



STATE OF TENNESSEE<sup>102</sup>  
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NASHVILLE, TN 37243  
615-741-2273  
<https://www.tn.gov/commerce/regboards/trec.html>

## MINUTES

The Tennessee Real Estate Commission held a meeting January 13, 2021 at 8:30 a.m. CST via the WebEx meeting platform based at the Davy Crockett Tower located at 500 James Robertson Parkway, Nashville, TN 37243. The meeting was called to order by Chairman John Griess. Chairman Griess welcomed everyone to the Board meeting.

Executive Director Caitlin Maxwell read the public disclaimer and called the roll. The following Commission Members were present: Chairman John Griess, Commissioner Steve Guinn, Commissioner Joe Begley, Commissioner Jon Moffett, Commissioner Stacie Torbett, Commissioner DJ Farris, Commissioner Joan Smith, and Commissioner Geoff Diaz. Vice-Chair Marcia Franks was absent. Quorum Confirmed. Others present: Executive Director Caitlin Maxwell, Associate General Counsel Anna D. Matlock, Associate General Counsel Shilina Brown, Paralegal Carol McGlynn, Education Director Ross White, and TREC staff member Aaron Smith.

Associate General Counsel Anna Matlock read the “Statement of Necessity” into the record.

Motion to approve the “Statement of Necessity” was made by Commissioner Farris and seconded by Commissioner Moffett. Motion passed unanimously by roll call vote.

The January 13, 2021 board meeting agenda was submitted for approval.

Motion to approve the agenda was made by Commissioner Diaz and seconded by Commissioner Guinn. Motion passed unanimously by roll call vote.

Minutes for the December 09, 2020 board meeting were submitted for approval.

Motion to approve the December 09, 2020 minutes was made by Commissioner Diaz and seconded by Commissioner Begley. Motion passed unanimously by roll call vote.

### **INFORMAL CANDIDATE APPEARANCES:**

Sara Jones, and Principal Broker Gerran Wheeler appeared before the commission to obtain approval of Ms. Jones’s Affiliate Broker license.

Motion to approve Ms. Jones was made by Commissioner Begley and seconded by Commissioner Farris. Motion passed unanimously by roll call vote.

David Boardman, and Principal Broker George Hatcher Jr. appeared before the commission to obtain approval of Mr. Boardman's Affiliate Broker license.

Motion to approve Mr. Boardman was made by Commissioner Guinn and seconded by Commissioner Smith. Motion passed unanimously by roll call vote.

Matthew Pellegrino, and Principal Broker Nancy Jernigan, appeared before the commission to obtain approval of Mr. Pellegrino's Affiliate Broker license.

Motion to approve Mr. Pellegrino was made by Commissioner Diaz and seconded by Commissioner Farris. Motion passes unanimously.

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### **EDUCATION REPORT**

Education Director Ross White presented the education report to the Commission.

Motion to approve courses J1-J26 was made by Commissioner Guinn and seconded by Commissioner Moffett. Motion passed unanimously by roll call vote.

Education Director Ross White presented Instructor's Bios to the commission.

Motion to approve instructors was made by Commissioner Moffett and seconded by Commissioner Diaz. Motion passed unanimously by roll call vote.

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### **EXECUTIVE DIRECTOR'S REPORT**

Director Maxwell updated the Commission on the following topics below.

- **2021 TN Excel Summit (TNEX):** Director Maxwell advised the commission that the upcoming TNEX would be on Tuesday, February 16, 2021 at 2:45PM CST.
- **ARELLO EDUCATION UPDATE:** Director Maxwell advised that ARELLO is rolling out their synchronous plan. TREC will work with provider's giving them until April to provide the ARELLO synchronous certificate.

- **MISCELLANEOUS:** Director Maxwell advised that we are processing E&O renewals for the 2021-2023 period. As of today, we have 7500 licensee's that have not renewed their Errors and Omissions Insurance. TREC will run the suspension on January 29, 2021. In addition, a reminder to submit 2021 Conflict of Interest forms.

### **OFFER OF SETTLEMENT:**

Associate General Counsel Shilina Brown advised the commission of the offer regarding Case Number: 2018073421

Motion to accept the Offer of Settlement was made by Commissioner Diaz and seconded by Commissioner Moffett. Motion passed unanimously by roll call vote.

### **COMMISSION DISCUSSION:**

### **KREC RECIPROCAL AGREEMENT:**

Director Maxwell advised the changes to the agreement. There changes made to 2.5 & 3.2. These changes added the words "upon request" to 2.5 and added "this agreement does not supersede any rules/laws Tennessee or Kentucky have in place" to section 3.2.

Motion to approve the agreement was made Commissioner Farris and seconded by Commissioner Moffett. Motion passed 7-0 with Commissioner Diaz absent for the vote.

### **CONSENT AGENDA:**

The following cases were presented to the Commission via a Consent Agenda. All cases were reviewed by legal and legal has recommended either dismissal or discipline.

A motion to accept counsel's recommendation for cases 1-37 with exception of the following cases which were pulled for further discussion: **2020070531, 2020066181, 2020072351, 2020072731, 2020073211, 2020063351** was made by Commissioner Torbett and seconded by Commissioner Smith. Motion passed unanimously by roll call vote.

After further discussion by the Commission on complaint 2020070531, Commissioner Farris made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Torbett. Motion passed 7-0 with Commissioner Diaz absent for the vote.

After further discussion by the Commission on complaint 2020066181, Commissioner Farris made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Torbett. Motion passed 7-0. Commissioner Diaz was absent for the vote.

After further discussion by the Commission on complaint 2020072351, Commissioner Farris made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Torbett. Motion passed 7-0. Commissioner Diaz was absent for the vote.

After further discussion by the Commission on complaint 2020072731, Commissioner Farris made the motion **Letter of Instruction advising the Respondent to ensure all pertinent terms of a transaction are included in the Purchase and Sale Agreement and the importance of ensuring all terms of the transaction are in writing**. The motion was seconded by Commissioner Smith. Motion passed 7-0. Commissioner Diaz was absent for the vote.

After further discussion by the Commission on complaint 2020073211, Commissioner Farris made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Torbett. Motion passed 7-0. Commissioner Diaz was absent for the vote.

After further discussion by the Commission on complaint 2020063351, Commissioner Farris made the motion **to accept counsel's recommendation**. The motion was seconded by Commissioner Guinn. Motion passed 7-0. Commissioner Diaz was absent for the vote.

- 1. 2020062701**  
**Opened: 9/14/2020**  
**First Licensed: 05/19/2016**  
**Expires: 5/19/2021**  
**Type of License: Time Share Registration**  
**History: None**

Complainant is a Tennessee resident and purchaser of a timeshare and the Respondent is licensed Tennessee Time Share Registrant.

The Complainant purchased a timeshare from the Respondent and when the purchase was made, the Respondent stated the 100,000 points purchased per year would allow the Complainant to vacation four times per year and resort amenities would be included (water parks, golf courses and other family activities). In July 2019, the Complainant first vacationed at a Respondent property and received an additional 200,000 points as part of the purchase. 160,000 points were used for the four days. "The Complainant does not understand how the Respondent could represent the 100,000 points originally purchased would allow the Complainant to vacation on four separate occasions per year if one trip used up 160,000 points. Also, the amenities of the resort were not included as part of the room reservation and the Complainant had to pay additional amounts to use the facilities and participate in additional resort activities. Also, extra toiletries and paper towels were charged to the Complainant. The Complainant has attempted to make a reservation for 2020 and was unable to book a room because there are no available rooms at the chosen location. The Complainant was advised to make reservations one year in advance or become a member of the signature collection in order to make bookings in a shorter period. To join the signature collection, the Complainant had to pay additional monies. The Complainant alleges the Respondent

misrepresented the terms and conditions of the timeshare purchase.

The Respondent provided a response and stated the Complainant attended a timeshare presentation on September 30, 2018 and purchased a standard interest and was given 100,000 club points per year in the club. The timeshare is a points-based exchange program where an owner may book reservations at 28 resorts in the network. An owner can make reservations for any available unit (standard or signature collection) during any time of year provided the owner has the requisite number of club points in the account for the desired reservation. The Respondent stated the Complainant was never provided any assurances were provided that 100,000 club points would allow the Complainant to four vacations at the resort per year. The number of club points required for any given reservation is entirely dependent on specifics for such reservations (length of stay, size of accommodation and the season). The sales consultant provide prospective purchasers with examples of how the points can be used, but there are other factors involved when booking a vacation using points and there is no guarantee that 100,000 points would allow for four vacations at the resort. Sales consultants do not provide prospective purchasers with guarantees that a specific number of vacations can be taken based on the number of points purchased. The Complainant was provided with an owner guide which specifically provides all the details necessary for reservations and how to use the points. The exact number of points for any reservations is clearly set forth in the member guide. This guide is provided to the owners at the time of purchase of the timeshare. The guide also breaks down by resort, season, day of week, unit type and unit size. The 100,000 points would not be enough to secure one weeklong reservation in a four-bedroom signature collection unit during peak season. It would be enough to secure four five-day reservation in a smaller accommodation during off-peak season when used with the Developer's MaxTime (deeply discounted vacation offers) which is all fully disclosed to the Owner at the time of purchase. The Complainant also claims at the time of purchase the Complainant would receive 200,000 additional club points in connection the purchase of the ownership interest. This is inaccurate. On the date of the purchase, the Complainant executed a bonus point certificate which stated that upon remittance of six mortgage payments, the Complainant would receive an additional deposit of 100,000 bonus points on the account on June 19, 2019. The Complainant also claimed the July 2019 reservations required 160,000 points. This is inaccurate. The Complainant contacted the Respondent on May 13, 2019 to book two 2-bedroom units at a resort in Florida from July 14 to July 18, 2019. Each reservation was secured with 66,400 club points for a total of 132,800 points for both reservations. The Respondent's records reflect at the time the reservation was secured with the 2018 club points and with 2019 club points. The owner's 100,000 points have not been used and remain available in the Complainant's club account. The Complainant also claims to have tried to book a reservation in 2020 and alleges the Respondent indicated there was no availability at the desired resort and was told to book a year in advance or be part of the signature collection. The Respondent is unable to locate any such inquiry by the Complainant on this date. The Complainant has not attempted to book any reservation after May 13, 2019. An owner with a traditional membership level cannot book reservations more than 59 days in advance. The Complainant was not advised the reservation would have to be booked one year in advance. Also, the contract documentation clearly discloses all reservations are based on availability. It is strongly recommended owner's book as early as the booking window allows them in order to maximize their ability to secure reservations as early as their booking windows allow to maximize the ability to secure reservations at desired resorts during desired dates. The Complainant is correct concerning the additional charges for amenities and other services. The

member guide and the public offering statement provided to Owner at the time of purchase provides an outline of the various amenities and services available at the specified resorts and further advised that some are subject to additional fees. There are also additional fees for additional toiletries and towels. The units are cleaned prior to arrival and after departure. There is an additional fee for daily maid service. Each unit is initially set up to accommodate a specific number of people and towels provided in each unit are based on the number of individuals that will occupy the unit. If an owner requests additional towels, there is an additional fee. The Complainant is provided with clear and accurate disclosure regarding rescission rights and how to exercise the same within the statutory rescission period. The Complainant did not exercise this right within the prescribed timeframe. The Complainant's rescission period has past, and the Complainant is not entitled to cancellation of the contract. Our records show the Complainant's purchase documents are in order containing full and accurate disclosure of the terms of his purchase, signed and acknowledged by the Complainant and agreeing to the terms and conditions contained in the documents. Notwithstanding the foregoing, in the spirit of good customer service and in recognition that financial hardships arise, we are willing to extend Owner a one-time offer to cancel his Ownership pursuant to a Deed in Lieu of Foreclosure ("DIL"), thereby releasing the Complainant from the outstanding obligations in connection with the Ownership. The DIL, once properly executed and returned to Developer, will allow Owner to surrender the Ownership to Developer, without refund, and will relieve Owner of any future obligations applicable to the Ownership. Please note, however, that the execution and recording of the DIL may have a negative impact on Owner's credit. If Owner would like to move forward with the DIL, the Complainant should contact the Legal Department. Upon receipt of such notification, we will forward the applicable documentation to Owner's attention for execution. Alternatively, if Complainant determines that the Complainant prefers to retain ownership, the Complainant will be required to cure the delinquencies thereunder and to timely remit the payments applicable thereto.

There is insufficient evidence concerning a violation of the laws and rules of the Tennessee Real Estate Commission.

Pursuant to Tenn. Code Ann. § 66-32-119, the statute of limitations for the Complainant to file a civil lawsuit concerning the validity of a timeshare contract has expired. The cancellation must be done within a four (4) year period of the date of the contract.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**2. 2020070311**  
**Opened: 9/22/2020**  
**Unlicensed**  
**History: None**

The Complainant is a Tennessee resident and the Respondent is an unlicensed Tennessee property manager.

The Complainant entered into a lease agreement with the Respondent, a representative of a South Carolina real estate corporation. The Complainant was directed to deal with the local property managers concerning the lease. After the Complainant moved into the unit, there were several repairs that needed to be done, the parking areas were unavailable and there was open use of alcohol and drugs by neighbors. The managers refused to help and began to harass the Complainant, family and guests. The Respondent refused to make the necessary repairs and made verbal threats against the Complainant. The Respondent handles the maintenance, property management, collects rent, holds escrow monies and oversees the operation at several apartment complexes in the area. The Complainant alleges the Respondent has violated state and federal privacy laws by providing friends and neighbors with the Complainant's personal information provided during the signing of the lease.

The Respondent is a property manager for a real estate corporation and falls under the exemption for Tenn. Code Ann. § 62-13-104(E) ["A resident manager for a broker or an owner, or employee of a broker, who manages an apartment building, duplex or residential complex where the person's duties are limited to supervision, exhibition of residential units, leasing or collection of security deposits and rentals from the property. The resident manager or employee shall not negotiate the amounts of security deposits or rentals and shall not negotiate any leases on behalf of the broker;"]

The Respondent is exempt from licensure pursuant to state law. The complaint relates to state and federal privacy issues not under the jurisdiction of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**3. 2020070531**  
**Opened: 9/22/2020**  
**First Licensed: 5/3/2018**  
**Expires: 5/2/2022**  
**Type of License: Affiliate Broker**  
**History: None**

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant stated the Respondent and her husband entered a contract to purchase the Complainant's home on June 24, 2020, subject to the sale of their home and financing. The Respondent's home was already under contract with a closing date of August 7, 2020. A pre-approval letter was provided by the mortgage corporation. The Respondent contacted the Complainant's agent on July 7, 2020 and stated the Respondent had not been approved for a loan and sent a Mutual Release for Earnest Money. The denial letter was sent by the loan officer prior to an appraisal or going through underwriting. The Complainant alleges this is fraud because the

Complainant had requested the loan be sent through underwriting before the release was signed and the earnest money was returned. The Complainant received another denial letter from an underwriter and release the earnest money. The Respondent purchased another home on August 31, 2020 for \$860,000 which was \$45,000 more than the contract with the Complainant. The Complainant alleges the Respondent had buyer's remorse and acted fraudulently in being released from the contract.

