

MINUTES OF THE MEETING
Kansas Real Estate Commission
October 12, 2016

The Kansas Real Estate Commission held its regular meeting on Wednesday, October 12, 2016 at 9:00 a.m. at the Marriott Hotel, 9100 Corporate Hills Dr, Wichita KS 67207.

Commissioners Present:

Sue Wenger, Chairperson
Joe Vaught, Vice-Chairperson
Errol Wuertz, Member
Bryon Schlosser, Member
Connie O'Brien, Member

Staff Present:

Erik Wisner, Executive Director
Kelly White, Deputy Director, Director of Licensing and Education

Kansas Real Estate Commission Legal Counsel:

Sarah Fertig, Assistant Attorney General

Members of the Public

Mark Barker
Barbara Boulanger
Jeff Carson
Bud Cortner
Kristi Fowler
Joni Gaertner
Lucy C. Hesse
Brian Johnson
Jeanette Johnson
Steve Kornspan
Delaine Lacey
Chonci Lekawa
Marsha McConnell
Braden McCurdy
John McKenzie
Deborah McMullen
Judy J. Miller
Kathy Murick
Natalie Moyer
Carol Page

Jon Quincy
Chris Rost
Patty Sanders
Dwyn Thudium
Patrick Vogelsberg

Call to Order

Ms. Wenger called the meeting to order at 9:00 a.m.

Public Comment on Proposed Regulations

Mr. Wisner summarized the proposed regulations. No written comments were received in advance of the hearing. Mr. Wisner called for comments from the public. Ms. Deborah McMullen, President of the Kansas Association of Realtors, commended the Director and Commission for the work done on the proposed regulations.

Motion was made by Mr. Wuertz, seconded by Mr. Vaught, to approve the proposed regulations. Motion carried unanimously.

K.A.R. 86-1-2, K.A.R. 86-1-4, K.A.R. 86-2-8 and K.A.R. 86-3-30 are proposed for repeal due to outdated or ambiguous language that is no longer required. Repealing these regulations will have no economic impact.

Roll call vote on revocation of K.A.R. 86-1-2

Ms. Wenger, "aye"

Mr. Vaught, "aye"

Mr. Wuertz, "aye"

Mr. Schlosser, "aye"

The vote was unanimous. Ms. O'Brien did not vote.

Roll call vote on revocation of K.A.R. 86-1-4

Ms. Wenger, "aye"

Mr. Vaught, "aye"

Mr. Wuertz, "aye"

Mr. Schlosser, "aye"

The vote was unanimous. Ms. O'Brien did not vote.

Roll call vote revocation of K.A.R. 86-2-8

Ms. Wenger, "aye"

Mr. Vaught, "aye"

Mr. Wuertz, "aye"

Mr. Schlosser, "aye"

The vote was unanimous. Ms. O'Brien did not vote.

Roll call vote on revocation of K.A.R. 86-3-30

Ms. Wenger, “aye”

Mr. Vaught, “aye”

Mr. Wuertz, “aye”

Mr. Schlosser, “aye”

The vote was unanimous. Ms. O’Brien did not vote.

K.A.R. 86-3-19 amendments clarify that a licensee has to disclose the interest an immediate family member has in a real estate transaction if the family member is the party purchasing or leasing real estate in the transaction. All of the proposed amendments to this regulation are language changes for the purposes of clarity and do not make any substantive changes to current policy and will therefore have no economic impact.

Roll call vote on amendments to K.A.R. 86-3-19

Ms. Wenger, “aye”

Mr. Vaught, “aye”

Mr. Wuertz, “aye”

Mr. Schlosser, “aye”

The vote was unanimous. Ms. O’Brien did not vote.

K.A.R. 86-3-26a amendments clarify that the brokerage relationship disclosure required in K.S.A. 58-30,110(c) has to be accurate and complete. The statute only addresses that this disclosure is included in an agency agreement. The Commission feels this addition clarifies legislative intent. All of the proposed amendments to this regulation are language changes for the purposes of clarity and do not make any substantive changes to current policy and will therefore have no economic impact.

Roll call vote on amendments to K.A.R. 86-3-26a

Ms. Wenger, “aye”

Mr. Vaught, “aye”

Mr. Wuertz, “aye”

Mr. Schlosser, “aye”

The vote was unanimous. Ms. O’Brien did not vote.

K.A.R. 86-3-31 is a new regulation that defines specific requirements for brokers who supervise primary or branch office. The regulation sets out defined standards and mitigating and aggravating factors the Commission would consider if they found the broker had failed to supervise their office. Since this regulation simply clarifies expectations for adequate supervision by a broker of their primary or branch office, it will have no economic impact.

Roll call vote on approval of new regulation 86-3-31

Ms. Wenger, “aye”

Mr. Vaught, “aye”

Mr. Wuertz, “aye”

Mr. Schlosser, “aye”

The vote was unanimous. Ms. O’Brien did not vote.

The regulation changes will take effect 15 days after publication in the Register.

Approval of the Minutes of the August 29, 2016 Meeting

Motion was made by Mr. Schlosser, seconded by Mr. Wuertz, to approve the minutes from the August 29, 2016 meeting. Motion carried unanimously.

