

TENNESSEE REAL ESTATE COMMISSION MINUTES

FEBRUARY 5 – 6, 2014

The Tennessee Real Estate Commission convened on Wednesday, February 5, 2014 at 9:02 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, Commissioner Janet DiChiara, Commissioner Austin McMullen, Commissioner Grover Collins, Commissioner Gary Blume and Commissioner Marcia Franks. Vice-Chairman John Griess, Commissioner Wendell Alexander and Commissioner David Flitcroft were absent from the meeting. 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 February 2014 Commission meeting. **Commissioner Collins made a motion to adopt the agenda; seconded by Commissioner McMullen; Commissioner DiChiara asked that a discussion be added with Ms. Robyn Ryan, Assistant General Counsel and TREC’s Litigation Attorney, regarding possibly allowing her to negotiate Consent Orders. It was determined it would be added before the Legal Report; agenda as amended adopted unanimously.**

The next order of business was the adoption of the January 2014 meeting minutes. **Commissioner Collins made a motion to adopt the minutes for the January 2014 meeting; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

INFORMAL APPLICANT APPEARANCE

Roger Sweeney, applicant, appeared with his potential principal broker Mickey Stafford of Farm & Home Real Estate of Fayetteville, Tennessee. Mr. Sweeney disclosed to the Commission a complaint with the Alabama Real Estate Commission which ultimately led to the revocation of his Alabama license in 2010. He appealed the revocation but the Commission upheld the original decision. Mr. Sweeney appealed to the Circuit Court of Alabama which held there was reasonable basis for the decision by AREC and therefore denied his appeal in 2012. The attorney for AREC stated that Mr. Sweeney can reapply for his Alabama salesperson real estate license and come before the AREC to present his case to allow for re issuance of his license. It

was not known if that been had done at the time of the requested appearance before TREC. Ms. Maxwell presented the basic facts of the complaint and the Commission asked Mr. Sweeney and Mr. Stafford questions. **Commissioner Blume made a motion to approve Mr. Sweeney's request; seconded by Commissioner DiChiara; vote: 4 yes, 1 no (Commissioner Franks voted no); Commissioner McMullen abstained; motion carried.**

EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

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

COMPLAINT STATISTICS REPORT

Ms. Maxwell presented complaint statistics to the Commission. As of January 31, 2014, TREC had a total of 131 open complaints. There were 23 new complaints in January 2014. There were 110 complaints in the legal department and 21 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2013-2014 is 202. The total civil penalties that were collected in January 2014 were \$31,990.00.

LICENSING STATISTICS

Ms. Maxwell presented licensing statistics for the month of January 2014. As of January 31, 2014, there were 23,844 active licensees, 1,101 inactive licensees and 8,301 retired licensees. There were 3,905 active firms and 211 retired firms. There were 200 new applications approved in January 2014. Further, she presented a comparison of total licensees for individuals (active, retired and inactive) and firms in January of 2008 – 2014. She reported on each state with a licensed Tennessee firm or firms and the number of those firms in each state. She presented a comparison chart of applications approved and examination taken. She also presented license renewal percentages and the average number of licenses issued per month in 1997 and 2000 – 2013, firms closed or retired from 2008 – 2014 and the applications approved from 2008 – 2014 and a report on the number of Salespersons by Timeshare Developer.

FINGERPRINT QUESTIONS/CLARIFICATION

Ms. Maxwell reported to the Commission between 1-1-2014 and 2-4-2014, 342 applicants had been fingerprinted. She explained that of those 342 applicants, 269 had no indications (charges/convictions/"hits"), 73 had indications and 8 were no reads (may go back and be re-fingerprinted within 60 days at no charge). Ms. Maxwell explained that she and Ms. Cropp needed some clarification on how the Commission would prefer to handle indications where the applicant answers Question 5, which reads "Have you ever pled guilty, pled nolo contendere, or been convicted or any criminal offense? (include traffic violations that are alcohol or drug related), "no" but then their TBI/FBI report comes back with an indication. She asked that if the conviction was of a nature that would not have been brought before them prior to the new fingerprinting process (DUI, Simple Possession, etc...), how do they want to handle applicants

who answer no but end up having convictions of this nature? She stated that applicants with felonies or theft would still be required to appear before the board under T.C.A 62-13-303(a)(1). **Commissioner DiChiara made a motion that Ms. Maxwell and Ms. Cropp have the discretion on a case by case basis, and if it is something that would not have had to come before the Board before the new fingerprinting process began, then they have the discretion to move forward with a decision; seconded by Commissioner Franks; unanimous vote; motion carried.**

COMPLAINT PROCESS

Ms. Maxwell explained that Commissioner Blume brought up how TREC determines who the Complainant will be, if a complaint is filed. Ms. Maxwell stated that 1) if the person's name is visible/included then it is opened in that person's name; 2) if it sent in a plain white envelope with no return address, it is opened as an anonymous complaint; and 3) it is opened as a TREC complaint, if it is for Failure to Supervise. Ms. Maxwell stated that everything in the office is public record. She also stated that people try to send in anonymous complaints via email but then that anonymity is destroyed because of the email address being in the header.

Commissioner Blume had someone contact him who filed a complaint, who wanted the complaint filed under his organization's name, but it actually ended up being filed under his name and he was unhappy. Commissioner Blume stated that maybe this practice discourages licensees from filing complaints against other licensees. Counsel Cropp stated that we cannot take names off of complaints or alter them in anyway and people in that situation would need to file anonymously. She stated that the biggest problem with anonymous complaint is that usually people do not send in enough documentation or information and she is not able to contact them for more information. She stated that she can only work with what she is given. Therefore, Ms. Maxwell stated that if a person is going to file an anonymous complaint, they need to thoroughly document the time, date, details and include enough information to verify their claims. If a complaints end up in litigation, she stated, there must be enough information to prove the State's case.

TIMESHARE INDUSTRY OVERVIEW

Commissioner DiChiara made a motion to defer the Timeshare Industry Overview report until the March meeting when the full Commission will be present; seconded by Commissioner McMullen; unanimous vote; motion carried.

BUDGET

Ms. Maxwell advised the Commission that there was a copy of the budget on their iPads and she expects that Assistant Commissioner Giannani and Accountant 3 Kimberly Whaley will most likely address the Commission on a quarterly basis regarding the budget.

TESTING CONTRACT/RFP

Ms. Maxwell stated that she and Ms. Cropp have seen a rough draft of the E&O RFP and that it is currently making its way up to the Contract Administration staff that have to review it further.

She said she expects it will be let around the middle of February and bidders will begin to bid and then around 45 days after that a vendor will win the contract.

ERRORS & OMISSIONS INSURANCE UPDATE

Ms. Maxwell updated the Commissioners on the number of suspensions. She advised that there are 494 in E&O suspension. She notes the following regarding the remaining uninsured principal brokers: "PBs = The firms of all of the PBs are either in problem status or they are beyond their expiry date. 13 PBs have been in suspension since 7/1/2013; 1 has been in suspension since 9/10/2013. Over the last month, 4 PBs have expired and 2 have complied with the statute. Of the PBs, 6 are in TN and 8 are out of state; the PB's have all been notified (some several times). Licensees continue to be placed in a suspended status as their E&O expires and no proof of current E&O is received."

ARELLO MID-YEAR MEETING

Ms. Maxwell advised that the travel justification had been submitted to the Administration for review but she had not heard back as of yet. She believes the number of people requested will have to be adjusted down to a lesser number because of department policy.

EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR

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

Mr. McDonald advised the Commission that Course F19 "Working with Seniors as Sellers and Buyers" offered by Provider Fearnley, Martin & McDonald, PLLC and Course F20 "Working with Seniors as Sellers and Buyers" offered by Provider GCAR are Reverse Mortgage courses. He advised the Commission that Matt Pule from the AG office's Mortgage Settlement Coordinator was on the agenda at 1:00 p.m. to address the Commission regarding Reverse Mortgages so they might want to defer those two courses until after he appears before voting on them. **Commissioner DiChiara made a motion to defer taking action on F19 and F20; seconded by Commissioner Franks; unanimous vote; motion carried.**

Commissioner Collins made a motion to approve the Courses for Commission Evaluation F1 through F18; seconded by Commissioner DiChiara; unanimous vote on all except Commissioner McMullen did abstain on course F1; motion carried.

Mr. McDonald presented the Course for Discussion "Virtual Offices" offered by Provider D&D School of Real Estate. He advised that he had asked Commissioner DiChiara to review the course and give her input and she reported to the Commission. She says it has some good information and she feels it is a worthwhile course. **Commissioner Franks made a motion to approve the course F21 "Virtual Offices"; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

INSTRUCTOR REVIEW

- Candy Joyce of MTAR® (#1141) requested the approval of Randa Dawson (#222929) to teach 2013-2016 NAR Code (#7249) and Code of Ethics - New Member Orientation (#5258).
- Tina Marshall of Wells Fargo Home Mortgage (#1516) requested the approval of Linda Corbin to teach Renovation Financing (#6702).
- Dottie Oslin of TREES (1032) requested the approval of Brenda Brewster (#274139) and Harold Luecke (#258812) to teach the following courses for TREES: Basic Principles of Real Estate (#1627), Course for New Affiliates (#1571), Office Broker Management (#335), Effective Buyer Representation (#2395) and Senior Housing Specialists (#3872).
- Sally Cummings of TAR® (1110) requested the approval of Monica Neubauer (#285136) to be approved to teach Real Estate Market Re-Boot (#6396).

