

TENNESSEE REAL ESTATE COMMISSION MINUTES

JULY 2, 2014

The Tennessee Real Estate Commission convened on Wednesday, July 2, 2014 at 9:15 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 John Griess, Commissioner Janet DiChiara, Commissioner Austin McMullen, Commissioner Grover Collins, Commissioner Gary Blume, and Commissioner Wendell Alexander. Absent from board meeting were Commissioner Flitcroft, and Commissioner Franks. Others present: Executive Director Eve Maxwell, Assistant General Counsel Robyn Ryan, and Assistant General Counsel Julie Cropp, Licensing Technician Kimberly Smith.

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, June 26, 2014. Also, this meeting has been notice on the tn.gov website since Thursday, June 26, 2014.

Commissioner Collins made a motion to approve the July 2014 agenda; seconded by Commissioner McMullen. Motion carried.

Commissioner Collins made motion to approve the June 2014 minutes; seconded by Commissioner Griess. Motion carried.

Election of Chairman and Vice Chairman

Commissioner McMullen made motion for Commissioner John Griess to be Chairman for fiscal year 2014-2015; seconded by Commissioner DiChiara.

Commissioner Alexander makes motion to cease nominations and to elect Commissioner Griess by acclamation; seconded by Commissioner McMullen. Motion carried.

Immediately following his election, Commissioner Griess assumed the role of the Chairman of the Commission.

Chairman Griess made motion for Commissioner DiChiara to be vice Chairman for fiscal year 2014-2015; seconded by Commissioner Alexander. Motion made by

Commissioner McMullen to close election process and make Commissioner DiChiara Vice Chairman by acclamation; motion seconded by Commissioner Alexander. Motion carried.

INFORMAL APPLICANT APPEARANCE

APPLICANT: FRANCES STEVEN BEIL #329657; PRINCIPAL BROKER: WILLIAM FRED SCOTT #322944

Principal Broker: William Fred Scott #322944 is the PB of McWhirter Realty LLC d/b/a Century 21 Premier # 261209 located in Brentwood, TN. Frances Beil #329657 has applied for an affiliate broker license. Mr. Beil has passed the affiliate broker exams and has revealed that he has had several misdemeanor convictions and one felony conviction in 1996.

After hearing from the applicant and his principal broker and much discussion, **Commissioner DiChiara made a motion to approve Frances Beil to move forward in the licensure process for affiliate broker; seconded by Commissioner Stephenson, roll call vote the Motion Carried 4 to 3. Commissioners McMullen, Collins, and Alexander voted against the motion.**

EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL

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

COMPLAINT REPORT

Consent Orders Fees \$4,500, Reinstatement Fees \$25,280, Agreed Citation Fees \$1,200, E&O Penalty Fee \$1,200 Total collected in June 2014 \$ 34,560

LICENSING STATISTICS

Ms. Maxwell presented licensing statistics for the month of June 2014. The statistics presented included tables which compared several years' number of licensees, firms, exams taken, applications approved and renewal percentages.

As of June 30, 2014, there were 24,559 active licensees, 1,127 inactive licensees and 7,730 retired licensees (these numbers include only brokers, affiliate brokers and timeshare salespersons). There were 3,885 active firms and 215 retired firms. The grand total of firms and licensees is 37,822, which represents an increase of 161 licensees from the prior month. There were 552 real estate licensing exams taken in June 2014 and 368 applications approved.

E&O UPDATE/QUARTERLY CLAIMS REPORT

Ms. Maxwell updated the Commissioners on the number of E&O suspensions and the number of licensees previously in suspension who have paid the statutory penalty fee and shown proof of E&O in order to be placed back into active status.

Ms. Maxwell stated that as of 7/1/2014, approximately 586 people are in suspension for failing to provide proof of E&O coverage as required by TCA 62-13-112. The amendments to TCA 62-13-112 (effective 7/1/2013) require the staff to automatically revoke the licenses of those licensees who have been suspended for more than 1 year. As of 7/1/2014, TREC estimates that approximately 490 suspended licenses will be revoked by end of week (7/5/2014).

TREC has received the signed and executed Amendment to the E&O Master Contract. The Amendment provides for an extension of the Master Contract with RICE Insurance Services to continue as the recommended state insurance E&O provider from 1-1-2015 – 12-31-2016. The cost of the base policy will be \$249 and any endorsements requested by an individual licensee will be an additional cost to the licensee.

ADVERTISING

At the request of Commissioner Blume, the Commission discussed several points related to proposed Rule 1260-02-.12(1): (a) Whether the word “promotes” should be removed from proposed Rule 1260-02.12(1) prior to the public hearing; (b) Should the term “electronic signatures” be clarified and does this term include services like DocuSign? and (c) Does the Commission have the resources to monitor tweets and other forms of social media and if so, to what extent? Are any or all of these a form of advertising which is, or should be, regulated by Rule 1260-02-.12.

After discussion, **Commissioner DiChiara made motion to remove words “promotional materials” from proposed Rule 1260-02-.12(1); seconded by Commissioner Blume. Friendly, amendment by Commissioner McMullen to add sentence at the end stating “Advertising does not include promotional materials that incidentally advertise a licensee such as hats, pens, note-pads, t-shirts, name tags, etc. and the like. Vote 6 to 1; Motion Carried; Commissioner Collins voted No.**

After discussion, **Commissioner Blume made motion to eliminate “Electronic signature” from proposed Rule 1260-02-.12(1); seconded by Commissioner Stephenson. Motion carried unanimously.**

Commissioner DiChiara made motion to add “E-Mail Signatures” in place of “Electronic Signatures” in proposed Rule 1260-02-.12(1); seconded by Commissioner Blume. Motion carried unanimously.

After Discussion on the social media issue, the Commissioners decided not to further amend the current proposed Rule 1260-02-.12(1) related to social media, but rather to allow those provisions to move forward as originally submitted.

BROKER MAIL AUDIT UPDATE 7-2-2014

Ms. Maxwell stated on 5-19-14 staff sent the new Mandatory Broker Audit Form out to 191 randomly selected firms throughout the state. As of 7-2-14, TREC has received 180 completed audits. Ms. Maxwell stated the Auditor position has been unfrozen; no more audits will be sent out until an auditor can be hired. Attorney, Julie Cropp added language to the Audit Form Cover Letter advising that failure to comply with the Audit Form requirements could result in civil penalties up to a \$1000.00 as requested by the Commission at the June, 2014 meeting.

Commissioner DiChiara brought up a concern with wording of audit regarding ESCROW ACCOUNT/TRUST ACCOUNT. Ms. Maxwell explained the differences; saying on the first page there is defined terms explaining what type of accounts are acceptable. One more mailing will be sent out with current wording if confusion is still present staff will add additional sentence of explanation.

TRAINING PROGRAM

The Public Chapter No. 881, which amended TCA 62-76-201 requires each regulatory board to develop a plan to create an apprentice program to be submitted to the speaker of the senate and house, the government operations committees, the commissioner of commerce and insurance, the commissioner of health and the commissioner of labor and workforce development on or before 12/31/2014. Ms. Maxwell had sent the Commissioners a copy of Public Chapter No. 81 a couple of weeks prior to the meeting in anticipation of a discussion of the apprentice program. The Commissioners discussed several ideas for apprentice programs and decided that the topic would be discussed again at the August, 2014 meeting.

2015 TREC COMMISSION MEETINGS

Commissioner Blume made motion to approve 2015 calendar dates; motion seconded by Commissioner DiChiara. Motion carried unanimously.

