

TENNESSEE REAL ESTATE COMMISSION MINUTES
November 7, 2012

The Tennessee Real Estate Commission convened on November 7, 2012 at 9:06 a.m., in Room 160 of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, TN 37243. The following Commission Members were present: Chairman William "Bear" Stephenson, Vice-Chairman Michelle Haynes, Commissioner Grover Collins, Commissioner Austin McMullen, Commissioner Janet DiChiara, Commissioner John Griess, Commissioner Isaac Northern and Commissioner Wendell Alexander. Commissioner David Flitcroft was absent. Others present: Executive Director Eve Maxwell, Education Director Steve McDonald, Assistant General Counsel Julie Cropp and Counsel Robyn Ryan.

Chairman Stephenson called the Tennessee Real Estate Commission to order at 9:05 a.m. on Thursday, November 8, 2012.

The first order of business was the adoption of the agenda for the November 2012 Commission meeting. **Commissioner Griess made the motion to adopt the November 2012 Commission meeting; seconded by Commissioner McMullen; unanimous vote, motion carried.**

The next order of business was the approval of September 2012 minutes. **Commissioner Griess made a motion to approve the September 2012 minutes; seconded by Commissioner Alexander; Commissioners McMullen and DiChiara abstained; motion carried.**

Formal Hearing

TREC v. Judy L. Jones, license #270718
Docket # 12.18-116426A
Complaint #201102148 & #201102088

The Commission meeting took a break at 10:15 a.m. and was called back to order at 10:31 a.m.

The Commission took a lunch break at 11:26 a.m. and was called to order at 1:08 p.m.

The Commission took a break at 2:08 p.m. and was called back to order at 2:19 p.m.

The Commission took a break at 4:09 p.m. and was called back to order at 4:19 p.m.

In the hearing of Ms. Judy Jones, license #270718, it was ordered that Respondent's license as a Principal Broker, having previously been issued number 270718 by the Tennessee Real Estate Commission is hereby permanently revoked. Additionally Respondent is ordered to pay a civil penalty of Three Thousand Dollars (\$3000.00). Respondent is ordered to pay all hearing costs which total Two Thousand Two Hundred Dollars and which include the costs of the Administrative Law Judge in the sum of Nine Hundred Dollars (\$900.00) and the court reporter in the sum of One Thousand Three Hundred Dollars (\$1300.00). Respondent is ordered to pay the total cost of Two Thousand Two Hundred Dollars (\$2200.00) within 30 days of the entry of

the Final Order, which shall take effect upon filing with the Administrative Procedures Division of the Secretary of State.

Chairman Stephenson adjourned the meeting at 4:53 p.m. Wednesday, November 7, 2012.

November 8, 2012

The Tennessee Real Estate Commission was called to order by Chairmen Stephenson at 9:05 a.m.

Informal Applicant Appearance : Matthew D. Tanksley

Matthew D. Tanksley, affiliate broker applicant, appeared with potential Principal Broker Jim Walton of Keller Williams Green Hills to request he be approved to apply for an affiliate broker license. Mr. Tanksley disclosed the following convictions: prostitution in November, 2000; burglary in the 1st degree and unauthorized control of a propelled vehicle in April, 2001 and violation of a temporary restraining order in January, 2001. **Commissioner DiChiara made a motion to approve; seconded by Commissioner Collins. Unanimous vote; motion carried.**

Education Report, Stephen McDonald, Education Director

Mr. McDonald presented the Courses for the Commission Evaluation and Discussion for the month of November 2012 and the report is inserted. **Commissioner Collins made a motion to accept the Courses for the Commission Evaluation (N1- N17); seconded by Commissioner Northern; unanimous vote; motion carried.**

Mr. McDonald presented the following Instructor review for the month of November 2012.

1. Karen Czarnecki of the Williamson County Association of REALTORS® (1135) requests the approval of Randall Fly to teach Fair Housing- 6101.
2. Emily Sy of Distressed Property Institute, LLC (1505) requests the approval of Aaron Lewis, Branden Lowder, and Robyn Webb to the CDPE- Certified Distressed Property Expert 6330.

Commissioner DiChiara made the motion to accept the Instructors for the month of November 2012; seconded by Commissioner Collins; unanimous vote; motion carried.

Mr. McDonald updated the Commissioners on the Instructor Training manual and provided the results of the review of online course completion times and stated that a particular provider was informed to enable the ARELLO time modules to slow testers to a time allotted for CE approval.

Chairman Stephenson deviated from the agenda to allow Mrs. Cropp to deliver the Legal Report. Commissioner Alexander requested that Chairman Stephenson introduce the purpose and process of the Legal Report to attendees.

Legal Report, Julie Cropp, Assistant General Counsel

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

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

- 1) **2012006651 &**
- 2) **2012006652 – Commissioner Haynes made a motion to accept legal counsel’s recommendation for a cease and desist with a \$500 civil penalty for each violation; seconded Commissioner McMullen; Alexander called for the question; unanimous vote; motion carried.**
- 3) **2012011911 &**
- 4) **2012011931 &**
- 5) **2012011941&**
- 6) **2012011941- Commissioner Northern motioned to accept legal counsel’s recommendation with a revision that Respondent 3’s consent order to include a civil penalty in the amount of \$500.0; seconded by Commissioner McMullen; unanimous vote; motion carried.**
- 7) **2012012641 – Commissioner Alexander made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Northern; unanimous vote; motion carried.**
- 8) **2012013391- Commissioner Alexander made a motion to assign file to Commissioner DiChiara to review; seconded by Commissioner Northern; unanimous vote; motion carried.**
- 9) **2012014031- Commissioner Griess made a motion to accept legal counsel’s recommendation of a Consent Order for failing to be loyal to the interests of the client in violation of T.C.A. § 62-13-312(b)(14) and § 62-13-404(2) with a civil penalty of \$500.00 plus attendance by Respondent at one (1) entire meeting of the Commission within one hundred eighty (180) days of Respondent’s execution of Consent Order; seconded by Commissioner Collins; unanimous vote; motion carried.**
- 10) **2012014241- Vice-Chairman Haynes and Commissioner Alexander called for a roll call vote to accept legal counsel’s recommendation; Commissioner Alexander voted for; Commissioner Collins for; Commissioner DiChiara against; Commissioner Griess; against; Vice-Chairman Haynes against; Commissioner Northern against; Chairman Stephenson against; motion failed; discussion; Commissioner DiChiara made a motion to accept counsel’s recommendation; seconded by Griess; unanimous vote; motion carried.**
- 11) **2012014891- Commissioner McMullen made a motion to accept legal counsel’s recommendation; seconded by Commissioner DiChiara; Commissioner Griess called for discussion and the motion to accept legal counsel’s recommendation was revised to reflect the Respondent’s Consent Order to include \$1,000 civil penalty; seconded by Alexander for the motion as amended by McMullen and seconded by DiChiara; unanimous vote; motion carried.**
- 12) **2012015031- Commissioner DiChiara made a motion to accept legal counsel’s recommendation of Consent Order for with a civil penalty of \$250.00 for misleading or untruthful advertising in violation of T.C.A. § 62-13-312(b)(4), and misleading advertising/failing to keep listing information current and accurate in violation of §**

62-13-312(b)(14) and Rule 1260-02-.12(2)(e) and (4)(c) plus attendance by Respondent at one (1) entire meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order; seconded by Chairman Stephenson; unanimous vote; motion carried.

13) 2012015101 &

14) 2012015102- Chairman Stephenson made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carried.

15) 2012015181- Commissioner Collins made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Northern; unanimous vote; motion carried.

16) 2012015551- Commissioner Collins made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carried.

17) 2012015821 &

18) 2012015822- Commissioner Northern made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carried.

19) 2012016901- Commissioner DiChiara made a motion to accept legal counsel's recommendation to close; seconded by Commissioner Collins; unanimous vote; motion carried.

20) 2012017151- Commissioner Collins made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Northern; Commissioner Griess made a motion to hear the complaint; seconded by Commissioner DiChiara; Commissioner Collins withdrew his motion. Commissioner McMullen made a motion to dismiss; seconded by Commissioner Northern; Commissioner McMullen called previous question; Commissioner Alexander called question; unanimous vote; motion carried.