The Respondent provided a response and stated the lender guidelines along with all lenders in the real estate industry were stricter by the day due to COVID-19 in addition to the market being so volatile. On February 26, 2020, the loan officer issued a pre-approval letter. The pre-approval was subject to the sale of the Respondent's home, contingent upon the Respondent raising their credit score to 700, and contingent upon debt to income ratios under 50%. In order for the lender to approve the loan, the lender needed to make sure the property met the loan guidelines, the property has marketable title, and final approval was contingent on the borrower not accruing no new obligations until the loan is funded. The present obligations had to be paid as agreed and reflect no late payments. Also, the lender needed to receive an acceptable appraisal indicating value was no less than sales price. The borrower was to provide acceptable homeowner's insurance and proof of payment at closing. Also, the Respondent had to show acceptable evidence prior to closing of enough funds to cover down payment, closing costs, reserves and any other funds necessary for closing. Also, the lender required the Respondent's proof of current employment, credit report and any other documentation which may be required to be completed for the loan file. The final approval was subject to underwriting approval and any conditions the underwriter may request. Also, there were to be no adverse actions to employment, credit rating or current debt obligations. Pre-approval is not a commitment to lend and is not guaranteed and may be subject to additional review. The Respondent indicated that at the time of the preapproval the Respondent's debt was higher and the credit score was not 700+. There was also not enough cash to come to the closing table and pay off debts to qualify. The debt to income ratio was 67.54%. The Respondent was trying to buy a home when there was a global pandemic and the lenders requirements were constantly in flux during this period. There was a \$58,407.62 shortage of cash needed at closing. The insurance for the home was also very high due to the fire hydrant being too far away from the property and this made the DTI very high. The lender was going through tight guidelines for loans due to the COVID-19 pandemic. The lender did not have any programs that would allow one-year tax returns with the credit score and seasoned money. The Respondent did not have enough money to pay down the debts and the credit scores were not over the qualifying scores to get the Respondent the loan. The homeowner's insurance was double the tax payments and this was due to the fire hydrant being so far away from the house. Essentially, the Respondent did not have enough funds to close and cannot pay off debt to correct the debt ratios and raise the score. The new lender helped the Respondent raise the credit score and qualify for a one-year program. The Respondent's 2018 taxes were low, and the prior lender used two years average which could not qualify the Respondent. The Respondent later paid off a student loan and several other debts to reduce the debt ratio. The Respondent also sold an investment home and freed up funds and sold their personal home. The investment home was under a Tennessee investment group.

Based on the above information, the lender would not approve the loan and Respondent had to request a release from the contract. The purchase was contingent on the Respondent obtaining the necessary financing. The Respondent did not act fraudulently. There is insufficient evidence to

support a violation of the laws and rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

- 4. 2020065881**  
**Opened: 9/22/2020**  
**First Licensed: 10/12/1982**  
**Expires: 7/9/2022**  
**Type of License: Real Estate Firm**  
**History: None**

Complainant is a North Carolina resident and purchaser of a timeshare property. The Respondent is a licensed Tennessee Real Estate firm.

The Complainant purchased one-week in a timeshare property located in Tennessee in 2012.

The Respondent provided a response and stated there was no fraud, deceit or misrepresentation by the Respondent. Since 2017, the Complainant has been attempting to cancel the contract and have no further obligations in the timeshare property.

The Respondent has not violated any of the laws and rules of the Tennessee Real Estate Commission. The rescission/cancellation period for the contract has expired. The Complainant entered a contract for the timeshare purchase eight years ago. Pursuant to Tenn. Code Ann. § 66-32-119, the statute of limitations for the Complainant to file a civil lawsuit concerning the validity of a timeshare contract has expired. The cancellation must be done within a four (4) year period of the date of the contract.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

- 5. 2020070351**  
**Opened: 9/22/2020**  
**First Licensed: 7/23/2020**  
**Expires: 7/22/2022**  
**Type of License: Real Estate Firm**  
**History: None**

Complainant is a Tennessee property manager and resident and the Respondent is a licensed Tennessee Real Estate firm and Florida corporation.

The Complainant stated the broker the Complainant used sold the company on June 24, 2020 to the Respondent. The Respondent had two years of experience in property management and were asked to sign an agent agreement. The Complainant agreed and signed the agreement. The Respondent advised the Complainant to advise all owners and tenants to send out notices to let owners and tenants know about the change in ownership. After three weeks, the Complainant heard nothing further from the Respondent. The Complainant decided to part ways with the Respondent and felt as though the Respondent was withholding information. The Complainant provided the thirty-day notice on July 21, 2020. The Complainant's agreement would expire on August 21, 2020. As a courtesy to the Respondent, the Complainant also submitted a letter to the owners advising them the previous company had been sold the Complainant would be leaving the new company. Several owners wanted to transfer the property with the Complainant and the Complainant advised the owners to have an attorney review the management agreement to see if that was possible. The Complainant was entitled to have all funds collected credited to the Complainant. The Complainant also submitted the request from six property owners who e-mailed the Complainant to have their management agreement terminated with the Respondent. The Complainant was still due commission on renewal of leases and was advised the renewal would go to a different property manager. The Complainant had signed management agreements from all these owners and to date the Complainant has not received the funds and keys for three of the owners even after repeated attempts to contact the Respondent. Also, the Respondent has failed to issue the final commission check to the Complainant. The Complainant should have received it by August 28, 2020 but has still not received it. In early September, the Complainant received a letter from the Respondent's attorney stating the Complainant had engaged in improper solicitation of the Respondent's customers.

The Respondent purchased the Complainant's former brokerage firm on June 24, 2020. The Respondent operates several brokerage firms in several states and is in the process of transferring the Tennessee assets and business operations to a newly formed Tennessee entity under common ownership. The Complainant executed an "Independent Agent Agreement" on June 24, 2020 and the agreement governs the rights and responsibilities of the parties' relationship. On July 21, 2020, the Complainant provided a 30-day notice of termination of the agent relationship with the Respondent. The decision was made by the Complainant and the agreement includes a confidentiality and non-disclosure clause which stated all information was confidential. The Respondent stated the Complainant has used the confidential information, such as customer lists, contracts and service rates to directly contract and/or solicit the Respondent's active customers in effort to generate new business for the Complainant's competitor brokerage firm. The Complainant sent e-mails before the Complainant's last day of as Respondent's agent to several customers advising them the Complainant was leaving the Respondent's brokerage firm. The e-mails were sent while the Complainant still had an agency agreement with the Respondent and clearly reflects the attempts by the Complainant to solicit the current customers for the Complainant's personal benefit and the benefit of the future brokerage firm. The Complainant also called into question the validity of the existing customer agreements with the Respondent. The Complainant even provided the customers a draft of proposed form termination letters the customers should use to send to the Respondent. As such, the Complainant violated the terms of the agreement with the Respondent and was in breach. The Respondent issued a cease and desist to the Complainant on August 24, 2020. The Complainant also sent a text message to a current agent of the Respondent advising the Complainant would continue to contact the customers of the

Respondent by using an e-mail list obtained when the Complainant was still an agent of the Respondent. The customer lists are also subject to the confidentiality and non-disclosure provision of the agreement signed by the Complainant. The Complainant has made disparaging and slanderous statements to the current customers in order to solicit the customers. This is improper and unlawful behavior by the Complainant, tortious interference with the Respondent's business relationship and a breach of the agreement between the Complainant and the Respondent. The Respondent is unable to determine if there is any validity to the Complainant's claims concerning the unpaid commissions because it is unclear which customers and accounts are at issue. The Respondent has never been provided the exact information by the Complainant and cannot investigate whether the claims are valid. The Complainant should provide the necessary information to the Respondent for the Respondent to investigate and determine if amounts are still due to the Complainant.

This matter is an employment contract and agency dispute between the parties. There is insufficient evidence indicating the Respondent has violated the laws or rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

6. **2020072851**  
**Opened: 9/22/2020**  
**Unlicensed**  
**History: None**

The Complainant is a Florida resident and the Respondent is an unlicensed Tennessee real estate firm and Florida corporation,

The Complainant alleges the Respondent is not licensed in Tennessee and is owned by a Florida corporation. The Complainant alleges the Respondent is offering brokerage services in Tennessee without a real estate license.

The Respondent did not provide a response to the complaint.

**Recommendation: Authorize a formal hearing and authorize a civil penalty for \$1,000 for unlicensed real estate activity.**

**Commission Decision: The Commission accepted counsel's recommendation.**

7. **2020060681**  
**Opened: 9/22/2020**  
**First Licensed: 4/20/1999**  
**Expires: 12/31/2021**  
**Type of License: Time Share Registration**  
**History: None**

Complainant is a Tennessee resident and timeshare purchaser and the Respondent is a licensed Tennessee Time Share Registrant.

The Complainant purchased a timeshare from the Respondent after visiting the property in 2011. The timeshare was purchased in 2013 and the Respondent used the timeshare only on one occasion in 2017 because of numerous problems in securing a reservation with the Respondent. The Complainant has had several issues booking the timeshare since the original purchase and no longer want to own the timeshare property.

The Respondent stated the Complainant purchased a timeshare in Tennessee on December 22, 2013. The Complainant also filed a complaint with the Florida Better Business Bureau addressing the same issues in the complainant and this was also filed with the Commission. The Respondent did not engage in any misrepresentation or fraud and the Complainant is seeking a rescission/cancellation of the contract after the expiration of the rescission/cancellation period. The Complainant has not been current on the mortgage payments and is in default and referred to collection.

There is no evidence indicating the Respondent has not violated the laws and rules of the Tennessee Real Estate Commission. The contractual rescission period for the Complainant has expired. The Complainant purchased the timeshare over seven years ago. Pursuant to Tenn. Code Ann. § 66-32-119, the statute of limitations for the Complainant to file a civil lawsuit concerning the validity of a timeshare contract has expired. A lawsuit must be filed by the Complainant within four (4) years after the date of the contract.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

8. **2020063111**  
**Opened: 9/22/2020**  
**First Licensed: 8/23/2017**  
**Expires: N/A**  
**Type of License: Time Share Registration**  
**History: None**

Complainant is a Kentucky resident and purchaser of a timeshare and the Respondent is a licensed Tennessee Time Share Registrant holding a time-share exemption.

The Complainant was offered a discount ticket to attend a seminar in July 20, 2018 while visiting the Respondent's resort property. The Complainant attend the seminar and answered a questionnaire and later a salesperson returned and asked for the Complainant's driver's license and stated the Complainant had been approved for \$3,524 line of credit. The Complainant did not authorize the Respondent to run a credit check or express interest in any purchase or seek credit for any purpose. The Complainant had no idea this related to the purchase of vacation points and told the salesperson when the Complainant goes on vacation it is paid with cash. The Complainant was rushed through some process by the Respondent and believes the Respondent engaged in fraud. In February 2019, the Complainant found an open account on the Complainant's credit report related to the Respondent's vacation club. The Complainant made an inquiry about the account with the credit reporting service and was told to contact the Respondent. In July 2020, the Complainant was attempting to sell a home and discovered that there was a delinquent balance of close to \$5,000 which had not been paid in over two years. The Complainant was under the impression the account was closed and claims to have not purchased anything from the Respondent. In August 2020, the Complainant contacted the Respondent and spoke with them concerning the account. The Respondent refused to resolve the issue or close the account.

The Respondent provided a response and stated the Complainant purchased an interest in the vacation property on July 21, 2018 and the Complainant received all proper disclosures and documents including the membership agreements and statement of understanding. A receipt was also provided to the Complainant in the amount of \$3,524.00 for payment of the vacation club credit account. The Complainant was provided all the terms and conditions of all programs. The Complainant was also provided with rescission rights. The Complainant did not rescind the contract within the rescission period. After the rescission period, the contract became legally binding. The Complainant also made three reservations following the purchase and later cancelled the reservation on another date. The Complainant was aware of the purchase of the timeshare.

The Respondent has not violated any of the laws and rules of the Tennessee Real Estate Commission. The rescission/cancellation period under the contract has expired. Pursuant to Tenn. Code Ann. § 66-32-119, the statute of limitations for the Complainant to file a civil lawsuit concerning the validity of a timeshare contract is four (4) years after the date of the contract. The Complainant can file a civil lawsuit concerning the validity of the timeshare contract.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**9. 2020065851**  
**Opened: 9/22/2020**  
**First Licensed: 4/3/2014**  
**Expires: 4/2/2021**  
**Type of License: Time Share Registration**  
**History: None**

Complainant is a North Carolina resident and purchaser of a timeshare property and the

Respondent is a licensed Tennessee Time Share Registrant.

The Complainant purchased a timeshare from the Respondent in 2012 and alleges the Respondent refused to assist the Complainant. The Respondent recommended the Complainant sell the timeshare. The Complainant spoke to a salesperson and were able to trade-in weeks owned in another timeshare property in South Carolina. The Complainants allege they were unable to secure a reservation with the Respondent and were put on a waitlist. The Complainant had to upgrade in order to get a booking. The Complainant upgraded to two weeks for an additional fee and alleges the Respondent lied to the Complainants and the salesperson was dishonest. The Complainant wants to file a complaint against the salesperson for misrepresentations.

The Respondent provided a response and stated the Complainant purchased one-week timeshare on September 25, 2012. There was no fraud, inducement, misrepresentation, deceit or any other illegal activity involved in the purchase. The Complainant submitted a letter in January 2017 requesting the Respondent take the deed back from the Complainant due to medical reasons. There was no indication concerning a problem with the validity of the contract.

This is a duplicate complaint filed by the Complainant. The Respondent has not violated any of the laws and rules of the Tennessee Real Estate Commission. The rescission/cancellation period for the contract has expired. The Complainant entered a contract for the timeshare purchase eight years ago. Pursuant to Tenn. Code Ann. § 66-32-119, the statute of limitations for the Complainant to file a civil lawsuit concerning the validity of a timeshare contract has expired. The cancellation must be done within a four (4) year period of the date of the contract.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**10. 2020063421**  
**Opened: 9/28/2020**  
**First Licensed: 1/24/2006**  
**Expires: 5/15/2011**  
**Type of License: Affiliate Broker**  
**History: None**

Complainant is an Ohio resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant alleges the Respondent represented the owner of a development located in Tennessee. The Complainant purchased a lot on July 29, 2017 as part of a "Land Liquidation" sale offered by the Respondent's firm. The Respondent's firm stated the land was "100% completed infrastructure, paved and curbed roads with underground utilities." On July 11, 2020, the Complainant's builder advised the Complainant there was no electric running to the lot and the builder even contacted the electric cooperative and were advised a payment would be required in

order to run electric from a lot three lots away from the Complainant's lot. On July 12, 2020, the Complainant contacted a representative of the Respondent's firm who also worked on the purchase and explained the situation to the Respondent's associate. There were several e-mails exchanged including a power route map. On August 9, 2020, the e-mail response from the Respondent's firm stated since the electric is so close, it is the Respondent's thought this is a general cost associated with construction and not the obligation of the Seller. The president of the homeowner association where the land is located stated the Complainant contacted the Respondent Affiliate Broker to address this matter. The Complainant contacted the Respondent and received no response. There were several follow-up e-mails sent to the Respondent and there was no response from the Respondent. The Complainant found there were other complaints lodged against the Respondent by another landowner who purchased a lot on July 29, 2017.

The Respondent did not provide a response to the complaint. Respondent's attorney was to provide a response and requested an extension of time in mid-October 2020. The Respondent's attorney indicated the matter has been settled and the Complainant will be withdrawing the complaint. The Respondent's attorney never submitted a response and follow-up confirming settlement of all claims and no withdrawal of the complaint was submitted by the Complainant.

**Recommendation: Authorize a contested case proceeding for violations of Tenn. Code Ann. §§ 62-13-313 (a licensee shall within ten (10) days file an answer to a complaint), 62-13-312(1) (making a substantial and willful misrepresentation), (4) misleading and untruthful advertising, and (20) any conduct that constitutes improper, fraudulent or dishonest dealing and assess a civil penalty in the amount of \$4,000 with the authority to informally settle by Consent Order.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**11. 2020066181  
Opened: 9/28/2020  
First Licensed: 9/11/2019  
Expires:9/10/2021  
Type of License: Affiliate Broker  
History: None**

The Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant alleges the Respondent has an advertising violation concerning a magazine advertisement for real estate services and the Respondent failed to include a phone number.

