

MINUTES OF MEETING

Kansas Real Estate Commission

February 12, 2014

The Kansas Real Estate Commission held its regular meeting on Wednesday, February 12, 2014 at 9:00 a.m. at the Kansas Real Estate Commission, Three Townsite Plaza, 120 SE 6th Street, Suite 200, Topeka, Kansas.

Commissioners Present:

Errol Wuertz, Chairperson
Sue Wenger, Vice Chairperson
Marilyn Bittenbender, Member
Shirley Cook, Member
Joseph Vaught, Member

Staff Present:

Sherry C. Diel, Executive Director
Jay D. Befort, Attorney
Kelly White, Director of Licensing and Education
David Pierce, Director of Enforcement
Mitzi Dodds, Legal Assistant

Kansas Real Estate Commission Legal Counsel Present:

Sarah Fertig, Assistant Attorney General

Members of the Public Present:

Vernon Jarboe
Raul Rubio Guevera
Maria P. Guevara
Kathleen J. Constant
Ruth D. Gardner
Carlos A. Cortez
Sonya D. Wilder
Larry D. Rickard
Richard W. Benson
Sherry A. McGowan
Steve Skeet

Call to Order

Mr. Wuertz called the KOMA meeting to order at 10:00 a.m.

Additions to the Agenda

An executive session for an attorney-client privileged matter was added to the agenda by staff.

Mr. Wuertz added Joshua Atkinson's salesperson's application and the broker's applications for Cheryl London and Brian J. Reed to the agenda.

Approval of the November 14, 2013 Meeting Minutes

Motion was made by Ms. Wenger, seconded by Mr. Vaught to approve the minutes of the November 14, 2013 meeting. Motion carried unanimously.

Approval of the December 12, 2013 Meeting Minutes

Motion was made by Mr. Vaught, seconded by Ms. Bittenbender to approve the minutes of the December 12, 2013 meeting. Motion carried unanimously.

Presentation on BRRETA

At the request of the Commission, Vernon Jarboe provided a presentation on the history of the Brokerage Relationships in Real Estate Transactions Act (BRRETA). A summary of Mr. Jarboe's comments follows.

In the 1980's and prior to 1990, most real estate agents worked as seller's agents and offered subagency. Both consumers and licensees were confused regarding their relationship in the transaction. A few brokers acted as buyer's agents. The Commission was concerned because consumers and agents were uncertain what their relationship was in the transaction.

The first version of BRRETA, effective January 1996, mandated the use of a disclosure alternative agency relationship form, commonly referred to as the DAAR form, which needed to be signed at the first meeting with the consumer. The consumers thought they were entering into a contract by signing the DAAR form. Neither consumers nor licensees liked the form.

Because of those complaints, the second version of BRRETA was enacted during the 1996 Legislative session. It repealed the earlier version of the law. Mr. Jarboe served on a task force that proposed the current BRRETA that took effect on October 1, 1997. This version repealed dual agency in favor of a "facilitator" called a transaction broker who does not represent the interests of any party but facilitates the transaction. To clarify a licensee's role, a licensee defaults to the position of transaction broker unless the parties have entered into a written agency agreement. The task force looked at state laws of approximately 20+ states to draft the BRRETA law. Pulling ideas from the other states, the task force wrote the seller agency section [now codified as K.S.A. 58-30,106] first. After consensus was reached on the seller agency provisions, the buyer agency section [now codified as K.S.A. 58-30,107] was drafted, using wording almost identical to the seller agency section. The transaction broker section [now codified as 58-30,113] was written by first replacing seller and buyer agent with transaction broker where appropriate. The duties also differed with respect to the fiduciary duties of utmost good faith, loyalty, and fidelity.

