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MINUTES OF MEETING

Kansas Real Estate Commission

July 11, 2013

The Kansas Real Estate Commission held its regular meeting on Thursday, July 11, 2013 at 9:00 a.m. by telephone conference at Three Townsite Plaza, Suite 200, 120 S.E. 6th Avenue, Topeka, Kansas.

Commissioners Present:

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

Staff Present:

Sherry Diel, Executive Director
Kelly White, Director of Licensing & Education
David Pierce, Director of Enforcement
Laurel Lowrie, Legal Assistant

Kansas Real Estate Commission Legal Counsel Present:

Sarah Fertig, Assistant Attorney General

Members of the Public Present:

Donna Lilley, Applicant

Call to Order

Mr. Wuertz called the meeting to order at 9:05 a.m.

Approval of the June 13, 2013 meeting minutes

Motion was made by Ms. Bittenbender, seconded by Mr. Vaught to approve the Minutes of the June 13, 2013 meeting. Motion carried unanimously.

Applications for Salesperson's License

Michelle Campbell

Applicant altered her Missouri Certification of Licensure by checking the method of licensure box on the form. After review and discussion regarding Applicant's explanation, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to approve Applicant's application for a salesperson's license conditioned upon her completing, within 90 days, an ethics course and writing a letter to the Commission acknowledging the seriousness of modifying documents, or the application is denied. Motion carried unanimously.

Christopher Cribb

Applicant answered "Yes" to Question No. 5 on his application and self-reported three criminal offenses. After review and discussion regarding the circumstances surrounding the offenses, the nature and severity of the conduct, the passage of time and Applicant's lack of additional criminal conduct, motion was made by Ms. Wenger, seconded by Mr. Vaught to approve Applicant's application for a salesperson's restricted to his proposed supervising broker, Gregg Davidson at Reece & Nichols for two years. Motion carried unanimously.

Cody Rajatar

Applicant answered "Yes" to Question No. 5 on his application and self-reported two criminal offenses. After review and discussion regarding the circumstances surrounding the offenses, the nature and severity of the conduct, the passage of time and Applicant's lack of additional criminal conduct, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to approve Applicant's application for a salesperson's license restricted to his proposed supervising broker, Donald Edwards at Compass Point LLC for two years. Motion carried unanimously.

Marco Reyes

Applicant answered "No" to Question Nos. 5 and 6 on his application and failed to disclose numerous criminal offenses. After review and discussion regarding the circumstances surrounding the offenses, the nature and severity of the conduct, and Applicant's failure to disclose the offenses, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to approve Applicant's application for a salesperson's license conditioned upon Applicant's completion of an ethics course and Applicant's submission of a letter to the Commission demonstrating his understanding of the gravity of his failure to disclose his criminal history on his application, and acknowledging that all criminal history must be reported to the Commission accurately and completely on all future applications and that additional criminal offenses must be timely reported to the Commission and are subject to additional disciplinary or licensure proceedings. Applicant shall be restricted to his proposed supervising broker, Debra Strecker at Ford County Realty for two years. Applicant's supervising broker shall be required to submit semi-annual status reports to the Commission. Motion carried unanimously.

Applications for Broker's License

Candace Davis

The application of Ms. Davis was presented for review by the Commission. After review and discussion regarding the number of years Ms. Davis had been licensed, her transaction experience, related experience and knowledge of Kansas brokerage relationships, motion was made by Ms. Wenger, seconded by Ms. Cook to table Ms. Davis' application for a broker's license until the August 22, 2013 meeting, instructing staff to send a letter to Ms. Davis requesting additional information regarding her understanding of brokerage relationships and requesting Ms. Davis' presence at the August 22, 2013 meeting. Motion carried unanimously.

Jacklyn Gomez

The application of Ms. Gomez was presented for review by the Commission. After review and discussion regarding the number of years Ms. Gomez had been licensed, her equivalent experience, related experience and knowledge of Kansas brokerage relationships, motion was made by Ms. Bittenbender, seconded by Ms. Cook to approve Ms. Gomez's application for a branch broker's license. Applicant shall also affiliate her license with the main company of State Line Real Estate and any transactions performed by Applicant must be done under the supervision of the supervising broker Gregory Franklin. The restriction that Greg Franklin shall supervise Ms. Gomez's transactions shall run indefinitely. If Applicant should want to change companies and work as a supervising or branch broker of another company, in the next two years, she must obtain the prior approval of the Commission. If Applicant should want to open her own office or lift the restriction on her license she must submit satisfactory evidence to the Commission that she has obtained the transaction and supervisory experience necessary to obtain a license without restrictions. Motion carried unanimously.

Donna Lilley

The application of Ms. Lilley was presented for review by the Commission. Ms. Lilley was present and the Commissioners and Ms. Diel asked Ms. Lilley for clarification regarding her role in the transactions reported. After review and discussion regarding the number of years Ms. Lilley had been licensed, her transaction experience, related experience and knowledge of Kansas brokerage relationships, motion was made by Ms. Bittenbender, seconded by Mr. Wuertz, to approve Ms. Lilley's application for a broker's license. Motion carried unanimously.

Applications for Renewal

Mary Fate

Applicant answered "Yes" to Question No. 3 on her application for renewal and self-reported a criminal offense. After review and discussion regarding the circumstances surrounding the offenses, the nature and severity of the conduct and Applicant's lack of additional criminal conduct, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to approve Applicant's application for renewal of her broker's license. Motion carried unanimously.

