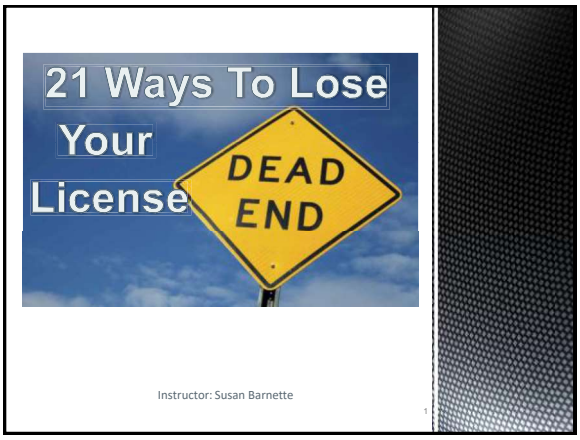


1

Materials Referenced

- TCA 62-13-312 (A)
- TCA 62-13-312 (B) 1-21
- Rule 1260-2-.32



2

Suggested After Class Ideas & Reading

- TREC Commission Agenda & Minutes
  - https://www.tn.gov/commerce/regboards/trec/public-meeting-information.html
- TN REALTORS® Hotline Library
  - https://tnrealtors.com/legal-hotline-q-a/
- TREC Videos on YouTube
  - https://www.youtube.com/playlist?list=PLWgyob0pqnhxCNPK8wjI7AnnbbHXH1ba8

3

The Law

- **62-13-312. Discipline — Refusal, revocation or suspension of license — Downgrading of licenses —Automatic revocation. —**
  - (a) The commission may, upon its own motion, and shall, upon the verified complaint in writing of any person setting forth a cause of action under this section, ascertain the facts and, if warranted, hold a hearing for reprimand, or for the suspension or revocation of a license.

4

- (b) The commission shall have power to refuse a license for cause or to suspend or revoke a license where it has been obtained by false representation, or by fraudulent act or conduct, or where a licensee, in performing or attempting to perform any of the acts mentioned herein, is found guilty of:
  - Any of the 21 ways!

5

Discipline TREC Can Impose

- ... for violations of the Brokers Act:
  - Reprimand
  - Suspend License
  - Revoke License
  - Downgrade from Broker to Affiliate Broker
  - Civil Penalty (See Rule 1260-2-.32)

6

How Complaint Is Filed...

- Consumer goes to website
  - http://tennessee.gov/commerce/boards/trec/
- Consumer clicks on left side menu: Consumer Resources
- Consumer clicks on: File a Complaint
- ALL Complaints are filed ONLINE
  - https://www.tn.gov/commerce/regboards/trec/consumer-resources/file-a-complaint.html

7

T.C.A. 62-13-313 (e)

- (e) Any complaint filed with the commission pursuant to this chapter shall be filed within the longer of the following:
  - (1) Two (2) years from the date of commission of the alleged violation of § 62-13-312, or the date that the complainant actually became aware of the violation;



8

The 21 Ways……



9

Scenario 1:



- Listing Agent Kathy states to Customer Buyer Bob, that “Interstate 75 extension is coming through the property” that Customer Buyer Bob is interested in, and that “TDOT is going to put an interchange there”. At the time of the statement, I-75 extension is in the planning stage, but no definite plans for the interchange or exact location of the road have been determined.

10

1

- Making any willful misrepresentation
  - Relating to a material fact
  - Relating to the property
  - Relating to the transaction



11



- Definition of “willful”
  - A "willful" act is one done intentionally, as distinguished from an act done carelessly or inadvertently.
  - Any act which is consciously or intentionally performed and directed toward achieving a specific purpose.
  - Voluntary and intentional. Frequently used interchangeably with “wanton.”

12

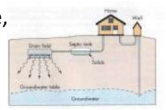


- Definition of "misrepresentation"
  - A misleading falsehood
  - An innocent or negligent misstatement of a material fact detrimentally relied upon by an innocent party.
  - Any statement of fact by one person to another, either by words or actions, which is not in accordance with the actual facts.
  - The act of knowingly presenting false information.

13

Scenario 2:

- Selling agent John brings an "As-Is" counter offer to Buyer Sally. Buyer Sally is worried about the septic system since she has never owned a house with a septic tank. Seller Hank, of course, is unwilling to pay for the septic inspection/letter. Selling agent John tells Buyer Sally that he will take care of getting a letter. At the closing table, septic letter.



