



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

**August 5, 2015**

The Tennessee Real Estate Commission convened on Wednesday, August 5, 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 Diane Hills, Commissioner Austin McMullen, Commissioner Wendell Alexander and Commissioner Marcia Franks. Others present: Executive Director Eve Maxwell, Education Director E. Ross White, Assistant General Counsel Mallorie Kerby, Paralegal Jennaca Smith 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 Thursday, July 30, 2015. Also, this meeting has been notice on the tn.gov website since Friday, July 31, 2015.

**Commissioner DiChiara made a motion to adopt the agenda; motion seconded by Commissioner Franks; Commissioner Blume made a motion to amend the agenda to add a discussion of Policy Statement before Executive Director Maxwell report; as amended motion passes unanimously.**

**Commissioner DiChiara made a motion to approve the July minutes; motion seconded by Commissioner Hills; Commissioner Alexander abstains from vote; motion passes.**

**Discussion of Policy Statement**

Commissioner Blume discussed the addition of a Policy Statement reflecting that a real estate license can be considered to be in an active status when a search on [verify.TN.gov](http://verify.TN.gov) reflects the license as active.



STATE OF TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE  
TENNESSEE REAL ESTATE COMMISSION  
500 JAMES ROBERTSON PARKWAY  
4ST Floor  
NASHVILLE, TENNESSEE 37243-1151  
(615) 741-2273 or (800) 342-4031

**COMMISSION POLICY STATEMENT  
NUMBER 2015-CPS-001  
EFFECTIVE DATE: August 5, 2015**

**EFFECTIVE DATE OF NEW LICENSE**

The Tennessee Real Estate Commission adopted the following policy on the effective date of new licenses.

- (1) A licensee may participate in the acts regulated by the Tennessee Real Estate Broker License Act of 1973 so long as the license shows “active” on <http://verify.tn.gov/>, even if the licensee does not yet have possession of the paper license.

ADOPTED BY THE COMMISSION AUGUST 5, 2015.



Chairman John Griess

**Commissioner DiChiara made a motion that license is active from the time it is posted as active on [verify.tn.gov](http://verify.tn.gov); motion seconded by Commissioner Franks; motion passes unanimously.**

### **Discussion of New Rules**

**PROPOSED Rules  
(Effective Date: 10/18/2015) (Excerpts)  
Chapter 1260-01  
License  
New Rules**

**1260-01-.18 Duplicate or Confusingly Similar Firm Names.**

(1) In order to protect the public from confusion regarding licensed real estate firms, the Tennessee Real Estate Commission reserves the right to refuse to issue a new firm license in a name that is the same or confusingly similar to another firm already issued.

(2) The Commission staff shall review all applications for a firm name to determine whether the name is the same or confusingly similar to the name of another firm licensed with the Commission. If a name is rejected, the applicant will be notified. If the applicant does not agree with the decision, he or she may appeal to the Executive Director. Upon notification of an appeal, the Executive Director will either approve or reject the name and notify the applicant.

(3) The applicant may then appeal, in writing, the Executive Director's decision to the Commission. The Commission's decision will be final.

(4) The Commission expects that the applicant has researched any legal restriction regarding the use of a proposed firm name. The Commission will not attempt to determine ownership, trademark, copyright, or the validity of any other legal means to protect a name.

**Chapter 1260-02 Rules of Conduct  
Amendments**

**Rule 1260-02-.12 Advertising** is amended by deleting the text of the rule in its entirety and substituting, instead, the following language so that, as amended, the rule shall read:

(1) All advertising, regardless of its nature and the medium in which it appears, which promotes either a licensee or the sale or lease of real property, shall conform to the requirements of this rule. The term "advertising," for purposes of this rule, in addition to traditional print, radio, and television advertising, also includes, but is not limited to, sources of communication available to the public such as signs, flyers, letterheads, e-mail signatures, websites, social media communications, and video or audio recordings transmitted through internet or broadcast streaming. Advertising does not include promotional materials that advertise a licensee such as hats, pens, notepads, t-shirts, name tags, business cards, and the sponsorship of charitable and community events.

(2) For purposes of this rule, the term "firm name" shall mean either of the following: (a) The entire name of the real estate firm as licensed with the Commission; or (b) The d/b/a name, if applicable, of the real estate firm as licensed with the Commission.

(3) General Principles

(a) No licensee shall advertise to sell, purchase, exchange, rent, or lease property in a manner indicating that the licensee is not engaged in the real estate business.

(b) All advertising shall be under the direct supervision of the principal broker and shall list the firm name and the firm telephone number as listed on file with the Commission. With regard to the size and visibility of the firm name and firm telephone number, all of the following shall apply:

1. The firm name must be the most prominent name featured within the advertising, whether it be by print or other media; and

2. The firm's telephone number shall be the same size or larger than the telephone number of any individual licensee or group of licensees.

(c) Any advertising which refers to an individual licensee must list that individual licensee's name as licensed with the Commission.

(d) No licensee shall post a sign in any location advertising property for sale, purchase, exchange, rent or lease, without written authorization from the owner of the advertised property or the owner's agent.

(e) No licensee shall advertise property listed by another licensee without written authorization from the property owner. Written authorization must be evidenced by a statement on the listing agreement or any other written statement signed by the owner.

(f) No licensee shall advertise in a false, misleading, or deceptive manner. False, misleading, and/or deceptive advertising includes, but is not limited to, the following:

1. Any licensee advertising that includes only the franchise name without including the firm name;

2. Licensees who hold themselves out as a team, group, or similar entity within a firm who advertise themselves utilizing terms such as "Real Estate," "Real Estate Brokerage," "Realty," "Company," "Corporation," "LLC," "Corp.," "Inc.," "Associates," or other similar terms that would lead the public to believe that those licensees are offering real estate brokerage services independent of the firm and principal broker; or

3. Any webpage that contains a link to an unlicensed entity's website where said entity is engaged or appears to be engaged in activities which require licensure by the Commission.

(4) Advertising for Franchise or Cooperative Advertising Groups

(a) Any licensee using a franchise trade name or advertising as a member of a cooperative group shall

clearly and unmistakably indicate in the advertisement his name, firm name and firm telephone number { all as registered with the Tennessee Real Estate Commission) adjacent to any specific properties advertised for sale or lease in any media.

(b) Any licensee using a franchise trade name or advertising as a member of a cooperative group, when advertising other than specific properties for sale or lease, shall cause the following legend to appear in the advertisement in a manner reasonably calculated to attract the attention of the public: "Each [Franchise Trade Name or Cooperative Group] Office is Independently Owned and Operated."

(c) Any licensee using a franchise trade name on business cards, contracts, or other documents relating to real estate transaction shall clearly and unmistakably indicate thereon:

1. his name, firm name, and firm telephone number (all as registered with the Commission); and

2. the fact that his office is independently owned and operated.

(5) Internet Advertising: in addition to all other advertising guidelines within this rule, the following requirements shall also apply with respect to internet advertising by licensees, including, but not limited to, social media:

(a) The firm name and the firm telephone number listed on file with the Commission must conspicuously appear on each page of the website.

(b) Each page of a website which displays listings from an outside database of available properties must include a statement that some or all of the listings may not belong to the firm whose website is being visited.

(c) Listing information must be kept current and accurate. This requirement shall apply to "First

Generation" advertising as it is placed by the licensee and does not refer to such advertising that

may be syndicated or aggregated advertising of the original by third parties outside of the licensee's control and ability to monitor

(6) Guarantees, Claims and Offers

(a) Unsubstantiated selling claims and misleading statements or inferences are strictly prohibited.

(b) Any offer, guaranty, warranty or the like, made to induce an individual to enter into an agency relationship or contract, must be made in writing and must disclose all pertinent details on the face of such offer or advertisement.

Authority: T.C.A §§ 62-13-203, 62-13-301, 62-13-310(b), and 62-13-312.

**Chapter 1260-02  
Rules of Conduct  
New Rules**

- (1) Licensees who hold themselves out as a team, group, or similar entity within a firm must be affiliated with the same licensed firm and shall not establish a physical location for said team, group, or similar entity within a firm that is separate from the physical location of record of the firm with which they are affiliated.
  - (2) No licensees who hold themselves out as a team, group, or similar entity within a firm shall receive compensation from anyone other than their principal broker for the performance of any acts specified in T.C.A. Title 62, Chapter 13.
  - (3) The principal broker shall not delegate his or her supervisory responsibilities to any licensees who hold themselves out as a team, group, or similar entity within a firm, as the principal broker remains ultimately responsible for oversight of all licensees within the principal broker's firm.
  - (4) No licensees who hold themselves out as a team, group, or similar entity within a firm shall represent themselves as a separate entity from the licensed firm.
  - (5) No licensees who hold themselves out as a team, group, or similar entity within a firm shall designate members as designated firm agents, as this remains a responsibility of the licensed firm's principal broker.
- Authority: T.C.A. §§ 62-13-203 and 62-13-312.

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

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

**LICENSING STATISTICS**

Ms. Maxwell presented licensing statistics for the month of July 2015. The statistics presented included tables which compared several years' number of licensees, firms, exams taken, applications approved and renewal percentages. As of July 30, 2015, there were 25,640 active licensees, 1,097 inactive licensees, retired licensees 6,404, broker release 396, and 495 suspended. There were 483 exams administered in month of July 2015. The total of exams taken year to date is 3,594. There were 382 approved applications in July 2015. Year to date total of approved applications 2,681. TREC total number of individual licensees in active, inactive, retired, suspended, and broker release is 34,032. There were 3,771 active firms and 148 retired firms. Grand total of firms and retired firms 3,919.

**TREC EDUCATIONAL SEMINAL UPDATE**

9 Seminars have been given with a total of 396 attendees  
Upcoming Educational Seminar in September will be in East TN; the new rules will be incorporated into the Seminar.

