

MINUTES OF THE MEETING
Kansas Real Estate Commission
April 15, 2019

The Kansas Real Estate Commission held its regular meeting on Monday, April 15, 2019, 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 – by Telephone
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

Kansas Real Estate Commission Legal Counsel:

Jane Weiler, Assistant Attorney General
Athena Andaya, Deputy Attorney General
Charles Macheers, Assistant Attorney General

Members of the Public:

Kathy McCarty
Patrick Vogelsberg
Mark Barker
Luke Bell
Bill Sneed

Call to Order

Mr. Schlosser called the meeting to order at 9:02 a.m.

Approval of the Minutes of the February 18, 2019 Meeting

Mr. Vaught made the motion, seconded by Ms. Wenger, to approve the minutes from the February 15, 2019 meeting. Motion carried unanimously.

Conference Hearing of Erin Bassi, Docket No. 19-7655

Conference Hearing of Rayshon Hughes, Docket No. 19-7605

Mr. Schlosser recessed the KOMA meeting at 9:41 a.m.
Mr. Schlosser reconvened the KOMA meeting at 10:05 a.m.

Review of the Gifts and Gratuities Guidelines

The Commission reviewed the current guidelines for gifts and gratuities adopted in August 2016 in response to the Attorney General's opinion on unlawful rebates. The guidelines related to possible unlawful rebates differ from the Attorney General's opinion, however, that opinion relies on a specific set of facts not applicable in all situations. The Commission decided to take no action.

Advertising Regulations

The Commission reviewed advertising issues related to individuals and teams under a supervising broker. Mr. Wisner presented a proposed advertising regulation based on past discussions from Commission meetings and input from industry. The only modifications to previous versions of the proposed language is to establish a definition of "advertisement" and to allow the Commission to consider the context of the advertisement. The latter change is to address concerns among some industry members about prominence issues on yard signs compared to websites or other social media. Mr. Wisner recommends delaying approval of the regulation until the rest of the proposed regulation changes related to SB 60 are ready for review at the next meeting. This will also provide time for further comment by industry members. By consensus, the Commission decided to delay approval of the proposed regulation until the next meeting in June.

SB 60 After Action

Governor Kelly signed Senate Bill 60, which makes several changes to licensing changes statutes, on April 11, 2019. These changes will go into effect July 1, 2019. The changes require the Commission to make several regulatory updates and review current licensing procedures.

Staff will need to make updates to the application approval guidelines because the "look back" period for experience required for a broker's license changed from two out of the last three to two out of the last five years prior to application. Mr. Wisner asked the Commission if they wanted to include implementing a recommendation from the Broker Experience Task Force to codify a broker experience point system. Mr. Wisner presented examples of point systems from other jurisdictions. Staff will present a revised application approval guideline that could include a modified point system for review at the next commission meeting. Counsel and staff will also review precedent for granting a broker's license to a licensed attorney regardless of prior real estate transactions or experience.

Senate Bill 60 increased the "Broker Pre License Course", from 24 hours to at least 30 hours and renamed the course the "Kansas Real Estate Fundamentals Course" on July 1, 2019. SB 60 also establishes a new broker prelicense course titled "Kansas Real Estate Management Course." These changes require amendments to K.A.R. 86-1-11 to match the statutory change. Counsel advised the commission to proceed with a temporary regulation. Ms. Wenger made the motion, seconded by Mr. Vaught to amend K.A.R. 86-1-11, subsections (b) and (d) to match the statutory language in Senate Bill 60. Motion carried unanimously. Staff was granted approval to make any changes to the language requested by the Department of Administration or the Attorney General's office during their review of the temporary regulation.

The Commission determined if a broker took the 24 hour broker pre license course prior to July 1, 2019 but did not submit a complete application until after July 1, 2019, the application would be incomplete. In this scenario

the applicant would need to complete a supplementary six-hour course. Mr. Vaught made the motion, seconded by Ms. O'Brien, to approve a supplementary six-hour course for those applicants who completed the 24-hour course prior to July 1, 2019 but apply for licensure on or after July 1, 2019. Motion carried unanimously.

Staff will have the regulatory revisions ready for review at the next Commission meeting in June.

Mr. Wisner provided outlines for the Broker Fundamentals Course and the Broker Management Course for review. Mr. Wuertz made the motion, seconded by Mr. Vaught to approve the outlines. Motion carried unanimously.