14

#2

- Making any promise of a character likely to influence, persuade, or induce any person to enter into a contract or agreement when he could not or did not intend to keep such a promise.



15

Scenario 3:



- In her newest ads, Agent Elaine states that she has sold more properties in the last year than any other agent in SE Tennessee. The ads also say that if you are a buyer and she represents you as a Buyer's Agent, she will guarantee you that you will pay less for a property than if you were working with any other agent, that she can fix you up with a mortgage company offering 4% financing and she urges buyers and sellers to put her "20 years of experience" to work for them. Agent Tom, tired of Agent Elaine's ads because he has known Agent Elaine since high school and knows that she has only been selling real estate for six years, files a complaint with TREC.

16

#3

- Pursuing a continued and flagrant course of misrepresentation or making of false promises through affiliate brokers, other persons, or any medium of advertising, or otherwise.



17

Scenario 4:

- Real estate licensee Bobby is not a member of any Association of Realtors®, however upon receiving a telephone call from a consumer (who had been referred to him by a family friend), who is looking to purchase a house, Bobby tells the consumer that he would gladly be their Realtor®. You receive a call off one of your signs from this same consumer concerning a listing you have and you meet them at the house with Bobby and they introduce him as their Realtor®. Of course Bobby has no lock box key and wanting to represent your seller, you open the house for them and patiently wait outside.

18

#4

- Misleading or untruthful advertising, including the use of the term "REALTOR®" by a person not authorized to do so, or using any other trade name or insignia or membership in any real estate association or organization, of which the licensee is not a member.

THAT'S WHO WE REALTOR®

ABR®

CRS

GRADUATE, REALTOR® INSTITUTE

19

Scenario 5:



- You are the selling agent who writes up an offer for Buyer Ken. The seller counters your original offer and one of the terms of the counteroffer is that the listing broker will hold the earnest money. The offer becomes a contract, and you submit the earnest money check to the listing agent. Just before going to closing, the listing agent calls you and informs you that he forgot to deposit the earnest money and asks you to amend the contract so the HUD-1 will be correct, showing the buyer's paid no earnest money.

20

#5

- Failing within a reasonable time to account for or remit any monies coming into the licensee's possession which belong to others.



21

Scenario 6:



- Broker Jim has had his office open for about 2.5 years. Business is steady and Broker Jim is running out of space to store files. Broker Jim decides he will rent a storage unit to keep all of his old files in. After about 8 months, business slows down and Broker Jim does not have the money to pay for the storage unit any longer. He decides that he will just throw away all the old paperwork. He does.

22

#6

- Failing to preserve for three (3) years following it's consummation records relating to any real estate transaction.



23

Scenario 7:



- Listing Agent Kelly lucks out and finds a buyer interested in purchasing her listing. Listing Agent Kelly feels that since her sign was in the yard the buyer fully understands that she represents the seller. Listing Agent Kelly helps the buyer write an offer, which is accepted by the seller. The deal closes and the buyer loves the house.

24

7

- Acting for more than one party in a transaction without the knowledge and consent in writing of all parties for whom the licensee acts



25

Scenario 8:



- Listing Agent Angie brings an offer to Seller Sam's house for his review. Seller Sam likes the deal and signs the offer. Listing Agent Angie intends to go back to the office, copy the contract and mail a copy to Seller Sam. Seller Sam says that he never received a copy in the mail.

26

8

- Failing to furnish a copy of any listing, sale, lease or other contract relevant to a real estate transaction to all signatories thereof at the time of execution



27

Scenario 9:



- Selling Agent Brian writes an offer for Buyer Chuck. Buyer Chuck does not want to rush the Seller, so he asks Selling Agent Brian not to put any date or time in the Time Limit of the Offer blanks on the Purchase & Sale Agreement.

28

9

- Using or promoting the use of any real estate listing agreement form, real estate sales contract form, or offer to purchase real estate form which fails to specify a definite termination date



29

Scenario 10:



- Agent Paula has 34 listings with her firm and she is "hot"! Paula decides that she is going to transfer to a new firm who has offered her "a better deal". A few days before she informs the broker of XYZ Firm that she will be leaving, Paula contacts all the sellers of the properties she has listed and tells them she is leaving the XYZ Firm and asks them if they would allow her to transfer their listing to her new firm.

30

10

- Inducing any party to a contract, sale or lease to break such contract for the purpose of substitution in lieu thereof a new contract, where such substitution is malicious or is motivated by the personal gain of the licensee



31

Scenario 11(a&b):



- Team Thompson's team leader Gladys has a policy that she will pay the two buyer's agents out of her business account after she has deposited the commission check her broker writes to her.