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

Mr. McDonald advised the Commission that the Education Seminars would be starting the following week in Mt. Juliet. He advised the attendees that the calendar of upcoming seminars is on the website and they can get their other two hours of elective CE for free.

He advised the Commission that the next TREC News Journal is in final draft and should be ready the following week and ready to be posted to the website. He advised he would also send it to them.

Ms. Cropp presented the Commission with the Consent Order Log and asked if the Commission had any questions and they did not.

Ms. Cropp handed out a few copies of withdrawn and proposed legislation that may affect the Real Estate Commission and advised them that a departmental legislative liaison, Greer Kelly, would be by later to address the Commission regarding proposed legislation.

Ms. Cropp addressed the Commission regarding when a potential Complainant attempts to contact a Board Member directly regarding filing a complaint or the facts of a potential complaint. She advised them that if the information comes in an envelope, please just don't open it. She explained that she understand that sometimes an email might be received and they would not realize what they were looking at until it was too late and that could compromise the complaint. She explained that if a Commission, or the entire Board, knew the

content of the complaint, it could create a bias and, if the case went to litigation, then it would have to be heard by an ALJ alone. The Commissioners and staff determined the key is to attempt to educate the licensees and the public regarding this matter.

Chairman Stephenson recessed the meeting for lunch at 11:23 a.m. and reconvened the meeting at 1:03 p.m.

MATT PULLE, MORTGAGE SETTLEMENT COORDINATOR, ATTORNEY GENERAL'S OFFICE

Counsel Pulle, Mortgage Settlement Coordinator for the Attorney General's Office, addressed the Commission regarding Reverse Mortgages. The totality of this discussion, which was lengthy, can be found on YouTube by typing in Tennessee Real Estate Commission, clicking on the link for the February 5, 2014 meeting and going to the 2:07:40 point in the recording.

Mr. McDonald returned to the Courses for Commission Evaluation (regarding Reverse Mortgages) F19 "Working with Seniors as Sellers and Buyers" offered by Provider Fearnley, Martin & McDonald, PLLC and Course F20 "Working with Seniors as Sellers and Buyers" offered by Provider GCAR are Reverse Mortgage courses. **Commissioner Blume made a motion that the courses be approved as long as the courses also include Mr. Pulle's PowerPoint presentation; seconded by Commissioner Collins; opened to discussion; Counsel Cropp and Mr. McDonald said they would need to ask Mr. Pulle about including his PowerPoint presentation in course materials to avoid any copyright infringement; vote: 1 yes, 4 no; motion failed. Commissioner McMullen made a motion to defer; seconded by Commissioner Blume; unanimous vote; motion carried. Commissioner McMullen asked Mr. McDonald to follow up with Counsel Pulle and the instructors and bring the courses back to the Commission the following month.**

Assistant General Counsel Ryan discussed with the Commission the possibility of her negotiating consent orders. However, Ms. Ryan said that since three members of the Commission were not present, she preferred that the matter be deferred. **Commissioner McMullen made a motion to defer the discussion until next month; seconded by Commissioner Franks; unanimous vote; motion carried.**

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

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

- 1) 2013014711 – Commissioner Blume had previously reviewed the complaint and reported to the Commission. He agreed with legal counsel’s previous recommendation to dismiss. Commissioner McMullen made a motion to accept legal counsel’s recommendation to dismiss; vote; 5 yes; 0 no; Commissioner Blume abstained; motion carried.
- 2) 2013016381 – Commissioner Collins made a motion to Close and refer to the Consumer Affairs division; seconded by Commissioner McMullen; 4 yes, 0 no; Commissioner DiChiara abstained; motion carried.
- 3) 2013016631 – Commissioner McMullen made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty of \$1,500 for failing to respond to a complaint filed with the Commission in violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-313(a)(2) and failing, within a reasonable time, to account for or to remit moneys coming into the licensee’s possession that belong to others in violation of T.C.A. § 62-13-312(b)(5) 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.
- 4) 2013016671 – Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Franks; 4 yes. 2 no (Commissioners DiChiara and Franks voted no); motion carried.
- 5) 2013016691 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Franks; unanimous vote; motion carried.
- 6) 2013017311 &
- 7) 2013017312 &
- 8) 2013017313 – Commissioner McMullen made a motion to dismiss as to Respondents 2 and 3 and as to Respondent 1, issue a Consent Order with a civil penalty of \$500.00 for violation of Rule 1260-02-.09, specifically referencing subsection (3) which states that brokers are responsible for deposits and earnest money accepted by them or their affiliate brokers and subsection (7) which states that funds in escrow or trustee accounts must be disbursed in a proper manner without unreasonable delay and should be disbursed or interplead within twenty-one (21) calendar days from the date of receipt of a written request, 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; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 9) 2013017701 &
- 10) 2013017702 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Franks; unanimous vote; motion carried.
- 11) 2013017781 &
- 12) 2013017782 &
- 13) 2013017783 – Commissioner DiChiara made a motion as to Respondent 1, that the Commission vote to authorize a Consent Order which includes a civil penalty of

\$750.00 for violations of T.C.A. §§ 62-13-312(b)(1) and 62-13-309(e), 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; seconded by Commissioner Franks; vote; 5 yes, 0 no; Commissioner Collins abstained; motion carried. As to Respondent 2, Commissioner Franks made a motion to dismiss; seconded by Commissioner DiChiara; 5 yes; 0 no; Commissioner Collins abstained; motion carried. As to Respondent 3, Commissioner DiChiara made a motion that the Commission vote to authorize a Consent Order which includes a \$1,000.00 civil penalty for violation of T.C.A. § 62-13-312(b)(15), plus attendance by Respondent 3 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 3's execution of Consent Order; seconded by Commissioner Franks; vote: 5 yes, 0 no; Commissioner Collins abstained; motion carried.

- 14) 2013018141 – Commissioner Blume made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner McMullen; 4 yes, 2 no (Commissioners DiChiara and Franks voted no); motion carried.**

The Commission took a short break from the Legal Report so the department legislative liaison could address the Commission. **Greer Kelly, Legislative Liaison of the Department of Commerce & Insurance, updated the Commission on proposed legislation HB 1663/SB 1761.** Commissioner McMullen asked what the potential impact could be on the TREC. She stated that according to the bill analysis, completed by the department legal department, there should be no impact on department policies or any fiscal impact. Commissioner McMullen asked about HB 1387 regarding interpleader actions. She confirmed that the bill had been withdrawn and off the table.

15) 2013018251 &

16) 2013018252 – Commissioner McMullen made a motion to accept legal counsel's recommendation to issue Letters of Warning regarding T.C.A. § 62-13-104(a)(1)(F); seconded by Commissioner DiChiara; unanimous vote; motion carried.

17) 2013018591 – Commissioner Collins made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.

18) 2013018721 &

19) 2013018741 – Commissioner Collins made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carried.

20) 2013018881 &

21) 2013018901 – Commissioner DiChiara made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.

22) 2013019131 &

23) 2013019132 &

- 24) 2013019171 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.
- 25) 2013018921 &
- 26) 2013019021 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Franks; unanimous vote; motion carried.
- 27) 2013019221 – Commissioner Franks made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carried.
- 28) 2013019281 – Commissioner Franks made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carried.
- 29) 2013019401 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carried.
- 30) 2013019451 &
- 31) 2013019452 – Commissioner Collins made a motion to accept legal counsel’s recommendation to Close as to Respondent 2 and as to Respondent 1, issue a Consent Order with a civil penalty of \$500 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; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 32) 2013019581 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carried.
- 33) 2013020201 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.

Chairman Stephenson recessed the meeting on Wednesday, February 5, 2014 at 4:20 p.m.

FEBRUARY 6, 2014

The Tennessee Real Estate Commission convened on Thursday, February 6, 2014 at 9:02 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, Commissioner Janet DiChiara, Commissioner Austin McMullen, Commissioner Grover Collins, Commissioner Gary Blume and Commissioner Marcia Franks. Vice-Chairman John Griess, Commissioner Wendell Alexander and Commissioner David Flitcroft were absent from the meeting. Others present: Executive Director Eve Maxwell, Education Director Steve McDonald, Assistant General Counsel Julie Cropp and Administrative Secretary Kelly Hestand.

The formal hearing of TREC v. Kenny Medlin, Docket # 12.18-122766A convened at 9:03 a.m.

It was ordered, adjudged and decreed that Respondent Kenny Medlin shall pay a civil penalty in the amount of One Thousand Dollars (\$1,000.00) for violation of T.C.A. § 62-13-301 and shall pay this amount within thirty days of the entry of the order. Respondent was further ordered to pay all hearing costs pursuant to T.C.A. § 56-1-311 and Tenn. Comp. Rules & Regs. 0780-5-11-.01. Costs in the matter include but are not limited to the costs of the Administrative Law Judge and court reporter. The costs in the matter total \$1,960.00 which total includes the court reporter costs of \$300.00 and the Administrative Law Judge costs of \$1,660.00. Respondent was ordered to pay the total cost amount of \$1,960.00 within thirty days of entry of the order. The final order shall take effect upon filing with the Administrative Procedures Division of the Office of the Secretary of State.

