

TENNESSEE REAL ESTATE COMMISSION MINUTES
September 12, 2012

The Tennessee Real Estate Commission convened on September 12, 2012 at 9:07 a.m., in Room 160 of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, TN 37243. The following Commission Members were present: Chairman William "Bear" Stephenson, Vice-Chairman Michelle Haynes, Commissioner Grover Collins, Commissioner Janet DiChiara, Commissioner John Griess and Commissioner Austin McMullen were present. Commissioner Isaac Northern joined the meeting at 9:15 a.m. Commissioner Wendell Alexander and Commissioner David Flitcroft were absent. Others present: Executive Director Eve Maxwell, Education Director Steve McDonald, Assistant General Counsel Julie Cropp, Assistant General Counsel Robyn Ryan and Administrative Secretary Kelly McDermott.

The first order of business was the adoption of the agenda for the September 2012 Commission meeting. **Commissioner DiChiara made a motion to adopt the agenda as amended for the September 2012 agenda; seconded by Commissioner McMullen; unanimous vote; motion carried.**

The next order of business was the approval of the August 2012 minutes. **Commissioner Collins made a motion to approve the August 2012 minutes; seconded by Commissioner Griess; unanimous vote; motion carried.**

Ms. Ryan addressed the Commission regarding the formal hearing, TREC v. Jordan Mollenhour, license # 276868, Docket # 12-18-115601A, that was scheduled for the first day of the meeting but was continued to December 5, 2012. She recommended the matter be settled with the payment of court costs and with proof that all of his office matters are now in compliance; and that the matter be heard on December 5, 2012 if the proposed agreed order is not accepted by the Respondent. **Commissioner DiChiara made a motion to accept the recommendation set forth by Assistant General Counsel Ryan; seconded by Commissioner Collins; vote: 5 yes, 0 no, Commissioner Northern abstained as he was absent from the room for a part of the discussion; motion carried.** Mr. Ryan also updated the Commission on all scheduled, upcoming legislation. She also told the Commission that they as a whole, not as individuals, is being sued by a former Respondent of a hearing from several years prior and she advised them she would keep them informed about the progress in the matter.

Commissioner Griess asked Ms. Maxwell about the process for automatic suspension for a licensee's failure to pay such things as the privilege tax, student loans and child support. He asked if the licensee's principal broker is notified when a license is suspended for such a reason. Ms. Maxwell explained that, as of right now, the principal broker is not notified, but that setting forth a plan for doing so had been discussed. She stated that it could be pursued as a plan of action. It was agreed that the principal broker would also need to be notified when the licensee's suspension has been lifted.

EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

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

- **Complaint Statistics Report** (Exhibit 3) – Ms. Maxwell presented complaint statistics to the Commission. As of August 31, 2012, TREC had a total of 110 open complaints. There were 36 new complaints in August 2012. There were 85 complaints in the legal department and 25 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2012-2013 is 62. Total Civil Penalties paid in August 2012 were \$40,717.00.

ERRORS & OMISSIONS INSURANCE DISCUSSION

Ms. Cropp advised the Commission that she had taken the previous Policy on Lapsed E&O and revised it for the new renewal period. She stated that the dates had been changed and the process for authorizing action streamlined. Commissioner Northern asked about the provision about a licensee's ability to backdate a policy and asked how that would be applicable if the new carrier, or an alternate carrier, did not backdate policies. Ms. Maxwell stated that the reason the policy was being prepared now, instead of after a carrier is selected, is to be proactive administratively. She stated that a letter and policy are being prepared in advance so that when the E&O policy is actually let in mid to late October; the vendor information can be included and sent to all licensees in a timely manner. However, Ms. Maxwell did agree that the wording could be problematic and suggested it perhaps should be reworked. Ms. Cropp stated that she could work on further revising the policy at lunch and bring it back to the board during the afternoon session of the meeting. Some of the newer or newly appointed board members expressed concern over allowing the person's penalty to be waived if they got their policy backdated. There was concern that some licensees may take advantage of having the ability to go without insurance for 90 days and then get it backdated at the last minute. A brief history to why that provision was included was discussed (i.e. the large number of delinquent licensees who did get their policies backdated and therefore were not pursued from a penalty standpoint). Commissioner Northern stated that it is a primary concern for him that a licensee's principal broker be notified when their licensee is late in obtaining E&O insurance. After extensive discussion, it was determined that Ms. Ryan should come back to the meeting for the remainder of the discussion as she is the attorney who litigate the E&O formal hearings and she may have some input. The Commission took a break to allow Ms. Ryan time to be contacted so she could participate in the discussion.

After the break Ms. Ryan returned to the meeting to discuss E&O. She explained the history of the existing policy so everyone would be on the same page. She stated that every two years, thousands of issues come up with E&O compliance and so a subcommittee was formed to address how to handle licensees who did get their policies backdated and closed the gap. She stated that the law says that you have to have continuous coverage and that if a licensee has their policy backdated then they have complied with the law as stated. She added that if a person does not/cannot get their policy backdated then they would be in violation and disciplinary action would be pursued. She advised that the new streamlined policy is an attempt to clarify what action will be taken in this upcoming renewal cycle for E&O. Commissioner DiChiara reiterated that there is concern that by allowing them to backdate their policies, the

Commission is giving them a “free period” in which to close the gap and in which they would be uninsured. Ms. Ryan advised that as long as they do close the gap by backdating, then there is not a grace period. Commissioner McMullen stated that as long as agents have continuous coverage, the statute is being followed and the public is being protected and that the cost-benefit to prosecute is not there if prosecution is pursued too early in the process (for example January 5 or closely thereafter a person would become delinquent). After the conclusion of the discussion, Ms. Ryan left the meeting and Ms. Maxwell advised the Commission that she and Ms. Cropp would revise the policy and return with another copy for review later in the meeting.

- **Licensing Statistics** (Exhibit 4) – Ms. Maxwell presented licensing statistics for the month of August 2012. As of August 31, 2012, there were 23,768 active licensees, 835 inactive licensees and 9,712 retired licensees. There were 4,054 active firms and 298 retired firms. There were 225 new applications approved in August 2012. Further, she presented a comparison of total licensees for individuals (active, retired and inactive) and firms in August of 2008, 2009, 2010 and 2011. She also presented license renewal percentages and the average number of licenses issued per month in 1997 and 2000 – 2012, firms closed or retired from 2008 – 2012 and the applications approved from 2008 – 2012.

Ms. Maxwell advised the Board that the staff had been, at the instruction of the Administration, keeping a phone and email log for all incoming calls and initial correspondence. She reviewed the amounts tallied of each that were received in the office. She explained, when asked by the Board if this could possibly mean that the phone answering would become automated, that it was her understanding that the reason for the logs was to determine if the information offered on the website needs to be tweaked so the public can find the information they seek on there more readily. She stated that the website traffic is also being studied along with the phone and email logs.

Ms. Maxwell reviewed the meeting room and hotel arrangements for the October 2012 TREC meeting in Chattanooga. Ms. Maxwell briefly touched on reciprocity ending at the end of September and stated that, as far as she had heard, none of our bordering states were going to require any additional information or education for existing licensees licensed by reciprocity.

Ms. Maxwell presented the Commission with an excerpt from the TAR Digest from August 21, 2012 that addressed a question regarding Teams. Commissioner DiChiara asked that a discussion be added to the agenda regarding the information provided in the TAR Digest. Following is the question and the response offered by the author of the TAR Digest.