## 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 **7/29/2015**, there were **440 licensees who remain suspended for E&O**. **242 are Affiliate Brokers, 26 are Brokers, 44 are Principle Brokers, and 128 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

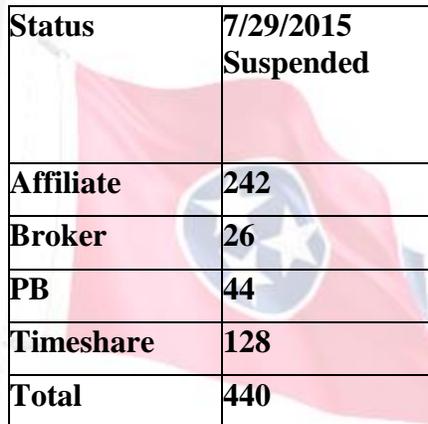
Reissuance of a Revoked License: Upon revocation of a license pursuant to T.C.A. § 62-13-112 for failure to maintain E&O insurance, any individual seeking reissuance of such license shall:

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

**July 29, 2015**

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

(7/30/2015)



Status	7/29/2015 Suspended
Affiliate	242
Broker	26
PB	44
Timeshare	128
Total	440

**INFORMAL APPLICANT APPEARANCE**

APPLICANT: JOHN ALLEN RUTHERFORD #333317

PRINCIPAL BROKER: CHARLES L. YATES #259954

FIRM: OLCC TENNESSEE, INC #261077

Principal Broker: Charles L. Yates #259954 is the PB of OLCC Tennessee, Inc. #261077 a firm located in Gatlinburg, TN. engaged in the sale of timeshare interests. Mr. Yates was first licensed as a broker in Tennessee on 2/28/1996 through reciprocity with North Carolina. Since his initial licensure in TN, Mr. Yates has been continuously licensed, acting as a broker or a principal broker at a number of firms engaged in the sale of timeshare interests. The records indicate that he

became PB of OLCC Tennessee, Inc on 9/29/2009, the date the firm was initially licensed. The TREC records reflect that OLCC Tennessee, Inc currently has 51 timeshare salespersons, 5 affiliate brokers, 1 broker and 1 PB. Mr. Yates has had no disciplinary action taken against him by the Commission.

Applicant: John Allen Rutherford held a TN acquisition agent license #112 from 5/12/2003 until its expiration on 12/31/2010. Mr. Rutherford submitted an Application for a Timeshare salesperson license. Mr. Rutherford has taken and passed the timeshare salesperson exam and has submitted his application for licensure. Mr. Rutherford revealed the following:  
Convictions for two felonies; terms of his conviction have been met.

**Commissioner DiChiara made a motion for Applicant, John Allen Rutherford, to move forward with the licensure process; motion seconded by Commissioner Blume; motion passes unanimously.**

### **INFORMAL APPLICANT APPEARANCE**

APPLICANT: REGINALD KEITH HARRIS #284382

PRINCIPAL BROKER: CHERYL B. HARRIS #256902

FIRM: HARRIS REALTY SERVICE #257171

Applicant: Reginald Harris #284382 has requested that he be approved to retest and reapply for licensure. On October 17, 2013, Reginald Keith Harris was notified by certified mail that his real estate broker license #284382 had been revoked pursuant to TCA 62-13-312(1). This provision requires that within 60 days of a guilty plea or a conviction for an offense enumerated in the Broker Act, that the licensee provide notification of the conviction/plea, provide certified copies of the conviction/plea and make a written request for a hearing within 60 days of such plea or conviction. Failure to comply with the provisions of TCA 62-13-312(1) shall result in automatic revocation of the license. Mr. Harris did not notify the Commission of his conviction, nor did he make a written request for a hearing. In accordance with the terms of TCA 62-13-312(1), the license of Mr. Harris was revoked.

Applicant: Reginald Harris has submitted an Application for licensure with plans to become the Principal Broker of Harris Realty Services. If approved by the Commission to move forward in the licensure process, Mr. Harris intends to retest and reapply for a real estate broker license.

Mr. Harris has revealed the following in his Application: He was convicted of a felony; terms of conviction have been met. He received an early termination of probation supervision on June 4, 2013 and was given a Certificate of Restoration of Voting Rights upon release from probation.

**After discussion concerning whether Mr. Harris should be approved to test for broker or should only be approved to test for affiliate broker, Commissioner Alexander made a motion for Applicant, Reginald Harris, to move forward with the licensure process as an Affiliate Broker license; motion seconded by Commissioner Hills; motion passes unanimously.**

### **Complaint Report for July 31, 2015**

Open	160
Formal Complaints	41
Formal Hearing	7
Consent Order Not Signed	14
License Suspended for failure to comply	2
License Suspended due to TREC Meeting attendance	3

### **Monies Collected 7/1/15 – 7/30/15**

Consent Orders Fees \$5,920.00; Agreed Citation \$1,100.00; Reinstatement Fees \$26,590.00, E&O Penalty \$700.00 for a Total of \$34,310.00.

### **ARELLO UPDATE**

Executive Director Maxwell reported that the justification for ARELLO Conference on Sept 9<sup>th</sup>-13<sup>th</sup>, 2015 and the Commissioner College was approved. Commissioners that will be attending are Commissioner DiChiara, Commissioner Franks, and Commissioner Hills. Executive Director Maxwell will not be attending ARELLO this year due to the roll out of new CORE computer system during the same time of the meeting.

### **Early Bird Renewal Update**

Renewals sent out to licensees eligible for early renewal from May- November 2015; only 23% of early bird renewals have renewed.

### **Fingerprints Updates**

Ms. Maxwell presented an update on the fingerprint reports required as of 1/1/2014 pursuant to TCA 62-13-303(1); since 1-1-2015 there have been 2,584 individuals fingerprinted, 485 had an indication, and 2,052 had no indication. In the month of July 2015 there were 73 indications, 296 no indication, 6 pending, 0 no reads Total 375

## **BUDGET**

Ms. Maxwell had previously sent a copy of the budget to the Commissioners for their review. The Commissioners asked several questions regarding the budget process.

## **EDUCATION REPORT**

Mr. White, the Education Director, presented the educational courses A1 – A32 set forth on the August, 2015 Education Report for Commission Approval.

**Commissioner DiChiara made a motion to approve A1 – 32 courses; motion seconded by Commissioner Franks; Commissioner McMullen abstains from A1 vote; motion carries.**

## **Instructors Approvals**

Education Director, Mr. White presented instructors some are previously approved and some need approval; they are marked in red A1 – A32 to be approved as Instructors.

**Commissioner DiChiara made a motion to approve all instructors, since Education Director White recommended for approval A1 - A32; motion seconded by Commissioner Franks; Commissioner McMullen abstains from A1 vote; motion carries.**

## **Consent Orders**

The Commissioners had no questions about the consent orders report.

## **INFORMAL APPLICANT APPEARANCE**

APPLICANT: STEPHANIE JOANN TELLEZ #333270

PRINCIPAL BROKER: JONATHAN HEBER HARMON #320381

FIRM: ANDREWS & ASSOCIATES, INC. DBA WEICHERT REALTORS  
#262813

**Principal Broker:** Jonathan Heber Harmon #320381 is the PB of Andrews & Associates, Inc. d/b/a Weichert Realtors #262813. The firm is located in Murfreesboro, TN. Mr. Harmon was first licensed as an affiliate broker on 9/9/2009 and was first licensed as a broker on 3/8/2013. The records indicate that he became PB of Andrews & Associates, Inc. d/b/a Weichert Realtors #262813 on 9/5/2014, when the firm was first issued a license.

The TREC records reflect that Andrews & Associates, Inc. d/b/a Weichert Realtors currently has 11 affiliate brokers, 0 brokers and 1PB.

Mr. Harmon has had no disciplinary action taken against him by the Commission.

Applicant: Stephanie Joann Tellez submitted an Application for Decision Regarding Criminal Convictions and an Application for licensure. She has taken and passed the real estate exams and has completed the 90 hours of prelicensing courses. Ms. Tellez revealed the following:

She was convicted of a Misdemeanor and felony; terms of her convictions have been met.

**Commissioner DiChiara made a motion for Applicant, Stephanie Joann Tellez, to move forward with the licensure process; motion seconded by Commissioner Franks; motion passes unanimously.**

### **CONSENT ORDER TRACKING**

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

### **LEGAL REPORT, MALLORIE KERBY, ASSISTANT GENERAL COUNSEL**

At the beginning of the text of each legal report (complaint report) the following text is inserted and Ms. Kerby 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: MALLORIE KERBY, Assistant General Counsel

SUBJECT: AUGUST LEGAL REPORT

DATE: August 5, 2015

---

**\*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. 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 an affiliate broker in complaint 2015000211 (hereinafter "affiliate broker"). The following was presented at the June 2015 meeting in regards to the affiliate broker:

*Complainant states that Respondent (affiliate broker), acting as seller in this transaction, and an 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.*

The complainant against the affiliate broker referenced above is still in litigation monitoring because there is still a pending civil suit in circuit court against the affiliate broker. That complaint will be represented upon the conclusion of litigation. The following was presented at the June 2015 meeting in regards to this respondent, principal broker (2015000241):

*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.**

Since the complaint was first presented, Complainant has agreed to dismiss Respondent from the civil lawsuit pending in circuit court with prejudice. It does not appear that Respondent had any more than casual knowledge that the affiliate broker was selling his own property. It is legal counsel's opinion that Respondent had no responsibility under TREC statutes and rules to supervise the affiliate broker in the affiliate broker's sale of his own property while using a listing agent affiliated with a different firm beyond instructing the affiliate broker to disclose his licensee status. This obligation was fulfilled by the affiliate broker.

**Recommendation: Dismiss**

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

**Commissioner Franks made a motion to accept recommendation of legal counsel to dismiss; motion seconded by Commissioner DiChiara; motion passes unanimously.**

**2. 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**

The following was presented at the June 2015 meeting in regards to the same affiliate broker/seller referenced in the above complaint. This respondent is the affiliate broker/seller's agent in the transaction:

*Complainant states that this Respondent and the Respondent in complaint 2015000211 (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.**

Since the complaint was first presented, Complainant has voluntarily dismissed Respondent from the civil lawsuit pending in circuit court with prejudice. Complainant has provided nothing to corroborate Complainant's allegations against Respondent.

