

TENNESSEE REAL ESTATE COMMISSION MINUTES

JUNE 5–6, 2013

The Tennessee Real Estate Commission convened on Wednesday, June 5, 2013 at 9:06 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. Commissioner McMullen left the meeting at 10:00 a.m. and returned at 2:05 p.m. Others present: Executive Director Eve Maxwell, Education Director Steve McDonald, Assistant General Counsel Robyn Ryan 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 Wednesday, May 29, 2013. Also, this meeting has been noticed on the tn.gov website since May 29, 2013.

The first order of business was the adoption of the agenda for the June 2013 Commission meeting. Commissioner Flitcroft asked that a section of the agenda be set aside to recognize, thank and commend outgoing Commissioner Northern for his 10 years of service to the TREC. **Commissioner DiChiara made a motion to adopt the agenda as amended for the June 2013 agenda; seconded by Commissioner McMullen; unanimous vote; motion carried.**

INFORMAL APPEARANCES/REQUESTS FOR WAIVER OF THE 50 MILE RULE

Prior to the actual appearance, Commissioner Alexander offered his input on the 50 mile rule as it relates to the following requests by Mr. Jeffrey Evans. He stated that at the May meeting Ms. Maxwell had presented a letter that Mr. Evans had sent requesting a blanket waiver of the 50 mile rule. That request was denied and therefore Mr. Evans was now in Nashville with two of his applicants. Commissioner Alexander stated that the two applicants are not licensed and that Mr. Evans is licensed but that his firm is in Illinois. Commissioner Alexander spoke some about the reasons for the establishment and continued enforcement of the 50 mile rule and stated that he believes that waivers to the rule, when appropriate, were meant to be applied to principal brokers and licensees/applicants within the State of Tennessee; not out of state brokerage firms run by non-residents.

Jeffrey Evans, Principal Broker, license #325829, appeared with applicant David Pritchard and Sean Maxwell to request a waiver of the 50 mile rule. Mr. Evans explained his request and also his company's business model. Mr. Evans explained that he understands and appreciates the 50 mile rule as it relates to most brokers' ability to effectively supervise and manage their agents. He said he is requesting the Commission consider exempting two of his potential agents, Mr. David Pritchard and Mr. Sean Maxwell from this rule so that they might continue their brokerage structure and hire these two gentleman to work out of Tennessee and supervise them from his home office headquartered out Illinois to help allow his company to start conducting business in the State of Tennessee. He explained that the brokerage is headquartered out of Pittsfield, Illinois and specializes in selling hunting, recreational and farmland exclusively. He explained that the brokerage does not list homes unless they are on a larger rural property that they have listed. He stated that they are currently brokered in 13 states and have 80 agents licensed with their brokerage throughout those states. He advised that their business model and company structure is very different than most real estate companies in that their agents work in specific territories and are hand selected based upon not only their professional experience, but also on their ethics and integrity. He stated that also unlike many traditional real estate companies, their hiring process is very rigorous and that this process has allowed them to build a successful brokerage with what they would consider the most knowledgeable and trustworthy agents and brokers out in the field to serve the public and its best interest. He says that he understood that the Commission's question is how he, as principal broker, could adequately supervise these agents from out state. He stated that by utilizing today's technology at Whitetail Properties Real Estate, they are able to teach, coach, mentor and supervise their agents more effectively and more efficiently than 98% of real estate companies doing business across the country. He explained that they have three full time brokers in the office who are there to assist and interact with their agents on a daily basis. He advised that they have various methods of teaching and training that they feel develop their agents in the field to be knowledgeable and hardworking. He explained that every agent who is hired goes through a two day orientation at the main office in Illinois where they introduce and equip them for their careers in real estate. He advised they use webcams and have developed their own office software through which they interact with their agents. He advised that the entire sales force meets twice a year for a State of the Union performance review. He stated that his brokerage is also in the process of joining TAR to assist their agents in the additional training and education outlets that the TAR offers, including the code of ethics and the use of their formal contracts. He advised that with their current agent territory structure, they would only look to hire between 6 – 8 agents to represent the brokerage throughout the entire state of Tennessee.

Again, Mr. Evans asked for the exemption for Mr. David Pritchard and Mr. Sean Maxwell. Each individual applicant was to appear separately with Mr. Evans.

Jeffrey Evans, Principal Broker, license #325829, appeared with applicant David Pritchard first and requested the waiver for him. Mr. Pritchard spoke about his history and why he wished to work for Whitetail Properties. The Commission members discussed the request at length, asked many questions and considered all factors in this matter at great depth. Commissioner Alexander made a motion to deny both requests (Mr. David Pritchard and Mr. Sean Maxwell – neither of whom had any real estate experience); seconded by Commissioner Flitcroft; opened to further discussion; unanimous vote; motion carried.

Commissioner McMullen left the meeting at 10:00 a.m. but returned later in the afternoon.

INFORMAL APPEARANCES/REQUESTS FOR WAIVER OF THE 50 MILE RULE

Carolyn DiLoreto, Principal Broker of PSM Realty of TN in Ashland City, Tennessee requested to appear to discuss the possibility of getting the 50 Mile Rule waived for any all validly licensed and active Tennessee Affiliated Brokers who are employed by PSM Realty of TN, LLC or any licensee residing outside of Tennessee that will be employed by PSM Realty of TN, LLC in the future (if all other qualifications are met, even though a licensee might reside at a distance greater than 50 miles of the Office of PSM Realty of TN, LLC. Ms. DiLoreto explained that PSM Realty of TN, LLC solely lists and sells only properties owned and/or associated with Patten Sales & Marketing, Inland Management Corp. and National Land Partners. She stated that the TN Real Estate Commission is familiar with the aforementioned companies and has granted this waiver to the responsible brokers in the past. She advised that the companies; Patten Sales & Marketing, National Land Partners and Inland Land Management currently own communities in Ashland City, Oak Ridge and Waverly, TN. She explained that their business plan is to do a mass marketing campaign for date specific sales for which she, as principal broker, along with her affiliate brokers would be on site for the date of the sales. She stated that she would be directly supervising the licensed affiliates. She explained that after the specific sale in one location, the project will be shut down and they will all move to the next location and do another mass campaign. She stated that they would continue to rotate this cycle until all communities are sold out. Commissioner Alexander made a motion to deny the request for a blanket waiver for PSM Realty of TN but that Ms. DiLoreto may come in on an individual basis for Informal Appearances with her potential affiliates; seconded by Commissioner Northern; opened to discussion; vote: 6 yes, 0 no; Commissioner Flitcroft abstained; motion carried.

The Commission and Staff spoke about the service that Commissioner Northern has contributed over his 10 years of service on the Tennessee Real Estate Commission. They expressed how much they respect him and value him. Commissioner Northern spoke about his time on the Commission and thanked his fellow Commissioners for their kind words and spoke of how the Commission has given him time to learn and grow as a regulator as well as a practitioner.

LEGAL REPORT, ROBYN RYAN, ASSISTANT GENERAL COUNSEL

Ms. Maxwell spoke briefly about the Government Ops meeting that she attended with Vice-Chairman Michelle Haynes. She stated that all went well and that the proposed VLS rules (except the ones involving advertising) were approved and went into effect on June 2, 2013.

Next, Ms. Ryan, who was filling in for TREC's Assistant General Counsel Julie Cropp, presented the Commission with the following outline of Legislative Proposals prepared by Ms. Cropp for the Tennessee Real Estate Commission.

OUTLINE OF LEGISLATIVE PROPOSALS – TENNESSEE REAL ESTATE COMMISSION – MAY 28, 2013

Housekeeping Matters:

- Revision to T.C.A. § 62-13-303(a)(3)(A): remove language in subsection which states that affiliate brokers must complete the thirty (30) hour affiliate course within six (6) months of obtaining their affiliate broker's license. Instead, change the language to state that affiliate brokers must complete the thirty (30) hour affiliate course as a prerequisite to licensure (so as not to conflict with T.C.A. § 62-13-303(b)(2))
- Removal of T.C.A. §§ 62-13-303(e)(2)(B), 62-13-303(f)(2)(B), and 62-13-303(j)(2)(B): these subsections require that applications for affiliate broker's license, broker's license, and time-share salesperson's license must be accompanied by satisfactory proof of applicant's residency within the state

Other Matters:

- Revision to T.C.A. § 62-13-318: The Commission would like to amend the language of this statute, which currently requires completion of all education requirements prior to a licensee placing his or her license into a retired status. Instead, the Commission would like for a licensee to be able to retire his or her license without completion of all education requirements and, in the alternative, require the licensee to have all education requirements of a licensing period to become active again (with special consideration to military service members). The Commission made a motion on this at the January 2013 meeting which is reflected on page 3-4 of the minutes.
- Revision to T.C.A. § 62-13-110 or § 62-13-301: The Commission has many times expressed interest in "putting more teeth" into the unlicensed activity statute. Commissioner Flitcroft provided Eve and I (as well as the other Commissioners) with some proposed additional language to § 62-13-110, a copy of which is attached.

