

TENNESSEE REAL ESTATE COMMISSION MINUTES

March 5, 2014

The Tennessee Real Estate Commission convened on Wednesday, March 5, 2014 at 9:02 a.m. in Meeting Room 1 A of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, Tennessee 37243. The following Commission Members were present: Chairman William "Bear" Stephenson, Vice-Chairman John Griess, Commissioner Janet DiChiara, Commissioner Austin McMullen, Commissioner Grover Collins, Commissioner Gary Blume, Commissioner Wendell Alexander, Commissioner David Flitcroft and Commissioner Marcia Franks. Others present: Executive Director Eve Maxwell, Education Director Steve McDonald, Assistant General Counsel Julie Cropp and Administrative Secretary Kelly Hestand.

Ms. Maxwell read the following statement into the record: This meeting's date, time and location have been noticed on the TN Real Estate Commission's website, included as part of this year's meeting calendar, since August 9, 2013. Additionally, the agenda for this month's meeting has been posted on the TN Real Estate Commission's website since Thursday, January 30, 2014. Also, this meeting has been notice on the tn.gov website since Friday, January 31, 2014.

The first order of business was the adoption of the agenda for the March 2014 Commission meeting.

The next order of business was the approval of the February 2014 meeting minutes. **Commissioner Collins made a motion to approve the February, 2014 minutes, seconded by Commissioner Franks. The motion was approved with Commissioners Flitcroft, Alexander and Griess abstaining.**

INFORMAL APPLICANT APPEARANCE

Christopher Wakefield, PB of Whitetail Properties located in Cookeville, TN and Jeffrey M Evans, PB of Whitetail Properties located in Pittsfield, IL., appeared to request a waiver of Rule 1260-2-.01 for affiliate David Pritchard, who wishes to affiliate with the Cookeville office. This office is located in excess of 50 miles from Mr. Pritchard's home in Cordova, Tn.

After lengthy discussion, **Commissioner Blume made a Motion to Deny the Waiver Request, seconded by Commissioner Franks. The Motion to Deny carried unanimously.**

INFORMAL APPLICANT APPEARANCE

Pam Johnsen, PB of Wyndham Vacation Resorts, Sevierville, Tn., appeared with applicant for licensure Jeffrey L. Davis, who disclosed certain criminal convictions to the Commission. After discussion, **Commissioner Flitcroft made a Motion to Approve the applicant to move forward in the licensing process, seconded by Commissioner Griess. The Motion to Approve failed with three yes votes and six no votes. The applicant was denied.**

INFORMAL APPLICANT APPEARANCE

Sandra “Sandi” Wray, PB of Wyndham Vacation Resorts, Nashville, Tn., appeared with applicant for licensure Mark D. Ross who disclosed a felony conviction to the Commission. After discussion, **Commissioner Alexander made a Motion to Approve the applicant to move forward in the licensing process, seconded by Commissioner DiChiara. The Motion to Approve carried, with Commissioners Blume and Franks voting against approval for licensure.**

EXECUTIVE DIRECTOR’S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

Ms. Maxwell presented to the Commission the following Reports, which were discussed by the Commission. No motions were made and additional no action was required to be taken in regard to the information contained in the reports presented.

COMPLAINT STATISTICS REPORT

LICENSING STATISTICS

E& O UPDATE/ QUARTERLY CLAIMS REPORT

FINGERPRINT UPDATE

NEBRASKA REAL ESTATE COMMISSION – JURISDICTION OVER UNLICENSED ACTIVITY

PRINCIPAL BROKER MANDATORY AUDIT FORM

Because some of the Commissioners had not received the email sent by Ms Maxwell which contained the PRINCIPAL BROKER MANDATORY AUDIT FORM, the final discussion on this matter was deferred until the April, 2014 Commission meeting.

BUDGET

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

EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR

Mr. McDonald presented the Courses for Commission Evaluation for March 2014.

Commissioner Collins made a motion to approve the Courses for Commission Evaluation M1 through M19; seconded by Commissioner DiChiara;

INSTRUCTOR REVIEW

- Sally Cummings of TAR (#1110) requests the approval of Tara Hampton to teach Transaction Desk Basic -#5747 and Transaction Desk Advanced- #5748. Ms. Hampton is a previously approved instructor with TREC.
- Lorie Jaynes (#1500) requests the approval of Kimberly Swann to teach Back to Basics: Real Estate Finance - #6206.

Ms. Swann began her career in the mortgage business in 1997. She has held positions in underwriting, loan origination and loan processing. Her National Mortgage License is #184685 and Tennessee Mortgage License is # 117723.

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

INFORMAL APPLICANT APPEARANCE

Perry Hamlett, PB of Realty Association, Inc., d/b/a The Realty Association, Nashville, Tn., appeared with applicant for licensure Rick W. Wells, who disclosed certain criminal convictions to the Commission. After discussion, **Commissioner Blume made a Motion to Approve the applicant to move forward in the licensing process, seconded by Commissioner Collins. The Motion to Approve passed. Commissioner Flitcroft recused himself.**

INFORMATION APPLICANT APPEARANCE

Barbara Coats, PB of Red Door Real Estate, Fayetteville, Tn., appeared with applicant for licensure Joan Lynn Kronk, who disclosed an adverse decision made against her by the Alabama Real Estate Commission. After discussion, **Commissioner Franks made a Motion to Approve the applicant to move forward in the licensing process, seconded by Commissioner Collins. The Motion to Approve passed.**

INFORMATION APPLICANT APPEARANCE

Judy White Walters, PB of ERA Real Estate Professionals, Dickson, Tn., appeared with applicant for licensure, Lea Ann England, who disclosed a criminal conviction. After discussion, **Commissioner Blume made a Motion to Approve the applicant to move forward in the licensing process, seconded by Commissioner Franks. The Motion to Approve passed.**

INFORMAL APPLICANT APPEARANCE

Miles E. Cullom, Jr., PB of CHM, LLC located in Knoxville, Tn., appeared to request a waiver of Rule 1260-2-.01 for affiliates Tim Hickey and Mike McGuffin, who wish to affiliate with the Knoxville office. The office of CHM, LLC is located in excess of 50 miles from the residences of Tim Hickey and Mike McGuffin, both of whom reside in Nashville, Tn. After discussion, **Commissioner Alexander made a motion to approve a waiver of Rule 1260-2-.01 for affiliates Tim Hickey and Mike McGuffin so that each could affiliate with CHM. LLC, seconded by Commissioner Collins. Commissioner Griess recused himself. The motion carried.**

Executive Director Eve Maxwell presented a scenario to the Commission involving an applicant who had appeared in the summer of 2013 before the Commission with the applicant's PB and disclosed certain criminal convictions. At the time of the appearance, the Commission voted to approve the applicant to move forward in the licensure process. The FBI/TBI fingerprint report, required of all initial applicants after 1/1/2014, revealed additional convictions which were not disclosed by applicant at the time of appearance and approval of the applicant by the Commission. Ms. Maxwell asked the Commission how it would like to proceed in this matter. **Commissioner DiChiara made a motion to have the applicant and the applicant's PB appear again before the Commission, seconded by Commissioner McMullen. The motion carried.**

Chris Sexton, Director of Government Affairs for TAR, appeared before the Commission to discuss the upcoming TAR Conference in Franklin, TN., and asked the Commissioners if they once again would participate in a Question and Answer session scheduled for Tuesday, March 25, 2014 at 11:00 am. The Commissioners expressed interest in participating and determined that each would decide later if he or she was able to participate.

Mr. Sexton stated that TAR had an interest in discussing the possibility of the Commissioners approving CE courses offering one hour of credit. It was noted that to approve such courses would require a change to Rule 1260-5-.03(1) (c) and that this topic would need to be discussed more at a later time.

UPDATE ON LITIGATION MATTERS

Attorney Robyn Ryan discussed with the Commission the possibility of the Commission allowing her to enter into preliminary settlement talks with respondents in the time between the rejection of the Consent Order by the respondent and the formal hearing. Ms. Ryan noted that often facts that can impact a case surface during this time period and that sometimes these facts might make settlement a more efficient, economical and effective option. The Commission had several concerns about this possibility, but Ms. Ryan assured the Commission that all matters regarding possible settlement would be brought back to the Commission for a final determination, with the understanding that certain facts might have to be withheld in the event the case ended up in litigation.

