

MINUTES OF THE MEETING
Kansas Real Estate Commission
October 16, 2015

The Kansas Real Estate Commission held its regular meeting on Friday, October 16, 2015 at 8:30 a.m. in the Pioneer Room, Maner Conference Center, Capital Plaza Hotel, Topeka, Kansas.

Commissioners Present:

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

Sarah Fertig, Assistant Attorney General

Call to Order

Ms. Wenger called the KOMA meeting to order at 8:30 a.m.

Additions to the Agenda

Mr. Wuertz requested discussion on Audit Procedures be added to the agenda.

Ms. Cook arrived 8:31 a.m.

Public Comment on K.A.R. 86-1-5 Fees

Mr. Wisner began the public hearing on K.A.R. 86-1-5 by providing a brief summary of the regulation including the reason for the need to increase license fees for salespersons and brokers.

Mr. Wisner stated the Commission has not received any written public comments, including the Joint Committee on Administrative Rules and Regulations, regarding the proposed changes. He asked for any verbal public comment.

Chris Rost, past president of the Kansas Association of Realtors (KAR) spoke in favor of the regulation. He believes an effective and functional Commission helps all practitioners. Mr. Rost believes the Commission is overdue for an increase in funding.

The public hearing concluded at 8:36 a.m.

Approval of the Minutes of the September 21, 2015 Meeting

Motion was made by Mr. Wuertz, seconded by Mr. Vaught, to approve the minutes from the September 21, 2015 meeting. Motion carried unanimously.

Comments from the Public

Karen Gehle, CEO of KAR, appreciated the Commission adjusted their schedule to be at the conference. She believes it's important for members to understand how Commission operates. Having the Commission be accessible at events like the annual meeting will help facilitate that understanding.

Discussion of Continuing Education Regulation Revisions

The Commission reviewed written comments from KAR regarding the modifications to the Commission's continuing education regulations.

KAR's main concern is ensuring quality education from distance learning providers. The Commission's current draft requires distance learning courses to be certified by ARELLO or another institution whose certification standards are deemed equivalent by the Commission. KAR felt this certification could be cumbersome and unnecessary for providers without a national scope. There was also concern by the Commission this certification could be seen as a delegation of authority. The Commission will look at adopting certain ARELLO standards and incorporating them into the regulation.

The draft regulation eliminates the Required Broker Core Course and raises the number of elective hours for broker renewal. KAR voiced concerns over the availability of content provided in the current broker core course. Ms. Wenger and Mr. Wuertz suggested courses from the Certified Residential Broker Program may fill any void.

KAR was also concerned about reasonable notice for providers to come into compliance. Ms. Fertig felt the best way to do so would be to establish a "go live" date six to nine months in the future so that all providers would be aware of the coming changes and the time line for coming into compliance. Currently, a course must be approved 45 days prior to offering. Due to changes in the statute, however, the Commission may want to consider increasing the time to 60 days.

Mr. Wisner will work on updating the draft for the next Commission meeting.

Overview of Past Discussions on Two-Tiered Broker's License

The commission discussed establishing a two-tiered broker's license. This was considered by the Commission in late 2012. The Commission looked at offering a second tier of broker's license for a broker who specialized in limited market transactions such as agricultural land.

The Commission is currently looking at the possibility of having a second tier of a broker license for applicants that may meet the minimum qualifications to be a broker but do not have the experience necessary to be a supervising broker.

Currently, the Commission has 3,510 active broker licensees. Of those 128 are restricted/conditioned to work under a supervising broker or not supervise any affiliated licensees. However, there are over 1,600 brokers (45%) working under a supervising broker who although not necessarily restricted/conditioned, are functionally not operating as a supervising broker. Mr. Schlosser asked for the number of non-resident broker's licenses.

Mr. Wisner stated staff often see Missouri brokers without sufficient transaction experience applying for a license in Kansas. K.S.A. 58-3040 restricts these applicants to applying for a broker's license only. Mr. Wisner believes many of these applicants would be satisfied with a salesperson's license. It would require a statutory change in order to allow this.

Ms. Wenger asked if it would be better to do a statutory fix for the non-resident licenses now or wait and consider more comprehensive statutory changes such as a two-tiered broker's license. Ms. Fertig explained it would be easier to explain a change to the non-resident statute and to move it through the legislature, rather than trying to implement a complete new structure for licensing brokers. Ms. Fertig and Mr. Wisner will work on draft changes to the non-resident license statute and present to the Commission for consideration.

