

## TENNESSEE REAL ESTATE COMMISSION MINUTES

**March 6 – 7, 2013**

The Tennessee Real Estate Commission convened on Wednesday, March 6, 2013 at 9:09 a.m. in Meeting Room 1A of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, Tennessee 37243. The following Commission Members were present: Chairman William "Bear" Stephenson, Vice-Chairman Michelle Haynes, Commissioner Grover Collins, Commissioner Janet DiChiara and Commissioner John Griess. Commissioner Isaac Northern joined the meeting at 9:45 a.m. Commissioner Wendell Alexander and Commissioner David Flitcroft were absent on Wednesday, March 6, 2013 and Thursday, March 7, 2013 and Commissioner Austin McMullen was absent only on Wednesday, March 6, 2013. Others present: Executive Director Eve Maxwell, Education Director Steve McDonald, Assistant General Counsel Julie Cropp, 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 February 28, 2013. Also, this meeting has been noticed on the tn.gov website since February 22, 2013.

The first order of business was the adoption of the agenda for the March 2013 Commission meeting. Commissioner Griess asked if the discussion of Errors & Omissions Insurance should be moved to the top of the agenda since Deputy General Counsel Wayne Pugh was present to discuss the proposed E&O legislation. It was agreed that it should be moved to the beginning of the meeting. Director Maxwell stated that Commissioner Northern, who had not joined the meeting yet at the time of the adoption of the agenda, had previously asked her to add a discussion regarding the Reinstatement Policy to the agenda. It was agreed to add that discussion to the agenda as well. **Commissioner DiChiara made a motion to adopt the agenda as amended for the March 2013 agenda; seconded by Commissioner Collins; unanimous vote; motion carried.**

The next order of business was the approval of the February 2013 minutes. **Commissioner Collins made a motion to approve the February 2013 minutes; seconded by Commissioner Griess; unanimous vote; motion carried.**

Deputy General Counsel Wayne Pugh discussed pending legislation that affects TREC with the Commission. He went over the content of the E&O bill and an amendment and a Fingerprint bill that are currently being heard in the State Legislature.

## **INFORMAL APPLICANT APPEARANCE**

**Charles Rayborn Jones**, applicant, appeared with his potential Principal Broker Pam Johnsen of Wyndham Vacation Resorts in Sevierville to request that he be approved to apply for a Timeshare Salesperson license. Mr. Jones disclosed to the Commission convictions of Burglary, Forgery and Residential Burglary in August of 1990. **Commissioner DiChiara made a motion to approve Mr. Jones' request; seconded by Commissioner Griess; unanimous vote; motion carried.**

**John Kevin Westmoreland**, applicant, appeared with his potential Principal Broker William Cates of Re/Max Cross Roads Realty & Auction in Livingston, Tennessee to request that he be approved to apply for an Affiliate Broker license. Mr. Westmoreland disclosed to the Commission a conviction of Misprison of a Felon in January of 2002. **Commissioner Collins made a motion to approve Mr. Westmoreland request; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

**Roger Norris**, applicant, appeared with his potential Principal Broker Larry Musgrove of Tree Tops Real Estate of Gatlinburg to request that he be approved to apply for a Timeshare Salesperson license. Ms. Maxwell explained Mr. Norris' history with TREC. Following is part of her written explanation presented to the Commission. It was followed by a timeline of events written by Ms. Maxwell regarding activity related to Mr. Norris' Tennessee and Florida licenses and disciplinary action and his ultimate request to appear before the Commission at the current meeting. She explained: Mr. Norris has held an affiliate broker, a broker or a timeshare salesperson license from 10/26/1983-10/1/2009. Mr. Norris agreed to voluntary surrender his broker license on 10/1/2009 to avoid a formal hearing scheduled for 10/2/2009. The Final Agreed Order signed by Mr. Norris provided that if Mr. Norris desired to be licensed in the future, he may be required to appear before the Commission. A complaint had been brought against Mr. Norris because upon application with TREC he answered "No" to Question 2 "Have you ever been refused a license or had a license revoked, suspended, reprimanded or fined by any federal, state or local government?" Allegedly unbeknownst to Mr. Norris, his Florida sales associate license had been revoked by FREC On 6/17/1997 pursuant to a complaint filed against Mr. Norris by Kenneth Lewis. Mr. Norris had moved from Florida and FREC was unable to locate Mr. Norris to serve him; therefore, he did not receive notice of the Complaint and did not respond to it. There has been ongoing contact with Mr. Norris throughout the past few several years (primarily in 2007 – 2008 and again in 2012) regarding his issues with FREC and subsequent misrepresentation on his Tennessee Broker's license application that he had not had any complaints with any regulatory board. This appearance was scheduled when Mr. Norris applied for a Timeshare Salesperson license (already passed exams on 10/4/2012) and he answered "Yes" to Questions 1, 2 and 3 and disclosed FREC license and subsequent revocation and TREC voluntary surrender. **Commissioner Griess made a motion to approve Mr. Norris'**

**request; seconded by Commissioner Collins; opened to discussion; after discussion, the vote was 5 yes, 0 no; Commissioner Northern abstained because he had prior knowledge of the applicant's actions; motion carried.**

**EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR**

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

- **Complaint Statistics Report** – Ms. Maxwell presented complaint statistics to the Commission. As of February 28, 2013 TREC had a total of 84 open complaints. There were 30 new complaints in February 2013. There were 76 complaints in the legal department and 8 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2012-2013 is 194.
- **Licensing Statistics** (Exhibit 4) – Ms. Maxwell presented licensing statistics for the month of February 2013. As of February 28, 2013, there were 22,945 active licensees, 1,366 inactive licensees and 9,199 retired licensees. There were 3,919 active firms and 267 retired firms. There were 225 new applications approved in February 2013. Further, she presented a comparison of total licensees for individuals (active, retired and inactive) and firms in February of 2008 – 2013. She reported on each state with a licensed Tennessee firm or firms and the number of those firms in each state. She presented a comparison chart of applications approved and examination taken. She also presented license renewal percentages and the average number of licenses issued per month in 1997 and 2000 – 2013, firms closed or retired from 2008 – 2013 and the applications approved from 2008 – 2013.

**ERRORS & OMISSIONS INSURANCE**

Ms. Maxwell presented the Commission with a report comparing the number of uninsured licensees by date in each of the last three renewal cycles (2009, 2011 & now 2013). She gave them a breakdown of how many licensees are shown insured with Rice and/or several alternate carriers. On March 5, 2013, it was reported that 16,879 licensees had purchased Rice Insurance, 6,072 had Alternate Insurance and 1,599 were uninsured. Ms. Maxwell stated that she is hopeful that by the March 31, 2013 deadline for compliance without penalty, many of these uninsured will purchase and backdate their insurance policies from either Rice or an alternate carrier. She will report back to the Commission at the April meeting after the actual March 31 deadline expires. She also explained how Staff administratively handles the management of databases of uninsured licensees, final notifications via mass mailing and the actual opening of complaints and issuing of agreed citations.

Ms. Maxwell updated the Commissioners on the upcoming ARELLO conference and where in the process the funds request submitted on behalf of the Board stands. She advised that the approval process is complete or almost complete for all participants.

Ms. Maxwell gave the Commission an overview regarding the planning of the May meeting and some of the obstacles being faced during the planning. The Commissioners agreed that since holding meetings at state parks was an Administrative initiative, then perhaps they could get involved to work out the logistics of the meeting.

