

STATE OF KANSAS

KANSAS REAL ESTATE COMMISSION
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GOVERNOR JEFF COLYER, M.D.
ERIK WISNER, EXECUTIVE DIRECTOR

MINUTES OF THE MEETING Kansas Real Estate Commission May 21, 2018

The Kansas Real Estate Commission held its regular meeting on Monday, May 21, 2018, at 9:00 a.m. at the Kansas City Regional Association of Realtors, 11150 Overbrook Rd #100, Leawood, KS 66211.

Commissioners Present:

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

Staff Present:

Erik Wisner, Executive Director
Kelly White, Deputy Director, Director of Licensing and Education
Stacey Serra, Legal Assistant
Amber Nutt, Education Specialist
Wendy Alkire, Compliance Director
Denise Schmidt, Real Estate Specialist

Kansas Real Estate Commission Legal Counsel:

Sarah Fertig, Assistant Attorney General

Members of the Public:

Mark Barker
Patrick Vogelsberg

Call to Order

Mr. Schlosser called the meeting to order at 9:01 a.m.

Approval of the Minutes of the April 16, 2018 Meeting

Motion was made by Mr. Wuertz, seconded by Ms. O'Brien, to approve the minutes from the April 16, 2018 meeting. Motion carried unanimously.

Broker Experience Task Force Recommendations

Mr. Wisner presented several recommendations from the Broker Experience Task Force to revise the education, experience and licensing requirements to obtain a broker's license in Kansas.

- Increase the required broker pre-license education hours from 24 to 90 hours. The 90-hour requirement would include a 60-hour mandatory broker pre-license course focused on topics related to Commission laws and regulations including brokerage relationships, advertising, fiduciary duties and misrepresentation, development of policies to manage the office and requirements to supervise affiliated licensees. A 30-hour elective broker pre-license course would be on a topic specialized to the brokers business interest. These could include commercial and agricultural real estate transactions, business marketing and branding, fair housing issues and trust account management. This would require a statutory change.
- Reduce the timeframe for an applicant to have been actively engaged in the business for real estate from five years to three years immediately preceding the date of the broker application. This would require a statutory change.
- Develop a standardized point system for evaluating applicant experience. It should factor in real estate transactions completed within the last three years, real estate education programs, degrees and certifications completed by the applicant, and relevant occupational experience. For the point system to have a binding effect it would need to be adopted in regulation.
- Establish a follow-up task force to look at commercial real estate licensure issues. The task force did not take any action on a recommendation to create a separate license type and requirements for broker who specialize in commercial transaction. This follow-up task force would look at how current requirements impact commercial real estate licensees and recommend policy solutions to address those concerns.
- Although not a formal recommendation from the task force, if the Commission wants to consider a core continuing education requirement for only supervising brokers, the task force would recommend referencing the Brokerage Management Clinic required in Arizona.

Commission members asked several questions about the rationale for these recommendations. The Commission requested staff research in greater detail the number of pre-license hours needed to complete the mandatory topics and to obtain contact information for entities interested in commercial real estate trends. Staff will also request feedback from Commission members by email on criteria that should be included in the point system for reviewing broker applicant experience.

Licensing Business Process Changes

Mr. Wisner presented proposed regulation revisions for the licensing business process changes discussed at the April 16, 2018 meeting.

Revisions to K.A.R. 86-1-3 proposed changing the calculation of the license expiration date from the first letter of the licensee's last name to the first day of the month of issuance two years after the issuance date. Motion was made by Mr. Vaught, seconded by Mr. Wuertz, to approve the revisions. Motion carried unanimously.

Revisions to K.A.R. 86-1-5 increased the fees for the submission of an application for an original broker's license to \$50 and to open a company or branch office to \$100. Motion was made by Mr. Wuertz, and seconded by Mr. Vaught, to approve the revisions. Motion carried unanimously.

Repeal K.A.R. 86-1-15 as it refers to reporting a name change for licensing purposes which is no longer applicable based on changes to K.A.R. 86-1-3. Motion was made by Mr. Wuertz, and seconded by Mr. Vaught, to approve repealing the regulation. Motion carried unanimously.

Revisions to K.A.R. 86-1-19 and 86-3-15 clarified disclosures required to be made by licensees regarding pending litigation and criminal offenses. It also changed the documents required by the Commission relating to these disclosures. Motion was made by Ms. Wenger, seconded by Mr. Vaught, to approve the revisions. Motion carried unanimously.

Mr. Wisner presented a draft of the Guidance Document for Alternatives to Displaying Paper Licenses. Motion was made by Mr. Vaught, seconded by Ms. O'Brien, to approve the Guidance Document. Motion carried unanimously.

