

MINUTES OF THE MEETING
Kansas Real Estate Commission
July 20, 2015

The Kansas Real Estate Commission held its regular meeting on Monday, July 20, 2015 at 9:00 a.m. at Three Townsite Plaza, Suite 200, 120 SE 6th Avenue, Topeka Kansas

Commissioners Present:

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

Staff Present:

Erik Wisner, Executive Director
Kelly White, Director of Licensing and Education
David Pierce, Director of Enforcement
Stacey Serra, Legal Assistant

Kansas Real Estate Commission Legal Counsel Present:

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

Members of the Public Present:

Luke Bell, Kansas Association of Realtors

Call to Order

Ms. Wenger called the KOMA meeting to order at 9:00 a.m.

Approval of the Minutes of the May 14, 2015 Meeting

Motion was made by Mr. Vaught, seconded by Mr. Schlosser, to approve the minutes from the May 14, 2015 meeting. Motion carried unanimously.

Name Change

REALHome Services and Solutions Inc. would like to change their name to REAL Home Services and Solutions Inc. dba Owners.com. The commission approved the name change.

Ms. Wenger recessed the KOMA meeting at 9:11 a.m. for KAPA proceedings

Conference Hearing in the Matter of William Carpenter Docket No. 14-4747

Ms. Wenger recessed KAPA proceedings at 9:36 a.m.

Ms. Wenger reconvened the KOMA meeting at 9:50 a.m.

Remarks by Patricia Bolden

Ms. Bolden wanted to make a personal petition to have her renewal granted after the 6 month grace period. The Commission has no statutory authority to grant the request.

Ms. Wenger recessed the KOMA meeting at 9:56 a.m. for a short break.

Ms. Wenger convened KAPA deliberations at 10:03 a.m.

Ms. Wenger reconvened the KOMA meeting at 10:26 a.m.

I-Team

The I-Team reported that they discussed the violations index. Certain violations were approved in the May Commission meeting to receive a warning letter instead of a fine. The index was reviewed for further revisions of some penalties. The I-Team decided against revision as the index is a guideline only. The I-Team already has authority to assess alternate penalties due to the circumstances surrounding the case.

I-Team has received several complaints regarding advertisements/communications for compensation for referrals sent to individuals without a license from the Commission. The recommendation was a warning letter to those individuals reminding them only licensed individuals may receive compensation for referrals. In addition, the next Commission newsletter will address this issue.

Ms. Mendoza provided an update on older cases where the respondent has requested a hearing with the Office of Administrative Hearings. In the next month or so, she hopes to be able to resolve these using consent agreements with those individuals. Due to the time elapsed, trying to take it to a hearing would not be appropriate. Ms. Serra will assist in disposition. The requests for hearing have decreased significantly due to the approach the Commission has taken towards discipline.

FY2015 DIMS Report

Mr. Wisner presented discipline statistics from fiscal year 2015.

Report of Legal Actions by Year and Type. The report shows fines have drastically decreased, with an increase in warning letters. Previously, warning letters were not being tracked in DIMS. Even if they were, you would still see an increase in FY15. Mr. Schlosser requested information on how many audits were performed in FY2013 and FY2014 compared to FY2015.

Report of Violations by Year and License type. The report shows a definite increase in the working while expired in both brokers and salespersons. It is, however, still a low number

Report of most common legal actions for violations in FY2015

Report of Restricted and/or Conditioned licenses through July with underlying violation.

Mr. Schlosser would like to see a report showing differentiation of DUI from the rest of the Lack of HITC violations.

Update on status of K.A.R. 86-1-5

The current draft of the regulation has been approved by the Department of Administration. It is now with the Attorney General's office. It is being reviewed by two attorneys, and the Commission is awaiting a response. Once it is approved by the Attorney General's office, it will then be reviewed by the Joint Committee on Rules and Regulations. The regulation would then need a public hearing. The Commission is planning on holding the public hearing at the October Commission Meeting.

Review of NORTH CAROLINA BOARD OF DENTAL EXAMINERS, v. FEDERAL TRADE COMMISSION

The North Carolina Board of Dental Examiners is the professional licensing agency for dentists/hygienists. The Board had received several complaints regarding non dentists performing teeth whitening services. The Board issued a cease and desist letter to these businesses. The Federal Trade Commission filed a complaint alleging anti-competitive acts. The Supreme Court ruled in favor of the FTC. The North Carolina Board of Dental Examiners differs from boards and commissions in Kansas; it is composed of dentists elected by their peers. The Supreme Court ruled this particular board did not have active supervision by the state. The Board did not have the authority to issue the cease and desist letters because teeth whitening is not considered the practice of dentistry in the state of North Carolina. Mr. Wisner and Ms. Fertig discussed the implications of the ruling and what the Commission needs to do to avoid a similar situation.

