

**TENNESSEE REAL ESTATE COMMISSION MINUTES
November 6, 2013**

The Tennessee Real Estate Commission convened on November 6, 2013 at 9:00 a.m., in Meeting Room 1 A of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, TN 37243. The following Commission Members were present: Chairman William “Bear” Stephenson, Vice-Chairman John Griess, Commissioner Grover Collins, Commissioner Austin McMullen, Commissioner Janet DiChiara, Commissioner Michelle Haynes, Commissioner Gary Blume and Commissioner Wendell Alexander. Commissioner David Flitcroft was absent. Commissioner Austin McMullen left the meeting at 4:00 p.m. 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 9:00 a.m. on Wednesday, November 6, 2013.

The first order of business was the adoption of the agenda for the November 2013 Commission meeting. **Commissioner DiChiara made a motion to amend the Agenda to remove the informal appearance of Brad Pruitt and his principal broker Gary Green scheduled for 2:45 p.m. and to add a discussion on advertising at 2:45 p.m. and to approve the Agenda as amended. Commissioner McMullen seconded the motion; unanimous vote, motion carried.**

The next order of business was the approval of September 2013 minutes. **Commissioner Griess made a motion to approve the September 2013 minutes; seconded by Commissioner DiChiara; Commissioner Blume abstained; motion carried. The next order of business was the approval of October, 2013 minutes. Commissioner Griess made a motion to approve the October, 2013 minutes; seconded by Commissioner DiChiara; Commissioner McMullen abstained; motion carried.**

Education Report, Stephen McDonald, Education Director

Steve McDonald presented the Education Report. **Commissioner DiChiara made a motion to approve Courses N1- N16; seconded by Commissioner Collins; Motion carried. Vice-Chairman Griess made a motion to approve Course N17, Reverse Mortgages and Commissioner DiChiara seconded the motion for purposes of discussion.** A discussion of reverse mortgages followed. Commissioner Alexander stated the mission of TREC is to protect the public and emphasized that mortgage companies are abandoning reverse mortgage programs. Commissioner Haynes stated her research indicated that F.H.A. had \$2.8 Billion in losses and that according to the Federal Government statistics, 1 out of 10 reverse mortgages are projected to fail. Vice-Chairman Griess stated that reverse mortgages are legal and occur on a daily basis and therefore licensees should be knowledgeable about the program and TREC’s approval of a course on reverse mortgages is not a ratification of any reverse mortgage program. Commissioner DiChiara agreed with Vice-Chairman Griess. Commissioner Collins stated that education approved by TREC should focus on buying and selling real estate and not train licensees on financing. Commissioner Alexander called for the question and a roll call vote. For the motion to approve course N17: Vice-Chairman Griess and Commissioner DiChiara. Against

the motion to approve course N17: Commissioners Haynes, Alexander, McMullen, Blume, Collins and Stephenson. Chairman Stephenson stated he was against the motion to approve the course but thinks licensees should be aware of reverse mortgage programs. Commissioner McMullen would like any future submission of reverse mortgage courses to include a discussion of the risks inherent in such mortgage programs.

Commissioner Collins made a motion to approve all instructors presented by Mr. McDonald; seconded by Commissioner McMullen; Motion carried.

Public Rule Making Hearing

At 9:34 a.m. the RuleMaking Hearing on Rule 1260-01-.16 and Rule 1260-01-.17 was convened. The RuleMaking Hearing had been timely and properly noticed. There is a transcript of the RuleMaking Hearing which contains all discussions regarding the rules and the comments of the one member of the public who appeared and the body of the two written comments submitted. The Commission considered all comments and the Economic Impact Statement was thoroughly considered. Rule 1260-01-.16 and Rule 1260-01-.17 were adopted. The context of the Rules as adopted can be heard in the November, 2013 audio recording of the RuleMaking Hearing.

The RuleMaking Hearing concluded at 11:16 a.m.

Assistant General Counsel Julie Cropp outlined the reasons that any clarification regarding advertising needed to be effectuated by rules, not guidelines or policies. A brief discussion of the timeline for rule making followed.

The Commission recessed for lunch at 11:29 a.m. and reconvened at 1:15 p.m.

Presentation By Pearson Vue

James Fryer and Thomas Magallanes, representatives from Pearson Vue, a firm which administers the real estate licensing exams in a number of states, made a presentation to the Commission. In this presentation, the representatives discussed the business model and the security measures utilized by Pearson Vue. The representatives of Pearson Vue noted that there is a security camera for every two testers and the film from the cameras is retained for 30 days. Pearson Vue uses palm scanners to verify tester identity. The scanner maps the blood vessels in the palm which are unique to an individual. In addition to the security measures, Pearson Vue utilizes 24" screens and reviews all exams annually with subject matter experts to ensure the validity of the exams given. The representatives encouraged the Commissioners and members of the TREC staff to arrange a tour of a Pearson Vue facility. A pre-authorization letter to take such a tour can be requested from the representatives.

Informal Applicant Appearances

There were three informal applicant appearances, with each applicant appearing separately with his or her principal broker. Each applicant had an opportunity to give the Commission some history about his or her conviction and to answer questions from the Commissioners. Each

principal broker outlined his or her training/mentoring program and discussed how that program would be implemented with the applicant.

Marilyn Anderson Applicant; Principal Broker Scott Crandall

Marilyn Anderson, applicant, appeared with her principal broker Scott Crandall.

Commissioner Collins made a motion to approve Marilyn Anderson to move forward with the licensing process; seconded by Commissioner DiChiara; motion passed.

Scott Stumbo Applicant; Principal Broker Terri Hollandsworth-Rutherford

Scott Stumbo, applicant, appeared with his principal broker Terri Hollandsworth-Rutherford.

Commissioner DiChiara made a motion to approve Scott Stumbo to move forward with the licensing process; seconded by Commissioner Blume; motion passed.

Stacey Grissom Applicant; Principal Broker Perry Hamlett

Stacey Grissom, applicant, appeared with his principal broker Perry Hamlett.

Commissioner DiChiara made a motion to approve Stacey Grissom to move forward with the licensing process; seconded by Commissioner Alexander; motion passed.

Assistant Commissioner of Regulatory Boards, Bill Giannini; Accountant 3 Kimberly Whaley

Assistant Commissioner of Regulatory Boards, Bill Giannini and Accountant 3 Kimberly Whaley addressed the Commission regarding the 6/30/2013 budget close, the financial position of the Commission and to give an administrative update. Assistant Commissioner Giannini and Kimberly Whaley outlined the plans for payment and implementation of CORE, the new computer system and addressed a number of questions and concerns of the Commissioners. Commissioner Haynes made a motion for the Commission to support the administration's efforts to upgrade the current database system; seconded by Commissioner Griess; motion passed. There was a discussion of monies budgeted for travel to conferences such as ARELLO. At the request of the Commissioners, Assistant Commissioner of Regulatory Boards, Bill Giannini agreed to come to the December 4, 2013 Commission meeting.

