

TENNESSEE REAL ESTATE COMMISSION MINUTES

April 3 – 4, 2013

The Tennessee Real Estate Commission convened on Wednesday, April 3, 2013 at 9:09 a.m. in Meeting Room 1A of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, Tennessee 37243. The following Commission Members were present: Chairman William “Bear” Stephenson, Vice-Chairman Michelle Haynes, Commissioner Grover Collins, Commissioner Janet DiChiara, Commissioner John Griess, Commissioner Isaac Northern, Commissioner Wendell Alexander and Commissioner David Flitcroft. Commissioner Austin McMullen joined the meeting at 10:39 a.m. Others present: Executive Director Eve Maxwell, Education Director Steve McDonald, Assistant General Counsel Julie Cropp and Administrative Secretary Kelly Hestand.

Ms. Maxwell read the following statement into the record: This meeting’s date, time and location have been noticed on the TN Real Estate Commission’s website, included as part of this year’s meeting calendar, since September 7, 2012. Additionally, the agenda for this month’s meeting has been posted on the TN Real Estate Commission’s website since March 27, 2013. Also, this meeting has been noticed on the tn.gov website since March 28, 2013.

The first order of business was the adoption of the agenda for the April 2013 Commission meeting. **Commissioner Flitcroft made a motion that the Chairman lead the attendees in saying the Pledge of Allegiance; seconded by Commissioner DiChiara; unanimous vote; motion carried.** The Commissioners, Staff and Attendees said the Pledge of Allegiance. **Commissioner DiChiara made a motion to adopt the agenda as amended for the April 2013 agenda; seconded by Commissioner Collins; unanimous vote; motion carried.**

The next order of business was the approval of the March 2013 minutes. **Commissioner Griess made a motion to approve the March 2013 minutes; seconded by Commissioner Collins; vote: 7 yes, 0 no, Commissioners Alexander and Flitcroft abstained as they were absent from the March 2013 meeting; motion carried.**

EXECUTIVE DIRECTOR’S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

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

- **Complaint Statistics Report** – Ms. Maxwell presented complaint statistics to the Commission. As of March 28, 2013 TREC had a total of 101 open complaints. There were 31 new complaints in March 2013. There were 85 complaints in the legal department and 16 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2012-2013 is 220.

- **Licensing Statistics** (Exhibit 4) – Ms. Maxwell presented licensing statistics for the month of March 2013. As of March 28, 2013, there were 23,050 active licensees, 1,317 inactive licensees and 8,932 retired licensees. There were 3,903 active firms and 249 retired firms. There were 235 new applications approved in March 2013. Further, she presented a comparison of total licensees for individuals (active, retired and inactive) and firms in March of 2008 – 2013. She reported on each state with a licensed Tennessee firm or firms and the number of those firms in each state. She presented a comparison chart of applications approved and examination taken. She also presented license renewal percentages and the average number of licenses issued per month in 1997 and 2000 – 2013, firms closed or retired from 2008 – 2013 and the applications approved from 2008 – 2013.

There was a discussion regarding the renewal postcards and the problems that may arise from licensees believing it is junk mail because it does not look like an invoice or bill. Several Commissioners voiced concerns and stated that perhaps a change is in order on the delivery method of renewal postcards. After discussion, **Commissioner Alexander made a motion that instead of the current postcards, renewal notices should be sent in an “invoice” type form that is very clear about how much is due and the ways it can be paid; seconded by Commissioner Flitcroft; opened to discussion;** the Commission and Staff discussed who all receives the renewal notice for each licensee. Ms. Maxwell stated that a renewal is sent to the licensee at their firm and at their home address and one is also sent to the licensee’s principal broker. Mr. Alexander asked if there are any repercussions for a principal broker who does not ensure their affiliates pay their renewals. Ms. Maxwell stated that at this time there are no repercussions unless a complaint for unlicensed activity by one of their affiliates was opened and then the Commission, in turn, determined the principal broker should also have a complaint opened for failure to supervise. **The vote on Commissioner Alexander’s motion was 7 yes, 0 no; motion carried. Commissioner Alexander made a motion that any determination on what format the renewals should be sent to licensees should be deferred to give Staff time to do research on different methods and the corresponding cost for each type of format; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

ERRORS & OMISSIONS INSURANCE

Ms. Maxwell presented the Commission with a report comparing the number of uninsured licensees by date in each of the last three renewal cycles (2009, 2011 & now 2013). She gave them a breakdown of how many licensees are shown insured with Rice and/or several alternate carriers. On April 1, 2013, it was reported that 17,294 licensees had purchased Rice Insurance, 7,162 had Alternate Insurance and 661 were uninsured. She advised the Commission on what letters of notice went out to the licensees and the number of each that went to affiliates and principal brokers who are uninsured or have, in the case of principal brokers, affiliates are

uninsured. There was also a discussion about the E&O bill that just passed the Legislature but has not yet been signed by the Governor. The law would take effect on July 1, 2013 and would not be retroactive. Commissioner Flitcroft stated that a legal opinion is needed to determine if the bill would apply to the currently uninsured licensees or just those uninsured on or after July 1, 2013.

Ms. Maxwell discussed the current Policy on Reinstatement of an Expire License. As discussed last month, there has been some interest in adjusting the policy as it relates to the person's requirement to attend the meeting as a condition of reinstatement and the corresponding fee that a licensee may pay to not have to attend the meeting (currently \$1,500.00). Commissioner Northern explained that he had been contacted by a licensee who is currently at his second home in Texas and does not want to attend the meeting and also does not want to pay the \$1,500.00 because he feels it is an excessive additional penalty. There was some discussion regarding why the policy was put in place, as it stands now, and what the policy should be going forward. Commissioner Northern expressed that he too thinks the penalty is excessive. There was a discussion of whether any change would be retroactive or only going forward and it was determined that it would apply going forward if changed. Mr. McDonald stated that most of the time when someone pays the \$1,500.00, it is because they would rather be back to work within days instead of having to wait to attend the next Commission meeting. **Commissioner Alexander made a motion to amend the current policy and reduce the amount of the assessment from \$1,500.00 to \$750.00 and it be retroactive and effective upon the signature of the Chairman; seconded by Commissioner Griess; opened to discussion; vote: 7 yes, 1 no (Commissioner Flitcroft); 1 abstained (Commissioner McMullen); motion carried.**

Commissioner Flitcroft expressed that, in light of the new E&O bill and soon to be statute, he would like for legal counsel to review all of the policies and see if changes need to be made in light of the suspension language. He stated that he just wants to make sure our policies are consistent with the new statute after it is signed by Governor Haslam.

Ms. Maxwell discussed with the Commission co-branding and advertising requirements (what is needed on signs, font size, etc...). She presented the Commission with a picture of an actual sign and notations on what is misleading on the sign. The discussion was relevant to T.C.A. § 62-13-310(b) which states "Licensees may not post signs on any property advertising themselves as real estate agents unless the firm's name appears thereon in letters the same size or larger than those spelling out the name of the licensee." It is a major concern that names (i.e. "Teams") are being included on signs that are not licensed with TREC and are being advertised as if they are a licensed entity in the real estate industry. Commissioner Griess stated that he has found, in his experience, that advertising in general is becoming more about the agent or a team instead of the actual firm.

During the discussion, Ms. Maxwell also referenced Rule 1260-02-.12(2)(e) which states that no licensee can advertise in a manner that is false, deceptive or misleading and that the firm name and phone number must appear on all advertising and if on the internet, the firm name and phone number must appear on each web page. Further, a licensee can only be affiliated with one firm and a licensee can only advertise under the firm name with which the license is affiliated. In regards to the sign presented as an example, she asked, does this type of advertising influence the consumer to call a certain licensee or firm, does it omit certain salient facts, thereby causing a misrepresentation, or is it presented in such a way that it could mislead the average consumer?

Ms. Cropp presented the Commissioners with a document outlining the following relevant statutes and rules, specifically the highlighted sections, regarding this issue. Following are the rules that apply to the discussion of co-branding and advertising.

T.C.A. § 62-13-309. Business Locations – Display of license – Signs.

(a)(1)(A) Each office shall have a real estate firm license, a principal broker and a fixed location with adequate facilities for affiliated licensees, located to conform with zoning laws and ordinances.

(B) Each branch location shall comply with the requirements of subdivision (a)(1)(A).

(2) The license of a broker and of each affiliate broker under contract to the broker shall be prominently displayed in the broker's principal place of business.

(3) Within ten (10) days after any change of location of the office, all licensees registered at that office shall notify the commission in writing of their new business address and shall pay the fee established in § 62-13-308.

(b) (1) Each licensed broker shall maintain a sign on the outside of the broker's office of the size and content that local ordinances and the commission prescribe, which shall clearly state that the broker is engaged in the real estate business.

(2) In making application for a license or for a change of location, the licensee shall verify, in writing, that the licensee's office conforms with zoning laws and ordinances.

(3) The maintenance of the broker's office in the broker's home shall not relieve the broker from the requirement of having a sign outside of the house as required in this subsection (b).

(4) Affiliate brokers are not required to display signs at the office of their brokers.

(c) The requirements of subsections (a) and (b) may be waived in cases of certain unusual geographical circumstances.

(d) (1) If the applicant for a broker's license maintains more than one (1) place of business within the state, the applicant shall apply for and obtain an additional firm license for each branch office;

(2) Every application shall state the location of the branch office and the name of the person in charge of it; and

(3) Each branch office shall be under the direction and supervision of a broker licensed at that address.

(e) No more than one (1) license shall be issued to any broker or affiliate broker to be in effect at one (1) time.

