

## MINUTES OF MEETING

### Kansas Real Estate Commission

December 12, 2013

The Kansas Real Estate Commission held its regular meeting on Thursday, December 12, 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 C. Diel, Executive Director  
Jay D. Befort, Attorney  
Kelly White, Director of Licensing and Education  
David Pierce, Director of Enforcement  
Wendy Alkire, Compliance Supervisor  
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 9:04 a.m.

Ms. Cook joined the call at 9:05 a.m.

#### **Approval of the October 10, 2013 Meeting Minutes**

Motion was made by Mr. Vaught, seconded by Ms. Bittenbender to approve the Minutes of the October 10, 2013 meeting. Motion carried unanimously.

#### **Approval of the October 17, 2013 Meeting Minutes**

Motion was made by Ms. Bittenbender, seconded by Mr. Vaught to approve the Minutes of the October 17, 2013 meeting. Motion carried unanimously.

#### **State of the Commission Report**

Ms. Diel reported that numerous complaints were being received from applicants stating they were unable to work because of extended delays in processing license applications. This increase in processing time is the result of low staffing levels and staff turnover. Whenever an applicant answers "Yes" to the questions

concerning pending criminal charges or disposition of those charges, the application is summarized in order to determine whether staff have the authority to approve the application, additional documentation is needed, or whether the Commission must review the application. This backup in reviewing the applications causes a "wave" effect. The backup begins with Licensing staff, who determine if additional review is required. Staff get behind in the review process and when they have time to catch up on the backlog, the wave is pushed down the line to the next staff required to deal with the application. When licenses are restricted or conditioned, this hits the Legal staff, resulting in a backlog of orders.

Ms. Diel asked staff to pull statistics to compare restrictions/conditions for 2012 and 2013. For Licensing cases, from January 2012 through the end of November 2012, there were 4 licenses restricted and 16 licenses conditioned. From January 2013 through November 2013, there were 15 licenses restricted and 21 licenses conditioned. This shows a significant increase in restrictions. Ms. Diel said that restrictions may be warranted but should be evaluated if necessary in each instance. Any time a restricted licensee wishes to transfer to another broker or company or requests that the restriction be lifted, the application must be brought back before the Commission and an order is required. In order to avoid having to prepare so many orders, Ms. Diel inquired whether conditions could be instituted instead of restrictions. The conditions would require the next supervising broker to provide a written statement indicating they are aware of the applicant's criminal history/conduct and are willing to supervise. This would allow the licensees to transfer to another supervising broker without the need for an additional order. In addition, the turnover in the Legal staff has required retraining in preparing orders. Ms. Bittenbender suggested that case findings be handled differently, such as limiting the restriction of licenses and focusing on the conditioning of licenses when appropriate to reduce the backlog.

With low staffing levels and retraining needed, Ms. Diel explained it is hard for staff to set and stick with priorities because fires are constantly popping up. For discipline cases, there is a backlog in regard to hearing requests as well. There are 9 complaint cases and 10 audit cases to be sent to the Office of Administrative Hearings. Some of the audit cases may have been the result of the change to the Audit by Mail Program. Several options for lowering the backlog and speeding up the review process include using standard language in orders whenever possible. Ms. Diel reported staff are open to other suggestions as well. Staff are sending cases to the Office of Administrative Hearings in groups of 3-4 cases.

Mr. Vaught stated that the issue of needing more staff should be addressed. Ms. Bittenbender asked if the complaints are logged when they are received. Ms. Diel reported licensing files contain a history of case interactions. Ms. Bittenbender expressed interest in compiling statistics on the complaints received. Having documentation to show that people are being prevented from working or expanding their business in Kansas because of the cuts made in the agency's staffing levels due to the inability to obtain approval for a fee increase would be helpful during the next session. The Commissioners stated licensees should be encouraged to lodge written complaints so that information can be documented and provided to legislators. Mr. Wuertz reported he had received some complaints, but when he explained someone had been out for emergency surgery, it satisfied those individuals. Ms. Diel explained that it is not just one employee being out that causes delays and complaints. Ms. Diel also reported that because staff set aside their workload in order to help out during peak renewal times, that results in a buildup of incoming original applications and the cycle repeats itself. The Commissioners will suggest people write their complaints to the Commission so they can be investigated and documented. Ms. Bittenbender also suggested logging the complaints in order to be prepared to discuss low staffing levels with members of the legislature. Staff will document complaints and compile reports for members of the legislature to see if something can be done.

