

MINUTES OF THE MEETING
Kansas Real Estate Commission
August 29, 2016

The Kansas Real Estate Commission held its regular meeting on Monday, August 29, 2016 at 9:00 a.m. at Three Townsite Plaza, Suite 200, 120 SE 6th Avenue, Topeka, KS 66603.

Commissioners Present:

Sue Wenger, Chairperson
Joe Vaught, Vice-Chairperson
Errol Wuertz, Member
Bryon Schlosser, Member
Shirley Cook, Member

Staff Present:

Erik Wisner, Executive Director
Kelly White, Deputy Director, Director of Licensing and Education
Wendy Alkire, Compliance Director
Stacey Serra, Legal Assistant
Amber Nutt, Education Specialist

Kansas Real Estate Commission Legal Counsel:

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

Members of the Public

Mark Barker, Career Education Systems
Patrick Vogelsberg, Kansas Association of Realtors

Call to Order

Ms. Wenger called the KOMA meeting to order at 9:02 a.m.

Approval of the Minutes of the July 18, 2016 Meeting

Motion was made by Mr. Schlosser, seconded by Mr. Wuertz, to approve the minutes from the July 18, 2016 meeting. Motion carried unanimously.

Hearing in the Matter of Nicolette Trumbo, Docket No. 17-5863

Ms. Wenger recessed for a short break at 9:54 a.m.
Ms. Wenger reconvened the meeting at 10:16 a.m.

August I-Team Overview

I-Team discussed the interpretation of K.S.A. 58-3062(a)(22). Incompetence. I-Team reviewed several past orders citing incompetence. The Commission has cited incompetence in past orders when there was a lack of agreement on the actual violations, but felt the actions of the licensee were unacceptable. I-Team concluded while the Commission can and should still cite incompetence in certain situations, the question to be addressed is: “Was there real harm to the parties involved and was it to the detriment of a client?” In addition, it would be inappropriate to cite incompetence without citing an additional violation.

Gifts and Gratuities Revisions

This is a continuation of the discussion from the July 18, 2016 Commission meeting. Ms. Fertig presented a revised draft of the gifts and gratuities policy incorporating comments and suggestions from Commissioners and staff. Ms. Fertig added references to K.S.A. 58-3062(a)(4) and changes to the percentage and cash equivalent language. Mr. Wuertz questioned not having percentage language included. Ms. Fertig explained the removal allows for the inclusion of a tier/scale situation and eliminates the conflict with statute in the previous version of the guidelines. Motion was made by Mr. Wuertz, seconded by Mr. Vaught, to approve the guidelines for gifts and gratuities. Motion carried unanimously.

Ms. Fertig presented a draft of a regulation defining rebate, which shall mean the return of all or a part of the purchase price of real estate by cash or cash equivalent. It shall also include any transaction that results in, or which has as its purpose, the purchase of real estate at a different price than reflected in the closing statement. Ms. Wenger suggested adding “purchase price, commission or compensation” to the definition. Ms. Fertig will work on a revised draft of the definition. There was also discussion on the creation of a “definitions” regulation to incorporate several terms needing clarification.

Verification of Transactions in Broker Applications

At the June 20, 2016 meeting, the Commission requested Ms. White research verifying transactions on broker applications. Historically, the Commission has relied on a count of completed transactions on the application with no other supporting documentation. A copy of the contract or purchase agreement would be the most reliable form of proof of completed transactions by the applicant, but there may be problems for applicants to get former supervising brokers to comply with such a request, the company may be in another state or may have closed. Individual property sheets from the Multiple Listing Service (MLS) or a summary report from the MLS may be the next best thing. It should be noted, not all licensees are members of the MLS and not all transactions are listed through MLS. Ms. White contacted the 14 local Boards in Kansas to inquire whether it would be possible for an applicant to request a summary report of their completed transactions that would include the same information the Commission requests in the broker application. She received responses from seven. The reports that could be provided by the local MLS would not show information for the licensee on the buyer’s side or if the licensee had a personal interest in the property. Some reports would not be able to remove lease information and agricultural and industrial transactions might not be broken out.

The new broker application form will include a place for the applicant to summarize the count and type of completed transactions and directs the applicant to provide supporting

documentation either in the form of MLS information or their own log if they cannot obtain such a report or if they are not an MLS member.

Ms. White also provided an ARELLO report showing which states require documentation of actual experience and those that only require a salesperson's license be held for a specified period prior to issuance of a broker's license. The Commission has decided to wait to see if the new application form will address these concerns.