“QUESTION: We have a team in the office. One team member has the seller and another has a buyer. Can one team member be a designated agent for the seller and the other be a designated agent for the buyer, or do they both have to default to facilitator?”

“ANSWER: Unfortunately, there are not any guidelines concerning teams in any rules or statutes set forth by TREC. Therefore, the team should generally follow the guidelines set forth for individual agents. **A team is therefore viewed as ONE agent working on behalf of a buyer or seller.** In a designated agency situation, the team (and all its agents) is named as the designated

agent for a buyer OR seller. This means that ALL of the members of that team are the designated agent for that client. They would then all have the same legal responsibilities to that client under the Broker's Act (specifically see Tenn. Code Ann. 62-13-404). Therefore, it is our opinion that ALL of the members of that team are required to sign the listing agreement, buyer's representation agreement and confirmation of agency status. In addition, if one agent defaults, they all default. Otherwise there is a dual agency situation. Another important thing to remember with teams is that it is very likely that the knowledge of one team member will be imputed to ALL team members; in other words, **what one agent knows, they all know. This is especially true if the team shares files.** It is not necessary that all of the members of the team are present at a showing, but remember: what one knows, they all know. When advertising, it is also important that the advertisement contain the name and telephone number of the firm. If the team name is included, then it should be obvious that this team is NOT another real estate company, but rather is a team within the licensed firm."

Commissioner DiChiara advised the Commission that she had received phone calls from several licensees and brokers regarding this advice conflicting with TREC law. Ms. Maxwell explained, in more detail, the situation with the excerpt from the TAR Digest and the confusion it has caused. She stated that, per the TAR Digest, the question is are all members of the Team viewed as representing one client so that all of the knowledge is imputed and so the Team would be viewed as an entity and that entity alone could only represent a buyer or a seller in a transaction. She advised that the TAR Digest answer said the Team was one entity and therefore only one member could represent a party. She went on to say this is contradictory because TREC law does not recognize Teams as one entity and therefore the answer is problematic and prompts questions from licensees. Commissioner Griess stated that this matter is actually more of a firm procedure question and should be addressed by licensees with the principal broker and that TREC's stance is that as long as you disclose everything then there is no set law regarding the issue. Ms. Cropp, when asked if she reviewed the TAR Digest for accuracy and compliance with TREC laws, rules and policies, stated that she could not offer a legal opinion on this matter because there is no TREC law regarding the recognition of Teams as one entity. Commissioner Northern stated that his stance is that TREC has a law that addresses the situation in general, and past that the Commission does not need to get involved in telling principal brokers how to run their firms in regard to Teams. He stated that TREC does not need to get into a situation where it is debating other people's interpretation of law. At this point, the Commission ceased the discussion without further debate of the issue.

Chairman Stephenson turned the gavel over to Vice-Chairman Haynes and she ran the meeting.

EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR

Mr. McDonald presented the Courses for Commission Evaluation and Discussion for September 2012. Mr. McDonald presented the course, "The Reverse Mortgage Purchase Program" by provider American CE Institute, LLC. because said provider had asked that it be re-presented to the Board for approval. Commissioner Northern asked if there was any new information that merited the course being reconsidered and Mr. McDonald answered in the negative. Commissioner Northern made a motion to reject the request for reconsideration; seconded by Commissioner Griess; unanimous vote; motion carried. **Commissioner DiChiara made a motion**

to approve the Courses for Commission Evaluation (S1 – S16); seconded by Commissioner Stephenson; vote 5 yes, 0 no; Commissioner McMullen abstained; motion carried.

Mr. McDonald presented the following Instructor Review for the month of September 2012.

1. Karen Czarnecki of Williamson County Association of REALTORS® (1135) requested the approval of John Giffen to teach Unethical or Bad Judgment (6340).

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

Mr. McDonald reviewed the statistics from the incoming course renewals. He reported that as of the day of the meeting, \$35,375.00 in fees had been collected and 105 providers had renewed and of those 105 providers, they had renewed a total of 851 courses and 255 instructors. He stated that this places the renewal percentage rate at 55%. He also reviewed the statistics for the various delivery methods for classes.

Commissioner DiChiara suggested that Mr. McDonald should attend the TAR Instructor Course being taught in October.

There was a discussion regarding internet/online courses and whether guidelines exist regarding whether someone should be required to take a certain amount of time to finish a course. For example, some students may be able to finish a four hour course in an hour and a half. It was discussed if there is any way to slow a student down where they will not speed through a course and receive the full credit hours. Ms. Maxwell stated that per TREC rule, at least 50 minutes of an hour must be full of content and completed to count as one credit hour. **Commissioner Stephenson made a motion to have Mr. McDonald notify all of the online providers that an online course must meet this requirement (must have three hours and thirty minutes of content for every four hours credit); seconded by Commissioner DiChiara; opened to discussion.** Commissioner Northern asked what the benefit is of having to sit through a certain time period if you have absorbed the information and answered the questions correctly. He suggested that instead of what Commissioner Stephenson's motion directed, ask the providers to track each student and how long it takes them to complete a course. Then that data can be studied and if it appears a course does not meet the standards of a certain number of credit hours then the number of credit hours approved could be possibly reduced/adjusted. **Commissioner Stephenson withdrew his motion and Commissioner DiChiara withdrew her second.** At that time, it was determined that Mr. McDonald would request the providers track the information and then after a certain time period, to allow for study of the statistics, report back to the Board.

Mr. McDonald updated the Board on what steps he has taken to try and streamline the process for searching for courses on the TREC website.

Chairman Stephenson recessed the meeting for lunch at 11:36 a.m. and reconvened the meeting at 1:04 p.m. After lunch, Chairman Stephenson took back over as acting Chair of the meeting.

TIMESHARE SALESPERSON INFORMAL APPEARANCE

Mr. Stephen Stitt, applicant, appeared with his potential principal broker, Pamela Johnsen to ask he be approved to apply for a Timeshare Salesperson license. Mr. Stitt disclosed to the Commission the following convictions: Grand Larceny in 1985, Theft/Larceny in 1991 and Simple Assault in 1992. **Commissioner Northern made a motion to approve Mr. Stitt's request; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

The Commission briefly discussed the establishment of a new policy regarding setting a date for an applicant having committed an offense and not be required to appear before the board. For example, if the conviction was over 10 or 15 years prior to application. It was discussed if a date certain is not set, is there an alternative way of the cases being presented to the Commission for consideration. Ms. Cropp advised the Commission that she and Ms. Maxwell had discussed the matter previously and had some concerns about setting a date certain that someone would not need to appear before the Board. She stated that one concern was if a person did have a conviction or convictions then perhaps the date it occurred should not matter as much as the nature of the offense or the number of offenses. For example, someone may have one felony for the sale of drugs or theft of property 15 or 20 years ago or they could have a string of varied convictions from over 15 to 20 years ago that are more severe in nature and should be evaluated more seriously. Therefore, Ms. Cropp suggested a possible option for presenting the information in a preliminary manner to the Commission prior to requiring, or not requiring, an appearance. It was suggested that on a monthly basis, a report could be prepared outlining each applicant who has a felony or a misdemeanor that involves the theft of money, property or services. The report would itemize their offense(s), sentence, date(s) of conviction, license for which they are applying, etc. The Commission could then review the information and vote on whether, based on the information, they want the person to appear before them at an Informal Applicant Appearance. This would leave the Commission more discretion than assigning an arbitrary date for not having to disclose and an offense. It was also discussed that if someone wanted to go ahead and appear without having their case heard on the preliminary report, then they could. This could cut off any lag time between the presentation of the preliminary report and any required subsequent appearance deemed necessary. It was ultimately determined that Ms. Cropp would discuss the matter with General Counsel Wayne Pugh and return to the Commission in October with a recommendation regarding this matter.