FINGERPRINT UPDATE

Ms. Maxwell presented an update on the fingerprint reports required as of 1/1/2014 pursuant to TCA 62-13-303(1); Since 1-1-2014 there have been 2,138 fingerprinted 428 have an indication, 1,654 had no indication, and 56 were retaken.

BUDGET

Ms. Maxwell had previously sent a copy of the May, 2014 budget to the Commissioners for their review. Commissioners did not have questions on the May, 2014 budget. Ms. Maxwell reported that June 30, 2014 marks the end of the fiscal year, and that the preliminary year end budget numbers should be available in August, 2014.

ARELLO

TREC attorney Julie Cropp reported that she would be able to attend the ARELLO Annual Conference. The Commissioners voted to request the following individuals be approved to attend the ARELLO Annual Conference to be held in Philadelphia, September 17- 21, 2014.

Commissioner McMullen made a motion to request that Commissioner DiChiara, Executive Director Eve Maxwell, and Attorney Julie Cropp be approved to attend the ARELLO Annual Conference to be held in Philadelphia, September 17- 21, 2014; seconded by Commissioner Collins. Motioned carried unanimously.

William C. (Bill) Tune Award

In order to enable the Commission to effectuate action taken at the June, 2014 meeting, Commissioner Collins made a motion to amend to Commission Policy 96-CPS-004 to remove the current language of the Policy (which states that only one award may be made per year) in order to allow the Commission to present the William C. (Bill) Tune Award to multiple recipients in one year; motion seconded by Commissioner Blume. Motion carries unanimously.

EDUCATION REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

COURSE REVIEW

Ms. Maxwell presented the educational courses and instructors set forth on the July, 2014 Education Report for Commission Approval.

Commissioner DiChiara made a motion to approve the Courses for Commission Evaluation J1 through J13; seconded by Commissioner Stephenson. Motion carries.

Commissioner Alexander made motion not to approve J14 because the course did not appear to fall within the requirements for CE courses established in Rule 1260-05-.03(5)(a); motion seconded by Commissioner Stephenson. Motion carries; Commissioner McMullen abstains.

INSTRUCTOR QUALIFICATION

Ms. Maxwell requested that the Commission give some guidance on the following issue: Can an individual who does not hold a broker license in Tennessee, but is a licensed broker in one or more other states with multiple years of experience as a broker and is an ARELLO trained and approved instructor who teaches prelicense courses in numerous states, teach Tennessee pre-license internet courses? Ms. Maxwell stated that TCA 62-13-324 does not appear to prohibit the approval of such an individual.

Commissioner Alexander made motion that an individual such as the individual described could be an approved instructor for Tennessee prelicense internet courses; seconded by Commissioner Stephenson. Motion carries.

INFORMAL APPLICANT APPEARANCE

APPLICANT: Timothy Ray Lung #329875; PRINCIPAL BROKER: Cindy Garvey #240640 is the PB of United Country-Leiper's Fork Land & Home # 256857 located in Franklin, TN. The applicant, Timothy Ray Lung has applied for an affiliate broker license. Mr. Lung passed the exams and revealed that he had one felony conviction and one

misdemeanor, both in 1984.

After hearing from the applicant and his principal broker, **Commissioner Collins made a motion to approve Timothy Ray Lung to move forward in the licensure process for affiliate broker; seconded by Commissioner DiChiara. Motion Carried.**

WILLIAM TUNE UPDATED POLICY

Based upon the action taken earlier in the meeting, during the lunch break, Attorney Cropp drafted an updated copy of Commission Policy 96-CPS-004 and it submitted for the approval of the Commissioners.

Commissioner Alexander made motion to accept the revised Commission Policy 2014-CPS-01 to repeal and replace Commission Policy 96-CPS-004; seconded by Commissioner DiChiara. Motion carried.

RULE MAKING

I. Rule 1260-01-.01

Based upon amendments to TCA 40-29-107 regarding Certificates of Employability, Ms. Cropp presented to the Commission a proposed amendment to Paragraph (4) of current Rule 1260-01-.01 Applications for Examinations that would add the following language to the beginning of the initial sentence of Paragraph (4): “Notwithstanding a person’s possession of a certificate of employability pursuant to TCA 40-29-107,”

Chairman Griess asked if it was the will of the Commission to move forward with the process to necessary to approve the proposed amendment to Rule 1260-01-.01(4), hearing no objection Chairman Griess stated that it was the will of the Commission to move forward with the steps necessary to approve the Amendment to move forward in the Rulemaking process.

The Commission at this time analyzed and discussed as necessary, the proposed amendment to Rule 1260-01-.01(4) as it relates to each of the requirements of the Regulatory Flexibility Act, Other Considerations, Economic Impact Statement Analysis, and Financial Impact on Local Governments Analysis.

Regulatory Flexibility Act: Pursuant to the Regulatory Flexibility Act of 2007 (T.C.A. § 4-5- 401 *et seq.*), prior to initiating the rulemaking process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-203(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

REGULATORY FLEXIBILITY ANALYSIS: (from T.C.A. § 4-5-402(b))

*Each of the following must be considered by the Commission with regard to the proposed rules:

(1) The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules

There is no overlap, duplication, or conflict with other federal, state, or local governmental rules.

Commissioner McMullen moves to adopt the statement that there is no overlap, duplicate, or conflict with other federal, state, and local governmental rules; seconded by Commissioner Collins. Motion carries.

(2) Clarity, conciseness, and lack of ambiguity in the rule

The rule is clear, concise, and unambiguous and seeks to address the provisions of T.C.A. § 40-29-107 relating to an applicant for licensure with the Commission who holds a certificate of employability.

Commissioner McMullen moves to adopt the rule is clear, concise, and unambiguous and seeks to address the provisions of T.C.A. § 40-29-107 relating to an applicant for licensure with the Commission who holds a certificate of employability; seconded by Commissioner Collins. Motion carries.

(3) The establishment of flexible compliance and reporting requirements for small businesses

This rule does not establish compliance or reporting requirements for small businesses but instead only addresses situations involving a person's application for licensure where that 2 person holds a certificate of employability.

Commissioner McMullen moves to adopt statement, "this rule does not establish compliance or reporting requirements for small businesses but instead only addresses situations involving a person's application for licensure where that 2 person holds a certificate of employability;" seconded by Commissioner Collins. Motion carries.

(4) The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses

This rule does not create any compliance and reporting requirements for small businesses.

Commissioner McMullen makes motions that this rule, “does not create any compliance and reporting requirements for small business;” seconded by Commissioner DiChiara. Motion carried.

(5) The consolidation or simplification of compliance or reporting requirements for small businesses

This rule does not create any compliance or reporting requirements for small businesses.

Commissioner McMullen makes motion to adopt this statement that this rule does not create any compliance or reporting requirements for small businesses; seconded by Commissioner Collins. Motion carried.

(6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule

There are no performance, design, or operational standards established by this rule.

Commission McMullen make motion to adopt statement, “there are no performance, design, or operational standards established by this rule;” seconded by Commissioner DiChiara. Motion carried.

(7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs

This rule does not result in the unnecessary creation of entry barriers or other effects that will stifle entrepreneurial activity, curb innovation, or increase costs.

Commissioner McMullen makes motion to adopt statement, “this rule does not result in the unnecessary creation of entry barriers or other effects that will stifle entrepreneurial activity, curb innovation, or increase costs;” seconded by Commissioner DiChiara. Motion carried.

OTHER CONSIDERATIONS:

Does the rule make it better to do business in Tennessee?

This rule is expected to make it better to do business in Tennessee by helping to ensure that anyone licensed with the Commission is fit and able to perform the duties and responsibilities necessarily related to real estate licensure.