Vice-Chairman Haynes recessed the meeting for lunch at 11:29 a.m. and reconvened the meeting at 1:03 p.m.

Ms. Maxwell advised that she spoke to the representative, Ms. Mills, at Pickwick Landing State Park and was able to work out some of the details such as cancellation and the minimum rooming requirements to secure a meeting room. She stated that Ms. Mills had agreed to her making some changes to the contract and returning it to her for her to initial and that after that she will ask someone from the Administration to execute the contract.

**Gary Cordell, Director of Consumer Affairs**, spoke with Commission regarding consumer education and avenues that might be good for the Commission to pursue in order to get their message out regarding consumer protection. He spoke with them about different media outlets that are available to disseminate information. He also spoke of the effectiveness of such outlets. He advised that Consumer Affairs would be willing to possibly work with the Commission on funding their consumer education efforts. He suggested that TREC could possibly put together a brochure that educates the population on the issues they feel should be disseminated to the public for their protection. He stated that the Consumer Affairs division travels across the State and visits with the local sheriffs' offices and works with them to educate the public via the distribution of brochures, adding links for Consumer Affairs to their websites and investigating potential scams in a particular sheriff's area of the state. Commissioner Collins stated that unlicensed activity is a big problem that needs to be addressed. Mr. Cordell stated that, through brochures, PSAs, etc. TREC could refer consumers to the Verify TN website where a person can look up if someone is licensed. Mr. Cordell and the Commission discussed TREC being included in part of the 2014 calendar that they distribute to consumers. The Commission thanked Mr. Cordell for appearing and for his willingness to work with TREC in its efforts to reach the public.

**Mr. Maxwell presented the Commission with the following language regarding the Standard Operating Procedure for Online Firm Transfer:**

The online transfer system for payment was activated the end of March, 2012. The first on line transfer took place on 7/18/2012 and since that time there have been about 85. Neither the

online payment nor the online transfer information is input directly into the computer system. All information entered online and all transfer payments made online must be manually entered into RBS. Because of this, information changes will not immediately appear on the internet licensee search or on the internal intranet search.

**Overview:**

This system is designed to expedite the process of transfer, so that there is a smooth transition between firms for the licensee and so that transactions for the consumer can continue with minimal disruption. The online transfer option is set up for the PB of the firm to which the licensee is transferring to actually fill out the form and pay the transfer fee. When a licensee is transferring to a new firm, the new PB can go online and fill out the transfer form information and pay the \$25.00 fee by credit card. This is a very limited on line option, allowing only for transfer and allowing only one signature (certification) and that is from the PB. Since the on line transfer could only accommodate one signature, it was decided that the signature of the PB was the most important as far as the acceptance of the transferring licensee. The account is established in the name of the firm to which the licensee is transferring, but it is an account established for the sole purpose of transferring a licensee to the firm. Each transferring licensee requires a new form to be completed. The account set up for the transfer transaction does not give anyone access to any confidential or additional information nor would it allow an individual access to go in and manage the affiliated licensees in the firm—a licensee cannot be broker released, upgraded, or retired through the current online system.

**Mechanics:**

PB must go online and complete form and electronically sign affidavit that former PB properly broker released licensee, that licensee has E&O, that licensee has active license and that PB understands that if TREC 1 is not received by TREC in 5 business days that the transfer is void from the beginning. Once confirmation of online payment and affidavit are transmitted to PB, then licensee can go to work for new PB.

Transmission of the TREC 1 is a critical part of the process. At the time payment and the affidavit are received by the third party vendor, an email is generated and sent to TREC, the administration and to the cashier that the transfer payment and information has been received by the vendor. The third party vendor sends the cashier a computer listing of all on line transfer payments received. Once the payment information is received, the cashier's office verifies it and enters the payment and preliminary identifying information into the computer system. It is the intent that this online transfer process be given priority by the cashier's office, so that the information once received, is processed and entered quickly.

Once the payment information is entered into the system, TREC can go into the computer and begin the transfer process. TREC and the computer verify E&O coverage and then the remaining information required for transfer is input into the system and the transfer is approved. If the TREC 1 is not received in 5 business days, the transaction will be unwound and the licensee placed in a broker release status. Thus far, we have not had this happen.

Ms. Maxwell and Ms. Cropp also presented the following Policy on Transfers of Firm Affiliation Which Are Completed Online, 2013-CPS-001, Effective Date of March 6, 2013:

**COMMISSION POLICY STATEMENT**

**NUMBER 2013-CPS-001**

**EFFECTIVE DATE: March 6, 2013**

**POLICY ON TRANSFERS OF FIRM AFFILIATION**

**WHICH ARE COMPLETED ONLINE**

With regard to firm transfer requests which are completed online, the Commission recognizes the transfer of an affiliated licensee to a new firm as having been completed at the time that said transfer request is completed online and the transfer confirmation is printed only if the following conditions are met:

1. Prior to the submission of the online transfer request, the principal broker who is receiving the affiliated licensee into his or her firm has verified that the affiliated licensee has an active Tennessee license and current errors and omissions insurance; and
2. A completed and signed TREC 1 form is submitted to the Commission within five (5) business days of the date of the online transfer request.

**Commissioner Griess made a motion to adopt the Standard Operating Procedure and also adopt Policy 2013-CPS-001 [Policy Transfers of Firm Affiliation Which Are Completed Online]; seconded by Commissioner Northern; unanimous vote; motion carried.**

Ms. Maxwell discussed the issue of co-branding and firm divisions and whether these firm divisions are really branches. Commissioner Griess had brought this matter to the attention of Ms. Maxwell and she presented the Commission with an explanation of the matter and the Commissioners discussed the issue and the corresponding relevant statute of T.C.A. § 62-13-310(b) which states “Licensees may not post signs on any property advertising themselves as real estate agents unless the firm’s name appears thereon in letters the same size or larger than those spelling out the name of the licensee.” Commissioner Griess stated that his major concern is that names (i.e. “Teams”) are being included on signs that are not licensed with TREC and are being advertised as if they are a licensed entity in the real estate industry.

Ms. Maxwell presented the Commission with the following overview:

In response to the changing marketplace, a number of real estate firms have made the decision to expand their services, branching out into other sectors of the real estate market. Many of these firms have previously focused on one area of the real estate industry, building a well-

known and well respected reputation and name. With the decision to expand into commercial real estate or property management, some firms do not want to establish a new firm, but rather want to add a division to the already licensed firm. This can result in a firm advertising under names other than the name in which the license is held and can result in the firm advertising in two or more names. The firm will use one name for residential properties and another name for property management, yet the real estate license issued by TREC is in only one name and that is the name under which advertising is to be conducted. Licensees often have one set of business cards for use with one name and another set for use with the other name, even though there is only one firm. Does such create the impression that the licensee is affiliated with more than one firm, could the average member of the public be misled by the advertising, is the new division attached to the licensed name really a new branch office, a new firm that should hold its own license, are licensees functioning as if they are affiliated with two firms? These are questions which arise in these situations.

