

TENNESSEE REAL ESTATE COMMISSION MINUTES

JANUARY 8, 2014

The Tennessee Real Estate Commission convened on Wednesday, January 8, 2014 at 9:02 a.m. in Meeting Room 1A of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, Tennessee 37243. The following Commission Members were present: Chairman William "Bear" Stephenson, Vice-Chairman John Griess, Commissioner Janet DiChiara, Commissioner Wendell Alexander, Commissioner Austin McMullen, Commissioner Grover Collins, Commissioner Gary Blume and newly appointed Commissioner Marcia Franks. Commissioner David Flitcroft was absent from the meeting. Others present: Executive Director Eve Maxwell, Education Director Steve McDonald, Assistant General Counsel Julie Cropp and Administrative Secretary Kelly Hestand.

Ms. Maxwell read the following statement into the record: This meeting's date, time and location have been noticed on the TN Real Estate Commission's website, included as part of this year's meeting calendar, since August 9, 2013. Additionally, the agenda for this month's meeting has been posted on the TN Real Estate Commission's website since Thursday, January 2, 2014. Also, this meeting has been notice on the tn.gov website since Friday, January 3, 2014.

Chairman Stephenson introduced newly appointed Commissioner Marcia Franks and Commissioner Franks told the rest of the Board a little about herself and said she was honored to be serving on the Commission.

The first order of business was the adoption of the agenda for the January 2014 Commission meeting. Chairman Stephenson noted that a vote on adopting Robert's Rules of Order needed to be added to the agenda immediately following the approval of the minutes. **Commissioner McMullen made a motion to adopt the agenda for the January 2014 meeting as amended; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

The next order of business was the adoption of the November and December 2013 meeting minutes. **Commissioner Collins made a motion to approve the November and December 2013 meeting minutes; seconded by Commissioner DiChiara; Commissioner Blume made a friendly amendment to make a small change to amend language in both month's minutes that referred to Commissioner Haynes as Vice-Chairman instead of Commissioner; seconded by Commissioner Griess; vote on motion as amended: 7 yes; 0 no; Commissioner Franks abstained since she was not yet appointed to the Commission and was not present at those meetings; motion carried.**

Chairman Stephenson called for a motion regarding adopting Robert's Rules of Order.

Commissioner DiChiara made a motion adopt Robert's Rules of Order as standard operating procedure for Commissioner business; seconded by Commissioner McMullen; unanimous vote; motion carried.

RULEMAKING NOTICE DRAFT DISCUSSION

Ms. Cropp presented a draft of proposed rules for the purpose of discussion amongst the Commission. These rule drafts included amendments to multiple existing rules as well as the addition of several drafted potential new rules. Ms. Cropp asked if the Commissioner preferred to take each item one by one. **Commissioner Griess made a motion to take each item one by one; seconded by Commissioner Alexander; unanimous vote; motion carried.** The Commission engaged in a discussion regarding each rule draft, recommending changes to some of the drafts and accepting some rule drafts as written for purposes of moving forward with the rulemaking process. The Commission then performed an analysis, including, but not limited to, the Regulatory Flexibility Analysis, regarding the proposed rules.

Ms. Cropp performed the Regulatory Flexibility Act Analysis with the Board.

Regulatory Flexibility Act: Pursuant to the Regulatory Flexibility Act of 2007 (T.C.A. § 4-5-401 et seq.), prior to initiating the rulemaking process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-203(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

REGULATORY FLEXIBILITY ANALYSIS: (from T.C.A. § 4-5-402(b))

(1) The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules

Commissioner McMullen made a motion that with respect to the rules proposed; there will be no known overlap, duplication, or conflict with other federal, state, or local governmental rules; seconded by Commissioner DiChiara; unanimous vote; motion carried.

(2) Clarity, conciseness, and lack of ambiguity in the rule

Commissioner McMullen made a motion that the proposed rules are clear, concise, and unambiguous and further, the proposed rules are not open to different interpretations; seconded by Commissioner DiChiara; unanimous vote; motion carried.

(3) The establishment of flexible compliance and reporting requirements for small businesses

Commissioner McMullen made a motion that these proposed rules provide uniform and reasonable requirements, both for licensees of the Tennessee Real Estate Commission, as well as those individuals who wish to be licensed with the Tennessee Real Estate Commission and the proposed rules assist with ensuring the welfare and safety of the citizens of Tennessee; seconded by Commissioner DiChiara; unanimous vote; motion carried.

(4) The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses

Commissioner McMullen made a motion that the the proposed rules will not be effective until a rulemaking hearing is held (which is open to the public for comment) and ninety (90) days have passed after filing with the Secretary of State any rules which are adopted by the Tennessee Real Estate Commission at said rulemaking hearing and therefore, any individuals affected by these rules will have notice and an adequate period of time to ensure compliance with the requirements of the rules and furthermore, the schedules and deadlines contained within the rules are friendly for various compliance and reporting requirements; seconded by Commissioner DiChiara; unanimous vote; motion carried.

(5) The consolidation or simplification of compliance or reporting requirements for small businesses

Commissioner McMullen made a motion that the proposed rules, some of which amend current rules and some of which are new rules, are intended to provide clarification are not intended to or expected to complicate compliance or reporting requirements for small businesses; seconded by Commissioner DiChiara; unanimous vote; motion carried.

(6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule

Commissioner McMullen made a motion that many of the proposed rules do not include design or operational standards and any rules involving design or operational standards, such as the rule amendments to the escrow and trustee account rule and the advertising rule, incorporate such standards in order to ensure the health, safety, and well-being of the citizens of Tennessee which, it is not believed, could be adequately accomplished through the use of performance standards; seconded by Commissioner DiChiara; unanimous vote; motion carried.

(7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs

Commissioner McMullen made a motion that the proposed rules do not result in the unnecessary creation of entry barriers or other effects that would stifle entrepreneurial activity, curb innovation, or increase costs; seconded by Commissioner DiChiara; unanimous vote; motion carried.

OTHER CONSIDERATIONS:

(1) Does the rule make it better to do business in Tennessee?

Commissioner McMullen made a motion that the proposed rules do make it better to do business in Tennessee because the proposed rules will be clarifying the requirements for licensees of the Tennessee Real Estate Commission in order to ensure the welfare and safety of the citizens of Tennessee; seconded by Commissioner DiChiara; unanimous vote; motion carried.

(2) Does the rule make it easier to create jobs in Tennessee?

Commissioner McMullen made a motion that the proposed rules are unlikely to have a foreseeable negative impact on job creation in Tennessee; seconded by Commissioner DiChiara; unanimous vote; motion carried.

(3) Is it essential and effective?

Commissioner McMullen made a motion that the proposed rules are essential and effective as they seek to clarify the responsibilities of licensees and applicants for licensure in order to better protect the welfare and safety of the citizens of Tennessee; seconded by Commissioner DiChiara; unanimous vote; motion carried.

(4) Who does it affect?

Commissioner McMullen made a motion that the proposed rules affect licensees of the Tennessee Real Estate Commission, some potential applicants for licensure, as well as citizens of the State of Tennessee; seconded by Commissioner DiChiara; unanimous vote; motion carried.

(5) Is the rule a positive move?

Commissioner McMullen made a motion that the proposed rules are a positive move. These proposed rules seek to further specify the responsibilities and duties of licensees as well as clarify existing rules in order to protect the welfare and safety of the citizens of the State of Tennessee and also the Military Applicant rule seeks to streamline the application and renewal process for affected individuals; seconded by Commissioner DiChiara; unanimous vote; motion carried.

(6) Is it outcome-based (i.e. does it have a measurable, positive outcome)?

Commissioner McMullen made a motion that the proposed rules are outcome-based and will have a measurable, positive outcome and the Tennessee Real Estate Commission expects to receive fewer questions regarding the responsibilities and duties of licensees as well as clarify some of the existing provisions found within the statutes and rules of the Tennessee Real Estate; seconded by Commissioner DiChiara; unanimous vote; motion carried.

Commissioner McMullen made a motion to move forward with the drafted rules as they have been amended and proposed today; seconded by Commissioner DiChiara; unanimous vote; motion carried.

Ms. Cropp advised the Commission that SB1712/HB1387* had been filed with the legislature relating to real estate brokers filing interpleader actions in general sessions court without an attorney.