(f) Upon original application for a firm license and each renewal of the license, the firm shall provide proof of the establishment of the firm's escrow account satisfactory to the commission.

(g) A principal broker may act as a principal broker for two (2) firms as long as both firms are in the same location. As used in this subsection (g), "the same location" means that both firms are located at and use the same physical address.

T.C.A. § 62-13-310. Affiliate broker relationship to broker. –

(a) Whenever the contractual relationship between a broker and affiliate broker is terminated, the present broker shall immediately sign and date the change of affiliation form prescribed by the commission. The affiliate broker may act under a contract with another broker upon completion and transmittal to the commission of the form, accompanied by the fee established pursuant to § 62-13-308. The affiliate broker shall assure that the completed form and fee are promptly transmitted and that the affiliate broker's license is prominently displayed in the new broker's principal place of business.

(b) Licensees may not post signs on any property advertising themselves as real estate agents unless the firm's name appears on the signs in letters the same size or larger than those spelling out the name of the licensee.

(c) Any unlawful act or violation of this chapter by any affiliate broker may not be cause for the suspension or revocation of the license of the broker with whom the affiliate broker is affiliated.

Rule 1260-02-.03 Offices.

(1) Signs. Each licensed real estate firm shall conspicuously display on the outside of the firm's place of business a sign which contains the name of the real estate firm as registered with the Commission.

(2) Zoning. An application for a license or change of location shall be accompanied by a written certification (from the proper governmental authority) of compliance with zoning laws and ordinances.

(3) Branch Offices.

(a) For purposes of T. C. A. §62-13-309(d), a licensee is deemed to maintain a "branch" if the licensee:

- 1. Advertises the office in any manner for the purpose of attracting the public;**
- 2. Has a mail drop at the office which is registered with and served by the United States Postal Service; or**

3. Invites or solicits telephone calls to the office (by such means as advertising or listing in a telephone directory).

- (b) Model Homes and Modular Units. A model home may be utilized in a subdivision or on a commercial lot and a modular unit may be utilized in subdivisions which are under construction for purposes of soliciting business and will not be required to be licensed as a branch office as long as the model home or modular unit meets the following requirements:
1. The model home or modular unit location and/or telephone number is only advertised in conjunction with advertising the main firm office and such advertising complies with the statutes, rules and regulations of the Commission;
 2. The model home or modular unit does not have a mail drop;
 3. The model home or modular unit is not the sole sales office for the firm;
 4. The model home or modular unit is not utilized to allow unlicensed activity by individuals in performing any of the acts requiring licensure under T. C. A. §62-13-101, et seq.; and
 5. The principal broker of the main firm office shall adequately supervise licensees operating from model homes or modular units as required by T.C.A. §62-13-312 and any rules promulgated thereunder.

Rule 1260-02-.12 Advertising.

- (1) All advertising, regardless of its nature and the medium in which it appears which promotes the sale or lease of real property, shall conform to the requirements of this rule.
- (2) General Principles
 - (a) No licensee shall advertise to sell, purchase, exchange, rent, or lease property in a manner indicating that the licensee is not engaged in the real estate business.
 - (b) All advertising shall be under the direct supervision of the principal broker and shall list the firm name and telephone number.**
 - (c) No licensee shall post a sign in any location advertising property for sale, purchase, exchange, rent or lease, without written authorization from the owner of the advertised property or the owner's agent.
 - (d) No licensee shall advertise property listed by another licensee without written authorization from the property owner. Written authorization must be evidenced by a statement on the listing agreement or any other written statement signed by the owner.
 - (e) No licensee shall advertise in a false, misleading, or deceptive manner.**
- (3) Advertising for Franchise or Cooperative Advertising Groups
 - (a) Any licensee using a franchise trade name or advertising as a member of a cooperative group shall clearly and unmistakably indicate in the advertisement his name, broker or firm name and firm telephone number (as registered with the Tennessee Real Estate Commission) adjacent to any specific properties advertised for sale or lease in any media.

- (b) Any licensee using a franchise trade name or advertising as a member of a cooperative group, when advertising other than specific properties for sale or lease, shall cause the following legend to appear in the advertisement in a manner reasonably calculated to attract the attention of the public: "Each [Franchise Trade Name or Cooperative Group] Office is Independently Owned and Operated."
- (c) Any licensee using a trade name on business cards, contracts, or other documents relating to real estate transaction shall clearly and unmistakably indicate thereon:
 - 1. his name and firm telephone number (as registered with the Commission); and
 - 2. the fact that his office is independently owned and operated.
- (4) Internet Advertising
 - (a) The listing firm name and telephone number must conspicuously appear on each page of the website.**
 - (b) Each page of a website which displays listings from an outside database of available properties must include a statement that some or all of the listings may not belong to the firm whose website is being visited.
 - (c) Listing information must be kept current and accurate.
- (5) Guarantees, Claims and Offers
 - (a) Unsubstantiated selling claims and misleading statements or inferences are strictly prohibited.
 - (b) Any offer, guaranty, warranty or the like, made to induce an individual to enter into an agency relationship or contract, must be made in writing and must disclose all pertinent details on the face of such offer or advertisement.

Commissioner Stephenson said that he would like to have Staff put this matter back on the agenda for the May meeting for further discussion.

Ms. Maxwell gave the Commission a quick update on possibly producing and ordering a new law manual. She presented them with a comprehensive overview in writing and verbally addressed the Commission regarding several factors as well. She stated that the law manuals are a licensee's primary reference resource and is a critical component of their knowledge base for the statutes and rules. She briefly discussed how TREC manuals have been ordered in the past and some potential options for ordering new manuals. She explained that Lexis Nexis is set up to store inventory, receive manual orders and to fulfill those orders and that TREC does not have the tools available to undertake the sale and distribution of manuals. She advised that Lexis Nexis is researching the price points, but believes that it can sell a combo print and eBook Manual to the licensees for a turnkey price of \$30.00 - \$35.00 per manual. She went on to state that Lexis Nexis' price to the public is not controlled by the State contract, so Lexis Nexis hopes that it can offer the Manual at an affordable price to the licensees but that this would require that TREC commit to purchase some number of Manuals (possibly as few as 50 combo print and

eBook) at the State contract price, which would be higher per unit than that paid by the licensees. She advised that Lexis Nexis is gathering information on the number of hours required to produce the manuals in the past and what the estimated costs to produce a new manual this year and what the costs will be to TREC and to the licensees. She explained that the other option for production and distribution of the manuals is for TREC to place a large order and then send the manuals out to the active licensees and new licensees at no cost to the licensees but she did say this is quite costly. She stated that although the TREC website does have the updated Rules and the Lexis Nexis/ Michie site has the updated statutory material, the licensees would be better served to have all of this information in one easy to use reference source. She gave the Commission some quotes but advised that the quotes were very high and represented a price which would have been too costly per book, either paper or eBook, for TREC or licensees to pay. She stated that at the time those quotes were made, Lexis Nexis did not have an efficient system in place to distribute eBook keys to purchasers but that they did anticipate that the eBook system would be fully operational this year. She explained that Lexis Nexis is working on a new estimate and it does appear that they might be able to offer the licensees a price that will be affordable for a print and eBook combination. She advised that TREC would actually be picking up some of the licensee's cost of the manual in that TREC would have to pay the contract rate for its print and eBooks, but by doing so, Lexis Nexis could offer the licensees the manual at a more affordable price. She explained that if Lexis Nexis could sell the print and eBook from their site, the licensees would be able to take advantage of an efficient and expeditious method of manual distribution.

Chairman Stephenson recessed the meeting for lunch at 11:30 a.m. and reconvened the meeting at 1:15 p.m. The remainder of Ms. Maxwell's report was deferred so that scheduled informal appearances could begin.

INFORMAL APPLICANT APPEARANCES

Albert E. Adams, applicant, appeared with his potential Principal Broker Nina DesJean of Woods & Water Realty, LLC in Knoxville to request that he be approved to apply for an Affiliate Broker license. Mr. Adams disclosed to the Commission conviction of Make False Statements Influencing a Bank Loan in 1997. **Commissioner Griess made a motion to approve Mr. Adam's request; seconded by Commissioner Collins; unanimous vote; motion carried.**

Chris Brown, applicant, appeared with his potential Principal Broker Stephanie Conner of Crye-Leike South in Johnson City to request that he be approved to apply for an Affiliate Broker license. Mr. Brown disclosed to the Commission a conviction of Aggravated Burglary in 1991. **Commissioner DiChiara made a motion to approve Mr. Brown's request; seconded by Commissioner Collins; unanimous vote; motion carried.**

Ms. Cropp revisited the discussion of the Reinstatement Policy. She advised that after conferring with both Chief and Deputy Counsel, it would be best if this matter be ultimately addressed in rulemaking instead of policy. She advised that as to the question asked earlier about applying the reduction in penalty retroactively of the \$750.00 in lieu of attending the meeting, they both agreed that it is possible to make something like that possible but there are two things that must happen: 1) give a date to where you are going to make it retroactive and; 2) provide a rationale for making it retroactive and that the rationale cannot be arbitrary or based on any one single incident. She stated that she had drafted a new policy statement, 2013-CPS-002 which would replace the previous policy with the sole change that the penalty now states \$750.00 instead of \$1,500.00 effective the day of the meeting and that it only apply to any reinstatement orders signed the day of the meeting (April 3, 2013) or after and that it not be applied retroactively. Commissioner Northern asked that he be allowed to offer a rationale the next day. **Commissioner Alexander made a motion to table the discussion until the next day before any final action is taken regarding the change in policy; seconded by Commissioner Collins; unanimous vote; motion carried.**

Ms. Maxwell gave the Commission a brief update on the plans being made for the Commission's May meeting at Pickwick Landing State Park.