21) 2012018181- Chairman Stephenson made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.

22) 2012018581 &

23) 2012018591- Commissioner McMullen made a motion to accept legal counsel's recommendation to dismiss; seconded by Chairman Stephenson; unanimous vote; motion carried.

24) 2012019091 &

25) 2012019092 &

26) 2012019093 &

27) 2012019201 - Commissioner Northern made a motion to accept legal counsel's recommendation to close; seconded by Commissioner McMullen; unanimous vote; motion carried.

28) 2012018811- Commissioner Northern made a motion to accept legal counsel's recommendation to close and flag; seconded by Commissioner Griess; unanimous vote; motion carried.

Executive Director's Report, Eve Maxwell, Executive Director

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

Complaint Report:

Attached to and made a part of Disciplinary Action Report

Tennessee Real Estate Commission:

Respondent:	Melissa Demeno, Nashville, TN
Violation:	Escrow account violation
Action:	\$250 Civil Penalty
Respondent:	Edward "Ed" R. Gwinn, Johnson City, TN
Violation:	Advertising violation
Action:	\$250 Civil Penalty
Respondent:	Chris F. Harwell, Nashville, TN
Violation:	Failure to timely complete required education
Action:	\$600 Civil Penalty
Respondent:	Kinnie Nicole Jenkins, Sevierville, TN
Violation:	Failure to timely complete administrative measures
Action:	\$250 Civil Penalty
Respondent:	Lawrence Johnson, III, Memphis, TN
Violation:	Failure to timely remit monies belonging to others
Action:	\$1500 Civil Penalty
Respondent:	Larry S. McClanahan, Johnson City, TN
Violation:	Failure to supervise activities of affiliates(advertising)
Action:	\$250 Civil Penalty
Respondent:	Jordan Mollenhour, Knoxville, TN
Violation:	Failure to maintain adequate facilities
Action:	\$200 court costs
Respondent:	Stephanie Rust Reece, Nashville, TN
Violation:	Escrow account violation
Action:	\$250 Civil Penalty
Respondent:	Royal Resorts International, LLC
Violation:	Unlicensed activity
Action:	\$2,000 Civil Penalty plus \$1,705 court cost

Respondent: Samuel T. Smith, Brentwood, TN
 Violation: Failure to timely complete required education
 Action: \$500 Civil Penalty

**Tennessee Real Estate Commission:
 Agreed Citation Report, October 2012**

Respondent: Melissa Demeno, Nashville, TN
 Violation: Escrow account violation
 Action: \$250 Civil Penalty

Respondent: Edward "Ed" R. Gwinn, Johnson City, TN
 Violation: Advertising violation
 Action: \$250 Civil Penalty

Respondent: Chris F. Harwell, Nashville, TN
 Violation: Failure to timely complete required education
 Action: \$600 Civil Penalty

Respondent: Kinnie Nicole Jenkins, Sevierville, TN
 Violation: Failure to timely complete administrative measures
 Action: \$250 Civil Penalty

Respondent: Larry S. McClanahan, Johnson City, TN
 Violation: Failure to supervise activities of affiliates(advertising)
 Action: \$250 Civil Penalty

Respondent: Stephanie Rust Reece, Nashville, TN
 Violation: Escrow account violation
 Action: \$250 Civil Penalty

Respondent: Samuel T. Smith, Brentwood, TN
 Violation: Failure to timely complete required education
 Action: \$500 Civil Penalty

Licensing Statistics:

ADDITIONAL STATISTICS
10/31/2012

TOTAL LICENSEES:

INDIVIDUALS

	10/31/12	10/31/11	10/30/10	10/30/09	10/31/08	Change	Change 11/1/07
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						10/31/09- 10/31/12	10/31/12
Active	23,780	24,396	26,733	28,478	33,101	<4,698>	<11,705>
Inactive	858	1,752	1,449	2,445	2,355	<1,587>	<547>
Retired	9,446	10,145	10,419	10,248	9,424	<802>	<964>
Broker Release	412	546	626	1,261	1,622	<849>	<629>
Vol Term	3,103	2,964*	2,690*	2,419*	2,012*	+684	+1,325
GRAND TOTAL	34,496	36,839	39,227	42,432	46,502	<7,936>	<13,845>

*Voluntary terminations not included in grand total. Represents # of licensees who have written TREC requesting that their licenses be terminated prior to expiry date.

FIRMS

	10/31/12	10/31/11	10/30/10	10/30/09	10/31/08	Change 10/31/08- 10/31/12
Active	4,023	4,181	4,370	4,473	4,655	<632>
Retired	278	329	343	346	296	<18>
GRAND TOTAL	4,301	4,510	4,713	4,819	4,951	<650>

LICENSEES RANK PER LIST 10-31-2012(all statuses but retired/inactive)

Timeshare 994
 Affiliate Broker 16,343
 Broker 3,644
 Principal Broker 4,311

SIZE OF FIRMS BASED ON # OF LICENSEES-- PER LIST 10-31-2012

(Numbers are Approximate based upon the IS List)

Single (39%)	1,551	
10 or less (49%)	1,959	
11-25 (6.5%)	259	(
25-50 (2.5%)	103	(
50-100 (2%)	74	(
100+ (1%)	37	(
TOTAL	3983	

Average Number of Licenses(individuals) Issued per month (based on a calendar year)

Year	Licenses Issued(month)	Twelve Month Total
1997	328	3,936
2000	276	3,312
2001	312	3,744
2002	320	3,841
2003	420	5,046
2004	471	5,647
2005	565	6,775
2006	589	7,063
2007	543	6,511
2008	281	3,372
2009	172	2,068
2010	167	2,529
2011	189	2,269
2012	240	2,398(10 months)

Firm Closure/Retd	October	Total for year	Average @ month
2012	11	188	19
2011	27	305	31

2010	20	245	25
2009	12	327	33
2008	14	140	14

Apps Appd	Aug	Sept.	Oct	Year Total	Average @month	Exams Taken	Sept	Oct	Year Total	Average @month
2012	225	185	222	2,398	240	2012	283	273	2,627	263
2011	225	201	184	1,982	198	2011	209	384	2,311	231
2010	219	226	220	2,234	223	2010	248	268	2,675	267
2009	221	235	119	2,165	216	2009	271	261	2,686	269
2008	266	293	282	3,504	350	2008	478	332	4,449	445
2007	526	551	516		531	2007	831	693	8,680	868
2006	697	572	552		607	2006	1,025	1,116	9,824	982

Individual Licensees Lost/Gained Year to Year 2000-2011

			Av L/G @ month
2000	36,968		
2001	34,007	<2,961>	<296>
2002	37,847	+3,840	+320
2003	35,951	<1,896>	<158>
2004	41,598	+5,647	+470
2005	42,059	+ 461	+ 38
2006	48,996	+6,937	+578
2007	50,333	+1,337	+114
2008	50,700	+ 367	+ 30
2009	47,980	<2,720>	<226>
2010	38,892	<9,088 >	<757>
2011	36,839	<2,053 >	<205>
2012	34,496	<2,343>	<234>

TOTAL ALL LICENSES ISSUED

LICENSE TYPE	10/31/2012 Total	10/31/2009
Affiliate, Broker, Timeshare	34,625	42,526
Real Estate Firms	4,314	4,823

Rental Location Firm	No Active	No Active
Rental Location Agent	No Active	No Active
TimeShare Registration-Active	54	66
TimeShare Registration-Exempt	135	115
Vacation Lodging Service Firms	141	138
Acquisition Agent Registration	41	41
Acquisition Representative Registration	2,331	2,331
Acquisition Agent License	121	185
Designated Agent—VLS	94	N/A

TOTALS **10/31/2012:** **41,856** **10/31/2009**
50,225

LICENSEE RENEWAL PERCENTAGE

Expiry Date By Month*	Renewal Notices Sent	Licenses No Renew By 61st Day	% Licenses Did Not Renew
7/2011	1,540	201	12%
8/2011	1,889	429	11.8%
9/2011	1,618	206	11%
10/2011	3,635	165	11%
11/2011	1,866	143	14%
12/2011	1,418	243	15%
1/2012	1,024	225	15%
2/2012	1,592	265	16%
3/2012	1,435	308	17%
4/2012	1,681	247	15%
5/2012	1,618	199	12%
6/2012	1,525	256	16%
7/2012	1,519	229	15%

- This information is gathered by TREC on (or about) the 61st day after the expiry date, so 4/1/2011 expiry date will report renewal numbers on 6/2/2011. For reporting purposes, I have grouped the monthly figures together.