Mr. Jarboe teaches that BRRETA was written to clarify responsibility; not to avoid responsibility from a liability standpoint. Mr. Jarboe feels that the cases do not reflect much of a difference in liability between transaction brokers and agency. Errors and omissions carriers' experience reflects that 2/3 – 3/4 of the cases filed against licensees allege non-disclosure. Mr. Jarboe states there is no difference in disclosure duties between an agent and transaction broker. Mr. Jarboe states that the remaining 25 percent of the risk involves breach of contract, fair housing, antitrust law, and federal regulations that impose the same obligations on licensees regardless of whether they are functioning as agents or transaction brokers. The only difference in liability of an agent and transaction broker is the fidelity and loyalty owed by an agent, but because so many cases allege duties that both transaction brokers and agents must perform, Mr. Jarboe has not seen a case yet that imposes liability on the agent solely because of their fiduciary duty.

Mr. Rickard presented several questions to Mr. Jarboe regarding the role of transaction brokers and the role of auctioneers. Mr. Rickard stated he feels that the Commission is changing the law. Mr. Jarboe stated he could interpret the law in a manner that transaction brokers could be auctioneers but he gave that argument up 15 years ago. However, he understands the Commission's interpretation and it is within the Commission's authority to interpret the law. Mr. Rickard told Mr. Jarboe that part of the reason for the BRRETA amendments was so that auctioneers could function as transaction brokers. Mr. Rickard also reported that a committee member told him that was the intent of the committee. Mr. Jarboe disagreed and stated he recalls nothing about that issue being discussed by the task force and he recalls nothing about it in the minutes. After further questioning from Mr. Rickard, Mr. Jarboe stated that BRRETA was not passed to authorize any specific type of conduct. BRRETA is a broad statute, not every issue that comes up could have been included in the statute, and the Commission's role is to interpret BRRETA's meaning.

At 10:23 a.m., the Chair thanked Mr. Jarboe for his presentation and Mr. Jarboe left the meeting.

Applications for Salesperson's License

Michael E. Ward

Applicant answered "yes" to Question No. 5 and self-reported a criminal offense in Kansas. Following receipt of Applicant's application, staff learned Applicant was charged with a subsequent criminal offense in Missouri. Applicant pled guilty to two charges in relation to the Kansas offense and provided proof that he had completed the Kansas probation requirements. Applicant's Missouri case is still pending. After review and discussion regarding the circumstances surrounding the conduct, the nature and severity of the conduct, Applicant's recent criminal conduct and that no charges have been filed to date, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to approve Applicant's application for a salesperson's license but Mr. Ward's license is restricted indefinitely to his supervising broker, Brenda M. Hanson with Diamond Partners, Inc. for a minimum period of two years. Applicant must notify the Commission of any dismissal or judgment and satisfactorily complete and provide proof to the Commission that he successfully completed any sentencing requirements. Should Applicant want to transfer or reactivate his license to another supervising broker, Applicant must submit a letter from the proposed supervising broker that they are aware of the conduct and are willing to supervise him. Motion carried unanimously.

Sherry Wright

Applicant answered "yes" to Question No. 5 on her application and self-reported two potential criminal offenses. After review and discussion regarding the circumstances surrounding the offenses, the nature and severity of the conduct, and Applicant's failure to provide any pleadings to support her explanation of the charges, motion was made by Mr. Vaught, seconded by Ms. Wenger to grant Commission staff the authority to approve Applicant's application for a salesperson's license subject to Applicant providing the pleadings for the offenses. If Applicant provides the pleadings, which will be kept confidential, and the pleadings support her explanation, staff is granted authority to approve Applicant's application for a license. If the pleadings do not support Applicant's explanation, Applicant's application will come back before the Commission again. A friendly amendment to the motion was made by Ms. Bittenbender, seconded by Mr. Vaught to allow Applicant 60 days to either provide the pleadings or to notify the Commission that Applicant needs more time to provide the pleadings. If Applicant does not provide the requested pleadings within the specified timeframe, her application will be deemed abandoned. Motion carried unanimously.