After discussion, **Commissioner Franks made a motion to allow Robyn Ryan to negotiate on the Commission's behalf, for final approval by the Commission, as long as Ms. Ryan is the litigator for TREC. The Motion was seconded by Commissioner DiChiara; the motion carried.** Commissioner Griess stated that the motion makes good business sense for the licensees and for the public if it can save time and resources.

Ms. Ryan discussed the possibility of filing for an informal conference for a Summary Suspension of a licensee. This would be conducted by telephone. After discussion, it was determined that the Summary Suspension teleconference would be held at 1:00 PM CST on Tuesday, March 25, 2014 in Room 1-B of the DCT.

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."

Below is a copy of the legal report with the motions made by the Commission noted and decisions indicated.



**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
OFFICE OF LEGAL COUNSEL**
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MEMORANDUM

TO: TENNESSEE REAL ESTATE COMMISSION
FROM: JULIE CROPP, Assistant General Counsel
SUBJECT: FEBRUARY LEGAL REPORT

TREC Meeting
March 5-6, 2014
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DATE: March 5-6, 2014

***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. **2013019501**

Opened: 10/22/13

First License Obtained: 8/7/92

License Expiration: 8/22/14

E&O Expiration: 1/1/15

Type of License: Broker

History: **No Prior Disciplinary Action**

Complainant was in a divorce situation and states that Complainant had exactly six (6) months to sell Complainant's home. Complainant states that Complainant hired Respondent (broker) to sell the property. Complainant states that Respondent brought potential purchasers who executed a Purchase and Sale Agreement as well as a Temporary Occupancy Agreement with Complainant and moved into the home. From the documents provided, it appears that the contract closing date was extended a number of times. Ultimately, the potential purchasers did not qualify for financing, and Complainant states that, while the potential purchasers were living in the home, Respondent was making Complainant believe that everything was going to go through okay. Complainant believes that Respondent handled things in a fraudulent, dishonest and unprofessional way and did not represent Complainant in the way Respondent should have. Complainant also attaches documentation regarding the transaction and states that there were mistakes in some of the paperwork, most of which appear to be where Complainant states that Respondent did not sign some of the paperwork. Complainant also attached a Listing/Agency Mutual Release Agreement cancelling the Agency Agreement with Respondent's firm and a notification to the purchasers from Complainant demanding that the potential purchasers vacate due to the sale and listing contract expiring and no loan approval.

Respondent was the principal broker of the firm at the time of the beginning of the transaction involving Complainant. Responses were submitted both by Respondent and the individual who took over as principal broker after the transaction had begun. The current principal broker states that Respondent brought the sale to his attention due to the fact that the sale called for a delayed

closing which was repeatedly extended due to lender requirements and buyer issues, and the buyers had moved into the home and were paying rent to Complainant each month in an amount to cover Complainant's house payment. The current principal broker states that the buyers then brought a copy of a foreclosure letter they received as occupants of Complainant's home, and the current principal broker states that it then began to appear that Complainant was not using the rent money to make the mortgage payment. The current principal broker states that he met with Complainant and another broker, who said that the buyer's loan had been denied and insisted that the current principal broker release Complainant's property from agency agreements as the listing contract and sales contract had expired, which the current principal broker states was done and, at Complainant's request, a notice to vacate the property pursuant to the terms of the Temporary Occupancy Agreement was sent to the buyers. The current principal broker states that there was no fraudulent activity in connection with the sale and everyone worked to have it close. Respondent denies that there was any fraudulent activity. It appears from the signed Confirmation of Agency Status form, Respondent became a transaction broker/facilitator once the potential buyers became involved. Respondent states that, after the buyers looked at the home and made an offer, Respondent was told by the loan originator that only one of the buyers would qualify and would be okay in a period of several months, which Respondent states was explained to Complainant and agreed to allow the buyers to move into the property paying rent until closing. For months, Respondent states that the buyers worked to meet the loan approval conditions, but then the buyers received a letter from a law firm stating that the house was going to be sold as a foreclosure. Respondent states that when Complainant was notified of this, Complainant became angry and demanded that the representation cease. Respondent states that the buyer was approved by the lender, but Complainant failing to pay the mortgage caused the sale to fall through. Based on the documentation within the file, there does not appear to be a violation by Respondent.

Recommendation: Dismiss.

Action: Commissioner Franks made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Griess; unanimous vote; motion carried.

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

2. **2013020141**

Opened: 10/29/13

First License Obtained: 2/12/01

License Expiration: 10/20/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant is the principal broker of a real estate firm, and Respondent (principal broker) was a former licensee with that firm. Complainant states that Respondent resigned Respondent's position on September 17, 2013, and left the office officially on September 24, 2013. Upon Respondent leaving the firm, Complainant states that the firm preformed an audit of Respondent's computer and discovered that Respondent had copied and taken documents and information belonging to Complainant, including, but not limited to, listing agreements, rent rolls, blank management agreement forms, blank listing agreement forms, client phone numbers, financial spreadsheets, etc. Complainant further states that Respondent contacted existing clients of the firm without permission. Complainant states that Respondent formed a new real estate firm in September 2013 with Respondent as the principal and advertised the business as such. However, as of the date of the complaint, Complainant states that Respondent does not have a broker license, and Respondent's new business does not have a firm license or business license. At the same time that Complainant filed this complaint with TREC, it appears that a lawsuit was also filed by Complainant's firm against Respondent.

Respondent states that, after giving notice of resignation, Respondent explained to Complainant that Respondent planned to start Respondent's own firm. Respondent states that Respondent offered to stay long enough for the firm to find a replacement, and Respondent states that a meeting was scheduled to develop a transition plan. On the day after the transition meeting, Respondent states that Respondent was told to leave immediately and Respondent's employment was terminated. Respondent states that, if there was an audit on the date Respondent left, that audit did not show Respondent had taken confidential and other information. Respondent states that, after the transition meeting, Respondent was reminded of the confidentiality agreement signed years earlier. On that day, Respondent states that Respondent was given a copy, but Respondent was continuing to work on Complainant's business and had many documents on Respondent's personal computer. Respondent states that Respondent did not think any of the documents on the personal computer were confidential or proprietary, but Respondent deleted the documents on Respondent's computer that evening. Respondent states that, a few days later, Respondent received a letter from an attorney demanding the return of documents, but it is an inventory list of hard-copy documents that Respondent had at the time of termination and that Respondent returned to the firm. Respondent denies that Respondent solicited any clients of Complainant after termination. Respondent states that the client contact after departure from Complainant's firm was limited to notifying certain clients who Respondent had a long relationship or was currently engaged with at the time of departure, but Respondent did not solicit the business of those clients. Finally, Respondent states that Respondent did not take any

property listings or execute contracts or agreements with clients prior to receiving Respondent's principal broker license and Respondent's new firm getting a real estate firm license.

Complainant submitted additional information through an attorney, outlining the fact that Complainant had filed suit against Respondent requesting a restraining order limiting Respondent from using any information, documents, etc. of Complainant. It appears that the parties entered into an Agreed Order regarding the same, but this matter is still in litigation. Based on the fact that this matter is currently in litigation regarding a number of potential issues under the Broker Act, it is likely that more information will be uncovered through the course of the civil litigation which could be pertinent to the Commission's determination of this matter.

Recommendation: Consent Order for litigation monitoring.

Action: Commissioner Alexander made a motion to accept legal counsel's recommendation for litigation monitoring; seconded by Commissioner DiChiara; unanimous vote; motion carried.

