

MINUTES OF MEETING

Kansas Real Estate Commission

June 18, 2014

The Kansas Real Estate Commission held its regular meeting on Thursday, June 18, 2014, at 9:15 a.m. (or immediately following KAPA deliberations) 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
Joseph Vaught, Member
Shirley Cook, Member

Staff Present:

Sherry C. Diel, Executive Director
Alexandra Blasi, Disciplinary Counsel
David Pierce, Director of Enforcement
Kelly White, Director of Education
Sam Blasi, Legal Intern
Wendy Alkire, Compliance Supervisor
Mitzi Dodds, Legal Assistant

Kansas Real Estate Commission Legal Counsel Present:

Sarah Fertig, Assistant Attorney General

Call to Order

Mr. Wuertz called the KOMA meeting to order at 9:50 a.m.

Additions to the Agenda

Ms. Diel requested the March 13, 2014 minutes be added to the agenda.

Ms. Wenger requested an item regarding a call she received from a broker be added to the agenda.

Approval of the March 13, 2014 Meeting Minutes

Motion was made by Ms. Bittenbender, seconded by Ms. Wenger to approve the minutes of the March 13, 2014 meeting. Motion carried unanimously.

Consider Staff Request to Change Procedure for Interim Commission Packets

The Commissioners discussed how to verify the weekly packets were received via email. The Commission discussed but decided not to have Ms. Diel add a delivery receipt when forwarding the weekly emails. Commissioners discussed how to determine an appropriate amount of discussion had occurred on an application. Ms. Diel requested authority to hold for in-person review those applications she believes require in-person discussion. If an application is sent in the weekly packets and Ms. Diel determines based upon the email deliberations that an in-person discussion of the application would be beneficial, a majority vote of the Commissioners is required to remove the application from the weekly packet. In addition, if the

application is sent out with recommendations, one or more of the Commissioners can request the application be considered at the next in-person meeting. This procedure operates like a consent agenda and a Commissioner objection would cause the application to be moved to the next in-person meeting for further consideration. The Commissioners approved the change in procedures.

Ms. Diel reported that it will become more difficult to send out weekly packets in August and September as budget preparation takes precedence. During that timeframe, more applications will be referred to the monthly meeting agenda. In addition, Ms. Blasi requested that the Commissioners respond to the most recent email thread so that the entire history of the deliberation can be kept organized.

Status Report on Licensing Complaints

Ms. Diel reported there were two licensing complaints registered regarding the triaging of applications. One complaint involved an application that was not complete when submitted. The second complaint involved a delay in summarizing a broker application. Broker applications require extensive time and expertise to summarize. Following Janell Bolton's resignation, it has become more difficult to keep up with applications. Once the new administrative assistant begins work on June 30, 2014 and is trained, this situation should improve because the new staff person will process continuing education, renewals, demographic changes, deactivations and assist with a portion of the application summaries.

Budget Report

The Budget Report was received by the Commissioners. Ms. Diel reported the following:

Expenditures

At eleven months into the FY 2014 budget, expenditures are 75% of total appropriations. If expenditures were spent equally throughout the year, total expenditures should be approximately 92%. This savings is due to budget cuts, a large portion can be attributed to less travel and personnel costs due to the Audit By Mail Program.

Ms. Diel reported that June expenditures would increase because Office of Information Technology Services (OITS) has recommended the agency replace two large servers. The servers are five years old now and OITS recommended replacing them to prevent problems in the future. One server would be used for the licensure system and one for handling the electronic storage system. In addition, a printer had to be replaced.

Because FY 2014 ends on June 26, 2014, there may be numerous encumbrances reported next month for services or equipment that have not been billed by the deadline for the fiscal year.

Encumbrances

Total encumbrances are \$37,600. This is primarily for information technology projects involving the Online License Management System (OLMS) that is currently in testing as well as a maintenance contract for the licensure system.

According to SMART, the Fee Fund is at \$350,480. However, after the encumbrances are subtracted, the available Fee Fund balance is \$312,879. Ms. Diel reported that two years ago, it was projected that the

Fee Fund balance would have a negative balance by this time. The deficit has been avoided due to significant cuts made by the agency.

Receipts

To date in FY 2014, KREC has transferred 10% of receipts, or \$86,541, to the State General Fund and retained 90%, or \$778,910, for the KREC Fee Fund.