Ms. White provided an overview of compliance issues regarding residency or company location requirements pursuant to K.S.A. 58-3060(a). Commission staff will contact those companies in violation to have them come into compliance.

Mr. Schlosser recessed the KOMA meeting at 10:42 a.m.
Mr. Schlosser reconvened the KOMA meeting at 10:56 a.m.

Revised Open Records Policy

Mr. Wisner presented revisions to the Open Records Policy to bring it into compliance with the Governor's Executive Order. Changes include:

- Staff time will be assessed at the employee's rate of pay. It was previously billed at \$20 per hour.
- Mailing hard copies will be billed at \$0.50 for the first five pages and \$0.25 for each additional five pages. Mailing costs were not previously set by policy.
- Requests by Kansas residents that are 100 pages or less, or that require less than one hour of staff time will be provided at no charge.

Revisions also include clarifications regarding written requests, record formats and availability, and response times. Motion was made by Ms. Wenger, seconded by Mr. Vaught, to approve the revisions to the policy. Motion carried unanimously.

Revisions to the Violations Index

The KREC Violations Index is a list of violations with standard disciplinary action assigned. Staff can assign disciplinary action for a violation included on the index without the need for further review. At the May 2, 2018 meeting, the Investigation Team reviewed and recommended the following violations to be added to the KREC Violations Index:

- K.S.A. 58-3036(a): an out of state (foreign) licensee is operating in Kansas without a broker cooperation agreement. A warning letter will be issued for first time violations.

- K.S.A. 58-3077: a supervising broker fails to submit a copy of a broker cooperation agreement to the Commission within five days. A warning letter will be issued for first time violations.
- K.S.A. 58-3062(c)(1): a supervising broker compensates an affiliated licensee for activity conducted while the licensee was expired. A warning letter will be issued for first time violations.

Motion was made by Mr. Wuertz, seconded by Ms. O'Brien, to approve the revisions to the index. Motion carried unanimously.

Application Approval Guideline Update

Ms. White presented proposed revisions to the guidelines allowing applications to be approved by licensing staff. Motion was made by Mr. Vaught, seconded by Mr. Wuertz, to approve the revised guidelines.

Licensee, Education and Exam Report

Ms. White informed the Commission there were 16,147 licensees as of May 1, 2018, this is up 817 since last year.

Staff approved five elective courses in April.

In FY2018, there have been 2,599 exams administered with an overall pass rate of 67%. 53 brokers and 367 salespersons were tested by equivalent requirements, brokers had a 94% pass rate, and salespersons had an 89% pass rate.

Director's Report

FY2018 real estate fee fund receipts are \$1,012,612. This is 8% above estimates. Additional gains should be seen in May and June as the transfer to the state general fund has been met. Real estate fee fund expenditures for FY2018 are \$837,452. This is 4% or \$44,794 less than estimated.

The real estate fee fund balance is currently \$772,241 which is up \$303,133 from July 1, 2017. Background investigation fee fund receipts for FY2018 are \$106,040 which is 5% above estimates. Real estate recovery fund receipts for FY2018 are \$6,492 and the balance in the fund is at \$258,745.

Mr. Wisner provided an update on HB 2494. The bill would define "rebates" in real estate transactions and allow them in Kansas if they were disclosed. A hearing on the bill occurred in the House Commerce and Economic Development committee. The committee did not work the bill. An amended version (SB 435) was introduced in the Senate Commerce committee that included recommended changes to the bill proposed by KREC on the House side. The bill did not receive a hearing. The Commission requested an opinion from the Attorney General's office regarding rebates on February 19, 2018. The opinion is expected in late May.

Mr. Wisner also provided an update on HB 2386. The bill would require licensing boards to only consider criminal history of applicants that are directly related to protecting general welfare and responsibilities of the occupation. Several boards and commissions have proposed revisions to make the bill more applicable including exempting certain boards from these requirements. It passed both the House and Senate by wide margins. The bill was reconciled in conference committee and a provision was included that exempted the

Commission from the bill along with several other boards and commissions. Since the Commission is exempt from the legislation this will have no impact.

Mr. Wisner provided a summary of HB 2280, the Rules and Regulations Filing Act. The bill would make changes to the requirements related to economic impact statement included with all new regulations or amendments. The bill would also require proposed regulations be approved by the Director of the Budget along with existing requirements for approval by the Secretary of Administration and the Attorney General. This was signed by the Governor. Effective June 7, 2018, regulation changes will go first to Division of Budget for any fiscal considerations, then to the Department of Administration and Attorney General's office for review. This may delay the review process for these regulations required prior to setting a date for a public hearing.

Adjournment

Mr. Schlosser adjourned the meeting at 11:36 a.m.