DISCUSSION OF PUBLIC ACT 420 (Fingerprinting Applicants) WHICH FOLLOWS:

State of Tennessee

PUBLIC CHAPTER NO. 420
SENATE BILL NO. 942
By Southerland
Substituted for: House Bill No. 944
By Ryan Williams, Sargent

AN ACT to amend Tennessee Code Annotated, Title 62, Chapter 13, Part 3, relative to licensure.
BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 62-13-303, is amended by adding the following as a new, appropriately designated subsection:

(l)(1) The commission shall require all applicants for initial licensure issued under this chapter, including but not limited to a time-share license, on or after January 1, 2014, to submit a complete and legible set of fingerprints, on a form prescribed by the commission or in such electronic format as the commission may require, to the commission or to the Tennessee bureau of investigation for the purpose of obtaining a criminal background check from the Tennessee bureau of investigation and the federal bureau of investigation.

(2) The commission shall refuse to issue a license to an applicant for initial licensure who does not comply with subdivision (1)(1); provided, a licensee who requests to renew an existing license issued under this chapter, or obtain a broker license after being licensed as an affiliate broker, shall not be required to submit a set of fingerprints pursuant to this subsection (1).

(3) The commission shall conduct a criminal background check of each applicant described in subdivision (l)(1) by using information:

- (A) Provided by the applicant under this subsection (l); and
- (B) Made available to the commission by the Tennessee bureau of investigation, the federal bureau of investigation and any other criminal justice agency.

(4) The commission may:

- (A) Enter into an agreement with the Tennessee bureau of investigation to administer a criminal background check required under this subsection (l); and
- (B) Authorize the Tennessee bureau of investigation to collect from the applicant the costs incurred by the department in conducting the criminal background check.

SECTION 2. The Tennessee Real Estate Commission is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with Title 4, Chapter 5.

SECTION 3. For purposes of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2014, the public welfare requiring it.

SENATE BILL NO. 942

PASSED: April 18, 2013

Signed by the Governor on May 16, 2013

Ms. Ryan advised the Commission that Ms. Maxwell had spoken with the director of one of the regulatory boards divisions who currently fingerprints applicants and got information on how to get the ball rolling on implementing the new law. Ms. Maxwell advised the Commission that they would need to begin seriously thinking about potential rules that will interpret and implement the statute. She stated that the Legal Department thinks TREC should move forward as soon as possible with discussing rules because there must be 60 days-notice before an actual Rulemaking hearing can be held. The Commission and Ms. Maxwell discussed the administrative logistics of implementing the new law.

Chairman Stephenson recessed the meeting for lunch at 11:35 a.m. and reconvened the meeting at 1:10 p.m.

After lunch, Chairman Stephenson also recognized the service of Commissioner Haynes. He explained that Commissioner Haynes was fulfilling the term of her late husband Charles Haynes and is up for reappointment at the end of her term (also June 30). He said that although he hopes very much that she be reappointed, he also wanted to recognize and thank her for her extraordinary service to TREC.

LEGAL REPORT, ROBYN RYAN, ASSISTANT GENERAL COUNSEL (continued)

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

Ms. Ryan "legal recommendations" as presented are those of TREC's regular Assistant General Counsel Julie Cropp. Ms. Cropp was unable to attend the meeting but did review all complaints and wrote the legal report and made recommendations. Ms. Ryan, stated during the legal report, that she has also reviewed the complaint files.

Attached to the end of these minutes is a copy of the legal report with all decision indicated.

- 1) 2012026901 &
- 2) 2012026902 – Commissioner Griess made a motion to accept legal counsel’s recommendation to Close as to Respondent 2 and as to Respondent 1, send a letter of instruction regarding T.C.A. § 62-13-309(a)(1)(A)’s requirement that each office shall have a real estate firm license; seconded by Commissioner Collins; unanimous vote; motion carried.
- 3) 2013000251 – Commissioner Flitcroft made a motion to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.
- 4) 2013000271 – Commissioner Northern made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 5) 2013000301 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.
- 6) 2013000441 – Commissioner Northern made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.
- 7) 2013000811 – Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner DiChiara; vote: 6 yes, 0 no, Commissioner Flitcroft abstained; motion carried.
- 8) 2013001111 – Commissioner Northern made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Collins; opened to discussion; unanimous vote; motion carried.
- 9) 2013001181 – Commissioner Griess made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 10) 2013001481 &
- 11) 2013001482 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Flitcroft; unanimous vote; motion carried.
- 12) 2013001591 &
- 13) 2013001592 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to Close as to Respondent 2 and as to Respondent 1, send a letter of instruction regarding Rule 1260-02-.09, subsection (3) of which states that brokers are responsible for deposits and earnest money accepted by them or their affiliate brokers, 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[shall] be disbursed or interplead within twenty-one (21) calendar days from the date of receipt of a written request; seconded by Commissioner Griess; unanimous vote; motion carried.

Commissioner McMullen returned to the meeting at 2:05 p.m.

- 14) 2013002561 – Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Haynes; unanimous vote; motion carried.
- 15) 2013002871 – Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Northern; unanimous vote; motion carried.
- 16) 2013003451 &
- 17) 2013003491 – Commissioner Flitcroft made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carried.
- 18) 2013006401 – Commissioner Flitcroft made a motion to discipline the principal broker (Respondent) for violations of the Broker’s Act and require he complete four hours of ethics continuing education within three months and attend a complete regularly scheduled TREC meeting within six months; seconded by Commissioner Alexander; opened to discussion; Commissioner McMullen and Ms. Ryan asked which section he violated. After a lengthy discussion regarding escrow accounts and accountability/responsibility, Commissioner Flitcroft withdrew his motion and Commissioner Northern made a motion to defer this matter to allow Commissioner DiChiara to take and review the file and report back to the full Commission at the next meeting; seconded by Commissioner Alexander; unanimous vote; motion carried.
- 19) 2013007621 – Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Flitcroft ; unanimous vote; motion carried.

Chairman Stephenson turned the meeting over to Vice-Chairman Haynes to run for the remainder of the day.

ERRORS & OMISSIONS INSURANCE

Ms. Ryan asked that the portion of Ms. Maxwell’s report regarding E&O be held at that time of the meeting because Chief Legal Counsel Laura Betty was present in the room to join in the discussion of E&O insurance.

Chief Legal Counsel Betty addressed the Commission regarding the content of Public Act 84 that amended T.C.A. § 62-13-112. She gave an overview of the Act that was signed into law by Governor Haslam on April 12, 2013. She stated that the act would benefit TREC because it would no longer be necessary to hold the large number of formal hearings every two years as they have in the past. Following is the content of Public Act 84:

**State of Tennessee
PUBLIC CHAPTER NO. 84
SENATE BILL NO. 646
By Tracy, Ketron**

Substituted for: House Bill No. 133
By Lundberg

AN ACT to amend Tennessee Code Annotated, Title 62, relative to professions.
BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 62-13-112, is amended by adding the following language as new, appropriately designated subsections:

(j)(1) If a licensee fails to obtain, maintain or renew the licensee's errors and omissions insurance which meets or exceeds the minimum requirements established by the commission and provide proof of compliance to the commission if such proof is required by subsection (g), then the licensee's license shall be suspended.

(2) The commission shall send notification of the license suspension by regular mail:

(A) To the licensee at the last known business address and home address of the licensee as registered with the commission; and

(B) To the licensee's broker at the broker's address as registered with the commission.

(3) While a license is suspended pursuant to this section, the licensee shall not engage in activities which require a license under this chapter, nor will the license be renewed or a new license issued. Any license suspended pursuant to this section shall remain suspended until the licensee establishes, to the satisfaction of the commission, compliance with this section.

(4) The licensee may, upon written notice to the commission, request a formal hearing on any license suspended pursuant to this section.

(k)(1) A license suspended pursuant to this section shall be reinstated if, within thirty (30) days of suspension, the licensee provides proof of insurance that complies with the required terms and conditions of coverage to the commission without the payment of any fee.

(2) A license suspended pursuant to this section shall be reinstated if, on or after thirty-one (31) days of suspension, the licensee provides proof of insurance that complies with the required terms and conditions of coverage to the commission and the licensee pays:

(A) For a license suspended more than thirty (30) days but less than one hundred twenty (120) days, a penalty fee of not more than five hundred dollars (\$500); or

(B) For a license suspended for more than one hundred twenty (120) days but less than one (1) year, a penalty fee of five hundred dollars (\$500), plus an additional penalty fee of not more than one hundred dollars (\$100) per month for months six (6) through twelve (12).