The formal hearing of TREC v. Kenny Medlin, Docket # 12.18-122766A adjourned at 3:49 p.m. There was no break for lunch.

Chairman Stephenson adjourned the meeting on Thursday, February 6, 2014 at 3:50 p.m.



**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
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MEMORANDUM

TO: TENNESSEE REAL ESTATE COMMISSION
FROM: JULIE CROPP, Assistant General Counsel
SUBJECT: FEBRUARY LEGAL REPORT
DATE: February 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. 2013014711
Opened: 8/13/13
First License Obtained: 1/24/06
License Expiration: 1/23/14
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

January 2014 Meeting:

Complainant was the buyer of a property, and Respondent (affiliate broker) represented the seller. Complainant states the property was listed as a triplex, but, after purchase, Complainant discovered that the property was not a legal triplex and had been rented

that way illegally by the previous owner. Complainant also states that Complainant requested a revision to the contract to address a leak in one of the showers and that Respondent represented that the leak was fixed and the provision did not need to be in the contract. Complainant states that, when Complainant first used the shower, water was discovered in the basement and that upon relaying this information, Complainant was told that Respondent/seller were not responsible as the issue was not in the contract. Complainant further states that, after purchase, other leaks were discovered making none of the bathrooms functional, and Respondent refused to address the issue. Complainant further states that, at the final walkthrough, Complainant discovered that a large tree had been cut down and there was long electrical tube exposed. Complainant states that Complainant asked Respondent if the home had any water intrusions from the 2010 flood and was told no and the disclosure was marked as such. Complainant states that the house floods, but Respondent claimed ignorance regarding this issue. Complainant states Respondent should have known many of these issues as Respondent had managed the property on behalf of the seller. Complainant further states that the contract provided that the seller's items would be removed from the property prior to closing, but that, on possession, this was not done, and it took weeks for the for sale sign to be removed.

Respondent states that Respondent did not manage the property and had no dealings with the property prior to listing. Complainant was represented by a licensee, and Respondent states that there were actually two (2) contracts with Complainant, but Complainant terminated the first contract when the seller did not agree to make all repairs requested by Complainant. Respondent states that Respondent was later contacted and informed that Complainant was interested in submitting a new offer with new terms, and a new contract was executed. Respondent states that the property had been rented for several years as three (3) separate units and was referred to as a triplex by the owner, and Complainant had representation and time to evaluate the property, but Respondent never made representations regarding permitting use under current zoning as a triplex. Respondent further states that Complainant became aware of the shower leak when Complainant had an inspection done as part of the first failed contract, and the seller engaged someone to repair the leak. Respondent states that the first contract was terminated by Complainant due to refusal by seller to make a number of repairs, and when the second contract was entered, Respondent informed Complainant's broker that, based on the information Respondent had, the shower had been repaired. Respondent states that Complainant had an inspection period, but no inspections were made until the final walkthrough. Respondent states Respondent was not aware of any longstanding water issues, and Complainant had a contingency period for inspection. Respondent states that the walkthrough, everyone was surprised that the tree had been cut down, which involved an issue with the bank and insurance company, and Respondent states that the buyer and buyer's agent said they would address the issue, and the parties proceeded to closing. Respondent states that Respondent was not aware of any previous flooding and was not given any information regarding previous flooding of the property.

Respondent states that the seller hired a house cleaner and handy man to address cleaning and removal of items, and Respondent was told that the cleanup and debris removal was complete. Based on the information provided, there does not appear to be a violation by Respondent.

Recommendation: Dismiss.

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

New Recommendation: Commissioner Blume to discuss.

DECISION: The Commission voted to accept the recommendation of Commissioner Blume to dismiss this matter.

Commissioner Blume abstained from the vote on this matter.

2. 2013016381

Opened: 9/5/13

First License Obtained: 8/16/04

License Expiration: 11/1/15

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant was a renter who states that Respondent (affiliate broker) assisted Complainant in finding a rental unit. Complainant states that Respondent received the security deposit and rent, which were to be taken to the property owner, which were paid by money order. Complainant alleges that Respondent located two (2) of the money orders which Complainant claims Respondent attempted to convert to Respondent's own use. Complainant also submitted a copy of an unsigned lease agreement which was allegedly given to Complainant by Respondent, and itemization of money given to Respondent as well as the landlord, and states that an amount representing the refundable deposit amount should have been returned to Complainant. Complainant also attached a string of e-mails between the parties, which appear to indicate an underlying ongoing issue between the landlord, Respondent, and another licensee (who appears to represent the landlord), and outlining the payments made by Complainant to the various parties throughout Complainant's short residence in the unit.

Respondent submitted a response through an attorney stating that the blank lease submitted was not the lease signed regarding the property in question and provided a different lease, which is alleged to be (and appears to be) signed by both Complainant and the landlord. Respondent's attorney states that Respondent never represented

Complainant in the matter but only provided staged furniture and appliances for the unit, and the other licensee included in the e-mail correspondence (whose name also appears on the executed lease copy provided by Respondent's attorney) provided representation in this matter. Further, Respondent's attorney states that any money received by Respondent from Complainant was forwarded to the other licensee with the exception of some money which was paid to Respondent as reimbursement for a washer/dryer set purchased by Respondent for the unit. Respondent's attorney states that there was not a security deposit paid but only a first and last month's rent which were forwarded to the other licensee from Respondent. The executed lease agreement (as well as the e-mails provided by Complainant) appears to indicate that the refundable last month's rent (or security deposit) was paid to the landlord. An e-mail provided by Respondent's attorney contains information that the other licensee acted on behalf of the landlord utilizing some of the rent money to make repairs and reimbursing Respondent for the washer and dryer with Respondent assisting with the staging. The documentation does not appear to indicate that Respondent held any funds which are owed to Complainant. Instead, the documentation appears to indicate that there may be a possible dispute under the Landlord/Tenant between Complainant and one of the other parties.

Recommendation: Close and refer to Consumer Affairs division.

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

3. 2013016631

Opened: 9/24/13

First License Obtained: 4/25/88

License Expiration: 6/20/14

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant is a property owner, and Respondent (affiliate broker) acted as Complainant's property manager. Complainant states that there were problems in the past with receiving timely rent payments, bounced checks from Respondent, infrequent statements of accounting (Complainant included a copy of the only statement received in 2013 before Complainant terminated services), and difficulty contacting Respondent. Complainant states that Respondent collected rent for two (2) months and did not send the money owed to Complainant. Finally, Complainant states that the rent for one (1) of the months was received, but Complainant has not received the money owed to Complainant for one (1) month's rent. Complainant then terminated Respondent's management services. Complainant sent additional documentation stating that a check was later sent by Respondent to Complainant for the rent money owed, but that check bounced (a copy was provided), and good payment has not been made.

Respondent submitted no response to the complaint, which was sent to the firm address on file with the Commission and signed for by Respondent.

Recommendation: Consent Order for \$1,500 for failing to respond to a complaint filed with the Commission in violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-313(a)(2) and failing, within a reasonable time, to account for or to remit moneys coming into the licensee's possession that belong to others in violation of T.C.A. § 62-13-312(b)(5) 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.

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

4. 2013016671

Opened: 9/17/13

First License Obtained: 4/25/01

License Expiration: 8/23/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant was a potential home buyer, and Respondent (principal broker) represented the seller. Complainant states that Respondent is the daughter-in-law of the sellers. Complainant states that Complainant was interested in a home listed by Respondent, and the listing stated that the home included hardwood floors. Complainant states that the real estate appraiser stated that, during the appraisal, it was represented to the appraiser that there was hardwood flooring in the home, but Complainant later discovered that the floors were wood laminate. Complainant states that this was brought to the attention of Respondent, who changed the listing to reflect that the floors were laminate. Complainant states that, since this was not discovered by Complainant until after the appraisal, it was an overstated appraisal as well as a factor considered in the offer and execution of the Purchase and Sale Agreement. Complainant further states that, at the first viewing, Complainant discovered basement water seepage behind items stored in the basement, and the contract specified that this would be addressed before closing, but the seller's property disclosure did not reference the seepage. Complainant also states that the builder told Complainant that there was a leak in the same place and the leak had been addressed, but Complainant states that this was not in the seller's property disclosure either.

Respondent states that Respondent is an in-law, which was disclosed to Complainant and confirmed in writing signed by Complainant. Respondent states that Respondent did list the home as having hardwood as this was what Respondent understood to be true at that

time. At the appraisal, Respondent states that the floors were not discussed at any time, that the appraisal report only listed wood floors and that Respondent was later told by the appraiser that this description can cover hardwood as well as wood laminate flooring. Respondent states Complainant requested more information about the floors as Complainant intended to extend the flooring, discovered it was wood laminate, and requested a credit at closing due to this. After verifying that the floors were wood laminate, Respondent states that the change was made to the MLS listing. Respondent states that it was a very rainy season and Complainant's agent called about the basement seepage, which was unknown to the sellers, as items in storage obscured the view. Respondent states that this was not listed by the sellers in the disclosure as it was not known to sellers, but the sellers agreed to address the seepage accordingly. Respondent states that the builder was present at the inspection due to a possible garage extension, and there was a discussion that seepage was discovered during construction which was addressed. Respondent states that Respondent had not been informed because Respondent had not been involved at the construction of the home (which was approximately one (1) year old at the time), and the sellers stated that they did not list the issue as it occurred during the construction, and they did not know it was necessary to list. Respondent states that Respondent never attempted to hide adverse facts regarding the property. Respondent states that, soon after this purchase was terminated, the home sold to a new purchaser for a higher price. Based on the information contained within the file, there does not appear to be a violation by Respondent.