Commissioner McMullen makes motion to adopt statement, “this rule is expected to make it better to do business in Tennessee by helping to ensure that anyone licensed with the Commission is fit and able to perform the duties and responsibilities

necessarily related to real estate licensure;” seconded by Commissioner Collins. Motion carried.

Does the rule make it easier to create jobs in Tennessee?

This rule is unlikely to have a foreseeable impact on job creation in Tennessee.

Commissioner McMullen moves to adopt statement, “this rule is unlikely to have a foreseeable impact on job creation in Tennessee;” seconded by Commissioner DiChiara. Motion carried.

Is it essential and effective?

The rule is essential and effective in addressing the provisions of T.C.A. § 40-29-107 relating to a person who wishes to obtain licensure with the Commission and who presents a certificate of employability to the Commission.

Commissioner McMullen moves to adopt the statement, “this rule is essential and effective in addressing the provisions of T.C.A. § 40-29-107 relating to a person who wishes to obtain licensure with the Commission and who presents a certificate of employability to the Commission;” seconded by Commissioner Collins. Motion carried.

Who does it affect?

The rule affects any person who wishes to obtain licensure with the Commission who possesses a certificate of employability but who also has a felony or theft misdemeanor conviction where less than two (2) years have passed from the date of expiration of probation, parole or conviction, or from the date of release from incarceration.

Commissioner McMullen moves to adopt the statement, “the rule affects any person who wishes to obtain licensure with the Commission who possesses a certificate of employability but who also has a felony or theft misdemeanor conviction where less than two (2) years have passed from the date of expiration of probation, parole or conviction, or from the date of release from incarceration;” seconded by Commissioner DiChiara. Motion carried.

Is the rule a positive move?

The Commission’s adoption of this rule denying licensure for a specified period of time for certain offenses, despite a person’s possession of a certificate of employability, results from the fact that the time elapsed and nature of the offense has a direct bearing on the fitness or ability of the person to perform the duties of a real estate licensee, and this rule will serve to protect the safety and welfare of the citizens of Tennessee.

Commission McMullen moves that is a positive move to adopt the statement, “this rule denying licensure for a specified period of time for certain offenses, despite a person’s possession of a certificate of employability, results from the fact that the time elapsed and nature of the offense has a direct bearing on the fitness or ability of the person to perform the duties of a real estate licensee, and this rule will serve to protect the safety and welfare of the citizens of Tennessee;” seconded by Commissioner DiChiara. Motion carried.

Is it outcome-based (i.e. does it have a measurable, positive outcome)?

This rule will serve to protect the safety and welfare of the citizens of Tennessee.

Commissioner McMullen moves to adopt the statement, “this rule will serve to protect the safety and welfare of the citizens of Tennessee;” seconded by Commissioner DiChiara. Motion carried.

Economic Impact Statement: Pursuant to the Regulatory Flexibility Act (T.C.A. § 4-5-401 *et seq.*), as part of the rulemaking process, each agency must prepare an economic impact statement as an addendum to each rule that is deemed to affect small businesses, which shall be published in the Tennessee administrative register, filed with the Secretary of State’s office, and made available to all interested parties, including the Secretary of State, Attorney General and Reporter and the House and Senate Government Operations Committees (this requirement is found at T.C.A. § 4-5-403). The statement shall include the following:

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule;

This rule is not expected to have a measurable impact on small businesses.

Commissioner McMullen made motion to adopt statement, “this rule is not expected to have a measurable impact on small businesses;” seconded by Commissioner Collins. Motion carried.

(2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record;

There are no projected reporting, recordkeeping or other administrative costs required for this proposed rule.

Commissioner McMullen made motion to adopt statement, “there are no projected reporting, recordkeeping or other administrative costs required for this proposed rule;” seconded by Commissioner DiChiara. Motion carried.

(3) A statement of the probable effect on impacted small businesses and consumers;

There is no expected adverse impact on small businesses as a result of this proposed rule. This proposed rule is expected to assist with the protection of the welfare and safety of the citizens of the State of Tennessee by helping to ensure that all licensees are fit and able to perform the duties and responsibilities necessary related to real estate licensure.

Commission McMullen made motion to adopt statement, “there is no expected adverse impact on small businesses as a result of this proposed rule. This proposed rule is expected to assist with the protection of the welfare and safety of the citizens of the State of Tennessee by helping to ensure that all licensees are fit and able to perform the duties and responsibilities necessary related to real estate licensure;” seconded by Commissioner DiChiara. Motion carried.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business;

There are no less burdensome, less intrusive, or less costly alternative methods known which will achieve the purpose and objectives of this proposed rule.

Commissioner McMullen made motion to adopt statement, “there are no less burdensome, less intrusive, or less costly alternative methods known which will achieve the purpose and objectives of this proposed rule;” seconded by Commissioner DiChiara. Motion carried.

(5) A comparison of the proposed rule with any federal or state counterparts; and

There are no known federal or state counterparts to this rule.

Commissioner McMullen makes motion to adopt statement; “there are no known federal or state counterparts to this rule;” seconded by Commissioner DiChiara. Motion carried.

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Any possible exemption of small businesses from this rule would result in less protection for the citizens of the State of Tennessee.

Commissioner McMullen makes motion to adopt the statement; “Any possible exemption of small businesses from this rule would result in less protection for the citizens of the State of Tennessee;” seconded by Commissioner DiChiara. Motion carried.

*******Also, pursuant to T.C.A. § 4-5-228, a simple declarative statement must be adopted regarding whether the rules may have a projected financial impact on local governments:**

This rule is not reasonably viewed as having a projected financial impact on local governments.

Commissioner McMullen made motion to adopt statement, “this rule is not reasonably viewed as having a projected financial impact on local governments;” seconded by Commissioner Collins. Motion carried.

A roll call vote was taken on the motion by Commissioner McMullen to adopt the proposed amendment to Paragraph (4) of current Rule 1260-01-.01 Applications for Examinations that would add the following language to the beginning of the initial sentence of Paragraph (4): “Notwithstanding a person’s possession of a certificate of employability pursuant to TCA 40-29-107,” ; seconded by Commissioner Collins. Motion carried. 7 in favor of the motion. Commissioners Franks and Flitcroft were absent from the meeting.

II. Rule 1260-01.21 (b)(2)(ii)

Based upon comments from the review of the Office of the Attorney General, Attorney Cropp presented a possible change to proposed Rule 1260-01.21 (b)(2)(ii) for consideration by the Commission. Ms. Cropp explained proposed Rule 1260-01-.21(2)(b)(2)(ii) currently provides for a penalty fee of \$150.00 beginning on the 121st day after expiry. After review, the Attorney General’s office has taken the position that the maximum fine allowable is \$100.00 per month pursuant to T.C.A. 62-13-319.

Commissioner McMullen made motion to change the language of proposed Rule 1260-01.21 (b)(2)(ii) by substituting the penalty sum of \$100.00 in place of the currently proposed penalty fee of \$150.00; seconded by Commissioner Collins. Motion carried.

LEGISLATIVE PROPOSALS

Attorney Cropp presented for the Commission’s consideration, proposed topics for possible inclusion in the Commerce and Insurance 2015 Legislative Proposal Package. The Commission decided to submit the following topics for consideration: (a) Include preparation of broker price opinions within definition broker in 62-13-102(4)(A); (b) Amend 62-13-318 to allow retirement of license without completion of Continuing Education, but to require a licensee who wants to reactive a license to have all Continuing Education completed for that licensing period prior to reactivation of the license; and

Amend 62-13-110 to authorize the commission to assess an increased penalty amount of \$5,000.00 for unlicensed activity.

