

MINUTES OF THE MEETING
Kansas Real Estate Commission
December 21, 2015

The Kansas Real Estate Commission held its regular meeting on Monday, December 21, 2015 at 9:00 a.m. at Three Townsite Plaza, Suite 200, 120 SE 6th Avenue, Topeka, KS 66603.

Commissioners Present:

Sue Wenger, Chairperson
Joseph Vaught, Vice Chairperson
Errol Wuertz, Member
Bryon Schlosser, Member

Commissioners Appearing by Phone:

Shirley Cook, Member

Staff Present:

Erik Wisner, Executive Director
Kelly White, Director of Licensing and Education
Wendy Alkire, Compliance Supervisor
Stacey Serra, Legal Assistant

Kansas Real Estate Commission Legal Counsel:

Sarah Fertig, Assistant Attorney General
Lisa Mendoza, Assistant Attorney General

Members of the Public:

Luke Bell, Kansas Association of Realtors
Mark Barker, Career Education Systems

Call to Order

Ms. Wenger called the KOMA meeting to order at 9:01 a.m.

Additions to the Agenda

Ms. Mendoza requested the Commission make a statutory interpretation of K.S.A. 58-30,103(f). Motion by Mr. Vaught to add the item to the agenda, and seconded by Mr. Wuertz. Motion carried unanimously.

Approval of the Minutes of the November 16, 2015 Meeting

Motion was made by Mr. Schlosser, seconded by Mr. Vaught, to approve the minutes from the November 16, 2015 meeting. Motion carried unanimously.

Conference Hearing in the Matter of Joseph Ruhlman, Docket No. 16-5506

Ms. Wenger recused herself for the hearing of Joseph Ruhlman only. Proceedings were conducted by Mr. Vaught. Ms. Wenger resumed her position for the following two hearings.

Conference Hearing in the Matter of Judie Burkhalter, Docket No. 16-5507

Conference Hearing in the Matter of Floyd Allen, Docket No. 16-5550

I-Team Report

I-Team discussed a technical issue with the Kansas Association of Realtors (KAR) standard contracts. The Association's contracts did not include an acknowledgment of the receipt of the brokerage relationships brochure by the seller and buyer as required by K.S.A. 58-30,110(a)(4). KAR has revised their contracts to correct the error. This is a warning violation, however, if found in concert with other violations it receives a fine. Should this error be noted in audits of KAR contracts, it will only receive a warning letter, with no enhanced penalty. In response to Ms. Wenger's question, Mr. Wisner stated the error went back to 2014 but was corrected by KAR as soon as it was identified.

I-Team had a brief discussion regarding communicating the results of an investigation to the complainant. Previously, no communication was required if the complaint had merit and resulted in a disciplinary action against the respondent. A letter would be sent to the complainant if no action was to be taken regarding the complaint. Now, a new field will be added to the complaint form to ask if the complainant would like to be advised as to the outcome of the investigation. If so, the communication will occur after disciplinary action is taken and the case is closed. The current policy of sending a letter when no action is taken will remain in effect.

I-Team also discussed the declaration of interest of family members in a transaction. K.S.A. 58-3062(a)(15) has very clear language on when and what must be disclosed by a licensee when they have an interest in a transaction. The regulation that applies to a licensee's family member is required only if they have an ownership interest. If they are purchasing, disclosure is not required. Commission staff has added this to the regulation amendment package, so that the regulation matches the statute with respect to disclosure of interest if licensee's family member is purchasing the property. Until it can be updated, staff will not penalize licensees who fail to disclose the interest their immediate family member will have in the purchase or lease real estate.

I-Team reviewed K.S.A. 58-3050(f) regarding the revocation of a license of a licensee who is under investigation and voluntarily surrenders their license. Previously, the investigation was stopped if the licensee voluntarily surrendered their license. I-Team feels the best practice moving forward will be to complete the investigation prior to revocation. If the investigation is not completed and the licensee reapplies for their license at a later date, there may not be grounds for denial. Once staff completes the investigation, they are better able to evaluate the proper next steps. If the investigation finds the licensee had no violations, then they will close the investigation and allow the licensee to surrender their license with no further action. If the investigation finds there were violations, the Commission can request the licensee enter into a

consent agreement where the licensee would agree to surrender their license and to not reapply for a minimum number of years depending on the violations. If the licensee will not cooperate with the investigation or enter into a consent agreement, staff should move forward with revocation under K.S.A. 58-3050(a)(5) for failure to respond to a Commission directive.