Recommendation: Dismiss.

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

5. 2013016691

Opened: 9/20/13

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 was the purchaser of a property and Respondent (broker) was Complainant's agent. Complainant purchased a home in 2008 and that, at closing, Complainant learned that Complainant did not qualify for a home loan. Complainant states that Complainant was told that Complainant had to pay \$15,000.00 down (which Complainant does not believe was properly administered toward the purchase price) and \$1,500.00 per month for three (3) years, after which all would convert to a mortgage. After three (3) years, Complainant states that Complainant was again told that Complainant still did not qualify and that the plan had to be renewed for another three (3) years with the payment now being \$1,900.00 per month. Complainant states that after

confronting Respondent, Respondent stated that there was nothing else that Respondent could do. Complainant states Complainant was left with a solution to pay \$25,000.00 to walk away.

Respondent states that Respondent first attempted to assist Complainant in a home purchase in 2007, but Complainant could not get the financing necessary for the purchase. In 2008, Respondent states that Respondent again assisted Complainant in purchasing a home, and Complainant's self-employment did not allow Complainant to purchase via conventional or FHA loans. Respondent states that Complainant was interested in a new home, and the builder was in agreement to finance with three percent (3%) down at a six percent (6%) interest rate for three (3) years with a balloon payment at the end with the intent to give Complainant time to improve Complainant's credit score before the loan became due in three (3) years. Respondent states that Respondent met with Complainant, discussed the deal and its terms, and, to finish the transaction, Complainant needed to pay the down payment and Complainant's portion of closing costs. Respondent states that, a couple of years after closing, Complainant asked Respondent to go back to seller to request that seller reduce the principal on the loan, and Respondent refused and informed Complainant that Respondent was real estate agent and had nothing to do with the mortgage process, and for that, Complainant would need to deal with the lender/seller and/or hire an attorney for assistance. At the end of the three (3) years, Respondent states that Complainant could not secure a conventional loan as Complainant had filed for bankruptcy, but the builder extended the term for another three (3) years with an increase in the monthly payments due to tax and homeowner insurance policy premium increases. It appears that the events surrounding the initial transaction in 2008 are well beyond TREC's statute of limitations. Further, based on the information contained within the file, there does not appear to be a violation by Respondent.

Recommendation: Dismiss.

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

6. 2013017311

Opened: 9/24/13

First License Obtained: 10/19/01

License Expiration: 4/13/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

7. 2013017312

Opened: 9/24/13

First License Obtained: 3/5/08

License Expiration: 3/4/14

E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

8. 2013017313
Opened: 9/24/13
First License Obtained: 9/22/06
License Expiration: 9/21/14
E&O Expiration: 1/15/15
Type of License: Broker
History: No Prior Disciplinary Action

Complainants were potential buyers, and Respondent 3 (broker) represented Complainants. Respondent 2 (affiliate broker) is the owner of the firm and Respondent 1 is the principal broker of the firm which represented the seller. Complainants state that Complainants entered into a contract to purchase a home in July 2012 and paid five thousand dollars (\$5,000.00) in earnest money to Respondents 1 and 2's firm. The closing was set for approximately one (1) month later. Complainants state that, a few days prior to closing, the bank informed Complainants that there was a problem with closing the loan, and it would have to be submitted for higher approval, or Complainants could look into another lender. According to Complainants, the contract expired on the closing date and was not extended, but Complainants were still willing to buy the home if a new application would not pull credit scores until after a favorable bank appraisal. Complainants state that the sellers then received a cash offer for a higher amount, and negotiations regarding Complainants' purchase of the house ceased soon after that. Complainants state that Complainants requested return of the earnest money by telephone and in writing several times in October 2012 and also asking that the money be interplead. Complainants state that the seller wrote Complainants and stated that seller endured large costs due to Complainants' apparent refusal to go forward with financing from another bank, and the seller offered to split the earnest money with Complainants. Complainants state that Complainants attempted on several occasions to contact Respondent 1 but received no response. Complainants further state that, after the transaction fell through, Respondent 3 divulged information that past transactions involving Complainants had not gone through and neglected to assist Complainants by explaining Complainants' right for interpleading. As of the date of the complaint, Complainants state that the earnest money has not been returned or interplead.

Respondent's 1 and 2 replied stating that the contract provided the holder of the earnest money with the authority to either disburse the earnest money upon a reasonable interpretation of the contract or file an interpleader action. Respondents 1 and 2 state that Respondent 1 spoke to agents to determine whether an agreement could be reached, and, once it was determined that there was not an agreement, Respondent 1 consulted legal counsel, who reviewed the contract and circumstances and advised that seller was entitled

to the earnest money but further advised that it would be better to interplead the funds. Respondents 1 and 2 state that Respondent 1 then informed the parties of the intent to interplead the earnest money and attempted to reach the seller regarding legal service, but the seller has failed to provide a valid address for service of process despite multiple attempts by Respondent 1 to reach the seller. Respondents 1 and 2 state that, after this complaint was filed, Respondent 1 left further messages for the seller advising that if a valid address for process was not provided within twenty-four (24) hours, then Respondent 1 would disburse the earnest money funds to Complainants.

Respondent 3 states that Respondent 3 began working with Complainants in early 2011, and, since that time, Respondent 3 showed Complainants numerous houses and assisted them through multiple sales, which did not go through, including the subject transaction. When there was a red flag due to the appraiser's inability to find other comparable homes which led Complainants' lender to put a hold on the purchase, Respondent 3 states that the seller's agent attempted to get Complainants to try working with a different lender, but they refused. Soon after, Respondent 3 states that Complainants decided to step out of the deal for lack of financing, and Respondent 3 notified the seller's agent and asked for a return of the earnest money but was told that the sellers would not consider returning the earnest money because Complainants had refused another viable alternative for financing. Respondent 3 states that, when Complainants contacted Respondent 3 about this refusal, Respondent 3 told Complainants that Respondent 3 could not make the sellers return the earnest money and that Complainants may need to get an attorney.

Respondent 1, as principal broker of the firm, did not disburse or interplead the earnest money until approximately one (1) year after the transaction fell through, although Respondent 1 did consult an attorney on the issue and reported that attempts to interplead the money were complicated by the seller refusing to provide an address for service.

Recommendation: Dismiss as to Respondents 2 and 3. As to Respondent 1, Consent Order for \$500.00 for violation of Rule 1260-02-.09, specifically referencing subsection (3) which states that brokers are responsible for deposits and earnest money accepted by them or their affiliate brokers and subsection (7) which states that funds in escrow or trustee accounts must be disbursed in a proper manner without unreasonable delay and should be disbursed or interplead within twenty-one (21) calendar days from the date of receipt of a written request, 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.

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

**9. 2013017701
Opened: 9/24/13**

First License Obtained: 9/23/03
License Expiration: 7/31/14
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

10. 2013017702
Opened: 9/24/13
First License Obtained: 9/15/94
License Expiration: 12/30/15
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

Complainant states that Respondents (Respondent 1 is principal broker; Respondent 2 is affiliate broker) did not get proper authorization from all necessary parties to list a property for sale which went under contract. Complainant's involvement and interest in the subject property is that of a child of a deceased heir. Complainant states that the property was listed by Respondent 2, went under contract, and documents were signed to allow the buyers to complete certain repairs prior to closing without proper authorization from all parties. Complainant states that numerous other family members should have signed the listing and sale documents, but did not do so. Complainant states that Complainant was later contacted to sign documents relating to those actions after the fact, which Complainant did not sign as Complainant felt the transaction was suspicious. Complainant states that Complainant made requests to Respondents' firm to pull or cancel the listing and terminate the contract, but the requests were not honored, which resulted in Complainant filing this complaint.

Respondents submitted a response to the complaint, with Respondent 1 (as principal broker) stating that, as evidenced by the documentation provided by Respondents, the situation relating to the property was very confusing, but Respondent 1 does not believe that Respondent 2 (as listing broker) did anything wrong. Respondent 2 states that, when Respondent 2 was asked to list the subject property, Respondent 2 immediately contacted an attorney with whom Respondent 2 had a long-time working relationship and who also does work for Respondents' firm and a title company. Respondent 2 stated that the property was titled by a 1953 Affidavit of Heirship, which vested title to the subject property to the six (6) children of the deceased owners. Respondent 2 states that only two (2) of the six (6) original heirs are alive and are both of advanced age. Respondent 2's mother-in-law is one of the surviving heirs. Respondent 2 states that Respondent 2 was advised by the attorney that Respondent 2 only needed to work with the two (2) remaining heirs, and this is the path which Respondent 2 originally pursued. Respondent 2 states that the out-of-state heir had help with documents from that heir's child, and the local heir's daughter had power of attorney, and both heirs gave authorization to proceed.

