

MINUTES OF THE MEETING
Kansas Real Estate Commission
February 15, 2016

The Kansas Real Estate Commission held its regular meeting on Monday, February 15, 2016 at 9:00 a.m. at Three Townsite Plaza, Suite 200, 120 SE 6th Avenue, Topeka, KS 66603.

Commissioners Present:

Sue Wenger, Chairperson
Joseph Vaught, Vice Chairperson
Errol Wuertz, Member
Bryon Schlosser, Member
Shirley Cook, Member

Staff Present:

Erik Wisner, Executive Director
Kelly White, Director of Licensing and Education
Wendy Alkire, Compliance Supervisor
Stacey Serra, Legal Assistant
Amber Nutt, Education Specialist
Richard Ford, Investigator

Kansas Real Estate Commission Legal Counsel:

Sarah Fertig, Assistant Attorney General
Lisa Mendoza, Assistant Attorney General

Members of the Public:

Mark Barker, Career Education Systems
Steve Kornspan, HomeSPOT

Call to Order

Ms. Wenger called the KOMA meeting to order at 9:01 a.m.

Additions to the Agenda

Directors Report--House Bill 2677.

Procedures for notifying supervising brokers when an affiliated salesperson is issued a broker license.

Approval of the Minutes of the December 21, 2015 Meeting

Motion was made by Mr. Schlosser, seconded by Mr. Wuertz, to approve the minutes from the December 21, 2015 meeting. Motion carried unanimously.

Conference Hearing in the Matter of Michael Snyder, Docket No. 16-5560
Conference Hearing in the Matter of Michael Head, Docket No. 16-5574

Ms. Wenger recessed for a short break at 10:25 a.m.

Ms. Wenger reconvened the meeting at 10:40 a.m.

Conference Hearing in the Matter of Hannah Elder, Docket No. 16-5547

Ms. Wenger recessed the KOMA meeting at 10:55 a.m. for KAPA deliberations.

Ms. Wenger reconvened the KOMA meeting at 11:25 a.m.

I-Team Policy Changes

Mr. Wisner reviewed the policy changes recommended by the I-Team during the 2015 calendar year. Most of these changes have been formally approved by the Commission. One of the most important changes addressed the standard discipline guidelines. The Commission now allows a warning letter in lieu of an order for several minor violations. This change has increased the number of files that do not have to go to I-Team for review. At the present time, there are fewer than 40 complaints in the system. The Commission also made changes to our general correspondence to ensure the complainant knows when the investigation is completed. There have also been changes to the citing of certain violations, for example, when we can cite the broker for violations committed by the affiliated licensee. Several violations that previous went to the broker are now against the affiliated licensee. There have also been changes regarding the disclosure of interest in a property by the licensee's family. The Commission is proposing a regulation change to clarify the intent. The next I-Team meeting is set for March 2, 2016.

Mr. Wuertz questioned advertising guidelines. An agent had sent out an advertisement that did not contain her broker's name, but did contain the brokerage name. Mr. Wisner stated the I-Team would be reviewing advertising issues at their next meeting. The meeting will address the NAR guidelines and their possible incorporation into Kansas statutes and regulations.

Audit Process Overview

The Audit-By-Mail program started in fiscal year 2014 as a cost savings measure by the Commission. The process has saved the Commission approximately \$22,000 per year. The program also allows the Commission to audit brokers with offices outside the state of Kansas. Currently, 25% of supervising brokers are outside of the state of Kansas; 21% are in contiguous states.

In the Audit-By-Mail program, brokers are randomly selected by the database for audit. The broker will receive an initial audit notice to complete and return a questionnaire to the auditor, along with a transaction log for a specific time period. The log must include the transaction identification number, and the sellers' and buyers' names for the requested audit period. The auditor will request a certain number of files from the broker for audit. This number is based on the number of transactions reported by the broker. For brokers maintaining a trust account, documentation for that account must also be provided to the auditor.

After the auditor reviews the files, the broker will receive the examination report with the auditor's comments. Any violations or discrepancies noted in the broker's files or trust account will be addressed with the broker by the auditor during a telephone exit interview to discuss the findings. This is generally completed within three to four weeks after the broker submits the files to the auditor. The Commission will accept documentation addressing the violations or discrepancies noted in the exit interview for up to 30 days after the audit findings report is completed. Once the audit findings report is completed, the file is reviewed by another Commission employee for quality control. Brokers may receive discipline for violations found in the audit in the form of a warning letter, fine, continuing education, or other disciplinary action. The broker will receive notice of the disciplinary action via U.S. mail. The broker has the opportunity to request a hearing if any disciplinary action is imposed.

The most frequent violations found include:

1. Failing to obtain and keep in the transaction file a receipt from the escrow agent showing date of delivery of the purchase agreement and earnest money deposit;
2. Failing to include an accurate disclosure of the brokerage relationship as part of the contract;
3. Failing to properly assign transaction identification numbers;
4. Failing to see financial obligations and commitments between the parties to an agreement are in writing, expressing the exact agreement of the parties;
5. Failing to include radon gas language in the contract;
6. Failing to include the KBI offender registration information in the contract.