License Transfer requests:
Included in the minutes.

Update on Errors and Omissions:

E & O PROPOSED TIMELINE
For 1/1/2013 Renewal
11-1-2012

9-2012 Explore cost of media services printing two sided E&O letter/policy, state postal stuffing and mailing. Start forms and fiscal approval process for Letter and costs to print, stuff and send TREC mailer. Total cost (including postage) of mailer is: \$12,972.00

10/12/2012 After RFP process completed, RISC awarded contract as state E&O carrier for period 1/1/2013-12/31/2014. Two year E&O policy premium is \$249.00.

10/15/2012 E&O renewal reminder updated on TREC Website. TAR continues to remind its members that current E&O insurance policy will expire 12/31/2012 and that new policy must be in place prior to 1/1/2013.

10/31/2012 95 individual licensees appear as uninsured as of this date. 52 licensees appeared as uninsured as of 10/10/2010.

10/31/2012 List of 25,292 licensees (excludes retired/inactive) with home and business addresses, license number, status and firm (if applicable), received from IS. Sent copy to RISC as additional licensee information.

10/31/2012 Letter to licensees and requisition for printing approved by Forms and Fiscal. Two sided document to be printed, with TREC letter to licensees on one side and Commission Policy on Lapsed E&O Insurance, 2012-CPS-008, on the other side.

11/1/2012 IS list, licensee mailing and requisition approval all transmitted to Media Services to merge list and to print mailing to licensees.

11/2/2012 Review and respond to RISC re 2013 E&O brochure and RISC letter. RISC has enrollment form, broker letter and brochure ready to send to PBs and enrollment form ready to send to all other licensees. Anticipate that renewal notices will go out on or about 11/12/2012. RISC has set its deadline for licensee policy renewal as 12/3/2012.

11/5/2012 Media Services has begun printing of TREC E&O mailing. Once printing completed, will be delivered to state postal for folding, stuffing and mailing.

11/12/2012 RISC anticipates that online renewal system for 1/1/2013 will be updated and fully operational to take licensee E&O insurance renewals and issue certificates of insurance and/or download proof in insurance for period 1/1/2013-12/31/2014.

11/15/2012 Anticipated that TREC licensees will have received, or will soon receive, mailings from TREC and RISC

12/3/2012 Date E & O renewal due into RISC. At that point, TREC will take inventory and see how many renewals are in. This number will have a bearing on type and content of next contact with licensees

12/17/2012 Anticipate letter and email blast to licensees who have not renewed, but response number will help determine

1/7/2013 Inventory responses and number of insureds and uninsureds.

1/14/2013 Email blast to uninsureds by RISC; TREC letter at some point during Jan 2013 to affiliates and PBs. PBs to be notified of uninsured affiliated licensees and reminded of provisions, penalties and options set forth in Commission Policy on Lapsed E&O Insurance adopted 9/12/2012.

Chairman Stephenson addressed the attendees and reminded them that the Rice Errors and Omissions policy shall expire December 31, 2012 and explained that the policy for 2013- 2014 coverage period is \$249.00 for a (2) year policy. Vice-Chairman addressed the attendees and urged them to read the policy. Ms. Maxwell urged also for attendees to look at the additions, read the policy and verify coverage considerations.

Budget Information FY 2012 Close:

Ms. Maxwell asked the Commissioners if they had questions. Ms. Maxwell informed the Commission that the TREC office had lost (8) employees over the last four years. Ms. Maxwell noted that the state is currently reviewing the knowledge, skills and abilities required for every job classification and it is anticipated that TREC will be able to hire a full time Clerk 3 as soon as the review process is completed and has also requested 2 temps to assist with TREC business.

Ms. Maxwell addressed the question posed by Commissioner Alexander about the hiring of an auditor. The Commissioners were updated on the TREC file reduction and stated that there are over 900 boxes of files and moving these files to storage cuts \$23,000 a year in storage costs.

Chairman Stephenson requested an update on the TREC procedure of auditing a firm as Assistant Commissioner of Regulatory Boards, Bill Giannini, requests a different way to audit. Commissioner Haynes followed-up with the request from Chairman Stephenson asking for a history and information on TREC auditors. Commissioner Northern suggested self-monitoring as a possibility.

Commissioner Alexander had no report. Commissioner Griess had no report. Commissioner DiChiara wished the attendees a Happy Thanksgiving and urged anyone in attendance that

wished to send a book to troops overseas to see her after the meeting. Commissioner Northern stated he hoped the attendees had a learning experience and no other comment. Commissioner Collins had no report. Vice-chairman Haynes had no report. Chairman Stephenson informed the attendees on the policy and procedure of Commissioners and the role they serve from the Governor and urged attendees to budget for the year end dues and expenses. Chairman Stephenson also praised Commissioner McMullen and the Governor's appointment of him to the Commission.

Chairman Stephenson adjourned the meeting at 11:39 a.m.



**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
OFFICE OF LEGAL COUNSEL
Davy Crockett Tower,
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NASHVILLE, TENNESSEE 37243
(615) 741-3072 fax 615-532-4750**

MEMORANDUM

TO: TENNESSEE REAL ESTATE COMMISSION

FROM: JULIE CROPP, Assistant General Counsel

SUBJECT: NOVEMBER LEGAL REPORT

DATE: November 7-8, 2012

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

- 1. 2012006651**
Opened: 4/17/12
First License Obtained: 1/24/06
License Expiration: 1/23/10
E&O Expiration: 1/1/13
Type of License: Affiliate Broker
History: No Prior Disciplinary Action
***Respondent's license expired on 1/23/10**

- 2. 2012006652**
Opened: 4/17/12
History: No Prior Disciplinary Action – Unlicensed

August 2012 Meeting:

Complainants state that they leased a home from Respondents (both unlicensed). Complainants were relocating to Tennessee from another area of the country and selected the home to rent which was shown on Respondents' website. Complainants state that the photos that were provided of the property on Respondents' website were not the actual home Complainants rented. Complainants state that the home was very dirty and unfit to live in. It appears that Respondent 1 was a licensee whose license has expired.

Respondents submitted a response stating that they are married and Respondent 2 entered into a lease option agreement with the owner of the subject property rented by Complainants (copy of lease option agreement was provided by Respondents). Then, Respondent 2 personally entered into a rental agreement with Complainants, which did not involve Respondent 1 or their company. It appears that the maintenance and cleanliness issues addressed in the complaint were handled by attorneys for the parties. Respondent 1 states that, upon realizing that Respondent 1's real estate license had expired, Respondent 1 shut down their company and has ceased operations. Respondent 1 is in the process of taking the exam and obtaining proper licensure, at which time Respondent 1 plans to affiliate with a firm. With regard to the property that was rented by Complainants, it appears from the documentation provided that Respondent 2 was renting the property to Complainants personally pursuant to the rights granted to Respondent 2 by a lease option agreement with the property owner.

Recommendation: Dismiss.

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

September 2012 Meeting:

New Recommendation: Commissioner DiChiara to discuss.

DECISION: The Commission voted to defer the matter until next month to allow legal counsel time to obtain additional information.

Respondents provided additional documentation in response to request.

New Recommendation: Commissioner DiChiara to discuss.

DECISION: Due to Commissioner DiChiara's absence, this matter was deferred until the November 2012 meeting.

New Recommendation: Commissioner DiChiara to discuss.

DECISION: The Commission voted to authorize a consent order for each Respondent for \$500.00 for unlicensed activity and including an order to cease and desist all unlicensed activity.