Mr. Robyn Ryan, Assistant General Counsel and TREC's Litigation Attorney, advised the Commission that the formal hearing that was scheduled for the next day had been continued and she was planning on putting it before them at the February meeting.

EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR

Mr. McDonald presented the Courses for Commission Evaluation for January 2014. **Commissioner Griess made a motion to approve the Courses for Commission Evaluation J1 through J16; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

Mr. McDonald presented the Courses for Commission Discussion for January 2014. The Courses, J17 & J18, are Reverse Mortgage courses, "Working with Seniors as Sellers and Buyers" by Provider, Fearnley, Martin & McDonald, PLLC and "Working with Seniors as Sellers and Buyers" by Provider, GCAR with instructor Cathy McDaniel; a previously approved instructor. **Commissioner Griess made a motion approve Courses J17 & J18; seconded by Commissioner DiChiara. Commissioner Alexander made a substitute motion to defer until a representative**

from the AG's office can come and address the Commission regarding Reverse Mortgages; seconded by Commissioner Collins; roll call vote: 2 yes, 6 yes; motion failed. Chairman Stephenson called for the vote on the original vote by Commissioner Griess and DiChiara. The vote was 6 yes, 2 no (Commissioner Alexander and Commissioner Collins voted no); motion carried. Mr. McDonald presented course J19, "TN Principles and Practice" by Provider, Monica Wilder. Mr. McDonald explained that Ms. Wilder holds Broker license #306093 and was requesting approval for teaching a pre-license course without 5 years of experience as a Broker. He further explained that her Post 120 hours runs from 10/22/13 to 10/21/16 and she has been actively licensed since 9/19/11. **Commissioner DiChiara made a motion to not approve the course because Ms. Wilder lacks the required experience; seconded by Commissioner Franks; unanimous vote; motion carried.**

INSTRUCTOR REVIEW

Sally Cummings of TAR® (1110) requests the approval of Larry Carroll to teach ABR – Day 2 (#7177) and SRES Specialist (#5367).

Commissioner DiChiara made a motion to approve the above instructor; seconded by Commissioner Collins; unanimous vote; motion carried.

Chairman Stephenson recessed the meeting for lunch at 11:30 a.m. and reconvened the meeting at 1:11 p.m.

INFORMAL APPLICANT APPEARANCE

Charles Zachary Doak, applicant, appeared with his potential principal broker Randall Fuller of Blackwell Realty and Auction in Lebanon, Tennessee. Mr. Doak disclosed to the Commission a conviction of Theft Under \$500.00. **Commissioner DiChiara made a motion to approve Mr. Doak's request; seconded by Commissioner Franks; unanimous vote; motion carried.**

LEGAL REPORT, JULIE CROPP, ASSISTANT GENERAL COUNSEL

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

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

Ms. Cropp re-presented the following case because she obtained new information prior to the meeting and she was asked by the Respondent to present the new information even though it was not on her original Legal Report.

- 2013013981 -

Commissioner McMullen made a motion to allow counsel to allow new information received; seconded by Commissioner DiChiara; vote; 7 yes; 0 no; Commissioner Collins passed; motion carried. Commissioner Alexander made a motion to reaffirm its original decision from the December 2013 meeting to issue a Consent Order with a civil penalty of \$1,500.00 for failing to respond to a complaint filed with the Commission in violation of T.C.A. § 62-13-312(b)(14) and 62-13-313(a)(2) and misleading or untruthful advertising in violation of T.C.A. § 62-13-312(b)(4) plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order; seconded by Commissioner Blume; vote: 7 yes, 0 no; 1 abstained (Commissioner Franks abstained because she was not yet on the Commission at the December meeting); motion carried.

- 1) 2013009941 &
- 2) 2013009942 – Commissioner McMullen made a motion to accept legal counsel's recommendation to Close the complaint; seconded by Commissioner Collins; unanimous vote; motion carried.
- 3) 2013011511 &
- 4) 2013013911 &
- 5) 2013015201 – Commissioner Griess made a motion to accept legal counsel's recommendation to issue a Consent Order for voluntary and permanent license surrender for failing to respond to a complaint filed with the Commission in violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-313(a)(2), failing to timely notify the Commission of a change of location of the office in violation of T.C.A. § 62-13-309(a)(3), and failing within a reasonable time to account for or remit money coming into the licensee's possession that belongs to others in violation of T.C.A. § 62-13-312(b)(5); seconded by Commissioner Franks; unanimous vote; motion carried.
- 6) 2013014711 – Commissioner DiChiara made a motion to have Commissioner Blume take the file for review and report back to the full Commission at the February meeting; seconded by Commissioner Alexander; vote: 2 yes (DiChiara, Alexander), 5 no (McMullen, Collins, Griess, Blume, Franks); Chairman Stephenson did not vote; motion failed. Commissioner McMullen made a motion to accept legal counsel's recommendation to dismiss; seconded by Collins; vote: 4 yes (Franks, McMullen, Collins, Griess), 4 no (Alexander, Blume, DiChiara, Stephenson); motion failed because of tie vote. Commissioner DiChiara made a motion to have Commissioner Blume take the file for review and report back to the full Commission at the February meeting; seconded by Commissioner Alexander; vote: 4 yes (Alexander, Griess, DiChiara, Stephenson; 3 no (Franks, McMullen, Collins); 1 abstained (Commissioner Blume); motion carried.

- 7) 2013015291 &
- 8) 2013017771 &
- 9) 2013022141 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty of \$3,000 for unlicensed activity in violation of T.C.A. §§ 62-13-103 and 62-13-301, said order to also include order to cease and desist all unlicensed activity; seconded by Commissioner Franks; unanimous vote; motion carried.
- 10) 2013015431 – Before Ms. Cropp finished reading her entire synopsis, Commissioner Collins made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner McMullen; vote: 2 yes, 5 no; motion failed. Ms. Cropp continued reading her synopsis. Commissioner Franks made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Griess; unanimous vote; motion carried.
- 11) 2013015501 – Commissioner McMullen made a motion to accept legal counsel’s recommendation to issue a Consent Order with a civil penalty of \$500 for unlicensed activity in violation of T.C.A. §§ 62-13-103 and 62-13-301, said order to also include order to cease and desist all unlicensed activity; seconded by Commissioner Collins; unanimous vote; motion carried.
- 12) 2013015591 – Commissioner Blume made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Griess; unanimous vote; motion carried.
- 13) 2013015941 &
- 14) 2013015942 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Blume; unanimous vote; motion carried.
- 15) 2013016061 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Franks; unanimous vote; motion carried.
- 16) 2013016121 &
- 17) 2013016122 – Commissioner Blume made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 18) 2013016141 – Commissioner Alexander made a motion to issue a Consent Order with a civil penalty of \$1,000 for a violation of Rule 1260-02-.02(3) and also require Respondent to complete four (4) hours of continuing education in ethics plus attendance by Respondent be required at one (1) entire regularly scheduled meeting of the Commission, both within one hundred eighty (180) days of Respondent’s execution of Consent Order; seconded by Commissioner Griess; unanimous vote; motion carried.
- 19) 2013017501 – Commissioner Franks made a motion to accept legal counsel’s recommendation send a Letter of Warning regarding Rule 1260-02-.33 outlining Gifts and Prizes; seconded by Commissioner Alexander; no vote; opened to discussion; Commissioner McMullen made a motion to amend to issue a Consent Order with a civil penalty of \$250 for violations of Rules 1260-02-.12(5)(b) and 1260-02-.33 plus

- attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order; seconded by Commissioner DiChiara; amendment passed unanimously; Ms. Cropp advised that the Letter of Warning would not apply because you would not send a Letter of Warning and a Consent Order because the facts would be outlined in the Consent Order; motion as amended passed unanimously. Commissioner McMullen made a motion to open a complaint against the Complainant from #19 (#2013017501) for violating Rules 1260-02-.12(5)(b) and 1260-02-.33; seconded by Commissioner Griess; unanimous vote; motion carried.
- 20) 2013016191 – Commissioner DiChiara made a motion to accept legal counsel's recommendation to Close the complaint; seconded by Commissioner Franks; unanimous vote; motion carried.
- 21) 2013016361 – Commissioner Franks made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Griess; unanimous vote; motion carried.
- 22) 2013017141 &
- 23) 2013018231 – Commissioner DiChiara made a motion to accept legal counsel's recommendation to Close and refer to district attorney for continuing to act as a licensee after license has been revoked; seconded by Commissioner Franks; unanimous vote; motion carried.

