

MINUTES OF MEETING

Kansas Real Estate Commission

March 13, 2014

The Kansas Real Estate Commission held its regular meeting on Thursday, March 13, 2014, at 9:00 a.m. by telephone conference call at Three Townsite Plaza, Suite 200, 120 S.E. 6th Avenue, Topeka, Kansas.

Commissioners Present:

Errol Wuertz, Chairperson
Sue Wenger, Vice Chairperson
Marilyn Bittenbender, Member
Shirley Cook, Member
Joseph Vaught, Member

Staff Present:

Sherry C. Diel, Executive Director
Jay D. Befort, Attorney
David Pierce, Director of Enforcement
Mitzi Dodds, Legal Assistant

Kansas Real Estate Commission Legal Counsel Present:

Sarah Fertig, Assistant Attorney General

Members of the Public Present:

Richard W. Benson
Sherry A. McGowan
William Welch (Mr. Welch arrived at the KREC office at 10:10 a.m., but did not join the meeting as he arrived after the discussion concluded regarding the particular Applicant.)

Call to Order

Mr. Wuertz called the KOMA meeting to order at 9:30 a.m.

Approval of the January 14, 2014 Meeting Minutes

Motion was made by Ms. Cook, seconded by Ms. Wenger to approve the minutes of the January 14, 2014 meeting. Motion carried unanimously.

Consider Request from Raul Rubio Guevara to Modify Restriction and Transfer License

At its meeting on February 12, 2014, the Commission considered Raul Rubio Guevara's request to reactivate his restricted salesperson's license under the supervision of Brenda M. Hanson at Diamond Partners, Inc. However, on February 13, 2014, Ms. Hanson withdrew her offer to supervise Mr. Guevara. Subsequently, William Welch at Performance Realty agreed to serve as Mr. Guevara's supervising broker. As a result, Mr. Guevara requests to modify the restriction on his salesperson's license and transfer his affiliation to Mr. Welch. Ms. Cook abstained from the discussion and voting on this matter. After review and discussion, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to approve Mr. Guevara's request to modify the restriction on his license and transfer his license to the supervision of William Welch at Performance Realty. Motion carried unanimously.

Mr. Benson and Ms. McGowan left the meeting at approximately 9:40 a.m.

Applications for Salesperson's License

Daniel Davis

Applicant submitted an incomplete application on November 25, 2013. Applicant did not report any criminal offenses on this application, but a Rapback indicated a 2013 arrest for criminal charges. On February 11, 2014, Applicant submitted a subsequent application and answered "yes" to Question No. 5 and self-reported a criminal offense which is still pending. Staff has requested but not received the pleadings for the pending case. After review and discussion regarding the circumstances surrounding the conduct, the nature and severity of the conduct and the amendment of the original charge to a lesser charge, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to approve Applicant's application for a salesperson's license but Applicant's license is restricted to his supervising broker, Scott G. DeNeve at Platinum Realty, LLC, for a minimum of two years. Applicant must provide a current reputation for honesty, integrity, trustworthiness and competence to have the restriction lifted following the minimum period of restriction. Applicant must provide the pleadings in regard to his pending criminal charges. Applicant must provide quarterly reports if he fails to timely submit proof of completion of probation to the Commission. In addition, Applicant was fined \$250 for failing to disclose the criminal conduct. Motion carried unanimously.

Jamie Helm

Applicant answered "yes" to Question No. 5 on her application and self-reported 2010 and 2013 criminal offenses. After review and discussion regarding the circumstances surrounding the conduct, the nature and severity of the conduct and Applicant's recent pattern of criminal conduct, motion was made by Ms. Wenger, seconded by Ms. Bittenbender to approve Applicant's application for a salesperson's license but Applicant's salesperson's license is indefinitely restricted to her supervising broker, Trent T. Brown at Signature Partners, LLC, for a minimum period of two years. Applicant must show a current reputation for honesty, integrity, trustworthiness and competency to have the restriction lifted following the minimum period of restriction. Motion carried unanimously.

Eric Jaynes

Applicant answered "yes" to Question No. 6 on his application and self-reported a 2005 criminal offense. After review and discussion regarding the circumstances surrounding the offense, the nature and severity of the conduct, the evidence of Applicant's rehabilitation, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to approve Applicant's application for a salesperson's license but Applicant's salesperson's license is indefinitely restricted to his proposed supervising broker, William Arbuckle at Northland Partners, LLC, for a minimum period of two years. Applicant must show a current reputation for honesty, integrity, trustworthiness and competency to have the restriction lifted following the minimum period of restriction. Motion carried unanimously.