Commissioner Collins made a motion to send the proposed topics for possible inclusion in the Commerce and Insurance 2015 Legislative Proposal Package on to the administration without further discussion. There was no objection to this motion Chairman Griess stated that it was the will of the Commission without objection, to adopt the proposed topics.

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 June, 2014 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
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: JULY LEGAL REPORT

DATE: July 2, 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. 2014001131

Opened: 2/5/14

History: No Prior Disciplinary Action - Unlicensed

Complainant alleges that Respondent (unlicensed individual), acting for a corporation, purchased two (2) properties in Tennessee and sold them to Complainant's company on the same day in 2012 for a higher price, without making any improvements to the properties. Complainant states that Respondent had an understanding with a third party to repair these properties to a rent ready standard. Complainant states these properties remain in a condition which would not allow them to be rented. Included in documentation provided by Complainant were Warranty Deeds conveying the property to Respondent's corporation and Warranty Deeds (signed by Respondent) conveying the property to Complainant's company on the same day. Also included with the complaint were copies of Respondent's corporation's website advertising itself as buying and selling property. Also included were Settlement Statements for both properties when they were conveyed to Complainant's company from Respondent's corporation.

Respondent submitted a response through an attorney stating that Respondent's company was the owner and seller of the subject properties. The attorney states Respondent individually did not own or sell the properties, and Respondent and Respondent's company are not licensed to sell property. Further, the attorney states that there was no violation because Respondent's company is exempt from the licensure requirement since it is the seller of the property it owned and it did not earn commission on the transaction. In response to requests for additional information, Respondent's attorney stated that Respondent is President of the corporation and is the primary shareholder acting on the corporation's behalf. Further, Respondent's attorney states that Respondent runs the corporation and is not salaried.

It would appear from the documents provided that Respondent does not qualify for the license exemption found at T.C.A. § 62-13-104(a)(1)(F) because it appears that Respondent is performing activities described in § 62-13-102 as a vocation.

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

Action: Commissioner Stephenson made a motion to accept legal counsel's recommendation to Consent Order for \$1,000 for unlicensed activity in violation of T.C.A. §§ 62-13-103 and 62-13-301, said order to also include order to cease and desist all unlicensed activity; seconded by Commissioner DiChiara; Commissioner McMullen asked for roll call 6-1 vote; Commissioner Collins voted no; motion carries.

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

2. 2014002551

Opened: 2/27/14

History: No Prior Disciplinary Action - Unlicensed

Complainant states that Respondent (unlicensed individual) advertised a home for sale as "Rent to own," showed the property twice to Complainant, wrote a contract for Complainant's signature, and accepted a payment of \$1,000 which was to be credited toward the first rent payment. Complainant states that Respondent also requested an additional amount a couple of weeks later, but Complainant saw that the homeowner had not packed when Complainant went to the property. Complainant requested the \$1,000 to be returned but states that Respondent and the homeowner refused. Complainant attached a receipt signed by Respondent, a copy of the cashier's check and money order made payable to the homeowner, and a copy of the lease purchase contract (which does not reference Respondent). The address of the home listed on the contract is in a neighboring state. Complainant also attached copies of online advertisements for several properties within the state of Tennessee, which were advertised by Respondent and not owned by Respondent according to a search performed by the office of legal counsel.

Respondent sent a response stating that the down payment was non-refundable according to the contract. Respondent states that Respondent was friends with the homeowner and was simply assisting the homeowner in showing the home. Respondent states that Respondent intends to obtain proper licensure in this state and has ceased and desisted all activities to the extent they may violate the Broker Act. Respondent submitted a letter from the homeowner who states that there was no promise of payment to show the home, and Respondent was only showing the home because the homeowner was working late hours. The homeowner states that Respondent received no payment. The homeowner also states that the down payment was given directly to the homeowner, and Respondent was present as a witness and had a receipt book.

The property primarily complained of by Complainant is in another state, and it appears, from the statement of the homeowner, that Respondent did not receive and had no expectation of compensation for whatever services were provided. However, it does appear that Respondent advertised multiple properties in Tennessee which Respondent did not own. It is recommended that this matter be dismissed and an additional complaint be opened against Respondent regarding possible unlicensed activity relating to those listings.

Recommendation: Dismiss and open additional complaint regarding Tennessee listings.

Action: Commissioner Blume made a motion to accept legal counsel's recommendation to dismiss and open additional complaint regarding Tennessee listings; seconded by Commissioner DiChiara; unanimous vote; motion carried.

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

3. 2014003101

Opened: 2/27/14

First License Obtained: 10/3/12

License Expiration: 10/2/14

E&O Expiration: Uninsured

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

License was placed into inactive status on or about 4/16/13.

Complainant, a licensed broker, states that neither Respondent (affiliate broker – inactive license) nor Respondent’s company are licensed, and Complainant states that Respondent is engaged in property management. Complainant attached a copy of a letter from Respondent to Complainant’s clients (the owners of a neighboring property), which, in part, states that Respondent manages a property next door, describes the individuals in the property as “my tenants” and refers to the property as “one of my units.” Complainant states that Respondent is not the owner of the property. The office of legal counsel conducted a search of the property address and confirmed that Respondent does not own the subject property.

Respondent submitted a response stating that Respondent oversees a few residential properties for the homeowner, and Respondent’s duties are to handle repair calls, oversee yard maintenance, submit notices to tenants for non-compliance of the lease between tenants and homeowner, take photos of damages, maintenance repair, change locks, perform inspections, and clean/paint vacated property. Respondent states that Respondent sent the letter to Complainant’s clients (who are neighboring homeowners) on behalf of the homeowner, and Respondent states that Respondent’s words were not

“political correct.” Respondent states that Respondent’s affiliate broker license is going to be in retirement once Respondent completes education, and Respondent’s former clients were advised to find another management company or have rents sent to them, advertise their own properties, and negotiate their own leases.

Office of the legal counsel confirmed that Respondent’s license is currently in inactive status, and Respondent’s company has never been licensed with TREC. Office of legal counsel also performed a Google search of Respondent’s company name and found webpages listing Respondent’s company, with Respondent as the contact person, advertising property management services for a fee, including leasing, negotiating contracts, and collecting rent.

Recommendation: Consent Order for \$2,000 for violations of T.C.A. §§ 62-13-312(b)(14), 62-13-309(a)(1)(A), and 62-13-318(b)(4), 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 to Consent Order for \$2,000 for violations of T.C.A. §§ 62-13-312(b)(14), 62-13-309(a)(1)(A), and 62-13-318(b)(4), 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; seconded by Commissioner Blume; unanimous vote; motion carried.

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

4. 2014003861

Opened: 3/28/14

First License Obtained: 9/9/11

License Expiration: 9/8/13

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

License has been suspended since 6/7/13; now suspended for multiple reasons.

TREC opened complaint based on information received from a licensed principal broker who reported that Respondent (principal broker – suspended license) was the selling individual for a property listed by the reporting principal broker’s firm. That licensed principal broker states that the property closed in January 2014, and the licensed principal broker learned after closing that Respondent’s license had been suspended for several months. The licensed principal broker provided a Settlement Statement from the closing which shows that a commission was paid to the real estate firm where Respondent was principal broker (firm expired in September 2013). Additionally, executed documents

relating to the sale – specifically, a Purchase and Sale Agreement, Lead-Based Paint Disclosure, Compensation Agreement, and Confirmation of Agency Status – were provided which list Respondent as the selling licensee.

Respondent did not respond to the complaint. In addition to failing to respond, it appears as if Respondent was engaged in unlicensed activity while Respondent's license is suspended and also while Respondent's firm license was expired.