The Commission and Ms. Maxwell briefly discussed the TREC law manual again. There was discussion of the different manner in which the manuals could possibly be sold. Ms. Maxwell advised that information offered at this meeting is preliminary in nature and she will elaborate on the subject more at future meetings.

Ms. Maxwell advised the Commissioners that PSI would like the Commission to put together a Subject Matter Experts (SME) team to assist in a review of the state specific test items for the TN broker and affiliate broker exams. She further advised that PSI has stated that the last exam review was completed in 2008, so the review could possibly be extensive and that they estimate that about one-third of the items on the broker and affiliate broker exam will need to be reviewed based upon the statistical performance of these items. Ms. Maxwell reported that it is a very important part of ensuring that the exam remains challenging and relevant and that the sessions are pretty intense, but are also very rewarding. It is anticipated that the review could take about 1-1.5 days and PSI has usually paid for the hotel expenses, gas and a per diem for the participants. She stated that she believes that this review will be held in Nashville, probably in late May or June, 2013. Ms. Maxwell advised that in the past reviews involving the Broker and Affiliate exams, the Commissioners have usually selected individuals who they believe would be both interested and qualified to participate in the maintenance item review. She said that PSI prefers that the SMEs be from the real estate industry and the licensees participating would join Steve McDonald, Eve Maxwell, Julie Cropp and PSI representatives in reviewing the state specific exam questions. Chairman Stephenson asked that the Commissioners send Eve the names of licensees who they believe would be interested in taking part in the evaluation process.

Ms. Maxwell advised the Commission that there is a potential claim for \$30,000 being made against the Education and Recovery Fund. She reported that on February 7, 2013, these individuals filed a petition for recovery against the Education and Recovery Fund for the maximum of \$30,000 which is the most you can claim against one individual. She advised that the Attorney General believes that they have met the qualifications under the Education and Recovery Fund and they are working out the final logistics for making payment.

EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR

Mr. McDonald presented the Courses for Commission Evaluation for April 2013. **Commissioner Collins made a motion to approve the Courses for Commission Evaluation A1 through A43; seconded by Commissioner DiChiara; vote: 8 yes, 0 no and Commissioner McMullen abstained on A1; motion carried.**

Mr. McDonald advised the Commission that the 2013 Education Seminars are set to begin soon.

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

- Sally Cummings of TAR® (#1110) requested the approval of Barry Hensley to teach the Transaction Desk Basic #5747 and Transaction Desk Advanced # 5748.
- Sally Cummings of TAR® (#1110) requested the approval of Ruth Fennell to teach SRES-Senior Real Estate Specialist course #5367.

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

Ms. Maxwell asked the Commissioners to re-affirm who wished to attend the ARELLO District Meeting. They confirmed that the two Commissioners that wish to attend are Commissioner Collins and Commissioner DiChiara along with Ms. Maxwell and Mr. McDonald.

Ms. Maxwell advised the Commission that TREC will be moving, along with the other regulatory boards and legal division, the first week of May. Specifically TREC is scheduled to move on May 8, 2013.

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) 2012022011 – Commissioner DiChiara had previously reviewed the complaint and recommended legal counsel’s original recommendation of dismissal. Commissioner McMullen made a motion to accept Commissioner DiChiara’s and Legal Counsel’s original recommendation to dismiss; seconded by Commissioner Northern; vote: 8 yes, 0 no, Commissioner DiChiara abstained; motion carried.
- 2) 2012022021 - Commissioner Northern made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carried.
- 3) 2012022261 – Commissioner Alexander had previously reviewed the complaint. He recommended by motion to issue a Consent Order for violations of T.C.A. § 62-13-405 and T.C.A. § 62-13-403(1), said Consent Order to require Respondent to attend one (1) entire meeting of the Commission within one hundred eighty (180) days of Respondent’s execution of the Consent Order and Respondent must also complete four (4) hours of continuing education in ethics and sixteen (16) hours of continuing education in contract writing within three hundred sixty-five (365) days of Respondent’s execution of the Consent Order; seconded by Commissioner Collins; vote: 8 yes, 0 no, Commissioner Alexander abstained from the vote; motion carried.
- 4) 2012023691 – Commissioner McMullen made a motion to accept legal counsel’s recommendation to issue a Consent Order for \$1,000 for unlicensed activity in violation of T.C.A. § 62-13-102(4)(A)(B), § 62-13-103, and § 62-13-301, said order to also include order to cease and desist all unlicensed activity; seconded by Commissioner Northern; unanimous vote; motion carried.
- 5) 2012025501 &
- 6) 2012025502 – Commissioner Griess made a motion to accept legal counsel’s recommendation to close as to both Respondents; seconded by Commissioner Collins; unanimous vote; motion carried.
- 7) 2012025661 &
- 8) 2012025662 – Commissioner Griess made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Northern; unanimous vote; motion carried.
- 9) 2012025711 &
- 10) 2012025721 – Commissioner Flitcroft made a motion to accept legal counsel’s recommendation to issue a Consent Order for \$500.00 to Respondent 1 based on failure to complete administrative measures as required by § 62-13-312(b)(14)(16) and Rule 1260-02-.02(2) plus attendance at one (1) entire meeting of the Commission within 180 days of Respondent 1’s execution of Consent Order and as to Respondent 2, dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 11) 2012025731 – Commissioner Griess made a motion to accept legal counsel’s recommendation to issue a Consent Order for failing to diligently exercise reasonable skill and care in providing services to all parties to the transaction and failing to provide services to each party to the transaction with honesty and good faith in violation of T.C.A. § 62-13-312(b)(14) and § 62-13-403(1) and (4) with a civil penalty of \$500.00 plus attendance by Respondent at one (1) entire meeting of the Commission within one hundred eighty (180) days of Respondent’s execution of Consent Order;

- seconded by Commissioner DiChiara; 8 yes, 1 no (Commissioner Collins voted no); motion carried. Commissioner Griess made a motion to open a complaint against the Respondent's principal broker; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 12) 2012025881 – Commissioner McMullen made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 13) 2012026571 – Commissioner McMullen made a motion to issue a Consent Order for failing to diligently exercise reasonable skill and care in providing services to all parties to the transaction and failing to provide services to each party to the transaction with honesty and good faith in violation of T.C.A. § 62-13-312(b)(14) and § 62-13-403(1) and (4) with a civil penalty of \$500.00 plus attendance by Respondent at one (1) entire meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order; seconded by Commissioner Haynes; unanimous vote; motion carried.
- 14) 2012026601 &
- 15) 2012026621 – Commissioner McMullen made a motion to accept legal counsel's recommendation to Close as to Respondent 1 and send a Letter of Instruction to Respondent 2 regarding Rule 1260-02-.09, subsection (6) of which lists a number of conditions which allows a broker to properly disburse funds from an escrow account and subsection (7) of which states that funds should be disbursed or interplead within twenty-one (21) calendar days from the date of receipt of a written request; seconded by Commissioner Northern; unanimous vote; motion carried.
- 16) 2012026631 &
- 17) 2012026632 &
- 18) 2012026633 &
- 19) 2012026634 – Commissioner Alexander made a motion to accept legal counsel's recommendation to issue a Consent Order for litigation monitoring as to Respondent 1 and 2 and close as to Respondents 3 and 4; seconded by Commissioner Collins; unanimous vote; motion carried.

Mr. Cropp reviewed the Consent Order Log with the Commission and the Commission had no questions or comments.

Ms. Cropp and Deputy Counsel Wayne Pugh updated the Commission on the status of legislation that affects TREC. They reported that HB 133/SB 646, regarding E&O, had passed in the Legislature but still needed to be signed by Governor Haslam. Mr. Pugh updated the Board on HB944/SB942, regarding requiring fingerprinting for new applicants. He advised that the fingerprinting bill with the amendment had passed Committee and was ready to go to the Senate Calendar Committee and therefore it is almost ready to go to the Senate Floor.

Ms. Cropp presented the Commission with the following information regarding licensees selling their own property.

Question: If an agent sells his/her own property and does so on his/her own (a for sale by owner situation – not going through his/her firm), does that agent have to include his/her firm name and telephone number on the advertisement?

Relevant Statute/Rule Subsections:

Rule 1260-02-.11 “Personal Interest”

- (1) No broker or affiliate broker shall, either directly or indirectly through a third party, purchase for himself or attempt to purchase or acquire any interest in or option to purchase property listed with him or with his company, or property regarding which he or his company has been approached by the owner to act as broker, without first making a full disclosure of his true position to the owner of the property or to any prospective purchaser for which he has acted for as a client or customer. After acquiring any such personal interest, either directly or indirectly, the broker or affiliate broker shall make a full disclosure of his true position to prospective purchasers who tender offers to buy the property.
- (2) All licensees shall identify themselves as a licensee when buying or selling property for themselves.

Rule 1260-02-.12 “Advertising”

- (1) All advertising, regardless of its nature and the medium in which it appears which promotes the sale or lease of real property, shall conform to the requirements of this rule.
- (2) General Principles
 - a. No licensee shall advertise to sell, purchase, exchange, rent, or lease property in a manner indicating that the licensee is not engaged in the real estate business.
 - b. All advertising shall be under the direct supervision of the principal broker and shall list the firm name and telephone number
 - c. No licensee shall post a sign in any location advertising property for sale, purchase, exchange, rent or lease, without written authorization from the owner of the advertised property or the owner’s agent.
 - d. No licensee shall advertise property listed by another licensee without written authorization from the property owner. Written authorization must be evidenced by a statement on the listing agreement or any other written statement signed by the owner.
 - e. No licensee shall advertise in a false, misleading, or deceptive manner.