Assistant General Robyn Ryan

Assistant General Counsel Robyn Ryan presented to the Commission a signed Agreed Order to Surrender the license of the firm Griffey & Associates, Inc. #11985. **Commissioner DiChiara made a motion to approve the Agreed Order; seconded by Commissioner Collins; unanimous vote; motion carried.**

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. 2013011341
Commissioner Diciara made a motion to assign file to Commissioner Griess to review;
seconded by Commissioner Alexander; unanimous vote; motion carried
2. 2013012591 &
3. 2013012592
Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss;
seconded by Commissioner McMullen; unanimous vote; motion carried.
4. 2013012611 &
5. 2013012612 &
6. 2013012613 -
Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss;
seconded by Commissioner McMullen; unanimous vote; motion carried.
7. 2013013031 &
8. 2013013041
Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss;
seconded by Commissioner McMullen; unanimous vote; motion carried.
9. 2013013161 &
10. 2013013162 &
11. 2013013163 -
Commissioner Diciara made a motion to accept legal counsel’s recommendation to dismiss;
seconded by Commissioner McMullen; unanimous vote; motion carried.
12. 2013013171 &
13. 2013013201 -
Commissioner Diciara made a motion to accept legal counsel’s recommendation to send a
Letter of Instruction; seconded by Commissioner Collins; unanimous vote; motion carried.
14. 2013013221
Commissioner Blume made a motion to accept legal counsel’s recommendation to dismiss;
seconded by Commissioner Diciara; 5 Yes 2 No (Alexander; Collins); motion carried.
15. 2013003911 &
16. 2013003912 &
17. 2013012151 &
18. 2013012152 &
19. 2013012153 &
20. 2013012161 &
21. 2013012162 &
22. 2013012181 &
23. 2013012182 &
24. 2013012201 &

- 25. 2013012202 &
- 26. 2013012203 &
- 27. 2013014041 &

Commissioner Griess made a motion to accept legal counsel’s recommendation to dismiss as to Respondent 1 and 2 and flag Respondent 3; seconded by Commissioner Dichiara; unanimous vote; motion carried.

- 28. 2013008251

Commissioner Blume made a motion to affirm the terms of the original Consent Order; seconded by Commissioner Alexander; 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 the minutes is the November, 2013 Complaint Report and the Disciplinary Action Report.

Open Complaint By Source Report

PROFESSION	Code	Consumer	Fellow Practitioner	Concerned Citizen	Legal	Investigations	Outside Agency	Staff	Anonymous	Board	Totals		
Brokers/Affiliates	2501	60	17					32	1		110		
Firms	2502	1	0					0			1		
Rental Location Firms	2503										0		
Rental Location Agents	2504										0		
Timeshare Registrations	2505	11						1			12		
Vacation Lodging Services	2506	0									2		
Acquisition Agent Registrations	2507										0		
Acquisition Rep. Registrations	2508										0		
Acquisition Agent Licenses	2509										0		
Totals		72	17	0	0	0	0	33	1	0	123		
							Total Open Complaints	120					
							Total Agreed Citations	3					
							Total E&O Complaints	0					
							Total Complaints	123					
Fiscal Year 2012 - 2013	Jul. - Aug.	Aug. - Sept.	Sept. - Oct.	Oct. - Nov.	Nov. - Dec.	Dec. - Jan.	Jan. - Feb.	Feb. - Mar.	Mar. - Apr.	Apr. - May	May - June	June - July.	Totals
Complaints Received	33	36	30	38	28	17	16	30	31	28	42		329
Referrals													0
Fiscal Year 2013 - 2014	Jul. - Aug.	Aug. - Sept.	Sept. - Oct.	Oct. - Nov.	Nov. - Dec.	Dec. - Jan.	Jan. - Feb.	Feb. - Mar.	Mar. - Apr.	Apr. - May	May - June	June - July.	Totals
Complaints Received	30	29	28	36									123
Referrals													0

COMPLAINTS OVER 180 DAYS

Consumer	Fellow Practitioner	Concerned Citizen	Legal	Investigations	Outside Agency	Staff	Anonymous	Board	Totals	Over 180 days		
10	3	0	0	0	0	6	0	0	0	19		
July	August	September	October	November	December	January	February	March	April	May	June	Totals
\$22,090.00	\$40,717.00	\$13,050.00	\$15,990.00	\$18,210.00	\$19,980.00	\$22,430.00	\$10,500.00	\$13,470.00	\$27,870.00	\$34,190.00		\$ 238,497.00
July	August	September	October	November	December	January	February	March	April	May	June	Totals
\$30,760.00	\$28,600.00	\$15,970.00	\$26,900.00									\$ 102,230.00

TREC - TOTAL OPEN COMPLAINTS AS OF 10/31/2013

Open Staff - Waiting for Response				19
Open Staff - Referred to Legal				104
Total Open Complaints				123

CLOSED COMPLAINTS - FISCAL YEAR 7/1/2012 - 6/30/2013

Closed with No Action				189
Referral to Outside Agency				4
Closed with Letter of Warning/Instruction				9
Closed with Consent Order				46
Revocation				2
Total Closed for Year to Present Date				250

CLOSED COMPLAINTS - FISCAL YEAR 7/1/2013 - 6/30/2014

Closed with No Action				91
Referral to Outside Agency				2
Closed with Letter of Warning/Instruction				5
Closed with Consent Order				14
Revocation				2
Total Closed for Year to Present Date				114

**Disciplinary Action Report-
Tennessee Real Estate Commission:**

Respondent: Claire C. Badon, Franklin, TN
Violation: Advertising violation
Action: \$250 Civil Penalty

Respondent: Joseph Roy Brown, Collierville, TN
Violation: Being convicted in a court of competent jurisdiction of this or any other state or federal court of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud or any crime or any similar offense or offenses , or pleading guilty or nolo contendere to any such offense or offenses;
Action: Surrendered license

Respondent: Jerry W. LaQuiere, Antioch, TN
Violation: (1)No licensee shall advertise to sell property in a manner indicating that the licensee is not engaged in the real estate business
(2) All advertising shall list the firm name and telephone number
(3) Each page of a website which displays listings from an outside database of available properties must include a statement that the listings may not belong to the firm whose website is being visited
Action: \$500 Civil Penalty
Attend one regularly schedule two-day commission meeting

Respondent: James "Jim" Marlan Walton, Mt. Juliet, TN
Violation: Failure to timely disburse earnest money
Action: \$500 Civil Penalty
Attend one regularly schedule two-day commission meeting
Complete four (4) hrs. of CE in ethics

Respondent: Clint Alan McAfee, Antioch, TN
Violation: Failure to maintain Errors and Omissions insurance
Action: \$500 Penalty Fee, placed licensed into inactive status

Respondent: Mark J. Schnuck, St. Louis, MO
Violation: Failure to maintain Errors and Omissions insurance
Action: \$500 Penalty Fee, provided proof of errors and omissions ins.