(l)(1) A license suspended more than one (1) year pursuant to this section shall be automatically revoked without any further action by the commission.
SB646 mail:

(2) The commission shall send notification of the license revocation by regular
(A) To the licensee at the last known business address and home address of the licensee as registered with the commission; and

(B) To the licensee's broker at the broker's address as registered with the commission.

(3) The licensee may, upon written notice to the commission, request a formal hearing on any license revoked pursuant to this section.

(4) Upon revocation of license, any individual seeking reissuance of such license shall reapply for licensure and pay the penalty fees in subsection (k); provided, however, that the commission may, in its discretion:

(A) Waive reexamination or additional education requirements for such an applicant; or

(B) Reinstate a license subject to the applicant's compliance with such reasonable conditions as the commission may prescribe, including, but not limited to, payment of a penalty fee, in addition to the penalty fee provided in subdivision (k)(2)(B), of not more than one hundred dollars (\$1 00) per month, or any portion thereof, from the time of revocation.

(m) Notwithstanding subsections (k) and (1), if the licensee proves to the commission that the license suspension or revocation pursuant to subsections (k) or (l) was in error and that the licensee obtained, maintained or renewed the licensee's errors and omissions insurance as required by this section, then the commission shall immediately reinstate the license to the date of suspension.

SECTION 2. This act shall take effect July 1, 2013, the public welfare requiring it.

SENATE BILL NO. 646

PASSED: March 28, 2013

SIGNED BY GOVERNOR ON APRIL 12, 2013

Chief Counsel Betty explained that when Assistant General Counsel Cropp returns, they will meet and discuss a temporary policy on the E&O penalty fees and other proposed rules for an upcoming, to be scheduled, Rulemaking Hearing. She stated that since the E&O law is going into effect July 1, 2013, and there is no penalty fee assessed for the first 30 days, then the Board can vote on a policy at the July meeting. The intent of the policy would be to establish temporary language that would then be proposed as a rule at a Rulemaking Hearing – most likely in the fall/early winter because there are a certain number of days’ notices required before a Rulemaking Hearing can be held. Ms. Betty left the meeting at this point.

Ms. Maxwell presented the part of her report that had to do with E&O. She reiterated/recapped some of what was discussed by Ms. Betty and laid out a plan of action to get the policy written and before the Board at the July meeting. She also offered them statistics on who is still uninsured and how the process would work to suspend those licenses and notify the licensees. Ms. Maxwell asked if any of the board members had any questions regarding the quarterly claims report from Rice, which was on their iPads. Commissioner Northern asked if the colored graph that Ms. Maxwell presented could be placed on the website and she stated it could.

Ms. Ryan asked if any of the board members had any questions regarding the Consent Order Log and they did not.

EXECUTIVE DIRECTOR’S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

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

- **Complaint Statistics Report** – Ms. Maxwell presented complaint statistics to the Commission. As of May 31, 2013 TREC had a total of 101 open complaints. There were 42 new complaints in May 2013. There were 91 complaints in the legal department and 10 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2012-2013 is 250. The total civil penalties that were collected in May 2013 were \$34,190.00.
- **Licensing Statistics** (Exhibit 4) – Ms. Maxwell presented licensing statistics for the month of May 2013. As of May 31, 2013, there were 23,434 active licensees, 1,242 inactive licensees and 8,588 retired licensees. There were 3,862 active firms and 235 retired firms. There were 339 new applications approved in May 2013. Further, she presented a comparison of total licensees for individuals (active, retired and inactive) and firms in May 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.

AUDITING PROCESS

Ms. Maxwell asked if the Commissioners had a chance to look over the proposed mail in audit form. Commissioner Alexander stated that he would like to not adopt anything today to allow more time for he and his fellow board members to review it and come back with recommendations. Ms. Maxwell stated that she is really most interested in getting input from the board members/licensees who are working out in the field. The main idea is to get compliance and if the mail in audit is not somewhat user friendly; then it might not be the most effective method. Commissioner Collins asked if there would be a provision so TREC could access the escrow accounts if it is warranted. She stated that of some of the states that do mail in audits, some do have a statement in the firm application that the State would have the ability to audit the escrow account but that permission would also have to be obtained from the financial institution. Commissioner Northern asked about the questions regarding co-mingling. There is concern among the Commissioners that the statute is not clear on co-mingling of funds. Ms. Maxwell stated that the primary purpose of the mail in audit is to get responses, and if a question is answered in a way that raises a red flag for whoever is reviewing it, then that principal broker could be called and asked specific questions to clarify any answers on the survey which raised those questions. It was determined that some possible rulemaking should be done to define co-mingling. She explained that first she looked at the firms who have been cited for escrow violations and that was around 40, and TREC could start from there and then branch out from that. She stated that another big component is enforcement; if the principal broker does not comply. Ms. Ryan explained it would fall under T.C.A. § 62-13-312(14) and therefore be a violation so it would result in the opening of a complaint and then it would follow the same process as other complaints. Commissioner Alexander suggested the board move on and pick the discussion up next month.

DISCUSSION OF ADVERTISING

Ms. Maxwell moved on to the discussion of the Advertising/Signage and Co-Branding. She advised the rest of the board that Commissioner Griess had sent her a number of advertisements with violations. She stated that she showed them to Legal Counsel Cropp and Ms. Cropp thought complaints should be opened so she asked that they not be shown to Commission. Commissioner Griess said that he firmly believes that TREC must push, in some manner; that the Commission is closely looking at specific advertising violations. He also stated that there are many companies that are just flagrantly ignoring the advertising rules and it is time the Commission addresses teams, franchises, names, font size, etc... and make it clear to the public what is acceptable. Commissioner Griess stated that in current advertising it seems that the emphasis is less on the brokerage and more on the teams, groups, divisions or individual licensees and that the firm itself seems unimportant. His proposal was simply to start honing in on clarification and enforcement of rules to make licensees pay attention to TREC's law, statutes and rules regarding advertising. **After discussion, Commissioner Griess made a motion, to go on record, that the Commission intends to start examining and enforcing existing advertising rules and to also include this information in the newsletter and online; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

DISCUSSION OF MANUALS

Ms. Maxwell and Mr. McDonald gave a brief overview of a meeting that they had with representatives of Lexis Nexis. They gave an overview of pricing but advised that Lexis Nexis is still working out the numbers. She stated that right now, the print book, 3 downloadable eBooks would cost approximately \$35.00. Commissioner Northern asked if there would be an additional charge for new rules or statutes. Ms. Maxwell stated that if someone wanted a book with updates, it would cost the same as a whole new book. Mr. McDonald stated that the software cannot be overlapped where you can just make deletions or revisions. They would have to generate a whole new book and therefore the licensee would have to pay the new book price. Ms. Maxwell advised that the representative from Lexis Nexis has offered to come and speak to the full Commission with their proposal. Ms. Maxwell also advised the Michie has the contract for the complete T.C.A. code so that definitely complicates matters because it is copyrighted material.

ARELLO ANNUAL CONFERENCE

Ms. Maxwell confirmed that Commissioner Griess and Commissioner DiChiara still wished to attend the September ARELLO Annual Conference. They confirmed they did and Ms. Maxwell let them know the process for approval is underway.

EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR

Mr. McDonald presented the Courses for Commission Evaluation for June 2013. **Commissioner Griess made a motion to approve the Courses for Commission Evaluation J1 through J12; seconded by Commissioner Stephenson; unanimous vote; motion carried.**

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

- Candy Joyce of Middle Tennessee Association of REALTORS (1141) requests the approval of Harold "Lucky" Luecke (license # 258812) to teach Code of Ethics- New Member Orientation- Course 5258, Purchase and Sales Agreement- Course 5259 and 2013-2016 NAR Quad Code of Ethics- Course 7249.
- Susan Barnette (1397) requests the approval of Brent Maybank to teach the following courses: Agency in TN- 6687, TAR Purchase and Sale Agreement- 6688, TAR Forms 101-6689, TAR Forms 102-6690, Quad Ethics-6691, Advertising in TN-6692, Transaction Desk Basic-6693, TREC Manual 101-6695, 21 Ways to Lose a License-6696, RESPA-6806, Fair Housing Not an Option- 6910, Written Goals- 6911, Meth Contaminated Homes-6927, Listing Property- 7009.

- Sally Cummings of TAR (1110) requests the approval of Ed Mathews to teach the TREC Core course (7035).
- Sally Cummings of TAR (1110) requests the approval of Bobbie Noreen to teach the Contracts 101 course (6711).
- Karen Czarnecki of the Williamson County Association of REALTORS (1135) requests the approval of John Giffen to teach the ABR course 6610.

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

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

Vice-Chairman Haynes recessed the meeting on Wednesday, June 6, 2013 at 4:40 p.m.