***Also possibly relevant to the discussion is the fact that, when the Commission revised the advertising rule (Rule 1260-02-.12) in 2010, it removed a previously numbered subsection which dealt with a confusing owner/agent issue. The subsection which was formerly in the rule but was removed stated “A licensee is exempt from paragraph (2) of this rule if the licensee’s advertising includes the designation “owner/agent” and the property is not listed.”

T.C.A. § 62-13-403 “Duty Owed to All Parties”

A licensee who provides real estate services in a real estate transaction shall owe all parties to the transaction the following duties, except as provided otherwise by § 62-13-405, in addition to other duties specifically set forth in this chapter or the rules of the commission:...

(7)(A) Not engage in self-dealing nor act on behalf of licensee’s immediate family or on behalf of any other individual, organization or business entity in which the licensee has a personal interest without prior disclosure of the interest and the timely written consent of all parties to the transaction;

These statute/rule sections, while relevant to this topic of an agent selling his/her own property in a FSBO situation not through his/her firm, do not appear to directly address this question of whether the agent must include his/her firm name and telephone number.

Ms. Cropp asked for the Commission’s opinion on this matter. Commissioner Alexander stated that he believes there was a policy created by the Commission that a licensee does not have to have the name of the firm and firm telephone number but it must be disclosed when a contract is created. Commissioner Northern stated that a firm might have a different rule for its affiliates and Commissioner Haynes explained that if the property is listed in MLS, then a person should put the name of the firm and the telephone number. Commissioner Alexander said that such posting is to satisfy a licensee’s trade association not TREC. It was the consensus that this requirement is usually a company/firm’s policy instead of a TREC requirement. It was also discussed what would happen to the firm/pb if a complaint was brought before the board if one of their affiliates is selling their own property and has not listed their firm name and phone number. It was determined that this issue should be addressed by a new rule. Mr. Pugh, Deputy Counsel, reminded the Commission of the difference between a policy and a rule. He stated that if you are dealing with any of the rights of someone outside the Commission or the staff, then it must be a rule and passed under the UAPA. He said that the only thing a policy can do is dictate the internal working of the Commission. Commissioner Northern then reiterated that he believes it should be by rule for clarity purposes. If an individual is acting on their own, outside the purview of the firm, then that firm or principal broker has no liability in regards to the actions of that individual. Commissioner McMullen stated that there could be some question as to liability because a principal broker who is properly supervising their affiliates could not turn a blind eye if an affiliate was doing something inappropriate. Commissioner Flitcroft suggested that the question be investigated at ARELLO and those who attend the conference can report back.

Commissioner Griess made a motion to recess; seconded by Commissioner Alexander; unanimous vote; motion carried.

Chairman Stephenson recessed the meeting on Wednesday, April 3, 2013 at 4:36 p.m.

March 7, 2013

The Tennessee Real Estate Commission convened on Thursday, April 4, 2013 at 9:27 a.m. in Meeting Room 1A of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, Tennessee 37243. The following Commission Members were present: Chairman William "Bear" Stephenson, Vice-Chairman Michelle Haynes, Commissioner Grover Collins, Commissioner Janet DiChiara, Commissioner John Griess, Commissioner Isaac Northern, Commissioner Wendell Alexander, Commissioner David Flitcroft and Commissioner Austin McMullen. Others present: Executive Director Eve Maxwell, Education Director Steve McDonald, Assistant General Counsel Robyn Ryan and Assistant General Counsel Julie Cropp and Administrative Secretary Kelly Hestand.

The Commission returned to the discussion of the Reinstatement Policy, specifically the portion of the policy regarding the amount a person must pay in order to not have to attend the Commission meeting as a condition of reinstatement. Ms. Cropp stated that the policy was first promulgated and represented the Commission's desire to treat everyone equally. She advised that the Commission can deviate from the policy but they must make sure that if they choose to deviate from or change the policy then they must be able to articulate a reason why they are choosing to deviate thus ensuring that the Commission is not acting in an arbitrary and capricious manner. She stated that anyone wishing to ask for an exception would need to write a letter or appear before the Board to request special consideration. With respect to the licensee, Meredith McCullar, who contacted Commissioner Northern and submitted a letter to TREC asking for special consideration, the Board could consider his request or anyone else's request going forward on a case by case basis. She stated the Commission would have to make a decision based on the individual facts of a person's request. Commissioner Northern offered the rationale for reducing Mr. McCullar's fee that he can pay to not attend the meeting from \$1,500.00 to \$750.00. He stated that Mr. McCullar has been in real estate for forty plus years with, according to the licensee's letter, no infractions. He stated that Mr. McCullar is a well-respected commercial real estate licensee in Memphis. He advised that Mr. McCullar lived part of the year in Texas, which is where he is currently and when he was told what the penalty would be plus the fee to not have to attend the meeting, he believed the \$1,500.00 was excessive and therefore, he wrote a letter of appeal to the Commission. Commissioner Northern asked the Commission to consider reducing the fee for this licensee. **Commissioner Alexander made a motion to reduce the fee he must pay in lieu of attending the meeting from \$1,500.00 to \$750.00; seconded by Commissioner Griess; opened to discussion.** Commissioner DiChiara said that she feels that doing this for one person would set a bad precedent. She said that if someone had a medical reason or another reason that would make the decision not seem arbitrary then consideration should be made but she said that she does not believe just not wanting to attend the meeting is reason enough to grant a reduction in the fee. Commissioner

Haynes stated that she believes it makes more sense to take each request on a case by case basis instead of assigning a retroactive date to the policy as was discussed the day before. Commissioner Northern stated that Mr. McCullar is simply appealing to the Commission which is a right that licensees have always had. Commissioner McMullen asked how many people had paid the \$1,500.00 and Ms. Maxwell advised that 107 had paid since the inception of the policy. Deputy General Counsel Wayne Pugh, who was also in attendance at the meeting for this discussion, reminded the Commission that a policy and rule are two different things. He explained that a policy should only affect the inner workings of the Commission and Staff and how they handle certain matters administratively and as a Board. He advised the Commission that the legal division is going to go back and take a look at all of the current TREC polices and make sure they should not be rules instead to comply with the UAPA (Uniform Administrative Procedures Act). Mr. Pugh advised that the Commission should not apply a retroactive date but review these requests on a case by case basis and, if an exception is made, they must provide a reason that is not arbitrary. **The vote on Commissioner Alexander's motion to reduce the fee from \$1,500.00 to \$750.00 was 6 yes, 3 no (Commissioners DiChiara, Flitcroft and McMullen voted no); motion carried.**

At this point in the discussion, Commissioner Griess asked if they had made the motion to accomplish changing the fee from \$1,500.00 to \$750.00 going forward. After more discussion, **Commissioner Alexander made a motion to table future discussion regarding changing the policy to give Staff time to further review and come back with a recommendation; seconded by Commissioner Northern; no vote because Commissioner Griess offered a substitute motion to alter the policy on reinstatement to make the fee to not have to attend the meeting \$750.00, a reduction from \$1,500.00 and to apply no retroactive date; seconded by Commissioner McMullen; opened to discussion; unanimous vote; motion carried. When this motion carried, it negated Commissioner Alexander's motion to table.**

Deputy Wayne Pugh pointed out that the ALJ for the formal hearing had arrived and suggested they move forward with the formal hearing.

The Formal Hearing of TREC v. Walter "Walt" R. Lane, unlicensed, Docket # 12.18-120150A, Complaint # 2012014241 convened at 10:08 a.m. The Respondent was not present and a default hearing was held. It was ordered, adjudged and decreed that Respondent shall pay a civil penalty of One Thousand Dollars (\$1,000.00) for two separate violations of T.C.A. § 62-13-301 and shall pay said amount within thirty days of the entry of the order. Respondent was further ordered to pay all hearing costs in the matter which includes but is not limited to the costs of the Administrative Law Judge and the court reporter. The costs in the matter total Five Hundred Thirty Five Dollars (\$535.00), which total includes the court reporter costs of One Hundred Twenty Five Dollars (\$125.00), and the Administrative Law Judge costs of Four Hundred Ten Dollars (\$410.00). Respondent is therefore ordered to pay the total court costs of \$535.00 within thirty days of the entry of this order. The Final Order shall take effect upon filing with the

Administrative Procedures Division of the Office of the Secretary of State. The formal hearing adjourned at 12:03 p.m.

Chairman Stephenson recessed the meeting for lunch at 12:08 p.m. and reconvened the meeting at 1:30 p.m.

The Formal Hearing of TREC v. Jeffrey "Jeff" Alan Hale, license #317970, Docket # 12.18-120149A, Complaint # 2012010721 convened at 1:35 p.m. and the Respondent was present and not represented by legal counsel.

The following are the Stipulated Conclusions of Law.

1. The parties agree that Respondent's acts and conduct, as described in the foregoing Stipulated Facts, constitute a violation of Tenn. Code Ann. §62-13-312(b) wherein the Commission shall have the power to refuse a license for cause, or to suspend or revoke a license where it has been obtained by false representation, or by fraudulent act or conduct or where a licensee, in performing or attempting to perform any of the acts mentioned herein, is found guilty of (14) Violating any provision of this chapter, any rule duly promulgated and adopted under this chapter or the terms of any lawful order entered by the Commission and, Respondent may further be assessed the costs of investigatory and hearing costs pursuant to TENN. CODE ANN. § 56-1-311 and TENN. COMP. R. & REGS. 0780-5-11-.01.