Respondent: Misty D. Woodford, Franklin, TN

Violation: Failure to exercise adequate supervision over the activities of licensed affiliate brokers (Advertising)
 Action \$250 Civil Penalty

Suspensions: Corey Dean Hastings, Murfreesboro, TN
 Keisha Jade Monroe, Bean Station

Licensing Statistics:

TOTAL LICENSEES

INDIVIDUALS

	10/31/13	10/31/2012	10/31/11	10/30/10	Change 10/31/08- 10/31/13	Change 10/30/10- 10/31/13	Change 10/31/12- 10/31/13	10/31/13
Active	24,036	23,780	24,396	26,733	<9,065>	<2,697>	+256	3
Inactive	949	858	1,752	1,449	<1,406>	<500>	+91	
Retired	8,257	9,446	10,145	10,419	<1,167>	<2,162>	<1,189>	
Broker Released	147	412	546	626	<1,475>	<479>	<265>	
Suspended	515**	40**	32**	32**	+492	+483	+475	
Vol Term	3,266*	3,103*	2,964*	2,690*	+1,254	+576	+163	2
Totals	33,904	34,536	37,170	39,372	<12,784>	<5,468>	<632>	4

****The 2013 Suspension Total includes the licensees who remain suspended for failure to provide proof of insurance pursuant to the 7/1/2013 amendment to TCA 62-13-112.**

*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

	10/31/13	10/31/12	10/31/11	10/30/10	10/31/08	Change 10/31/08- 10/31/13	Change 10/31/12- 10/31/13
Active	3,862	4,023	4,181	4,370	4,655	<793>	<161>
Retired	208	278	329	343	296	<88>	<70>
Grand Total	4,070	4,301	4,510	4,713	4,951	<881>	<231>

AVERAGE NUMBER OF LICENSEES (INDIVIDUALS) ISSUED PER MONTH (BASED ON CALENDAR YEAR)

Year	Licenses Issued per 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	229	2,742
2013	284	2,835

Firm Closed/Retired	April	May	June	July	Aug	Sept	Oct	Total for Year	Av @ month
2013	19	17	17	9	7	17	8	161	16
2012	7	32	24	17	16	9	11	188	19
2011	25	38	32	19	19	10	27	305	31
2010	12	11	47	14	26	25	20	245	25
2009	20	36	55	34	27	26	12	327	33
2008	14	21	21	39	19	26	14	234	23

APPLICATIONS APPROVED/EXAMS TAKEN

Apps Approved	Aug	Sept	Oct	Year to Date	Average @ month	Exams Taken	Aug	Sept	Oct	Year to Date	Average @month	Annual Total Exams
2013	305	337	304	2,835	284	2013	433	434	430	3,912	391	n/a
2012	225	185	222	2,195	220	2012	285	283	273	2,683	268	3,068
2011	225	201	184	1,982	198	2011	258	209	384	2,346	235	2,369
2010	219	226	220	2,234	223	2010	281	248	268	2,706	271	2,976
2009	221	235	119	2,165	217	2009	361	271	261	2,726	273	3,041
2008	266	293	282	3,831	383	2008	366	478	332	4,513	451	4,704
2007	526	551	516	6,314	631	2007	907	831	693	8,857	886	9,302
2006	697	572	552	6,483	648	2006	1,218	1,025	1,116	10,022	1,002	11,618

EXAMS TAKEN BY LICENSE TYPE

License Type of Exams Taken	1/1/2013-10/31/2013	1/1/2012-10/31/2012
Acquisition Agent	50	37
Affiliate Broker	2,984	1,857
Broker	365	357
Timeshare Salesperson	513	432
TOTAL	3,912	2,683
Difference b/t 2013 & 2012=1,229		

INDIVIDUAL LICENSEES LOST/GAINED YEAR TO YEAR - 2000 – 2013

			Average 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>
2013	33,904	<592>	<59>

TOTAL ALL LICENSES

License Type	10/31/2013 Total	10/31/2011	Total Difference 10/31/2011 10/31/2013
Affiliate, Broker, Timeshare	34,031	37,007	<5,440>
Real Estate Firms	4,107	4,523	<644>
Rental Location Firm	No Active	No Active	No change

Rental Location Agent	No Active	No Active	No change
Timeshare Registration – Active	65	65	<2>
Timeshare Registration – Exempt	140	134	+17
Vacation Lodging Service Firms	132	134	<6>
Acquisition Agent Registration	41	41	No change
Acquisition Representative Registration	2,331	2,331	No change
Acquisition Agent License	124	109	<15>
Designated Agent – VLS	129	34	n/a
TOTAL	10/31/13 = 41,100	10/31/11=44,378	<3,278>

Total for 9/30/2013= 41,094
 Total for 8/30/2013= 41,128
 Total for 7/31/2013= 41,024
 Total for 6/30/2013= 41,066
 Total for 5/31/2013= 40,558
 Total for 3/28/2013= 41,162
 Total for 2/28/2013= 41,087

LICENSE RENEWAL PERCENTAGE

Expiry Date* by Month	Renewal Notices Sent	Lic. Not Renewed by 61 st Day	% of Licensees Not Renewed
8/2012	1,441	247	17%
10/2012	1,416	228	16%
11/2012	1,321	217	16%
12/2012	1,286	216	16%
1/2013	1,383	251	18%
2/2013	1,538	298	19%
3/2013	1,632	299	18%
4/2013	1,517	257	16%
5/2013	1,350	237	17%
6/2013	1,424	222	15%
7/2013	1,528	185	12%
8/2013	1,511	161	10%

*This information is gathered by TREC on (or about) the 61st day after the expiry date. This percentage is based upon the total renewal notices mailed to licensees during a thirty day period and the number of licensees who renew on or before the 60th day after their expiry date. (On 61st day, licensee must reinstate and therefore that license is not counted as a renewed license.)

Annual Percentage of Licenses NOT Renewed for last 12 months= 15.80%

NUMBER OF ACTIVE INDIVIDUAL LICENSEES BY LICENSE TYPE

	10/31/2013	10/31/2012	11/1/2007
Affiliate Broker	16,085	16,343	26,254
Broker	3,402	3,644	4,640
Principal Broker	3,771	4,311	3,591
Timeshare	776	994	1,000

UPDATE ONE E & O

Date	2009	2011	2013
1/5	11,406	7,564	6,689
1/7	10,948	6,907	6,126
1/24	6,371	2,151	4,387
1/31	5,904	1,870	2,479
2/5	5,288	1,608	2,319
2/18	2,569	880	1,943
2/28	2,222	777	1,727
3/4	1,914	716	1,637
3/11	1,722	677	1,060
3/19	1,598	611	963
3/28	1,203	496	726
4/1	973	488	661
4/11	733	464	412
4/23	595	400	369
4/30	605	391	358
5/6	474	378	355
5/15	422	372	357
5/31	357	344	298
6/4	373	343	291
6/13	429	305	240
6/28	225	276	186
7/2	229	274	16*
7/5	288	409	40*
7/16	269	441	216
7/23	255	355	88
7/30	250	329	72
8/6	276	290	75*
8/9	370	290	75*
8/12	254	280	49*

8/14	259	255	5*
8/30	249	243	16*
9/10	235	232	19*
9/27	208	213	22*
9/30	213	206	22*
10/31	166	159	0*

