

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 December 17, 2018

The Kansas Real Estate Commission held its regular meeting on Monday, December 17, 2018, at 9:00 a.m. at the 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

Members of the Public:

Mark Barker
Patrick Vogelsberg
William Sneed
Kathy McCarty

Call to Order

Mr. Schlosser called the meeting to order at 9:03 a.m.

Approval of the Minutes of the November 19, 2018 Meeting

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

Conference Hearing of Kirandeep Singh, Docket No. 19-7358

Conference Hearing of Tri Minh Nguyen, Docket No. 19-7359

Mr. Schlosser recessed the KOMA meeting at 10:08 a.m.
Mr. Schlosser reconvened the KOMA meeting at 10:18 a.m.

Attorney General Opinion 2018-17

The opinion of the Attorney General regarding rebates was received by the Commission on December 12, 2018. The opinion stated a licensee does not violate K.S.A. 2018 Supp. 58-3062(a)(3) or (4) when a portion of the commission or fee paid to the licensee is used to purchase a gift card that is conveyed to the licensee's client, provided the proceeds of the gift card do not reduce the amount of commission, fee or purchase price paid by the licensee's client.

Ms. Andaya discussed the ramifications of the Attorney General's opinion and suggested if the Commission wanted a more enforceable action on the issue, a legislative change would be an option.

Motion was made by Mr. Wuertz, seconded by Mr. Vaught, to move forward with the introduction of legislation to define rebate as it appeared in the Commission proposed regulation from 2017 that was used as the basis of the rebate definition contained in 2018 Senate Bill 435. Motion carried unanimously.

Advertising Requirements

At the November 18, 2018 meeting, the Commission reviewed recommendations from the Kansas Association of Realtors (KAR) task force on advertising. KAR recommended the broker's name on an advertisement be at least 50% of the size of the individual or team name and any legislation have a delayed effective date of one year after enactment. After seeing examples of non-compliant advertisements, the Commission had further concerns regarding the brokerage name not being located adjacent to the individual or team name in many of the examples.

The Commission reviewed the requested statutory revisions incorporating the recommendations from Kansas Association of Realtors and adding language regarding proximity of the broker's name to that of the individual or team name. Mr. Wisner also addressed concerns regarding the use of the phrase "trade or business name" in the current advertising statute and how it correlates to the information registered with the Commission.

After discussion, it was decided Commission staff will work with counsel on drafting a regulation incorporating language from the proposed statutory change. Staff will also look at reconciling the term "trade or business name" with current licensing registration requirements.

Mr. Schlosser recessed the KOMA meeting at 11:48 a.m.
Mr. Schlosser reconvened the KOMA meeting at 11:59 a.m.

Licensee, Education and Exam Report

Ms. White reviewed the new Applicant Status Report. As of December 3, 2018, there were 316 pending applications. There were 57 salesperson applications, 10 broker applications, and 249 fingerprint-only files.

There was a total of 16,533 licensees as of December 3, 2018. There were 457 expired but renewable licensees.

Since the last Commission meeting, staff approved one elective course.

In FY2019, there have been 1,254 exams administered with an overall pass rate of 63%. 16 brokers and 168 salespersons were tested by equivalent requirements, brokers had a 73% pass rate, and salespersons had an 92% pass rate.

Ms. White presented a draft of a Misdemeanor or Felony Offense Report Form for review.

Ms. Nutt provided information regarding the Continuing Education Survey Results.

Compliance Report

Ms. Alkire reviewed the status of legal cases. The oldest complaint pending review (non-litigation) is December 13, 2017, the oldest disciplinary file pending staff review is March 5, 2018, and the oldest disciplinary file pending review by the attorney general's office is January 18, 2018.

As of December 6, 2018, 370 compliance reviews have been completed in FY2019, an additional 110 brokers were contacted but had no records. There is currently a ten month turn around time for compliance review results.

Ms. Alkire provided an update on the development of the disciplinary continuing education course. The first two modules, broker supervision and an overview of BRRETA, are nearly completed for preliminary review.

Director's Report

FY2019 real estate fee fund receipts are \$522,793. This is 3% above estimates. Real estate fee fund expenditures for FY2019 are \$407,414. This is 3% or \$27,065 lower than estimated. There are still several one-time payments pending.

The real estate fee fund balance is currently \$871,607 which is up \$58,919 from July 1, 2018. Background investigation fee fund receipts for FY2019 are \$51,576 which is 1% higher than estimated. Real estate recovery fund receipts for FY2019 are \$73,644 and the balance in the fund is at \$334,600. This is a significantly higher balance than normal due to a \$67,000 transfer of unobligated earnest money from a large brokerage's trust account.

Licensing business process statute changes approved at the November meeting have been sent to the Revisor's Office.

Regulations approved at the last meeting will go into effect on December 21, 2018.

Mr. Wisner requested the Commission consider two requests for delegation of authority to deal with questions and policy matters that may arise during the 2019 legislative session.

Motion by Mr. Vaught, seconded by Ms. Wenger, “that the Commission designate and delegate to the Executive Director its authority to provide testimony to the Legislature or answers to Legislators or Legislative Committees, during the 2019 Legislative Session, on policies decided by the Kansas Real Estate Commission and that the Executive Director is required to notify the Commission of the testimony or answers at the next meeting.” Motion carried unanimously

Motion by Mr. Vaught, seconded by Ms. Wenger, “that the Commission designate and delegate to the Chairperson, or the Vice Chairperson in the absence of the Chairperson, its authority to provide testimony or answers to Legislators or Legislative Committees, during the 2019 Legislative Session, on policies that have not been finally determined by the Commission but requires an immediate response by the Commission to the requestor. Any testimony or answers to Legislators or Legislative Committees from the Chairperson, or the Vice Chairperson as the case may be, may be conveyed through the Executive Director. Further, I move that the Chairperson, or the Vice Chairperson as the case may be, is required to notify the Commission of the testimony or answers at the next meeting, whether at a special meeting or at the regularly scheduled meeting. If the Commission approves of the testimony or answers provided, the Chairperson, or the Vice Chairperson shall obtain ratification by the Commission. If the Commission disapproves of the testimony or answers provided, the Chairperson, or the Vice Chairperson shall immediately withdraw the prior testimony or answers and shall provide the requestor with the Commission’s approved policy.” Motion carried unanimously.

Adjournment

Mr. Schlosser adjourned the meeting at 12:40 p.m.

Attest: _____

Bryon Schlosser, Chairperson

Joe Vaught, Vice-Chairperson

Errol Wuertz

Sue Wenger

Connie O'Brien