated that, if an offer was received, the tenants had forty-eight (48) hours to exercise the right of first refusal. Respondent states that it was Respondent's opinion that, by submitting the first offer, the previous Complainants had cancelled the stipulation. Respondent states that Respondent discussed the matter with multiple parties, including an attorney, who agreed that it was a gray area but advised that the seller allow the right of first refusal, and the offer was provided. Respondent states that the affiliate broker reviewed both contracts with the seller, and the seller ultimately chose which contract to accept. Respondent states that the second offer was a legitimate offer from an individual who was represented by another agent at the firm. Respondent states that this was a difficult transaction, and the affiliate broker was in continuous contact with Respondent for guidance, and Respondent made contact several times with the company attorney. Based on the information in the file, there does not appear to be a failure to supervise by Respondent.*

**Recommendation: Dismiss.**

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

**14. 2014000231**

**Opened: 1/23/14**

**First License Obtained:** 9/27/05  
**License Expiration:** 8/12/15  
**E&O Expiration:** 1/1/15  
**Type of License:** Principal Broker  
**History:** No Prior Disciplinary Action

Complainant states that Complainant's daughter viewed a property which was managed by Respondent's firm. Respondent is the principal broker. Complainant states that Complainant's daughter submitted an application and paid a deposit, and Complainant agreed to co-sign the lease. Complainant states that, at Respondent's request, Complainant filled out an application which required personal and financial information. Complainant states that Respondent then stated that Respondent could not rent the property to them because of Complainant's financial circumstances. Complainant states that Respondent then sent an e-mail to several third parties without authorization or notification to Complainant which included personal financial information about Respondent and defamatory comments. Complainant provided a copy of the referenced e-mail written by Respondent, which outlined the financial reasons for Respondent's decision to deny Complainant as a co-signor. This information appears to have been given by way of background due to Respondent stating that Complainant made statements regarding Complainant's affiliations with government officials and other political appointees in response to Respondent's decision regarding the rental application.

Respondent submitted a response through an attorney denying the allegations of misconduct. The information within the file does not appear to constitute a violation of TREC's statutes and/or rules.

**Recommendation:** Dismiss.

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

**15. 2014000291**  
**Opened:** 1/31/14  
**History:** No Prior Disciplinary Action - Unlicensed

Complainants are time-share owners and residents of another state who state that they were contacted by an individual associated with Respondent (unlicensed company) and told that Complainants fell under the "Predatory Lending Law," and Respondent could help Complainants get out of their outstanding debt with the time-share developer. Complainants state that they were told that they could get their number of points reduced if they paid a fee to Respondent. Complainants state that they have a large monthly payment and large outstanding debt to the developer and were told that they could pay the fee to Respondent in three (3) payments. Complainants state that they paid all payments but have seen no action from Respondent other than occasional calls from a representative of Respondent who tells Complainants to ignore the calls from the developer and send any past due statements so Respondent can monitor the process. Complainants state that they could have had the service for much less from another company, and Complainants want a refund from Respondent.

Respondent submitted a response through its president. Respondent denies that Complainants have received no service for the money paid and states that Respondent has had numerous communications with Complainants by telephone, e-mail, mail, and sent multiple letters on Complainants' behalf. Respondent states that the contract clearly states the scope of services which include providing necessary consulting services to guide an individual through the process of terminating existing time-share debt and facilitating the purchase of a new time-share ownership at an affordable price. Respondent states that

*Respondent is not engaged in unlicensed real estate activity in Tennessee, and Respondent takes care to be sure its procedures are compliant with TREC's rules. Respondent states that the first time it is discussed how a time-share works and any benefits of owning a particular time-share are done out of Respondent's office in another state where Respondent is licensed as a real estate company by an individual who is licensed as a broker in that state. Respondent states that all contracts are sent from that state's office and were made in that state as outlined in the contract.*