June 6, 2013

The Tennessee Real Estate Commission convened on Thursday, June 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 Administrative Secretary Kelly Hestand.

Commissioner Flitcroft made a motion to add a discussion of Eve’s compensation. He stated that when the Commission voted to lower the “buy-out” cost to not attend the meeting when applying for reinstatement of their expired license, the result was generated revenue of \$12,000.00 plus thus far. He stated that this alone offsets the cost of Ms. Maxwell’s \$5,000 salary increase; seconded by Commissioner Alexander; opened to discussion; Chairman Stephenson clarified that the increase was to be \$10,000.00 total and Commissioner DiChiara made a friendly amendment to also request the additional \$5,000.00; friendly amendment was accepted by Commissioner Flitcroft and Commissioner Alexander and reiterated that per statute the Board of Commissioners of TREC have been granted the authority to set the Executive Director’s salary and hire and fire them as well; Commissioner Northern re-confirmed with Ms. Maxwell that none of the salary increases had been followed through on as promised by the Administration and Ms. Maxwell stated that no; she had received no increase in salary; Commissioner McMullen suggested the motion be tabled until he could contact Assistant Commissioner Giannini and ask him to come to the meeting and offer an

explanation as to why the increases had not been granted; seconded by Commissioner Alexander; unanimous vote; motion carried.

The Formal Hearing of TREC v. Charles E. Moore, license #52602, Docket # 12.18-119483J, convened at 9:11 a.m. The Respondent was not present and a default hearing was held. The Commissions judgment was as follows: **"WHEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED** that Respondent's license is hereby **REVOKED**. It is further **ORDERED, ADJUDGED AND DECREED** that Respondent pay all hearing costs in this matter which includes, but is not limited to, the costs of the Administrative Law Judge and the court reporter. The costs in this matter total One Thousand Two Hundred Twenty Dollars (\$1,220.00), which total includes the court reporter costs of Six Hundred Sixty Dollars (\$660.00), and the Administrative Law Judge costs of Five Hundred Sixty (\$560.00). Respondent is therefore **ORDERED** to pay the **total court costs of \$1,220.00 and shall pay within thirty (30) days of the entry of this Order**. This 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 12:14 p.m.

Chairman Stephenson asked Commissioner McMullen if he was able to get in contact with Assistant Commissioner Giannini so he could come to the meeting and address the Board about Ms. Maxwell's salary increase. He stated that he had not been able to reach him to come and attend. Chairman Stephenson asked the Board if this matter is something they want added to the next month's agenda. **Commissioner Alexander made a motion to table the previous motion to table and to open the matter back up to discussion and that the Board go ahead and fulfill their request for Ms. Maxwell's salary increase, not only regarding the original \$5000.00 but also the additional \$5,000.00, that was promised to her and has not been paid; Commissioner Alexander also asked Chairman Stephenson request that Assistant Commissioner Giannini appear before the Commission next month (or Deputy Commissioner Majchrzak) to give the Board reasons why what they agreed upon for the original salary increase and the additional salary increase have not been fulfilled; seconded by Commissioner DiChiara; vote: 6 yes, 1 no; Commissioner Collins was out of the room and did not vote; motion carried.**

Chairman Stephenson adjourned the meeting on Thursday, June 6, 2013 at 12:23 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: JUNE LEGAL REPORT
DATE: June 5-6, 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.**

- 2012026901**
Opened: 1/25/13
First License Obtained: 5/17/07
License Expiration: 5/16/15
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

TREC Meeting
June 5-6, 2013
Page 16 of 41

2. **2012026902**
Opened: 1/25/13
First License Obtained: 9/30/03
License Expiration: 8/22/09
E&O Expiration: Uninsured
Type of License: Affiliate Broker
History: No Prior Disciplinary Action
**Respondent's license expired on 8/22/09*

Complainant is a licensee who states that Respondent 2 (unlicensed), who lives next door to a property that Complainant's affiliate had listed, saw people walking around the outside of the property and used Respondent 1's (principal broker) lock box key and opened the door to let them see the property. Complainant states that Respondent 2 showed the buyers the property another time and wrote the offer and submitted it to Complainant's agent and handled the counter offers as well as had all of the communication with Complainant's agent. After closing, when Complainant's office tried to enter the closed sale on the MLS, Complainant states that they could not find Respondent 2's name on the MLS so it was entered as a "comp" sale, to which Complainant's agent received "nasty and hateful" text messages from Respondent 2 because Respondents' company did not receive credit for the sale. It was resolved with Respondent 1 being credited with the sale. Complainant began researching the issue and states that, at the time of the complaint, Respondents' Tennessee firm license (an out of state firm) had expired. Complainant also states that Complainant took a reading of the MLS lock box and found that the key pad which Complainant says Respondent 2 was using belonged to Respondent 1. Complainant submitted a number of documents, including a copy of the Purchase and Sale Agreement as well as Counter Offers and the Confirmation of Agency Status form, all of which show Respondent 1's name as the buyer's agent. Complainant also attached a Purchaser's Final Inspection, which is signed by the buyers and states that the buyers certify that they have made the final inspection, which was signed by Respondent 2. Finally, Complainant attached a KeyBox Activity Report showing that Respondent 1 got the key from the lockbox a number of times throughout the negotiation process time period and several fax cover sheets (2 faxes from Respondent 2 sent from a contracting company to Complainant's agent which appear to attach information regarding the negotiations and one 1 fax which appears to be from Respondent 1 sent from the firm to Complainant's agent).

Respondent 1 states that Respondent 2 works part time as Respondent 1's assistant, and Respondent 2 did not renew Respondent 2's Tennessee license (but states that Respondent 2 is an active agent in the state where the firm is located). Respondent 1 states that the subject property was sold by Respondent 1, and Respondent 1 worked with Complainant's agent from start to finish on it. Respondents state that Respondent 2 lives next door to the property and saw people walking around who asked if the property was for sale since there was no sign, and Respondent 2 told them that Respondent 2 was an assistant for Respondent 1, and Respondent 1 would research the matter and contact them. At that time, Respondents state that the buyers told Respondent 2 that they would buy the property sight unseen for \$250,000 if it was for sale. Once the seller was contacted, Respondents state that the seller had just entered into a listing agreement with Complainant's agent. All of this information was confirmed in writing by the buyers of the subject property, who state that they were shown the house by Respondent 1, all negotiations went through Respondent 1, and at no time did Respondent 2 represent that Respondent 2 was a real estate agent and was just an assistant. Respondent 1 denies that Respondent 2 had possession of Respondent 1's key pad, but states that the Final Inspection was signed by Respondent 2 because Respondent 1 had failed to sign it. Respondent 1 states that Respondent 2 faxed the offer twice from a spouse's office for Respondent 1 because the fax was not working. Respondent 1 states that Respondent 1 let Respondent 2 take the key home once to set out the garbage for Complainant's agent as a favor, but Respondent 2 never showed the property. As to the expired Tennessee firm license, Respondent 1 states that the license has been reinstated, and this was an oversight. Respondent 1 states that Complainant's agent knew that Respondent 2 was Respondent 1's assistant and Respondent 1 sold the property and states that the Respondent 2 and Complainant's agent were friends at one point. With regard to the text messages, Respondent 1 states that Respondent 1 was unaware of the communication because all communication involving Respondent 1 was done by fax or phone. Respondent 1 indicates there was a dispute over the commission owed on the sale which caused some animosity. The documents within the file do not show unlicensed activity on the part of Respondent 2. However, the Tennessee firm license was expired for a period due to oversight, and, although this has now been corrected, Respondent 1 might benefit from a letter of instruction.

Recommendation: Close as to Respondent 2. As to Respondent 1, letter of instruction regarding T.C.A. § 62-13-309(a)(1)(A)'s requirement that each office shall have a real estate firm license.

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

3. **2013000251**
Opened: 1/24/13
- First License Obtained:** 9/13/02
- License Expiration:** 10/16/13
- E&O Expiration:** 1/1/15
- Type of License:** Principal Broker
- History:** No Prior Disciplinary Action

May 2013 Meeting:

Complaint opened at the direction of the Commission based on information which was included as part of another complaint file against another licensee. The information in the complaint file against the other licensee suggested that Respondent (principal broker) paid a commission to an affiliate who was not affiliated with Respondent's firm. This complaint was opened against Respondent to obtain additional information regarding the potential issue regarding Respondent's payment of the commission to that affiliate.

