



**STATE OF TENNESSEE
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243
615-741-2273**

<https://www.tn.gov/commerce/regboards/trec.html>

MINUTES

The Tennessee Real Estate Commission held a meeting on April 13, 2022, at 8:30 a.m. CST at the Davy Crockett Tower located at 500 James Robertson Parkway Nashville, TN 37243 in Conference Room 1-A. In addition, the meeting was streamed electronically via Microsoft Teams meeting platform. John Griess called the meeting to order and welcomed everyone to the Board meeting. Executive Director Caitlin Maxwell read the public disclaimer and called the roll. The following Commission members were present: Commissioner Joe Begley, Commissioner DJ Farris, Commissioner Joan Smith, Vice-Chair Marcia Franks, Chairman John Griess, Commissioner Jon Moffett, Commissioner Geoff Diaz, and Commissioner Steve Guinn. Commissioner Stacie Torbett was live via the Microsoft Teams meeting platform. Quorum Confirmed. Others present: Associate General Counsel Anna D. Matlock, Associate General Counsel Dennis Gregory, Paralegal Carol McGlynn, Education Director Ross White, and TREC staff member Aaron Smith.

The April 13, 2022, board meeting agenda was submitted for approval.

Motion to approve the agenda was made by Commissioner Diaz and seconded by Commissioner Moffett. Motion passed unanimously.

Minutes for the March 9, 2022, board meeting was submitted for approval.

Motion to approve the March 9, 2022 minutes was made by Vice-Chair Franks and seconded by Commissioner Diaz. Motion passed unanimously.

INFORMAL CANDIDATE APPEARANCES

Brandi Dye and Principal Broker Steven Flippo appeared before the Commission to obtain approval for Ms. Dye's Affiliate Broker license.

Motion to approve Ms. Dye was made by Commissioner Begley and seconded by Commissioner Diaz. Motion passed unanimously.

Amy Mulch and Principal Broker Nancy Malone appeared before the Commission to obtain approval for Ms. Mulch's Affiliate Broker license.

Motion to approve Ms. Mulch was made by Commissioner Smith and seconded by Vice-Chair Franks. Motion passed unanimously.

WAIVER REQUEST

Director Maxwell presented Ms. Darlene Verita to the commission seeking a waiver request of Errors and Omission Insurance penalties.

Motion to deny the request was made by Vice-Chair Franks and seconded by Commissioner Guinn. Motion passed unanimously.

EDUCATION REPORT

Education Director Ross White presented the Education Report to the Commission.

Motion to approve courses A1-A11 with exception to A10-A11 was made by Commissioner Smith and seconded by Commissioner Begley. Motion passed unanimously.

After further discussion motion to approve courses A10-A11 was made by Vice-Chair Franks and seconded by Commissioner Diaz. Motion passed unanimously.

Education Director Ross White presented the Instructor Biography to the Commission.

Motion to approve instructor's biography was made by Vice-Chair Franks and seconded by Commissioner Diaz. Motion passed unanimously.

EXECUTIVE DIRECTOR'S REPORT

Executive Director Maxwell updated the Commission on the topics below.

- **MEMPHIS:** Director Maxwell advised the Commission the May meeting will be a one (1) day meeting to be held at the Germantown Town Hall. In addition, coordination with Commissioner Guinn, and M.A.A.R. regarding location, dinner, etc. Hotel accommodations will be at Marriott East Memphis.
- **ARELLO/AUGUST-SEPTEMBER MEETING:** The annual conference will be held in Nashville, TN starting on Monday, August 29th. Arrangements will be made for those commissioners wishing to participate in the ARELLO conference. Request for more information will be sent prior to the next meeting.

COMMISSION DISCUSSIONS:

Commissioner Franks discussed the removal of the ARELLO synchronous course certification requirement and expressed her concern.

Education Director Ross White to look into other states requirements and propose guidelines at the May meeting.

CONSENT AGENDA

The following cases were presented to the commission via a Consent Agenda. All cases were reviewed by legal counsel and were recommended for either dismissal or disciplinary action.

A motion was made to accept Counsel's recommendation for complaints 1-58 with the exception of the following complaints, which were pulled for further discussion:

2022003541, 2022004521, 2022004701, 2022001311, 2022005371, 2022000951, 2022001911, 2022005671, 2022006121, 2021072411, 2021069861, 2021066481, 2021075271, 2019029971, 2021078971, 2022000081, 2022000501, 2022002711.

Motion was made by Commissioner Diaz and seconded by Vice-Chair Franks. Motion passed unanimously.

After further discussion by the Commission on complaint 2022003541, Commissioner Diaz made the motion **to dismiss the complaint**. The motion was seconded by Commissioner Guinn. Motion passed unanimously.

After further discussion by the Commission on complaint 2022004521, Commissioner Diaz made the motion **to accept counsels' recommendation** motion was seconded by Commissioner Farris. Motion passed unanimously.

After further discussion by the Commission on complaint 2022004701, Commissioner Smith made the motion **to accept counsels' recommendation** motion was seconded by Vice-Chair Franks. Motion passed unanimously.

After further discussion by the Commission on complaint 2022001311, Vice-Chair Franks made the motion **accept counsel's recommendation to issue a Consent Order for failure to respond** motion was seconded by Commissioner Moffett. Motion passed unanimously. 2nd Motion Vice-Chair Franks made a motion to **open an administrative complaint against the principal broker for failure to supervise the affiliate** motion was seconded by Commissioner Guinn. Lastly Vice-Chair Franks made a motion due to advertising violation, and to add **an additional \$1000.00 civil penalty for the advertising violation**. motion was seconded by Commissioner Moffett. Motion passed unanimously.

After further discussion by the Commission on complaint 2022005371, Commissioner Farris made the motion **to authorize a formal hearing and issue a Consent Order with a \$1,000.00 civil penalty for the above violation**. motion was seconded by Commissioner Moffett. Motion passed unanimously.

After further discussion by the Commission on complaint 2022000781, Commissioner Diaz made the motion **to accept counsels' recommendation**. motion was seconded by Commissioner Guinn. Motion passed unanimously.

After further discussion by the Commission on complaint 2022000781, Vice-Chair Franks made the motion **to accept counsels' recommendation.** motion was seconded by Commissioner Diaz. Motion passed unanimously.

After further discussion by the Commission on complaint 2022005671, Commissioner Diaz made the motion **to accept counsels' recommendation.** motion was seconded by Commissioner Farris. Motion passed unanimously.

After further discussion by the Commission on complaint 2022006121, Commissioner Diaz made the motion **to dismiss the complaint.** motion was seconded by Commissioner Farris. Motion passed unanimously.

After further discussion by the Commission on complaint 2021072411, Vice-Chair Franks made the motion **to accept counsels' recommendation.** motion was seconded by Commissioner Moffett. Motion passed unanimously.

Additionally, the Commission voted to open an administrative complaint against the principal broker for violation of Rule 1260-01-.04. The motion was made by Vice-Chair Franks and seconded by Commissioner Moffett. Motion passed unanimously.

After further discussion by the Commission on complaint 2021066481, Vice-Chair Franks made the motion **to close and flag this complaint.** The motion was seconded by Commissioner Diaz. Motion passed unanimously.

After further discussion by the Commission on complaint 2021075271, Commissioner Farris made the motion **to continue with the original decision.** motion was seconded by Commissioner Smith. Motion passed 6-2-1 with Commissioner Diaz, and Commissioner Begley voting no, and Commissioner Guinn abstaining.

After further discussion by the Commission on complaint 2019029971, Vice-Chair Franks made the motion **to accept counsel's recommendation.** The motion was seconded by Commissioner Diaz. Motion passed unanimously.

After further discussion by the Commission on complaint 2021078971, Commissioner Farris made the motion **to accept counsels' recommendation.** motion was seconded by Commissioner Diaz. Motion passed unanimously.

After further discussion by the Commission on complaint 2022000081, Commissioner Begley made the motion **to accept counsels' recommendation.** motion was seconded by Commissioner Smith. Motion passed unanimously.

After further discussion by the Commission on complaint 2022000501, Vice-Chair Franks made the motion **to accept counsels' recommendation and administratively open a complaint against Respondent's principal broker for failure to supervise.** The motion was seconded by Commissioner Diaz. Motion passed 8-1 with Commissioner Farris voting no.

After further discussion by the Commission on complaint 2022002711, Vice-Chair Franks made the motion **to accept counsel's recommendation.** The motion was seconded by Commissioner Moffett. Motion passed unanimously.

Dennis Gregory:
New Complaints:

1. 2022002941
Opened: 2/7/2022
First Licensed: 4/24/1998
Expires: 11/12/2022
Type of License: Real Estate Firm
History: None

The Complainant is a tenant managed by the Respondent. The Respondent is a property management entity.

The Complainant says his rental unit is infested with bugs and that his rent is going up. He implies that the rent should not increase unless the bugs are eliminated. The Complainant pays rent by the week.

The Respondent says they took over management of the Complainant's property (apartment units) in July 2021. The Respondent claims that the previous owners did not provide a great deal of pest prevention. Once they took over last year; however, they claim to have instituted regular pest treatments. According to the Respondent, the new owners have also spent nearly \$100,000 in upgrades on the property. The Respondent appears to have inherited this problem from the prior owners who somewhat neglected the

property. The rent issue, arguably, is to offset what the new owners have spent in upgrades as well as what other rent is in the area.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

2. 2022003541
Opened: 2/7/2022
First Licensed: 8/31/2017
Expires: 8/30/2023
Type of License: Real Estate Firm
History: None

The Complainants are the buyers. The Respondent is the listing agency who sold the property.

The Complainants purchased a new home listed by the Respondent in November 2020. The Complainants say that part of the home's draw was the size of the back yard. The Respondent had, apparently, constructed a fence that ran to the boundary. The Complainants say they did not receive a plat map or any other information about the property boundary. It appears they were not working with their own agent.

The Complainants then say that roughly eight months after moving in they received a letter from the HOA saying there was a minimum building setback line (MBSL) at the back of the property and that they would be required to tear down the fence and relocate it 20 feet closer to the home. The fence, in fact, encroached on a drainage easement as outlined by the HOA. According to the Complainants, this eliminated about half the usable space in the back yard. The Complainants say they found out that the Respondent gained approval for the fence from the city; however, they did not gain approval from the HOA. The Respondent applied for an exception/variance that would allow the fence to remain in its place; however, the exception/variance was denied. The matter is now set to go to arbitration after the Complainants hired an attorney.

The Respondent says very little other than this matter is a dispute between the homeowners and the HOA. This may be due to the fact that the arbitration is pending, and they have been advised to say as little as possible.

The Complainants' attorney says, in a later-filed document, that the Respondent had a property appraisal prior to closing. The attorney alleges that the Respondent failed to provide the property appraiser with a copy of the survey showing where the fence was built. As such, the appraisal report did not include the MBSL which might have alerted the Complainants to the potential conflict with the fence.

Recommendation: Discussion.

Commission Decision: The Commission voted to dismiss this complaint.

3. 2021079311
Opened: 2/14/2022
First Licensed: 7/12/2012
Expires: 7/11/2022
Type of License: Affiliate Broker
History: None

The Complainants are timeshare holders. The Respondent is an affiliate broker who previously worked as a timeshare manager.

The subject timeshare goes back to October 2019. The Complainants say they were talked into purchasing a new contract after they paid off a previous contract with the same timeshare company or a similar one. Ultimately, they decided to purchase a new deal.

The Complainants say that during a stay on the property in August 2021, they were told that they could transfer their points to the timeshare entity, and they would "rent them out" for the Complainants. Going so far as to tell them they would receive a check they could put towards their membership. The Complainants say that they have thus far only been able to use 25% of their points to pay the maintenance fees. The renting out option, apparently, never came to anything either. None of this was memorialized in writing.

The Respondent says that the Complainants have the option to rent out points; however, getting a check for cash in exchange was not what the conversation

was about. He says the Complainants simply misunderstood this portion of the discussion. The Respondent says that points can be rented, sold, exchanged or even willed to another person.