*The issue for TREC's determination is whether Respondent is operating as a time-share resale company without licensure. The file contains an executed contract which is somewhat unclear as to what particular services will be provided by Respondent other than assistance with helping an individual achieve extinguishing the debt and ownership and obtaining a new time-share, and/or vacation club points. The contract states that it was made in another state, shall be governed under that state's laws, and all payments/correspondence not sent through electronic means shall be mailed to that state. The state referenced is where Respondent is licensed. E-mail correspondence was provided between Complainants and a representative of Respondent who appears to be operating from that state, as well. The only documentation provided which appears to tie this transaction to Tennessee is an e-mail from an individual whose signature line includes a Tennessee address who provided Complainants with the names and numbers of individuals who were references and information on Respondent from the BBB in the state where Respondent is licensed. The information within the file does not appear at this time to indicate that Respondent engaged in activities requiring time-share resale licensure in Tennessee; however, it is recommended that the matter be referred to the real estate commission in the state where Respondent is licensed and where it appears that Respondent's actions took place.*

**Recommendation: Close and refer to real estate commission where Respondent is licensed.**

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

**16. 2014000541**

**Opened: 1/30/14**

**First License Obtained: 12/29/93**

**License Expiration: 6/9/15**

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

**Type of License: Broker**

**History: No Prior Disciplinary Action**

*Complainant, through Complainant's agent, states that Complainant made an offer on a foreclosure property, where Respondent (broker) was the listing agent. It appears, from the listing, that offers were to be submitted to Respondent with attached documents, preapproval letter, and a copy of earnest money, to be sold "as is where is." Complainant's first offer included several special stipulations and the attached documents and approval letter were not sent with the offer. Complainant's agent states that he received a phone call from Respondent stating that the offer would not be presented to the seller because it was incomplete, and Respondent also stated that the seller would not do repairs, and Respondent had received higher offers. A second offer was later submitted by Complainant's agent without the stipulations except for early access to the garage, and the offer was submitted without a pre-qualification letter that Complainant's agent told Respondent via e-mail the bank was preparing. Complainant's agent states that it was explained to Respondent that the property would be purchased in cash via the funds Complainant would be receiving from the sale of another property which was scheduled to close the following month, and Respondent replied that Respondent would not present the offer to the seller because it is a contingency sale. Complainant's agent states that the pre-qualification letter was later sent, and this was not a contingency*

offer. Later, Complainant's agent submitted a third offer, removing the cash option, and providing the pre-qualification letter, and Respondent requested that the letter state the loan was not contingent upon the sale of the home and requested initialed addendums. Complainant's agent states that a finance statement was sent to Respondent to show verification of the down payment but states that Respondent initially objected then stated that Respondent would notify Complainant's agent if the seller opts to consider other offers. Complainant's agent's broker then followed up with Respondent and learned that the seller accepted a contract three (3) weeks prior, which Complainant's agent states closed for less than Complainant's offer.

Respondent submitted a response stating that the MLS listing linked to the required seller addendums necessary for an offer, a proof of funds letter was required for cash offers, and a preapproval letter was required for a mortgage. Respondent states that Respondent notified Complainant's agent prior to submission of Complainant's first offer that the seller had already selected an offer, and Respondent was waiting for it to be returned. Respondent states that the first offer was incomplete, but Respondent would hold the offer as back up if corrections were made and the seller addendums were properly filled out. Respondent states that, when the second offer was received, Respondent contacted Complainant's agent and asked for a proof of funds letter since it was a cash offer and was told that the cash would be available when Complainant's other home closed. Respondent states that Respondent explained that proof of funds was required and states that the second offer package was not complete either with some of the paperwork not completely filled out or signed. Respondent states that the third offer was received, and Respondent told Complainant's agent that proof of the down payment was needed, which was then provided, and Respondent states that Respondent again told Complainant's agent that the seller had chosen another offer and Respondent was awaiting executed documents. Respondent states that there was a delay in obtaining the seller's signature for the offer that was accepted because this was a bank owned property. Respondent stated that Respondent properly informed Complainant's agent of the status of the accepted offer. Respondent submitted a copy of the accepted offer, which was signed by buyer prior to the submission of Complainant's first offer and was signed by the seller about a month later. It does not appear, based on the information submitted, that there was a violation by Respondent.

