



STATE OF TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE  
TENNESSEE REAL ESTATE COMMISSION  
TENNESSEE REAL ESTATE COMMISSION MINUTES

**June 3-4, 2015**

The Tennessee Real Estate Commission convened on Wednesday, June 3, 2015 at 9:00 a.m. in Meeting Room 1A of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, 37243. The following Commission Members were present: Chairman John Griess, Vice-Chairman Janet DiChiara, Commissioner Gary Blume, Commissioner Grover Collins, Commissioner Diane Hills, and Commissioner Wendell Alexander. Absent from meeting was Commissioner Marcia Franks. Commissioner Austin McMullen late arrival; he arrived at 9:47am. Others present: Executive Director Eve Maxwell, Education Director E. Ross White, Assistant General Counsel Julie Cropp, and Administrative Secretary Kimberly Smith.

Ms. Maxwell read the following statement into the record: This meeting's date, time, and location have been noticed on the TN Real Estate Commission's website, included as part of this year's meeting calendar, since August 12, 2014. Additionally, the agenda for this month's meeting has been posted on the TN Real Estate Commission's website since Fridays May 29, 2015. Also, this meeting has been notice on the tn.gov website since Friday, May 29, 2015.

**Commissioner DiChiara made a motion to adopt the agenda; motion seconded by Commissioner Collins; Chairman Griess amended agenda by adding a discussion of upcoming TREC elections and discussion about the July meeting; motion passes unanimously.**

**Commissioner DiChiara made a motion to approve the May minutes; motion seconded by Commissioner Hills; motion passes unanimously.**

## INFORMAL APPLICANT APPEARANCE

APPLICANT: JOHN ALLEN MORRIS #332514

PRINCIPAL BROKER: SUE ACEE #282767

FIRM: WYNDHAM SMOKY MOUNTAINS #256346

Principal Broker: Sue Acee #282767 is the PB of Wyndham Smoky Mountains located in Sevierville, TN.

Ms. Acee was first licensed as a timeshare salesperson on 4/16/2002 and was licensed as an affiliate broker in TN in 2011 and held a TN Affiliate Broker license until she tested and got her broker license in TN. on 4/30/2014. On 7/1/2014, Ms. Acee became the PB of Wyndham Smoky Mountains.

Applicant: John Allen Morris has submitted both an Application for licensure as a timeshare salesperson and has passed required exam. If approved by the Commission to move forward in the licensure process, Mr. Morris plans to complete the licensure process.

Mr. Morris has revealed he was convicted of a misdemeanor in his Application.

**After discussion, Commissioner Collins made a motion for Applicant Mr. Morris to move forward with the licensure process; motion seconded by Commissioner DiChiara; motion passes unanimously.**

## INFORMAL APPLICANT APPEARANCE

APPLICANT: CHARLES EDWARD ELLIS, JR. #332245

PRINCIPAL BROKER: MR. ELLIS IS APPLYING to be PB

FIRM: COLLETT MANAGEMENT, LLC #262956

Principal Broker: Charles Edward Ellis, Jr. is applying for licensure as a broker so that he can become the PB of his proposed new firm Collett Management, LLC.

Mr. Ellis was first licensed as a salesman in North Carolina on 1/22/1988 and was licensed as a broker in North Carolina on 5/23/1988. Mr. Ellis holds broker licenses in South Carolina and Georgia as well. Mr. Ellis has taken and passed the broker exam and has applied for both his broker license and the firm license for Collett Management, LLC. If approved to continue in the licensure process, Mr. Ellis would upgrade to PB once his broker license was approved for issuance. Mr. Ellis revealed the following: Conviction of felonies.

**After discussion, Commissioner Collins made a motion for Applicant Mr. Ellis to move forward with the licensure process; motion seconded by Commissioner DiChiara; motion passes unanimously.**

### **INTRODUCTION OF COMPLAINT COORDINATOR**

Executive Director Eve Maxwell introduced TREC new Complaint Coordinator Alan Waddell.

### **EDUCATION REPORT**

Mr. White, the Education Director, presented the educational courses J1 – J11 set forth on the June, 2015 Education Report for Commission Approval.

**Commissioner DiChiara made a motion to approve J1 – J11 courses; motion seconded by Commissioner Hills; motion carries.**

### **INSTRUCTOR APPROVALS**

Education Director, Mr. White presented instructors some are previously approved and some need approval; they are marked in red J1 – J11 to be approved as Instructors.

**Commissioner DiChiara made a motion to approve all instructors, since Education Director White recommended for approval J1 – J11; motion seconded by Commissioner Hills; motion carries.**

### **UPDATE ON 3-2 HOUR EDUCATIONAL SEMINARS**

Tuesday June 16<sup>th</sup>, Columbia TN, Southern Middle Tennessee Association of Realtors, from 9:00AM to 12:00PM

Tuesday June 23<sup>rd</sup>, Clarksville TN, Clarksville Association of Realtors, from 9:00AM to 12:00PM

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

Ms. Maxwell presented the following information to the Commission for review via the I-Pads:

### **FINGERPRINT UPDATE**

Ms. Maxwell presented an update on the fingerprint reports required as of 1/1/2014 pursuant to TCA 62-13-303(l); since 1-1-2015 there have been 1,785 individuals fingerprinted, 334 had an indication, 1,416 had no indication, and 35 were retaken. In the month of May 2015 there were 53 had indication, 277 had no indication, 12 had no reads  
Total 342

## **E&O UPDATE/QUARTERLY CLAIMS REPORT**

Ms. Maxwell stated on **1/13/2015**, a total of **2,822** licensees were suspended for failure to provide proof of E&O coverage. Of that total, **25 were already in suspension** for another matter, **312 were in a Broker Release** status (broker released at time E&O renewals were due), **7 were in a problem status** and **2,474 were in an active status**. Pursuant to TCA 62-13-112, letters were sent to the licensee at their last known business address and home address as registered with the Commission and to the licensee's principal broker at the principal broker's address as registered with the Commission.

As of **5/31/2015**, there were **470 licensees who remain suspended for E&O**. **252 are Affiliate Brokers, 32 are Brokers, 56 are Principle Brokers, and 130 are Timeshare Representatives** that are in a suspended status. The table below shows the breakdown of those remaining in suspension. Licensees who show proof of E&O coverage within 30 days of suspension shall be reinstated without the payment of any fee. Starting with 31st day of suspension, the licensee must pay a penalty fee and show proof of E&O in order to be reinstated.

### **Rule 1260-01-16**

Lapsed Errors and Omissions Insurance (Effective 5/8/2014)

#### **(1) Licensees Who Fail to Maintain Errors & Omissions (E&O) Insurance**

(a) Penalty fees for Reinstatement of a Suspended License: Any licensee whose license is suspended for more than thirty (30) days pursuant to T.C.A. § 62-13-112 for failure to maintain E&O insurance must provide proof of insurance that complies with the required terms and conditions of coverage to the Commission and must pay the following applicable penalty fee in order to reinstate the license:

1. For a license suspended due to a lapse in E&O coverage for more than thirty (30) days but within one hundred twenty (120) days: (i) Two Hundred Dollars (\$200.00) if the licensee's insurance carrier back-dated the licensee's E&O insurance policy to indicate continuous coverage; or (ii) Four Hundred Dollars (\$400.00) if the licensee's insurance carrier did not back-date the licensee's E&O insurance policy to indicate continuous coverage.

2. For a license suspended due to a lapse in E&O coverage for more than one hundred twenty (120) days but less than six (6) months, a Five Hundred Dollar (\$500.00) penalty fee;

3. For a license suspended due to a lapse in E&O coverage for six (6) months up to one (1) year, a Five Hundred Dollar (\$500.00) penalty fee plus a penalty fee of One Hundred Dollars (\$1 00.00) per month, or portion thereof, for months six (6) through twelve (12).

(b) Conditions for

Reissuance of a Revoked License: Upon revocation of a license pursuant to T.C.A. § 62-13-112 for failure to maintain E&O insurance, any individual seeking reissuance of such license shall:

1. Reapply for licensure, including payment of all fees for such application;
2. Pay the penalty fees outlined in subparagraph (a) above;
3. Pass all required examinations for licensure, unless the Commission waives such examinations; and
4. Meet any current education requirements for licensure, unless the Commission waives such

### **INFORMAL APPLICANT APPEARANCE**

APPLICANT: STEPHEN RICHARD SCHWEEN #332531

PRINCIPAL BROKER: DEBRA BEAGLE #319265

FIRM: MAX ELITE d/b/a THE ASHTON REAL ESTATE GROUP #262883

Principal Broker: Debra A. Beagle #319265 is the PB of Max Elite d/b/a The Ashton Real Estate Group located in Nashville, TN. Ms. Beagle was first licensed as an affiliate broker on 2/11/2009 and was licensed as a broker on 5/7/2013. Ms. Beagle became the PB of Max Elite d/b/a The Ashton Real Estate Group as of 12/15/2014. The TREC records reflect that the firm currently has 61 affiliate brokers, 2 brokers and 1 PB. Ms. Beagle has had no disciplinary action taken against her by the Commission.

Applicant: Stephen Richard Schween has submitted an Application for licensure as an affiliate broker and has passed the national and state exams. If approved by the Commission to move forward in the licensure process, Mr. Schween plans to complete the licensure process. Mr. Schween has revealed the following in his Application: Theft, a Misdemeanor.

**After discussion, Commissioner McMullen made a motion for Applicant Mr. Schween to move forward with the licensure process; motion seconded by Commissioner DiChiara; motion passes unanimously.**

### **INFORMAL APPLICANT APPEARANCE**

APPLICANT: TIMOTHY BRITTON CLAY #332541

PRINCIPAL BROKER: JAMES "JIM" L. HODGE #23387

FIRM: APEX VENTURES, INC. #215561

Principal Broker: James "Jim" L. Hodge #23387 is the PB of Apex Ventures, Inc. #215561 located in Nashville, TN. Mr. Hodge was first licensed as an affiliate broker on 1/1/1983 and

was first licensed as a broker and became PB of Apex Ventures, Inc on 1/1/1989. The TREC records reflect that the firm currently has 3 affiliate brokers and 1 broker and 1 PB. Mr. Hodge has had no disciplinary action taken against him by the Commission.

Applicant: Timothy Britton Clay has taken and passed the affiliate broker exam, submitted his application for affiliate broker and completed the Course for New Affiliates. If the Commission approves him to move forward in the licensure process, Mr. Clay intends to complete any outstanding requirements for affiliate broker licensure. Mr. Clay has revealed he was convicted of a Felony in his Application.

**After discussion, Commissioner DiChiara made a motion for Applicant Mr. Clay to move forward with the licensure process; motion seconded by Commissioner Collins; motion passes unanimously.**

### **INFORMAL APPLICANT APPEARANCE**

APPLICANT: FRANK GRESHAWN BUTLER #332163

PRINCIPAL BROKER: FRAN HOOTEN #230310

FIRM: KELLER WILLIAMS REALTY-MT. JULIET #258732

Principal Broker: Fran Hooten #230310 is the PB of Keller Williams Realty-Mt. Juliet # 258732 located in Mt. Juliet, TN. Ms. Hooten was first licensed as an affiliate broker in 1986 and was first licensed as a broker on 7/1/1997. Ms. Hooten became the PB of Keller Williams Realty-Mt. Juliet as of 5/10/2013. The TREC records reflect that the firm currently has 85 affiliate brokers and 4 brokers and 1 principal broker. Ms. Hooten has had 0 complaints filed against her by the Commission.

Applicant: Frank Greshawn Butler has taken and passed the national and the state exams, completed the Course for New Affiliates and has applied for licensure as an affiliate broker. Mr. Butler has revealed the following in his Application for Licensure: Mr. Butler has revealed he was convicted of Felonies and Misdemeanor in his Application.

**After discussion, Commissioner DiChiara made a motion for Applicant Mr. Butler to move forward with the licensure process; motion seconded by Commissioner McMullen; motion passes unanimously.**

### **Monies Collected 5/1/15 – 5/31/15**

Consent Orders Fees \$18,520.00; Reinstatement Fees \$14,030.00, E&O Penalty \$2,200.00 for a Total of \$34,480.00.

**May 31, 2015**

### **E&O Suspended/Insured Breakdown by Licensee Status**

**(5/31/2015)**

Status	5/31/2015 Suspended	Percentage Suspended	Insured	Total Insured & Suspended
Affiliate	252	1%	17,535	17,801
Broker	32	1%	3,168	3,201
PB	56	2%	3,640	3,704
Timeshare	130	17%	755	887
<b>Total</b>	<b>470</b>	<b>2%</b>	<b>24,788</b>	<b>25,593</b>

### **LICENSING STATISTICS**

Ms. Maxwell presented licensing statistics for the month of May 2015. The statistics presented included tables which compared several years' number of licensees, firms, exams taken, applications approved and renewal percentages. As of May 31, 2015, there were 25,306 active licensees, 1,171 inactive licensees, retired licensees 6,805, broker release 388, and 517 suspended. There were 577 exams administered in month of May 2015. The total of exams taken year to date is 2,485. There were 378 approved applications in May 2015. Year to date total of approved applications 1,702. TREC total number of individual; licensees in active, inactive, retired, suspended, and broker release is 34,187. There were 3,769 active firms and 164 retired firms. Grand total of firms and retired firms 3,933.

