

MINUTES OF MEETING

Kansas Real Estate Commission

November 13, 2014

The Kansas Real Estate Commission held its regular meeting on Thursday, November 13, 2014, at 9:00 a.m. at Three Townsite Plaza, Suite 200, 120 S.E. 6th Avenue, Topeka, Kansas.

Commissioners Present:

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

Staff Present:

Sherry C. Diel, Executive Director
David Pierce, Director of Enforcement
Kelly White, Director of Education
Wendy Alkire, Compliance Supervisor
Mitzi Dodds, 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 (KAR)®
Allison Conklin, Division of Personnel Services
Lois Ryan, Division of Personnel Services
Jessica Hensley
Marjean Hendrix

Call to Order

Ms. Wenger called the KOMA meeting to order at 11:10 a.m.

Additions to the Agenda

No additions were made to the agenda.

Executive Session to Discuss a Personnel Matter

Based upon a motion made by Mr. Vaught, seconded by Mr. Schlosser, Ms. Wenger recessed the KOMA meeting at 11:12 a.m. for 30 minutes to enter into an executive session to protect the privacy of those involved. Those in attendance include the Commissioners, Ms. Diel, Ms. Fertig and Ms. Mendoza. Motion carried unanimously.

Ms. Wenger reconvened the KOMA meeting at 11:45 a.m.

Executive Session to Discuss a Personnel Matter Extended

Based upon a motion made by Mr. Vaught, seconded by Mr. Wuertz, Ms. Wenger recessed the KOMA meeting at 11:46 a.m. in order to extend the executive session an additional 15 minutes. The same staff members were in attendance. Motion carried unanimously.

Ms. Wenger reconvened the KOMA meeting at 12:05 p.m.

Executive Session to Discuss a Personnel Matter Extended

Based upon a motion made by Mr. Vaught, seconded by Mr. Schlosser, Ms. Wenger recessed the KOMA meeting at 12:05 p.m. in order to extend the executive session an additional 10 minutes. The same staff members were in attendance. Motion carried unanimously.

Ms. Wenger reconvened the KOMA meeting at 12:19 p.m.

Executive Session to Discuss a Personnel Matter

Based upon a motion made by Mr. Vaught, seconded by Mr. Schlosser, Ms. Wenger recessed the KOMA meeting at 12:20 p.m. for 30 minutes to enter into an executive session to protect the privacy of those involved. Those in attendance include the Commissioners, Ms. Conklin, Ms. Ryan, Ms. Fertig and Ms. Mendoza. Motion carried unanimously.

Ms. Wenger reconvened the KOMA meeting at 12:50 p.m.

Executive Session to Discuss a Personnel Matter Extended

Based upon a motion made by Mr. Vaught, seconded by Ms. Cook, Ms. Wenger recessed the KOMA meeting at 12:50 p.m. in order to extend the executive session an additional 15 minutes. The same staff members were in attendance. Motion carried unanimously.

Ms. Wenger reconvened the KOMA meeting at 1:10 p.m.

Executive Session to Discuss an Attorney-Client Privilege Matter

Based upon a motion made by Mr. Vaught, seconded by Ms. Cook, Ms. Wenger recessed the KOMA meeting at 1:12 p.m. for 20 minutes to enter into an executive session for consultation with the Commission's attorney to seek legal advice on a matter protected by the attorney-client privilege. Those in attendance include the Commissioners, Ms. Diel, Ms. Fertig and Ms. Mendoza. Motion carried unanimously.

Ms. Wenger reconvened the KOMA meeting at 1:34 p.m.

Mr. Bell, Ms. Hensley, and Ms. Hendrix joined the meeting at approximately 1:40 p.m.

Request to Open Company and Transfer License

Ms. Diel reported that Mark H. Maschger requests to open a company named FSBO Friendly Realty and transfer his license to the proposed company. Commissioners expressed concern with the use of this proposed company name, including that the name may mislead or confuse the public so that it is assumed that no licensee will be involved in the transaction. Based upon a motion made by Mr. Schlosser, seconded by Ms. Vaught, the request of Mark H. Haschger to open a company named FSBO Friendly Realty and to transfer his license to the proposed company was denied. Staff will prepare a letter to report

the Commission's denial to Mr. Maschger. If Mr. Maschger disagrees with the decision, his appeal rights would be covered under the act for judicial review. Motion carried unanimously