Todd Kolars

Applicant answered "yes" to Question No. 6 on his application and self-reported a 2012 criminal offense. After review and discussion regarding the circumstances surrounding the conduct, the nature and severity of the conduct and Applicant's lack of other criminal conduct, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to table Applicant's application for a salesperson's license. The Commission directed staff to request that Applicant provide additional documentation. Motion carried unanimously.

Michael Snyder

Applicant answered "yes" to Question No. 2 on his application and reported suspension of his real estate license in another jurisdiction. After review and discussion regarding the circumstances surrounding the suspension and the fact that the suspension has been lifted and was not due to a disciplinary action in that jurisdiction, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to approve Applicant's application for a salesperson's license but Applicant's salesperson's license is restricted to his proposed supervising broker, Brenda L. Fulks at Elite Realty of KC, for a period of two years. Motion carried unanimously.

Decisions from KAPA Proceedings

Terri Hollenbeck

The Commission reported its decision In the Matter of Terri Hollenbeck, Docket No. 14-4760. The Commission directed staff to prepare a Consent Agreement and Final Order to include provisions regarding a required mentoring program and other matters contained in the offer. A draft of this agreed order will be presented to the Commission by staff for review to ensure the mentoring provisions comply with the Commission's intent.

Ross Daniels

The Commission reported its decision In the Matter of Ross Daniels, Docket No. 14-4862. The Commission directed staff to proceed to hearing on this matter.

Charlene MacCallum

The Commission reported its decision In the Matter of Charlene MacCallum, Docket No. 14-4880. The Commission informed staff that Ms. MacCallum's choice of a mentor is rejected. The order requires the mentor be a supervising broker who is approved by the Commission.

Applications for Broker's License

Stuart Frazier Bell

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

Andrew Gardner

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

Paula Hutcheson

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

Eric Palmer

The application of Mr. Palmer was presented for review by the Commission. After review and discussion, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to table Applicant's application for a broker's license. The Commission directed staff to request Mr. Palmer provide additional documentation. If Mr. Palmer fails to provide the information within 60 days, his application will be considered abandoned and he will need to meet all requirements to re-apply. Motion carried unanimously.

James Russell

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

Applications for Renewals

Carolyn French

Ms. French's application to late renew her broker's license was considered by the Commission at its January 14, 2014 meeting. The Commission directed staff to send a letter to Ms. French requiring her to submit a letter which reflected that she understood and took responsibility for matters surrounding her late renewal application. Ms. French submitted a letter containing the required admissions. However, the broker who had agreed to supervise Ms. French rescinded his offer to supervise. Therefore, Ms. French had to secure a new supervising broker before her license could be issued. Ms. French provided the Commission with notification of her new supervising broker, but also provided conflicting information on her renewal forms. After review and discussion regarding the circumstances surrounding the nature and severity of Ms. French's conduct and whether Ms. French understood her role as an associate broker or a supervising broker, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to table Ms. French's renewal application. The Commission directed staff to notify Ms. French that she was required to attend the April 10, 2014 Commission meeting and be available to answer questions from the Commissioners. Motion carried unanimously.

Kimberly S. Nold

Ms. Nold's application to renew her salesperson's license was presented for review by the Commission. Currently, Ms. Nold has a hearing scheduled at the Office of Administrative Hearings regarding a disciplinary issue. After review and discussion regarding the disciplinary matter and renewal application, motion was made by Ms. Wenger, seconded by Ms. Bittenbender to direct staff to draft an order acknowledging Ms. Nold's on-going disciplinary case, the Commission is allowing the disciplinary case to go forward separately even though it raised issues which constitute grounds to deny Ms. Nold's renewal application. Motion carried unanimously.

David Noon

Mr. Noon's application to renew his broker's license was presented for review by the Commission. Mr. Noon answered "yes" to Question No. 2 and reported a 2013 pending criminal offense. After review and discussion regarding the circumstances surrounding the offense and the number of years Mr. Noon had been licensed, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to approve Mr. Noon's application to renew his broker's license but his license is conditioned to require him to report any trial

dates and disposition by the court. If no dismissal of the charges, Mr. Noon must provide quarterly reports regarding the status of his criminal case until sentencing is completed or the charges are dismissed, including providing copies of all relevant pleadings or agreements. Motion carried unanimously.