The Respondent provided a response and stated the advertisement was in local magazine and this was a genuine mistake. As soon as the mistake was realized, the Respondent immediately contacted the magazine and had the mistake corrected. The advertisement ran for three months before the Respondent realized the phone number was missing.

**Recommendation:** Authorize a contested case proceeding and assess a civil penalty in the amount of \$500 for the advertising violation with authority to settle the matter by Consent Order. Tenn. Comp. R. & Regs. 1260-02-.12(3)(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. The firm name must appear in letters the same size or larger than those spelling out the name of a licensee or the name of any team, group or similar entity.

**Commission Decision:** The Commission accepted counsel's recommendation.

**12. 2020071691**  
**Opened: 9/28/2020**  
**First Licensed: 6/14/2007**  
**Expires: 2/9/2021**  
**Type of License: Principal Broker**  
**History: None**

The Complainant is a Florida resident and the Respondent is a licensed Tennessee Principal Broker.

The Complainant went to see a home in Tennessee in July 19, 2020 and the Respondent's husband helped the Complainant. The Complainant alleges the home was listed in the MLS with a square footage of 4,034 and the actual square footage is 2,100 square feet. The Respondent was the listing agent and the Complainant retained the services of the Respondent's husband. The Complainant signed a full price offer for \$795,000 for the home. The Complainant sent \$10,000 in earnest money and paid for the termite and home inspection. The Complainant was applying for a VA loan and a VA appraiser was assigned to appraise the home. Due to a significant difference between the appraised value and the asking/contract price and the "Tidewater Process" was initiated. The appraisal came up at \$637,000 which was below the asking price. The appraisal was still too high based upon comparable homes in the area. There were several real estate professionals in the area and stated the appraisal value should have been closer to \$580,000, based on the comparable home sales. The copy of the appraisal was sent to the Respondent and the Respondent erupted into a storm of expletives and ranting and raving about the appraiser. At the end of the conversation, the Complainant alleges the Respondent's husband terminated the contract. The Complainant made no allegations against the Respondent but alleges the Respondent's husband did not properly represent the Complainants. Since the listing agent was the Respondent's wife, the Complainants were concerned that changing real estate agents may not be in their best interest if the Complainants wanted to purchase the home. On August 13, 2020, the Complainants signed a new contract with the Sellers for \$775,000. There was such a discrepancy between the asking price and the appraised value, the Complainants were aware a larger down payment would be necessary. The Complainant were later advised the mortgage company was unable to secure a mortgage for the Complainants and there was only one more option of reaching out nationwide mortgage provider to obtain a mortgage. The mortgage provider finally stated they were unable to complete the loan due to the unacceptable high appraisal and the discrepancy between the appraisal, the actual value and the asking price. The Complainant tried to contact another national mortgage

company and determine if the lender could assist the Complainants. The Respondent never gave the Complainants an opportunity to put in another offer when there had been a pending offer when the Complainants came to Tennessee to see the home at the end of August 2020.

The Respondent provided a response and stated the Complainant is making a false claim. The Respondent showed the home to the Complainants on the evening of July 19, 2020. The square footage on the home is correct. There is a first floor, second floor, basement, guest suite and party barn and the total square footage is 4,034 square feet. The home is a two-story home with a finished basement, guest suite, party barn and are all under heat and air. The Respondent did not volunteer to be the Complainant's realtor and the Respondent stated he would represent him before coming to see the home. After the Complainant expressed interest in purchasing the home, the Respondent stated the Complainants should make an offer of \$795,000. The Complainant submitted a full price offer of \$795,000. The Respondent received the preapproval letter from the lender for the mortgage. The Complainant was concerned about the mortgage rate and the Respondent did suggest the Complainant call one of the companies on a list of potential banks that the Respondent provides to all clients. The Complainant asked for a recommendation of which lender to use and the Respondent suggested using one of the lenders on the list. The Respondent stated if he had been aware of the appraisal amount and the details concerning the appraisal, the Respondent would have had the home reappraised immediately. One week before the credit denial letter, the Respondent spoke directly with the Complainant's lender and it was too late to salvage the deal. The Respondent believed another lender would have accepted the appraisal that the original lender rejected. When the Respondent received the appraisal, he was stunned at the inconsistency and could not understand the \$158,000 discrepancy. The lender explained there were no other comparables to this home in the area even though the Seller had invested over \$1.2 million into the property. The Respondent made multiple calls to try to understand why this appraised at over \$150,000 below the asking price of the property. The Respondent often felt attacked by the Complainant and the Complainant was very upset when the lender would not approve the loan. After the Tidewater Process was initiated, the Respondent knew there were two options: make a new offer using the appraisal as consideration or continue with the current contract and make up the difference with cash. A second offer was made for \$670,000 on August 12, 2020 and this was rejected by the Seller. The Complainant was very upset at the rejection and was very aggressive with the Respondent. The Respondent even suggested another option of going with a conventional loan and getting a new appraisal. The Complainant wanted to get the same rate, but it was likely a conventional loan would be at a higher rate even with the perfect credit and even with a perfect debt to income ratio of the Complainant. After the earnest money was returned and the mutual release was signed, the following day the Complainant contacted the Respondent again and stated the Complainants were still interested in purchasing the home. The Complainants made a third offer and the Complainant decided to go FHA and use the same appraisal. The Sellers accepted the third offer of \$775,000. The Respondent never had any conversations with the Complainant concerning the commission or the amount of commissions. The discussions for commission are between the listing agent and the Seller. The Respondent was not the listing agent. In fact, the Respondent's wife was the listing agent and ended up lowering the Commission. The Respondent stated on August 29, 2020, the Complainant texted the Respondent and stated they were on their way to Tennessee and would like to see the home again. On the same day, the Respondent's wife, the listing agent of the property received a full cash offer on the property and the home went under contract on August 30, 2020. The Complainant asked about the specifics of

the offer and it was a solid offer when the Respondent spoke to the Complainant after the offer had been accepted on the afternoon of August 30, 2020. The Respondent did not offer the information or provide the information to hurt the Complainant's feelings. The Sellers decided to accept the offer that was the best for them and there was nothing the Respondent could do to prevent the Seller from accepting an all cash offer. The Complainant had every opportunity to buy the home and was unable to purchase the home. Also, after receiving the appraisal the Complainant was determined to purchase the home at a lower price.

The Respondent has not violated the laws and rules of the Tennessee Real Estate Commission.

**Recommendation: Close**

**Commission Decision: The Commission accepted counsel's recommendation.**

**13. 2020072151**  
**Opened: 9/28/2020**  
**First Licensed: 9/19/2007**  
**Expires: 9/18/2021**  
**Type of License: Affiliate Broker**  
**History: None**

The Complainant is a Florida resident and the Respondent is a licensed Tennessee Affiliate Broker.

This complaint is identical to the previous complaint and was filed by the same Complainant against the listing broker of the property.

The Complainant went to see a home in Tennessee in July 19, 2020 and the Respondent indicated the Seller had received a "sight unseen, full price offer." The home was listed in the MLS with a square footage of 4,034 and the actual square footage is 2,100 square feet. The house was listed at \$197.07 when the actual price was \$379. The Respondent offered to be the Complainant's real estate agent and the Complainant retained the services of the Respondent. The Respondent's wife was the listing agent of the property. The Complainant signed a full price offer for \$795,000 for the home. The Complainant sent \$10,000 in earnest money and paid for the termite and home inspection. The Complainant was applying for a VA loan and a VA appraiser was assigned to appraise the home. Due to a significant difference between the appraised value and the asking/contract price and the "Tidewater Process" was initiated. The appraisal came up at \$637,000 which was well below the asking price. The Complainant indicated there were other real estate professionals in the area that opined the appraisal value should have been closer to \$580,000, based on the comparable home sales. The copy of the appraisal was sent to the Respondent and the Respondent erupted into a storm of expletives ranting and raving about the appraiser. At the end of the conversation, the Respondent terminated the contract. The Complainant alleges the Respondent was not properly representing the Complainants. Since the listing agent was the Respondent's wife, the Complainants were concerned that changing real estate agents may not be in their best interest if the Complainants wanted to purchase the home. The Respondent stated he would re-list the home and accept only a conventional loan or cash, not VA. The Respondent did

return the earnest money. The Respondent also indicated he would get another home appraiser who would appraise the home for the full asking price by another appraiser. The Complainant alleges the Respondent is only concerned about the commission from the sale. The Complainant even sent a letter to the Sellers explaining the situation to them and let them know despite the low appraisal the Complainants still wanted to purchase the home and were very motivated to purchase the home. On August 13, 2020, the Complainants signed a new contract with the Sellers for \$775,000. There was such a discrepancy between the asking price and the appraised value, the Complainants were aware a larger down payment would be necessary. The Complainant were later advised the mortgage company was unable to secure a mortgage for the Complainants and the only other option would be to obtain a mortgage from a nationwide bank. The mortgage company communicated with the Complainants daily and the complexity of the transaction was too much for the mortgage company. The Complainant informed the Respondent of the issues that the Complainants were facing and wanted the Respondent, his wife and the Sellers to be aware of the current situation. The Respondent did not assist or provide any insight or guidance to the Complainant. The mortgage provider finally stated they were unable to complete the loan due to the unacceptable high appraisal and the discrepancy between the appraisal, the actual value and the asking price. The Complainant tried to contact another national mortgage company and determine if the lender could assist the Complainants. The contract was cancelled due to the inability of the Complainant to obtain the necessary financing. At the end of August 2020, the Complainant contacted the Respondent about purchasing the home and wanted to see the home again. The following day after the Complainants had driven from Florida to Tennessee. The following morning, the Respondent called the Complainants and advised them the home had been sold the previous day. The Respondent was aware the Complainants were coming from Florida to see the home again and never called them to advise the house had been sold or was in the process of being sold. In fact, the Respondent made it a point to inform the Complainants it was a full cash offer and the cash buyers made a much larger earnest money deposit of \$40,000 compared to the \$10,000 the Complainants had made. On July 20, 2020, the Complainants signed a contract with the Respondent to act as the Complainants real estate agent in the purchase of a home and do not recall ever terminating the contract. The Complainant also alleges the Respondent listed the home with an incorrect square footage. The Respondent never gave the Complainants an opportunity to put in another offer when there had been a pending offer when the Complainants came to Tennessee to see the home at the end of August 2020. The Respondent was only interested in making sure the maximum commission was obtained for himself and his wife and did not care about the Complainants, who were his clients once it was determined a VA loan could not be obtained for the Complainants.

The Respondent was the listing agent for the property and the Complainant has made false claims against both her husband, the agent for the Complainant and the Respondent. The home was shown to the Complainants on the evening of July 19, 2020. The square footage on the home is correct. There is a first floor, second floor, basement, guest suite and party barn and the total square footage is 4,034 square feet. The home is a two-story home with a finished basement, guest suite, party barn and are all under heat and air. The Respondent was not the Complainant's realtor and the Respondent's husband represented the Complainant. The Complainant submitted a full price offer of \$795,000. The Respondent received the appraisal and was surprised about the \$158,000 discrepancy. The lender explained there were no other comparables to this home in the area even though the Seller had invested over \$1.2 million into the property. A second offer was made for

\$670,000 on August 12, 2020 and this was rejected by the Seller. After the earnest money was returned and the mutual release was signed, the following day the Complainant contacted the Respondent's husband again and stated the Complainants were still interested in purchasing the home. The Complainants made a third offer and the Complainant decided to go FHA and use the same appraisal. The Sellers accepted the third offer of \$775,000. The Respondent never had any conversations with the Complainant concerning the commission or the amount of commissions. The discussions for commission are between the listing agent and the Seller. The Sellers decided to accept the offer that was the best for them and there was nothing the Respondent could do to prevent the Seller from accepting an all cash offer. The Complainant had every opportunity to buy the home and was unable to purchase the home.

The allegations in the complaint do not indicate the Respondent violated any of the laws and rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**14. 2020072211**  
**Opened: 9/28/2020**  
**First Licensed: 8/24/2005**  
**Expires: 8/23/2021**  
**Type of License: Affiliate Broker**  
**History: None**

Complainant is a Tennessee resident. The Respondent is a licensed Tennessee Affiliate Broker.

The Complainant purchased a condominium and put down \$5,000 in earnest money. The entire building was still being construction and only half completed. The COVID-19 pandemic was growing and the Complainant did not feel it would be safe to move into the condominium because there were over 100 units in a single five story building and the Complainant would be living in close proximity to many other tenants, using elevators, stairs and other common resident areas. The Complainant requested the Respondent refund the earnest money and explained to them because the Complainant was in the higher risk category because the Complainant was over the age of 70 years old, it would be unsafe to move-into the unit as long as there was a pandemic. The Respondent repeatedly refused to give an answer and then finally stopped communicating with the Complainant's real estate agent. A few weeks later, the Respondent sent an e-mail stating that they would consider returning the earnest money if the Respondent was able to sell the condo. On September 3, 2020, the Complainant received a threatening contract insinuating the Complainant was responsible for the entire amount of \$152,500 if the Complainant would sign the contract releasing the \$5,000 earnest money. The Complainant signed a different contract under duress on the advice of the Complainant's agent. The Complainant's agent suggested the Complainant file a complaint against the Respondent. The Respondent has not returned the \$5,000 earnest money.

The Respondent provided a response and denies the allegations made by the Complainant. The

Complainant forfeited the earnest money pursuant to the terms of the Purchase and Sale Agreement. On November 7, 2019, the Complainant submitted an offer to purchase a unit in a new construction condominium development. The Seller accepted the offer. The Complainant was represented by a licensed Tennessee real estate agent in the transaction. The Complainant submitted \$5,000 earnest money to be applied to the purchase price of the unit at the closing. The sales teams received notification from the Complainant prior to closing the Complainant did not intend to close on the unit due to COVID-19 pandemic concerns. The Complainant was advised the Purchase Agreement could only be terminated by citing a valid contract contingency, such as financing (a contingency the Complainant had waived). The Purchase Agreement did not contain a contingency related to COVID-19. Therefore, the contract was still in force. The Complainant still advised the Complainant would not close on the unit. The contract does not address what happens to the earnest money in the event of a default by the Buyer. If the Buyer defaults, the Seller shall give the Buyer a written notice of Buyers default and shall allow the Buyer ten (10) days to correct the default. The Seller had the right to declare all money paid by the Buyer under the Agreement and interest earned and then to terminate the Purchase Agreement. The closing shall take place ten (10) days of receipt of the Use and Occupancy. The Use and Occupancy was received on June 17, 2020. The Respondent sent the Complainant a notice requesting the Complainant schedule the closing. By September, the Complainant had still not scheduled a closing on the unit. On September 3, 2020, the Complainant was sent a notice advising that the Seller would release the Complainant from the contract in return for forfeiture of the earnest money. On September 9, 2020, the Complainant signed the mutual release of purchase and sale agreement and disbursement of earnest money. This form released the Complainant from further obligations under the contract in return for the release of the \$5,000 earnest money. The Complainant was never threatened to sign a document and it was the decision of the Complainant.

The Respondent has not violated any of the laws and rules of the Tennessee Real Estate Commission. This is a contractual dispute between the parties.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**15. 2020072351**  
**Opened: 9/28/2020**  
**First Licensed: 12/27/2005**  
**Expires: 12/26/2021**  
**Type of License: Affiliate Broker**  
**History: None**

The Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant alleges the Respondent is an affiliate broker and uses a website which makes it appear that it is the Respondent's brokerage firm. The Complainant alleges this is an unauthorized use of a web domain to make it appear the Respondent is a brokerage because of the term "realty"

is used in the name of the website. The website domain is listed as citystaterealty.com and will take an individual to the Respondent's team site. The team site does state the brokerage firm; however, the Respondent's team is listed on the website.

