

## MINUTES OF MEETING

### Kansas Real Estate Commission

July 10, 2014

The Kansas Real Estate Commission held its regular meeting on Thursday, July 10, 2014, at 9:00 a.m. at Three Townsite Plaza, Suite 200, 120 S.E. 6<sup>th</sup> Avenue, Topeka, Kansas.

#### **Commissioners Present:**

Errol Wuertz, Chairperson  
Sue Wenger, Vice Chairperson  
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, Law Clerk  
Wendy Alkire, Compliance Supervisor  
Lynne Comfort, Auditor  
Brooke Daniels, Licensing Assistant  
Michaela McGinnis, Licensing Assistant  
Janet Pierce, Administrative Specialist  
Mitzi Dodds, Legal Assistant

#### **Kansas Real Estate Commission Legal Counsel Present:**

Sarah Fertig, Assistant Attorney General

#### **Members of the Public Present:**

Chris Rainbolt

#### **Call to Order**

Mr. Wuertz called the KOMA meeting to order at 10:51 a.m.

#### **Additions to the Agenda**

Ms. Diel requested that Licensing complaint statistics be added to the agenda.

#### **Approval of the May 8, 2014 Meeting Minutes**

Motion was made by Ms. Wenger, seconded by Ms. Cook to approve the minutes of the May 8, 2014 meeting. Motion carried unanimously.

#### **Introduction of Commission Staff**

Commission staff introduced themselves and explained their job duties to the Commissioners.

Ms. Comfort is an Auditor and works with the Audit By Mail Program. She explained how that program works and reported receiving very positive comments about the program. The Commissioners requested

clarification on what was reviewed during an audit. Ms. Comfort explained that she reviews any documents that might be pertinent to the audit. There are approximately 2,500 to 2,800 offices and approximately 20,000 to 30,000 transactions, but the number of transactions being audited has decreased since the Audit By Mail Program was initiated.

Ms. McGinnis is an Administrative Assistant who primarily handles renewals, licensee changes, and continuing education functions.

Ms. Daniels is a Senior Administrative Assistant who primarily handles original applications, background check processing, trust account functions, and assists with other Licensing functions.

Ms. Pierce is an Administrative Specialist who handles all accounts receivable, accounts payable, interagency interfunds, fine tracking in the Document Information Management System (DIMS), payroll, basic human resource duties, inventory, parking, recycling, maintains office supplies, maintains copier service, vehicle maintenance, balances the agency's credit card statement, scans agency records into the electronic records management storage system, assists Licensing with various duties, runs errands for the agency, assists with the records retention function, assists with maintaining the agency's back-up tapes, and tracks cases sent to Debt Setoff.

Mr. Pierce is an Investigator who investigates complaints, testifies at hearings, provides information regarding the Broker Relationships in Real Estate Transactions Act (BRRETA) and other license law issues, prepares monthly statistical reports, serves on the I-Team, assists Licensing as needed, and assists Legal in reviewing orders. Mr. Pierce is also a Certified Real Estate Investigator (CREI) through ARELLO and has completed National Certified Investigator Training (NCIT) through the Counsel on Law Enforcement and Regulations (CLEAR). Mr. Pierce has won the ARELLO Investigator of the Year Award.

Ms. Alkire is the Compliance Supervisor and investigates complaints, testifies at hearings, helps proof orders drafted by the Legal Division, oversees the Audit By Mail Program and supervises the Auditor, drafts audit orders, and makes presentations for real estate licensees when requested. Ms. Alkire reports receiving positive comments regarding the Audit By Mail Program from most brokers. Mr. Vaught also reported receiving positive comments regarding the program.

Ms. Dodds is a Legal Assistant and assists the Litigation Counsel in issuing orders and preparing for hearings and assists the Executive Director in preparing for the Commission meetings, assists in preparing mailings for the I-Team, and utilizes the DIMS Program to track orders and compliance of licensees who have been fined, restricted and/or conditioned, or otherwise disciplined by the Commission.

Ms. White is the Director of Licensing and Education and supervises Licensing staff, reviews and approves courses and instructors for education providers, proofs licensing certifications, prepares Secretary of State certifications, updates the agency web site, currently processes company name changes, reviews requests for refunds, works with other staff in processing insufficient fund checks, enters late license renewal applications, and monitors online renewals and follows up with any questions. Ms. White clarified that Kansas licensees can complete a form and submit the appropriate fee to request credit for attending out-of-state continuing education courses.

Mr. Blasi is a Legal Assistant/Law Clerk and drafts Summary Proceeding Orders and Consent Agreements and Final Orders. He also assists Ms. Blasi in testing the DIMS Program, attends I-Team and Commission

meetings, and assists Ms. Blasi with hearing preparations. Ms. Blasi reported that Mr. Blasi is also able to manage and maintain the DIMS Program.