Ms. Diel next discussed the budget appeal. She will prepare talking points for the Commissioners to use in regard to how the agency got to the point of numerous complaints and the options in revenue with the 27 cuts and efficiencies instituted. Ms. Wenger stated the information provided was clear and to the point, a good start for information that can be shared with legislators. Ms. Diel will prepare documentation for the Commissioners to distribute.

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

#### **Ashley Sweeney-Emmons**

Applicant answered "yes" to Question No. 6 and self-reported a criminal offense for which she is scheduled to complete diversion on October 7, 2014. 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 subject to the conditions that Applicant successfully complete probation and suspended imposition of sentence (SIS); Applicant must submit proof that she satisfactorily completed the requirements of the probation and SIS; Applicant must provide quarterly reports on the progress made in meeting the requirements of the probation and SIS should she not successfully complete the probation and SIS as scheduled on October 7, 2014; and should Applicant wish to change supervising brokers, the next broker must submit a letter stating that the supervising broker is aware of Applicant's criminal history and is willing to supervise Applicant. Motion carried unanimously.

#### **Bradley Talley**

Applicant answered "yes" to Question Nos. 5 and 6 and self-reported a criminal offense for which an Order of Dismissal-Diversion was entered on August 8, 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 Mr. Vaught, seconded by Ms. Wenger to approve Applicant's application for a salesperson's license. Motion carried unanimously.

### **Applications for Renewals**

#### **Jess Davis, Jr.**

Applicant's salesperson's license expired April 30, 2013. Applicant's late renewal application was received on December 3, 2013. Thus, Applicant's renewal application was received beyond the six-month grace period and staff did not have the authority to process the application. In addition, the check for renewal fees Applicant submitted with his late renewal application was returned by his bank marked "Account Closed." After review and discussion regarding Applicant's late renewal application, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to deny Applicant's application as he applied for renewal past the six-month grace period.

After the motion to deny was made, Ms. Alkire provided additional information regarding Applicant's renewal application. A damaged envelope was received by Commission staff from the Post Office, without any contents. Applicant was tracked down through the return address on the envelope. Applicant relayed to Ms. Alkire that his renewal application and check had been in the damaged envelope. Ms. Alkire corresponded with Applicant and gave him until December 6, 2013 to submit a completed application, late addendum, and check. After further discussion, a second motion was made by Ms. Bittenbender, seconded by Mr. Vaught to withdraw the motion to deny Applicant's renewal application. A new motion was made by Ms. Bittenbender, seconded by Mr. Vaught to treat Applicant's late renewal application as

timely received and handle the insufficient check that had been deposited in a suspense fund in accordance with standard procedures for returned checks. Motion carried unanimously.

### **Charlene MacCallum**

Ms. MacCallum's renewal application was referred to the Commission for review by the Disciplinary Committee because Ms. MacCallum had several past violations of the Brokerage Relationships in Real Estate Transactions Act (BRRETA) and a recent audit found numerous violations. The Disciplinary Committee deferred the matter to the Commission to consider for renewal.

After reviewing the past violations, complaint and recent audit findings, a motion was made by Ms. Bittenbender, seconded by Mr. Vaught to approve Ms. MacCallum's license renewal subject to certain conditions, including: Ms. MacCallum must submit a business plan; Ms. MacCallum must obtain intensive mentoring on BRRETA from a supervising broker approved by the Commission; an affiliated licensee in the brokerage must obtain their broker's license and attend the same intensive mentoring as outlined by the Commission; Ms. MacCallum is prohibited from using: provisions mandating unrepresented buyers sign procuring cause agreements to see listings, any amendments regarding appointment of a designated agent at the time of listing for circumstances that have not occurred yet and any other similar language that violates BRRETA; Ms. MacCallum must properly use transaction broker addendum forms and designated agent forms; and Ms. MacCallum must submit to another audit following the successful completion of the approved mentoring program. If the next audit reveals similar findings, it will be considered an aggravating factor and action will be taken upon further order of the Commission. Ms. Wenger recused herself from the discussion and vote on this matter. Motion carried unanimously.

Mr. Wuertz declared a 10 minute break at 10:25 a.m.

Mr. Wuertz reconvened the meeting at 10:35 a.m.