Respondent submitted a response vigorously denying any wrongdoing. Respondent states that, in 2011, the partners of Respondent's firm began exploring a franchise situation with a licensee who wanted to open a firm and borrow from Respondent's branding and support while being the principal broker of her own firm. Respondent states that the partners of Respondent's firm agreed to work with that licensee while she opened her firm if she met a number of conditions, which included but were not limited to that licensee being the principal broker and that licensee working with the firm's accounting department to develop proper accounts and follow certain policies and procedures. Respondent states that, soon after, it was discovered that the licensee had already opened her firm and hired another licensee as principal broker (that principal broker was the licensee from whose complaint file this information came). Because the licensee had agreed to meet certain conditions in order to have a franchising agreement with Respondent's firm, and because those conditions were not met, the relationship with that firm was severed. Respondent states that Respondent learned most of this after the fact, and, at the time, only understood there might be a possible franchise opening. Around that time, the subject affiliate broker (who was at that time affiliated with the firm who was working toward a franchising agreement, but has been affiliated with Respondent's firm since shortly after the subject closing where the commission was disbursed – the other firm ultimately closed), arrived

at Respondent's office for a closing, which Respondent states was not unusual because Respondent's firm office allows all six (6) affiliated firms to use its office space. When this is done, Respondent states that Respondent transmits the check (which, in this case, was made out by the title company to Respondent's firm and not the firm at which the affiliate was at that time affiliated) by remote deposit machine which goes to accounting and notifies the affiliate's principal broker. Respondent states that Respondent does not handle the money and the centralized accounting department does it all and notifies the principal broker that the deposit was made. Respondent further states that the affiliate turned in all post-closing paperwork to his principal broker. Respondent states that the affiliate gets one hundred percent (100%) of the commission so none goes to the principal broker or the firm. Respondent denies any wrongdoing and states that Respondent's firm prides itself on its compliance record. Based on the information supplied by Respondent, it does not appear that Respondent violated TREC's statutes and/or rules.

Recommendation: Dismiss.

DECISION: The Commission voted to defer a determination on this matter until next month's meeting.

New Recommendation: Discuss

DECISION: The Commission voted to dismiss this complaint.

4. **2013000271**
Opened: 1/23/13
- First License Obtained: 3/14/96**
- License Expiration: 3/14/15**
- E&O Expiration: 2/11/15**
- Type of License: Broker**

History: No Prior Disciplinary Action

Complainant, who lives out of state, states that Complainant contacted Respondent (broker) in 2008 regarding the purchase of land for residential use which Complainant had seen advertised. Complainant states that Respondent suggested that Complainant work with a certain banker, a certain attorney, and a certain insurance agent because Respondent was familiar with them and this would make the process smoother and would also help if Respondent chose to build a house or buy a house for the land later. Other than stating that Complainant feels that Respondent made false promises to Complainant that a particular bank would be easier to work with and stating that a real estate closing/possession date that Respondent sent Complainant was unsigned by the seller, the focus of Complainant's complaints appear to be regarding the actions of other parties well after the sale which appear to be unrelated to Respondent. Complainant states that Complainant bought the property, made payments, and later wanted to build but was told by the bank that Complainant did not qualify. Ultimately, Complainant lost the property, it appears, through foreclosure. Complainant outlines numerous complaints regarding the way the bank, the attorney, and the tax assessor treated Complainant after Complainant was the owner of the property, and Complainant suggests those individuals were all working together for their own interests against Complainant.

Respondent and Respondent's principal broker both submitted responses to the complaint, stating that they could not find anywhere in the file that a person by the name of the Complainant had ever been noted regarding the purchase of the subject property. Respondent and broker indicate surprise and confusion regarding this Complainant since they did not work with and have never heard of the Complainant and the transaction was approximately (4) years ago and went smoothly with the individual who was the buyer. Respondent provided information regarding the parties to the contract, and all documents regarding the sale provided by Respondent indicate a different name from that of Complainant. Respondent denies that Respondent steered Complainant in any way to use a certain attorney, banker, or insurance office and states that Respondent gave information about multiple offices to the buyer. Respondent also enclosed documents from the transaction file, which includes the closing date/possession date form referenced by Complainant, which includes all signatures, including that of the seller. With regard to Complainant's allegations regarding the other parties after the closing, Respondent states that Respondent had no control or knowledge of those issues. It appears that the real estate transaction involving Respondent occurred well outside TREC's statute of limitations. Despite that, however, there does not appear to be any violation by Respondent.

Recommendation: Dismiss.

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

- 5. 2013000301**
Opened: 1/25/13
- First License Obtained: 8/25/04**
- License Expiration: 5/6/14**
- E&O Expiration: 1/1/15**
- Type of License: Affiliate Broker**
- History: No Prior Disciplinary Action**

Complainant owns four houses in a neighborhood (three are rentals and one is the primary residence). Complainant saw the subject property (located in the same neighborhood) listed for sale (Respondent – an affiliate broker – was the listing broker), and Complainant’s broker arranged a showing and Complainant submitted a written offer on the subject property, stating that Complainant intended to make it Complainant’s primary residence. The complaint states that a number of verbal counter offers were made between the parties, and Complainant states that Complainant’s broker made a verbal counter offer to Respondent and received a reply from Respondent later that day stating that the seller took a higher offer. Later, Complainant discovered that Respondent and Respondent’s spouse had purchased the home with a purchase price which Complainant states was equal to Complainant’s last verbal counter offer to the seller, which was submitted verbally through Complainant’s broker. Complainant provided documentation which included a Purchase and Sale Agreement which contained Complainant’s initial offer but was not countered or accepted in writing by the seller. Complainant feels that Respondent put Respondent’s personal interests ahead of Complainant’s, that Respondent refused to put counter offers in writing, that Complainant/Complainant’s broker were never told that there was another bidder (Respondent), and that Respondent’s actions were unethical.

Respondent states that Respondent represented the seller, who initially contacted Respondent about buying the home. Respondent states that Respondent encouraged the seller to put the house on the market to hopefully maximize the sale price. When Complainant made the initial written

offer (which Respondent states was presented to the seller as well as all subsequent counter offers), Respondent states that Respondent encouraged the seller to respond to each offer from Complainant, but the seller wanted to reject the offer due to the offer being so low. Instead, Respondent states that the seller countered verbally and this continued. Respondent states that Respondent never refused anything in writing because there was never anything submitted by Complainant in writing other than the initial offer, so there was no contract past the termination date of the original offer. When the seller received a verbal counter offer from Complainant and the seller was contemplating a higher counter offer back to Complainant, Respondent states that the seller told Respondent that the seller would rather sell the property to Respondent at the seller's intended counter offer price so the two reached a verbal agreement. Then, Respondent states that Complainant's broker conveyed a verbal counter offer from Complainant which was equal to the agreed-upon price already reached between Respondent and the seller. At that point, Respondent states that Respondent conveyed the final counter offer from Complainant to the seller and offered to move away if the seller wanted to move forward with Complainant, but the seller declined. Respondent states that Respondent immediately prepared a written offer, completed a change in agency status form and a personal interest disclosure form for the seller's signature and informed the seller that Respondent would no longer be representing the seller. Respondent included an affidavit from the seller which confirmed the facts outlined in Respondent's response, stating additionally that Complainant's offer had a number of contingencies and the seller's contract with Respondent accepted the property "as is" and allowed the seller to stay in the home after closing. Respondent also provided the transaction file, which included but was not limited to all signed applicable disclosures regarding the change of agency relationship when Respondent decided to purchase the property, the personal interest disclosure, and the representation agreements. It does not appear that there is a violation of TREC's statutes and/or rules by Respondent.

Recommendation: Dismiss.

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

6. 2013000441

Opened: 1/23/13

First License Obtained: 5/16/02

License Expiration: 12/13/13

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant was a tenant and Respondent's (principal broker) firm was handling the property management for the home Complainant was renting. Complainant expressed issues with the cleanliness of the property during the initial walkthrough. Complainant states that Complainant had to pay for a locksmith to install a lock on a downstairs door when Complainant moved in due to the garage doors openers being on potentially the same frequency as other garage doors, and Complainant did not feel safe. Complainant states that Complainant did not find out until spring that the weeds at the property were very bad. At the end of the lease, Complainant states that Complainant looked at the final inspection check list and did everything that Complainant had not already done. Complainant states that Complainant was told that Complainant would have to pay to have the locks changed, and Complainant did not feel like that was Complainant's responsibility. Complainant attached a notification from Respondent's firm notifying Complainant of estimates of repair charges and the estimated return amount from Complainant's security deposit. Complainant states that some items on the list, including replacing light bulbs, should have been borne by the property management company as a good will gesture. Complainant disputed other items on the list, and that as far as estimated charges for de-weeding, Complainant should not have to pay for something that Complainant did not have control over. Complainant alleges that the estimated deductions were not accurate and the firm is not honest.