The Respondent provided a response and stated the Respondent believes the word "realty" could not be used in a team's name, however, it could be used in a domain name. When the new TREC rules were released for teams/groups, the Respondent took immediate action to change the name to ensure compliance with the rules. The domain that uses the word "realty" is only used by the Respondent's marketing company to host blogs and listings that are posted on Facebook. It is very clear which firm the Respondent works for and it is not misleading to the public. It is prominent on the website and Facebook which is the only place the domain is referenced. The Respondent's firm name is prominent on all advertising and on the domain and it does not appear as if the Respondent has his own brokerage firm or is operating independently of the firm. The sole purpose of the domain is to let the public know that the website relates to real estate in a city in Tennessee. The Respondent has used the domain for over five years and there has never been a single call or inquiry with anyone expressing any confusion. The Respondent discontinued using the domain on Facebook in order to avoid any further issues related to the complaint.

**Recommendation: Authorize a contested case proceeding and civil penalty in the amount of \$500 for violations of the Tenn. Comp. Rules & Regs. 1260-02-.12(f) [No licensee shall advertise in a false, misleading, or deceptive manner]. The website domain leads the public to believe that the licensee is offering brokerage services independent of a firm and principal broker and authorize informal settlement and the word "realty" is in the domain name of the website which is considered a form of advertising.**

**Commission Decision: The Commission accepted counsel's recommendation.**

16. **2020072361**  
**Opened: 9/28/2020**  
**First Licensed: 9/28/2017**  
**Expires: 9/27/2021**  
**Type of License: Affiliate Broker**  
**History: None**

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant entered into a Purchase and Sale Agreement on July 3, 2020 for real property in Tennessee. After the Complainant had initial contact with the listing agent, the Complainant was told by the listing agent the initial Buyers who entered a contract on June 28, 2020 were unable to obtain financing. The Respondent encouraged the Complainant to write a back-up offer. The Complainant's sister was also a licensed real estate agent and initiated the contract through the firm on July 3, 2020. The back-up offer was accepted on July 5, 2020. The Complainant's agent asked for the termination letter to confirm the Complainant was the primary Buyer. Three or four days later the agent contacted us to say that the original primary Buyers were declined financing,

but the Buyers still had 60 days to come up with a financing alternative and the deadline was 60 days from the executed contract. On August 3, 2020, the Complainant contacted the agent to ask if the financing had been obtained with a conditional approval. The Respondent indicated the primary Buyers had obtained conditional approval and the appraisal had been ordered for August 10, 2020. On August 15, 2020, the appraisal had been completed and the primary Buyers were going to purchase the property. On August 21, 2020, the Complainant inquired if the primary Buyers had obtained the clearance to close and the Buyers were not cleared. On August 26, 2020, the Complainant's agent contacted the listing agent for an update and the Respondent stated the parties were waiting for the title to be returned. The Complainant again asked if the primary Buyers had obtained the clearance to close and the Respondent indicated they had not been cleared; however, the closing was scheduled for September 1, 2020. On September 1, 2020, the Complainant was told it looked like the purchase was going through and the primary Buyers were waiting on the funding. The Complainant was later advised the sale had closed. The following day the MLS noted the closing type was "CASH." The Complainant's agent contacted the listing agent and asked at what point did the primary Buyers convert the deal from finance to cash and why the Complainant had not been notified because the Complainant had been waiting two months for the financing contingency. The listing agent stated the primary Buyers had decided to bundle the land with a mobile home through a home builder. The following week the Complainant was able to verify the builder had purchased the home. The Complainant contacted the Respondent's broker and questioned the validity of the transaction. There was some indication that in 30 days there would be a transfer of ownership to the primary Buyers because it was a bundle deal. The primary Buyers could not obtain the financing and could not fulfill the contract and in the middle of the process, the builder was contacted to intervene as a last resort. The Complainant has confirmed the deed and purchase of the land was to the builder. The builder positioned themselves as the primary buyer although there was a signed and accepted back-up offer. The Complainant's question the legality of the transaction. The builder was not the original buyer in the purchase and sales agreement, and they could not be placed as the primary buyer after the fact when there was an accepted back-up offer. The transfer deed was recorded on September 10, 2020.

The Respondent provided a response and stated the Respondent was contacted in June 2020 concerning a property listed for sale. The prospective Buyers were in the process of negotiating with a builder to purchase a mobile home and were interested in the subject property to place the mobile home. There was a lot/land Purchase and Sale Agreement entered by the parties on June 28, 2020. The Buyers obtained an FHA loan to purchase the property and this would give the lending institution a first mortgage lien on the property. The Buyers were advised the builders policy was for the purchase of a home and land package. This required the Buyers to enter into an Assignment of Real Estate Purchase and Sale Agreement with the builder whereby the builder would purchase the property on behalf of the Buyers for cash and then bundle the home into a FHA loan for the Buyers upon delivery of the mobile home. The closing on the Buyer's contract could proceed upon execution of the Assignment of Real Estate Purchase and Sale Agreement which would assure the builder of a first mortgage priority on the subject land. The assignment was executed on August 11, 2020. The closing on the contract between the Buyers and Sellers represented by the Respondent on September 1, 2020, as originally scheduled. The Buyers received the mobile home and property pursuant to the agreement with the builder. The Buyer's realtor was also paid the contract commission at the closing. On July 5, 2020, the Respondent was contacted by the Complainant and the Complainant's sister, a real estate agent who expressed an

interest in purchasing the subject property. The Complainant was advised there was a contract on the property and the prospective Buyers were negotiating with the builder to purchase a mobile home to place on the property. The Complainant and her sister still chose to submit a Lot/Land Purchase and Sale Agreement and Back-up Agreement Contingency Addendum 1. The Complainant submitted the back-up agreement with full knowledge of the circumstances of the original contract on the subject property. During the conversations between the Complainant and Respondent, the financing of the original contract had not been assured and the Complainant was not encouraged to write a back-up contract but chose on their own to submit a back-up contract. The closing was noted as "CASH" because the builder provided cash funds to purchase the property. The Respondent has not violated any law or rule of the Tennessee Real Estate Commission. The Complainants have no right to examine or be advised of the terms of the primary agreement or the amendment. This transaction was closed with the Buyers obtaining the necessary financing other than what was originally anticipated. The Complainants were advised of the details of the purchase and the financing as a courtesy. The Buyers had fulfilled their obligations under the original contract using the assignment to arrange the financing.

There is insufficient evidence to indicate the Respondent violated the laws and rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**17. 2020072731**  
**Opened: 9/28/2020**  
**First Licensed: 7/5/2017**  
**Expires: 7/4/2021**  
**Type of License: Affiliate Broker**  
**History: None**

The Complainant is a Tennessee resident and purchaser of real estate. The Respondent is a licensed Tennessee Affiliate Broker.

The Complainant purchased a parcel of land and alleges the Respondent misrepresented the items and property on a parcel of land being sold. The Complainant indicated when the property was sold the Complainant was under the impression the property would be sold with a herd of cattle, electric fencing, a solar power unit for the fencing, cattle enclosure fencing and a feeder cage. Most of this property was the property of the caretaker of the Seller. There was also a hay wagon in the barn belonging to another individual and did not belong to the Seller. This information and ownership of the property on the land was never communicated to the Complainant until after the closing. Also, the caretaker was given written permission by the Seller to have 45 days to vacate and remove all items and the Complainant was never told about the agreement with the Seller and only learned about the agreement after the closing. Since the purchase did not include the cattle, the Complainant demanded the animals removed on the day of the closing because of concerns about potential future liability if the animals remained on the property after the closing. The Complainant alleges the Respondent misrepresented the ownership of all the items located on the

property.

The Respondent provided a response and stated the complaint was a baseless and an erroneous complaint filed against the Respondent's husband, who attended a closing on behalf of the Respondent because the Respondent was 8.5 months pregnant with their second child. Due to the Respondent's absence, it would not be appropriate for the Respondent to provide a commentary on the events that transpired which was filed in another complaint. The Respondent was directly involved in every other aspect of the transaction from the signing of the Purchase and Sale Agreement on May 18, 2020 up to and including the closing itself on June 4, 2020. The subject property is a 65-acre tract of vacant land. During the listing process and showings, there were 20-30 cows on the property that belonged to a neighbor. The neighbor had leased the pasture for their animals for over 20 years, dating back to an agreement between the neighbor's late father and the late owner of the property. When the Purchase and Sale Agreement was signed on May 18, 2020, the Buyer's agent told the Respondent's office the Buyers were interested in maintaining the relationship with the current tenant since the Buyers liked the idea of someone being on the property and keeping the land maintained. The Buyers were considering putting a campground type business on the property but were not ready for it to be done immediately. The Complainant had been fully advised the cattle would not be sold with the property and was aware the cattle belonged to the neighbor. There were no specific contingencies written into the Purchase and Sale Agreement concerning the removal of the cattle prior to closing. The closing was scheduled on June 4, 2020. Due to the Respondent's pregnancy, the COVID-19 pandemic and the Seller not being able to attend the closing in person, it would be best for the Respondent's husband to attend the closing in the Respondent's stead because the Respondent's husband was a licensed broker and the Respondent wanted to make sure that everything was done properly and the property closed. Two hours prior to the scheduled time of the closing, the Complainant's agent called the Respondent's office and stated the Buyers wanted all the cattle removed from the property. The Respondent explained this was in direct contradiction to what had been previously discussed and due to the short timeframe, this request could not be accommodated and the Respondent would get to work on it with the neighbor/tenant immediately but it would not be done before the closing. The closing became very contentious over this issue and as the Respondent's husband was working to find a resolution, including making several phone calls to the tenant, the tenant's son, the tenant's insurance provider and the Buyer's agent to attempt to resolve the issue. The tenant's son was responsible for handling the cattle and stated he had an encounter with the Buyer which was unpleasant, and the new Buyer was rude and belligerent. The Respondent had believed the situation had been resolved following all conversations with the necessary parties and the Respondent was surprised to find a complaint had been filed against the Respondent concerning this matter. It appears the Buyer had grossly misunderstood and was misinformed about the exact details of the purchase of the land and was looking to express some displeasure about the recent purchase of the property.

The allegations in the complaint do not indicate the Respondent violated any laws and rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: Letter of Instruction advising the Respondent to ensure all**

**pertinent terms of a transaction are included in the Purchase and Sale Agreement and the importance of ensuring all terms of the transaction are in writing.**

- 18. 2020073211**  
**Opened: 9/28/2020**  
**First Licensed: 12/6/2006**  
**Expires: 7/28/2022**  
**Type of License: Principal Broker**  
**History: None**

Complainant is a New Jersey resident and the Respondent is a licensed Tennessee Principal Broker

The Complainant submitted an offer to purchase a home on August 1, 2020 and counteroffer was submitted on August 3, 2020. The Seller accepted the offer. The Complainant began the mortgage process, conducted an inspection, appraisal and paid the required mortgage fees. The closing was set to be on September 4, 2020 and there were several items that needed to be completed. The closing date was extended to September 12, 2020. On September 11, 2020, the Complainant still had not received the clearance to close because the appraiser had written in the appraisal that the home was on a private road, but it was actually on a county road, so the appraisal had to be rewritten. The Complainant would have had the clearance to close on the Monday, but another extension was needed to September 17, 2020. The Seller refused to grant another extension. The Seller sold the home on September 14, 2020 to a cash buyer and closed on the same date the Complainant had requested. The Respondent harassed the Complainant's mortgage company about the identity of the appraiser and kept inquiring about when the title search would be performed. The Respondent called and e-mailed the mortgage company on several occasions.

The Respondent provided a response and stated the Complainant set forth the facts incorrectly. The Respondent represented the Seller and the Seller had agreed to lower the price because the Complainant had preapproval and had made an offer with a 30-day closing. Almost immediately, the Respondent was asked by the mortgage company to extend the closing date and the Seller agreed to extend the closing date until September 11, 2020. The Respondent had requested the mortgage company not use a specific appraiser because this appraiser repeatedly gave low appraisals on previous contracts. The Respondent understood a specific appraiser could not be selected but still made the request to the mortgage company to not use the appraiser in question. The appraiser who was selected called to schedule the appraisal and was specifically asked if the appraisal would be returned to the lender in time for a September 11, 2020 closing date. The appraisal was completed quickly, and the lender had the appraisal back on September 3, 2020. A home inspection was ordered, and the Sellers agreed to fix a few items. Everything had been done and the Sellers were ready to close. The closing documents were mailed to the Sellers and the Respondent contacted the Buyer's agent on September 8, 2020 because the title company had not heard back from the mortgage company about balancing the CD or scheduling a closing. The Buyers had not obtained home insurance which was supposed to have been done 14 days after the contract had been bound. The lender was waiting for the insurance before the lender could issue the clearance to close. The Respondent did not harass the lender and only e-mailed the lender twice to find out the status of the loan. The Respondent was told the proof of homeowner's

insurance was sent to the wrong e-mail address. The Respondent knew it would not be possible to close on the scheduled closing date. On the date of the closing, the Respondent was contacted by the Complainant's agent and asked if the road was private and it had been marked incorrectly by the appraiser. This was something the lender should have already reviewed and if it had been previously done, the closing would have occurred as scheduled. The lender never responded to the Respondent about the estimated closing date and the Complainant's agent did not ask the Sellers to sign an extension. On Saturday, an extension was suddenly sent to the Seller and the Seller refused to sign it. As a result, the contract expired. On September 13, 2020, the Seller met a Buyer who made a verbal back-up offer and signed the Purchase and Sale Agreement. The title company had already completed the title work and only had to update it and could have updated it on the morning of September 13, 2020. The Respondent obtained a cashier's check from the bank and the closing occurred on Monday afternoon. The Respondent stated the Complainants may be upset but failed to fulfill the contract terms and the agent failed to stay in contact with them and their lender to make sure all the deadlines were met.

The Respondent has not violated any of the laws and rules of the Tennessee Real Estate Commission. This is a contractual dispute between the parties.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**19. 2020073541**  
**Opened: 9/28/2020**  
**First Licensed: 6/2/2004**  
**Expires: 3/26/2021**  
**Type of License: Principal Broker**  
**History: None**

Complainant is a Georgia resident. The Respondent is a licensed Tennessee Principal Broker.

The Complainant alleges the Respondent has engaged in an unethical and illegal acts. The Respondent counteroffered the Complainant's offer and the Complainant agreed to the price of the counteroffer. The Respondent later sent the Complainant's agent an e-mail stating "rejection and took the property off the market." The Respondent would not answer or return any of the phone calls. The Complainant alleges this is illegal and unprofessional. The Complainant received a text from the Seller the following morning stating the Respondent's firm had advised him to remove the listing because the Seller could be sued for not having a perk test and an updated survey.

The Respondent provided a response and stated the last and final offer was made by the Complainant on September 10, 2020 for the purchase of two acres with a Special Stipulations page attached to the offer. The Seller rejected the offer the same day. The Respondent advised the Complainant and Complainant's agent the following day. The Complainant made another offer the following day. The Respondent advised the Special Stipulations page must be attached to the

contract. The Seller was looking for his survey and septic permit and the Respondent advised a response would not be given that day, as required. The Respondent also learned from the county the property would have to be plated before it can be transferred because it was less than five acres. The following day the Respondent received the contract. The Respondent notified the Complainant's agent the Seller had rejected the offer and had to remove the property from the market.