- Agent Aaron is working with a buyer. Buyer finds a new construction home that she likes and Agent Aaron begins negotiations directly with a small, independent builder. Builder Tim, when discussing the commission states that he would prefer to leave Aaron's broker out of this and he will pay Aaron directly.

32

11

- Accepting a commission or any valuable consideration by an affiliate broker for the performance of any acts specified in this chapter, from any person except the licensed real estate broker with whom the licensee is affiliated



33

Scenario 12:



- It had been a long day in a continuing education class and Realtor Rhonda makes a quick stop by the local bar before heading out to show a house. Realtor Rhonda is pulled over by a policeman and unfortunately is placed under arrest for DUI. While taking an inventory of the car's contents, the policeman finds a Dell laptop that turns out to be stolen. Realtor Rhonda is subsequently charged with theft, pleads no contest and since it was her first offense, is placed on probation for 6 months. Following the six months, the conviction is expunged by the judge because he feels sorry for Realtor Rhonda. Realtor Rhonda is embarrassed by the event, and tells no one of the situation.

34

12

- Being convicted in a court of competent jurisdiction of this or any other state, or federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any crime or any similar offenses, or pleading guilty or nolo contendere to any such offense or offenses



35

Scenario 13:

- Agent Marie lists her own condo in what is known to be a predominantly "white" area. Agent Marie, who is a very "progressive" type person, is concerned and frankly tired of the lack of diversity in the area. Agent Marie decides to advertise the condo for sale and writes an ad for the newspaper that includes the following: "condo for sale, special consideration made for persons of color".

36

13

- Violating any federal, state, or municipal law prohibiting discrimination in the sale or rental of real estate because of race, color, religion, sex or national origin

EQUAL HOUSING OPPORTUNITY

37

Scenario 14:

- Broker Rick is also the owner of Land For Sale Realty. Broker Rick had his license suspended for failing to keep up with the education requirements and failing to renew his E & O Insurance policy. Broker Rick continues to work in his office and to sell the properties he currently has listed, however he does not solicit any new listings until the suspension is over.

38

14

- Violating any provision of this chapter, any rule duly promulgated and adopted thereunder, or the terms of any lawful order entered by the commission

39

Scenario 15 (a&b):

- Broker Teresa's business is going very well. She decides to open another office in the same county, although it is in a different town, less than 50 miles away. The new office is opened for business and several licensees are recruited to work in the new location. Broker Teresa spends roughly 70% of her time in the old office and the remainder of the time in the new office.
- Agent Sue is in a rush to get her ads into the local paper, so no one at the office sees what she submits to the newspaper…not her assistant, her office manager or her broker. The ads come out in the Sunday edition and Agent Sue's ads are missing the firm name and telephone number. Agent Sue checks her copy and sure enough she has left this pertinent information out—in her last minute rush.

40

15

- In the case of a licensee, failing to exercise adequate supervision over the activities of any licensed affiliate brokers under the scope of this chapter



41

Scenario 16 (a&b):

- Broker Steve's best agent decides she will do better at a competing real estate firm because of a better commission split. After a heated meeting with Broker Steve, the agent grabs her active files and tells Broker Steve to "shove it" and walks out. Broker Steve determined to recover his files, tells the agent he will not transfer her license until he gets his property back.
- Broker Robert decides he has had enough of Agent Tammy and tells her she needs to take her license to another firm. Agent Tammy starts to collect her things and brings her license and a TREC 1 form into Broker Robert. Broker Robert refuses to sign the TREC 1 form until Agent Tammy pays for her portion of signs the company agreed (as an entire company) to purchase...even though she is not going to be able to use the signs because he fired her!

42

16

- In the case of a licensee, failing within a reasonable time to complete such administrative measures as may be required by the commission upon the transfer or termination of any affiliate broker employed by the broker



43

Scenario 17:



- Listing Agent Marlene is working with Builder Murray. Builder Murray tells Agent Marlene that for every one of his houses that Agent Marlene sells, she is required to pay Builder Murray's sister a $1500 "consulting " fee.