In response to Mr. Vaught's question regarding the percentage of violations found in the audit by mail program versus the in-person audits, Ms. Alkire stated there were no noticeable differences.

Approximately 50% of supervising brokers state they have no transactions for audit. Mr. Vaught asked how Commission staff verifies a company has no transactions. Ms. Alkire stated the Commission has to trust the licensee's statements. Companies stating they have no transactions are flagged in the system however. Staff will check how other states verified there were no transactions

Ms. Alkire provided the results of the recent survey regarding the audit by mail program. There was a 29% response rate and the overall results were very positive.

The most frequent comments were:

1. Very convenient and efficient
2. Brokers missed the in-person interaction
3. Final audit results were not received timely
4. The program has created more work and expense because the broker was responsible for sending paper files to the Commission.
5. Issues with delivery of documents electronically due to size.

Mr. Wisner explained that comments regarding delivery of the documents electronically could not be addressed at this time by the Commission. The Commission cannot provide an electronic

drop box because it is prohibited by state IT security protocols. Ideally, the improvements to the online licensing system will incorporate the ability for the broker to upload their files to our system.

Ms. Wenger recessed for lunch at 12:15 p.m.

Ms. Wenger reconvened the meeting at 12:45 p.m.

Continuing Education Regulation Review

Mr. Wisner addressed proposed changes to the Continuing Education Regulation. Due to proposed regulatory changes in distance education requirements, new definitions addressing the difference between live courses, online distance education courses and correspondence distance courses have been added. Self-regulating language has been removed. The current process for course renewal seems cumbersome and outdated. The only time a course renewal is reviewed in any detail is when the course outlines change. Proposed changes would eliminate the need for schools to go through the renewal process. Currently, course outlines do not change often; however, the proposed regulation change would require the salesperson and broker core class to change more frequently. The required broker core class would be eliminated. The Commission consensus was to proceed with the proposed revisions.

License, Education and Exam Report

Ms. White informed the Commission there were 14,165 licensees in January and 14,308 in February, an increase of 260 licensees. Our highest number of licensees in recent months was in November at 14,416.

In December, staff approved nine new elective courses and one new school. In January, staff approved three elective courses, two mandatory courses, two pre-license courses and two new schools.

Ms. White presented the exam performance for brokers and salespersons broken down by fiscal year. Fiscal year 2016 was included through January 2016. Overall, brokers had a pass rate of 79% in 2014, 81% in 2015 and 57% so far in 2016. Salespersons had a pass rate of 71% in 2014, 72% in 2015 and 69% so far in 2016

Ms. White advised the Commission that exam provider AMP was taken over by PSI. There are now only two companies that administer pre-license exams, PSI and Pearson Vue.

Directors Report

Budget

Mr. Wisner informed the Commission revenue and expenditure numbers are being reviewed for errors in coding and fund management. This should be completed by the end of February. The March report will include accurate and up-to-date revenue and expenditure estimates. Mr. Wisner advised he did have general numbers. Expenditures were at \$513,000, 10% lower than estimated. Revenues were at \$609,000, which is on pace with estimates. The Real Estate Fee Fund balance is \$398,804. This is \$38,000 higher than July 1, 2015. The Background fee fund is at \$60,000 so far this year, which is on pace with estimates. The recovery fund is at \$234,000,

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but there is a \$10,000 deposit that is not reflected. When the recovery fund hits \$250,000, the Commission can spend money out of that fund for licensee education. Mr. Wisner doubts it will be available in FY 2016 but could be in FY 2017.

IT Issues

Mr. Wisner advised enhancements to the proposed online licensing systems are continuing. The Commission's current developer and another company, System Automation, are submitting quotes for these enhancements. System Automation has developed a real estate module for another entity and the previous fee structure has also changed. Several functions are now handled by the state instead of the vendor. Mr. Wisner will have an update in March.

The website has a tentative go-live date of March 25, 2016.

The electronic document management project was closed out on January 28, 2016, six months behind schedule. The total cost for the system was \$87,000, primarily paid out of the Recovery Fund. The current backlog on scanning is approximately six months.

Other Issues

Mr. Wisner advised as part of the contract with Pearson, staff will be reviewing the salesperson and broker licensing exams. The Commission will be soliciting licensee volunteers to assist in the process.

The bill addressing nonresident licensing passed out of committee on February 9, 2016, with no comments. Mr. Wisner anticipates this will be on the Senate floor early next week.

HB2677 limits the ability of the Commission to deny licensure solely on felony convictions not directly related to the industry and restricts the background check until all qualifications have been reviewed. The Commission would not be able to consider any charges resulting in diversion. This bill is set for a hearing tomorrow. The language in the bill would conflict with current statutes directing the commission. By general consensus the Commission directed Mr. Wisner to submit neutral written testimony.

Agenda Addition

Mr. Schlosser requested clarification on the process for notifying a supervising broker that an affiliated licensee has received their broker's license. One of his affiliated licensees had recently received his broker's license and opened his own company. Mr. Schlosser had not received notification of his new company. Ms. White is going to review the paperwork to determine why Mr. Schlosser did not receive notification.

Adjournment

Ms. Wenger adjourned the meeting at 2:00 p.m.

Upcoming Commission Meeting Dates

March 21, 2016