**Recommendation: Dismiss**

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

**Commissioner McMullen made a motion to accept recommendation of legal counsel to dismiss; motion seconded by Commissioner Franks; motion passes unanimously.**

**3. 2015007811**

**Opened: 3/25/2015**

**First License Obtained: 4/29/02**

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

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

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainant was filed against Respondent (Principal Broker) who was representing the seller of a historic home owned by Freddie Mac. Complainant states that Respondent rushed Complainant for preapproval and tried to get Complainant to use a friend of Respondent as the mortgage lender. Complainant states Respondent did not want Complainants to use a VA loan because it would take too long. Complainant states that Respondent called Complainant while Complainant was working on getting preapproval and gave Complainant a 3 day deadline to submit an offer because the home was going to be auctioned. Complainant was not able to meet that deadline and assumed the house had been auctioned. Complainant saw that the house was reposted after 30 days and followed up with another realtor. Complainant states that their new realtor contacted Respondent and Respondent told the new realtor that there had been an offer on the house but the buyers backed out on the day of closing. Complainant states that Complainant then made another offer and received preapproval. Complainant states that Respondent stopped responding to Complainant's calls and emails. Complainant states the house went into pending status and sold 90 days later. Complainant states that Respondent discriminated against Complainant based on age and military status and that they were not given time or consideration. Complainant provided no supporting documentation.

Respondent states that Complainant called Respondent's office on October 3, 2014 to obtain information on the property. Respondent's states that Respondent told Complainant at this time that Respondent represented the seller on the listing.

Respondent states Respondent provided Complainant with the tax records for the property as well as an information sheet with the restrictions and details for homes located within the Historic District and told Complainant to contact Respondent again if Complainant had questions. On October, 17, 2014, Respondent was contacted by the seller, Freddie Mac, who told Respondent that the listing was considered "aged" and would be put on the next auction list. Respondent told seller that there was someone looking at the house but the financing was still in the works. Seller advised Respondent to let seller know if the Complainant followed through with the home as seller would prefer to sell the property prior to the auction deadline. On October 23, 2014, Respondent emailed Complainant to tell Complainant that the seller reduced the price. Complainant responded that Complainant was still interested in the property and had requested a VA certificate of eligibility. Complainant also stated that Complainant had a VA approved inspector look at the property, unbeknownst to Respondent, that had concerns over the location of the septic tank and, therefore, the VA would not approve a loan. Complainant stated that Complainant was looking for other lenders and that Complainant's credit score was presenting issues. Respondent immediately inquired as to the nature of the supposed problem with the septic tank and Complainant stated that the inspector thought it was located underneath the addition to the house. Respondent told Complainant that the septic tank had been inspected and that the location could be determined. In addition, Respondent told Complainant that the seller may be willing to make repairs required by the VA lender, depending upon the cost. The same day, Complainant told Respondent that Complainant was speaking with a lender and would pass that information along to the loan officer. The next day, Respondent emailed Complainant to advise that the septic tank was located approximately 10-15 feet from the gas meter in the front yard, not under the addition, according to the contractor. Complainant responded that Complainant needed to get additional pictures of the interior of the home for the VA lenders that Complainant was working with. Respondent advised that Respondent would be willing to set up a showing or take pictures and send to Complainant. Respondent states that when Complainant began to have trouble getting a VA loan, Respondent gave Complainant contact information for another lender to try. Respondent does not think Complainant ever contacted this lender. On November 10, 2014 Respondent received an email from Complainant stating the name of the lender Complainant was now working with and also including a letter from the lender stating that the lender would need additional time. Respondent states that Respondent tried to reach the new lender several more times but was unable to reach him. On Nov. 19, 2014, Complainant's lender advised Respondent that he was still in the process of getting Complainant approved. Respondent states that, during this period, the seller notified Respondent that the house would be going to bulk auction, but was not told specifically when it would go to or return from auction. Respondent states that Respondent encouraged Complainant to submit an offer quickly if Complainant wished to purchase the home before it went to auction and that Complainant could submit a back-up offer if unable to purchase before the auction. Respondent states that on November 24, 2014, Respondent received an offer from a different buyer which was accepted by the seller. This offer failed to close and the property was put back on the market on Dec. 22, 2014. On Jan. 15, 2015, another offer was placed on the property which was accepted and closed on March 17, 2015. Respondent states that at no time did Respondent meet with Complainant, show the property to Complainant, draft any

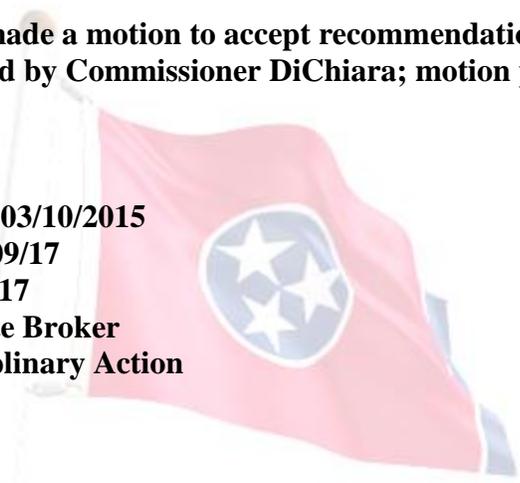
documents for Complainant, enter into a buyer's representation agreement with Complainant, or receive an offer from Complainant. Respondent also states that Respondent has done VA transactions for years and has taken many classes concerning how to work with veterans in purchasing homes and that the discrimination allegation is preposterous.

Respondent included email correspondence between Respondent and Complainant as well as Respondent and seller indicating that Respondent was working with Complainant to get Complainant the house. Complainant produced nothing to show discrimination based on age or military status. In fact, email correspondence shows Respondent suggesting that Respondent may still be able to get the VA loan because the seller might be willing to do the repairs necessary for VA loan approval.

**Recommendation: Dismiss.**

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

**Commissioner Franks made a motion to accept recommendation of legal counsel to dismiss; motion seconded by Commissioner DiChiara; motion passes unanimously.**

- 
4. **2015008101**  
**Opened: 04/07/15**  
**First License Obtained: 03/10/2015**  
**License Expiration: 03/09/17**  
**E&O Expiration: 01/01/17**  
**Type of License: Affiliate Broker**  
**History: No Prior Disciplinary Action**
  5. **2015008102**  
**Opened: 04/07/15**  
**First License Obtained: 02/25/88**  
**License Expiration: 09/12/16**  
**E&O Expiration: 01/01/17**  
**Type of License: Principal Broker**  
**History: No Prior Disciplinary Action**
  6. **2015008103**  
**Opened: 04/07/15**  
**First License Obtained: 03/09/15**  
**License Expiration: 03/08/17**  
**E&O Expiration: 01/01/17**  
**Type of License: Affiliate Broker**  
**History: No Prior Disciplinary Action**

Complainant states that Complainants submitted an offer on property via Respondent 1 (affiliate broker) on February 3, 2015. Complainant states that, immediately after

Complainants submitted their offer, Respondent 1 told them there were multiple offers on the property. Complainants state that their agent asked Respondent 1 if they needed to submit a best and final offer and were told by Respondent 1 that the bank (seller) would counter all offers. Complainants state that they tried to stay in touch with Respondent 1 to make sure they were given this opportunity were told on February 19 that they would have a reply soon. On February 25, Complainant and went to Respondents' firm to see what was going on because they had not heard anything regarding a counter offer. Complainant states that Complainant met with Respondent 3 (then unlicensed) who told Complainant that the offer was never submitted. Complainants' agent then submitted a new offer to Respondent 3. Complainants state that they were told by Respondent 2 (Principal Broker) the next day that the bank had countered the offer. Complainants state that they immediately accepted the offer and submitted the proper forms. Complainants state that they were sent separate disclosure and confidentiality forms from Respondent 3 on February 25 and 27 which they signed and returned. Respondent 3 then sent environmental reports to Complainants. Complainants state that on March 2, their agent contacted Respondent 3 asking for the final contract from the bank. Respondent 3 told Complainants that another bidder had come up in price and his offer was accepted. Complainants state this was nearing the end of their inspection period. Complainants state that they had a contract with the bank (seller) but that the bank then entered a contract with another buyer. Complainants also state that Respondent 3 negotiated pricing and other aspects of the transaction while unlicensed.

Respondent 1 states that Respondent 1 was out of the office dealing with personal issues during the time of this transaction. Respondent 1 states that Respondent 1 recalls passing all correspondence related to this property onto Respondent 2 (principal broker). To the best of Respondent 1's recollection, Respondent 1 was no longer the listing agent on this property at the time these events took place, never met Complainants or their agent, and never showed them the property. Respondent 1 states that Respondent 1 is no longer affiliated with this firm and, therefore, has no access to any emails or documents related to this transaction and defers all other response to Respondent 2 (principal broker).

Respondent 2 (principal broker) states that a potential buyer put in an offer on the property in mid-January of 2015 after the price was reduced significantly from \$255,000 to \$90,000. The bank (seller) did not want to execute any documents at that point because it did not want to go through all of the corporate approvals in advance, only to have the buyer back out during the due diligence period. Instead, the bank supplied the buyer with the due diligence information after executing a confidentiality agreement. Respondent 2 states that Complainant came into the firm office with an offer for the same price as the first buyer on February 25. Respondent 2 states that Respondent 3 told Complainant that they had never received a previous offer from Complainant, therefore, an offer was never transmitted to the seller. Respondent 2 states that Complainant then sent an offer via email to Respondent 3 the same day with the same offer and same dates as the supposed previous offer the firm never received but with the wrong seller name. Complainant's agent was copied in the email containing the offer. Respondent 2 stated that Respondent 3 provided Complainant with the correct seller information and Complainant returned an offer with the correct information. Respondent stated that Complainant's agent replied,

thanking Respondents for their help. Respondent 2 states that Respondent 2 then advised the seller that there were now two legitimate purchasers and seller asked Respondent 2 to work with both potential purchasers to get the best price and move the sale as quickly as possible since they were going to be losing a substantial amount of money on this loan. Respondent 2 states that Respondents then sent Complainant the confidentiality agreement and due diligence information which Complainant signed and returned. Respondent 2 states that the other buyer went up in his offer, meeting Complainant's offer and that Respondent 2 recommended the seller accept Complainant's offer. The Seller, however, accepted the other buyer's offer. Respondent 2 states that Complainant is upset that he was unable to purchase the property but that Complainant's offer was not any higher than the original offer and was not worthy of any special consideration. Regarding the allegation that Respondent 3 was conducting unlicensed real estate activity, Respondent 2 states that Respondent 3 did nothing more than assemble and pass along documents pertaining to the transaction as well as keep the parties apprised of the current status of the transaction. Respondent 2 states that all of these actions were at Respondent 2's direction by phone while Respondent 2 was out of town at a conference. Respondent 2 states that Respondent 2 negotiated the price with Complainant's agent directly over the phone and Respondent 3 never did any negotiating of price, terms or conditions and never showed the property. Respondent 2 states that Respondent 3, at the time, had already submitted her documentation to TREC to receive her affiliate broker's license and had successfully completed the educational requirement and was very familiar with the required separation of administrative and licensee duties.

