

## TENNESSEE REAL ESTATE COMMISSION MINUTES

February 6, 2013

The Tennessee Real Estate Commission convened on Wednesday, February 6, 2013 at 9:15 a.m., in the 3<sup>rd</sup> Floor Conference Room of the Andrew Johnson Building, 710 James Robertson Parkway, Nashville, TN 37243. The following Commission Members were present: Chairman William "Bear" Stephenson, Vice-Chairman Michelle Haynes, Commissioner Grover Collins, Commissioner Wendell Alexander, Commissioner Janet DiChiara, Commissioner Isaac Northern, Commissioner John Griess and Commissioner Austin McMullen. Commissioner David Flitcroft was absent. Others present: Executive Director Eve Maxwell, Education Director Steve McDonald, Assistant General Counsel Julie Cropp, Assistant General Counsel Robyn Ryan and Administrative Secretary Kelly Hestand.

The first order of business was the adoption of the agenda for the February 2013 Commission meeting. Commissioner Northern asked that a discussion be added to the agenda regarding the planning and location of the upcoming May 2013 meeting in West Tennessee. It was determined it would be addressed first on agenda. Commissioner Griess asked for a discussion regarding the procedure for transferring a license be added to the agenda and it was determined that the discussion would held at the conclusion of the Executive Director's report. **Commissioner McMullen made a motion to adopt the agenda as amended for the February 2013 agenda; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

The next order of business was the approval of the January 2013 minutes. **Commissioner Collins made a motion to approve the January 2013 minutes; seconded by Commissioner Griess; unanimous vote; motion carried.**

Commissioner Northern advised the Commission and Staff that he was charged by the Department's Administration to attempt to hold the Commission's out of town meetings at a state park and, as one of the West Tennessee Commissioners, he was asked to look into parks in the western part of Tennessee. He stated that he had made contact with representatives at Pickwick Landing State Park. He advised that Pickwick Landing has a 2000 square foot meeting room and also rooms for lodging at \$75.00/night (\$2.00 less per night than the state rate). The issue of needing recording equipment was addressed. It was suggested that perhaps TREC could take some portable recording equipment with them to the park. Ms. Maxwell explained that, per the Administration, we could not take any of the Department of C&I's recording equipment unless we also took an Information System (IS) employee to set up, run and break down the recording equipment. She also explained that the recording equipment, that could possibly be available to use in a travel situation, may not be able to be moved anyway if the new meeting rooms are not ready for use with new recording equipment. It was determined that taking

existing state equipment might not be the best option and that perhaps recording equipment could be rented from a vendor in that area. Ms. Cropp explained that Ms. Ryan, TREC's Litigation Attorney, had expressed concern about holding a formal hearing in a state park setting – especially if the room could not be set up in a courtroom type setting with proper recording equipment. Ms. Maxwell reminded the Commission that, in the past, the Department's Administration had not been inclined to pay for the rental of recording equipment rental and the associated labor costs.

**Commissioner Alexander made a motion that the Commission go on record that, per the Administration's request to the Board to attempt to hold meetings in state facilities or state parks, they want to hold the May 2013 meeting at Pickwick Landing State Park and that the State of Tennessee pay out of the TREC general operating fund whatever costs (above and beyond the normal – i.e. recording equipment and labor, meeting room rental) are incurred in order to hold the meeting at the state park; seconded by Commissioner Haynes; unanimous vote; motion carried.** The staff will follow up on the costs associated with holding the meeting at Pickwick Landing and discuss it with the Administration of the Regulatory Boards.

#### **INFORMAL EXPIRED LICENSEE APPEARANCE (MEDICAL WAIVER REQUEST)**

Mr. Richard W. Johnson, expired licensee #272630, appeared to request that he be allowed to renew his real estate license which has been expired since 5/22/2010, a period of 33 months. He requested that the Commission allow him to renew his license because he had some serious medical issues beginning 8/5/2010. During a previous visit to the TREC office, Mr. Johnson was advised that the Commission Reinstatement Policy has a medical waiver provision but that provision only allows for reinstatement within the first year after expiration and therefore he would need to appear before the Board with his request because his license expired more than one year ago. Mr. Johnson advised the Commission that he did development and sold his own property or property owned by a LLC in which he had an interest. The Commission told Mr. Johnson that when selling his own property, he does not need a license. **Therefore, Mr. Johnson withdrew his request to the Commission to renew his license. Mr. Johnson was advised that if he wants a license in the future, he will need to follow all proper procedures in place for expired licensees. Commissioner Alexander made a motion to accept Mr. Johnson's request to withdraw his request; seconded by Commissioner McMullen; unanimous vote; motion carried.**

#### **INFORMAL APPLICANT APPEARANCE**

Garry Stephen Wicker, Affiliate Broker applicant appeared with his potential Principal Broker Susan Bradberry of Premier Realty Group of Carroll County to request he be approved to apply for an Affiliate Broker license. Mr. Wicker disclosed to the Commission convictions on

4/20/2000 for Aggravated Burglary, Simple Domestic Assault & Aggravated Assault (all charges stemming from one isolated incident on 5/26/1999). **Commissioner Griess made a motion to approve Mr. Wicker's request; seconded by Commissioner Haynes; roll call vote: 5 yes, 0 no, 3 abstained because they know the Principal Broker; motion carried.**

After a brief break, Chairman Stephenson turned the gavel over to Vice-Chairman Haynes and she ran the meeting.

#### **EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL, EXECUTIVE DIRECTOR**

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

- **Complaint Statistics Report** – Ms. Maxwell presented complaint statistics to the Commission. As of January 31, 2013 TREC had a total of 88 open complaints. There were 16 new complaints in January 2013. There were 82 complaints in the legal department and 6 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2012-2013 is 175. Total Civil Penalties paid in January 2013 were \$22,430.00.

There was a discussion regarding the best way to reach and educate consumers about potential real estate scams or unlicensed activity. Using television PSAs was discussed and Ms. Maxwell was charged with looking into how such information could be disseminated from a cost and logistical standpoint. It was suggested that perhaps the local Realtor Associations could help spread the information. Ms. Maxwell asked what the Commission believed to be the best format. Commissioner Northern suggested that we may be able to get some free advertising space since it is meant for public service but that the production of the commercial/PSA would fall on TREC or another entity, such as an Association of Realtors. Ms. Maxwell suggested perhaps the Consumer Affairs Division might be willing and able to help TREC with production and distribution of this information.

- **Licensing Statistics** (Exhibit 4) – Ms. Maxwell presented licensing statistics for the month of January 2013. As of January 31, 2013, there were 22,960 active licensees, 1,359 inactive licensees and 9,275 retired licensees. There were 3,926 active firms and 276 retired firms. There were 244 new applications approved in January 2013. Further, she presented a comparison of total licensees for individuals (active, retired and inactive) and firms in January of 2008 – 2013. She reported on each state with a licensed Tennessee firm or firms and the number of those firms in each state. She presented a comparison chart of applications approved and examination taken. She also presented license renewal percentages and the average number of licenses

issued per month in 1997 and 2000 – 2013, firms closed or retired from 2008 – 2013 and the applications approved from 2008 – 2013.

### **PSI TESTING CONTRACT**

Ms. Maxwell discussed with the Commission the contract for testing. She advised that a testing contract with PSI became effective 7/1/2009. The initial term of the PSI testing contract was from 7/1/2009-7/1/2011 and that the contract provides for a term extension (at the state's option) for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than 5 years. (if all extensions exercised contract would run until 6/30/2014. She stated that on February 9, 2011, the Commission, upon the motion of Commissioner Flitcroft, voted to extend the PSI contract for one additional one year term on the same basic terms as the original contract and the term of the initial extension ran from 7/1/2011-6/30/2012. She further stated that on March 7, 2012, the Commission, upon the motion of Commissioner Alexander, voted to extend the PSI contract for an additional one year term on the same basic terms as the original contract. The term of this extension ran from 7/1/2012-6/30/2013. Ms. Maxwell advised the Commission that the contract will expire on 6/30/2014, if the state exercises its right to extend for the last additional one year term (7/1/2013-6/30/2014) and if the state does not exercise its right to extend, the contract will expire on 6/30/2013 and a RFP will need to be prepared and issued in order to select a testing company prior to the 6/30/2013 expiration date. She stated that if the contract is extended until 6/30/2014, then a RFP will be issued in 2014 to select a testing company. **Commissioner Collins made a motion to extend the testing contract with PSI for an additional year; seconded by Commissioner Alexander; unanimous vote; motion carried.**

### **ERRORS & OMISSIONS INSURANCE**

Ms. Maxwell presented the Commission with a report comparing the number of uninsured licensees by date in each of the last three renewal cycles (2009, 2011 & now 2013). She gave them a breakdown of how many licensees are shown insured with Rice and/or several alternate carriers. On January 5, 2013, it was reported that 13,089 licensees had purchased Rice Insurance, 3,715 had Alternate Insurance and 6,689 were uninsured. On February 5, 2013, it was reported that 16,560 licensees has purchased Rice Insurance, 4,054 had Alternative Insurance and 2,319 were uninsured. Ms. Maxwell stated that she is hopeful that by the March 31, 2013 deadline for compliance without penalty, many of these uninsured will purchase and backdate their insurance policies from either Rice or an alternate carrier. She will report back to the Commission at the March meeting and then after the actual March 31 deadline expires.