Some of the potential considerations are:

- Does the firm logo/advertisement indicating that QRL Commercial Real Estate Services is a separate firm from QRL Realty misleading and in violation of the Broker Act? The firm is licensed is QRL Realty and that is the only name under which the firm can advertise. All advertising must be conducted in the name of the firm as licensed with TREC.
- Does another firm need to be opened if the firm plans to advertise under the name QRL Realty Commercial Real Estate Services? Can a firm just add an additional tag line to its current firm name and decide for some purposes that the firm will be known as QRL Realty Commercial Real Estate Services and other times it will be known as QRL Realty? Is this a branch office which would require its own license per TCA 62-13-309(d)?
- Does it appear that the firm plans for QRL Realty Commercial Real Estate Services to advertise and operate as a separate entity, but do not want to create a separate entity to conduct business under this new name?
- Could this be viewed as the operation of an unlicensed firm and the PB allowing his or her affiliated licensees to engage in unlicensed activities, in violation of the Broker Act?
- Could advertising as if there are two firms with two different names mislead and confuse the public by advertising in a manner which indicates that QRL Realty Commercial Real Estate Services is a stand-alone licensed firm, when it is not licensed at all.
- Will the consumer know who an affiliate works for if the licensee is advertising or holding himself out as if he or she is affiliated with two firms? Is this a violation of the Broker Act (T.C.A. § 62-13-309(e)), as a licensee can only be affiliated with one firm (there is the limited PB exception in T.C.A. § 62-13-309(g)). Must any and all real estate activities in which affiliated licensees engage be conducted in the name of the firm with which they are affiliated according to the TREC records and this name must be the firm name as licensed with TREC? Can a licensee give the impression to members of the public that the licensee is, or might be, affiliated with two firms?
- Section 1 of Rule 1260-02-12 states that it applies to all advertising, regardless of its nature and the medium, which promotes the sale or lease of real property. Section (2) (e) states that no licensee can advertise in a manner that is false, deceptive or

misleading. The firm name and phone number must appear on all advertising and if on the internet, the firm name and phone number must appear on each web page. A licensee can only be affiliated with one firm and a licensee can only advertise under the firm name with which the license is affiliated.

- Could a licensee be able to be affiliated with one firm and then advertise on the website, on a sign, or a billboard, or business cards or any other medium under what might appear to be a separate firm, thereby potentially creating the impression that the licensee is affiliated with two different firms?
- Can a licensee by omission of facts, lead consumers to believe that the licensee has another affiliation?
- Can a licensed firm suddenly become an arm of another entity or add another entity to its name which it uses only for specific purposes?
- Since advertising is often what draws a consumer to a particular licensee or property, does this type of advertising promote truthfulness and transparency? Is it false, misleading, deceptive, improper, dishonest or untruthful?
- Does this type of advertising influence the consumer to call a certain licensee or firm, does it omit certain salient facts, thereby causing a misrepresentation, or is it presented in such a way that it could mislead the average consumer?

Ms. Cropp was assigned the task of putting together a presentation for a future meeting that addresses the specific issues discussed. She stated that she will pull any relevant statutes, get some ideas together so the Commission may move forward to clarify this matter in the future.

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

Mr. McDonald presented the Courses for Commission Evaluation for March 2013. **Commissioner Griess made a motion to approve the Courses for Commission Evaluation M1 through M31; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

Mr. McDonald presented the Courses for Commission Discussion: "Know The Code: Real Estate Ethics" (M32) and "2013-2014 TREC Core", both provided by Care+er The Real Estate Learning Center taught by Acquanetta Harris. Mr. McDonald said the courses were up for discussion because in the past the provider/instructor had provided an answer sheet to students but she now states that she will discontinue that practice. **Commissioner Northern made a motion to approve the two Courses for Commission Evaluation; seconded by Commissioner Collins; unanimous vote; motion carried.**

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

- Randall Bedwell of Real Estate Leadership School (1459) requested the approval of Jack Jernigan to teach "Builders Are From Mars/ REALTORS Are from Venus" (# 6775) and Eva Angelina to teach "Value Proposition as New Home Buyer Rep" (#6925). Jack Jernigan holds TN License #300555 and has been licensed since 2005. He holds ABR,

ASP, e-PRO, CRCS, MMDC, SNP and SRES designations. He earned a BS in Accounting and Masters in Religious Studies. Eva Angelina holds TN Broker License #325556 and was first licensed in CA in 2005; former High School English teacher; Ph.D candidate 2017 in Counseling; holds GRI and SRES designations. He stated that it would appear these individuals are qualified to instruct these courses.

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

Mr. McDonald and Ms. Cropp discussed with the Commission T.C.A. § 62-13-324 [Real Estate Education Instructors], section 4 & 5. He explained his standard operating procedure for checking the qualifications of an instructor when they are submitted for approval. There was some discussion regarding T.C.A. § 62-13-324(4) which states "If the course concerns the principles of real estate, mathematics or sales techniques, is a licensed broker, or, with the approval of the commission, an affiliate broker, with at least five (5) years of experience in the subject of the course". The discussion revolved around whether "licensed broker" means a person who is licensed as a broker in any state. Ms. Cropp advised that clarifying the statute would require a statutory change by the State Legislature. The Commission very briefly touched on what constitutes a "sales technique" course. Ms. Cropp stated that she believes the statute was written to allow for a broad interpretation of what course content is considered a course in sales technique and that restricting the definition of sales technique could be problematic. The Commission also briefly touched on T.C.A. § 62-13-324(5) which reads "If the course concerns the law of real estate, has graduated from a law school accredited by the American Bar Association or approved by the state board of law examiners." Commissioner DiChiara has some concerns that this statute is not being adhered to and Ms. Cropp stated that there is much overlap into law when teaching real estate. Commissioner Griess stated that he believes that Mr. McDonald has been given the authority and latitude to judge each person on a case by case basis and bring any concerns to the Board. This concluded the discussion of the Instructor Eligibility statute.

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

The discussion turned to the age and out of date content of the 2008 TREC Law Manuals. Ms. Maxwell advised that she and Mr. McDonald had met with a representative of Lexis Nexis last year and discussed the cost of production for a new book and also about alternatively offering an eBook. Ms. Maxwell stated that the cost of eBooks is still rather expensive and Lexis Nexis was just then venturing into the eBook market. She stated that she would make contact with them again to see if they have a more solid price structure for eBooks. She stated that TREC is searching for the lowest cost option with the easiest ability to update the manuals when there are law and rule changes. She stated that perhaps TREC could just print a book of rules that

does not include statutes. It was determined that the discussion would continue at a future meeting.