Recommendation: Consent Order with \$3,000.00 civil penalty for violations of T.C.A. §§ 62-13-312(b)(14), 62-13-309(a)(1)(A), 62-13-313(a)(2), 62-13-103, and 62-13-301, said order to also include order to cease and desist all unlicensed activity.

Action: Commissioner Blume made a motion to accept legal counsel's but increase civil penalty to \$4000, said order to also include order to cease and desist all unlicensed activity; seconded by Commissioner McMullen; unanimous vote; motion carried.

DECISION: The Commission voted to authorize a Consent Order with a \$4,000 civil penalty for violations of T.C.A. §§ 62-13-312(b)(14), 62-13-309(a)(1)(A), 62-13-313(a)(2), 62-13-103, and 62-13-301, said order to also include order to cease and desist all unlicensed activity.

5. **2014003961**
Opened: 3/17/14
First License Obtained: 8/27/98
License Expiration: 12/19/14
E&O Expiration: 1/1/15
Type of License: Broker
History: No Prior Disciplinary Action

Complainant hired Respondent (broker) to lease Complainant's property. Complainant states that Respondent collected rents for February 2012 and September 2012 but failed to forward payments to Complainant. Complainant also states that Respondent held the security deposit collected from the tenant. Complainant further states that tenants damaged the property and included receipts for costs of repair. Complainant further submitted a copy of a check from tenant that was made payable to Respondent and appears to be endorsed by Respondent. Complainant also submitted Complainant's bank statements as evidence of money received.

Respondent submitted a response stating that Respondent continuously deposited rents collected into Complainant's account. Respondent states that it was brought to Respondent's attention twice that rent was not deposited, and the issues were corrected. Respondent further states that the agreement provided for Respondent to receive the first

full month's rent as a fee for acquiring tenant and five percent (5%) of future rents. Respondent states that funds for the prorated first month and second month were deposited to Complainant, and Respondent has no record to show that the tenant paid a security deposit, but, even if a security deposit was paid, it was a fee that Respondent earned per the management agreement. Respondent states that Complainant never provided proof that Respondent owed Complainant money for rents collected via canceled checks from the tenant. Respondent also states that Respondent's attorney provided proof to Complainant's attorney that those payments were made. Respondent further states that two (2) deposits were made in May 2012, one for May 2012 rent and the other for the missing February 2012 rent. Respondent also states that September 2012 rent was deposited in October.

Respondent provided a copy of the Property Management Agreement, which was between Complainant and Respondent (who is referred to as "Manager" without any apparent reference to Respondent's firm). The Agreement states, "...Owner agrees to pay the Manger an amount equal to the first full month's rent as a fee..." Respondent also submitted a copy of a Residential Lease Contract for a twelve month term beginning June 2011. The lease provides that a deposit is due at execution of the lease. Respondent provided a printed bank deposit slip from 5/21/12 for what is stated to be February's rent into what appears to be Complainant's bank account as well as a deposit slip on 10/24/12 for what is stated to be September's rent.

Complainant submitted an additional response stating Respondent did pay twice in May but also missed June's rent payment in addition to February and September. Complainant submitted deposit slips showing deposits for January, February, March, April, May, July, August and October. Bank statements indicate that the tenant paid Complainant directly for November.

It appears that, even based on Respondent's own admission of depositing February 2012 rent in May 2012 and September 2012 rent in October 2012, Respondent did not timely remit money owed to Complainant (which should have been remitted to Complainant by the tenth of the month collected per the Management Agreement). However, the documentation provided does not show that all months' proceeds were paid to Complainant because, although Respondent states that the February proceeds were paid in May and September proceeds were paid in October, Complainant's documentation suggests that, if this is true, there is no proof of funds paid for June 2012 and October 2012. Further, the Management Agreement between Complainant and Respondent, combined with the September 2012 rent check from the tenant (made payable to Respondent and endorsed by Respondent) indicates that Respondent was being compensated by someone other than Respondent's broker for real estate activities. Respondent stated that Respondent originally kept the September 2012 payment for Complainant terminating the management agreement early without written notice, but Respondent later deposited that money back into Complainant's account in October,

which would appear to indicate that Respondent accepted compensation directly not through Respondent's broker and would also suggest that the money was not kept in an escrow account pursuant to the deposits and earnest money rule. In response to a request for additional accounting documentation and check copies, Respondent states that Respondent cannot provide the information because it was misplaced during a firm change in 2012. This appears to be a failure to maintain documentation. Finally, it appears that the failure to collect the security deposit pursuant to the lease provisions constitutes a failure to be loyal to the interest of the client.

Recommendation: Consent Order for \$2,500 for violations of T.C.A. §§ 62-13-312(b)(5), (6), (11), and (14) and 62-13-404(2) as well as Rule 1260-02-.09, 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 Blume made a motion to accept legal counsel's but increase civil penalty to \$5000, 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; seconded by Commissioner DiChiara; unanimous vote; motion carried.

DECISION: The Commission voted to authorize a Consent Order for \$5,000 for violations of T.C.A. §§ 62-13-312(b)(5), (6), (11), and (14) and 62-13-404(2) as well as Rule 1260-02-.09, 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.

6. 2014003991

Opened: 3/24/14

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)

2013022121 – Formal Charges Authorized

A complaint was opened against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent broker in complaint 2014003961 ("broker").

Respondent responded to the complaint stating that it is Respondent's belief that broker has done no wrong and has documented how the money was handled. Respondent states that broker only did what was agreed in the lease, and this matter has been going on for

over two (2) years. As stated above, in response to a request for additional documentation, neither Respondent nor the broker were able to provide further accounting documentation and/or check copies due to the documents being misplaced during a firm change in 2012, which appears to be a failure to maintain documentation. Also, it appears that the funds in this transaction were not kept in an escrow account pursuant to the deposits and earnest money rule.

Recommendation: Consent Order for \$2,000 for violation of T.C.A. §§ 62-13-312(b)(6), (14), and (15) and 62-13-321 as well as Rule 1260-02-.09, 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 Blume made a motion to accept legal counsel's but increase civil penalty to \$4000, 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; seconded by Commissioner DiChiara; unanimous vote; motion carried.

DECISION: The Commission voted to authorize a Consent Order for \$4,000 for violations of T.C.A. §§ 62-13-312(b)(6), (14), and (15) and 62-13-321 as well as Rule 1260-02-.09, 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.

7. 2014004231

Opened: 3/24/14

History: No Prior Disciplinary Action - Unlicensed

Complainant states that Respondent (unlicensed individual) is managing and renting seven (7) units in a condo building without a license and provided a link to the advertisements. The advertisements attached are for nightly vacation rentals.

Respondent submitted a response through an attorney. Respondent's attorney states that Respondent is not engaged in unlicensed real estate activity. Respondent's attorney states that Respondent is the owner of the unit in the advertisement, and the other units referenced are neighbor's units. Respondent's attorney states that Respondent may from time to time show the units or assist the homeowners in their transactions, but Respondent does not negotiate security deposit amounts or rentals for any property other than Respondent's own.

Complainant states that the listings on the website show rate and security deposit information, and the tab that states "email the manager" sends an e-mail to Respondent. Complainant states that Complainant spoke to a representative from the website who

stated that, in order to list information on the website, either Respondent had to have an agreement with the property owner to list the property on Respondent's page, or Respondent has to post and pay for the listing. Complainant also states that Respondent is collecting a commission.

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 Stephenson made a motion to accept legal counsel's recommendation consent order for \$1,000 for unlicensed activity in violation; seconded by Commissioner Alexander; unanimous vote; motion carried.

