

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 April 16, 2018

The Kansas Real Estate Commission held its regular meeting on Monday, April 16, 2018, at 9:00 a.m. at Jayhawk Tower, 700 S.W. Jackson Street, Suite 404, Topeka, Kansas 66603.

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

Kansas Real Estate Commission Legal Counsel:

Sarah Fertig, Assistant Attorney General
Jane Weiler, Assistant Attorney General

Members of the Public:

Mark Barker
Larry Rickard

Call to Order

Mr. Vaught called the meeting to order at 9:06 a.m.

Approval of the Minutes of the February 19, 2018 Meeting

Motion was made by Mr. Wuertz, seconded by Ms. O'Brien, to approve the minutes from the February 19, 2018 meeting. Motion carried unanimously.

Conference Hearing of Timothy Ewald Docket No. 18-6662

Mr. Schlosser recessed the KOMA meeting at 9:50 a.m.
Mr. Schlosser reconvened the KOMA meeting at 9:53 a.m.

Conference Hearing of Jane Schell Docket No. 18-6967

Mr. Schlosser recessed the KOMA meeting at 10:25 a.m.
Mr. Schlosser reconvened the KOMA meeting at 10:49 a.m.

Licensing Business Process Changes

Mr. Wisner presented several proposed changes to update statutes, regulations and policies to modernize business processes and simplify them for licensees.

- Change the license expiration date from a renewal period based on the first letter of a licensee's last name to the last day of the month of issuance, two years after the issue date. Ms. Fertig noted K.S.A. 58-3045(a) states a license shall expire not more than two years from the date of issuance. The license would need to expire the last day of the month before the day of issuance. Changes to the expiration date would require revisions to K.A.R. 86-1-3 and the repeal of K.A.R. 86-1-15. Motion was made by Mr. Schlosser, seconded by Mr. Vaught, for staff to proceed with a draft of revisions to K.A.R. 86-1-3. Motion carried unanimously.
- Remove references to "Renewal Date", this will also eliminate the late fee for failing to renew 30 days prior to the expiration date. This change will require revisions to K.S.A. 58-3045(b), K.S.A. 3046a(e), K.A.R. 86-1-17(c)(1) and (d)(1). Motion was made by Mr. Vaught, seconded by Ms. Wenger to proceed with a draft of revisions for these statutes and regulations. Motion carried unanimously.
- Increase the late fee from \$50 to \$100. This change will require revisions to K.S.A. 58-3045(c). Motion by Mr. Vaught, seconded by Mr. Wuertz, to proceed with a draft of revisions for this statute. Motion carries unanimously.
- Increase license application fees. The current fee for both brokers and salespersons is \$15. The cap established by statute is \$25 for a salesperson and \$50 for a broker. Increasing the fee up to the cap would require revisions to K.A.R. 86-1-5. Raising the fee beyond the cap would require revisions to K.S.A. 58-3063. Motion by Mr. Wuertz, second by Mr. Schlosser, to have staff draft revisions to K.A.R. 86-1-5, increasing the broker application fee to \$50.00.
- Increase the fee to open a new office. The current fee is \$25. The cap established by statute is \$100. Raising the fee beyond the cap would require revisions to K.S.A. 58-3063. Motion by Mr. Schlosser, second by Mr. Wuertz, to have staff draft revisions to K.A.R. 86-1-5, increasing the fee to open a new office to \$100.
- Kansas law requires real estate licenses to be displayed in the primary and branch offices. The Commission will consider the company roster information obtained from the Commission's online company search page to be sufficient for display. Staff will draft a guidance document to be reviewed at the May meeting.
- Remove the requirement that limits which state a resident or non-resident broker is required to maintain their place of business. Revisions to K.S.A. 58-3060(a) would be required. Action was deferred to the May meeting in order to get some current examples of licensees who are not in compliance w/ the current requirements.

- The following changes would require revisions to K.A.R. 86-1-19 and K.A.R. 86-3-15:
 - a. Remove the requirement that licensees must notify the Commission regarding pending litigation. They would still be required to report the final court judgment or settlement.
 - b. Remove the requirement that applicants must include documentation related to criminal charges. This will allow staff discretion to determine which charges need additional information.
 - c. Eliminate the ambiguity regarding the reporting of misdemeanors. Currently it is required to report misdemeanors that reflect on honesty, integrity, trust and competence. Instead, require all misdemeanors and felonies to be disclosed on original applications and, if currently licensed, within 10 days of the occurrence.
 - d. Increase the 10-day time frame for reporting court judgments, criminal charges/convictions, name/address changes, disciplinary action or denial of a professional license. After discussion, it was decided the time frame would remain unchanged.
 - e. Add a requirement that a licensee must report to their responsible broker information required pursuant to K.A.R. 86-3-15.
- Clarify the requirements for deactivating and reactivating licenses. This will place the reactivation requirements currently listed in regulation into statute and clarify conflicting language regarding the affiliation of expired licensees in their grace periods.

Changes not specifically addressed by a motion will have sample language presented for review at a later meeting date.

Revised Open Records Policy

This agenda item was tabled until the May meeting.

Compliance Update

Ms. Alkire provided an overview of the development of a course to be utilized as a tool to educate licensees in lieu of or in addition to other disciplinary action. For example, the Commission may offer licensees the option of attending the course in lieu of fines for duplicate compliance review violations. The goal for CY2018 is to create two modules, Brokerage Relationship Basics and Broker Supervision. The pilot program launch date is anticipated to be in the first quarter of CY2019. Once the two-module program is launched, staff will move forward with creating the remaining modules.

Licensee, Education and Exam Report

Ms. White informed the Commission there were 16,094 licensees as of April 2, 2018, this is up 802 since last year.

Staff approved 12 elective courses and one mandatory course in February. Staff approved six elective courses and one mandatory course in March.

In FY2018, there have been 2,304 exams administered with an overall pass rate of 66%. 47 brokers and 315 salespersons were tested by equivalent requirements, brokers had a 96% pass rate, and salespersons had an 88% pass rate.

Ms. Nutt provided an update of the continuing education credit submission through the online licensing software. Non-compliance letters have been sent to a few vendors, but errors are decreasing.

Ms. White presented information regarding the certification of licensure for an LLC formation. Licensees apply to the Kansas Secretary of State to form an LLC. This allows the licensee's commission to be paid to the LLC, creating a tax savings. The Commission is required to certify the applicant is licensed and the proposed LLC name is acceptable. The proposed LLC name may be denied if it is too similar to an existing brokerage. The Commission does not require a licensee to provide proof of registration from the Secretary of State's office.

Director's Report

FY2018 real estate fee fund receipts are \$904,499. This is 6% above estimates. Real estate fee fund expenditures for FY2018 are \$761,749. This is 3% or \$32,273 less than estimated.

The real estate fee fund balance is currently \$741,274 which is up \$272,167 from July 1, 2017. \$167,000 of the increase is due to the net repayment of fee funds swept from the Commission in 2009. Background investigation fee fund receipts for FY2018 are \$93,803 which is 3% above estimates. Real estate recovery fund receipts for FY2018 are \$5,527 and the balance in the fund is at \$257,780.

Mr. Wisner provided an update on HB 2494/SB 435. 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 on February 12, 2018. The committee did not work the bill. The Commission requested an opinion from the Attorney General's office regarding rebates on February 19, 2018. The opinion is estimated to come back 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. The conference committee report on the bill is still pending final approval by the House.

Adjournment

Mr. Vaught adjourned the meeting at 12:58 pm