## **NONRESIDENT CONTINUING EDUCATION RECOGNITION**

Ms. Maxwell presented the Commission with a table of all the states and what education each state requires for nonresident licensees to complete. Ms. Maxwell asked if the Commission would prefer to discuss this topic during Mr. McDonald's Education Report and they agreed and the discussion was deferred.

Commissioner Griess addressed the Commission and Staff regarding the transfer of an affiliate from one firm to another. He stated that he had been contacted by a broker about the lag time between a transfer form being faxed and the time that the person actually becomes active with the new firm in the TREC computer system. He asked Ms. Maxwell to explain how the process runs so he can report back to the broker on how, in fact, transfers are processed. Ms. Maxwell briefly explained the new process for licensees paying for transfers online and what occurs after the initial payment is made and how the transfer is processed administratively. It was ultimately determined that more information was needed and the discussion would need to be addressed again at an upcoming meeting. It was suggested that Ms. Cropp draft some language in a policy. **Commissioner Northern made a motion that Legal Counsel Cropp draft a policy statement that states that the Commission recognizes that a licensee has successfully transferred his/her affiliation from one firm to another if they have gone online, completed the online transfer, printed out the confirmation document and maintained it in their file and then follow up by sending the required paperwork to the Commission within the specified time period of ten days; seconded by Commissioner Alexander; unanimous vote; motion carried.**

Vice-Chairman Haynes recessed the meeting for lunch at 11:30 a.m. and reconvened the meeting at 1:09 p.m.

## **EDUCATION REPORT, STEVE MCDONALD, EDUCATION DIRECTOR**

Mr. McDonald presented the Courses for Commission Evaluation for February 2013. There was some discussion regarding some items on the Courses for Evaluation but ultimately the following was the vote regarding the approvals by the Commission of the courses. **Commissioner DiChiara made a motion to approve the Courses for Commission Evaluation F1 through F29; seconded by Commissioner Northern; unanimous vote; motion carried. Commissioner McMullen abstained on F28.**

At the January 2013 meeting, a discussion was held regarding paper and pencil courses and whether some providers might be providing the students the answers, and also if the future approval of paper and pencil courses should be in question. Pursuant to that deferred discussion, Mr. McDonald presented the following courses that had been submitted that are delivered in a pencil and paper format.

- 2013-2014 TREC Core Course (F30) – Provider: Cape School, Inc,
- 2013-2014 TREC Core Course (F31) – Provider: Care+er The Real Estate Learning Center
- Know the Code: Real Estate Ethics (F32) – Provider: Care+er The Real Estate Learning Center
- Know the Code: Real Estate (F33)– Provider: CLI
- Ethics & Understanding 1031 Tax Free Exchanges (F34) – Provider: CLI
- The Truth About Mold (F35) – CLI
- Foreclosures, Short Sales, REOs and Auctions: Tools for Success in Today’s Market (F36)– Provider: CLI
- Sustainable Housing & Building Green – What Agents Should Know (F37) – Provider: CLI
- GRI 401: Doing the Right Thing (F38) – Provider: Tennessee Association of REALTORS®
- GRI 402: Staying In Business & Out of Court (F39) - Provider: Tennessee Association of REALTORS®
- GRI 403: Working More Effectively with Buyers (F40) - Provider: Tennessee Association of REALTORS®
- GRI 404: Working More Effectively with Sellers (F41) - Provider: Tennessee Association of REALTORS®
- GRI 405: Working More Effectively with Sellers (F42) - Provider: Tennessee Association of REALTORS®
- GRI 406: Tips, Tools & Technologies for Your Business (F43) - Provider: Tennessee Association of REALTORS®

There was a discussion regarding the content and substance of some of the courses and whether the completion of these courses by students meets the minimum requirements below set forth in TCA 62-13-325(b)(3):

**Distance Education Courses T.C.A. 62-13-325**

**(b)** A distance education course using printed materials may be approved by the commission if:

**(3)** It contains at least six (6) written exercises that are to be submitted periodically to the instructor, graded and returned to the student; and

Mr. McDonald advised the Commission that two representatives from CLI were present in the audience and Commissioner Griess asked if it would be appropriate to ask them questions

regarding the discussion of Distance Education Courses (TCA 62-13-325(b)(3)). Commissioner Stephenson made a motion to suspend the rules and allow the representatives of CLI, Chuck Ringo and Donna Reeves to discuss the matter with the Commission; seconded by Commissioner DiChiara; unanimous vote; motion carried. There has been an ongoing discussion about whether certain courses that earn a licensee a certain amount of hours of credit actually take that actual number of hours to complete. The discussion focused on whether courses are meeting the minimum requirements but at the same time enriching the student. Commissioner Northern stated that the objective of a course should be that the student is leaving the class prepared to deal with the issues that are coming before him as a novice licensee.

**Commissioner Griess made a motion to approve the course F30: 2013-2014 TREC Core Course (F30) – Provider: Cape School, Inc.; seconded by Commissioner Alexander for discussion; roll call vote: 3 yes, 6 no; motion failed. The course, F30, was not approved.**

The Commission moved on to the discussion of F31 & F32. Mr. McDonald advised that Care+er - The Real Estate Learning Center responded, when asked via email, that she provided an answer sheet for the students “most of the time.” He stated that he included the courses in the Courses for Discussion not only because of the method of delivery, but also because the provider of course F32, as presented, is seeking six hours of credit when other similar courses have previously been approved for fewer hours. **Commissioner Alexander made a motion to deny F31; seconded by Commissioner DiChiara; unanimous vote; motion carried.**

**Commissioner Alexander made a motion to deny the approval of F32; seconded by Commissioner DiChiara; unanimous vote; motion carried.** Commissioner Griess stated the reasoning for the denial: 1) does the course contain enough content for six credit hours and 2) the Commission does not approve of the answers being given to the student. Commissioner Northern confirmed with Staff that the provider can make changes and resubmit the courses for consideration.

**Commissioner DiChiara made a motion to approve F32-F43; seconded by Commissioner Stephenson; vote: 6 yes, 1 no (Commissioner Alexander voted no); motion carried.**

**Mr. McDonald presented the following Instructor Review for the month of February 2013.**

- Sally Cummings/Pug Scoville of Tennessee Association of REALTORS® (#1110) requested the following to be approved to teach the 2013-2014 TREC Core Course (#7035): William (Bill) Malone, John Geffen, Helen Carter & Terry Atkinson. **Commissioner Collins made a motion to approve these instructors; seconded by Commissioner DiChiara; unanimous vote; motion carried.**
- Sally Cummings/Pug Scoville of Tennessee Association of REALTORS® (#1110) requested that Terry Atkinson be approved to teach Transaction Desk Basic (#5747) and Transaction Desk Advanced (#5748). **Commissioner DiChiara made a motion to approve this instructor; seconded by Commissioner Griess; unanimous vote; motion carried.**

- Sally Cummings/Pug Scoville of Tennessee Association of REALTORS® (#1110) requested that Ruth Fennell be approved to teach REALTORS an Accredited Buyer's Representative (REBAC)- SRES (#5367). Mr. McDonald advised the Commission that Ms. Fennell's real estate license has expired which is a criteria to teach this course. There was a discussion regarding T.C.A. 62-13-325(a)(4) and (a)(5) [below] and whether Ms. Fennell is eligible to be approved to teach the course Accredited Buyer's Representative (REBAC)- SRES (#5367).