Mr. Schlosser recessed the KOMA meeting at 12:22 p.m.
Mr. Schlosser reconvened the KOMA meeting at 12:45 p.m.

Violations Index

Based on discussions between Commission staff, Commission members on I-Team and Disciplinary Counsel there is concern about staff drafting administrative orders without first consulting with any Commission members on I-Team. This occurs when the violations index refers to standard discipline that requires an order. Staff asked for guidance from the Commission on changes to the document. By consensus, the Commission delayed deliberation on this subject until the I-Team could do a thorough review.

Licensee, Education and Exam Report

Ms. White reviewed the new Applicant Status Report as of February 5, 2019. The Commission has 264 pending applications (65 salesperson, 20 broker and 179 fingerprint-only files).

As of April 1, 2019, there are 16,699 licensees, an increase of 602 over last year, and 709 expired-renewable licensees.

Ms. White presented a revised outline for the four-hour Kansas law course, the broker course taken when applicants are applying under equivalent requirements. Ms. Wenger made the motion, seconded by Mr. Wuertz to approve the revised outline. Motion carried unanimously.

Ms. White provided an overview of the testing results before and after changes to the cut score for the broker exam.

Staff approved three mandatory continuing education courses and 27 elective continuing education courses between February 1, 2019 and March 30, 2019.

In FY2019, Pearson administered 2,276 exams with an overall pass rate of 64%. 27 brokers and 358 salespersons tested by equivalent requirements. Brokers had a 63% pass rate, and salespersons had a 90% pass rate.

Compliance Report

Ms. Alkire reviewed the status of open legal cases. The oldest complaint pending review (non-litigation) is from May 21, 2018. The oldest disciplinary file pending staff review is from February 19, 2018. The oldest disciplinary file pending review by the attorney general's staff is from May 7, 2018.

Staff completed 297 compliance reviews in FY2019. There is currently a nine-month turnaround time for compliance review results.

Ms. Alkire presented a violation seen by the auditors recently regarding K.S.A. 58-3078a. The statute requires specific language to be included in residential purchase contracts on how consumers can obtain information on sexually violated offenders from the KBI website. Certain purchase contracts from the Kansas City Regional Association of Realtors list a different web address than the one in the statute. The Commission has decided to issue a warning letter for these violations and reach out to the KCRAR to have the contract forms updated to reflect the required statutory language.

Director's Report

Real estate fee fund receipts are \$905,487. This is 2% above estimates. Real estate fee fund expenditures for FY2019 are \$771,328. This is 3% or \$35,126 higher than estimated.

The real estate fee fund balance currently stands at \$889,968 up \$77,281 from July 1, 2018. Background investigation fee fund receipts for FY2019 are \$91,428 which is 2% lower than estimated. Real estate recovery fund receipts for FY2019 are \$77,503 and the balance in the fund is at \$299,753.

The House and Senate gave initial approval to the Commission's overall budget. This includes increased expenditure authority of \$33,000 annually to absorb credit card convenience fees.

Executive Session

Mr. Vaught made the motion, seconded by Ms. Wenger, to recess into executive session to K.S.A. 2018 Supp. 75-4319(b)(2) for consultation with counsel, Athena Andaya, Deputy Attorney General, Charles Macheers, Assistant Attorney General, and Jane Weiler, Assistant Attorney General to seek legal advice on a matter protected by the attorney-client privilege related to internal procedures and statutory compliance. The Open meeting would resume at 2:10 p.m.

Mr. Schlosser recessed for executive session at 1:55 p.m.
Mr. Schlosser reconvened the KOMA meeting at 2:10 p.m.

Mr. Vaught made the motion, seconded by Ms. Wenger, to recess into executive session to discuss and evaluate an individual employee's performance pursuant to the non-elect personnel matter exception in K.S.A. 2018 Supp. 75-4319(b)(1). The Open meeting would resume at 2:17 p.m.

Mr. Schlosser recessed for executive session at 2:11 p.m.
Mr. Schlosser reconvened the KOMA meeting at 2:21 p.m.

Adjournment

Mr. Schlosser adjourned the meeting at 2:21 p.m.

Attest: June 17, 2019


Bryon Schlosser, Chairperson


Joe Vaught, Vice-Chairperson


Errol Wuertz


Sue Wenger


Connie O'Brien