* The uninsured number decreased because of the licensees placed in suspension

UPDATE ON E&O SUSPENSIONS

License Type	7/1/13		7/25/13		7/31/13		9/10/13	10/7/13	11/1/13
	Active	B/R	Active	B/R	Active	B/R			
Affiliate Broker	99	205	43	196	41	140	227		217
Broker	16	13	9	13	7	13	20		18
Principal Broker	74		38	0	21	0	33(active)	30(active)	28(active)
Timeshare Sales	3	176	5	187	4	186	262		259
Suspended-exclude Broker Release									
Broker Release Suspended									
TOTAL	586		491		412		543	<u>529</u>	<u>522</u>

*PBs= The firms of all of the PBs are either in problem status or they are beyond their expiry date. 20 PBs have been in suspension since 7/1/2013; 3 have been in suspension since 9/10/2013 and 5 have been in suspension since 10/31/2013. Of the PBs, 11 are in TN and 17 are out of state; the PB's have all been notified (some several times). Licensees continue to be placed in a suspended status as their E&O expires and no proof of current E&O is received.

10/31/2013

11/6/13 Minutes

RISC (Rice Insurance)	18,775
Alternate	7,450
None	0
Total from Insurance Rpt	24,037*
Total Active Licensees	24,036
E&O Suspension	515

*Some licensees have RISC and alternate insurance

9/30/2013

RISC (Rice Insurance)	18,711
Alternate	7,489
None	22
Total from Insurance Rpt	23,987*
Total Active Licensees	23,986
E&O Suspension	533

*Some licensees have RISC and alternate insurance

8/30/2013

RISC (Rice Insurance)	18,544
Alternate	7,455
None	16
Total from Insurance Rpt	23,827*
Total Active Licensees	23,826
E&O Suspension	650

*Some licensees have RISC and alternate insurance

7/31/2013

RISC (Rice Insurance)	18,383
Alternate	7,455
None	72
Total from Insurance Rpt	23,662*
Total Active Licensees	23,678
E&O Suspension	412

*Some licensees have RISC and alternate insurance

6/28/2013

RISC (Rice Insurance)	18,216
Alternate	7,551
None	186
Total from Insurance Rpt	23,657*
Total Active Licensees	23,656

*Some licensees have RISC and alternate insurance

5/31/2013

11/6/13 Minutes

RISC (Rice Insurance)	17,942
Alternate	7,499
None	298
Total from Insurance Rpt	23,435*
Total Active Licensees	23,434

*Some licensees have RISC and alternate insurance

4/30/2013

RISC (Rice Insurance)	17,716
Alternate	7,390
None	374
Total from Insurance Rpt	25,480*
Total Active Licensees	23,201

*Some licensees have RISC and alternate insurance

4/1/2013

RISC (Rice Insurance)	17,294
Alternate	7,162
None	661
Total from Insurance Rpt	25,117*
Total Active Licensees	23,044

*Some licensees have RISC and alternate insurance

3/5/2013

RISC (Rice Insurance)	16,879
Alternate	6,072
None	1,599
Total from Insurance Rpt	24,450
Total Active Licensees	22,945

*Some licensees have RISC and alternate insurance

2/5/2013

RISC (Rice Insurance)	16,560
Alternate	4,054
None	2,319
Total Active Licensees	22,936

1/5/2013

RISC (Rice Insurance)	13,089
Alternate	3,715
None	6,689
Total Active Licensees	23,493

There being no further business to come before the Commission,

Chairman Stephenson adjourned the meeting at 4:45 p.m. Wednesday, November 6, 2013.

EXHIBITS OF DOCUMENTS PRESENTED ARE ATTACHED HERETO AND MADE A PART OF THE NOVEMBER 6, 2013 MINUTES



**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
OFFICE OF LEGAL COUNSEL
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500 James Robertson Parkway
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(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 6-7, 2013

***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. 2013011341**
Opened: 6/28/13
First License Obtained: 11/17/86
License Expiration: 8/31/14
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

Complainants were lessees, and Respondent is the principal broker of a licensed firm. Complainants state that they entered into two (2) leases (a twelve (12) month lease and a six (6) month lease) with a company which has substantially the same name as the firm for which Respondent is principal broker, except the firm with which Complainants state they dealt had a division name added to the end of the name. Complainants state that the property was not habitable so Complainants moved prior to the end of the second lease term. Complainants state that there was a broken window at the time Complainants moved in, windows were not air tight, and a door was not air tight or wind tight, as well as other issues which Complainants state the company refused to repair. Complainants state there were a number of matters which were not handled in compliance with the Landlord Tenant Act. Finally, Complainants state that they were sued by the company which included the division name and are in a legal battle. Complainants state that they received a letter from the Executive Director for the Real Estate Commission stating that the company with which Complainants dealt was not a licensed real estate firm.

Respondent states that Complainants signed a one (1) year lease and then another for six (6) months. Respondent states that all monthly payments were paid until January 2012, when Complainants moved out (breaking their second lease) after purchasing a home. Respondent states that all tenants are asked to send in a list of any issues with the property prior to moving in and such a list was provided by Complainants. Respondent states that the list included the cracked window and the lease provides the tenant accept the property in an "as is" condition. Respondent states that there was nothing filed to request the window be replaced or that Respondents were giving a thirty (30) day notice. Respondent states a lawsuit was filed and a judgment was entered against Complainants (this has been appealed and the appeal is currently pending). Respondent states that Respondent's firm is a licensed firm in the State of Tennessee and addresses Complainant's allegations as if they are alleged against Respondent's firm. Respondent does not specifically address the allegation regarding company with the substantially similar name which dealt with Complainants and which does not have its own firm license.

Based on an internet search of the company with which Complainants state they dealt, it appears to be an LLC registered with the Secretary of State (Respondent's licensed firm is also registered with the Secretary of State as a corporation) and also has a website with the company's name at the top of the webpage which states that it is a property management company. The website also includes the name of Respondent's firm at the bottom along with address and phone number, but the phone number does not match the firm telephone number of Respondent's firm as displayed on Respondent's firm's website. Additionally, Complainants provided copies of the lease agreements, which included a letterhead of the company with division in its name, and a security deposit check which was written to Respondent's firm but was stamped deposited into an account including the name of the company with division in its name. In light of recent discussions regarding topics of a substantially similar nature, it is recommended that the Commission discuss this matter.

Recommendation: Discuss.