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

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

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

- 1) **2012022011 – Ms. Cropp stated that because the file had been assigned to Commissioner DiChiara and she has not had the opportunity to fully review the file in order to report, the complaints needed to be deferred until the next meeting.**
- 2) **2012022051 &**
- 3) **2012022052 &**
- 4) **2012022081 – Commissioner Griess had previously reviewed the complaint and he recommended that the Commission accept legal counsel's original recommendation to dismiss. Commissioner Northern made a motion to accept legal counsel's and Commissioner Griess' recommendation to dismiss; seconded by Commissioner Haynes; unanimous vote; motion carried.**
- 5) **2012022411 – Commissioner Collins made a motion to issue a Consent Order for voluntary revocation of Respondent's license for violating the terms of any lawful order entered by the Commission in violation of T.C.A. § 62-13-312(b)(14); seconded by Commissioner Haynes; unanimous vote; motion carried. Commissioner Northern made a motion that the Respondent must appear before the Commission if Respondent wishes to be licensed in the future; seconded by Commissioner DiChiara; unanimous vote; motion carried.**
- 6) **2012022091 – Commissioner Griess made a motion to issue a Consent Order with a civil penalty of \$250.00 and require attendance at a TREC meeting within six months for violation of Rule 1260-02-.02(3); seconded by Commissioner DiChiara; vote: 3 yes, 3 no; motion failed. Commissioner DiChiara made a motion to accept legal counsel's recommendation to issue a Letter of Warning to Respondent regarding Rule 1260-02-.02(3) which states that when a licensee terminates affiliation with a firm, the licensee shall neither take nor use any property listings secured through the firm unless authorized by the principal broker; seconded by Commissioner Haynes; vote: 5 yes, 1 no (Commissioner Collins voted no); motion carried.**
- 7) **2012022811 – Commissioner Collins made a motion accept legal counsel's recommendation to dismiss; seconded by Commissioner Haynes; unanimous vote; motion carried.**
- 8) **2012022991 – Commissioner Griess made a motion to accept legal counsel's recommendation to issue a Consent Order for \$500.00 for unlicensed activity in violation of T.C.A. § 62-13-102(4)(A)(B) and § 62-13-301, said order to also include**

order to cease and desist; seconded by Commissioner Collins; unanimous vote; motion carried. It was also the consensus of the Commission that a complaint should be opened against the Respondent's principal broker.

- 9) 2012023131 &
- 10) 2012023132 &
- 11) 2012023151- Commissioner Griess made a motion to accept legal counsel's recommendation to dismiss as to Respondent 1 and 3 and as to Respondent 2, issue a Consent Order for voluntary surrender of Respondent 2's license based on failure to complete administrative measures as required by § 62-13-312(b)(16) and Rule 1260-02-.02(2); seconded by Commissioner Collins; unanimous vote; motion carried.
- 12) 2012023381 &
- 13) 2012023382 – Commissioner Collins made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Northern; unanimous vote; motion carried.
- 14) 2012023481 &
- 15) 2012023482 – Commissioner Collins made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Northern; unanimous vote; motion carried.
- 16) 2012023631 – Commissioner Northern made a motion to accept legal counsel's recommendation to send a Consent Order for litigation monitoring; seconded by Commissioner Collins; unanimous vote; motion carried.
- 17) 2012023741 – Commissioner Northern made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Collins; vote: 4 yes, 1 no, Commissioner Griess recused himself from the vote; motion carried.
- 18) 2012023791 &
- 19) 2012023792 – Commissioner Griess made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 20) 2012024041 &
- 21) 2012024131 – Commissioner Griess made a motion to authorize a Consent Order for \$1,000.00 for each Respondent for failure to respond to a complaint filed with the Commission in violation of T.C.A. § 62-13-312(b)(14) and § 62-13-313(a)(2), each Consent Order to require the Respondent to attend one (1) entire meeting of the Commission within one hundred eighty (180) days of Respondent's execution of the Consent Order; seconded by Commissioner Northern; vote: 5 yes, 1 no (Chairman Stephenson voted no); motion carried.

Deputy General Counsel Wayne Pugh came back by the meeting to give the Commission an update on an amendment to the proposed legislation to require fingerprinting for all applicants and also all current licensees upon renewal of their license. The Commission discussed such factors as logistics and cost.

Mr. Cropp reviewed the Consent Order Log with the Commission and the Commission had no questions or comments. She also gave the Commission an update on the rules that became effective on March 3, 2013.

Chairman Stephenson recessed the meeting on Wednesday, April 3, 2013 at 4:58 p.m.

### **March 7, 2013**

The Tennessee Real Estate Commission convened on Thursday, March 7, 2013 at 9:09 a.m. in Meeting Room 1A of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, Tennessee 37243. The following Commission Members were present: Chairman William "Bear" Stephenson, Vice-Chairman Michelle Haynes, Commissioner Grover Collins, Commissioner Janet DiChiara, Commissioner John Griess, Commissioner Isaac Northern and Commissioner Austin McMullen. Commissioner Wendell Alexander and Commissioner David Flitcroft were absent. Others present: Executive Director Eve Maxwell, Education Director Steve McDonald, Assistant General Counsel Julie Cropp, Assistant General Counsel Robyn Ryan and Administrative Secretary Kelly Hestand.

The Formal Hearing of TREC v. Gaius Hill, license #21873, Principal Broker of Christian Realty, license #258642, Docket # 12.18-119922A, Complaint # 2012016321 convened at 9:10 a.m. The Commission found that title to the security deposit never vested in any party other than the tenant. This is because the evidence in the record suggests that the conditions in paragraph 3 of the lease were satisfied. It was therefore the conclusion of the Commission that there is no violation of T.C.A. § 62-3-312(b)(5) because the evidence failed to establish that the Respondent did not account for or remit money in his possession that belonged to others. Wherefore, it was ordered, adjudged and decreed that the matter be dismissed.

The formal hearing adjourned at 12:45 p.m. and the Commission discussed some additional matters regarding proposed legislation and the TREC reinstatement policy.

The Commission briefly discussed a licensee who contacted Commissioner Northern about not wanting to attend the Commission meeting as a condition of reinstatement. The Commission discussed the different aspects of requiring attendance at a board meeting. In the case of this licensee, he lives out of state most of the time and he would have to travel a great distance to attend. **Commissioner Haynes made a motion to have the licensee write a letter to request that his attendance at the meeting be waived as a condition of reinstatement; seconded by Commissioner McMullen; unanimous vote; motion carried.** After discussion, **Commissioner Haynes made a motion to reconsider her original motion; seconded by Commissioner McMullen; unanimous vote; motion carried.** **Commissioner McMullen made a motion to add a discussion to the April agenda of the existing policy and whether the Board should**

**reconsider the provisions of the reinstatement policy; seconded by Commissioner Haynes; unanimous vote; motion carried.**

Deputy Counsel Wayne Pugh again updated the Commission on amendments to the E&O bill and the Fingerprint bill. There was a brief discussion of the administrative procedure that may be used if mandatory fingerprinting is implemented.

Chairman Stephenson recessed the meeting on Thursday, March 7, 2013 at 1:18 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: MARCH LEGAL REPORT  
DATE: March 6-7, 2013

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

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

**February 2013 Meeting:**

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

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

**Recommendation:** Dismiss.

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

**New Recommendation:** Commissioner DiChiara to discuss.

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

2. 2012022051

Opened: 11/5/12

First License Obtained: 5/3/96

License Expiration: 11/11/14

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

**Type of License:** Principal Broker

**History:** 2012022081 – Under review by legal

3. **2012022052**

**Opened:** 11/5/12

**First License Obtained:** 3/6/12

**License Expiration:** 3/5/14

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

**Type of License:** Affiliate Broker

**History:** No Prior Disciplinary Action

4. **2012022081**

**Opened:** 11/5/12

**First License Obtained:** 5/3/96

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

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

**Type of License:** Principal Broker

**History:** 2012022051 – Under review by legal

*February 2013 Meeting:*

*Complainant was the purchaser of a property who was represented by Respondent 2 (affiliate broker). Complainant alleges that Respondent 2 and Respondent 1 (who is Respondent 2's principal broker) told Complainant at closing that certain repairs would be completed by a specified time, and the repairs were not done. Respondent 3 is the same person as Respondent 1; another complaint was opened failure to supervise. Complainant was purchasing a former vacation rental home, and Complainant states that renters in the house were scheduled to stay past the closing date. As it turns out, Complainant states that the tenants were out by closing date, but Complainant alleges that Respondent 2 told the renters to get out. Complainant states the closing was delayed by a few hours due to "poor planning" by Respondent 2. In the final walkthrough a few hours before the closing, Complainant states that Complainant discovered that several items on the inspection report which were supposed to be repaired before closing had not been done, and those that were fixed were done by a handyman that Complainant does not think was licensed and insured. Based on the documentation provided, it appears that*