2. The parties further agree that Respondent's acts and conduct, as described in the foregoing Stipulated Facts, constitute a violation of TENN. COMP. R. & REGS. 1260-02-.02, which states, in pertinent part:

(2) Within ten (10) days after the date of release, the licensee shall complete the required administrative measures for either change of affiliation or retirement. The licensee shall not engage in any activities defined in § 62-13-102 until a change of affiliation is received and processed by the Commission.

3. Parties agree that these violations constitute grounds of possible disciplinary action and civil penalties and the assessment of investigatory and hearing costs pursuant to TENN. CODE ANN. § 56-1-311 and TENN. COMP. R. & REGS. § 0780-5-11-.01.

NOW THEREFORE, in order to effectuate Respondent's desires and intentions, Respondent hereby consents and agrees to the following:

1. Respondent shall pay a civil penalty in the amount of Five Hundred Dollars (\$500.00).
2. Respondent shall pay the Court Costs and Court Reporter Fees in the total amount of Three Hundred Ninety Five Dollars (\$395.00).
3. The Civil Penalty and Costs and Fees total Eight Hundred Ninety Five Dollars (\$895.00)

and Respondent shall pay this amount no later than April 30, 2013.

4. Respondent 1 shall attend one (1) regularly scheduled two-day meeting of the Tennessee Real Estate Commission within One Hundred Eighty Days (180) from the date of this Order.
5. Respondent shall comply with all statutes and rules governing the licensure of real estate brokers in this state.
6. The Tennessee Real Estate Commission shall seek no additional sanctions against the Respondent by reason of the violations admitted herein. Respondent acknowledges that Respondent understands and agrees that this settlement in no way binds any other agency, division, department or political subdivision of the State of Tennessee relative to any factual allegations cited herein.
7. This Order was accepted by the Commission on April 4, 2012, the date this matter was set for formal hearing.
8. Respondent, by signing this Agreed Order, expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of this Agreed Order
9. Respondent understands and agrees that the Commission has the right to REVOKE Respondent's license based on Respondent's failure to comply with any term and provision within this Agreed Order. Respondent hereby acknowledges that failure to comply with any term contained within this Agreed Order, including but not limited to making timely payments as agreed and timely submitting proof of attendance at the Commission meeting shall result in the AUTOMATIC SUSPENSION of Respondent's license. If suspended, Respondent's license shall be reinstated only when said default is cured and proof of the cure is received by the Commission and Respondent has fully complied with the terms of the Agreed Order.

The formal hearing adjourned at 2:40 p.m.

Commissioner McMullen made a motion that the board/TREC refer all cases involving unlicensed activity to be heard by an Administrative Law Judge and not the full Commission; seconded by Commissioner Collins; discussion; ALJ Stovall advised that under the Administrative Procedures Act, the board may delegate any or all of the contested cases the board wishes to the ALJs and an initial order would be issued that would become a final order unless one of the parties appeals it to be heard by the board. He also said that the Commission could have a policy that all initial orders must be presented to the full Commission for their blessing before they become final orders. **The Commission voted on Commissioner McMullen's motion and the vote was 8 yes, 1 no (Commissioner Haynes voted no.); motion carried.** Judge Stovall stated that it would be best if Ms. Ryan, who litigates the cases, not

determine which case should be heard by the Commission or if it will be heard by an ALJ and that perhaps someone like Ms. Maxwell or Ms. Cropp could be the gatekeeper. Commissioner Haynes stated that she believes the board should have input on all cases and that responsibility should not fall on Staff and that everyone should have as much of an opportunity to review all of the information before a determination is made on who will ultimately hear the case. Mr. Ryan told the board that any case that comes to her for litigation is first presented on the legal report to establish probable cause before a formal hearing is authorized. **Commissioner Northern made a motion to reconsider Commissioner McMullen's motion giving Judge Stovall or another judge from his office, Legal Staff and Director Maxwell to meet and discuss the matter and report back to the full Commission before any final determination is made regarding the matter; seconded by Commissioner Haynes; 4 yes, 5 no; motion failed and the prior motion made by Commissioner McMullen stands.**

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

Chairman Stephenson adjourned the meeting on Thursday, April 4, 2013 at 2:55 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: APRIL LEGAL REPORT
DATE: April 3-4, 2013

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

- 2012022011**
Opened: 10/23/12
First License Obtained: 7/2/01
License Expiration: 3/7/14
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

February 2013 Meeting:

Complainant was the buyer of a new construction home. Complainant contracted with the builder with Respondent (affiliate broker) acting as facilitator. Complainant states that Complainant was told to bring any issues during construction to Respondent. From the correspondence provided, it appears that Complainant and Respondent were in frequent contact throughout the process. Complainant states that there were issues during building such as walls in the wrong places, which Complainant states that Respondent assured Complainant that Respondent would address with the builder. Complainant states that the issues were not resolved, and Respondent's principal broker became involved with communicating with Complainant. At this point, Complainant states there were a number of problems, including footers, walls, windows, and room dimensions being wrong. Complainant states that Complainant was released from the contract due to the problems. Complainant alleges that the problems were the fault of Respondent who did not resolve them, and Complainant states that Respondent was unprofessional.

Respondent submitted a response stating that Respondent met with Complainant about building a home, and when the builder, who was a client of Respondent's, became involved with building Complainant's house, Respondent states that Respondent reviewed the agency terms, and the parties agreed that Respondent would be a facilitator in the transaction. Respondent states that Complainant wanted to shop for finishes outside of the builder selections despite the fact that it was a spec home. Respondent states that communication with Complainant took place primarily through e-mail, and Respondent states that every time Complainant contacted Respondent with a problem, Respondent contacted the builder with the concern. Respondent states that Complainant sent several "nasty" e-mails regarding the problems, which resulted in Respondent asking Respondent's broker to become involved. At that point, the principal broker became designated agent for Complainant and Respondent represented the builder. Respondent states that Complainant would not meet with the parties in person to resolve some of the building issues. Eventually, Respondent states that the building stopped and Complainant was released from the purchase of the home due to problems which the parties could not resolve. Based on the documentation within the file, there does not appear to be a violation by Respondent.

Recommendation: Dismiss.

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

March 2013 Meeting:

New Recommendation: Commissioner DiChiara to discuss.

DECISION: Because Commissioner DiChiara has not yet had the opportunity to fully review the file in order to report, the matter was deferred until the next meeting.

New Recommendation: Commissioner DiChiara to discuss.

DECISION: Commissioner DiChiara recommended legal counsel's original recommendation of dismissal. The Commission voted to accept the recommendation to dismiss. Commissioner DiChiara abstained from the vote on the matter.

**2. 2012022021
Opened: 11/15/12**

History: No Prior Disciplinary Action - Unlicensed

Complainants attended a presentation given by Respondent (unlicensed entity) for membership into a vacation travel club. At the presentation, Complainants traded in their time-share and received a discounted price for membership into Respondent's vacation travel club which provided discounted travel pricing for its members. Complainants submitted documentation showing that they signed up for and paid for the vacation travel club membership and traded Complainant's time-share to a company located in another state, receiving a discounted price on the vacation travel club membership. Complainants state that they later asked to be released from their vacation travel club contract due to personal reasons, and Complainants state that Respondent has not returned Complainant's money. There was no response submitted to the complaint, but subsequent correspondence from Complainants states that Complainants have received a refund. Because Respondent is unlicensed, attempts were made to gather additional information to determine whether Respondent should be licensed with TREC. An auditor visited Respondent and obtained information that Respondent is not involved with the time share transfers (the transfers are handled by a separate company in another state which was referenced in Complainant's document regarding the time-share transfer), and Respondent is not compensated for the transfers, which was confirmed in a conversation with one of the owners of the travel club, who stressed that Respondent is not involved in time share transfers but only sells memberships into a travel program allowing members to have discounts on travel for condos, motels, airfare, cruises, etc. Based on the documentation provided and obtained, it does not appear that Respondent is engaged in unlicensed activity.

Recommendation: Dismiss.

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

**3. 2012022261
Opened: 10/31/12
First License Obtained: 11/17/03
License Expiration: 7/2/13**

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

February 2013 Meeting:

Complainants were prospective buyers who contacted Respondent (principal broker) for assistance due to Complainants' interest in a property which was listed for sale. Complainants then entered into a buyer's representation agreement with a specified period of approximately three (3) months with Respondent, and the parties viewed the home. The home was a foreclosure, and Complainants made an offer, but Respondent verbally notified them that the seller did not accept the offer. Complainants then began discussing building a home, and Respondent introduced them to a builder. Approximately one (1) month after the expiration of the buyer's representation agreement, Complainants entered a contract with the builder to build a home. Later, Complainants state that they learned that Respondent had purchased the foreclosure home which the parties had viewed. Complainants state that Respondent then sold the house for a profit and is now the listing agent for the property, which the owner listed for sale. The building of the home continued, and issues arose with a window and a ceiling, which Complainants indicate were resolved. Complainants state that issues arose with the builder's inability to provide the type of hardwood floors specified in the contract. Due to this and other issues with building the home, it appears that finishing the home and the closing got delayed. Complainants state that Respondent prepared new documents, which included a new contract reflecting price changes as a result of issues which arose during building, and Complainants consulted an attorney. It appears that all parties obtained attorneys who attempted to resolve the floor issue. Complainants state that the builder listed the home for sale with Respondent.