Joshua Atkinson

Applicant's application for a salesperson license was approved by the Commission at its November 14, 2013 meeting subject to Applicant's license being restricted to his supervising broker for a minimum period of two years. An agreed order was prepared and mailed to Applicant for signature. To date, Applicant has neither returned the signed order nor has Applicant notified the Commission that he does not intend to sign and return the order. In addition, Jerome H. Reilly, Applicant's proposed supervising broker, has submitted a letter indicating he wishes to withdraw his offer to supervise Applicant because Applicant has not remained in contact with Mr. Reilly. After review and discussion regarding the circumstances surrounding Applicant's failure to return the agreed order or contact the Commission as to his intentions regarding the agreed order and the fact that he no longer has a supervising broker, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to withdraw the Consent Agreement and Final Order and issue a denial of Applicant's application for a salesperson's license. Motion carried unanimously.

Applications for Broker's License

Brian Icenhower

The application of Mr. Icenhower was presented for review by the Commission. Mr. Icenhower self-reported three alcohol-related criminal offenses in California. After review and discussion regarding the number of years Mr. Icenhower had been licensed, his related real estate and business experience and education, the nature and severity of the conduct and Applicant's evidence of rehabilitation, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to approve Mr. Icenhower's application for a broker's license indefinitely restricted to his supervising broker, William Arbuckle with Northland Partners, LLC for a minimum period of two years. Applicant must petition the Commission if he wishes to request that the restriction be lifted following the minimum two-year period showing good cause why the restriction should be lifted. Applicant is required to successfully complete probation and provide the Commission proof for both pending cases. Applicant is required to provide biannual status reports showing that he is regularly attending substance abuse counseling and remains in compliance with all recommendations and maintenance of his sobriety. Applicant cannot serve as a supervising broker nor have affiliated licensees. Motion carried unanimously.

Ralph E. Spencer, III

The application of Mr. Spencer was presented for review by the Commission. Mr. Spencer disclosed discipline from another jurisdiction. After review and discussion regarding the number of years Mr. Spencer had been licensed, his transaction experience, related experience, knowledge of Kansas brokerage relationships, his conduct and his explanation, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to approve Mr. Spencer's application for a broker's license. Motion carried unanimously.

Cheryl London

The application of Ms. London was presented for review by the Commission. After review and discussion regarding the number of years Ms. London had been licensed, her lack of transaction experience, her related experience in property management and leasing activities and knowledge of Kansas brokerage relationships, motion was made by Mr. Vaught, seconded by Ms. Cook to approve Ms. London's application for a broker's license that is indefinitely restricted to prohibit Ms. London from conducting any commercial sales for a minimum period of two years. Motion carried unanimously.

Brian J. Reed

The application of Mr. Reed was considered by the Commission. Following review of Mr. Reed's application at the August 22, 2013 Commission meeting, a Summary Proceeding Order was issued denying Mr. Reed's application for a broker's license. After review and discussion of additional information from Mr. Reed regarding his application, motion was made by Ms. Wenger, seconded by Mr. Vaught to withdraw the Summary Proceeding Order denying Mr. Reed's application and approve Mr. Reed's application for a broker's license subject to Mr. Reed's payment of a \$100 fine for failure to timely report disciplinary action taken by another jurisdiction against a professional or occupational license or certification. Motion carried unanimously.

Robert Mirich

The renewal application of Mr. Mirich was considered by the Commission at its January 14, 2014 meeting. The application was tabled so that additional information could be requested from Mr. Mirich regarding rehabilitation. After review and additional discussion regarding Mr. Mirich's application following receipt of information requested by the Commission, motion was made by Ms. Wenger, seconded by Mr. Vaught to approve Mr. Mirich's renewal application for a broker's license. Motion carried unanimously.

Applications for Renewals

Shawn Sherese Jacobs

Applicant filed a renewal application for her broker's license. Prior to submitting her renewal application, Applicant's two companies had been selected for audit of the company trust accounts. Staff requested Applicant provide audit information on three separate occasions. Applicant failed to timely comply with these requests. Following receipt of Applicant's renewal application by the Commission, Applicant submitted paperwork to close one company. To date, Applicant has not provided the audit information for the second company. After review and discussion regarding Applicant's failure to timely provide the requested audit information and the fact that Applicant timely submitted her renewal application, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to table Applicant's renewal application and directed staff to inform Applicant that she has 60 days to provide the requested audit information. If Applicant fails to provide the requested audit information within the timeframe outlined, Applicant's application will require further review by the Commission and the Commission may take additional action, including denial of Applicant's renewal application. Motion carried unanimously.