**62-13-324. Real estate continuing education instructors. —**

(a) In order to be eligible for approval by the commission, a course in real estate designed to meet the educational requirements established in § 62-13-303 shall be under the personal and direct supervision of an instructor who:

(4) If the course concerns the principles of real estate, mathematics or sales techniques, is a licensed broker, or, with the approval of the commission, an affiliate broker, with at least five (5) years of experience in the subject of the course;

It was determined that Ms. Fennell does not meet the criteria to teach the course Accredited Buyer's Representative (REBAC)- SRES (#5367). **Commissioner Collins made a motion to deny the request; seconded by Commissioner DiChiara; opened to discussion;** Mr. McDonald advised the Commission that Ms. Fennell was approved to teach a course during her grace period for her license renewal and he asked for guidance on how to handle her approval to teach that course now that her license is expired. He advised the Commission that the Association at which that course is taught, has been put on notice that Ms. Fennell's license has expired. Mr. McDonald also stated that in order for Ms. Fennell to become re-licensed, she would need to retest and reapply and take the 120 hours required for a Broker's license. **The motion to deny Ms. Fennell as an instructor for the course, Accredited Buyer's Representative (REBAC)- SRES (#5367) carried.**

There was a brief discussion regarding the following part of the same statute:

**62-13-324. Real estate continuing education instructors. —**

(a) In order to be eligible for approval by the commission, a course in real estate designed to meet the educational requirements established in § 62-13-303 shall be under the personal and direct supervision of an instructor who:

(5) If the course concerns the law of real estate, has graduated from a law school accredited by the American Bar Association or approved by the state board of law examiners;

It was determined though that Ms. Cropp would need some additional time to review the information and report back to the Commission. **Commissioner Stephenson made a motion to defer the discussion of T.C.A. 62-13-324(a)(5) to allow Ms. Cropp an opportunity to analyze the statute and report back to the Commission on her legal opinion; seconded by Commissioner McMullen; unanimous vote; motion carried.**

- Edward Gettelfinger of Courthouse Educational Services (#1285) requested Van Duong be approved to teach the classroom delivered (3) hour CE course Enhancing Customer Service (#3552) and Enhancing Customer Service Commercial (#6475). **Commissioner Stephenson made a motion to approve the above instructor; seconded by Commissioner Griess; unanimous vote; motion carried.**

Mr. McDonald presented the Commission with a breakdown in a chart of the type of paper and pencil courses that are offered (60 hr. course, CNA, OBM, CORE, CE) and the total percentage of the provider's business that is made up of paper and pencil courses. This information was supplied so the Commission could better understand the effect that doing away with paper and pencil courses would have on a real estate education provider's business.

Mr. McDonald presented the Commission with a copy of the revised Tennessee Real Estate Commission Instructor Training Manual. **Commissioner Alexander made a motion to approve the manual as presented; seconded by Commissioner Collins; unanimous vote; motion carried.**

Ms. Maxwell, as part of Mr. McDonald's report, presented the Commission with a chart with every state and their practice for accepting non-resident continuing education. The Commission had previously asked for a report on what states accepted continuing education that was completed by a licensee in another state. She stated the Commission had previously posed the question of whether Tennessee would/should continue to recognize continuing education that a non-resident licensee completes in another state. Additional discussion was deferred.

#### **LEGAL REPORT, JULIE CROPP, ASSISTANT GENERAL COUNSEL**

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

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

Commissioner Alexander commented on the frequency of complaints being re-presented because of new information received by the Legal Division even though they have already been heard and disposed of by the Board at a previous meeting. He said that it appears to him that

someone is not doing their due diligence to make sure all of the facts are collected before the complaint is brought before the Commission. He is concerned that it makes the Commission look inappropriate in their ability to act when they make a decision on a complaint and then it is brought back up before the Board again. Ms. Robyn Ryan, Litigation Attorney, addressed the Commissioner Alexander's concerns. She stated that when she receives a complaint for litigation, sometimes new facts will be brought to light when she reviews the case. Commissioner Alexander asked if she thinks that the complaints are being put before the Commission prematurely because there is a specific time period to present complaints. Ms. Ryan said she does not believe that is the issue but that new info does just come to light once actual litigation proceedings begin. Commissioner Northern stated that the Commission had, several years ago, directed Legal Staff to make sure all of the information from the Respondent and the Complainant be collected and presented when the complaint was initially heard by the Board. He asked if the Board could not adopt a certain time period, like used in other courts, that if a person does not get the information in before a certain time then it cannot be used in the case. Ms. Ryan stated that the Legal Division is working under the standards of the Department of Commerce & Insurance/Regulatory Boards and that those standards must be followed by Legal Staff. Commissioner Northern stated that it is costing the Commission time and money to deal with issues that could be dealt with in a shorter time period. Ms. Ryan explained that when a Consent Order is sent out, the Respondent has thirty days to comply and if they do not comply then it is sent to her for further investigation and litigation. She also explained that sometimes there will be pending civil litigation and that new information will not be submitted until the civil case is resolved. In one particular case (#24 on legal report), she explained that the civil case was ultimately dismissed and that dismissal information was sent to the Board so it was re-presented to the board with this new information because the Board had previously voted to issue a \$2,000.00 penalty and Ms. Cropp was recommending that the complaint be dismissed in light of the new information. Commissioner Alexander stated again that he believes that too many of the cases are being dismissed and that he is going to recommend that some of the items on the February Legal Report be assigned to a Commissioner for additional review.

- 1) **2012020341 &**
- 2) **2012020361 – Commissioner Stephenson made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner McMullen; unanimous vote; motion carried.**
- 3) **2012021701 – Commissioner Alexander made a motion to accept legal counsel's recommendation to dismiss as to Respondent #2012021701 and further agreed with Legal Counsel's assessment that based on the fact that the response indicates that Respondent company is being operated by licensees but without a principal broker or**

- firm license, that it is also legal's recommendation that the complaint against the unlicensed entity be closed and instead that complaints should be opened against the two (2) affiliates involved with Respondent company and their principal broker; seconded by Commissioner McMullen; unanimous vote; motion carried.
- 4) 2012021721 – Commissioner Northern moved to accept legal counsel recommendation to send a Letter of Instruction regarding the definition of “broker” within T.C.A. § 62-13-102(4)(A) and (B), § 62-13-103 titled “broker or affiliate identified by single act,” and § 62-13-301, which prohibits unlicensed activity seconded by Commissioner Griess; unanimous vote; motion carried.
  - 5) 2012021851 – Commissioner McMullen made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.
  - 6) 2012022011 – Commissioner Alexander made a motion to have Commissioner DiChiara review the complaint and report back to the full Commission; seconded by Commissioner Griess; unanimous vote; motion carried.
  - 7) 2012022041 – Commissioner Northern made a motion to accept legal counsel's recommendation to dismiss; seconded by Commissioner Stephenson; unanimous vote; motion carried.
  - 8) 2012022051 &
  - 9) 2012022052 &
  - 10) 2012022081 – Commissioner Alexander made a motion to have Commissioner Griess review the complaint and report back to the full Commission; seconded by Commissioner McMullen; unanimous vote; motion carried.
  - 11) 2012022261 – Commissioner Collins made a motion to have Commissioner Alexander review the complaint and report back to the full Commission; seconded by Commissioner McMullen; unanimous vote; motion carried.
  - 12) 2012022801 – Commissioner Griess made a motion to accept legal counsel's recommendation to issue a Consent Order with a civil penalty of \$1,000.00 for accepting a commission or any valuable consideration from any person except the licensed real estate broker with whom the licensee is affiliated in violation of T.C.A. § 62-13-312(b)(11) plus attendance by Respondent at one (1) entire meeting of the Commission within one hundred eighty (180) days of Respondent's execution of

Consent Order; seconded by Commissioner Collins; opened to discussion; unanimous vote; motion carried.

- 13) 2012022851 – Commissioner Northern made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Collins; unanimous vote; motion carried.
- 14) 2012023071 &
- 15) 2012023091 – Commissioner Stephenson made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 16) 2012023401 – Commissioner DiChiara made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Griess; unanimous vote; motion carried.
- 17) 2012023411 – Commissioner Griess made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner DiChiara; unanimous vote; motion carried.
- 18) 2012025111 &
- 19) 2012025112 &
- 20) 2012025113 &
- 21) 2012025121 – Commissioner McMullen made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Griess; unanimous vote; motion carried.
- 22) 2012023351 &
- 23) 2012023352 – Commissioner McMullen made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Stephenson; vote: 6 yes, 0 no, Commissioner Northern abstained; motion carried.
- 24) 2011027091 - Commissioner Griess made a motion to accept legal counsel’s recommendation to dismiss; seconded by Commissioner Collins; motion carried.
- 25) 2011027201 – Commissioner Northern made a motion to accept legal counsel’s recommendation to authorize the inclusion of language that, if Respondent chooses to become licensed in the future, Respondent will have to retest and reapply and satisfy

**all conditions necessary for licensure which are applicable at that time, and that the Respondent agrees that the Commission could, under the authority granted by T.C.A. § 62-13-312(b), exercise its power to refuse Respondent a license for any default, either monetary or non-monetary, of any provision of this Consent Order; seconded by Commissioner McMullen; unanimous vote; motion carried.**

Mr. Cropp reviewed the Consent Order Log with the Commission and the Commission had no questions or comments.