For FY 2014, a comparison of year-to-date expenditures and receipts reflects a savings of \$72,652. Comparing the same data for FY 2013, there was a deficit of \$123,925. Receipts are lower in odd-numbered years, so it will be extremely difficult to avoid deficit spending in FY 2015 unless revenues are increased through retention of a portion of fines or a fee increase is approved.

To date in FY 2014, fines totaling \$80,755 have been collected. In FY 2013, fines totaling \$112,088 were collected. The difference in FY 2013 was due to Ms. Blasi working the disciplinary files and keeping the backlog to a minimum. Ms. Blasi is now catching up on the current disciplinary backlog. The Audit By Mail Program does not produce as many fines, as there are not as many files being audited. However, there are still fines being imposed. In FY 2012, only \$66,670 was collected in fines due to backlogs in agency orders at that time.

Ms. Diel reported there have been 1,037 brokers and 2,971 salespersons renew online. This is only approximately 30% of licensees.

Recovery Fund

The balance in the Recovery Fund is \$316,173.

Planning Session for FY 2015-2017 Budget

Mr. Wuertz reported that the Kansas Association of Realtors® (KAR) will support a fee increase during the 2015 Legislative Session. Luke Bell with KAR suggested the Commissioners discuss this with their legislators. Mr. Vaught questioned if there was a policy for what lobbying efforts the staff can or cannot take part in. Ms. Blasi advised that the staff is restricted by the Governmental Ethics Commission rules to providing information. Ms. Wenger reported that the talking points Ms. Diel provided last year was an exceptional resource. Ms. Bittenbender stated the 2015 Legislative Session may be a more favorable climate for getting a fee increase bill passed.

Ms. Diel reported that staff has come up with several ideas to implement efficiencies for the agency. Some require Commission approval and some can be implemented immediately.

Ms. Diel reported that Ms. Blasi and Mr. Blasi are working on a program to implement the new billing system for recouping enforcement costs. Staff will begin utilizing the billing procedure to offset staff costs against fines collected beginning July 1, 2014.

Ms. Diel reported the following items require Commission approval:

Ms. Diel reported that changing the wording regarding the six-year look back period on the online renewal application is proposed to increase the number of licensees eligible for online renewals. When OLMS goes

online, the wording would be changed from “within the past six years” to “since the last time an application was submitted.” Ms. Blasi reported that staff will prepare a list over time of what criminal offenses prevent applicants from renewing online.

Ms. Diel reported that instead of mailing a postcard to licensees six weeks prior to their renewal date, an email will be sent to save staff time and postage. Then, three weeks prior to the renewal date, a postcard will be sent. Ms. Blasi confirmed the Commission does not have a renewal notification requirement. The notices are sent as a courtesy.

Ms. Diel reported staff has been working on simplifying license history certifications. Because records prior to 2004 are stored on microfilm, researching license histories can be quite labor intensive for staff. A new process would be initiated which establishes 2001 as the cut-off date. Staff would include a licensee's license history from RELS with the certification form that contains a description of what the codes from the printout mean.

Ms. Diel reported that licensees currently receive a congratulatory letter as well as a license law book when their license is issued. The licensees already receive a booklet from the course provider. This procedure would be revised so that a congratulatory email will be sent when a license is issued. The email will explain that the licensee is entitled to a license law book within 90 days of the letter and will include a link to the statutes and regulations on the Commission's web site. In the future, an option to consider may be to send out licenses and pocket cards via email but that would require programming changes that have budgetary impact.

In years past, when revamping applications with representatives from Pearson Vue, the last day of the meeting was always an industry day. Such an event benefitted the Commission, staff and licensees by informing educators of changes being implemented so that the educators could, in turn, pass the information along to applicants and licensees. The staff would like to start with an industry day for pre-license educators. Pearson Vue may be able to assist with this again.

Ms. Diel reported that licensees often wait until the last minute to complete their continuing education. This creates a situation where staff is forced to rush to enter the continuing education into RELS so that individuals can timely renew. By offering a financial incentive to complete continuing education requirements early, such a rush could be avoided. A \$3 discount could be offered for those utilizing the online renewal system. The discount would come from a reduction in the online convenience fee charged through KanPay and would be paid for by the Commission. The question becomes whether enough licensees who already completed their continuing education would renew online to justify the cost of the discount. Staff would not implement this without considering the cost of programming changes as part of the equation.

The remaining items can be implemented as office procedures.

Ms. Diel reported that an email to remind licensees of their continuing education requirements would be sent out two weeks prior to the pertinent renewal date.