Respondent 3 states that Respondent 3 did nothing but disclose the status of a listed property and deliver documents, which is allowed under TREC laws. Respondent 3 states that Complainant came in on February 25 to discuss a contract for a listed property with Respondent 2. Respondent 3 states that Respondent 2 was at a conference but Respondent 3 was aware of the status of the property and informed Complainant. Respondent 3 states that Respondent 2 then spoke with the owners who decided that they would put the drafting of a contract with another buyer on hold to consider Complainant's offer. Respondent 2 then told Respondent 3 to send Complainant the confidentiality agreement and due diligence forms in case the bank went with Complainant's offer because the bank did not want to lose any more time. Respondent 3 states that, on the following work day, Respondent 2 told Respondent 3 that the seller has countered both parties and are waiting until the end of the week for responses. Respondent 3 let Complainant's agent know of the delay and gave him the lockbox code, which he had requested. On Thursday of that week, Respondent 2 notified Respondent 3 that the seller decided to go with the original buyer. Respondent 2 asked Respondent 3 to notify Complainant's agent since Respondent 2 was still out of town to which Complainant's agent wanted further explanation. Respondent 3 states that since Respondent 3 had not spoken with the owners, Complainant's agent would have to speak with Respondent 2 when he got back in town. They spoke the following week. Respondent 3 states that Respondent 3 had successfully completed the real estate courses and examination and was issued a license on March 8<sup>th</sup>.

Complainant provided nothing indicating any contact with Respondent 1 nor did Complainant produce any evidence of an offer submitted before February 25<sup>th</sup>. Email

correspondence between the parties indicate that Complainant submitted an offer on February 25 via email to Respondents 2 and 3. In a previous email that day, Respondent 3 tells Complainant's agent that Respondent 2 will submit the offer to the owners. On the 27<sup>th</sup>, Complainant's agent returns the signed confidentiality agreement which provides that the form does not obligate the buyer or seller as to the purchase or sale of the property. Respondent 3 immediately replies with the due diligence documents. An email sent from Respondent 3 to Complainant's agent on March 2 states that, since the bank now has two offers on the table, they are giving the other buyer until the end of the week to go up in his offer. Email correspondence also indicates that the bank was drafting a contract for the original buyer when Complainant's offer was submitted but put it on hold to consider Complainant's offer. Email correspondence also shows Respondent 2 stating that Complainant is a legitimate buyer and that Respondent 2 will recommend Complainant's deal to the seller on an upcoming conference call. Email shows that the other buyer increased his offer to Complainant's price and the seller chose the other buyer. There is no documentation or correspondence indicating that a counteroffer was made or accepted. The written offer submitted by Complainant on February 25 was unexecuted. There is no correspondence indicating that Respondent 3 negotiated any terms or did anything other than deliver documents and disclose the status of a listed property.

**Recommendation: Dismiss as to all three Respondents.**

**DECISION: The Commission voted to refer the matter to Commissioner Hills for review as to all three respondents and to report at the next Commission meeting.**

**Commissioner McMullen made a motion for the files to be reviewed by Commissioner Hills regarding Respondent 1, 2, and 3. Commissioner Hills will report back to the Commission at the September meeting; motion seconded by Commissioner DiChiara; motion passes unanimously.**

**7. 2015007901**

**Opened: 6/19/15**

**First License Obtained: 6/18/84**

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

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

**Type of License: Principal Broker**

**History: No history of disciplinary action.**

Complainant alleges that in March 2014, Respondent came to Complainant's home and offered \$2,000 for the keys to the home. Complainant states that Complainant told Respondent that the home foreclosure was being litigated as to wrongful foreclosure, and Complainant is not interested in any deals. Complainant alleges that Respondent grabbed the door and attempted to force entry into the home. Complainant states that when retrieving the papers taped to the door, Respondent grabbed Complainant's arm and pulled Complainant off the porch. Complainant states that Respondent refused to leave the property, so Complainant called the police. Complainant further states that

Respondent drove off in a reckless and hasty manner. Complainant stated that Complainant filed a police incident report. Complainant states that Complainant sustained bruises as a result of Respondent's actions.

Respondent denies all accusations. Respondent (Principal Broker) arrived at Complainant's property to present an offer for a relocation assistance program (cash for keys) based on the foreclosure action on the property. Respondent knocked on the door and did not hear a response, so Respondent attempted to open the storm door to knock on the inner door, but it was locked. Respondent denies attempting to force entry. Respondent states there was no reply, so Respondent posted the cash for keys program and agreement documents to the door. Respondent states that Complainant came out of the house as Respondent was taping the documents to the door. Respondent explained the reason for being there and states that Complainant was hollering at Respondent. Respondent states that Complainant never mentioned calling the police. Respondent denies leaving the property in a reckless manner. Respondent states that Respondent has been in the business for forty (40) years and has never been accused of nor committed wrongful acts. Respondent believes that Complainant is upset over the foreclosure and is trying to prolong the time in the home. Respondent states that Respondent would never harm anyone. Respondent attached correspondence emails through July 2014 between Complainant, Respondent, and the asset management company stating that Complainant desires to retain their home and would pay the mortgage in full. However, it does not appear proof of funds were provided.

Respondent provided a copy of the Agreement to Vacate and Relocation Assistance Program documents that were provided to Complainant in March. Further, it appears that a police report was filed; and at the July 10, 2015 hearing, the Judge dismissed the matter with prejudice. Correspondence with Respondent's attorney states that there is no further litigation pending against Respondent. Respondent's attorney also states that the eviction against Complainants is moving forward in General Sessions Court.

**Recommendation: Dismiss.**

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

**Commissioner McMullen made a motion to accept recommendation of legal counsel to dismiss; motion seconded by Commissioner Franks; motion passes unanimously.**

**8. 2015008861**

**Opened: 4/7/2015**

**First License Obtained: 11/09/09**

**License Expiration: 11/08/15**

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

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

**9. 2015008862**

**Opened 4/7/2015**

**First License Obtained: 4/9/03**

**License Expiration: 2/24/16**

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

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainant states that complainant entered into an agreement on August 4, 2014 with Respondent 1 (affiliate broker) and Respondent 2 (principal broker) for Respondents to sell Complainant's property. Complainant was behind on payments and anticipating foreclosure. Complainant lived out of state during the entirety of the events of this complaint. Complainant alleges that Respondents were grossly negligent with the house while they had it listed. Complainant states that Respondent 1 told Complainant by phone in December that other agents who showed the house left the doors and windows open to ventilate it and did not close, lock, or otherwise secure the property. Complainant states that Complainant contacted the local realtors association and found out that Respondents never put a lock box on the door from August 7, 2014 until January, 15, 2015 to secure the property. Complainant states that Respondents knew the walk-in crawl space doors which led to an escape scuttle in the kitchen had no locks on them and should have provided locks. Complainant states that, as a result, the house was exposed to the elements which caused damage to the house and that the house was vandalized. Complainant states that the Air Handlers that blow heat or cold air into the house were stolen from the house and that it must have been an inside job by Respondent 2 because it would take several people to remove them from underneath the house. Complainant states that Respondent 2 should have fronted the money to have the house cleaned because Complainant was out of work and could not afford to do it. Complainant states that Respondent 1 told Complainant several months later that there was couple who wanted to rent-to-own the house. Complainant states Complainant was told to contact the potential buyer. Complainant states that Complainant received an email from Respondent 1 stating that, since Complainant was going to enter into a rent-to-own agreement with the buyer, Complainant needed to pay Respondents their commission the day Complainant receives the \$50,000 deposit and the buyer moves into the property. Complainant states that this was unacceptable and that this caused him to lose the agreement with the potential rent-to-own buyers. Complainant states that Respondents did nothing to earn the commission. Complainant states that Complainant then spoke to Respondent 2 regarding the payment and the damage to the house. Complainant states that Respondent 2 called Complainant's disdain for Respondents' demand for payment comical. Complainant states Respondent 2 said Respondent 2 is not responsible for locking the house or keeping after the other agents. Complainant states that Respondent 2 and the potential buyers were in cahoots to purchase the property when it went into foreclosure, flip it and resell. Complainant states that, subsequently, the foreclosure was postponed and the potential buyer backed out, stating he was not able to sell his business and, therefore, did not have the deposit money. Complainant states that Complainant continued to contact potential buyer with no response. Complainant also states that Respondents committed an ethical violation by not following Complainant's instruction regarding the return of the key after the contract was terminated. Complainant states that,

On February 6, 2015, after the listing agreement expired on February 1, 2015, Complainant asked that the key be given to a friend of Complainant's spouse but Respondents mailed it to Complainant on February 11 instead. Complainant states that Complainant intends to sue Respondent 2 but cannot find an attorney to represent him who does not work with Respondent 2. Complainant states that Complainant has switched realtors and that the new realtor was able to sell the property in 3 weeks.

