

## MINUTES OF MEETING

### Kansas Real Estate Commission

October 10, 2013

The Kansas Real Estate Commission held its regular meeting on Thursday, October 10, 2013 at 9:00 a.m. by telephone conference call 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  
Marilyn Bittenbender, Member  
Shirley Cook, Member  
Joseph Vaught, Member

#### **Staff Present:**

Sherry Diel, Executive Director  
Jay Befort, Attorney  
Kelly White, Director of Licensing and Education  
David Pierce, Director of Enforcement  
Mitzi Dodds, Legal Assistant

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

Sarah Fertig, Assistant Attorney General

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

No members of the public were present.

#### **Call to Order**

Mr. Wuertz called the meeting to order at 9:03 a.m.

Ms. Diel asked to add to the agenda a company name modification for Prudential KC Realty. Mr. Wuertz stated he was adding an item regarding concerns that have been expressed about 395 Realty.

#### **Applications for Salesperson's License**

##### **Brandon Hall**

Applicant answered "yes" to Question Nos. 5 and 6 and self-reported three criminal offenses. After review and discussion regarding the circumstances surrounding the offenses, the nature and severity of the conduct, the passage of time and Applicant's lack of additional criminal conduct, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to approve Applicant's application for a salesperson's license subject to a restriction to his proposed supervising broker, Brenda Hanson at Diamond Partners, Inc., for a period of two years. Motion carried unanimously.

##### **Timothy Julian**

Applicant answered "yes" to Question No. 6 and self-reported a criminal offense for which he is scheduled to complete probation on November 28, 2013. After review and discussion regarding the circumstances

surrounding the offense, the nature and severity of the conduct, the passage of time and Applicant's lack of additional criminal conduct, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to approve Applicant's application for a salesperson's license but issuance is subject to the condition that he complete the terms of his probation and provide to the Commission documentation that he completed his probation. Should Applicant complete probation prior to November 28, 2013, he may submit proof of completion of probation to the Commission and staff has authority to issue the license upon receipt of the documentation. Motion carried unanimously.

### **Applications for Broker's License**

#### **James E. Fisher, III**

The application of Mr. Fisher was presented for review by the Commission. After review and discussion regarding the number of years Mr. Fisher has been licensed, his transaction experience, related experience and knowledge of Kansas brokerage relationships, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to approve Mr. Fisher's application for a broker's license subject to the restriction that he have no affiliated licensees. The restriction shall run indefinitely and Mr. Fisher must petition the Commission to lift this restriction. Motion carried unanimously.

Mr. Wuertz recessed the KOMA meeting at 9:33 a.m. due to a fire drill.

Mr. Wuertz reconvened the KOMA meeting at 9:43 a.m. with all Commissioners, staff, and counsel present as listed above.

#### **Dorothy Karnowski**

The application of Ms. Karnowski was presented for review by the Commission. After review and discussion regarding the number of years Ms. Karnowski had been licensed, her transaction experience, related experience and knowledge of Kansas brokerage relationships, a motion was made by Ms. Wenger, seconded by Ms. Bittenbender to deny Ms. Karnowski's application for a broker's license. Staff may include in the cover letter that Ms. Karnowski may reapply for a broker's license after obtaining more experience representing clients and customers in completed transactions. Motion carried unanimously.

#### **Cheryl London**

The application of Ms. London was presented for review by the Commission. Although staff had requested documentation regarding Ms. London's transaction experience on several occasions, inadequate documentation was provided. Therefore, the Commission was unable to review and discuss her transaction experience, related experience and knowledge of brokerage relationships. After review and discussion, a motion was made by Mr. Vaught, seconded by Ms. Cook to deny Ms. London's application for a broker's license due to insufficient evidence to document her experience and competency to function as a supervising broker. Motion carried unanimously.

#### **Janelle O'Dell**

The application of Ms. O'Dell was presented for review by the Commission. After review and discussion regarding the number of years Ms. O'Dell had been licensed, her transaction experience, related experience and knowledge of Kansas brokerage relationships, a motion was made by Mr. Vaught, seconded by Ms. Bittenbender to approve Ms. O'Dell's application for a broker's license subject to the restrictions that she cannot practice in the capacity of supervising broker or branch broker and can have no

affiliated licensees. The restrictions shall run indefinitely, and Ms. O'Dell must petition the Commission to lift these restrictions. Motion carried unanimously.