Ms. Cropp re-presented the revised Policy on Lapsed E&O Insurance. After adding one change suggested by Commission McMullen to add language regarding the requirement for a licensee to also obtain insurance (to be added at the end of paragraph two), the following Commission Policy Statement was voted on and passed unanimously. The motion to adopt was as follows: **Commissioner DiChiara made a motion to adopt Policy 2012-CPS-008 [Policy on Lapsed E&O Insurance]; seconded by Commissioner McMullen; unanimous vote; motion carried.**

**COMMISSION POLICY STATEMENT
NUMBER 2012-CPS-008
EFFECTIVE DATE: September 12, 2012
REPLACES: 2011-CPS-001**

POLICY ON LAPSED E&O INSURANCE

1. For any licensee who, on or before the ninetieth (90th) day following that licensee's errors and omissions (E&O) insurance renewal date, has failed to comply with the Commission's requirement to be insured by an E&O policy and whose insurance carrier has not back-dated said E&O insurance policy to indicate continuous coverage, the Commission authorizes a formal hearing on the matter but also authorizes that a consent order shall be sent to said licensee, offering that licensee the opportunity to settle the matter informally, thereby making formal hearing proceedings unnecessary, by paying a civil penalty of one thousand dollars (\$1,000.00) and providing proof that the licensee has obtained E&O insurance;
2. For any principal broker whose licensee(s) are not insured on or before the ninetieth (90th) day following the E&O insurance renewal date and for whom that licensee's insurance carrier has not back-dated the licensee's E&O insurance policy to indicate continuous coverage, the Commission authorizes a formal hearing on the matter but also authorizes that a consent order shall be sent to said principal broker, offering that principal broker the opportunity to settle the matter informally, thereby making formal hearing proceedings unnecessary, by paying a civil penalty of one thousand dollars (\$1,000.00) per uninsured affiliated licensee and providing proof that the uninsured affiliated licensee(s) have obtained E&O insurance;
3. Where any authorized consent order offered to a licensee and/or a licensee's principal broker is not accepted, thus requiring a formal hearing on the matter of failure to timely obtain E&O insurance, the Commission hereby authorizes said hearing to be held before an Administrative Law Judge, who has the authority to hear and decide the matter pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. Title 4, Chapter 5.

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 decision indicated.

- 1) 2011027841 &
- 2) 2011027821 &
- 3) 2011027791 – Commissioner Collins made a motion to accept legal counsel's recommendation to close and flag Respondent 1's file; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 4) 2012006651 &

- 5) **2012006652** – Commissioner DiChiara had previously reviewed the complaint and reported to the Commission. After discussion regarding the need for additional information, Commissioner Haynes made a motion to defer the complaint until the October 2012 meeting to allow time to request additional information; seconded by Commissioner Northern; unanimous vote; motion carried.
- 6) **2012009551** – Commissioner Griess made a motion to issue a consent order for failing, within a reasonable time, to account for or to remit any moneys coming into the licensee’s possession that belong to others in violation of T.C.A. § 62-13-312(b)(5), and 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) with a civil penalty of \$1,500.00 plus attendance by Respondent at a two day meeting of the Commission within one hundred eighty (180) days of Respondent’s execution of Consent Order; seconded by Commissioner Collins; unanimous vote; motion carried.
- 7) **2012009921** &
- 8) **2012009922** – Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carried.
- 9) **2012010281** – Commissioner McMullen made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Northern; there was a brief discussion about whether all written content presented by legal counsel in the legal report should be read into the record before a vote is held on the complaint. This matter had been discussed at a previous meeting and it had been debated whether it was necessary. It was pointed out that every Commissioner has received a copy of the legal report in advance of the meeting and have had an opportunity to examine the content of the complaint to assist in making a determination regarding a disposition; **Commissioner Griess made a substitute motion to read the written content of the complaint into the record; no second; motion failed for lack of a second and the original motion was approved.**
- 10) **2012010841** – Commissioner McMullen made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Northern; Commissioner Griess made a substitute motion to read the written content of the complaint into the record; no second; motion failed for lack of a second and the original motion was approved.
- 11) **2012011001** – Commissioner McMullen made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.
- 12) **2012010961** – Commissioner McMullen made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Northern; unanimous vote; motion carried.
- 13) **2012011081** &
- 14) **2012011082** – Commissioner McMullen made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Haynes; unanimous vote; motion carried.
- 15) **2012011251** – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carried.

- 16) 2012011311 &
- 17) 2012011371 – Commissioner Haynes made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner DiChiara; opened to discussion; unanimous vote; motion carried.
- 18) 2012011841 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Griess; unanimous vote; motion carried.
- 19) 2012011961 &
- 20) 2012011962 – Commissioner McMullen made a motion to accept legal counsel’s recommendation that as to Respondent 1, dismiss and as to Respondent 2, Consent Order for \$500.00 for failure to respond to a complaint filed with the Commission in violation of T.C.A. § 62-13-312(b)(14) and § 62-13-313(a)(2), plus attendance by Respondent 2 at a two day meeting of the Commission within one hundred eighty (180) days of Respondent 2’s execution of Consent Order; seconded by Commissioner Griess; unanimous vote; motion carried.
- 21) 2012012001 &
- 22) 2012012002 – Commissioner McMullen made a motion to accept legal counsel’s recommendation that as to Respondent 1, dismiss and as to Respondent 2, Consent Order for \$500.00 for failure to respond to a complaint filed with the Commission in violation of T.C.A. § 62-13-312(b)(14) and § 62-13-313(a)(2), plus attendance by Respondent 2 at a two day meeting of the Commission within one hundred eighty (180) days of Respondent 2’s execution of Consent Order; seconded by Commissioner Collins; unanimous vote; motion carried.
- 23) 2012011991 – Commissioner McMullen made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Northern; unanimous vote; motion carried.
- 24) 2012013591 &
- 25) 2012013601 – Commissioner Northern made a motion to accept legal counsel’s recommendation to send a Letter of instruction to both Respondents regarding Rule 1260-02-.12(2)(b) requiring all advertising to list the firm name and telephone number; seconded by Commissioner McMullen; unanimous vote; motion carried.
- 26) 2012013771 – Commissioner McMullen made a motion to accept legal counsel’s recommendation to close and flag the licensee’s file; seconded by Commissioner Collins; unanimous vote; motion carried.
- 27) 2012011801 &
- 28) 2012011802 &
- 29) 2012011803 – Commissioner McMullen made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Griess; unanimous vote; motion carried.