**Ms. Cropp reviewed the following current proposed legislation with the Commission.**

<b>Senate Bill</b>	<b>House Bill</b>	<b>Abstract</b>	<b>Sponsor(s)</b>	<b>Type</b>
SB0646	HB0133	Real Estate Agents and Brokers. As introduced, makes various changes regarding maintenance and renewal of error & omissions insurance required under the Tennessee Real Estate Broker Act of 1973. – Amends TCA Title 62	Lundberg/ Tracy	Assigned
SB0346	HB0759	Sunset Laws – As introduced, extends the real estate commission, June 30-2018 – Amends TCA Title 4, Chapter 29 and Title 62, Chapter 13	Bell/ Matheny	Assigned
SB0759		Real Property – As introduced, increases the registration fee for acquisition agents and their representatives, as defined in the Tennessee Time-Share Act of 1981, from \$25.00 to \$50.00, Amenda TCA Title 66	Johnson	Assigned
SB0942	HB0944	Real Estate Agents and Brokers. As introduced, requires the Tennessee Real	Southerland/ Williams R	Assigned

		Estate Commission to conduct criminal background checks on certain applicants and licensees for real estate broker, affiliate broker, time-share salesperson, and acquisition agent licenses – Amends TCA Title 62, Chapter, 13, Part 3		
SB0944	HB0682	Real Estate Agents & Brokers- As introduced, deletes requirement that executive director of the real estate commission have passed the broker's examination – Amends TCA Title 62, Chapter 13	Southerland/ Swann	Assigned

**Commissioner Stephenson made a motion to have Ms. Cropp gather all of the information on each bill that she can gather that may affect the Real Estate Commission and keep the Commission up to date on any new bills that may affect the Real Estate Commission and that she may report this information via email; seconded by Commissioner McMullen; unanimous vote; motion carried.**

Ms. Cropp advised the Commission that the Legal Staff had been asked to address the Tennessee Open Meeting Act with each of their Boards. She outlined the some of the following language from the Tennessee Open Meetings Act. She reminded the Commission members that they should not discuss board matters on break, at lunch, etc... and that all deliberations or comments must be made on the record.

Partial content of the Tennessee Open Meetings Act:

- The general assembly hereby declares it to be the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret.
- All meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Constitution of Tennessee.
- "Meeting" means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter.

- Notice of Regular Meetings. Any such governmental body which holds a meeting previously scheduled by statute, ordinance, or resolution shall give adequate public notice of such meeting.
- Notice of Special Meetings. Any such governmental body which holds a meeting not previously scheduled by statute, ordinance, or resolution, or for which notice is not already provided by law, shall give adequate public notice of such meeting.
- The minutes of a meeting of any such governmental body shall be promptly and fully recorded, shall be open to public inspection, and shall include, but not be limited to, a record of persons present, all motions, proposals and resolutions offered, the results of any votes taken, and a record of individual votes in the event of roll call.

At the January meeting, Ms. Cropp had updated the Commission on the rules which had been sent to the AG's office in the spring of 2012. Ms. Cropp reported, at that time, that the review of the Rules which did not address vacation lodging had been approved by the AG's office and had been sent to the Secretary of State's office and should be effective 3/3/2013. She did report however, that the Vacation Lodging Services (VLS) rules were still at the AG's office and that there was a question of statutory authority for a few of the costs and fees added by rule. At this meeting, Ms. Cropp touched briefly on the matter. She advised the Commission that the AG's office had determined that the Commission does not have the authority to assess certain fees under Rule 1260-07-.06. She stated that Deputy Counsel had met with the AG's office, as requested by the Commission, and that the AG's office is standing by their position. She stated that at the January meeting, the Commission voted that the rules should be moved forward without subsection three (3) and that Deputy Counsel agrees that the rules should be sent but exclude subsection three (3) to keep the other rules from being delayed for approval. **Commissioner Griess made a motion that the Board re-affirm last month's action regarding this matter; seconded by Commissioner Collins; unanimous vote; motion carried.**

The Commissioners reported on matters of concern to them or to the Commission and made comments regarding the meeting or upcoming meetings.

Chairman Stephenson adjourned the meeting on Wednesday, February 6, 2013 at 4:20 p.m.



**STATE OF TENNESSEE**  
**DEPARTMENT OF COMMERCE AND INSURANCE**

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MEMORANDUM

TO: TENNESSEE REAL ESTATE COMMISSION

FROM: JULIE CROPP, Assistant General Counsel

SUBJECT: FEBRUARY LEGAL REPORT

DATE: February 6-7, 2013

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

**1. 2012020341**

**Opened: 9/28/12**

**First License Obtained: 3/6/06**

**License Expiration: 3/5/14**

**E&O Expiration: Uninsured**

TREC Meeting  
February 6, 2013  
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**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

**2. 2012020361**

**Opened: 9/28/12**

**First License Obtained: 3/13/95**

**License Expiration: 12/5/12**

**E&O Expiration: Uninsured**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complaint opened by TREC based on news article which stated that a family moved into a home and then learned that a portion of the fenced backyard was not theirs. The article stated that the listing agent (Respondent 1 – affiliate broker; Respondent 2 is Respondent 1’s principal broker) told them it was a minor property line dispute. The article states that it turned out that the portion of the yard belonged to a neighbor who had been trying to address the issue with the seller for months. The article indicates that the seller, the neighbor, and Respondent 1 knew about the issue but did not tell the family until they moved in.

Respondents submitted responses denying any wrongdoing. Respondent 1 states that there was no mention from the seller of an encroachment issue when the property condition disclosure sheet was completed. Respondent 1 states that Respondent 1 first became aware of the issue several weeks later when the neighbor called Respondent 1 and said the fence was on the neighbor’s property. At that time, Respondent 1 states that the seller denied to Respondent 1 that the fence was on the neighbor’s property. Shortly after, Respondent 1 states that Respondent 1 discovered that the seller had been in contact with the neighbor about the fence after the property was listed and the forms were filled out but before the neighbor had contacted Respondent 1, and the seller had not told Respondent 1 this information. Having just received the offer to buy, Respondent 1 states that Respondent 1 contacted someone to survey and stake the property. A few days later, prior to the buyers taking early occupancy, Respondents state that Respondent 1 met with the buyers and their agent, they walked the backyard, viewed the stakes that had been placed to indicate where the fence would be moved, and the buyers and their agent were fine with the fence relocation. Respondent 1 then states that the buyers moved in and began raising issues with the fence being moved, and Respondent 1 learned that the buyers had been making renovations in the home during early occupancy and prior to closing. After all repairs were completed and the fence was moved, Respondent 1 states that the buyers sent an addendum asking for the seller to cover the cost (based on an estimate) to put in privacy fencing and if the seller did not agree they would

close under protest. Soon after, Respondent 1 states that the buyers contacted the news and the story was released.

Respondent 2 states that when Respondent 1 was contacted by the news provider requesting a comment, Respondent 2 instructed Respondent 1 not to comment until they could consult with legal counsel, and then the news provider released the story without having all of the information. Respondents indicated that they do not believe the seller knew of the encroachment at the time of the disclosure because the fence had been up for over a year before the home was listed and the disclosure documents were signed, and the neighbor first raised the issue after this had all been done. Respondents also state that the buyers knew of the encroachment prior to taking early occupancy and chose to move in and go forward. Finally, Respondents state that, after the news story was released, all parties obtained attorneys, the closing took place, and the matter was settled. Respondents deny that there were any misrepresentations made by Respondent 1 regarding the property and, once Respondent 1 was aware of the problem, Respondent 1 worked to resolve the issue. The documentation submitted by Respondents appears to support this.

**Recommendation: Dismiss.**

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

**3. 2012021701**

**Opened: 10/3/12**

**History: No Prior Disciplinary Action (Unlic.)**

Complaint opened by TREC based on anonymous complaint which stated that Respondent (unlicensed company) was operating as a property management firm without a firm license or “broker of record.”