### **BUDGET**

Ms. Maxwell had previously sent a copy of the budget to the Commissioners for their review.

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

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

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

### MEMORANDUM

TO: TENNESSEE REAL ESTATE COMMISSION

FROM: JULIE CROPP, Assistant General Counsel

SUBJECT: MAY LEGAL REPORT

DATE: June 3-4, 2015

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





**1. 2014029911**

**Opened: 12/12/14**

**First License Obtained: 6/3/09**

**License Expiration: 6/2/15**

**E&O Expiration: 1/1/17**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

ADDITION: this Respondent is a principal broker. The issue a potential failure to supervise an affiliate broker. This matter is only being represented as to the principal broker. For the Commission's reference in reviewing this matter regarding the principal broker for June, the summary for the affiliate broker in complaint 2014029891 is: *TREC opened a complaint based on information received regarding a possible unlicensed branch office operated by Respondent (affiliate broker). Information was provided from the Tennessee Secretary of State for an LLC in which Respondent is listed as the Registered Agent. It also appears that the member count is one (1). Respondent responded stating that Respondent is a licensed affiliate broker with a licensed real estate firm, and Respondent tries to do everything above board. Respondent is unclear regarding the allegations of the complaint. There is an e-mail in the file from a TREC staff member explaining that two (2) staff members spoke with both Respondent and Respondent's principal broker (the next Respondent) and clarified any questions regarding the complaint. The staff member states that both Respondent and the principal broker are fully aware of the allegations. A copy of the LLC's website was printed on December 12, 2014. There is a tab entitled "Sell Your Home," which states, "Our company specializes in solving real estate problems and we can help correct almost any financial situation at no cost to you...Our real estate specialties include: foreclosure avoidance, debt removal or renegotiation, refinancing homes in foreclosure, sell your property without realtor commissions, resolving title issues, relocation assistance, vacant properties, environmental or structural problems, apartment and house rental specialists, bankruptcy, over-leveraged properties, judgments or outside liens, little or no equity sales...here is a short list of what we can do for you: buy your property today for top dollar...refinance your existing mortgage...work out a payment plan with your existing lender...negotiate debt with existing creditors...We are real estate professionals helping provide solutions to your existing real estate problems..." Further, there is a phone number listed. The in state phone number is not the number on file with TREC for either Respondent or Respondent's firm. The FAQ page asks a question, "Are you REALTORS?" The answer states that "[Company Name] is a real estate investment and solution company. One of our owners is a Realtor in Tennessee, but we act as property acquisition specialists that buy houses; we want to BUY your home. There is never a charge or a commission when we buy your property. However if listing your property is the best solution then we can and will connect you with a recommended licensed agent." Another FAQ questions asks if the company will pay a referral fee, and the answer states, "YES! Referrals are our number one means of purchasing property. Maybe there is a vacant house on your street or you know someone who needs and wants to sell their home, please refer them to us! Better yet, provide us their information and we will do all the research and make an offer. In some cases we will pay you up to \$500 for a referral! Contact us directly to discuss the terms." Further, the home selling guide states the company is a full service professional residential redevelopment company operating in Tennessee and out of state, and it is proud to provide real estate services in the following areas: Residential Redevelopment, Short Sales/Loss Mitigation, Real Estate Investment, Foreclosure Solutions. The company advertises that it will buy a house cash, sold as is, no commissions, and no seller paid closing costs. It appears that there is no reference to Respondent specifically on the website; however, it is clear that Respondent is operating the LLC based on the Secretary of State's documents. There is no*

reference to Respondent's license firm on the website. Further, Respondent's LLC appears to be offering referrals to unlicensed individuals.

**May 2015 Meeting:**

TREC opened a complaint against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 2014029891 above (hereinafter "affiliate broker").

Respondent submitted a response stating Respondent supervises the activities of the affiliate broker, meeting on a regular basis for training and discussion of the affiliate broker's business. However, Respondent states that it is not possible for a principal broker to supervise every interaction that an affiliate broker has on a daily basis. Respondent states that the affiliate broker is unaware what the actual allegation is. Respondent states that Respondent is willing to take whatever action is needed to address the matter with the affiliate broker and correct whatever the issues are, but Respondent needs to know the details of what the allegations are.

**Recommendation: Consent Order for \$1,000 for violations of T.C.A. § 62-13-312(b)(14) and (15) and Rule 1260-02-.12 (advertising rule), 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 authorize a Consent Order for \$2,000 for violations of T.C.A. § 62-13-312(b)(14) and (15) and Rule 1260-02-.12 (advertising rule), 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.**

Legal counsel was contacted by the Respondent principal broker upon receipt of the Consent Order. Respondent states that Respondent received complaint materials in December and immediately called the affiliate broker into the office to discuss. Respondent insists that TREC staff gave no specifics about the complaint allegations when Respondent called to inquire at the time of complaint receipt. Respondent states that Respondent reviews each and every transaction that the affiliate broker does in reference to the affiliate broker's LLC, and Respondent had no idea that the affiliate broker was operating a website. Respondent states that, upon realizing this when the Consent Order was received, Respondent immediately asked that the affiliate broker take down any website or other advertising that contradicts TREC's statutes and rules or Respondent will release the affiliate broker. Respondent states that Respondent has checked the website multiple times and social media to be sure that the advertising has been taken down. Respondent agrees that the website is in violation and would have taken action immediately had Respondent realized that this website existed. Respondent feels that Respondent was training the affiliate broker on everything Respondent could think of and asks that the Commission reconsider the Consent Order because Respondent would have dealt with the website issue at the time of receipt of the complaint had Respondent known of the issue with the website.

**Recommendation: Discuss.**

**DECISION: There was no motion from any Commissioner. Therefore, the Chairman determined that the matter died for lack of motion and that the Commission's original decision would stand.**

**Chairman Griess determines original decision stands for lack of motion.**

**2. 2014024761**

**Opened:** 10/20/14  
**First License Obtained:** 9/21/11  
**License Expiration:** 9/20/15  
**E&O Expiration:** 1/1/17  
**Type of License:** Affiliate Broker  
**History:** No Prior Disciplinary Action

***March 2015 Meeting:***

*The complaint is a copy of a civil lawsuit complaint filed by Respondent's former firm against Respondent (affiliate broker) alleging Respondent forged checks made payable to a company, which is alleged to be Respondent's pseudo-company. The lawsuit alleges that Respondent embezzled a substantial amount of money from the firm and its associated LLCs while working there as a bookkeeper and property manager.*

*Respondent submitted a response through an attorney stating that the civil complaint does not contain allegations which give rise to an action with TREC. Respondent submitted an answer and a proposed counter-complaint alleging assault by Respondent's previous principal broker and stating that Respondent's former principal broker created the alleged pseudo-company to spy on business associates, and the former principal broker paid Respondent money for Respondent's services in assisting with that pseudo-company. Respondent states that Respondent does not have access to the documentation and cannot provide it to TREC because Respondent is no longer with that firm. It is likely that further information will be uncovered through the course of the litigation which will be pertinent to the Commission's determination regarding this matter.*

***Recommendation: Litigation Monitoring Consent Order.***

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

Legal counsel received a copy of an Order Granting Default against Respondent in the aforementioned civil litigation. The Order specifically states that the plaintiffs in the matter were awarded a default judgment, and the default judgment "conclusively establishes" the defendants' civil liability for an amount to be proven at a later hearing. The complaint alleges that Respondent forged Respondent's former principal broker's signatures on these checks and held the money in an account owned by Respondent in Respondent's pseudo-company's name at a named bank. The attorney for the plaintiffs in the civil matter provided documentation from the bank where the complaint alleges that the embezzled funds were held by Respondent. The documentation contains copies of checks which are purportedly written payable to Respondent's pseudo-company by Respondent's former principal broker from the firm which Respondent was formerly affiliated. In light of this information and the default judgment obtained against Respondent, it appears that Respondent has committed a number of violations.

**New Recommendation: Consent Order for revocation of Respondent's license for violations of T.C.A. § 62-13-312(b)(1) (making any substantial and willful misrepresentation), (3) (pursuing a flagrant course of misrepresentation), (14), (17) (paying or accepting, giving or charging any undisclosed commission, rebate, compensation or profit), and (20) (improper, fraudulent, or dishonest dealings).**

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

Commissioner McMullen made a motion to accept recommendation of legal counsel which is a Consent Order for revocation of Respondent's license for violations of T.C.A. § 62-13-312(b)(1) (making any substantial and willful misrepresentation), (3) (pursuing a flagrant course of misrepresentation), (14), (17) (paying or accepting, giving or charging any undisclosed commission, rebate, compensation or profit), and (20) (improper, fraudulent, or dishonest dealings); motion seconded by Commissioner Collins; motion passes unanimously.

**3. 2014029751**

**Opened: 12/15/14**

**First License Obtained: 2/27/07**

**License Expiration: 2/26/17**

**E&O Expiration: 1/1/17**

**Type of License: Broker**

**History: No Prior Disciplinary Action**

**4. 2014029781**

**Opened: 12/15/14**

**First License Obtained: 5/13/03**

**License Expiration: 7/23/15**

**E&O Expiration: 1/1/17**

**Type of License: Broker**

**History: No Prior Disciplinary Action**

***May 2015 Meeting:***

*A complaint was filed by a potential buyer against Respondents (Respondent 1 is broker who was sellers' agent; Respondent 2 is also a broker who was the principal broker of the firm from on or about February 10, 2014 through on or about August 27, 2014). Complainant states that the offer on a tract of land was accepted contingent upon financing. Complainant states that the closing date was extended due to financing. Complainant states that the lender denied the loan. Complainant states that Complainant's parents offered to purchase the property for Complainant, and this was discussed with Respondent 1, but the original contract was not changed. Complainant alleges that Respondent 1 insisted on using a specific title company because they had previously done a title search from a failed contract, but Complainant chose to do an independent title search with a different title company. Complainant states that Respondent 2 called requesting that Complainant use the original title company; and Complainant felt that Respondents were trying to hide something. Complainant states that the second title company found that there were multiple liens on the property and a hundred year lease. Complainant states that this was not disclosed by sellers or Respondents' firm. Complainant notified Respondent 1 that Complainant was withdrawing the offer due to the financial contingency clause. Complainant states that the release was signed in September 2014, but sellers have refused to sign the release, and the earnest money has not been refunded.*

*A collective response was filed by both Respondents as well as the current principal broker of the firm (who became principal broker on or about August 27, 2014 and who is the Respondent in the complaint 2014029771 below). Respondents state that the delay of closing caused concern for the sellers because one deal had already fallen through. Respondents state that Complainant's lender contacted Respondent 1 about a title company, and Respondent 1 gave the lender the title company's name. Respondents state that the title company had already done the previous title search without getting paid since that deal fell through, and Respondent 1 was merely trying to help the title company recoup some of their costs. Respondents state that the contract listed that*

title company as the closing company, and it is not unreasonable to expect that the title company on the contract would complete the transaction. Respondents state that, when Complainant advised Respondent 1 that Complainant's parents would purchase the land, Respondent forwarded an amendment, but it was never returned. Respondents further state that it was explained to Complainant that the original title company had done a title search twice and that the title company may be able to match the new title company's cost. Respondents state that Respondent 2 contacted Complainant's mother to explain that having two (2) title companies performing the same search created an added expense. Respondents state that Complainant's mother asked Respondent 2 for the names of the lien holders and offered to pay them directly then pay seller the difference, but Respondent 2 called to explain that payment of the liens must go through the title company to ensure the liens were released. Respondents state that Respondent 1 drove a copy of the purchase offer and the original lease termination that had been signed by the lessee to the new title company. Respondents state that Respondent 1 spoke with a representative at the new title company and explained that the original title company had performed the search twice and had already negotiated lesser payoff amounts regarding the liens. Respondents state that the new title company agreed to contact the original title company. Respondents state that, while the lease could have been considered an adverse condition, a lease termination had already been signed clearing the potential "cloud" on the title, and Respondents do not believe that liens must be disclosed to potential buyers because they must be cleared at closing in order for the seller to convey title. Respondents state that Respondent 1 did not feel that it was appropriate to disclose the sellers' financial situation with a potential buyer. Respondents state that the Earnest Money Disbursement and Mutual Release form was received on September 29, 2014. Respondent states that the sellers initially refused to sign, feeling that they had been lied to because it was mentioned that the property would be bought for cash and then the loan denial was cited as the reason for cancellation. Respondents state that the principal broker debated whether or not to release the earnest money upon reasonable interpretation of the contract per Rule 1260-02-.09 but, because of the seller's anger, decided to explain the interpleader process. Respondents state that Complainant expressed concern over the length of time that an interpleader would take. Respondents state that, in October, the principal broker spoke with the sellers, who agreed to sign the release when they returned to town. As agreed, Respondents state that the sellers signed the release, and the earnest money was immediately sent to Complainant.