Dennis Perkins

Mr. Perkins' application to renew his broker's license was presented for review by the Commission. Mr. Perkins answered "yes" to Question No. 2 and reported a 2013 criminal offense. After review and discussion regarding the circumstances surrounding the offense and the number of years Mr. Perkins had been licensed, motion was made by Ms. Wenger, seconded by Ms. Cook to approve Mr. Perkins' application to renew his broker's license. Motion carried unanimously.

Mr. Wuertz declared a 10 minute break at 10:43 a.m.

Mr. Wuertz reconvened the meeting at 10:53 a.m.

Consider Request from Troy Moellinger to Lift Restriction

The Commission considered Mr. Moellinger's request to lift the restriction on his license so that he could become supervising broker of 1st Realty Trust. A Final Order approving Mr. Moellinger's 2011 application for a broker's license was issued but his license was subject to restriction to his current supervising broker, Lawrence Volbrecht. After review and discussion regarding Mr. Moellinger's request and supporting documentation, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to grant Mr. Moellinger's request to lift the restriction on his broker's license so that he may serve as the supervising broker of 1st Realty Trust. Motion carried unanimously.

Consider Proposed Revisions to Questions 5 and 6 on License Application

At its meeting on February 12, 2014, the Commission directed staff to prepare checklists for Questions 5 and 6 on the Commission's web site. Specifically, the Commission suggested applicants might provide more complete applications if more detailed explanation was included for Questions 5 and 6 of original license applications and Questions 2 and 3 of renewal applications on the Commission's web site. Ms. Diel reported that staff made the recommended checklists. However, staff believes that if Questions 5 and 6 are spaced differently and the language is clarified, there may be fewer applications that require staff follow up. Ms. Diel reported such changes would likely require a two-page original application. Pearson VUE would likely approve such a change because the company is working to get away from printing on security paper, so it would be feasible to print the forms in-house and post the application pages on the Commission's web site. The Commission directed Ms. Diel to move forward with discussing with Pearson VUE revision of the license application and posting the forms on the web site.

Consideration of Correspondence Regarding Education Requirements

Mr. Wuertz changed the agenda in order to review a letter from Chairperson Wuertz to Larry Rickard clarifying education requirements.

Status Report on Licensing Complaints

Ms. Diel presented a status report on the number of licensing complaints received by staff. Complaints reduced significantly and fell into the following categories: (1) applications not being timely summarized, (2) a delay in review by the Executive Director, (3) a delay in review by the Commission, and (4) a delay in staff follow-up because applications are submitted incomplete. Staff is awaiting responses on several applications that require additional documentation. A "triage" has been instituted so that an application that can be approved under a Guidance Document is sent directly to the Executive Director for review without a summary being required. In addition, staff is working on how to address complaints resulting from a delay in issuing legal orders. Staff training remains a barrier. Another factor is whenever an applicant is restricted, a new order must be issued each time the applicant moves to another broker.

Legislative Report

Ms. Diel reported that the Legislative Watch document would be available after the meeting. This document is for informational purposes, to keep the Commissioners apprised of various categories of legislative bills.

Ms. Diel reported on SB 298, the mortgage tax registration bill. The bill proposes eliminating the mortgage tax registration and replacing that revenue with various filing fees and would be phased in over a five year period. The bill was on General Orders two or three days ago and a long debate was held on it prior to a favorable recommendation for passage. It was then referred back to the Committee on Assessment and Taxation. A hearing is scheduled today at 9:30 a.m. on this bill.

Budget Report

Ms. Diel reported that the Division of the Budget recommended using \$100,000 of the Recovery Fund for replacement of the agency's electronic management system. If this expenditure is approved throughout the Legislative process, the \$100,000 will be specifically used for this purpose. This option was preferential over using Recovery Fund monies to pay for general operating costs.

Ms. Diel will be meeting with key legislators regarding HB 2125. Mr. Wuertz encouraged the Commissioners to write their senators to see if the bill can get to the floor for a vote. The Commission would like to keep people in business and improve the Kansas economy. Without an increase in revenue, it will continue to be difficult to keep up with the workload.

The Budget Report was received by the Commissioners. Ms. Diel reported the following:

Expenditures

At eight months into the FY 2014 budget, the agency continues to keep total expenditures consistently below budgeted expenditures to delay the fee fund deficit. Total expenditures are running at 55% and salaries are right in line with budgeted expenditures, at 65.5%. Current total expenditures are at \$524,380 compared to \$609,171 in FY 2013 and \$588,671 in FY 2012.