44

17

- Paying or accepting, giving or charging any undisclosed commission, rebate, compensation or profit or expenditures for a principal, or in violation of this chapter



45

Scenario 18:



- Listing Agent Paul lists 150 acres for Seller Russell. Shortly after Agent Paul starts marketing the property he finds out that the property is sitting on a huge natural gas well. The price of natural gas has went through the roof lately. Agent Paul and his dad decide to purchase the property. Agent Paul makes the offer on behalf of his dad and in a separate agreement with his dad, Agent Paul obtains an option to buy 1/2 of the property at a later, unspecified time.

46

18

- Failing to disclose to an owner the licensee's intention or true position if the licensee, directly or indirectly through a third party, purchases for itself or acquires or intends to acquire any interest in or any option to purchase property which has been listed with the licensee's office to sell or lease



47

Scenario 19:



- Listing Agent Ginger is working with a seller who wants to sell off a few 2 acre tracts from her family's 100 acre farm. The Seller is still going to live in the area, so he wants some fairly typical restrictions placed on the new tracts. Listing Agent Ginger helps the Seller by drawing up some restrictions, using some she had seen in the past as an example.

48

19

- Engaging in the unauthorized practice of law



49

Scenario 20:



- Listing Agent George enters into a listing contract to provide that he will receive in commission "anything received over $90,000 "for the property. The property subsequently sells for $92,000.00.

50

20

- Any conduct, whether of the same or a different character from that hereinbefore specified, which constitutes improper, fraudulent or dishonest dealing



51

21

- Violating the Tennessee Time-Share Act, compiled in Title 66, Chapter 32, Part 1, or any rule duly promulgated thereunder



52

…If You Witnessed or Heard Of Any Of The Issues We Have Just Discussed?



53

THAT'S WHO WE

REALTOR®

Be Proud Of Your Profession & Protect It!

54

Licensees can be disciplined for the following violations:

1. Making any willful misrepresentation;
2. Making any promise of a character likely to influence, persuade, or induce any person to enter into a contract or agreement when he could not or did not intend to keep such promise;
3. Pursuing a continued and flagrant course of misrepresentation or making of false promises through affiliate brokers, other persons, or any medium of advertising, or otherwise;
4. Misleading or untruthful advertising, including the use of the term "Realtor"™ by a person not authorized to do so, or using any other trade name or insignia or membership in any real estate association or organization, of which the licensee is not a member;
5. Failing, within a reasonable time, to account for or remit any moneys coming into the licensee's possession which belong to others;
6. Failing to preserve for three (3) years following its consummation records relating to any real estate transaction;
7. Acting for more than one (1) party in a transaction without the knowledge and consent in writing of all parties for whom the licensee acts;
8. Failing to furnish a copy of any listing, sale, lease, or other contract relevant to a real estate transaction to all signatories thereof at the time of execution;
9. Using or promoting the use of any real estate listing agreement form, real estate sales contract form, or offer to purchase real estate form which fails to specify a definite termination date;
10. Inducing any party to a contract, sale or lease to break such contract for the purchase of substitution in lieu thereof a new contract, where such substitution is malicious or is motivated by the personal gain of the licensee;
11. Accepting a commission or any valuable consideration by an affiliate broker for the performance of any acts specified in this chapter, from any person except the licensed real estate broker with whom the licensee is affiliated;
12. Being convicted in a court of competent jurisdiction of this or any other state, or federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any crime or any similar offenses, or pleading guilty or nolo contendere to any such offense or offenses;
13. Violating any federal, state, or municipal law prohibiting discrimination in the sale or rental of real estate because of race, color, religion, sex or national origin;
14. Violating any provision of this chapter, any rule duly promulgated and adopted thereunder, or the terms of any lawful order entered by the commission;
15. In the case of a licensee, failing to exercise adequate supervision over the activities of any licensed affiliate brokers under the scope of this chapter;

16. In the case of a licensee, failing within a reasonable time to complete such administrative measures as may be required by the commission upon the transfer or termination of any affiliate broker employed by the broker;
17. Paying or accepting, giving or charging any undisclosed commission, rebate, compensation or profit or expenditures for a principal, or in violation of this chapter;
18. Failing to disclose to an owner the licensee's intention or true position if the licensee, directly or indirectly through a third party, purchases for itself or acquires or intends to acquire any interest in or any option to purchase property which has been listed with the licensee's office to sell or lease;
19. Engaging in the unauthorized practice of law;
20. Any conduct, whether of the same or a different character from that herein before specified, which constitutes improper, fraudulent or dishonest dealing; or
21. Violating the Tennessee Time-Share Act, compiled in Title 66, Chapter 32, Part 1, or any rule duly promulgated thereunder.