

## MINUTES OF THE MEETING

Kansas Real Estate Commission

May 14, 2015

The Kansas Real Estate Commission held its regular meeting on Thursday, May 14, 2015 at 9:00 a.m. at Three Townsite Plaza, Suite 200, 120 SE 6<sup>th</sup> Avenue, Topeka Kansas

### **Commissioners Present:**

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

### **Staff Present:**

Erik Wisner, Executive Director  
Kelly White, Director of Licensing and Education  
David Pierce, Director of Enforcement  
Stacey Serra, Legal Assistant

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

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

### **Members of the Public Present:**

Deangelo Green  
James Davis

### **Call to Order**

Ms. Wenger called the KOMA meeting to order at 9:03 a.m.

### **Approval of the Minutes of the April 9, 2015 Meeting**

Motion was made by Mr. Wuertz, seconded by Mr. Vaught to approve the minutes from the April 9, 2015 meeting with corrections. Motion carried unanimously.

Ms. Wenger recessed the KOMA meeting at 9:09 a.m. for KAPA proceedings

### **Conference Hearing in the Matter of Aaron Clemons Docket No. 15-5400**

Ms. Wenger recessed KAPA proceedings at 10:28 a.m.

Ms. Wenger reconvened the KOMA meeting at 10:39 a.m.

Ms. Wenger extended congratulations to Mr. Wuertz on his re-appointment to the Commission.

### **Name Change Request**

Request was made by licensee Sheri Dahler to be known as “Sheri Dahler (Haynes)” on her business cards. Staff was concerned this would be an advertising regulation violation. Advertising is supposed to be in the name of the licensee. Licenses are issued in a licensee’s legal name. Ms. Dahler is not changing her name to “Sheri Dahler (Haynes)”; she wishes to use Haynes in promotional materials (business cards). As this is not her legal name, the Commission denies her request. Staff will notify Ms. Dahler.

### **I-Team Report**

**Incomplete Application Procedure.** Currently, the Commission issues orders for incomplete applications. K.S.A. 58-3044(b) allows for the denial of a license for an incomplete application. Staff will send a letter to the applicant detailing the deficiencies in the application; the applicant has 15 days to respond. If no response is received, staff will attempt to contact the applicant by phone. After 7 days, if no response is received, a letter will be issued denying the applicant a license due to an incomplete application. The Kansas administrative procedures act does not apply to incomplete applications. Their license fee will be refunded but not the application fee. The applicant may submit a new application and a new fee.

**Authority to Allow Executive Director to Issue Warning Letters in Lieu of Fines Pursuant to Guidance Document 2013-04.** Currently, the guidance document outlines fines for audit and licensing violations that in some cases are only minor issues or technical oversights. The I-Team feels the Commission would be better served by issuing a warning letter in lieu of fines. These letters would be tracked via the disciplinary system. The letter would be sent to the licensee and their supervising broker. Since the guidance document was approved by the Commission, legal staff feels it is necessary to have a motion granting approval to the Executive Director to issue warning letters and to withdraw Guidance Document 2013-04. Mr. Schlosser moved the Commission withdraw Guidance Document 2013-04 effective immediately, and the Executive Director, in consultation with the Commission serving on the Investigations Committee and disciplinary counsel as needed, be authorized to consider warning letters for violations described in the document titled “Violations Eligible for Warning Letter” dated May 6, 2015, which was distributed to Commission members with their meeting materials. Mr. Wuertz seconds. Motion carried unanimously.

**Review of Changes to the Warning Letter Structure.** There have been recent changes to the format of the warning letters to make them more direct. This is an attempt to ensure the licensee understands their conduct was unacceptable and the Commission may not be lenient in the future.

**Update on the Violations Index.** The I-Team is working on a comprehensive index of violations. This project is in progress, but it is not yet ready to be presented to the Commission.

Ms. Mendoza stated there are alternative disciplinary actions not currently being used such as public censure, suspension or more frequent audits.

**Pending Disciplinary Actions.** There are currently 144 restricted and/or conditioned licenses being tracked in the disciplinary system. 112 of these are indefinite. There are 42 orders staff or legal have yet to finalize.

### **Review of K.A.R. 86-1-19 and K.A.R. 86-3-15**

This is an update to an ongoing project. Ms. Fertig suggested there needs to be a comprehensive discussion of what the Commission believes needs to be reported and submitted with an application. A decision is needed as to what is relevant when applying for a license. Ms. Fertig has suggested a full update of the requirements and not just individual sections. The Commission will continue this discussion at a future meeting.