Ms. Cropp presented the Commission with the Consent Order Log and asked if the Commission had any questions and they did not.

Commissioner McMullen left the meeting and did not return at 3:32 p.m.

EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR

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

COMPLAINT STATISTICS REPORT

Ms. Maxwell presented complaint statistics to the Commission. As of December 31, 2013, TREC had a total of 112 open complaints. There were 22 new complaints in December 2013. There were 101 complaints in the legal department and 11 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2013-2014 is 179. The total civil penalties that were collected in December 2013 were \$25,000.00.

There was a discussing about whether we could print/publish a prominent list of licensees whose licenses have been revoked. Ms. Cropp stated that she would have to look into if that is possible and if yes, where we could do so. Ms. Maxwell added that it would be good to find a way to get that information to the general public and not just licensees.

LICENSING STATISTICS

Ms. Maxwell presented licensing statistics for the month of December 2013. As of December 30, 2013, there were 24,085 active licensees, 950 inactive licensees and 8,271 retired licensees. There were 3,913 active firms and 207 retired firms. There were 212 new applications approved in December 2013. Further, she presented a comparison of total licensees for individuals (active, retired and inactive) and firms in December of 2008 – 2013. She reported on each state with a licensed Tennessee firm or firms and the number of those firms in each state. She presented a comparison chart of applications approved and examination taken. She also presented license renewal percentages and the average number of licenses issued per month in 1997 and 2000 – 2013, firms closed or retired from 2008 – 2013 and the applications approved from 2008 – 2013.

ERRORS & OMISSIONS INSURANCE UPDATE

Ms. Maxwell updated the Commissioners on the number of suspensions. She advised that there are 499 in E&O suspension. Of that 499, 17 are Principal Brokers and of those 17, 8 are in Tennessee and 11 are out of state.

FINGERPRINTING UPDATE

Ms. Maxwell gave a brief update on the fingerprinting process and how it was going for the first week of the new program. She stated that there were only a few in so far (15) but, of course, expects it to pick up.

TESTING CONTRACT/RFP

Ms. Maxwell and Ms. Cropp explained to the Commission that the attorneys that do the testing RFP asked them to ask the Commission to please consider having a five year term instead of a two year base contract with one year extensions; as they voted to accept at the October 2013 meeting. Ms. Cropp explained that they told her that it is very difficult administratively to handle a two year contract with extension and when you have a longer contract, it increases the field of contractors that are interested and if there is a reason to terminate the contract, then that can be done. **Commissioner Griess made a motion that the testing contract be offered with a five year base contract; seconded by Commissioner Griess; unanimous vote; motion carried.**

SUBJECT MATTER EXPERTS SUMMARY

Ms. Maxwell gave an overview of the Subject Matter Experts Committee that met recently. Following is a list of those who participated and information she presented in written form to the board members regarding the process and the outcomes.

Participants:

- *Brenda Brewster – Knoxville, Broker, Century 21 Select Properties*
- *Rex Brown - Tullahoma, Broker, Coffee County Realty & Auction Co.*
- *Phillip Cantrell – Franklin, Broker, Benchmark Realty, LLC*
- *John Giffen - Franklin, Principal Broker, Benchmark Realty, LLC*
- *Bryan Kendrick - Seymour, Broker, Re/Max Preferred Properties*
- *Lucy Smith - Brentwood, Affiliate Broker, Fridrich and Clark*
- *Eve Maxwell - TREC-Executive Director)*
- *Steve McDonald - TREC Education Director)*
- *Julie Cropp - TREC Asst General Counsel)*
- *Wayne Thorburn - PSI*
- *Carolyn Moore-Mosso - PSI*

“We had a great group of participants acting as subject matter experts (SME) for the PSI exam review. Participating in this process always makes me realize that the majority of our Tennessee licensees are extremely passionate about their profession, are very interested in protecting the public and are very driven to ensure that all licensees are well informed. The primary purpose of the session was to review state specific exam questions from the affiliate broker and broker exam which had statistically been shown to be too easy or too hard. During the review, the SME participants examine the questions, determine if they are necessary and if they are necessary, then the questions are re- structured and/or the answer choices are revised. There were certain portions of the Broker Act and the Rules which many of the SME participants thought needed more emphasis on the exam. These were primarily areas about which many affiliates and brokers seemed to be lacking knowledge and/or correct information. In order to address those problems, we wrote a number of new questions on gifts and prizes, referral fees and advertising.

We greatly appreciated the licensees who devoted an entire day (a long day at that) to participate as an SME. While the exam review is a very rewarding and interesting experience, and critical to the exam process, it is also a task which requires a great amount of focus and thought. Each of the attendees were fully engaged in the task and offered wonderful insight, ideas and suggestions. We had a number of “roundtable” discussions in the process of working on the questions and answers, which I found to be very informative and enlightening. The practical ideas and solutions offered by the participants were very beneficial. I certainly came away with information about some of the areas most confusing to licensees and ways that TREC Might be able to work to overcome this confusion.

It appears that there still remains quite a bit of confusion about inactive vs. retires, when CE is required and when it is not, when compensation must be paid through the PB/firm, the role and advertising of teams, the firm name, all of the responsibilities of the PB and fair housing. The participants all agreed that the principal broker has the ultimate responsibility to mentor and guide their affiliated licensees and to oversee their actions, but they were not always clear on how the PB responsibilities should be implemented.

It was interesting to note that there were a number of questions which those who generally did well on the exam, missed with regularity, as in 98-99% of those who were successful on the exam missed certain specific questions. Those who got some of these questions correct were individuals who did not generally score well on the exams. Many of these "poor predictor" questions were ones which I thought most testers would know. These questions were straightforward and not written as "trick" questions."

ARELLO MID-YEAR MEETING

Ms. Maxwell advised the Commission that upcoming ARELLO Mid-Year Meeting is in San Diego, California and the dates of the meeting are Wednesday, April 9 through Saturday, April 12, 2014. She advised that the trip justification must be sent up to the Administration no later than 60 days before the trip dates; therefore the Commission must determine and vote on who it would like to request to be able to attend the meeting. Commissioner DiChiara stated that she is on the Fair Housing Committee. Education Director McDonald is Co-Chair of the Exam Accreditation Committee and Director Maxwell is Chair of District 2 of ARELLO. Chairman Stephenson asked if we could still only ask for four people total to attend. Ms. Maxwell stated that when Assistant Commissioner Giannini appeared before the board several months earlier, he stated that the request could be submitted and include proper justification why each person would like to attend and it would be considered on a case by case basis. After discussion it was determined that staff members Eve Maxwell, Steve McDonald and Julie Cropp would be submitted and board members Janet DiChiara, Marcia Franks and Gary Blume would be submitted. **Commissioner Alexander made a motion to seek approval for Executive Director Eve Maxwell, Education Director Steve McDonald, Assistant General Counsel Julie Cropp, Commissioner Janet DiChiara, Commissioner Marcia Franks and Commissioner Gary Blume with the Commissioners also able to attend the Commissioners College; at least the two newest members (Franks & Blume); seconded by Commissioner Griess; unanimous vote; motion carried.**

Commissioner DiChiara made a motion to order a plaque to present to former Commissioner Michelle Haynes to honor her service to the Tennessee Real Estate Commission; seconded by Commissioner Franks; unanimous vote; motion carried.

Commissioner Alexander made a motion to defer the Timeshare Industry Overview report until the February meeting; seconded by Commissioner Blume; unanimous vote; motion carried.

Ms. Maxwell advised the Commission that there was a copy of the budget on their iPads.

The Commissioners made Commissioner Reports.

Chairman Stephenson adjourned the meeting on Wednesday, January 8, 2014 at 4:12 p.m.