Ms. Cropp reported to the Commission on a topic discussed at the previous month’s meeting regarding possibly requiring attendance at a TREC meeting as part of any agreed citation sent to a licensee as we do in all consent orders. She explained that she was unsure at that time if it was possible to do so and it was determined she would talk to General Counsel Pugh and report back. She outlined the process for handling an agreed citation administratively. She stated that the agreed citations are sent by the TREC Staff and if the person complies and pays the penalty

then the agreed citation is closed administratively. She went on to explain that if the person does not comply, then the citation is opened as a complaint and is sent the legal division to be presented to the board. She advised that she had spoken with General Counsel Pugh and he had indicated that some language could be added to the agreed citation that stated the agreed citation is an order of the Commission/Board. Therefore, she advised, if the person does not comply with the requirements, including meeting attendance, they would be in violation of T.C.A. § 62-13-312(14). She went on to say, however, that it is the opinion of legal and TREC staff that attempting to require meeting attendance could be problematic and could cause tracking difficulty administratively. She stated that if someone does not comply with the agreed citation then it would follow this pattern: agreed citation will stay open in the TREC office for 180 days to allow the person to comply, if they do not comply then they would be sent to Legal as a complaint for failing to comply, presentation to the Board in the Legal Report, a consent order issued and if the person fails to comply with that consent order, then litigation would be authorized. She advised that Ms. Ryan, TREC's litigation attorney, has concerns about trying to prove, at a formal hearing, the reasonableness of requiring attendance at a TREC meeting for a \$250.00 or less citation. Ms. Cropp says she is concerned that we could be making a big issue out of something that started as a very small issue. Ms. Maxwell advised the Commission that she had reviewed the minutes from 2005-2006 and at that time the Board had authorized staff to handle agreed citations administratively because they wanted to dispose of these cases and not be required to be heard by the Board. She stated that if someone did not comply with an agreed citation, then it would, at that time, be brought before the board and when it was the board could then require the meeting attendance requirement. Commissioner Haynes asked if it was possible for the Board to get a separate list of all satisfied agreed citations and Ms. Maxwell explained that they are included in the DAR report that is presented monthly but that a separate list of only paid agreed citations could be compiled if the board desired. **Commissioner McMullen made a motion to leave the standard operating procedure as is and not require the meeting attendance when the agreed citation is sent; seconded by Commissioner Haynes; unanimous vote; motion carried.**

The Commissioners reported on matters on concern to them or to the Commission and made comments regarding the meeting or upcoming meetings.

Chairman Stephenson adjourned the meeting on Wednesday, September 12, 2012 at 3:13 p.m.



**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
OFFICE OF LEGAL COUNSEL
Davy Crockett Tower,
500 James Robertson Parkway
NASHVILLE, TENNESSEE 37243
(615) 741-3072 fax 615-532-4750**

MEMORANDUM

TO: TENNESSEE REAL ESTATE COMMISSION

FROM: JULIE CROPP, Assistant General Counsel

SUBJECT: SEPTEMBER LEGAL REPORT

DATE: September 12-13, 2012

***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. 2011027841**
Opened: 11/23/11
First License Obtained: 4/28/08
License Expiration: 4/27/12
E&O Expiration: 1/1/13
Type of License: Affiliate Broker
History: No Prior Disciplinary Action
**7/22/11 Respondent was broker released, as of the date of this review, Respondent has failed to complete administrative measures.*

- 2. 2011027821**
Opened: 11/14/11
First License Obtained: 5/2/94
License Expiration: 3/19/13
E&O Expiration: 1/1/13
Type of License: Principal Broker
History: No Prior Disciplinary Action

- 3. 2011027791**
Opened: 10/28/11
First License Obtained: 2/13/06
License Expiration: 7/1/13
E&O Expiration: 1/1/13

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

February 2012 Meeting:

This Complaint filed by licensee who represented a seller against a Respondent (#1) who was the buyer's agent. #1 had been broker released on July 22, 2011 from his old firm and apparently had the intent to affiliate with Co- Respondent (#2) who is a principal broker. This intent is confirmed by #2 but #2 never filed the necessary administrative action to do such.

Co Respondent (#3) apparently had his letterhead used in the contract that was drawn up but appears to be a victim in this matter and had no knowledge of the activities involved. Apparently, #1 accessed this sales contract with #3's logo on it through the network "Transaction Desk" accessed at the office of Respondent #2.

On August 17, 2011 Respondent #1 (not affiliated with any firm according to TREC records) presented an offer to purchase to Complainant's clients. The offer was given to the Complainant on a sales contract with Respondent #3's logo and business information on it. Respondent #1 also provided a loan pre-approval letter for the buyer from a finance company Complainant was not familiar with. The sales contract was accepted pending a closing date approved by the Court as this was an estate sale.

Complainant states that the Respondent #1 and the buyer's finance company began pressuring her and her clients to go to closing. The buyer's finance company began calling the seller's title company making demands to hurry up and close the deal before the end of September stating the buyer was anxious to close. The Complainant and seller were able to get the matter approved by the court and set a closing date of September 30, 2011.

At the closing the Complainant still believed #1 was the buyer's agent and he worked for the company listed on the sales contract which is owned by #3. After the closing, the Complainant found out that the buyers finance company was owned in part by respondent #1 and his parents. This was not disclosed. The commission check was made out to Respondent #2 who Complainant had no knowledge of. After the closing, the Complainant investigated further and discovered that Respondent #1 had been associated with an entirely different company but was brokered released in July of 2011, over a month before he submitted the offer.

Respondent #1 did not respond to the Complaint.

Respondent #3 responded very upset and concerned. He had never heard of this Respondent #1 and specializes only in commercial properties. He had worked at one time with Respondent #2 but had no association with him in years. A letter was submitted by the law firm for the Tennessee Association of Realtors stating that they had looked into the matter and the sales contract used by #1 with Respondent #3's name on it came from a TAR online vendor called "Transaction Desk" and that the logo for respondent #3's company had been loaded onto the system whereby Respondent #2 had access to it. Apparently, Respondent #1 found it in Respondent #2's system and accessed the sales contract. There does not appear to be any

knowledge of the transaction or the parties involved by Respondent #3. He has asked for the Commission to issue a "letter of innocence" and complete purging of this complaint on his file.

Respondent #2 admits that he had agreed to allow Respondent #1 be transferred to his firm. Respondent #2 states he thought the previous principal broker was taking care of the transfer and it appears he was allowing #1 to work out of his office without being affiliated. After Respondent #1 "discovered" that he had been "terminated" from his previous broker #2 alleges that he took over the contract while so that Respondent #1 could "sort out his status with the local association of realtors." He further states that Respondent #3 and he worked together years ago but he had no idea he had access to his company logo as he doesn't use Transaction Desk. Respondent #2 does not explain the fact that he took over a contract listed in another agent's name, on another real estate firm's contract, the fact that at no time did he take any administrative measures regarding an affiliate working out of his office, nor state whether or not Respondent #1 is or is not affiliated with his firm (which he is not).

Recommendation: Respondent #1 – Consent Order for violation of TCA 62-13-312(b)(14)(16) failure to take administrative action and (20) conduct that is improper, fraudulent or dishonest dealing for \$1000.00; 62-13-313(a)(2) failure to respond to a complaint filed by the Commission for \$1000.00; 62-13-310(a) acting as an affiliate without having been transferred under contract with the new broker or acting without a broker for \$1000.00 for a total civil penalty of \$3000.00. Additionally, attendance at a two-day scheduled TREC meeting within six months and 6 additional hours of ethics continuing education within six months.

Respondent #2 - Consent Order for violation of TCA 62-13-312(b)(14) (15) failure to supervise an affiliate for \$1000.00 (16) failure to take administrative action for an affiliate broker for \$1000.00; (20) conduct that is improper, fraudulent or dishonest dealing for \$1000.00; 62-13-310(a) allowing an affiliate broke to work in firm without having been transferred under contract with the new broker or acting without a broker or \$1000.00 for a total civil penalty of \$4000.00. Additionally, attendance at a two-day scheduled TREC meeting within six months and 3 additional hours of ethics and 3 additional hours of office management continuing education within six months.

Respondent #3 Dismiss though due to the public records requirement of the office there does not appear to be a mechanism to expunge this complaint. The Commission could direct a letter be sent stating it sees no evidence of any wrongdoing on this person's behalf.