*Complainant's list of repairs based on the inspection report was sent on the day before closing. Complainants attended the closing and the sellers and seller's agent were not present. Complainant states that Complainant was going to refuse to close due to repairs not being finished, but Complainant states that Respondents 1 and 2 told Complainant that they would have the original noted items repaired within a couple of days. Complainant signed a Buyer's Final Inspection sheet which stated that certain repairs would be completed within a specified time period, and Respondent 2 signed the bottom of the sheet. For the seller, it was written "not available." Complainant states that the repairs were not completed on time, that Respondent 2 assisted with repairs, and that Respondents lied to Complainant about what had been done.*

*Respondents each submitted a response. Respondent 1 states that Respondent 1 was unaware of the problems with the workman hired by the seller after the closing to do repairs, but Respondent 1 had contacted Complainant and a resolution had been reached regarding the repairs.*

*Respondent 2 submitted a response denying that Respondent 2 told the renters to get out of the subject property, but instead Respondent 2 informed the rental manager to be sure that the renters were out by closing day, which was done. Further Respondent 2 states that closing was delayed because Complainant did not have a check ready for closing. Respondent states that the walkthrough was done just prior to closing and there was not time to have all of the repairs completed prior to closing due to renters in the property. During the closing, Respondent 2 states that Complainant expressed that Complainant was not sure Complainant wanted to continue and should have asked for more repairs. Respondent 2 states that Respondents agreed to make sure that the repairs were made, but Complainant continually kept asking for additional repairs. Respondent 2 states that Respondent 2 assisted with being sure that some of the agreed repairs were done after closing, and Respondent 2 understood that the repairman would complete the other exterior items. Respondent 2 denies that Complainant was lied to and believes that Respondents did everything possible to meet Complainant's expectations. Complainant submitted an additional response confirming that Complainant did come to an agreement with Respondents to resolve the repair issues but Complainant stands by the allegations in the complaint. Based on the information contained within the file, there does not appear to be a violation by Respondents.*

**Recommendation:** Dismiss.

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

**New Recommendation:** Commissioner Griess to discuss.

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

5.      **2012022411**  
Opened:    11/13/12

**First License Obtained:**    7/15/86

**License Expiration:**    8/29/14

**E&O Expiration: Uninsured**

**Type of License: Principal Broker**

**History: 2009011311 – Final Order \$2,950 CP, 16 CE, costs**

TREC opened complaint based on Respondent's (principal broker) failure to comply with the terms of a Final Order of the Commission. Specifically, Respondent failed to pay the required civil penalty, failed to complete the specified continuing education, and failed to pay the court costs – all included as provisions of the Final Order.

Respondent submitted a response which stated that Respondent was forced to file personal and business bankruptcy shortly after the Final Order and the fine was listed as an unsecured non-priority claim. Further, Respondent stated that Respondent attended the continuing education courses which were required by the Final Order. Legal counsel obtained information that Respondent's personal bankruptcy was dismissed. Further, it appears that Respondent did attend a three (3) hour ethics course in April 2012 and a three (3) hour contracts course in July 2012. However, the Final Order required that Respondent take eight (8) hours of continuing education in contract writing and eight (8) hours of continuing education in ethics. Therefore, Respondent did not complete the required amount of education, and the courses which Respondent did take were not completed in a timely manner within six (6) months of the Final Order.

**Recommendation: Consent Order for voluntary revocation of Respondent's license for violating the terms of any lawful order entered by the Commission in violation of T.C.A. § 62-13-312(b)(14).**

**DECISION: The Commission voted to accept the recommendation of legal counsel with the Consent Order to state that Respondent must appear before the Commission if Respondent wishes to be licensed in the future.**

**6. 2012022091**

**Opened: 10/29/12**

**First License Obtained: 9/13/04**

**License Expiration: 9/15/13**

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

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

Complainant is the former principal broker of Respondent (affiliate broker). Complainant states that when Respondent notified Complainant that Respondent was transferring Respondent's license to another firm, Complainant withdrew several listings from the area MLS without

Complainant's knowledge or consent. Complainant provided copies of change forms showing the MLS withdrawals. Complainant notes that several of the withdrawn properties were owned by Respondent and spouse. With regard to the other withdrawn properties, several change forms note that the withdrawals were done per phone conversation with the owners. For one of the listings, which was a bank-owned property, Complainant provided an e-mail from Respondent to the bank representative asking the representative's permission to withdraw the listing and move it to Respondent's new firm, to which he responded that he wanted to cancel the listing and meet regarding a marketing plan. Complainant also points to an e-mail from Respondent to Complainant which indicates, in part, that Respondent's clients are moving with Respondent.

Respondent submitted a response which first stated that it was standard practice at the firm for all agents to go into the MLS to make any changes which were requested by sellers without getting permission from Complainant. Respondent states that, when Respondent determined that Respondent was moving firms, Respondent felt it was Respondent's responsibility to contact the sellers for which Respondent was the designated agent to inform them that Respondent was moving and explain to them that their contract was with the firm and that when Respondent left, another agent with the firm would be appointed to take over their listings. With regard to the withdrawn listings, Respondent addressed the situation for each. For two of the individual sellers, Respondent states that when informing them of Respondent's situation, both asked that their listings be withdrawn as they no longer wanted the properties on the market and the properties are not listed with any firm (this was confirmed by conversation with both sellers). For one withdrawn property with an individual owner, legal counsel was unable to obtain contact information to confirm the reasons behind the withdrawal. For one bank owned property, Respondent states that it was withdrawn after a dispute over the listing agreement's end date, and just before leaving the firm Respondent had been contacted by another agent stating that the agent was listing the property. Upon obtaining a copy of the listing agreement, it does appear that the listing had expired many months before it was withdrawn from the firm by Respondent. With regard to the bank listing where Complainant had an e-mail asking for permission for the withdrawal, Respondent states that, in a previous conversation with the bank representative, Respondent had informed the representative that Respondent was leaving and the e-mail reflected his response. In a conversation with the bank representative, the representative indicated that, at the time he spoke with Respondent, he was considering other brokers, and Respondent approached him stating that Respondent was transferring so he indicated that he wanted to withdraw the listing. At this point in time, this bank listing is back listed with Complainant's firm.

**Recommendation:** Letter of warning to Respondent regarding Rule 1260-02-.02(3) which states that when a licensee terminates affiliation with a firm, the licensee shall neither take nor use any property listings secured through the firm unless authorized by the principal broker.