There is no evidence the Respondent violated any laws and rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**20. 2020072701**  
**Opened: 9/28/2020**  
**First Licensed: 10/5/2012**  
**Expires: 12/22/2022**  
**Type of License: Real Estate Firm**  
**History: None**

Complainant is a Georgia resident. The Respondent is a licensed Tennessee Real Estate firm and the firm representing the Complainant in transaction.

The Complainant alleges the Respondent has engaged in an unethical and illegal situation with the Respondent, Respondent's agent and the Seller's agent. The Seller's agent counteroffered the Complainant's offer and the Complainant agreed to the price of the counteroffer. The Respondent sent the Complainant's agent an e-mail stating, "rejection and took the property off the market." The Respondent would not answer or return any of the phone calls. The Respondent stated these acts are illegal and unprofessional. The Complainant received a text from the Seller the following morning stating the Respondent's firm had advised him to remove the listing because the Seller could be sued for not having a perk test and an updated survey.

The Respondent's Principal Broker provided a response and stated the last and final offer was made by the Complainant on September 10, 2020 for the purchase of two acres with a Special Stipulations page attached to the offer. The Seller rejected the offer the same day. The Respondent advised the Complainant and Complainant's agent of the Seller's rejection the following morning. The Complainant later made another offer the following day. The Respondent advised the Special Stipulations page must be attached to the contract and was awaiting receipt from the Buyer. The Seller was looking for his survey and septic permit and the Respondent advised a response would not be given that day, as required. The Respondent also learned from the county the property would have to be plated before it can be transferred because it was less than five acres. The following day the Respondent received the contract. The Respondent notified the Complainant's agent the Seller had rejected the offer and had to remove the property from the market.

There is no evidence the Respondent violated any laws and rules of the Tennessee Real Estate

Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**21. 2020075221**

**Opened: 9/28/2020**

**First Licensed: 5/7/1997**

**Expires: 2/6/2023**

**Type of License: Principal Broker**

**History: 2001 Civil Penalty**

The Complainant is a Tennessee resident and this complaint was referred to the Tennessee Real Estate Commission from another state department and administratively opened with by the administrative office of the Tennessee Real Estate Commission. The Respondent is a licensed Tennessee Principal Broker.

Complainant purchased a home in 2018 and the Respondent was the Seller's listing agent. Following the home inspection there were several issues with the home. Following the home inspection there were several issues identified with the home that needed to be repaired. According to the Complainant, the Complainant's agent never checked her e-mails and when the agent got involved, the time period for submitting repairs had expired and the Complainant's agent indicated the Complainant would lose the earnest money or could be sued for backing out of the contract. The Complainant continued with the purchase after the Complainant's agent indicted all the repairs needed to meet the VA's minimum requirements would be completed. A repair and replacement amendment was signed and the Complainant's real estate agent stated all items would be completed. After the Complainant moved into the home, the furnace started to leak carbon monoxide and then stopped working completely four months after the closing. It took nearly two months to get the heat and warranty company into the home to make the repairs or replace the unit. The warranty company refused to pay rent elsewhere other than a hotel because the Complainant had three dogs. A month after moving into the home, the Complainant fell on his back from the attic ladder that was supposed to be repaired. Also, the roof began to leak water in through the light fixture in the dining area. The insurance company claims the existing condition that was to be replaced before the closing. Also, there were stains that started to appear on the ceilings, the floors started buckling, the windows started leaking and the humidity in the house rose to unhealthy levels. The insurance company sent an engineer to inspect the home and the engineer determine the roof had holes from a preexisting condition. Also, the siding was rotting from the outside, there was water in the crawl space, there was mold that had been painted over on deteriorating interior walls and subflooring. The A/C split unit stopped working in July 2019. The warranty company stated after the service call that all duct work was molded and filthy and there were three new units in three days and an old unit and duct work needed to be replaced. In June 2020, the Complainant still had no new air-conditioning unit despite an e-mail from the warranty company stating the Complainant had a new unit. The Complainant is unable to locate the Respondent. The

Complainant stated he and his family are living in a mold infested home, with no air conditioning, no working stove, a leaky roof, high humidity levels, rotting siding, water intrusion. The Complainant and his family have suffered physical, emotional and financial hardships resulting in pneumonia, shingles, asthma and COPD. The home is now in foreclosure, had an undisclosed fire and flood and none of the parties responsible for assisting the Complainant in the purchase of home are being held accountable for the repairs that should have been done to the home.

The Respondent provided a response and the Respondent does not have any knowledge of the issues concerning the home sold to the Complainant. The Respondent does not recall the Complainant having been forced or coerced to sign any documents to purchase the property. The Respondent claims the repair proposal was completed according to the request in a timely manner and according to the Complainant's agent, a walkthrough was conducted and the Complainant was satisfied with the repairs after doing a walk through at 8:30 a.m. before the closing on August 1, 2018. The Respondent is not involved in any type of civil court action with the Complainant and the Respondent stated the Complainant has harassed the Respondent via social media and text messages and even filed a false claim of identity theft with the FTC. The Respondent was not involved with the warranty company and did not make any recommendations about any repair people for the property. The property was co-listed with another agent of the firm and the other agent handled all the communication and paperwork with the Complainant's agent. The Respondent did take pictures of the exterior and interior of the property and added them to the MLS along with floor measurements and remarks. There were not any visible signs of damage, mold/mildew, fungus or buckling floors. The Respondent did not view or inspect the repairs after the repair proposal had been submitted and the repairs were completed. The Respondent did attend the closing and the Complainants were extremely late to the closing. The Sellers had signed the final papers before the Complainants arrived. The Respondent did review the paperwork during the transaction and after the closing and briefly saw the Complainants on the day of the closing when the Respondent removed the sign and lockbox. The Respondent did not enter the home on the day of the closing and gave the key to the Complainant and left the property. The Respondent provided the inspection and repair proposal, the repair summary from the home inspection and the repair proposal, the Seller's response to the repair proposal, the signed Buyer's Final Inspection form and the signed ALTA Settlement Statement form.

This matter was sent to the Investigation Division for an investigation of the allegations contained in the complaint. Upon review of the investigation report and the various affidavits obtained by the Investigator, there is no evidence of any violations by the Respondent of any the laws and rules of the Tennessee Real Estate Commission. The repairs were properly performed as requested by the Seller and there were no patent or latent defects or misrepresentations made concerning the home. The home has undergone normal wear and tear and requires upkeep and maintenance.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**22. 2020075241**  
**Opened: 9/28/2020**  
**First Licensed: 5/28/2003**  
**Expires: 5/6/2022**  
**Type of License: Affiliate Broker**  
**History: None**

The Complainant is a Tennessee resident and this complaint was referred to the Tennessee Real Estate Commission from another state department and administratively opened with by the administrative offices of the Tennessee Real Estate Commission. The Respondent is a licensed Tennessee Principal Broker.

Complainant purchased a home in 2018 and the Respondent was the Buyer's agent. Following the home inspection there were several issues. The Complainant alleges the Respondent was a former classmate and grew up with the Respondent and trusted the Respondent. Following the home inspection there were several issues identified with the home that needed to be repaired. According to the Complainant, the Complainant's agent never checked her e-mails and when the agent got involved, the time period for submitting repairs had expired and the Complainant's agent indicated the Complainant would lose the earnest money or could be sued for backing out of the contract. The Complainant continued with the purchase after the Complainant's agent indicated all the repairs needed to meet the VA's minimum requirements would be completed. A repair and replacement amendment was signed and the Complainant's real estate agent told the Complainant all the items would be repaired by the Seller. After the Complainant moved into the home, the furnace started to leak carbon monoxide and then stopped working completely four months after the closing. It took nearly two months to get the heat and warranty company into the home to make the repairs or replace the unit. The warranty company refused to pay rent elsewhere other than a hotel because the Complainant had three dogs. A month after moving into the home, the Complainant fell on his back from the attic ladder that was supposed to be repaired. Also, the roof began to leak water in through the light fixture in the dining area. The insurance company claims the existing condition that was to be replaced before the closing. Also, there were stains that started to appear on the ceilings, the floors started buckling, the windows started leaking and the humidity in the house rose to unhealthy levels. The insurance company sent an engineer to inspect the home and the engineer determine the roof had holes from a preexisting condition. Also, the siding was rotting from the outside, there was water in the crawl space, there was mold that had been painted over on deteriorating interior walls and subflooring. The A/C split unit stopped working in July 2019. The warranty company stated after the service call that all duct work was molded and filthy and there were three new units in three days and an old unit and duct work needed to be replaced. In June 2020, the Complainant still had no new air-conditioning unit despite an e-mail from the warranty company stating the Complainant had a new unit. The Complainant is unable to locate the Respondent. The Complainant stated he and his family are living in a mold infested home, with no air conditioning, no working stove, a leaky roof, high humidity levels, rotting siding, water intrusion. The Complainant and his family have suffered physical, emotional and financial hardships resulting in pneumonia, shingles, asthma and COPD. The home is now in foreclosure, had an undisclosed fire and flood and none of the parties responsible for assisting the Complainant in the purchase of home are being held accountable for the repairs that should have been done to the home.

The Respondent provided a response and stated the real estate transaction was done in accordance with the real estate rules, guidelines and laws and all necessary disclosures were provided to the Complainant. The Respondent even videotaped the home for the Complainant to view while he was still residing in Florida. The Complainant only watched 25 seconds of the first video. The Complainant was never coerced or forced to complete the purchase of the property. The Complainant was provided with all available options and could have choose not to proceed with the sale. The Complainant had a home inspection and HVAC inspection performed. A repair proposal was drafted, signed and presented to the Seller. Later, the repair amendment was signed off by both parties. The Complainant was also provided with all repair receipts obtained by the listing agent. A final walkthrough was done by the Complainant and the Complainant signed the Buyer's Final Inspection document and confirmed the property was in the same or better condition than on the date of the binding agreement. The Respondent is not involved in any civil lawsuit with the Complainant concerning this transaction. The Respondent did not grow up with the Complainant as the Complainant incorrectly stated in the complaint. The Respondent never made any guarantees or warranties concerning the property, either express or implied.

This matter was sent to the Investigation Division for an investigation into the allegations and for a review of the case. Following the investigation and obtaining of various affidavits from various individuals involved in the transaction, there is no evidence the Respondent violated any of the laws and rules of the Tennessee Real Estate Commission. The repairs were properly performed by the Seller as requested by the Complainant and there is no evidence any misrepresentations were made concerning the home. The home has undergone wear and tear and requires upkeep and maintenance by the homeowner.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**23. 2020075261**  
**Opened: 9/28/2020**  
**First Licensed: 8/15/2008**  
**Expires: 8/14/2022**  
**Type of License: Real Estate Firm**  
**History: 2016 Consent Order**

The Complainant is a Tennessee resident and this complaint was referred to the Tennessee Real Estate Commission from another state department and administratively opened with by the administrative offices of the Tennessee Real Estate Commission. The Respondent is a licensed Real Estate Firm.

Complainant purchased a home in 2018 and the Respondent was the Seller's real estate firm. Following the home inspection there were several issues. Following the home inspection there were several issues identified with the home that needed to be repaired. According to the

Complainant, the Complainant's agent never checked her e-mails and when the agent got involved, the time period for submitting repairs had expired and the Complainant's agent indicated the Complainant would lose the earnest money or could be sued for backing out of the contract. The Complainant continued with the purchase after the Complainant's agent indicated all the repairs needed to meet the VA's minimum requirements would be completed. A repair and replacement amendment was signed and the Complainant's real estate agent stated all items would be completed. After the Complainant moved into the home, the furnace started to leak carbon monoxide and then stopped working completely four months after the closing. It took nearly two months to get the heat and warranty company into the home to make the repairs or replace the unit. The warranty company refused to pay rent elsewhere other than a hotel because the Complainant had three dogs. A month after moving into the home, the Complainant fell on his back from the attic ladder that was supposed to be repaired. Also, the roof began to leak water in through the light fixture in the dining area. The insurance company claims the existing condition that was to be replaced before the closing. Also, there were stains that started to appear on the ceilings, the floors started buckling, the windows started leaking and the humidity in the house rose to unhealthy levels. The insurance company sent an engineer to inspect the home and the engineer determine the roof had holes from a preexisting condition. Also, the siding was rotting from the outside, there was water in the crawl space, there was mold that had been painted over on deteriorating interior walls and subflooring. The A/C split unit stopped working in July 2019. The warranty company stated after the service call that all duct work was molded and filthy and there were three new units in three days and an old unit and duct work needed to be replaced. In June 2020, the Complainant still had no new air-conditioning unit despite an e-mail from the warranty company stating the Complainant had a new unit. The Complainant is unable to locate the Respondent. The Complainant stated he and his family are living in a mold infested home, with no air conditioning, no working stove, a leaky roof, high humidity levels, rotting siding, water intrusion. The Complainant and his family have suffered physical, emotional and financial hardships resulting in pneumonia, shingles, asthma and COPD. The home is now in foreclosure, had an undisclosed fire and flood and none of the parties responsible for assisting the Complainant in the purchase of home are being held accountable for the repairs that should have been done to the home.

The Respondent served as the Seller's real estate firm. All necessary disclosures were properly provided to the Complainant. The repairs were completed as required by the Seller and the receipts for the repairs were provided to the Complainant.

This matter was sent to the Investigation Division for an investigation into the allegations and for a review of the case. Following the investigation and obtaining of various affidavits from various individuals involved in the transaction, there is no evidence the Respondent violated any of the laws and rules of the Tennessee Real Estate Commission. The repairs were properly performed by the Seller as requested by the Complainant and there is no evidence of latent or patent defects or misrepresentations made concerning the property.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**24. 2020075291**  
**Opened: 9/28/2020**  
**First Licensed: 1/7/2019**  
**Expires: 1/6/2023**  
**Type of License: Real Estate Firm**  
**History: None**

The Complainant is a Tennessee resident and this complaint was referred to the Tennessee Real Estate Commission from another state department and administratively opened with by the administrative offices of the Tennessee Real Estate Commission. The Respondent is a licensed Tennessee Real Estate Firm representing the Complainant in the transaction at issue.

Complainant purchased a home in 2018 and the Respondent was the Complainant's real estate firm involved in the purchase of real property. Following the home inspection there were several issues identified with the home that needed to be repaired. According to the Complainant, the Complainant's agent never checked her e-mails and when the agent got involved, the time period for submitting repairs had expired and the Complainant's agent indicated the Complainant would lose the earnest money or could be sued for backing out of the contract. The Complainant continued with the purchase after the Complainant's agent indicted all the repairs needed to meet the VA's minimum requirements would be completed. A repair and replacement amendment was signed and the Complainant's real estate agent stated all items would be repaired by the Seller. After the Complainant moved into the home, the furnace started to leak carbon monoxide and then stopped working completely four months after the closing. It took nearly two months to get the heat and warranty company into the home to make the repairs or replace the unit. The warranty company refused to pay rent elsewhere other than a hotel because the Complainant had three dogs. A month after moving into the home, the Complainant fell on his back from the attic ladder that was supposed to be repaired. Also, the roof began to leak water in through the light fixture in the dining area. The insurance company claims the existing condition that was to be replaced before the closing. Also, there were stains that started to appear on the ceilings, the floors started buckling, the windows started leaking and the humidity in the house rose to unhealthy levels. The insurance company sent an engineer to inspect the home and the engineer determine the roof had holes from a preexisting condition. Also, the siding was rotting from the outside, there was water in the crawl space, there was mold that had been painted over on deteriorating interior walls and subflooring. The A/C split unit stopped working in July 2019. The warranty company stated after the service call that all duct work was molded and filthy and there were three new units in three days and an old unit and duct work needed to be replaced. In June 2020, the Complainant still had no new air-conditioning unit despite an e-mail from the warranty company stating the Complainant had a new unit. The Complainant is unable to locate the Respondent. The Complainant stated he and his family are living in a mold infested home, with no air conditioning, no working stove, a leaky roof, high humidity levels, rotting siding, water intrusion. The Complainant and his family have suffered physical, emotional and financial hardships resulting in pneumonia, shingles, asthma and COPD. The home is now in foreclosure, had an undisclosed fire and flood and none of the parties responsible for assisting the Complainant in the purchase of home are being held accountable for the repairs that should have been done to the home.