Since the time that this matter was originally presented to the Commission in February, Respondent 1's license expired on April 27, 2012. To date, Respondent 1 has not attempted to contact TREC regarding Respondent 1's license/reinstatement or Respondent 1's Consent Order.

Recommendation: Close and flag Respondent 1's file.

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

4. **2012006651**
Opened: 4/17/12
First License Obtained: 1/24/06
License Expiration: 1/23/10
E&O Expiration: 1/1/13
Type of License: Affiliate Broker
History: No Prior Disciplinary Action
**Respondent's license expired on 1/23/10*
5. **2012006652**
Opened: 4/17/12
History: No Prior Disciplinary Action – Unlicensed

August 2012 Meeting:

Complainants state that they leased a home from Respondents (both unlicensed). Complainants were relocating to Tennessee from another area of the country and selected the home to rent which was shown on Respondents' website. Complainants state that the photos that were provided of the property on Respondents' website were not the actual home Complainants rented. Complainants state that the home was very dirty and unfit to live in. It appears that Respondent 1 was a licensee whose license has expired.

Respondents submitted a response stating that they are married and Respondent 2 entered into a lease option agreement with the owner of the subject property rented by Complainants (copy of lease option agreement was provided by Respondents). Then, Respondent 2 personally entered into a rental agreement with Complainants, which did not involve Respondent 1 or their company. It appears that the maintenance and cleanliness issues addressed in the complaint were handled by attorneys for the parties. Respondent 1 states that, upon realizing that Respondent 1's real estate license had expired, Respondent 1 shut down their company and has ceased operations. Respondent 1 is in the process of taking the exam and obtaining proper licensure, at which time Respondent 1 plans to affiliate with a firm. With regard to the property that was rented by Complainants, it appears from the documentation provided that Respondent 2 was renting the property to Complainants personally pursuant to the rights granted to Respondent 2 by a lease option agreement with the property owner.

Recommendation: Dismiss.

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

New Recommendation: Commissioner DiChiara to discuss.

DECISION: The Commission voted to defer the matter until next month to allow legal counsel time to obtain additional information.

6. 2012009551

Opened: 5/23/12

First License Obtained: 1/24/66

License Expiration: 6/1/13

E&O Expiration: 1/1/13

Type of License: Principal Broker

History: 2011013051 – Closed \$1,000 CP (failure to supervise/E&O)

2011019441 – Closed \$1,000 CP (failure to account)

Complainant is the owner of property managed by Respondent's (principal broker) firm. Complainant alleges that Respondent's firm allowed a tenant who defaulted multiple times on rent to remain in Complainant's property for an extended period before instituting eviction proceedings. Complainant alleges that Complainant requested eviction multiple times during the time period and suffered a loss in income due to defaulted payments and the delay in eviction. Complainant also alleges that a second tenant was placed in December 2010, and was given a "move-in special" of reduced rent and a reduced security deposit without Complainant's approval or knowledge. Complainant also alleges that the tenant did not sign a lease and Respondent's firm did not verify the tenant's income. Complainant alleges that the second tenant defaulted in December and January, but Respondent's firm did not institute an eviction until February 2011. Also, Complainant states that the security deposit for the first tenant was not returned by Respondent until approximately five (5) months after the first tenant moved out. It appears that both parties obtained attorneys and a settlement was reached between the parties and then Complainant filed this complaint.

Respondent submitted a response stating that the first tenant paid all monthly rents through August 2010. Respondent states that there were delinquent rental payments and Respondent's firm "referred this tenant for eviction in June 2010" but when the tenant paid the rent the proceedings were cancelled. Respondent states that there were months in which partial rent payments were accepted, but Respondent claims that the lease agreement between Respondent's firm and the tenant allowed partial payments, giving Respondent's firm "the discretion to be flexible considering the tenant's circumstances." Respondent states that a partial payment was received in September 2010 and no further payments were received, resulting in eviction proceedings being filed on November 15, 2010. As to the second tenant, Respondent claims that Complainant was aware of the "move-in special" of reduced monthly rent in order to quickly secure a tenant. Respondent states that the second tenant was referred by a reputable party so a credit check was not performed and the tenant was employed and also self-employed. Respondent further states that, though the lease agreements with tenants state that eviction proceedings may begin on the 11th day after default, the management agreement with Complainant did not specify such. Based on documentation provided by both parties, whether or not the first tenant paid in full through August 2010 is unclear, and the tenant was evicted in November 2010 but Complainant does not appear to have received the security deposit for this tenant until May 2011. Further, the documents provided and the explanation of the second tenant's situation, including amounts paid and owed, appear to conflict. The parties settled the matter through attorneys, but the lack of clarity regarding these matters appears to show a failure to timely account for money as well as a failure to be loyal to Complainant's best interests on the part of Respondent.

Recommendation: Consent Order for failing, within a reasonable time, to account for or to remit any moneys coming into the licensee's possession that belong to others in violation of T.C.A. § 62-13-312(b)(5), and 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) with a civil penalty of \$1,500.00 plus attendance by Respondent at a two day 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.

7. **2012009921**
Opened: 5/28/12
First License Obtained: 12/31/91
License Expiration: 3/16/13
E&O Expiration: 1/15/13
Type of License: Principal Broker
History: No Prior Disciplinary Action

8. **2012009922**
Opened: 5/28/12
First License Obtained: 9/25/06
License Expiration: 9/24/12
E&O Expiration: 1/1/13
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

Complainant was the potential buyer of a short-sale property. Complainant alleges that Respondents (Respondent 1 is principal broker and Respondent 2 is affiliate broker) did not act professionally and wrongfully held Complainant's earnest money. It appears that Complainant signed an amendment to extend the closing date due to delays in the bank's decision of whether or not to accept the offer. Later, Complainant met with Respondent 1 in order to find out how Complainant could get the earnest money back and was told that Complainant needed to send in paperwork showing that Complainant had been denied for financing. In the meantime, Complainant's offer was approved by the seller's bank. Complainant says that Complainant sent a denial letter from the first loan officer that Complainant met with but was told that the letter was not sufficient because it did not include the price or property address. Complainant states that Respondents said that the sellers would sue Complainant for breach and the sellers would not release the earnest money. Complainant claims Complainant is entitled to the earnest money.

Respondents submitted a response stating that Respondent 1 met with Complainant due to Complainant's unhappiness with the sale process, where Respondent 1 explained the short sale process and discussed signing the contract extension. Respondents state that when they were notified of the seller's bank approval of the offer, they found out that Complainant had not met with the loan officer and was demanding return of the earnest money. Respondents state that they were informed that Complainant was pre-approved for the loan but had not submitted

updated information as requested by the loan officer. Respondents state that Complainant gave an old copy of a loan rejection and letters from another provider denying the loan, but Respondents state they told Complainant that Complainant should update the information with the officer who was processing the loan and if the requirements for loan were not met after that, then Complainant would receive the earnest money back. At that point, the police were called due to an altercation. Respondents included documentation from the loan officer which indicates that Complainant did not provide updated documentation to process a loan approval for Complainant. Respondents state that Complainant refused to update the information with the loan officer because Complainant was under contract for another home. The seller made written demand for the earnest money due to Complainant's breach. At that time, Respondent 1 met with Respondents' corporate attorney and made the decision regarding the earnest money. Based on the documentation contained within the file, there does not appear to be a violation of TREC's statutes and/or rules by Respondents.

Recommendation: Dismiss.

