

Email from Eve Maxwell, Executive Director, Tennessee Real Estate Commission (dated July 31, 2008)

Dear Jenna,

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.

I think that this outlines what we discussed at our meeting and I believe it will help avoid any confusion in the future when an audit is conducted by one of the TREC auditors .

Again, I enjoyed meeting with you and if you have any other questions, please do not hesitate to call me a call.

Best Regards,

Eve M Maxwell