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE

OFFICE OF LEGAL COUNSEL

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MEMORANDUM

TO: TENNESSEE REAL ESTATE COMMISSION

FROM: JULIE CROPP, Assistant General Counsel

TREC Meeting
January 8, 2014
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SUBJECT: JANUARY LEGAL REPORT

DATE: January 8-9, 2014

***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.**

2013013981

Opened: 8/22/13

First License Obtained: 10/23/85

License Expiration: 11/8/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: 201101233 – Closed \$1,000 CO (failure to supervise E&O)

December 2013 Meeting:

Complainant is the designation coordinator for a real estate organization where Respondent (principal broker) was formerly a member. Complainant states that the Respondent had formerly earned a designation through Complainant's organization but states that Respondent discontinued Respondent's membership several years ago. Complainant states that Respondent continues to use the designation and states that Complainant has contacted Respondent three (3) times asking Respondent to either discontinue using the designation or reinstate the membership. Complainant also provided copies of multiple written requests made by Complainant to Respondent, which were sent prior to filing the complaint and which notified Respondent of Respondent's expired designation and provided information regarding reinstating the membership or instructed Respondent to stop using the designation if Respondent chose to remain inactive. Complainant also attached screen shots from websites in which the designation was utilized while Respondent's membership was expired. The screen shots note the designation along with Respondent's name and other information.

Respondent submitted no response to the complaint, which was sent to the firm address on file with the Commission and signed for by an individual there.

Complainant later sent additional information stating that Respondent contacted Complainant and resolved the issue by reinstating Respondent's membership, so Respondent is now entitled to utilize the designation.

Recommendation: Consent Order for \$1,500 for failing to respond to a complaint filed with the Commission in violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-313(a)(2) and misleading or untruthful advertising in violation of T.C.A. § 62-13-312(b)(4) plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.

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

*It was verbally reported to the Commission by legal counsel that the Respondent in this matter had contacted legal counsel by phone providing information that the reason for Respondent's failure to respond to the complaint was due to the fact that, as soon as the complaint was filed with TREC, Respondent contacted the Complainant (a well-established designation organization) and had rectified the situation with Complainant and was told at that time by Complainant that the issue was resolved and Complainant would contact TREC and resolve the issue with TREC. In light of this new information and Respondent's request that the Commission reconsider the matter based on these circumstances and the assurances from this Complainant, legal counsel provided this additional information to the Commission for possible reconsideration.

Decision: The Commission voted to reaffirm its original decision from the December 2013 meeting.

1. **2013009941**
Opened: 6/18/13

First License Obtained: 8/31/81

License Expiration: 8/21/14

E&O Expiration: 1/1/15

Type of License: Broker

History: No Prior Disciplinary Action

2. **2013009942**
Opened: 6/18/13

First License Obtained: 8/5/68

License Expiration: 12/25/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant was the joint owner of a home with Complainant's girlfriend, and, when the relationship ended, the court ordered the property sold at public auction in September 2011. Complainant contacted Respondent 1 (broker; Respondent 2 is Respondent 1's principal broker) and asked Respondent 1 to purchase Complainant's home at auction because Respondent 1 was an investor. Complainant then planned to re-purchase the property. Complainant states that Respondent 1 told Complainant that Respondent 1 knew an investor who was willing to purchase the home at the court-ordered sale, and Respondent 1 stated that the investor's fee would be five thousand dollars (\$5,000), but the day before the public auction Respondent 1 told Complainant that the investor would require a ten thousand dollar (\$10,000) fee. Complainant questions the amounts referenced on the HUD statement from the 2011 sale of the home to the investor. After the sale to the investor, Complainant and the investor immediately entered into a Purchase and Sale Agreement (with Complainant as the buyer) which provided that Complainant would lease the property until closing. Complainant states that the rental payments were given to the investor through Respondent 1, and the rental payments were supposed to be used to cover the interest on the investor's mortgage. Complainant states that Complainant was not aware that the investor had a variable interest rate loan and the interest later increased. When the second closing occurred with Complainant re-purchasing the home, Complainant again raised issues with the numbers on the HUD statement. After the closing, Complainant states that Complainant was given a much smaller monetary amount than Complainant was initially told, and Complainant believes that this was due to the acts of several parties, including but not limited to Respondent 1 and the bank who had the investor's loan on the subject property.

Respondents submitted a response through an attorney stating that Complainant contacted Respondent 1 about buying a home but Respondent 1's role in this transaction was not as an investor. Respondents state that Respondent 1 was asked to help Complainant find an investor to purchase Complainant's home that was to be sold at auction by court order, which was done, and later when Complainant re-purchased the home, Respondent 1 received a standard commission for that sale. Ultimately an investor negotiated an agreement with Complainant with the intent being that Complainant would later buy back the house. Respondents state that Respondent 1 had no agreement to receive payment relating to the auction, and it is believed that the buyer and Complainant had an agreement for Complainant to pay the buyer to purchase the house at auction and pay fees associated with the buyer purchasing the house with Complainant later buying the house back from the buyer. After the buyer purchased the home at auction, a closing occurred in November 2011, and, on the same day, the buyer and Complainant entered into a Purchase and Sale Agreement for the same property with Complainant leasing the property until closing. Respondent 1 was the transaction broker/facilitator for this transaction as confirmed by a signed Confirmation of Agency Status form. Respondents state that Complainant was going to live in the house until closing and make repairs, and then an appraisal would be performed to determine how much Complainant could borrow to purchase the home. Respondents state that no representations were made regarding financing, who would finance the home, closing costs, or how much money Complainant would receive at closing. Respondents state that Complainant did

not make all of the intended repairs and there was a lower than anticipated appraisal value. At the closing of the sale of the home from the buyer to Complainant which occurred in May 2012, the buyer received a settlement which was reflected on the Settlement Statement and the buyer paid Complainant an amount agreed upon by those parties. Respondents state that if Complainant is unhappy with the amount, then that is an issue that did not involve Respondents, and any issues as to what Complainant believes should have been paid to Complainant by the buyer are between those parties and do not involve Respondents.

Both parties have attorneys who submitted numerous documents to assist in the outline of the events that transpired relating to this rather involved transaction. Based on a review of the documents and information submitted, while it appears that there may be the potential for a court action involving multiple parties including parties other than the Complainant and Respondent 1, it does not appear at this time that there was a violation of TREC's laws and/or rules by Respondents.

Recommendation: Close.

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

3. 2013011511
Opened: 7/16/13

First License Obtained: 4/19/93

License Expiration: 7/18/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: 2013013911 – Under review by legal

2013015201 – Under review by legal

4. 2013013911
Opened: 8/16/13

First License Obtained: 4/19/93

License Expiration: 7/18/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: 2013011511 – Under review by legal

2013015201 – Under review by legal

5. 2013015201

Opened: 9/6/13

First License Obtained: 4/19/93

License Expiration: 7/18/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: 2013011511 – Under review by legal

2013013911 – Under review by legal

Three (3) separate complaints opened against the same Respondent (principal broker).

The first complaint (2013011511) was opened based on information received from an anonymous individual who stated that Respondent was operating a property management firm with an expired firm license and that Respondent was operating the firm office in a residential location. Respondent attached a photo which did not have a date stamp or clearly show the location where the picture was taken. A complaint was opened based on the information and a copy sent to Respondent. Respondent submitted no response to this complaint, which was sent to the firm address on file with the Commission and signed for by an individual there. Soon thereafter, it was discovered that Respondent's firm license was not actually expired but was showing up in the system as such because when Respondent renewed the firm license after the expiry date, the system attached an additional late fee due to the date on which the payment processed, thus inaccurately showing an expired firm license at first glance.

The second complaint (2013013911) was originally opened as an Agreed Citation sent to Respondent for failure to notify the Commission of an address change within ten (10) days as required by statute. The same anonymous source from above furnished more dated pictures indicating that Respondent's firm had moved to a new location and had not notified TREC of the firm address change. The Agreed Citation was returned by the postal service with a notation of the new address (same address provided by the anonymous source). The Agreed Citation was then sent to Respondent at the purported new address, which was returned "unclaimed."

The third complaint (2013015201) is a consumer complaint against Respondent. Complainant is a property owner, and Respondent was Complainant's previous property manager. Complainant states that Complainant attempted to cancel the property management agreement with Respondent's firm after Complainant did not receive rent money from Respondent for two (2) months, but Respondent was unresponsive. Complainant has hired a new firm to handle the property management but states that Respondent will not turn over rents collected, hand over

keys, pay back deposits to tenants who moved out, or forward current tenant deposits to the new management company. Complainant provided documentation of some payments which were received by Respondent from various tenants which Complainant says were not turned over to Complainant. The complaint was sent to Respondent's new address and returned "unclaimed."