The Respondent served as the Complainant's real estate firm. All necessary disclosures were

properly provided to the Complainant. The repairs were completed as required by the Seller and the receipts for the repairs were provided to the Complainant.

This matter was sent to the Investigation Division for an investigation of the allegations contained in the complaint. Upon review of the investigation report and the various affidavits obtained by the Investigator, there is no evidence of any violations by the Respondent of any the laws and rules of the Tennessee Real Estate Commission. The repairs were properly performed as requested by the Seller and there were no patent or latent defects or misrepresentations made concerning the home.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**25. 2020070931**  
**Opened: 9/28/2020**  
**First Licensed: 1/9/2008**  
**Expires: 1/8/2022**  
**Type of License: Real Estate Firm**  
**History: 2017 Consent Order**

Complainant is a Tennessee resident and owner of real property managed by the Respondent and the Respondent is a licensed Tennessee real estate firm.

The Complainant stated the homeowners and tenants agreed upon a security deposit disbursement of funds on August 28, 2020 in the amount of \$1,900 to the tenants and \$200 to the homeowners. There was an interpleader document filed with the General Sessions court and the Respondent filed the document through their attorney. According to the Complainant, this was invalid because the management company was fired on August 12, 2020.

The Respondent provided a response and stated the Respondent was unable to effectively communicate with the property owner and as a result, the Respondent sought the advice of legal counsel and filed an interpleader action at the firm's expense. The Respondent wanted to be sure there was proper disbursement of funds. The attorney filed an Agreed Order reflecting the disbursement of funds agreed upon by the owner and the Complainant. Although the property manager was terminated, the only way to release the tenant security deposit would be to make the amounts payable to the owner and all four tenants and the Complainant disputed this disbursement. At this point, it was necessary for the firm to file the interpleader action in General Sessions court.

This matter involves a contractual dispute between the parties. The Respondent has not violated any of the laws and rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**26. 2020063841**  
**Opened: 9/28/2020**  
**First Licensed: 4/20/1999**  
**Expires: 12/31/2021**  
**Type of License: Time Share Registration**  
**History: None**

The Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Time Share Registrant.

The Complainant attended a sales presentation on July 25, 2020 to purchase a timeshare property. The attendees were seated in the presentation room in a socially distanced manner and when the presenter arrived, he insisted that everyone sit next to one another in the first two rows. The Complainant refused and the presenter was rude and berated the Complainant in front of the other attendees. The Complainant stated the Respondent was rude and the other senior employees of the Respondent did nothing to correct how the Complainant was being treated by the Respondent's employee. The Complainant has a disability and the Respondent is in violation of ADA requirements and socially distancing mandates.

The Respondent provided a response and denied the allegations of the Complainant. The Respondent stated the Complainant is making a complaint about disability discrimination and it does not appear the Tennessee Real Estate Commission has jurisdiction over disability requirements or claims. Rather, the jurisdiction of the Commission is limited to disciplining licensees for violations of laws prohibiting discrimination in the sale or rental of real estate because of race, color, religion, sex or national origin. The Respondent stated the Complainant was not subject to disability discrimination in the sale or rental of real estate. The Complainant also alleged the Respondent disclosed to all other attendees the disability of the Complainant, however, this is not correct. The Respondent asked the Complainant and her husband to move to the front of room for the podium presentation and the Complainant refused because she was charging her telephone. The Complainant never mentioned anything about remaining socially distanced or of her disability. Complainant refused to move to the front of the room and an argument ensued between the Respondent's presenter and the Complainant. The presenter did disclose the Complainant's disability or mentioning any disability. The presenter had no information or knowledge concerning the Complainant's disability. The Complainant left the room after the argument and went to speak to the Sales Director and disclosed she suffered from PTSD from serving in the military and was unable to sit in the front of the presentation room due to the bright lights. The Sales Director allowed the Complainant to remain the back of the room during the podium presentation. The Respondent accommodated the Complainant's disability. The Complainant was also permitted to tour the property with the other attendees and was not denied the ability to purchase a travel club membership.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**27. 2020069091**  
**Opened: 9/28/2020**  
**First Licensed: 8/23/2017**  
**Expires: N/A**  
**Type of License: Time Share Registration – Time Share Exempt**  
**History: None**

Complainant is a Tennessee resident and timeshare purchaser. The Respondent is a licensed Tennessee Time Share Registrant.

The Complainant attended a sales presentation held by the Respondent and alleges the Respondent held them there for five hours. The Complainant attempted to leave on several occasions and were stopped by a representative and the person in charge would reduce the price each time and stated this would be the last opportunity to purchase from the Respondent. After a prolonged sales pitch, the Complainant's depression and the Complainant's spouse's need for medication, the Complainant reluctantly and under duress agreed to purchase the timeshare. The Complainant alleges the paperwork was rushed and the Complainant attempted to cancel the transaction and were told the three-day period for cancellation had expired. The Complainant later learned the cancellation period in Tennessee is 10 days. The Complainant also alleges the Respondent deceived them and were promised items that were part of the purchase and later were not. The Complainant was persuaded to purchase points that could be used at any property, however, the Complainant later found this was false. In order to use the points at any property, the Complainant had to be a member of the property. The Complainant was told how easy booking would be and how the Complainant could stay anywhere. This was incorrect. The Complainant was unable to secure bookings. Also, many of the properties that were available were dirty, old and horrible for money the Complainant had paid for the timeshare. The Complainant was also told the timeshare could be cancelled if their health declined and this was untrue. The Complainant alleges the Respondent never informed the Complainant about the additional fees and exchange rates that were needed in order to maintain the property and stay at other resorts. There were credits such as housekeeping credits that were not transferrable from one property to another and the Complainant had to pay additional cleaning fees at every resort. The Complainant stated the purchasing experience with the Respondent has been terrible, stressful and mentally exhausting. The Complainant wants the contract cancelled and a full refund.

The Respondent provided a response and stated it appears the Complainant has been advised that the Respondent will cancel contracts, regardless of validity. The Respondent takes all complaints seriously and reviews all complaints on their own merit to determine if the allegations alleged can be substantiated. The Respondent has found that often these forms of complaints often time reference issues that arose that are difficult to substantiate or even contain information that may not be accurate or specific to each individual owner's experience. Often an owner is experiencing financial hardship unrelated to the sales presentation or the original purchase agreement. Those invited to the sales presentation meetings are only required to stay for the length of the presentation and this time can vary depending on the guest's interest and inquiries. A guest is always free to leave the sales presentation at their own discretion. The Complainant purchased the timeshare

property on October 3, 2015 in Nashville, Tennessee and purchased an allocation of 84,000 points. In addition, the Complainant holds membership in the club plus exchange program and offers a variety of locations, seasonality, lengths of stay and unit sizes. The best value is towards the club plus resort stays and there are other available program features, memberships and discount benefits available. All reservations are confirmed on a first come, first serve basis and based on availability. The usage of the membership is optional and subject to the rules, regulations, terms, and conditions which are explained in greater detail. The contract documents provided to the Complainant fully explain and disclose the agreement between the parties. Also, a buyer's acknowledgment, ownership review and quality review are performed, and documents are provided to the Complainant to support the review. There are also written disclosures concerning ownership, discounts, down payments, monthly assessments, loan payments, programs, resale assistance, rental income, investments and tax benefits. All purchasers are given rescission rights and are provided the opportunity to carefully review and consider all the documents and the provisions in the contract. After the rescission period has expired, the contract becomes legally binding between the parties. There is no record of the Complainant making any complaints in the past related to the ownership interest. The Complainants have utilized their ownership since the purchase. On November 14, 2019, the Respondent's owner resolution and strategy department received a similar complaint and there were no grounds or merit to warrant a cancellation of the contract. Also, the Complainant's club plus assessment and loan accounts are delinquent and they are in breach of contract. The Respondent is unable to find any information substantiating the allegations set forth in the complaint. Therefore, the Respondent denies the cancellation request.

The rescission and cancellation period for the contract has expired. Additionally, pursuant to Tenn. Code Ann. § 66-32-119, the statute of limitations for the Complainant to file a civil lawsuit concerning the validity of a timeshare contract has expired. The cancellation must be done within a four (4) year period of the date of the contract. The Complainant purchased the timeshare property over five (5) years ago.

There is insufficient evidence indicating the Respondent violated any of the laws and rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**28. 2020071141**  
**Opened: 9/28/2020**  
**First Licensed: 4/20/1999**  
**Expires: 12/31/2021**  
**Type of License: Time Share Registration**  
**History: None**

Complainant is a Texas resident and the Respondent is a licensed Tennessee Timeshare Registrant.

The Complainant alleges the Respondent engages in fraudulent sales tactics and refused to cancel the contract the day after the timeshare upgrade in November 2016.

The Respondent provided a response and stated the contract is valid and enforceable. The Respondent stated the Complainant signed a legally binding contract with the Respondent over four years ago and a proper Validation of Debt was sent to the Complainant. The Respondent will continue to collect on the debt and the Respondent is not required to report the debt is disputed.

The rescission and cancellation period for the contract has expired. Additionally, pursuant to Tenn. Code Ann. § 66-32-119, the statute of limitations for the Complainant to file a civil lawsuit concerning the validity of a timeshare contract has expired. The cancellation must be done within a four (4) year period of the date of the contract. The Complainant purchased the timeshare property over five (5) years ago.

There is insufficient evidence indicating the Respondent violated any of the laws and rules of the Tennessee Real Estate Commission.

**Recommendation:** Close.

**Commission Decision:** The Commission accepted counsel's recommendation.

**29. 2020071701**  
**Opened: 9/28/2020**  
**First Licensed: 4/4/2018**  
**Expires: N/A**  
**Type of License: Time Share Registration**  
**History: 2016 Consent Order**

The Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Time Share Registrant.

The Complainant purchased a timeshare from the Respondent on August 24, 2019. The Complainant and her husband were approached on the street during a vacation about attending a presentation the following morning and in return would receive a free one-week vacation. The Complainant attended the presentation and after a high-pressure sales pitch, the Complainant and her husband decided to purchase a timeshare. The Complainant was told they could apply for a credit card and use it for the down payment of the timeshare. The Respondent told the Complainant once it was paid the Complainant would own a piece of property and receive a deed. The Complainants were also told they should attend a new owner workshop in a couple of weeks to learn how to use the timeshare. The Complainant signed all the papers and a month later never received a call to schedule the workshop. The Complainant had to reach out to the Respondent in order to schedule the workshop. A few months later the Complainant was advised they had not

paid the club dues and property taxes and were unaware of having to pay the fees. Every time the Complainant contacted the Respondent, there would be no answer and the call would be transferred to voicemail.

The Respondent provided a response and stated it owns a multi-site timeshare plan create and registered with the Florida Department of Business & Professional Regulation and is structured as a perpetual trust with over 6,000 member beneficiaries with 35 component site resorts in Florida, Maine, Missouri, Mississippi, North Carolina, Tennessee, Virginia and Wisconsin. These are resorts developed by the Respondent and affiliations and other third-party entities not affiliated with the Respondent. Purchasers of timeshare interests are entitled to exercise member beneficiary rights which include a point system to use for enjoying accommodations and facilities in the Club Plan. The Complainant purchased a timeshare in Tennessee in August 2019. The Complainant voluntarily attended the sales presentation and can decline the invitation. The sales presentations offer purchasers some discounted rates and attendees are under no obligation to purchase a timeshare. If a purchaser decides to purchase, it is not unusual for the sales presentations to be 90-120 minutes long and additional time to answer questions, print out documents, review purchase documents and make payment, etc. The contract was provided to the Complainant at the time of the purchase. The Purchase Agreement clearly reflects the points purchased by the Complainant and the timeshare interests deeded to the property. The points can be used to make reservations at the Club Plan component sites. The plan offers purchasers a membership into a points-based timeshare system where purchasers are assigned timeshare interests based on the amount of points purchased. The points also represent the reservation and use rights. Each owner is allocated a certain number of points to make the reservations. The reservations are made on a first come, first serve basis and subject to the point requirements. These point requirements are often based on the unit type and season. The Complainant did attend the special owner's weekend from November 6, 2019 to November 8, 2019 and attended shows and events for two adults and two children. The Complainant also attended the new owner's workshop and received a two-night accommodation for the Complainant and family. The Complainant was not misled concerning the annual maintenance fees. There were several documents signed by the Complainant and the Complainant acknowledged and represented an understanding of the amount of the Club Dues/Common Assessment Fees that were required annually. The Complainant initialed in the line that stated the "[p]urchaser understands that Common Assessment Fees, Club Dues and Facility Fee are due and payable each year. . ." The Purchase Agreement included the cancellation provision which granted the purchaser the right and opportunity to cancel the contract within the statutory rescission period according to the law of the state where the contract was executed. There is a "cooling off" period in the contract which also provides for additional time to review the contract and the terms contained in the contract. The statutory rescission period in Tennessee is for ten (10) days from the date of purchase. The cancellation and rescission language was included in the Complainant's Purchase and Sale Agreement in bold text and large font, was clear and conspicuous and the Complainant signed directly below the provision. The rescission provision outlines how the purchaser can rescind the purchase by mailing the notice to the address provided within the rescission period. The Complainant could have canceled the timeshare purchase in accordance with the rescission period and did not exercise the right to cancel within the rescission period. The Respondent denies the allegations in the complaint and stated there is no violation.

The rescission and cancellation period for the contract has expired. Additionally, pursuant

to Tenn. Code Ann. § 66-32-119, the Complainant can file a civil lawsuit against the Respondent and bring a private right of action concerning the validity of a timeshare contract.

There is insufficient evidence indicating the Respondent violated any of the laws and rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**30. 2020065901**  
**Opened: 10/6/2020**  
**Unlicensed**  
**History: None**

Complainant is a North Carolina resident and the Respondent was a timeshare salesperson.

The Complainant purchased a timeshare in 2012 for one week in a timeshare in Tennessee. The Complainant alleges the Respondent engaged in misrepresentations concerning the timeshare, induced the Complainant to enter into the purchase of the time share, made false promises, engaged in misleading and deceptive advertising, not providing proper documents at the time of the sale and various other violations of the Tennessee Real Estate License Act.

The Respondent provided a response and stated the purchase was made on September 25, 2012 and the Complainant has been attempting to have the Respondent repurchase the deed since January 19, 2017 due to medical conditions and has been making false allegations against the Respondent since that date.

The rescission and cancellation period for the contract has expired. Additionally, pursuant to Tenn. Code Ann. § 66-32-119, the statute of limitations for the Complainant to file a civil lawsuit concerning the validity of a timeshare contract has expired. The cancellation must be done within a four (4) year period of the date of the contract. The Complainant purchased the timeshare property over eight (8) years ago.

There is insufficient evidence indicating the Respondent violated any of the laws and rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**31. 2020069851**  
**Opened: 10/6/2020**  
**Unlicensed**  
**History: None**

Complainant is a North Carolina resident and the Respondent was a timeshare salesperson.

