

MINUTES OF THE MEETING
Kansas Real Estate Commission
March 21, 2016

The Kansas Real Estate Commission held its regular meeting on Monday, March 21, 2016 at 8:30 a.m. at Three Townsite Plaza, Suite 200, 120 SE 6th Avenue, Topeka, KS 66603.

Commissioners Present:

Sue Wenger, Chairperson
Errol Wuertz, Member
Bryon Schlosser, Member
Shirley Cook, Member

Staff Present:

Erik Wisner, Executive Director
Kelly White, Deputy Director, Director of Licensing and Education
Wendy Alkire, Compliance Director
Stacey Serra, Legal Assistant
Amber Nutt, Education Specialist
Richard Ford, Investigator

Kansas Real Estate Commission Legal Counsel:

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

Members of the Public

Mark Barker, Career Education Systems

Call to Order

Ms. Wenger called the KOMA meeting to order at 8:37 a.m.

Additions to the Agenda

None

Approval of the Minutes of the February 15, 2016 Meeting

Motion was made by Mr. Schlosser, seconded by Mr. Wuertz, to approve the minutes from the February 15, 2016 meeting. Motion carried unanimously.

Application Approval Guidelines Review

Mr. Wisner presented a revision of the license application approval guidelines for Commission staff. The guidelines are updated to incorporate recent Commission license application decisions for renewals, transfers and reactivations. This would also replace guidance document 2013-02.

Motion was made by Mr. Wuertz and seconded by Mr. Schlosser, to update the existing staff guidelines, with the updated document presented to the Commission and rescind guidance document 2013-02. Motion carried unanimously.

Lisa Mendoza, Disciplinary Counsel for the Commission joined the meeting at 8:42 a.m.

I-Team Policy Review

Mr. Wisner reviewed policy discussions from the March 2, 2016 meeting of the I-Team.

Audits

I-Team discussed the processes and rationale for audit procedures. This was a continuation of the presentation given by Wendy Alkire to the Commission at the February 15, 2016 Commission Meeting. As a next step, Ms. Alkire will be developing topics for continuing education and core course outlines related to frequent audit violations.

Advertising

At the February 15, 2016 Commission Meeting, the I-Team was asked to review advertising statutes and regulations and determine if updates were needed based on the increase in use of social media as an advertising tool. I-Team reviewed past Commission research on this topic along with the revisions to the Code of Ethics from the National Association of Realtors which prompted the discussion at the Commission meeting. The I-Team's next step is to review other states advertising regulations, especially with regard to social media platforms. Mr. Wisner will send a request to other state directors through the ARELLO listserv and will present an aggregate of the responses.

K.A.R. 86-3-22. Transaction Identification.

Violations of this regulation have occurred in several audits. The regulation is primarily for consistency. It benefits the Commission staff during the audit, and gives a standardized system for the broker for tracking. The violation will continue to be noted in audits, but will only receive a warning letter.

Disciplinary Guidelines Review

At the May 14, 2015, the Commission approved revisions to the violations guidelines that changed standard discipline from a small monetary fine to a warning letter. At that time, it was decided if a warning letter violation was in conjunction with a violation which received a fine, then the warning letter violation would convert back to a fine, or a warning letter would be issued separate from the order assessing the fine. After this process was implemented, staff found it was very cumbersome and confusing to licensees to issue both a warning letter and a summary proceeding order at the same time. I-Team discussed adding the warning to the order with the fine assessment in the same document. Legal counsel for the Commission was concerned if it was noted in the order, the warning letter violations would be subject to KAPA. After further review, legal counsel determined the warning could be incorporated into the order with some minor revisions to standard language in the order.

Ms. Wenger asked about tracking the warning letters. She expressed concern about the amount of time it would take for repeated violations of a statute to go from warning to a fine. The warning letters are being tracked in both the RELS and DIMS systems. Commission staff will have record of the warnings received by a licensee. Ms. Mendoza explained multiple violations of a Commission statute or regulation would go to I-Team, as the guidelines are subject to aggravating and mitigating standards.

Conference Hearing in the Matter of *Stephen Dockers, Docket No. 16-5589*

Ms. Wenger recessed for a short break at 9:38 a.m.
Ms. Wenger reconvened the meeting at 9:55 a.m.

Broker Application Revision

Ms. White presented an overview of the broker application revisions. A licensing checklist has been added. It lists pertinent statutes, the documents and fees to be included with the application, and instructions for attaching a resume to the application. Staff has combined and reordered several of the questions on the application. There are also several changes to the transaction portion of the application to streamline the evaluation of information by Commission members and staff.

Licensee, Education and Exam Report

Ms. White informed the Commission there were 14,253 licensees as of March 2, 2016, and 14,336 as of March 16, 2016. There were 14,302 in October 2015 and 14,416 in November 2015. October 2006 had 17,668, the highest count since the Commission began its current tracking process.

In February, staff approved seven elective courses.

Mark Barker, Career Education Systems said larger class sizes lead to higher pass rates. Pass rates can be subject to time of year and type of teaching style.