Overview of Draft of Broker Supervision Regulation

Ms. Fertig walked the Commission through the draft of the broker supervision regulation. The broker supervision task force was composed of Mr. Wuertz, Ms. Fertig, Mr. Pierce, Mr. Schlosser, Mr. Wisner and Kathy Copeland. Although there is a requirement for broker's to supervise their primary office, the specific standards for what adequate supervision entails has not been defined in the statute or regulation. The task force evaluated statutes and regulations from several states to determine what would be appropriate for Kansas. In the end, the task force decided to define what a failure to supervise the office would entail, and mitigating and aggravating factors the Commission would consider if they found the broker had failed to supervise the primary office.

The purpose of this regulation is to make clear to the Commission, the industry and staff what constitutes a violation. The task force did discuss if there should be specific supervision requirements for restricted and conditioned licensees. The task force did not make any recommendations, but agreed requirements need to be consistent across the board.

The Commission decided by general consensus to proceed with an exposure draft. Mr. Wisner will forward an exposure draft to KAR for any questions or comments

Mr. Wuertz would like the Commission to formally thank Ms. Copeland for her time and assistance with the broker supervision task force. Mr. Wisner will send a letter to Ms. Copeland for her service on the task force.

License, Education and Exam Report

Ms. White informed the Commission there are currently 14,302 licensees; this is 546 more licensees than this time last year.

Staff approved eight elective continuing education courses and one mandatory broker core course.

The overall examination pass rate for September was 66%; calendar year to date was 70%. Ms. White also presented a breakdown of the pass rates by school.

Mr. Wisner looked at trends over time with the break down by school. In FY2014 and FY2015 for brokers, the pass rates overall were higher than FY2016. With respect to salespersons, FY2016 is currently at 66%, which is closer to the norm of 70%. There were 1,787 exams in FY2014, 1,898 exams in FY2015 and so far this year, there have been 551 in the first quarter.

Ms. Wenger asked if staff had reviewed the difference between online and classroom education and its impact on the pass rate. Mr. Wisner is looking at increasing analytics for pre-license and continuing education providers to associate pass/fail rates and violations.

Directors Report

Mr. Wisner informed the Commission revenue is on par with estimates. First quarter fee fund revenues are \$256,575 after transfers and recovery of expenses. Background investigation receipts are at \$27,392 for the quarter, 28% of anticipated revenue. First quarter expenditures are \$250,393, including encumbrances. This represents 22.7% of estimated expenditures for FY2016.

Mr. Wisner advised the Commission that a quality control review of the new website has been completed. Commissioners will be able to review the website at the November meeting.

Mr. Wisner updated the Commission on the new document management system. Staff has completed user testing. The project is two months behind schedule due to issues with employee turnover within the vendor's organization and problems with migrating data from ACCORDE to the new SharePoint system.

Mr. Wisner updated the Commission on the status of the online licensing upgrade (OLMS/RELS). Cost estimates have been requested from the developer to enhance functionality, including allowing licensees to print licenses at home to save mailing costs and allowing CE

providers to electronically upload data into the system. The current changes will allow licensees to update demographic data, transfer, and add additional affiliations but Mr. Wisner would like to see further improvements before going live..

The request for proposals for pre-licensing examination provider services has been posted. The deadline for questions from potential vendors is October 16. The deadline for the final proposal from potential vendors is November 16. The contract award will run from October 1, 2016 through September 30, 2021 with two optional five-year renewal periods.

Auditing

Mr. Wuertz inquired as to the general procedure for communicating the results of an audit. The response is not laid out by statute or regulation. Typically, after the audit is completed, there is an exit interview. The broker is informed of any violations which are found. Mr. Wisner was not aware of a formal communication from the Commission if no violations are found. Mr. Wisner will look at implementing appropriate communication if the office is in compliance.

Adoption of K.A.R. 86-1-15

As the Commission has not received any written comments and only one public comment, Mr. Wisner proposed a roll call vote to officially adopt the revised regulation.

Mr. Vaught made a motion to officially adopt K.A.R. 86-1-5 a permanent regulation. Mr. Wuertz seconded the motion.

Mr. Wisner initiated the Roll Call Vote. The Commissioners voted as follows:

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

The motion passed unanimously.

Additional Comments

Mr. Wuertz advised Mr. Wisner he had received several favorable comments on Mr. Wisner's presentations, and he made a favorable impression on many people.

Mr. Wisner thanked KAR staff for being very accommodating and allowing staff to attend several sessions. He has received good feedback from licensees regarding the Commission, with credit especially to Ms. White and her staff.

Adjournment

Ms. Wenger adjourned the meeting at 10:13 a.m.

Upcoming Commission Meeting Dates

November 16, 2015

ATTEST:

Date: _____

Sue Wenger, Chairperson

Joseph Vaught, Vice Chairperson

Errol Wuertz, Member

Shirley Cook, Member

Bryon Schlosser, Member