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

7.      **2012022811**  
Opened:    11/9/12

**First License Obtained:** 12/19/11

**License Expiration:** 12/18/13

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

**Type of License:** Affiliate Broker

**History:** No Prior Disciplinary Action

Complainant entered into a purchase and sale contract with a builder to purchase a new construction property. Respondent (affiliate broker) was the broker for the builder, and Complainant had a broker. Complainant states that Complainant was aware of a high voltage tower near the property. Complainant applied for financing, there was an appraisal, and a closing was set. Complainant was applying for a conventional loan (which Complainant states that Complainant told Respondent), but, shortly before closing, Complainant found out that Complainant's lender for the conventional loan would not approve financing due to FHA guidelines and the fact that the property was within the fall line of the tower. Therefore, the contract was cancelled. Complainant then tried to negotiate with the builder to build a new home with the same specifications and compensate Complainant for moving expenses, rent, and an additional appraisal, which was denied. Complainant states that another potential buyer before Complainant had been turned down for FHA financing for the same reason, and Complainant alleges that Respondent failed to disclose the fact that the high voltage tower would make it ineligible for a loan under FHA guidelines, which Complainant states affects the marketability of the property and would have made it difficult to re-sell the property. Complainant attached a number of documents, including but not limited to a copy of the appraisal and a printout which Complainant accessed from the internet which states that it outlines the requirements for FHA-insured mortgages and states that the dwelling cannot be located within the fall line of the tower.

Respondent submitted a reply stating that it is Respondent's and the builder's understanding that the FHA guidelines only preclude financing for a property in a tower easement and not the tower fall line, and the subject property was not located in the easement and was therefore not precluded. Respondent states that Respondent told Complainant when Complainant first viewed the property that the financing should be done through a conventional loan. Respondent states that Complainant's lender did not approve a conventional loan, but Respondent communicated to Complainant that the builder's preferred lender would offer a conventional loan for the property. Complainant did not opt to apply for a conventional loan through the preferred lender, the contract was cancelled, and Complainant received a return of the earnest money. Respondent states that, while Respondent understands that the property is not precluded from FHA financing, Respondent later removed FHA from the accepted financing on the MLS listing to avoid confusion. Respondent states that the subject property was later sold to another buyer at the same price with a conventional loan through the preferred lender. Respondent also attached a copy of a letter from the builder's corporate counsel, which was sent to Complainant in response to a letter to the builder, which, in part, states that the FHA guidelines indicate that FHA financing will not be precluded unless the home is located in the tower easement, which the property was not.

Complainant submitted an additional response stressing that Complainant was never told that the property would not finance FHA, and because this information was not disclosed to Complainant, Complainant states that Complainant suffered from unnecessary expense of multiple appraisals, temporary rent until Complainant could find a home, and additional moving and storage fees, etc. Complainant also questions why the preferred lender was willing to finance the subject property when other banks would not. Further, Complainant states that Complainant was unwilling to do business with the preferred lender because Complainant does not like the bank's business practices. Additionally, Complainant states that Complainant did not want a home that would not meet all lenders' underwriting guidelines. Based on the information submitted by the parties, the parties disagree as to the FHA financing requirements. There does not appear to be a violation by Respondent.

**Recommendation:** Dismiss.

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

8. **2012022991**

Opened: 11/9/12

First License Obtained: 6/19/96

License Expiration: 12/31/02

E&O Expiration: Uninsured

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

*\*Respondent's license expired on 12/31/02*

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.

**Recommendation: Consent Order for \$500.00 for unlicensed activity in violation of T.C.A. § 62-13-102(4)(A)(B) and § 62-13-301, said order to also include order to cease and desist.**

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

**9. 2012023131**  
**Opened: 11/14/12**

**First License Obtained: 9/16/10**

**License Expiration:** 9/15/14

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

**Type of License:** Affiliate Broker

**History:** No Prior Disciplinary Action

**10.** 2012023132

**Opened:** 11/14/12

**First License Obtained:** 9/13/11

**License Expiration:** 9/12/13

**E&O Expiration:** Uninsured

**Type of License:** Affiliate Broker

**History:** No Prior Disciplinary Action

**11.** 2012023151

**Opened:** 11/14/12

**First License Obtained:** 1/17/86

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

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

**Type of License:** Principal Broker

**History:** No Prior Disciplinary Action

Complainant was the seller of a home, and Respondents 1 and 2 (affiliate brokers) were the listing agents (Respondent 3 is the principal broker). Complainant states that Complainant told Respondents 1 and 2 that the fireplace gas line was not plumbed to the exterior of the crawl space, and Complainant states that, when asked by Complainant, Respondent 1 told Complainant that Complainant did not have to disclose this and therefore Complainant decided not to give an allowance in the listing for this. Complainant also states that Respondents 1 and 2 told Complainant that if Respondents 1 and 2 brought a buyer and became transaction brokers, Complainant could have another agent from their firm represent Complainant. Complainant states that the initial listing price proposed by Respondents 1 and 2 seemed high, and Complainant had to reduce the price a number of times. Complainant states that, later in the listing, Respondents 1 and 2 introduced the idea of Complainant offering an agent bonus to the buyer's agent, and so Complainant agreed to do this by amendment to the listing agreement. Complainant states that, a few months later, Respondents 1 and 2 notified Complainant of an offer from a client of Respondents 1 and 2, which included stipulations for Complainant adding a privacy fence and plumbing the fireplace gas line (which Complainant states means that Respondents 1 and 2 told the potential buyer about the issue since it was not visible). Complainant states that Complainant, when notified that Respondents 1 and 2 would become

transaction brokers, asked for another agent from the firm but Complainant says this was denied, so Complainant signed the form disclosing the change to transaction broker/facilitator status. After some issues with an appraisal and someone hitting the mailbox during the buyer's early occupancy, which Complainant states were resolved, the closing was set. Just before closing, Complainant states that it was first addressed with Complainant that Complainant had to pay the agent bonus to Respondents' firm, which Complainant refused to pay (said it must be removed or Complainant would not close). Complainant states that the agent bonus was removed from the settlement statement and the house closed. Later, Complainant received a debt collection notice from Respondents' firm and was served with a lawsuit for payment of the agent bonus.

Respondents 1 and 2 submitted responses disputing Complainant's allegations. Respondents state that Complainant bought the house at foreclosure and did not want to disclose that the gas logs were not plumbed despite Respondents telling him that it should be disclosed. Respondents, on the advice of their managing broker, included the information on the MLS input sheet which was part of the listing agreement (and was reviewed by Complainant) since Complainant did not put it on the property disclosure, and Respondent 1 states that the prospective buyer asked about the gas logs. Respondents state that Respondents explained to Complainant the options available to Complainant with regard to representation if Respondents brought the buyer and became facilitators. Respondent 1 states that all price reductions and the agent bonus were confirmed in writing via amendments to the listing agreement. Respondent 1 states that Complainant never asked anyone about having another agent assigned to Complainant when Respondents defaulted to facilitator status and signed documents to that effect. At several points throughout the process, Respondent 1 states that Complainant acted belligerent and was difficult to deal with for Respondents as well as other individuals. Respondent 1 states that Complainant refused to close with the agent bonus included on the HUD statement, so it was decided that the bonus would be removed from the HUD and dealt with later through the court system so that the closing would be able to go forward since the agent bonus was part of the listing agreement and not the purchase and sale agreement, which Respondent 1 states Complainant was aware. Respondents state that they, at all times, acted appropriately and kept their managing broker and principal broker informed of the difficulties and sought advice on how to proceed. Respondent 3 as principal broker submitted a response to the complaint of failure to supervise. Respondent 3 states that Respondent 3 was kept informed of the situation with Complainant, and Respondent 3 agrees that the situation unfolded as Respondents 1 and 2 described. Respondent 3 states that, in Respondent 3's experience with the Complainant, Complainant acted in an unacceptable manner. Respondent 3 states that Respondents acted professionally and properly as facilitators, and the complaint was filed due to the lawsuit for the agent bonus. Based on the documentation contained within the file, there does not appear to be a violation by Respondents with regard to the allegations in the complaint. However, it appears that Respondent 2 was broker released in September 2012 due to relocation to a northern state, and Respondent 2 did not take action to change affiliation or retire the license. Respondent 2 states that Respondent 2 was informed that Respondent 2 did not need to do anything with regard to the license, but Respondent 2 does not plan to return to the state or renew the license.

