

MINUTES OF THE MEETING
Kansas Real Estate Commission
May 16, 2016

The Kansas Real Estate Commission held its regular meeting on Monday, May 16, 2016 at 8:30 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
Luke Bell, Kansas Association of Realtors
Patrick Vogelsberg, Kansas Association of Realtors

Call to Order

Ms. Wenger called the KOMA meeting to order at 9:07 a.m.

Additions to the Agenda

Mr. Wuertz would like to add a discussion of audit procedures to the I-Team Report.

Approval of the Minutes of the March 21, 2016 Meeting

Motion was made by Mr. Schlosser, seconded by Mr. Wuertz, to approve the minutes from the March 21, 2016 meeting. Motion carried unanimously.

Conference Hearing in the Matter of Jennifer Shipman, Docket No. 16-5715

Ms. Wenger recessed for a short break at 9:55 a.m.
Ms. Wenger reconvened the meeting at 10:03 a.m.

Non-KAPA Proceedings: Appeal of Course Denial

The Commission reviewed the denial of two courses submitted by the Kansas City Regional Association of Realtors (KCRAR), “Cash Flow Analysis: Rentals” and “Representing Landlords and Tenants”. The courses were denied by staff as the content appeared to primarily focus on property management. Courses approved for continuing education credit need to have application to those practices requiring a real estate license in Kansas. Property management is not a licensed practice in Kansas. Jan Pringle of KCRAR submitted an appeal for both courses.

In her appeal Ms. Pringle stated “Representing Landlords and Tenants” was relevant under BRRETA, it was about establishing and disclosing agency relationships and how to fulfill those obligations. The Commission reviewed the materials submitted by KCRAR and determined, although there was information about agency relationships, there was not enough content outside the property management realm to approve for continuing education. Staff decision to deny continuing education credit for the course was affirmed.

In her appeal, Ms. Pringle acknowledged the course title “Cash Flow Analysis: Rentals” could be misleading. She explained the course was about working with a client as an investor. The course focused on helping clients analyze a prospective purchase or sale from a financial standpoint. The Commission reviewed the materials and discussed the course content. By consensus, the Commission reversed staff decision and approved continuing education for the course provided the name was changed.

I-Team Report

Mr. Wuertz is concerned about the amount of time elapsed between the completion of the audit and when an order is issued. He has received calls from concerned licensees. Mr. Wisner explained the current audit timeline. Once staff has completed the audit, they conduct an exit interview with the broker and review the violations. The auditor explains to the broker they have thirty (30) days to submit documentation regarding the violations. The file then moves to Ms. Alkire for quality control review. The audit will then close with no further action, receive an order or receive a warning letter. Mr. Wisner stated, while there is a backlog in audit results being released, the delays are decreasing. The current backlog is with audits resulting in orders. Staff has drafted several orders for Ms. Mendoza’s review. Ms. Mendoza is working to ensure all claims are defensible, as there were interpretation questions in the past. This has created delays in the process as wording is reviewed and finalized.

Mr. Wisner reviewed policy discussions from the May 4, 2016 meeting of the I-Team.

Advertising: Internet and Social Media

This topic was continued from the March 2, 2016 I-Team meeting. After reviewing the issue, I-Team determined the current statutes and regulations are adequate, however, the Commission may want to consider adopting examples or a guidance document explaining what the Commission will accept for electronic advertising. I-Team determined licensees who commit

minor advertising violations will continue to receive warning letters. A letter will also be sent to the supervising broker reminding them all advertising is to be conducted under their supervision. Outreach efforts to educate licensees will be incorporated into training.

Use of Directives vs. Orders

I-Team discussed issuing a Commission Directive in lieu of an order in certain circumstances. Currently, if a licensee would be approved for renewal or an original license but reports a pending misdemeanor charge, probation/diversion/supervision/suspended imposition of sentence, or have pending discipline against a professional license, an order is issued granting the license subject to conditions. The licensee must report quarterly on the status of their compliance with the unresolved issue. Orders are subject to the Kansas Administrative Procedures act and are usually more time consuming. In addition, staff and counsel were unable to recall an instance where a licensee requested a hearing based on these conditions. I-Team recommended the Commission grant Mr. Wisner the authorization to issue directives in certain circumstances.

Mr. Wuertz moved the Commission designate and authorize the Executive Director, on behalf of the Commission, to issue a directive to a licensee or applicant requiring that person to submit quarterly status reports and proof of final resolution of their pending case, if that person otherwise meets the requirements for staff to grant a conditioned license but if one of the following applies: has a pending misdemeanor charge; is currently on probation or other supervision; or has a pending disciplinary action against a professional license. Mr. Vaught seconded the motion. The motion passed unanimously.

Licensee Question regarding Rebates and Undisclosed Commissions

I-Team reviewed a question received by Commission staff asking if a drawing for a gift card or a trip would constitute a rebate or undisclosed commission. The licensee would like to hold a drawing for all of the agents who have participated in a co-op or referral program. I-Team determined this could fall under the Gifts and Gratuities Policy which is up for review on today's agenda. The licensee was advised they will receive a response after the Commission's review of the policy.