Overall, the Complainants are now in a spot, financially, that the timeshare is not netting what they want. Between Covid restrictions and the Complainants' apparent health situation, they simply want out.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

4. 2022001291
Opened: 2/22/2022
First Licensed: 9/29/2009
Expires: 9/28/2023
Type of License: Real Estate Firm
History: None

The Complainants own a timeshare. The Respondent is a timeshare company.
*This complaint is directly related to #3 (2021079311) above.

The subject timeshare goes back to October 2019. The Complainants say they were talked into purchasing a new contract after they paid off a previous contract with the same timeshare company or a similar one. Ultimately, they decided to purchase a new deal.

The Complainants say that during a stay on the property in August 2021, they were told that they could transfer their points to the timeshare entity, and they would "rent them out" for the Complainants. Going so far as to tell them they would receive a check they could put towards their membership. The Complainants say that they have thus far only been able to use 25% of their points to pay the maintenance fees. The renting out option, apparently, never came to anything either. None of this was memorialized in writing.

The Respondent says that the Complainants have the option to rent out points; however, getting a check for cash in exchange was not what the conversation was about. They say the Complainants simply misunderstood this portion of

the discussion. The Respondent says that points can be rented, sold, exchanged or even willed to another person. The Respondent and Complainants have also negotiated a Deed in Lieu of Foreclosure option for the subject timeshare. Therefore, the Complainants will get out of the timeshare agreement, although with some negative credit impact.

Overall, the Complainants are now in a spot, financially, that the timeshare is not netting what they want. Between Covid restrictions and the Complainants' apparent health situation, they simply want out.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

5. 2022004521
Opened: 2/14/2022
First Licensed: 9/11/2018
Expires: 9/10/2022
Type of License: Affiliate Broker
History: None

The Complainants are the buyers. The Respondent is the buyers' broker.

The Complainants hired the Respondent to find a house as part of a move from Arizona to Tennessee. The parties located a house and made an offer that was later accepted. The time between the acceptance and closing was approximately three months. The Complainants say the Respondent did an initial walk through and did not find any issues of concern. The Respondent allegedly did a Facetime call with the Complainants while at the house.

Once closing time arrived in November 2021, the Complainants made the move from Arizona. The Complainants opted to waive a final inspection of the home and after the Respondents completely moved out, the Complainants got into the house for the first time. They claim they found the house heavily infested with cockroaches (\$70 a week to treat) along with the home needing a roof replacement and a water leak "in the main" causing mold to grow. The only inspection of the property was a termite inspection performed in August

2021 a few months before closing. The Complainants have since hired an attorney and have made a claim on the broker's insurance.

The Respondent points out that the Complainants wanted no inspections. Further, the property disclosures filled out and signed by the seller indicated they were not aware of any defects. The only disclosure of note is the seller's disclosure of a shared driveway. The Respondent says that the Complainants were aware that the home was a "fixer upper" and would need some degree of work. The Complainants allegedly told the Respondent they were experienced with remodeling and could handle work where necessary. The Respondent says that three months prior to closing, she did not notice any smells or odor consistent with cockroaches or mold.

The Respondent was not qualified to make conclusions about the home related to pest infestations or water leaks. The Respondent was aware of the home needing some repairs and communicated that to the Complainants. The Complainants also had every opportunity to obtain a home inspection.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

6. 2022004701
Opened: 2/14/2022
First Licensed: 8/18/2005
Expires: 12/6/2022
Type of License: Principal Broker
History: None

The Complainant is the Respondent's estranged spouse. The Respondent is a licensed principal broker.

The complaint says the Respondent applied for a credit card in their name and then used the card to make purchases. Apparently, the Complainant filed a police report but there is no other information with the complaint (dollar amount, etc.). The local police did charge the Respondent; however, the matter has not yet been scheduled for an initial appearance (as of March 16, 2022). As the Commission has the authority to discipline depending on this

matter's outcome, the complaint can be placed in litigation monitoring to await a final disposition.

Recommendation: Litigation Monitoring.

Commission Decision: The Commission accepted counsel's recommendation.

7. 2022005101
Opened: 2/14/2022
First Licensed: 9/30/2020
Expires: 9/29/2022
Type of License: Affiliate Broker
History: None

The Complainant is not a buyer/seller of real estate or a tenant and is not a TREC licensee. The Respondent is an affiliate broker.

The Complaint says that he was contacted, presumably by phone, by the Respondent regarding interest in "investing in my property." He says he is on the "Do Not Call" list to avoid such calls and feels the action was unethical.

The Respondent says she has never contacted the Complainant and does not know him at all. She claims to have never sent any emails or regular mail to his address. The Respondent says she was told by an unrelated third party prior to this incident that they received a similar call or email claiming to be her. The Respondent may be the subject of some form of hacking. The Respondent does not appear to have purposely contacted the Complainant.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

8. 2022000301
Opened: 2/14/2022
Unlicensed
History: Final Order that Revoked Respondent

The Complainant is a tenant. The Respondent is a property management company whose firm license has been previously revoked by the Commission.

The Complainant says he had to clean up the subject property after he moved in it. Additionally, he had to fight with the Respondent in order to get his security deposit of \$995 back. It appears the Complainant did, in fact, get his security deposit back after a month of a number of phone calls.

The Respondent's license was revoked through a formal hearing. This complaint was likely lodged shortly after that event.

Recommendation: Close and Flag.

Commission Decision: The Commission accepted counsel's recommendation.

9. 2022001311
Opened: 2/22/2022
First Licensed: 12/16/2016
Expires: 12/15/2022
Type of License: Affiliate Broker
History: 2020 Consent Order for Advertising Violation

The Complainant is a TREC licensee. The Respondent is an affiliate broker.

The Complaint contains a photograph of a sign belonging to the Respondent. The firm name is larger, in part, and the same size, in part, as the Respondent's name. The Respondent; however, did not respond to the complaint.

Recommendation: Authorize a formal hearing and assess a civil penalty in the amount of \$1,000 for violation of Tenn. Code Ann. § 62-13-313(a)(2), which states, "[t]he accused applicant or licensee shall, within (10) days, file with the commission the applicant's or licensee's answer to the complaint, a copy of which shall be transmitted to the complainant."

Commission Decision: The Commission accepted counsel's recommendation to issue a Consent Order for failure to respond and also voted to add an additional \$1000.00 civil penalty for the advertising violation and also to open an administrative complaint against the

principal broker for failure to supervise the affiliate due to the advertising violation.

10. 2022003971
Opened: 2/22/2022
First Licensed: 12/21/2017
Expires: 12/20/2023
Type of License: Affiliate Broker
History: None

The Complainant is the buyer's broker. The Respondent is the listing agent who is both a South Carolina and Tennessee licensee.

The Complainant says his buyer made an offer on 268 acres of land in Tennessee on December 3, 2021, which was later countered by the seller. That offer terminated December 4. A second offer was submitted on December 8; however, the Complainant says there was no response to the second offer. The Complainant claims he asked for a rejection letter but did not receive one. Later, the Respondent told the Complainant that the sellers had decided to go with another offer.

The Complainant says that the property remained "active" as of mid-January at which time the Complainant inquired about the property again. The Respondent supposedly told him the attorneys were still reviewing the contract, but they were still not interested in the Complainant's buyers. The Complainant says the Respondent has poor ethics. Additionally, he claims the Respondent was operating on an expired license.

The Respondent says he never received a request for a signed rejection letter on the second offer. He claims he did inform the Complainant that he was rather certain his seller would not act on the second offer as they were apparently intent on going with the other offer. As to the mid-January call, the Respondent says that is simply not true. He says that his call log shows December 31, 2021 as the last call from the Complainant. The Respondent says that he made it very clear his seller was not going to take the buyer's offer that had expired December 10. As to the license, the Respondent's affiliate broker license did not expire until December 20, 2021. Therefore, it appears the license was in good standing at the time these negotiations were ongoing.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

11. 2022004051
Opened: 2/22/2022
First Licensed: 8/1/2018
Expires: 7/31/2022
Type of License: Affiliate Broker
History: 2021 Consent Order for Advertising Violation

The Complainants are the buyers. The Respondent is the listing agent.

The Complainants say they asked their agent to put in an offer on a lot listed by the Respondent. The offer was made on January 7, 2022. They claim that offer was never communicated to the sellers, so the Complainants' agent made the same offer again. On January 1, the Respondent informed the Complainants' agent that their offer had been rejected with no counter. Further, they say that the Respondent told the agent that the lot was no longer for sale. The Complainants say the lot was listed for sale as of February 2.

The Respondent says that the issue with the initial offer was not handled properly by the Complainants' agent. As to the rejection of the Complainants' offer, the Respondent says that "the community administration would not honor the deal they made to this seller last year regarding unpaid HOA fees..." The Respondent goes on to say that the seller felt that the Complainants would not be able to pay \$30,000. As to the status of the property, the Respondent claims that it was temporarily taken off the market on January 10. On February 6, the property was once again listed as active. The Respondent says she has notified the Complainants' agent that the property is active again. It appears the Respondent honored the seller's decision not to accept the offer based on a prior dealing with the Complainants.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

12. 2022004071
Opened: 2/22/2022
First Licensed: 8/12/2004
Expires: 3/24/2024
Type of License: Principal Broker
History: None

The Complainant is a contractor but not a TREC licensee. The Respondent is a principal broker.

The Complainant says the broker is selling lots not recorded on a plat. The Respondent claims to have counted seven lots in one development and five in another.

The Respondent's attorney, who claims to have drafted all the relevant subdivision documents for these developments, responded on the Respondent's behalf. The attorney says that the three lots in one development were not conveyed to a "third-party, arm's length buyer but were, instead, conveyed to a separate entity wholly-owned by the principal of the seller." The attorney goes on to say that these transactions were initially questioned by the local zoning office but were later approved through the county attorney's office due to the included disclaimer language in the deed. The other issue the attorney addresses is a "phase" that was initially approved by the county for 24 lots, but the plat map only showed 22 when recorded. One of the lots was later annexed into "Phase One" by a second amendment to the master deed. Later, the county zoning office approved the annexation. According to the attorney, these are the only actions that even came close to creating any negative issues; however, they were all corrected.

He closes by saying that the Complainant has a bit of an ax to grind with the developers as he was "excluded" from undertaking further construction in both areas. The Respondent appears to have used reasonable skill and care in these transactions.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

13. 2022004621
Opened: 2/22/2022
First Licensed: 8/27/2013
Expires: 8/12/2023
Type of License: Principal Broker
History: None

The Complainant is not a TREC licensee. The Respondent is a principal broker.

The Complainant runs a business that claims to do services for realtors such as, coordinating inspections and appraisals, ordering home warranties, scheduling final walk throughs, and confirming title and lender commitments. The complaint was lodged over a check the Respondent gave to the Complainant for services that was returned for insufficient funds. The Complainant filed a police report.

The Respondent says he is “unaware” of the allegations the Complainant makes, including the existence of any police reports or charges filed. The Respondent also included a copy of a check along with an email from the Complainant saying the check covered “your past due invoices and credit card fees.” It appears a good check was finally received.

In rebuttal, the Complainant says that the Respondent only paid after a police report was made. After discussions with both the Complainant and the local police, it does not appear that the matter will be pursued by the servicing district attorney’s office as the Respondent made good on payment.

Recommendation: Letter of Warning for failure to exercise reasonable skill and care to all parties to a transaction in violation of T.C.A. 62-13-403(1).

Commission Decision: The Commission accepted counsel’s recommendation.

14. 2022004771
Opened: 2/22/2022
First Licensed: 7/14/2003
Expires: 3/16/2024
Type of License: Affiliate Broker

History: None

The Complainant is the seller. The Respondent is the listing agent. *This complaint is related to #15 and #16 below.

The Complainant says he received a “Just Sold” postcard from the Respondent in 2018, showing where the Respondent had sold a home in the Complainant’s neighborhood. He was not ready to list his house at the time but made initial contact. In early 2021, the Complainant contacted the Respondent in order to list his house and buy another house later. The Complainant says the Respondent they could make a contingency offer on whatever he found contingent on his current home selling. The Complainant says the home was in a flood plain; however, he says the Respondent did not ask him about it or discuss the impact.