Ms. Diel reported that staff is working on creating instructional videos to post on YouTube. The videos will explain the application process, how to properly complete forms, etc. Ms. Fertig will check on the potential

American with Disabilities Act (ADA) ramifications of posting content in this manner. Ms. Blasi will check to see what online videos may be offered by other State of Kansas agencies.

Ms. Diel reported that staff will review all Stop Online Renewal notes with each renewal group. If some of these types of notes can be revised, it may allow more licensees to renew online.

Ms. Diel reported that staff will begin utilizing email to notify licensees of mail that has been returned by the U.S. Postal Service. Commissioners requested that the "Read Receipt" be utilized.

Ms. Diel reported that staff will begin including "abandonment" language per Ms. Fertig's suggestion in correspondence that is sent out in regard to incomplete applications. This language will inform applicants and/or licensees that if an application is not made complete by a certain date, the application would be considered abandoned.

Ms. Diel asked the Commissioners for permission to post to the web site a timeline showing the normal processing times for salesperson and broker applications and applications that may require additional review. The staff will also post on the web site the steps involved in the application process. This would serve as a guideline for applicants who are either unsure of what step to take next or an estimate of the amount of time it will take before they will hear something regarding their application. This will hopefully eliminate some of the complaints received in regard to the length of time taken to review applications.

Ms. Blasi reported there are now direct links on the web site to pre-license courses, continuing education courses, required disclosure form, licensee fee schedule and broker points system. In addition, there is a new form online that allows the supervising broker to change the company email and phone. Lists of renewals mailed will now be stored electronically instead of on paper. The renewal application will be revised in an effort to prevent applicants from submitting the \$10 duplicate license fee unnecessarily. The original application will be revised to be available online as well. The goal is to change this form to a "smart" form, or one that will require blanks be completed based upon responses marked. Ms. Diel reported that it has been recommended the new storage system should be able to import electronic documents received by the Commission to create efficiencies.

The Commissioners approved the recommendations and provided staff authority to proceed with plans for implementation.

Mr. Wuertz declared a 10 minute break at 11:11 a.m.

Ms. Alkire joined the meeting at 11:18 a.m.

Mr. Wuertz reconvened the meeting at 11:21 a.m.

Audit By Mail Program

Ms. Alkire presented a report to the Commission on how brokers are initially notified of an upcoming audit. Ms. Alkire reported the first step in an audit is to confirm whether or not a company has any branch offices. If so, correspondence concerning the audit is sent to the supervising broker of the company at the main office as well as to each branch broker at the branch office. It can become confusing if staff is not aware that a company keeps records for branch offices at the main office. The initial contact is made via email to the main office and branch office. If staff receives no response to the initial communication, a second letter

is sent by email to the main office and the supervising broker as well as mailed to the company address. If staff receives no response to the second communication, a third letter is sent to all via email and U.S. Mail. If the company and/or broker do not respond to the third communication and no reason for the lack of response is discovered, the matter may be referred for discipline. Ms. Alkire reported that most of the feedback indicates most brokers seem pleased with the program because it provides additional time for the brokers to prepare and submit documentation in regard to the audit compared to an on-site visit. Statistics provided show that more audits are being conducted, including audits of out-of-state brokers. There may be more hearing requests or complaints from out-of-state brokers who are often unsure why their company was selected for an audit. Audits have been conducted on nearly all companies that were opened prior to 2010.

Ms. Alkire left the meeting at 11:25 a.m.

Request from Wichita Area Association of Realtors® (WAAR) for Approval of New Continuing Education Format

Ms. Diel reported that WAAR had requested approval of a roundtable format for a continuing education course on finance. Several concerns were raised, including whether individuals with hearing impairments could miss out on some of the information. Questions on the qualifications of presenters were also raised. WAAR explained that the tables would be separated, there would be a limit of 6-9 participants per table, and the facilitators are volunteers who have gone through training to serve in that role. The Commission proposed WAAR hold the course as a trial run, without offering continuing education credit, so that a Commissioner could attend and evaluate the offering. Retroactive approval could be granted if the class was deemed sufficient for continuing education purposes. Ms. White will obtain more information on the course schedule and coordinate with Ms. Wenger to attend.

Request from Harvey Bodker to Waive Continuing Education Requirement

Ms. Diel reported that Mr. Bodker, a former Commissioner, had written to request the Commission waive continuing education requirements for individuals over 80 years of age. This would require a statutory change and could create controversy to implement. The Commission asked Ms. Diel to thank Mr. Bodker for his proposal and suggest that he could approach his legislator to discuss such a statutory change.