**Recommendation: Dismiss.**

**DECISION: The Commission voted to defer a determination on the matter until the June 2015 meeting.**

The Commission voted to defer a determination on the matter until the June 2015 meeting so that legal counsel could contact Respondents and determine whether Respondents' firm had any ownership interest in the first title company. Office of legal counsel independently searched the firm and the title company on the Secretary of State's website and found that the registered agent information and address information for the two entities were not the same and did not appear to have a connection to one another based on those filings. Further, office of legal counsel contacted Respondents' principal broker (Respondent in complaint 2014029771 below) who confirmed in writing by e-mail that there is no business affiliation between the title company and the real estate firm, that the firm has no ownership interest in the title company, that none of the named Respondents individually have any ownership interest in the title company, and that the firm and the title company are not owned by the same parent company.

**New Recommendation: Dismiss.**

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

**Commissioner Collins made a motion to accept the recommendation of legal counsel which is to dismiss; motion seconded by Commissioner McMullen; motion passes unanimously.**

**5. 2014029771**

**Opened: 12/15/14**

**First License Obtained: 3/19/99**

**License Expiration: 8/19/16**

**E&O Expiration: 1/1/17**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

***May 2015 Meeting:***

*TREC opened a complaint against Respondent (principal broker) for a potential failure to supervise Respondent 1 above. Respondent was the principal broker following Respondent 2 above, beginning August 27, 2014 to present.*

*Respondent was also included in the joint response outlined above.*

***Recommendation: Dismiss.***

***DECISION: The Commission voted to defer a determination on the matter until the June 2015 meeting.***

As previously outlined in complaints 2014029751 and 2014029781 above, office of legal counsel confirmed with Respondent that there is no business affiliation or common ownership between the firm and the title company.

**New Recommendation: Dismiss.**

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

**Commissioner DiChiara made a motion to accept the recommendation of legal counsel which is to dismiss; motion seconded by Commissioner McMullen; motion passes unanimously.**

**6. 2014029051**

**Opened: 12/12/14**

**History:**           2014030441 – Under review by legal  
                          2015000531 – Under review by legal  
                          2015000551 – Under review by legal  
                          2015005551 – Under review by legal

**7. 2015000461**

**Opened: 3/30/15**

**First License Obtained: 6/29/87**

**License Expiration: 10/17/16**

**E&O Expiration: 1/1/17**

**Type of License: Broker**

**History:**           2015000521 – Under review by legal

2015000541 – Under review by legal  
2015000561 – Under review by legal  
2015005601– Under review by legal

**8. 2014030441**

**Opened: 12/12/14**

**History:** 2014029051 – Under review by legal  
2015000531 – Under review by legal  
2015000551 – Under review by legal  
2015005551 – Under review by legal

**9. 2015000521**

**Opened: 3/30/15**

**First License Obtained: 6/29/87**

**License Expiration: 10/17/16**

**E&O Expiration: 1/1/17**

**Type of License: Broker**

**History:** 2015000461– Under review by legal  
2015000541 – Under review by legal  
2015000561 – Under review by legal  
2015005601– Under review by legal

**10. 2015000531**

**Opened: 12/12/14**

**History:** 2014029051 – Under review by legal  
2014030441 – Under review by legal  
2015000551 – Under review by legal  
2015005551 – Under review by legal

**11. 2015000541**

**Opened: 3/30/15**

**First License Obtained: 6/29/87**

**License Expiration: 10/17/16**

**E&O Expiration: 1/1/17**

**Type of License: Broker**

**History:** 2015000461 – Under review by legal  
2015000521 – Under review by legal  
2015000561 – Under review by legal  
2015005601– Under review by legal

**12. 2015000551**

**Opened: 12/12/14**

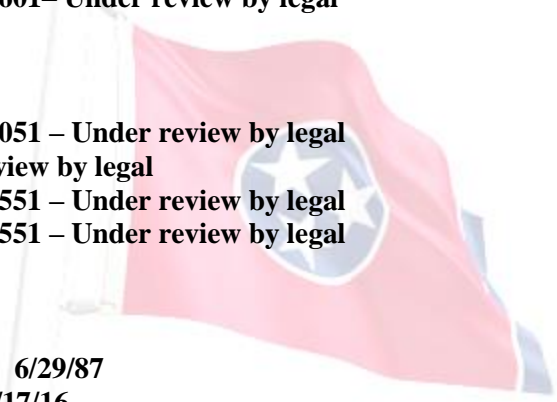
**History:** 2014029051 – Under review by legal  
2014030441 – Under review by legal  
2015000531 – Under review by legal  
2015005551 – Under review by legal

**13. 2015000561**

**Opened: 3/30/15**

**First License Obtained: 6/29/87**

**License Expiration: 10/17/16**



**E&O Expiration: 1/1/17**

**Type of License: Broker**

**History: 2015000461 – Under review by legal**  
**2015000521 – Under review by legal**  
**2015000541 – Under review by legal**  
**2015005601– Under review by legal**

**14. 2015005551**

**Opened: 12/12/14**

**History: 2014029051 – Under review by legal**  
**2014030441 – Under review by legal**  
**2015000531 – Under review by legal**  
**2015000551 – Under review by legal**

**15. 2015005601**

**Opened: 3/30/15**

**First License Obtained: 6/29/87**

**License Expiration: 10/17/16**

**E&O Expiration: 1/1/17**

**Type of License: Broker**

**History: 2015000461– Under review by legal**  
**2015000521 – Under review by legal**  
**2015000541 – Under review by legal**  
**2015000561 – Under review by legal**

Five (5) complaints of a similar nature were all received regarding the same Respondent 1 (unlicensed individual). According to the Regulatory Boards System, Respondent 2 is a licensed broker who was formerly listed as the principal broker for two firms (a real estate firm and property management firm), and Respondent 1 is the owner of these firms. An investigation was conducted regarding the allegations of the complaints.

**Cases 2014029051/2015000461**—Complainants allege that Respondent 1 owes them \$9,802 that was collected by Respondent 1 during the course of Respondent 1's property management of their seven (7) properties. It appears that Complainants purchased these properties through an investment company who then sub-contracted Respondent 1's property management services.

The investigator was able to obtain documents from one of the Complainants, which included rental owner statements for six (6) properties for January 1, 2014-September 29, 2014 prepared by Respondent 1's second property management firm for Complainant's LLC.

**Cases 2014030441/2015000521**—Complainant alleges that Respondent 1 has failed to remit rent moneys, security deposits, and/or pet fees that were collected by Respondent 1 during the course of Respondent 1's property management. Complainant further alleges that Respondent 1 failed to return the keys, security deposits and pet fees over to the new property manager when requested.

The investigator was not able to get obtain supporting documentation from Complainant.

**Cases 2015000531/2015000541**—Complainants allege that they spent a week in Tennessee touring properties with an investment company and were told that any properties they purchased would be managed by Respondent 1 due to a previously entered agreement between the investment company and Respondent 1. Complainants purchased five (5) properties, which were



handled by Respondent 1, including rehabs and property management. Complainants allege that Respondent 1 was paid \$18,000 for rehabs without any progress reports. Complainants further state that Respondent 1 withheld rent disbursements for April, May, July, August, September, October and November 2014.

The investigator was able to obtain documents from one of the Complainants. There is a property management agreement between the second property management firm and the owner LLC. The agreement date is June 3, 2014 for the purposes of renting, leasing, operating and managing five (5) properties. It appears that Complainants terminated services via email on October 2, 2014. Complainants also supplied owner statements for each of the properties for June and July 2014 and rehabilitation quotes for two of the properties.

**Cases 2015000551/2015000561**—Complainant alleges that Respondent 1 did not remit funds in the amount of \$65,000 for a property that Complainant attempted to purchase. Complainant states that the property never closed, but the \$65,000 was not returned. Complainant further states that Respondent 1 previously managed three (3) duplexes and Complainant is owed three (3) months of rental income and their security deposits.

The investigator spoke with a friend of Complainant who stated that Complainant is out of the country, there is no further information regarding Respondent 1 other than the allegations of the complaint, and Complainant filed a civil lawsuit against Respondent 1.

**Cases 2015005551/2015005601**—Complainant alleges that Respondent 1 managed thirteen (13) rental properties and collected rent in November and December 2014 but did not pay Complainant. Complainant further alleges that Respondent 1 has not provided monthly statements for November and December or money for the deposits on the properties.

The investigator spoke with Complainant who advised that the leases and property management agreements were on a shared website that Complainant no longer has access to.

During the investigation, Respondent 2 stated that Respondent 2 was a realtor for Respondent 1 and became principal broker for the first real estate firm but not the second property management firm. Respondent stated that all activities of the complaint happened prior to becoming principal broker for the first real estate firm on or about September 3, 2014, and all records were removed prior to Respondent 2's employment. Respondent 2 stated that Respondent 1 advised that Respondent 1 had a conflict with the investment firm stating it was going to litigation but did not elaborate. Respondent 2 further stated that Respondent 1 did not allow Respondent 2 access to any records for the firms. Respondent 2 further stated that Respondent 1 was in control of the escrow account(s) and Respondent 2 only had view only permissions. Respondent 2 submitted a statement from the bank confirming that Respondent 2 has view-only access to the business account through online banking. It further appears that Respondent 2 contacted the ethics hotline in December 2014 asking how to handle the situation if the owner is limiting access to an escrow account, in which Respondent 2 was advised that the principal broker is responsible for the escrow account pursuant to TCA § 62-13-321 and Rule 1260-2-.09. It does not appear that there is documentation in TREC files to support the listing that Respondent 2 was principal broker for the property management firm. Unless documentation is uncovered to the contrary, it appears that Respondent 2's statement that Respondent 2 was not principal broker of the property management firm is true. Additionally, although complaints were opened against Respondent 2 for failure to supervise Respondent 1, it does not appear to legal counsel that Respondent 2 can be cited for failure to supervise an unlicensed individual because T.C.A. § 62-13-312(b)(15) states that disciplinary action can be taken for "...failing to exercise adequate supervision *over the*

*activities of any licensed affiliate brokers* within the scope of this chapter;” Therefore, closure as to Respondent 2 is recommended based on the information available at this time.

**Recommendation:** As to Respondent 2, close as to all complaints opened against Respondent 2. As to Respondent 1, Consent Order for \$30,000 for unlicensed activity in violation of T.C.A. §§ 62-13-103 and 62-13-301, said order to also include order to cease and desist all unlicensed activity, and refer information to District Attorney regarding unlicensed real estate activity.

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

Commissioner McMullen made a motion to accept the recommendation of legal counsel which as to Respondent 2, close as to all complaints opened against Respondent 2. As to Respondent 1, Consent Order for \$30,000 for unlicensed activity in violation of T.C.A. §§ 62-13-103 and 62-13-301, said order to also include order to cease and desist all unlicensed activity, and refer information to District Attorney regarding unlicensed real estate activity; motion seconded by Commissioner Collins; motion passes unanimously.

**16. 2014031181**

**Opened: 12/26/14**

**First License Obtained: 4/14/76**

**License Expiration: 9/8/16**

**E&O Expiration: 1/1/17**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

A complaint was filed by the owner of a property against Respondent (principal broker). Complainant states that Complainant needed to get some equity from Complainant’s property in order to finance Complainant’s business operations. Complainant states that Respondent had an investor who could help Complainant do this. At Respondent’s suggestion, Complainant contacted a closing attorney to ask questions about an arrangement proposed by Respondent, and Complainant was told that the transaction was a “sale, lease buy-back” and the investor would purchase the building for a price and lease it back to Complainant over a two (2) year period following which Complainant could re-purchase the property for the same sum plus interest and closing costs. Complainant states that the contract required the investor buyer to procure a loan for 50% of the appraised value of the building. Complainant states that the buyer was to advance Complainant \$50,000 until the building was appraised and a true closing would occur. Complainant further states that a lien was to be placed on Complainant’s spouse’s property to secure the \$50,000 advance. Complainant further states that the buyer did not fulfill his obligations under the contract, and buyer was attempting to obtain both properties under false pretenses. Complainant further states that several items were charged to Complainant at closing that were unethical.

Respondent states that Respondent was referred to Complainant who advised that Complainant wanted a loan using Complainant’s commercial property as collateral for said loan. Respondent represented an investor who does not give loans but could give Complainant funds via a sale leaseback transaction. Respondent met with Complainant and the investor to explain the process and ensure complete understanding. The investor stated that the investor required an appraisal before loaning the full amount requested but agreed to advance \$50,000 in a short amount of time. Respondent further states that Complainant agreed to pay for said appraisal. Respondent states that it was agreed that the investor would advance \$50,000, that an appraisal value would

be determined, and that the investor would advance funds in the amount of 50% of the appraisal value less the \$50,000 already funded. Respondent's fee would be 1% the total amount of the purchase price or at least \$1,500. Respondent prepared a non-circumvention, non-disclosure, and confidentiality agreement and a sale leaseback agreement. Respondent further states that the closing attorney found three (3) liens and judgments against the property, although Complainant had advised that there was only one lien which had already been paid off. Respondent contacted Complainant's attorney, who stated that it had been paid and they were working on the release. Respondent states that Respondent did not attend the first closing for the \$50,000 but states that the closing attorney brought up the three liens, and Complainant suggested that the investor place a lien on the other property. Respondent states that, once the appraisal was completed, the closing attorney prepared closing documents for the balance of the transaction, the investor signed the buyer's documents, but Complainant did not sign the seller's documents. It is Respondent's understanding that Complainant has a petition pending in bankruptcy, and Complainant and the investor have agreed to go forward with the balance of the sale leaseback transaction, pending approval of the bankruptcy court. Respondent further states that Respondent's and Complainant's attorneys have advised that Complainant wishes to withdraw the complaint. Respondent attached documentation for the transaction, one of which was an email from Complainant's attorney to Respondent's attorney stating that Complainant's attorney is authorized to withdraw the grievance against Respondent without prejudice. The contract states that Complainant will become the lessee of the property and explains the purchase parameters noted above. A lease agreement was also included. A preliminary settlement statement was prepared by the closing attorney and dated April 1, 2015. The executed settlement statement for the initial \$50,000 was dated March 4, 2014 and executed by both parties. There is also a post-closing agreement and warranty deed in the file transferring the property to the investor.