- 3. 2012011911**
Opened: 6/12/12
First License Obtained: 8/22/11
License Expiration: 8/21/13
E&O Expiration: N/A
Type of License: Firm
History: No Prior Disciplinary Action

4. **2012011912**
Opened: 6/12/12
First License Obtained: 2/3/04
License Expiration: 5/28/13
E&O Expiration: 1/1/13
Type of License: Principal Broker
History: 2012011941 – Under review by legal
5. **2012011931**
Opened: 6/12/12
Type of License: Unlicensed
History: No Prior Disciplinary Action
6. **2012011941**
Opened: 6/12/12
First License Obtained: 2/3/04
License Expiration: 5/28/13
E&O Expiration: 1/1/13
Type of License: Principal Broker
History: 2012011912 – Under review by legal

Complaint opened against Respondents (Respondent 1 is a licensed firm, Respondent 2 and 4 are the same individual who is the principal broker of Respondent 1 firm, and Respondent 3 is an unlicensed individual) based on complaint which alleges that Complainant's development company contracted with Respondent 3 in April 2010 for design/construction services and property management services. Complainant states that, in February 2012, Complainant discovered that Respondent 3 and Respondent 3's company had been making false statements regarding management practices, tenant placement, security deposit and rent handling, and repairs to the properties. There were also issues with the construction services. Complainant gave thirty (30) days' notice to terminate management agreements, and Complainant states that Respondent 3 promised to do a number of things, including but not limited to turning over all previous rents and security deposits collected and stopping rent collection as of April 1, 2012. Complainant states that Respondent 3 and Respondent 3's unlicensed company failed to do these things and continued to collect rent after April 1.

Based on the submitted complaint, Complaints were opened against Respondent 1 (a licensed firm which is owned by Respondent 3), Respondent 2 (the principal broker for Respondent 1), Respondent 3 (the unlicensed individual referenced in Complainant's complaint), and Respondent 4 (the same principal broker as Respondent 2 – opened for failure to supervise unlicensed Respondent 3). Respondent 3 submitted no response. Replies were submitted by Respondent 2/4 on behalf of Respondents 1, 2, and 4, which states that there is an ongoing dispute between Respondent 3 and Complainant which involves attorneys and a potential lawsuit. Respondent 2/4 states that nothing in the complaint involves services provided by Respondent 1, 2, or 4, and Respondents 1, 2, and 4 are not involved in any property management or construction services, with the only service ever provided to Complainant being representation

in the purchase of several properties. Respondent 2/4 states that his understanding is that the construction issues arose from Respondent 3's construction companies (a complaint was also filed with the contractor's board, which was closed). Respondent 2/4 states that Respondent 3 owned a company (an LLC which is currently administratively dissolved and which was formerly licensed as a firm but the firm license expired on 5/2/09) which had the management agreements with Complainant. This unlicensed LLC is the company addressed in Complainant's complaint. Respondent 2/4 states that he is not and has never been affiliated with that company and does not know anything about whether it is operating. Respondent 2/4 states that he does not understand why a complaint was filed against him because Respondent 1 firm and Respondent 2/4 have no involvement in the dispute with Complainant. Further, Respondent 2/4 does not understand why a failure to supervise complaint was opened because it is not Respondent 2/4's right/responsibility to supervise Respondent 3 in companies in which Respondent 2/4 is not involved. Respondent 2/4 attached copies of two (2) management agreements between Complainant's company and the LLC referenced in Respondent 2/4's response. Though the management agreements are fully executed (it appears on 7/2/10), Respondent 3's name is not on the agreements and Respondent 3 did not sign the agreements.

A TREC auditor met with Respondent 2/4 and Respondent 3. According to the auditor, Respondent 3 admitted that the unlicensed LLC managed Complainant's properties since 2010, at which point Respondent 3 thought the LLC was properly licensed. Respondent 3 claims that when Respondent 3 learned that there was not a license, Respondent 3 opened Respondent 1 and hired Respondent 2/4. However, Respondent 3's unlicensed LLC continued to manage Complainant's properties under the unlicensed firm due to the still-existing construction contracts with Complainant. Respondent 3 and 2/4 agreed that Respondent 2/4 was not aware that the management continued, and the auditor stated that he could find no documents to suggest otherwise. The auditor obtained a rent roll from the unlicensed firm referencing rents collected from Complainant's properties from January 2012. The auditor states that the unlicensed firm was closed upon concluding business with Complainant, as Complainant's company was the only remaining client due to the involved construction projects. Complainant provided copies of management agreements with the unlicensed LLC as well as a number of construction contracts. Complainant indicated that an attorney had been retained to file suit against Respondent 3.

With regard to Respondent 1, Respondent 2, and Respondent 4, there appears to be no documentation evidencing any involvement with Complainant. Similarly, there appears to be no documentation evidencing any knowledge or involvement in Respondent 3's activities on the part of Respondent 2/4. Based on the information included in the auditor's report, Respondent 3 and the unlicensed LLC retained only Complainant's properties after Respondent 1 was licensed, and the unlicensed LLC was closed after Complainant (the sole remaining client) ceased doing business with it. However, the January 2012 rent roll suggests that Respondent 3's unlicensed LLC was engaged in unlicensed activity.

Recommendation: Dismiss as to Respondent 1, Respondent 2, and Respondent 4. As to Respondent 3, consent order for \$1,000.00 for unlicensed activity in violation of T.C.A. § 62-13-102(4)(A)(B), § 62-13-103, and § 62-13-301, said order to also include order to cease and desist all unlicensed activity.

DECISION: The Commission voted to accept the recommendation of legal counsel with the revision that Respondent 3's consent order include a civil penalty in the amount of \$500.00.

- 7. 2012012641**
Opened: 7/24/12
First License Obtained: 8/22/84
License Expiration: 11/22/13
E&O Expiration: 1/1/13
Type of License: Affiliate Broker
History: 200101367 – Closed \$1,000 CO

Complainant's property was scheduled for foreclosure, and Respondent (affiliate broker) was Complainant's broker. The property was listed for \$34,000, and Respondent informed Complainant that Respondent had received a cash offer for \$25,000 so Respondent attempted a short sale. Complainant states that Respondent was "slow in responding with the bank, and did not comply as instructed" and the short sale did not close. Complainant states that Respondent continued with attempting a second short sale. Complainant states that the second short sale fell through and the bank foreclosed on Complainant's property. Complainant claims that the foreclosure resulted from Respondent's failure to communicate with the bank. From e-mails provided by Complainant, it appears that Complainant could not reach the bank and attempted to e-mail the bank on the day before the foreclosure to request a postponement of the foreclosure. Other e-mails from Respondent to Complainant indicate that Respondent repeatedly tried to reach the bank and its short sale department without success.

Respondent submitted a response stating that when the sales contract on the all-cash offer was received for Complainant's property, the documentation was forwarded to the contact person in the bank's short sale department with whom Respondent was instructed to deal. Upon providing additional requested financial information to the bank's short-sale department, Respondent states that Respondent was instructed to complete an Offer Worksheet for the offer, which Respondent states was completed and submitted on the day after the request. One day later, Respondent states that Respondent was asked by the bank's short-sale department to complete a HUD-1 Settlement Statement, which Respondent had an attorney assist with and was sent to the bank. After multiple attempts to contact the short-sale contact person, Respondent states that the short-sale department requested a hardship letter and other documentation such as bank statements and tax returns, which was provided to the bank on the same day. Then, Respondent states that the short-sale department needed a signed Short Sale Purchase Contract Addendum form, which was signed by the parties and returned and another Offer Worksheet was completed. Respondent states that Respondent was subsequently contacted by the bank stating that the land was still in review and the bank was attempting to obtain an updated valuation of the property, and Respondent was contacted by an appraiser who stated that the bank had hired him to do an appraisal. Soon after, Respondent states that the bank contacted Respondent asking if the buyer would increase the offer, but the buyer would not. Respondent states that Respondent feels Respondent did everything possible to close the sale. The information contained within the file does not appear to substantiate a violation of TREC's laws and/or rules by Respondent.

Recommendation: Dismiss.