### **Applications for Renewal**

#### **Jeffrey Franklin East**

Applicant's salesperson license expired while a disciplinary case was pending. On October 21, 2011, a Summary Proceeding Order was issued to Applicant by which he was fined \$300. Applicant did not request a hearing, he did not pay the fine, and he did not respond to a demand letter. Consequently, on March 2, 2012, a second Summary Proceeding Order was issued revoking his license and fining him an additional \$750 for failure to comply with an agency order. On March 27, 2012, Applicant paid the initial \$300 fine. On March 5, 2012, Applicant requested a hearing on the March 2, 2012 Summary Proceeding Order. On April 30, 2013, Applicant's license expired. On August 21, 2013, the hearing request on the Summary Proceeding Order involving the revocation and \$750 fine was referred to the Office of Administrative Hearings. The Commission asked that Applicant's request for hearing be dismissed as he did not timely renew his license. On September 6, 2013, Applicant filed a Late Renewal Application. After review and discussion regarding the Applicant's failure to comply with an agency order, motion was made by Mr. Vaught, seconded by Ms. Wenger to deny Applicant's renewal application for a salesperson's license. Motion carried unanimously.

#### **Consider request of Katherine J. Earl to lift restriction**

The Commission considered Katherine J. Earl's request to lift the restriction on her broker's license so that she can open her own business with a proposed company name of Katherine J. Earl. Ms. Earl's broker license was granted in 2009 subject to the restriction that her activities as a broker be supervised by her supervising broker. The additional experience Ms. Earl provided includes residential rental property management, which is not a licensed activity. Ms. Earl also obtained related experience working as a network manager negotiating cell tower leases for Verizon Wireless. The Commission also considered if Ms. Earl's request to lift the restriction is granted, whether Ms. Earl should be directed to add wording to the proposed company name of Katherine J. Earl to prevent confusion. The discussion on this matter was deferred until later in the meeting so that the Commission would have time to review additional information which was forwarded to them by staff concerning Ms. Earl's application.

#### **Consider request of Serena Mahlan to modify and/or lift restriction**

The Commission considered Serena Mahlan's request to modify her license so that she can transfer from one branch of Reece & Nichols to another and/or to lift the restriction on her salesperson's license. Ms. Mahlan's license has been restricted since July 2011, when her application for a salesperson's license was granted. After review and discussion regarding the nature and severity of the conduct, the passage of time and Applicant's rehabilitation, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to grant Ms. Mahlan's request to lift the restriction on her license. Once the restriction is lifted, Commission staff will approve the transfer request. Motion carried unanimously.

#### **Review transaction documents and reconsider application of Candace Davis for broker's license**

The Commission reviewed the application of Candace Davis. This matter was deferred from the August 22, 2013 Commission meeting. At that meeting, the Commission instructed staff to request from Ms. Davis documentation regarding four transactions in order to clarify her role as a seller's agent or FSBO based upon Ms. Davis' representations to the Commissioners at the August meeting. If the documentation Ms. Davis was to provide substantiated her claims, Commission staff was given authority to approve Ms. Davis'

application for a broker's license. The documentation Ms. Davis provided failed to clarify the Commission's questions or substantiate her claims. Staff had the following concerns after reviewing the transaction documents: 1) her role in the transaction as a seller's agent and FSBO; 2) not having copies of contracts in the transaction file; 3) not disclosing she was a licensee in the contract; and 4) not disclosing to HUD that she was an owner/occupant. After review and discussion regarding the number of years Ms. Davis had been licensed, her equivalent experience, related experience, knowledge of Kansas brokerage relationships, and honesty, integrity, trustworthiness, and competency to practice real estate as a supervising broker, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to deny Ms. Davis' application for a broker's license. Motion carried unanimously.

**Consider request of Mark Fountain to open a company named True North Industrial Realty, LLC**

The Commission considered the request of Mark Fountain to open a company named True North Industrial Realty, LLC. It was noted that Mr. Fountain wants to use the name True North Industrial Realty, LLC because one of his clients is NorthPoint Development. The company name that conflicts with True North Industrial Realty, LLC is True North Hotel Group. The Commission voiced concern such similar company names could be confusing because of the appearance the companies may be related to each other. After review and discussion, motion was made by Ms. Bittenbender, seconded by Mr. Vaught that Commission staff can approve the business name or trade name of True North Industrial Realty, LLC providing Mr. Fountain submits written documentation from a principal at True North Hotel Group that True North Hotel Group does not object to the use of True North Industrial Realty, LLC. Motion carried unanimously.