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

9. **2012010281**
Opened: 5/23/12
First License Obtained: 8/1/07
License Expiration: 7/31/13
E&O Expiration: 1/1/13
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

Complainant was the neighbor and potential buyer for a short sale property listed for sale for which Respondent (affiliate broker) was the listing agent. Complainant states that Complainant saw Respondent outside of the home and indicated interest in buying. Complainant states that Respondent told Complainant that Respondent would represent Complainant in the matter but they could not write a contract until the appraisal was completed. When Complainant tried to proceed with making an offer and arranging a title search/title insurance, Complainant states that Respondent was unresponsive and did not reply to Complainant's attorney's attempts to contact Respondent. Later, Complainant found out that there was a contract on the property, and then found out that Respondent was the purchaser of the property. Complainant states that Respondent paid \$5,000 less for the property than the amount that Complainant states was verbally offered by Complainant to Respondent for the home.

Respondent states that when Respondent met with the homeowner, Respondent saw Complainant outside. When Complainant indicated interest in buying, Respondent gave Complainant a business card. A few days later, Respondent and the seller executing the listing agreement. At that point, Respondent states that Respondent indicated interest in buying, and soon after, Respondent and the seller executed the sales contract, which, from the documentation of the listing agreement and the contract, appears to have sold for the list price. Respondent states that Complainant contacted Respondent a few weeks later and Respondent told Complainant the

property was already under contract. Respondent states that Complainant pursued, talking about a title search and a closing and Complainant's attorney also called regarding the title search. Respondent states that no verbal offer was given by Complainant. Respondent provided a letter from the seller who indicated satisfaction with Respondent's services.

An additional letter was submitted by an attorney on behalf of Complainant. The parties appear to dispute contact back and forth by phone between Complainant and Respondent. However, there was no documentation provided to indicate any representation of Complainant by Respondent or any intended offer on the part of Complainant which was not conveyed by Respondent. Based on the documentation contained within 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.

10. 2012010841

Opened: 5/23/12

First License Obtained: 8/4/95

License Expiration: 8/27/14

E&O Expiration: 1/1/13

Type of License: Broker

History: 2012011001 – Under review by legal

Complainant entered into a residential lease agreement with Respondent (broker) as landlord to rent a property and paid a one thousand one hundred dollar (\$1,100.00) security deposit. Later, Respondent sold the property that Complainant was renting, and returned nine hundred fifty dollars (\$950.00) of the deposit. Complainant states that the new owner has inspected the property and says that there is no damage; therefore, Complainant claims that Complainant is entitled to a return of the remaining one hundred fifty dollars (\$150.00) of the security deposit.

Respondent submitted a reply stating that the matter has been handled through a court of law wherein all matters were adjudicated by the court. Respondent states that Respondent has agreed to pay the one hundred fifty dollars (\$150.00) that Complainant requested. Two weeks later, Complainant sent a reply stating that Complainant had not received the one hundred fifty dollars (\$150.00). Based on the information contained within the file, this issue regarding return of a portion of the security deposit appears to be a contractual issue.

Recommendation: Dismiss.

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

11. 2012011001
Opened: 5/28/12
First License Obtained: 8/4/95
License Expiration: 8/27/14
E&O Expiration: 1/1/13
Type of License: Broker
History: 2012010841 – Under review by legal

This Respondent is the same broker as the previous matter. This Complainant is the buyer of the property referenced in the previous matter. Complainant alleges that Complainant purchased a rental property from Respondent, and the closing documents "...were filed on March 12, 2012." Complainant states that Respondent collected rent for the month of March from the tenant on February 27, 2012, but Respondent did not remit to Complainant the prorated rent amount for the remainder of March.

Respondent submitted a reply stating that Complainant purchased the property through auction in October 2011. Respondent claims that Complainant breached the purchase and sale contract by failing to close on the November 11, 2011 date specified in the contract. The closing occurred on March 12, 2012. Respondent states that the delay was due to a court action against Complainant for breach. Respondent states that Complainant was ordered to close and, pursuant to court order, Complainant was ordered to pay Respondent's fees and court costs, and all other matters were dismissed. Complainant submitted an additional response stating that the rent matter was not addressed by the court as it had not yet become an issue. Because the purchase and sale contract executed between the parties makes no reference of proration of rent, this appears to be a contractual issue between the parties.

Recommendation: Dismiss.

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

12. 2012010961
Opened: 6/4/12
First License Obtained: 11/1/07
License Expiration: 9/5/13
E&O Expiration: 1/1/13
Type of License: Broker
History: No Prior Disciplinary Action

Complaint alleges that Respondent (broker) submitted a fake degree in order to obtain Respondent's real estate license. Specifically, Complainant alleges that the high school which Respondent said Respondent graduated from does not exist. Complainant states that Respondent purchased the high school diploma that Respondent provided online.

Respondent submitted a response stating that the Complainant is not a real person but was a name invented by an ex-girlfriend in an attempt to cause Respondent professional harm.

Respondent obtained Respondent's first license in 2007 and Respondent's broker license in 2011. Respondent was raised Amish/Mennonite and completed 8th grade, as required by Respondent's religion, which was recognized by the state. After working in the family excavation business, Respondent began working with a real estate developer and was told by a TREC auditor that Respondent needed a real estate license. Respondent enrolled in TREES, where Respondent was told about the online program. Respondent enrolled in the online course, took the courses, and took the examination. Upon passing, Respondent was provided with the diploma. Respondent claims that Respondent believed the program was accredited and was not aware of the issues with the program until receiving the complaint. Respondent states that Respondent has a clean real estate record with no complaints since licensing and that nothing was hidden from the Commission. Based on the information contained within the file, there does not appear to be evidence of any willful misrepresentation on the part of Respondent.

Recommendation: Dismiss.

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

13. 2012011081

Opened: 6/19/12
First License Obtained: 6/14/99
License Expiration: 2/27/14
E&O Expiration: 1/1/13
Type of License: Principal Broker
History: No Prior Disciplinary Action

14. 2012011082

Opened: 6/19/12
First License Obtained: 8/19/02
License Expiration: 9/11/13
E&O Expiration: 1/1/13
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

Complainant was the potential buyer of a property who Respondent 1 (principal broker) represented in the attempted purchase. Respondent 2 (affiliate broker) represented the seller. Complainant entered into a purchase and sale agreement for the property and also a temporary occupancy agreement. Complainant states that Complainant was preapproved and finally approved for financing but the financing was suspended "due to a problem with documentation" which is ongoing. As a result, the closing was delayed multiple times and later a denial letter was sent. This situation appears to have arisen based on prior foreclosure and/or bankruptcy of Complainant which appears to have been uncovered during the process. At that point, it appears that a dispute arose regarding the amount of money due from Complainant to the seller for Complainant's occupancy. Complainant states that Complainant tried to vacate the premises within three (3) days as specified in the occupancy agreement. On the fourth day, Complainant

states that Respondents came to the property to inspect the premises and “did conspire to aggravate, inflame, and incite” Respondent through utilizing photography and presenting documents for signature before return of any earnest money after which law enforcement was called and Complainant left the premises.

Respondents submitted replies stating that Complainant was only preapproved (and did not have final approval as Complainant stated) and provided a copy of the preapproval letter but was denied based on a bankruptcy or foreclosure of which Complainant was aware and did not disclose initially. Respondent 1 claims that all earnest money owed to Complainant was returned after deductions for Complainant’s occupancy and utilities during said occupancy. Respondents also state that the police had to be called when Respondents went to the home after the closing fell through to exchange the keys and earnest money. Respondents dispute that Complainant is entitled to a return of more earnest money, stating that Complainant made alterations to the home in violation of the agreements between the parties, which, if anything, entitled the seller to even more of the earnest money. Based on the documentation within the file, there does not appear to be a violation of TREC’s statutes and/or rules by Respondents.