Review of Proposed Changes to K.A.R. 86-1-5 Fees

Mr. Wisner reviewed the proposed changes to K.A.R. 86-1-15 regarding fees. The purpose of the proposed regulation is to eliminate fees being charged for several business processes. All fees in question are \$15 or less. With the implementation of the enhanced online license management system, most of these processes will be automated.

The proposed regulation also proposes to increase the fee for approval of an original course of instruction from \$50.00 to the statutory maximum of \$75.00. This change more accurately reflects resource costs incurred by the Commission.

In fiscal year 2016, the fees being eliminated generated \$25,500 in revenue. The loss of this revenue will be moderated by a decrease in the amount of time staff spend processing these payments. The one increase being proposed will generate approximately \$2,500 in new revenue. The net effect of all changes will be a decrease in revenue of \$23,000 or about 2.2% of total fee revenue collected by the Commission in fiscal year 2016. Individual licensees will see a net financial benefit due to the proposed changes.

Motion was made by Mr. Vaught, seconded by Mr. Schlosser to approve the proposed changes to K.A.R. 86-1-5 Fees. Motion carried unanimously.

Review of Proposed Definition of Rebate

Based on previous discussions related to permissible gifts and gratuities, Ms. Fertig reviewed the proposed definition of the term “rebate” as used in K.S.A. 58-3062.

Mr. Schlosser and audience members Mr. Chris Rost, Ms. Jeanette Johnson, and Mr. Steve Kornspan provided comments. Ms. Johnson indicated the word “inducement” came to mind in both gifts and gratuities and rebates. Mr. Kornspan asked about the intent, whether it was a consumer issue, and whether RESPA allowed for it. Mr. Schlosser indicated full disclosure should be made at the closing table especially on larger amounts which are often given by big box stores and RESPA has not indicated it is allowed, but the Federal Trade Commission is for it. Ms. Fertig will work on another draft to include the comments made.

Communication Plan for Changes to Gifts and Gratuities Guidelines and Proposed Broker Supervision Regulation

Mr. Wisner indicated the changes to Gifts and Gratuities Guidelines and Proposed Broker Supervision Regulation could be published on the website and included in a newsletter, but invited other suggestions. Mr. Wuertz asked if a video might be another way to communicate the changes. Ms. Fertig said it may be easier to communicate once we have a final definition of “rebate”. Mr. Wisner indicated topics could be added to the continuing education core class regarding the broker supervision regulation, gifts and gratuities, and rebates. Mr. Schlosser indicated when the license law booklet is republished, a “what’s new” section since the last printing may be helpful.

September I-Team Overview

Mr. Wisner explained to the audience what the I-Team does and the difference between it and the Commission. At its September meeting, the I-Team reviewed K.S.A. 58-30,103 which specifies the requirements for written agency agreements and how inaccurate or missing terms and conditions in an agency agreement should be cited for disciplinary purposes. Several instances of the transaction brokerage addendum being used incorrectly were reviewed and multiple policy questions were addressed. Consideration was given to combining some of the four versions of the transaction broker addendum. A formal proposal will be submitted to the Commission.

First American Title Company requested a ruling regarding the legal interpretation of K.S.A. 58-3062(b)(1) and if they would be allowed to disburse a commission directly to the affiliated licensee at closing at the written direction of the supervising broker. K.S.A. 58-3062(b) states: “No salesperson or associate broker shall: (1) Except as provided in subparagraph (A) or (B), accept a commission or other valuable consideration from anyone other than the broker by whom the licensee is employed or with whom the licensee is associated as an independent contractor.” The I-Team will advise First American Title the Commission does not issue rulings. The statute, however, is very clear; commissions must be paid through the broker of the affiliated license.

Public comments were made by Ms. Joni Gaertner, Mr. Jon Quincy, and Mr. Jeff Carson regarding commissions and title companies.

Ms. Gaertner indicated Oklahoma law refers to “distribution authorization”. Ms. Fertig explained how the law reads in Kansas.

Mr. Quincy likes how the law was applied in the early days when the intent was to maintain control. Waiving one’s right to a title company and cutting commission checks at the closing table requires another layer of supervision for the broker which some companies don’t want. Many title companies record all documents before they disburse funds which can cause delays. He commends the Commission for specifying the duties of a supervising broker.

Mr. Carson said in Kansas City, the lender, appraiser, and everyone else is paid at closing before the licensee. This prompts the licensee to have the transaction file complete before they are paid.

It would be a cost savings to larger brokerages. He thinks the supervising broker should have a right to make it an office policy, and we should look at Oklahoma's law for approval of who to write the check to.

Licensee, Education and Exam Report

Ms. White informed the Commission there were 14,913 licensees as of October 3, 2016, an increase of 611 since October 2015. Seven courses were approved in August and five in September. There were no denied courses. In August, there were 17 broker exams with a 76% pass rate and in September, there were 14 exams with a 64% pass rate. In August there were 228 salesperson exams with a 70% pass rate and in September, there were 224 exams with a 66% pass rate. The overall pass rates are 70% for August and 66% for September. The overall pass rate is 69% thus far for FY 2017.