Raul Rubio Guevara

Applicant requested to reactivate his salesperson's license under the supervision of Brenda M. Hanson at Diamond Partners, Inc. in Olathe, Kansas. Applicant and Mr. Benson were available to respond to inquiries by the Commissioners. Ms. Cook recused herself from discussing and voting on this matter. After review and discussion regarding Applicant's former supervising broker and concerns regarding the supervision of Applicant because of the distance between the location Applicant plans on doing business and Applicant's proposed supervising broker's office, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to approve Applicant's request to reactivate his license subject to an indefinite restriction to Brenda M. Hanson at Diamond Partners, Inc. Applicant must petition the Commission to request that the restriction be lifted or modified. Following additional review and discussion, an amended motion was made by Ms. Bittenbender, seconded by Ms. Wenger to require that Ms. Hanson first submit a letter outlining her company's sales meeting and training schedules and her plans for supervising Applicant in Topeka. Upon receipt, Ms. Diel can grant Applicant's reactivation request if she has no questions or concerns. If Ms. Diel has questions or concerns regarding the training or supervision Applicant will receive, Ms. Diel is to refer

the matter back to the Commission for further review. Motion carried unanimously with Ms. Cook recusing. Following the motion, the Commission directed staff to investigate the allegations made by Applicant regarding his former supervising broker failing to report a change of address and possible other violations.

At 10:24 a.m., Mr. Guevara, Ms. Guevara, Ms. Constant, Ms. Gardner, Mr. Cortez, Ms. Wilder, Mr. Benson and Ms. McGowan left the meeting.

At 11:19 a.m., Mr. Wuertz recessed the KOMA meeting for a 10-minute break.

Reconvene KOMA Meeting

At 11:30 a.m., Mr. Wuertz reconvened the KOMA meeting.

Doris Scheer

Applicant requested to reactivate her salesperson's license under the supervision of Tim Crosby at Crosby Real Estate. After review and discussion, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to approve Applicant's request to reactivate her salesperson's license indefinitely restricted to Tim Crosby at Crosby Real Estate for a minimum period of two years. Applicant must petition the Commission if she wishes to transfer or reactivate her license to another proposed supervising broker and the new supervising broker must provide to the Commission a letter stating the broker is aware of Applicant's conduct and is willing to supervise Applicant. Applicant is required to successfully complete the requirements of her probation and provide proof to the Commission. Should Applicant fail to timely provide proof of completion of her probation, Applicant shall be required to submit quarterly status reports until such time as she provides to the Commission proof that she has successfully completed the requirements of her probation. Motion carried unanimously.

Consider request of Kent Welch to open Skeet Real Estate

The Commission considered the request made by Kent Welch to open a company named Skeet Real Estate. Steve Skeet, a salesperson, wants Mr. Welch to serve as the supervising broker of Mr. Skeet's company, Skeet Real Estate, until such time as Mr. Skeet can obtain his broker's license. The Commission had tabled this item from the January 14, 2014 Commission meeting so that staff could request more information from Mr. Skeet concerning his future plans and what his timeframe is for obtaining a broker's license. Mr. Skeet was present at the meeting and addressed questions asked by the Commissioners. Mr. Skeet said that he will have owner/agent identified on all documents and make every effort to obtain his broker's license as soon as possible. Mr. Skeet said he will meet with Mr. Welch on a weekly basis. Once Mr. Skeet obtains his broker's license, he will become the supervising broker of Skeet Real Estate. After review and discussion on Mr. Welch's request, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to approve Mr. Welch's request to open Skeet Real Estate and for Mr. Welch to serve as supervising broker until such time that Mr. Skeet obtains his broker's license and takes over as supervising broker for Skeet Real Estate. Mr. Welch's name must be listed as the supervising broker on all documentation, including disclosures. Mr. Vaught opposed the motion. Motion carried. Following the motion, the Commission directed staff to investigate allegations made by Mr. Skeet against his former supervising broker regarding supervision of the office.