Because Respondent's last two (2) complaints were returned unclaimed, legal counsel sent additional copies of those complaints to Respondent via regular U.S. Mail and requested an investigation. Legal counsel was contacted by an attorney who stated that he represented Respondent and would attempt to answer the complaints. Respondent's attorney later sent an e-mail to legal counsel for the Commission and the investigator stating that the attorney did not receive the information requested by the investigator from Respondent. The attorney stated that he did not have enough information from Respondent to respond to the complaint. The attorney indicated that Respondent wanted to get out of the property management business.

The investigator visited the firm address on file with the Commission and spoke with the man who lived there who stated that Respondent did not live there. The investigator then went to the address where the anonymous source stated that Respondent was operating the firm and found a sign with the firm name and a telephone number, where no one answered. The investigator took photos of both locations. The investigator then spoke with Respondent's attorney and provided a list of information requested in the investigation request. The investigator never received the requested information but only the aforementioned e-mail from Respondent's attorney.

Recommendation: Consent Order for voluntary and permanent license surrender for failing to respond to a complaint filed with the Commission in violation of T.C.A. §§ 62-13-312(b)(14) and 62-13-313(a)(2), failing to timely notify the Commission of a change of location of the office in violation of T.C.A. § 62-13-309(a)(3), and failing within a reasonable time to account for or remit money coming into the licensee's possession that belongs to others in violation of T.C.A. § 62-13-312(b)(5).

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

6. 2013014711
Opened: 8/13/13

First License Obtained: 1/24/06

License Expiration: 1/23/14

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant was the buyer of a property, and Respondent (affiliate broker) represented the seller. Complainant states the property was listed as a triplex, but, after purchase, Complainant discovered that the property was not a legal triplex and had been rented that way illegally by the previous owner. Complainant also states that Complainant requested a revision to the contract to address a leak in one of the showers and that Respondent represented that the leak was fixed and the provision did not need to be in the contract. Complainant states that, when Complainant first used the shower, water was discovered in the basement and that upon relaying this information, Complainant was told that Respondent/seller were not responsible as the issue was not in the contract. Complainant further states that, after purchase, other leaks were discovered making none of the bathrooms functional, and Respondent refused to address the issue. Complainant further states that, at the final walkthrough, Complainant discovered that a large tree had been cut down and there was long electrical tube exposed. Complainant states that Complainant asked Respondent if the home had any water intrusions from the 2010 flood and was told no and the disclosure was marked as such. Complainant states that the house floods, but Respondent claimed ignorance regarding this issue. Complainant states Respondent should have known many of these issues as Respondent had managed the property on behalf of the seller. Complainant further states that the contract provided that the seller's items would be removed from the property prior to closing, but that, on possession, this was not done, and it took weeks for the for sale sign to be removed.

Respondent states that Respondent did not manage the property and had no dealings with the property prior to listing. Complainant was represented by a licensee, and Respondent states that there were actually two (2) contracts with Complainant, but Complainant terminated the first contract when the seller did not agree to make all repairs requested by Complainant. Respondent states that Respondent was later contacted and informed that Complainant was interested in submitting a new offer with new terms, and a new contract was executed. Respondent states that the property had been rented for several years as three (3) separate units and was referred to as a triplex by the owner, and Complainant had representation and time to evaluate the property, but Respondent never made representations regarding permitting use under current zoning as a triplex. Respondent further states that Complainant became aware of the shower leak when Complainant had an inspection done as part of the first failed contract, and the seller engaged someone to repair the leak. Respondent states that the first contract was terminated by Complainant due to refusal by seller to make a number of repairs, and when the second contract was entered, Respondent informed Complainant's broker that, based on the information Respondent had, the shower had been repaired. Respondent states that Complainant had an inspection period, but no inspections were made until the final walkthrough. Respondent states Respondent was not aware of any longstanding water issues, and Complainant had a contingency period for inspection. Respondent states that at the walkthrough, everyone was surprised that the tree had been cut down, which involved an issue with the bank and insurance company, and Respondent states that the buyer and buyer's agent said they would address the issue, and the parties proceeded to closing. Respondent states that Respondent was not aware of any previous flooding and was not given any information regarding previous flooding of the property.

Respondent states that the seller hired a house cleaner and handy man to address cleaning and removal of items, and Respondent was told that the cleanup and debris removal was complete. Based on the information provided, there does not appear to be a violation by Respondent.

Recommendation: Dismiss.

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

7. **2013015291 (Unlicensed)**
 Opened: 8/23/13

 History: 2013017771 – Under review by legal
 2013022141 – Under review by legal

8. **2013017771 (Unlicensed)**
 Opened: 9/24/13

 History: 2013015291 – Under review by legal
 2013022141 – Under review by legal

9. **2013022141 (Unlicensed)**
 Opened: 11/12/13

 History: 2013015291 – Under review by legal
 2013017771 – Under review by legal

Three (3) separate complaints opened against the same Respondent (unlicensed individual).

In the first complaint (2013015291), Complainant is a property owner who states that Complainant hired Respondent (unlicensed individual) to manage Complainant's rental property. Complainant states that Complainant does not remember signing any documents (and did not receive copies), and Respondent rented the property to a tenant but failed to provide any documentation of expenses or where the money was being spent, but Complainant received different amounts each month from Respondent with no explanation. Complainant hired a new management company but states that Respondent refused to send a copy of the tenant lease agreement or the security deposit to the new company. Complainant attached a copy of the Rental Agreement with the tenant which was between Respondent's company and the tenant (signed by the tenant but not Respondent), which provided for rental payments to go to Respondent's company and that a security deposit would be paid to Respondent's company. Respondent submitted a reply stating that Respondent's company did not have a rental agreement

to manage Complainant's property. Respondent states that Complainant hired a company sharing office space with Respondent to renovate Complainant's property. Respondent states that both Complainant and the tenant separately expressed interest in Respondent's company managing the property, but Respondent told both individuals that Respondent's company only handled HOA management and was not licensed for rental properties. Respondent states that Respondent advised the tenant of Complainant's property, the two connected, and Respondent provided a sample rental agreement for Complainant to use. Complainant provided e-mail chains between Complainant and Respondent referencing Respondent finding a tenant, depositing Complainant's rent funds, and providing a spreadsheet of income and expenses. Based on this information, it appears that Respondent was engaged in unlicensed activity.

In the second complaint (2013017771), Complainant is a property owner who states that Complainant has been attempting for six (6) months to obtain rent checks, invoices, repair receipts, and an accurate budget sheet from Respondent, who has disregarded Complainant's requests. Complainant states that Complainant discovered that Respondent's company is not licensed to manage single family homes. Complainant attached a Rental Property Management/Property Owner Agreement between Complainant and Respondent's company (signed by Complainant but not Respondent) which, in part, provided that Respondent's company would show the property to prospective tenants, process rental applications, collect rents, maintain the property, advertise/market the property, and sign/renew/cancel leases in exchange for a ten percent (10%) management fee. Complainant also provided a copy of a fully executed Rental Agreement with a tenant between Respondent's company and the tenant, which provided for rental payments to go to Respondent's company and that a security deposit would be paid to Respondent's company. Respondent submitted a response stating that Respondent's company has no rental property agreements under contract to date, is not holding any deposits, and does not handle Complainant's rental property and is not collecting rent on Complainant's behalf. The documentation indicates that Respondent was engaged in unlicensed activity.

In the third complaint (2013022141), Complainant is a property owner who states that Complainant hired Respondent's company to handle rental of Complainant's home, and immediately began experiencing problems with the management. Complainant states that rent money was not timely deposited to Complainant, and Respondent refused to provide Complainant a copy of the property management agreement or lease agreement with the tenants. Complainant states that Respondent finally agreed to cancel the management agreement for a fee. Complainant states that Respondent failed to provide paperwork relating to the property management or turn over escrow money or the tenant security deposit, and Complainant got a judgment for the money, but Complainant states that Respondent is unlicensed and had Complainant sign an agreement with another unlicensed company under the guise of a second unlicensed company operated by Respondent. Complainant attached a fully executed Rental Property Management/Property Owner Agreement between Complainant and Respondent's second unlicensed company which, in part, provided that Respondent's company would collect rents, provide accountings to Complainant, maintain the property, advertise/market the property,

and sign/renew/cancel leases in exchange for a management fee. Complainant also provided a copy of a fully executed Rental Agreement which provided for rental payments to go to Respondent's company and that a security deposit would be paid to Respondent's company. Respondent submitted a reply stating that Respondent has ended all rental business, and there was never intent to conduct either unlicensed business in a fraudulent manner. Respondent states that Respondent is not managing any properties under any name and is not holding any deposits. Further, Respondent states that Complainant has been paid in full, Respondent does not handle Complainant's rental property, and Respondent is not collecting rent on Complainant's behalf. The documentation indicates that Respondent was engaged in unlicensed activity.