Ms. White reported in February, brokers had a pass rate of 70% and salespersons had a pass rate of 71%.

Director's Report

Mr. Wisner informed the Commission that FY 2016 Real Estate Fee Fund revenues are \$647,291, 1% under estimates. FY 2016 expenditures, excluding encumbrances, are \$588,692. This is 7%, or \$80,600 less than estimated. The savings are mainly from staff vacancies and information technology contract invoices that have yet to be received this FY. The Real Estate Fee Fund balance is currently \$398,954 which is up \$38,000 from July 1, 2015. Background Investigation Fee Fund receipts are \$67,580 which is 2% above estimates.

Mr. Wisner and Ms. White met with the RELS application developer, Murali Kolla, on February 23, 2016 to discuss the timeline and cost for upgrading the current system licensing system. They also reengaged with System Automation and the Kansas Board of Healing Arts to discuss

changes in the state contract and the possibility of reduction in overall costs based on those changes. Mr. Wisner provided a comparison of the bids for the Online Licensing System from Mr. Kolla and System Automation. At this time, Mr. Wisner is not offering a recommendation. Mr. Kolla's bid is lower, but not by a significant amount. Ms. Wenger brought up some historical concerns with Mr. Kolla working remotely. System Automation is now significantly more cost effective than they were several months ago. In addition, the System Automation proposal offers a more sustainable long-term solution because of the commitment the state of Kansas has made to the vendor and the fact that full-time support is housed locally with the Board of Healing Arts. Mr. Wisner is interested in hearing the concerns or questions from the Commission regarding the system. Mr. Wisner will revisit this issue with a more solid recommendation at the April meeting.

The state is transitioning to Office 365. Staff has been attending training in preparation for the roll out at the end of March.

The soft launch of the new website was March 16, 2016. The full migration will occur on March 25, 2016. Staff will be informing licensees of the new website including functionality in an upcoming newsletter.

Legislation

Senate Bill 352. This is the legislation the Commission introduced to change the statute regarding nonresident licenses. The bill has passed the Senate with no amendments. The House Commerce Committee held a hearing on March 14, 2016.

House Bill 2677. This bill would limit the ability of a licensing board to deny an occupational license based on prior felony convictions not directly related to the licensed occupation. Several agency directors met with the bill's sponsor, Rep Highberger, to discuss concerns with the bill. After the meeting, Rep. Highberger requested the bill have no further action this legislative session.

House Bill 2721. This bill would create three committees to look at how boards and commissions could share strategic resources, consolidate leadership and prevent redundancies. The Commission would be part of the financial industry regulatory committee. A Commission member would be appointed to a position on the committee. The bill was tabled March 17, 2016 because no proponents testified in favor of the bill in committee.

House Bill 2660. This bill would require all licensing fees deposited in state agency fee funds be used for the purposes set forth in statute and no other government purposes. If those fees were used for something else, the agency would have to notify members. This is in response to recent fee sweeps. It has passed the House and is currently in the Senate Ways and Means committee.

Review of Occupational Licensing Standards. The Institute for Justice and the John Locke Foundation provided testimony to House and Senate Commerce committees on hazards related

to excessive regulation of occupational licensing. The groups concluded Kansas was doing well compared to other states.

The regulatory update package was submitted to Department of Administration. Mr. Wisner and Ms. Fertig are addressing the questions received from the review.

The Commission received a request from the Oprah Winfrey network. They are in production on a documentary, tentatively titled "Young Grandmother". The network wants permission to show images from the Commission website on the documentary. Motion was made by Mr. Schlosser and seconded by Mr. Wuertz, not to allow the network to use the Commission website. Motion carried unanimously

Mr. Wisner will be attending the ARELLO midyear meeting in April. Lynn Comfort and Richard Ford will be attending the Investigator Workshop prior to the midyear meeting.

The ARELLO District meeting is being held in Oklahoma City in June. The District Meeting is more focused on regional issues rather than national, and its proximity makes it a good opportunity for Commission members to attend.

The REEA conference is in Denver in June; Ms. White is tentatively scheduled to attend.

The KAR annual conference will be held in Wichita in October. In lieu of the August Commission meeting being held in Wichita, Mr. Wisner suggested waiting until October. Mr. Wisner would like to make a decision soon so as to ensure no hearings are scheduled at an off-site meeting.

Wendy Alkire will give a presentation regarding BRRETA on May 13, 2016, for a CLE sponsored by the Wichita Bar Association

Conference Hearing in the Matter of Andrew Dalager, Docket No. 16-5624

Ms. Wenger moved the Commission, pursuant to K.S.A. 77-520, Default, Subsection (d), grant a default order dismissing Mr. Dalager's hearing. Mr. Schlosser seconded. The Motion carries unanimously.

Adjournment

Ms. Wenger adjourned the meeting at 11:14 a.m.

Upcoming Commission Meeting Dates

April 18, 2016
May 16, 2016
June 20, 2016