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

3. **2013020261**

Opened: 11/20/13

First License Obtained: 6/7/00

License Expiration: 7/7/15

E&O Expiration: 1/1/15

Type of License: Broker

History: No Prior Disciplinary Action

Complainant was the purchaser of a property, and Respondent (broker) represented seller Fannie Mae. Complainant made several offers on the home and requested repair concessions in offers, including repairs to the driveway. Complainant states that Complainant had a contractor come out and estimate repairs, including for an asphalt driveway), so that Complainant would know how much to ask for in concessions and so Complainant would have someone local to call in the future if work was needed. Complainant states that Complainant was told by Respondent that Fannie Mae picked the contractor. Complainant states that Complainant agreed after Complainant's agent was contacted and told that they would meet or beat the workmanship of Complainant's contractor. Complainant states that Respondent told Complainant that there was a cash offer so Complainant completed the sale even though Complainant did not receive the asphalt driveway as requested. Complainant blames Respondent for this and not the contractor

because Complainant states that Respondent knew Complainant wanted asphalt and never let Complainant know that this was not what the contractor was going to do. After the sale, Complainant states that Complainant was informed that Fannie Mae does not dictate concessions as Complainant was led to believe, Complainant states, from Respondent. After the sale, Complainant states that Complainant had to invest four thousand dollars (\$4,000.00) for driveway repair and there is still no asphalt, and more work will be needed.

Respondent states that Complainant is correct that Fannie Mae does not dictate concessions, but the Complainant's offer came with requests for closing costs and repair concessions. Respondent states that the Complainant's offer was countered, and the counter was rejected by Complainant and countered again by Complainant. Respondent states that Fannie Mae and Complainant finally came to an agreement on the purchase price with a five thousand dollar (\$5,000.00) contribution to buyer's closing costs and six thousand dollars (\$6,000.00) for contract negotiated repairs. Respondent states that there was a bid for the repair work submitted by Complainant's contractor, but Fannie Mae mandates the use of SAM contractors where they are available. The contractor used for Complainant's property was a SAM contractor, and Respondent states that Respondent put the contractor in touch with Complainant and Complainant's agent. Then, the SAM contractor bid is forwarded to the Fannie Mae Repair Department where it is approved or disapproved. The SAM approved contractor did the repairs, and Respondent reviewed the work and disapproved the repairs and made the disapproval known in e-mails and initiated a review at Fannie Mae; however, Respondent states that the repair supervisor supported the SAM contractor's work, and Complainant and agent expressed that they did not want the contractor involved anymore. Respondent states that Respondent was able to negotiate an additional two thousand eight hundred dollars (\$2,800.00) in concessions toward Complainant's closing costs. Respondent states that Respondent was proactive and diligent in all efforts regarding this transaction. Respondent further states that the contract had to be amended several times due to lender delays and that Fannie Mae then refused any more extensions, and Respondent did receive a call noting that the property had been pending for a while and asking whether it was still available. Respondent states that Complainant was not forced to complete the sale and that Complainant did sign the Buyer's Final Inspection.

A review of the file reveals that Respondent attempted to address the concerns of Complainant, but, as this was a Fannie Mae foreclosure, Respondent had less power to address such matters as who did the contract work. There does not appear to be a violation by Respondent.

Recommendation: Dismiss.

Action: Commissioner Alexander made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.

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

4. 2013020321
Opened: 10/28/13

First License Obtained: 10/17/02

License Expiration: 2/19/15

E&O Expiration: 1/1/15

Type of License: Broker

History: No Prior Disciplinary Action

Complainant was the purchaser of a property, and Respondent (broker) was the seller's agent. Complainant states that, about six (6) months after closing on the home, Complainant discovered a crack in the siding in back of the house which ultimately revealed termite damage. Complainant then requested a copy of the termite report from Complainant's lender and called the termite company. Complainant states that the company stated there was no record of an inspection of the property but sent out the individual who was named as the inspector in the report. Complainant states that the inspector verified the termite damage and stated that, based on the damage progression, it would appear that the issue was one and a half (1½) to two (2) years in the making. Complainant states that the inspector viewed the termite report and stated that based on the omitted information and the fact that the signature was not his, the report was a forgery. Complainant provided a copy of the Wood Destroying Insect Inspection Report, which listed a pest control company's information and the name of the inspector, and indicated that there was no visible evidence of wood destroying insects observed and no treatment recommended. The report also shows that Complainant signed the termite report. Complainant also provided copies of the sales documentation, showing that this was a HUD sale of a foreclosure property that Complainant purchased "as-is" with the seller not agreeing to repair or treat any damage caused by termites or wood destroying insects.

Respondent states that Respondent read the complaint and would have been upset, too, but Respondent does not know who filled out the Wood Destroying Insect Inspection Report. Respondent states that the report was ordered as was the practice and then the pest company brings the report to Respondent's firm. Respondent states that the inspection was paid for by Respondent's firm. Respondent provided a copy of the invoice from the pest company and the cancelled check. Respondent states that Respondent does not know what else Respondent can

provide on this issue, but Respondent does not know why Complainant would think that Respondent would forge the document. Respondent further states that Respondent quit using this pest company some time ago. The information in the file does not appear to evidence a violation by Respondent.

Recommendation: Dismiss.

Action: Commissioner Franks made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.

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

5. 2013020341

Opened: 11/6/13

First License Obtained: 4/18/07

License Expiration: 4/17/15

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: 2013020351 – Under review by legal

6. 2013020351

Opened: 11/6/13

First License Obtained: 4/18/07

License Expiration: 4/17/15

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: 2013020341 – Under review by legal

These complaints were filed by two (2) different Complainants against the same Respondent (affiliate broker) but are combined in a summary to assist in eliminating confusion because the allegations within the complaints appear to be substantially similar. Both Complainants were purchasers of undeveloped property (the first purchased in 2007 and the second purchased in 2010) who allege wrongful activities on the part of Respondent, who, in addition to being a

licensee, is also a property owner and was an investor and is now the developer of the development as well as HOA vice-president.

Complaint 2013020341 was filed by a Complainant who was the purchaser of a lot in a development in 2007. Complainant states that Respondent was involved in multiple sales within the development, which Complainant states was originally developed from a family farm by one company which sold the lots to a second company in which Respondent was involved. Complainant states that Respondent's company developed relationships with an out of state mortgage company, an out of state real estate firm, an appraiser, and a closing attorney, and the lots were marketed to out-of-state investors (such as Complainant) who were not familiar with property in the county where the development was located. Complainant states that the first company would sell a lot to the second company in which Respondent was involved, and the second company would turn around and sell the lot to one of the out-of-state buyers. Complainant states that the out-of-state buyers were promised a lease-back agreement which was meant to make the purchase seem like a no-risk deal and the buyer having the opportunity to sell the lots for a profit. Complainant states that the investors were referred to an out-of-state mortgage company for financing and to a certain appraiser. Complainant states that the appraiser did not have like comparable sales within the county which would make the value high enough so the appraiser used lots outside the counties and which were not truly comparables to support inflated appraisals, and therefore, inflated sales prices. When one lot had an inflated sales price, Complainant states that the lot was used to inflate others. Complainant states that the buyers were referred to one closing attorney, but that attorney also represented the developers and the newly formed HOA. Complainant states that Respondent recorded sales prices which were higher than the price actually paid for the lot. There was a wealth of documentation provided in both complaints, but it appears that, for the times which it was noted that sales prices were inflated, the wording of the document states that the person is swearing or affirming, "...that the actual consideration of this transfer, or the value of the property or interest in property transferred, whichever is greater, is..." Complainant states that the sales values were built on fraud. Complainant states that the HOA collected fees but that the HOA was never formed. Complainant states that many of the lots went into foreclosure and were later sold for much less.

Respondent states that Respondent did not represent Complainant as a real estate agent. Further, Respondent states that Respondent never met and does not recall even speaking with Complainant when Complainant purchased the lot. Respondent states that Respondent did purchase the lot bought by Complainant from the original developer as an investor, and Respondent's role was only as the seller in Complainant's transaction.