The Complainant says he missed an opportunity on a house in a rural part of the state after they submitted a low offer which was not accepted. After this, he then increased his offer by nearly \$20,000. The Complainant and Respondent went and viewed the house, and he eventually won the offer in a multiple offer situation after the Complainant opted to remove the contingency portion from the offer so as to be more competitive. A couple of weeks later, the Complainant was then angry with the Respondent that he had removed the contingency clause. The Complainant then terminated his relationship with the Respondent and went with another affiliate broker in the same office.

The Complainant wants the Commission to “rebate back to me all or at least half of the commission they earned on the purchase of the home I now own in [name of county].” The Commission does not have such authority.

The Respondent says that the issue of the flood plain never arose during the transaction. She says that the home she sold in the Complainant’s neighborhood in 2018 was, in fact, located in a flood plain. The Respondent goes on to say; however, that the seller never had any issues with flooding. The requirement for flood insurance never arose also with that prior sale. The Respondent was not in a position to know whether the house had ever flooded or not. The Respondent’s actions were reasonable in terms of skill and care.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

15. 2022004801
Opened: 2/22/2022
First Licensed: 9/4/2018
Expires: 9/3/2022
Type of License: Affiliate Broker
History: None

The Complainant is the seller. The Respondent is the listing agent. The Respondent took over from the Respondent in #14 above after the Complainant fired the other Respondent.

The Respondent says she asked him if he carried flood insurance. The Complainant says that he wasn't sure. The Complainant filled out the property disclosure as not having any prior flooding. The Respondent said she had no knowledge of any flooding as would be expected. The appraiser found that the Complainant's home had been severely flooded in 2010. The Respondent told them she was not aware of any flooding as explained before. Apparently, the home had suffered flooding in 2010 up to as much as 5 feet of water inside the home.

The Respondent says the Complainant did not openly admit to knowing about the flooding; however, he supposedly screamed at the Respondent for disclosing the information. The Complainant said that there would be a "red flag" if he disclosed that the property flooded in 2010. According to the Respondent, the Complainant later admitted to inspecting the home himself but did not hire an inspector. The Respondent explained that the Complainant had to reveal whatever information he was aware of concerning the house. After the relationship further deteriorated, the parties terminated the listing agreement.

The complaint is born out of the Complainant's frustration at having to reveal potentially negative information about the house. There is no way to know for certain if the Complainant was aware that the home had previously flooded. In any event, the Complainant could simply not get along with either broker (#14 or #15) and that conflict led to this eventual outcome.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

16. 2022004291
Opened: 2/22/2022
First Licensed: 1/12/2004
Expires: 1/20/2023
Type of License: Real Estate Firm
History: None

The Complainant is the seller. The Respondent is the real estate firm related to complaints #14 and #15 above.

The Complainant says he received a "Just Sold" postcard from the Respondent's broker in 2018, showing where the broker had sold a home in the Complainant's neighborhood. He was not ready to list his house at the time but made initial contact. In early 2021, the Complainant contacted the broker in order to list his house and buy another house later. The Complainant says the broker told him they could make a contingency offer on whatever he found-contingent on his current home selling. The Complainant says the home was in a flood plain; however, he says the broker did not ask him about it or discuss the impact.

The Complainant says he missed an opportunity on a house in a rural part of the state after they submitted a low offer which was not accepted. After this, he then increased his offer by nearly \$20,000. The Complainant and broker went and viewed the house, and he eventually won the offer in a multiple offer situation after the Complainant opted to remove the contingency portion from the offer so as to be more competitive. A couple of weeks later, the Complainant was then angry with the broker that he had removed the contingency clause. The Complainant then terminated his relationship with the broker and went with another affiliate broker in the Respondent's firm.

The Complainant wants the Commission to "rebate back to me all or at least half of the commission they earned on the purchase of the home I now own in [name of county]." The Commission does not have such authority.

The Respondent says that the two affiliate brokers, as well as the Respondent, attempted to accommodate the Complainant as much as possible. The Respondent says that in 24 years she had never encountered a transaction where it took two agents and a principal broker to handle one client.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

17. 2022004901
Opened: 2/22/2022
First Licensed: 3/9/2020
Expires: 3/8/2024
Type of License: Affiliate Broker
History: None

The Complainant is the listing agent. The Respondent is the buyers' broker.

The Complainant says the parties went into contract on January 11, 2022 with a February 3 closing date. The Respondent then asked if closing could be pushed up to January 31 with a final walk through of January 30. The sellers agreed and a temporary occupancy agreement was executed to allow the sellers to be in the home until February 3. The Complainant then says that her sellers called her in a furious state, saying that the buyers had entered the house on January 30 without the Respondent present. When the Complainant asked the Respondent about this, the Respondent supposedly said she was "parked on the street."

The closing occurred on January 31 as scheduled. The Complainant says she got a text from her sellers on February 2 saying that the Respondent told her buyers they could take occupancy on February 1 and that her sellers needed to be out. The buyers came by the house asking the sellers when they could be out since they had painters scheduled to come by at some point (the date is not mentioned). The Complainant says she tried to call the Respondent to tell her buyers to leave until February 3. The Complainant closes by saying that the Respondent was later broker released from her firm as a result of this incident.

The Respondent's new principal broker responded to the complaint along with the Respondent. He says that the Respondent neither gave her buyers access to the property nor told them they were free to enter the property. He goes on to say this was a case of the buyers simply doing what they wanted without asking the Respondent. The principal broker also says that he and the Respondent had been in conversation about coming to his firm for several months before this incident. He says the broker release and this incident are purely coincidental and not related.

The Respondent, herself, says that her buyers did walk in the house for the final walk through; however, she says she was walking up the driveway several feet behind them and did accompany them inside. As to the issue of the buyers coming by the property, she denies telling them they could enter the property earlier than February 3. She also says that the buyers only came by the property to ask the sellers when they would be out so they could schedule the painters around their departure.

The buyers appear to have never entered the house prior to February 3. They only came to the property to inquire when the sellers would be out. The buyers appear to have done this on their own accord without notifying the sellers.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

18. 2022005081
Opened: 2/22/2022
First Licensed: 4/24/2002
Expires: 1/6/2023
Type of License: Real Estate Broker
History: None

The Complainants are the sellers. The Respondent is the co-listing agent along with the Respondent in #19 below.

The Complainants say the Respondent failed to find another home for them after listing their house. The Complainants also say the Respondent should

have listed their house for more given the change in the market. They feel they lost between \$50,000-\$80,000 because of the failure to list the house for more.

The Respondent says the Complainants never employed her (and the other Respondent in #19) as the buyers' agent (no agency agreement was signed). They only listed the property for the Complainants. Despite this, however, the Respondent explains that they would send them listings and offer to show them available properties. As to the listing price, the Respondent explains they were able to negotiate a sales price of \$599,900, which was higher than the appraised value of \$575,000 with a "reconsideration" value of \$590,000. The Respondent says they were able to further negotiate away any repairs and for them to remain in the home for an additional 28 days at a cost of \$2,000.

In rebuttal, the Complainants say the Respondent was more concerned with a commission than "their wellbeing." Apparently, the Complainants inquired if the Respondent would reduce their commission to 5% from 6% and the Respondent refused. The Complainants then say the \$590,000 appraisal was "weak and not thorough..." This allegation deals with the home appraiser's ability rather than the broker's ability.

There is not enough to conclude the Respondent acted contrary to the clients' interest. There is also no agency agreement that supports that the Respondents had any duty to find the Complainants a new home.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

- 19.** 2022005241
Opened: 2/22/2022
First Licensed: 2/1/2010
Expires: 1/31/2024
Type of License: Affiliate Broker
History: None

The Complainants are the sellers. The Respondent is the co-listing agent along with the Respondent in #18 above.

*The facts in this complaint are identical to those in #18 above.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

20. 2022005371
Opened: 2/22/2022
First Licensed: 3/27/2018
Expires: 3/26/2022
Type of License: Affiliate Broker
History: None

The Complainants are the buyers. The Respondent is the buyers' broker. *The Complainants originally lodged a complaint against the listing agent. That complaint was closed during the February 2022 meeting as to the listing agent and this complaint opened against the buyers' broker at the Commission's request.

The Complainants say they purchased the subject property on October 1, 2021, using the Respondent as broker. They claim the listing agent "fraudulently advertised" the subject property. According to the Complainants, the seller was retaining part and selling part. They claim that the sellers' sale sign was posted on the portion of the property the seller intended to keep. The associated map for the listing did not have the boundaries clearly defined. Now the Complainants are occupying property the sellers claims to have retained.

The Respondent says the Complainants asked him to put an offer in on the sellers' property on September 3, 2021. He says he reviewed the MLS sheet and attached documents, and then offered to walk the property with the Complainants. The Respondent explains that the Complainants told him they did not need to walk it with him as they had already viewed it and felt comfortable. They requested the Respondent make a cash offer with no contingencies.

The Respondent goes on to say that he reviewed the photos and description and then put in the offer. The offer was then accepted and closing took place

on October 1. A week after closing, the Complainants called him explaining that what they had purchased was not what they thought they were originally getting. Apparently, the seller told them they had, in fact, only purchased the 22.83 acres on the back side of the lot. The seller then offered to grant them an easement over his property. The Complainants believed they had purchased the *entire* lot.

The Respondent says that he contacted the listing agent and went over the matter. It was then that the Respondent found out there was a survey attached to the “document” section of the MLS. He says he had no reason to pull it because of the photos and description appeared very conclusive. He says that if one were to read the property description and then reference the photos, a person could conclude that you would be buying “one 22.83-acre lot that fronts the road. In reality, the buyers purchased 3 separate lots that *total* [emphasis added] 22.83 acres, and they surround a 25-acre center lot that is not for sale.” He says that in hindsight, he should have had the buyers walk the property with him before making the offer and had them sign and initial the attached survey. He goes on to point out that the three lots totaling 22.83 acres should have been highlighted, which would have fallen on someone other than the Respondent. The Respondent now claims that he has since represented the Complainants again in another real estate transaction.

The Respondent admits to what likely should have occurred prior to the offer, which was walking the property and being a bit more diligent in reviewing the survey. The Respondent should have utilized a bit more reasonable skill and care.

Recommendation: Letter of Warning for failure to diligently exercise reasonable skill and care to all parties to the transaction in violation of T.C.A. 62-13-403(1).

Commission Decision: The Commission voted to authorize a formal hearing and issue a Consent Order with a \$1,000.00 civil penalty for the above violation.

21. 2022005591
Opened: 2/22/2022
First Licensed: 6/6/2017
Expires: 6/5/2023
Type of License: Affiliate Broker

History: None

The Complainant is not a buyer/seller of real estate or a tenant and is not a TREC licensee. The Respondent is an affiliate broker.

The Complainant says the Respondent solicited his personal phone number regarding the purchase of his home. He says his number is on the Do Not Call list. The Complainant feels the practice is unethical.

The Respondent says she has never heard of this Complainant and says she has never called or attempted to call his phone number. The company with who the Complainant says the Respondent is affiliated is the company the Respondent's husband works for. She theorizes that someone from her husband's investment company called the Complainant, and then the Complainant pulled her name from the website where she is listed as a real estate consultant. There is no other evidence with the complaint file.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

22. 2022005881
Opened: 2/22/2022
First Licensed: 4/13/2017
Expires: 4/12/2023
Type of License: Affiliate Broker
History: None

The Complainant is not a buyer/seller of real estate or a tenant and is not a TREC licensee. The Respondent is the listing agent.

The Complainant lives next door to the Respondent's listing/sellers. She claims to have called the Respondent to ask the Respondent if she was aware that one of the sellers was Covid-19 positive. The Complainant's complaint is largely due to the screaming match that occurred during this phone call. The Complainant also says the sellers' driveway is encroaching on her property line.

