

MINUTES OF THE MEETING
Kansas Real Estate Commission
August 28, 2017

The Kansas Real Estate Commission held its regular meeting on Monday, August 28, 2017, 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
Wendy Alkire, Compliance Director

Kansas Real Estate Commission Legal Counsel:

Sarah Fertig, Assistant Attorney General
Tom Nanney, Assistant Attorney General

Members of the Public:

Patrick Vogelsberg
William Sneed
C.B. Starks
Larry Lloyd

Call to Order

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

Approval of the Minutes of the June 19, 2017 Meeting

Motion was made by Ms. Wenger, seconded by Mr. Vaught, to approve the minutes from the June 19, 2017 meeting. Motion carried unanimously.

Conference Hearing of Ted Ihde, Docket No. 17-6195

Conference Hearing of Julia Paluka, Docket No. 17-6175

Mr. Schlosser recessed the KOMA meeting at 11:02 a.m.

Mr. Schlosser reconvened the KOMA meeting at 11:28 a.m.

Conference Hearing of Brent Voepel, Docket No. 17-6318

Mr. Schlosser recessed the KOMA meeting at 11:55 a.m.
Mr. Schlosser reconvened the KOMA meeting at 12:03 p.m.

Attorney-Client Executive Session

Mr. Vaught moved the Commission enter into executive session for consultation with counsel regarding potential litigation, seconded by Ms. Wenger. The meeting was to reconvene in 30 minutes.

The Commission entered into executive session at 12:03 p.m.
The Commission exited executive session at 12:35 p.m.

Mr. Schlosser moved the Commission continue the executive session, seconded by Mr. Vaught. The meeting was to reconvene in 20 minutes.

The commission re-entered executive session at 12:35 p.m.
The meeting reconvened at 12:55 p.m.

Conference Hearing of Robert Jewell, Docket No. 17-6316

Mr. Schlosser recessed the KOMA meeting at 1:10 p.m.
Mr. Schlosser reconvened the KOMA meeting at 1:18 p.m.

Team Advertisement Requirements-Proposed Statutory Change

A draft of the statute regulating advertising by real estate teams was presented to the Commission. The language originated from staff research into requirements on team advertising in other states. Since the June meeting, at least two states have adopted regulations or statutes to regulate team advertisement. Mr. Wisner also provided a report discussing the motivation for creating a team. Staff will work on incorporating revisions suggested by the Commission. Mr. Wisner indicated he would informally disburse the revised draft to industry members for comment.

Conference Hearing of Sandie Ghilino, Docket No. 17-6320

Mr. Schlosser recessed the KOMA meeting at 2:06 p.m.
Mr. Schlosser reconvened the KOMA meeting at 2:21 p.m.

Possible reconsideration of K.A.R. 86-3-32 (Rebates)

Mr. Schlosser moved to adopt regulation K.A.R. 86-3-32 as proposed. The motion was seconded by Mr. Vaught. USAA offered revisions to the proposed regulation, eliminating language from the proposed regulation stating gift cards are considered to be equivalent to cash. Remarks were made by William Sneed and C.B. Starks of USAA regarding these revisions. Patrick Vogelsberg of the

Kansas Association of Realtors (KAR) offered remarks regarding the proposed regulation, stating the Commission's proposed regulation is sufficient and supported by KAR. Ms. Fertig noted what seems to have caused some interested parties to object is the attempt to further define the common understanding of rebate. In the absence of statutory or regulatory definition, the dictionary definition must stand. Ms. Wenger commented this is an important issue, there needs to be some type of definition, and that may mean a statutory change to get the necessary clarification.

Mr. Wuertz moved to amend the earlier motion and table the issue until the October Commission meeting to give Ms. Fertig time to re-work the proposed language and to develop a possible statutory language for the Commission to consider. The motion was seconded by Ms. Wenger. Motion carried unanimously.

Seller Property Disclosure – Proposed Statutory Change

Ms. Fertig presented proposed language for a statutory change to the minimum requirements for a seller or landlord's agent (K.S.A. 58-30,106). The proposed change requires either a written disclosure statement of the real property's condition to the best of the seller's knowledge or a statement that the seller is selling the property as-is. The language also included a subsection exempting the federal government from this requirement. Ms. Fertig will incorporate comments from the Commission regarding commercial transactions, issues arising from sellers refusing to sign a disclosure, or sellers who are unaware of defects or history of a property into a revised draft for the October meeting. She will also develop an alternative standalone statute like the radon disclosure in K.S.A. 58-3078 for the Commission to consider.

Broker Experience Task Force Update

The Commission discussed the development of a Broker Experience Task Force to review the requirements for broker applications and education requirements. Mr. Schlosser appointed Ms. Wenger and Mr. Wuertz to lead the task force, with one staff member, the executive director, Ms. Fertig, one industry member from each congressional district supplied by each Commission member and one industry member submitted by KAR.