Respondent 1 (affiliate broker) states that Respondent 1 is flabbergasted at Complainant's allegations and that Respondent 1 has been working with Complainant for a few years. Respondent 1 is the same agent that sold Complainant the house about two years earlier. Respondent 1 states that Respondent 1 took pictures of the property the day after the listing agreement was signed. Respondent 1 states that the house had trash everywhere, dirty diapers, beer cans and cigarette butts laying around and human feces on the walls. Respondent 1 states the house had unlocked doors and windows when Respondent 1 went to take the photos. Respondent 1 states that Complainant told Respondent 1 that it was probably the neighbors who did it because they didn't like Complainant and had killed Complainant's dogs. Respondent 1 states that Respondent 1 put a lock box on the door and secured the property upon receipt of the key in the mail sent from Complainant. Respondent 1 states that three agents showed the property and asked if it was going to be cleaned since it was so disgusting. After speaking to Complainant, Respondent 1 got quote for cleaning. The quote was for \$10,000 to do everything including the trash removal, ceilings, walls etc. for the 5500 square foot house. Respondent 1 states that Complainant told Respondent 1 that Complainant could not afford this and that Respondent 1 should take it out of Respondent 1's commission. Complainant then wanted Respondent 2 (Principal Broker) to pay for it because it would be good customer service. Respondents and Complainant then decided to list the house as-is. Respondent 1 states that, after several months, Respondent 1 was contacted by a couple wanting to rent to own the property. Respondent 1 asked Complainant if Respondent 1 could give the potential buyer's Complainant's contact information and Complainant agreed. Respondent 1 states that at about 10:30 that night, after Complainant had spoken to potential buyers, Complainant called screaming at Respondent 1 that the air duct and the electric dog fence were taken which Respondent 1 new nothing about. Respondent 1 states that Respondent 1 hung up on Complainant because Complainant was screaming at Respondent 1. Respondent 2 called Complainant the next day and Complainant apologized but started blaming everyone for taking the air ducts. Respondent 1 states Respondent 1 knows that it is not possible to get around to the side of the house with a truck to load the air ducts and that it could have been the construction company that was building houses down the street or someone in the neighborhood since Complainant had had prior issues with the neighbors. However, Respondent 1 states that Respondent 1 does not recall if the air handlers were in place upon listing the house. Respondent 2015 states that Complainant was adamant that Respondent 2 did it but Respondent 1 does not know how Complainant came to that conclusion. Respondent 1 states that Complainant then started sending threatening emails to which Respondent 1 stopped replying after the contract between Respondents and Complainant was up in February of 2105. Respondent 1 states that Respondent 1 notified Complainant that Respondent 1 mailed Complainant

the key on February 13, 2015 and apologized that it was late due to Respondent 1's surgery.

Respondent 2 states that Respondent 2 talked to Complainant several times while Respondents listed Complainant's property. Respondent 2 states that Respondent 2 can understand why Complainant would be upset about his property going into foreclosure. Respondent 2 states that Respondent 2 is upset that they could not sell Complainant's property but that it looked horrible. Respondent 2 states that Complainant contradicts himself many times in the complainant and emails. Respondent 2 states that Respondent 2 did say it was "comical" on the phone because Complainant was threatening and saying that Respondents stole the dog fence electronics when, in an email, Complainant states that Complainant took the fence to Complainant's new house. Respondent 2 states that the request for commission at the time of deposit was because Complainant was going to owner finance the house.

Respondent 1 included pictures of Complainant's property dated August 5, 2014, the date after the listing agreement began. The photos show piles of trash everywhere and feces on the floor and walls. Emails dating back from January of 2013 included Complainant stating that Complainant had boarders who turned out to be criminals and did damage to the house and that Complainants dogs had chewed up windows, steps and doors. Complainant states in an email to Respondent 1 in March of 2013 that the house needs about \$10,000 in work done. Complainant states in an email dated August 3, 2014 that all of the damage in the apartment (section of the house) was done by Complainants step-daughter while she was drunk or on drugs. Respondent 1 provided an email confirming the \$10,000 cleaning quote and Complainant requesting that the money be taken from Respondent's commission. Complainant provided nothing to show that other agents had left the doors and windows open or that Complainant had been told so by Respondent 1. While Complainant attempted to provide proof that there was no lockbox on the house by providing the numbers of two lockboxes that were supposedly on his house at different times and the dates on which the shackle was opened, there is not enough information to draw any conclusions. It is counsel's opinion that it is not a duty of the Respondents to provide locks for the crawl space doors that did not have locks prior to being listed. Complainant also admits in an email that Complainant took the electric dog fence to the new home. Emails and documentation show that Complainant listed the house at \$400,000 and did not want to go below \$325,000. Respondent 1 indicated in an email to Complainant that it was not selling because buyers were seeing that it was sold to Complainant about two years prior for \$270,000 and was in such awful shape. Complainant threatened Respondent 1 in emails demanding the names and contact information of the agents that supposedly showed the house and left the windows and doors open and did not put in offers on the house. Complainant sent an email wanting to terminate the contract with Respondents in December of 2014 but then continued with their services after apologizing. Email also indicates that Complainant requested the potential buyer's contact information from Respondent 1 because Complainant wanted to contact the potential buyer himself. Since the listing agreement did not specifically address payment to Respondents if the house transfers as a rent-to-own, this appears to be the reason for the email to Complainant regarding payment upon deposit from the buyer.

It is legal counsel's opinion that this was a request for payment and not a threatening demand, as the Complainant alludes. It is legal counsel's opinion that Respondents were justified in not fronting the money (to later be deducted at closing) for cleaning because of the high cleaning cost and the possibility that it may never make it to closing because of the condition of the house. It is also legal counsel's opinion that, while Complainant may have requested the key to be given physically to a friend upon termination of the contract, Respondents were justified in sending the key via mail to ensure by tracking that it was received by Complainant, given the way the relationship ended.

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

**DECISION: The Commission voted to accept the recommendation of legal counsel. Commissioner Franks made a motion to accept recommendation of legal counsel to dismiss; motion seconded by Commissioner McMullen; motion passes unanimously.**

**10. 2015010781 (unlicensed)**

**Opened: 6/19/15**

**History: No Prior Disciplinary Action**

TREC opened a complaint against an unlicensed Respondent (doing business as an LLC) that included website advertisements for nine (9) commercial properties either for sale or for lease. Respondent submitted a response by and through an attorney stating that Respondent is exempt pursuant to T.C.A. § 62-13-104(a)(1) (*this chapter does not apply to: (A)(an owner of real estate with respect to property owned or leased by such person) and (F) (a corporation, foreign or domestic, acting through an officer duly authorized to engage in a real estate transaction...)*). The attorney outlined the ownership structure of each of the nine (9) properties. Each property is owed by multiple LLCs of which Respondent's immediate family members have ownership interests. The attorney further states that because Respondent is the manager of one of the owner LLCs, Respondent is not acting as a broker as defined in T.C.A. § 62-13-101, *et seq.*

Attorney General opinion no. 14-27, states that the exemptions provided in T.C.A. § 62-13-104 are limited to, "a corporation, foreign or domestic," and a limited liability company must be licensed under the Act, as it is not a corporation.

**Recommendation: Consent Order for \$4,500 [representing \$500 for nine (9) properties] for unlicensed activity in violation of T.C.A. §§ 62-13-103 and 62-13-301, order to also include order to cease and desist all unlicensed activity.**

**DECISION: The Commission authorized a Consent Order in the amount of \$9,000 for unlicensed activity in violation of T.C.A. §§ 62-13-103 and 62-13-301, order to also include order to cease and desist all unlicensed activity.**

Commissioner McMullen made a motion to accept recommendation of legal counsel but to amend Civil Penalty to \$9,000 [representing \$1000 for nine (9) properties] for unlicensed activity in violation of T.C.A. §§ 62-13-103 and 62-13-301, order to also include order to cease and desist all unlicensed activity; motion seconded by Commissioner DiChiara; motion passes unanimously.

**11. 2015011221**

**Opened: 6/22/15**  
**First License Obtained: 4/2/07**  
**License Expiration: 4/1/17**  
**E&O Expiration: 1/1/17**  
**Type of License: Affiliate Broker**  
**History: No history of disciplinary action.**

**12. 2015011222**

**Opened: 6/22/15**  
**First License Obtained: 10/29/01**  
**License Expiration: 3/17/17**  
**Type of License: Real Estate Firm**  
**History: No history of disciplinary action.**

**13. 2015011223**

**Opened: 6/22/15**  
**First License Obtained: 3/5/07**  
**License Expiration: 3/4/17**  
**E&O Expiration: 1/1/17**  
**Type of License: Affiliate Broker**  
**History: 2010016151 \$300 Consent Order (failure to maintain E & O Insurance)**

**14. 2015011224**

**Opened: 6/22/15**  
**First License Obtained: 6/20/94**  
**License Expiration: 7/4/16**  
**E&O Expiration: 1/1/17**  
**Type of License: Principal Broker**  
**History: No history of disciplinary action.**

**15. 2015011225**

**Opened: 6/23/15**  
**First License Obtained: 7/30/03**  
**License Expiration: 8/19/16**  
**E&O Expiration: 1/1/17**  
**Type of License: Broker**  
**History: No history of disciplinary action.**

A complaint was filed by buyers (husband and wife) against Respondents regarding the attempted purchase of a property. Respondent 1 was Complainants'/buyers' agent and is an affiliate broker who was associated with Respondent 2 (real estate firm) and Respondent 4 (principal broker of Respondent 2 firm) during the activities of the complaint. Respondent 3 was seller's agent and is an affiliate broker who was associated with a different licensed firm from Respondents 1 and 4 between from 8/7/13 through 9/9/14. Respondent 5 was Respondent 3's principal broker during this time.