**Recommendation: Dismiss.**

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

**Commissioner McMullen made a motion to accept the recommendation of legal counsel which is to dismiss; motion seconded by Commissioner DiChiara; motion passes unanimously.**

**17. 2015000211**

**Opened: 1/22/15**

**First License Obtained: 10/20/04**

**License Expiration: 6/14/16**

**E&O Expiration: 1/1/17**

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

Complainant states that Respondent (affiliate broker), acting as seller in this transaction, and an agent (Respondent in case number 2015000251 below – hereinafter “agent”) marketed and sold Complainant a condominium with structural defects. Complainant alleges that Respondent failed to disclose knowledge of structural issues and lied to Complainant about it. Complainant further alleges that Respondent made a promise in writing that Respondent did not have the intent or ability to keep, breached their contract to keep Complainant from discovering the structural defect, and defrauded Complainant into signing a release. Complainant states that the seller accepted Complainant's offer with a statement that Respondent would repair the bathroom floor at Respondent's expense. Complainant states that a contractor stated that there appeared to be

nothing wrong with the bathroom floor, but there could be decayed wood under the bathtub, and removal of the tub and floor would be required to inspect the floor joists. Complainant states that Respondent did not call the contractor to make repairs in a timely fashion, did not have repairs made pursuant to the contract, and had no intent to fulfill Respondent's obligation under the contract. Complainant states that Respondent and agent repeatedly denied that there was anything wrong with the floor or structure and had Complainant sign a release stating that Complainant would receive \$2,500 to replace the decking and floor covering that were removed, which Complainant stated was an adequate and fair amount for the work on the floor to be performed. Complainant states that a plumber was hired to remove the bathtub and stated that there are structural issues, and the owner in the unit below asked a contractor to check on the stability of the floor brace. Complainant alleges that the structural issues cannot be repaired, stating that the floor brace was built without building permits or foundation plans and that it is not permanently attached to the building or foundation, all of which violate city codes.

Respondent states that Respondent listed the home through the agent. Respondent also states that this was a private transaction in which Respondent did not act as a real estate broker, stating that Respondent's principal broker only has casual knowledge that Respondent was selling a condo that Respondent's child had lived in. Respondent states that, when Respondent purchased the property in 2008, no structural inspections were performed. Respondent further states that the unit sat empty from May 2012 until Complainant purchased it in 2013. Respondent states that Respondent was at no time a resident of the subject property, and Respondent has never entered the crawlspace of the building where Complainant alleges there are structural defects. Respondent states that a professional engineer prepared a report in 2009, which was submitted to the HOA, and Respondent had not seen a copy of that report until the complaint was filed. Respondent states that the engineer noted that the beams, posts and supports stated there were "no specific repairs required," in any of the crawlspaces of the building. Respondent states Respondent was only aware of mold remediation work performed in all of the crawlspaces. Respondent states that Respondent allowed Complainant to expose the bathroom floor for inspection and paid Complainant \$2,500 to replace the decking and floorcovering that were removed. Respondent states that Complainant signed a release regarding same. Respondent states that Respondent has endeavored to conduct business in a fair and ethical manner. Respondent further denies all allegations that Respondent failed to disclose any structural defects, stating that Respondent had no knowledge of defects and made no guarantees regarding the structural integrity of the condo. With regard to the contract, Respondent states that the contractor could not perform the work within the timeframe of the sales contract, so the parties entered the release agreement to take payment so the work could be done under Complainant's control and to Complainant's satisfaction. Respondent states that Complainant signed the release at closing and freely acknowledges that this was an adequate and fair amount.

Complainant submitted additional information stating that Complainant agreed to take the \$2,500 partly as compensation due to the damage Respondent and the agent did to the bathroom floor and alleges that Respondent paid the money because Respondent breached contract in that Respondent agreed to repair the bathroom floor, not Complainant. Complainant also alleges that Respondent was evasive in response and any denial that Respondent had no knowledge of structural defects is not credible because Complainant discovered the defects within a week of closing. Complainant also indicated that Complainant may end up filing a civil lawsuit. Additional information was submitted that included a copy of a civil lawsuit that Complainant filed against Respondent on or about April 28, 2015 regarding the allegations of this complaint. It is likely that further information will be uncovered through the course of the litigation which will be pertinent to the Commission's determination regarding this matter.

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

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

**Commissioner McMullen made a motion to accept the recommendation of legal counsel which is a Consent Order for litigation monitoring; motion seconded by Commissioner Collins; motion passes unanimously.**

**18. 2015000241**

**Opened: 1/22/15**

**First License Obtained: 12/29/87**

**License Expiration: 3/25/17**

**E&O Expiration: 1/1/17**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

TREC opened a complaint against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 2015000211 above (hereinafter "affiliate broker").

Respondent states that neither the affiliate broker nor the firm acted as a listing or selling agent or agency in the subject transaction. Respondent states that the affiliate broker did not solicit or receive any brokerage fees, commissions, or referral fees with regard to the subject transaction, nor did the affiliate broker advertise as an agent for the sale of the subject property. Respondent states that the affiliate broker and spouse acted as private individuals. Respondent states that Respondent's only supervisory responsibility in this matter was to ensure that the affiliate broker disclosed in writing that the affiliate broker was a licensed real estate agent. Respondent states that the affiliate broker fulfilled this requirement in the contract by writing, "Buyer acknowledges disclosure that [affiliate broker] is a real estate licensee in Tennessee." Respondent expressed displeasure in the previous Complainant for venting frustrations that Respondent believes has no basis in fact. Respondent states that Respondent has known the affiliate broker for over twenty (20) years and they have worked closely in professional and charitable settings, and Respondent states that the affiliate broker's character is above reproach. Respondent states that Respondent has practiced for over twenty-five (25) years without a complaint against Respondent, the firm, or any affiliated agents. Respondent also states that the firm has been audited several times without a single citation.

Additional information was submitted that included a copy of a civil lawsuit that Complainant filed against Respondent on or about April 28, 2015 regarding the allegations of this complaint. It is likely that further information will be uncovered through the course of the litigation which will be pertinent to the Commission's determination regarding this matter.

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

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

**Commissioner McMullen made a motion to accept the recommendation of legal counsel which is a Consent Order for litigation monitoring; motion seconded by Commissioner Collins; motion passes unanimously.**

**19. 2015000251**

**Opened: 1/21/15**

**First License Obtained: 2/18/92**

**License Expiration: 11/26/15**

**E&O Expiration: 1/1/17**

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

Complainant states that this Respondent and the Respondent in complaint 2015000211 above (hereinafter "seller") marketed and sold Complainant a condominium with structural defects. Complainant alleges that Respondent never gave Complainant copies of the offer to purchase, which was made on the property. Complainant states that failing to provide a copy of the offer was calculated, deliberate and malicious. Complainant alleges that Respondent repeatedly denied that anything was wrong with the floor boards.

Respondent states that the bathroom was originally constructed with ceramic tile and the concrete board and tile were removed and replaced with plywood and linoleum. Respondent states everything in the bathroom worked perfectly. Respondent states that Complainant was furnished with all documents in a timely fashion and that, after signing the documents, Complainant was unable to go to the bank the same day due to health problems, so Respondent provided the documents the next day. Respondent states that Respondent has no knowledge of contractors looking at the floor or a conversation with the seller or contractor(s). Respondent states that Complainant decided to not have any repairs done until after closing stating that Complainant thought the appraisal would come up short if the unit was under construction. Respondent further states that Complainant decided on the \$2,500 amount for repairs. Respondent denies having knowledge of structural defects or whether or not the seller knew of any. Respondent states that Complainant was a licensed real estate agent but does not understand the special stipulations portion of the purchase and sale agreement. Respondent states that Complainant has not presented evidence that there is a structural problem with the condo building. Respondent provided a copy of the transaction file which included fully executed Property Condition Disclaimer Statement, Additional Required Disclosures, and Disclaimer Notice which states "Consult with professional engineers or other independent, qualified professional to ascertain the existence of structural issues..." The Get a Home Inspection document was also included stating Complainant chose not to have a home inspection performed. The Confirmation of Agency Status form states that Complainant is unrepresented. A Buyer's Final Inspection was also executed.

Additional information was submitted that included a copy of a civil lawsuit that Complainant filed against Respondent on or about April 28, 2015 regarding the allegations of this complaint. It is likely that further information will be uncovered through the course of the litigation which will be pertinent to the Commission's determination regarding this matter.

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

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

**Commissioner McMullen made a motion to accept the recommendation of legal counsel which is a Consent Order for litigation monitoring; motion seconded by Commissioner Collins; motion passes unanimously.**

**20. 2015000261**

**Opened: 1/22/15**

**First License Obtained: 10/22/13**

**License Expiration: 10/21/15**

**E&O Expiration: 1/1/17**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

TREC opened a complaint against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 2015000251 above (hereinafter "affiliate broker"). Respondent acted as principal broker for the affiliate broker beginning on or about July 17, 2014 to present. The subject transaction closed on May 6, 2014 before Respondent was the affiliate broker's principal broker.

Complainant filed a civil lawsuit on or about April 28, 2015 regarding the allegations of this complaint; however, the complaint states that Respondent is named because TREC deems principal brokers to be responsible for the activities of their affiliated brokers, and, because TREC opened complaints for failure to supervise against this Respondent and the previous principal broker Respondent in complaint 2015000241 above, they are included as defendants. Although the Complainant is correct that TREC opens complaints against principal brokers for failure to supervise affiliated licensees, it appears that this Respondent was not the principal broker at the time that the alleged violations took place.

**Recommendation: Dismiss.**

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

**Commissioner McMullen made a motion to accept the recommendation of legal counsel which is to dismiss; motion seconded by Commissioner DiChiara; motion passes unanimously.**

**21. 2015000351**

**Opened: 1/29/15**

**First License Obtained: 7/25/05**

**License Expiration: 4/6/16**

**E&O Expiration: 1/1/17**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

In 2010, Complainants purchased a property with Respondent (principal broker) acting as buyer's agent and had to do extensive remodeling in order to make the property a rental cabin. Complainants allege that, prior to closing, Respondent misrepresented to their lender that Complainants had a Rental Contract & Exclusive Management Agreement with Respondent's company. Complainants allege that Respondent provided the lender with an executed copy of a fraudulent rental agreement that Complainants never signed, which included a provision for anticipated rental income. Complainants further allege that, on the closing day, somebody posing as one of the Complainants contacted an insurance company and ordered insurance coverage for the property stating that Respondent's firm was the management company for the property. Complainants state that they have thought about Respondent's actions for a long time and have had several encounters with Respondent since closing because Respondent owns property in the

same development. Complainants allege that Respondent denies wrongdoing and misrepresents that Respondent had Complainants' permission to sign the management agreement on their behalf.

Respondent states that, after Complainants purchased the foreclosed property, they paid for extensive rehabilitations with an unlicensed contractor, and property permits were not pulled for the renovations. Respondent states that Respondent advised Complainants otherwise, but Complainants were threatening. Respondent states that Complainants insisted that Respondent contact the lender to send information, stating that Respondent never had previous contact with anyone at that bank. Respondent states that the lender requested a brief anticipated revenue stream and a sample agreement for the rental. Respondent reiterates that Complainants insisted that Respondent forward this information to the lender, although Respondent realized Complainants would likely use a different rental company (Respondent states that Complainants were not under an agreement with anyone else at the time). Respondent denies sending any information other than the information that Complainants insisted that Respondent send. Respondent also states that Respondent was directed by Complainants to contact the insurance company to provide a copy of the management agreement so the company would provide an insurance policy. Respondent states that Complainants forwarded a signature page for Respondent's use. Respondent denies that Respondent or anyone at the office forged the management agreement provided. Respondent states that one of the Complainants continues to threaten and defame Respondent. Respondent states that Respondent bought the development as the Developer in October 2014, and there appears to be a dispute which arose between Respondent and Complainants relating to a piece of property in the development.

Complainants submitted additional information stating that Respondent encouraged Complainants to use the lender due to the offered interest rate. Complainants further state that Respondent prepared the documents for the bank to induce the bank to give Complainants a loan, and the estimated income is much more than the actual amount.

It appears that this complaint was filed well outside of the two (2) year statute of limitations. Despite this fact, the information in the file does not appear to evidence a violation by Respondent.