Respondent 2 states that the property, which was in poor condition, was placed on the market, and, soon after, an offer was made, which was accepted by the two (2) original heirs. This offer was intended to be a cash offer, but the buyer then decided to secure a mortgage and permission was sought to “shore up” the property to pass bank inspection, and this was approved by the two (2) heirs in a signed Amendment. Once learning of Complainant’s dissatisfaction, Respondent 2 states that Respondent 2 contacted a title company and was told that Respondent 2 probably needed the signatures of all children of deceased siblings, as well, so Respondent 2 then sent the forms and signature pages to all potential heirs, but not all potential heirs could be located to sign the documents. Respondent 2 states that Respondent 2 has spoken with most of the heirs of the siblings and all heirs that could be found are in agreement with what has been done except for Complainant, who Respondent 2 states tried to remove a remaining original heir from the property in years past and failed and would like all of the proceeds. Respondent 2 further states that Respondent 2 was put in touch with a different attorney who advised Respondent 2 that one of the original heirs needed to file suit against the estate, and Respondent 2 put the parties in contact. Respondents provided numerous documents relating to the transaction with descriptions by Respondent 2, including, but not limited to, the documents signed by or on behalf of the original two (2) heirs and the buyers, documents sent by Respondent 2 to the children of the deceased heirs (some of which were returned signed), and e-mails showing correspondence between Respondent 2 and an attorney. Respondent 2 also provided copies of documents showing that Complainant signed all documents which Respondent 2 sent relating to the sale except for the amendment allowing the buyers to make repairs and the hold harmless agreement.

This is a complicated transaction, but it would appear from the information provided that Respondent 2 did seek legal advice on multiple occasions regarding the best way to handle the transaction and attempted to proceed accordingly. It appears from the information provided that Respondent 2 worked diligently to handle this sale in the correct manner.

Recommendation: Dismiss.

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

11. 2013017781

Opened: 9/27/13

First License Obtained: 11/7/07

License Expiration: 4/2/15

E&O Expiration: 1/1/15

Type of License: Broker

History: No Prior Disciplinary Action

12. 2013017782

Opened: 9/27/13
First License Obtained: 8/19/94
License Expiration: 8/25/14
E&O Expiration: 1/1/15
Type of License: Broker
History: No Prior Disciplinary Action

13. 2013017783
Opened: 9/27/13
First License Obtained: 10/24/07
License Expiration: 9/2/14
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

Complainant states that Complainant rented a home from Respondent 1 (affiliate broker) for a twelve (12) month lease. Respondent 2 is a broker at the same firm at which Respondent 1 was affiliated at that time, and Respondent 3 was the principal broker of the firm at which Respondents 1 and 2 were affiliated at that time. Although not an allegation within the complaint, it was noticed, upon receiving the complaint, that the Lease Agreement which Complainant executed with Respondent 1 was between Complainant and a different licensed firm from where Respondent 1 was affiliated at that time, and the lease listed that Respondent 1 was an agent of that different firm, which would indicate that Respondent 1 was working for two (2) firms at once.

Complainant states that during the lease period, illness and inability to work for a period of time caused Complainant to be late with rent for two (2) months. Complainant states that, at the end of the second (2nd) month, Complainant was served with a detainer warrant. The following day, Complainant states that Complainant paid the past due rent amount as well as the current month's rent. Complainant states that Respondent 1 told Complainant not to worry about the court date, that Respondent 1 would take care of it, and Complainant need only pay late fees. Complainant admits that the next two (2) months' rent was paid late. In the meantime, Complainant states that the court date was not cancelled, but was postponed for approximately two (2) months later, that Respondent 1 appeared and asked for an eviction and judgment against Complainant and costs, which was granted. Complainant states that Complainant was paying the rent in the meantime and nothing was said about the court date by Respondent 1 or the owner, who visited the home and spoke with Complainant around the time of the court proceeding. Approximately three (3) weeks after the detainer hearing, Complainant states that Respondent 1 conveyed that the owners wanted to set up a direct withdrawal from Complainant's account for half of the rent on the fifteenth (15th) of the month and the other half on the thirtieth (30th) of the month. Then, four (4) days later, Complainant states that Respondent 1 texted Complainant that the owner would not wait longer for the

rent and filed a writ of possession and told Complainant that Complainant did not have thirty (30) days to move because it was waived in Complainant's lease, and the sheriff may only give twenty-four (24) hours. The following day, Complainant states that Respondent 1 arrived with sheriffs and gave Complainant's girlfriend time to remove some items but said movers would remove personal possessions to a secure location where Complainant would have to make arrangements to retrieve them. Complainant states that Complainant was then told by Respondent 1 that legally they were supposed to put everything on the street for the trash to pick up. Complainant states that Respondent 1 then agreed to bring items out of the home and allow Complainant to remove them, but, when Complainant arrived to do so, there were a few boxes by the curb and Complainant was told that Complainant could remove items from the shed but there was nothing left in the home. Complainant contacted Complainant's attorney, then several officers arrived who told Complainant that Complainant had all the possessions to be picked up and the items in the home belonged to the new tenants. Complainant states that Complainant later called Respondent 2, who told Complainant that the Respondent 2 was not aware of this situation then called Complainant back and said there was no legal notification requirement for eviction. Complainant alleges that the house was not rented to new tenants and Respondent 1 is in possession of Complainant's valuable personal items.

Respondent 1 submitted a response through an attorney stating that Complainant was late with rent payments throughout the lease period. Respondent 1's attorney states that the Uniform Residential Landlord and Tenant Act provides that a tenant may waive their right to notice of a breach of lease due to failure to pay rent, and Complainant's lease agreement specifically stated that "Notice of termination of tenancy under lease agreement for nonpayment of rent is hereby specifically waived." Respondent 1 states that, after Complainant was repeatedly late with rent payments, a detainer warrant was filed, which Complainant was served with a copy, and the hearing was reset at the request of the owner who wanted to give Complainant more time to pay the amounts owed. Respondent 1 states that the court notified Respondent 1 of the new date by letter and informed Respondent 1 that it would notify Complainant, as well. Respondent 1 states that the court records reflect that Complainant was notified of the new hearing date by mail. Respondent 1 states that Complainant had failed to pay several late fees as well as the rent for the month of the detainer hearing at the time it took place. On the court date, Complainant did not appear and the General Sessions Court entered a default judgment in favor of Respondent 1 and the owner, and Complainant did not appeal the judgment. Respondent 1's attorney states that Complainant then had ten (10) days to voluntarily vacate before a writ of possession, and Respondent 1 and the owner attempted to work with Complainant to pay all amounts owed and stay. However, Respondent 1's attorney states that Complainant did not do so, and the writ of possession was issued and executed, terminating the landlord/tenant relationship. Respondent 1 states that Respondent 1 consulted an attorney regarding what to do with Complainant's possessions and was told that Respondent 1 did not have the right to keep the items and they needed to be placed outside the home, so Respondent 1 hired a company to remove the property

from the home and place it on the street. Pursuant to the Forcible Entry and Detainer statute, Respondent 1's attorney states that once a writ of possession is executed, the landlord is to be restored to possession immediately and there is no provision authorizing a landlord to keep a tenant's property once this is done. Respondent 1 states that, a few days after the writ of possession was executed, Complainant's attorney contacted Respondent 1 to see if any possessions were in the home, and Respondent 1 checked with the movers who said some was still there so Respondent 1 made arrangements for Complainant to pick up those remaining items at that time. Respondent 1's attorney states that the parties are in litigation over the execution of the writ of possession because items were removed from the home when the writ was executed were set on the street and taken by third parties.

Respondent 2 submitted a response stating that Respondent 2 does not recall speaking to Complainant but confirms that Respondent 2 would have discussed the matter with Respondent 1 first and Respondent 2 would have referenced Paragraph 5 of the Lease which Complainant signed regarding waiver of notice of termination of tenancy for nonpayment of rent.

Respondent 3 states that Respondent 3 is the principal broker for the firm which operates as the sales division of the company (which was the firm that Respondent 1 was affiliated at the time of the transaction) and not the firm which serves as the rental and property management division (which has a different principal broker and which is the firm which was referenced on the lease agreement with Complainant listing Respondent 1 as agent and was the firm listed on the accounting of the money paid by Complainant which was provided by Respondent 1). Respondent 3 states that Respondent 3 supervises the sales transactions in the company and is not involved in any management, supervision or day to day business in the rental/property management division, and the first time Respondent 3 was aware of Complainant was upon receipt of the complaint.

Complainant submitted additional information stating that a County General Sessions Court Judge ruled against Respondent 1 in favor of Complainant concerning Complainant's possessions that Complainant never received or was allowed to retrieve which not only included personal items but sentimental family items which can never be replaced. That judgment has been appealed and is currently in active litigation in Circuit Court.

It appears to legal counsel that, based on the parties to the lease agreement as well as the Statement of Account showing payments by Complainant, Respondent 1 was handling the transaction involving Complainant through a licensed firm other than the licensed firm at which Respondent 1 was affiliated at that time. After the complaint was filed and responses submitted, Respondents 1 and 2 changed their firm affiliations with TREC and are currently affiliated with the firm referenced on the lease agreement which handles rentals/property management according to Respondent 3. The situation regarding the

detainer warrant, eviction, and handling of Complainant's items is a complicated issue that involves statutory law not administered by the Commission; however, it is recommended that the Commission discuss these issues with regard to possible violations of the Broker Act.

Recommendation: Discuss.