Complainants entered into a contract to purchase a property on August 8, 2014. Complainants state that a repair/replacement list was included in the transaction from the onset and allege that Respondents were unable to successfully guide the completion of repairs, which resulted in an unsuccessful closing. Complainant states that the home inspection report was available on August 22, 2014 and Respondent 1 obtained a copy of the inspection report and completed the first repair/replacement proposal without Complainants' knowledge or consent. Complainants state that the issue was eventually resolved, and a Repair/Replacement proposal was submitted using DocuSign. Complainants state that Respondent 1 led them to believe that the proposal submitted via DocuSign was binding throughout the transaction but the seller did not countersign the proposal. Complainants further allege that Respondent 1 failed to extend the resolution period specified in the original contract stating that if the repair/replacement proposal was not binding, then the involved agents did not meet their duties to their respective clients by extending the resolution period. Complainants state that this is an issue of good faith because they were led to believe this was binding and that they met their four day resolution period. Complainants state that Respondent 3 and seller countered the repair/replacement proposal outside of the fifteen (15) day objection period. Complainants state that the contract states that if the parties do not reach a mutual written resolution during the resolution period or a mutually agreeable extension, then the Agreement is terminated and buyer is entitled to a refund of the earnest money. Complainant states that Respondent 1 assured them on numerous occasions that the repairs would be completed. Complainants further allege that Respondent 1 acted on behalf of the seller without knowledge and consent of Complainants by cancelling a radon test that Complainants ordered and paying for certain repairs requested on the repair/replacement proposal. Complainant states that because Respondent 1 was doing the repairs, Respondent 1 had a personal interest to reduce the number of items on the repair list or include those that were cost beneficial to Respondent 1. Complainant states that upon finding incomplete repairs at final inspection, an offer to accept a washer and dryer in lieu of the remaining repairs was proposed and rejected. Complainant states that at closing, Respondent 1 did not say a word about the repair/replace list and that Respondent 1 attempted to withhold a copy of the repair/replacement proposal from Complainants at closing. Complainant states that an attorney was present at closing who was clearly representing the seller. Complainants further state that after the closing fell through, Complainants requested earnest money on three separate occasions but allege that Respondent 1, Respondent 4 (Principal Broker), and Respondent 3 (seller's agent) ignored the requests. Complainants state there was no real dispute over earnest money to warrant filing an interpleader, but Respondent 2 (firm) and Respondent 4 (principal

broker) held onto the money until the seller and Respondent 3 (seller's agent) sold the property, at which point seller's attorney requested that the firm release the funds to the seller. Complainants further allege that Respondent 1 did not forward a copy of contract documents until September 5, 2014, after several requests. Complainants further state that Respondent 4 (principal broker to Respondent 1) was aware of the dispute with the repair/replacement proposal. Complainants state that Respondent 1 and Respondent 3 promote the idea that Complainants were unwilling to sign the documents necessary to complete the transaction, but in actuality, Complainants did not close because the repairs were not completed. Complainants state that Respondent 2 (firm) unnecessarily filed an interpleader on November 24, 2014. Complainants further allege that Respondent 1's actions constitute improper, fraudulent, or dishonest dealings.

Respondent 1 states that Complainants' accusations are egregious and untrue. Respondent 1 states that Complainants are family friends, and Respondent 1 has no reason to misrepresent them or not look out for their interests. Respondent 1 believes that Complainants were questioning the purchase of the home throughout the transaction and states that there was no collaboration between all of the other parties against Complainants at any point during the transaction. The home went under contract on August 8, and Respondent 1 states that on August 10 when showing the home to Complainants again, they expressed that they were not comfortable purchasing the home and asked Respondent 1 to approach the sellers to see if they would reconsider the contract. Respondent 1 states that they left the house without looking at the crawl space or anything else constituting the purpose for the second visit because, at that point, Complainants no longer wanted to purchase the house. Respondent 1 states that the next morning, however, Complainants were back on course to purchase for reasons unknown to Respondent 1. Respondent 1 states that Complainants canceled the first inspection set for August 18 and rescheduled with a different inspector on August 20. Respondent 1 received a copy of the inspection report on August 21, stating that it is customary for inspectors to send copies of the inspection report to the agents and that Complainants had no problem with this at the time. Respondent 1 states that Respondent 1 called Complainants and expressed urgency for response, as the fifteen (15) day inspection period was coming to an end. Respondent 1 compiled a list of repair items that Respondent 1 thought was reasonable and states that Complainants repair list ended up being much longer, so Respondent 1 encouraged Complainants to focus on things that are most important to them. Respondent 1 states that Complainants and seller were not going to agree on repairs so Respondent 1 decided to cover the remainder of the repairs because Complainants were family friends. Respondent 1 states that on the final walk through, Complainants identified some items not completed yet, and Respondent 1 assured that it would be handled. Respondent 1 states that the biggest issue to Complainants was trenching in the crawlspace around the foundation footer, which was not noted in the inspection report and not mentioned before by Complainants. Respondent 1 states that Complainant did not understand that this was common for the area, and they are built in that manner for drainage. Respondent 1 offered to have it back-filled, but that it would need time to settle which would not work in the given timeframe. Respondent 1 states that Complainants were no longer comfortable with the purchase due to the crawl space and not because of any other repairs. Respondent 1 states that if Complainants had looked

at the crawl space on their walk through on August 10, their concerns could have been addressed much sooner. Respondent 1 states that if Complainants wanted the house, they could have delayed closing to address the repair concerns or could have signed an agreement to resolve any repair concerns after closing. Respondent 1 believes that Complainants' actions indicated they did not want the house and were unwilling to work towards a resolution. Respondent 1 states that the attorney was brought into closing in an effort to be a neutral third party and to calm a tense situation. Respondent 1 states that Complainants still wanted Respondent 1 to represent them after the failed purchase, but Respondent 1 advised that Complainants needed to consult an attorney since they were now dealing with matters outside of Respondent 1's expertise. Respondent 1 further states that the earnest money was in fact in dispute, and Respondent 2 (the firm) could not make a decision on the money. Respondent 1 denies canceling the radon test. Respondent 1 states that Respondent 1 used DocuSign in order to facilitate the transaction of documents with the out of town Complainants, not to mislead them as alleged. Respondent 1 denies having a dual agency stating that Respondent 1 represented only Complainants throughout the entire transaction. Regarding copies of transaction documents, Respondent 1 has emails indicating the documents were sent to the lender, the title company, and the selling agent and states that Respondent 1's assistant would have forwarded the documents to Complainants as well. However, Respondent 1 could not find an email confirming that the documents were sent to Complainants.

Respondent 4, principal broker for Respondent 1 (Complainants/Buyers' agent), states that when the situation was brought to Respondent 4's attention, the transaction was already in dispute and the earnest money could not be released to either party. Respondent 4 denies receiving any request from Complainants for the release of earnest money and denies holding onto the earnest money until the seller sold the house because Respondent 4 had and still has no knowledge of when the seller sold the house. Respondent 4 was aware that the parties were in dispute and was not comfortable releasing the earnest money until research was done to discover which party had defaulted. Respondent 4 states that Respondent 1 brought a letter from the seller's attorney to Respondent 4's attention which requested that Complainants forfeit the earnest money to the seller. Respondent 4 was not comfortable releasing the earnest money to the attorney, and Respondents 1 and 4 advised Complainants to seek counsel after providing a copy of the letter to Complainants. Respondent 4 states that Respondent 4 tried to get in touch with the Respondent 2's (the firm's) attorney to file the interpleader, but the attorney was out of town and finally filed the interpleader on November 17<sup>th</sup>. Respondent 4 states that the transaction was supposed to close on September 15 but Complainants refused to sign any closing documents due to the repair proposal, although Respondent 1 repeatedly assured Complainants that the repairs would be done by Respondent 1 himself. Respondent 4 was not at closing but states that Respondent 1 is very laid back and would never gang up on a client as alleged. Respondent 4 denies the allegation that Respondent 1 acted for both parties, stating that Respondent 1 only tried to keep the deal moving forward to help Complainants purchase the home. Respondent 4 states that it appears that Respondent 1's assistant did not transmit a copy of the purchase and sale agreement and acknowledges that Respondent 1 should have verified that Complainants received a copy. Respondent 4 states that the

assistant was let go for numerous reasons. Respondent 4 states that Complainants changed their mind three (3) times throughout the transaction. Respondent 4 states that they told Complainants numerous times that they could not release the earnest money because it was in dispute and that the seller would likely file a lawsuit against Complainants for default of contract. Respondent 4 states, in hindsight, that there were mistakes made by everyone involved. Respondent 4 states that the delay in filing the interpleader was in anticipation that the parties would reach an agreement and close the property. Respondent 4 states that Respondent 1 should have communicated better with Complainants and kept Respondent 4 more informed and Respondent 4 should have been more on top of the transaction. Respondent 4 further states that Complainants should have been adamant about not closing and gotten out of the contract immediately rather than waiting until closing. Respondent 4 does not remember seeing that the repair/replacement proposal was not signed by all parties. Respondent 4 states that this is the first time Respondent 4 ever sent the earnest money to court, and that any of the mistakes made were not intentional toward Complainants.

Respondent 3 (seller's agent) gave a timeline of events during the representation of the seller. Respondent 3 states that the inspection period for fifteen (15) days was longer than desired but granted in consideration of out of town Complainants. Respondent 3 further states that the inspection period ended August 23 and no extension was requested or approved. However, an unsigned repair proposal was received on August 26. A different signed repair proposal was received on August 27 along with a copy of the home inspection report, which was not requested by seller. Respondent 3 replied to Respondent 1 stating that the seller was under no legal obligation to do repairs, but the seller, in the spirit of good faith, would agree to work with Complainants. Respondent 3 states that a counter-proposal was emailed, to which there was no written or verbal response. However, the seller completed all of the repairs on the counter-proposal, and Respondent 1 informed Respondent 3 that this would be communicated to the Complainants. Respondent 3 received correspondence from Respondent 1 on September 14 that closing was confirmed for the following day, however Complainants then refused to close. Respondent 3 states that Complainants sent threatening emails, to which Respondent 3 did not respond. Respondent 3 states that seller's attorney sent a letter in October notifying Complainants of potential litigation regarding the earnest money. Respondent 3 further states that seller was instructed by the attorney not to sign the standard earnest money release form, as it waives any rights to pursue future damages.

Respondent 5, principal broker for Respondent 3 (seller's agent), states that Respondent 3 was the designated agent for seller in this transaction, and at no time did they have any monies in their possession that belonged to Complainants. Respondent states that Respondent 2 (firm) held the earnest money, which was their responsibility to return.