Respondent submitted a reply stating that Complainants' offer on the foreclosure home was not accepted due to the offer price, which was substantially lower than the original list price. At that point, Respondent and Complainants discussed building a home, and they began looking at the builder's homes and Respondent introduced Complainants to the builder and a contract was signed between Complainants and the builder. At that point, the buyer's representation agreement had expired and Respondent became a facilitator. Later, Respondent states that Respondent and Complainants were discussing investment properties and Respondent told Complainants that Respondent had later purchased the foreclosure home after the price had been reduced. As to the issues with the home being constructed, Respondent states that, during construction, multiple flooring suppliers advised the builder that the specified type of hardwood floors was not recommended. Respondent states that Complainants insisted on pursuing this type of hardwood flooring, and Respondent states that Complainants would not make their selection. Nearing the end of the contract term, Respondents state that Complainants selected flooring but were over budget. Due to these issues and the first contract expiring, Respondent states that Respondent attempted to put together a new contract to attempt to resolve the issues. The parties obtained attorneys, and, unable to come to a resolution on the contract, the builder instructed Respondent to list the home for sale. Respondent asserts that Respondent did everything to the best of Respondent's ability and states that Respondent and Respondent's attorney have attempted to contact Complainants' attorney about resolving the earnest money, but Complainants' attorney has not been responsive. The file does not contain a written request for

disbursement of earnest money, and it appears that Respondent tried to send an Earnest Money Disbursement and Mutual Release of Purchase and Sale Agreement form to the builder and Complainants, but it does not appear that anyone responded or signed same. Based on the correspondence provided by the parties, it appears attorneys are involved, and, though the correspondence does not indicate that litigation has not been filed, there appears to be a possibility in the future. The documentation in the file appears to indicate that this is a contractual issue between the parties.

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 discuss.

DECISION: Commissioner Alexander recommended a Consent Order for violations of T.C.A. § 62-13-405 and T.C.A. § 62-13-403(1), said Consent Order to require Respondent to attend one (1) entire meeting of the Commission within one hundred eighty (180) days of Respondent's execution of the Consent Order and Respondent must also complete four (4) hours of continuing education in ethics and sixteen (16) hours of continuing education in contract writing within three hundred sixty-five (365) days of Respondent's execution of the Consent Order. The Commission voted to accept Commissioner Alexander's recommendation. Commissioner Alexander abstained from the vote on the matter.

4. 2012023691

Opened: 11/13/12

History: No Prior Disciplinary Action - Unlicensed

Complainant states that Respondent (unlicensed individual) is operating an unlicensed property management company.

Respondent submitted a response stating that Respondent was unaware that Respondent was in violation of TREC's laws and/or rules by operating Respondent's business. Respondent indicated in the response that Respondent is in the process of attempting to obtain proper licensure. A TREC auditor visited Respondent and obtained documentation that Respondent has been managing a number of properties for a fee and performs management activities such as collecting rents and holding security deposits. Respondent informed the auditor that Respondent was unaware that Respondent needed licensure, and, after receiving this complaint, Respondent completed the pre-licensing education and plans to take the test in the near future to obtain licensure and plans to obtain proper licensure for the property management firm.

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

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

5. **2012025501**
Opened: 12/7/12
First License Obtained: 2/3/04
License Expiration: 5/28/15
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

6. **2012025502**
Opened: 12/7/12
History: 2012011931 - Closed \$500 CO (unlic.)

Complainant is the owner of several properties for which Respondents' firm was managing. Respondent 1 was the principal broker of the licensed firm at the time that the allegations contained in the complaint took place. Respondent 2 was the owner of the firm and was unlicensed. Complainant states that the firm has failed to turn over tenant deposits after receiving a termination letter from Complainant in August 2012, and the firm has failed to turn over remaining rents due for August as well as September. Complainant states that tenants paid rents in September and have receipts, but the tenants show as delinquent in the rent rolls provided to Complainant. Complainant also states that after the firm was terminated, someone trespassed on the property and took the appliances and solicited tenants to go to other properties. Complainant states that the firm did not turn over complete leases from current tenants, did not provide bids for work to be done and billed Complainant for work that was not done. Complainant also states that the firm took cash payments from tenants and then said tenants did not pay, that the firm has failed to appear in court as Complainant's representative, that the firm violates housing codes, and rents to people without substantiating their identities. Complainant provided documentation consisting of a management agreement for some of Complainant's properties which was made between Complainant and an unlicensed firm which was also owned by Respondent 2 as well as some e-mail correspondence, a court document showing a judgment which Complainant states shows that the firm failed to go to court for Complainant, as well as a number of rent rolls provided to Complainant by the firm, which Complainant states substantiate Complainant's allegations. Further, Complainant attached copies of documents indicating multiple judgments against Respondent 2 and Respondent 2's other company.

Respondent 2 did not submit a response to the complaint. Respondent 1 submitted a response stating that there is a dispute between Respondent 2 and Complainant regarding construction and maintenance bills (it appears Respondent 2 also owned a construction company). Respondent 1 states that, as Respondent 1 understands it, the only allegation against the real estate firm is the allegation of improper handling of deposits, to which Respondent 1 states that there are no security deposits on Complainant's leases, but instead the firm charges each tenant a non-refundable acceptance fee at the time of lease which is not held in escrow but is used to offset the

costs of making the unit ready to rent with the excess returned to the owner. Respondent 1 attached copies of three (3) leases. Respondent 1 states that when Complainant terminated the property management services of the firm, Complainant had an outstanding balance with Respondent 2's construction company for unpaid bills, and non-refundable lease fees and rents which Complainant claims are owed were used to offset the construction balances. Respondent 1 states that the leases were given to Complainant or Complainant's representative in a reasonable time frame. Respondent 1 also states that the firm utilized identity verification documents for tenants. As to Complainant's allegations of trespass, altering rent rolls, violating housing codes, etc., Respondent 1 denies the allegations. Respondent 1 states that Complainant's investment into the housing units has not met Complainant's expectations, but that is not the fault of the firm.

Complainant submitted additional information stating, in part, that Complainant does not have the leases provided by Respondents and Complainant does not think the people on the leases exist. Complainant states that the utility company will not allow Complainant to turn on utilities at some of the addresses because utilities were being stolen, and Complainant could not provide the utility company with leases to show that someone else was in the units and was responsible. Complainant states that the firm places tenants that do not stay longer than 2-3 months and leave.

The documentation provided was unclear as to what was taking place. As legal counsel was preparing to take steps to gather additional documentation, information was received that Respondent 2 was suddenly deceased. Telephone calls were made to Complainant and Respondent 1, who it appears left the firm as principal broker in February 2013 (there is currently no principal broker for the firm), in an attempt to gather information. Complainant stated that Complainant's dealings were solely with Respondent 2, and was not even aware that Respondent 1 was involved. Complainant stated that Complainant has hired a new management company and states that the firm owes Complainant money, but at this point, Complainant's focus is on obtaining all lease agreements to resolve the utility issue. Respondent 1 confirmed that Respondent 1 had left the firm in February over differences with Respondent 2 regarding the handling of the firm and stated that the firm was in the process of shutting down with the death of Respondent 2. Respondent 1 stated that when Respondent 1 joined the firm as principal broker, Respondent 2 agreed to close the unlicensed firm Respondent 2 had been operating and start a compliant firm. Respondent 1 states that Respondent 1 later found that the unlicensed company was not closed as quickly as Respondent 2 had agreed, that Respondent 2 maintained control of the operating account and would not allow Respondent 1 control over it. Respondent 1 stated that, due to differences regarding the amount of supervision Respondent 1 should be allowed and changes to the firm's practices, Respondent 1 made the decision to leave in February and told Respondent 2 that a full-time principal broker should be placed to supervise the property management. Respondent 1 stated that all documentation relating to the transactions with Complainant was held with the firm and provided contact information for the individual responsible for the firm's shutting down. An auditor was quickly sent in an attempt to gather documentation, but when the auditor arrived, the offices were closed and deserted and the auditor found only a sign stating that tenants were under new management of another entity (unlicensed) and only provided a phone number. Based on the death of Respondent 2, it is recommended that the complaint against Respondent 2 be closed. As to Respondent 1, the documentation which was provided and obtained does not appear to evidence a violation on the part of Respondent 1.

Recommendation: Close as to both Respondents.

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

7. **2012025661**
Opened: 12/11/12

First License Obtained: 1/11/89

License Expiration: 10/24/14

E&O Expiration: 1/1/15

Type of License: Broker

History: No Prior Disciplinary Action

8. **2012025662**
Opened: 12/11/12

First License Obtained: 5/8/07

License Expiration: 5/7/15

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant's son is the owner of a property which has been managed by Respondents (Respondent 1 is a broker; Respondent 2 is an affiliate broker) for several years. Until mid-2012, Complainant states that there were no problems. Then, an existing tenant moved out due to a health problem. Complainant states that Complainant's son only received a partial rent payment for the following month, then did not receive any rent for the following month, and was delayed in getting a return of the first tenant's security deposit. Complainant states that Complainant's son was told that another tenant was found who wanted to pay six (6) months up front, but Complainant states that Respondents did not provide a lot of information about the new tenants. Complainant listed other issues including questions regarding repair bills which were reflected on owner statements and which Complainant states that Complainant did not receive full information regarding said repairs, and Complainant's son received a return of a security deposit for a name that Complainant did not know or recognize with a deduction for an electricity bill which Complainant questions why this was Complainant's son's responsibility to pay because the property was unoccupied for the period of the electricity bill.