Respondent submitted a reply stating that the home was cleaned professionally by the prior tenant but that the house was promptly cleaned again by the firm and work done by maintenance to meet Complainant's expectations. Respondent states that installation of the downstairs lock by Complainant was done without the consent of the property owner or the management company, and therefore Complainant was informed that no reimbursement would be paid. Respondent states that the lease agreement provides that the property must be returned to the move in condition on move out, and the locks had to be re-keyed. Respondent states that the repair estimate provided to Respondent had to be provided in a strict time frame and included only estimates of repairs. Respondent states that some of the actual costs of repairs were lower than the initial estimates, and the cost of the landscaping was absorbed by the firm. The estimated amount was adjusted down to reflect the actual costs of repairs (which was lower than the initial estimate provided by Complainant), and Respondent states that the amount which was "legitimately and rightfully" owed by Complainant was deducted from the security deposit. Respondent disputes that the company is dishonest. If anything, this appears to be a contractual

dispute between the parties because the lease agreement outlines the responsibilities of the tenant. It does not appear that there was a violation by Respondent.

Recommendation: Dismiss

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

7. **2013000811**
Opened: 1/23/13
- First License Obtained: 11/7/90**
- License Expiration: 1/6/15**
- E&O Expiration: 1/1/15**
- Type of License: Principal Broker**
- History: No Prior Disciplinary Action**

TREC opened complaint based on a federal indictment against Respondent (principal broker). Said indictment included multiple counts consisting of mail fraud, wire fraud, and engaging in criminally derived monetary transactions based on Respondent's actions relating to individuals who bought real estate in Respondent's real estate development. Specifically, the indictment alleges that Respondent collected money from buyers, who were told that the money would be deposited into a segregated account for use in constructing certain amenities, and Respondent removed the buyers' money for use in other real estate ventures.

Respondent submitted a response asserting that Respondent is innocent of all charges contained in the federal indictment and asking the Commission to defer any decision on this complaint until the case has been adjudicated. Shortly before presentation of this matter, Respondent provided a motion from the prosecution to dismiss the case without prejudice and an Order dismissing the case without prejudice. Based on the dismissal of all counts of the indictment which was the basis of the complaint, dismissal is recommended.

Recommendation: Dismiss.

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

- 8. 2013001111**
Opened: 1/28/13
- First License Obtained: 5/3/01**
- License Expiration: 2/5/14**
- E&O Expiration: 4/1/14**
- Type of License: Affiliate Broker**
- History: No Prior Disciplinary Action**

Complainant was a potential buyer and Respondent (affiliate broker) was initially the listing broker. Complainant states that Complainant expressed an interest to purchase a property that had a business through sending Respondent a letter of intent to purchase which subject to the conditions of receiving financial information on the business and acceptance of financing based on that financial information. Complainant states that Respondent relayed false information to Complainant. Specifically, Complainant states that Respondent indicated that the owner of the property was local, and that that was not true, and Respondent only provided financial information from the purported owner. Complainant further states that the MLS indicated that things would be included in the sale which were different from what Complainant was told was included. Complainant further states that Respondent insisted on using Respondent's forms (Respondent used TAR forms), and Complainant wanted to represent himself in the process but that Respondent refused to allow him to do that and instead said he would represent both the buyers and sellers. Complainant further states that Respondent checked a box that Complainant would pay for seller's debts and further would not get Complainant requested true financial information from seller. Complainant attached a partially filled out Commercial Purchase and Sale Agreement, a Confirmation of Agency Status form which had Respondent checked as facilitator, and a Disclaimer Notice (which was signed by the seller). There were no signatures of Complainant on any of the forms.

Respondent first states that all but one conversation and communication was not with Complainant but instead was with Complainant's sister. Respondent states that Respondent conveyed to the sister that the property was a business which was run, operated, and maintained by one brother, but the brother who provided the funding resides in another state. Respondent states that all financial information received by the brother running the business was provided to Complainant (Respondent states the other brother has no information on the running of the business). With regard to the allegation that different things were offered than advertised, Respondent states that Complainant made a series of verbal offers that were so low that the seller withdrew the offer of including the inventory, etc. and this was verbally negotiated away. Respondent states that Respondent's role was initially as the seller's agent but when there is no representative on the other side, Respondent marked on the agency form that Respondent would be a facilitator (not an agent for either party), and that Respondent did not insist that Respondent represent Complainant. Respondent states that Complainant could have marked that Complainant was unrepresented, but Complainant did not. Respondent states that Respondent does not know what box Complainant is referring to concerning the buyer taking over the seller's debt as no such box exists on the documents. Respondent explained that the unsigned forms provided by Complainant were sent to Complainant at the request of the seller, who was tired of only verbal negotiations and wanted a written contract, so Complainant's sister told Respondent to send over the forms, fill out what Respondent could and they would complete the rest and send back (which Respondent states never happened). Respondent denies any wrongdoing. There does not appear to be a violation by Respondent.

Recommendation: Dismiss

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

9. **2013001181**
Opened: 1/31/13
- First License Obtained: 11/16/05**
- License Expiration: 11/15/13**
- E&O Expiration: 1/1/15**
- Type of License: Affiliate Broker**

History: No Prior Disciplinary Action

Complainants were the sellers, and Respondent (affiliate broker) was one of the listing brokers. Complainants state that they received an offer for below list price which asked for an allowance for closing costs and the refrigerator. Complainants state that they countered with the asking price, and state that they offered to pay the seller's closing costs as well as pay for a home warranty but Complainants would be taking the refrigerator. Complainants state that the buyers accepted the offer, and Complainants were later contacted after closing regarding the missing refrigerator (which Complainants state that they never agreed to leave). Complainants state that they are being sued for a refrigerator from the eventual buyers of the property. Complainants state that they had no intention of leaving the refrigerator for the buyers and that Respondent knew this. Complainants state that the refrigerator was not in the counter offer as stated by the buyers, and that Respondent must have forged or added stipulations as they had already signed and agreed to the counter offer.

Respondent states that the original offer requested that the sellers pay a certain amount in closing costs and leave the refrigerator. When Complainants signed and submitted the first counter offer to the buyers, the counter offer only changed the sales price and stated that Complainants would pay for a home warranty. When the buyer's agent received Complainant's counter, the buyer's agent had the buyers sign and write in the same provisions regarding the closing costs and refrigerator to restate the presence in the contract. Respondent states that Complainants were aware of these items because the closing costs were paid by Complainants, and there was no paperwork to show Complainants were not planning to leave the refrigerator. Respondent states that the buyers were upset about a number of issues, efforts were made to resolve the problems, and Complainants began making these accusations. There does not appear to be a violation.

Recommendation: Dismiss

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

**10. 2013001481
Opened: 2/9/13**

First License Obtained: 8/18/92

License Expiration: 1/12/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

11. 2013001482

Opened: 2/9/13

First License Obtained: 2/3/99

License Expiration: 7/21/14

E&O Expiration: 1/1/15

Type of License: Broker

History: No Prior Disciplinary Action

Complainant states that Respondent 1 (principal broker) represented himself to be associated with a real estate firm (Respondent 1 is principal broker of that firm), and Complainant alleges that Respondent 1 gained information about Complainant's financial situation and used that information and Complainant's fragile state at the time due to personal circumstances to state that Respondent 1 would only allow Complainant to rent from Respondent 1's firm if Complainant wired ten thousand dollars (\$10,000.00) to a company in another state which involved a "get rich quick" scheme. Complainant states that Complainant was made to sign the lease and pay the rental deposit that day for a property which Complainant had never seen (and which Complainant states was in poor condition). Complainant wired the money to the out of state company on the following day. Complainant states that Respondent 1 made various forms of contact with Complainant which Complainant states were inappropriate and harassing. Complainant later contacted the real estate firm, after Complainant had stopped paying rent, to attempt to recover the money which Complainant wired to the out of state company, and Complainant states that Respondent 2 (broker) said that Respondent 1 did not work at the firm and that Respondent 2 would allow Complainant to move out of the property without recourse.

Respondents submitted responses. Respondent 2 states that the complaint is unrelated to Respondents' firm, which had nothing to do with the business venture involving Complainant's money wired to the out of state company. Respondent 2 states that Complainant first contacted Respondent 2 regarding the pending eviction proceedings and then expressed concerns about Respondent 1 and stated that she no longer wanted to live at the house. Although Respondent 2 states that Respondent 2 and the firm had nothing to do with the business or personal agreement regarding the money wire and Respondent 2 saw nothing to validate Complainant's claims regarding Respondent 1, Respondent 2 agreed to forgive Complainant's past due balance if Complainant would vacate the property because Respondent 2 states that fighting a legal battle over the deal/money wire would have been more expensive than the amount owed in back rent. Respondent 2 states that Respondent 2 never told Complainant that Respondent 1 did not work at the firm, but Respondent 2 had limited Respondent 1's involvement with the firm's rentals because of Complainant's stated concerns. Respondent 1 states that Respondent 1 showed Complainant a number of properties and Complainant decided to rent a property, and Complainant went to the office, signed the lease with another broker and paid the deposit. A few days later, Respondent 1 states that Complainant asked Respondent 1 about business deals where Complainant could make money, and Respondent 1 shared that Respondent 1 had recently received an e-mail from a company which would help people start up a "hard money lending business" and Respondent 1 forwarded the information and the two agreed to work together to ultimately seek a profit. Respondent 1 says Complainant wired the money and the two met at various places concerning training, but Respondent 1 states that Respondent 1 later walked away from the deal. Respondents state that after the firm took Complainant to court for non-payment of rent, Complainant began making false allegations against Respondent 1 and the firm in an attempt to get the firm to pay back the money Complainant wired to the out of state company.