The Complainant purchased a timeshare in 2012 for one week in a timeshare in Tennessee. The Complainant alleges the Respondent engaged in misrepresentations concerning the timeshare, induced the Complainant to enter into the purchase of the time share, made false promises, engaged in misleading and deceptive advertising, not providing proper documents at the time of the sale and various other violations of the Tennessee Real Estate License Act.

The Respondent provided a response and stated the purchase was made on September 25, 2012 and the Complainant has been attempting to have the Respondent repurchase the deed since January 19, 2017 due to medical conditions and has been making false allegations against the Respondent since that date.

The rescission and cancellation period for the contract has expired. Additionally, pursuant to Tenn. Code Ann. § 66-32-119, the statute of limitations for the Complainant to file a civil lawsuit concerning the validity of a timeshare contract has expired. The cancellation must be done within a four (4) year period of the date of the contract. The Complainant purchased the timeshare property over eight (8) years ago.

There is insufficient evidence indicating the Respondent violated any of the laws and rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**32. 2020072741**  
**Opened: 10/6/2020**  
**First Licensed: 9/2/2011**  
**Expires: 2/4/2021**  
**Type of License: Affiliate Broker**  
**History: None**

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant alleges the Respondent failed to provide any information or documentation and this resulted in the Complainant missing the original closing date. The Complainant alleges the Respondent displayed rude and arrogant behavior. The Complainant contacted the company that

the Respondent works for and let them know about a problem with the Respondent and the Respondent contacted the Complainant instead the Principal Broker. The Respondent advised the Complainant to contact their own real estate agent and not to contact the Respondent. The Complainant stated their real estate agent and the owner of the company contacted the Respondent on numerous occasions and were not able to work out the problems. The Complainant and the Complainant's real estate agent have numerous e-mails, texts and phone calls to show the Respondent agent was negligent in his duties as a real estate agent. The Respondent failed to update any changes or updates and withheld verbal offers from the Seller in order to increase the price of the property. The Respondent also requested the closing costs be split in order to prevent traveling less than fifty miles. The Respondent often used profane and vulgar comments and often displayed his disgust in the entire process. The Complainant stated this real estate agent has a reputation for this type of behavior and is well-known by his peers and local bankers for behaving in this manner. The Complainant stated the brokerage firm ignored the Complainant's concerns and has forced the Complainant to file this complaint. The Complainant, lender, real estate agent and real estate firm are willing to give examples, accounts and/or provide documentation to support the Complainant's allegations.

The Respondent provided a response and has been a real estate agent since 1985. The Respondent has a good name and reputation and lives and works by the "Golden Rule." The Respondent will not close a sale without proper paperwork from a closing attorney. The Respondent claims this is a false complaint and was orchestrated by the Buyer's broker who the Respondent used to work for in the past and resigned twelve months after opening an office for the Respondent due to personality conflicts. The Respondent was the broker's top salesperson and in charge of the office. The Respondent claims the Complainant's broker is still bitter about the Respondent's departure and continues to encourage others to file false charges against the Respondent when possible. The Respondent claims this broker continues to lose brokers because of personality issues of the Complainant's broker. The documents related to the closing were properly and promptly submitted to the Complainant's agent. The owner of the property was required to have the title to the 30-year old mobile home retitled. This was not discovered until the title was found and was forwarded to the Respondent. This was sent to the attorney and explained to the Complainant. The Seller had some health problems and was on oxygen full-time and relied upon her daughter in Chicago, Illinois. The Seller also did not have access to a computer to communicate due to a power outage. The title had to be changed in order to close on the property. Also, due to all these issues, the Seller asked the Respondent to serve as the Power of Attorney (POA). The Respondent was able to do this because he was the listing agent. The Complainant's client also contacted the Respondent on his cell phone in a rage about the delay. The Respondent indicated to the Complainant's client to contact the Complainant and it was not ethical for the Respondent to speak to the Complainant since he was represented by a real estate agent. The client later contacted the Respondent's broker to complain about the Respondent and the statements of the Respondent. The broker never contacted the Complainant's client. The Complainant does not have access to the Respondent's MLS and does not know whether a property is pending or sold. The Respondent closed the sale when the settlement was received from the attorneys. The Respondent was unable to attend the closing because the death of his mother-in-law and the Respondent was assisting in making funeral arrangements in Memphis. The verbal offers from the Buyer do not have to be legally presented, however, the Respondent was authorized to handle offers below a certain amount while representing the Seller as her agent. The Complainant did not write the offers and

verbally presented them to the Seller, and they were verbally rejected by the Seller. The original closing date was August 27, 2020. The Seller was unable to close on the closing date and it agreed by the parties to extend the closing date to September 22, 2020. The closing took place on September 14, 2020.

There is insufficient evidence to prove any violations of the laws and rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**33. 2020072761**  
**Opened: 10/6/2020**  
**First Licensed: 10/17/2016**  
**Expires: 10/16/2022**  
**Type of License: Affiliate Broker**  
**History: None**

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant Sellers had signed the documents the day before the Buyers were to sign the closing documents and the Complainant trusted the title company would have done the necessary due diligence and make sure everything was correct. The Respondent intentionally convinced the title company change to charge the Respondent's office fee to the Complainant without any documentation or signed acknowledgment by the Complainant. The Complainant's real estate agent noticed this problem and advised the Complainant. The Complainant alleges the Respondent acted in an unethical manner and this should not be tolerated. The Complainant alleges the Respondent engaged in fraud and should provide a refund to the Complainant.

The Respondent and the Respondent's Principal Broker provided a response to the complaint and stated there was a misunderstanding in the transaction concerning the office fee charged and there was not any malicious intent to receive undue money from the Seller. The Sellers signed the documents the day before the Buyers and the wire transfer was delayed until the following Monday. If the Buyers had signed one day earlier, this would have been resolved on the Friday. The title company stated it was an oversight by them and mistakenly placed the ALTA charges after the Sellers had signed the documents. The documents included a \$350 Admin Fee and it had been added after the Seller had signed their ALTA and the Respondent instructed the title company to refund the Sellers. The check was never cashed, and it went back to the Sellers. The Complainant was advised of the error by both the Respondent and the Respondent's assistant before filing the complaint and was not intentionally deceptive. The Respondent provided the e-mails from the title company indicating the error and the e-mail exchange with the Complainant advising of the error and an apology.

The Respondent has not violated the laws and rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

**34. 2020091971**  
**Opened: 12/7/2020**  
**First Licensed: 4/23/2004**  
**Expires: 12/27/2021**  
**Type of License: Affiliate Broker**  
**History: None**

The Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Affiliate Broker.

The Complainant was attempting to purchase a new home and the closing dates were to be scheduled for October 2, 15, or 30<sup>th</sup>. There were problems that arose that led to the closing date being pushed further out. The initial walkthrough had been completed on October 15, 2020 and the final closing date was set for October 30, 2020. The Complainant had been working with the lender on a VA loan since the earnest money of \$3,500 had been deposited in March 2020. The Complainant also put down an additional \$58,500 for secondary upgrades which were to be made on the new home. The Complainant was not able to obtain a final closing date on the home after the final walkthrough which had been rescheduled to October 30, 2020. The Respondent and the builder were present during the initial walk through and there were items identified to be fixed. On the day of the final walkthrough, neither the Respondent nor the builder were present. The Complainant stated there was a punch list at the house that needed to be completed, but none of the items were completed and the punch list was blank. The sheet was retrieved on November 18, 2020 when it had been left on the counter of the home. The Complainant had significant problems with the VA loan and closing. The Complainant contacted a congressman for assistance and others and finally decided to walk away from the purchase. This resulted in significant cost and stress to the Complainant. The Complainant alleges this was a concerted effort to prevent a veteran from buying a home. The Complainant alleges the denial of the VA loan was unethical and the action reflects poorly on the real estate profession and is an unacceptable practice. The main issue for the Complainant was the inability to get a closing date.

The Respondent provided a response and represented the Seller in the transaction with the co-listing agent. The contract was written on March 20, 2020 with a closing date of October 2, 2020. There were three closing amendments November 10<sup>th</sup>, November 17<sup>th</sup> and November 25<sup>th</sup> with an early occupancy of November 18<sup>th</sup>. There were several builder delays leading up to the final closing date. There were limitations on the number of workers allowed in units along with delays with permits and inspections, because of COVID regulations that dictated most the delays. There were also several delays due to

loan type. The first VA ID the builder used was rejected by the lender/underwriter on August 31, 2020. The last completed VA closing with the same ID was for another unit in August 2020. The builder was asked by the lender to apply for a new VA ID in October 15, 2020 and this was done after several calls to the VA to get this straightened out. In one of these calls on October 9<sup>th</sup>, the Respondent was told by the VA representative to tell the lender not to wait until the ID was returned and to proceed with ordering the appraisal. It just had to be returned before value was released. When this was relayed to the lender, the lender said they could not proceed without a number to place the order. The new VA ID was sent to the lender the day it was received. The lender called on November 2, 2020 and stated the appraiser was invoking the "Tidewater ruling" because there were no comparable available. The Complainant had paid \$58,188 in upgrades in April 9, 2020. These were added items of the Complainant's choice and not items that added to the appraisal value. There were special stipulations in the contract stating the house had to appraise for the base price and the \$58,188 did not have to be included in the appraisal value. The lender still asked for comps to justify the value which were provided the same day. The Complainant's agent should have provided this information, but the Respondent was willing to help to facilitate the closing. The closing amendment had not been signed by the lender. There were several text messages between the Complainant's agent and the Respondent concerning the appraisal. The Complainant also wanted the builder to pay for the epoxy finish of the garage floor because the Complainant was ready to close, and the Builder was not ready. The Complainant's agent never confirmed the lender was ready to close by the 31<sup>st</sup>. There was no appraisal. The builder refused to epoxy finish the garage floor or offer any compensation. The Certificate of Occupancy was received on November 6, 2020 and the first extension was signed by the parties. The lender stated everything would be ready by the 10<sup>th</sup>. On November 4, 2020, the lender asked for radon certification from the builder. This was the first request for this information, and it raised many red flags and issues. The lender wanted the builder to sign a statement that radon preventive building techniques were used construction and since they were not, the builder refused to sign the statement. Since the Complainant had indicated they wanted the builder to do a radon test and the Builder did not have one done. The builder agreed to sign a statement that the unit was built in accordance with radon codes. The contract date was extended again on a Closing Amendment 2. The radon test came back on November 14 and it was clear and the statement on radon was sent to the builder. The builder struck through a section of the statement and signed it. The lender said the VA would not accept the form with the section crossed out. The builder was instructed to write a statement and the lender wrote the statement, but the builder would not agree to sign the statement as written. Since the city did not require a radon statement, the builder did not think it was required. The builder was willing to sign the home had been built according to city codes. The VA handbook sent by the lender stated the radon the radon preventative techniques were used where applicable and the building had to comply with local and state regulations. The lender

stated the underwriter would not accept it. Since the Complainant had already made plans to move, the builder agreed to grant early occupancy while this was resolved. The unit had been started and the contract had been bound prior to the revision in the policy but the underwriter refused to approve the file. The builder could not go back and rebuild the unit, so a solution was reached where the builder paid to have a radon remediation system installed in the home at a cost of \$1,500. The Complainant could not close until the installation had been completed. There were several conversations with local city and county officials about the requirement for radon preventative techniques, however, there is no requirement in the city where the home was built. This is only a VA requirement. The Complainant had been told by their agent, they could try to find another type of lender or be released from the contract. There were no individuals trying to keep the upgrade money or the amount the Complainant had put as the down payment. All parties understood there was an issue on the lending/underwriting side, and all concerned were working to resolve the issue. The Respondent even offered to help the Complainant find a lender who could help them get the loan closed. In the end a solution was reached to allow the Complainants to stay with a VA loan and with the current lender. This allowed them to get some of the amount that was prepared for upgrades to be returned to them at closing. This was only possible because the Respondent provided the comps that were provided to the appraiser and used to raise the value. The Complainant got a higher appraisal value. On November 17<sup>th</sup>, the lender requested all builder documents including the certificate of occupancy to be reissued in the name of the developer not the builder as an employee. The usual process for this is that the units are in Horizontal Property Regime (HPR)<sup>1</sup> format where each unit is broken down from the master deed by quitclaim deed at closing. The lender would not accept this as the way it was to be done. All of this prompted by the reissuance of the VA ID. The Respondent worked with the co-listing agent and the builder and title company to make sure this was completed. Ultimately, the Complainant decided to cancel the contract and walk away from the transaction.

The Respondent was not responsible for obtaining a closing date and it was not the fault of the Respondent the Complainant was not able to obtain the necessary financing for the purchase. The Respondent has not violated any of the laws and rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

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<sup>1</sup> HPR in real estate means that you buy a property that is large enough to either renovate and convert into two separate homes or tear down and build a structure divided into two separate parts. In either scenario, the double home unit structure is on one property tax lot.

**35. 20200919961**  
**Opened: 1/4/2021**  
**First Licensed: 8/30/2001**  
**Expires: 9/7/2022**  
**Type of License: Principal Broker**  
**History: 2014 Letter of Warning**

The Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Principal Broker of the Affiliate Broker and the co-listing agent of the property that is also the subject matter of the previous complaint.

The Complainant was attempting to purchase a new home and the closing dates were to be scheduled for October 2, 15, or 30<sup>th</sup>. There were problems that arose that led to the closing date being pushed further out. The initial walkthrough had been completed on October 15, 2020 and the final closing date was set for October 30, 2020. The Complainant had been working with the lender on a VA loan since the earnest money of \$3,500 had been deposited in March 2020. The Complainant also put down an additional \$58,500 for secondary upgrades which were to be made on the new home. The Complainant was not able to obtain a final closing date on the home after the final walkthrough which had been rescheduled to October 30, 2020 and the Complainant's left after a final walkthrough with no information. The Respondent and the builder were present during the initial walk through. The items were identified to be fixed. On the day of the final walkthrough, neither the Respondent nor the builder were present. The Complainant stated there was a punch list at the house that needed to be completed, but none of the items were completed and the punch list was blank. The sheet was retrieved on November 18, 2020 when it had been left on the counter of the home. The Complainant had significant problems with the VA loan and closing. The Complainant contacted a congressman for assistance and others and finally decided to walk away from the purchase. This resulted in significant cost and stress to the Complainant. The Complainant alleges this was a concerted effort to prevent a veteran from buying a home. The Complainant alleges the denial of the VA loan was unethical and the action reflects poorly on the real estate profession and is an unacceptable practice. The Complainant alleges the issue was the inability of the Complainant to obtain a closing date.