**Recommendation: Dismiss as to Respondent 1 and 3. As to Respondent 2, Consent Order for voluntary surrender of Respondent 2's license based on failure to complete administrative measures as required by § 62-13-312(b)(16) and Rule 1260-02-.02(2).**

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

**12. 2012023381**

**Opened:** 11/16/12

**First License Obtained:** 10/17/96

**License Expiration:** 9/18/14

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

**Type of License:** Principal Broker

**History:** No Prior Disciplinary Action

**13. 2012023382**

**Opened:** 11/16/12

**First License Obtained:** 11/14/03

**License Expiration:** 5/26/13

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

**Type of License:** Broker

**History:** No Prior Disciplinary Action

Complainant attempted to buy a bank owned foreclosure property as an investor which was listed by Respondent 2 (broker; Respondent 1 is Respondent 2's principal broker). Complainant states that Respondent 2 told Complainant's broker that there was a five (5) day waiting period before the offers could be taken. On the date of the listing, Complainant states that Complainant's broker e-mailed a cash offer for \$1,000 over the listing price to Respondent 2 and later delivered a hard copy of the offer to Respondent 2's office. A few days later, Complainant's broker went to Respondent 2's office, and Complainant states that Complainant's broker was informed that Complainant's broker was supposed to enter the offer directly on the website. Once Complainant's broker visited the site to enter the offer, the property was already under contract for the list price for another buyer. Complainant states that Respondent 2 never submitted Complainant's offer, and that there was never a five (5) day waiting period for the property.

Respondents submitted responses to the complaint. Respondent 2 states that Respondent 2 received the listing from the seller, and the listing was posted on the MLS. On the following day, Respondent 2 states that Respondent 2 received a notification that the MLS sheet should read that all offers should be submitted through the website in the Agent Only Remarks, and the MLS sheet was updated immediately (Complainant disputes this). When Complainant's broker brought the offer to the office, Complainant's broker was told about submitting the offer online. Respondent 1 states that Complainant was represented by Complainant's spouse who was a very new licensee and did not read the instructions on the MLS sheet which stated that all offers had to be submitted through the website. Instead, Complainant's broker e-mailed Respondent 2, which was not received, and came the next day to submit an offer in person and was told that the offer

had to be submitted online through the website, and by the time Complainant's offer was submitted correctly, another offer was already accepted. Respondent 1 states that Complainant's offer was ultimately submitted as a back-up offer by Complainant's agent. Respondent 1 states that the listing agent in this case does not present the offers but are e-mailed when offers are received, accepted, rejected or if there is a need for multiple offers. Based on the documentation within the file, there does not appear to be a violation by Respondents.

**Recommendation: Dismiss.**

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

**14. 2012023481**

**Opened:** 11/14/12

**First License Obtained:** 9/20/00

**License Expiration:** 4/9/13

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

**Type of License:** Principal Broker

**History:** No Prior Disciplinary Action

**15. 2012023482**

**Opened:** 11/14/12

**First License Obtained:** 1/28/00

**License Expiration:** 12/25/13

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

**Type of License:** Affiliate Broker

**History:** No Prior Disciplinary Action

Complainant booked a vacation rental through a vacation lodging firm for which Respondent 2 (affiliate broker) works. Respondent 1 is Respondent 2's principal broker and the designated agent for the VLS. Complainant states that when Complainant arrived, Complainant signed the rental agreement (which stated that there were no refunds) and found the vacation rental "uninhabitable" with a dead animal smell and mouse feces. When Complainant told the firm's office of the problems, Complainant was told that all other properties were booked, and the office offered to clean Complainant's vacation rental, but Complainant declined. Complainant decided to dispute the payment with the credit card company. During the dispute, Complainant states that the parties were attempting to settle the matter but Respondent 2 was pursuing payment from the credit card company.

A response was submitted stating that Respondent 1 is also the designated agent for the vacation lodging firm. According to Respondents, Complainant's reservation was an online reservation where fifty percent (50%) was charged at the time of booking and fifty percent (50%) at arrival. Respondent states that Complainant told the office there was a smell and the office offered to send maintenance and housekeeping, but Complainant refused, chose not to stay, and disputed the credit card charge. Respondents state that Complainant disputed the charges twice, at first losing the dispute and then winning the dispute and eventually receiving a return after the complaint was filed. Respondents state that all credit card disputes are handled by the vacation lodging firm's credit card processing company and not by Respondents. 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.

**16. 2012023631**

**Opened:** 12/7/12

**First License Obtained:** 6/5/01

**License Expiration:** 2/27/14

**E&O Expiration:** Uninsured

**Type of License:** Affiliate Broker

**History:** No Prior Disciplinary Action

Complaint opened by TREC based on information received which stated that Respondent (affiliate broker) had been arrested for theft of over \$10,000 and Respondent had entered into a judicial diversion agreement regarding the charge. Based on the documentation received, it appears that, in early 2012, Respondent gave a conditional plea of nolo contendere (no contest) to the felony charge and the court deferred further proceedings without entering a judgment of guilty. Instead, Respondent entered a judicial diversion program, which, in part, provided for a three (3) year probationary period. During that probationary period, Respondent is required to complete a number of items. If Respondent violates any condition of Respondent's probation, the court may enter an adjudication of guilt and proceed accordingly. If, at the end of the probationary period, Respondent has successfully completed the diversion program, the court will discharge Respondent and dismiss the proceedings, after which point, it is possible for Respondent to petition for expungement.

Respondent submitted a response stating that there was no conviction with regard to this legal matter, and, therefore, Respondent was not required to inform TREC of the situation based on TREC's rules and regulations. Respondent appears to be correct that T.C.A. § 62-13-312(f)'s notification requirement within sixty (60) days of conviction does not apply at this point in time since, at this time, there has not been a conviction. However, it is possible under the diversion

agreement that, if Respondent violates a term of Respondent's probation within the probationary period, the court could enter an adjudication of guilt, triggering the notification requirement.

**Recommendation: Consent Order for litigation monitoring.**

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

**17. 2012023741**

**Opened: 11/16/12**

**First License Obtained: 6/29/07**

**License Expiration: 6/28/13**

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

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

Complainant, a licensee, was one of the sellers of a property. Complainant was represented by another broker acting as the listing agent. Respondent (affiliate broker) was the buyer's broker. Complainant alleges that Respondent tried to increase Respondent's commission from the 2.4% offered in the MLS listing to 3% and told Complainant's agent that Respondent would divert Respondent's buyer elsewhere if Complainant's agent did not agree to 3%. On the day of closing, Complainant told Respondent that Complainant would not close because of Respondent's 3% commission demand. Complainant states that Respondent apologized and agreed to take the commission down to 2.4% and let the sellers net .6% more, but the parties agreed that the .6% would be donated to a charity. When the title agent said that the paperwork would have to be reworked to address this, the parties agreed to leave the commission the same with the understanding that Respondent's firm would disburse 2.4% of the payment to Respondent and the remaining .6% to the charity. Later, Complainant learned that the full amount had been disbursed to Respondent, and the money was not paid to charity.