FY2017 Legal Action Summary

The number of fines imposed continues to decrease. The number of commission directives has increased dramatically with a correlating increase in temporary suspensions due to a failure to respond. The backlog of files pending legal review has been significantly reduced following the implementation of commission directives for those files. Staff has been receiving positive feedback regarding the implementation of the commission directives. There is an increase in "other" violations due to staff beginning to track pending civil litigation cases involving licensees. The rise in the number of "Lack of HITC" violations corresponds to the increase in salespersons license applications.

Licensee, Education and Exam Report

Ms. White informed the Commission there were 15,470 licensees in July, this was down 36 compared to June. There were 15,626 licensees in August, which is an increase of 886 over August of 2016.

Staff approved two pre-license courses and six elective courses for June, and 10 elective courses for July.

In June, there were 257 exams taken with an overall pass rate of 60%. There were 10 broker exams with a pass rate of 70%, and 247 salesperson exams with a pass rate of 60%. Three brokers and 39 salespersons tested by waiver for equivalent requirements.

In July, there were 244 exams taken with an overall pass rate of 59%. There were nine broker exams with a pass rate of 67%, and 235 salespersons exams with a pass rate of 58%. Two brokers and 30 salespersons tested by waiver for equivalent requirements.

In FY2017, there were 3,009 exams administered with an overall pass rate of 67%. 47 brokers and 481 salespersons tested by equivalent requirements, brokers had a 100% pass rate, and salespersons had an 86% pass rate. In a comparison of FY2017, FY2016 and FY2015 the pass rate is about 70% for both tests.

Ms. White provided a report showing the rates of issuance for salespersons licenses for FY2014 through FY2017. There has been a steady increase over the last four years. The months with the highest number of licenses issued are March, April and May.

A meeting is scheduled with PearsonVue for August 29-30 to review standard setting in relation to exam scores. A webinar is scheduled with providers for September 14 to demonstrate how continuing education courses will be submitted to the new MLO database.

Over the last few months, staff has monitored several courses. Staff is trying to review a mix of courses including in-person, online and hybrid courses. In the future, pre-license courses will also be reviewed. The course evaluation form was provided to the Commission for review. It was based off of ARELLO and other state resources regarding the evaluation of real estate courses and student evaluations. If the review finds the course does not match what was approved by the Commission, a directive will be sent requesting a response to the findings and asking if they wish to revise their course content if deficient.

Director's Report

FY 2017 real estate fee fund receipts are \$1,017,310. This is 3% above estimates, 15% higher than last fiscal year and 18% higher than FY 2015. This is the highest amount of revenue collected since at least 2008. FY 2017 expenditures, excluding encumbrances, are \$1,028,075. This is 1% less than approved expenditure limits. Most office and move related expenditures were paid using FY 2017 funds.

The Commission fee fund balance was \$468,958; this is up \$20,000 from July 1, 2016. The overage is a result of higher than anticipated revenues in FY 2017. Background investigation fee fund receipts were \$125,155, which is 14% above estimates and 14% above FY 2016 revenue. That ties directly to the number of applicants. The Real Estate Recovery Fund receipts were \$21,451 and the balance of the fund was at \$262,353.

The Commission will need to submit a realigned budget estimate for FY18 and 19 using approved amounts from the totals approved by the 2017 Legislature by September 15, 2017. Adjustments will include reducing projected expenditures on capital outlay (due to moving up the purchases to FY2017) and increasing projected expenditures on salaries, travel and professional development. There is no plan to request an enhancement but the Commission may have to make an adjustment to either revenues or expenditures after FY2019 due to the repayment of the money swept from the agency fee fund in 2009 (approximately \$167,000).

Mr. Wisner provided an overview of potential occupational licensing legislation. FTC scrutiny has increased. There has been a significant move towards reducing the focus on past criminal history when reviewing someone's application for an occupational license.

Mr. Wisner advised the Attorney General's office has not yet provided feedback on changes to proposed education regulations and several other regulations that adopted required forms by reference.

Mr. Wisner provided information on a complaint from Alan Howard, a licensee, regarding Commission approval of a trade name. Mr. Howard operates the company Results Realty, LLC in Haven, Kansas. Commission staff approved the name Results Realty, LLC for use by Linda Ludes in Great Bend, Kansas. The name was approved by historical precedent as it was outside the same marketing area. There is no definition for "marketing area" in the law, so staff has deferred to U.S. census statistical areas. In this case, Barton County and Reno County are in two different areas. Mr. Howard has disagreed with this determination because he feels both companies are in the same marketing area and he is looking to expand his business into the Barton County area in the future. Mr. Howard wanted to appeal this decision. Mr. Howard has no claim or "appeal" rights in this situation. The Commission has no authority to deny a company name to protect another company's business. Mr. Howard was advised to seek legal counsel.

Mr. Wisner presented the FY2018 contract for legal services from the Attorney General's office. The only change is a 2.5% increase in cost.

The May 21, 2018 meeting will be held in the KCRAR Conference Room in Leawood, Kansas.

Adjournment

Mr. Schlosser adjourned the meeting at 4:04 p.m.

Attest: _____

Bryon Schlosser, Chairperson

Joe Vaught, Vice-Chairperson

Errol Wuertz

Sue Wenger

Connie O'Brien