A response to the complaint was submitted by a licensee (affiliate broker). Said response states that Respondent company contracts with property owners to conduct management services, and all interviews, showings, and lease signings are done by licensed affiliate brokers. The response provides the names and license numbers of two (2) affiliate brokers who do these activities. They are affiliated with a licensed firm and principal broker. The response states that the affiliate broker who drafted the response was “scheduled” to take the broker’s examination in October

2012 so that Respondent could be licensed as a firm, but based on a check with the TREC office, there appear to have been no materials received indicating that the affiliate has upgraded to a broker or taken steps to license Respondent as a firm. Based on the fact that the response indicates that Respondent company is being operated by licensees but without a principal broker or firm license, it is legal's recommendation that the complaint against the unlicensed entity be closed and instead that complaints should be opened against the two (2) affiliates involved with Respondent company and their principal broker.

\*It was noted verbally at the meeting that since the time of submission of the legal report, the regulatory boards system indicates that money for a firm license for Respondent may have been received, but as of the date of review of this matter, no application has been received in the TREC office nor has any information been received that the responding affiliate has taken steps to upgrade to a broker.

**Recommendation: Dismiss.**

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

**4. 2012021721**

**Opened: 10/3/12**

**History: No Prior Disciplinary Action (Unlic.)**

Complainant alleges that Respondent (unlicensed) is selling real estate and charging a fee to do so without a license. Complainant appears to indicate that Respondent had a potential buyer for Complainant's property, and a "legal issue" came on the property. Because Complainant would not accept the potential buyer's offer, Complainant states that Respondent made phone calls which resulted in an institution of foreclosure proceedings. There were no documents submitted with the complaint.

Respondent submitted a reply denying the allegations. Respondent states that Respondent does "consulting work" for which Respondent is paid, but does not elaborate on what kind of consulting work. Respondent indicates that Respondent looks for businesses for sale that may suit Respondent's friends. Respondent denies trying to sell Complainant's property. Subsequent responses from Complainant and Respondent indicate that Respondent and Complainant know

each other personally, as Complainant makes a statement that Respondent has been doing these types of things for a number of years, and Respondent makes reference to Complainant's financial situation and provides details regarding same. Though the information contained within the file is not sufficient to evidence unlicensed activity on the part of Respondent, Respondent might benefit from a letter of instruction regarding what types of activities require a real estate license.

**Recommendation:** Letter of instruction regarding the definition of "broker" within T.C.A. § 62-13-102(4)(A) and (B), § 62-13-103 titled "broker or affiliate identified by single act," and § 62-13-301, which prohibits unlicensed activity.

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

5. **2012021851**

**Opened:** 10/23/12

**First License Obtained:** 9/28/79

**License Expiration:** 7/9/13

**E&O Expiration:** 1/1/15

**Type of License:** Principal Broker

**History:** 2011030851 & 2011030871 – Closed \$1,500 CO (adv. and unlic. branch)

Complainant is a licensee who was the principal broker of a firm for a number of years, and, according to Complainant, the firm used "a very distinctive sign" for a number of years. Complainant closed this firm and began working with another firm in 2011. At that time, Complainant states that one of Complainant's affiliates left and eventually began working with Respondent (principal broker). Complainant states that, in 2012, Complainant discovered that the affiliate was using a sign which had a design so similar to the sign which was used by Complainant's former firm that it was confusing to the public. In fact, Complainant states that Complainant began using the design again in Complainant's advertising with Complainant's new firm. Complainant states that, when contacted by Complainant, Respondent refused to have the sign taken down. Complainant filed suit based on the matter, and Complainant states that the court ordered that the affiliate could not use the sign until the matter was resolved, which Complainant states was violated when the affiliate redesigned and continued using a similar sign. Complainant submitted the complaint against Respondent, stating that this was

misleading/untruthful advertising and Respondent failed in his duties to supervise the affiliate and the affiliate's advertising.

Respondent submitted a response denying that there was any violation. Respondent states that Complainant had closed Complainant's firm and had not used the design in approximately one (1) year at the time that the affiliate began utilizing a sign with a similar design and only began re-using the design when Complainant discovered that the affiliate had developed a sign with a similar design image on it. Respondent acknowledges that the matter resulted in a lawsuit, at which point the parties agreed that the offending design image would not be used and the firm and Respondent were dismissed from the lawsuit. Later, the affiliate, upon the advice of counsel, modified the sign to eliminate the design image originally utilized by the affiliate, and the affiliate was permitted by Respondent to use the revised design, at which point Complainant amended the complaint to include the firm and Respondent again. Respondent states that, although the Complainant filed a lawsuit, the use of the design on the sign is not unlawful or in violation of the Commission's rules. In fact, Respondent points out that all of the affiliate's signs have utilized the affiliate's name, the firm name, and the firm telephone number. However, Respondent states that all signs of which Complainant complained have been taken down. Based on subsequent information submitted to TREC, it appears that Respondent and the firm have reached a settlement with Complainant and the lawsuit between the affiliate and Complainant is ongoing. Based on the information contained within the file, it does not appear that Respondent's actions violated TREC's laws and/or rules.

**Recommendation: Dismiss.**

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

**6. 2012022011**

**Opened: 10/23/12**

**First License Obtained: 7/2/01**

**License Expiration: 3/7/14**

**E&O Expiration: 1/1/15**

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

Complainant was the buyer of a new construction home. Complainant contracted with the builder with Respondent (affiliate broker) acting as facilitator. Complainant states that Complainant was told to bring any issues during construction to Respondent. From the correspondence provided, it appears that Complainant and Respondent were in frequent contact throughout the process. Complainant states that there were issues during building such as walls in the wrong places, which Complainant states that Respondent assured Complainant that Respondent would address with the builder. Complainant states that the issues were not resolved, and Respondent's principal broker became involved with communicating with Complainant. At this point, Complainant states there were a number of problems, including footers, walls, windows, and room dimensions being wrong. Complainant states that Complainant was released from the contract due to the problems. Complainant alleges that the problems were the fault of Respondent who did not resolve them, and Complainant states that Respondent was unprofessional.

Respondent submitted a response stating that Respondent met with Complainant about building a home, and when the builder, who was a client of Respondent's, became involved with building Complainant's house, Respondent states that Respondent reviewed the agency terms, and the parties agreed that Respondent would be a facilitator in the transaction. Respondent states that Complainant wanted to shop for finishes outside of the builder selections despite the fact that it was a spec home. Respondent states that communication with Complainant took place primarily through e-mail, and Respondent states that every time Complainant contacted Respondent with a problem, Respondent contacted the builder with the concern. Respondent states that Complainant sent several "nasty" e-mails regarding the problems, which resulted in Respondent asking Respondent's broker to become involved. At that point, the principal broker became designated agent for Complainant and Respondent represented the builder. Respondent states that Complainant would not meet with the parties in person to resolve some of the building issues. Eventually, Respondent states that the building stopped and Complainant was released from the purchase of the home due to problems which the parties could not resolve. Based on the documentation within the file, there does not appear to be a violation by Respondent.

**Recommendation: Dismiss.**

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

7. **2012022041**

**Opened: 10/29/12**

**First License Obtained: 3/10/98**

**License Expiration: 1/13/15**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainant hired Respondent (principal broker) to manage Complainant's properties approximately four (4) years ago. In early 2012, Complainant states that issues arose with management practices, and Complainant terminated Respondent's firm to hire a new property manager and requested all rent money, keys, deposits and rental agreements to the new manager. From the complaint, it appears that Complainant's decision to terminate Respondent's services was due to a lack of an owner's draw check on the properties for a couple of the months prior to the termination and incomplete income statements. After Complainant terminated the services, Complainant states that Complainant was unable to get comprehensive documents and statements from previous years showed duplicate charges, excessive fees and repair expenses, and commingling of funds between the properties, which Complainant states were organized into two (2) legal ownership entities. Complainant indicates that Complainant filed the complaint so that the parties could settle the matter. No documentation was submitted with the complaint.

Respondent submitted a response denying Complainant's allegations and stated that Respondent managed the properties to the best of Respondent's ability but Complainant refused to cooperate in keeping the property in a way to attract tenants. Respondent states that all of Complainant's properties were reported under the same tax ID number, and Complainant never indicated this was an issue. Respondent states that Complainant terminated the agreement when Respondent's firm requested payment from Complainant for an outstanding balance. Respondent states that Complainant owes Respondent's firm money, and Respondent has consulted with an attorney to attempt to obtain that money. The documentation provided does not appear to evidence a violation by Respondent, but instead this appears to be a dispute between the parties which is best left for resolution through civil litigation and/or mediation.