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

2. **2013012591**
Opened: 7/18/13
First License Obtained: 8/11/11
License Expiration: 8/10/15
E&O Expiration: N/A
Type of License: Firm
History: No Prior Disciplinary Action
3. **2013012592**
Opened: 7/18/13
History: No Prior Disciplinary Action - Unlicensed

Complainant states that Complainant attended a time-share meeting in another state where Complainant met with Respondent 2 (unlicensed company). There, Complainant states that Respondent 2 asked Complainant to purchase an expensive vacation package, and Complainant declined but did pay \$1,500 to Respondent 2 to transfer Complainant's time-share (which was also located in another state) to Respondent 2. Complainant states that Complainant was told by a representative for Respondent 2 that Complainant would be contacted regarding the transfer process in ten (10) days and the check was soon cashed. Complainant states that a transfer document signed by Complainant at Respondent 2's presentation stated that Respondent 1 (firm) would handle the transfer paperwork for a specified transfer fee. Complainant states that Complainant was never contacted by either Respondent regarding the transfer so Complainant began attempting to contact individuals associated with both Respondents. Complainant states that a representative for Respondent 1 stated that they had received no paperwork from Respondent 2 to complete the transfer. According to Complainant, the transfer of Complainant's time-share was never completed, and Respondent 2 has not returned Complainant's \$1,500.

Respondent 1 submitted a response stating that Complainant attended a meeting in another state with Respondent 2, not Respondent 1, and entered into a sales transaction with Respondent 2 there. Respondent 1 states that Complainant has not paid Respondent 1 for any services. Respondent 1 states that, when a time-share owner attends a presentation and wishes to have a time-share transferred out of their name, Respondent 1 is sometimes referred to the owner to handle the transfer. According to Respondent 1, the referral is then sent to Respondent 1, and Respondent 1 contacts the owner to explain the transfer process, and at that point the owner is billed for the transfer service and documents are requested to actuate the transfer. In this case, Respondent 1 states that the referral was not forwarded to Respondent 1, and when Complainant contacted Respondent 1 and sent the documents and was informed that there would be a transfer fee, Complainant stated that the transfer fee should have been paid by Respondent 2 (Complainant denies that Complainant was told about this additional fee or refused to pay it). After further discussions with Respondent 2 and Complainant, Respondent 1 suggested that Respondent 2 recommend another company to complete the transfer process. Respondent 1 says that, if Complainant wants a return of the \$1,500, Complainant should contact Respondent 2, as that is who was paid the money, and no funds have been paid to Respondent 1.

It appears that the transaction with Respondent 2 took place in another state regarding a time-share located in another state. At this time, there does not appear to be any information substantiating that Respondent 1 was ever paid to complete the transfer paperwork for the time-share or to show any violation by Respondent 1.

Recommendation: Close.

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

4. **2013012611**
Opened: 7/9/13
First License Obtained: 10/19/99
License Expiration: 9/27/14
E&O Expiration: 1/1/15
Type of License: Broker
History: No Prior Disciplinary Action

5. **2013012612**
Opened: 7/9/13
First License Obtained: 11/22/93
License Expiration: 9/9/15
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

6. **2013012613**
Opened: 7/9/13
First License Obtained: 10/19/01
License Expiration: 4/13/15
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

Complainant was the prospective purchaser of a property. Respondents 1 and 2 (Respondent 1 is a broker; Respondent 2 is an affiliate broker; Respondent 3 is principal broker) originally represented the seller/builder but became facilitators when Complainant entered into the agreement to purchase the property. The contract included a purchase price which was the list price plus a closing cost amount which was specified in the contract to be paid by the seller at closing. Complainant states that Complainant paid earnest money to Respondents and also paid in excess of \$3,000.00 to other parties for a hardwood floor upgrade. Later, Complainant could not qualify for VA loan, and the hardwood floor upgrade money was not refunded to Complainant. Complainant states that as licensees, Respondent 1 and 2 knew that the VA would not approve loan and that Complainant had to pay for the hardwood floors and for molding up front. Complainant states the first VA lender overestimated income and had a number of other complaints regarding that lender, and Complainant states that the lender was in conspiracy with

Respondent 2 to keep the VA from processing the loan. Complainant states that Respondent 2 contacted Complainant to switch to a different lender, but the second was not approved either. Complainant states that Complainant was advised by the VA to have Complainant's own realtor so Complainant hired another party to represent Complainant, but the sale fell through. Complainant feels that Complainant should be reimbursed for the flooring upgrades.

Respondents state that Complainant approached Respondents 1 and 2, who represented the seller/builder, about the home, which was a new home that was completed except for some flooring. Respondents state that Complainant provided a letter stating that Complainant was approved for a VA loan, and, after conversations with the lender, Respondents were assured that Complainant would be able to secure the necessary loan. Respondents state that Complainant was not represented so Respondents 1 and 2 defaulted to facilitators on the contract and confirmation of agency. Due to the VA loan, Respondents state that the lender said that Complainant would need funds for closing costs so these costs were added to the total price of the contract with a provision that seller would pay the specified amount of closing costs. Respondents state that, after the contract was drafted, Complainant asked for additional hardwood floors, and Complainant was given a quote by the supplier/installer. Respondents state that Complainant was told that this additional flooring was an addition to the home, that it would have to be prepaid, and that it was non-refundable. Respondents also state that they advised Complainant against this additional cost, but Complainant wanted this done prior to moving in. Respondents state that they were assured by Complainant and the lender that Complainant would qualify for financing, and Complainant stated that Complainant had no objection to paying the extra money for the hardwood upgrade. Respondents state that the home was appraised for more than the purchase price, but the lender then indicated that Complainant would not be able to get the loan. Respondents state that they asked Complainant what the issue was and were informed that support listed as income on the application by Complainant was not being received on a regular basis, and Complainant asked for another mortgage company referral. Respondents suggested another company and this company required more to be paid toward closing price thus raising the price an additional amount. Respondents state that loan documents were never provided to this new mortgage company, and Respondents had difficulty getting Complainant to respond to phone calls. Complainant secured another licensee to represent Complainant so Respondents state the parties revised the original confirmation of agency form to indicate that Respondents 1 and 2 represented the seller and the other licensee represented Complainant. The second mortgage was also denied due to insufficient income. Respondents state that Respondents learned that Complainant had overstated outside income that could not be verified. After the loan was denied, Respondents state that an Earnest Money Disbursement and Mutual Release of Purchase and Sale Agreement was completed, and Complainant's earnest money was returned to Complainant, but, as explained to Complainant, the hardwood upgrade was non-refundable. Based on the information in the file, there does not appear to be any violation by these Respondents.

Recommendation: Dismiss.

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

7. **2013013031**
Opened: 7/18/13
First License Obtained: 9/3/03
License Expiration: 11/10/13
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

8. **2013013041**
Opened: 7/18/13
First License Obtained: 11/7/03
License Expiration: 11/29/14
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

Complainant, a licensee, states that Respondent 1 (affiliate broker) is advertising and acting as and receiving payment for being a property manager for a certain property without proper licensure. Complainant states that Respondent 1 has listed Respondent 1's cell phone number on a sign on this property for over four (4) years. Complainant attached a photo of the sign which offered the space for lease, included the owner's e-mail address and two telephone numbers (one of which was allegedly Respondent 1's cell phone number) and did not include Respondent 1's name. Complainant also makes complaints of Respondent 1's position as a city alderman, specifically Respondent 1's involvement with an erection of a cell tower which has devalued nearby property. Respondent 2 is Respondent 1's principal broker, and the complaint was opened for failure to supervise Respondent 1.