**Recommendation: Dismiss.**

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

17. 2014000631

**Opened: 1/31/14**

**First License Obtained: 7/11/07**

**License Expiration: 7/10/15**

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

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

18. 2014000632

**Opened: 1/31/14**

**First License Obtained: 6/20/94**

**License Expiration: 6/3/15**

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

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainant's property was listed with another licensee from Respondents' firm who, due to illness, could no longer represent Complainant and assured Complainant that the licensee's clients would be managed by the firm. Complainant states that Complainant contacted the firm and found that no one was handling Complainant's representation in the other licensee's absence. Complainant alleges that Respondent 2 (principal broker) first told Complainant that the firm had no responsibility for the other licensee's clients, but Respondent 2 then assigned Respondent 1 (affiliate broker) to represent Complainant in the place of the other licensee. Complainant states that the home is of architectural interest with numerous unique features, and when first meeting, Complainant states that Respondent 1 stated that the home was very reasonably priced at its current list price at the time but might take a bit longer to sell because of its appeal in a specialized market. Complainant states that it took a long time before the listing appeared as being for sale on Zillow and took a while before professionally-taken photos were displayed on the MLS listing. Complainant states that there was not much interest in the house so Complainant contacted Respondent 1 regarding where the house should be listed to be sold. Complainant states that Respondent 1 recommended a figure, Complainant agreed to the reduction, and when Complainant objected that there was still no movement, Complainant states that Respondent 1 responded that the property had been over priced. Complainant states that there was no chance in selling the property when Respondent 1 did not promptly return telephone calls and told Complainant that Respondent 1 rarely answered the phone, did not leave messages with answering services, and did not read text messages. Complainant believes that a breach of trust occurred.

Respondent 2 submitted a response stating that the other licensee became Complainant's agent through direct contact and agents are only assigned when a listing comes through the relocation department, if an affiliate leaves, or a client requests reassignment. Respondent 2 states that it is an affiliate's responsibility to make arrangements with another affiliate to cover them when necessary. Respondent 2 states that this was explained to Complainant by Respondent 2, and, upon learning that the other agent was unable to work, Respondent 2 made arrangements (with Complainant's consent) to assign Respondent 1. Respondent 2 states that the unique property was marketed through all of the firm's marketing resources and picked up by Zillow, although Zillow is not a first generation website under a licensee's control. Respondent 2 states that Respondent 2 had no knowledge of problems until contacted by Complainant before the complaint was filed. Respondent 2 states that, when it became apparent that neither Respondent could satisfy Complainant, Respondent 2 offered options including contract termination, which Complainant declined. Respondent 2 states that, despite Respondents' efforts, they have been unable to produce a ready, willing and able buyer for the property, but there has been no breach.

Respondent 1 submitted a response denying that there was a breach of trust and stating that Respondent 1 has advertised the property monthly in a magazine, placed signage, created a mobile website, placed the property on the MLS, advertised the property on websites, e-mailed and mailed flyers, and advertised in a newspaper. Respondent 1 states that Respondent 1 followed up on all text messages, potential buyer calls, and local agent inquiries. When first meeting, Respondent 1 states that Respondent 1 stated that the home was priced reasonably based on its features, but it would require a unique seller and may require a price reduction. Respondent 1 states that it took a day at most to return messages from Complainant if the call was not answered immediately. Respondent 1 admits that, on one occasion, Respondent 1 answered Complainant's request for a call by e-mail and forgot to return the call as promised due to extensive traveling and other obligations. Respondent 1 denies making any statement about not texting and states that Respondent 1 texts hundreds of times a day. Respondent 1 denies that Respondent 1 stated that Respondent 1 does not leave messages. Respondent 1 states that, when the parties discussed price reduction, Respondent 1 sent an e-mail with comparables attached suggesting a significant price reduction, outlining the range for an aggressive price reduction, but suggesting an amount a bit higher than the drastic reduction range so as not to reduce too much at once. With regard to Zillow, Respondent 1 states that Zillow is not a site where Respondent 1 posts directly, but Respondent 1 contacted the site by e-mail and the situation was corrected. Regarding the photos to the MLS listing, Respondent 1 states that the professional photos were loaded to Respondent 1's thumb drive at the initial meeting and loaded to the site that afternoon, and Respondent 1 later took new pictures at Complainant's request and posted them, as well. There does not appear to be a violation by Respondents.