**Recommendation: Dismiss.**

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

**Commissioner Blume made a motion to accept the recommendation of legal counsel which is to dismiss; motion seconded by Commissioner Hills; motion passes unanimously.**

**22. 2015000601**

**Opened: 1/26/15**

**First License Obtained: 1/10/02**

**License Expiration: 9/21/16**

**E&O Expiration: 1/1/17**

**Type of License: Principal Broker**

**History: 2014018011 – \$1,000 Consent Order (failure to respond to complaint)**



Respondent (principal broker)'s firm managed Complainant's rental property. Complainant states that tenant broke the lease, and Respondent's firm changed the locks without permission, refused to collect monies owed for landscaping work that was not done and a month's rent.

Respondent sent a response stating that the tenant sent notice on July 28, 2014 to vacate by August 31 and paid July and August rent. Respondent attached a copy of the lease (the lease term is March 28, 2013 through March 27, 2015) which states that if tenant terminates the lease in the second year, tenant agrees to give a thirty (30) day notice and shall forfeit the security deposit. Respondent states that Respondent forwarded the rent and security deposit, less invoices, to Complainant. Respondent states that it is the firm's policy to re-key properties after a tenant moves out for safety and liability purposes and states that Complainant acknowledged that Complainant received a copy of the new keys. Per the lease, the tenant is responsible for lawn maintenance including lawn cutting and weeding of flower beds, and Respondent states that the tenant had the yard mowed after they moved out. Respondent states that the tenant may be responsible for weeding the beds, but the additional items Complainant requested for the landscaping were not tenant's responsibility.

**Recommendation: Dismiss.**

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

**Commissioner Hills made a motion to accept the recommendation of legal counsel which is to dismiss; motion seconded by Commissioner DiChiara; motion passes unanimously.**

**23. 2015000631**

**Opened: 1/27/15**

**First License Obtained: 7/29/71**

**License Expiration: 10/21/16**

**E&O Expiration: 1/1/17**

**Type of License: Broker**

**History: No Prior Disciplinary Action**

Complainants purchased a home and allege that Respondent (broker) and the home inspector acted fraudulently in order to sell the home. Complainants state that when Respondent showed them the home, Respondent focused on the new roof and new heating and air unit instead of noticeable issues. Complainants state that Respondent arranged for the home inspector to inspect the home, and Complainants allege that the home inspector's responses to their questions seemed odd. Complainants state they ended up owner financing the home because they were told the home did not meet Fannie Mae standards. Complainants state that after move in, they crawled under the house to look at the floors and noticed that all the floor joists were broken and found mold. Complainants state the Respondent is inquisitive about the floor repairs and comes by often to check on the progress of the repair. Complainants further state that, after several storms, it appeared that the roof started lifting but the insurance agency has advised that this is not a result of storm damage but because there are three (3) layers of shingles that are too heavy for the roof. Complainants allege that Respondent denies ever saying anything about the roof or knowing about any of the disclosures that Complainants allege are filled out incorrectly.

Respondent states that Complainants called Respondent (who was the listing agent) to inquire about the property. Respondent recalls that the seller informed Respondent that a new roof had been put on, and Respondent passed the information on to Complainants. Respondent recalls pointing out the sagging of the floors in various places during the showing. Respondent states

that an offer was accepted contingent on financing, but the appraisal informed Complainants that the house would not meet requirements to secure a loan. Respondent states that Complainants and sellers agreed to owner finance and a home inspection was done. Respondent states that the property is in Respondent's neighborhood. Respondent states that, months after the closing, Complainants accused Respondent of unethical business conduct and threatened a lawsuit. Respondent states that the home inspector is not employed by Respondent's company and denies that the transaction was fraudulently handled. Respondent states that Respondent was both listing and selling agent, representing both parties with fairness and trust. Respondent states that the seller stated that the roof and natural gas heating unit were new, and Respondent had no reason to doubt it. Respondent attached the transaction file. The confirmation of agency status states "Disclosed Dual Agent (for both parties) with the consent of both the Buyer and the Seller in this transaction." It is executed by sellers, buyers and Respondent. The Property Condition Disclosure states that the roof type is shingles and flat and approximately one year old. Further, it asks if the seller is aware of any defects/malfunctions, and the box next to floors is checked yes. The explanation states, "when purchased in 1990 the floors were leveled but not perfect." There is also a final property disclosure in the file which states "satisfied with home inspection."

**Recommendation: Dismiss.**

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

**Commissioner DiChiara made a motion to accept the recommendation of legal counsel which is to dismiss; motion seconded by Commissioner Hills; motion passes unanimously.**

**24. 2015000681**

**Opened: 1/27/15**

**First License Obtained: 5/13/70**

**License Expiration: 10/19/16**

**E&O Expiration: 1/1/17**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

TREC opened a complaint against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent broker in complaint 2015000631 above (hereinafter "broker").

Respondent states that the broker handled the listing and selling of the property. Respondent states that, during the showing, the broker pointed out any adverse conditions that the broker could see or was made aware of. Respondent further states that offers were conveyed properly and that the broker recommended that Complainants get a home inspection and make the offer contingent of their approval of the inspection. Respondent states that the inspection was completed by a licensed home inspector and the broker suggested owner financing, which was agreed to by both parties, when Complainants could not get the loan they wanted. Respondent states that the documentation in the file proves that the broker provided Complainants with information on the property, disclosures, and recommended termite and home inspections. Respondent further states that the broker checked in on the Complainants after the purchase to see if everything was going well. Respondent further states that the documents and statements Complainants signed shows that they were aware of needed repairs to the home. Respondent denies all claims against Respondent and the broker.

**Recommendation: Dismiss.**

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

**Commissioner DiChiara made a motion to accept the recommendation of legal counsel which is to dismiss; motion seconded by Commissioner McMullen; motion passes unanimously.**

**25. 2015000771**

**Opened: 1/22/15**

**First License Obtained: 5/7/13**

**License Expiration: 5/6/17**

**E&O Expiration: 1/1/17**

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

Complainants contacted Respondent (affiliate broker) to view properties and placed an offer on a piece of land which was accepted. Complainants state that Respondent advised that a survey was not necessary because there had already been many surveys of the property. Complainants contacted a surveyor who advised they wait until the foliage was cleared to perform a survey. Complainants allege that, at closing, Respondent was not helpful in assisting and reviewing any of the documents. Complainants state that, after closing, they were told by sellers that there was a cemetery on the property, and the seller's agent stated that Complainants did not own the road frontage, stating that the plat given to Complainants by Respondent was upside down. Complainants state that they missed the paragraph located on the warranty deed that reads, "There is reserved by the Grantees a right of way over the existing roadway and the right to enter upon the land above described to visit their family cemetery located upon the land..." Complainants further state that, upon speaking with a neighbor, they discovered that they do not own the creek and spring as advertised. Complainants allege that Respondent gave them the impression that they did own it. Complainants state that the listing agent described the road frontage as "irregular," which seemed to mean that it was curvy rather than that it lacked road frontage. A copy of the MLS listing was supplied which states under topography that there is a creek and, under water supply, that there is a spring. The remarks section states that the property features mountains, stream, and spring water.

Respondent states that Complainants waived all inspections, and the special stipulations in the contract note that buyer is to do a survey. Respondent denies making statements regarding the property line stating that Respondent was not provided that information from the listing agent. Respondent further denies telling Complainants that no survey was needed, stating that Respondent advised Complainants of their right to obtain a survey in the Disclaimer Notice. Respondent further states that, when the loan was approved, the loan officer advised of their right to do a survey and gave Complainants the name of a surveyor. Respondent further states that Respondent went out to eat dinner with Complainants after the closing and does not recall any mention of any of their concerns. Respondent states that Complainants were provided with a copy of the deed, the legal description of the property, and the specifics/restrictions contained on it. Respondent further states that Respondent was not the listing agent and cannot be responsible for how the property was listed. Finally, Respondent states that one of the Complainants' profession is in real estate and contracting, and the buyer is familiar with the process and has expertise beyond that of a lay person.

Complainants submitted additional information reiterating that Respondent verbally told them they did not need a survey.

**Recommendation: Dismiss.**

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

**Commissioner McMullen made a motion to accept the recommendation of legal counsel which is to dismiss; motion seconded by Commissioner Collins; motion passes unanimously.**

**26. 2015000781**

**Opened: 1/22/15**

**First License Obtained: 3/15/02**

**License Expiration: 1/4/16**

**E&O Expiration: 1/1/17**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

TREC opened a complaint against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 2015000771 above (hereinafter "affiliate broker").

Respondent states that the affiliate broker showed many properties to Complainants and states that, in the accepted offer, Complainants stipulated that they would do a survey on the property. Respondent states that the affiliate broker advised Respondent that Complainants found a surveyor who was going to charge \$4,500 but Complainants decided to do the survey after the closing. Respondent further states that a surveyor that Respondent works with quite often offered to do the survey for \$3,500, but Complainants declined. Respondent states that the adjoining property owner tried to persuade any person buying the adjoining property also purchase his property and has told Complainants all kinds of things about property lines. Respondent states that documentation of a survey was never at any time provided to the affiliate broker or anyone at the office. Further, it is Respondent's understanding that neither the affiliate broker nor Complainants walked the entire property but Complainants were satisfied with what they saw and were happy with their purchase. Respondent states that Complainants were not misled by the affiliate broker with regard to road frontage. As for the cemetery, Respondent states that it is an old abandoned cemetery that has been overgrown for many years, that it is not on record at the courthouse or county plats, and that it is only mentioned in the deed, which was given to Complainants prior to closing by the affiliate broker. Respondent denies that the affiliate broker distracted Complainants at closing, stating that the affiliate broker fulfilled the affiliate broker's professional duties. Respondent further states that Complainants still have not performed a survey and are making accusations of boundary lines without having a survey. Respondent stands behind the affiliate broker's performance of duties and an agent.

**Recommendation: Dismiss.**

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

**Commissioner Collins made a motion to accept the recommendation of legal counsel which is to dismiss; motion seconded by Commissioner McMullen; motion passes unanimously.**

**27. 2015000821**

**Opened: 1/21/15**

**First License Obtained: 6/30/05**

**License Expiration: 3/6/16**  
**E&O Expiration: 1/1/17**  
**Type of License: Affiliate Broker**  
**History: No Prior Disciplinary Action**

Complainant was one of the sellers for a property that was to be sold as part of divorce litigation. Complainant states that the home was listed with another real estate firm in May 2014, but Complainant's spouse transferred the listing to Respondent (affiliate broker) in August 2014. Complainant states that Respondent told Complainant that both signatures were needed to have anything changed on the home, but both signatures were not obtained to remove the listing from the MLS in November 2014. Complainant further states that Complainant has not received any of the paperwork regarding the listing of the property. Complainant further states that the home was pulled from MLS on November 20, 2014, but Complainant was not informed of this. Complainant states that another agent at Respondent's firm told Complainant that the spouse made the home inaccessible for showing. Complainant alleges that Respondent and the other agent failed to communicate regarding the property. Complainant attached text messages with Respondent stating that Respondent needed both signatures to pull the listing.

Respondent states that a copy of the paperwork was left at the property when photos were taken, and the spouse has a copy, as well. Respondent states that Respondent was unaware that Complainant asked for the MLS change form because Respondent did not receive the text message Complainant states was sent to Respondent requesting same. Respondent states that Respondent was unaware that Complainant's spouse had not spoken to Complainant regarding removing the listing. Respondent believed that both signatures were needed to pull or change the listing and states that Respondent's broker would be the one to pull the listing because Respondent, as an affiliate broker, cannot pull a listing. Respondent states that Respondent left the paperwork for the spouse to sign on November 9, that the spouse signed and faxed the form back to the office on November 20, and that someone in the office forwarded the paperwork to the broker who pulled the listing on November 20, and Respondent was unaware that Complainant did not want the listing pulled because Complainant did not follow-up by calling Respondent after the text conversation of November 18 when Respondent informed Complainant that Respondent was waiting for the spouse to send back the paperwork regarding pulling the listing. Respondent states that Complainant designated Complainant's spouse as the point person, and the spouse was kept updated on any activity involving the property. Respondent states that the divorce pulled Respondent into a bad situation.

Office of legal counsel reviewed the documentation and it appears that the RealTracs Status Change and Listing Agreement Amendment Form withdrawing the listing was executed only by Complainant's spouse and Respondent. The Exclusive Right to Sell Listing Agreement and other documents were executed by both Complainant and Complainant's spouse. As Complainant was also a client pursuant to the listing agreement, it appears that Respondent's failure to ensure that the form withdrawing the listing was signed by both clients is a failure to be loyal to the client's interest.

**Recommendation: Consent Order for \$500 in violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-404(2) (be loyal to the interests of the client), 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.**

Commissioner McMullen made a motion to accept the recommendation of legal counsel which is a Consent Order for \$500 in violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-404(2) (be loyal to the interests of the client), 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; motion seconded by Commissioner DiChiara; motion passes unanimously.

**28. 2015000841**

**Opened: 1/21/15**

**First License Obtained: 7/9/02**

**License Expiration: 11/23/15**

**E&O Expiration: 1/1/17**

**Type of License: Affiliate Broker**

**History: 2015002661 – Under review by legal**

This is the same Complainant regarding the same property in complaint 2015000821 above. Respondent (affiliate broker) was the other agent mentioned above.