Recommendation: Dismiss.

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

15. 2012011251

Opened: 5/29/12

First License Obtained: 8/27/02

License Expiration: 4/15/13

E&O Expiration: 1/1/13

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant entered into a two (2) year lease-purchase agreement with tenants. At the time of signing the lease agreement and sales contract, Complainant paid Respondent (principal broker) \$4,500.00 at the time of execution and agreed to pay an additional \$4,500.00 approximately one (1) year later. During the first year of the contract, Complainant states that Respondent did not attempt to help the lessee obtain financing for the property, but after the first year, Respondent sent a letter stating that the second commission installment was due. Complainant states that Complainant requested that the second installment be waived until the contract was fulfilled, and Complainant states that Respondent agreed to accept \$3,300.00 instead of \$4,500.00. During the second year of the contract, Complainant states that Respondent did not assist the lessee with obtaining financing. There does not appear to be any provision in the agreements stating that Respondent would assist with financing.

Respondent submitted a reply stating that, during the contract period, Complainant was unsure whether the tenants would close on the home. Respondent states that Respondent told Complainant that the possibility existed due to the nature of lease/purchase, which was what Complainant wanted, but Respondent had done Respondent’s job by bringing the parties

together. Respondent states that attorneys prepared the contracts and reviewed them after Complainant requested a refund, and all advised that Respondent was due the commission. Based on the documentation provided, this appears to be a commission dispute and 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.

16. 2012011311

Opened: 6/7/12

First License Obtained: 9/4/97

License Expiration: 12/31/13

E&O Expiration: 1/1/13

Type of License: Affiliate Broker

History: 2009017711 – Closed \$1,000 CO (E&O)

17. 2012011371

Opened: 6/7/12

First License Obtained: 1/27/76

License Expiration: 7/15/14

E&O Expiration: 1/1/13

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant, a licensee, states that Respondent 1's (affiliate broker) license expired on December 31, 2011 and, as of May 2012 (the time of the complaint), Respondent 1 failed to reinstate Respondent 1's license or complete the required education. Respondent 2 is Respondent 1's principal broker. Complainant alleges that, during the time Respondent 1's license was expired, Respondent 1 was acting as a licensee. Complainant did not submit any documentation with the complaint.

Respondents both submitted responses. Respondent 1 stating that Respondent 1 did not realize that Respondent 1's license had expired because Respondent 1 thought that Respondent had successfully renewed Respondent's license when, after having difficulties connecting with the TREC website, Respondent 1 sent an e-mail with Respondent 1's license number and payment information. Respondent 1 also states that Respondent 1 completed education through an online course and faxed the information to the school, but later found out there were problems due to the bank card which Respondent 1 used to pay for the course being stolen and Respondent having to cancel said card. Respondent states that Respondent's failure to follow up with these matters was due to Respondent's illness over several months. Respondent 2 said that Respondent 2 did not learn that Respondent 1's license had any problems until May, at which point Respondent 2 told Respondent 1 to clear the issues up and until that time, Respondent 1 could not receive any commissions. Since the time of the complaint, Respondent 1 has taken

steps, including payment of the renewal fee and penalty as well as TREC attendance, and has reinstated Respondent 1's license.

Recommendation: Dismiss.

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

18. 2012011841

Opened: 6/26/12

First License Obtained: 4/15/08

License Expiration: 4/14/12

E&O Expiration: 1/1/13

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

****Respondent was broker released on 4/30/12****

Complainant was the principal broker of Respondent (affiliate broker). Complainant broker released Respondent in April 2012 at time of complaint. Complainant states that another agent in the firm informed Complainant that Respondent was practicing real estate outside of the firm. Specifically, Complainant states that Respondent told the other agent that Respondent was "privately" selling a property for a client. Respondent provided a copy of a flyer for the property, which the other agent said Respondent made and gave him, but Respondent's contact information is not displayed (Complainant states the bottom was torn off). Complainant found the property on trulia.com and found Respondent's name as well as the name of the firm (as the listing brokerage firm). Complainant states that the property was not listed by the firm.

Respondent submitted a reply stating that the subject property's owner was an acquaintance and the property was for sale by owner. Respondent was asked to open the door for potential buyers who had an appointment due to the owner's location out of state. Respondent claims that Respondent did not tell the other agent that Respondent was "privately" listing the home, but just said that Respondent was opening the door for the owners. Respondent states that the home had a "for sale by owner" sign and the flyer was merely a sample that Respondent had made for the owners to show them what a flyer could look like. Respondent attached an e-mail from the company which makes the flyers which stated that a sample was made for the subject property but was not paid for or finished. Respondent also attached a letter from the home owner stating that Respondent assisted them by helping them enter their information on trulia. The owner states that Respondent was not hired to market the home and did not serve as their agent but merely opened the door for them when needed as the owners relocated out of state. The documentation in the file does not appear to substantiate Complainant's allegations.

Recommendation: Dismiss.

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

19. **2012011961**
Opened: 6/12/12
First License Obtained: 8/14/87
License Expiration: 12/21/13
E&O Expiration: 1/1/13
Type of License: Broker
History: 2012012001 – Under review by legal
20. **2012011962**
Opened: 6/12/12
First License Obtained: 10/20/09
License Expiration: 10/19/13
E&O Expiration: 1/1/13
Type of License: Broker
History: 2012003371 - \$2,000 CO authorized (fail to respond, admin. steps)
2012012002 – Under review by legal
Broker Released on 2/14/12

Complainant was the potential purchaser of a property. Respondent 1 is a broker and Respondent 2 is licensed as a broker but is currently in broker release status and is not affiliated with a firm. Based on the information submitted, it appears that Respondent 1 was the listing broker of the subject property and Respondent 2 is the registered agent and a member of a Missouri limited liability company (“LLC”) which was the potential seller of the subject property to Complainant. The subject property was a short sale which Respondent 2 and the LLC appear to have contracted with the original owner to purchase the subject property upon the original owner’s lender’s approval and giving Respondent 2’s LLC the right to sell the property to a third party buyer (such as Complainant) for profit. Complainant alleges that, entering into a purchase and sale agreement, Complainant had to pay a fee to treat the property for termites in order to get a loan and Complainant also paid for an inspection. Subsequently, Complainant’s lender would not approve the sale due to lack of documentation that there had already been a sale of the property to Respondent 2’s LLC and a HUD1 form. Complainant states that Respondents did not provide sufficient evidence for Complainant’s lender to approve the transaction and therefore the sale did not close.

There was no response submitted from Respondent 2. Respondent 1 submitted a response with documentation stating that Respondent 1 was merely the listing broker for the subject property and that Complainant did not submit documentation of the termite treatment or inspection, and the decision of whether to return the money spent for these procedures was between the LLC and Complainant. Further, Respondent 1 stated that supporting documentation showed that the LLC had the authority to sell the property with third party lender approval and that the LLC would close on the property and take clear title before closing with Complainant. Further, Respondent 1 stated that the LLC had received approval from the original owner’s lender and HUD for the property to sell to the LLC with no resale restrictions and attached documentation from the lender and HUD referencing this. Based on the documentation contained within the file, there does not appear to be a violation of TREC’s statutes and/or rules on the part of Respondents except for Respondent 2’s failure to submit a response to this complaint.