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

8. 2012013391

Opened: 7/27/12

First License Obtained: 3/10/95

License Expiration: 12/7/12

E&O Expiration: 1/1/13

Type of License: Principal Broker

**History: 200101760 - \$500.00 Consent Order (escrow account violation)
2012019891 – Under review by legal**

Complaint opened against Respondent (principal broker) based on an April 2012 audit of one of the firms at which Respondent was principal broker (according to the audit report, Respondent was the principal broker of two (2) firms at the same location). The audit report indicates that the audited firm was closing within a month. The audit report noted three (3) issues. First, the auditor stated that the firm sign was not out front because it was waiting to be installed. Second, the auditor noted issues with the escrow account which included several small overdrafts and had non-escrow payments (firm had no general account). Finally, the auditor noted that Respondent had written to TREC notifying of a situation where one of Respondent's affiliated brokers was paid a commission from a sale by a related firm, which had ongoing negotiations with Respondent's audited firm but no agreement.

Respondent submitted a reply stating that in opening the audited firm, they were trying to accomplish a franchise with another firm, which did not work out and was the reason for the audited firm deciding to close its doors in May 2012. With regard to the sign issue, Respondent states that the large outdoor sign had been delivered but not yet installed, and a 24 x 24 sign was temporarily in the window. As to the escrow account issue, Respondent states that when Respondent came on with the audited firm, the book keeper had the subject account already established. Respondent states that Respondent told the book keeper that the account was escrow only. Respondent states that several checks were given to Respondent for use in setting up the firm (check to Secretary of State, check to TREC, and check to MLS). Respondent states that Respondent was not aware that these checks were given from the escrow account. Respondent states that the overdrafts were due to bank charges (\$15 monthly fee). After the firm closed, the account was also closed, and Respondent states that Respondent has learned to be more attentive to the escrow situation. With regard to the final commission issue, Respondent states that Respondent notified TREC of the situation, where one of Respondent's affiliated brokers received a commission check from another firm. At the closing, the HUD form listed Respondent's audited firm as the firm to receive the closing check, but it was issued to another firm (which Respondent's audited firm was, at that time, attempting to do a franchise with which later fell through) and the principal broker of the other firm deposited the closing check and issued it to Respondent's affiliated licensee.

Recommendation: Letter of warning regarding Rule 1260-02-.09(1) which states that each broker shall maintain a separate escrow account for the purpose of holding any funds which may be received as deposits, earnest money, etc. and (3) which states that brokers are responsible at all times for deposits and earnest money.

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

9. **2012014031**
 Opened: 7/18/12
 First License Obtained: 8/26/02
 License Expiration: 3/21/13
 E&O Expiration: 1/15/13
 Type of License: Principal Broker
 History: No Prior Disciplinary Action

Complainant was represented by Respondent (principal broker) in the listing of Complainant's home. It appears that the home was at first listed for sale and then as a lease-purchase. Later, Complainant states that the property was rented, but there was no agreement signed between Complainant and Respondent to reflect the management arrangement. After several months, Complainant became dissatisfied with Respondent's services and terminated Respondent as property manager and instructed that the tenant move out. Based on the documents provided by Complainant, it appears Complainant's dissatisfaction was based on the time it took to secure a tenant, and then once a tenant was found for the property, the time it took for the tenant to make his first payment and also with how often Respondent contacted Complainant. Complainant also states that when the tenant moved in, Complainant was asked if several rooms could be painted and more were actually painted, that the locks were changed and Complainant did not receive a key, that Complainant never got a copy of the lease agreement with the tenant, that Complainant does not know what the tenant paid in rent or Respondent's fee for management (Complainant states that Respondent told Complainant the documents could be viewed online), and that the tenant did not pay rent on time, causing difficulties in Complainant paying the mortgage. Complainant references that Respondent had been making payments to Complainant from Respondent's account, and Complainant argues that even if the renter does not pay the rent on time to Respondent, Respondent should at least pay Complainant on time. Complainant is also unhappy because, at one point, Complainant left a note on the house telling the tenant to contact Complainant and Respondent asked Complainant not to do this. Complainant states that the last month's rent has not been paid to Complainant, and Complainant seems to suggest that Complainant should not have responsibility for painting and cleaning fees. Finally, Complainant states that keys were not given back to Complainant after the management period ended.

Respondent submitted a response stating that Respondent refused to sign a management agreement after no one was secured for the lease-purchase, and therefore the terms of the leasing of the property were verbally agreed to between Complainant and Respondent. Respondent states that Respondent paid some fees for work done to the property to prepare it for the tenant such as carpet cleaning and painting and allowed Complainant to pay those fees later to assist

Complainant in ensuring Complainant paid the mortgage. Respondent states the tenant was never thirty (30) days late in paying rent so no legal action was taken against the tenant. Respondent states that the tenant paid to paint everything except one room, which had markings and holes left by Complainant, and the home was left dirty. The fees for invoices paid by Respondent up front were apparently deducted from the last month's prorated rent with the balance paid to Complainant. Regarding the tenant, Respondent claims that Respondent was contacted by the tenant, who was distressed at Complainant having people repeatedly "lurk and spy on the tenant" and notes left by Complainant. With regard to key return, Respondent states that Complainant sent another individual to do the final walk through who was instructed by Complainant not to sign the key release and to leave.

There appears to be a number of issues between Complainant and Respondent. However, Respondent's failure to insist upon written contractual agreements regarding the management of the property, the messy bookkeeping, and the issues regarding the responsibilities of Complainant for painting, cleaning, etc., which are not clearly resolved based on the lack of agreements between the parties, it appears that there was a failure on the part of Respondent to be loyal to the best interests of the client.

Recommendation: Consent Order for failing to be loyal to the interests of the client in violation of T.C.A. § 62-13-312(b)(14) and § 62-13-404(2) with a civil penalty of \$500.00 plus attendance by Respondent at one (1) entire meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.

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

10. 2012014241
Opened: 7/24/12
First License Obtained: 9/19/78
License Expiration: 12/17/10
E&O Expiration: Uninsured
Type of License: Principal Broker
History: No Prior Disciplinary Action
Respondent's license expired on 12/17/10

TREC opened complaint against Respondent (former principal broker – license is expired) based on photographs submitted anonymously of a yard sign which displays Respondent's name and the name of Respondent's former firm (license expired on 9/8/10) as well as a phone number. There is no information provided regarding who took the yard sign photo or where or when the photograph was taken. Respondent submitted no response to the complaint, which was returned "unclaimed."

After calling the number on the yard sign and speaking briefly with Respondent, who stated that Respondent owned the property which the photographed yard sign was on and Respondent was not sure if the sign was still up, legal counsel obtained information from the local realtors' association which included two (2) property listings by Respondent on the MLS service. Both

properties were listed by Respondent and included the name of Respondent's expired firm. The MLS listings indicate that, as of October 17, 2012, the properties had been listed by Respondent on the MLS for thirty-three (33) days.

Recommendation: Consent Order for \$500.00 for advertising to be engaging in or conducting the business or acting in the capacity of a real estate broker in this state without first obtaining a license in violation of § 62-13-301, said order to also include order to cease and desist said activity.

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

11. 2012014891

Opened: 7/30/12

First License Obtained: 3/29/04

License Expiration: 10/26/14

E&O Expiration: 1/1/13

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainants are two (2) principal brokers. One is the current principal broker at a firm, and the other was the former principal broker of that same firm at the time that Respondent (principal broker) was affiliated there. According to Complainants, in 2010, the firm entered into an exclusive agency agreement for sale or lease of a property with the property owners, and the firm also had an agreement with the owners regarding the firm negotiating a lease renewal with the tenant and pursuant to which the property owner agreed to pay the firm two thousand dollars (\$2,000.00) with half paid in advance and the other half payable upon lease renewal with the current tenant. At that time, the property owner paid \$1,000 in the form of a check made to Respondent which was turned over to the firm, and Respondent was compensated Respondent's share of this amount by the firm. Then, the property owners entered into a twelve (12) month lease agreement from January 1, 2011 – December 31, 2011 with the tenant (which was not referred to as a lease renewal but contained a renewal option at the end of the original term) and the tenant exercised the renewal option near the end of the lease period. At that time, the firm invoiced the property owner the remaining balance of \$1,000 from the lease renewal agreement with the property owners, and the property owner informed the firm that Respondent had already invoiced the property owner at the end of 2010 and the property owner had paid the \$1,000 to Respondent directly as directed in the invoice (the check was made to Respondent directly). The firm has no record of this payment. Respondent acknowledged by e-mail to Complainant that the second payment was made by the property owner, and Respondent deposited same.