Employee Award Program

During the Commission's January 2014 meeting, Ms. Diel presented to the Commission amended guidelines for a KREC Employee Award Program. Currently, KREC has one award in place whereby employees are recognized for years of service with a plaque.

Ms. Diel drafted guidelines for a KREC Employee Award Program based on the Department of Administration's program, which includes an Employee of the Quarter Award. A representative from the Division of Personnel Services, Ms. Diel, and a Commissioner would serve on a committee to receive nominations for various awards. Kansas statutes set a cap of \$3,500 per employee per year for each employee, which would come out of the agency's budget. Commissioners suggested a \$250 quarterly award for the Employee of the Quarter Award.

Several other Employee Awards are available including Distinguished Accomplishment, Meritorious Service, and Innovation. Awards can be monetary or non-monetary.

Following review and discussion, motion was made by Ms. Cook, seconded by Ms. Wenger to approve the guidelines for the KREC Employee Award Program. Motion carried unanimously.

Education Report

The Education Report was received by the Commissioners. Ms. Diel reported on the calendar year education statistics as well as course approvals granted. In January 2014, 7 brokers and 123 salespersons took the licensure exams. All 7 of those taking the broker's exam passed, for a passing rate of 100%, and a total of 85 passed the salesperson's exam, for a passing rate of 69%.

Ms. Diel provided the Commissioners with copies of outline changes Pearson VUE has made to the national portion of the licensure exam.

At 12:02 p.m., Ms. Fertig left the meeting.

At 12:05 p.m., Mr. Skeet left the meeting.

At 12:19 p.m., Mr. Wuertz recessed the KOMA meeting for lunch.

Reconvene KOMA Meeting

At 12:40 p.m., Mr. Wuertz reconvened the meeting.

Status report on licensing complaints

At the Commission's December 12, 2013 meeting, the Commissioners suggested staff compile complaints received on licensing matters caused by the limited staffing. Ms. Diel reported to the Commission that staff may be under-reporting the number of complaints received. Applications that are incomplete, applications on which an applicant answered "Yes" to questions concerning criminal offenses or disciplinary action, and applications on which applicants fail to disclose criminal offenses require additional review to determine if additional documents are needed, whether the application can be approved by the Executive Director or whether the application must be reviewed by the Commission. This is where the licensing process tends to get bogged down because the application must be summarized to figure out the next steps. Staff has been directed to "triage" the applications. If a matter can be simply addressed with notes in the chronology, Ms. Diel has instructed staff to send the file directly through to the Executive Director for review without preparing a summary. This will hopefully speed up the process for many of the applications, leaving the more complicated salesperson and renewal applications and all broker applications to summarize.

Complaints are being filed because the initial review process takes too long or because there is a delay in issuing a Commission order. Staff has also received complaints on how much applicants dislike stock email responses used by staff and the Commission's automated phone system. In addition, applicants allege that staff has not timely returned phone calls. Ms. Diel made an inquiry to the Governor's Office for direction on how to handle persons who call without allowing reasonable processing time and are calling for information that is readily available on the web site, which keep staff from working on their backlog. It was suggested that staff use voice mail messages indicating that return phone calls can be expected within 48 business hours or, for faster response to inquiries, callers may access the Commission's web site.

Ms. Diel reported that staff will also prepare a stock email response to be used to notify applicants/licensees that their applications require review by the Commission. Ms. Diel said on a couple of occasions, because of staff delay in getting to the file to determine if it was complete, she approved the license subject to disciplinary action if additional pleadings were needed and no threat to the public was present. The Commission agreed that if additional documentation is required to clarify an applicant's criminal offenses and there has been a significant delay in staff determining the deficiency, if Ms. Diel finds no harm to the public will occur from the offenses, Ms. Diel can approve the application and later request the documentation subject to disciplinary action if there is a failure to respond to the request.