**Recommendation: Dismiss.**

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

8. **2012022051**  
**Opened:** 11/5/12  
**First License Obtained:** 5/3/96  
**License Expiration:** 11/11/14  
**E&O Expiration:** 1/1/15  
**Type of License:** Principal Broker  
**History:** 2012022081 – Under review by legal
9. **2012022052**  
**Opened:** 11/5/12  
**First License Obtained:** 3/6/12  
**License Expiration:** 3/5/14  
**E&O Expiration:** 1/1/15  
**Type of License:** Affiliate Broker  
**History:** No Prior Disciplinary Action
10. **2012022081**  
**Opened:** 11/5/12  
**First License Obtained:** 5/3/96  
**License Expiration:** 11/11/14  
**E&O Expiration:** 1/1/15  
**Type of License:** Principal Broker  
**History:** 2012022051 – Under review by legal

Complainant was the purchaser of a property who was represented by Respondent 2 (affiliate broker). Complainant alleges that Respondent 2 and Respondent 1 (who is Respondent 2's principal broker) told Complainant at closing that certain repairs would be completed by a specified time, and the repairs were not done. Respondent 3 is the same person as Respondent 1;

another complaint was opened failure to supervise. Complainant was purchasing a former vacation rental home, and Complainant states that renters in the house were scheduled to stay past the closing date. As it turns out, Complainant states that the tenants were out by closing date, but Complainant alleges that Respondent 2 told the renters to get out. Complainant states the closing was delayed by a few hours due to “poor planning” by Respondent 2. In the final walkthrough a few hours before the closing, Complainant states that Complainant discovered that several items on the inspection report which were supposed to be repaired before closing had not been done, and those that were fixed were done by a handyman that Complainant does not think was licensed and insured. Based on the documentation provided, it appears that Complainant’s list of repairs based on the inspection report was sent on the day before closing. Complainants attended the closing and the sellers and seller’s agent were not present. Complainant states that Complainant was going to refuse to close due to repairs not being finished, but Complainant states that Respondents 1 and 2 told Complainant that they would have the original noted items repaired within a couple of days. Complainant signed a Buyer’s Final Inspection sheet which stated that certain repairs would be completed within a specified time period, and Respondent 2 signed the bottom of the sheet. For the seller, it was written “not available.” Complainant states that the repairs were not completed on time, that Respondent 2 assisted with repairs, and that Respondents lied to Complainant about what had been done.

Respondents each submitted a response. Respondent 1 states that Respondent 1 was unaware of the problems with the workman hired by the seller after the closing to do repairs, but Respondent 1 had contacted Complainant and a resolution had been reached regarding the repairs. Respondent 2 submitted a response address denying that Respondent 2 told the renters to get out of the subject property, but instead Respondent 2 informed the rental manager to be sure that the renters were out by closing day, which was done. Further Respondent 2 states that closing was delayed because Complainant did not have a check ready for closing. Respondent states that the walkthrough was done just prior to closing and there was not time to have all of the repairs completed prior to closing due to renters in the property. During the closing, Respondent 2 states that Complainant expressed that Complainant was not sure Complainant wanted to continue and should have asked for more repairs. Respondent 2 states that Respondents agreed to make sure that the repairs were made, but Complainant continually kept asking for additional repairs. Respondent 2 states that Respondent 2 assisted with being sure that some of the agreed repairs were done after closing, and Respondent 2 understood that the repairman would complete the other exterior items. Respondent 2 denies that Complainant was lied to and believes that Respondents did everything possible to meet Complainant’s expectations. Complainant submitted an additional response confirming that Complainant did come to an agreement with Respondents to resolve the repair issues but Complainant stands by the allegations in the complaint. Based on the information contained within the file, there does not appear to be a violation by Respondents.

**Recommendation: Dismiss.**

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

**11. 2012022261**

**Opened: 10/31/12**

**First License Obtained: 11/17/03**

**License Expiration: 7/2/13**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: No Prior Disciplinary Action**

Complainants were prospective buyers who contacted Respondent (principal broker) for assistance due to Complainants' interest in a property which was listed for sale. Complainants then entered into a buyer's representation agreement with a specified period of approximately three (3) months with Respondent, and the parties viewed the home. The home was a foreclosure, and Complainants made an offer, but Respondent verbally notified them that the seller did not accept the offer. Complainants then began discussing building a home, and Respondent introduced them to a builder. Approximately one (1) month after the expiration of the buyer's representation agreement, Complainants entered a contract with the builder to build a home. Later, Complainants state that they learned that Respondent had purchased the foreclosure home which the parties had viewed. Complainants state that Respondent then sold the house for a profit and is now the listing agent for the property, which the owner listed for sale. The building of the home continued, and issues arose with a window and a ceiling, which Complainants indicate were resolved. Complainants state that issues arose with the builder's inability to provide the type of hardwood floors specified in the contract. Due to this and other issues with building the home, it appears that finishing the home and the closing got delayed. Complainants state that Respondent prepared new documents, which included a new contract reflecting price changes as a result of issues which arose during building, and Complainants consulted an attorney. It appears that all parties obtained attorneys who attempted to resolve the floor issue. Complainants state that the builder listed the home for sale with Respondent.

Respondent submitted a reply stating that Complainants' offer on the foreclosure home was not accepted due to the offer price, which was substantially lower than the original list price. At that point, Respondent and Complainants discussed building a home, and they began looking at the builder's homes and Respondent introduced Complainants to the builder and a contract was signed between Complainants and the builder. At that point, the buyer's representation

agreement had expired and Respondent became a facilitator. Later, Respondent states that Respondent and Complainants were discussing investment properties and Respondent told Complainants that Respondent had later purchased the foreclosure home after the price had been reduced. As to the issues with the home being constructed, Respondent states that, during construction, multiple flooring suppliers advised the builder that the specified type of hardwood floors was not recommended. Respondent states that Complainants insisted on pursuing this type of hardwood flooring, and Respondent states that Complainants would not make their selection. Nearing the end of the contract term, Respondents state that Complainants selected flooring but were over budget. Due to these issues and the first contract expiring, Respondent states that Respondent attempted to put together a new contract to attempt to resolve the issues. The parties obtained attorneys, and, unable to come to a resolution on the contract, the builder instructed Respondent to list the home for sale. Respondent asserts that Respondent did everything to the best of Respondent's ability and states that Respondent and Respondent's attorney have attempted to contact Complainants' attorney about resolving the earnest money, but Complainants' attorney has not been responsive. The file does not contain a written request for disbursement of earnest money, and it appears that Respondent tried to send an Earnest Money Disbursement and Mutual Release of Purchase and Sale Agreement form to the builder and Complainants, but it does not appear that anyone responded or signed same. Based on the correspondence provided by the parties, it appears attorneys are involved, and, though the correspondence does not indicate that litigation has been filed, there appears to be a possibility in the future. The documentation in the file appears to indicate that this is a contractual issue between the parties.

**Recommendation: Dismiss.**

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

**12. 2012022801**

**Opened: 10/29/12**

**First License Obtained: 2/12/96**

**License Expiration: 1/19/15**

**E&O Expiration: 1/1/15**

**Type of License: Broker**

**History: No Prior Disciplinary Action**

Complainants state that they listed their residence for sale with Respondent (broker) in 2010. At that time, Complainants signed an Exclusive Right to Sell Agreement with Respondent's firm for a period of one (1) year, which, in part, provided that six percent (6%) commission would be paid "...if the Property is sold, exchanged, leased, conveyed, or otherwise transferred..." during the contract period. After approximately six (6) months, Complainants state that Respondent presented them with an opportunity to enter into an Installment Purchase Agreement with potential buyers which provided that the potential buyers would pay a down payment and then pay in installments for a period of twenty four (24) months (Respondent acted as a facilitator). At the direction of Respondent, Complainants paid the entire commission to Respondent immediately by personal check to Respondent's firm. Complainants state that Respondent contacted Complainants and asked them to pick up the check to the firm and write a personal check directly to Respondent because the payment did not have to go through the office. Complainants state that they did this and the check to Respondent was cashed on or about November 30, 2010. Complainants state that, in September 2012, the buyers contacted Complainants notifying Complainants that they were moving out and would not be fulfilling the contract. Thus, Complainants state that Respondent is no longer entitled to the full commission.

Respondent submitted a response attaching a copy of the listing agreement and pointing to the language that the commission is earned "...if the Property is sold, exchanged, leased, conveyed, or otherwise transferred during the terms of this contract..." Respondent states that an Installment Purchase Agreement is a form of conveyance, and therefore Respondent states the fee was earned. Respondent did not address the issue of directing Complainants to write a check to Respondent personally for the commission amount without sending the money through the firm and Respondent's principal broker. The commission amount issue appears to be a contractual issue between the parties; however, it appears that Respondent accepted the commission directly from Complainants and not through the firm/principal broker.