**Recommendation: Dismiss.**

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

**19. 2014000681**

**Opened: 2/5/14**

**First License Obtained: 6/14/00**

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

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

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainants entered into a New Home Sales Contract with a home builder, which provided for payment of a three thousand dollar (\$3,000) deposit to the builder. Complainants state that Respondent (principal broker) has not cashed or returned the initial deposit check. Complainants state the contract was cancelled because the home was not built by the verbally promised date. Complainants state that Respondent lied about the construction time and states that Complainants were told by the home builder that the non-refundable deposit applied to Complainants cancelling the contract. It appears from the New Home Sales Contract as well as the Confirmation of Agency Status form that Respondent acted as facilitator for the seller/home builder and another licensee served as facilitator for Complainants.

The contract provides that the deposit would be paid to the builder and states that, upon preapproval, the deposit would be non-refundable. The contract also states that, "Purchaser acknowledges that delivery of the house is approximate...and that any closing date by anyone is an estimate only, and seller shall have no liability for damages resulting from failure to close at an estimate, beyond a refund of the Contract deposit money which is at their option." The contract states that the seller shall not be held responsible for any delay by any cause beyond the seller's control and that, if the home is not completed within ten (10) months, then the contract may be terminated at the option of the seller or purchaser and deposit money shall be returned.

Respondent states that Complainants were represented by a licensed agent who first entered into a contract for another property. Respondent states that Complainants were released from the contract, and Complainants entered into another contract (the subject contract), and the deposit was never cashed as stated by Complainants. Respondent further states that, per the contract, the seller was not to be held liable for construction delays, and there were no other agreements other than those within the contract. Respondent states that Complainants were given a normal construction time frame of between 5-6 months of the contract date if there were no issues, but there had been a delay before construction began. Respondent states that the seller and Complainants met, the seller outlined the timeline for closing, and Complainants were given the opportunity to walk away with a refund. Respondent states that a substantial amount of money was spent on custom changes. Respondent states that Respondent understands that the seller and Complainants reached a settlement. Respondent denies that there were any misrepresentations.

Complainants replied stating that Complainants entered the first contract with the home builder and paid one thousand dollars (\$1,000) as a deposit which was cashed. Complainants state that the deal fell through, and a second contract (the subject contract) was entered in February 2012 and a second check was given for the deposit. Complainants state that they were told that the home could be built in 3-4 months. Complainants also state that a refund was discussed, but the builder

denied the request. Complainants state that the home was completed in September, but Complainants had already purchased a different home. Complainants state that Respondent stated and implied incorrect information that led to Complainants losing money with the home builder. Although Complainants may have an action against the builder, the information within the file does not appear to indicate a violation of TREC's statutes and/or rules by Respondent.

**Recommendation: Dismiss.**

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

20. 2014000781

**Opened: 1/31/14**

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

**License Expiration: 3/23/15**

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

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

**History: 2014001121 – Under review by legal**

21. 2014000782

**Opened: 1/31/14**

**First License Obtained: 1/24/96**

**License Expiration: 8/27/14**

**E&O Expiration: 7/13/15**

**Type of License: Broker**

**History: No Prior Disciplinary Action**

Complainants are time-share owners who attended an owners meeting, which Complainants state was really a lengthy sales presentation, given by Respondents (Respondent 1 is a time-share registration; Respondent 2 is a broker). Complainants state that verbal misrepresentations were made which resulted in Complainants making another purchase. Complainants state that they were told that they did not have enough points to qualify for a VIP member status, that alleged benefits of the VIP status were described, that maintenance fees could be paid using a rewards credit card, and that Complainants could use their points to purchase airfare, car rentals, cruises, and hotel stays at a discount.