Respondent denies any wrongdoing. Respondent states that the property owner paid Respondent as a two-part consulting fee with \$1,000 up front, which was provided to the firm and part of which was disbursed to Respondent. During the period of time between the first installment payment and the second, Respondent states that the firm "...established a pattern of not charging brokerage for consulting fees..." and attached two (2) commission split sheets where the firm distributed the full amounts received on two other matters and did not take a deduction for the

firm so Respondent followed that practice by accepting the full second installment. Respondent denies doing anything improper due to the firm's course of dealings. Respondent also states that both installment checks from the property owner were made directly to Respondent and not the firm, with the first turned over to the firm and Respondent disbursed a percentage, and the second check kept by Respondent due to the firm's course of dealings regarding other similar consulting transactions. Respondent states that when the issue was brought to Respondent's attention, Respondent attempted to work out the issue by paying the entire second installment amount back.

Recommendation: Consent Order for with a civil penalty of \$250.00 for accepting a commission or any valuable consideration from any person except the licensed real estate broker with whom the licensee is affiliated in violation of T.C.A. § 62-13-312(b)(11) plus attendance by Respondent at one (1) entire meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.

DECISION: The Commission voted to accept the recommendation of legal counsel with the revision that Respondent's Consent Order include a \$1,000.00 civil penalty.

12. 2012015031

Opened: 7/27/12

First License Obtained: 3/4/93

License Expiration: 1/20/13

E&O Expiration: 1/1/13

Type of License: Broker

History: No Prior Disciplinary Action

Complainant purchased a home in 2010 for which Respondent (broker) was the listing agent (Complainant was represented by another broker from another firm). Complainant states that, in mid-2012, Complainant attempted to re-finance Complainant's home and was advised by the lender that Respondent was featuring a listing for Complainant's home on Respondent's website (and therefore other third party websites picked up the listing) even though Complainant's home is not and was never listed with Respondent. Complainant states that the matter was brought to Respondent's attention in early June 2012 (approximately eighteen (18) months after Complainant purchased the property) and Respondent told Complainant the issue had been corrected. Complainant attached printouts from Respondent's website from several days later which still included Complainant's home and others which Complainant says were not for sale.

Respondent submitted a response stating that Respondent contracted with a third party firm to administer the website, which Respondent states is infrequently used and not Respondent's primary source for marketing. Respondent states the property was automatically placed on the website when listed in 2010, and Respondent assumed that it would automatically be removed when sold and was unaware it was listed until notified. At that point, Respondent claims to have unsuccessfully attempted to remove the listing and was unable to reach the website vendor, but the listing was removed approximately one (1) month later. Respondent denies attempting to

market Complainant's property during the period the home was on the website, and Respondent was unaware that sold properties remained on the website but claims the issue was corrected.

Complainant submitted an additional response disputing Respondent's claims that this was an infrequently used site and Respondent was not aware of the listings. Complainant states that Respondent actively markets the subject website, listing it on Respondent's facebook page and on her other marketing materials. Finally, Complainant claims that the lender denied the home refinance due to the fact that the property was listed for sale on Respondent's website.

Recommendation: Consent Order for with a civil penalty of \$250.00 for misleading or untruthful advertising in violation of T.C.A. § 62-13-312(b)(4), and misleading advertising/failing to keep listing information current and accurate in violation of § 62-13-312(b)(14) and Rule 1260-02-.12(2)(e) and (4)(c) plus attendance by Respondent at one (1) entire meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.

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

13. **2012015101**
Opened: 7/27/12
First License Obtained: 9/28/82
License Expiration: 8/7/14
E&O Expiration: N/A
Type of License: Firm
History: No Prior Disciplinary Action

14. **2012015102**
Opened: 7/27/12
First License Obtained: 9/13/10
License Expiration: 9/12/12
E&O Expiration: 1/1/13
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

Complainants were represented by Respondent 2 (affiliate broker) in the attempted purchase of a foreclosure property. Respondent 1 is the firm at which Respondent 2 is affiliated. Complainants made an initial offer on the subject foreclosure property and were informed that it was a multiple offer situation so Complainants completed a multiple offer form and verbally gave Respondent 2 a revised higher offer. Respondent 2 revised Complainants' original contract to include the higher amount and told Complainants that they had submitted everything necessary. After approximately one (1) week, Respondent 2 informed Complainants that there were three (3) cash offers with owner-occupant buyers with no contingencies, and Complainants did not get the property. At that time, Complainants state they were told that the third offer (the winning offer) was submitted for a buyer who was represented by another licensee at Respondent 2's firm. Complainants believe that it is suspicious that two (2) of the three (3) offers were from

the same firm and think that someone may have been aware of their offer. Complainants state that another licensee was present and assisted Respondent 2 in preparing Complainant's initial offer. The successful buyer of the property was represented by the principal broker of Respondent 1. Complainants state that, although the successful buyer was represented as an owner-occupant, Complainants believe that the buyer is an investor because the individual owns several properties, lives in a \$259,000 home and the subject property was a "...very damaged double-wide trailer." Finally, Complainants state that the listing agent noted that an updated proof of funds was not submitted by Respondent 2 for Complainants when Complainants' second higher offer was submitted. Complainants believe there was wrongdoing when the winning offer on the property was only \$4,000 more than Complainants' offer.

Respondent 1's principal broker states that he was contacted by a potential buyer who viewed the subject property and made an offer. After being informed there were multiple offers, Respondent 1's principal broker's client was instructed to sign a multi-offer form and make their highest and best offer, which was done. Respondent 1's principal broker's client, whose bid was \$4,000 more than Complainant's offer, was named the high bidder and was awarded the contract. Respondent 1's principal broker stated that at no time until after the contract was awarded to his client was he ever made aware that one of the other offers was from his office. Respondent 1's principal broker states that he was not aware of Respondent 2's involvement or what Complainants offered until after the fact.

Respondent 2 states that when Complainants wanted to put an offer on the subject property, Respondent 2 asked another agent in the office who had twenty-five (25) years of experience to assist with the offer. At that time, Respondent 2 states Complainants were told to submit their best offer. Initially, Complainants offered \$12,000 less than the list price, and when informed there were multiple offers, Complainants offered \$100 more than the list price. Respondent 2 states that Respondent 2 did not know who the other offers were from or how much the other offers were for, and the agent who assisted with the initial offer did not assist with Complainants' final offer and was not the agent for the successful buyer.

Based on the information contained within the file, there does not appear to be a violation of TREC's statutes and/or rules on the part of Respondents.

Recommendation: Dismiss.

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

15. **2012015181**
Opened: 7/27/12
First License Obtained: 4/29/02
License Expiration: 4/16/14
E&O Expiration: 1/1/13
Type of License: Principal Broker
History: No Prior Disciplinary Action

Complainant was the attempted purchaser of a home who states that Respondent (principal broker) will not return Complainant's earnest money. Complainant had a purchase and sale contract on a property, but Complainant secured the wrong type of lender, and then another party ultimately bought the house. The purchase and sale contract signed by Complainant specified that the agreement was not contingent on financing or appraisal and was "as is, where is."

Respondent submitted a reply stating that the earnest money was held by the title company, and therefore Respondent was not in possession of the earnest money. Respondent states that Respondent repeatedly tried to get the earnest money returned, but the title company would not release the money without a release from the seller. Eventually, Respondent states that the asset manager agreed to return the money, the earnest money disbursement was signed, and ultimately the title company returned Complainant's earnest money. Based on the information within the file, there does not appear to be a violation of TREC's statutes and/or rules by Respondent.

Recommendation: Dismiss.