Recommendation: Consent Order for \$3,000 for unlicensed activity in violation of T.C.A. § 62-13-103 and 62-13-301, said order to also include order to cease and desist all unlicensed activity.

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

10. 2013015431

Opened: 8/16/13

First License Obtained: 9/11/03

License Expiration: 4/13/14

E&O Expiration: 1/1/15

Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainant states Complainant had a lake home that Complainant attempted to sell, and potential buyers who were under contract to purchase the home did not complete the sale due to the home inspection and other issues with the home. Complainant states that Complainant removed the property from the market, updated the interior, and addressed the items within the home inspection. Later, Complainant again listed the home for sale and reviewed the inspection report with Complainant's new listing agent. Complainant states Respondent (affiliate broker) and Respondent's potential buyers requested a viewing, and Complainant and Respondent spoke prior to the potential buyers' arrival. Complainant states that Respondent told Complainant that Respondent knew the neighbors. Complainant states Respondent's potential buyers made an offer and the parties attempted to negotiate a contract. Complainant states that, in these negotiations, Respondent told Complainant's agent that the property was not worth the asking price because Respondent had information regarding the home's previous list price and the previous contract fell through due to the home inspection. Complainant states that Complainant discussed this with Complainant's agent and told that agent about Respondent's previous comment about knowing the neighbors.

Respondent states Respondent did say that Respondent knew the neighbors when meeting with Complainant. Respondent states that Respondent's potential buyers discussed the property and issues including, but not limited to, a shared well and a shared driveway. After this meeting, Respondent states that Respondent spoke with the neighbor about the shared well and other issues, and the neighbor stated that a previous contract fell through due to the home inspection. After this, Respondent states that Respondent's potential buyers still made an offer even after learning this information, and, after multiple counteroffers between the parties, an agreed upon price could not be reached to result in a contract on the house. Respondent further states that Complainant's property disclosure was inadequate in explaining what had occurred with the home. Respondent states that Respondent worked for Respondent's clients' best interest and researched the issues regarding the home and ultimately assisted the clients with finding a home that better met the clients' criteria. Respondent further states that Respondent's potential buyers did not want to pay more than the property's original list price. Based on the information within the file, there does not appear to be a violation by Respondent.

Recommendation: Dismiss.

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

11. 2013015501

Opened: 8/26/13

History: No Prior Disciplinary Action - Unlicensed

Complainant is a licensee who states that Respondent (unlicensed individual) is engaged in unlicensed real estate activity. Complainant includes notes from an unnamed individual who states that Respondent was contacted and stated that Respondent did not have a license but that Respondent showed homes and charged between five thousand (\$5,000) and ten thousand (\$10,000). According to the unnamed person's notes, Respondent stated that Respondent advertised the homes but did not write the contracts (an attorney wrote the contracts and closed the transactions), and Respondent stated that Respondent was told by brokers in the area as well as an attorney that Respondent was doing nothing wrong. A copy of a "for sale by owner" sign is attached, which contains Respondent's telephone number. The notes indicate that Respondent stated that Respondent only opens the doors and sends information to lawyer who drafts documents, and Respondent is paid to unlock the door depending upon the price of the home and how many times Respondent has to show the home before it closes. The unknown individual's notes indicate that Complainant and Respondent had a disagreement regarding homes which were built by Respondent which were formerly sold by Complainant. Complainant submitted additional information stating that Respondent is facilitating transactions by putting out "for sale by owner" signs with Respondent's contact information when Respondent is not the home owner. Complainant states that Respondent facilitates sales by arranging with owners in advance for an

agreed-upon commission for opening doors, giving potential buyers information on the property, and negotiating a contract.

Respondent states that due to health issues, Respondent is removing Respondent's phone number from the one home that Respondent was helping the owners with. Respondent states that Respondent only helped owners with homes that Respondent built by advertising their home "for sale by owner," by letting people in to look at the homes, and by letting people into the homes to do work and repairs. Respondent states that the homeowners facilitated all sales and negotiations through their own means. Respondent states that, with regard to two (2) homes, Complainant would have listed the homes had Complainant not gotten into a conflict with the owners, who no longer wanted to work with Complainant. Respondent states that Respondent does not solicit "for sale by owner" homes, but only helps after homeowners contact Respondent in order to help the owners get the most out of their investment. Respondent states that, if Respondent's health improves, Respondent will consider licensure. Legal counsel contacted Respondent by telephone, who confirmed that Respondent did accept money for performing the services referenced in the response. Specifically, Respondent stated that Respondent received five thousand dollars (\$5,000) from a homeowner who had moved out of state and needed someone local to advertise on the sign, show the house, walk through the home to ensure it was in good condition, etc. Respondent states that Respondent has ceased these activities, and legal counsel could find no information indicating that the activities are ongoing.

Recommendation: Consent Order for \$500 for unlicensed activity in violation of T.C.A. §§ 62-13-103 and 62-13-301, said order to also include order to cease and desist all unlicensed activity.

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

12. 2013015591
Opened: 9/6/13

First License Obtained: 5/3/89

License Expiration: 9/5/14

E&O Expiration: 1/1/15

Type of License: Broker

History: No Prior Disciplinary Action

Complainant was a potential buyer who contacted Respondent (broker) for assistance with finding a home. Complainant states that Complainant sold Complainant's home and was on a

strict budget due to a spouse moving to another country. Complainant states that Respondent told Complainant to contact a lender to discuss what type of mortgage Complainant could obtain. Complainant states that Complainant contacted the lender Respondent referenced and received a pre-approval letter. Complainant states that a home was listed for slightly more than the amount contained within the pre-approval letter, and Respondent contacted the lender to see if Complainant could be pre-approved for the larger amount, which was done. Complainant states the home had multiple offers, and Complainant gave Complainant's best offer, but later increased the offer due to Respondent stating that it would not affect the monthly mortgage amounts by much and Complainant receiving another higher pre-approval letter. Complainant states that Complainant made the offer, which was ultimately accepted, and Complainant was asked by the lender to return additional mortgage documents. Then, Complainant states that Respondent told Complainant that Complainant would have to get the utilities connected and the home de-winterized. Complainant states that the home had numerous plumbing leaks. Complainant states that Respondent notified the listing agent of the leaks, and the seller eventually agreed to carry out the minimum repairs if Complainant agreed to the earnest money becoming non-refundable, which Complainant did not like, but Complainant ultimately signed the addendum with these provisions and an extension on the closing date. Later, Complainant states that Respondent told Complainant that financing was not possible, and the seller was not willing to extend the contract further. Ultimately the sale fell through, and Complainant believes that it is due to the actions of Respondent.

Respondent submitted a response stating that Respondent had no knowledge of Complainant's available funds to purchase a home, but Respondent did suggest that Complainant first contact a lender concerning Complainant's ability to secure a loan. Respondent states that Respondent provided the contact information for a mortgage company but states that Complainant was free to use whatever lender Complainant wanted. Respondent states that the pre-approval letter was contingent upon the lender getting sufficient documentation to support the information given at the time of application. Respondent states that the home Complainant made an offer on was a foreclosure property which had multiple offers. Respondent states that, as the home was a foreclosure, Complainant was responsible for turning on utilities and de-winterizing the home. After inspection, Respondent states that Complainant was still interested in the home, and the lender ordered the appraisal. Respondent states that negotiations began regarding the seller paying for repairs, and Complainant executed an extension and addendum acknowledging the seller's payment of certain repairs and the non-refundable earnest money. Respondent states that Respondent was not aware of problems regarding the income claimed on Complainant's application, and, once Respondent was informed of the issues, Respondent suggested trying another lender. Respondent states that the second lender also had issues with Complainant's income documentation. Respondent states that Respondent worked diligently to help Complainant find a home. Based on the information in the file, it does not appear that there was a violation of TREC's laws and/or rules by Respondent.

Recommendation: Dismiss.