Licensee Question regarding Escalation Clauses

I-Team reviewed a question received from a licensee asking if escalation clauses were valid in Kansas. The licensee also forwarded information from a continuing education course stating escalation clauses were barred in Kansas. On its face, the clause is not prohibited. The statute prohibits a purchase contract not having a definite purchase price but there is no prohibition on an escalation clause in the contract offer.

Business Process Simplification Recommendations

Forms

The licensing and course approval forms were thoroughly reviewed by staff. A number of the forms were simplified and combined. The forms library shrank from 44 forms to 27 forms. All forms have been updated to reflect the new website address and the new email address. Staff feels this change will simplify reporting requirements. The commercial co-brokerage

agreements, BRRETA and other disclosure forms did not change and were not included in the counts. Staff is beginning a review of those forms and will have recommendations in the future.

Future Recommendations

Staff recommended revising questions 1 and 2 on the license renewal form. The most frequent complaint from licensees who incorrectly answer this question is that they thought they didn't need to report this information since they previously disclosed it on a prior application or renewal. Staff recommended changing the language "In the last six years" to "Since your last license renewal". Mr. Wuertz moved to change the language on the license renewal form. Motion seconded by Mr. Vaught. Motion approved unanimously.

Staff also recommended additions to the Licensee Deactivation Form. Add a statement that in lieu of licensee signature, a supervising Broker can attach a copy of correspondence sent to the affiliated licensee informing them of deactivated status. This is current practice. Also, add a statement saying the license deactivation form cannot be signed by the affiliated licensee prior to the date submitted by the supervising broker. Some supervising brokers require affiliated licensees to sign the document prior to employment. The supervising broker will then fill out the date section so it appears their affiliated licensee signed it at a date well after they actually signed the document. Mr. Vaught moves to add the statement "In lieu of the affiliated licensee's signature, the supervising broker may attach correspondence sent to the licensee informing them of the deactivated status". Motion seconded by Mr. Schlosser. Motion approved unanimously.

Staff recommends eliminating the fees being charged for several business processes. All fees in question are \$10 or less. In FY 2015, these fees generated \$13,700 in revenue or about 1.5% of total fee revenue collected by the Commission. With the implementation of our enhanced online license management system, most of these processes will be automated. What requires moderate staff time presently, will require little if any moving forward. This recommendation will require amendments to K.A.R. 86-1-5 before it can be implemented. Mr. Wuertz moves we eliminate the fees being charged for several different processes requiring amendments to K.A.R. 86-1-5. Motion seconded by Mr. Vaught. Motion carried unanimously.

Commission Review of Guidelines and Policy Positions

Electronic Signatures.

In 2008 the Commission decided not to allow electronic signatures. They upheld this decision in 2012. In light of current business practices is this still a valid position? The signature will become a nonissue with the enhancements requested to the OLMS. Staff does receive a number of calls requesting to be able to use e-signatures. An original signature is not required, fax and email copies are accepted, but electronic signatures are prohibited.

Ms. Fertig added under the new broker supervision regulation, it would be considered failure to properly supervise the operations of your office. If you fail to ensure that all forms are reviewed to make sure everything is correct. Mr. Schlosser stated there is a uniform electronic signature statute the state has adopted. Due to the difficulty in enforcement, Mr. Wisner recommends rescinding the policy. Because the original policy was put into effect by the Commission, it will take a motion to rescind. Mr. Schlosser made a motion to rescind the current policy and bring

the policy in line with the uniform electronic signature statute. Mr. Wuertz seconded the motion. Motion passed unanimously.

Activities of Unlicensed Personnel.

In 2011, the Commission received recommendations from the Kansas Association of Realtors (KAR) to update the Commission guidelines for unlicensed activity. At that time, the I-Team reviewed these recommendations and presented to the Commission revisions that incorporated the KAR recommendations along with a couple of other suggestions. These revisions were approved at the November 10, 2011 meeting. This is one of the most accessed documents on the website. This was not meant to be comprehensive. Mr. Wisner wanted to ensure the Commission was still comfortable with the document. By general consensus, the Commission decided to make no changes to the document.

Gifts & Gratuities.

The guidelines were originally put in place in July 2004 to clarify prohibited gifts and gratuities after 2004 SB 404 was passed. The intent behind SB 404 was to repeal the broader language that prohibited the offering of prizes, gifts and gratuities in real estate transactions while keeping the more narrow prohibition on the offering of cash rebates to unlicensed principals in the transaction. In 2012, the Commission approved the following changes to the guideline:

- Correct statutory references
- No gift may exceed 0.5% of the purchase price of the property as shown on the closing statement.
- Add gift cards to the list of permissible gifts.
- Remove “Reduction of commission that would be due from the client or customer” from the list of permissible gifts.
- Change the word “money” to “cash or cash equivalent.”

Commission staff receives several questions regarding this policy. It was decided to temporarily pull the policy from the website for revisions. Ms. Fertig will work at redrafting the policy. The Commission discussed the question from the licensee regarding a drawing for a gift card or a trip would and if that would constitute a rebate or undisclosed commission. The Commission determined the prize must pass through the broker.