Respondent acknowledges Complainant's frustration and states that it likely stems from the contentious divorce. Respondent states that communication with sellers was difficult at best and the agents had difficulty showing the property. Respondent states that Respondent responded appropriately to all of Complainant's texts and information was passed on to the affiliate broker (previous Respondent in complaint 2015000821) who was handling the listing. Respondent believes that Complainant felt that Respondent was the managing broker because Respondent is the owner of the company, but Respondent states that Respondent is not the managing broker. Respondent states that there were no misrepresentations. Based on the documentation submitted, there does not appear to be a violation by Respondent.

**Recommendation: Dismiss.**

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

Commissioner DiChiara made a motion to accept the recommendation of legal counsel which is to dismiss; motion seconded by Commissioner McMullen; motion passes unanimously.

**29. 2015000851**

**Opened: 1/23/15**

**First License Obtained: 12/11/89**

**License Expiration: 12/7/16**

**E&O Expiration: 1/1/17**

**Type of License: Principal Broker**

**History: 2015000861 – Under review by legal**

**2015002671 – Under review by legal**

**2015002691 – Under review by legal**

**30. 2015000861**

**Opened: 1/23/15**

**First License Obtained: 12/11/89**

**License Expiration: 12/7/16**

**E&O Expiration: 1/1/17**

**Type of License: Principal Broker**

**History:** 2015000851 – Under review by legal  
2015002671 – Under review by legal  
2015002691 – Under review by legal

TREC opened complaints against Respondent (Respondent is the same individual – principal broker) on a potential failure to supervise issue regarding the previous Respondents (both affiliate brokers) in case numbers 2015000821 and 2015000841 above.

Respondent states that the designated agent (affiliate broker in complaint 2015000821) left the signed paperwork for Complainant in the home when the designated agent was there to take pictures of the property, as Complainant was residing in the property at that time. Respondent states that it is evident in the text messages that Complainant told Respondent that Complainant's spouse was the contact person for the property after Complainant moved out. Respondent states that Complainant's spouse did not want to show the home during the holidays and requested the listing to be removed until January 2015. Respondent states that the designated agent forwarded a MLS form to the spouse to remove the listing, which was done on November 20. Respondent states that it appears the designated agent replied in a timely manner any time Complainant contacted the designated agent. Respondent states that Complainant and spouse did not communicate during the divorce and the designated agent was caught in the middle.

Respondent further states that the other affiliate broker (who was Respondent in complaint 2015000841) was not the designated agent for seller, and Respondent does not feel that this affiliate broker should be named in a complaint nor Respondent for failing to supervise that affiliate broker's activities for this listing. Respondent states that Complainant did contact the other agent who rightfully replied that Complainant's concerns would be addressed with the listing agent.

**Recommendation:** As to complaint 2015000851, Consent Order in the amount of \$500 for failure to supervise the affiliate broker in case number 2015000821 in violation of T.C.A. § 62-13-312(b)(15), 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. As to complaint 2015000861, dismiss.

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

Commissioner McMullen made a motion to accept the recommendation of legal counsel which is as to complaint 2015000851, Consent Order in the amount of \$500 for failure to supervise the affiliate broker in case number 2015000821 in violation of T.C.A. § 62-13-312(b)(15), 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. As to complaint 2015000861, dismiss; motion seconded by Commissioner Blume; motion passes unanimously.

**31. 2015002661**

**Opened:** 2/13/15

**First License Obtained:** 7/9/02

**License Expiration:** 11/23/15

**E&O Expiration:** 1/1/17

**Type of License:** Affiliate Broker

**History:** 2015000841 – Under review by legal

**32. 2015002662**

**Opened: 2/13/15**

**First License Obtained: 6/6/13**

**License Expiration: 6/5/15**

**E&O Expiration: 1/1/17**

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

Complainant was the buyer of a property who states that Respondents (both affiliate brokers) did not have the home repairs ready for closing and pressured Complainant to close without all of the repairs being complete to Complainant's satisfaction. Complainant further states that Respondents have not responded to Complainant's agent in a timely manner. Complainant further states that Respondent 2 wanted Complainant to use a specific home inspector so the inspection would pass. Finally, Complainant states that Complainant paid a two thousand dollar (\$2,000) earnest money deposit which will not be returned even if Respondents have not held up their side of the agreement.

Respondent 1 filed a response stating that Complainant entered the home without Complainant's agent and without permission and asked for the floors to be redone. Respondent 1 states that Respondents declined, and this is the reason for the complaint. Respondent 2 states that the binding agreement date was December 16, 2014 with an original closing date of January 15, 2015. Respondent 2 states that the home was completely gutted with new plumbing, electric, drywall, fixtures, flooring, cabinets, countertops, etc. Respondent 2 states that a building permit was required along with a certificate of occupancy. Respondent 2 states that, at Complainant's request, they agreed to wait for the home inspection until the certificate of occupancy was issued. Respondent 2 states there was a delay in the electrical inspection because Complainant entered the home without permission and locked the door, which was left unlocked for an electrical inspection—delaying the certificate of occupancy for one week. Respondent 2 states that certificate of occupancy was forwarded to Complainant's agent as soon as received, but the inspector could not come out as quickly as promised, so Respondent 2 offered to send contact information for other inspectors, which Complainant declined. Respondent 2 states that the home inspection was performed January 9 and the initial repair proposal and closing date amendment, requested by Complainant, was submitted on January 12 with closing date amendment for January 22. Respondent 2 states the final walk through was scheduled for January 20 and further information on the certificate of occupancy was requested by Complainant's agent on January 20, which Respondent complied. Respondent 2 states that the Buyer's Final Inspection was received on January 21 with repair items. Respondent 2 states there was a dispute on the hardwood flooring, but was agreed to on January 22, with closing extended to January 23. Respondent 2 states the home closed on January 23.

It appears from the transaction documents that Respondents were sellers of the property and also listed in the confirmation of agency status that they were designated agents for sellers. Further, a Personal Interest Disclosure & Consent form stating that the licensees are the sellers/owners of the property was executed by Complainant on December 15, 2014. Respondent attached a letter from the local department of codes and building safety dated January 20, 2015 stating that the home is approved for final use and occupancy. There is a Buyer's Final Inspection dated January 22, 2015 confirming that the home is in the same or better condition and requesting that five (5) repairs be completed prior to closing. There are several Repair/Replacement Proposals in the file and a Closing Date/Possession Date Amendment # 2 states that closing will be January 23, 2015.



Further, it appears that a settlement statement was entered January 23, 2015 and the earnest money was applied to the sales price.

**Recommendation: Dismiss as to both Respondents.**

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

**Commissioner Collins made a motion to accept the recommendation of legal counsel which is to dismiss as to both Respondents; motion seconded by Commissioner McMullen; motion passes unanimously.**

**33. 2015002671**

**Opened: 2/12/15**

**First License Obtained: 12/11/89**

**License Expiration: 12/7/16**

**E&O Expiration: 1/1/17**

**Type of License: Principal Broker**

**History: 2015000851 – Under review by legal  
2015000861 – Under review by legal  
2015002691 – Under review by legal**

**34. 2015002691**

**Opened: 2/12/15**

**First License Obtained: 12/11/89**

**License Expiration: 12/7/16**

**E&O Expiration: 1/1/17**

**Type of License: Principal Broker**

**History: 2015000851 – Under review by legal  
2015000861 – Under review by legal  
2015002671 – Under review by legal**

TREC opened complaints against Respondent (both Respondents are the same individual – principal broker) for failure to supervise previous Respondents (both affiliate brokers) in case numbers 2015002661 and 2015002662 above.

Respondent submitted a response stating that the original closing date was held up due to the previous Complainant making an unscheduled visit to the property and locking the door which had been unlocked by sellers for an electrical inspector, which was needed for a certificate of occupancy. Respondent further states that, after the certificate of occupancy was obtained, Complainant's home inspection and requested repairs could not be completed in time to meet the original closing date, but the property closed on January 23, 2015.

**Recommendation: Dismiss both complaints against Respondent.**

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

**Commissioner DiChiara made a motion to accept the recommendation of legal counsel which is to dismiss both complaints against Respondent; motion seconded by Commissioner Collins; motion passes unanimously.**

**35. 2015002331**

**Opened: 2/12/15**

**First License Obtained: 10/20/04**

**License Expiration: 5/1/17**

**E&O Expiration: 1/1/17**

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

Complainant alleges that Respondent (affiliate broker) has a property listed on a website that shows a home which has yet to be built. Complainant states that Respondent is posting pictures of a fake home, and this is a bait and switch scam. Complainant states that this is Complainant's second encounter with Respondent's false advertising, and Complainant has complained about Respondent already.

Respondent states that this is the first complaint that Respondent has ever received. Respondent recalls two phone calls from Complainant. Respondent states that, in the first call, Complainant requested information on the property, and Respondent advised that it is to be built and Complainant was welcome to view the property. Respondent explained that it was clearly stated in the MLS that the home was to be built but alleges Complainant proceeded to be loud, rude, and obnoxious. Respondent states that Complainant stated the information was found on Zillow, and Respondent tried to explain that Zillow is not 100% accurate and apologized for any misunderstanding. Respondent states that Complainant called back several weeks later asking if the home was complete, and Complainant proceeded to be threatening in tone and language. Respondent attached the MLS listing for the subject property, which states under realtor remarks, "...This is TBB-To Be Built. You pick the floor plan, we have 100's of Floor Plans..."

Complainant submitted additional information stating that Complainant drove an hour to the first location only to find out there was no home there. Complainant states that several weeks later, Complainant drove to see another home only to find a sign from Respondent stating it was also to be built. Complainant states that Complainant did not threaten Respondent but firmly stated Complainant would be filing a complaint with the Commission. Complainant states that Respondent ignored the complaint allegations and is attempting to damage Complainant's reputation. Complainant states that derogatory statements aside, Respondent's advertisements are deceptive by posting pictures of homes that do not exist.

**Recommendation: Dismiss.**

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

**Commissioner McMullen made a motion to accept the recommendation of legal counsel which is to dismiss; motion seconded by Commissioner Collins; motion passes unanimously.**

**36. 2015002341**

**Opened: 2/12/15**

**First License Obtained: 10/19/01**

**License Expiration: 4/13/17**

**E&O Expiration: 1/1/17**

**Type of License: Principal Broker**

**History: 2013017311 – \$500 Consent Order (earnest money dispute)**

TREC opened a complaint against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 2015002331 above (hereinafter “affiliate broker”).

Respondent submitted email correspondence and phone logs between Respondent and the affiliate broker stating that the affiliate broker obtained approval for advertising such as signs, riders, brochures, and websites. Respondent also submitted information on training sessions offered to agents for TREC compliance purposes. Respondent states that the ads in question were generated by third party syndicated websites. Respondent states that the affiliate broker added language to the websites to make it clearer that the house was to be built, but the syndicated websites removed the information and displayed the original content 24 hours later. Respondent states that the add states “Build your dream home,” which usually indicates that the home is not completed or started. Respondent states that the listing agreement for the property is in order, which includes an addendum allowing the firm to market the home in the residential section of the MLS. Respondent states that none of the ads indicate that a buyer can move in immediately and the home was correctly listed as to be built. Respondent states that the pictures added are not of fake homes but those of the builder who is represented by Respondent’s firm. Respondent states that Complainant was advised that the house in the ad can be built on that lot for the advertised price, or Complainant had the opportunity to choose another floor plan available through the builder. Respondent states that this is not a bait and switch. Respondent states that, if the property that was advertised can be built for the price with the features listed on the lot specified and the advertisement does not mention that it is available to move in today, the advertisement is not false, misleading or deceptive.

**Recommendation: Dismiss.**

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

**Commissioner Alexander made a motion to accept the recommendation of legal counsel which is to dismiss; motion seconded by Commissioner DiChiara; motion passes unanimously.**

**37. 2015002351**

**Opened: 2/13/15**

**History: No Prior Disciplinary Action - Unlicensed**

A complaint was filed against Respondent who works for a company that advertises as a timeshare transfer service. Complainant wired \$36,277.84 to Respondent’s firm in order to transfer their timeshare unit for a supposed offer of \$54,898. Complainant alleges that Respondent advised Complainant needed to wire \$12,530 for transfer of ownership and \$16,857 for tax liens plus \$6,890.84 for commission. Complainant states that Respondent requested a final payment of \$4,500, but Complainant’s bank refused to send the wire.

Office of legal counsel attempted to contact Respondent and Respondent’s firm. This appears to be a time-share resale scam, and the address and name of Respondent appear to be fake. There was a previous similar complaint against this timeshare transfer service which was visited by the BBB, and there was no such business at the address. It appears that this unlicensed individual used the name of a licensee with TREC, but that licensee is not actually involved in the scam. Further, it appears that the money was wired out of the country.