Request from Harvey Bodker for Commission to Hold a Luncheon

Ms. Diel reported that Mr. Bodker requested the Commission hold a luncheon for past and present Commissioners. Ms. Diel proposed the Commission consider finding a sponsor for such a function to be held in conjunction with another event. It was proposed that a reception could be scheduled, which would allow Commissioners and attendees to converse with one another and show exactly what the Commission does. Questions on potential violations of the Kansas Open Meetings Act (KOMA) were raised and Ms. Fertig clarified the KOMA requirements.

National Association of Exclusive Buyer Agents (NAEB) Request

Ms. Diel reported that NAEB submitted a letter requesting the Commission's support in educating licensees on the difference between exclusive buyer agency and regular buyer agency. The Commission directed Ms. Diel to respond that the Commission currently operates under Kansas license law and this subject is not covered under Kansas statutes and regulations.

Executive Session to Discuss an Attorney-Client Privilege Matter

Based upon a motion made by Ms. Wenger, seconded by Ms. Bittenbender, Mr. Wuertz recessed the KOMA meeting at 11:52 a.m. for 10 minutes to enter into an executive session to discuss an attorney-client privilege matter. Those in attendance include the Commissioners, Ms. Diel and Ms. Fertig.

Mr. Wuertz reconvened the KOMA meeting at 12:00 p.m.

Executive Session to Discuss a Personnel Matter

Based upon a motion made by Ms. Wenger, seconded by Mr. Vaught, Mr. Wuertz recessed the KOMA meeting at 12:45 p.m. for 30 minutes to enter into an executive session to discuss a personnel matter. Those in attendance include the Commissioners and Ms. Fertig.

Mr. Wuertz reconvened the KOMA meeting at 1:15 p.m.

Executive Session to Discuss a Personnel Matter

Based upon a motion made by Ms. Wenger, seconded by Mr. Vaught, Mr. Wuertz extended the executive session at 1:15 p.m. for 15 additional minutes. Those in attendance include the Commissioners and Ms. Fertig.

Mr. Wuertz reconvened the KOMA meeting at 1:30 p.m.

Executive Session to Discuss a Personnel Matter

Based upon a motion made by Ms. Wenger, seconded by Mr. Vaught, Mr. Wuertz recessed the KOMA meeting at 1:30 p.m. for 15 minutes to enter into an executive session to discuss a personnel matter. Those in attendance include the Commissioners, Ms. Fertig and Ms. Diel.

Mr. Wuertz reconvened the KOMA meeting at 1:49 p.m.

Reschedule August and September 2014 Meeting Dates

Ms. Diel reported that the budget will be due the second Monday of September 2014. In the past, the Commission has scheduled a late August meeting and not held a meeting in September so that staff can work on the budget. The July 10, 2014 meeting is scheduled to be held in Topeka. The August meeting will be held on August 21, 2014 by phone. The October meeting will be held on October 9, 2014 in Topeka.

Staff Report on I-Team Statistics

The Commission received the staff report on I-Team statistics.

Education Report

The Commissioners received the Education Report.

Director's Report

The Commissioners received the Director's report.

Ms. Blasi provided an update on the status of licensing and disciplinary orders. As of April 25, 2014, 34 orders have been mailed. Of these, 19 were Consent Agreements and Final Orders. There are currently 24 orders in final draft stage. Mr. Blasi has drafted 10 orders and Ms. Blasi is working on five orders from the most recent I-Team meeting. The Commission inquired whether complaints have decreased since the

Chair began signing orders. Ms. Blasi advised there are a number of persons that are not happy about receiving disciplinary or audit orders.

Addition to the Agenda – Inquiry from Murray Cleveland Smith

Ms. Wenger reported that she had received an inquiry from Mr. Smith regarding Toyce Hare, a licensee who recently affiliated with Mr. Smith. Ms. Hare's ordered suspension affected when Mr. Smith had scheduled a vacation. Mr. Smith advised Ms. Wenger he would be forced to cancel his vacation unless the suspension could begin at a later date. Ms. Blasi explained the process that occurs following the issuance of a Summary Proceeding Order. The suspension normally begins once the time to appeal the Order expires. Ms. Blasi explained Ms. Hare timely requested a hearing so the Order and required suspension did not take effect. The Disciplinary Committee will consider alternative dates being offered so that Mr. Smith can go on vacation as planned.

Public Comments

No one was present to offer public comments.

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

Adjournment

Mr. Wuertz adjourned the meeting at 1:55 p.m.