Complainant 2013020351 was filed by a Complainant who was the purchaser of a lot in the development in 2010 as a foreclosure from another licensee whose firm was selected by the bank to sell the foreclosure. Complainant states that, when Complainant purchased the property, the listing agent did not know much about the property and referred Complainant to Respondent for details, and Complainant states that Respondent made misrepresentations about the subdivision (it

does not appear that Respondent was Complainant's agent at any time). After purchasing the property, Complainant states that it was discovered that the tax assessor had appraised the land at a much higher value, and Complainant states that the appraisal was not representative of the fair market value. Complainant states that Complainant contacted the original 2007 purchasers, and learned that the same appraiser, closing attorney, mortgage broker were used for most, if not all, of the sales, and the closing attorney was also the attorney for the developers. Complainant states that the sales prices on the deeds as filed were overstated and that Respondent was on such deeds. Complainant states the properties' values are significantly lower than what was appraised in 2007 and that Respondent is attempting to use the assessor's office to justify the 2007 sales prices and keep the values at an artificially high level. Complainant states that, when Complainant met with Respondent in 2010 to talk about the properties, Respondent stated that there were strict building standards and misrepresented values, amenities, and what was owned by the HOA (which Complainant states was not registered in 2007 and was dissolved in 2010). Complainant states that after purchase in 2010 Complainant appealed the value of the lot and received a reduced value. Complainant states that Complainant believes that Respondent was aware of the fair market values in 2007 and there is reason to believe that Respondent conspired with other professionals to misrepresent property values at that time. Complainant indicates that a complaint has also been filed against the attorney who was involved with the 2007 sales as well as an attorney who wrote Complainants' employer a cease and desist letter on behalf of members of the HOA regarding alleged unwanted communications from Complainant.

Respondent states that Respondent did not represent Complainant. Respondent states that, when Respondent met with Complainant in 2010, it was in Respondent's new capacity of developer, and was done as a favor to Complainant's agent. Respondent states that the allegations of both complaints have misinformation and fabrications which are false. Respondent states that both Complainants have histories of filing complaints, and both Complainants have refused to pay their HOA assessments which have resulted in liens. Respondent attached a letter written by this Complainant appealing an assessment and stating that the judge was arbitrary and capricious and misapplied the law. Respondent states that Respondent did not misrepresent property values in 2007 but questions what this has to do with Complainant's 2010 purchase. Respondent states that Respondent was not involved in Complainant's purchase of the lot and states that Respondent made Complainant no promises regarding Complainant's lot. Respondent states that Respondent was not involved in and did not influence the appraiser's decisions regarding lot values in 2007. Respondent states that Respondent's initial role was not as developer but as investor. Respondent states that Respondent was the first purchaser, paying substantially more than Complainant paid for Complainant's lot, and then Respondent and spouse invested money on additional lots and paid out of pocket to complete infrastructure and promised amenities. When the original developer backed out, Respondent states that Respondent bought them out. Respondent further states that the HOA (where Respondent serves as vice-president) filed property liens against Complainant for failure to pay annual assessments. Respondent further states that Complainant

was invited to address issues Complainant and other owners might have at the annual meeting but Complainant did not appear.

In summary, this appears to be a complicated set of circumstances which began in 2007 and which the second Complainant raises again in that Complainant's 2010 purchase. Based on a review of the information provided by both Complainants and Respondent, it does not appear to legal counsel that there is evidence of a violation of the Broker Act by Respondent; however, due to the complicated nature of this set of transactions, it is recommended that the Commission discuss.

Recommendation: Discuss.

Action: Commissioner Franks made a motion to dismiss; seconded by Commissioner Blume; unanimous vote; motion carried.

DECISION: The Commission voted to dismiss the complaints.

7. **2013021981**

Opened: 11/27/13

History: No Prior Disciplinary Action - Unlicensed

Complainant is the designated agent for a licensed vacation lodging service who states that Respondent (unlicensed individual), who formerly cleaned for Complainant, is now working managing overnight rentals without proper licensure as a vacation lodging service. Complainant states that Respondent took over the management of one of the rental homes formerly handled by Complainant's VLS and solicited another of Complainant's owners regarding managing the overnight rentals of that individual's property. Complainant attached a copy of an advertisement for Respondent's cleaning company advertising itself also as a "rental service" stating that it manages all size overnight rentals, advertises cabins and rental units online, and stating that their fee covers all expenses to maximize income for the owner (which was given to Complainant's owner by Respondent or one of Respondent's cleaning employees). Complainant also provided a copy of a text from Respondent to Complainant, which stated, in part, that a guest of Complainant's was now booking with Respondent, and Respondent is managing property now. Complainant also attached a copy of an e-mail from a customer who states that the customer booked with Respondent and made payment but was concerned because the customer cannot find information about Respondent's business online except for the cleaning business. Respondent also attached a copy of Respondent's cleaning service Facebook page which states, in part, that the company has a rental program and solicits overnight rentals.

Respondent submitted a response stating that Respondent is a cleaning service, that Respondent did not steal any rental property from Complainant, and that Respondent does not manage or have any rental property. Respondent states that Respondent's company is only a cleaning company. Respondent states that, if Respondent decides to get into the rental business in the future, Respondent will get a vacation lodging service license.

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

Action: Commissioner Blume made a motion to accept legal counsel's recommendation for \$1000.00 Consent Order for unlicensed activity; seconded by Commissioner DiChiara, with the addition of a Cease and Desist in the Consent Order; unanimous vote; motion carried.

DECISION: The Commission voted to accept the recommendation of legal counsel and noted that the Consent Order should include a cease and desist.

8. 2013022011

Opened: 11/14/13

First License Obtained: 5/16/94

License Expiration: 7/16/14

E&O Expiration: 1/1/15

Type of License: Broker

History: No Prior Disciplinary Action

9. 2013022012

Opened: 11/14/13

First License Obtained: 4/28/11

License Expiration: 4/27/15

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant is the purchaser of a home. As stated in the signed Confirmation of Agency Status form, Respondent 1 (broker) was a transaction broker/facilitator for Complainant and Respondent 2 (affiliate broker) was the designated agent for the seller. Respondent 2 was also an immediate family member of the seller, which was disclosed in a signed Personal Interest Disclosure and Consent Form. Complainant states that there are problems with the home's septic system, and tenants in the home before Complainant purchased also complained of problems with the septic system (Complainant included a statement from one of the prior tenants), but Complainant states that Complainant was told before purchasing the home that the problems were fixed. Complainant states that, a few months after moving in, Complainant began experiencing septic problems which resulted in Complainant digging the tank up and discovering a number of problems which Complainant repaired. Complainant attached a statement from an individual who worked on the septic tank who listed the problems with the tank and the cost of repair. Complainant states that the seller refused to help Complainant do any of this. Complainant believes that the seller knew all along that there were problems with the septic tank and did not disclose it and believes that the seller owes Complainant the money spent to repair the problems. Complainant further states that Respondents have not been helpful in assisting Complainant in resolving the septic issues.

Respondents submitted a response including documentation relating to the sale and stating that Complainant was given the opportunity for a home inspection, which Complainant conducted himself. Respondents attached copies of the sales documents, including, but not limited to a Residential Property Condition Exemption Notification for the property because the seller had not resided on the property within three (3) years prior to the date of transfer. Respondents also included an agreement between the seller and Complainant that Complainant could move into the home prior to closing for a period of time rent-free in lieu of the seller helping with the expense of installing a pump under the house. Respondents enclosed a statement from the owner of a septic system company who stated that the septic tank was pumped at the subject property approximately ten (10) days before the closing date, and the tank was running fine at the end. Respondents also included a statement from a plumber who states that the seller contacted the plumber's company to clear a sewer line clog just after the tank had been pumped, and, after performing work, the tank's operation and sewer line appeared to be in working condition. There does not appear to be a violation by Respondents.

Recommendation: Dismiss.

Action: Commissioner DiChiara made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Franks; unanimous vote; motion carried.

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

10. 2013022051

Opened: 11/13/13

First License Obtained: 1/31/97

License Expiration: 2/10/15

E&O Expiration: 1/1/15

Type of License: Broker

History: No Prior Disciplinary Action

11. 2013022121

Opened: 11/13/13

First License Obtained: 5/19/99

License Expiration: 1/21/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: 2011016301 – Closed \$1,000 CO (failure to supervise/E&O)

Complainant submitted a copy of Respondent 1's (broker) advertisement. A complaint was also opened against Respondent 2 (principal broker) for a potential failure to supervise issue. Complainant states that said advertisement, which includes photos of homes stating the number of days at which the home was sold and whether it sold at full price or the percentage over price for which the home sold but does not include the address of any of the homes (only the city), does not allow anyone to see if the claims of number of days and pricing are true. Second, Complainant states that the advertisement includes a claim that an individual's home would be sold in a specified number of days at an acceptable price to that individual guaranteed or Respondent 1 will pay a specified amount "cash" and Complainant questions the enticement as well as the appearance of paying a non-licensee money. Third, Complainant states that the bottom of the advertisement has a statement in very small letters with an asterisk stating that, "Some Conditions Apply," but there is no other asterisk to lead anyone to the disclaimer. Finally, Complainant states that the advertisement references a certain area of town, which Complainant feels is discriminatory as it is not offered across the board.