Stephen Franano

Applicant answered "Yes" to Question Nos. 2 and 3 on his application for renewal and self-reported a pending criminal offense. After review and discussion regarding the circumstances surrounding the offense, the nature and severity of the conduct and Applicant's lack of additional criminal conduct, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to approve Applicant's application for renewal of his salesperson's license conditioned upon Mr. Franano successfully completing the terms of his probation and providing proof of completion to the Commission. Motion carried unanimously.

Timothy Gates

Applicant answered "Yes" to Question No. 2 on his application for renewal and self-reported a pending criminal offense. After review and discussion regarding the circumstances surrounding the offenses, the nature and severity of the conduct and Applicant's lack of additional criminal conduct, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to approve Applicant's application for renewal of his broker's license conditioned upon Mr. Gates providing quarterly reports to the Commission regarding the status of his case, that he comply with any sentence imposed and provide proof to the Commission of completion of the terms of any sentence imposed. Motion carried unanimously.

Ms. Diel discussed with the Commissioners the history of the Gates' Supreme Court case. Ms. Diel noted the case is cited frequently regarding whether an agency has acted outside of its authority in a licensure proceeding. In the Gates case, rehabilitation factors were not properly considered by the Commission during the hearing on Mr. Gates' third application for licensure. The Supreme Court remanded the case to the Commission for further hearing. Ms. Diel stated it is very important when reviewing applications that the Commission provides staff with the factors considered for approval and denial of applications, including whether an applicant has established rehabilitation, so the factors can be documented in the order.

Consider request of Steven Hooks to work under the supervision of Scott DeNeve

After review and discussion regarding the materials provided by Mr. Hooks and Mr. DeNeve, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to approve Mr. Hooks' request to work under the supervision of Scott DeNeve at Platinum Commercial, LLC. Motion carried unanimously.

Staff Request regarding Guidance Documents 13-01 and 13-02

After review and discussion, motion was made by Mr. Vaught, seconded by Ms. Bittenbender for Ms. Fertig to provide revised language regarding approvals, denials, restrictions and conditions and to table Guidance Document 13-01 and 13-02 until the August 22, 2013 meeting. Motion carried unanimously.

Staff Request regarding Guidance Document 13-05

After review and discussion, the Commissioners directed Ms. Diel to continue working on the guidance document with input from the Commission and to provide visual examples at a future date. Motion carried unanimously.

Mr. Wuertz declared a break for five minutes at 11:35 a.m.

Mr. Wuertz reconvened the meeting at 11:41 a.m.

Staff Request regarding fee schedule for open records

After review and discussion, motion was made by Mr. Vaught, seconded by Ms. Cook to approve the open records fee schedule. Motion carried unanimously.

Staff Report on I-Team Statistics

The I-Team Statistics were received by the Commissioners.

Education Report

The Education Report was received by the Commissioners. Ms. Diel informed the Commissioners that data could now be reported by fiscal year instead of by calendar year and asked the Commissioners for their preference. The Commissioners indicated they preferred the calendar year report.

Budget Report

The Budget Report was presented including Expenditures and Real Estate Receipts as of June 2013.

KREC's fee fund balance is \$302,048. The available cash balance is \$235,627 which is the Commission's current fee fund balance less encumbrances.

KREC has transferred 10% of receipts to the State General Fund from July 2012 – June 2013 or \$84,800 and kept 90% or \$764,800 for the KREC fee fund for the current fiscal year.

KREC collected \$150,102 in fines for FY 2013 for the State General Fund. The Revolving Recovery Fund balance is \$312,450.

From FY 11 receipts are down about \$61,000. From FY 12 receipts are down about \$76,000, however this is typical in even numbered years given that it is a larger renewal group.

The Commissioners discussed obtaining statutory authority to keep fines. Ms. Diel noted the Commission collected \$150,000 in fines in FY 13, \$81,400 in FY 12 and \$48,000 in FY 11.

In June 82 brokers and 173 salespersons renewed online.

Director's Report

The Commissioners received the Director's report and Ms. Diel noted that there are currently 13,554 licensees.

Ms. Diel provided the Commissioners with a status report on the audit by mail program. Luke Bell from the Kansas Association of Realtors® will add an article to their newsletter regarding the program.

Ms. Diel informed the Commissioners that an educator had contacted staff regarding the status of a broker application and either the educator provided incorrect information to the applicant regarding what documentation was needed or the applicant misinterpreted the communication. Ms. Diel informed the Commissioners that a policy is now in place that application status will only be provided to the applicant or the proposed supervising/branch broker.

Ms. Diel asked the Commissioners if they would be interested in a checklist for rehabilitation factors considered in prior court decisions as well as those contained in the Commission's license act. The Commissioners indicated they would like such a checklist and asked staff to prepare a draft for review by the Commission.

Public Comment

There was no public comment.

Mr. Vaught asked for clarification regarding motions made by the Chair. Ms. Fertig informed the Commissioners that the Commission has not adopted Robert's Rules of Order and therefore, the Chair may second a motion.

Ms. Diel informed the Commissioners that the Kansas Association of Realtors® had a time slot available for the Commission and HUD to present mortgage fraud training at their October 9, 2013 meeting. This would require the October meeting to be rescheduled to October 9, 2013. The training session would take place at 9:00 a.m. and the Commission meeting would take place at 10:30 a.m. The consensus of the Commissioners was to proceed with the training and reschedule the October meeting. The October meeting may have an abbreviated agenda to fit the time slot.

Adjournment

Mr. Wuertz adjourned the meeting at 12:22 p.m.