**Consider request of Scott Olson to open a company named Northpoint Asset Management**

The Commission considered the request of Scott Olson to open a company named Northpoint Asset Management. The company name that conflicts with Northpoint Asset Management is NorthPoint Development. As noted above, NorthPoint Development, a real estate brokerage in Kansas City, Missouri, is registered with the Commission and is a client of True North Industrial Realty, LLC.

Mr. Wuertz recessed the KOMA meeting at 11:18 a.m. for staff to re-send one of the attachments to the Commissioners. Mr. Wuertz also declared a 10-minute break.

Mr. Wuertz reconvened the KOMA meeting at 11:30 a.m.

**Consider request of Scott Olson to open a company named Northpoint Asset Management (continued)**

The Commission voiced concern regarding such similar company names in the same market area could be confusing to the public. After review and discussion, motion was made by Mr. Vaught, seconded by Ms. Bittenbender to deny Mr. Olson's request to use the proposed business name or trade name of Northpoint Asset Management. Mr. Olson can submit another business name or trade name for consideration by the Commission. Motion carried unanimously.

**Consider request to change company name of Prudential KC Realty to KC Realty**

The Commission discussed a request to change the company name of Prudential KC Realty to Kansas City Realty. Staff explained that the Prudential franchise in Kansas City is changing over to Berkshire Hathaway Homeservices. They submitted a company name change request to Kansas City Realty as the business name or trade name and Berkshire Hathaway Homeservices as the franchise name. Kansas City Realty was a business name or trade name in the Kansas City area that changed its name less than two years ago. It was a Prudential franchise, but changed to Better Homes and Gardens. The use of Kansas

City Realty only would be confusing to staff and the public because the name has been in use by another brokerage less than two years ago and was a Prudential franchise. After review and discussion, motion was made by Ms. Wenger, seconded by Ms. Cook to authorize staff to approve an amended request for the company name of Berkshire Hathaway Homeservices Kansas City Realty. Motion carried unanimously.

#### **Consider concerns regarding 395 Realty**

Mr. Wuertz discussed information he recently received on 395 Realty. While attending a state convention, it was reported to Mr. Wuertz that a proposed brokerage in Overland Park, 395 Realty, was recruiting salespersons across Kansas. Because the salespersons would be located throughout the state of Kansas, it was questioned how they would be supervised on a daily basis by a licensed broker. Ms. Diel explained that 395 Realty is registered with the Commission and has a Kansas licensed supervising broker. A regulation has been drafted, but needs to be finalized and processed when legal staff gets caught up again with the backlog, that sets up guidelines for a broker's supervision duties, including requirements for training, policies and procedures, and supervision of licensees at remote locations. Mr. Wuertz stated the proposed regulation would address the concerns that were raised.

#### **Consider proposed Employee of the Quarter Guidelines**

The Commission received a report from Ms. Diel on proposed Employee of the Quarter Guidelines. Following discussion at the August 22, 2013 Commission meeting, Ms. Diel has drafted guidelines for implementing the program. Ms. Diel discussed the program with Department of Administration staff and learned that although the Governor's Office recommends the program, it is not mandatory because it can be difficult for small agencies to administer due to budgeting and staffing issues. Agencies can choose to grant employees rewards and those can be monetary or non-monetary. The Commission deferred action on this item so that Commissioners can have more time to study the guidelines. The Commission will revisit this item at the January or February 2014 Commission meeting, depending on which meeting is in-person.

#### **Consider proposed amendment to Guidance Document 2013-04**

Ms. Diel reported to the Commission that currently there have been two standard fine options for failing to respond to a Commission request. The current version of Guidance Document 2013-04 treats the situations alike, with a \$200 fine and the penalty is more severe for forms or information not being returned to Licensing than previous practice. The first situation is a \$200 fine for failing to respond to a request from Licensing to complete any licensing forms or provide information. If the licensee failed to respond, they would be fined or suspended indefinitely until the forms are returned. The second situation is a \$300 fine and a minimum 45-day suspension, to run indefinitely until the person cooperates, if the licensee failed to cooperate with an investigation resulting from an audit, complaint, or licensing matter. The proposed amendment attempts to distinguish between these two fines and penalties. After review and discussion, motion was made by Mr. Vaught, seconded by Ms. Bittenbender to approve the proposed changes made to Guidance Document 2013-04. Motion carried unanimously.

