

MINUTES OF MEETING

Kansas Real Estate Commission

April 10, 2014

The Kansas Real Estate Commission held its regular meeting on Thursday, April 10, 2014, at 9:00 a.m. 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
David Pierce, Director of Enforcement
Kelly White, Director of Education
Mitzi Dodds, Legal Assistant

Kansas Real Estate Commission Legal Counsel Present:

Sarah Fertig, Assistant Attorney General

Members of the Public Present:

John Akers
Todd Kolars
Glenn Bechler
Dee Ann Short
David Short
Carolyn French
Murray Cleveland Smith

Call to Order

Mr. Wuertz called the KOMA meeting to order at 9:24 a.m.

Additions to the Agenda

Addition – Consider Request from Darol Eugene Rodrock to close Rodrock & Associates, Inc. and open Rodrock & Associates Realtors, LLC

Delete – Minutes from February 12, 2014

Delete – Legislative Watch

Addition – Executive session for a personnel matter

Addition – Executive session for a personnel matter

Delete – Request to implement a consent agenda procedure

Delete – Planning session for FY 2015 – FY 2017 budget

Applications for Salesperson's License

John Akers

Applicant answered "yes" to Question No. 2 on his salesperson application regarding a denial or disciplinary action taken against a professional or occupational license or certification held by Applicant. Applicant was present at the meeting and addressed questions from the Commissioners. Applicant reported he does not currently hold any insurance licenses or any other professional license. After review and discussion, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to table Applicant's application until Applicant's supervising broker, Stephen E. Summers, submits a letter acknowledging Mr. Summers is aware of Applicant's prior conduct and is willing to supervise Applicant. Motion carried unanimously.

Todd Kolars

Applicant answered "yes" to Question No. 6 on his application and self-reported a 2012 criminal offense. Applicant's application was tabled from the March 13, 2014 meeting so that additional documentation requested by the Commission could be provided. Applicant was present at the meeting and addressed questions from the Commissioners. 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. Cook to approve Applicant's application for a salesperson's license subject to the condition that if Applicant wishes to change supervising brokers for a two-year period, the next supervising broker must provide a letter acknowledging the broker is aware of Applicant's conduct, has read all prior orders and is willing to supervise him. Motion carried unanimously.

Jeffrey A. Lamott

Applicant answered "yes" to Question Nos. 5 and 6 on his application and reported 2008 and 2012 criminal offenses. After review and discussion regarding the circumstances surrounding the offenses, the nature and severity of the conduct, Applicant's lack of other criminal conduct and other matters deemed pertinent, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to table Applicant's application for a salesperson license for additional information concerning Applicant's use of the title "Senior Associate" and what activities Applicant engages in under that title. Motion carried unanimously.

Dee Ann Short

Applicant answered "yes" to Question Nos. 5 and 6 on her application and reported 1991 and 2010 criminal offenses. Applicant was present at the meeting and addressed questions from the Commissioners. After review and discussion regarding the circumstances surrounding the offenses, 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 approve Applicant's application for a salesperson's license. Motion carried unanimously.

Applications for Broker's License

Glenn Bechler

The application of Mr. Bechler was presented for review by the Commission. After review and discussion regarding discipline imposed by the Commission in 2005 and a 2003 criminal offense which led to that discipline, the number of years Mr. Bechler had been licensed, the number of years he was continually licensed in another jurisdiction, his previous transaction experience, related experience and knowledge of Kansas brokerage relationships, motion was made by Ms. Wenger, seconded by Mr. Vaught to approve Mr. Bechler's application for a broker's license. Motion carried unanimously.

Robert Lendman

The application of Mr. Lendman was presented for review by the Commission. After review and discussion regarding the number of years Mr. Lendman had been licensed, discipline imposed on his license in another jurisdiction, the denial of a previous application, his transaction experience, related experience and knowledge of Kansas brokerage relationships, motion was made by Ms. Wenger, seconded by Mr. Vaught to approve Mr. Lendman's application for a broker's license but his license is restricted for a minimum period of five years that Mr. Lendman cannot serve as supervising broker or branch broker for an office nor can he have any affiliated licensees. Mr. Wuertz opposed. Motion carried.

Spencer Lindahl

The application of Mr. Lindahl was presented for review by the Commission. After review and discussion regarding Mr. Lindahl's volume of transactions, his related experience and knowledge of Kansas brokerage relationships, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to table Mr. Lindahl's application until he provides additional information regarding his related experience and his business model. Motion carried unanimously.

Ray Orellano

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

Dawn Schultz

The application of Ms. Schultz was presented for review by the Commission. After review and discussion regarding the number of years Ms. Schultz had been licensed, her transaction experience, related experience and knowledge of Kansas brokerage relationships, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to approve Ms. Schultz'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. 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. Ms. French and her proposed supervising broker, Murray Cleveland Smith, appeared at the meeting to address questions from the Commissioners. 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, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to approve Ms. French's renewal application for a broker's license subject to the restriction she must practice real estate activities under Mr. Smith's supervision for a minimum period of five years. In addition, Ms. French cannot serve as a supervising broker or branch broker or supervise other licensees. The issue of unlicensed activities is to be referred to the Commission's Disciplinary Committee for review. Ms. Wenger abstained from the vote. Motion carried.

Mr. Akers, Mr. Bechler, Ms. Short, Mr. Short, Mr. Kolars, Ms. French and Mr. Smith left the meeting at 10:25 a.m.