The Respondent says the Complainant called her unexpectedly one evening regarding the Covid-19 issue. The Respondent says she had had no prior contact with the Complainant. The Respondent claims that she told her she was well aware of the Covid-19 matter and that each prospective buyer was aware before entering the house. She then says the Complainant began yelling at her about the property line. The Respondent says she told her she was not involved in that; however, she recommended that either party obtain a survey. A few weeks later a survey was obtained which determined that the Complainant, in fact, was encroaching on the sellers. The Respondent had no duty to the Complainant as she is outside the real estate transaction.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

23. 2022000781
Opened: 2/22/2022
First Licensed: 10/23/2013
Expires: 10/22/2023
Type of License: Real Estate Firm
History: None

The Complainant is the seller. The Respondent does not appear to be related to the Complainant's allegations in any way.

The Complainant inherited property in 2006. Another party (not the Respondent) agreed to purchase part or all of the subject property, and as part of the transaction, was to build the Complainant a "Handicapped Acceptable" home within 2.5 years or less. The other party failed to do so. The Complainant then filed a lawsuit in 2009 alleging breach of contract and obtained a default judgement for \$200,000. The other party later filed for Chapter 7 Bankruptcy in 2011. The Complainant has since been attempting to attach the judgement.

The Complainant must believe the Respondent is some kind of successor in interest to the original buyer; however, there is nothing to support this. The Respondent was not even licensed until two years after the default judgement.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

24. 2022000951
Opened: 2/22/2022
Unlicensed
History: None

The Complainant is a tenant. The Respondent is an unlicensed property management supervisor who is not the correct Respondent.

The Complainant appears to have lodged this complaint after being sued by the Respondent's property management entity for past unpaid rent. The Complainant now lives out of state. The Complainant says the reason she left owning rent was because her apartment had a water leak that resulted from the Respondent's plumber attempting to fix a leaky toilet in her apartment. The Complainant says she eventually just moved out of the apartment after the premises flooded. All the events took place in 2019.

The correct Respondent is an out of state property management entity. The Respondent possesses no license; however, that appears to be as a result of being unaware of the license requirement. The Respondent, who was located by a TDCI investigator, says they did not understand the law at the time. As to the Complainant's allegations, they say the leak was not as severe as the Complainant makes out. Additionally, the Complainant filed a counterclaim against the Respondent that was recently dismissed.

Recommendation: Close the complaint against the Respondent and open a new complaint against the unlicensed property management entity.

Commission Decision: The Commission accepted counsel's recommendation.

25. 2022001571
Opened: 2/28/2022
First Licensed: 12/9/2004

Expires: 3/30/2023

Type of License: Principal Broker

History: 2012 Consent Order for Failure to Supervise an Affiliate; 2021 Agreed Citation for Advertising Violation

This is an anonymous complaint. The Respondent is a principal broker.

The Respondent's affiliate broker had a billboard that displayed the affiliate's name larger than the firm's name. The Respondent and affiliate have both paid Agreed Citations since before this complaint was opened. The complaint was opened in error.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

26. 2022001911

Opened: 2/28/2022

First Licensed: 1/14/2011

Expires: 1/13/2013 (Expired)

Type of License: Affiliate Broker

History: None

The Complainant is the listing agent. The Respondent is an unlicensed broker.

The Complainant says the Respondent is an unlicensed person attempting to act as a buyer's broker. The issue that made the Complainant suspicious was that the name at the bottom of the "TAR" forms did not match the agent's name. The Complainant says that she asked for the Respondent's license number, but the Respondent was never forthcoming. The Complainant says she eventually found where the Respondent had been licensed in Tennessee at one time but that the license had long since expired. The Complainant also says that as the transaction progressed, she did receive an email from a New Jersey transaction coordinator. The transaction has since come to a halt.

It appears the Respondent was engaging in unlicensed brokering. All certified mail was returned from the Respondent's alleged address. This being the case, locating the Respondent for purposes of a Consent Order or for service of

process for a formal hearing may be difficult. It may be more practical to inform the Respondent she is engaging in unlicensed activity and to cease and desist until a license is obtained.

Recommendation: Letter of Warning for unlicensed brokering in violation of T.C.A. § 62-13-301.

Commission Decision: The Commission accepted counsel's recommendation.

27. 2022003151
Opened: 2/28/2022
First Licensed: 1/27/2016
Expires: 1/26/2022 (Expired – Grace)
Type of License: Affiliate Broker
History: None

The Complainants are the buyers. The Respondent is the buyers' broker.

The buyers hired the Respondent as a broker in April 2021. Closing on the subject property occurred in late May 2021. The Complainants allege that roughly two days after closing, the home's septic system backed up, flooding the basement. The Complainants allege that the field lines failed rather than a defect concerning the septic tank. The Complainants allege the sellers failed to disclose this information in the property condition disclosure statement. In January 2022, the Complainants filed a lawsuit against the sellers, the Respondent, and the Respondent's realty firm. The Complainants allege that the Respondent misrepresented the condition of the field lines such that the Complainants did not request any further inspection.

The Respondent's attorney says that the Complainants' lawsuit does not even allege, specifically, that the Respondent did anything wrong. As a result, the Respondent's attorney has recently filed a motion to dismiss the Respondent from the lawsuit along with the Respondent's realty firm. The attorney theorizes in his response that the only reason the Complainants' attorney included the Respondent and her realty firm was to invoke "the fund" pursuant to T.C.A. § 62-13-208(d). There is no evidence contained in the complaint that supports that the Respondent failed to exercise reasonable skill and care.

More specifically, the Respondent was not in a position to know the status of the home's field lines.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

28. 2022003171
Opened: 3/1/2022
First Licensed: 11/20/2015
Expires: 11/19/2023
Type of License: Real Estate Firm
History: None

The Complainants are the buyers. The Respondent is the buyers' broker's firm, directly related to #27 above).

The buyers hired the Respondent's broker as an agent in April 2021. Closing on the subject property occurred in late May 2021. The Complainants allege that roughly two days after closing, the home's septic system backed up, flooding the basement. The Complainants allege that the field lines failed as opposed to a defect with the septic tank. The Complainants allege the sellers failed to disclose this information in the property condition disclosure statement. In January 2022, the Complainants filed a lawsuit against the sellers, the Respondent, and the Respondent's realty firm. The Complainants allege that the Respondent misrepresented the condition of the field lines such that the Complainants did not request any further inspection.

The Respondent's attorney says that the Complainants' lawsuit does not even allege, specifically, that the broker did anything wrong. As a result, the Respondent's attorney has recently filed a motion to dismiss the broker from the lawsuit along with the Respondent realty firm. The attorney theorizes in his response that the only reason the Complainants' attorney included the broker and the Respondent realty firm was to invoke "the fund" pursuant to T.C.A. § 62-13-208(d). There is no evidence contained in the complaint that supports that the broker or the Respondent realty firm failed to exercise reasonable skill and care. More specifically, the broker was not in a position to know the status of the home's field lines.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

29. 2022004351
Opened: 2/28/2022
First Licensed: 7/17/2006
Expires: 7/16/2022
Type of License: Affiliate Broker
History: None

The Complainant is the seller's estranged spouse. The Respondent is the listing agent.

The Complainant starts out the complaint by explaining that her husband hired the Respondent to list "his property that is owned by his self-directed IRA under [entity name]." This was in August 2021. The Complainant says she filed for divorce in Wisconsin in October 2021. The Complainant says the court in Wisconsin ordered that the sale of the subject Tennessee property would have to be by agreement. There is a "Temporary Stipulation" (dated December 13, 2021) prepared by one of the party's attorneys in which the Complainant will pay the "Tennessee lake home mortgage" and that the "parties agree that the home and the Tennessee farm may be listed for sale, with the paperwork signed by both parties. The terms and conditions of sale, including the broker, shall be agreed upon by the parties."

The Complainant goes on to say that the Tennessee home was being listed without the Complainant's knowledge. She claims that she attempted to contact the Respondent several times concerning the listing. Eventually, the estranged husband accepted an offer of which the Complainant did not receive a copy until December 21. The Complainant says the Tennessee property is "investment property" that is, according to her, marital property.

The Respondent says that the Complainant is a family friend. She claims she was contacted by the husband and entered into a listing agreement with the husband on August 4, 2021-long before the divorce was filed or spoken of. The Respondent says the property was owned by the IRA. She claims she

consulted with the title company and was informed that an IRA sale required only the husband's signature. The wife would only have to sign a form at closing, acknowledging the sale. The Respondent goes on to say that an offer was accepted on December 15 and was marked "pending" on the MLS. Around this time, the Respondent became aware of the parties' pending divorce. The husband told the Respondent that he had a restraining order against the Complainant wife, so the Respondent says she did not attempt to contact the Complainant. Over the course of a few days, the Complainant allegedly called the Respondent's office, using harsh language.

After consulting with an attorney, the Respondent advised the Respondent to hold off on closing given the divorce. As of February 11, 2022, the Respondent claims the parties came to an agreement to sell the Tennessee property with the Respondent still representing the seller. It is unknown whether this also includes the Complainant. It appears the Respondent was not aware of any potential problems with the subject listing until made aware in December. Seeking the advice of an attorney and halting the sale was the appropriate action. All actions prior to that were without the knowledge of the parties' divorce.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

30. 2022005421
Opened: 2/28/2022
First Licensed: 4/25/2019
Expires: 4/24/2023
Type of License: Affiliate Broker
History: None

The Complainant is the sellers' neighbor. The Respondent is the listing agent for the sellers.

The Complainant's property (lakefront) adjoins the seller's property that was listed for sale by the Respondent beginning in September 2020. The Complainant says the problem started when the Respondent allegedly posted a YouTube video showing the sellers' property but also showing parts of the

Complainant's property. The other relevant pictures of the sellers' property (not included with the complaint) supposedly show the Respondent driving up the Complainant's driveway. Additionally, the Complainant says her boat dock is in the photos. She goes on to say that they have even had people on the boat dock thinking the dock was part of the listed property. The Complainant claims the video came down for a time but was then re-posted in November 2021. As of March 2021, the video appears to be down.

The Respondent says he had the subject listing from September 2020 until February 2022. The Respondent says that the driveway the Complainant references is part of an easement that his sellers have the right to over the Complainant's property. The Respondent included a copy of the plat showing the easement. Therefore, the use of the driveway referenced by the Complainant is permissible. As to the videos and photos, the Respondent admits that some of the surrounding area is visible in those shots; however, he denies that he is attempting to use the Complainant's property to create greater interest in his sellers' property. The sellers are now, apparently, reconsidering the sale price, so the listing is currently off the MLS. The Respondent closes by saying that at no time during the listing period did he ever receive a call from any buyer or another agent questioning what was for sale and what belonged to the Complainant next door.

In rebuttal, the Complainant is adamant the Respondent's drone-video guy is standing on her boat dock in the YouTube video. Again, the video is no longer available for viewing. In order to get some clarity, Counsel called the Respondent. The Respondent explains that he cannot verify if his drone guy did get on the dock or not. Further, he says the sellers are reconsidering the sale price, but also want to verify the property boundaries as they do not want further problems from the Complainant. The video remains down.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

31. 2022005671
Opened: 2/28/2022
First Licensed: 11/26/2018
Expires: 11/25/2022

Type of License: Affiliate Broker
History: None

The Complainants are the buyers. The Respondent is the buyers' broker.

The Complainants hired the Respondent through a referral service in early September 2021. The Complainants were preparing to move from Utah to Tennessee as part of a job change. Within a few days, the Complainants went under contract on a property, but then later decided to withdraw after the home had some apparent property line issues. The Respondent assisted in this termination. After the Complainants flew back to Utah, the Respondent visited a number of listings and found another suitable house. In late September, the Respondent showed a house via a Zoom call. The Complainants got an inspection report and then closed on the home a month later.

The Complainants moved in during the first week of January 2022. After that time, they claim to have found signs of rodent infestation in the attic, a "small creek" in the crawl space, and rotting windows and door frames. The Complainants claim to have received repair estimates of upwards of \$40,000 to fix everything. The Complainants believe the Respondent was negligent in her explanation of the home inspection and, further, that she colluded with the home inspector to get the house sold.