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

8. 2014004371

Opened: 4/23/14

History: No Prior Disciplinary Action – Unlicensed

Complainant states that Respondent (unlicensed individual) and Respondent's company are unlicensed but are performing property management services. Complainant states that Respondent retained rent checks and security deposits for properties located in Tennessee. Complainant submitted screenshots of Respondent's website (which advertises services such as tenant placement, marketing and advertising, and property showings), Rental Owner Statements for multiple properties, and Exclusive Leasing/Management Agreements for (2) properties.

Respondent did not respond to the complaint.

Recommendation: Consent Order for \$2,000 for unlicensed activity in violation of T.C.A. §§ 62-13-103 and 62-13-301, said order to also include order to cease and desist all unlicensed activity.

Action: Commissioner McMullen made a motion to accept legal counsel's recommendation consent order for \$2,000 for unlicensed activity in violation said order to also include order to cease and desist all unlicensed activity; seconded by Commissioner DiChiara; unanimous vote; motion carried.

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

9. 2014004411

Opened: 3/25/14
First License Obtained: 1/3/01
License Expiration: 4/15/16
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

Complainant signed a contract to purchase a lake front lot and provided an earnest money check. Respondent (affiliate broker) was the listing agent for the seller. Complainant states that the listing promised year round water. Complainant states that, by October, the water in the cove dramatically dropped, and the water is gone beneath the boat lift. Complainant sent a letter stating that Complainant would not be closing on the property and received a response requesting earnest money be delivered to the owner and requesting that Complainant pay half of the closing costs. Complainant states that Respondent misrepresented the property. Complainant also states that the Purchase and Sale Agreement provided that an owner finance agreement would be presented prior to closing for review and acceptance, and Complainant states that a financing agreement was never signed. Complainant states that the earnest money issue was resolved, and the earnest money was split. Complainant further states that the MLS listing still claims year round water. Complainant submitted copies of listings which state "Minutes from [Yacht Club] & year round water on the main channel." Complainant also submitted photos which were stated to be taken in mid-November where there is no water beneath the boat lift.

Respondent submitted an answer to the complaint stating that Complainant was an unrepresented buyer, and Respondent submitted a Purchase and Sale Agreement, Disclaimer, Agency Representation Agreement and Lot/Land disclosures. Respondent states that Respondent reminded Complainant of inspection rights and due diligence period, but Complainant chose part G of the contract with no inspection contingencies and accepted the property "As Is." Respondent also states that Respondent reviewed the disclaimer language with the Complainant that acknowledged that buyer and seller have not relied upon advice, casual comments, and verbal representations relative to the matters. Respondent states that, since the contract referenced owner financing, an attorney was asked to prepare a Promissory Note and Deed of Trust, and Respondent states that Respondent was not informed that Complainant wanted changes to those documents. Respondent states that Complainant called mid-November and asked about the neighbors clearing brush, but it was determined that the neighbors were doing so legally and within their boundary lines. Respondent states that Complainant did not mention the water line but made a verbal offer to reduce the property price because Complainant felt that the property had lost value due to the neighbor's renovations. Respondent states that the seller declined and closing instructions were sent to both parties. Respondent states that the letter to cancel the contract due to the water issue was presented to seller, who found the claim unfounded because Complainant visited the

property multiple times and already owned property in the subdivision and was a boat owner who would have been familiar with the customary draw down of water levels in the fall. Respondent states that Complainant did not show up to closing, a mutual release of earnest money was presented but not signed, and an interpleader was filed. Respondent further states that the neighborhood dock and yacht club offers year round water, but the language does not state that the property dock offers year round water. Respondent states that Complainant seemed to be offering excuses to get out of the closing, and Respondent's client, the seller, requested that Respondent hold firmly to the original contract.

Recommendation: Dismiss.

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

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

10. 2014004421
Opened: 3/25/14
First License Obtained: 1/4/00
License Expiration: 1/25/15
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

A complaint was opened against this Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 2014004411 above (hereinafter "affiliate broker").

Respondent responded stating that the affiliate broker submitted the Purchase and Sale Agreement documents and earnest money, which was deposited into the company's escrow account. Respondent further states that all agency and contract documents were executed in a timely matter, submitted to Respondent, and processed by staff. Respondent states that the affiliate broker notified Respondent that the previous Complainant and the seller could not come to an agreement regarding earnest money, and the previous Complainant requested the contract be cancelled. Respondent further states that an interpleader action was filed within twenty (20) days, and the judge split the earnest money 50/50 after a hearing the following month. Respondent further states that Respondent reviewed the previous complaint with the affiliate broker regarding the advertising. Respondent states that the affiliate broker advertised the property per the owner's instructions, that the previous Complainant owns property in the community and is aware that the property is minutes from the yacht club, and that there is year round

water on the main channel. Respondent states that the affiliate broker is an excellent agent and attends all the meetings and educational classes on a regular basis.

Recommendation: Dismiss.

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

DECISION: The Commission voted to accept the recommendation of legal counsel. *Chairman Griess recused himself from the vote on this matter.*

11. 2014004461
Opened: 3/28/14
First License Obtained: 9/3/10
License Expiration: 9/2/14
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

Complainant hired Respondent (affiliate broker) to assist in purchasing a property. Complainant states that Complainant was informed that Complainant was pre-approved, signed a Purchase and Sale Agreement, paid for the required inspections, and began moving out of a rental property in preparation for the November 18 closing. Complainant states that, on November 15, Complainant was notified that Complainant needed to have spouse's car transferred out of Complainant's name to qualify. Complainant was notified on November 16 or 17 that Complainant did not qualify for the loan alone and needed to process the application with Complainant's spouse. The loan was denied on November 18, and closing did not occur. Complainant states that Complainant does not understand how this happened, and Respondent and the loan officer each blamed the other for the problems. Complainant states that Respondent misrepresented Complainant's interests by providing Complainant with untruthful and misleading statements, and Complainant feels that there was a close relationship between Respondent and the loan officer, which was a conflict of interest. Complainant states that Complainant does not understand how all of the chaos occurred with Complainant losing Complainant's current rental and paying for inspections and a closing date being scheduled when the loan approval had not already been confirmed. In early December, Complainant states that Complainant requested the earnest money back and states that Respondent never deposited the earnest money check into the firm escrow account.

Respondent submitted a response through an attorney. The loan officer also submitted a statement that the allegations against Respondent are unfounded and that the loan officer advised Complainant in a phone conversation that Complainant should be looking for a house within a specific price range, and Complainant called a few days later stating that a

home was found and a formal loan application was made. The loan officer states that the mortgage rate lock disclosure was mistaken by Complainant as a loan commitment letter. The loan officer states that there may have been a proposed closing date between buyer and seller, but closing was subject to loan approval, which had not been issued. The loan officer states that Complainant misrepresented the value of Complainant's out-of-state home and indicated higher earnings than what Complainant's employer verified, which led to loan denial. Respondent states that while looking at houses, Respondent gave Complainant the name of two (2) different lenders to contact, and there was no affiliation with the loan officer and Respondent. Respondent states that Respondent requested a number of inspections and appraisal, some of which have not been paid. Respondent states that a closing time was set up with the title company for the targeted closing date in the contract, but Respondent said an e-mail on November 15 from the lender stated that there was no loan approval yet. Respondent further states that, despite many requests, Complainant did not write an earnest money check until November 15, and the office policy is that a check cannot be deposited within ten (10) days of closing. Respondent states that a cashier's check was requested so that it could be deposited and credited at closing, but Complainant only provided a personal check. It appears that a cashier's check was never provided, and the personal check was voided after the transaction fell through. Respondent states that closing did not occur due to false statements provided to the mortgage company. Respondent states that Respondent was loyal to Complainant's interests. Respondent submitted a copy of the transaction file along with a copy of Complainant's personal check for earnest money. Also included was an Earnest Money Disbursement and Mutual Release of Purchase and Sale Agreement, which provided that the money be returned to Complainant due to inability to obtain a loan and signed by Complainant.