Respondents each submitted responses denying the complaint's allegations. Respondents state that Respondent 1 has never been the property manager for the property bearing the sign, and Respondent 1 has not received any compensation for real estate activities relating to the property. Respondents state that the property belongs to someone out of state (whose son manages the property), and Respondent 1 allowed Respondent 1's cell phone number to be listed together with the out of state number so that there was a local number. Respondent 1 states that Respondent 1 has received a few calls on this property over the years that the sign has been displayed, but Respondent 1 has never discussed any lease details and all callers are given the property manager's number or the information has been passed to that manager. Respondent 2 states that Respondent 1 had no discussions about the property, did not list or connect anything about the property with Respondents' real estate firm, and that there is not nor has there ever been a contract of any sort between Respondent 1 and the property owner. Respondents attached a letter from the property owner confirming that Respondent 1 has never been employed by the owner of the property or acted as property manager. Concerning the cell tower issue, Respondents state that Respondent 1 had no vote or say as this was voted on by the city planning commission. Further Respondents indicate (and a letter from the city mayor also indicates) that Complainant has residential property near the cell tower approved by the planning commission.

Complainant re-stated that Respondent 1 is representing himself as property manager for the subject property and states that an individual called and spoke with Respondent 1 who discussed the prices for renting space, space amenities, and offered to show the property. Respondent 1 submitted an additional reply stating that Respondent 1 has no recollection of speaking with the person referenced by Complainant, and Respondent 1 referred all calls to the property manager.

Based on a review of the information, there appears to be no evidence that Respondent 1 is acting as property manager or being paid as such. Further, Complainant states that this sign has been up for over four (4) years. Additionally, as Respondent 1 is not being compensated for performing real estate services and is only providing Respondent 1's cell phone number as a local point of contact to forward calls to the property manager (and is not representing himself as a real estate licensee on the sign), there does not appear to be a violation by Respondents.

Recommendation: Dismiss.

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

- 9. **2013013161**
Opened: 7/19/13
History: No Prior Disciplinary Action - Unlicensed

- 10. **2013013162**
Opened: 7/19/13
History: No Prior Disciplinary Action - Unlicensed

- 11. **2013013163**
Opened: 7/19/13
History: No Prior Disciplinary Action - Unlicensed

TREC opened complaint against Respondents (Respondents 1 and 2 are individuals who are spouses and Respondent 3 is their LLC) based on information submitted by a licensee who stated that she received "a very low ball cash offer" from Respondents and requested that TREC take a look at Respondents as they did not appear to be licensed. The licensee provided two pages from Respondents' website and a copy of a partially executed contract (presumably the one referenced by the licensee) which lists Respondent 1 and Respondent 3 (the LLC) as buyer.

Respondent 1 submitted a response on behalf of Respondents stating that Respondents 1 and 2 are real estate investors who do not claim to be real estate licensees. Respondent 1 states that Respondents are a business that buys, sells, rents, or leases properties which are owned by Respondents or in which Respondents have an equitable interest, and Respondents do not represent others in real estate transactions. It does not appear that Respondents are engaged in unlicensed activity.

Recommendation: Dismiss.

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

- 12. 2013013171**
Opened: 8/16/13
First License Obtained: 1/13/06
License Expiration: 1/12/14
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action
- 13. 2013013201**
Opened: 7/24/13
First License Obtained: 4/7/00
License Expiration: 3/14/15
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: No Prior Disciplinary Action

This complaint was opened based on an e-mail stating that an e-mail advertisement failed to meet the TREC advertising requirements. Based on a copy of the internet advertisement, it appears that Respondent 1 (affiliate broker) appears to have created Respondent 1's own team name, and Respondent 1, working together with an architect and builder, advertised a new development which included that team name. In said advertisement, Respondents' licensed firm, as well as the licensed firm's address and firm telephone number, is included at the bottom of the e-mail in smaller type. Respondent 2 is Respondent 1's principal broker, and the complaint was opened for failure to supervise Respondent 1.

Respondents each submitted responses to the complaints. Respondent 1 states that Respondent 1 now understands that the firm must always appear in conjunction with Respondent 1's branding. Respondent 1 states that when preparing the e-mail advertisement in question, Respondent 1 questioned the placements and provided documentation that shows this questioning as well as a response from the person preparing the flyer for the e-mail who said that the flyer as presented would make the Respondent 1 compliant. Respondent 1 apologized and stated that Respondent 1 has made the needed corrections. Respondent 2 states Respondent 2 started as principal broker around the same time that the events which were the subject matter of this complaint occurred, and Respondent 2 takes matters such as these very seriously. Respondent 2 states that Respondent 2 met with Respondent 1 after verifying the rules so as to correct any error. Respondent 2 states that Respondent 2 was assured by Respondent 1 that Respondent 1 would follow all rules set forth by the Commission and would correct any error in a timely manner. Respondent 2 states Respondent 1 enlisted the help of a professional marketing company and that company did state that the advertisement was compliant. Respondent 2 states that Respondent 2 made it clear that all advertisements were to be reviewed by Respondent 2 and that it was the responsibility of Respondent 1 to be clear in all advertisements that Respondent 1 works in Respondent 2's firm and is not a separate office. Respondent 2 further states that Respondent 2 reviewed the modified advertisement and states that it is in full compliance with

advertisement rules. Respondent 2 also attached a copy of a letter to Respondent 1 which informed Respondent 1 of the importance of following TREC rules and stating that Respondent 2 must be put on all e-mail, social media, direct mail, and ad distributions and must be approved by Respondent 2. Though it appears that Respondents immediately took action to correct the issues within the subject e-mail advertisement as well as future advertisements, Respondent 1 might benefit from a letter of instruction regarding TREC's advertising rule.

Recommendation: Dismiss as to Respondent 2. As to Respondent 1, letter of instruction regarding Rule 1260-02-.12.

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

14. 2013013221

Opened: 7/18/13
First License Obtained: 5/9/07
License Expiration: 5/8/15
E&O Expiration: 1/1/15
Type of License: Affiliate Broker
History: No Prior Disciplinary Action

Complainant states that, upon a pending transfer to another state, Complainant had to use an agent who was approved to do relocations, and Respondent (affiliate broker) was hired. Complainant states that, when negotiating the offer from the buyers, the buyers would not come above \$327,000.00, and Complainant would not go below \$330,000.00, so Respondent offered to reduce Respondent's commission by one percent (1%). This situation was accepted by Complainant and spouse, but, when the paper work was prepared for the sale, the reduced commission was not included in the documents. Complainant states that, upon questioning how Complainant was going to get the \$3,000.00, Respondent stated that Respondent could not do that and only the relocation company could do that. Complainant states that, in a conversation with the relocation company, Complainant was told that the relocation company would not assist, and Respondent was deserving of the full commission. Many phone calls ensued between Complainant and Complainant's spouse with Respondent, and, in one conversation, Respondent told Complainant that Complainant needed to communicate directly with the relocation company, as there was nothing that Respondent could do. Complainant states that, upon learning that this conversation took place, Respondent again agreed to a reduced commission, but Respondent said that Respondent could not write a check to Complainant. Complainant states that the sales price was based on this promise and that, in making that promise, Respondent misled Complainant and should not have made a commitment that Respondent could not fulfill.