Continuing Education Provider Approval

SB 108 gave us authority to approve continuing education providers through 58-3046a(h)(6). Continuing education providers were previously approved by the Kansas Board of Regents. The Board required they also offer a pre-license course in order to be approved. The Commission has two options: to create a regulation to approve of the provider, or just approve the courses. This is only for those providers who do not want to offer a pre-licensing course. Mr. Bell from the Kansas Association of Realtors suggested considering recommendations made by the Continuing Education Task Force and also consider a requirement that distance education providers be approved by the Association of Real Estate Law License Officials (ARELLO). Motion was made by Mr. Wuertz to authorize staff to develop a draft regulation for K.A.R. 86-1-10 and K.A.R. 86-1-11 for review by the Commission. Motion seconded by Mr. Schlosser. The motion passes unanimously. Motion by Mr. Schlosser to approve all currently approved continuing education providers as schools and direct staff to approve new continuing education

schools pending the drafting of the regulations. Motion seconded by Mr. Vaught. Motion passes unanimously.

Ms. Wenger recessed the KOMA meeting at 12:11 p.m. for lunch.

Ms. Wenger reconvened the KOMA meeting at 12:43 p.m.

Brokerage Relationship Brochure Update and Alternate Versions

Staff received a call from the Kansas City Regional Association of Realtors asking if the Commission provided a Spanish language version of the brokerage relationships brochure. Brokers are not required to use the version provided by the Commission. They may offer their own provided it contains the statutorily mandated minimum information. The Commission decided not to provide an alternative translation of the brochure at this time.

Licensee, Education and Exam Report

There were 3,533 active brokers and 9,942 active salespersons in July in FY2015. This compares to 3,649 active brokers, and 9,180 active salespersons in FY2013 and 3,549 active brokers and 9,250 active salespersons in FY2014.

There were 91 inactive brokers and 649 inactive salespersons in July in FY2015. This compares to 113 inactive brokers, and 679 inactive salespersons in FY2013 and 91 inactive brokers and 571 inactive salespersons in FY2014.

Eight new continuing education courses and two pre-license courses were approved in May. Fourteen continuing education courses and two pre-license courses were approved in June.

In May, the overall pass rate for brokers was 92%. For salespersons it was 74%. In June, the pass rate was 60% for brokers, and 66% for salespersons. For FY2015 the overall pass rate for brokers was 84% and for salespersons it was 71%.

Per a previous request from Mr. Wuertz, Ms. White presented a report showing the passing rate by school for the month of July and a report showing all of FY2015. These reports will continue to be presented each month.

Directors Report

Mr. Wisner indicated that expenditures from the Real Estate Fee Fund totaled \$799,873.68 in FY2015. The Commission was approved for \$972,651.00. The Commission had salary savings of \$85,329.37 and other expenditures of \$56,905.70 that were paid out of the Real Estate Recovery Fund instead of the Real Estate Fee Fund as was originally budgeted. The remaining difference in actual expenditures versus approved expenditures from the Real Estate Fee Fund were reductions in capital outlay. The Commission spent \$96,340.84 out of the \$100,000 available in FY2015 from the Recovery Fund. The Commission had until June 30, 2015 to spend these funds. The Commission upgraded all of the staff computers, replaced three servers and was able to fund most of the contract to replace our current document management system.

In FY 2015, the Commission had less expenditures from the Real Estate Fee Fund compared what was spent in both FY 2013 and 2014. The Division of Budget is requiring a realigned FY2016 and FY2017 budget. The Commission will need to review and possibly realign expenditures for both fiscal years.

The Commission is projecting the proposed fee increase will add \$90,000 in revenue for FY2016 and \$165,000 in FY2017.

KBI background check fee fund is currently at over \$50,000 when it should have little to no carryover. The KBI reduced the fee for fingerprint and background check, the Commission has not. In addition, the Commission has not expended any monies for salaries which the Commission has the authority to do.

AOS is currently designing a Microsoft SharePoint site for our Document Management System. Mr. Wisner anticipates it will be up and running in September. The Commission will probably need to retain temporary staff to scan the backlog of documents.

OITS migration is 98% done. There are a few lingering folders to migrate. The Commission is now part of the OITS user group, and no longer paying per service call. The pending issue is the RELS migration. Our programmer had an emergency and was not able to complete the migration this weekend. It will not be complete until August.

The website content upgrade is still ongoing.

The Commission has extended the PearsonVue contract, for one year to develop a comprehensive RFP. Mr. Wisner and Ms. White are working on the RFP. The Commission would like to incorporate LiveScan fingerprint scanning with the pre-licensing exam.

Upcoming Events

Kansas Association of Realtors Annual Meeting is October 14-16. They have time for the Commission to have a meeting during this event on the morning of October 16. The Commission approved meeting on October 16th at 8:00 am. The Commission would also like to include the public hearing on K.A.R. 86-1-5 during this meeting.

The ARELLO Annual Meeting is September 9-12. Mr. Wisner would like to attend the executive director orientation. They are also doing a commissioner college on Sunday. The Commission has money in the budget to send at least one commission member.

Ms. Mendoza has requested a commission member with whom to discuss licensing matters. It is very rarely an issue arises but it does occur. The commissioner she consults with would be barred from participating in deliberations about the specific cases. Mr. Wuertz moves Mr. Schlosser should work with Ms. Mendoza. Mr. Vaught seconded, motion carried unanimously.

Adjournment

Ms. Wenger adjourned the meeting at 2:02 p.m.

Upcoming Commission Meeting Dates

August 17, 2015

September 21, 2015 (tentative)