Complainant submitted additional information stating that the difference in income was for projected bonuses. Complainant states that Complainant was not asked for a cashier's check for earnest money. Further, Complainant states that Complainant does not want Respondent to get in trouble and that Complainant would use Respondent as a realtor again; however, Complainant states that Complainant only wanted questions answered and is trying to understand if it is normal practice to go through the motions of closing even though a loan had not been approved.

Recommendation: Dismiss.

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

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

12. 2014004501

Opened: 4/1/14
First License Obtained: 4/19/93
License Expiration: 8/19/14
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

A complaint was opened against this Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 2014004461 above (hereinafter "affiliate broker").

Respondent submitted a response stating that it is Respondent's understanding that the previous Complainant (hereinafter "buyer") originally requested that the affiliate broker set a closing date for November 15 because of time constraints with a rental property. Respondent also states that there is no documentation in the file that the buyer was ever approved for a loan with the mortgage company, and the pre-approval appeared to be based on incorrect information, but the affiliate broker has no input on the pre-approval process. Respondent states that the affiliate broker moved forward based on a pre-approval because there was no indication that the loan would not be approved, and the affiliate broker worked to ensure the buyer's obligations to the seller under the contract relating to inspections and appraisals were met. Respondent states that it appears that the loan approval issues were not discovered until November 15 after inspections were complete and the appraisal ordered. Respondent also states that there was a short time frame from the offer date to the closing date. Respondent states that the affiliate broker asked the buyer for an earnest money check upon acceptance of the offer on November 5, and the affiliate broker submitted the transaction paperwork on November 8 without the earnest money check. Respondent states that the affiliate broker continued to request the earnest money check from the buyer, and the check was provided to affiliate broker on November 15. Respondent states that the check was provided to bookkeeping on November 15, but, since closing was scheduled for November 18, the check was returned to the affiliate broker with a note requesting that the buyer convert it to a cashier's check along with a contract amendment stating the earnest money was not deposited by the date specified on the contract, but the buyer provided it in the form of a cashier's check. Respondent states that the affiliate broker prepared an earnest money disbursement form to notify sellers that the buyer was denied a loan, and this should have also clearly stated that the firm was not holding any earnest money. Respondent states that the sellers did not sign the form and have made no claim to earnest money. Respondent also states that there appears to be no misrepresentation of the situation because it appears that the mortgage broker was in constant contact with the buyer, and the affiliate broker helped coordinate all documentation in the transaction to work toward a closing. Respondent further states that the affiliate broker worked in the best interest of the buyer, that Respondent did not receive any communication from the buyer during the process, that the affiliate broker followed the proper procedures for closing, and that it is unfortunate

that the buyer was unable to close due to the circumstances. Respondent further states that, as a principal broker, there are many checks and balances put in place to ensure agents understand the rules and abide by them, and Respondent communicates with agents on a regular basis.

Recommendation: Dismiss.

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

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

13. 2014004911

Opened: 4/2/14

First License Obtained: 2/3/11

License Expiration: 2/2/15

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant was purchaser of a property, and Respondent (affiliate broker) was Complainant's agent. Complainant states that, before closing, Complainant asked Respondent where the property line was, and Respondent stated everything inside the fence. Complainant states that, after closing, Respondent gave Complainant a key to a storage unit located on the side of the property. Several months after closing, Complainant states that Complainant received a notice that Complainant had not paid property taxes, and the property would be auctioned later that month. Complainant states that it was discovered at that time that the fence on Complainant's property is also on a parcel of land not belonging to Complainant, and the storage unit is outside Complainant's property. Complainant states that Respondent stated that Respondent was sorry and assumed the property inside the fence was one lot and was not aware it was two lots. From the documentation submitted by Complainant, it appears the purchase was an REO, and it appears that Complainant only purchased a parcel identified as Lot 1. Lot 2 does not appear to be referenced in the deed or title policy. It appears that Lot 2 (not owned by Complainant) is the lot which has delinquent taxes.

Respondent submitted a response admitting that Respondent told Complainant that the property inside the fence was included in the sale according to the MLS listing but that Complainant could get a survey done to be sure, and Respondent states that Complainant did not do so. Respondent states that Complainant's biggest concern was to close quickly, and Respondent followed Complainant's instruction. Respondent states that Respondent notified Respondent's principal broker, who was the listing agent of the

property (proper notices of agency status included), and the closing agent for the title company. Respondent states that Respondent is sorry that Complainant is having this issue, but Respondent is no longer with the same firm as Respondent was at the time this took place, and Respondent feels that Respondent's previous principal broker should address the situation. Respondent submitted a copy of the listing, which noted acreage in the same amount as listed on the Tax Assessor's website for Lot 1, and the remarks state that the property is sold as-is. Additionally, an addendum signed by Complainant and seller states, in part, that the seller acquired the property by foreclosure, deed in lieu, forfeiture, tax, sale, right of eminent domain or similar process, and the purchaser acknowledges and agrees to accept the property in an "as-is" "where-is" condition.

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.

14. 2014005151

Opened: 4/8/14

First License Obtained: 6/29/11

License Expiration: 6/28/15

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant, a licensed agent, states that a listing was posted by Respondent (affiliate broker) on at least Zillow, Trulia and Hotpads, but was a "Phantom Listing for a house that doesn't exist." Complainant states that a client called and was excited about the listing at a "too good to be true listing price," and Complainant found no record of the address on realtracs or the tax records. Complainant states that there was no such house or address. Complainant states that, when Complainant inquired about the property listing, Respondent sent a response stating that there were still a couple of lots left, that this home is to-be-built, and that the pictures were from a house which was built for a client elsewhere. Complainant states that this is a phantom listing so Respondent could obtain leads.

Respondent submitted a response stating that this is not a phantom listing, but Respondent attempted to assist another agent in marketing property under the residential category to increase the volume of interest in the property. Respondent states that these ads seem too good to be true, but Respondent can provide a list of happy clients that will attest to the amount of equity earned. Respondent submitted a listing addendum form

that would be signed by the builder attesting that the builder is capable of building a home on the proposed lot for the price advertised. Respondent states that Respondent's e-mail response to Complainant clearly states that there are multiple lots that can be built on, that the property is not there yet, and that the property is to-be-built. Respondent states that this was not misleading advertising. Respondent also states that the websites given were auto-populated and not always current, but Respondent is not responsible for the content posted on those sites. To try to combat this, Respondent includes a timeframe in the ad stating when the pricing is good through. Respondent's principal broker also submitted a statement along with another similar ad and states that the third party website had added changed, or provided information other than that listed because the property was "to be built" but was listed on the third party website as a single family home. Principal broker also states that Respondent even offered to set up a meeting with Complainant and Complainant's client to explain how the process worked and to answer additional questions. Respondent's principal broker states that he has and will continue to monitor ads and information so that the public is not misled and understands the products offered.

Recommendation: Dismiss.

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

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

15. 2014005421
Opened: 4/21/14
First License Obtained: 10/27/06
License Expiration: 10/26/14
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

16. 2014005422
Opened: 4/21/14
First License Obtained: 3/25/02
License Expiration: 1/25/16
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

A complaint was opened against Respondents (both are affiliate brokers) for Respondents' failure to satisfy Agreed Citations sent to each Respondent for advertising

violations. Specifically, TREC received a photograph of what appears to be a directional sign on property which includes the name of Respondents' firm and Respondents' names. The apparent violations appear to be that part of the firm name is in a font smaller than that of Respondents' names (in violation of T.C.A. § 62-13-310(b)), and the sign does not include the firm telephone number (in violation of Rule 1260-02-.12(2)(b)). A complaint was opened against each Respondent because neither Respondent signed and paid the Agreed Citations.