Respondents submitted a response outlining Complainants' ownership history and the additional purchase outlined in the complaint. Respondents state that the owners meeting attended by Complainants is voluntary. Respondents state that Complainants were advised of the pending changes to the VIP program. Respondents deny that any verbal misrepresentations were made regarding the points or credit card benefits. Respondents state that the contracts signed for and received by Complainants disclose Complainants' agreement, and several of the documents assist a purchaser in avoiding misunderstandings about the product. Respondents state that there are specific written disclosures and rescission rights. Respondents deny the allegations and state that the documentation signed by Complainants does not substantiate the allegations, but agreed to cancel the upgrade purchase and reinstate the former contract. The documentation in the file does not appear to substantiate a violation by Respondents.

**Recommendation: Dismiss.**

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

22. 2014000951

**Opened:** 2/5/14

**First License Obtained:** 2/10/97

**License Expiration:** 10/25/14

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

**Type of License:** Broker

**History:** No Prior Disciplinary Action

TREC was contacted by an individual who provided a link to a website and stated that the Respondent (broker) does not include Respondent's firm in Respondent's PR or Respondent's website. Web page print outs from multiple websites advertise Respondent and Respondent's team, but only a few of the web pages appear to include any mention of Respondent's firm name.

Respondent submitted a response apologizing and stating that, approximately a month before the complaint was opened, Respondent hired a third party IT company in order to assist Respondent in Google search rankings. In doing so, Respondent states that the company took portions of Respondent's website to create various other pages to drive traffic to Respondent's website, and, in doing so, Respondent states that it appears that not all guidelines were followed. Respondent states that, after reading information about team advertising a few weeks before Respondent received the complaint, Respondent immediately sent the information to the IT company (e-mail included) directing them to be sure that all information was displayed correctly. Respondent states that Respondent is auditing all advertising to be sure this does not happen in the future.

On May 1, 2014, legal counsel conducted a search of the web pages printed with the original complaint and found that the pages had all been updated to reference the firm name, but some of the websites appear to include the name of Respondent's current firm and others still featured the name of the firm where Respondent was affiliated until on or about February 24, 2014 (after the complaint was filed and answered). Based on the information submitted, it appears that Respondent's original internet advertising did not include the firm name and telephone number on each page as required by Rule 1260-02-.12(4)(a). Although it appears that this was corrected and properly updated for a few of the web pages, it also appears that there are several web pages which still contain Respondent's former firm information and have not been updated as referenced in Rule 1260-02-.12(4)(c).

**Recommendation:** Consent Order with \$500.00 civil penalty for violation of Rule 1260-02-.12, highlighting subsection (2)(b) requiring that all advertising shall be under the direct supervision of the principal broker and include firm name and telephone number, subsection (4)(a) stating that the firm name and telephone number must appear on each page of the website, and (4)(c) stating that listing information must be kept current and accurate, 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.*

23. 2014001001

**Opened:** 2/5/14  
**First License Obtained:** 7/21/10  
**License Expiration:** 7/20/14  
**E&O Expiration:** 1/1/15  
**Type of License:** Principal Broker  
**History:** No Prior Disciplinary Action

A complaint was opened against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent broker in complaint 2014000951 ("broker"), who was affiliated with Respondent's firm at the time of the complaint/response.

Respondent states that, before receiving the complaint, Respondent was aware of the broker's internet advertising and was in communication with the broker concerning the issue. Respondent states that the broker has been diligently working on getting the web pages corrected through the IT company which was hired approximately a month before. Respondent states that the broker has assured that the broker will audit all marketing to be sure in states "Team name at Firm Name" with the firm name conspicuously appearing on all pages of the website, and Respondent would be following up with the broker regarding the process of the corrections. Respondent attached an e-mail from the same date as Respondent's complaint response instructing Respondent to make the discussed changes to certain specified websites as well as all personal websites.

It appears that Respondent is attempting to instruct the broker on appropriate advertising; however, it does not appear to legal counsel that Respondent was monitoring all of the broker's advertising.

**Recommendation:** Consent Order with \$500.00 civil penalty for violation of Rule 1260-02-.12, highlighting subsection (2)(b) requiring that all advertising shall be under the direct supervision of the principal broker and include firm name and telephone number and subsection (4)(a) stating that the firm name and telephone number must appear on each page of the website, 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.