HUD/VA.

In early 2012 the Commission heard from licensees who were concerned that in HUD/VA transactions, the federal agencies refuse to allow the use of anything other than their contracts and other forms. This meant certain Kansas-required statutory disclosures would not be in the contracts. The position statement along with the form was intended to assist licensees to comply with Kansas law. Staff and legal counsel have concern with the current language in the position statement that uses the term “directive”. The Commission intended this to be a document that should serve as a helpful reference but not a directive. The Commission feels this document is still necessary, however, they agreed the statement regarding the “directive” at the bottom of the page should be removed.

Licensee, Education and Exam Report

Ms. White informed the Commission there were 14,456 licensees as of April 6, 2016 and 14,519 licensees as of May 4, 2016. Overall license numbers are holding steady, however, broker licenses are on the decline, while salesperson licenses are increasing

In March, staff approved twenty five (25) continuing education courses; two (2) property management courses were denied.

In April, staff approved five (5) continuing education courses; two (2) property management courses were denied.

In March, the overall pass rate for brokers was 85%, for salespersons it was 66%.

In April, the overall pass rate for brokers was 55%, for salespersons it was 65%.

Staff had a conference call with PearsonVue to discuss planning for their on site visit. The new contract begins October 1, 2016. Since the Commission is continuing with the same vendor, there will be updates to the salesperson and broker exams and not complete overhauls. Pearson will be tentatively on site in late October. Commission staff will be soliciting potential participants to assist in test updates in the near future. In addition, when PearsonVue is on site, staff is looking at conducting an "Educators Summit". PearsonVue needs a day and a half for their portion; the other half day would be used for the education workshop. This is a tentative plan. It has been five to eight years since the Commission has held an educator's workshop.

Ms. Wenger recessed for lunch at 11:53 a.m.

Ms. Wenger reconvened the meeting at 12:40 p.m.

Director's Report

Mr. Wisner informed the Commission that FY 2016 real estate fee fund revenues after transfers and recovery of expenses are \$810,213. This is 2% under estimates for FY 2016. May should see heavy receipting due to the "S" renewal deadline of May 31, 2016. In addition, the \$100,000 threshold where the 10% transfer to the state general fund shuts off should occur around the end of May. Therefore most June receipts should go to the Real Estate Fee Fund. FY 2016 Commission expenditures excluding encumbrances are \$733,811. This is 8% or \$103,000 less than estimated. Most of the savings are from staff salaries (\$80,000 less) and the Webelan/Murali Kolla contract (\$15,000 less). The KREC Fee Fund Balance is currently \$401,624 which is up \$41,000 from July 1, 2015. Background investigation fee fund receipts are \$90,944 which is 8% above estimates.

Mr. Wisner presented the final proposals from Webelan/Murali Kolla and System Automation/Board of Healing Arts for the online licensing management system. After review of the proposals and discussion, Mr. Vaught moves to approve the statement of work submitted by System Automation/Board of Healing Arts. Mr. Wuertz seconds the motion. Motion passes unanimously.

The Commission's current lease at Townsite Plaza will expire September 1, 2017. Mr. Wisner has engaged the state leasing office to discuss next steps based on state guidelines. A draft of the proposed lease request was presented to the Commission. Mr. Wuertz moves to grant Mr. Wisner authorization to proceed with the lease request. Mr. Vaught seconds the motion. Motion passes unanimously.

Mr. Wisner updated the Commission regarding the regulation revisions. Regulations 86-1-2 (revocation), 86-1-4 (revocation), 86-2-8 (revocation), 86-3-19 (disclosure of relationship; immediate family member), 86-3-26a (accurate brokerage relationship disclosure), 86-3-30 (revocation) and 86-3-31 (broker supervision) have all been approved by the Department of Administration and the Attorney General's Office with minimal changes. They are ready for review and approval by the Commission. Regulations 86-1-10 and 86-1-11 (continuing education) have been reviewed by the Department of Administration. The reviewer has several concerns with the structure of the regulation with the inclusion of differing standards for correspondence distance education. The best option may be a complete rewrite as opposed to amending the existing language. In addition, we may have to open up another CE regulation because of shared references from the two being amended. Mr. Schlosser votes to approve the regulations 86-1-2, 86-1-4, 86-2-8, 86-3-19, 86-3-26a, 86-3-30 and 86-3-31 as proposed. Mr. Vaught seconds the motion. Motion passes unanimously.

Mr. Wisner attended the ARELLO mid-year meeting. Lynn Comfort, Auditor, and Richard Ford, Investigator attended the ARELLO Investigator Training in mid-April. Major themes across jurisdictions are online real estate transactions, the prevalence of teams and discussions on occupational licensing and the perception it is anticompetitive and a job killer. Education issues were also discussed. Many states have more defined requirements for instructor qualifications and requiring non-credit CE as part of standard discipline is also much more common

Adjournment

Ms. Wenger adjourned the meeting at 2:44 p.m.

Upcoming Commission Meeting Dates

June 20, 2016

July 18, 2016