### **Review of K.A.R. 86-1-5**

Passage of Senate bill 108 authorized the Commission to increase fees for salespersons from \$100 up to \$150 and brokers from \$150 to \$200. During the April 9, 2015 meeting, the Commission reviewed language that amends fees charged by the Commission in regulation. The proposed amendment increases original and renewal license fees for brokers and salespersons by \$25, eliminates language regarding temporary licenses and lowers the fee for background checks to \$60. The Commission also reviewed revenue projections for three license fee rate options. The options included the original proposed increase of \$25, an increase of license fees by \$35, and an increase in the license fees by \$35 while eliminating the fee for other activities such as transfers, duplicate licenses and name changes. Mr. Schlosser moved to approve the changes to temporary licenses and back ground checks and for the \$25 increase unless the Legislature increases the statutory transfer next fiscal year and in that case the fee would go up by \$35. The effective date for the fee increase would be December 1. Mr. Wuertz seconded the motion. Motion carried unanimously. Mr. Wisner and Ms. Fertig will work on finalizing the language.

Ms. Wenger recessed the KOMA meeting for lunch at 11:51 a.m.

Ms. Wenger reconvened the KOMA meeting at 12:25 p.m.

### **Changes to Standard Restriction and Condition Language**

Guidance documents currently authorize staff to issue licenses subject to certain restrictions and conditions. The restricted and conditioned language is in templates developed by Commission staff. Ms. Fertig is proposing changes for the Commission's review. This relates back to the review of K.A.R. 86-1-19 and K.A.R. 86-3-15 and the discussion of what aspects are important to the Commission. This will be reviewed at a future commission meeting.

### **Licensee, Education and Exam Report**

Ms. White reported the licensee count as of May 7, 2015 is 13,957, an increase of 43 since last month. This count is a combination of active and inactive. Ms. White will provide a breakdown of active versus inactive licensees to the Commission at the next meeting. In April, the broker

exam had a 94% pass rate; the sales exam had a 73% pass rate. There have been 755 broker and sales exams administered in January through April, with a 73% pass rate. Mr. Wuertz would like information on the fail rate for the sales exam. Ms. White will provide information regarding schools for those applicants failing the exam. Only one continuing education course was approved in April.

### **Broker Supervision Task Force Update**

No formal report at this time. The task force has focused on reviewing the draft regulation presented to the Commission several years ago that was not adopted. The task force is also reviewing legislation from other jurisdictions. They want to set a minimum standard for brokers, not micromanage a broker's business. A future meeting is planned, but a date has not been set.

### **Budget Report**

Mr. Wisner reported revenue is holding with projections from previous months. Fiscal year 2015 is behind 2014; but, historically, more money is receipted during even numbered fiscal years. If 2015 is compared to 2013, the 2015 receipts are higher. May and June are high volume months, so the numbers for 2014 and 2015 will be close. Receipts will most likely be less than 2014 but \$50,000 more than in 2013. There will be revisions to this report in the next fiscal year providing more analytical data.

Mr. Wisner reported expenditures were made for the electronic storage system and IT hardware. Approximately \$80,000 more will be spent in May for the final round of purchases. Currently there is \$317,000 in the recovery fund, and there will still be over \$200,000 after the last round of purchases. Expenditures are significantly under last month and an estimated \$100,000 under 2015 appropriations. There are still some capital expenditures pending, most notably chairs.

### **Director's Report**

The replacement of staff computers is completed. Server infrastructure purchases have been made and are being configured by OITS. We anticipate the servers will be running by the end of June. The servers will most likely be moved to the OITS data center in December. OITS will try to make the move during non-business hours.

The PearsonVue contract was set to expire on September 30, 2015. Procurement has authorized, and PearsonVue has agreed, to a one year extension on the contract. Mr. Wisner will develop a work group to start the RFP development process. More details will be provided at the next meeting.

The audit position has been approved by the governor and posted. This position will be based in Topeka, and is unclassified. Resume and applications will be reviewed starting May 28, 2015. We hope to have someone on board in early July.

The ARELLO annual meeting is in September. Mr. Wisner would like to attend. The Commissioner College is conducted immediately preceding the meeting. Topics include simple

procedures, ethical considerations and rules of evidence. Registration is \$210 plus travel expenses.

We are currently in negotiations on a statement of work with AOS for an electronic document management system to replace the current ACCORDE system. This would include conversion of ACCORDE to a SharePoint system and development of enhancements for electronically storing legal files. AOS currently estimates a 7 week time frame once work begins. Once the conversion is complete, the scanning backlog can be completed by temporary employees.

#### **Reorganization of Commission Pursuant to K.S.A. 74-4202(a)**

The Commission reviewed possible reorganization due to the reappointment of Mr. Wuertz. By general consensus, Ms. Wenger will remain as Chair, and Mr. Vaught as Vice Chair.

#### **Future Commission Meeting Dates**

Due to conflicts with several members, the Commission decided to shift meetings from the second Thursday to the third Monday of the month. The commission also decided to cancel the June meeting due to conflicts.

#### **Adjournment**

Ms. Wenger adjourned the meeting at 2:14 p.m.

#### **Upcoming Commission Meeting Dates**

July 20, 2015

August 17, 2015