There was discussion on how the Commission's web site could provide clarification on the exact documentation needed in respect to criminal offenses. Staff will work on revisions to the web site so that applicants must submit the required documentation before the application will be considered. Ms. Diel also made further suggestions how the language can be changed on the application form as well.

Ms. Diel requested that the Commissioners let her know of any complaints they receive.

Legislative Report

Ms. Diel reported that HB 2125 has been moved off the Senate debate calendar to an exempt committee. It will hopefully be temporary until after turnaround. It could be a potential vehicle for other legislation because it has passed the House.

Ms. Diel will include requests in her testimony on the possibility of retaining a portion of fines collected or the 10 percent transfer issues. The 10 percent issue had trouble with the House last year because the split has been reduced from 80/20 with a \$200,000 cap to 90/10 with a \$100,000 cap. Retention of the fines as proposed would require introduction of legislation.

Ms. Diel reported on the status of SB 298. The bill is intended to provide transparency in fees that are paid, but there is opposition because there would be a reduction in revenue to the counties and a fund that is dependent on the tax.

Budget Report

The Budget Report was received by the Commissioners. Ms. Diel reported the following:

Expenditures

The agency continues to do well at saving. At seven months into the FY 2014 budget year, total expenditures are at just over 49%, with salaries at 57.87%. Expenditures should be at about 58% of the total appropriation. All vacant positions are zero funded.

Ms. Diel reported how drastically expenditures have been reduced. For the current reporting period, expenditures are \$79,000 lower than FY 2013 and \$54,600 lower than FY 2012.

Revenues

Total revenues collected to date are \$53,900 higher than FY 2013 and approximately \$1,500 more than FY 2012. This is because revenues collected in odd-numbered years are always lower.

Encumbrances

Total encumbrances are \$39,012.68. A bill for the new phones still remains outstanding. According to SMART, the Fee Fund is at \$342,461. However, the available Fee Fund balance is \$303,449 if the encumbrances (\$39,012.68) are subtracted. Because of the savings realized, the agency has been able to maintain the fund at higher than estimated levels, although this will be difficult in FY 2015 when revenues decrease.

Receipts

To date in FY 2014, KREC has transferred 10% of receipts, or approximately \$59,000, to the State General Fund and retained approximately 90%, or \$530,000, for the KREC Fee Fund.

To date in FY 2014, KREC has collected approximately \$63,500 in fines.

Recovery Fund

The balance in the Recovery Fund is \$316,000.

Staff report on FY2014-15 Budget

The Governor's Budget does not recommend the proposed fee increase. The Governor recommended the agency seek approval from the Legislature for the fee increase. The Governor's Office and the Division of the Budget did accept a proposal to use \$25,000 in FY 2014 and \$75,000 in FY 2015 from the Recovery Fund to upgrade the agency's electronic storage system.

Ms. Diel discussed recommendations from OITS that may impact the FY 2015 budget. OITS previously recommended separating servers by putting one in the Landon State Office Building for Disaster Recovery purposes. Staff reported problems with connectivity even though a 10MB line was installed. OITS has recommended moving the server back to the agency's physical location and upgrading it to 40 or 50 MB. Such an upgrade would cost approximately an additional \$292 per month, or another \$3,600 per year. There are also concerns whether the 10 MB line can handle the new online system operations. The upgrade can wait until the server is brought back to the agency's physical address. It was the consensus of the Commission to bring the server back first to see if connectivity improves. The Commissioners authorized Ms. Diel to proceed with the upgrade to a 40 or 50 MB line if staff continue to report connectivity problems or there are problems when the new programs come online.

Staff Report on I-Team Statistics

The I-Team Statistics were received by the Commissioners. Ms. Diel reviewed the calendar year and fiscal year reports. The fiscal year reports show that: 68 cases have been closed with outcomes reported; 36 cases were closed with no legal order or warning letter; and 96 cases remain open.