**Recommendation: Close.**

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

**Commissioner DiChiara made a motion to accept the recommendation of legal counsel which is to close; motion seconded by Commissioner McMullen; motion passes unanimously.**

**38. 2015002451**

**Opened: 2/26/15**

**First License Obtained: 9/23/89**

**License Expiration: 11/14/16**

**E&O Expiration: 1/1/17**

**Type of License: Principal Broker**

**History: 2015005141 – Under review by legal**

Complainant entered into a property management agreement with Respondent (principal broker)'s firm and alleges poor accounting, improper disbursement of funds, failure to represent the interests of the client, and poor communication. Complainant states that direct deposits were late three out of four months and there were accounting errors where rent was paid but not properly disbursed. Complainant further states that two of the four tenants were Section 8 tenants, and Complainant had to contact rural housing to determine why rent was not being paid, and Complainant was unable to collect on unpaid rent. Complainant alleges that Respondent is unfamiliar with rural housing policies. Complainant further states that Complainant was issued a judgment from a tenant, but Complainant was not informed of the judgment, and Respondent's firm never forwarded payment to the attorney. Complainant further states that Respondent failed to use the agreed upon repairman and Complainant was charged \$290 for an after-hours service when only a fuse needed to be replaced. Complainant further stated that the management agreement was terminated December 31, 2014, in which Respondent's firm shut off the power for the properties and collected all their fees. Complainant states that Respondent did not collect late charges. Complainant further states that Respondent initially charged Complainant for a deposit that was never paid. Complainant also states that Respondent initiated three eviction processes but canceled court dates and still charged legal fees. Complainant also states that Respondent did not list a vacancy and also allowed a tenant to move while owing back rent. Complainant states that Respondent refused to collect back rent without a judgment in place. Complainant also states that Complainant had to pay for two service calls although only one repairman actually performed the work.

Respondent answered through an attorney stating that Complainant was a novice investor who purchased multiple rental properties but was unprepared for the headaches that naturally come with these properties. Respondent states that the firm became property manager on September 1, 2014 and many of the problems Complainant was facing had already developed prior to Respondent's firm becoming property manager. Respondent states that the Complainant severed their relationship on December 20, 2014 without giving the firm a reasonable opportunity to untangle the predicament. Respondent states that Complainant did not timely provide information regarding preexisting tenants including copies of leases and past due amounts owed, which slowed the eviction process. Respondent further states that Complainant had a poor understanding of legal obligations pursuant to the Landlord Tenant Act. Respondent states that Complainant failed to maintain security deposits of preexisting tenants, using them at Complainant's discretion. Respondent further states that Complainant was frustrated when Respondent had to deposit money into an escrow account before paying it over to Complainant. Respondent further states that Complainant never forwarded any security deposits to Respondent

to be held in escrow, although the property management agreement specifically provides that they would be held by Respondent's firm and disbursed according to the lease agreement and applicable laws. Respondent states that this was a baseless complaint filed by disgruntled former clients. Respondent further states that the complaint is compiled of indefinite statements and Respondent cannot identify specific transactions that are alluded to. Respondent denies all allegations stating that the firm uses a standard and widely used accounting system, and the firm disbursed funds as provided by the property management agreement during reasonable intervals. Respondent states that their records reflect that disbursements were made on October 13, November 18, November 20, December 11 and December 31. Respondent further states that Respondent attempted to provide the best services and communications in good faith, but Complainant failed to recognize certain factors beyond Respondent's control. Respondent states that Respondent engaged in a large volume of communications and Complainant failed to provide requested information regarding the properties and failed to keep appointments. Respondent further states that preexisting leases were in the name of Complainant and not Respondent's firm, and Respondent's counsel advised that Respondent did not have authority to pursue the eviction process until the lease agreements reflected Respondent's firm. Respondent states that it is Respondent's policy that any preexisting tenants execute new leases naming Respondent's firm as lessor, so the firm has the authority to evict a tenant if necessary. Respondent further states that the section 8 properties did not pass inspection, which is the reason back rent was not paid. Respondent further states that the inspection was done in August prior to Respondent's property management. Respondent also states that Complainant attempted to increase rent, which rural housing rejected. Further Respondent states that on one occasion a tenant came to pay one thousand dollars, and Respondent was counseled by the firm's attorney that Respondent should not accept payment due to ongoing legal proceedings because it would constitute a waiver of default and Respondent would no longer be able to evict tenant. Respondent advised the tenant to make payment arrangements with the attorney, but the tenant never did so. As to repairmen, Respondent states that according to the property management agreement, Respondent's firm had the authority to hire, discharge, and supervise anyone required for repairs, although Respondent attempted to follow suggested preferences of Complainant. However, there were occasions when Complainant's repairman was unavailable. Respondent further states that Respondent has no record of any \$290 repair as alleged, but Respondent has record of a \$240 bill which arose from an emergency situation due to reported sparks from a wall outlet which was deemed as a fire hazard. Respondent states that the property management agreement was terminated on December 20, 2014 stating that Respondent had turned on utilities at several vacant properties in Respondent's firm name, and Respondent provided advance notice to Complainant stating utilities would be turned off. Respondent states that when Complainant dissolved their relationship, Respondent's firm no longer had authority to pursue legal proceedings for evictions, so any such actions were terminated. It appears that the Property Management Agreement that listed twenty-six (26) properties which was executed by Complainant but not dated. The term was for one year beginning September 1, 2014, and ending the final day of September 2015. Section 3(c) of the agreement states, "The owner hereby gives the Agent the following authority and powers and agrees to assume the expenses in connection herewith: to hire, discharge and supervise all labor and independent contractors require the operation and maintenance of the premises...." The management fees include 8% for management; half of first month's rent for leasing, and 3% for lease purchase or sale. Multiple emails were provided to corroborate Respondent's statements.

**Recommendation: Dismiss.**

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

**Commissioner DiChiara made a motion to accept the recommendation of legal counsel which is to dismiss; motion seconded by Commissioner McMullen; motion passes unanimously.**

**39. 2015002461**

**Opened: 2/24/15**

**First License Obtained: 11/10/77**

**License Expiration: 9/6/16**

**E&O Expiration: 1/1/17**

**Type of License: Broker**

**History: No Prior Disciplinary Action**

Complainants were buyers and Respondent (broker) was their agent. Complainants state that Respondent voiced concern over the shared drive for three properties but stated Respondent would not impede a sale but encouraged Complainants to talk to neighbors about the issue. Complainants stated that, three months after closing, Complainants were sued and discovered there was pending litigation on the shared drive from work that previous owners had done. Complainants state that this was not disclosed prior to closing. Complainants state that Respondent was supposed to protect their interest but instead endeavored to collect commission and neglected agent duties. Complainants further state that Respondent recommended the home inspector and advised Complainants that they did not need to be present for the inspection. Complainants state that they were under the impression that the roof was inspected and the inspector stated the roof was in good working order. Complainants state that it was discovered that the roof had several leaks and major damage. Complainants further state that they purchased a home warranty at Respondent's recommendation and had work done on the garage door, but Complainants did not know that the home warranty would have covered repairs to the garage door if they had used a preferred vendor.

Respondent states that Respondent suggested Complainants contacted the neighbors regarding the shared drive, and they did and were okay with it. Respondent states that nothing in Respondent's records indicated that there was any litigation at the time of the sale, stating that subsequent lawsuits have risen beginning three (3) months after the closing. Respondent states that, at the time of closing, the title came back clean. With regard to the home inspection, Respondent states this was a foreclosure sale that was as is, where is. However, Respondent suggested they have a home inspection anyway. Respondent further stated that Respondent gave them several options of home inspectors when they asked for recommendation. Respondent states that many inspections are completed without the potential buyers present. Respondent states that there were no visual residues of any leakage, but the garage door looked like it could break at any time. Respondent states that Respondent gave names of several repairmen in case they needed it. It is Respondent's understanding that for warranties to be valid, items are to be in working order at the time of closing but the home inspection cited the garage door as inadequate. Respondent did not advise regarding what is covered in the home warranty and states that Complainants chose to call a repairman rather than the warranty company after closing. Respondent further states that seller paid a certain amount of money for the warranty, so Respondent selected the best warranty for that price. Respondent denies neglecting any duties in this transaction and states that Respondent was helpful, cordial and professional.

**Recommendation: Dismiss.**

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

**Commissioner Hills made a motion to accept the recommendation of legal counsel which is to dismiss; motion seconded by Commissioner DiChiara; motion passes unanimously.**

**40. 2015002481**

**Opened: 2/24/15**

**First License Obtained: 9/28/79**

**License Expiration: 1/28/17**

**E&O Expiration: 1/1/17**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

TREC opened a complaint against Respondent (principal broker) on a potential failure to supervise issue regarding the previous Respondent broker in complaint 2015002461 above (hereinafter "broker").

Respondent states that the broker is a very experienced agent with the firm who has been under Respondent's supervision for years and who has always done an excellent job representing clients in a professional manner. Respondent states that if a problem arises, Respondent is always available to assist and advise the broker. Respondent states that Complainants contacted Respondent about the problems with the roof and garage door. Respondent states that, after reviewing the file and speaking with the broker, it appears that the broker had done everything to look out for the best interest of Complainants. Respondent states that the broker voiced concerns about the shared driveway, and the lawsuit came into play three (3) months after the property closed. Respondent states that a lawsuit did not show up in the title work, and the broker would have no way of knowing about it. Respondent further states that the broker recommended a home inspection, and Complainants asked for a recommendation, and the broker discussed several recommendations, including the inspector chosen, who Respondent states has been fully accredited for about twenty (20) years and has always done a good job. Respondent states that it is standard practice that the home inspector does not climb or walk on the roof, which is listed in the home inspection report. Respondent further states that the garage door was noted for needing repair in the report, and the broker gave Complainants the number of a repairman. Respondent further states that home warranties do not cover existing repairs before time of purchase. Respondent further states that Complainants requested that the broker pay Complainants \$550, but the broker refused to do so because the broker had done nothing wrong. Respondent further states that this purchase was "as is" and all disclaimers and disclosures were attached.

**Recommendation: Dismiss.**

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

**Commissioner Hills made a motion to accept the recommendation of legal counsel which is to dismiss; motion seconded by Commissioner DiChiara; motion passes unanimously.**

**41. 2015002511**

**Opened: 2/18/15**

**First License Obtained: 5/23/75**

**License Expiration: 9/30/16**

**E&O Expiration: 1/1/17**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainants purchased a property and Respondent (principal broker) represented sellers. This is regarding the same circumstances in previous case number 2015002461. Complainants allege that Respondent knew of the pending litigation regarding the shared driveway but neglected to disclose it prior to the sale. Complainants state that Respondent stated that Respondent knew about the pending lawsuit but did not think it would affect the sale of the property and stated Respondent forgot to tell Complainants.

Respondent answered through an attorney stating there is pending civil litigation. Respondent states that Respondent heard in passing from an owner of a neighboring property that there might be a potential suit or lien issue affecting the property. Respondent states that Respondent was not presented with further information or proof of the nuisance litigation which was pending at the time against the previous owner. Respondent requests that the Commission withhold its decision until the civil litigation has been concluded, at which time, Respondent would like the opportunity to provide a more detailed response.

Complainants submitted additional information stating that Respondent did more than hear of the pending litigation in passing because the neighbor was a personal acquaintance and real estate agent, who had firsthand knowledge of the litigation.

It is likely that further information will be uncovered through the course of the litigation which will be pertinent to the Commission's determination regarding this matter.

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

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

**Commissioner DiChiara made a motion to accept the recommendation of legal counsel which is a Consent Order for litigation monitoring; motion seconded by Commissioner McMullen; motion passes unanimously.**

**42. 2015002651**

**Opened: 2/6/15**

**First License Obtained: 9/3/04**

**License Expiration: 11/8/16**

**E&O Expiration: 1/1/17**

**Type of License: Broker**

**History: No Prior Disciplinary Action**

**43. 2015002652**

**Opened: 2/11/15**

**First License Obtained: 10/21/03**

**License Expiration: 12/12/16**

**E&O Expiration: 1/1/17**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainant states that Complainant worked as a personal assistant for Respondents' firm stating that Complainant was given access to the local association's realtor site in order to upload homes for sale and set showing appointments for Respondent 1. Complainant further states that Complainant was quickly promoted to sales assistant which included all property management aspects of the business. Complainant further states that Complainant was filing as 1099 self-



employed. Complainant further states that Complainant moved in an apartment that was managed by the firm but was terminated from employment on or about June 9, 2014. Complainant further states that Complainant requested to pay rent late on July 1 and was told that Complainant would have until the 15<sup>th</sup>. Complainant also states that Complainant reported a leak. Complainant was notified on July 2 that the property management was changing and the owner wanted the firm to file evictions by the 10<sup>th</sup>. Complainant states that Complainant attempted to pay rent on July 14 but was advised by Respondent 1 that Complainant should not bother paying without the late fee. Complainant alleges that many tenants paid rent late and did not pay late fees and eviction proceedings were not filed against them. Complainant further states that the late fee is \$100, but the law states that the most that can be charged is 10% of rent, and Complainant's rent was \$500 a month. Complainant further states that at the eviction proceeding, the judge dismissed the case because the firm was no longer the property management company. Complainant further states that Complainant's \$250 deposit was withheld by the firm and not transferred to the new property management company. Complainant states that the firm told the new management company that the \$250 was used for non-payment of rent and/or to file evictions, and Complainant states that Complainant was not notified that the deposit would be withheld. Complainant further states that when Complainant was an employee, Complainant witnessed both Respondents charging illegal late fees to tenants, eviction fees without filing for evictions, \$125 more than needed in attorney's fees, and missed service call fees.