Respondents submitted responses addressing Complainant's concerns. As to the concern regarding the security deposit which was returned with a name Complainant did not recognize, Respondents state the person was a tenant who had been named on the owner statements sent since 2010. That particular tenant became ill, left, and the security deposit was forfeited by that

tenant. After the tenant left, Respondents discovered the electricity had been turned off for nonpayment by the tenant, and the property needed repairs such as painting and carpet cleaning. Respondents state that electricity was turned on so that repairs could be completed to ready the property for a new tenant and was billed to Complainant's son. Respondents state all owner statements were very detailed and supplied copies of same. Regarding partial rental payments, Respondents state that such payments were remitted to Complainant's son after invoices were received for repairs to the unit. Respondents state they were in communication with Complainant, and Respondents state that they also had direct communication with Complainant's son on several issues of concern to Complainant including the tenant who paid rent in advance and provided copies of email evidencing same. Respondents provided documents, including the new tenant's security deposit and rental agreement, as well as owner statements, repair invoices, and a copy of the property management agreement between Complainant's son and Respondents.

Documentation provided appears to indicate that Respondents documented and accounted for repairs, payments for work done, and payments to Complainant's son and indicates that there was no violation by Respondents.

Recommendation: Dismiss.

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

9. 2012025711

Opened: 12/13/12

First License Obtained: 6/30/08

License Expiration: 6/29/14

E&O Expiration: Uninsured

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Respondent was broker released on or about 12/10/12

10. 2012025721

Opened: 12/14/12

First License Obtained: 6/20/94

License Expiration: 6/3/13

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant is the owner of a vacation home which is located near a number of homes which are being rented by an LLC of which Complainant states Respondent 1 (affiliate broker) is a partner and contact for potential renters. Respondent 2 is Respondent 1's principal broker. Complainant states that Respondent 1 and Respondent 1's brother have rented, "...all of these homes listed on their web site for years, packing in as many young kids as possible, and hurting the property values." Complainant states that Respondent 1 is running a property management company without a broker because Complainant has contacted the firm at which Respondent 1 is affiliated and was told that the firm is not connected with Respondent 1's LLC. Complainant states that Respondent 1 is required to advertise the firm name and number where Respondent 1 is affiliated when Respondent 1 advertises vacation rentals for Respondent 1's LLC.

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

Complainant submitted a number of additional letters stating that Respondent 1 and Respondent 1's brother continue to operate what Complainant calls "a large scale property management company" without any involvement from the firm where Respondent 1's affiliate broker license is held. Complainant also included photos of properties near Complainant's home for which Respondent 1's LLC handles the vacation rentals. Complainant states that the renters are out of control, that the renters trash the homes they are renting, and that renters park too many cars in the roadway which blocks access. Complainant states that Complainant is frustrated at having spent a large amount of money on a vacation home where there are out of control renters and an illegally managed property management company. Further, Complainant states that Respondent 1 advertises vacation rentals in the development on a national vacation rentals website in which Respondent 1 calls himself the owner of the home (the website has a link to "e-mail owner" which e-mails Respondent 1). These national websites for vacation rentals state that they are

used both for owner vacation rentals as well as privately owned properties offered through rental managers (which is what Respondent 1 appears to be doing). The website profile for one of the properties states that Respondent 1 is a realtor in Tennessee, and, at this point, Respondent 1 was released by Respondent 1's broker.

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

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

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

11. 2012025731

Opened: 12/14/12

First License Obtained: 12/3/10

License Expiration: 12/2/14

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant was the seller of a home, and Respondent (affiliate broker) represented the buyers who purchased the home. Complainant states that, after the house went under contract and after the home inspection had been completed, Complainant heard banging on Complainant's roof and discovered Respondent and another individual on the roof unannounced, and Complainant states that Respondent should have notified Complainant or Complainant's broker that this would be done. Secondly, Complainant states that three (3) days before closing, Respondent did the final walkthrough with the buyers, and, at that time, Respondent gave the buyers a key to the home from the lockbox. Third, Complainant states that two (2) days before closing, Complainant gave permission for Respondent to allow an electrician in the home, and, an hour later, Complainant discovered the electrician and the buyers in the home without Respondent present. Fourth, Complainant states that, shortly before closing, Respondent asked Complainant to sign a revised Repair Counter Proposal from Complainant to the Buyer Inspection Contingency Removal/Notification. The original Repair Counter Proposal from Complainant stated that Complainant would provide an allowance of a sum of money to buyers in lieu of repairs in the

form of closing costs and prepaids at closing. Complainant states that Respondent told Complainant's broker that there would be problems with processing the buyers' loan if Complainant did not sign a revised Repair Counter Proposal which provided for the same allowance of money in the form of closing costs and prepaids at closing but eliminated the repair reference, which Complainant states that Complainant felt forced to sign. Fifth, Complainant states that on the day before closing, Complainant discovered several items in the home including paint materials, clothing, and drinks in the home and the walls had primer and paint on them, which was done by the buyers before closing.

Respondent submitted a response addressing each of Complainant's issues. First, as to the unannounced roof top visit, Respondent says that, after the inspection, a roofing sub-contractor met Respondent at the home and it appeared no one was home. Respondent states that once Respondent realized Complainant was home, Respondent spoke with her and apologized for the lack of notice. Secondly, Respondent states that the walkthrough was three (3) days before closing, and Complainant had already moved out. When the buyers asked for a key from the lockbox, Respondent admits that Respondent was in error in providing the key and says this mistake will not happen again. Third, Respondent states that Respondent met the electrician and the buyers at the property so the buyers could get a bid, and Respondent admits leaving them alone at the home for about an hour while Respondent took care of business a few blocks away before returning. Fourth, as to the Repair Counter Proposal, Respondent states that it was Complainant's broker's responsibility to help Complainant understand that the buyer's lender had made the request to simply remove the word "repair" so that it would move through underwriting more smoothly. Fifth, Respondent admits that the buyers started painting the day before closing since they had a key, but this was done without Respondent's knowledge.

It appears that Respondent's act of providing the house key to the buyers several days before closing, which allowed the buyers to access the property and paint before closing, shows a lack of diligence on the part of Respondent.

Recommendation: Consent Order for failing to diligently exercise reasonable skill and care in providing services to all parties to the transaction and failing to provide services to each party to the transaction with honesty and good faith in violation of T.C.A. § 62-13-312(b)(14) and § 62-13-403(1) and (4) with a civil penalty of \$500.00 plus attendance by Respondent at one (1) entire 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.

12. 2012025881
Opened: 12/21/12
First License Obtained: 9/11/98
License Expiration: 3/28/14
E&O Expiration: 1/1/15
Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainants were the owners of a home which they sold to Respondent (affiliate broker) and spouse in 2006 for use by Respondent and spouse's grown son and children. The property was originally listed with the principal broker of Respondent's firm but was withdrawn, and the subject property was subsequently sold through a private sale between the parties. The parties signed a Purchase and Sale Agreement which provided that Respondent and spouse purchased the home with a primary mortgage and included in special stipulations that Complainants would carry a second mortgage of thirty thousand dollars (\$30,000.00) at a specified interest rate with a balloon payment in three (3) years. Complainant states that prior to signing the agreement, there was a verbal agreement that Complainants would make a twenty thousand dollar (\$20,000.00) loan to Respondent and spouse to be paid in two (2) years then balloon. Complainants allege that Respondent altered that agreement on the Purchase and Sale Agreement and Complainants signed the papers in good faith. Respondent has paid the monthly payments, but was unable to pay the balloon payment at the time due, so, in 2009, the parties agreed to extend the balloon payment deadline for an additional year. Complainants attached copies of the recorded Deeds of Trust to the primary lender bank and to Complainants which were prepared by an attorney, and the primary lender's Deed of Trust has a future advance clause with an initial maturity date in 2009 and a final maturity date many years later, which appears to contemplate that the amount owed to Complainants would be rolled into the primary mortgage at that time. Documentation submitted by Complainants spanning the time since the 2006 sale indicates that Respondent continues making the specified monthly payments but tells Complainants that Respondent is financially unable to obtain financing to make the balloon payment to Complainants due to personal reasons and the decline in the real estate market. Complainants contacted Respondent's principal broker to complain about Respondent's alteration of the financing agreement in 2006 and failure to pay off the loan from Complainants, which was met with a response denying wrongdoing by Respondent. Complainants state that Respondent's son keeps the home in a poor condition and sent pictures showing the condition of the home's exterior.

Respondent's principal broker submitted a statement that the property was not listed when sold but was sold through a private sale, that the documentation for the mortgages was completed by the bank that was the primary lender, that Respondent's financial difficulties have prevented Respondent from being able to make the balloon payment, and that Complainants have been harassing Respondent. Respondent submitted a response denying any fraud or misconduct. Respondent denies altering any documents relating to the financing agreement between the parties. Respondent states that Respondent has made best efforts to honor Respondent's debts and will continue to do so, but the 2008 death of Respondent's husband and the crash of the housing market has caused Respondent great financial difficulty. Respondent states that Respondent has and will continue to try to deal with Complainants in good faith but states that Complainants have threatened Respondent, Respondent's employer and Respondent's family which resulted in Respondent having to hire an attorney. Respondent attached a letter from the attorney to Complainant's attorney from mid-2012 indicating that the parties dispute the total amount of money owed under the current note and asking to work on negotiating resolution of the note. Said letter also directed Complainants to direct all future communications regarding accusations against Respondent to the attorney instead of third parties. There does not appear to be a violation of TREC's laws and/or rules by Respondent.

Recommendation: Dismiss.