Respondents each submitted responses. Respondent 1 states that, with regard to not including the addresses of the homes featured, there are property listing ads throughout the country that do not give addresses, and agents are not required to put addresses on properties they are marketing. Secondly, Respondent 1 states that the marketing program provides that the amount specified in

the advertisement is actually a reduction in the commission paid at closing if the home is not sold in the specified number of days, and no money is given to any unlicensed individuals. Respondent 1 states that the enticement is performance-based and not a gift to a listing contract. Respondent 1 attached the full disclaimer which Respondent states is given when meeting with prospective clients, which further lays out the terms of the program. Third, Respondent 1 states that a disclaimer is not required for this marketing, but the disclaimer was provided and a marketing error was the reason why another asterisk did not lead the reader to the second asterisk, which has been fixed. Finally, Respondent 1 states that there is no restriction in marketing to affluent areas, but Respondent 1 makes it a point to name the areas that Respondent 1 is mailing to in order to create a more personal touch. Respondent 2 states that addresses are not required, and this protects the sellers' privacy. Further, Respondent 2 states that this is a performance-based advertisement where, if the house is not sold in the specified number of days, there is a reduction in commission at closing with no money paid directly to the seller. Also, Respondent 2 states that a disclaimer is not required for the advertisement, and agents go into "full disclosure mode" once contacted by a potential seller. Additionally, Respondent 2 states that Respondent 2 does not view the ad as discriminatory, and it is used all over their market and inserts proper cities or communities as needed. Finally, Respondent 2 states that this marketing strategy is used by several other agents with no problems, that Respondent 2 approved this piece and does not feel that it is false or misleading in any way and is just good marketing.

The advertising piece states that a home will be sold in a specified number of days at a price acceptable to the seller guaranteed or Respondent 1 will pay a specified amount "cash." There does not appear to be information on the advertisement which states that this money is not given in cash but is instead given as a commission reduction if the home is not sold in the number of days and other restrictions are met. This information does not appear to be provided until Respondent 1 provides the potential seller with the "full disclaimer" which Respondent 1 attached and states is given when meeting with potential clients. This "full disclaimer" lists a number of performance guarantee restrictions and restrictions regarding pricing and days on the market, but appears to be more of a flyer format without being signed by the licensee as referenced in the gifts and prizes rule. Further, the advertisement states that, monthly, many of their homes sell at full price or more in under thirty (30) days and then provides a number of photos of homes referenced by Complainant with the number of days until sold and the pricing information without addresses to verify this information, which appears to be slightly different than a mere listing of a home for sale, which may or may not include the full address.

Recommendation: As to Respondent 1, Consent Order for \$1,000 for violations of T.C.A. § 62-13-312(b)(4) prohibiting misleading or untruthful advertising, Rule 1260-02-12, specifically referencing subsection (2)(e) which prohibits advertising in a false, misleading, or deceptive manner and subsection (5)(a) which prohibits unsubstantiated selling claims and misleading statements or inferences and (5)(b) which requires that any offer, guaranty, warranty or the like made to induce an individual to enter into an agency relationship or contract, must be made in writing and must disclose all pertinent details on the face of such

offer or advertisement, and Rule 1260-02-.33 regarding gifts and prizes, plus attendance by Respondent 1 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 1's execution of Consent Order. As to Respondent 2, Consent Order for \$1,000 for violation of T.C.A. § 62-13-312(b)(15) failure to supervise, plus attendance by Respondent 2 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 2's execution of Consent Order.

Action: Commissioner DiChiara made a motion, seconded by Commissioner Franks to accept legal counsel's recommendation with the revision that Respondent 1's Consent Order shall include a civil penalty of \$3,000 and include a requirement of completion of four (4) hours of continuing education in ethics (over and above the standard continuing education requirements) and no continuing education credit for Respondent 1's meeting attendance. Motion carried.

Action: Commissioner DiChiara made a motion, seconded by Commissioner Franks to accept the recommendation of legal counsel with the revision that Respondent 2's Consent Order shall include a requirement of completion of four (4) hours of continuing education in ethics (over and above the standard continuing education requirements) and no continuing education credit for Respondent 2's meeting attendance. Motion carried.

DECISION: The Commission voted to accept the recommendation of legal counsel with the revision that Respondent 1's Consent Order shall include a civil penalty of \$3,000 and include a requirement of completion of four (4) hours of continuing education in ethics (over and above the standard continuing education requirements) and no continuing education credit for Respondent 1's meeting attendance. The Commission voted to accept the recommendation of legal counsel with the revision that Respondent 2's Consent Order shall include a requirement of completion of four (4) hours of continuing education in ethics (over and above the standard continuing education requirements) and no continuing education credit for Respondent 2's meeting attendance.

12. 2013022191

Opened: 11/8/13

First License Obtained: 1/4/07

License Expiration: 9/1/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

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

Respondent submitted a response and documentation through an attorney stating that Respondent never made any misrepresentations about the loan. Respondent states that Respondent never said that the loan had been approved, and, at no time, did Respondent tell Complainant's agent that the financial contingency had been satisfied. Respondent states that after the home and termite inspections were completed and the Buyer Inspection Contingency Removal Notification was signed, Complainant's agent prematurely changed the listing status of the home from "Active" to "Pending," although the appraisal had not been conducted, the buyer had not been approved for financing, the home inspection contingency removal had not been signed by the sellers, and the septic system had not been inspected. Later, Respondent states all contingencies except the financing contingency were satisfied, which was when Complainant stated that Complainant started packing. Respondent states that it appears that Complainant incorrectly believed that, with the appraisal contingency removed, this was a go-ahead to start packing the house. Respondent states that it is the responsibility of the Complainant's agent to make sure Complainant understands what a financial contingency means and that Complainant's agent should have advised Complainant against making expenditures until all the contingencies were met. Respondent states that the VA loan application took longer than anticipated, and Respondent asked to extend the closing date in case the loan did not come through by closing, but Respondent's request was ignored. Respondent dates that, on the date agreed to as the closing

date, the lender denied the buyer's loan application. Respondent states that, until that point, it was impossible to know that underwriting would deny the buyer's loan based on prior tax returns and debt to income ratio. When Respondent informed Complainant's agent that Respondent would be submitting the earnest money release form and loan denial letter, Respondent states that Complainant's agent stated that the sellers would not agree to return the money and threatened legal action. Respondent states that Complainant's agent pushed for the buyers to apply for another loan, and the parties agreed to extend the contract closing date. During this time, Respondent states that the interest rates had increased, and, on information from the second lender, Respondent told Complainant's agent that it was possible that the loan could be made if Complainant could contribute more to "buy down" the interest rate and the agents could contribute some of their commissions. Respondent states that Complainant's agent immediately rejected the proposal. After this rejection, Respondent states, at her client's request, that Respondent again requested a return of the buyers' earnest money. Respondent states that Complainant's agent again renewed threats of legal action and also threatened to call the owners of Respondent's firm and report Respondent's inappropriate conduct. Respondent states that Complainant's agent and principal broker refused to return the earnest money and demanded that the buyers continue with the second loan application, even after the lender told them that it would be denied. The parties agreed to another extension. After official denial from the second lender, Respondent states that Respondent again requested the earnest money. Complainant and Complainant's agent filed a lawsuit against Respondent and the buyers in September 2013.

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

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

Action: Commissioner Griess made a motion to accept legal counsel's recommendation for litigation monitoring or to dismiss if the action settles as described by Respondent's attorney; seconded by Commissioner DiChiara; unanimous vote; motion carried.