Ms. White presented the passing rates by school for August and September. Based on equivalent requirements met in another state, the general portion of the exam was waived for eight brokers and 82 salespersons thus far in FY 2017.

The Kansas content outline for the Salesperson and Broker exams was reviewed for any additions or deletions and for any changes to the number of questions per topic.

Public comments were received from Ms. Kristi Fowler and Ms. Marsha McConnell. Ms. Fowler would like to see proposed regulation changes earlier in the approval process and new topics in the mandatory core courses so brokers may provide better supervision. She also relayed a disappointing experience where she was not allowed continuing education credit because the home-study material could not be timely provided due to a wrong fax number. Ms. McConnell expressed her appreciation for the improved turnaround time for processing a license transfer. She received it the next morning.

Ms. Wenger recessed for a 15-minute break at 10:35 a.m. and reconvened the meeting at 10:50 a.m.

Director's Report

FY17 real estate fee fund receipts are \$271,272. This is exactly in line with estimates. FY17 Commission expenditures excluding encumbrances are \$200,709. This is 6% or \$58,000 less than estimated. This is mostly due to payments for one-time expenditures for IT, furniture and state assessments not occurring yet this fiscal year. The KREC Fee Fund Balance is currently \$517,977 which is up \$69,000 from July 1, 2016. This carryover should drop over the next few months with the previously mentioned one-time expenditures and the FY16 encumbrances for the System Automation project. Background investigation fee fund receipts for FY17 are \$28,240 which is 1% above estimates Real estate recovery fund receipts are \$15,014 and the balance in the fund is at \$257,483. Since the balance is over \$250,000, we will look at expending some of this money for educational purposes including videos to explain the licensing process.

The Phase 1 Performance Based Budgeting requirement for breakdown of operational costs by subprograms and narrative data has been reviewed. By December 1, 2016, the Commission will need to submit materials supporting evidence ratings of why the programs are necessary. As with other small agencies, the budget was broken down by Licensing, Education and Compliance. Mr. Wisner will include a draft of the performance based budget supporting documentation requirement for review at the November meeting.

Bi-weekly status meetings have begun with the vendor (System Automation) and the project management team (Board of Healing Arts) regarding online licensing and replacement of the current licensure database. Staff is working with the project manager to fill out a license type questionnaire. Staff also met with the vendor to go over technical specifications for transferring continuing education data. After go-live, education providers will be required to send continuing education data via a secure online transfer. This will replace the current method of individual certificates being hand keyed by Commission staff.

Mr. Wisner provided a comparison of the office lease best and final offers from the final two bidders. Motion was made by Mr. Wuertz, seconded by Mr. Vaught, to give Mr. Wisner authority to sign a lease with Jayhawk Towers LLC. Motion carried unanimously.

Staff met with Rod McIntyre from the Kansas Association of Realtors and Mark Barker from Career Education Systems to discuss next steps with respect to education regulations following comments received from the Department of Administration. The current status of the regulations will be reviewed with education providers at our Educators Conference on October 26. After review of those comments, staff will provide recommendations and proposed regulations for consideration by the Commission.

Mr. Wisner and Mr. Vaught attended the ARELLO Annual Meeting on Sept. 21-24 in Vancouver, CA. Over 270 attendees were at the meeting which is the largest attendance in the last three years. Regulating teams was one of the topics discussed and continues to be a challenge.

Reorganization of Commission Pursuant to K.S.A. 74-4202(a)

Motion was made by Mr. Wuertz, seconded by Mr. Vaught, to approve the reorganization of the Commission making Mr. Vaught the Chairperson, and Mr. Schlosser the Vice-Chairperson. Motion carried unanimously.

Public Comments

Mr. Wuertz asked the audience of their impression of how the Commission serves their needs since Mr. Wisner became the Executive Director.

Ms. Patty Sanders stated there has been a significant improvement in the turnaround time for license changes, and the new database will help licensees and schools.

Ms. McConnell sees a more user-friendly type of Commission and appreciates removing old, ambiguous language from the law. Complaints used to be a 3-year time frame.

Mr. Wisner indicated the response time for complaints has shrunken from three years to several months. An online complaint form is now available with the ability to submit documents electronically. This is more user-friendly than submitting by mail so slightly more complaints are being filed.

Everyone likes the audit-by-mail program. Mr. Wisner said a drop box will be added to the new online system to submit large documents. The response time for audit orders has been reduced from two years to seven months.

Ms. Fowler asked what date the Commission determines a contract effective so she can stay in compliance with the number of days the license law allows for deposit. Title companies say the effective date is when the counter-offer is signed. The REALTORS say it is the last date in the transaction. Ms. Fertig said the Commission would not intervene on a difference of opinion between the title company and the broker. Mr. Wisner indicated staff would review Ms. Fowler's question related to the audit timeline and respond to her.

Ms. Wenger thanked the audience for attending and their comments.

Adjournment

Ms. Wenger adjourned the meeting at 11:48 p.m.

Upcoming Commission Meeting Dates

November 21, 2016

December 19, 2016