The Respondent says that she told the Complainants to look over the home inspection and see what they wanted to request in terms of repairs. The Complainants did ask for certain repairs prior to closing; however, nothing was mentioned about rodent infestation. The Respondent says that she did not see any signs of rodents from her walk through the home on a few occasions. In late December, the Respondent says she picked up the Complainants from the airport and drove them to the house as she knew an Uber would be expensive. By early January, the Complainants were explaining what they had found in the house.

The Respondent believes that many of the noted items occurred in the two-month period after closing but before the Complainants took possession of the house. In particular, she believes the mice moved in after the sellers vacated and made worse by the fact the weather turned cold. The Respondent also alleges the Complainants wanted to make some of the repairs themselves, so those items were not made part of the negotiations with the sellers.

The Respondent relied on the home inspection to tell her and the Complainants what items were of concern. The Respondent was not in a position to guarantee the condition of the house, particularly given the two-month period in which the house was vacant.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

32. 2022005691
Opened: 2/28/2022
First Licensed: 5/25/1999
Expires: 3/22/2024
Type of License: Affiliate Broker
History: None

The Complainant is the seller. The Respondent is the listing agent.

The Complainant appears to be one of four sellers of real estate that is part of an estate. As best can be discerned, the property is now part of an ongoing lawsuit between the sellers (siblings). The Complainant says the Respondent shared his social security number with "others." The complaint contains no other details.

The Respondent says she entered into a listing agreement in May 2021 with all four siblings to sell the subject house. During the course of the listing, the Respondent says communication was always sent to all four clients/siblings simultaneously. After the property closed and several months later, the issue of 1099-S forms arose with the clients/siblings who was also the executor of the subject estate. The Respondent says she called the title company who told her they could send the 1099-S forms to the Respondent directly and then she could distribute them to the clients/siblings.

The Respondent says that when she got the email from the title company, she opened it only to insure that at least one of the sibling's names was on the document. She then says she hit "Forward" and added all four names to the "To" line. The Complainant then called the Respondent to let her know his social security number had been shared with the other siblings. The

Respondent says she notified the other three siblings and told them what had happened and to return the email unopened. The Respondent also notified her principal broker.

The Respondent had a duty to maintain each party's confidentiality under T.C.A. § 62-13-403(3), although the Respondent appears to have maintained confidentiality throughout the real estate transaction and up until this point. The only issue is the Complainant's social security number in this one email sent only to the siblings. Arguably, the Respondent was not in a position to know how litigious any of the sellers were. She was also not in a position to know whether the litigation was ongoing.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

33. 2022005711
Opened: 2/28/2022
First Licensed: 9/27/2018
Expires: 9/26/2022
Type of License: Affiliate Broker
History: None

The Complainant is the buyer. The Respondent is the listing agent.

The Complainant says the Respondent listed the subject property (condo) on February 10, 2022. The MLS included a statement that: "All offers to be submitted by FEB 20@ noon. Seller will review offers than and make a decision." The Complainant says she looked at the property on February 13 and then discussed an offer with her family. On the same day, she claims the MLS stated "Pending." The Complainant believes the pending status on the MLS posted before February 20 was false advertising and misrepresentation.

The Respondent says he added the language concerning the offers at the seller's request due to the seller being out of town for a while. On February 13, the first offer came in which the Respondent communicated to his seller. After a review of the offer, the Respondent claims the seller was very pleased

with the offer and wanted to accept it prior to the February 20 date in the MLS. He then changed the listing's status to "Pending" on the MLS.

The Respondent says he then received a rather nasty email from the buyer's agent voicing frustration over her client missing out on the condo. He says he then explained to the buyer's agent and the Complainant that his seller was very eager to move the property and the first offer satisfied her. The Respondent goes on to say that he changed the MLS information as soon as he could.

The Respondent's primary duty was to his seller. If the seller was good with the initial offer and did not want to take others, it was the Respondent's duty to change the MLS status. In fact, the MLS was accurate as "Pending" after the offer was accepted.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

34. 2022005781
Opened: 2/28/2022
First Licensed: 1/27/2004
Expires: 11/21/2023
Type of License: Affiliate Broker
History: None

The Complainant is the buyer. The Respondent is the listing agent.

The Complainant put a contract on the sellers' home in October 2021. The closing occurred at some point thereafter, however, the date is not specified. The Complainant was working with her own agent. The Complainant says the Respondent misrepresented the house by using old listing photos, lying about the home's gutters, not confirming the property boundaries, and not having the sellers disclose existing foundation and plumbing issues. As to the gutters, specifically, the Complainant says they were supposed to be connected to an in-ground French drain.

The Respondent says the photos were made within the last couple of years and, according to the sellers, still accurately reflected the condition and appearance of the home. Regarding the gutters, the Respondent claims that everything the sellers said about the gutters was known to the Complainant's agent. She says the Complainant or agent could have asked for further inspections of the drain lines but did not. The Respondent says she could not verify the condition of the drainage system as she did not get in the crawl space. The sellers, apparently, filled out the property disclosure to the best of their knowledge.

As to the property lines, the Respondent explains that it is not her duty as a listing agent to ensure the accuracy of the property. The buyer, as the Respondent points out, generally can request a survey or offer to split the cost with the seller. Here, apparently, that was not done. The Respondent says much the same for any alleged problems with the home's foundation or plumbing system.

Overall, the Respondent used reasonable skill and care in this transaction.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

35. 2022006121
Opened: 3/1/2022
First Licensed: 6/24/2020
Expires: 6/23/2022
Type of License: Affiliate Broker
History: None

The Complainant is a TREC licensee representing buyers. The Respondent is a TREC licensee also representing buyers.

The Complainant says that she was attending a showing with her clients in February 2022. She explains that when they arrived, they noticed another realtor was conducting a showing, so they waited outside for roughly 15 minutes. Once inside, the Complainant says the other realtor began making rude comments to both her and her clients. The Complainant says they were

not there for long before they decided to leave. She claims the other realtor was taking pics of her vehicle before leaving the area.

After departing the house, the Complainant says she noticed a vehicle driving up behind her on the highway. She says the driver was waving his hands at her, which made the Complainant believe something was wrong with her vehicle. The Complainant pulled over at a gas station parking lot and the Complainant alleges the driver began screaming at her from the driver's side. She says she then noticed it was the realtor from the showing she had just left. The Complainant claims the Respondent attempted to block her vehicle in the parking lot where she stopped. The Complainant was unable to hear what the Respondent was saying as she did not want to lower her window. The Complainant later filed a police report. The local police have opted not to charge the Respondent.

The Respondent has a slightly different version of the events. The Respondent says he was at the 3:15pm scheduled showing with his out-of-state buyers to see the subject home. He claims that about 10 minutes into the showing, he noticed three people he did not recognize walking up the drive. He says he met them at the door, only opening the door a few inches. The Respondent explains that the Complainant placed her foot in the door in an attempt to force the door open. One of the Complainant's buyers then pushed open the door after which the Respondent just let them all in. Supposedly, the Complainant told him, "...you cannot keep me out of this house, we do what we have to do for our clients during times like these!" Apparently, there were no "overlapping showings" for the listing.

The Respondent says he asked when the Complainant's showing time was scheduled, to which the Complainant replied "around 2:15pm." If accurate, this would mean the Complainant was over an hour late already. The Respondent then claims that some pointed questions flew back and forth between he and the Complainant regarding how long he had "been in real estate?" The Respondent finished up earlier than intended and then left with his buyers. He says everyone left at about the same time. The Respondent explains that while sitting in traffic down the street from the home, he noticed the Complainant's vehicle ahead of him. According to him, he got curious as to whether or not the Complainant was even a realtor, so he decided to follow the Complainant's vehicle. He goes on to say that once they were approaching a gas station, he pulled up into the passing lane and motioned to the Complainant in attempt to have her pull over and talk. At that point, the

vehicles did stop at the gas station at which time he says the Complainant asked, "What do you want?" The Respondent says he explained that he did not recognize her and was not sure who she was. His version of the story is that the Complainant was trying to run into his vehicle-not that he was trying to block her in. He closes his statement by saying he is a relatively new agent and did not know what actions to take with an unidentified realtor.

Overall, both the Complainant and Respondent could have acted with more professional tact. The Complainant should have acted more rationally with the Respondent at the showing. Conversely, the Respondent should not have taken off in his vehicle to track down the Complainant as there were other means to determine her identity.

Recommendation: Letter of Warning for failure to diligently exercise reasonable skill and care to all parties to the transaction in violation of T.C.A. 62-13-403(1).

Commission Decision: The Commission voted to dismiss this complaint.

36. 2022004511
Opened: 3/1/2022
First Licensed: 12/4/2015
Expires: 12/3/2023
Type of License: Real Estate Firm
History: None

The Complainants are tenants. The Respondent is a property management company.

In short, the Complainants problem is that they are disputing a number of HOA fees that associated with HOA violations. The complaint was lodged in December 2021, and due to the passage of time, the complaint has now largely resolved itself.

The Respondent says that since the Complainants occupied the subject residence, they have received a total of five violation notices. Over a series of communications back and forth with the Complainants appealing the decisions, the HOA fees were not calculated correctly. Eventually, however, the fees were straightened out and now the Respondent takes the position that

the Complainants are up to date. The ledger attached to the complaint appears to reflect that the violations are now paid up and the Complainants have been properly credited where appropriate.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

37. 2022006351
Opened: 3/1/2022
First Licensed: 11/26/2019
Expires: 11/25/2023
Type of License: Real Estate Firm
History: None

The Complainant is the buyer. The Respondent is the listing agent's realty firm.

The Complainant closed on the subject home in April 2021. The Complainant was given the sellers' disclosure statement in February 2021 which resulted in the Complainant ordering a home inspection. As a side note, the Complainant also filed a complaint against the home inspector alleging negligence in the preparation of the report. In any event, the Complainant says that the Respondent failed to disclose deficiencies related to a number of areas around the home.

The Respondent says that the Complainant made no requests for any repairs or replacements prior to closing despite having a copy of the home inspection report. Further, the Complainant indicates on the "Buyer's Final Inspection" that the property was in satisfactory condition prior to closing.

If the home inspector's report was flawed that is not the Respondent's fault.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

38. 2022001751
Opened: 3/1/2022
Unlicensed
History: None

The Complainant is a representative or family member of the seller. The Respondent is an unlicensed representative or owner of a company that buys real estate. The Respondent is also an attorney.

The Complainant says the seller executed a purchase and sale agreement in September 2020 in which the seller sold his home to the Respondent's company. The Complainant seems to be focusing more on whether or not the seller, in fact, signed the purchase and sale agreement. The Complainant claims that the seller (likely based on age) does not own any piece of electronic technology that would have allowed the seller to sign the sale agreement, implying that the seller's signature was forged. It appears, however, that only the buyer's signature is electronic with the seller's signature being done in ink.

The Complainant goes on to say that while the seller still resides in the subject home (apparently the sale never went through), the home's title is now "clouded" as the purchase and sale agreement was filed with the county register of deeds office. This, of course, is now keeping the home from being sold until it is resolved. The Respondent did not respond to the complaint as it appears the address provided is outdated.

There is little for the Commission to address here. It not clear that the Respondent needed a license in 2020 as the only attempt to practice brokering appears to be the statement to "help seller find a property in [area of state] close to family." This likely never occurred as the seller never sold his house. The seller has retained an attorney and appears to be pursuing the Respondent regarding the encumbrance on the seller's title.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

TIMESHARES:

- 39.** 2022000101
Opened: 2/14/2022
First Licensed: 5/8/2007
Expires: N/A
Type of License: Time Share Registration – Time Share Exempt
History: None

The Complainant is a time share owner. The Respondent is a time share company.

The Complainant says the time share he and his spouse contracted for was based on misrepresentations by the time share salesperson. The complaint contains no specifics as to what was supposedly misrepresented.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

CASES TO BE REPRESENTED:

- 40.** 2021072411
Opened: 1/5/2022
First Licensed: 8/23/2007
Expires: N/A
Type of License: Time Share Registration – Time Share Exempt
History: None

The Complainant is one of the Respondent's former employees and not a TREC licensee. The Respondent is a time share company.