Consider Broker Supervision Regulation

Ms. Diel reported that this regulation was discussed sometime in 2009 or 2010. There was Commission discussion to the effect that the 100-mile requirement may be outdated due to technological advances. Mr. Pierce reported that the 100-mile rule resulted from several situations, including a broker out of Nebraska with multiple agents at offices a long distance from the main office. In addition, an Emporia brokerage alleged it had not been audited for some time. Following Commission discussion on the benefit of learning how other states handle broker supervision, a consensus was reached to form a small group, including Mr. Schlosser, Ms. Diel, Ms. Fertig, Ms. Mendoza, and a KAR® representative, to work on obtaining input into updating the proposed regulation so that it can be brought back before the Commission for consideration.

Schedule for Commission Meetings for the Next Three Months

Ms. Wenger asked the other Commissioners how they would like to set the schedule for the next three Commission meetings. Following discussion on continuing the trend of holding every other meeting by conference call, the Commissioners agreed that the December 11, 2014 meeting would be held by conference call, the January 8, 2015 meeting would be held in Topeka, and the February 12, 2015 meeting would be held by conference call.

Budget Report

Ms. Diel presented the Expenditures and Receipts Report as well as the Budget Report.

FY 2015 Year-to-date Expenditures and Receipts Report

The Division of Budget has recommended that the encumbrances totaling \$47,200 be cancelled. Ms. Diel recommends this decision be appealed because that is funding earmarked for testing costs for the new online licensure system.

Fee Fund

Ms. Diel reported that SMART currently reflects a Fee Fund balance of \$370,886. However, if encumbrances are factored in, the available Fee Fund balance is \$323,686.

Expenditures

Ms. Diel reported that agency expenditures are at 25.7% at 4/12's through FY 2015. If spent on an equal percentage throughout the year, expenditures would normally be at 33% at this point in the fiscal year.

The Salary line item will increase due to two full-time temporary positions added in October 2014. Ms. Diel reported that the agency contracted with a temporary employment agency to fill the positions. Ms. Diel reported that one option to funding these positions was to utilize funds available due to a vacant Legal Assistant position.

Receipts

Ms. Diel reported that the agency has retained 90% of receipts, or \$298,655. The agency has transferred 10%, or \$33,160, to the State General Fund (SGF).

Fines

Ms. Diel reported that year-to-date the agency has collected \$34,264 in total fines. Of this amount, \$28,134 has been transferred to the SGF and \$6,130 has been retained by the agency.

Recovery Fund

Ms. Diel reported that the Recovery Fund balance is \$321,735. Approximately \$100,000 of the Recovery Fund is set aside to replace the agency's obsolete electronic records management storage system. In addition, OITS is researching Cloud-based storage and has asked the agency to hold on purchasing the system until that research is concluded.

Comparison of Receipts and Expenditures

Ms. Diel reported that normally odd-numbered years are selected for comparison since renewal groups in odd-numbered years are similar in size. Ms. Diel explained that expenditures have been substantially reduced and receipts have increased approximately \$20,000. The comparison of previous fiscal years (July through October) reflect the following: in FY 2015, up \$48,724; in FY 2014, up \$70,478; and in FY 2013, down \$49,756. Ms. Diel reiterated that it is important to maintain data on fines collected and retained so that allegations made inferring that the Commission is collecting fines to fund agency operations can be addressed.

Division of Budget Recommendations

Ms. Diel reported on recommendations made by the Division of Budget. The Division of Budget's analysis calculates base receipts, with no fee increase, and expenditures from the enhancement request.

There was discussion concerning an item included in the Commission's 2012 budget in which it was proposed that the Commission model its operations after the Texas Real Estate Commission, a semi-independent, self-directed agency. Consequently, the Commission would be able to set its own fee structure. However, it was decided not to proceed on the proposal because it did not appear to be a popular option in Kansas.

Ms. Diel reported that there are two items that should be appealed. First, the recommendation to take out \$15,200 in encumbrances should be appealed.¹ Second, the expenditure authority and fee increase should be appealed. Best case scenario for expenditure authority would be contingent on the fee increase being approved. The Division of Budget does indicate that the Commission does not have enough funding to pursue the agency's mission.

Ms. Diel reported that provisions addressing Commission meeting schedules and additional in-person audits were included to return to existing level of service so that hearings can be completed and individuals can get to work on a more timely basis.