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

13. 2013022211

Opened: 11/13/13

First License Obtained: 6/29/12

License Expiration: 6/28/14

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

14. 2013022212

Opened: 11/13/13

First License Obtained: 7/8/03

License Expiration: 7/10/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant was the seller of a property, and Respondent 1 (affiliate broker; Respondent 2 was Respondent 1's principal broker at the time) was Complainant's agent. Complainant states that Complainant's appliances were sold with Complainant's home despite, Complainant says, Respondent 1 being told by Complainant that the appliances were not a part of the sale. Complainant states that, on the date Complainant signed the offer, Complainant was told where to sign, and, after asking about the appliances, Respondent 1 told Complainant not to worry. Complainant further states that, when asked, Respondent 1 told Complainant what Complainant could expect to clear from the sale, but Complainant did not clear that much and was not given a list of itemized expenses. Complainant states that Complainant was not given a copy of the documents signed on the date signed and did not receive a copy until the day before closing, at which point Complainant states Complainant discovered that all of the appliances including the washer and dryer would be included with the sale. Complainant states that Complainant never

agreed to this and the page where it stated that the appliances were included was not included in the paperwork signed by Complainant. At closing, Complainant states that Respondent 1 was not present. Complainant also states that, for the purchase of Complainant's new home, Respondent 1 was Complainant's agent, but Respondent 1 was not present at that closing either.

Respondent 1 states that Respondent 1 reviewed the Purchase and Sale Agreement with Complainant at the time Complainant signed the document. Respondent 1 also states that Respondent 1 never discussed what Complainant could expect to receive from this sale. Respondent 1 further states that Complainant did know the appliances were included in the offer, and Complainant had even talked about switching the appliances in the home for the appliances in the home Complainant was purchasing. Respondent 1 states that Complainant wanted to re-negotiate the sale after signing the contract and that Complainant was informed that the buyer would sue if the appliances and contract were not honored. Respondent 1 states that the document signed on the date referenced by Complainant throughout the complaint was the day that a Temporary Occupancy Agreement for seller after closing, a Buyer Inspection Contingency Removal, Closing Date Amendment 1 and FHA Real Estate Certification were signed, not the offer, which was signed approximately two (2) weeks prior. Respondent 1 further states that Respondent 1 continued to represent Complainant despite the fact that Respondent 1 states that Complainant and Complainant's spouse became verbally abusive and threatening, which resulted in Respondent 1 filing a complaint with the sheriff's department. Respondent 2 states that nowhere in the Exclusive Right to Sell Listing Agreement signed by Complainant was it listed that appliances would not remain with the property. Respondent 2 states that the executed Purchase and Sale Agreement provides that the listed appliances would remain with the property, and Respondent 1 went over the offer paragraph by paragraph at signing. Further, Respondent 2 states that Respondent 1 never discussed what net proceeds would be because Respondent 1 did not have access to Complainant's loan payoff information. Respondent 2 states that, at the time of signing and acceptance of the purchase contract, there was no availability of making copies, but Respondent 1 offered to immediately travel to Kinko's to make copies, which was declined by Complainant. Respondent 2 states that Respondent 1 did deliver the documents approximately five (5) days later at Complainant's instruction. Respondent 2 further states that, on the day before closing, Complainant told Respondent 1, via text message, not to show up and stated that Complainants would not be at closing. Respondent 2 states that Respondent 1 was fearful of Complainant, and Respondent 2 had multiple conversations with Complainant and Complainant's spouse, and there was constant yelling and foul language and that Complainant made threats that caused concern for the safety of Respondents so that Respondents did not attend the closing.

Respondents provided multiple documents as well as copies of text messages between Respondent 1 and Complainant. There did not appear to be anything in documents signed by Complainant suggesting any provision for keeping the appliances nor any indication of promised money. However, as admitted by Respondents, a copy of the contract signed by Complainant

accepting the offer was not given to Complainant at the time of signing, and a copy was not given until approximately five (5) days later.

Recommendation: As to Respondent 1, Consent Order with \$250.00 civil penalty for violation of T.C.A. § 62-13-312(b)(8) failing to furnish a copy of the contract at the time of execution, plus attendance by Respondent 1 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 1's execution of Consent Order.. As to Respondent 2, dismiss.

Action: Commissioner McMullen made a motion to accept legal counsel's recommendation; seconded by Commissioner Franks; unanimous vote; motion carried.

DECISION: The Commission voted to accept the recommendation of legal counsel as to Respondent 1. As to Respondent 2, the Commission voted to authorize a Consent Order with \$250.00 civil penalty for violation of T.C.A. § 62-13-312(b)(15) plus attendance by Respondent 2 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 2's execution of Consent Order.

15. 2013022221

Opened: 11/27/13

First License Obtained: 3/23/01

License Expiration: 10/6/15

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

In mid-2008, Complainants bought a house from Respondent (affiliate broker), who was the builder/seller and acting as his own agent to list the property. Complainants were represented by a different licensee. Complainants allege that Respondent did not disclose that the house failed a city inspection and was built with multiple code violations. After noticing some problems with the crawlspace, siding, and brick fascia, Complainants hired a structural engineer in mid-2013 to assess the condition of the foundation and attached a copy of the engineer's report. The report stated that the structure of the home was currently good, but there were issues noted in the report that needed to be addressed to avoid problems down the road. Among the items noted within the report are bare areas in the crawlspace that are not covered with a vapor barrier, sewer clean-outs which are located inside the crawlspace, and sufficient steps were not taken to prevent water from running behind the vinyl siding on the house. These items were among the code violations which Complainants state exist in the home which were not disclosed by Respondent. After this report,

Complainants went to City Hall and examined the inspection reports for the home and found that the home failed a framing inspection. The report states that Respondent needed to call when one issue was corrected, but the report does not indicate that a follow-up ever occurred. Further, Complainants state that the home never passed a final building inspection or received a certificate of occupancy. Complainants assert that the failed framing inspection report, the code violations, and the lack of a certificate of occupancy, which Complainants state were not disclosed by Respondent, constitute material defects that Respondent had an obligation to disclose when Respondent sold Complainants the property.

Respondent states that Respondent built the property and was the owner/agent of the home. Respondent states that Complainants were given a chance to perform inspections prior to closing, and Respondent states that, after closing, Respondent did return to make a few adjustments as in any new construction home, but Respondent states that, to Respondent's knowledge, the real estate transaction has never been an issue. Respondent's principal broker submitted a statement that the purchase was over five (5) years ago, and the office only keeps the records for the required three (3) year period as required by the Commission, so the office no longer has the records relating to the transaction. Respondent's broker states that the complaint appears to be construction related and not related to the real estate side of the sale.

Complainants responded that they were unaware of the matters referenced in the complaint regarding the home. Complainants state that they received a home appraisal and paid for a home inspection but never received a copy of the report and have been unable to obtain a copy once discovering the issues due to changes in the inspector's business. Complainants state that Respondent was the builder and had more access than a typical real estate licensee to have knowledge of the home's quality and inspection paperwork.

Based on the information within the file, it appears that the above-referenced issues noted by the structural engineer as well as the failed framing inspection and lack of a certificate of occupancy, both of which Complainants state were not disclosed by Respondent, appear to constitute misrepresentation (in the case of the lack of certificate of occupancy) and a failure to disclose adverse facts of which the licensee has actual notice or knowledge (with regard to the failed framing inspection and the items alleged as code violations).

Recommendation: **Consent Order for \$1,000 for violations of T.C.A. §§ 62-13-312(b)(1) and 62-13-312(b)(14) and 62-13-403(2), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.**

Action: **Commissioner Griess made a motion to accept legal counsel's recommendation; seconded by Commissioner McMullen; motion carried 6 yes and 3 no. Commissioner Collins, Alexander and Stephenson voted against the motion.**

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

16. 2013022241

Opened: 11/14/13

First License Obtained: 5/8/00

License Expiration: 3/25/14

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant was the seller of a property, and Respondent (affiliate broker) was initially the seller's agent. The property went under contract with potential buyers but ultimately fell through due to financing. Complainant alleges that Respondent allowed the couple (the potential buyers) to move into Complainant's home and collected rent without Complainant's knowledge. Complainant states that, when Complainant told Respondent that Complainant was coming in town, Respondent instructed that a rent check (made out by a family member of the people residing within the home to Complainant) be paid to Complainant (a copy of the check was included). Complainant attempted to cash this "rent" check of \$400, but it was denied for insufficient funds. Complainant states that Respondent collected rent money from the individuals without giving them a receipt. When Complainant contacted Respondent's principal broker, Complainant states that the principal broker did not do anything.