The Complainant says the Respondent hires new employees and allows them to work without an acquisition license. The Complainant says they do this work off site, according to him, inside a nationally-recognized store chain.

The Respondent says the new agents completed a two-week training course and then are instructed on how to obtain the Tennessee acquisition license. The Respondent does not categorically deny that the agents are working prior to gaining a license; however, the Complainant provides no time period in which these events have allegedly occurred or any specific sales agents.

Recommendation: Letter of Warning for unlicensed activity in violation of Tenn. Code Ann. § 62-13-301

Commission Decision: The Commission voted to defer this matter to the April meeting in order for counsel to send this matter for investigation.

New Information: A TDCI investigator went to all the locations identified in the Complainant's initial complaint. The investigator found one time share salesperson who was not licensed at the time of the investigator's visit to the site. This individual; however, had a license application pending and has since been granted a license effective February 24, 2022. The other two individuals possessed valid licenses.

New Recommendation: Authorize a formal hearing with authority to settle by Consent Order with a \$1,000 civil penalty for a violation of Tenn. Code Ann. § 62-13-301 for unlicensed timeshare sales.

New Commission Decision: The Commission accepted counsel's recommendation and also voted to open a complaint against the principal broker for violation of Rule 1260-01-.04.

41. 2021069861
Opened: 11/1/2021
First Licensed: 4/13/2005
Expires: 1/28/2023
Type of License: Real Estate Broker
History: 2018 Letter of Warning re posted sign authorization

Complainant is a Tennessee resident. Respondent is a licensed broker.

Complainant submitted an offer on property that was listed as FSBO then requested Respondent close the deal for a small commission as a facilitator. Complainant alleges Respondent reached out to her on September 27, 2021, because Respondent heard Complainant intended to sell the contract rights to an assignor. Complainant alleges Respondent called again the next day and told her the contract was not assignable, and that she would be breaking the contract with tenants by not honoring a lease. Complainant states she later told Respondent she wished to terminate the contract and requested an earnest money release. Complainant attached a copy of her email to Respondent on September 28, 2021, stating she did not wish to move forward and requesting termination and earnest money release paperwork. Complainant alleges Respondent has not released the earnest money as of the filing of her complaint on October 14, 2021.

Respondent submitted a response stating that she did not tell Complainant the contract was unassignable. She states the property came with tenants, and Complainant agreed to let the tenants remain pursuant to the contract. Respondent states Complainant and her brother started telling the tenants to leave, and Respondent told Complainant she could not do that according to the contract. Respondent states Complainant presented a letter stating only that she wanted to be released based on her “findings,” but it did not specify what the findings were. Respondent stated Complainant never had an inspection nor requested access to the property. Respondent states the contract was not contingent on Complainant being able to assign the contract. Respondent states she does not believe Complainant should get the earnest money. The response did not include any documentation nor any information on the status/outcome of the earnest money dispute.

Counsel reached out to Respondent requesting additional information including an update on the outcome along with a copy of the contract designating the earnest money holder and/or a copy of any releases. Respondent did not respond. Counsel then reached out to Complainant requesting a copy of the contract and more information to identify the holder of the earnest money and if/when the money was disbursed. Complainant never responded.

It does not appear that Respondent was the holder of the earnest money at issue nor the principal broker at her firm. In the text exchange with Complainant on September 28, Respondent states that she was discussing

Complainant's request for the earnest money with her principal broker "to figure out what to do." In the same email, however, Respondent gives Complainant a legal opinion: "You don't have an auto out. It's a breach of contract." Based on the information provided, counsel recommends a civil penalty in the amount of \$1,000.00 for engaging in the unauthorized practice of law in violation of Tenn. Code Ann. § 62-13-312(b)(19).

Recommendation: Assess a \$1,000.00 civil penalty for the unauthorized practice of law in violation of Tenn. Code Ann. § 62-13-312(b)(19).

Commission Decision: The Commission accepted counsel's recommendation

New Information: In counsel's opinion, the Respondent's lone statement: "It's a breach of contract" does not rise to the level of the unauthorized practice of law. The statement was made as part of a conversation between the Complainant and Respondent that was not relied upon or taken as legal advice. This is the only evidence of such allegation.

New Recommendation: Close.

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

42. 2021066481
Opened: 11/22/2021
Unlicensed
History: None

The Complainant is a homeowner that utilized the Respondent to manage a rental property in TN. The Respondent is an unlicensed property manager.

The Complainant says she utilized the Respondent's "investment company" to manage her rental property in Tennessee. The Complainant resides in California. For whatever reason, the parties got into a disagreement about the lease. The Complainant called out the fact the Respondent had no TREC license and demanded to terminate their agreement. After this, neither the tenant nor the Complainant heard anything more from the Respondent. The

Respondent has moved and will no longer take phone calls. The Complainant says the Respondent kept \$1,600 of security deposit funds and \$547 in rent.

The Respondent did not respond to the complaint. No mail or email was accepted or acknowledged. The Respondent appears to be unlicensed.

Recommendation: Authorize a formal hearing with authority to settle by Consent Order with a \$1,000 civil penalty for a violation of Tenn. Code Ann. § 62-13-301, which states, “it is unlawful for any person to directly or indirectly engage in or advertise or claim to be engaging in the business of or acting in the capacity of a real estate broker or affiliate broker without first obtaining a license.”

Commission Decision: The Commission accepted counsel’s recommendation

New Information: All mail has been returned from any address supposedly belonging to the Respondent. Additionally, a TDCI investigator was unable to find the Respondent after a number of attempts. Based on discussion with the Complainant, the Respondent is no longer managing properties.

New Recommendation: Close.

New Commission Decision: The Commission voted to close and flag this complaint.

43. 2021075271
Opened: 11/29/2021
First Licensed: 11/30/2020
Expires: 11/29/2022
Type of License: Affiliate Broker
History: None

This is an anonymous complaint regarding an alleged advertising violation. The Complainant says the Respondent’s name is much larger than the firm name.

The Respondent says that he measured his name at “5” tall x 11 ½ wide while the [firm name] logo measures 6 1/2” tall x 21 ½” wide.” The picture included with the

complaint appears to depict the Respondent's name the same size as the branding for the firm; however, the firm's full name does appear somewhat small than the Respondent's.

The branding is not a "DBA," so the firm name is smaller.

Recommendation: Authorize a contested case proceeding with authority to settle by Consent Order and payment of a \$500 civil penalty for violation of Tenn. Comp. Rules & Regs. 1260-02-.12(3)(b) which requires that "[a]ll advertising shall be under the direct supervision of the principal broker and shall list the firm name and the firm telephone number as listed on file with the Commission. The firm name must appear in letters the same size or larger than those spelling out the name of the licensee or the name of any team, group, or similar entity."

Commission Decision: The Commission accepted counsel's recommendation and voted to open an administrative complaint against the Principal Broker for failure to supervise the affiliate due to the advertising violation.

New Information: Part of the Respondent's name on file with the Commission are the two, upper-case letters referenced in the original summary. On this particular sign, those two letters are larger than the affiliate broker's name. The rest of the name; however, is smaller than the affiliate broker's name.

New Recommendation: Discussion. Counsel recommends one Commission member review the picture of the sign contained in the complaint file. The Commission member should be one not active in the Middle Grand Division.

New Commission Decision: The Commission voted to continue with the original decision.

**44. 2019029971
Opened: 4/9/2019
Type of License: Unlicensed
History: None**

Complainant is a Tennessee real estate licensee. Respondent is an unlicensed individual.

Complainant alleges that Respondent is engaged in unlicensed activity. Complainant claims Respondent has set up a closed Facebook group on which Respondent posts commercial and residential listings that they are not legally entitled to post. Complainant alleges that Respondent was trying to connect buyers and sellers for a fee while they are unlicensed. Complainant sent the address of the Facebook group which appears to still be operating as of the date of this report entry.

Notice of the complaint was delivered to the only known possible address for Respondent but it was returned to sender. In addition, emails sent to Respondent went unanswered.

Recommendation: \$1,000 civil penalty for unlicensed activity.

Decision: The Commission voted to accept Counsel's recommendation.

New Information: A TDCI investigator attempted to make contact with the Respondent in order to ask the Respondent questions posed by counsel. The investigator found an office supposedly operated by the Respondent; however, neither the Respondent nor any employees were present. All the investigator's phone calls and texts went unanswered.

The complaint gives insufficient information as to how the Respondent is engaged in brokering. Possibly, the Respondent works with investors in some fashion that gives the impression she is engaging in brokering by her association. All internet searches bring up the Respondent as a "real estate investor." Without any more information to go on, it is difficult to conclude the Respondent is engaging in unlicensed brokering. If the Complainant comes up in a new complaint, the complaint can be re-opened.

New Recommendation: Close.

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

**Anna Matlock
New Complaints:**

45. 2021076591

Opened: 1/10/2022
First Licensed: 8/26/1986
Expires: 12/1/2022
Type of License: Real Estate Firm
History: None

Complainants are Tennessee Residents. Respondent is a licensed firm. Complainants allege the home they purchased had three (3) bedrooms and a full unfinished basement. After moving out of state, Complainants listed their home. The home was listed as a modular home. The inspections showed the septic system required upgrades for many of the bedrooms, which Complainants agreed to pay at closing. During a title search Complainants were told they lived in a “triple wide trailer” and could not obtain a loan required to sell the home. A new appraisal returned with a lower price and the buyer revised their purchase offer to the new appraisal cost. Complainants provide an affiliated agent of Respondent’s informed them a commission would not be charged on their side. Also, this affiliated agent maintained this was a modular home, not manufactured. Complainants believe the affiliated agent defrauded Respondents at the time of their original purchase of the property in question by providing dishonest information related to their property.

Respondent failed to submit a response. Therefore, Counsel recommends Respondent be assessed a civil penalty of One Thousand Dollars (\$1,000.00) for failure to respond and that an administrative complaint be opened against the affiliated agent of Respondent.

Recommendation: One Thousand Dollar (\$1,000.00) civil penalty for failure to respond and administratively open a complaint against the licensee mentioned by Complainants’.

Commission Decision: The Commission accepted counsel’s recommendation.

46. 2021078121
Opened: 1/10/2022
Unlicensed
History: None

This complaint was referred by the Division of Consumer Affairs. Complainant is a Tennessee resident. Respondent is an unlicensed business entity. Complainant

provides little information but appears to allege Respondent is not registered to solicit and do business in Tennessee and provides a link to a copy of a letter from Respondent to Complainant. Complainant provides no additional information.

Respondent answered the complaint through their CEO. Respondent states they are welcome to provide further information for Complainant's complaint, but at the time are unable to full respond as no specific allegations are made. Respondent states they solicit to sell only through licensed brokerage relationships. The solicitations to buy land is made through direct mail or social media.

Counsel recommends this matter be dismissed. Despite two (2) failed communication attempts to Complainant, Counsel finds no specific grievances from Complainant related to Respondent as applied to the Commission's jurisdiction, Counsel.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

47. 2021080611
Opened: 1/10/2022
First Licensed: 12/15/2009
Expires: 12/14/2023
Type of License: Real Estate Firm
History: None

This complaint was referred by the Division of Consumer Affairs. Complainant is a Tennessee resident. Respondent is a licensed real estate firm. Complainant alleges their residence has mold and mildew since August of 2019 until this complaint filing. Complainant alleges Respondent only paints over the issue and provides dehumidifiers. Complainant further states they are pregnant, have animals, and has requested to move from this property. Due to the condition of the property, Complainant provides they have spent money on cleaning supplies and other items to remedy the situation.

Respondent answered the complaint stating they are willing to move Complainant to a different property when availability permits. Respondent further states upon notice of existing mildew and mold Respondent provided the same humidifiers used

in water leaks throughout their properties, cleaned the areas, and then painted the repairs. Respondent also alleges Complainant fails to keep the humidifiers on, emptied, and maintain clean filters. Respondent has provided copies of receipts and invoices demonstrating their response to Complainant's issues.