#### **Consider Pearson Vue's inquiry whether extra time should be allotted as an accommodation to English as Second Language (ESL) students that take the licensure exams for salespersons or brokers**

Ms. Diel reported that Pearson Vue inquired whether Kansas wanted to allow extra time for ESL candidates. There are no federal or state requirements to allow extra time as an accommodation to ESL students who take the licensure exams for salespersons or brokers. Four hours are allotted for the exams

and a few states do allow one extra hour for the exam for ESL candidates. It was the consensus of the Commission that extra time for ESL candidates should not be granted.

### **Budget Report**

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

Budget cuts were made to approved funding levels so that the budget balanced. The new total appropriation is \$944,330.

#### Expenditures

At 25% of the fiscal year having passed, KREC's total expenditures are at 19.5%. The highest line item is salaries, with 24.3% of the amount budgeted for salaries being expended.

Appropriated amounts may change as the budget progresses through the legislative budget process. As of September 30, 2013, current expenditures are at \$184,000 compared to \$236,000 in 2013 and \$241,500 in 2012. This reflects the significant cuts that have been implemented.

#### Revenues

Ms. Diel explained that revenues are not increasing. They are below FY 2012 levels, which would correlate with the same renewal groups. Included in the budget were 27 cuts and efficiencies that have been implemented by the Commission, but a long term solution to the shortfall is needed.

#### Encumbrances

Total encumbrances are \$69,139. Total cash available in the Fee Fund (Fee Fund balance less encumbrances) is \$251,673.

An encumbrance of \$17,500 for a Task Order for the licensure system will not be used but will be left in place to make sure no bills come in, but should eventually be released and those funds would be returned as cash available in the Fee Fund.

#### Receipts

KREC has transferred 10% of receipts to the State General Fund to date in FY14 or \$24,228 and kept 90% or \$218,051 for the KREC Fee Fund for FY14.

To date, KREC has collected \$40,000 in fines.

Although FY 12 receipts should be similar to current receipts because the renewal groups are the same, this is not the case. FY 14 receipts are \$9,000 less than FY 12 receipts.

Average revenues exceed expenses by approximately \$11,000 for the first three months of FY 14 due to the significant cuts that have been made in FY 14.

## Recovery Fund

The Recovery Fund has a balance of \$313,163.

### **FY 2014-FY 2015 Budget Submission**

Ms. Diel reviewed the budget narrative with the Commissioners. She reviewed the anticipated deficit if revenues continue to decrease or remain flat and various options for raising revenue.

Ms. Diel reported that Oracle is no longer supporting the software for Acorde, the Commission's electronic management storage system for scanned documents. Therefore, she proposed in the budget to use Recovery Fund monies to replace the electronic management storage system since the Recovery Fund has been used in the past to fund the Commission's operating costs. Ms. Diel thought that if the Recovery Fund monies are used for operating costs, the funds would be used for a specific purpose, which would provide a greater benefit to the agency.

The Commission discussed keeping the entire amount of each fine paid. Currently, by statute, 100% of each fine is deposited into the State General Fund except the Commission is permitted to recover any costs and attorney fees out of the fine collected on a case. In order to keep the entire amount of each fine, a new or revised statute would be required.

Ms. Diel gave a report on the status of the fee increase legislation.

### **Executive Sessions for Items 12, 13, and 14 to discuss attorney-client privileged matters**

Mr. Wuertz reported he needed to leave the meeting. Ms. Wenger reported she needed to leave the meeting as well. Ms. Diel asked that the executive sessions be considered at a later meeting.

The executive sessions scheduled for Items 12, 13, and 14 to discuss attorney-client privileged matters were deferred to a special Commission meeting scheduled for October 17, 2013.