It appears that Complainant completed a rental application on the day before the lease agreement was signed. The lease agreement was executed between Complainant and another broker at the firm (not Respondent 1). Documentation suggests that court proceedings were instituted against Complainant for past due rent and for eviction, but the firm offered to extend the court date, and, if Complainant would vacate the property, have the case dropped. The documentation does not evidence any connection between the firm, Respondent 2, the rental of the property, and the business venture involving wiring the money. The business venture appears to have been a side discussion between Respondent 1 and Complainant which involved Complainant sending money to a company in California. It appears that Complainant has filed a lawsuit against Respondent 1 d/b/a the firm, which, according to the attorney formally representing Respondent 1 in the matter, says is dropped from the court calendar indefinitely due to a bankruptcy. There does not appear to be a violation of TREC's statutes and/or rules by Respondents.

Recommendation: Dismiss.

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

12. **2013001591**
Opened: 2/4/13
- First License Obtained: 9/28/79**
- License Expiration: 7/9/15**
- E&O Expiration: 1/1/15**
- Type of License: Principal Broker**
- History: 2011030851 & 2011030871 – Closed \$1,500 CO (adv. and unlic. branch)**
13. **2013001592**
Opened: 2/4/13
- First License Obtained: 3/21/00**
- License Expiration: 7/25/13**
- E&O Expiration: 1/1/15**
- Type of License: Affiliate Broker**
- History: No Prior Disciplinary Action**

Complainant signed a Purchase and Sale Agreement to purchase a home which was listed by Respondents' firm (Respondent 1 is the principal broker and Respondent 2 is an affiliate broker). There were two (2) signed extensions of the closing date, and ultimately Complainant was denied a certain type of mortgage due to student loan obligations. The mortgage company sent a denial letter dated as the day after the closing was scheduled to take place, and Complainant's broker contacted Respondent 2 via e-mail a few days later stating that Complainant was denied the loan and requesting Complainant's earnest money. Complainant states that Complainant contacted

Respondent 2 a few weeks later to inquire about the earnest money and was told that Complainant was not getting the earnest money back. Complainant then contacted Respondent 1 about the earnest money who told Complainant that Respondent 1 needed to speak with Complainant's broker regarding the issue (apparently Complainant's broker had switched firms and instructed Complainant to make contact directly). Complainant then contacted an attorney who sent a letter to the seller and Respondent 1 regarding return of the earnest money. Then Complainant filed this complaint.

Respondents submitted responses. Respondents state that the seller was angry when the denial letter was submitted after the closing date and was not in agreement with releasing the earnest money, even after both Respondents spoke with the seller. Respondents state that Respondents requested that Complainant's broker contact Respondents regarding the earnest money, to which there was no reply and the reason there was no speedy resolution. Respondent 1 states that after consulting with counsel, the earnest money was released to Complainant.

Recommendation: Close as to Respondent 2. As to Respondent 1, letter of instruction regarding Rule 1260-02-.09, subsection (3) of which states that brokers are responsible for deposits and earnest money accepted by them or their affiliate brokers, 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.

14. 2013002561
Opened: 2/15/13
First License Obtained: 11/20/06
License Expiration: 11/19/14
E&O Expiration: 1/1/15
Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant states that Respondent (affiliate broker) and another agent listed Complainant and spouse's home in 2010. Complainant states that Complainant and spouse have been going through a prolonged divorce since that time, which was the reason for listing the home, and, at that time, Complainant moved out and Complainant's spouse stopped paying the mortgage payments. Complainant states that, after the closing on the home took place in March 2011, Complainant found out that Respondent was romantically involved with Complainant's spouse and Complainant states that the two had been throughout the process. Complainant states that Complainant never had contact with Respondent during the listing and all communication was between Respondent and Complainant's spouse. After the house had sold, Complainant states that Complainant ran into another licensee, who Complainant says told Complainant that the licensee's buyers (who had made an offer on the property when it was listed) were told by Respondent that Complainant and spouse were in bankruptcy (which Complainant states was untrue). With regard to that licensee's potential buyers, Complainant states that Complainant signed one of the counter offers but was unaware of two other counter offers which were signed only by Complainant's spouse, and Complainant believes that they could have gotten a better price for the house but for Respondent's actions.

Respondent submitted a response stating that Respondent and Complainant's spouse were not involved romantically during the process of listing and selling the home. Respondent states that Complainant requested that Respondent and the other listing agent deal with Complainant's spouse regarding the property since the spouse was the current resident. Respondent states that an offer was received from some potential buyers by the licensee referenced by Complainant, and the offer was presented to Complainant and spouse for discussion. Respondent states that Complainant and spouse countered the offer, and, at the time, the home appeared in the local paper in the beginnings of foreclosure, and the bank and the attorneys who had begun the foreclosure proceedings began communicating with Complainant's spouse. Respondent states that, after the licensee conveyed his buyers' best and final offer via e-mail, the house remained on the market because the offer was not high enough to pay off all mortgages and commissions. Respondent states that Complainant was informed as to all counter offers (including the verbal and e-mailed best and final offer). Respondent states that the ultimate buyer viewed the property and made an offer which was presented to Complainant and spouse, and the contract was signed. Prior to closing, Respondent states that Complainant and spouse were informed by attorneys of several liens against the property. When it appeared that the sale would not close due to the amount of liens, Respondent and the other agent cut their commission to get the house closed and prevent foreclosure. Further, Respondent states that the house sold for significantly more than the other potential buyers' best and final offer. Respondent's principal broker also submitted a

statement saying that he had reviewed the file and found it to be in order and saw no merit to the complaint. There does not appear to be a violation by Respondent.

Recommendation: Dismiss.

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

15. 2013002871

Opened: 2/5/13

History: No Prior Disciplinary Action - Unlicensed

Complainant states that Respondent (unlicensed) was the developer where Complainant bought a home in 2008. Complainant states that Respondent is running what Complainant calls a property management business in the development, and states that Respondent is not licensed as a broker or associated with a brokerage. Complainant states that the renters are underage and drink and party all night, leave trash, and act inappropriately, and Complainant states that Respondent refuses to do anything about it. Additionally, Complainant states that Respondent advertises vacation rentals on a national vacation rentals website in which Respondent calls himself the owner (the website has a link to “e-mail owner” which e-mails Respondent 1). These national websites for vacation rentals are used both for owner vacation rentals as well as privately owned properties offered through rental managers (which is what Respondent appears to be doing).

Respondent submitted a response through an attorney which states that Respondent and his development company have had a long standing dispute with Complainant. The response states that Respondent and his brother are owners of a development company and a rental management company. The response states that Respondent has never sold or leased any property in the development and the rental management company was a licensed vacation lodging service firm for which the firm license had lapsed inadvertently due to problems with the mail, and they were in the process of correcting the issue by reapplying for a vacation lodging firm license (soon after the response was submitted, the vacation lodging service obtained active licensure). The response states that the Complainant does not participate in the rental program like some of the other owners and are angry at the conduct of the renters. It appears that Respondent is assisting

in the operation of a vacation lodging service firm, and the firm license at one time had lapsed but is now active with a licensed designated agent. It appears that Respondent also works with the vacation lodging firm and assisting with advertising and coordinating the nightly rentals, which Respondent is permitted to do under TREC's laws without a license since there is a firm license and licensed designated agent. The documentation submitted does not evidence any other type of unlicensed activity by Respondent.

Recommendation: Dismiss.

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

16. 2013003451

Opened: 2/25/13

First License Obtained: 2/19/13 (initially upgraded to broker on 1/9/09)

License Expiration: 2/18/15

E&O Expiration: 1/1/15

Type of License: Broker

History: No Prior Disciplinary Action

17. 2013003491

Opened: 2/25/13

First License Obtained: 4/18/05

License Expiration: 9/15/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Anonymous complainant states that Respondent 1's license (Respondent 1 is a broker; Respondent 2 is Respondent 1's principal broker) expired in January of 2013 and Respondent 1 was engaged in activities requiring a real estate license after the license expired. Specifically, the anonymous complainant sent a copy of a listing from a third party website stating that Respondent 1 was the listing broker of the property. Further, the anonymous complainant states that several properties were listed on the MLS by Respondent 1 while Respondent 1's license was expired.