Respondent states that, when the buyers and Complainant and spouse became deadlocked over the sale price, Respondent offered to reduce Respondent's commission, not realizing that Complainant and spouse were not paying their own commission. Respondent states that Respondent told Complainant and spouse that the commission reduction would be subject to relocation approval but stated that commission reduction would be the only possible way that Respondent could assist them. Respondent states that Respondent then attempted to have the

commission reduced but was informed by the relocation director this was not possible because Complainant and spouse were not paying any of the closing costs or commissions so they could not get credit for the one percent (1%). Further, Respondent was told that Respondent deserved the commission and it was company policy and relocation policy not to reduce commission. Respondent further states that Respondent so notified Complainant and apologized, but Complainant's spouse repeatedly called and demanded to know how Respondent would pay the \$3,000.00. Respondent states that Respondent was willing (but not allowed) to reduce the commission paid, and this was the only way Respondent was able to assist at all. Respondent provided emails to support this statement, including an email that Complainant's spouse was informed by the employer to leave the issue alone. Respondent regrets that the situation arose but states that Respondent's hands were tied. Documents provided show that the relocation company was the seller in the transaction. There appears to be no violation by Respondent.

Recommendation: Dismiss.

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

15. **2013003911**
Opened: 3/5/13
First License Obtained: 3/12/93
License Expiration: 11/8/13
E&O Expiration: None (Retired license)
Type of License: Affiliate Broker
History: 201101086 – Closed \$4000 Consent Order
2013012151 – Under review by legal
2013012161 – Under review by legal
2013012181 – Under review by legal
2013012201 – Under review by legal
2013014041 – Under review by legal
16. **2013003912**
Opened: 3/5/13
First License Obtained: 9/13/01
License Expiration: 3/17/14
E&O Expiration: None (Retired license)
Type of License: Affiliate Broker
History: 2013012152 – Under review by legal
2013012162 – Under review by legal
2013012182 – Under review by legal
2013012202 – Under review by legal
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17. **2013012151**
Opened: 7/11/13
First License Obtained: 3/12/93

License Expiration: 11/8/13
E&O Expiration: None (Retired license)
Type of License: Affiliate Broker
History: 201101086 – Closed \$4000 Consent Order
2013003911 – Under review by legal
2013012161 – Under review by legal
2013012181 – Under review by legal
2013012201 – Under review by legal
2013014041 – Under review by legal

18. 2013012152

Opened: 7/11/13
First License Obtained: 9/13/01
License Expiration: 3/17/14
E&O Expiration: None (Retired license)
Type of License: Affiliate Broker
History: 2013003912 – Under review by legal
2013012162 – Under review by legal
2013012182 – Under review by legal
2013012202 – Under review by legal

19. 2013012153

Opened: 7/11/13
First License Obtained: 5/4/11
License Expiration: 5/3/13 (Expired)
E&O Expiration: None
Type of License: Time-Share Salesperson
History: 2013012203 – Under review by legal

20. 2013012161

Opened: 7/11/13
First License Obtained: 3/12/93
License Expiration: 11/8/13
E&O Expiration: None (Retired license)
Type of License: Affiliate Broker
History: 201101086 – Closed \$4000 Consent Order
2013003911 – Under review by legal
2013012151 – Under review by legal
2013012181 – Under review by legal
2013012201 – Under review by legal
2013014041 – Under review by legal

21. 2013012162

Opened: 7/11/13
First License Obtained: 9/13/01

License Expiration: 3/17/14
E&O Expiration: None (Retired license)
Type of License: Affiliate Broker
History: 2013003912 – Under review by legal
2013012152 – Under review by legal
2013012182 – Under review by legal
2013012202 – Under review by legal

22. **2013012181**
Opened: 7/11/13
First License Obtained: 3/12/93
License Expiration: 11/8/13
E&O Expiration: None (Retired license)
Type of License: Affiliate Broker
History: 201101086 – Closed \$4000 Consent Order
2013003911 – Under review by legal
2013012151 – Under review by legal
2013012161 – Under review by legal
2013012201 – Under review by legal
2013014041 – Under review by legal

23. **2013012182**
Opened: 7/11/13
First License Obtained: 9/13/01
License Expiration: 3/17/14
E&O Expiration: None (Retired license)
Type of License: Affiliate Broker
History: 2013003912 – Under review by legal
2013012152 – Under review by legal
2013012162 – Under review by legal
2013012202 – Under review by legal

24. **2013012201**
Opened: 7/11/13
First License Obtained: 3/12/93
License Expiration: 11/8/13
E&O Expiration: None (Retired license)
Type of License: Affiliate Broker
History: 201101086 – Closed \$4000 Consent Order
2013003911 – Under review by legal
2013012151 – Under review by legal
2013012161 – Under review by legal
2013012181 – Under review by legal
2013014041 – Under review by legal

25. 2013012202

Opened: 7/11/13
First License Obtained: 9/13/01
License Expiration: 3/17/14
E&O Expiration: None (Retired license)
Type of License: Affiliate Broker
History: 2013003912 – Under review by legal
2013012152 – Under review by legal
2013012162 – Under review by legal
2013012182 – Under review by legal

26. 2013012203

Opened: 7/11/13
First License Obtained: 5/4/11
License Expiration: 5/3/13 (Expired)
E&O Expiration: None
Type of License: Time-Share Salesperson
History: 2013012153 – Under review by legal

27. 2013014041

Opened: 8/7/13
First License Obtained: 3/12/93
License Expiration: 11/8/13
E&O Expiration: None (Retired license)
Type of License: Affiliate Broker
History: 201101086 – Closed \$4000 Consent Order
2013003911 – Under review by legal
2013012151 – Under review by legal
2013012161 – Under review by legal
2013012181 – Under review by legal
2013012201 – Under review by legal

The above-listed complaints all involve transactions relating to time-share transfers. Respondent 1 in the above-listed complaints is an affiliate broker whose license is retired. Likewise, Respondent 2 is an affiliate broker whose license is retired. Respondent 3, in complaints that have a Respondent 3, was a time-share salesperson whose license is expired. The issue for TREC's determination is whether these individuals are engaged in unlicensed time-share resale activity.

201300391 - The first Complainant states that she hired Respondents 1 and 2's company to handle a trade of Complainants' two (2) time-shares in 2010 and 2011. Complainant states that there were problems with the transfers, and Respondents should not have taken the transfer fee and agree to transfer the time-shares if they were not able to do so. Respondents submitted a response stating that the time-share resort for one of the properties had been giving them trouble

with completing the transfer, and Respondents are still currently trying to complete the resort's necessary steps to effectuate the transfer. Respondents state that Complainant's second time-share actually had money owed on it so it could not be transferred. Respondents state that they offered Complainant a return of the closing fee paid to Respondents, but Complainant just wants out of the time-shares. Complainant submitted an additional response stating that Complainant believes that Respondents have done all they can do to resolve the issues.