Respondent submitted a response stating that this is a commission dispute wherein the Complainant disputes that the difference in the 3% commission negotiated between the parties by agreement (and accepted by the parties in the Purchase and Sale Agreement through a counter offer which specified a three percent (3%) commission to Respondent) and the 2.4% commission offered in the MLS listing. Respondent states that Respondent's buyer was elderly and needed to close quickly or the buyer would have to move on if an agreement could not be reached quickly, and Respondent states that Respondent told Complainant's listing broker this. Once there was a counter from the sellers, Respondent states that Respondent assisted the buyer in preparing a counter offer with a revised price and provision stating that Respondent should receive 3% commission from the purchase price, which was accepted by all sellers (including Complainant). The closing quickly followed, and Respondent states that Complainant accused Respondent of threatening to take the buyer to another property unless Respondent received the 3% (which Respondent denies having done), and Complainant cursed Respondent and threatened not to close. Respondent states that Complainant told the closing agent that Respondent should donate a portion of the commission to charity and was informed that this would alter the closing papers, so

Complainant and the buyer signed the closing papers. Respondent denies threatening to divert the buyer to another property and Respondent denies agreeing to any concessions with regard to the commission. Based on the documentation contained within the file, this appears to be a commission dispute and there does not appear to be a violation by Respondent.

**Recommendation:** Dismiss.

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

Commissioner Griess recused himself from the vote on this matter.

**18. 2012023791**

Opened: 11/20/12

First License Obtained: 7/3/12

License Expiration: 7/1/14

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

**19. 2012023792**

Opened: 11/20/12

First License Obtained: 3/25/93

License Expiration: 1/15/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant states that Complainant viewed a number of homes for Complainant's daughter. Complainant contacted Respondents' firm (Respondent 1 is an affiliate broker; Respondent 2 was Respondent 1's principal broker) and met Respondent 1 at the subject property (a Fannie Mae property), where Complainant asked Respondent 1 to prepare an offer as soon as possible, as Complainant was leaving town. Later Complainant states that Respondent 1 informed Complainant that Respondent 1 had asked her broker about the situation, and the offer could not be submitted until that Friday. Complainant states that Complainant e-mailed Respondent 1 with the information for the contract on the evening that the house was viewed, and, after not hearing back from Respondent 1, Complainant realized that Complainant had sent the information to the wrong e-mail address. It was forwarded again to Respondent once Complainant realized this,

which appears to have been several days later based on copies of the e-mails submitted by Complainant. By the time that the information was given to Respondent 1 and the offer was submitted with Complainant's daughter as the owner occupant (as directed by Complainant), a higher offer had been accepted on the property. Complainant states that Respondent 1 did not properly present the offer, and Complainant did not get a contract on the house because of the lack of timeliness of the offer.

Respondents submitted responses to the complaint denying Complainant's allegations and stating that everything was done properly by Respondents. Respondents state that Respondent 1 met with Complainant and spouse at the property. Respondent 1 states that there was never any mention that the property would be owner-occupied by Complainant's daughter as the buyer, but only that Complainant wanted to buy the property for the daughter to live in (Respondent 1 never met with or spoke to the daughter) and Complainant would not be a permanent occupant of the house since Complainant lived in another state (which Respondent 1 states indicated that this was an investment purchase). Respondents state that Respondent 1 described the situation to Respondent 1's principal broker who advised that the first look period would not end for several more days and Complainant would have to wait to submit an offer after that time since Complainant appeared to be an investor. Respondent 1 told Complainant this and said that they could handle the offer by e-mail once Complainant returned home. Respondent 1 states that the information for the offer was not received from Complainant until several days later (due to the e-mail that Complainant sent to the wrong address). When it was received, the name of the buyer was another person whom Respondent 1 had never heard of or met. Respondent 1 prepared the offer in that name with the information given and indicating that it was for an investor. At that time, Respondent 1 states that Complainant said it should be owner occupant, and Respondent 1 sent the owner occupant affidavit for signature by the buyer, which Respondent 1 says was not received back from the buyer. Respondent 1 waited for the documents then prepared the offer to Fannie Mae without the documents which had not been received signed by the buyer, and the offer was rejected, and so Complainant told Respondent 1 to submit the offer at a higher price. Respondent 1 later received information that Fannie Mae had accepted an offer which was several thousand dollars higher. Respondent 1 states that Complainant is angry that the offer was not submitted on the first day that the property was viewed, but Respondent 1 states that Respondent 1 was abiding by the rules regarding owner occupancy and per the conversation on that date, Complainant did not qualify for that. Respondents added that Complainant states in the complaint that Complainant is not and has never been a licensed broker in any state, but Complainant made reference to being a retired broker in the correspondence between the parties. Respondent 2 states that Complainant did not timely return documents, and that Complainant changed the paperwork to owner occupant solely to avoid the waiting period for investors. It does not appear that there was a violation by Respondents.

**Recommendation: Dismiss.**

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

**20. 2012024041**

**Opened: 12/7/12**

**First License Obtained: 5/14/09**

**License Expiration: 5/13/13**

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

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

**21. 2012024131**

**Opened: 12/7/12**

**First License Obtained: 12/9/04**

**License Expiration: 3/30/15**

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

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

TREC opened complaint at the direction of the Commission regarding a situation where Respondent 2 (principal broker) represented a seller who entered into a purchase and sale agreement with unrepresented buyers, which did not proceed to close. TREC was provided with information that Respondent 1 (affiliate broker) may have been related to the unrepresented buyers (that the unrepresented buyers were Respondent 1's mother-in-law and father-in-law), which was disclosed verbally to the seller but not confirmed in writing. Respondent 1 filled out some of the paperwork with the unrepresented buyers. The Confirmation of Agency Status and the Lead-Based Paint Disclosure all contain the signed name of Respondent 2 as the licensee for the selling company with a notation that Respondent 2's name was signed by Respondent 1, and the Purchase and Sale Agreement contains the signed name of Respondent 2 as the licensee for the listing company as well as the selling company with a notation that Respondent 2's name was signed by Respondent 1. This complaint was opened against Respondent 1 for a potential personal interest disclosure issue and a potential failure to supervise issue for Respondent 2.

Respondents did not submit responses to this complaint.

**Recommendation:** A Consent Order is recommended for each Respondent on the issue of failure to respond to a complaint filed with the Commission in violation of T.C.A. § 62-13-312(b)(14) and § 62-13-313(a)(2), plus attendance by Respondents at one (1) entire meeting of the Commission within one hundred eighty (180) days of Respondents' execution of the Consent Order. It is recommended that the Commission discuss the personal interest disclosure issue and supervision issue in light of the information received.

**DECISION:** The Commission voted to authorize a Consent Order for \$1,000.00 for each Respondent for failure to respond to a complaint filed with the Commission in violation of T.C.A. § 62-13-312(b)(14) and § 62-13-313(a)(2), each Consent Order to require the Respondent to attend one (1) entire meeting of the Commission within one hundred eighty (180) days of Respondent's execution of the Consent Order.