Respondent states that Complainant signed a Purchase and Sale Agreement, but the closing never went through due to loan denial. Before the loan was denied, Respondent states that the loan officers required certain repairs to the house that were needed to pass inspection, and Complainant refused to pay but agreed that the buyers could make the repairs themselves and wanted all utilities in the buyers' names while the work was being done. Respondent states that this was an offer to purchase and in no way was a rental agreement done, but the potential buyers sent Complainant a check which Complainant signed and cashed. Respondent's principal broker stated that buyers came into his office and told him that they had rented the house and paid rent to Respondent. The principal broker states that he informed them that his office did not handle rent property or collect rent for other people. The principal broker states that the buyers told him different things about how they had given rent money to Respondent. The principal broker states that he encouraged the buyers to get out of Complainant's house. He also stated that he has satisfactorily worked with Respondent for thirteen (13) years and Respondent had never lied to

him. Respondents provided the transaction documentation, which included the Purchase and Sale Agreement which noted that possession of the property would be given with delivery of warranty deed and payment of purchase price and did not reference access for either renting or repairs. Further, the Purchase and Sale Agreement does not include a termination date as required by T.C.A. § 62-13-312(b) (9). Additionally, the Purchase and Sale Agreement lists Respondent as both the licensee for the Listing Company as well as the Selling Company, but there was no executed Confirmation of Agency form between the parties as required by T.C.A. §§ 62-13-312(b)(7) and 62-13-405(a) & (b).

Complainant responded again stating that an insurance agent called Complainant to complain about “debris” around her house, which was there because the buyers were living there and doing some work. Complainant states that this was the first time she heard of the buyers doing repair work, and this phone call was how she discovered that they were living there. She claims the buyers put utilities in their name without her knowledge (Respondent says that Complainant agreed to this), and that repairs were not needed because the house was sold “as is.” Complainant also addresses the check and states that Respondent called Complainant and encouraged Complainant to accept it because “she wanted the buyers to give something for holding up the Contract.” Complainant claims the buyers were in the house for eight (8) months.

Legal counsel spoke with the potential buyers who were allegedly residing in the property. They stated that they entered the Purchase and Sale Agreement and were given keys by Respondent’s broker around the time the agreement was signed. The potential buyers state that they moved into the home around that time, and the lender was stalling for a while, and the sale finally fell through. The Complainants state that there was no rental agreement, but they lived in the home and paid rent of \$400.00 per month cash to Respondent, who would not give them receipts, from December 2012 until July 2013. The potential buyers state that they were not aware that Complainant did not want to rent the property, and Respondent told them that Complainant did want to rent the home. The potential buyers state that they eventually moved out when Respondent’s broker told them that they should.

Recommendation: Consent Order for one (1) year license suspension in addition to \$1,700.00 for violations of T.C.A. §§ 62-13-312(b) (1) (3) (5) (7) (9) (14) (20), 62-13-403(1) and (4), 62-13-404(2), and 62-13-405(a) and (b).

Action: Commissioner DiChiara made a motion, seconded by Commissioner Franks, amended by Commissioner Griess, amendment seconded by Commissioner Blume, to authorize a Consent order for one (1) year license suspension in addition to \$11,400 for violations of T.C.A. §§ 62-13-312(b)(1)(3)(5)(7)(9)(11)(14)(20), 62-13-403(1) and (4), 62-13-404(2), and 62-13-405(a) and (b) plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days after Respondent’s suspension is lifted. Unanimous vote; motion carried.

DECISION: The Commission voted to authorize a Consent order for one (1) year license suspension in addition to \$11,400 for violations of T.C.A. §§ 62-13-312(b)(1)(3)(5)(7)(9)(11)(14)(20), 62-13-403(1) and (4), 62-13-404(2), and 62-13-405(a) and (b), plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days after Respondent's suspension is lifted.

17. 2013023201

Opened: 12/16/13

First License Obtained: 9/20/04

License Expiration: 2/11/12

E&O Expiration: Uninsured

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

****Respondent's license expired on 2/11/12****

Complainant works for an out-of-state business. Complainant alleges that Respondent (affiliate broker – expired license) acted as a property manager and real estate broker to Complainant's company. Complainant states that Respondent has been managing the properties since 2008 until July 30, 2013, when Complainant terminated Respondent's services for withholding information, rental incomes, and paperwork from the properties, for making claims on Complainant's company's insurance policy, and for failing to disclose that Respondent's license was expired. Complainant states that Respondent made a claim for completion of work on a property to the insurance company and collected funds between March and August 2013 totaling approximately twenty thousand dollars (\$20,000.00). Complainant states that Respondent cashed the check, using a stamp Respondent had created with Complainant's company name on it, and left the unit at issue for the claim in shambles. Complainant then learned that Respondent's license had expired in 2012 and states Complainant was not notified of this fact. Complainant has filed a complaint with the police department and is filing a complaint with the insurance company and is also consulting an attorney. Complainant attached documentation, including, but not limited to, rental agreements which included the name of Respondent's former firm, whose license is expired and a check from Respondent to Complainant's company from August 2013 when services were terminated for rents due at the time of termination. Additionally, Complainant provided a copy of a Property Loss Notice from March 2013 which listed Respondent as the

property manager and invoices submitted by Respondent regarding the work which purportedly needed to be done dated in April and May of 2013. Complainants also submitted other insurance documents and copies of checks paid to Complainant's company which were endorsed by stamp by Respondent.

There was no response filed by Respondent.

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

Action: Commissioner McMullen made a motion to accept legal counsel's recommendation; seconded by Commissioner Collins; unanimous vote; motion carried.

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

18. 2013023281

Opened: 11/27/13

First License Obtained: 3/12/93

License Expiration: 11/8/15

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: 201101086 – Closed \$4000 CO

19. 2013023282

Opened: 11/27/13

First License Obtained: 9/13/01

License Expiration: 3/17/16

E&O Expiration: None (Retired license)

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant was a time share owner, and Respondent 1 is an affiliate broker, and Respondent 2 is an affiliate broker whose license is retired. Complainant states that, in August 2012, Complainant hired a company run by Respondents to transfer Complainant's time-share and paid a closing fee and transfer fee to have Complainant's time-share taken out of Complainant's name. Complainant states that no closing took place, and, approximately one (1) year later, Complainant agreed to give the time-share back to the time-share developer. Complainant states that Respondents' company did not do the closings as paid for by Complainant.

Respondents state that the contract with Complainant provided that any maintenance bill occurring during the one hundred eighty (180) day transfer period is responsibility of time-share owner. After signing the transfer documents, Respondents state that Complainant was then billed for a maintenance fee for the upcoming year, and Complainant refused to pay, and the time-share registration would not complete the transfer although the registration had already cashed the transfer fee check before Respondents learned of the fees which were owed. Respondents state that Complainant then asked for the property to be deeded back to Complainant, and Respondents complied. Respondents state that Respondents issued Complainant the requested refund regarding the transaction.

The issue for TREC's determination is whether these individuals are engaged in time-share resale activity. Respondents' company/activities were the subject of a recent investigation wherein the investigator obtained information that Respondents did not buy or sell time-shares, but only handled timeshare closings and transferred timeshares from one entity to another when requested to do so. The previous findings concluded that the information provided and obtained through investigation did not show that Respondents were involved in unlicensed time-share resale activity, and this conclusion would appear to be appropriate here, as well.

Recommendation: Close.

Action: Commissioner DiChiara made a motion to accept legal counsel's recommendation to close; seconded by Commissioner McMullen; unanimous vote; motion carried.