DECISION: As to Respondent 1, the Commission voted to authorize a Consent Order which includes a civil penalty of \$750.00 for violations of T.C.A. §§ 62-13-312(b)(1) and 62-13-309(e), 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, the Commission voted to dismiss. As to Respondent 3, the Commission voted to authorize a Consent Order which includes a \$1,000.00 civil penalty for violation of T.C.A. § 62-13-312(b)(15), plus attendance by Respondent 3 at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent 3's execution of Consent Order.

14. 2013018141

Opened: 10/7/13

First License Obtained: 4/8/94

License Expiration: 8/30/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant is a licensee who represented a potential buyer. Respondent (principal broker) represented the seller. Complainant states that Complainant's clients had a preapproval letter prior to making an offer on the subject property. After going under contract, Complainant states that Complainant's clients immediately began working with their lender. Complainant states that, approximately two (2) weeks after the contract was accepted, Complainant received a call from Complainant's clients' mortgage officer, who told Complainant that the underwriter looked at the file, and Complainant's clients did not have enough income to qualify for the amount of the loan. Complainant states that Complainant's clients attempted to get more money for a down payment but were not able to do so, and Complainant informed the lender and asked for a denial letter. Complainant states that Complainant then contacted Respondent and told Respondent that the buyers' income did not qualify for the loan amount due to lender error. Complainant states that Complainant told Respondent that Complainant would send the termination of contract and release of earnest money form as soon as Complainant received the denial letter from the lender. This all took place prior to the specified closing date. Complainant states that the lender never sent Complainant a copy of the denial letter but mailed the letter directly to the buyers' home. Complainant states that the

clients gave Complainant a copy of the denial letter they received (nine (9) days after the closing date), which Complainant states Complainant forwarded to Respondent on the following day. Respondent then told Complainant that the notice was long after the expiration of the contract, and, therefore, the earnest money was released to the seller in accordance with the contract. Complainant states that the buyers and Complainant felt that the seller should give the buyers their earnest money back because of the lender's error and notice was given to Respondent as soon as Complainant had knowledge of it.

Respondent states that Respondent had multiple offers on the property, and Complainant assured Respondent that the buyers' income and credit was good, and the buyers had a down payment, which led the seller to accept the offer. Respondent states that Complainant phoned Respondent a week before the scheduled closing date to notify Respondent that the buyers were not able to obtain the loan and would be terminating the offer. Respondent states that Respondent asked Complainant to email the termination agreement along with the supporting documents showing that the loan had been denied so that Respondent could release the buyers' earnest money. When Respondent did not hear back from Complainant a few days later, Respondent states that Respondent sent Complainant a text message inquiring about the documents. Respondent states that Complainant responded back to Respondent the next day and said Complainant was still waiting on the documents to be sent to Complainant. Respondent states that the seller asked that the earnest money be released to the seller per the contract agreement. Respondent states that Respondent did not hear back from Complainant. Respondent states that, nine (9) days after the closing date, Respondent released the earnest money to the seller. Respondent states that Complainant sent the termination agreement and the loan denial letter the next day. Respondent feels that Respondent correctly released the earnest money to the seller per the contract. Based on the information provided, it does not appear that there was a violation by Respondent.

Recommendation: Dismiss.

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

15. 2013018251

Opened: 10/4/13

History: No Prior Disciplinary Action - Unlicensed

16. 2013018252

Opened: 10/4/13

History: No Prior Disciplinary Action - Unlicensed

An anonymous Complainant alleges that Respondents (both unlicensed individuals) are acting in the capacity of real estate affiliate brokers without licensure. Included with the

complaint were copies of website advertisements for a real estate developer with Respondent 1's name and picture featured prominently with a telephone number stating that Respondent 1 is the Vice President of the development company with a bio regarding Respondent 1's background with the development company. Also included are several web page print outs which list Respondent 1 and Respondent 2's names along with their Vice President titles for contact information regarding the development.

Respondents submitted a response drafted by one of the co-founders of the development company, who is also the principal broker of two (2) licensed firms. Respondents state that they are owners, officers and stock holders of the development company, which is an LLC. Respondents state that the development company has developed the residential community referenced in the advertisements for years and sells their own property in addition to listing their property with an outside residential licensed firm. The response outlines Respondent 1 and Respondent 2's duties with the development company and describes the recent changes in brokerage firms utilized for the development company's listings and explained that, where Respondent 1 and Respondent 2 were listed on any webpages, they were clearly listed as Vice Presidents of the development company. Respondents state that, unless it is not legal for an owner to represent and sell real estate property owned exclusively by the corporation that they own, the allegation of unlicensed activity is denied. There is an exemption for an owner of real estate with respect to property owned or leased by such person as well as an exemption for corporations acting through officers where certain circumstances are met. Though it certainly appears that Respondents 1 and 2 are part owners in the LLC that is developing the subject developments, it is recommended that Respondents 1 and 2 receive letters of warning outlining the licensing exemption regarding corporations acting through officers.

Recommendation: Letters of Warning regarding T.C.A. § 62-13-104(a)(1)(F).

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

17. 2013018591

Opened: 10/30/13

History: No Prior Disciplinary Action - Unlicensed

This complaint was referred to TREC from another state's Bureau of Real Estate. The initial complaint was filed against an individual who is a licensee in that state, but the property in question is located in Tennessee (which was the reason for the referral). The Complainant was a tenant who claimed that the licensee from the other state did not provide Complainant with a Lead Based Paint Disclosure for the property (which is owned by the out of state licensee). The complaint included an unexecuted Residential Lease Agreement for the subject property which was between Complainant and a company which is not licensed as a firm in Tennessee (this Respondent). Therefore, a

complaint was opened against this Respondent for possible unlicensed activity since it did not appear based on the information provided that the subject property was owned by this Respondent. No response was received from Respondent which is located out of state, and the certified mail card was not returned with a signature of receipt.

In researching the property owner (who is a real estate licensee in the other state but not Tennessee), it appears that the property owner is actively licensed as a broker in that state and this Respondent is that individual's DBA (as reflected on that state's license verification system), but Respondent is not registered as a corporation or LLC in either that state or Tennessee. Based on information obtained from that state's website and conversations with a representative there, all that is required to practice real estate in that state is an active broker's license but no firm license. In this case, this individual is an active broker who had Respondent entity listed as that individual's DBA, which is a fictitious business name that some licensees choose to create in that state, but it is not required. Based on the fact that Respondent is a DBA of the owner of the property located in Tennessee, it does not appear that there is any unlicensed real estate activity.

Recommendation: Dismiss.

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

18. 2013018721

Opened: 10/21/13

First License Obtained: 9/28/12

License Expiration: 9/27/14

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

19. 2013018741

Opened: 10/21/13

First License Obtained: 1/17/96

License Expiration: 7/1/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

TREC opened complaint based on newspaper story submitted to TREC by an anonymous source regarding Respondent 1 (affiliate broker). Respondent 2 is Respondent 1's principal broker, and the complaint was opened for a potential failure to supervise issue. The author of the newspaper story discusses Respondent 1's involvement in a development group and the development group's activities but does not state that

Respondent 1 is a licensee and the real estate firm name and phone number where Respondent 1 is affiliated do not appear in the article.

Respondent 1 submitted a response stating that Respondent 1 is not only a real estate licensee but also a part owner in the development group which is featured in the newspaper article. Respondent 1 states that Respondent 1 knows to fully disclose that Respondent 1 is a licensee and mention Respondent 1's broker and firm at every opportunity, and Respondent 1's principal broker has held multiple mandatory trainings regarding disclosures and rules regarding advertising. Respondent 1 states that this article was not an advertisement. Further, Respondent 1 states that Respondent 1 has never paid to be in any article such as this one and states that, when interviewed, Respondent 1 discloses that Respondent 1 is an agent, who Respondent 1's broker is, and the firm phone number. In the subject newspaper story, Respondent 1 states that Respondent 1 sent in a requested questionnaire (a copy was provided) wherein Respondent 1 provided the firm name and phone number, but only some of what Respondent 1 wrote was used, and the writer of the article did not use Respondent 1's firm name and telephone number.

Respondent 2 states that Respondent 2 has held multiple mandatory trainings for licensees on issues of ethics and TREC rules. Respondent 2 states that, regarding this complaint, Respondent 1 always discloses to the interviewing journalist that Respondent 1 is a licensee with Respondent 2's firm and provides the firm name and number, but Respondents have no control over what a journalist writes or does not write in an article. Respondent 2 further states that the news articles were not solicited or paid for and are not, in Respondent 2's opinion, advertising. Respondent 2 provided copies of other articles regarding Respondent 1's development group wherein Respondent 2 points out that the author at least included the notation that Respondent 1 was a licensee and the firm name. Respondent 2 also states (and provides a copy) of a similar article in the same publication regarding another licensee who is a builder, which Respondent 2 states does not mention that the individual is a real estate licensee or firm information, which would indicate that writers/publishers of articles of this nature would appear to routinely not include such information, which the newspaper might perceive to be "free advertising" for the firm.

The article was written by a third party reporter, who determined what information from the questionnaire would be included. Further, this article appears to focus on Respondent 1's development company's activities and does not appear to be a real estate advertisement.

Recommendation: Dismiss.