Ms. Blasi is the Disciplinary Counsel to the Commission and defends all Commission orders, ensures that all Commission actions are timely, participates in I-Team meetings, and negotiates settlement agreements. She also assists with information technology needs and prepares the agency's newsletter.

Ms. Diel is the Executive Director and oversees the Commission office, which includes approving all SMART and SHARP transactions, addressing staff questions, preparing the budget, and preparing testimony for Legislative issues. Ms. Diel reported that she approves those licensing applications she has been granted the authority to approve via the Guidance Documents. If the Guidance Documents do not provide her the authority to approve an application, it is forwarded to the Commission for review.

Ms. Fertig is an Assistant Attorney General from the Attorney General's Office and serves as the Commission's General Counsel.

#### **Discussion Regarding ARELLO Conference**

While at this time there is no funding available for the Commissioners to attend such conferences, it would be something the Commission would like to be considered in the future in order for Commissioners to keep up-to-date on what is happening with other regulatory agencies. Ms. Fertig reminded the Commissioners that this type of training must be built into the annual budget. Ms. Diel reported she has served as a district director for ARELLO in the past and that Commissioners and staff used to be able to travel, but that practice stopped with the economic downturn that resulted in a significant drop in revenue. Building such training into the FY 2015 budget will be difficult because the Legislature had instructed the agency could spend monies to return to existing level of services, which would include staff and Commissioner training, if there was a fee increase or if the Commission received the residual funds from the Home Inspector's Fund. Since neither of those things happened, no extra money will be available in the FY 2015 budget. Without a supplemental to the budget, that option is not available. The FY 2016 and FY 2017 budgets may be able to accommodate training expenditures in part due to the recovery of a percentage of fine amounts. At ARELLO's annual conference, a Commissioner College is normally held. Ms. Diel asked the Commissioners to let her know if they are interested in attending such training in the future if funding is available.

#### **Status Report on Licensing Complaints**

Ms. Diel reported there were no complaints during this reporting period. She did, however, explain a situation where an individual called several times inquiring about the status of an application. An application had been in the review process for four months. The progression of the application was found in the chronology: the application was received at the Commission on May 16, 2014, it was considered complete on May 29, 2014, and was reviewed by the Executive Director on June 12, 2014. On June 13, 2014, the Executive Director advised she did not have the authority to approve it and the application required Commission review. Since only four or five applications are emailed on a weekly basis and because additional pleadings had to be requested from this individual, the application has not yet been reviewed by the Commission. Another individual called to inquire as to the status of his application. He was advised that an order was prepared and ready to be issued. The caller's comments were all favorable and he was appreciative that staff took time to discuss the review process with him.

### **Budget Report**

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

#### Expenditures

For FY 2014, expenditures totaled \$846,380.

In June 2014, the Licensing system and electronic storage system servers had to be replaced. Both servers had reached the age of five years and were experiencing failed drives. Including these purchases, Expenditures and Capital Outlay totaled approximately \$15,000 as the servers cost approximately \$11,000. In addition, two printers and one scanner had to be replaced. The Department of Administration submitted numerous billings for 5-6 months of data processing as well as printing and advertising services. In addition, various office supplies were ordered in an attempt to meet the needs of the agency as far into the next fiscal year as possible.

The Commissioners inquired about the three vehicles maintained by the agency, including why there were expenditures for fuel and maintenance and the mileage on each vehicle. Ms. Diel explained there are fuel charges whenever staff drive one of the vehicles, whether that entails the Auditor traveling to Topeka or staff using the other vehicle for agency matters. Ms. Diel reported the agency currently has three state vehicles. One has approximately 80,000 to 90,000 miles and is not in great shape; one vehicle has between 60,000 to 70,000 miles; and one vehicle has very low mileage. Ms. Diel explained vehicles must be turned into State Surplus and would have very low sale value. Ms. Diel explained that when the Motor Pool was disbanded years ago, the Legislature will only allow agencies to replace vehicles, but they cannot add new vehicles to their fleet. The plan has been to replace the high mileage vehicle with the low mileage vehicle and monitor the situation to determine when the agency can return to in-person audits and how many auditors will be needed. The Commissioners want to return at least one of the vehicles and wanted to take a look at the costs associated with keeping the vehicles. Ms. Diel recommended keeping at least two of the vehicles if the Commissioners ever intend to return to in-person audits. Currently, there are instances when the Auditor must perform in-person audits, but this is not done on a regular basis.

#### Encumbrances

Total encumbrances are \$59,032. The only long-term FY 2015 encumbrance listed is approximately \$32,000 for Ask Associates for maintenance of the Licensure system. This money resulted from savings in the FY 2014 budget and is not counted in the FY 2015 budget, but is considered "nonavailable funds" except for the stated purpose. Any unused amounts can be released back to the Fee Fund when it is determined it is no longer needed. Two Webelon encumbrances are from 2009 and 2010 for final testing when OLMS is brought online.