The binding agreement date is August 8, 2014 with a fifteen (15) day inspection period, four (4) day resolution period, and a two (2) day final walkthrough. There is one repair/replacement proposal which was forwarded for Complainants' review on August 26, and was not signed by either party. The second draft, and more detailed repair/replacement proposal, is signed by Complainants and dated August 27. Both the

first and second proposal are dated beyond the 15 day window. The seller's counter-proposal was neither signed nor dated but forwarded to Complainants by Respondent 1 on August 31. Email exchanges between Respondent 1 and Complainants make it unclear as to whether Respondent 1 led Complainants to believe that their repair/replace proposal had been accepted by the seller. It also appears that the inspector forwarded a radon test report to Complainants on August 29. On September 1, Complainants emailed Respondent 1 regarding progress of repairs and asking Respondent 1 for a copy of the binding contract. Complainants forwarded another email to Respondent 1 on September 4 requesting a copy of the binding contract. The closing date was set for September 15. Complainants emailed Respondent 1 on September 19 with requesting the release of earnest money to Complainants. The letter from seller's attorney is dated October 8, requesting that the earnest money be released to seller. Complainants emailed Respondent 4 requesting the earnest money on October 9 and again on October 13. An email from Respondent 4 to Complainants dated October 14 states that the firm cannot release the earnest money because it is in dispute. The file also contains a lengthy email exchange between Respondent 1, Respondent 4 and Complainants regarding the earnest money dispute and failed transaction continuing through December 4, 2014. It appears that seller's attorney filed the interpleader on November 17, 2014, and a judgment for Respondent was granted on January 21, 2015. A Motion to Set Aside Judgment was filed on April 27, 2015, but no hearing date was set. This was filed outside the ten (10) day appeal period. Further, it appears that Complainants filed a civil action against Respondents 1, 2, and 3 alleging breach of contract, breach of fiduciary duty, and negligence. A counter-complaint and third party complaint has since been filed. It is likely that further information will be uncovered through the course of the civil litigation which could be pertinent to the Commission's determination regarding this matter.

**Recommendation: For all Respondents, Consent Orders for litigation monitoring.**

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

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

**16. 2015012631**

**Opened: 7/2/15**

**First License Obtained: 8/1/97**

**License Expiration: 10/27/15**

**E&O Expiration: 1/15/17**

**Type of License: Principal Broker**

**History: No history of disciplinary action.**

**17. 2015012632**

**Opened: 7/2/15**

**First License Obtained: 9/15/80**

**License Expiration: 1/21/16**

**E&O Expiration: 1/15/17**

**Type of License: Affiliate Broker**

**History: No history of disciplinary action.**

Complainant purchased a property that was listed by Respondent 2 (affiliate broker). Complainant states that the seller of the property was the closing agent as she was an employee of the title company. The previous owner of the property is Respondent 2. Complainant states that the property was advertised and described to include a septic system sufficient to sustain a three (3) bedroom house. Complainant further states that Complainant obtained a Permit for Construction of Subsurface Sewage Disposal System and a Certificate of Completion of Subsurface Sewage Disposal System from Respondents before purchasing the property. Complainant states that Complainant relied on these documents and the representations made by the seller and Respondent 2 and subsequently purchased the property. Complainant further states that, subsequent to the closing, Complainant's contractor attempted to obtain the necessary permits from the county to start construction on a three bedroom home and was informed there was no documentation on file concerning the septic system for the property. Complainant states that the permits provided by Respondents were given to the county, and Complainant's contractor met with a representative for a field study. Complainant states the field representative concluded that the septic system that was installed and never recorded with the county was different from the one outlined on the documents provided by Respondents. Complainant then hired a soil scientist who concluded, after two field studies, that the septic system was unable to sustain a three bedroom home. Complainant contacted Respondent 1 (principal broker) to discuss a resolution and states that they are at an impasse. Complainant alleges that Respondents advertised the property, made oral representations, and provided documents to corroborate that the property had a septic system sufficient to sustain a three (3) bedroom house, which were all false and misleading. Complainant further alleges that Respondent 2's actions constitute fraudulent misrepresentation, negligent misrepresentation, and fraudulent inducement.

Respondents filed a response by and through an attorney stating that Complainant has filed a civil lawsuit against Respondent 2 and the seller of the property. The attorney states that Respondent 1 was not a named party in the civil suit; however, the pending TREC complaint arises from the same factual allegations filed. Respondents request that these complaints be dismissed, or that a stay be issued until the civil litigation matter is concluded.

The civil litigation complaint includes factual allegations that are nearly identical to the TREC complaint. The listing advertises the property with a septic installed for three bedrooms. Seller filled out a Lot/Land Seller's Property Disclosure Statement and checked "NO" to the question, "Has the property been evaluated for subsurface sewage disposal system?" Further, the additional explanation or disclosures section states that a septic system and water line were installed in 1998. The Permit for Construction for new installation of a three bedroom residential system was dated February 6, 1995 and signed by Respondent 2 (previous owner and seller's agent). The Certificate of Completion was executed August 23, 1996. A letter from the soil scientist to Complainant states that the

County Environmental Specialist concluded that the existing system has enough field line to support a two bedroom residence and advises that a high or extra-high intensity soil map would need to be submitted to determine whether another bedroom would be approved by the county. The soil scientist states that, due to dense vegetation, a more intensive evaluation was unable to be performed. It is likely that further information will be uncovered through the course of the civil litigation which could be pertinent to the Commission's determination regarding this matter.

**Recommendation: As to both Respondents, Consent Orders 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 for a Consent Order for litigation monitoring; motion seconded by Commissioner Alexander; motion passes unanimously.**

**18. 2015013641**

**License Expiration: 2/01/2017**

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

Complainant was searching for a home to purchase with the help of Respondent. Complainant states that Complainant contacted Respondent to set up appointments to visit homes Complainant found listed on websites or had previously seen at open houses. At one point in the process, Complainant viewed a property that went under contract before Complainant was able to submit an offer. When this contract fell through because of the home inspection, Respondent scheduled a second viewing of the property upon Complainant's request. Complainant alleges that Respondent was pushy about placing an offer and that Respondent used force with words and scare tactics to get Complainant to make an offer. Complainant alleges that Respondent told Complainant to offer the full amount and to not wait, since someone else will put an offer on the home once it is back on the market the next day. Complainant states that the house had been on the market for over 244 days at that time, therefore Complainant believes Respondent was lying in order to push Complainant to place a contract on the home. Complainant wrote an Earnest Money check for \$1,000 to Respondent stating that Complainant thought Respondent had Complainant's best interest in mind. Complainant then entered into an exclusive buyer representation agreement with Respondent on May 12, 2015. Complainant placed an offer on the home, but Complainant alleges Respondent kept calling and telling Complainant to place a higher offer, despite Complainant informing Respondent that the offer was as high as Complainant would go. Complainant alleges that Respondent stated, "I can't believe you will let this sale go for \$4,000." Complainant states that

Complainant's loan officer told Complainant that Complainant's offer was valid for that area and size and that Respondent should not be telling Complainant what to offer. Upon a rejection of the offer by the seller, Complainant decided to terminate the buyer's representation agreement and Respondent refused to terminate the agreement. On May 17, 2015, Respondent informed Complainant that Respondent will terminate the contract if Complainant paid a \$2,200 compensation fee to Respondent. The compensation fee was for time spent by Respondent prior to the execution of the exclusive buyer representation agreement. Complainant no longer wants Respondent's services and wants to use the \$2,200 towards a new home and not in terminating the exclusive buyer representation agreement. Complainant states that Complainant has gotten her children to purchase a house for her so that Complainant does not have to pay \$2,200 to Respondent or use Respondent's services to buy a house for the remainder of the contracted period. Complainant also states that Respondent pushed Complainant to put an offer in on a different home at viewing on May 2, 2015. Complainant further denies that Complainant harassed Respondent.

Respondent sent a response denying Complainant's allegations and stating the exclusive buyer representation agreement is valid for time spent working with Complainant. Respondent states that Respondent has been working with Complainant since April 15, 2015 and showed Complainant approximately 40-50 homes. Respondent states that Complainant has been a difficult client. Regarding the May 2<sup>nd</sup> viewing, Respondent states that, during the showing, Complainant's daughter was telling Complainant how much she loved the house and was urging her mother to make a decision. Respondent states that Complainant then turned to Respondent and told Respondent to "just write the damn contract." Respondent states that Respondent told Complainant to think about it and let her know later or the next day if she wanted to make an offer, to be sure that she wanted to proceed. Complainant decided not to put an offer in on this home. Regarding the other property, Respondent set up the appointment for Complainant to visit the home, which Complainant loved and wanted to think about making an offer on. Respondent states that Complainant called Respondent that night about the home being posted on the market as "pending" about one hour after the showing. Respondent states that Complainant asked Respondent to call the seller's realtor to request notification from the seller's realtor if anything went wrong on the sale. Respondent did as requested. After the sale failed to go through, Respondent and Complainant visited the home again on May 12, 2015, and Respondent states Complainant sent the pre-approval that night. Respondent alleges that Complainant never shared the pre-approval letter with Respondent until after viewing the home and after the contract was submitted and that letter did not list an amount. Respondent states that Respondent could not have pushed her to go up in price when Respondent did not know Complainant's approval amount. Respondent states that she told Complainant that the market is hot and homes in that

price range are selling fast and that if she wanted this home, Respondent would encourage her not to wait too long to put in an offer. Later on May 12, 2015, Respondent downloaded the contract, with Complainant's requested terms, to Dotloop for Complainant to sign at home. Respondent states that Respondent and Complainant spoke over the phone and reviewed the content of the offer and the exclusive buyer's representation agreement. Respondent states that Respondent told Complainant that, since it was late, Complainant could sleep on it and sign in the morning but Complainant wanted to go ahead and sign. On May 13, 2015, the seller's realtor sent back a counter offer with a \$4,000 increase. Respondent emailed Complainant information regarding the house, such as how much the house originally sold for, the tax appraisal, a comparison to another house Complainant was interested in and stated it was a great deal. Complainant responded that Respondent was not working for Complainant and that Complainant wanted to take a break from buying. Complainant further stated she could not offer more than the original offer on the home. Complainant then asked how long the house had been on the market. Respondent provided the information and told Complainant that she could submit a counter offer if desired and to let Respondent know the next day after thinking about it. On May 14, 2015, Complainant emailed Respondent and seller's realtor to counter with the same original offer. Respondent typed the counter offer as directed by seller's agent and informed Complainant that the time to sign or reject seller's counter offer was nearing expiration. Complainant signed Complainant's new counter offer, but the offer was rejected. On May 15, 2015, Respondent alleges Complainant asked Respondent to submit another offer (same property) with an increase of \$1,000. However, the next day, Respondent received an email from Complainant to forget about the counter offer. Respondent alleges Respondent received a call from the seller's realtor stating that another realtor made an offer similar to Respondent's which led Respondent to discover that the other realtor was working with Complainant. Respondent received notification from Complainant that Complainant wanted to release Respondent from the agency agreement. After consulting with the principal broker, Respondent asked Complainant for compensation of \$2,200 to release Complainant from the exclusive buyer representation agreement. Respondent states that Respondent worked with Complainant for a month and believed a good settlement would be 1/3 of the commission if a sale had gone through in the amount of \$220,000 (the amount Complainant had offered and counter-offered on the house). Respondent alleges that Complainant has harassed Respondent through email and Facebook. Respondent believes that Complainant did not like the seller's counter offer and does not understand that Respondent has no control over what the seller offers.