**Recommendation: Consent Order with a civil penalty of \$1,000.00 for accepting a commission or any valuable consideration from any person except the licensed real estate broker with whom the licensee is affiliated in violation of T.C.A. § 62-13-312(b)(11) plus attendance by Respondent at one (1) entire meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.**

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

**13. 2012022851**

**Opened: 11/8/12**

**First License Obtained: 3/24/08**

**License Expiration: 3/23/13**

**E&O Expiration: N/A**

**Type of License: Time-Share Registration**

**History: 2012023071 – Under review by legal**

**2012025111 – Under review by legal**

Complainants were repeat time-share purchasers who, based on the complaint and supporting documentation submitted, list a number of issues which Complainants had in a purchase of a time-share from Respondent (time-share registration) in 2009, including, but not limited to not being able to leave the presentation, using high pressure sales tactics, failing to give a promised gift for attending, failing to advise of the right to cancel, and not allowing Complainants to review the legal documents which Complainants signed. Complainants also state that a number of verbal misrepresentations were made at the presentation, including but not limited to promising incentives and stating that said incentives would not be available on a later date, stating that the time-share was an investment that would increase in value, stating that Complainants could rent the time-share for profit, promising credit toward maintenance fees for referrals which Complainants did not receive, and telling Complainant that trading an existing time-share contract for a new one would be more affordable. Complainants say they can no longer afford the time-shares due to the costs and being sold more than they could afford.

Respondent submitted a response denying Complainants' allegations. Respondent also indicates that Complainants have made a number of repeat purchases over a period of years both prior to and after the presentation on which Complainants appear to be basing their complaint. Respondent states that the documents reviewed and signed by Complainants outlined the terms of their purchase, and one of the documents signed by Complainants contains specific disclosures regarding topics such as ownership, fees, rentals, resale, and investment and the documents include specific provisions regarding rescission. Respondent states that Complainants are delinquent in their assessments and loans.

Complainants submitted an additional response stating that Complainants have made a number of additional purchases since the 2009 purchase outlined in the complaint (one of which Complainants rescinded) in order to try to correct the problems of that purchase and their debt only increases. Complainants allege more verbal misrepresentations which Complainants state conflict with the documents they sign. The documentation contained within the file does not appear to evidence a violation by Respondent. Further, it would appear that Respondent's 2009 purchase outlined in the complaint took place outside of the two (2) year statute of limitations.

**Recommendation: Dismiss.**

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

**14. 2012023071**

**Opened: 11/15/12**

**First License Obtained: 3/24/08**

**License Expiration: 3/23/13**

**E&O Expiration: N/A**

**Type of License: Time-Share Registration**

**History: 2012022851 – Under review by legal**

**2012025111 – Under review by legal**

**2013001151 – Under review by legal**

**2013001161 – Under review by legal**

**15. 2012023091**

**Opened: 11/15/12**

**First License Obtained: 12/14/84**

**License Expiration: 12/5/14**

**E&O Expiration: 7/13/13**

**Type of License: Principal Broker**

**History: 2012025121 – Under review by legal**

Complainants were time-share owners who attended a member update in 2011 offered by Respondents (Respondent 1 is a time-share registration and Respondent 2 is a principal broker).

There, a time-share salesperson (now expired) met with Complainants. Complainants state that the salesperson told them that Respondents had a first right of refusal which would allow Respondents to buy back Complainant's time-share if they ever wanted out and the salesperson said he could help Complainants with rental of their time-share. Complainants also state that the salesperson told them that by purchasing and upgrade and combining deeds, the payment would be more manageable. Complainants state that they were told they had thirty (30) days to review the materials and rescind. Upon reviewing the contracts, Complainants realized that there was no guaranteed buy back of the time-share, rental assistance, or thirty (30) days to cancel.

Respondents submitted a response denying the allegations of verbal misrepresentations on the part of the salesperson. Respondents state that the documents signed by Complainants explains the first right of refusal and that Respondents have no obligation to buy back the time-share. Further, Respondents state that the documents disclose that the time-share was purchased for personal use and there have been no representations regarding rental income, tax advantages, etc. Further, Respondents state that the documents outline the rescission period. Respondents denied the allegations in the complaint, but state that, as a gesture of goodwill, Respondents agreed to cancel the contract and reinstate the old contract. The documentation in the file does not appear to evidence a violation by Respondents.

**Recommendation: Dismiss.**

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

**16. 2012023401**

**Opened: 12/7/12**

**First License Obtained: 4/20/99**

**License Expiration: 12/31/13**

**E&O Expiration: N/A**

**Type of License: Time-Share Registration**

**History: No Prior Disciplinary Action**

Complainant states that Complainant was "swindled" by Respondent (time-share registration). Based on the information contained within the file, it appears that Complainant purchased a time-

share in 2010. Complainant states that Complainant was promised a different time-share use schedule by the salespeople than the use schedule which Respondent actually got. Complainant states that, to receive the use schedule Complainant believed Complainant was getting, there were additional fees. Complainant states that Complainant did not discover the true terms, which were specified in some of the documentation provided to Complainant, until after the ten (10) day rescission period.

Respondent submitted a response denying that any misrepresentations were made to Complainant. Respondent states that Complainant signed documentation outlining the weeks that fell within Complainant's use period. Further, Respondent states that Complainant signed documentation which disclosed that Complainant had the ability to make exchanges, but that said exchanges would cost an additional amount. The documentation in the file does not appear to evidence a violation by Respondent.

**Recommendation: Dismiss.**

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

**17. 2012023411**

**Opened: 11/9/12**

**First License Obtained: 9/3/04**

**License Expiration: 12/31/14**

**E&O Expiration: N/A**

**Type of License: Vacation Lodging Service**

**History: No Prior Disciplinary Action**

Complainant reserved a cabin rental with Respondent (vacation lodging service) online and used a credit card to reserve the cabin. A few months later, when Complainant arrived, Complainant was first told the cabin was not ready, and was given a rate which Complainant thought was high. Complainant paid for the cabin then realized that the cabin was not the same cabin that Complainant had reserved. When Complainant mentioned this, Complainant was told that the specified cabin was already rented and that Respondent did not give refunds. Complainant states

that Respondent offered Complainant several other cabins, which were not acceptable to Complainant for various reasons such as Complainant's fear of heights, spouse's bad knees, etc.

Respondent submitted a response stating that Complainant attempted to reserve online and the credit card was declined. Respondent states that attempts to contact Complainant regarding the problem were unsuccessful. Respondent states that the original cabin was also high in the mountains, but when Complainant arrived, Respondent was able to reserve Complainant a cabin which was not so high up, but Complainant did not like the location so Respondent attempted to find another cabin at a more secluded location. Respondent expressed regret that Complainant did not like the cabin but attached a copy of Respondent's policies which states that no refunds are given after check in and key code packet acceptance.

Complainant denies that there were problems with Complainant's credit card or that Respondent tried to contact Complainant. The parties appear to have two different versions of what occurred, but the documentation contained within the file does not appear to evidence a violation by Respondent.

**Recommendation: Dismiss.**

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

**18. 2012025111**

**Opened: 12/11/12**

**First License Obtained: 3/24/08**

**License Expiration: 3/23/13**

**E&O Expiration: N/A**

**Type of License: Time-Share Registration**

**History: 2012022851 – Under review by legal**

**2012023071 – Under review by legal**

**2012001151 – Under review by legal**

**2012001161 – Under review by legal**

**19. 2012025112**

**Opened: 12/11/12**

**First License Obtained: 3/29/96**

**License Expiration: 4/29/13**

**E&O Expiration: 7/13/13**

**Type of License: Time-Share Salesperson**

**History: No Prior Disciplinary Action**

**20. 2012025113**

**Opened: 12/11/12**

**First License Obtained: 7/9/10**

**License Expiration: 7/8/14**

**E&O Expiration: 10/30/14**

**Type of License: Time-Share Salesperson**

**History: No Prior Disciplinary Action**

**21. 2012025121**

**Opened: 12/11/12**

**First License Obtained: 12/14/84**

**License Expiration: 12/5/14**

**E&O Expiration: 7/13/13**

**Type of License: Principal Broker**

**History: 2012023091 – Under review by legal**

Complainant is the owner of a time-share purchased through Respondents (Respondent 1 is a time-share registration, Respondents 2 and 3 are time-share salespersons, and Respondent 4 is a principal broker). Complainant alleges a number of verbal misrepresentations made prior to and during the sales presentation including but not limited to the starting date of Complainant's usage, that referrals would help Complainant avoid paying a monthly fee, and that the time-share could be taken back if Complainant was not happy. Complainant also states that Complainant was never told about the ten (10) day cancellation period.