Recommendation: For each Respondent: Consent Order for \$1,000 for violations of T.C.A. §§ 62-13-312(b)(14) and 62-13-310(b) and Rule 1260-02-.12(2)(b), 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 motion to accept legal counsel but to increase consent order to \$2000; motion dies like of second. Commissioner Alexander made a motion to accept legal counsel's recommendation consent order for \$1,000 for violations, 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; seconded by Commissioner McMullen; unanimous vote; motion carried.

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

17. 2014005501
Opened: 4/21/14
First License Obtained: 11/22/05
License Expiration: 3/11/16
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

A complaint was opened against this Respondent (principal broker), who is the principal broker of the previous affiliate broker Respondents in complaint 2014005421 and 2014005422 (hereinafter "affiliate brokers"), for this Respondent's failure to satisfy an Agreed Citation which was sent to this Respondent for failure to supervise the affiliate brokers' advertising – specifically, the aforementioned sign which included the firm name and the affiliate brokers' names (in a larger font than part of the firm name) and did not include the firm telephone number. A complaint was opened against Respondent because Respondent did not sign and pay the Agreed Citation.

Recommendation: Consent Order for \$1,000 for violations of T.C.A §§ 62-13-312(b)(14)(15) and 62-13-310(b) and Rule § 1260-02-.12(2)(b), 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 McMullen made a motion to accept legal counsel's recommendation consent order for \$1,000 for violations, 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; seconded by Commissioner Alexander; unanimous vote; motion carried.

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

18. 2014005601

Opened: 4/15/14

First License Obtained: 4/3/13

License Expiration: 4/2/14

E&O Expiration: 1/1/15

Type of License: Time-Share Salesperson

History: No Prior Disciplinary Action

License was suspended per DHS on 5/23/14

A complaint was opened against Respondent (time-share salesperson) for Respondent's failure to satisfy an Agreed Citation which was sent to Respondent for failure to complete administrative measures for transfer or retirement of license following Respondent's release from a time-share firm. A signed TREC Form 1 indicates that Respondent was released from Respondent's former firm on or about November 17, 2013. Another signed TREC Form 1 indicates that Respondent did not transfer to a new firm until on or about March 17, 2014.

Respondent submitted a response to the Agreed Citation acknowledging that Respondent failed to submit the retirement fee for Respondent's time-share salesperson license; however, Respondent states that Respondent did not have the extra money to do so, and the time-share resorts would not be hiring until the spring. Respondent also apologized for the infraction and asked for the Commission's consideration because Respondent states that Respondent does not have extra funds and must work to stay current on child support. On or about May 23, 2014, Respondent's time-share salesperson license was placed in suspension for child support.

Recommendation: Consent Order for \$250 for violations of T.C.A. § 62-13-312(b)(16) and Rule 1260-02-.02(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 DiChiara made a motion to accept legal counsel's recommendation consent order for \$250 for violations of T.C.A. 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; seconded by Commissioner Collins; unanimous vote; motion carried.

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

19. 2014006211

**Opened: 4/28/14
First License Obtained: 6/14/99
License Expiration: 9/11/14
E&O Expiration: 4/1/16
Type of License: Principal Broker
History: No Prior Disciplinary Action**

20. 2014006212

**Opened: 4/28/14
First License Obtained: 10/19/04
License Expiration: 4/21/16
E&O Expiration: 4/1/16
Type of License: Broker
History: No Prior Disciplinary Action**

Complainants were sellers, and Respondent 2 (broker) was a facilitator for buyers. Respondent 1 is Respondent 2's principal broker. Complainants state that the inspection period should have expired on December 2, but the inspection wasn't completed until December 3. Complainants state that they did not receive a report, and a licensed inspector was not present. Complainants state that they were presented with an Earnest Money Disbursement and Mutual Release based on inspection contingencies, but they did not sign it. Complainants filed their own Earnest Money Disbursement and Mutual Release on December 4 requesting earnest money for non-receipt of an inspection report by a licensed home inspector and the inspection not being completed on time. Respondent 1 e-mailed on December 10 stating that the buyers walked due to factory noise, but Complainants state that they live 6-7 miles away from any business. Respondent 1 emailed on December 28 stating that the investigation into the earnest money was complete and "upon a reasonable interpretation of the contract which authorizes him to hold such funds," Respondent 1 decided to release the earnest money to the buyers. Complainants submitted a letter via their attorney to Respondent 1, requesting that the earnest money be delivered to sellers or requesting filing an interpleader. Complainants state that Respondent 1 emailed Complainants' principal broker on stating that Respondent 1 consulted an attorney and was releasing the earnest money back to the buyers without Complainants' permission.

Respondents state that they understand Complainants' frustrations with packing before the home inspection was complete though there was a possibility that buyers would terminate the contract. Respondent 1 states that all surrounding events were looked into, and Respondent 1 focused merely on the facts. Respondent 1 emailed Complainants' principal broker stating that the most important element in the decision of distributing earnest money was the home inspection period, which was to be completed by December 2. Respondent 1 states that Respondent 2 requested by text a one day extension on the inspection, and a response of "OK" was received, leading Respondent 2 to believe that Complainants' agent conferred with Complainants and obtained permission. Respondent 1 states that that these communications really should have been submitted in writing signed by the parties. Respondent 1 states that Complainants had 3 days to dispute the delay of the inspection period and did not and that Complainants vacated the house for the inspection, and Respondent 1 considered these actions to be implied consent by Complainants. Respondent 1 also states that Complainants' agent called Respondent 2 during the inspection and asked if any questions could be answered. Respondent 1 states a belief that the precipitating issue relates to a noise nuisance for what seems to be a quarry operation which was discovered during the home inspection. Respondent 1 states that the noise was not investigated personally, but buyers described the noise, and neighbors confirmed that this noise is constant in the area. Respondent 1 states that the Property Condition Report did not disclose the problem. Respondent 1 states that the buyers chose to exercise their right to terminate and immediately notified Complainants in writing. Respondent 1 states that, after a thorough investigation, Respondent 1 exercised the right allowed by law "upon a reasonable interpretation of the contract which authorizes him to hold such funds" to release the earnest money to the buyers, after attorney consultation.

It appears that earnest money disbursement was requested by Complainants, and Respondent 1 began looking into the file and was in constant communication with Complainants' broker. Respondent 1 also consulted an attorney before disbursement of earnest money. For these reasons, it appears that, pursuant to Rule 1260-02-.09(6)(a), Respondent 1 exercised the right to disburse funds "upon reasonable interpretation of the contract" and disbursed the escrow money pursuant to Rule 1260-02-.09(7) "without unreasonable delay."

Recommendation: Dismiss.

Action: Commissioner Blume 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.

21. 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

March 2014 Meeting:

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 performed 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.

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

Since the Litigation Monitoring Consent Order was executed, Respondent's attorney notified legal counsel that the parties settled the civil litigation matter and provided a copy of an Order of Compromise, Settlement, and Dismissal filed in the civil litigation, which provided that the matter was dismissed with prejudice. Respondent's attorney submitted an additional response denying the allegations and stating that Respondent engaged in no wrongdoing. The documentation within the file does not appear to evidence a violation by Respondent.

New Recommendation: Dismiss.

Action: Commissioner Stephenson 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.

Chairman Griess adjourned the meeting on Wednesday, July 2nd, 2014 at 4:10p.m.