

## MINUTES OF MEETING

### Kansas Real Estate Commission

February 14, 2013

The Kansas Real Estate Commission held its regular meeting on Thursday, February 14, 2013 at 9:00 a.m. by telephone conference call at Three Townsite Plaza, Suite 200, 120 S.E. 6<sup>th</sup> Avenue, Topeka, Kansas.

**Commissioners Present:**

Kathy Copeland, Member  
Tim Holt, Member  
Marilyn Bittenbender, Member  
Errol Wuertz, Member  
Shirley Cook, Member

**Staff Present:**

Sherry Diel, Executive Director  
Kelly White, Director of Licensing & Education  
David Pierce, Director of Enforcement  
Alexandra Blasi, Attorney  
Laurel McGinnis, Legal Assistant

**Kansas Real Estate Commission Legal Counsel Present:**

Sarah Fertig, Deputy Attorney General

**Members of the Public Present:**

Raul Guevara  
Maria Guevara  
Richard Benson  
Sherry McGowan

**Call to Order**

Ms. Copeland called the meeting to order at 9:05 a.m.

**Approval of Minutes**

Motion was made by Mr. Wuertz, seconded by Mr. Holt by to approve the minutes of the January 15, 2013 meeting. Motion carried unanimously.

Motion was made by Mr. Holt, seconded by Mr. Wuertz to declare an Executive Session for five minutes to discuss an attorney-client privileged matter. The Commissioners, Ms. Diel and Ms. Fertig were present for the executive session.

Ms. Copeland reconvened the meeting at 9:22 a.m. The Commissioners gave Ms. Diel authority to sign an Order Nunc Pro Tunc *In the Matter of Raul Guevara*, Docket No. 3830.

**Consider request from Raul Guevara to change his supervising broker – Docket No. 3830**

After review and discussion, motion was made by Ms. Bittenbender, seconded by Mr. Wuertz to approve Mr. Guevara's request to change his supervising broker to Robert Brackney contingent upon his entering into a Consent Agreement and Final Order modifying the restriction on his license to change his supervising broker to Robert Brackney at 1 Source Real Estate, Inc. and if Mr. Guevara should want to change his supervising broker requiring him to petition the Commission for approval. Motion carried unanimously.

**Consider request from Patsy Lou Bouckhout to change her supervising broker – Docket No. 2961**

After review and discussion, motion was made by Mr. Holt, seconded by Ms. Cook to approve modifying the restriction on Ms. Bouckhout's license to change her supervising broker to Bess Athan at Mid-America Referral Network. Motion carried unanimously.

**Consider request from Kathryn (Lask) Brussel to changer her supervising broker or lift the restriction on her license – Docket No. 3534**

The Commissioners received an additional request from Ms. Brussel to lift the associate broker restriction on her license. After review and discussion, motion was made by Mr. Holt, seconded by Ms. Bittenbender to deny Ms. Brussel's request to lift the restriction that she practice as an associate broker and to approve modifying the restriction on her license to change her branch broker to Susan Kitzsteiner, Reece and Nichols Realtors, Inc. Motion carried unanimously.

**Applications for Broker's License**

**Theresa Charbonneau**

The application of Ms. Charbonneau and new office company affiliation information were presented for review by the Commission. Ms. Diel noted that two similar company names exist in the Commission's records, but both were closed in 2008. After review and discussion regarding Ms. Charbonneau residing in a county with a population of less than 20,000, the number of active supervising brokers in the county, the number of years Ms. Charbonneau had been licensed, her transaction experience, knowledge of Kansas brokerage relationships and her related experience, motion was made by Ms. Bittenbender, seconded by Mr. Holt to approve her application for a broker's license pursuant to K.S.A. 58-3039(d)(2) and to approve her company name, North Central Kansas Real Estate. Motion carried unanimously.

**James Foy**

The application of Mr. Foy was presented for review by the Commission. After review and discussion regarding the number of years Mr. Foy had been licensed, his transaction experience, knowledge of Kansas brokerage relationships and related experience, motion was made by Ms. Bittenbender, seconded by Mr. Wuertz to approve Mr. Foy's application for a broker's license. Motion carried unanimously.

**Ken Mason**

The application of Mr. Mason was presented for review by the Commission. After review and discussion regarding the number of years Mr. Mason had been licensed, his transaction experience, lack of knowledge of Kansas brokerage relationships and related experience, motion was made by Mr. Holt, seconded by Mr. Wuertz, to approve Mr. Mason's application for a broker's license subject to the condition that he complete the Salesperson/Broker Core Course within 90 days of licensure and if Mr. Mason does not timely complete the course, the Commission will refer the matter to the disciplinary committee for further action. Motion carried unanimously.