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

20. 2013018881

Opened: 10/21/13

First License Obtained: 4/26/06

License Expiration: 4/25/14

E&O Expiration: 3/29/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

21. 2013018901

Opened: 10/15/13

First License Obtained: 8/4/94

License Expiration: 5/25/14

E&O Expiration: 3/29/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

TREC opened complaint based on information received from an anonymous source stating that Respondent 1 (affiliate broker) was conducting property management activities through an unlicensed firm. Respondent 2 is Respondent 1's principal broker, and a complaint was opened for a potential failure to supervise issue. Information from the internet regarding the unlicensed company does not appear to specifically describe the company's business activities, and information obtained from the Secretary of State's website regarding the business lists an individual other than Respondent 1 as the registered agent. Part of the company's name and the registered agent's last name are the same as Respondent 1's last name, which is a rather common last name. Further, all addresses found relating to the unlicensed company appear to be different from the address of Respondent 1's firm.

Respondent 1 states that Respondent 1 does not currently work for and has never worked for or been affiliated with the unlicensed company referenced in the allegation or any other unlicensed branch office. Respondent 1 states that, based on the claim and the documentation located and included with the complaint, it appears that someone has misinterpreted the facts or confused Respondent 1 with someone else due to the same last name. Respondent 2 states that Respondent 1 is not operating an unlicensed property management company. Respondent 2 states that Respondent 1 did speak with Respondent 2 about a personal property that Respondent 1 was advertising for rent and had questions about a licensed agent handling their own personal property, and Respondent 2 referred Respondent 1 to TREC. Respondent 2 states that Respondent 1 knew to disclose to any potential renter that Respondent 1 was a licensee. Respondent 2 states that the personal property referenced has since rented. Based on the information provided and obtained, it does not appear that there was a violation by Respondents.

Recommendation: Dismiss.

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

22. 2013019131

Opened: 11/5/13
First License Obtained: 3/24/08
License Expiration: 3/23/14
E&O Expiration: N/A
Type of License: Time-Share Registration
History: No Prior Disciplinary Action

23. 2013019132

Opened: 11/5/13
First License Obtained: 5/17/13
License Expiration: 5/16/15
E&O Expiration: 7/13/15
Type of License: Time-Share Salesperson
History: No Prior Disciplinary Action

24. 2013019171

Opened: 11/5/13
First License Obtained: 12/14/84
License Expiration: 12/5/14
E&O Expiration: 7/13/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

Complainants attended a time-share presentation given by Respondents (Respondent 1 is a time-share registration; Respondent 2 is a time-share salesperson; Respondent 3 is Respondent 2's principal broker). Complainants state that, after a long presentation, Complainants decided to sign the paperwork to purchase the time-share. Complainants state that, after the purchase, Complainants told Respondent 2 that they wanted to cancel and would call and cancel the next day. Complainants then state that they called the next day and told another individual that they wanted to cancel the contract and that individual told Complainants that the individual would take care of the cancellation. Complainants continued to be billed and want out of the contract.

Respondents submitted a reply pointing to documents executed by Complainants which state in bold face type above Complainants' signatures that, if Complainants elected to cancel their contract, they may do so within ten (10) days from the date of the contract by either hand-delivering notice of cancellation or by mailing notice of cancellation within that time period. Respondents state that Complainants expressed their desire to cancel in a telephone call to another time-share salesperson and were advised by that individual of

the proper procedures to rescind the contract (which were also outlined in the contract signed by Complainants), but the cancellation notice was never received. While Respondents deny any wrongdoing, Respondents agreed to cancel Complainants' contract and issue a refund. The documentation within the file does not appear to evidence a violation by Respondents.

Recommendation: Dismiss.

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

25. 2013018921

Opened: 10/21/13

First License Obtained: 4/12/02

License Expiration: 11/29/15

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

26. 2013019021

Opened: 10/15/13

First License Obtained: 8/30/96

License Expiration: 6/21/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: 2012004361 – Closed \$500 CO (escrow)

TREC opened complaint based on information from the internet provided to the TREC office regarding a business which is not located in the same location as Respondent 1's (affiliate broker) firm, which appears to indicate that the company is involved in renting and selling homes. Respondent 2 is Respondent 1's principal broker, and a complaint was opened for a potential failure to supervise issue.

Respondent 1 states that Respondent 1 is also a real estate investor who purchases properties on the open market and always discloses Respondent 1's licensure when doing so then rehabs the properties and offers them for sale or rent, again disclosing Respondent 1's licensure status. Respondent 1 states that Respondent 1 does not represent third party buyers or sellers and does not manage, buy or sell properties that Respondent 1 does not own or are not owned by an entity Respondent 1 controls. Respondent 1 states that Respondent 1 uses Respondent 1's license occasionally to sell or rent property through the MLS and operates under the direction and supervision of Respondent 2 and firm when Respondent 1 lists properties for sale or rent on the MLS system. Respondent 2 states that Respondent 1 has been affiliated with Respondent 2's firm for quite some time and Respondent 1's business operation was discussed very early

on and disclosure requirements were also discussed. Respondent 2 states that Respondent 2 has verified that Respondent 1 and spouse own the business advertised on the webpage, and they buy and sell properties for themselves without representing buyers or sellers. Respondent 2 states that, when Respondent 1 does list a property on the MLS for Respondent 1's company through Respondents' firm, a personal interest disclosure is signed. Based on the information provided and obtained, it does not appear that there is a violation by Respondents.

Recommendation: Dismiss.

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

27. 2013019221

Opened: 11/6/13

First License Obtained: 9/24/03

License Expiration: 12/7/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant signed an Exclusive Buyer Representation Agreement with Respondent (principal broker) and Respondent's firm for a term of five (5) months. Approximately three (3) months later, Complainant filed this complaint and stated that Respondent had failed to find a house for Complainant, that Complainant asked Respondent to be released from the contract, and that Respondent refuses to release Complainant from the Exclusive Buyer Representation Agreement. Complainant alleges that Respondent would not answer Complainant's phone calls. Complainant feels that Respondent is being unfair, and Complainant needs housing with all of Complainant's belongings being in storage, and Complainant states that the bills are adding up. Complainant wants to be released from the contract with Respondent.

Respondent submitted a response through an attorney denying all of Complainant's allegations and stating that Respondent made every effort to assist Complainant in locating a home and maintained constant communication with Complainant during the time the parties worked together. Respondent states that Complainant did not have email or text messaging so it was challenging to get the home information to Complainant. Further, Respondent states that it was difficult to locate properties and schedule showings for Complainant because Complainant often changed Complainant's mind about what type of home Complainant was looking for, and Complainant only had specific days and times that Complainant could look at the homes. Respondent attached documentation which included listings that Respondent gave Complainant as well as Respondent's call log showing how many times Respondent phoned Complainant. Respondent states that Respondent received a call from another agent stating that Complainant was in their

office, and the agent realized that Complainant had a contract with Respondent. The agent informed Respondent that Complainant had just made an offer on a home which the agent had submitted to the agent's seller. Respondent alleges that, in the background, Respondent could hear Complainant stating that Complainant wanted to be released from the contract with Respondent. Respondent states that Respondent never told Complainant that Respondent would not release Complainant from the contract - only that Respondent needed to consult with Respondent's firm and get back with Complainant about this matter. Respondent states that ultimately Respondent did release Complainant from the contract, as Respondent did not feel their business relationship could be salvaged. Based on the information provided, it does not appear that there was a violation by Respondent.

Recommendation: Dismiss.

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

28. 2013019281

Opened: 10/22/13

First License Obtained: 6/16/06

License Expiration: 6/15/14

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant contacted Respondent (affiliate broker) regarding Complainant's interest in purchasing a home. Complainant states that Respondent encouraged Complainant to look at a house in an area that Complainant states Complainant did not want to live. Complainant states that Complainant was interested if the home was completed, and Complainant made an offer for the asking price based on advice from Respondent. Complainant states that Respondent encouraged Complainant to have a home inspection and recommended a home inspector. Complainant states that when Complainant asked if Complainant could be present during the inspection, Respondent told Complainant that Complainant could come when the inspector finished. When Complainant arrived, Complainant said the inspector was present but finished, and Complainant noticed sinks that were leaking underneath and toilets that were not mounted to the floor. Complainant states that Complainant pointed out the leaks to the inspector, and the inspector stated he did not notice the leaks when he ran the water. Complainant states that Complainant contacted Respondent multiple times before the closing date regarding another walk through the home, and approximately one (1) week before the closing date, Complainant states that the parties met at the home for the walk through. Complainant states that, soon after Complainant arrived, Respondent had to leave, and Complainant only quickly viewed the home. Complainant states that the closing took place, but Complainant was unaware that Complainant could request to wait to close until Complainant had a final

walk through. After closing, Complainant states that Complainant and family members went to the home and noticed that the electric wiring was not correct and needed re-wiring, the toilets were stopped up, and there was water underneath the sink. Complainant states that Respondent contacted the seller to send over a plumber, who attempted to fix the issues. Complainant alleges that Complainant continues to have multiple problems with the home including plumbing issues and raw sewage is running into the tub as well as issues with a smoke detector and the wiring and electricity. Complainant feels that the home inspection was completely invalid and states that the city told Complainant that the seller never pulled permits to remodel the home. Complainant states that home is unlivable.