### **Steven Mott**

Applicant answered "Yes" to Question No. 3 on his application for renewal and self-reported a criminal offense. Applicant is scheduled to complete unsupervised probation on or about March 21, 2015. After review and discussion regarding the circumstances surrounding the conduct, the nature and severity of the conduct and Mr. Mott's evidence of rehabilitation, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to approve Applicant's application for renewal of his salesperson's license. Motion carried unanimously.

### **Consider Proposed Amendment to Guidance Document 2013-02**

Ms. Diel reported to the Commission that the proposed changes to Guidance Document 2013-02 would give staff the authority to deny a renewal license application which is filed outside the licensee's six-month grace period. After review and discussion, motion was made by Ms. Wenger, seconded by Ms. Bittenbender to approve the proposed changes made to Guidance Document 2013-02. Motion carried unanimously.

In addition, Ms. Diel requested clarification on whether staff have the authority to approve applications in which a misdemeanor criminal conviction occurring 14 years ago was reported along with three or four more recent traffic offenses not involving alcohol or drugs. There was a consensus among the Commissioners that absent serious violations or danger to the public, Guidance Document 2013-02 would allow staff the authority to approve such applications.

### **2014 Legislative Agenda**

Ms. Diel reported that language has been drafted for K.S.A. 58-3050 to incorporate wording that allows the Commission to retain the first \$50,000 of fines collected by the Commission per the Commissioners' instruction at the November meeting. Until the Governor issues the budget on the first day of the Legislative Session, it is not known whether he supports a fee increase or waiver of the 10% transfer to SGF. The Commissioners stated retention of \$50,000 of the fines would give the Commission sufficient funds to hire new staff. Ms. Diel advised that such hiring capability would require approval of the Legislature because the vacant positions are "zero funded" in the budget. If new staff can be hired, it would be the first priority to hire staff for the Licensing Division. The Commissioners inquired if the revenue increase should be acted on first and then focus on the complaint issue. Ms. Diel reported that the complaints could show the reason for the delay in issuing licenses and that is keeping people from going to work. If the Commission returns to auditing companies in person, another auditor would have to be hired. The Audit by Mail Program saves travel costs and allows the Commission to audit more transactions. Following a discussion of this issue, the Commission reached a consensus that the proposed changes to the language in K.S.A. 58-3050 should be presented to the Revisor of Statutes following the presentation of the Governor's budget.

### **Budget Report**

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

#### Expenditures

At five months into the fiscal year, KREC is still doing well at saving. Total expenditures should be at 41.6%, but only 32.9% of total appropriations have been spent. The largest line item expense is salaries at 39.27%.

Appropriated amounts may change as the budget progresses through the legislative budget process. As of November 30, 2013, current expenditures to date in FY 2014 are \$310,699 compared to \$407,768 in 2013 and \$388,622 in 2012. This reflects the significant cuts that have been implemented because of the impending Fee Fund deficit.

#### Revenues

Ms. Diel explained that revenues are not increasing. To date, the Commission's FY 2014 90% share of revenue is \$377,126. This is below FY 2012 levels of \$387,471, which would correlate with the same renewal groups. A long term solution to the revenue shortfall is needed.

Ms. Diel reported that the available cash in SMART reflects a balance of \$352,130 in the Fee Fund. Less total encumbrances of \$67,570, this leaves a balance of \$284,560 in available funds. Five months into the fiscal year, the average monthly expenses are at \$62,140 and the average monthly revenues are at \$75,425, leaving an average \$13,285 surplus because of the budget cuts implemented.

Ms. Diel reported that a \$17,500 encumbrance for a Task Order for the licensure system will be released because the computer programmer has indicated no further billings will be made for services rendered for the project.

## Receipts

KREC has transferred 10% of receipts to the SGF to date in FY14 or approximately \$42,000 and kept approximately 90% or \$377,126 for the KREC Fee Fund for FY14.

To date, KREC has collected approximately \$53,000 in fines.

## DOB Budget Recommendation

Ms. Diel reported that the budget recommendation from the DOB recommends using \$100,000 of the Recovery Fund for replacement of the agency's electronic document storage system. If this expenditure is approved through the Legislative process, the Recovery Fund will be decreased. The Commissioners inquired if the reduction would affect the viability of the fund. Ms. Diel explained that the Recovery Fund is a last resort source of funding claims. In the last 11 years, there have been two claims paid out from the Recovery Fund. The cap for payment for a single claim is \$15,000. By statute, once the Recovery Fund reaches a balance of \$100,000, licensees are assessed an additional cost of \$5 per salesperson and \$10 per broker.