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

13. **2013015941**
Opened: 8/30/13

First License Obtained: 12/23/03

License Expiration: 3/6/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action
14. **2013015942**
Opened: 8/30/13

First License Obtained: 3/24/04

License Expiration: 6/11/15

E&O Expiration: 1/1/15

Type of License: Firm

History: No Prior Disciplinary Action

Complainants are tenants who had a lease agreement with Respondent 2 (firm; Respondent 1 is the principal broker). At the end of their lease, Complainants stayed and rented month to month. Complainants state that, in mid-February 2013, Complainants noticed that the trash was not being picked up, and the trash collectors stated the bill was not being paid. Complainants called Respondent 2 firm and were told that the matter would be resolved. Complainants state that in March 2013, Complainants received a letter from a utility company stating that the services were going to be terminated at the end of the month. Around the same time, Complainants state that a letter was also received from Respondent 2 stating that Respondents were no longer managing the property, and that, beginning on April 1, 2013, payments should be made to the new owner because the building had been sold in a tax sale. Complainants contacted the county and received a letter at the end of March 2013 stating that the property was purchased by the county for non-payment of taxes then offered for sale which was approved in mid-March 2013 and closing should be occurring in 20-30 days at which time the tenants would be contacted by the new owner. The letter also stated that no management company had been authorized to collect rent for the months of January, February and March 2013. Complainants state that they then

contacted Respondent 2 firm and individuals there assured Complainants that their money would be refunded but it has not happened.

Respondent 1 submitted a response on behalf of Respondents stating that Respondents were retained in 2007 by the property owners to perform management services. Respondent 1 states that at no time were Respondents notified of the pending tax sale by either the property owner or the county. Respondent 1 states that Respondents did learn of a pending auction of the property but saw on the tax assessor's website that the property was still in the name of their client. Respondent 1 states that Respondent 1 spoke with an individual from the county who indicated that the county's policy upon taking ownership was to cease utilities and waste services and force tenants to move. Respondent 1 states that Respondent 1 assumed that Respondents would be notified upon change of ownership but received nothing in writing from the county. Respondent 1 states that Respondents continued to monitor the situation on the assessor's website, and Respondents continued operation of services and collection of rents. Respondents attended the auction in mid-February 2013, and, at that auction, Respondent 1 states that Respondent 1 was told that Respondents could not continue to collect rents but were given nothing in writing. When the property was sold, Respondents state that the decision was made to cease involvement, but Respondents were contacted by the new owner who asked for assistance in keeping the property occupied during the transition and closing month. Respondent 1 states that all tenants were told that Respondents were not certain of Respondents' obligation to return rents collected as Respondents had not known of the change of ownership until mid-February and there was no way to get the money back from the original owner, and there was a balance owed to Respondents for the management and care of the property as well as expenses incurred in the interim time. Respondent 1 states that Respondents attempted to keep track of the transaction on a weekly basis but also thought they would receive something in writing from the county. Respondents state they believed their continued care of the property served the interests of the tenants and that tenants received benefits as well. Based on the information within the file, there does not appear to be a violation by Respondents.

Recommendation: Dismiss.

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

15. 2013016061
Opened: 9/17/13
First License Obtained: 12/9/04
License Expiration: 7/30/15
E&O Expiration: 1/1/15
Type of License: Affiliate Broker

History: No Prior Disciplinary Action

Complainants were the sellers of a property, and Respondent (affiliate broker) represented the buyers. Complainants state that Respondent allowed the buyers to take possession of the property prior to Complainants' closing and receiving the sale proceeds. Complainants state that the buyers' walk through was prior to the buyers' closing time (which was to be between 11:00 a.m. and noon), and Complainants were asked for permission for the buyers to park a U-Haul truck on the property prior to closing. Complainants state that Complainants did not agree to allow the truck to be parked on the property and were assured by Respondent that the buyers made other arrangements. Complainants state that, at Complainants' closing, Complainants were informed that the buyers' closing on their own home in another state would not take place until later in the day, and Complainants would not receive the money wire until the next morning. Complainants state that, on the closing date, three (3) U-Haul trucks were parked on the property, and, according to neighbors, people were in and out of the house throughout the day of the closing. Complainants state that, at Complainants' closing, the keys to the home were turned over to Complainants' agent, and, therefore, the keys or access to the home must have been given to the buyers by Respondent. Complainants state that there were items in the home prior to Complainants receiving the funds.

Respondent submitted a response through an attorney stating that Respondent did not allow access to property prior to closing. Respondent states that Respondent met the buyers for the walk through prior to closing, and Respondent took the key from the lockbox with Respondent. At that time, Respondent states that the buyers asked if they could leave their U-Haul truck at the property, and, after checking with Complainants' agent, Respondent told the buyers that Complainants would not allow it (and it was Respondent's understanding that the truck would not be parked at the property). Respondent states that the buyers completed their closing, Complainants completed their closing, and Respondent was informed by the title agent that the sale had funded that afternoon, that the buyers could move in, but Complainants had decided they wanted the funds to be wired in lieu of a check and, due to the timing, the wire transfer would not be completed until the following morning. That afternoon, Respondent states that Complainants' agent indicated that Complainants were upset that the buyers had been moving in all day, but Respondent states that this was impossible because Respondent had taken the key from the lock box and Complainants' agent had the other keys and remotes. Further, Respondent states that the buyers denied moving anything into the home on the day of the closing, but there were two (2) U-Haul trucks parked at the property which the buyers admitted was done against Respondent's instructions. Respondent states that at no time did Respondent give the buyers keys or allow them access, and Respondent specifically advised the buyers not to leave the truck in the driveway of home. It does not appear that there was a violation of TREC's laws and/or rules by Respondent.

Recommendation: Dismiss.

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

- 16. 2013016121**
Opened: 9/5/13
- First License Obtained: 2/25/03**
- License Expiration: 7/4/15**
- E&O Expiration: 7/1/14**
- Type of License: Affiliate Broker**
- History: No Prior Disciplinary Action**
- 17. 2013016122**
Opened: 9/5/13
- First License Obtained: 10/17/05**
- License Expiration: 10/16/15**
- E&O Expiration: 1/1/15**
- Type of License: Affiliate Broker**
- History: No Prior Disciplinary Action**

Complainant was the potential purchaser of a short sale property who was represented by Respondent 2 (affiliate broker). Respondent 1 (affiliate broker) was the listing agent for the subject property. Complainant made an offer which was below the asking price which was contingent upon one hundred percent (100%) VA financing and a satisfactory home inspection. Complainant believes that it was wrongful of Respondents to consult an attorney to assist with negotiating the price of the home although it appears that Complainant signed an agreement acknowledging that Respondents would contact the negotiator. Ultimately the sale did not go through, and Complainant wants Complainant's earnest money back. Complainant also believes that the reason the sale fell through was a scheme on the part of Respondents.

Respondents each submitted responses to the complaint. Respondent 1 (the listing agent) states that the property was listed as a short sale pending third party approval with two (2) lenders involved. Respondents state that, once Complainant and the seller agreed on a sales price, the price was still subject to lender approval, and, therefore, the materials were to be submitted to a third party negotiator to work out the short sale with the two (2) lenders. Respondents state that it was disclosed in writing and signed by both agents, the seller, and Complainant that the one

percent (1%) fee to the short sale negotiator would come from the contract amount at closing. Respondents state that the banks countered with a higher offer, and Complainant would not agree to increase the purchase price. Once the Earnest Money Disbursement and Release form was signed, Respondents state that the earnest money check was sent to Respondent 2, who sent the earnest money check to Complainant. Respondent 1 states that Respondents 1 and 2 had never worked together before and did not know each other until this transaction, did not have any interest in the property, and have never tried to buy the property in any way. Respondents state that the property has not sold, no commission has been earned by either Respondent, and neither Respondent has paid money to anyone for any reason regarding the property. Respondent 2 states that Complainant contacted Respondent 2 and stated that Complainant was unhappy because Respondents should have known what the purchase price of the home was. Based on the information within the file, there does not appear to be a violation by Respondents.

Recommendation: Dismiss.