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

16. 2012015551

Opened: 8/2/12

First License Obtained: 7/15/04

License Expiration: 7/15/13

E&O Expiration: 1/1/13

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainants allege that Respondent (affiliate broker) violated Complainants' rights by requiring that Complainants use a certain title company in order to close on a short sale property. Complainants state that the title company which Respondent required them to use was more expensive and "...uses a less than desirable underwriter..." Complainants believe they are entitled to three (3) times the amount paid for title insurance under RESPA. Complainants state that the requirement to use the title company suggests a monetary or other relationship between Respondent and the title company. When Complainants' initial offer was submitted with their chosen title company (which is owned by the husband Complainant – the wife Complainant was listed as the home buyer on all documents), Complainants state the contract was accepted as written and required bank approval. When the lender sent the addendums, Respondent changed the title company selection. Later, when Complainants realized the change and disputed the title company choice, they were told that they had twenty four (24) hours to sign the addendum or the contract would be null and void. Complainants were told that they could not use their preferred title company due to the fact that it would be a non-arm's length transaction. Complainants otherwise wanted to use other title companies other than the one specified by Respondent, but were told they must use the title company specified by Respondent in the addendums. Therefore Complainants used the title company specified by Respondent and closed. Complainants state that the title services cost would have been lower if the Complainant's husband's title company had been used, and the closing costs would have been lower had that title company been used –

saving Complainants money – and the title insurer selected was inferior in Complainants’ opinion. Complainants also state that signing the addendum agreeing to use the specified title company was a mistake. Then Complainants state they were not allowed to correct the mistake later in the amendment.

Respondent submitted a response denying Complainants’ allegations. Respondent states that Complainants signed the required short sale addendum (which specified the title company to be used) on the same day as Complainants submitted their initial offer. Respondent also states that Complainants also agreed to the specified title company in an amendment signed by the parties which addressed several issues, including a change in the closing date, the earnest money amount, and termite treatment payment along with the title company issue. Respondent states that the offer stated that all prepaids, closing costs and title fees were to be paid by the seller up to three percent (3%) of the purchase price and any title charges on the HUD statement paid by the buyers was credited by the seller paid costs. As to Complainants’ allegations of a relationship between Respondent and the title company used, Respondent states that this was Respondent’s first transaction with the title company used. Respondent also states that Complainants’ agent was in regular communication with the husband Complainant even though the husband Complainant was not the buyer or a party to any of the contracts, and a power of attorney produced by Complainants giving the husband Complainant power of attorney over the wife was not signed until after the closing date. Additionally, Respondent states that Complainants never made a formal request to use a title company other than the one owned by the husband Complainant, and Respondent states that only in one e-mail sent after the sellers signed the amendment specifying the title company was it stated that Complainants would “prefer” to close with another company. Respondent stated that the seller’s lender denied use of the husband Complainant’s title company for lack of an arm’s length transaction, and Complainant’s alleged mistake of signing the addendum was followed by Complainants proceeding to close on the property and raising the issues later. Based on the information contained within the file, there does not appear to be a violation of TREC’s statutes and/or rules by Respondent.

Recommendation: Dismiss.

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

17. 2012015821

Opened: 8/14/12
First License Obtained: 4/9/03
License Expiration: 2/24/14
E&O Expiration: 1/1/13
Type of License: Principal Broker
History: No Prior Disciplinary Action

18. 2012015822

Opened: 8/14/12
First License Obtained: 11/9/09

License Expiration: 11/8/13
E&O Expiration: 1/1/13
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

Complainant is a licensee who wanted to buy an REO property and who sought representation by Respondent 2 (affiliate broker – Respondent 1 is Respondent 2’s principal broker) in handling the purchase because Complainant is not a HUD agent. The property disclosure indicated plumbing pressure problems, and later it was found that the plumbing pipes had been removed from underneath the property. At that point, correspondence between Complainant and Respondent 2 indicates that Respondent 2 had spoken with the listing broker who was unaware that the plumbing was missing and Complainant was given the impression that a credit would be given due to the fact that the property was not in the same condition as it was at the time of the offer. After a period of time, it appears that HUD made the determination that the pipes were missing from the beginning and would not allow Complainant a credit, so Complainant decided not to go through with the sale and requested a return of the earnest money. The earnest money check was paid to HUD from the beginning, and it appears that HUD initially refused to return the earnest money (it was later returned by HUD after this complaint was filed). Complainant alleges that Respondent 2 did not adequately represent Complainant and failed to provide Complainant with a copy of the executed sales contract on the day it was signed and failed to provide the property disclosure until after the sales contract was signed.

Respondents 1 and 2 submitted responses stating that a copy of the signed sales contract was provided to Complainant and the property disclosure documents were discussed between Complainant and Respondent 2, and Complainant declined the documents because Complainant had already seen them. Respondent 2 states that Respondent 2 assisted Complainant with the subject property because Complainant’s license was expired (Complainant denies this), and Respondent 2 did everything Respondent 2 could to assist Complainant with the sale. Respondent 2 states that Respondent 2 told Complainant that Respondent 2 thought Complainant would get a credit for the plumbing based on the belief that the property had been altered, but HUD found that it had not. As to the earnest money, Respondent 2 states that when Complainant elected not to go through with the sale, a cancellation notice was sent saying that Complainant forfeited the earnest money. When Complainant later contacted Respondents again about return of the earnest money, Respondent 2 states that Respondent 2 instructed Complainant to contact HUD since the earnest money was paid directly to HUD and held by HUD. Respondents also state that Complainant is upset by losses incurred by Complainant entering the subject property and replacing flooring, painting, and perhaps attempting plumbing repairs without authority, and then Complainant cancelled the sale. The information in the file does not appear to substantiate a violation of TREC’s statutes and/or rules by Respondents.

Recommendation: Dismiss.

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

19. 2012016901

Opened: 8/14/12

First License Obtained: 9/11/78

License Expiration: 9/4/13

E&O Expiration: 1/15/13

Type of License: Affiliate Broker

History: 2006020302 – Closed \$250 CO (failure to exercise r'ble skill/care)

Complainants are the purchasers of a home who allege that Respondent (affiliate broker) and the sellers of the home lied to Complainants. Complainants state that the sellers did not properly fix issues identified in the inspection report, which Complainants state that Respondent told Complainants would be addressed. Further, Complainants state that Respondent did not provide Complainants with several pages from the inspection report. It appears that Complainants hired an attorney and filed suit against the sellers, Respondent, and Respondent's firm based on the same set of circumstances as the complaint.

Respondent submitted a reply denying Complainants' allegations and stating that the litigation filed by Complainants is ongoing and asked that this matter not be considered by TREC until the litigation is resolved. Based on information from the court clerk, as of October 31, 2012, the litigation is still open. Therefore it is recommended that this matter be closed until the court's final resolution, at which point Complainants may elect to re-file this complaint.

Recommendation: Close.

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

20. 2012017151

Opened: 8/21/12

First License Obtained: 7/25/05

License Expiration: 4/6/14

E&O Expiration: 1/1/13

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainants purchased an REO property with Respondent (principal broker) as their broker. Complainants state that Respondent did not represent Complainants' best interests, lied to Complainants, and misled Complainants regarding Respondent's commission. Complainants were told that Complainants must sign a contract for Respondent's commission before their offer would be submitted which provided that Respondent would receive a five percent (5%) commission on the sale of the home (Complainants state they thought this was to be shared with the seller's broker). Complainants' offer was accepted and a required inspection was performed which required the water to be turned on, and Complainants state that they had to contact someone to get the water turned on because Respondent told them it could not be done. After the inspection yielded information that a roof repair was needed, Complainants state that Respondent told them they needed to send \$100 for the repair, but when Complainants contacted

the listing agent, the sellers' agent told Complainants it was the seller's responsibility and had the repair completed. Complainants state that Respondent was unprofessional with them and in speaking about the listing agent, and Complainants needed the help of the listing broker at times when Respondent would not assist them. When Complainants arrived at the stated location for the closing, Complainants found the title company closed and found out Respondent was out of town attending a sick relative and the closing was set up in Florida, so the papers were faxed over and Respondent's spouse (a licensee) assisted with the closing. After the closing, Complainants were asked to write a check for Respondent's additional commission, and Complainants refused. Complainants discovered that the forms that Respondent had Complainants fill out were TAR forms and Respondent and spouse were not TAR members. Later, Complainants were served with a lawsuit filed by Respondent for the unpaid commission.