I-Team Statistics

Ms. Diel presented the I-Team Statistics Report to the Commission. There are currently a high number of open complaints, a majority of which are from the public or agents. Ms. Diel explained the Docket Report, included in the I-Team Statistics Report, shows those cases that have been closed. There was specific discussion on the Working While Expired category. The renewal notice mailing procedure has been changed so that the broker receives an email notice that a licensee's license must be renewed. It is hoped

¹ There is no record of a \$280.48 encumbrance listed; therefore, this encumbrance has been removed.

that this updated notice procedure will help to reduce the number of instances when a licensee performs real estate activities without a properly renewed license.

Education Report

Ms. Diel presented the Education Report to the Commission. It was noted that the number of individuals taking the licensure examination as well as applications have increased.

Director's Report

Ms. Diel presented the Director's Report to the Commission. She explained that the number of licensees remains around the 13,600 level. Ms. Diel reported that the state of California extended agency disclosure to commercial transactions.

Ms. Diel reported that Ms. Fertig, Ms. Mendoza, and staff will be reviewing test questions with Pearson Vue two days the week of November 17, 2014. If required, questions will be revised and then considered again by the participants. Participants will also write new questions. Due to a lack of RSVPs, an Industry Day planned for the same timeframe has been postponed. Once revisions to the application addendum form are made and several of the YouTube videos are finalized, possibly in January or February 2015, another attempt will be made to schedule an Industry Day.

Ms. Wenger declared a 10-minute break at 2:29 p.m.

Ms. Wenger reconvened the meeting at 2:40 p.m.

Mr. Bell left the meeting at approximately 2:42 p.m.

Public Comments

Ms. Hensley explained to the Commission why she had applied for a broker's license. Ms. Hensley had planned to take over Larry Frederick's brokerage. However, that did not come to fruition, so Ms. Hensley transferred to Carol Mangren. Ms. Hensley wishes to open her own office. Ms. Hendrix, who accompanied Ms. Hensley to the meeting but did not address the Commission, plans to affiliate her license under Ms. Hensley.

Ms. Hensley and Ms. Hendrix left the meeting at approximately 2:45 p.m.

Executive Session to Discuss an Attorney-Client Privilege Matter

Based upon a motion made by Mr. Vaught, seconded by Mr. Wuertz, Ms. Wenger recessed the KOMA meeting at 3:30 p.m. for 20 minutes to enter into an executive session for consultation with the Commission's attorney to seek legal advice on a matter protected by the attorney-client privilege. Those in attendance include the Commissioners, Ms. Fertig, and Ms. Mendoza. Motion carried unanimously.

Ms. Wenger reconvened the KOMA meeting at 4:00 p.m.

Executive Session to Discuss a Personnel Matter

Based upon a motion made by Mr. Vaught, seconded by Mr. Wuertz, Ms. Wenger recessed the KOMA meeting at 4:00 p.m. for 35 minutes to enter into an executive session to protect the privacy of those involved. Those in attendance include the Commissioners, Ms. Fertig and Ms. Mendoza. Motion carried unanimously.

Ms. Wenger reconvened the KOMA meeting at 4:35 p.m.

Executive Session to Discuss a Personnel Matter Extended

Based upon a motion made by Mr. Vaught, seconded by Mr. Schlosser, Ms. Wenger recessed the KOMA meeting at 4:35 p.m. in order to extend the executive session an additional 15 minutes. The same staff members were in attendance. Motion carried unanimously.

Ms. Wenger reconvened the KOMA meeting at 4:48 p.m.

Consulting Services Contract

Based upon a motion made by Mr. Vaught, seconded by Mr. Wuertz, the contract between Alexandra Blasi and the Commission dated November 7, 2014 to provide consulting services, excluding Scope of Services titled Human Resources, conditioned on approval from the Department of Administration. Motion passed unanimously.

Executive Session to Discuss a Personnel Matter

Based upon a motion made by Mr. Vaught, seconded by Mr. Schlosser, Ms. Wenger recessed the KOMA meeting at 4:52 p.m. for 20 minutes to enter into an executive session to protect the privacy of those involved. Those in attendance include the Commissioners, Ms. Diel, Ms. Fertig and Ms. Mendoza. Motion carried unanimously.

Ms. Wenger reconvened the KOMA meeting at 5:09 p.m.

Upon a motion from Mr. Wuertz, seconded by Mr. Vaught, the meeting was adjourned. Motion carried unanimously.

Adjournment

Ms. Wenger adjourned the meeting at 5:10 p.m.