Based on the information from Respondent and Complainant, Counsel finds no violations of the rules and statutes. It appears the matter between Complainant and Respondent is landlord-tenant related, which falls outside of the Commission's jurisdiction. Therefore, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

48. 2021078871
Opened: 1/18/2022
First Licensed: 9/13/2017
Expires: 9/12/2023
Type of License: Real Estate Firm
History: None

This complaint was referred by the Division of Consumer Affairs. Complainant is a Tennessee resident. Respondent is a licensed real estate firm. Complainant alleges they received a flyer of a take lot sale and later signed a contract and put down a deposit. Complainant states the flyer stated all utilities were in the subdivision but found no poles or wires. After Complainant asked their agent about the utilities, they were told the utilities were underground and only required service from the street to their future home. After construction began, Complainant stated they called an electricity provider requesting a temporary meter were told there were no utilities in the community. Complainants were informed the seller's been billed repeatedly without response and not can be done until payment is made. Therefore, electricity would not be available until the beginning of the year at the earliest. Complainant alleges Respondent's business entity was administratively dissolved in August of 2021. Complainant provided documents to support their claims.

Respondent failed to submit a response. Therefore, Counsel recommends Respondent be assessed a civil penalty of One Thousand Dollars (\$1,000.00) for

failure to respond and that an administrative complaint be opened against Respondent's principal broker.

Recommendation: One Thousand Dollar (\$1,000.00) civil penalty for failure to respond and administratively open a complaint against Respondent's principal broker.

Commission Decision: The Commission accepted counsel's recommendation.

49. 2021078971

Opened: 1/24/2022

First Licensed: 2/3/1995

Expires: 1/11/2024

Type of License: Principal Broker

History: 2013 Letter of Warning; 2019 Consent Order for failure to supervise an affiliate due to lapse in affiliate's E&O insurance; 2021 Consent Order for failure to supervise an affiliate due to lapse in affiliate's E&O insurance

Complainant is a Tennessee resident. Respondent is a licensed principal broker. Complainant alleges they purchased their property from Respondent's firm and were told city water came to their property. Complainant provides that their city of residence informed them the water lines are too old to give a new tap. Complainant provides they were informed by the utility department that the city does not have money to repair the money. Complainant states their property was falsely advertised and Respondent should return the money. Complainant is unable to access water and states there should be better communication between their agent and Respondent.

Respondent answered the complaint stating they did not represent Complainant in this transaction. Respondent was hired to sell the subject property and the seller and courthouse documents stated the water source was public and that the water line is at the road directly in front of the subject property. Respondent also provides Complainant signed a contract with no inspection contingencies and chose not to verify the information about the property. The contract also includes a disclaimer informing that the agents were not party to the contract and not responsible for any matters that could be revealed through inspections of the property, including utilities. Lastly, Respondent closes that Complainant also signed an agent disclaimer that

reiterated the disclaimer in the main contract. Respondent provides documents from the transaction file to support their statement.

Based on the information provided by Complainant and Respondent, Counsel finds no violation of rules and statutes by Respondent. Complainant signed several disclosure documents in the file waiving mechanisms to inspect and verify the property based on the information provided in the contract agreements related to this property. Therefore, Counsel recommends this matter be dismissed with no action.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

50. 2021079481
Opened: 1/24/2022
First Licensed: 10/11/2005
Expires: 10/10/2023
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is licensed affiliate broker. Complainant alleges Respondent represents the other party. Complainant alleges during the transaction Respondent and laments their attitude, dishonesty, and unprofessionalism. Complainant states Respondent approached them with information "that there is something wrong with our land." Complainant further alleges Respondent requested a sixty (60) day extension to complete testing, claimed Complainant was unreasonable in negotiations, and waived contingences Respondent claimed their clients would pay for any inspections in the contract. Specifically, Complainant sites the contingency that Respondent's plans would be approved by the Architectural Review Counsel, which was granted without issue and permitting Respondent to obtain the building permit. Complainant further alleges Respondent misrepresented their contracts and lied about the building permit contingency. Complainant concludes with stating if Respondent's behavior is permitted, that a reexamination of the ethics is warranted.

Respondent answered the complaint through their attorney and states this involves a failed purchase of a lot and Respondent's clients successfully withdrew their interest and the earnest money originally deposited for the transaction. Respondent's

attorney further provides upon hearing of potential issues with Complainant's property and subsequently had a soil test, which Respondent believed to be their ethical duty. Respondent's counsel states after Complainant refused a feasibility study, Respondent's clients withdrew from the transaction per the purchase and sale agreement and deny any contact with the Architectural Review Committee. Lastly, Respondent denies failing to uphold duties required by real estate professionals.

Complainant submitted a rebuttal providing an extensive timeline to counter the allegations denied by Respondent. In the rebuttal, Complainant again asserts that the behavior and level of service by Respondent is still unprofessional, which ultimately caused the transaction. After reviewing the information and statements by both parties, it appears this matter is primarily a contractual dispute and alleged ethics violations. The Commission does not have jurisdiction over either, nor does Counsel find any violations of the rules and statutes. Therefore, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

51. 2021081061
Opened: 1/24/2022
First Licensed: 5/21/2015
Expires: 5/20/2023
Type of License: Affiliate Broker
History: None

This matter was referred from Consumer Affairs. Complainant is a Tennessee resident. Respondent is an affiliate broker. Complainant provides Respondent is a property manager and is to be contracting repairs for a few balconies with puddling. Complainant provides a video of their issue for reference. Complainant alleges that Respondent made false promises to complete the repair on their balcony. Complainant states that other tenants of the condominium complex received refunds for failed repairs and their unit's balcony remains unfinished.

Respondent answers the complaint stating they were directed by the Board of Directors to identify a solution to address balcony leaks and that three solutions were identified and presented. Respondent further states that balconies are owned and to

be maintained by the homework, they are classified as a limited common area within the deed and homeowner association bylaws. Respondent ends stating that the effected homeowners attended the meeting and approved the solution to fix the balconies.

Counsel recommends this matter be dismissed. Based on the information provided by Complainant and Respondent, Counsel finds no violation of the rules and statutes. The crux of the situation appears to be more of a landlord tenant dispute, which the Commission does not have jurisdiction.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

52. 2022000081

Opened: 1/24/2022

First Licensed: 4/5/2017

Expires: 4/4/2023

Type of License: Affiliate Broker (Suspended)

History: 2021 Consent Order for making any substantial and willful misrepresentation

Respondent is a licensed principal broker. Complainant is a suspended affiliate broker. On January 2, 2022, Complainant states that Respondent placed their primary residence for sale representing themselves, the seller, as a real estate agent. Complainant provides a copy of the MLS details along with all the Tennessee REALTORS® forms that have Respondent listed as the seller and the agent. Additionally, Complainant provides Respondent advertised this property on social media. On January 3, 2022, Respondent removed their name from the MLS and substituted another agent's name in Respondent's firm. Complainant provides the listing still stated interested individuals should contact Respondent as the property is listed as for sale by owner. Complainant states at the time of the listing that Respondent's name is not listed on the unfiled quitclaim deed as the owner and is engaging in unlicensed activity. Complainant states Respondent's firm is aware of Respondent's suspension and Complainant spoke with the firm's new principal broker. Complainant provides copies of the MLS listing and multiple transaction documents with each document in Respondent's name at the bottom, as well as in other portions of the forms as both "owner" and "listing agent/real estate licensee".

Respondent answered the complaint stating on January 2, 2022, they completed listing paperwork for their personal home and placed the details in the MLS in the “Coming Soon” status. Respondent states within minutes of posting the listing, a friend notified Respondent their license changed. Respondent alleges the listing was immediately cancelled and the MLS can corroborate the elapsed time between posting and retraction. Respondent further states their property is owned by their in-laws and upon expressing an intention to move, a quitclaim deed was drafted, executed, and recorded in November of 2021. Respondent states in July of 2021, their license was placed into retirement and received a confirmation of status change, and their MLS access was made inactive. Respondent then claims they received a copy of their license with “Retired” denoted. Respondent provides they immediately self-corrected once they were aware of the change in status.

Respondent’s principal broker also provided a response stating Respondent joined the firm in early October 2021. At this time, Respondent mentioned to the principal broker they had an open complaint and were awaiting a final decision and understood from Respondent that suspension of their license was impending, but Respondent maintained contact with former Counsel. The principal broker stated they repeatedly checked with Respondent the status of their complaint in order to be prepared if a license status change occurred. Despite this, the principal broker stated they first learned of Respondent’s suspended license by their local association on January 5, 2022. At this time, the principal broker confirms that Respondent had an active listing of the subject property, and this was immediately transferred to them. On January 7, 2022, the principal broker received formal notification of the complaint via e-mail, when they took the listed two (2) days prior. The principal broker stated Respondent shared on January 11, 2022, that the consent order had been signed and submitted on December 20, 2021, without their knowledge. The principal broker stated on January 12, 2022, they met with Respondent and terminated their affiliation.

Respondent executed a previous consent order for violations of Tenn. Code Ann. §§ 62-13-312(b)(12), 62-13-312(b)(14), and 62-13-403(a). In the consent order Respondent agreed to a one (1) year suspension, a Two Thousand Dollar Civil Penalty (\$2,000.00), a CORE course, nine (9) hours of ethics, and is required to appear before the Commission in an informal capacity before their license can be moved into an active status. This consent order was executed on December 16, 2021, and an email was sent for Respondent’s license to be suspended on the same date. Prior to this complaint and listing, Respondent’s license was suspended for at least two (2) weeks, into a one (1) year suspension. Counsel finds based on the

information provided, that Respondent engaged in unlicensed activity by listing their own property on the MLS, using forms in their name, and holding themselves out as a real estate licensee as prohibited by Tenn. Code Ann. § 62-13-301. As Respondent has continued to violate the rules and statutes despite a suspension and existing consent order, Counsel recommends that Respondent's license be voluntarily suspended, the same as revocation for the remaining time period of the suspension, plus an additional eighteen (18) months.

Recommendation: Voluntary Surrender, same as Revocation for the remaining time period of the suspension, plus an additional eighteen (18) months and complete all outstanding matters of the December 16, 2021 Consent Order. Should Respondent reapply for licensure, Respondent shall appear before the Commission, receive Commission approval, and satisfy all additional licensure requirements, including but not limited to, application, education, examination, and any other administrative matters for an initial applicant.

Commission Decision: The Commission accepted counsel's recommendation.

**53. 2022000501
Opened: 1/24/2022
First Licensed: 3/18/2021
Expires: 3/17/2023
Type of License: Affiliate Broker
History: None**

Complainant is a Tennessee resident. Respondent is a licensed affiliate broker. Complainant alleges Respondent has a listing with the incorrect amount of square footage. Complainant provides the original listing had 2,881 square feet and the auditor website provides 2,437 square feet. Due to this discrepancy, Complainant hired an inspector and after finding the difference requested a new price per square footage and that was rejected. Complainant alleges the title company still retains their earnest money and requested a refund for the amount paid for the inspector and both were rejected. Complainant provides a new listing for the beginning of January that showed a difference square footage amount of 2,631.

Respondent answered the complaint confirming they do represent the owner of the property in question and that this is their first listing. Respondent states based on their understanding of the tax records there was 2,261 square feet plus 588 bonus

room for a total 2,849 and also provided this information in the public remarks section that the square footage was to be verified by the buyer and buyer's agent. Also, the property was sold "as is". Respondent states after a discrepancy of the square footage was discovered, a new offer was provided, \$25,000 less. The seller rejected this offer and countered that was then rejected by the buyer. Respondent states they did not intend to mislead anyone and believed the square footage to be correct. Regarding the earnest money, the funds were released following a correction of an address error.

Counsel does find discrepancies within the square footage of the subject property. However, it appears this discrepancy is due to information from the tax records. Furthermore, Complainant did agree to pay purchase the property "as-is". Ultimately, the seller rejected the counteroffer made by Complainant. Respondent was first licensed last year, and this project is their first listing. It is clear Respondent did not intend to misrepresent the information for this listing. Therefore, Counsel recommends Respondent be provided a Letter of Instruction explaining the importance of Tenn. Code Ann. § 62-13-403.

Recommendation: Letter of Instruction.