Encumbrances

Total encumbrances are \$39,012. According to SMART, the Fee Fund is at \$337,891. However, after the encumbrances are subtracted, the available Fee Fund balance is \$298,878.

Receipts

To date in FY 2014, KREC has transferred 10% of receipts, or approximately \$65,025, to the State General Fund and retained approximately 90%, or \$585,230, for the KREC Fee Fund.

To date, KREC has collected approximately \$70,000 in fines.

Ms. Diel provided a revenue-to-expenses comparison. In FY 2014, revenues exceed expenses by \$60,850; in FY 2013, expenses exceeded revenue by \$91,635, decreasing the Fee Fund by close to \$100,000; in FY 2012, revenues exceeded expenses by \$11,580. Ms. Diel reported that it will be difficult in FY 2015 to maintain the current savings trend because revenues are historically down in odd-numbered years.

Recovery Fund

The balance in the Recovery Fund is \$316,094.

Staff Report on I-Team Statistics

The I-Team Statistics were received by the Commissioners. Ms. Diel reviewed the current month and fiscal year reports. The first report lists all cases closed and the outcome of the cases. The second report lists those complaints closed with no legal docket being opened. The third report shows that 106 complaints are currently open.

Education Report

The Education Report was received by the Commissioners. Ms. Diel presented a list of the new courses that have been approved and a summary from Pearson VUE.

In February 2014, 20 brokers and 161 salespersons took the licensure exams. A total of 18 of those taking the broker's exam passed, for a passing rate of 90%, and a total of 110 passed the salesperson's exam, for a passing rate of 68%. For Calendar Year 2014, 27 brokers and 284 salespersons sat for the licensure exams. A total of 25 passed the broker's exam, for a passing rate of 93%, and a total of 195 passed the salesperson's exam, for a passing rate of 69%.

The Commissioners discussed the higher rate of failure for those sitting for the salesperson exam and wondered if it was possible to track why this occurs. Ms. Diel reported a failure rate in the high 60's to middle 70's has been a standard passing rate for salesperson exams.

Director's Report

The Commissioners received the Director's report.

Ms. Diel reported on the status of cases in which hearings have been requested. There are six disciplinary cases involving suspension and/or revocation that are slated to be sent over to the Office of Administrative Hearings. There are approximately 12 brokers who have requested hearings. A total of 117 Audit By Mail requests have been sent out and approximately seven percent of the brokers who received these audits have requested hearings. It is unclear if this is because brokers who operate out of state have been audited and are just not familiar with Kansas practices or are not familiar with the audit process. Licensees

are still adjusting to the Audit By Mail Program. In addition to hearing requests, staff are also dealing with settlement requests in response to violations that are found.

Ms. Diel reported the Johnson County Appraiser's Office has contacted the Commission to request a list of Kansas licensees. The Johnson County Appraiser's Office wishes to provide access to sales questionnaires online. The Appraiser's Office will contact the Commission quarterly to request an updated list of licensees.

Ms. Diel reported that an issue has arisen with applications that require Commission review. It has become a regular occurrence for applicants to submit additional documentation in support of their application after the deadline has passed, even though there is a deadline published on the web site. These late submissions force staff to immediately handle the matter so that the information can be forwarded to the Commissioners for review at the meeting. Ms. Diel would like direction on how to handle these late submissions. After review and discussion, motion was made by Ms. Wenger, seconded by Ms. Bittenbender to notify applicants that unless their application is complete by a deadline of 15 business days prior to a scheduled Commission meeting, the application will not be considered. Motion carried unanimously. Following additional discussion, an amended motion was made by Ms. Wenger, seconded by Ms. Bittenbender to immediately implement the deadline and notify licensees of the new deadline. In addition, applicants will be notified that if any supporting documentation is submitted later than 15 business days prior to the next scheduled Commission meeting, the application will be delayed until the following Commission meeting or until the application is complete. Motion carried unanimously.

Ms. Diel reported a reduction in licensees, for a total count of 13,378 licensees.

Public Comments

No one was present to offer public comments.

Upcoming Commission Meetings

Mr. Wuertz reported that the April 10, 2014 meeting will be held in person at the Commission's Topeka office, the May 8, 2014 meeting will be held via telephone, and the June 12, 2014 meeting will be held via telephone.

Upon a motion from Ms. Wenger, seconded by Ms. Bittenbender, the meeting was adjourned. Motion carried unanimously.

Adjournment

Mr. Wuertz adjourned the meeting at 12:25 p.m.