201301215 – This complaint was originally filed with the Consumer Affairs division in 2011, who referred the complaint to TREC in mid-2013. Complainants state that Respondent 3 contacted Complainants about their time-share which was listed for sale in 2010, and Respondents 1 and 2's company was to handle the transfer. Complainants state that the time-share was sold but Complainants never received their money. Respondents 1 and 2 submitted a response stating that the money had been sent to Complainants for the sale of the time-share to Respondent 3 (Complainants deny this) even though Respondents 1 and 2 were told by the Attorney General's office of Respondent 3's business practices and told not to pay any amounts relating to sales involving Respondent 3.

201301216 – This complaint was originally filed with the Consumer Affairs division in 2011, who referred the complaint to TREC in mid-2013. Complainant states that Complainant hired Respondents 1 and 2's company to transfer three (3) time-shares out of Complainant's name in 2010 because Complainants were joining a travel club. Complainant states that Respondents did not complete the transfers and Complainant continued to be billed by the resort for maintenance fees. Respondents 1 and 2 submitted a reply stating that Respondents have done everything possible to transfer Complainant's time-shares, but Complainant provided insufficient documentation for two (2) time-shares and did not have anything showing ownership of the third time-share. Respondents 1 and 2 state that they sent a check for the closing amounts minus the title searching fees to Complainant (Complainant denies receiving payment, but admits that Complainant has no deed for the third time-share).

201301218 – This complaint was originally filed with the Consumer Affairs division in 2011, who referred the complaint to TREC in mid-2013. Complainants state that they hired Respondent 1 and 2's company to transfer a time-share out of Complainants' name in 2010 because Complainant was joining a travel club. Complainants state that the transfers were not completed quickly, and Complainants continued to be billed by the resort for maintenance fees. Therefore, Complainants wanted the transfer stopped. Respondents 1 and 2 submitted a response stating that Respondents mailed a check to Complainants in 2011 for the maintenance fees (and provided a copy of said check) and the resort took the property back from Complainants.

201301220 - This complaint was originally filed with the Consumer Affairs division in 2011, who referred the complaint to TREC in mid-2013. Complainant states that Complainant purchased a time-share from Respondent 3 on ebay in early 2011 and had not received a title to the property four (4) months later when the complaint was originally filed. Respondents 1 and 2 submitted a response stating that the money was sent to Complainant for her purchase from Respondent 3, and there were issues with properties that Respondent 3 had sent Respondents 1 and 2 to transfer. Respondents state that they contacted the A.G.'s office about Respondent 3's dealings and were told not to pay anything relating to Respondent 3's transactions.

201301404 – This complaint was originally filed with the Consumer Affairs division in 2011, who referred the complaint to TREC in mid-2013. Complainants state that Complainants hired Respondent 1's company to handle the transfer of Complainants' time-share out of their name when Complainants joined a travel club in 2010. As of the time of the complaint in 2011, Complainants stated that the time-share still had not been transferred out of their names. Respondent submitted a response stating that the delay in the transfer was due to an upgrade which Complainant had purchased and Complainants' daughter's name on the deed, and once these problems were ironed out the resort had changed their transfer policy and were requiring a large transfer fee. Respondents state that they would be glad to return the transfer fee paid to Respondents due to the difficulty encountered with the resort during the transfer process, which Complainants expressed willingness to accept as a resolution.

The issue for TREC's determination is whether these Respondents are engaged in unlicensed time-share resale activity. An investigation was requested regarding the above-referenced complaints as well as Respondents' current activity. The investigator met with Respondents 1 and 2 and examined their files regarding the complaints referenced above as well as investigated their current practices and relationship with Respondent 3, who was non-responsive to all complaints. Respondents 1 and 2 stated to the investigator that Respondent 3 was not connected in any way to Respondents 1 and 2's business and only handled some of Respondent 3's closings in the past but are no longer do so as advised by the A.G. The investigator uncovered that Respondent 3 was incarcerated and possibly recently released, but was unable to obtain any other information through the internet and contacting Respondent 3's family member. Respondents 1 and 2 told the investigator that they do not sell or purchase time-shares but only handle time-share closings, transferring time-shares from one entity to another when requested to do so. The investigator stated that she was free to look at whatever documents she wanted, and it appeared that Respondents 1 and 2 worked diligently to complete complicated transfers. It does not appear at this time, based on the information provided and obtained through investigation, that Respondents are engaged in unlicensed time-share resale activity.

Recommendation: Close as to all.

DECISION: The Commission voted to close as to Respondents 1 and 2 and to close and flag with regard to Respondent 3.

28. **2013008251**
Opened: 5/17/13
First License Obtained: 7/24/69
License Expiration: 2/23/15
E&O Expiration: 1/1/15
Type of License: Principal Broker
History: 942100 – Closed CO (downgrade to affil., 1 yr. probation, 30 hr. course)

September 2013 Meeting:

TREC opened complaint based audit of Respondent's (principal broker) firm in April 2013. The auditor's report indicated a shortage in the firm escrow account (which only held one earnest money deposit) when comparing accountings to the most current bank statement. Based on the escrow account shortage, a complaint was opened.

Respondent submitted a response admitting the escrow account shortage due to obligations which led to Respondent utilize funds from the firm's escrow account, which Respondent states Respondent used due to expected income in the near future which did not come to fruition. Respondent acknowledged in the response that Respondent's action was a clear violation but expressed regret and stated that the account would be fully funded by June 2013, and Respondent would furnish proof of same.

Based on Respondent's statement that the account would be fully funded by June 2013, legal counsel contacted Respondent in August 2013 inquiring as to the current status of the escrow account. Respondent stated that the single deposit in the account is the same earnest money deposit referenced in the audit, as the sale is still pending. With regard to the current shortage, Respondent stated that the shortage is worse now than it was at the time of the auditor visit. A current statement of the firm escrow account shows a severe shortage. Respondent admits the violation but states that it was not done for personal gain, and Respondent expressed regret and inability to rectify the situation.

Recommendation: Consent Order for voluntary termination of Respondent's license for failure, within a reasonable time, to account for or to remit any moneys coming into the licensee's possession that belong to others in violation of T.C.A. § 62-13-312(b)(5), failure to timely account for trust fund deposits and all other property received from any party to the transaction in violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-403(6) and failure to properly disburse funds from an escrow account in violation of Rule 1260-02-.09(3)(6).

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

After the authorized Consent Order was sent to Respondent, legal counsel was contacted by an attorney who represents Respondent indicating that Respondent would be interested in entering into a Consent Order but requesting a lesser penalty than voluntary license termination if Respondent provided proof that the escrow account was replenished. Respondent's attorney then provided a bank statement showing that the full amount of the only earnest money deposit had been returned to the escrow account. Respondent's attorney further stated that the escrow account is now fully funded and there is no other money belonging to others which is unaccounted. In light of this new information, this matter is being represented to the Commission to determine whether or not, in light of the new information, the Commission is willing to consider revising the terms of the Consent Order.

New Recommendation: Discuss.

DECISION: The Commission voted to reaffirm the provisions of the original Consent Order.