Recommendation: As to Respondent 1, dismiss. As to Respondent 2, Consent Order for \$500.00 for failure to respond to a complaint filed with the Commission in violation of T.C.A. § 62-13-312(b)(14) and § 62-13-313(a)(2), plus attendance by Respondent 2 at a two day meeting of the Commission within one hundred eighty (180) days of Respondent 2's execution of Consent Order.

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

21. 2012012001

Opened: 6/12/12

First License Obtained: 8/14/87

License Expiration: 12/21/13

E&O Expiration: 1/1/13

Type of License: Broker

History: 2012011961 – Under review by legal

22. 2012012002

Opened: 6/12/12

First License Obtained: 10/20/09

License Expiration: 10/19/13

E&O Expiration: 1/1/13

Type of License: Broker

History: 2012003371 - \$2,000 CO authorized (fail to respond, admin. steps)

2012011962 – Under review by legal

Broker Released on 2/14/12

This is a TREC opened complaint against the same two Respondents as the previous matter (Respondent 1 is a broker and Respondent 2 is also licensed as a broker but is currently broker released and not affiliated with a firm). This complaint was opened against Respondents for operating an unlicensed firm – specifically, the LLC which was the seller of the home in the subject transaction with the Complainant from the previous complaint.

Respondent 1 submitted a response stating that Respondent 1 is not an owner of any part of that LLC. Instead, Respondent 1 states that Respondent 1 was acting merely as the LLC's listing broker for the property which the previous Complainant attempted to purchase. In support, Respondent 1 attached documentation, including a copy of the listing agreement between the LLC which was acting as the seller of the subject property and Respondent 1 as listing broker. None of the documentation submitted evidences that Respondent 1 was acting as anything more than the listing broker for the subject property. Respondent 2 did not submit a response to this complaint, but based on the documentation provided, it does not appear that the LLC was being operated as an unlicensed firm.

Recommendation: As to Respondent 1, dismiss. As to Respondent 2, Consent Order for \$500.00 for failure to respond to a complaint filed with the Commission in violation of

T.C.A. § 62-13-312(b)(14) and § 62-13-313(a)(2), plus attendance by Respondent 2 at a two day meeting of the Commission within one hundred eighty (180) days of Respondent 2's execution of Consent Order.

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

23. 2012011991

Opened: 6/12/12

First License Obtained: 8/30/01

License Expiration: 9/7/14

E&O Expiration: 1/1/13

Type of License: Principal Broker

History: 2011010371 – Closed \$750 CO (failure to supervise)

TREC opened complaint against Respondent, who is the principal broker of the broker who is Respondent 1 in the previous two complaints, for failure to supervise.

Respondent submitted a response stating that Respondent has investigated all information and documentation regarding the subject transaction. Based on this review, Respondent states that Respondent determined that Respondent 1 of the previous two complaints did nothing wrongful to warrant a complaint against this Respondent or Respondent 1 of the previous two complaints. Based on the documentation contained within the files regarding this matter, there does not appear to be a violation of TREC's statutes and/or rules by this Respondent.

Recommendation: Dismiss.

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

24. 2012013591

Opened: 7/12/12

First License Obtained: 3/25/86

License Expiration: 12/1/12

E&O Expiration: 1/1/13

Type of License: Principal Broker

History: 2006021312 – Closed \$1,000 CO

25. 2012013601

Opened: 7/12/12

First License Obtained: 10/17/02

License Expiration: 2/19/13

E&O Expiration: 1/1/13

Type of License: Broker

History: No Prior Disciplinary Action

Complaint opened by TREC against Respondents (Respondent 1 is a principal broker and Respondent 2 is a broker) for Respondents' failure to satisfy an Agreed Citation sent to Respondents for advertising violations. Specifically, Respondents' firm telephone number was not included in an advertisement. Based on the information in the file, it appears that Respondents, along with approximately thirty (30) other licensees were featured on an advertisement. Within the ad, only the names, firm name, and cell phone numbers of Respondents (who were pictured together) were included, but no firm telephone number.

Respondent 2 responded to the Agreed Citation, stating that Respondents were not given the opportunity to proof the ad before it ran. Respondent 2 forwarded an e-mail chain from the individual in charge of advertisements, in which Respondent 2 stated that Respondents had not been given the opportunity to proofread the ad prior to print and notified the individual of the lack of firm name and asked that the firm number be included in all future ads. The individual's response to Respondent 2 is unclear whether Respondents had an opportunity to proof the ad before it printed, but the issue has been corrected in future issues. Additional information was requested, but no documentation was provided which confirmed that Respondents had received information of when the ad would print or that Respondents proofread the ad. However, confirmation was provided that the error was corrected in future ads.

Recommendation: Letter of instruction to both Respondents regarding Rule 1260-02-.12(2)(b) requiring all advertising to list the firm name and telephone number.

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

26. **2012013771**
 Opened: 7/10/12
 First License Obtained: 4/12/02
 License Expiration: 8/12/12
 E&O Expiration: N/A
 Type of License: Firm
 History: No Prior Disciplinary Action

Complaint opened by TREC for Respondent's (firm) failure to satisfy an Agreed Citation sent to Respondent based on a March 2012 audit for failure to timely notify TREC of Respondent's new physical address. The auditor's report indicates that Respondent had moved to a new address, and "TREC has not been notified." An Agreed Citation was sent to Respondent's principal broker at Respondent's mailing address in June 2012 and, as of September 7, 2012, Respondent has not responded to or paid the Agreed Citation and Respondent has not updated Respondent's physical address with TREC. However, Respondent's license expired on August 12, 2012.

Recommendation: Close and flag.

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

27. **2012011801**
Opened: 6/12/12
History: No Prior Disciplinary Action (Unlic.)
28. **2012011802**
Opened: 6/12/12
History: No Prior Disciplinary Action (Unlic.)
29. **2012011803**
Opened: 6/12/12
History: No Prior Disciplinary Action (Unlic.)

Complainants entered into a lease agreement, and later a lease purchase arrangement, with Respondents 1 and 3 (Respondent 1 is an individual, Respondent 3 is a business name, and it appears Respondent 2 is Respondent 1's spouse) for a property. It appears that the property was not sold, and Complainants were provided with notice to vacate due to delinquent rental amounts and Complainants were referred to a collection agency. Complainants allege a variety of allegations including breach of contract issues and failure by Respondent 1 to provide information about Respondent 3 business. Complainants state that Respondent 1 told them that Respondent 3 was a business that Respondent 1 used to manage Respondent 1's rental properties, but Complainants cannot find information on business licenses or tax ID information for Respondent 3 business. Complainants also state that renters at another property also had breach of contract issues with Respondents 1 and 3. Respondent 1 submitted a response on behalf of Respondents stating that the lease/purchase agreement fell through and Complainants breached the lease agreement by failing to pay rent. Respondent 1 states that Respondent 2 is a spouse who is not involved in any of Respondent 1's businesses and Respondents businesses are properly registered with local county, city and state governments.

Based on a search of the State of Tennessee's Real Estate Assessment Data, it appears that Respondent 1 and 2 are the owners of the property which was rented by Complainant as well as the other property which Complainant referenced and Respondent 3 is a business name for Respondents managing their own property. The complaint states that Complainants have instituted a civil suit regarding this matter. Complainants' allegations appear to be contractual and of a nature which would be appropriately addressed in a civil forum, and the information contained within the file does not evidence unlicensed activity on the part of Respondents.

Recommendation: Dismiss.

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