Respondents submitted responses denying Complainant's allegations of misrepresentation during the sales presentation to Complainant. Respondents state that the documents signed and received by Complainant regarding the purchase disclose the use and occupancy terms as well as the rescission period. Further, Respondents state that the documents disclose that there is no resale or buyback program. The documentation in the file does not appear to evidence a violation by Respondents.

**Recommendation: Dismiss.**

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

**22. 2012023351**

**Opened: 11/13/12**

**First License Obtained: 7/15/11**

**License Expiration: 7/14/13**

**E&O Expiration: 1/1/15**

**Type of License: Affiliate Broker**

**History: No Prior Disciplinary Action**

**23. 2012023352**

**Opened: 11/13/12**

**First License Obtained: 12/6/93**

**License Expiration: 11/18/14**

**E&O Expiration: 1/1/15**

**Type of License: Broker**

**History: 201101633 – Closed \$1,000 CO (FTS/E&O)**

Complainant was the seller of a home. Complainant states that Respondent 1 (affiliate broker) was rude to Complainant's agent and that Respondent 1 told Complainant, on the Friday before Complainant closed on the home, that Complainant would have to sign the HUD form that day or the buyer would not receive the money to close. Complainant also states that Respondents allowed the buyer to close on the home on that Friday when Complainant was not in attendance and Complainant had not received any funds. Then, after the buyer closed, Complainant states that Respondent 2 (broker) gave the buyer a key to the house and Complainant's broker discovered the buyer in the home before Complainant had signed the closing papers to close on the home. Complainant closed on the following Monday. Complainant's broker submitted a timeline which Complainant's broker prepared outlining the transaction, which in part, states that Complainant signed the HUD1 on the Friday date so that the funding number would be issued, but none of the other papers, including the warranty deed were signed on that date, but were signed on the Monday when the seller received the funding.

Respondents each submitted responses. Respondent 1 states that Respondent 2 is Respondent 1's parent and they are in business together and frequently assist each other by making phone calls, etc., and Respondent 1 got involved on the day of closing by calling the title company to get an update on closing for Respondent 2. Respondent 1 states that the title agent told Respondent 1 that the HUD-1 form needed to be signed by the seller within a short time period that day in order to get a funding number for the buyer and to close on time, so Respondent 1 relayed the message to Complainant's agent. Respondent 1 states that, later that day, Respondent 1 called to check and the buyer and title attorney were closing, and the buyer brought the money for the buyer's closing costs. Respondent 1 states that Respondents believed that the documents would be sent over for Complainant (seller) to sign, that their money would be exchanged and possession granted on the date of the deed. Respondent 2 states that the closing was scheduled for late in the day on Friday, and the buyer's title company said that the only way to get a funding number was to have executed documents by the seller. Respondent 2 said that the buyer's title company gave Respondent 2 the indication that the seller was going to move forward, and the title company closed the buyer. Respondent 2 states that the HUD1 and warranty deed were signed by the parties on the date the buyer closed, and based on this, the issuance of the funding number, and the information received from the title company, Respondent 2 thought everything had been finalized. The next day, the buyer went to the home to have an appliance delivered and began choosing paint colors, and Complainant's broker arrived and told the buyer that the deal had not closed so the buyer left. Based on the documents contained within the file, there does not appear to be a violation by Respondents.

**Recommendation: Dismiss.**

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

**24. 2011027091**

**Opened: 10/28/11**

**First License Obtained: 11/3/95**

**License Expiration: 12/20/14**

**E&O Expiration: 1/1/15**

**Type of License: Principal Broker**

**History: 2005009451 – Closed via Consent Order (\$300) Misrepresentation of time-share incentives**

***January 2012 Meeting:***

*Complaint opened by TREC against Respondent who is a Principal Broker of a real estate firm and also employed by firm purporting to be a vacation club. The allegations within the complaint concern incentives being made by an unlicensed agent of the vacation club where Respondent is employed (Specifically, airfare and trips that were never given as promised to consumers).*

*Respondent answers that she is a principal broker for another company and was only employed by this firm for her “accounting expertise” and that she was not involved in sales and the promises that may have been made by the sales agents (unlicensed) to the consumers. She states that in this case the agent who dealt with the consumer has “disappeared” and is unable to be found.*

*The Respondent answers that at the time the consumers contacted the vacation club after entering into the agreement about not receiving the incentives they had been promised that the business refunded them \$2693.00 to settle the matter (of \$7693.00 total paid). Additionally, Respondent states in her response that the vacation club had cleared their business model with this Commission prior to opening their business. However, there is no such approval in the records of the Commission.*

*There are numerous complaints against this vacation club in Consumer Affairs. There had been one TREC complaint against this company in 2011 for operating without a license that was closed with a letter of warning.*

***Recommendation: Consent Order for a civil penalty of \$2000.00 for a licensee engaging in conduct through an unlicensed firm in violation of 62-13-312(b)(14)(20), acting as a “Time Share Salesperson” as defined in 62-13-102(15) and working for an unregistered time share company as required by 66-32-122, and for the offering of prizes or promotional offers under 62-32-133 by not offering this in writing and the failing to deliver the same. Additionally, require the Respondent to attend a two-day meeting of the Commission and get an additional four (4) hours of ethics continuing education both within six (6) months.***

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

After review for litigation, it was determined that all lawsuits mentioned in the article which was the basis for opening this complaint were dismissed, and the attorney representing the consumers was suspended from the practice of law. Additionally, Respondent’s attorney provided a copy of the contract between Respondent and the purported vacation club such contract showing Respondent was a W2 employee as a bookkeeper. Moreover, initial allegations against Respondent were that Respondent was a principal of the company not that Respondent sold any timeshares. It appears that Respondent was not a principal, only a W2 employee as provided in the contract. All complaints mentioned in the lawsuits were against others who sold the timeshares in question and these parties apparently have disappeared.

**New Recommendation: Dismiss**

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

**25. 2011027201**

**Opened: 11/4/11**

**First License Obtained: 8/4/93**

**License Expiration: 7/10/12**

**E&O Expiration: Uninsured**

**Type of License: Broker**

**History: No Prior Disciplinary Action**

***January 2012 Meeting:***

*Complaint filed by licensee (Complainant) against Respondent for advertising as the “Managing Broker” of a firm when he is not the managing/principal broker of the firm.*

*Respondent states that the advertisement was done on “linkedin” a business social network site. He does not deny that he had listed himself as the “Managing Broker” but states that he has removed such from anywhere it is posted.*

*Upon review, Respondent was broker released on 4/18/11 by his firm and as of the date of this review, Respondent has yet to complete administrative measures.*

***Recommendation: Consent Order with a \$250.00 Civil Penalty for false and misleading advertising under 62-13-312(b)(4)(14) and \$1000.00 for failing to take administrative measures under 62-13-312(b)(16). Additionally, attendance of a two day regularly scheduled meeting of the Commission within six months.***

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

The authorized Consent Order was sent, and this matter was later forwarded to the litigation attorney for a for a hearing on the misleading advertising and Respondent’s failure to take administrative steps after Respondent’s release from the firm at which Respondent was principal broker in April 2011. It appears that, since that time, Respondent’s license has expired. Recently, Respondent contacted legal counsel and indicated interest in signing the Consent Order to settle the matter informally. Respondent signed and returned the Consent Order without payment and included a note that Respondent would need 90-120 days to pay the civil penalty contained therein due to Respondent’s decreased income after Respondent’s license expired. In March 2012, the Commission authorized including language in all Consent Orders that if there is a default to any term in the Consent Order, the Respondent’s license would be automatically suspended and reinstated only when the default has been corrected. Since this particular Respondent’s license is currently expired, this automatic suspension language is inapplicable. Therefore, before legal counsel negotiates a payment plan for this Respondent, it is requested, for

this Respondent and for future Respondents with expired licenses who wish to settle their complaints informally by Consent Order, that the Commission authorize the inclusion of language that, if Respondent chooses to become licensed in the future, Respondent will have to retest and reapply and satisfy all conditions necessary for licensure which are applicable at that time, and that the Respondent agrees that the Commission could, under the authority granted by T.C.A. § 62-13-312(b), exercise its power to refuse Respondent a license for any default, either monetary or non-monetary, of any provision of this Consent Order.

**DECISION: The Commission voted to accept the addition of the proposed language.**