24. 2014001121  
**Opened:** 2/5/14  
**First License Obtained:** 3/24/08  
**License Expiration:** 3/23/15  
**E&O Expiration:** N/A  
**Type of License:** Time-Share Registration  
**History:** 2014000781 – Under review by legal

Complainant attended a sales presentation given by Respondent (time-share registration) in 2001. Complainant alleges that misleading tactics were utilized in the sales presentation. Complainant states that the lot that Complainant was shown was not the lot sold and that Complainant was told that the value of the lots was increasing when they were not. From the documentation provided by Complainant, it appears that Complainant sold the lot to another entity in 2012 at a significantly reduced price from what Complainant paid to purchase.

Respondent submitted a response stating that undeveloped lots were sold utilizing disclosure requirements that were filed with HUD and in compliance with the law. Respondent states that the written documentation provided to purchasers neither promoted the sale of the lots on the basis of an investment nor represented that the lots would be developed at a particular time. Respondent states that a settlement was reached in an attempt to provide relief to consumers through a state entity which contained a variety of relief options for individuals who filed complaints within a specified time period in order to qualify. Respondent states that Complainant did not file a complaint with the required entities within the required time period, and therefore was not eligible for relief under the settlement terms. The documentation within the file does not appear to substantiate a violation by Respondent.

**Recommendation: Dismiss.**

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

25. 2014003241

Opened: 3/25/14

History: 2013021981 – Consent Order Authorized - Unlicensed

26. 2014003242

Opened: 3/25/14

History: No Prior Disciplinary Action - Unlicensed

Complainant is the owner of a vacation rental property. Complainant states that Respondents 1 and 2 (both unlicensed individuals) approached Complainant regarding rental management. Complainant states that Respondents own a cleaning company and a vacation rental company. According to Complainant, Respondents began renting Complainant's property in October 2013. Beginning the following month, Complainant states that rents were not received in a timely fashion. When Complainant met with Respondent 1 about the problem, Complainant states that Complainant was informed that Respondents were getting a divorce and Respondent 2 was no longer involved in the business. Complainant states that, until that time, Respondent 1 did the rental bookings, and Respondent 2 did the pool maintenance. At that point, Complainant states that Complainant found out that Respondent 1 was not licensed, and Respondent 1 became unresponsive to communication attempts. Complainant states that Respondent 1 has not returned the rent money owed to Complainant for two (2) months of rentals as well as linens owned by Complainant, will not give names of individuals who have future bookings, and has not returned deposit money collected for future bookings. Complainant attached e-mails and documentation regarding money paid to Respondents' businesses by individuals who booked in the future.

There was no response submitted by Respondent 1. Respondent 2 submitted a response stating that Respondents met with Complainant regarding taking over the management of Complainant's rental property in September 2013. Respondent 2 states that Respondent 1 was managing property under the cleaning business at that time, and the vacation rental company was formed later. Respondent 2 states that Respondent 2 was not informed of any agreement between Respondent 1 and Complainant and does not know the details of their financial arrangement. Respondent 2 states that Respondents are divorcing, and Respondent 1 managed finances and was the sole manager of the cleaning business. Respondent 2 states that Respondent 2 did handy man jobs such as pool maintenance, assistance with cleaning, and delivery of fire wood. Respondent 2 states that Respondent 2 did not realize until later that Respondent 1 had not been sending rental payments to Complainant. Respondent 2 states that Respondent 2 did not take phone calls, accept rental bookings, or handle any

*finances for the cleaning company or the vacation rental company but only provided simple maintenance services when needed.*

*At this time, the information in the file indicates that Respondent 2's participation was limited to performing maintenance tasks as needed. However, it appears that Respondent 1 was operating a vacation lodging service without a license.*

***Recommendation: Close as to Respondent 2. As to Respondent 1, Consent Order for \$1,000 for unlicensed activity in violation of TCA § 62-13-104(b)(2) stating that each vacation lodging service shall be required to have a vacation lodging service firm license and (b)(3)(B)(i) stating that each vacation lodging service firm shall designate an individual to be licensed as a designated agent.***

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