This brings the available Fee Fund down from \$319,930 to \$260,898.

#### Receipts

For FY 2014, KREC has transferred 10% of receipts, or \$94,551, to the State General Fund and retained 90%, or \$850,962, for the KREC Fee Fund.

For FY 2014, receipts are \$87,425 higher than FY 2013 and expenditures are \$113,501 less than FY 2013. However, because expenditures for FY 2014 totaled \$846,380 and receipts totaled \$850,962, the Fee Fund increase was only \$4,582. Receipts are lower in odd-numbered years because of smaller renewal groups, so it is projected there will be a significant deficit for FY 2015.

For FY 2014, fines totaling \$87,520 have been collected. In FY 2013, fines totaling \$150,103 were collected and in FY 2012, fines totaling \$81,408 were collected.

#### Recovery Fund

The balance in the Recovery Fund is \$316,200.

#### **Planning Session for FY 2015-2017 Budget**

Ms. Diel requested guidance from the Commissioners in building the FY 2015 to FY 2017 budget. Several topics were also discussed:

#### Agent Retention Rate

Ms. Diel reported that agents are entering the business, but not necessarily staying in the industry, causing the retention rate to lag. She wondered what the Commissioners were seeing in the industry. The Commissioners reported a flat rate for this year with the possibility of a small increase through FY 2017.

#### Fee Increase

It was also reported by Commissioners at a prior meeting that the Kansas Association of Realtors® (KAR) would be supportive of a fee increase during the upcoming Legislative session. Ms. Diel asked the Commissioners what amount of increase they wanted included in the proposed bill. It was suggested that increases of \$25 and \$50 could receive more support. It has been approximately 21 years since a fee increase was approved. Even if a fee increase is approved in FY 2015, it would not be effective until FY 2016. It was also suggested that Commissioners meet with representatives of the Governmental Affairs Committee to encourage support of the fee increase.

#### Retention of Fine Monies

The other area by which the agency can increase revenues is with the retention of fine monies. Ms. Diel explained that some may raise concerns that the agency is fining licensees to fund agency operations. Ms. Diel is working with the budget analyst on the most favorable way to include this in the budget. Ms. Diel explained that the Commission will have records on fines collected each fiscal year.

#### Keeping 10 Percent of Licensing Fees

The Commissioners clarified for Ms. Diel that a proposal to keep the 10 percent of the Licensing fees that are transferred to the State General Fund should not be included in the budget.

#### Out-of-state Travel

The Commissioners indicated they would like allocations for out-of-state travel built into the FY 2016 budget. The Commissioners see the Audit By Mail Program continuing. A review of the remaining state vehicles maintained by the agency will be conducted in the future.

#### Meetings

Ms. Diel asked the Commissioners their preference on in-person versus teleconference meetings. The Commissioners agreed that holding in-person meetings every other month was acceptable. Meetings of the Disciplinary Committee will continue to be held by teleconference.

#### **Public Comments**

Chris Rainbolt addressed the Commission. He expressed remorse for actions that led to a more detailed review of his renewal application.

Mr. Rainbolt left the meeting at 12:39 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 1:10 p.m.

#### **Executive Session to Discuss a Personnel Matter**

Based upon a motion made by Mr. Vaught, seconded by Ms. Wenger, Mr. Wuertz recessed the KOMA meeting at 1:10 p.m. for 10 minutes to enter into an executive session to discuss a personnel matter. Those in attendance include the Commissioners, Ms. Diel and Ms. Fertig.

Mr. Wuertz reconvened the KOMA meeting at 1:20 p.m.

#### **Director's Report**

The Commissioners received the Director's report. Ms. Diel reported that the drives for the Licensing system and electronic records management storage system have failed and been replaced. Therefore, servers for both systems have been ordered, but programming is required before either can go "live." Consequently, both systems will be at risk for a short period of time.

#### **Staff Report on I-Team Statistics**

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

#### **Education Report**

The Commissioners received the Education Report.

The August 21, 2014 meeting will be held by telephone. The October 9, 2014 meeting will be held in-person.

The Governor's Office will appoint a new Commission member to fill Marilyn Bittenbender's position. The Commission's statute provides that Ms. Bittenbender can serve until the new appointee is confirmed. Mr. Wuertz will contact the Governor's Office concerning this issue. In case the new member's appointment is finalized before the August 21, 2014 meeting, the Commission decided to hold that meeting in-person and the October 9, 2014 meeting by phone.

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

**Adjournment**

Mr. Wuertz adjourned the meeting at 1:24 p.m.