## Recovery Fund

The Recovery Fund has a balance of \$313,208.

## **Staff Report regarding FY 2014 - FY 2015 Budget**

Ms. Diel reviewed what was submitted with the budget appeal, including her letter to John Hummel, DOB. The Commissioners requested that the letter be summarized and provided to them in bulleted format so that they can use it for a talking points document. The Commissioners requested that details on the license count, fee fund sweeps, and options for increasing revenue be included in the talking points document.

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

The I-Team Statistics were received by the Commissioners. Ms. Diel reviewed the cumulative reports, which run from January 1, 2013 through November 30, 2013. The first report lists all cases closed and the categorized outcome of the cases. The second report lists those cases closed with no legal docket being opened. The third report lists all cases currently open.

The Commissioners 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. If a matter is classified as an agency issue, it only includes agency matters. If a matter is classified as a BRRETA violation, it can include transaction broker issues as well as other BRRETA issues.

### **Education Report**

The Education Report was received by the Commissioners for January 1, 2013 through November 30, 2013. Five continuing education courses were denied: four were denied because of residential property management content and the fifth one was denied because of excessive dual agency content and it was an online course. In November 2013, 11 brokers and 133 salespersons took the licensure exams. The pass rate for brokers was 73% and the pass rate for salespersons was 67%. For Calendar Year 2013, 150 individuals sat for the broker's examination and 104 passed, for a passing rate of 69%. 1,524 individuals sat for the salesperson's examination and 1,070 passed, for a passing rate of 70%. The number of individuals taking the licensure exams increased.

### **Director's Report**

The Commissioners received the Director's report. Ms. Diel reported an increase in licensees. The total number of licensees has fluctuated from 13,200 to 13,400. The current number of licensees, 13,583, is the highest number reported for some time.

Ms. Diel reported that the next Commission meeting will be held in conjunction with KAR's workshop which runs from January 14-16, 2014. The Commission meeting is scheduled for January 14, 2014 from 9 a.m. until 12:00 noon, but the Commission can use the room longer, if necessary. There may be one hearing scheduled on that day.

Ms. Diel reported that a Housing and Urban Development (HUD) investigator will be presenting continuing education training on January 16, 2014. The investigator will cover mortgage fraud training and three hours of continuing education elective credit will be available.

Ms. Diel recommended the Commissioners read an article in *ARELLO Boundaries* that details New Jersey's decision prohibiting rebates. The court upheld the Commission's decision. Ms. Diel stated that New Jersey has amended the law and rebates are now allowed according to the article.

Ms. Diel reported that a Wichita agent was mentioned in a *Real Estate Intelligence* article. The Wichita Area Association of Realtors published a warning about a person who was attending open houses and stealing prescription medications from the properties. A Wichita agent hosting an open house realized a person matching the article's description had shown up for an open house. Law enforcement was notified and the suspect was apprehended with stolen medications on his person.

Ms. Diel reported that an email blast about the scam surrounding the Better Business Bureau had been sent out. Several licensees had written back thanking staff for the email and reporting that they had been contacted by scammers.

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

Based upon a motion made by Ms. Bittenbender, seconded by Mr. Vaught, Mr. Wuertz recessed the KOMA meeting at 11:14 a.m. for 10 minutes to enter into an executive session to discuss a personnel matter. Those in attendance include the Commissioners and Ms. Diel.

Mr. Wuertz reconvened the KOMA meeting at 11:25 a.m.

**Executive Session to Discuss an Attorney-Client Privilege Matter**

Based upon a motion made by Ms. Wenger, seconded by Mr. Vaught, Mr. Wuertz recessed the KOMA meeting at 11:27 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 11:35 a.m.

Mr. Wuertz announced that staff should proceed to schedule a hearing in the Jeffrey East renewal case.

**Public Comment**

There was no public comment.

Mr. Wuertz verified the next Commission meeting will be held January 14, 2014.

Ms. Diel inquired whether the February 13, 2014 Commission meeting would be held in person or by phone. At present, there is a hearing scheduled for February 13, 2014. However, that respondent indicated they wanted a continuance, but have not yet provided written confirmation of that request. Mr. Wuertz stated that unless a hearing is on the schedule for February 13, 2014, the meeting can be held by phone to save costs.

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

**Adjournment**

Mr. Wuertz adjourned the meeting at 1:05 p.m.