Review of K.S.A. 58-30,103(f)

Ms. Mendoza requested the Commission make a statutory interpretation of K.S.A. 58-30,103(f), requiring agency agreements to have a fixed date of expiration. Currently, “fixed date of expiration” is not defined in the statutes. Ms. Mendoza asked if “fixed date” meant an exact or specific date must be identified to meet the requirement. This is for purposes of determining if a violation has occurred. General consensus by the Commission, while best practice is to identify a specific date, other methods are allowed as long as a date certain can be ascertained.

Ms. Wenger recessed the KOMA meeting at 12:24 p.m. for lunch.

Ms. Wenger reconvened the KOMA meeting at 1:00 p.m.

Regulation Review

Mr. Wisner updated the Commission on the changes for several regulations.

Revisions:

K.A.R 86-1-10 and 86-1-11. Continuing Education Regulations. Ms. White and Mr. Wisner reviewed the comments from the Kansas Association of Realtors and had some additional questions. There have been several roadblocks adapting the ARELLO language to the regulation. Once staff receives clarification from KAR then revised regulations will be submitted for the Commission to review.

K.A.R. 86-3-19, Standards of Disclosure of Interest of the Immediate Family of the Licensee. The language is revised to clarify the intent of the regulation. Language was added for real estate exchanges and to define interest.

K.A.R. 86-3-26a. Designated Agents. Previously, when the disclosure of brokerage relationships in the purchase contract was wrong, the licensee was cited for violation of K.S.A. 58-30,110(c). The statute only states the disclosure must be included, not that it must be correct. By revising this regulation, we can clarify the disclosure must contain accurate information.

Repeals:

K.A.R. 86-1-2 and 86-1-4, Examinations and Renewal of License. These regulations are redundant and the subjects are covered in other statutes and regulations.

K.A.R. 86-2-8. Examination of Records. The statutes give the Commission the flexibility to do everything listed in the regulation, without this degree of specificity.

K.A.R. 86-3-7 and 86-3-30, Advertising. These regulations are redundant due to changes in the statutes.

Broker Application

Ms. White presented a draft of the revised broker application, attempting to incorporate all of the changes required. Another draft will be presented by Ms. White at a future meeting.

License, Education and Exam Report

Ms. White informed the Commission there are currently 14,291 licensees, this is 125 less than last month.

Staff approved two continuing education elective courses.

The overall pass rate for brokers was 54%, for salespersons it was 75%.

Mr. Wuertz questioned the high fail rate for repeat test takers.

Directors Report

Mr. Wisner informed the Commission FY2016 fee fund revenues after transfers and recovery of expenses are \$414,066. This represents 47% of estimated receipts for FY2016 or 3% more than estimated. The KREC Fee Fund Balance is currently \$349,853 which is down \$10,000 from July 1. Background investigation fee fund receipts for FY2016 are \$48,754. This represents 48% of estimated receipts for FY2016 or 2% less than estimated.

FY2016 Commission expenditures are \$420,699, this represents 42% of the estimated expenditures. Overall expenditures are down about 8% compared to estimates, this figure, however, there are a few major expenses that are pending this fiscal year.

Mr. Wisner advised the website has been delayed due to problems with the third party vendor that hosts the company search page. We have been waiting for some information so responsibility for that site can transfer to OITS.

Mr. Wisner updated the Commission on the new document management system. We have had an employee working on scanning since mid-November, processing approximately a month every week. That employee has moved over to licensing and we are backfilling her position.

Mr. Wisner stated Wendy Alkire, Compliance Supervisor, will be presenting an overview of the audit process at the February meeting along with the audit survey responses.

We have been informed by OITS that we will be upgrading to Office 365 in the next few months. Impact on the staff should be minimal, but there will need to be training on the new functionality.

Mr. Wisner advised he would be meeting with Pearson Vue the first week of February to discuss implementation of the new contract on October 1, 2016.

Adjournment

Ms. Wenger adjourned the meeting at 1:41 p.m.

Upcoming Commission Meeting Dates

February 15, 2016
March 21, 2016