



Tennessee Real Estate Commission

Several members across the state received audits arriving at varying results and interpretations of the License Act by auditors from the Tennessee Real Estate Commission. In an effort to address this issue and clarify the Commission's interpretation this Act regarding multi-family property management; members of TAA met with Eve Maxwell, Executive Director of the TREC, to clarify the Tennessee Real Estate Commission's position as it applies to our industry. TAA was pleased that the TREC was in agreement that the License Act exempts resident managers and that a real estate broker is not required to be on-site at a property.

Ms Maxwell issued the following statement: *"I enjoyed the opportunity to meet with the multi family representatives to discuss some of the problems which arise when the TREC auditors conduct audits of multi family properties. I fully understand the concerns and I believe that we all left the meeting with a common interpretation of the Tennessee Real Estate Broker License Act of 1973 (the "License Act"), as it relates to multifamily properties. Under certain conditions, a resident property manager will be exempt from the License Act.*

TCA 62-13-104 establishes certain exemptions from the License Act. TCA 62-13-104(a)(5) specifically states:

[A] resident manager for a broker or an owner, or an employee of a broker, who manages an apartment building, duplex or residential complex where such a person's duties are limited to supervision, exhibition of residential units, leasing and/or collection of security deposits and rentals from such property. The resident manager or employee shall not negotiate the amounts of security deposits and rentals from such property. The resident manager or employee shall not negotiate the amounts of security deposits or rentals and shall not negotiate any leases on behalf of the broker...."

This section of the License Act would apply in situations in which an employee of the owner or broker is assigned to one specific multifamily complex; however, the individual does not have to actually live on the premises. In order to fall within this exemption and therefore, not be required to have a real estate license, the employee must perform duties which are limited in scope, such as exhibiting units to prospective tenants, providing prospective tenants with prepared information about the lease of the units, accepting applications on preprinted form leases for lease of the units (but not making final decisions on any such applications) and accepting security deposits and rental payments which are made payable to the owner or broker employed by the owner. This employee may not negotiate the amount of the security deposit or rental payments and shall not negotiate leases or rental agreements on behalf of the owner or broker. The broker is still responsible for the actions of this employee and needs to make certain that the employee's duties do not expand to include acts that would fall within the definition of broker under TCA 62-13-102(4)(A)(B). The broker must also make sure that procedures are in place to ensure compliance with applicable escrow and trust account statutes and rules."

Card Check update:

"Card Check" On Hold in Senate

The proposed Employee Free Choice Act (S. 560, H.R. 1409) has been put on hold in the Senate for now, according to a spokesman for Senate Majority Leader Harry Reid (D-NV).

Instead, the Senate is focusing on the three legislative priorities—healthcare, climate change and financial regulatory reform—that will likely consume the remainder of the legislative calendar for the year. The Senate also has yet to act on 10 of the 12 must-pass annual appropriations bills and an extension of estate tax law.

Reid's spokesperson reiterated that the senator remains a strong supporter of the bill and it is still a top priority. Even without the crowded schedule, however, it is unlikely that the bill would come to the Senate floor because Democrats lack the 60 votes needed to overcome a Republican filibuster. All 40 Republicans and at least two moderate Democrats oppose the measure.

In addition, reports that closed-door negotiations led by Senator Tom Harkin (D-IA) have forced out the bill's card check provision have raised further uncertainty about the bill in its present form.