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

20. 2013023741

Opened: 12/16/13

First License Obtained: 7/22/68

License Expiration: 10/18/14

E&O Expiration: 1/1/15

Type of License: Broker

History: No Prior Disciplinary Action

Complainant states that Complainant was contacted by Respondent (broker) on several occasions. According to Complainant, Respondent stated that Respondent was the agent of Complainant's ex-wife, who had hired Respondent to market the sale of the home after Complainant's divorce. Complainant states that Complainant told Respondent that transactions were in place to satisfy the agreements of the divorce settlement agreement, but Respondent continued to harass Complainant regarding evaluating the property to list for sale and continued to state that Respondent was the agent for Complainant's ex-wife. Later, Complainant states that Respondent confirmed that there was no written agency agreement, which Complainant states means that Respondent misrepresented Respondent's relationship with Complainant's ex-wife, which Complainant states is a violation of T.C.A. §§ 62-13-401 and 62-13-403(4). Complainant attached two (2) months of cell phone bills wherein Complainant highlighted calls and texts from Respondent to prove contact as well as a fax to Respondent wherein Complainant sent Respondent the Quitclaim Deed conveying the ex-wife's interest in the home to Complainant and stating that the ex-wife had no authority to hire an agent, and a transaction was in place that was pre-approved to pay off the existing mortgage.

Respondent submitted a response denying any wrongdoing. Respondent states that Respondent was contacted by Complainant's ex-wife, who asked Respondent to do what was necessary to list the property for sale. Respondent stated that Respondent would need to see the property, and the ex-wife agreed to contact Complainant to arrange this. Respondent states that Respondent arrived at the property on a date and time at which the ex-wife told Respondent that Complainant would be meeting Respondent. When no one was home, Respondent states that Respondent called Complainant and sent a text message (as shown in the phone records) because Respondent thought they were supposed to meet. Respondent states that Respondent spoke with Complainant on the following day and discussed that the divorce decree called for a lockbox at the home, entry availability, a sign in the yard, and other things done to sell a home. Respondent states that Complainant said none of this would happen, and Respondent did not harass Complainant or do anything other than state that Respondent was following the ex-wife's direction and the divorce decree said the things should be done. Respondent states that Complainant informed Respondent of the quit claim deed, and, during that conversation was verbally hostile, and, after that date, Respondent has had no further contact with Complainant except when Complainant called Respondent. Respondent states that this listing was handled as Respondent handles others, and Respondent needed access to view the home before agreements were signed. Respondent states that the ex-wife stated that she wanted Respondent to handle the potential sale as the divorce decree called for and to be the ex-wife's agent. Respondent does not feel like the contact that Respondent had with Complainant was harassment in any way.

Respondent attached a copy of a letter from the ex-wife and a portion of the Settlement Agreement relating to the division of real property. Pursuant to the Settlement Agreement, Complainant had thirty (30) days to provide proof that Complainant qualified to re-finance to remove the ex-wife from the mortgage. If Complainant was unable to qualify for re-financing during that period, the Settlement Agreement provided that the home would be listed for sale with an agent chosen by the ex-wife for six (6) months. If not sold in that period, the parties would alternate choosing agents to list the home. The Settlement Agreement further stated that Complainant would cooperate with having the home listed for sale by allowing a lock box, ensuring the home was in "show condition," and making the house available for showings and timely signing any paperwork. The ex-wife stated that the ex-wife contacted Respondent approximately thirty (30) days after the divorce date and provided a copy of the settlement agreement and discussed Respondent meeting with Complainant to view the home. The ex-wife states that Complainant spoke with Respondent, would not allow Respondent in the house or a lock box or sign any listing agreement. The ex-wife states that the ex-wife quitclaimed the home to Complainant as provided in the Settlement Agreement, and Complainant's mother purchased the home with Complainant continuing to reside in the home and the calls between Complainant and Respondent having no effect on that. The ex-wife stated that Respondent was professional and did not misrepresent the nature of Respondent's relationship with the ex-wife. Based on the information within the file, there does not appear to be a violation by Respondent.

Recommendation: Dismiss.

Action: Commissioner Collins made a motion to accept legal counsel's recommendation; seconded by Commissioner Franks; unanimous vote; motion carried.

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

21. 2013023901

Opened: 12/18/13

Type of License: Time-Share Registration

History: No Prior Disciplinary Action

Complainants purchased a time-share from Respondent (time-share registration) and claim that a number of verbal misrepresentations were made to Complainants during the sales presentation. Said verbal misrepresentations alleged by Complainants included, but were not limited to, that Complainants could make rental income by renting the time-share with the assistance of

Respondent, that the time-share is a valuable investment, that Respondent has a resale department to assist with selling the time-share if Complainants wish, that a reduced price was available for that day only, that Complainants would receive a number of getaways per year that could be sold to make money, and that Complainants could make money through Respondent's referral program. Complainants further state that the rescission language was not pointed out to them. Complainants would like contract cancellation and a refund.

Respondent submitted a response denying that any of Complainants' alleged misrepresentations were made during the sales process. Specifically, Respondent states that Complainants' allegation regarding misrepresentations regarding investment potential due to resale or rental income is contradicted in a signed Acknowledgement of Representations, as well as the allegation that Respondent does not have a resale or rental department. Respondent does state that Complainants have the ability to rent their unit to whomever they choose and retain any rental income generated. Respondent states that Respondent does offer some same day price incentives only available on the day that a consumer attends a presentation. Further, Respondent states that the getaways are an owner benefit from a third party exchange company and, prior to purchasing, owners are given the terms and conditions which state that memberships may only be used for personal, non-commercial purposes. Additionally, Respondent states that Respondent does offer a referral program but denies that any representations were made during the sales presentation and points to materials given to Complainants regarding the program. Finally, regarding the rescission language, Respondent denies that the rescission period was concealed and point to a signed Receipt for Time-Share Documents signed by Complainants where Complainants received paper copies and a CD-ROM of the documents and the rescission period in bold type above Complainants' signatures. Despite denying any wrongdoing, Respondent states that, as a courtesy, Respondent has cancelled Complainants' contract and issued a refund. Based on the documentation of the file, there does not appear to be a violation by Respondent.

Recommendation: Dismiss.

Action: Commissioner McMullen made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.

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

22. **2014001291**
Opened: 2/6/14

First License Obtained: 3/2/11

License Expiration: 3/1/15

E&O Expiration: 1/1/15

Type of License: Broker

History: 2013016141 – Closed \$1,000 CO (taking listings)

Originally, a complaint was filed by this Respondent (broker) against another licensee (the two were formerly affiliated with the same firm), and this Respondent alleged in that complaint that the other licensee had been running ads which offered a free one (1) year home warranty if an individual buys or sells a home with the firm. In that complaint, this Respondent argued that the advertisement does not list the basic disclosure requirements as required by the Gifts and Prizes Rule regarding the offer details and states only that some stipulations apply, which this Respondent called a bait and switch tactic where the only way to know the stipulations was to schedule a listing or buyer appointment where the individual would find that the free home warranty only applied under certain circumstances. That complaint's Respondent argued that the firm no longer advertised in that manner and the disclosure had been changed to include more specific language. Further, that Respondent attached copies of ads for this Respondent (who was at that time the Complainant) which included the same inducement. After making a determination regarding that complaint, the Commission voted to open a complaint against this Respondent regarding this Respondent's advertisement which was provided in the response to the first complaint. Therefore, this complaint was opened at the direction of the Commission.

Respondent submitted a response stating that, as Respondent's defense for this complaint, Respondent was doing what Respondent was told by the other licensee from the earlier complaint (who was the owner of the firm where Respondent was previously the principal broker). Respondent states that the other licensee was in complete control of advertising while Respondent was at the firm, and all ads had to be uniform. Respondent attached a number of ads for several licensees (including this Respondent and the other licensee as well as several others) within that same firm which had the same language referenced above. Respondent states that, at Respondent's new firm, the ads featuring offers such as this give the value and no stipulations.

Recommendation: Consent Order for \$250 for violations of Rules 1260-02-.12(5)(b) and 1260-02-.33 plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.

Action: Commissioner DiChiara made a motion to accept legal counsel's recommendation; seconded by Commissioner Franks; unanimous vote; motion carried.

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

Chairman Stephenson adjourned the meeting on Wednesday, March 5, 2014 at 4:35 p.m.