### **Applications for Renewal**

#### **Jesse Berlin**

The renewal application of Mr. Berlin, tabled from the January 15, 2013 meeting, was presented for review by the Commission. After review and discussion regarding a status report provided by Mr. Berlin at the request of the Commission, motion was made by Ms. Bittenbender, seconded by Mr. Holt to approve Mr. Berlin's application for renewal conditioned upon him providing the Commission, no less than quarterly, with updates regarding the status of his case with the IRS. The condition shall lift upon Mr. Berlin entering into an offer in compromise or other settlement agreement with the IRS. Motion carried unanimously.

#### **Lawrence West**

The renewal application of Mr. West, tabled from the January 15, 2013 meeting, was presented for review by the Commission. After review and discussion regarding receipt of correspondence and supporting documentation on February 13, 2013 regarding his application for renewal, motion was made by Mr. Holt, seconded by Mr. Wuertz to table Mr. West's application until the March meeting in order to allow the Commission adequate time to review the correspondence and documentation provided by Mr. West. Motion carried unanimously.

### **Executive Session to discuss Attorney-Client Privileged Matter**

Ms. Bittenbender declared an executive session at 9:53 a.m.

At 9:53 a.m. motion was made by Ms. Bittenbender, seconded by Mr. Holt to enter into an executive session for 30 minutes to discuss an attorney-client privileged matter. The Commissioners, Ms. Diel and Ms. Fertig were present for the executive session.

Ms. Copeland reconvened the meeting at 10:28 a.m.

Motion was made by Mr. Holt, seconded by Ms. Bittenbender to give Ms. Diel authority to enter into the consent agreements regarding the matters discussed during the executive session.

### **Staff Report on I-Team Statistics**

Ms. Diel presented the Commissioners with the monthly statistics from the I-Team meetings. Ms. Blasi commented that the report does not include statistics on audits as it did last month so that the source of disciplinary actions is more clearly reflected. Mr. Wuertz noted that a majority of the actions were related to advertising violations. Ms. Copeland asked if the majority of the advertising violations are derived from complaints. Ms. Diel responded that most advertising violations are the result of anonymous complaints or from complaints by licensees. Mr. Holt commented that agents get irritated and complain to the Commission when they notice advertising that is noncompliant. Ms. Copeland also noted that there were numerous violations regarding honesty, integrity, trustworthiness and competency. Ms. Blasi replied that honesty, integrity, trustworthiness and competency are often cited in summary proceedings order as a relevant factor and thus it appears frequently. Ms. Diel noted that the report includes license cases referred to the I-Team because of disclosure issues. Ms. Copeland thanked Ms. Blasi for the report.

**Consider Commission's 2013 Legislative Agenda**

Ms. Diel presented the Commission with an update regarding HB 2122(Technical Amendments).

Ms. Diel noted that amendments were made prior to submission of the proposed legislation to the Revisor to address the Commission's approval of continuing education providers that offer real estate curriculum because the Kansas Board of Regents does not wish to extend jurisdiction over continuing education providers.

During testimony before the House Committee on Commerce, Labor and Economic Development, Representative Brunk expressed concern regarding the new "prohibited acts" subsection added to K.S.A. 58-3062. Representative Brunk felt certain language was too broad considering the Commission's intent. Ms. Diel and Ms. Blasi drafted a balloon amendment to address the concerns. On February 13, 2014, the House Committee on Commerce, Labor and Economic Development recommended the bill be passed as amended.

Ms. Diel notified the Commissioners that HB 2125(Fee Increase) was passed out of House Committee on Commerce, Labor and Economic Development on February 13, 2013, with a recommendation that the bill be passed. Ms. Diel believes the bill will go before the House late next week, but it may take additional time given the quantity of legislation that comes before the House.

Ms. Diel notified the Commission that SB115(Radon Testing) and SB116(Referral Fees) have both been assigned to the Senate Commerce Committee but hearings have not been set.

Mr. Wuertz commented that to his knowledge neither bill appears to have much traction. Ms. Diel informed the Commission she had spoken with Senator Melcher, the person who requested introduction of the bill, and he has received numerous phone calls regarding the proposed legislation. Ms. Diel indicated that he does not appear to have any interest in pursuing either bill.

Mr. Wuertz commented that he had spoken with Representative Schwab about fee fund sweeps and the impact it has had on the Commission. Representative Schwab indicated that the Local Government Committee is working on addressing the issue. Ms. Diel commented that when she addressed the House Committee on Commerce, Labor and Economic Development they also expressed concern regarding agency fee fund sweeps.