Commission Decision: The Commission accepted counsel's recommendation and also voted to administratively open a complaint against Respondent's principal broker for failure to supervise.

54. 2022001951
Opened: 1/31/2022
First Licensed: 7/6/1989
Expires: 11/2/2023
Type of License: Affiliate Broker
History: None

Complainant is an out of state resident. Respondent is a licensed affiliate broker. Complainant states they found an active listing for a new construction home at a listing price of \$449,900. Complainant claims they contacted the listing agent and to view the home. Complainant states after viewing the home they decided to place an offer on December 28, 2021 and accepted the contract with the agreed upon terms the same date. After the property went "off market" and Respondent did not contact Complainant for several weeks and promised to complete the sale. On January 20, 2022, Complainant noticed the subject property was relisted for an additional \$20,000. Complainant provides they were under contract and do not understand why

the home is relisted and for additional money. Complainant provides a copy of an unexecuted purchase and sale agreement.

Respondent answers the complaint stating they have never met Complainant, never served as their real estate agent, and no executed offer or contract exists. Respondent states Complainant is a real estate agent and insisted on representing himself, and never signed a purchase and sale agreement or confirmation of agency. Respondent states Complainant requested Respondent pay them a \$4,000 commission without going through their brokerage in another state. Respondent declined. Respondent provides Complainant stated purchase of the subject property is contingent upon the sale of their property out of state. Respondent states Complainant was provided the documents on December 28, 2022, with a deadline to sign of December 29, 2021, but Complainant never signed a written offer and the listing expired on December 31, 2021. On January 18, 2022, Respondent's seller decided to relist the property, sign an executive listing agreement, and increase the price.

Respondent's principal broker provided a response stating they do not believe any ethical or contractual obligations were violated. Complainant's unsigned offer was presented to the seller that declined to accept and later decided to relist the property. Respondent's principal broker further confirmed Complainant had no binding contract, nor submitted a signed offer, and was never represented by Respondent. Based on the documents provided by Respondent, and Complainant's unexecuted purchase and sale agreement, Counsel recommends this matter be dismissed due to no found violations of the rules and statutes.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

55. 2022002711
Opened: 1/31/2022
First Licensed: 9/20/2020
Expires: 4/9/2023
Type of License: Principal Broker
History: None

Complainant is an out of state resident. Respondent is a licensed principal broker. Complainant alleges that Respondent's family operation's advertising specifically

states they are real estate providers and found Respondent to be a licensed real estate agent. Complainant travelled to Tennessee as part of their family gathering each year, and their booked in advance space was "...a total mess, and uninhabitable except for the fact that we had nowhere else to go on short notice." Complainants state they would have liked to have the opportunity to say "no" and receive their money, but as this was late notice, this was not possible. Complainant states maintenance was not able to correct issues, phone calls and emails to their vacation location were ignored and will never rent from Respondent's establishment again. Complainant alleges Respondent is using their various companies and deliberately using their real estate connections and companies to back up the advertising.

Respondent answered the complaint stating they are the designated agent for the property in question and Complainant is not a party to the transaction as another individual is listed on the reservation in question. As property managers, Respondent states they resolve issues in a timely manner. Respondent further provides they do not have control over construction in any homeowner's association or other areas in this county. The construction company in question did have a property outside this respective area as well as materials and dumpsters in their own area. Respondent concluded by stating the HOA does have steps that led down to the river made out of railroad ties.

Based on the information provided by Complainant and Respondent, this appears to be more analogous to a landlord and tenant dispute, which falls outside of TREC's jurisdiction. Additionally, Complainant is not a party to the transaction in dispute. Therefore, Counsel recommends this matter be dismissed as no violations of rules and statutes were found.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

56. 2022003131
Opened: 1/31/2022
Unlicensed
History: None

Complainant is a licensed real estate broker. Respondent is an unlicensed individual. Complainant alleges their buying client contacted them on January 24, 2022, but the

seller upon contact was informed an individual in the home had COVID-19. On January 26, 2022, Complainant confirmed with Respondent the showing time and instructions. At that time, Respondent informed Complainant they had an equitable interest in the home and was not the owner. Upon this information, Complainant discovered Respondent was unlicensed. Complainant states this was not marketed as the sale of a contract, but the sale of a specific property.

Respondent answered the complaint confirming they do not and have not ever claimed to have a license. Upon the listing information, Respondent phone number is provided, and they identify themselves as the person to communicate, not the owner or as an agent. Respondent additionally informs contacts this is an equitable interest listing. Respondent states they have signed documentation with the property owner that allows them to list and market the property on the MLS. Respondent further states conversation about the sale of property because often tenants are there which have no relevance to the sale of the property. Respondent additionally provided a novation contract and an attorney-in-fact.

Counsel finds that Respondent falls into the exemption provided in Tenn. Code Ann. § 62-13-104(a)(1)(B) which exempts attorneys-in-fact under a duly executed and recorded power of attorney from the owner or lessor to conduct activities governed by the Act. Furthermore, the listing agent provided on the MLS posting has an active real estate broker license. It appears that Respondent is an employee of a larger company and the individual that serves as a conduit of information between the property and any prospective buyers. Therefore, based on the information provided by both parties in this complaint, Counsel finds no violation of the rules and statutes and recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

57. 2022001791
Opened: 2/7/2022
First Licensed: 3/23/2000
Expires: 8/11/2023
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is a licensed affiliate broker. Complainant alleges Respondent failed to provide proper notification to explain why their client would not continue with the purchase of their property. Complainant states Respondent provided various reasons why their client would not move forward including, loss of employment, failure to secure financing, and the need for a PERC test. Complainant states they were not notified of Respondent's client cancellation until Complainant completed their portion of closing and therefore were in breach of contract. Complainant concludes alleging Respondent handled this matter unprofessionally.

Respondent answered the complaint refuting Complainant's statement that their client was terminated from their job, only that their client was concerned about losing their job as their place of work was purchased by another owner. Respondent states they notified the listing agent of this fact on December 21, 2021. Respondent further provides this contract was written per their client's instructions and that the pre-approval letter did not specify the specific type of loan. On December 28, 2021, the listing agent emailed Respondent a letter stating a PERC test was required by the lender. Respondent was later notified by their client and lender that funds were short, but the lender would not issue a denial letter as Respondent's client could obtain the funds that were short but did not do so. Therefore, Respondent informed their client of possible legal action for failure to perform. The listing agent informed Respondent that despite being notified their client would not close due to funds, Complainant would be closing regardless. Respondent provided a copy of the transaction file.

Looking at the documents and correspondences, it appears that Respondent did their best in communicating with their client and relaying that information to Complainant's agent. The specific issue at hand and grievances stemming from the original complaint appear to be contractual and ethics. Complainant alleges that Respondent's client is now in breach of contract. Both contractual disputes and ethical matters fall outside of the jurisdiction of the Commission. Removing these allegations it does not appear that Respondent is in violation of any rules or statutes. Therefore, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

TIMESHARES:

58. 2022001671
Opened: 1/31/2022
First Licensed: 4/20/1999
Expires: 12/31/2022
Type of License: Time Share Registration
History: None

Complainant is an out of state resident. Respondent is a licensed time share company. Complainant states they purchased a timeshare in 2010 and states Respondent has continued to use unethical practices and deceive people and customers. Complainant describes the long sales presentation and are unable to make education decisions due to a non-reliance clause. Complainant alleges the contract is misleading, confusing, and the public offering statement was located in a folder within a folder. Complainant closes nothing purchasers are unable to use the property at their desired times, and that people are being harmed financially and emotionally.

Respondent answers the complaint through their compliance officer confirming that Complainants purchased a timeshare interest in March 2011 and provided a copy of the purchase and sale agreement. Respondent denies the allegations from Complainant related to the public offering statements and that Complainants received their copy per a strict policy on this matter. Respondent closes stating the purchase contract is valid and binding, and that Complainant did not seek to cancel within the rescission period that is conspicuously disclosed and are not entitled to cancellation of their account.

Complainant provides a rebuttal stating Respondent has not addressed the issue of the sales presentation, the non-reliance clause. Complainant has attempted to resell and rent, but Respondent did not address their concern that consequences exist for unethical practices. Complainant is not arguing their signature is on the contract, but maintains Respondent is taking advantage of a clause in an unethical way and do not attempt to change. Complainant closes stating unclear terms in the contract and failure to understand need to be addressed, not the signatures. Based on the signed purchase and sale agreement, the expired statute of limitations on this complaint, and the lapsed rescission period, there are no violations of the rules or laws. Therefore, this matter must be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission accepted counsel's recommendation.

CASES TO BE REPRESENTED:

- 59. 2021075521**
Opened: 12/13/2021
First Licensed: 8/21/1997
Expires: 3/26/2022
Type of License: Affiliate Broker
History: None

Complainant is a Tennessee resident. Respondent is a licensee. Complainant states their property sold with a projected closing date of 8/16/2021. On 11/17/2021, Complainant found Respondent did not pay the mortgage company and Respondent informed Complainant the mortgage company returned the check via mail. Complainant states the mortgage company did not receive a check. After contacting law enforcement, Complainant discovered their name still remained on the deed. Complainant is concerned the deed is "not technically legal" and has notified the buyers of Complainant's property and. All parties spoke and consulted with attorneys.

Respondent answered the complaint stating this is the first time their company has had a payoff delayed due to a mortgage company and apologizes for the inconvenience. Respondent states the closing occurred on 8/16/2021 with funds received via personal check. The bank held the funds for seven (7) banking days before issuing the certified funds for closing. The bank wrote the check on 9/8/2021 and contained a letter stating payoff was good through 9/15/2021. Respondent states they received the mail at their P.O. Box on 11/17/2021 torn and destroyed. At that point, Respondent contacted Complainant and requested Complainant come discuss how to remedy the situation. Respondent states Complainant ceased communications while Respondent was contacting the bank about the destroyed certified funds. The bank verified and issued a refund to Respondent's escrow account and the funds were immediately wired to Complainant's mortgage company. Respondent provides the transaction file that support their sequence of events. Respondent provided further information in a letter dated 12/8/2021 from Complainant's mortgage company verification the mortgage was current as of 11/17/2021.

Complainant submitted a rebuttal and copy of the demand letter sent to Respondent's firm on 12/2/2021. The demand letter details the amount of unsatisfied funds entrusted to Respondent by Complainant and the sellers. Complainant states despite reaching a remedy, both Complainant and the buyers retained counsel to resolve the matter. Complainant believes they were taken advantage; however, are satisfied the transaction is complete.

It appears Respondent received the damaged and torn payoff check on 11/17/2021 at no fault of Respondent. Further, Respondent took immediate steps to remedy the solution. It appears a time lapsed occurred between the time Complainant's demand letter was sent to Respondent and the time Respondent received verification of the mortgage company. After reviewing the information submitted by Complainant and Respondent including creating a timeline, Counsel does not see any clear violations of the Commission's rules and statutes. Therefore, Counsel recommends this matter be dismissed.

Recommendation: Dismiss.

Commission Decision: The Commission voted to defer this complaint until the April Commission meeting to allow counsel to gather more information.

New Information: Counsel attempted to contact Respondent via email to the address Respondent submitted their response on March 9, 2022, and March 21, 2022, with a deadline of Monday, March 28, 2022. Counsel received no response. Therefore, Counsel amends their previous recommendation and recommends Respondent be assessed a One Thousand Dollar (\$1,000.00) civil penalty for violation of Tenn. Code Ann. § 62-13-312(b)(11) for accepting a commission or any valuable consideration by an affiliate broker for the performance of any acts specified in this chapter, except the licensed real estate broker. Additionally, Counsel recommends an administrative complaint be opened against Respondent's principal broker for violation of Tenn. Code Ann. § 62-13-312(b)(15), failure to adequately supervise the activities of any licensed affiliate brokers within the scope of this chapter.

New Recommendation: One Thousand Dollar (\$1,000.00) civil penalty and administratively open complaint against Respondent's principal broker for failure to supervise.

Commission Decision: The Commission accepted counsel's recommendation.

Chairman John Griess adjourned the meeting at 11:50 A.M. CST