### **Consider Petition for Review filed by the Commission in the Matter of William Fair, Docket No. 11-3701 / OAH No. 12RE0005**

Ms. Fertig reported to the Commission on the Petition for Review Filed by the Commission in the Matter of William Fair, Docket No. 11-3701 / OAH No. 12RE0005. Ms. Fertig reported that an Amended Summary Proceeding Order was issued which required the broker to complete continuing education within 90 days and to pay total fines of \$2,500. Mr. Fair requested a hearing on this matter. The hearing officer at the Office of Administrative Hearings rendered an Initial Order which dismissed a couple of the counts but ruled in favor of the Commission on the majority of the issues. Commission's litigation counsel filed a petition for review of the Initial Order and asks the Commission to review the hearing officer's decision to dismiss one count involving automatic extension of listing contracts. Ms. Fertig explained that the Commission can grant, let stand, or deny the petition for review. If the Commission wishes to review the Initial Order, it can grant the petition for review and request briefs be submitted. Ms. Bittenbender and Ms. Wenger recused themselves from the discussion and vote on this matter. After review and discussion, motion was made by Ms. Cook, seconded by Mr. Vaught that the Commission grant the petition for review filed by the Commission. Ms. Fertig will prepare the Order Granting Review and establish a briefing schedule so that briefs are required to be submitted simultaneously. Motion carried unanimously.

**Defer consideration of Agenda Items 12, 13, and 14**

Ms. Diel requested that, due to several Commission members needing to leave the meeting early, the executive session matters be rescheduled for Commission review at a later meeting. Consensus was reached that the special meeting be held October 17, 2013 at 9:00 a.m.

**Consider request of Katherine J. Earl to lift restriction (continued)**

The Commission received additional information from staff that was inadvertently omitted from their packets regarding Ms. Earl's request to lift the restriction on her license. The Commissioners noted that Ms. Earl wishes to open her own business, but that her experience involves residential and cell tower lease agreements, not the buying and selling of real estate. After review and discussion regarding Ms. Earl's application, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to deny Ms. Earl's request to lift the restriction on her broker's license. Staff should also inform Ms. Earl that her proposed business name or trade name would not be approved. Motion carried unanimously.

Mr. Wuertz exited the KOMA meeting at 12:50 p.m. Ms. Wenger took over the chairperson's duties.

**Staff Report on I-Team Statistics**

The I-Team Statistics were received by the Commissioners. Ms. Diel inquired whether the Commission preferred a monthly or a cumulative report. The Commission indicated a cumulative report was preferred.

Ms. Wenger requested clarification on why cases are designated as handling violations. Mr. Pierce explained that handling is a "catch all" category when a specific category does not fit and a matter may be categorized as a handling violation when it first comes in because the complaint is non-specific and alleges a multitude of things. The investigator will later determine how the investigation will proceed.

**Education Report**

The Education Report was received by the Commissioners for January 1, 2013 – September 30, 2013. Out of the 110 individuals who sat for the broker's examination, 80 passed, for a passing rate of 73%. Out of 1,217 individuals who sat for the salesperson's examination, 864 passed, for a passing rate of 71%.

Ms. Diel confirmed a cumulative report format was preferred.

Ms. Diel reported the number of approved courses was included in the report.

**Director's Report**

The Commissioners received the Director's report. Ms. Diel noted that due to technical difficulties, Commission staff cannot prepare the October active/inactive report. The same problem has kept reminder notices from being mailed out as well. Ms. Diel will contact the Office of Information Technology Services regarding the problem in the system. Ms. Diel reported that the final renewal notices for licensees with last names beginning with D and E are due to be mailed by October 31, 2013.

Ms. Diel reported on an issue mentioned in Arello Boundaries about placing "Coming Soon" signs in yards without written permission. The Disciplinary Committee has previously handled this issue in a similar manner as other states.

Ms. Diel reported on the audit conducted on the Commission's P-Card transactions. P-Card transactions consist of transactions with a credit card or when Commissioners stay in hotels. The audit went well except

for two findings. Commission staff was trained not to change pre-populated numbers when loading the payment information into SMART; however, that interpretation has changed and staff has now been told to enter descriptions so if an electronic report is pulled, the type of expenditure is described. The only other issue noted was the lack of contract numbers on two vouchers. Ms. Diel responded to the audit that the Commission has changed its practice to add descriptions on all electronic vouchers.

Ms. Diel reported that the Commission was mentioned in an August 18, 2013 *Wichita Eagle* newspaper article concerning psychologically impacted properties.

Ms. Diel reported that the Housing and Urban Development (HUD) dual agency issue has been resolved, at least temporarily. The letter ruling initially stated licensees could not function on both sides of a short sale transaction. Due to opposition from the National Association of Realtors (NAR) and others, HUD issued a second letter ruling eliminating the dual agency prohibition.

**Public Comment**

There was no public comment.

Ms. Wenger noted that the special meeting will be held on October 17, 2013 at 9:00 a.m.

**Adjournment**

Ms. Wenger adjourned the meeting at 1:05 p.m.