Director's Report

The Commissioners received the Director's report.

Ms. Diel reported that the Kansas Court of Appeals affirmed a lower court decision.

Ms. Diel recommended the Commissioners read an article in *ARELLO Boundaries*® that reports a Vermont Supreme Court ruling finding that the state's realtors' association was not liable for allegedly deceptive clauses in a contract form. The trade association was sued for "deceptive" wording in a contract. The Vermont Supreme Court found that if the association did not participate in the transaction, the trade association was not liable.

A Commissioner questioned why KREC did not get involved in addressing commission disputes. Ms. Diel responded it was because such a dispute is a civil matter. The Commission may get involved if there is more at issue than simply not getting paid a commission. Ms. Diel explained that staff's authority on discipline is much smaller than the Commission's authority on renewal. Commission staff can only consider competency to be a broker in a transaction unless grounds exist for other violations, while the Commission can consider honesty, integrity, trustworthiness, and competence in regard to license renewals.

Public Comments

Mr. Rickard was present and addressed the Commission. He apologized for choosing to use his time at the January 2014 Commission meeting to instruct the Commissioners on agency. Mr. Rickard also apologized for being dismissive of a Commissioner's comment made at the January meeting regarding use of agency in commercial transactions.

Mr. Rickard stated he believes that Mr. Jarboe's presentation was done at the Director's request and the content was in accordance with the Director's wishes. Mr. Rickard stated he has an affidavit from a former commissioner and task force member saying BRRETA was passed so auctioneers could act as transaction brokers. Mr. Rickard also said that vicarious liability is not a new issue and was previously approved by a representative of the Commission.

Mr. Rickard stated that many of the problems that the Commission is having are caused by the Commission creating law. The Commission once required an owner of a company to be the broker, that affiliated licensees must be within a range of supervision, and vicarious liability was changed.

Mr. Rickard stated that all individuals should be able to participate in discussions of the Commission and be able to see what will be included on agendas.

A Commissioner explained to Mr. Rickard that the Commission creates policies and regulations, but the Legislature creates laws.

Ms. Diel also asked the Chair if she could clarify an issue because Mr. Rickard continues to raise the matter in letters to political figures. Mr. Rickard claims that Ms. Diel prevented him from speaking at a Commission meeting. Ms. Diel explained that during a Commission meeting a few years ago she was explaining something complicated to the Commission and Mr. Rickard, an audience member, kept raising his hand to talk. Because this was not during the Public Comment period, Ms. Diel told Mr. Rickard "No, Larry," so she could continue to speak without interruption and without losing her train of thought. Mr. Rickard responded to Ms. Diel's explanation that he should be able to raise his hand to speak at any time during the Commission meeting.

Ms. Diel left the meeting at 1:55 p.m. to discuss with Ms. Fertig about the mechanics of proceeding with the executive session that had been added to the agenda because Ms. Fertig left the meeting due to a scheduling conflict.

Ms. Diel returned at 1:56 p.m. to advise that Ms. Fertig could participate in the executive session by phone.

Ms. Bittenbender reported she may not be available for the March 13, 2014 meeting.

Ms. Cook reported she has a meeting scheduled at noon on March 13, 2014.

Mr. Rickard left the meeting at 1:57 p.m.

Executive Session to discuss an attorney-client privilege matter

Based upon a motion made by Ms. Bittenbender, seconded by Ms. Wenger, Mr. Wuertz recessed the KOMA meeting at 1:57 p.m. for 15 minutes to enter into an executive session to discuss an attorney-client privilege matter. Those in attendance include the Commissioners, Ms. Diel and Ms. Fertig.

Mr. Wuertz reconvened the KOMA meeting at 2:14 p.m.

Upon a motion from Ms. Cook, seconded by Ms. Wenger, the meeting was adjourned. Motion carried unanimously.

Adjournment

Mr. Wuertz adjourned the meeting at 2:15 p.m.