Licensee, Education and Exam Report

Ms. White informed the Commission there were 14,740 licensees as of August 1, 2016, an increase of 163 since last month and 661 more than August 2015. There were no approved or denied courses this month. In July, there were seven broker exams with a 100% pass rate. There were 163 salesperson exams with a 72% pass rate. The overall pass rate for July is 74%.

Ms. White presented the passing rates by school for July. Based on equivalent requirements met in another state, the general portion of the exam was waived for two brokers and 23 salespersons.

FY2017-2019 Budget Review

Mr. Wisner presented a draft of the FY2017-2019 budget. There are no proposed increases for staffing levels, but due to little expected turnover and one additional pay period in FY2017, salary levels are higher than FY2016. In FY2019, a \$15,000 increase in salary expenditures is budgeted due to increased employer costs for health insurance benefits and retirement contributions.

Mr. Wisner anticipates contractual services to be \$50,000 less in FY2017-2019 than in FY2016. The decrease is primarily because of reduced costs for information technology application development with the transition to the System Automation platform. Mr. Wisner has proposed an increase of \$7,500 annually in FY2017-2019 for travel related expenses. The proposed increase is related to increased travel for presentations, training, conferences and other professional development activities. Staff has been participating in more events across the state than in previous years. Mr. Wisner has proposed an increase of \$15,000 in FY2017 to scan the backlog of legal and trust account files to avoid moving those paper files during the relocation in FY2018. An additional \$20,000 is budgeted for legal representation in FY2017 and \$40,000 per year in FY2018 and 2019 to reimburse the Attorney General's office for general and disciplinary counsel services. Previously, the Commission has not paid the Attorney General's office for their services. Mr. Wisner has been in discussion with the Attorney General's office to reimburse them for their services if we can guarantee a designated amount of time for the Commission's legal work.

There is also a proposed increase from \$200 to \$1000 per fiscal year in hospitality expenditures. This will allow the Commission to host meetings/training and have staff/commission retreats etc. without having staff and Commission members fund the activities. This change will require approval by the legislature as part of the appropriations process. The Commission currently has the lowest official hospitality limit of any Kansas board/commission. The median level is \$1,000.

Capital outlay expenditures will increase in FY2017 and FY2018 to purchase furniture and equipment for the new office location. This will replace some dated office furniture and allow for the agency to maintain business operations with little downtime. Spreading the cost over two fiscal years will allow the Commission to stay within budgetary constraints. In FY2019 a significant number of computers and associated IT hardware will need to be replaced so all three years have higher capital outlay expenditures than FY2016.

Overall, expenditures are increased in FY2017-2019, but revenue is increasing as well. The projected carryover at the end of FY2019 is estimated to be 46% of annual expenditures.

Director's Report

In 2016, the legislature passed a bill that requires each agency to submit a performance based budget in FY2018 and 2019. Phase 1 requires a draft of program inventories to be submitted by October 15, 2016 to the Division of the Budget and Kansas Legislative Research Department analysts. By December 1, 2016, agencies must submit program inventories and materials supporting evidence ratings to Division of the Budget analysts. Mr. Wisner will work on having a draft for the Commission to consider at the October meeting.

Mr. Wisner has received an initial plan by the Board of Healing Arts and System Automation and is working to set up a kick off meeting. They estimate this to be an eleven month project. The long term go live date is July 2017.

Mr. Wisner presented an overview of the two proposals submitted based on the RFP issued by the Commission for office space after the current lease expires in August 2017. The Commission requested Mr. Wisner continue to work with the agents to obtain the best possible rates and report back with a recommendation at the next Commission meeting.

The public hearing on the regulation package which includes the new broker supervision regulation is set for October 12, 2016 in Wichita, Kansas during the annual Kansas Association of Realtors (KAR) conference.

Revisions to K.A.R. 86-1-5 were approved by the Department of Administration and submitted to the Attorney General's office for review. The Attorney General's office had issues with some of the changes by the Department of Administration. Staff is currently working to revise the regulation and resubmit to the Attorney General's office.

Mr. Wisner reviewed a potential agenda for the October meeting in Wichita, Kansas. There will be no administrative hearings held at this meeting. There will be the public hearing on K.A.R. 86-1-5.

Adjournment

Ms. Wenger adjourned the meeting at 12:20 p.m.

Upcoming Commission Meeting Dates

October 12, 2016, Wichita