Ms. Diel explained HB 2077 and noted it is an expansion of a bill passed last year that provided easier access to licensure for military spouses. The bill expands those efforts by including those individuals coming off of active duty. Ms. Diel presented testimony because the bill refers to applicants as a person who entered into military service and separated from such service "under conditions other than dishonorable."

Ms. Diel testified before the House Committee on Veterans, Military and Homeland Security and requested that the type of discharge be more narrowly defined because "under conditions other than dishonorable" could include discharges that would affect an applicant's qualification for licensure due to honesty, integrity, trustworthiness and competency. Ms. Diel's and the Board of Healing Art's testimony were received favorably and the bill was amended to change "under conditions other than dishonorable" to "with an honorable discharge." Ms. Diel also testified that temporary and probationary licenses could not be issued by the Commission without an order because it would not be cost effective to change the programming for the licensure system for just a few licensees covered by HB2077. Consequently, temporary and probationary licenses would not display appropriately on the Commission's web site.

Ms. Diel presented the Commission with the Legislative Watch spreadsheets and noted SB 10 which would changer permissible fees for open records, specifically prohibiting agencies from charging for staff time to respond to open records requests. She also provided the Commissioners with copies of all relevant bills, fiscal notes and testimony.

### **Education Report**

The Education Report was received by the Commissioners.

Ms. Diel advised the Commissioners that the PearsonVue Overland Park test center will be closed from March 1 until March 18 because it is moving to a new location. PearsonVue was unable to negotiate a lease extension at their old location or early occupancy at the new location. However, applicants may test in Kansas City or Independence, Missouri during this time period.

### **Budget Report**

The Budget Report was presented including Expenditures and Real Estate Receipts as of January 2013.

KREC's fee fund balance is \$405,600. The available cash balance is \$355,400.67 which is the Commission's current fee fund balance less encumbrances. Ms. Diel noted we are 58% through the year and expenditures are at 54.5%

KREC has transferred 10% of receipts to the State General Fund from July 2012 – January 2013 or \$52,900 and kept 90% or \$476,135 for the KREC fee fund for the current fiscal year.

KREC collected \$39,516.76 in fines for FY 2013 for the State General Fund. The Revolving Recovery Fund balance is \$305,000.

Ms. Diel reported that 81 brokers and 253 salespersons renewed online.

Ms. Diel also reported that the Governor's recommendations for the FY 2013 – FY 2015 Budget do not include a fee increase or an enhancement to restore the drastic cuts made to the budget in order to balance the budget. The Governor's recommendations are: FY 2013 - \$997,211; FY 2014 \$943,081 and FY 2015 \$932,606. These recommendations eliminate funding for vacant position(s), all temporary positions beginning in FY 2014 that have been handling part of the licensing and enforcement functions, reduces contractual services and reduces the agency's ability to replace IT equipment and software. With the drastic cuts, the Governor's budget only leaves \$6,085 in the fee fund at the end of FY 2015 but no fee increase is recommended.

The Commission is also losing two vacant positions, one from auditing, and one from licensing, due to reclassification of the positions to allow for hiring of an attorney and a legal assistant. The Commission now has one vacant position, which is not funded.

The Senate Ways and Means Committee submitted an Agency Information Request to the Commission and Ms. Diel testified before the Senate Subcommittee on Regulatory Boards and Commissions on February 4, 2013. The Subcommittee determined based upon the response to the Agency Information Request and Ms. Diel's testimony to recommend the Commission be flat funded at FY 2012 levels through FY 2015. The Subcommittee made adjustments to the Commission's budget in the amounts of \$22,000 for FY 2013; \$77,000 for FY 2014; and \$87,000 for FY 2015 adjustments are contingent upon the fee increase bill being passed. Ms. Diel reported that licensing staff cannot currently keep up with workload and enforcement staff are being pulled over to assist. An additional person to replace 2 ½ staff members lost appears to be needed, although staff will soon be returning incomplete paperwork to licensees for proper completion to create efficiencies.

The Subcommittee also recommended a legislative efficiency audit be completed prior to FY 2015. The Subcommittee told the full Committee that an audit will determine inefficiencies or whether a fee increase is needed to maintain services. Ms. Diel noted that the Commission has already done a substantial amount of work in the past nine months to address efficiency within the agency.

The Senate Ways and Means Committee adopted the Subcommittee report.

Ms. Diel will testify before the House General Budget Committee today at 1:30 p.m. and should know additional information by early next week. She also noted Appropriations should meet next Thursday on the Commission's budget.

#### **Director's Report**

The Commissioners received the Director's report and Ms. Diel noted that there are currently 13,612 licenses.

#### **Public Comment**

There was no public comment.

#### **Adjournment**

Ms. Copeland adjourned the meeting at 11:00 a.m.