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

13. 2012026571

Opened: 1/9/13

First License Obtained: 9/29/72

License Expiration: 11/21/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant was the seller of a home, and Respondent (principal broker) represented the buyers who purchased the home. Complainant states that the home's location and lot size required a fence with a locked gate, new door locks, and a security system. Approximately two (2) weeks before closing was scheduled to take place, Complainant states that Complainant was at the home packing up Complainant's belongings when Complainant noticed a group of people trying to unlock the door into the home, who turned out to be the buyers who had arrived to show the house to some family members. Complainant states that the buyers had been given keys to the gate and door as well as the security code by Respondent, who told the buyers that they could go to the home anytime without Respondent escorting them or notifying Complainant's broker. Complainant states that Complainant is not sure that this is the only time that the home was accessed because Complainant found the gate unlocked at another time. Complainant states that Respondent should not have given the buyers the keys and security code prior to closing because Complainant's furnishings were still inside, and Complainant was still liable for the home.

Respondent submitted a response stating that when the incident happened, the buyers were under contract, termite and home inspections had been completed, and the lender had approved the loan. Respondent states that the buyers wanted to show the home to family over a holiday weekend, and Respondent gave them the keys. Respondent states that if Respondent had known that Complainant was there, Respondent would not have given the buyers the keys. Respondent also states that Complainant allowed the buyers in the home. As to the unlocked gate, Respondent states that Respondent may have failed to properly lock it or it may have been someone else.

Recommendation: Consent Order for failing to diligently exercise reasonable skill and care in providing services to all parties to the transaction and failing to provide services to each party to the transaction with honesty and good faith in violation of T.C.A. § 62-13-312(b)(14) and § 62-13-403(1) and (4) with a civil penalty of \$500.00 plus attendance by Respondent at one (1) entire 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.

14. **2012026601**
Opened: 1/9/13
First License Obtained: 10/30/89
License Expiration: 9/17/13
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action
15. **2012026621**
Opened: 1/9/13
First License Obtained: 2/3/95
License Expiration: 1/11/14
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

Complainant was an unrepresented buyer and Respondent 1 (affiliate broker) represented the seller in a transaction. Respondent 2 is Respondent 1's principal broker. Complainant signed a contract to purchase a home listed by Respondent 1 shortly after the home was listed. Complainant states that Complainant provided one thousand dollars (\$1,000.00) as earnest money and states Complainant was told and understood that if Complainant's financing was not approved within the time period of the contract, Complainant's earnest money would be returned. Complainant states there were extensions to the contract and it ultimately expired on September 25, and the financing was approved on October 9. Complainant states that Respondent 1 harassed Complainant and Complainant's brother on the phone and e-mails, stating one e-mail was threatening. Complainant states that Respondents have refused to return the earnest money and feels Respondent 1 is taking advantage of Complainant due to Complainant's age and health. Complainant provided a copy of a letter sent by Complainant to Respondents' firm on November 2 stating that Complainant was not in default and was glad the seller sold his home but asking for return of Complainant's earnest money, stating that Complainant's loan was not approved until approximately two (2) weeks after the contract expired, and Complainant did not extend the contract were because: 1) Complainant perceived an e-mail from Respondent 1 as a threat; 2) Respondent 1 meddled in private affairs by calling Complainant's brother and the bank; and 3) Respondent 1 aggravated Complainant and Complainant's spouse with e-mails and phone calls.

Respondents each submitted responses attaching documentation including the listing agreement, the purchase and sale agreement and all amendments, signed disclosure forms, and e-mail communications. Respondent 1 states that the closing date was extended twice at the request of Complainant with the agreement of the seller with the final extension having an expiration date of September 25. Respondent 1 further states that after signing the contract and showing the house

for a second time in July, Respondent 1 had difficulty reaching Complainant by phone or by email. Respondent 1 states that the seller asked if the house was going to close as there had been nothing further heard from Complainant so after repeated tries, Respondent 1 finally called Complainant's brother who stated Complainant was in Florida and there might be a problem with the loan. Respondent 1 asked Complainant's brother to have Complainant call but there was no call. Respondent 1 then called the bank to determine if the loan was in process and the banker stated he would check and get back to Respondent 1 but did not. Respondent 1 states that after about fifty (50) attempts to call and e-mail attempts, Respondent 1 sent an email on September 25 (the email Complainant found threatening) stating that the contract would expire that night, that Complainant might be in default of the legal contract if Complainant did not contact Respondent 1, that Complainant might be responsible for real estate commissions, might forfeit earnest money and may need to seek legal counsel. Respondent 1 again states there was no response. Respondent 1 states that the next time Respondent 1 heard from Complainant was on November 1 when a loan approval letter dated October 9 was faxed to Respondent 1 by Complainant. On November 2, Complainant sent a fax stating that Complainant was not in default and asking for return of earnest money and the file was sent to Respondents' attorney. Respondent 2 submitted a response confirming the information submitted in Respondent 1's response and stating that Respondent 1 diligently attempted to contact Complainant and could not elicit any sort of response. Respondent 2 states that there were unsuccessful attempts to clarify a September 18 e-mail from Complainant stating that Complainant was changing the type of financing, to which no clarification was given by Complainant. Respondent 2 states that on November 1, when the loan document was faxed, Respondent 2 was able to call Complainant and explained that the contract had expired, and that because Complainant had not closed on September 25, Complainant had defaulted. Respondent 2 states that Complainant stated that they no longer had a contract because the closing date had passed, and Complainant cursed at Respondent 2 and hung up. Respondent 2 states that when Respondents received the November 2 letter from Complainant stating Complainant was not in default, Respondents gave the file to their attorney. Respondent 2 further states that Complainant owns two homes and is under contract for purchase another home in this same area and finds it hard to believe that Complainant does not understand contracts. The sales contract had a provision that earnest money could be forfeited if buyer defaulted and also had a provision that if the buyer was unable to secure a loan the buyer could terminate the contract upon written notice and with copy of lender's loan denial letter. The loan document provided is dated October 9 and there was nothing provided showing Complainant was unable to secure a loan.

Legal counsel contacted the attorney for Respondents, who stated that Respondents provided a copy of the file to the attorney in early November 2012. Respondents' attorney states that he had just been diagnosed with a serious illness and was unable to address Respondents' concerns until shortly after Christmas (Respondents' attorney is a solo practitioner and had no one covering for him). Respondents' attorney states that the firm tendered the earnest money to him on December 28, 2012, but the attorney did not get the interpleader filed and the money submitted to the court until February 14, 2013, due to back-ups due to his illness and surgery. Respondents' attorney states that the hearing on the interpleader action is scheduled for April 4. It appears that, after receiving legal advice from Respondents' attorney, it was determined the earnest money should be interpleaded, but this was not done within twenty-one (21) days of the request; however, that appears to have been due to circumstances beyond Respondents' control.

Recommendation: Close as to Respondent 1. Letter of instruction to Respondent 2 regarding Rule 1260-02-.09, subsection (6) of which lists a number of conditions which allows a broker to properly disburse funds from an escrow account and subsection (7) of which states that funds should be disbursed or interplead within twenty-one (21) calendar days from the date of receipt of a written request.

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

- 16. 2012026631**
Opened: 1/11/13

First License Obtained: 2/5/90

License Expiration: 6/8/13

E&O Expiration: 1/1/15

Type of License: Broker

History: No Prior Disciplinary Action
- 17. 2012026632**
Opened: 1/11/13

First License Obtained: 4/1/05

License Expiration: 10/9/14

E&O Expiration: N/A

Type of License: Firm

History: No Prior Disciplinary Action
- 18. 2012026633**
Opened: 1/11/13

First License Obtained: 12/15/78

License Expiration: 10/16/14

E&O Expiration: 1/1/15

Type of License: Broker

History: No Prior Disciplinary Action
- 19. 2012026634**
Opened: 1/11/13

First License Obtained: 7/25/96

License Expiration: 6/2/13

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complaint opened based on copy of Complaint which was filed in a court of law and sent to TREC by two individuals who are plaintiffs in the Complaint in the capacity of court-appointed receivers for several listed receivership companies. Several defendants are named in the court action, including Respondent 1 (broker) and Respondent 2 (firm). Respondent 3 (broker) and Respondent 4 (principal broker) are not named as defendants in the action or mentioned in the Complaint, but complaints were opened against these individuals since Respondent 4 is the current principal broker of Respondent 2 firm and Respondent 3 was the previous principal broker of Respondent 2 firm.

The Complaint indicates that the plaintiffs were appointed by the court as receivers for several companies to conserve and/or liquidate the assets of the companies and investigate unknown assets. The Complaint states that the plaintiffs discovered a number of irregularities attributable to Respondent 1, who controlled a majority interest in the receivership entities. The lawsuit contains a variety of allegations, including but not limited to various acts of false loan transactions, inappropriate distributions, fraudulent transfers, and altered contracts which were done to benefit the defendants during the period of 2006-2011. With regard to Respondent 2 firm, the Complaint states that Respondent 1 owns Respondent 2 firm and alleges that Respondent 1 charged excessive real estate commissions to one of the receivership entities through Respondent 2 firm during that period.

Respondents submitted brief responses stating that the matter is currently in litigation and, while Respondents deny the allegations, Respondents, on the advice of counsel, requested that the matter be delayed until the litigation is resolved. This civil litigation, in which Respondents 1 and 2 are named defendants, is currently active, and more information will be uncovered through the course of the litigation which would be important to the Commission's determination of this matter. At this time, there is no indication of violations by Respondents 3 and 4, and Respondents 3 and 4 are not parties to or mentioned in the court Complaint.

Recommendation: Consent Order for litigation monitoring as to Respondent 1 and 2. Close as to Respondents 3 and 4.

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