It is legal counsel's opinion that documentation corroborates Respondent's version of the events that took place. There is no documentation showing Respondent being pushy toward Complainant or using scare tactics to pressure Complainant into anything. In fact,

all correspondence submitted shows Respondent giving Complainant professional advice on the properties, the market, and the real estate purchase and sale process. Correspondence also shows Respondent advising Complainant to think things over before making a decision at multiple points in time. All offers and counter offers appear to have been made through the electronic system where Complainant was able to sign documents in her own home at her own time and under no pressure from anyone. Documentation shows that Respondent did not receive a letter of preapproval from the lender Complainant ultimately chose to use until the first offer was submitted. That letter did not include an amount. Complainant signed the exclusive buyer's representation agreement upon submitting the first offer. Complainant states in an email after attempting to terminate the representation agreement that Respondent is great at Respondent's job and that nothing is wrong.

**Recommendation: Dismiss.**

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

**Commissioner Franks made a motion to accept recommendation of legal counsel to dismiss; motion seconded by Commissioner DiChiara; motion passes unanimously.**

**19. 2015013821**

**License Expiration: 1/28/2017**

**Type of License: Principal Broker**

**History: Complaint 200705188 dismissed 4-07/; Agreed Citation \$100 for failure to submit application on a timely basis 3-00**

TREC opened a complaint against Respondent principal broker on a potential failure to supervise issue regarding the previous Respondent affiliate broker in complaint 2015013641.

Respondent submitted a response stating that the Respondent's affiliate broker and Complainant have an exclusive buyer representation agreement. Respondent states that the \$2,200 requested to release Complainant from the contract is based upon time, energy, and hard costs. Respondent further states that the affiliate broker believed that the affiliate broker complied with the agreement.

**Recommendation: Dismiss.**

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

**Commissioner Franks made a motion to accept recommendation of legal counsel to dismiss; motion seconded by Commissioner DiChiara; motion passes unanimously.**

**20. 2015013881**

**License Expiration: 8/23/2016**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainant alleges that Respondent willfully misrepresented the Purchase and Sale Agreement and engaged in the unauthorized practice of law and accounting with conflict of interest and without being licensed. Complainant was the buyer of a home and Respondent (principal broker) represented the seller. According to Complainant, the Purchase and Sale Agreement dated September 14, 2012 states "owner financing" for a term of three years. Complainant alleges that when Complainant questioned Respondent regarding closing, Respondent stated that the Agreement was a "lease option." Later, when Complainant denied signing a "lease option," Complainant alleges Respondent stated it was a "land contract." Complainant alleges Respondent has refused to provide Complainant with an actual land contract. Complainant alleges Respondent was aware of Complainant's intent to fix up the home and refinance the home at the end of the three year owner financing. Complainant alleges the home was not in any condition for a bank to finance nor was it insurable at the time due to major water damage from the roof. Complainant alleges that Respondent's refusal to provide an actual land contract or Deed of Trust will make Complainant unable to apply for refinancing. Complainant states that Respondent was in a hurry to seal the deal because Respondent was leaving for vacation so Respondent listed the closing date as "TBD." Complainant states that when Complainant attempted to obtain homeowner's insurance after the home was insurable, Complainant was unable to do so due to a lack of formal closing or transfer of deed. Complainant alleges Respondent was aware that the home would be under the name of Complainant's son, which is why the Agreement states "Deed is to be made in the name of TBD." Complainant alleges that Respondent refuses to include Complainant's son's name on any document, besides "Working with a Real Estate Professional," which lists the incorrect home address. Complainant alleges that Respondent refuses to update Complainant's contact information contained in Amendment 1 of the purchase and sale agreement. Complainant states that Respondent said "I will prepare an addendum to the contract addressing ONLY the insurance on the home" and blatantly refuses to update Complainant's legally vital information. Complainant states that Complainant informed Respondent that the furnace needs to be replaced, and Complainant refuses to pay for any further damage to the home from the possibility of the pipes bursting. Complainant states that the agreement states "This is an owner financing contract." Buyer agrees to start work fixing up the home when they take possession..." and that Complainant was

required to install a new roof. Complainant states that Complainant did as required but Respondent has refused to provide a valid deed. Complainant contacted the seller regarding this matter, and Complainant claims the seller stated that Respondent presented the deal to seller as “rent to own.” Complainant believes Respondent willfully misrepresented the deal to Complainant and the seller who Complainant claims is a senior widow. Complainant states that Respondent threatened Complainant by telling Complainant that Respondent could easily sell the property at the same price without the dwelling. Complainant states that Complainant received a text message from Respondent on November 20, 2013 that read “The best solution is for you to obtain financing from a third party and pay the seller for the property.” Complainant believes this statement sounds like legal and financial advice, which Complainant believes Respondent is not qualified or licensed to provide. Complainant believes Respondent would gain an early commission from this, while Complainant would be at a loss of over \$11,000 over the remaining two year term of “owner financing.” Complainant also states Respondent’s actions demonstrate a conflict of interest since Respondent represents the seller.

Respondent states that the Purchase and Sale Agreement does state “Owner Financing,” which is common when buyers have difficulty qualifying for a conventional loan. Respondent states that “owner financing” is known by many names, including contract for deed, land contract, and lease purchase agreement etc. Despite whether the agreement is for a lease option or land contract, Respondent states that title does not pass until the buyer fulfills the financial obligation to the seller. Respondent believes that since the purchase and sale agreement states it is an owner financing contract, the land contract was incorporated within the purchase and sale agreement but Respondent assumes that that the parties could prepare and execute a separate contract “nunc pro tunc,” if needed, to satisfy the lender’s requirements. Respondent alleges that Complainant made the decisions on repairs and expenses and their reflection on the equity. Respondent states that once the seller receives the payment in full, a formal closing or transfer of deed will occur. Respondent states that at the point of title transfer, Complainant establishes who the grantee will be. Respondent alleges that Complainant briefly mentioned Complainant’s son being the grantee, and Respondent sees no problem with him being the grantee at closing. Respondent admits an incorrect address for the Complainant on the Confirmation of Agency Status. Respondent states that this was an oversight and that all other documents have the correct address. Respondent states that Respondent updated Complainant’s contact information when Respondent learned Complainant occupied the property and that all parties were aware of Complainant’s address change. Respondent believes providing an amendment was unnecessary for a simple address update. In regard to damage to the home, Respondent states that Complainant purchased the property “as is” under the purchase and sale agreement. Furthermore, Respondent states that Complainant had a ten day inspection period in which Complainant could cancel the

contract with the seller. Respondent states that the seller has the responsibility of providing Complainant with a valid deed upon receipt of full payment and that the seller firmly refuses to modify anything pertaining to the purchase and sale agreement. Respondent states that Respondent has a 20+ year working relationship with the seller who is a very intelligent and competent business woman, regardless of her age. Respondent admits stating to Complainant that Respondent could sell the property for the same price without the dwelling and states it is a matter of fact based upon the 2012 appraisal which is \$111,300 more than Complainant's purchase price. Respondent denies any misrepresentation towards Complainant or the seller. Respondent denies giving legal or financial advice. Respondent defends Respondent's text message to Complainant as Respondent's opinion based on common sense and experience and the contract Complainant signed. Respondent states that Respondent receives commission when the seller receives full payment, regardless of the date and that Respondent would not consider 3 years early, as Complainant alleged Respondent was trying to expedite the contract for early commission. Respondent denies any willful misrepresentation and states that Respondent is a licensed contractor, auctioneer and broker with over 20 years of experience. Respondent states the situation has evolved from a misunderstanding. Respondent states that owner financing can be as flexible as the parties involved and the transaction addressed Complainant's situation and capabilities as simply as possible with no down payment required. Respondent states that Respondent is unaware of any seller who would transfer title with no money down and risk the consequences of a second mortgage. Respondent states that Respondent does not represent the buyer, but has been fair to all parties involved, has made no misrepresentation to anyone and has not engaged in the practice of law or financial advisement.

The Purchase and Sale Agreement states that transfer of title will occur at closing. The terms include a monthly payment of \$500 to the seller for the first year, the entirety of which will go towards reducing the principal. The second and third year require a \$600 monthly payment to the seller with \$300 going towards reducing the principal and the remainder as interest to the seller. The agreement requires the remainder of the purchase price due in full on or before September 14, 2015 at which time Respondent will receive a 6% commission based on the contract sale price. There is no down payment required in the terms. The agreement also states that Complainant agrees to purchase the property "as is". While Complainant states that Complainant was unable to obtain an insurance policy once the property was insurable, an amendment to a homeowner's policy for the subject property was provided showing Complainant as the insured. The confirmation of agency status form indicates that Respondent's status as seller's agent was disclosed to the buyer, who was unrepresented. While Complainant may have misunderstood the contract entered into, nothing was produced to substantiate Complainant's claims, including unauthorized practice of law or accounting.

**Recommendation: Dismiss**

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

**Commissioner Franks made a motion to accept recommendation of legal counsel to dismiss; motion seconded by Commissioner DiChiara; motion passes unanimously.**

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

**August 5, 2015 at 3:00 p.m.**