The Respondent provided a response and represented the Seller in the transaction with the co-listing agent. The contract was written on March 20, 2020 with a closing date of October 2, 2020. There were three closing amendments November 10<sup>th</sup>, November 17<sup>th</sup> and November 25<sup>th</sup> with an early occupancy of November 18<sup>th</sup>. There were several builder delays leading up to the final closing date. There were limitations on the number of workers allowed in units along with delays with permits and inspections, because of COVID regulations that dictated most the delays. There were also several delays due to loan type. The first VA ID the builder used was rejected by the lender/underwriter on August 31, 2020. The last completed VA closing with the same ID was for another unit in August 2020. The builder was asked by the lender to apply for a new VA ID in October 15, 2020 and this was done after several calls to the VA to get this straightened out. In one of these calls on October 9<sup>th</sup>, the Respondent was told by the VA representative to tell the lender not to wait until the ID was returned and to proceed with ordering the appraisal. It just had to be returned before value was released. When this was relayed to the lender, the lender said they could not proceed without a number to place the order. The new VA ID was sent to the lender the

day it was received. The lender called on November 2, 2020 and stated the appraiser was invoking the “Tidewater ruling” because there were no comparables available. The Complainant had paid \$58,188 in upgrades in April 9, 2020. These were added items of the Complainant’s choice and not items that added to the appraisal value. There were special stipulations in the contract stating the house had to appraise for the base price and the \$58,188 did not have to be included in the appraisal value. The lender still asked for comps to justify the value which were provided the same day. The Complainant’s agent should have provided this information, but the Respondent was willing to help to facilitate the closing. The closing amendment had not been signed by the lender. There were several text messages between the Complainant’s agent and the Respondent concerning the appraisal. The Complainant also wanted the builder to pay for the epoxy finish of the garage floor because the Complainant was ready to close, and the Builder was not ready. The Complainant’s agent never confirmed the lender was ready to close by the 31<sup>st</sup>. There was no appraisal. The builder refused to epoxy finish the garage floor or offer any compensation. The Certificate of Occupancy was received on November 6, 2020 and the first extension was signed by the parties. The lender stated everything would be ready by the 10<sup>th</sup>. On November 4, 2020, the lender asked for radon certification from the builder. This was the first request for this information, and it raised many red flags and issues. The lender wanted the builder to sign a statement that radon preventive building techniques were used construction and since they were not, the builder refused to sign the statement. Since the Complainant had indicated they wanted the builder to do a radon test and the Builder did not have one done. The builder agreed to sign a statement that the unit was built in accordance with radon codes. The contract date was extended again on a Closing Amendment 2. The radon test came back on November 14 and it was clear and the statement on radon was sent to the builder. The builder struck through a section of the statement and signed it. The lender said the VA would not accept the form with the section crossed out. The builder was instructed to write a statement and the lender wrote the statement, but the builder would not agree to sign the statement as written. Since the city did not require a radon statement, the builder did not think it was required. The builder was willing to sign the home had been built according to city codes. The VA handbook sent by the lender stated the radon the radon preventative techniques were used where applicable and the building had to comply with local and state regulations. The lender stated the underwriter would not accept it. Since the Complainant had already made plans to move, the builder agreed to grant early occupancy while this was resolved. The unit had been started and the contract had been bound prior to the revision in the policy but the underwriter refused to approve the file. The builder could not go back and rebuild the unit, so a solution was reached where the builder paid to have a radon remediation system installed in the home at a cost of \$1,500. The Complainant could not close until the installation had been completed. There were several conversations with local city and county officials about the requirement for radon preventative techniques, however, there is no requirement in the city where the home was built. This is only a VA requirement. The Complainant had been told by their agent, they could try to find another type of lender or be released from the contract. There were no individuals trying to keep the upgrade money or the amount the Complainant had put as the down payment. All parties understood there was an issue on the lending/underwriting side, and all concerned were working to resolve the issue. The Respondent even offered to help the Complainant find a lender who could help them get the loan closed. In the end a solution was reached to allow the Complainants to stay with a VA loan and with the current lender. This allowed them to get some of the amount that was prepared for upgrades to be returned to them at closing. This was only possible because the Respondent provided the comps that were provided to the

appraiser and used to raise the value. The Complainant got a higher appraisal value. On November 17<sup>th</sup>, the lender requested all builder documents including the certificate of occupancy to be reissued in the name of the developer not the builder as an employee. The usual process for this is that the units are in Horizontal Property Regime (HPR)<sup>2</sup> format where each unit is broken down from the master deed by quitclaim deed at closing. The lender would not accept this as the way it was to be done. All of this prompted by the reissuance of the VA ID. The Respondent worked with the co-listing agent and the builder and title company to make sure this was completed. Ultimately, the Complainant was unable to proceed with the transaction and the contract was cancelled.

The Respondent stated this is a frivolous claim made because the Complainant did not receive the additional items from the builder because of the delay in the closing date. The Respondent believes the Complainant was encouraged by the lender to file the complaint. The lender did not have the appraisal back by the original closing date and tried to blame the builder and others for the delay. As a result, the builder refused to provide the free painted garage floor. The Respondent and the co-listing agent both went above and beyond to assist the Complainant with the purchase of the property and even assisted the Complainant when not required to help in order to aid the Complainant to close on the property. Unfortunately, this did not occur because of a financing issue and was unrelated to the actions of the Respondent.

The Respondent was not responsible for obtaining a closing date for the Complainant and it was not the fault of the Respondent the Complainant was not able to obtain the necessary financing for the purchase. The Respondent has not violated any of the laws and rules of the Tennessee Real Estate Commission.

**Recommendation: Close.**

**Commission Decision: The Commission accepted counsel's recommendation.**

### **REPRESENTS**

**Shilina Brown:**

**36. 2019013841**  
**Opened: 2/19/2019**  
**Type of License: Unlicensed**  
**History: None**

Complainant is anonymous. Respondent is an unlicensed Tennessee limited liability company. Complainant alleges Respondent is advertising themselves as a real estate firm selling a property they do not own. Complainant provided counsel with an advertisement of Respondent's company

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<sup>2</sup> HPR in real estate means that you buy a property that is large enough to either renovate and convert into two separate homes or tear down and build a structure divided into two separate parts. In either scenario the double home unit structure is on one property tax lot.

advertising a price for a piece of land soliciting offers and a five thousand dollar (\$5,000.00) non-refundable earnest money deposit. Complainant also provided a screenshot of the parcel information for a Tennessee county that does not list Respondent as the owner.

Respondent did not answer the complaint. Internal research shows that Respondent's company website advertises themselves as a company that buys houses for cash offers without charging any fees or paying commissions. Based upon information provided by the Complainant and internal research, Counsel has found insufficient evidence that Respondent has violated any of the statutes or rules. Therefore, Counsel recommends that this matter be dismissed.

**Recommendation: Dismiss.**

**Decision: The Commission voted to issue a \$1,000 civil penalty for unlicensed activity.**

**New Information:** Respondent maintains he is not engaged in unlicensed real estate activity. The Respondent was the owner of the property. The Respondent provided documentary evidence of the Purchase and Sale Agreement which shows the Respondent entered into an agreement to purchase on February 1, 2019 and closed on February 14, 2019. The ad had been posted for the sale of the property on February 19, 2019. This was after the Respondent had purchased the home and was the owner of the property.

**New Recommendation: Close.**

**New Decision: The Commission accepted counsel's recommendation.**

**37. 2020063351**  
**Opened: 8/24/2020**  
**First Licensed: 6/2/2014**  
**Expires: 6/1/2022**  
**Type of License: Affiliate Broker**  
**History: None**

This complaint was administratively opened by the Tennessee Real Estate Commission. The Respondent is a licensed Tennessee Affiliate Broker.

The Respondent is suspected of falsifying education certificates to meet renewal requirements. The education provider has no proof of registration or attendance by the Respondent.

The Respondent provided a response and stated the certificates showing completion of courses were submitted to the Tennessee Real Estate Commission office and the administrative office responded stating that there was a discrepancy and the Respondent completed additional courses. The Respondent completed the required CEs as soon as it was pointed out there was a problem.

**Recommendation:** Authorize a contested case proceeding and assess a \$1,000 civil penalty for making a false representation by making a substantial and willful misrepresentation pursuant to Tenn. Code Ann. § 62-13-312(1) in submitting false education certificates to the Commission.

**Commission Decision:** The Commission voted to authorize a contested case proceeding and assess a \$4, 000.00 civil penalty and a six (6) month license suspension for the violation of making false representation by making substantial and willful misrepresentation pursuant to Tenn. Code Ann. § 62-13-312(1) in submitting false education certificates to the Commission.

**New Information:** The Respondent provided documentary proof (credit card statements and completion certificates) concerning the payment of the CE courses and the registration confirmation. It appears the Respondent registered for a course following a pop-up advertisement when working on his computer after browsing on the Internet. The Respondent paid the company the course fees, took the continuing education courses and received a certificate of completion. Later, the Respondent discovered the registration and courses were a fraud and were from website that spoofed the actual continuing education provider. The Respondent contacted the actual continuing education provider and was told the certificates were fraudulent and there was no record of any registration by the Respondent. The Respondent had been scammed and was being accused of submitting false continuing education certificates. The Respondent has been unable to determine how this scam had occurred. The Respondent provided the credit card statements and completion certificates indicating the courses were paid and received fraudulent certificates of completion from the spoofed website.

**New Recommendation:** Close.

**New Decision:** The Commission accepted counsel's recommendation.

**38. 2020048091**  
**Opened: 8/3/2020**  
**First Licensed: 3/21/1990**  
**Expires: 9/7/2022**  
**Type of License: Real Estate Broker**  
**History: None**

The Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Real Estate Broker.

The Complainant was in the process of purchasing a property and made an offer on May 31, 2020. The Seller counteroffered on June 3, 2020. The parties were not able to reach an agreement as of June 5, 2020. The Complainant requested a release and the Seller's agent never responded. Another release was submitted on June 11, 2020 and there was no response from the Respondent.

On June 23, 2020, the Complainant's agent submitted another release and never heard back from the Respondent. On August 3, 2020, the Complainant filed a supplemental filing stating all issues had been resolved and withdrew the complaint.

The Respondent provided a response and stated the issue was resolved between the parties. The Buyer and Seller agreed to split the earnest money and funds were released.

**Recommendation:** Authorize a contested formal hearing and informal settlement by Consent Order with the payment of a \$1,000 civil penalty for failure to diligently exercise reasonable skill and care in providing services to all parties to the transaction pursuant to Tenn. Code Ann. 62-13-403(1).

**Commission Decision:** The Commission accepted counsel's recommendation, but also opted to have a complaint opened against the Principal Broker.

**New Information:** The Respondent provided an extensive supplementary response explaining the details of the transaction. The Respondent represented the Seller in this transaction and stated this was a protracted and difficult transaction because of complications related to the Buyer's financing and disagreement between the parties on an ongoing basis concerning the sale price. The Respondent provided proof of the responding to the Buyer's agent concerning the earnest money on an ongoing basis. The Respondent stated this was as difficult transaction and there were major issues for both the Buyer in obtaining financing and the Seller agreeing to sell the property at a certain price.

The Principal Broker also provided a detailed response explaining the specifics of the transaction. The Principal Broker stated the property was listed for \$53,500 by the Seller. An offer was made in the amount of \$45,000 and the Seller finally accepted an offer of \$47,500 on February 26, 2020 with an earnest money deposit of \$500. The closing was set for March 21, 2020. An addendum was entered into by the parties to move the closing to April 30, 2020. The Buyer continued to have difficulty in obtaining financing throughout this time period. The same Buyer switched lenders and entered another contract with the Seller. During this time the Buyer and Seller's agents were in constant communication. However, the Seller was not willing to agree to the price and repeatedly made a counteroffer and there were up to five counteroffers made. The Buyer finally gave up and it was not because the Buyer did not want to purchase the property because of the numerous counteroffers from the Seller. The Buyer finally refused to proceed with transaction with this Seller. The Buyer wanted a release and the Seller refused. Thereafter, the Seller was refusing to release the funds. The Principal Broker got involved in the transaction when the issue arose concerning the earnest money and assisted in negotiating with the Buyer and Seller and obtained an agreement between the parties to split the earnest money. The complaint was filed the day after the parties agreed to split the earnest money. The Respondent stated the parties entered into an agreement to split the earnest money on June 28, 2020 and the matter had been resolved. The Complainant later withdrew the complaint. There was no issue concerning the Respondent's failure to respond to the Buyer or the Buyer's agent. The Respondent was in continuous communication with the Buyer's agent throughout the transaction.

**New Recommendation:** Close.

**New Decision:** The Commission accepted counsel's recommendation.

**Erica Smith:**

**39. 2017077801**  
**Opened: 12/5/2017**  
**First Licensed: 4/22/2016**  
**Expires: 4/21/2020**  
**Type of License: Affiliate Broker**  
**History: None**

Complainant is a licensee, specifically she was Respondent's principal broker during the time the transaction referred to in the complaint occurred. Complainant alleges Respondent participated in a closing where the buyer offered her a \$2,000 bonus. Complainant states the bonus was not added to the ALTA statement, but the buyer wanted to pay the bonus, so she emailed Complainant an invoice to pay the bonus as he requested. The following day, Respondent took the liberty of having her mother, who is not an attorney retained by the firm, invoice and collect the bonus separately. The next day, Complainant had Respondent come in before noon and released her from the firm. Complainant provided the complete file, copy of the paid invoice to a third party not hired by the firm, and a police report.

Respondent's attorney has notified Counsel that Respondent filed a civil suit against Complainant and her firm, and the matter is still pending with the money at issue being held in Respondent's attorney's trust account until the Judge makes a ruling. The docket sheet from the civil court shows the complaint was filed with the court on or around February 16, 2018 and a docket call was held on March 14, 2018. As of April 30, 2018, the civil matter is still not resolved. Counsel requested that Respondent's attorney stay in contact with Counsel, especially when the matter is resolved.

Counsel feels this issue is one for the civil courts to handle and recommends putting this complaint in Litigation Monitoring status or dismissing it unless the honorable Commission finds Respondent committed or may have committed a violation.

Recommendation: Dismiss or put into Litigation Monitoring Status until civil case is resolved.

**New Information:**

**In June 2018, Respondent entered a Litigation Monitoring Consent Order and agreed to respond to status update requests within thirty (30) days of receiving said request. Respondent also agreed that any delay in proceedings resulting from this Order shall not impair the Commission's authority to proceed against Respondent regarding the subject matter of the civil litigation. Respondent's attorney has not responded to Counsel's request for an update regarding the civil case since January 21, 2020. According to Respondent's original response to this complaint, Complainant refused to sign documentation of a bonus being paid in cash and became irate when they learned Respondent did not collect cash at**

the closing because the buyer admitted they had spent the bonus. The buyer said they were “a man of their word” and wanted to pay the bonus as promised and agreed to in the Designated Agency agreement. Complainant also takes issue with the fact the bonus was not added to the ALTA statement. Respondent explains that pursuant to the HUD-1, the bonus was not added and not received at closing because the buyer did not have the cash at closing. Respondent argues there was no wrongdoing because Respondent’s attorney’s firm collected the \$2,000 bonus and deposited it in their attorney’s trust account directly from the buyer. Additionally, Respondent notes this was purely a cash transaction with no mortgage or lending money involved and argues a bonus paid to a selling or buying agent was not required to be disclosed per federal regulations. Respondent feels the true nature of this complaint is unclear and without merit because Complainant always made it known and agreed that Respondent accepting \$2,000 in cash as a bonus was perfectly fine and stated they would take the cash and immediately hand it over to Respondent because it was payable at 100%. The civil litigation began with Respondent filing for an injunction against Complainant in the circuit court to prevent Complainant from fraudulently transferring any more funds or earned commissions that allegedly belong to Respondent. Respondent ended up filing a Motion for Recusal of the judge hearing the circuit court matter. According to the docket sheet, the Motion was denied in May 2019 and nothing else has been filed in the circuit court case. Counsel recommends dismissal of this matter.

**Recommendation: Dismiss**

**Amended Recommendation: Authorize a formal hearing and issue a Consent Order with \$1000.00 civil penalty for violation of Tenn. Code Ann. §62-13-312(b)(11)**

**Decision: The Commission accepted counsel’s recommendation.**

**New Information:**

Counsel spoke with Respondent’s attorney and they explained Respondent wants nothing more to do with the real estate industry and accordingly, allowed their license to expire in April of last year. This whole situation was very hard on Respondent and Complainant is still holding tens of thousands of dollars in commissions owed to Respondent. Counsel recommends closing and flagging this complaint.

**New Recommendation: Close and flag**

**New Decision: The Commission accepted counsel’s recommendation.**

**Chairman John Griess adjourned the meeting at 11:06AM**