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

18. 2013016141

Opened: 9/5/13

First License Obtained: 3/2/11

License Expiration: 3/1/15

E&O Expiration: 1/1/15

Type of License: Broker

History: No Prior Disciplinary Action

Complainant, the owner of a firm, released Respondent (broker) as principal broker of Complainant's firm, and Complainant reinstated Complainant as principal broker of the firm. Complainant states that Respondent became angry, withdrew listings from the MLS, and contacted the sellers instructing them to withdraw their listing contracts with the firm and re-list with Respondent at Respondent's new firm. Complainant also alleges that Respondent removed a lockbox from someone's home, and when the two parties met to return the key, it appears that Complainant and Respondent got into an altercation. Complainant states that, on the day following the release of Respondent, the firm received multiple contacts from sellers who stated that Respondent informed them that Respondent had been fired. According to Complainant, some sellers entered into a new listing agreement with Respondent at Respondent's new firm, and some sellers have not entered into a new listing agreement with anyone. Complainant attached documentation which included multiple written requests from sellers asking that their listings be withdrawn as the sellers understood that Respondent had been fired and the sellers no longer wished to be represented by Complainant or Complainant's company. Complainant also attached

copies of a sign that does not include the entire firm name as well as what appears to be a post card which does not include the entire firm name or firm telephone number.

Respondent submitted a response describing what appears to be a personal disagreement between Complainant and Respondent. Respondent states that Complainant was the owner of the firm, and Respondent was the principal broker. Respondent states that Respondent was asked to sign a TREC 1 form releasing Respondent as principal broker of the firm, and Respondent was told to get Respondent's signs off of Complainant's properties and remove all of Respondent's belongings from the office, and the two parties got into an altercation. Respondent then states that Respondent removed yard signs, brochure boxes, and key boxes off of the listings that Respondent had listed as principal broker. Respondent states that Respondent then withdrew the listings from the MLS because Respondent had not yet signed the TREC 1 form removing Respondent as principal broker. Respondent states that Respondent informed the owners why she was removing the signs and lockboxes at the instruction of Complainant, and many clients asked where Respondent would be going and asked how they could move their listings to continue working with Respondent at Respondent's new firm, which was the reason Complainant received the numerous written requests to have listings withdrawn. Regarding advertising, Respondent states that Respondent has corrected the sign issue and post cards all include the firm number, which Respondent states was a mistake with regard to some post cards.

Recommendation: Letter of warning regarding Rule 1260-02-.02(3) which states that when a licensee terminates affiliation with a firm, the licensee shall neither take nor use any property listings secured through the firm unless authorized by the principal broker and Rule 1260-02-.12 regarding advertising.

DECISION: The Commission voted to authorize a Consent Order for \$1,000 for a violation of Rule 1260-02-.02(3) and complete four (4) hours of continuing education in ethics plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission, both within one hundred eighty (180) days of Respondent's execution of Consent Order.

19. **2013017501**
 Opened: 9/19/13

First License Obtained: 5/3/99

License Expiration: 5/11/15

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant is a broker who was the Respondent in the previous complaint presented. Respondent (principal broker) was the Complainant in the previous matter presented. Complainant states that Respondent's firm has been running advertisements (and provides advertisement copies) which offer a free one (1) year home warranty if an individual buys or sells a home with the firm. Complainant states that the advertisement does not list the basic disclosure requirements as required by Rule 1260-02-.33 (Gifts and Prizes Rule) regarding the details of the offer but only states that some stipulations apply. Complainant states that this is a bait and switch tactic, and the only way to know the stipulations is to schedule a listing or buyer appointment, where the individual would find that the free home warranty only applied under certain circumstances.

Respondent submitted a response stating that Respondent's firm no longer advertises or offers this promotion, and the disclosure has changed from the disclosure provided by Complainant. Respondent states that Respondent was told that Respondent could advertise in this manner so long as the advertisement specifically listed that "some stipulations apply" in the advertisement. Respondent also attached copies of Complainant's ads while at Respondent's firm which included the same inducement. Respondent states that this complaint is in retaliation for Respondent's previous complaint against this Complainant.

Recommendation: Letter of warning regarding Rule 1260-02-.33 outlining Gifts and Prizes.

DECISION: The Commission voted to authorize a Consent Order for \$250 for violations of Rules 1260-02-.12(5)(b) and 1260-02-.33 plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.

20. 2013016191
Opened: 9/25/13

History: No Prior Disciplinary Action - Unlicensed

Complainant states that Respondent (unlicensed individual) is "buying, selling and renting properties in Tennessee without proper licensing." Complainant submitted some information from the internet regarding Respondent. Said information appears to indicate that Respondent is acting as an investor. Additionally, information was obtained that Respondent is an investor who has spoken at meetings for an investor's group.

Respondent submitted a reply stating that Respondent is a real estate investor who buys and sells properties in which Respondent has an ownership interest. Based on the information provided and obtained, there does not appear to be sufficient information to suggest that Respondent is engaged in unlicensed activity.

Recommendation: Close.

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

21. 2013016361

Opened: 9/18/13

First License Obtained: 10/3/06

License Expiration: 11/15/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

Complainant was the purchaser of a home who was represented by a licensee, and Respondent (principal broker) represented the seller of the home. Complainant states that Complainant purchased a home with a stainless steel stove and refrigerator to remain with the home which were present in the walk through but removed later by the seller and replaced with an older white refrigerator and an older white/yellow stove. Complainant states that Respondent first stated that Respondent did not know where the seller was then refused to give Complainant's broker the contact information for the seller. Complainant contacted the police with regard to the seller's actions. Complainant states that Complainant does not think that Respondent was involved in the theft of the appliances but does think Respondent was protecting the seller by not giving Complainant information about the seller's whereabouts.

Respondent states that Respondent was out of town when the problem arose but was notified by Complainant's broker that the seller had removed the stainless steel appliances and replaced them with older appliances. When Respondent was finally able to get in touch with the seller, Respondent states that the seller said that the seller had returned the stainless steel appliances because the seller still owed money on them and replaced them with the seller's older appliances because, the seller stated, the contract did not specify what type of appliances remained. Respondent states that Respondent told the seller that the seller should return the appliances that were there at the walkthrough or the buyer could file a civil suit. Respondent states that Respondent was unaware that the seller planned to exchange the appliances or that would have been specified in a counter offer. Respondent states that Respondent did not give the seller's number to Complainant's broker because Respondent was instructed not to do so by the seller and because Respondent did not think Respondent should disclose that information. However, Respondent did give the seller's phone number to police when they contacted Respondent. Based on the information in the file, there does not appear to be a violation by Respondent.

Recommendation: Dismiss.

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

22. **2013017141**
Opened: 9/24/13
First License Obtained: 3/12/99
License Expiration: 3/1/13
E&O Expiration: Uninsured
Type of License: Principal Broker - Revoked
History: 201102088 & 201102148 – license revoked, \$3,000 civil penalty, court costs
23. **2013018231**
Opened: 10/4/13
First License Obtained: 3/12/99
License Expiration: 3/1/13
E&O Expiration: Uninsured
Type of License: Principal Broker - Revoked
History: 201102088 & 201102148 – license revoked, \$3,000 civil penalty, court costs

Two (2) complaints submitted against the same former licensee whose license was revoked.

Complainants in the first complaint (2013017141) were renters of a property managed by Respondent. Complainants state that, after having Respondent's license revoked, Respondent continued to collect rent money for the property, which Respondent does not own. Complainants state that they vacated the property, and Respondent has taken legal action against Complainants for past due rent, attorney's fees, and late fees, which Complainants state Respondent has no right to do. Respondent submitted no response to the complaint.

Complainant in the second complaint (2013018231) is a property owner for whom Respondent handled the rental of the property. Complainant states that Respondent held money given to Respondent by tenants and held money in escrow for repairs which were not performed. After discovering that Respondent's license had been revoked and Respondent's office had been vacated (all Complainant could obtain for a location was a UPS drop box), Complainant was unable to reach Respondent to resolve the matter. Complainant cancelled the contract with Respondent and hired an attorney, who Complainant states was able to get Complainant's money returned to Complainant. Complainant also attached a copy of what appears to be an advertisement for properties for rent placed by Respondent. Complainant is requesting that Respondent be prevented from continuing to engage in these activities. Respondent submitted no response to the complaint. Respondent has ignored communications notifying Respondent that

Respondent's license has been revoked and may no longer engage in activities requiring licensure under the Broker Act.

Recommendation: Close and refer to district attorney for continuing to act as a licensee after license has been revoked.

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