Respondents submitted responses to the complaint. Respondent 1 states that the license expired because of Respondent 1's failure to timely obtain the necessary post broker education hours required for Respondent 1's broker license. Respondent 1 states that Respondent 1 mistakenly thought that Respondent 1's license would be downgraded to an affiliate broker if the broker education was not completed on time, but once Respondent 1 realized this was not true, Respondent 1 communicated with the TREC office and immediately began steps to get Respondent 1's broker license activated again. Respondent 1 passed the required examinations and reactivated Respondent 1's license in February 2013. Respondent 1 states that Respondent 1 did not engage in any real estate activities during the time that Respondent 1's license was expired, and, during that time period, only worked in the office performing the duties of an unlicensed assistant. Respondent 2 confirmed that there was no unlicensed activity by Respondent 1 during that period. Respondents state that three (3) of the listing agreements were signed with Respondent 1 prior to Respondent 1's license expiration but were held from being placed actively on the market for various reasons (listing agreements provided confirmed this). When these properties were placed on the MLS after Respondent 1's license expired, Respondents state that they were placed in Respondent 1's name by mistake, which were corrected to reflect Respondent 2 as the listing agent. With regard to the third party website listing provided by the anonymous Complainant, Respondent 1 states that the website was contacted regarding the correction, but Respondent 1's principal broker was the listing agent on the MLS while Respondent 1's license was expired. The documentation provided does not show any unlicensed activity by Respondent 1; furthermore, Respondent 1's broker's license has been active since February 2013.

Recommendation: Dismiss.

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

18. 2013006401
Opened: 4/24/13
First License Obtained: 7/24/96
License Expiration: 5/16/15
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

This complaint was opened at the direction of the Commission. Respondent is the principal broker of the firm referenced in a complaint which was filed against an unlicensed individual and was presented as follows:

March 2013 Meeting:

Complainant entered into a Pre-Sale Agreement and a Joint Venture Agreement with an LLC with Respondent (unlicensed) as its managing member. Complainant and Respondent also entered into a Commercial Purchase and Sale Agreement (on a TAR form). Complainant states that Complainant paid \$40,000.00 earnest money to Respondent (which the TAR form states will be held in a real estate firm escrow account). Complainant states that Respondent is the president of the real estate firm. Complainant states that Respondent represented the LLC in the transaction. After the LLC did not complete the acquisition of the property referenced in the agreements by the agreed-upon date, Complainant determined that the deal was not going to go through in the near future and made requests for return of the earnest money, which Complainant states have been ignored. Based on copies of the documents provided, it appears that Complainant entered into the Joint Venture Agreement with the LLC, wherein the LLC was acquiring a number of units which were to be renovated, and Complainant agreed to pay an up front cost for ten (10) units to be acquired by the LLC with the balance due when the units became ready for occupancy. The Joint Venture Agreement specified that the expected initial lease rate, the expected monthly costs, and explained that disbursements of profits to joint venture partners would be based on the gross profit. The agreement specified the LLC as the managing member and stated that the real estate firm would be the property manager.

Respondent submitted a reply stating that Respondent is not a real estate agent and has not been licensed in approximately ten (10) years, and Respondent has not represented himself as such.

Respondent states that Respondent is the managing and sole member of the LLC which owns the real estate firm referenced on the TAR purchase and sale agreement as the holder of the earnest money. Respondent states that the contracts between Complainant and the LLC relate to a separate operating unit from the real estate firm, and the real estate firm was to be retained as the property management company for the project but was not otherwise involved in the transaction between the LLC and Complainant. Respondent states that the LLC entered into a Pre Sale Agreement with Complainant for ten (10) units, and the real estate firm was not involved in the transaction. Respondent points to the TAR Purchase and Sale Agreement which does not include a listing or selling company to show a lack of agency relationship. Respondent states that Complainant wired a down payment to the real estate firm's escrow account in two separate wires. Respondents states that this was not earnest money as referenced in the TAR form but was instead a down payment, and the only reason that the money was sent to the real estate firm was to use as an account for receipt and disbursement of the money, and the joint venture agreement controlled the contract. Further, Respondent states that the money was not to be held in escrow by the real estate firm but only received and disbursed to the LLC, to be returned by the LLC to Complainant only upon certain contractual circumstances. According to Respondent, the money was wired into the real estate firm's account, and Respondent transferred the money to utilize it for the project for items such as appraisals, etc. Respondent states that Respondent has replied to Complainant's requests for return of the money, but there was never earnest money involved, and the money has been utilized for the project so the LLC no longer has the money. Further, Respondent states that Complainant's request for the return of the down payment was instrumental in causing the LLC's purchase of the units to fail, and therefore Respondent states that the LLC does not plan to return Complainant's payment.

Complainant submitted an additional response through an attorney, which stated that Complainant was lead to believe that Respondent was licensed since Respondent was the owner of the real estate firm, and Respondent never informed Complainant otherwise. Complainant states that Respondent chose the real estate firm to hold the money, and the real estate firm should not have relinquished control of the money to the LLC without Complainant's permission. Complainant states that the money was not a down payment, but, even if it was, the deal failed and the money is owed back to Complainant.

Based on the documents submitted, it is unclear whether the money was a down payment, earnest money, or an investment, and this is likely a determination for a court of law. However, Respondent's use of TAR contracts creates the appearance of unlicensed activity on the part of Respondent.

The Commission authorized a Consent Order for the unlicensed individual and directed that a complaint should also be opened against the principal broker of the real estate firm (this Respondent).

Respondent submitted a response stating that Respondent is the principal broker of the real estate firm, and Respondent's son (the unlicensed individual) owns an LLC which does business as the real estate firm. Respondent states that the unlicensed individual serves as President of the firm and handles administrative duties. Respondent states that there is one (1) escrow account at the real estate firm, and the unlicensed individual is a signatory on the account, a fact which this Respondent states the Commission is aware due to previous audits of the escrow account. Respondent states that the unlicensed individual's LLC entered into a joint venture with an individual, and pursuant to that agreement and a Commercial Purchase and Sale Agreement, forty thousand dollars (\$40,000.00) was deposited into the escrow account. Respondent states that "upon information and belief said money was released and utilized in furtherance of the subject project," and Respondent believes that release of the funds was reasonable.

Recommendation: Discuss.

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

19. 2013007621
Opened: 5/7/13

First License Obtained: 9/13/77

License Expiration: 10/27/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complaint opened at the direction of the Commission based on a complaint which was filed against one of Respondent's (principal broker) affiliate brokers. The complainant who filed the complaint against Respondent's affiliate broker listed a number of allegations, including but not limited to the fact that the affiliate broker provided a key to the buyers during the final walkthrough several days before closing, which allowed buyers to access the property and paint before closing. The Commission authorized a Consent Order for the affiliate broker based on those acts and directed that a complaint should also be opened against the affiliate broker's principal broker (this Respondent).

Respondent submitted a response through an attorney stating that the supervision which Respondent provided to the affiliate broker throughout the transaction was in compliance with the statutes and rules of TREC and standard practices of managing brokers within the real estate industry. Respondent states that Respondent devotes Respondent's full time to management of the firm, spending approximately fifty (50) hours present in the office and available by telephone until 10 p.m. to consult with and respond to affiliated licensees. Additionally Respondent outlined an extensive training program which Respondent provides to affiliates on an ongoing basis. Respondent states that, during the course of the subject transaction, the affiliate broker turned in copies of documentation relating to the subject transaction to Respondent, and those documents were reviewed and maintained in a separate file (as is company policy), and no documents referenced that a key would be provided to the buyers before closing. Respondent states that Respondent has contact with the affiliate broker (which is one of many of Respondent's affiliates) on a daily basis and has never observed any oversight by the affiliate broker giving Respondent any reason to believe that the affiliate broker was not adequately trained. During the subject transaction, while Respondent reviewed the transaction file as is customarily done, the affiliate broker did not ask any questions or seek guidance from Respondent or convey to Respondent that the affiliate broker intended to give the buyers a key before closing. Respondent states that Respondent was not present for the final walkthrough at which the affiliate broker gave the buyers the keys, and was not aware of the affiliate broker releasing the keys until after the closing had taken place, at which point Respondent counseled the affiliate broker that the affiliate broker should not release a key before closing in any future transaction. It appears that Respondent was available to the affiliate broker during the subject transaction and did not have any way of knowing that the affiliate broker planned to or gave the key to the buyers at the final walkthrough. Once Respondent did learn of this fact after closing, it appears that Respondent promptly addressed the issue with the affiliate to confirm that the mistake would not happen again. Based on these facts, there does not appear to be a failure to supervise by Respondent.

Recommendation: Dismiss.

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