Respondent submitted a reply disputing Complainants' allegations and stating that Respondent worked hard to ensure that the sale closed for Complainants. Respondent states that the buyer representation agreement with the commission payment was explained fully to Complainants and they understood and signed the agreement. Respondent denies Complainants' allegations with regard to the water being turned on for inspection. With regard to the roof repair, Respondent states that there was a question of whether there would be an extension at that time and the roofer required \$100, which Respondent states Respondent paid because Complainants refused and Respondent was told there would be a delay in getting Freddie Mac to pay. Respondent states that Complainants insisted on using an out-of-state bank and Freddie Mac used a title company in Florida which did not send the closing documents until the closing date to a company within the state and Respondent's office was not notified and believed the closing was at another location. Respondent states that Respondent was not present for the closing due to the death of Respondent's father that morning. Respondent states that Respondent's office and Respondent's spouse rushed to get the documents and handle the closing in order to be sure that the closing could be finalized that day. Respondent states that Complainants failed to pay the additional commission after the closing, and Complainants were unpleasant. Respondent states that Fannie Mae and Freddie Mac require the use of TAR forms in Tennessee transactions.

Based on additional documentation submitted by the parties, it appears that the judge did not require the Complainants to pay the additional commission. Based on the narratives describing the events submitted by the parties, it appears this was a strained relationship by the time the transaction concluded, but the documentation contained within the file does not appear to evidence a violation of TREC's statutes and/or rules by Respondent.

Recommendation: Dismiss.

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

21. 2012018181
Opened: 8/27/12
First License Obtained: 7/22/04
License Expiration: 8/4/13
E&O Expiration: 1/1/13

Type of License: Affiliate Broker
History: No Prior Disciplinary Action

Complaint against Respondent (affiliate broker) based on what appears to be a mailing which was submitted to TREC. Said mailing is a copy of a typed piece (not a postcard) and appears to offer a fee for referring property to Respondent if Respondent buys the property.

Respondent submitted a reply also signed by Respondent's principal broker stating that Respondent did not write, mail, or authorize said mailing, and the mailing was written and mailed by an overenthusiastic mass marketer who was trying to gain Respondent's business. Respondent states that the matter has been addressed with the mass marketer, and Respondent will do everything possible to make sure that this does not happen again.

Recommendation: Dismiss.

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

22. **2012018581**
Opened: 9/17/12
First License Obtained: 9/5/06
License Expiration: 3/31/14
E&O Expiration: 1/1/13
Type of License: Principal Broker
History: No Prior Disciplinary Action

23. **2012018591**
Opened: 9/17/12
First License Obtained: 3/1/12
License Expiration: 2/28/14
E&O Expiration: 1/1/13
Type of License: Broker
History: No Prior Disciplinary Action

Complaints opened by TREC against Respondents (spouses: Respondent 1 is a principal broker at one firm, Respondent 2 is a broker at another firm) based on Respondents' failure to satisfy an Agreed Citation sent to Respondents for advertising violations. Specifically, an anonymous complaint was received which alleged that Respondent 2's firm (at which Respondent 1 was also formerly affiliated) had a menu which included information to press a certain number and be connected to Respondent 1 (who left that firm and formed a new firm last year). The anonymous complaint also alleged that Respondents 1 and 2 advertise as though they are at both firms. Specifically, Respondent 2's firm website includes Respondent 2 on its agent listing, which includes Respondent 2's name, telephone number, cell and fax number and link to e-mail, as well as a photograph which includes Respondent 2 (another individual is also in the photo – it is assumed this is Respondent 1). Another webpage from tenant.com for Respondent 1's firm contains Respondent 1's information but includes the same photo depicting Respondent 1 and 2.

Respondents submitted a response to the Agreed Citation disputing the citation, stating that they were not aware that the photo was on Respondent 2's firm website and were not aware it was a problem since there was no mention of Respondent 1. Despite their assertion that the website was not misleading, the photo has been replaced with a photo of only Respondent 2. With regard to tenants.com, Respondents claim they did not know the photo of both Respondents was on the website, and have tried to request that the photo be removed but have received no response. Respondents also claim that they have no control over the phone system at Respondent 2's firm. Respondent 2's principal broker responded with regard to the phone issue, stating that Respondent 1 left the firm to concentrate only on property management. At that time, Respondent 1's license was removed, TREC release forms were submitted, and the firm ceased advertising property management services. However, due to continuing calls due to word-of-mouth, etc., Respondent 1 was left in the phone system for ease in transferring those calls. Respondent 2's principal broker states that Respondent 1's firm has an agency relationship with Respondent 2's firm to manage some properties which remained with Respondent 2's firm after Respondent 1 left to concentrate on property management, and Respondent 2's principal broker does not believe that the rules prohibit listing business partners in the telephone menu.

Recommendation: Dismiss.

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

24. **2012019091**
Opened: 9/28/12
First License Obtained: 4/20/99
License Expiration: 12/31/12
E&O Expiration: N/A
Type of License: Time Share Registration
History: No Prior Disciplinary Action

25. **2012019092**
Opened: 9/28/12
First License Obtained: 3/29/11
License Expiration: 3/28/13
E&O Expiration: 1/1/13
Type of License: Time Share Salesperson
History: No Prior Disciplinary Action

26. **2012019093**
Opened: 9/28/12
First License Obtained: 12/5/06
License Expiration: 12/4/12
E&O Expiration: 1/1/13
Type of License: Time Share Salesperson
History: No Prior Disciplinary Action

27. 2012019201
Opened: 9/28/12
First License Obtained: 3/6/00
License Expiration: 8/14/14
E&O Expiration: 1/1/13
Type of License: Principal Broker
History: No Prior Disciplinary Action

Complainants attended a time-share presentation where Complainants met with Respondents 2 and 3 (time-share salespersons). Respondent 1 is the time-share registration and Respondent 4 is the principal broker of Respondents 2 and 3. Complainants state that they met with Respondents 2 and 3 for eight (8) hours, during which time Complainants were promised in writing that Complainants would get a refund of part of the salesmen's commissions and that a foosball table would be delivered to Complainants' room when Complainants stayed at the resort. Further, Complainants allege that they were told that if they bought a time-share, they would be guaranteed the use of a certain unit they were shown and that Complainants could enjoy unlimited "owner's nights" at affiliate resorts for a reduced price. After completing the purchase and returning home, Complainants found out that they were not guaranteed the unit they viewed, that they were not entitled to unlimited "owner's nights," that they did not receive the return of the partial commission from one of the salesmen until after the date promised, and that they did not receive a hard copy of the public offering statement (Complainants state they received an old copy on a CD-ROM). Complainants unsuccessfully tried to rescind the contract several months after they purchased the time-share, and therefore Complainants filed suit against Respondents.

Responses were submitted on behalf of Respondents stating that Respondents complied with requirements for providing the public offering statement and provided copies of documentation showing that Complainants signed that they acknowledged receipt of the CD-ROM with the public offering statement (and elected to receive same in this format) and paper copies of all closing documents. Further, Respondents denied that Complainants were promised a fixed unit or unlimited owner's nights, and Respondents deny that any material misrepresentations were made to Complainants to enter into the purchase. Based on information provided by counsel for Respondents on October 31, 2012, a civil complaint was filed by Complainants against Respondents this year, and the case is currently active with discovery underway. Therefore, it is recommended that this matter be closed until the court's final resolution, at which point Complainants may elect to re-file this complaint.

Recommendation: Close.

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

28. 2012018811
Opened: 9/10/12
First License Obtained: 10/21/04
License Expiration: 2/5/13

E&O Expiration: N/A
Type of License: Firm
History: No Prior Disciplinary Action

TREC opened complaint based on auditor's attempted inspection of Respondent (firm). Auditor attempted to inspect Respondent on 7/31/12 but noted that Respondent was not at the physical location on file with TREC. Additionally, auditor's attempts to contact firm by telephone were unsuccessful with person answering phone stating that it was the wrong number. Respondent's principal broker's license expired in 2011. An Agreed Citation for failure to notify TREC of firm change of address within ten (10) days as required by § 62-13-309(a)(3) was sent to Respondent and its principal broker at multiple addresses, but all were returned unclaimed or box closed. Failure to satisfy the Agreed Citation resulted in opening this complaint. Based on the information contained within the file, it does not appear that Respondent is still operating.

Recommendation: Close and flag.

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