A joint response was filed stating that Complainant is a disgruntled former employee of the firm who was employed from October 8, 2013 through June 4, 2014. Respondents state Complainant was terminated for gross misconduct, extreme insubordination, and other issues. Respondents further stated that on July 11, 2014, the outside dropbox was burglarized, and Respondents were told that the person who burglarized the firm had knowledge of the business. Respondents state that eviction was filed on Complainant on July 14, 2014 for July's rent. Respondents state that this filing was not for failure to pay late fees but for failure to pay rent. Respondents state that eviction proceedings are handled on a case by case basis, stating that most evictions are filed by the 7<sup>th</sup>, but Respondents filed against Complainant on the 14<sup>th</sup>. Respondents state that this was allowed to give Complainant extra time to pay as requested. Respondents state that when property management companies were switched, Complainant was two (2) months behind on rent. Respondents further state that Complainant began working for the new property management company, and the principal broker of that firm sent a letter inquiring about Complainant's deposit. Respondents state that the \$250 was forfeited once eviction was filed, per the terms of the lease agreement. Respondents state that they use deposits to offset the eviction expense for the owners, as many property managers do. Respondents state that eviction was filed per the owner's request. Respondents state that they could not proceed with eviction because they were no longer the property management company, and the new company chose not to move forward with eviction. Respondents further state that after five (5) months of working for the new company, Complainant was terminated. Respondents further state that there is no deposit listed on the lease because Complainant drafted the lease and, at the time of signing, Respondents did not require an up-front deposit from Complainant. Respondents deducted two payments from Complainant's paycheck in order to cover a reduced deposit in the amount of \$250. Respondents deny charging more than what the attorney charges for evictions. Respondents also acknowledge that they charge a \$65 services fee for missed appointments, which is referenced in the lease. Respondents state that Complainant has made numerous attempts to tarnish the firm name, stating that the allegations are unfounded.

**Recommendation: Dismiss.**

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

**Commissioner McMullen made a motion to accept the recommendation of legal counsel which is to dismiss; motion seconded by Commissioner Hills; motion passes unanimously.**

**44. 2015002641**

**Opened: 2/5/15**

**First License Obtained: 12/8/04**

**License Expiration: 10/28/16**

**E&O Expiration: 1/1/17**

**Type of License: Principal Broker**

**History: 2010010391 – E&O Citation**

**2015005611 – Under review by legal**

**45. 2015002642**

**Opened: 2/11/15**

**First License Obtained: 6/7/94**

**License Expiration: 11/26/16**

**E&O Expiration: 1/1/17**

**Type of License: Principal Broker**

**History: 2015005621 – Under review by legal**

Complainant was the buyer of a property, and Respondent 1 was the listing agent. Respondent 1 was affiliated with a firm which is Respondent 2's current firm from on or about December 1, 2008 through on or about March 26, 2015 (Respondent 1 is now principal broker of a different firm). Respondent 2 has been with the firm since on or about July 29, 2013 and became principal broker of the firm on or about March 11, 2014. Complainant states that the home was listed and advertised as being on city sewer when Complainant purchased the property on November 27, 2012, but Complainant alleges that, on March 20, 2014, a septic tank was discovered when sewer waste erupted from the front lawn. Respondent further states that the home inspection and appraisal reports both stated the property was on city sewer. Complainant attached a copy of the listing, an excerpt of the home inspection report, and an excerpt of the appraisal report. Complainant also attached copies of invoices for repair.

Respondent 1 submitted a response stating that this situation is unfortunate and there are several relevant factors including that the property was clearly marketed and sold "As Is;" the sellers of the property were heirs to an estate and never occupied the property; the owners who lived in the property were deceased; all proper forms and disclosures were presented to and signed by all parties; the disclaimer notices specifically states that the buyer should have a professional check access and/or connection to public sewer and/or the condition of any septic system(s); the Complainant was represented by their agent of choice; the MLS clearly states that the information is believed to be accurate but not guaranteed; Complainant and agent organized and conducted a home inspection and appraisal; and the property report referencing the tax record showed no information regarding the sewer and/or septic information. Respondent 1 spoke to Complainant and Respondent 1 advised that Complainant's agent should contact Respondent 1. Respondent 1 stated that Complainant's agent did not have a resolution, and Complainant contacted Respondent 1 again demanding reimbursement for charges. Respondent 1 apologized but stated Respondent 1 was not responsible for the misfortune. Respondent 1 further states that Respondent 1 did not recommend or hire any of the professionals used. Respondent 1 denies intentionally misleading Complainant.

Respondent 2 submitted a response stating that Respondent became principal broker of the firm on February 28, 2014 and was not principal broker or even affiliated with the firm at the time of the November 27, 2012 closing. However, Respondent 2 reviewed the file to respond to the complaint. Respondent 2 states that Respondent 2 spoke with Complainant on more than one occasion and encouraged Complainant to reach out to Complainant's agent, whose role was to represent Complainant's best interest. Respondent 2 further states that there is a disclaimer on the MLS listing that states that the information is believed to be accurate but is not guaranteed. Respondent 2 believes that Respondent 1 took every precaution to list the property correctly. Respondent 2 further states that the listing was part of an estate sale, that the heirs had never occupied the property, and that they listed the property "As Is." Respondent 2 submitted copies of the transaction file, including the tax record which did not show that the property was on a septic system. Respondent 2 states that Respondent 1 did not intentionally mislead Complainant, and Respondent 1 is an exemplary agent. Respondent 2 further states that it is terribly unfortunate that the home inspector hired by Complainant did not discover this discrepancy.

**Recommendation: Dismiss both complaints.**

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

**Commissioner McMullen made a motion to accept the recommendation of legal counsel which is to dismiss both complaints; motion seconded by Commissioner DiChiara; motion passes unanimously.**

**46. 2015005611**

**Opened: 5/29/15**

**First License Obtained: 12/8/04**

**License Expiration: 10/28/19**

**E&O Expiration: 1/1/17**

**Type of License: Principal Broker**

**History: 2010010391 – E&O citation**

**2015002641 – Under review by legal**

**47. 2015005621**

**Opened: 5/29/15**

**First License Obtained: 6/7/94**

**License Expiration: 11/26/16**

**E&O Expiration: 1/1/17**

**Type of License: Principal Broker**

**History: 2015002642 – Under review by legal**

These are duplicate complaints filed against the same Respondents as referenced above in complaints 2015002641 and 2015002642 by the same Complainant regarding the same transaction and were opened in error by TREC staff.

**Recommendation: Dismiss both complaints as duplicates (administrative error).**

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

**Commissioner DiChiara made a motion to accept the recommendation of legal counsel which is to dismiss both complaints; motion seconded by Commissioner McMullen; motion passes unanimously.**

## CONSENT ORDER TRACKING

Ms. Cropp asked if the Commissioners had any questions about the consent order log. **The Commissioners did not have any questions.**

## LEGISLATIVE UPDATES

Assistant General Counsel Julie Cropp provided the Commission with a legislative update, informing the Commission that there had been no further updates since the May 2015 meeting. Ms. Cropp reiterated that Public Chapter No. 61 was signed by the Governor relating to the minimum length of continuing education courses.

Assistant General Counsel Cropp discussed the legislation requests that she prepared and confirmed that the Commission did not have any opposition to the requests.

**Commissioners agreed that it would be fine to hear more than one case on the same day with the stipulation that if the first hearing took all day the rest of the cases would be continued.**

## INFORMAL APPLICANT APPEARANCE

APPLICANT: JUANTISA K. PETWAY

PRINCIPAL BROKER: GEORGE E. WILLIS #2615

FIRM: WILLIS REALTY

Principal Broker: George E. Willis #2615 is the PB of Willis Realty located in Nashville, TN. Mr. Willis was first licensed as an affiliate broker in 1993 and was first licensed as a broker in 1995. Mr. Willis became the PB of Willis Realty as of 1995. The TREC records reflect that the firm currently has 2 affiliate brokers and 0 brokers. Mr. Willis has had no disciplinary action taken against him by the Commission.

Applicant: Juantisa K. Petway filed an Application for Decision Regarding Prior Criminal Convictions. If the Commission approves her to move forward in the licensure process, Ms. Petway intends to complete the requirements for affiliate broker licensure. Ms. Petway has revealed she was convicted of a Felony and a Misdemeanor in her Application.

**After discussion, Commissioner Alexander made a motion for Applicant Ms. Petway to move forward with the licensure process; motion seconded by Commissioner DiChiara; motion passes unanimously.**

## INFORMAL APPLICANT APPEARANCE

APPLICANT: JEAN CHAMBERS

PRINCIPAL BROKER: CHARLES LEWIS MCGUIRE #315411

FIRM: DREAM TEAM MURFREESBORO LLC d/b/a KELLER WILLIAMS #258449

Principal Broker: Charles Lewis McGuire #315411 is the PB of Dream Team Murfreesboro LLC d/b/a Keller Williams # 258449 located in Murfreesboro, TN. Mr. McGuire #315411 got his broker license in Tennessee 11/7/1987. At that time, reciprocity was still a recognized process in TN and Mr. McGuire obtained his broker license pursuant to the former reciprocity agreement with Kentucky. Since obtaining his TN broker license, Mr. McGuire has been affiliated with several firms as a principal broker and as a broker. Mr. McGuire #315411 became the PB of Dream Team Murfreesboro LLC d/b/a Keller Williams # 258449 as of 11/20/2012. TREC records reflect that the firm currently has 120 affiliate brokers, 6 brokers and 1 PB. Mr. McGuire #315411 has had no complaints filed against him by the Commission.

Applicant: Jean Chambers has submitted both an Application for licensure and an Application for Decision Regarding Prior Criminal Convictions. Ms. Chambers has passed both the national and state exams and if approved by the Commission to move forward in the licensure process, Ms. Chambers plans to complete the licensure process. Ms. Chambers has revealed the following in her Application for Decision: she was convicted of 2 Felonies.

**After discussion, Commissioner DiChiara made a motion for Applicant Ms. Chamber to move forward with the licensure process; motion seconded by Commissioner Collins; motion passes unanimously.**

**Chairman Griess adjourned the meeting on Wednesday,  
June 3, 2015 at 3:12 p.m.**

STATE OF TENNESSEE

DEPARTMENT OF COMMERCE AND INSURANCE

TENNESSEE REAL ESTATE COMMISSION

TENNESSEE REAL ESTATE COMMISSION MINUTES

**June 4, 2015**

The Tennessee Real Estate Commission convened on Thursday, June 3, 2015 at 9:00 a.m. in Meeting Room 1B of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, 37243. The following Commission Members were present: Chairman John Griess, Vice-Chairman Janet DiChiara, Commissioner Gary Blume, Commissioner Grover Collins, Commissioner Diane Hills, Commissioner Wendell Alexander, Commissioner Marcia Franks and Commissioner Austin McMullen. Others present:

Executive Director Eve Maxwell, Education Director E. Ross White, Assistant General Counsel Julie Cropp, Assistant General Counsel Adrian Chick, Judge Anthony Abgent, Paralegal Jennaca Smith and Administrative Secretary Kimberly Smith.

**9:00A.M. CST CALL TO ORDER**

**Chairman Griess made a motion to appoint Vice Chairman DiChiara, Commissioner Hills, Commissioner Franks, and Executive Director Eve Maxwell to attend the ARELLO Annual Conference September 9<sup>th</sup>- 13<sup>th</sup> 2015; motion seconded by Commissioner McMullen; motion passes unanimously.**

**FORMAL HEARING**

The formal hearing on TREC v Colleen M. Chapman 12.18-130007A convened at 9:12am TREC Meeting June 4, 2015 before Judge Anthony Abgent.

**Commissioner McMullen made a motion to proceed with hearing against Ms. Chapman as default; motion seconded by Commissioner Franks; motion passes unanimously.**

**Commissioner McMullen made a motion to revoke Ms. Chapman's real estate license, Civil Penalty of \$4,000.00, and impose all investigation and hearing cost; motion seconded by Commissioner DiChiara; motion passed unanimously.**

**Commissioner McMullen made a motion to adopt the following policy statement: As part of holding real estate license in State of Tennessee, an individual must bear a good reputation for honesty, trustworthiness, integrity, and competency to transact real estate business. As established by the criminal conduct and convictions in this case, Ms. Chapman does not have this good reputation. As the Court of Appeals stated: "It is the duty of this Commission to rid the ranks of licensees of those who have committed criminal acts that establish dishonesty as have occurred here," and that forms the basis for our revocation and our imposition the civil penalty in this case; motion seconded by Commissioner Franks; motion passes unanimously.**

**Commissioner Blume made a motion to keep the same officers: Chairman Griess and Vice Chairman DiChiara in place for another term; motion seconded by Commissioner Collins; motion passes unanimously.**

**Chairman Griess adjourned the meeting on Thursday,**

**June 4, 2015 at 10:20 a.m.**