Respondent states that Complainant was on a budget and needed a seller to pay closing costs as well as down payment assistance, and Complainant was interested in two (2) specified zip codes and "move-in condition" homes. Respondent states that Respondent worked to find a home that met the criteria. Respondent states that Respondent then discovered a "for sale by owner" home which appeared to meet all of Complainant's needs. Respondent states that Respondent recommended offering the asking price due to Complainant needing the seller to provide realtor fees, buyer closing costs, and prepaid expenses, and Respondent had researched comparable sales. Respondent states that Complainant did not want to have a home inspection, but Respondent encouraged Complainant to have the home inspected, and, because Complainant needed to postdate a check for the inspection, Respondent states that Respondent helped locate an inspector who would agree to do this. Respondent states that Respondent tells all clients that it is best to arrive at the home inspection during the last 30-45 minutes of the inspection, as to not interfere with the inspector's job. After the inspection, Respondent states that Complainant gave Respondent a list of repairs/replacements for the seller to complete prior to closing, which Respondent listed in a Buyer Inspection Contingency Removal/Notification form, which was signed by Complainant and agreed to by the seller. Respondent states that, on the final walk through, Complainant arrived an hour late. Respondent states that Respondent had arrived on time and had viewed the property but asked Complainant to quickly do the same, and Respondent states that Complainant walked around with a notepad and appeared satisfied. Respondent states that Respondent told Complainant that, if Complainant wanted to walk through again later that day or on the following Monday, to please let Respondent know. Respondent states that all documents were signed and all parties appeared satisfied at closing. Respondent states that Respondent represented Complainant to the best of Respondent's ability. Respondent states that Respondent sent a letter to the seller after closing listing outstanding issues with the home that the seller agreed to fix but apparently did not, and the items were not detected during walkthrough. Respondent states that Complainant sued the seller, and Respondent attended the court date with the Complainant to support the Complainant, and Complainant told Respondent that Complainant was suing the home inspector next. Based on the documentation provided, it appears that Respondent

had all documentation signed and appears to have answered and attempted to respond to Complainant's issues.

Recommendation: Dismiss.

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

29. 2013019401

Opened: 10/21/13

First License Obtained: 1/15/04

License Expiration: 7/9/15

E&O Expiration: 8/8/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainants state that they looked at a rental property listed through Respondent's firm and filed a rental application, paid the fee for a background search and credit check, and paid a deposit on the property. Complainants state that they were passing through on their way to a funeral in another state and did not have a date readily available to move in at the time due to personal circumstances. Later, upon returning home to another state to prepare to move, Complainants state that they had a situation arise which made it impossible for Complainants to move in the near future. By this time, it was approximately a month and a half after Complainants had viewed the property, filled out the rental application, and paid the deposit. Complainants state that they asked for the deposit back and were told that they would not get it back, and it had been given to the property owner. Complainants believe that since no lease was signed and Complainants were told that the money was refundable that Complainants should get their deposit money back.

Respondent submitted a response stating that Complainants submitted rental applications and paid the deposit. Respondent states that, approximately one (1) month later, Respondent's assistant sent an e-mail to Complainants which had an attached lease to be signed and returned with the first (1st) month's rent to start approximately two (2) weeks later. Respondent states (and a copy was provided) that one of the Complainants responded by e-mail, stating that Complainants would not be able to move due to financial situations, and the owners could keep the amount given by Complainants as the deposit. Respondent states that the deposit was released and mailed to the owner on that date. Based on this information, there does not appear to be a violation by Respondent.

Recommendation: Dismiss.

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

30. 2013019451

Opened: 10/29/13

History: No Prior Disciplinary Action - Unlicensed

31. 2013019452

Opened: 10/29/13

History: No Prior Disciplinary Action - Unlicensed

Complainant (a licensee) states that Respondent 1 (unlicensed individual) leases homes owned by military personnel. Complainant states that one of Complainant's licensees rented a property which was not owned by Respondent 1 and made rent checks payable to Respondent 1 and contacted Respondent 1 when repairs were needed. Complainant states that Respondent 2 (unlicensed individual) is an HVAC contractor/handyman who may be working a property owner to manage the property. Complainant states that Complainant checks a for sale by owner website and contacts unrepresented sellers, and, in one circumstance, the inquiry was not sent to an owner but to Respondent 1, who was apparently the contact on the listing and who replied to Complainant's e-mail regarding the property. Complainant attached an e-mail thread wherein Respondent 1 informed a party that Respondent 1 "...only lease[s] to military." Complainant also attached a for sale by owner online listing wherein it appears that Respondent 1's first name is the contact, and an e-mail chain between Complainant and Respondent 1 wherein Respondent 1 replied to Complainant's inquiry regarding the advertised property.

Respondent 1 submitted a response stating that Respondent 1 primarily provides "maintenance management services" and does not receive any fees, commissions, etc. to promote the sale or lease of properties. Respondent 1 states that Respondent 1 provides maintenance tasks for the homes and is allowed full access to the homes, and, in doing so, is sometimes asked to allow others to gain entry into the house by the owners. Respondent 1 states that Respondent 1 has assisted some, including the owner of the home that was advertised online and referenced by Complainant, advertise their homes online at no charge. Respondent 1 states that, when some owners transfer from the area, Respondent 1 is asked to provide maintenance for the homes, and Respondent 1 has never received any sort of compensation other than for maintenance of the home. After receiving the complaint, Respondent 1 states that Respondent 1 was advised that Respondent 1 should collect monthly maintenance fees from the owners directly and not handle any lease payments in any capacity. Respondent 1 states that the maintenance fees are not associated with collecting a rent payment.

Respondent 2 states that the complaint against Respondent 2 is unfounded, and Respondent 2 was asked to do maintenance on the home after the contract with Complainant's firm expired with the homeowner. Respondent 2 states that Complainant told Respondent 2 that Respondent 2 needed a license, but Respondent 2 states that Respondent 2 does not need a real estate license to do maintenance because Respondent 2

is a licensed contractor. Respondent 2 states that Respondent 2 does not receive any fees for anything other than maintenance and repairs.

The information provided indicates that Respondent 1 has been performing services requiring real estate licensure. However, it does not appear, based on the information provided, that Respondent 2 is performing anything other than maintenance work.

Recommendation: Close as to Respondent 2. As to Respondent 1, Consent Order for \$500 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.

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

32. 2013019581

Opened: 11/12/13

Type of License: Time-Share Registration

History: No Prior Disciplinary Action

Complainants purchased a time-share from Respondent (time-share registration) in 2005, and state that they have been trying to give it back since that time. Complainants allege that several verbal misrepresentations were made during the sales process, including, but not limited to, that Respondent would take the time-share back if Complainants did not want it, that Complainants would be able to travel wherever they wanted to go, that the time-share would appreciate in value, that a rental program would make money for Complainants, and that maintenance fees would never exceed a certain amount. Complainants state that they found these statements to be untrue and that it was seven (7) years before they were able to go anywhere. Complainants state that they were told not to call the resort until they received their welcome package, and, once the package was received, it was too late to cancel the contract.

Respondent submitted a response denying any wrongdoing and denying that Complainants were misled regarding the product they purchased. Respondent states that the sales documents signed by Complainants describe the product being purchased and address many of the issues referenced by Complainants, and Complainants were advised regarding the time-share interest being purchased as well as the related financial responsibility. Respondent states that the documents describe reservations and availability and this was explained to Complainants, as well. Further, Respondent states that Complainants' documents described the maintenance fee obligation. Respondent denies that Complainants were told that Respondent would buy back the time-share or that the time-share had any kind of investment potential. Further, Respondent states that Complainants' rescission rights were pointed out in bold font above Complainants' signatures. Respondent states that Complainants defaulted on the terms of their Purchase and Sale Agreement and Promissory Note for non-payment leading to the termination of

their membership in 2013. It appears that this transaction occurred well outside TREC's statute of limitations. Despite that, there does not appear to be evidence of a violation by Respondent.

Recommendation: Dismiss.

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

33. 2013020201

Opened: 11/20/13

Type of License: Time-Share Registration

History: No Prior Disciplinary Action

Complainant purchased a time-share from Respondent (time-share registration) in 2000. Complainant states that, at that time, Complainant was not told about certain fees which have accrued over the years since purchase, was pressured during the sale, and had difficulty booking vacations from the beginning. Complainant states that Complainant wanted to get rid of the time-share and contacted an out-of-state company (who asked Complainant not to give their name or address in the complaint) to get rid of the time-share. According to Complainant, this out of state company told Complainant that a buyer had been found for the time-share but the transfer could not be completed because Respondent was claiming a right of first refusal. Complainant states that there is no mention of this in the original purchase paperwork and states that this is a ploy to keep Complainant stuck with the time-share.

Respondent submitted a response denying that Complainant was misled during the initial purchase in 2000 and states that the paperwork signed by Complainant spelled out the purchase, including a provision stating the current amount of dues but that the dues could change in the future. Respondent also denies that Respondent is preventing Complainant from selling Complainant's time-share. Respondent states that, for an owner to transfer their title, certain documentation and fees must be submitted to Respondent in a timely manner and there must be no outstanding loan(s) or maintenance fees due. Respondent reiterates that Respondent is not preventing Complainant from selling the time-share, but that, in this circumstance, the necessary documents and associated fees were not submitted to Respondent by either Complainant or the out of state company handling the transfer. The documentation within the file does not appear to substantiate a violation by Respondent.

Recommendation: Dismiss.

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