Jennifer Hufft

Ms. Hufft's application to renew her salesperson's license was presented for review by the Commission. After review and discussion regarding previous discipline taken against Ms. Hufft in another jurisdiction, the denial of a previous broker's license application and affiliating with a company not registered in Kansas under that company name or address, motion was made by Mr. Vaught, seconded by Ms. Bittenbender to deny Ms. Hufft's application due to a lack of honesty, trustworthiness, integrity and competence to conduct the business of real estate. Motion carried unanimously.

Patrick Ruelle

Mr. Ruelle's application to renew his broker's license was presented for review by the Commission. Mr. Ruelle answered "yes" to Question No. 1 and reported disciplinary action taken by another jurisdiction in 2010. This discipline was not reported by Mr. Ruelle on his 2011 renewal application. After review and discussion regarding the circumstances surrounding the discipline and the number of years Mr. Ruelle had been licensed, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to approve Mr. Ruelle's application to renew his broker's license. Motion carried unanimously.

Mr. Wuertz declared a 10 minute break at 10:35 a.m.

Mr. Wuertz reconvened the meeting at 10:48 a.m.

Consider Request from Darol Eugene Rodrock to close Rodrock & Associates, Inc. and open Rodrock & Associates Realtors, LLC

The Commission considered Mr. Rodrock's request to close Rodrock & Associates, Inc. and open Rodrock & Associates Realtors, LLC. Ms. Diel reported this request was unique as instead of changing his current company name, Mr. Rodrock wants to close the current company and open a new company, thus creating two separate companies using similar names. After review and discussion regarding Mr. Rodrock's request and any possibility this new company name might cause confusion to the public, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to grant Mr. Rodrock's request to close Rodrock & Associates, Inc. and open a company named Rodrock & Associates Realtors, LLC subject to receiving approval from the

National Association of Realtors to use "Realtors" as part of the new company name. Motion carried unanimously.

Consideration of Recently Issued Kansas Attorney General Opinion

Ms. Fertig reported that an Attorney General Opinion was issued on April 1, 2014 regarding what portion or portions of agency meetings must be conducted in public. This opinion draws a distinction between what agencies can do under the Kansas Open Meetings Act (KOMA) and what must be handled under the Kansas Administrative Procedure Act (KAPA). For example, all applications can be considered under the KAPA and closed to the public. One specific caveat is that if an administrative hearing is held, the hearing must be open to the public unless the hearing officer closes a portion of the hearing for reasons available under KAPA. Concern was raised regarding the issue of transparency and how to initiate the change in procedure. However, because the Commission's action is outlined in an order which is open to the public, there is sufficient transparency so that the public can view the Commission's action. Certain actions such as approving minutes, approving company names, making policy decisions, the Commission's stance on legislation, and executive sessions must be handled under KOMA. The Commissioners also discussed utilizing a consent agenda, but clarified that moving applications under KAPA proceedings instead would be beneficial to the Commission. Staff could make recommendations for applications to give the Commissioners potential guidelines for their decisions. This could allow for quicker turnaround time for applications and substantially reduce the backlog in the application process. The time saved in removing applications to KAPA proceedings may allow the Commission to work on more educational and legislative items during regularly scheduled Commission meetings. In addition, the Commission discussed altering their meeting schedule from meeting every month to meeting every other month.

Consider Request from C. Edward Wray to open a company named Agent Ace, Inc. and transfer his license to this new company

The Commission considered Mr. Wray's request to open a company named Agent Ace, Inc. and transfer his license to this new company. Ms. Diel reported the company name was approved, but was reversed by Ms. Diel prior to issuance when staff discovered that the company wanted to enter into exclusive brokerage service agreements with its customers and a co-cooperating standard broker agreement with a licensee from another brokerage to perform specified required duties. After review and discussion regarding Mr. Wray's request, motion was made by Ms. Bittenbender, seconded by Mr. Vaught to table Mr. Wray's request and refer this matter to Ms. Fertig and the Investigation Committee for review and to make recommendations back to the Commission regarding the legality of the services provided by Agent Ace. Motion carried unanimously.

Consider request from Career Education Systems to change the exam process for the Kansas Practice Course correspondence class

Ms. Diel reported that Career Education Systems (CES) requested changes because clients wait until the last minute to take their exams. CES requests several possible variations to change the method and pass rate for distance education courses to address this concern. First, CES proposes allowing a computer log-in to serve as the proctor, allowing students to pass with a 70% score. Currently, closed book proctored exams require a 70% pass rate while open book non-proctored exams require a 90% pass rate. CES also asks for permission to email the exam to the proctor, have the proctor administer the exam, and then have the proctor scan and email the exam back to CES. The Commissioners discussed several issues under the current regulatory framework, including email security, the appropriateness of allowing a computer log-in to serve as a proctor, altering the pass rates, timeframes and methodology for providers keeping completed materials and timeframes for completing exams. The Commission reached a consensus to

table this request and directed that Ms. Diel respond to CES that the issues raised are part of a much larger discussion on educational issues. The Commission asked CES to notify the Commission of other issues to be addressed regarding educational offerings that could be addressed later as part of a task force or committee.

Consider cut-off date for retention of licensure records

The Commission discussed how long licensing records should be retained. Ms. Diel reported that the current system to read and print out microfilm records is obsolete. The quote for comparable hardware and software was more than \$13,000. Such equipment becomes obsolete approximately every 10 years because it no longer interacts with newer versions of Microsoft products. Ms. Fertig reported that the Commission's license application retention schedule has not been updated since 1990. Ms. Diel reported that Commission records were digitized in 2004, which includes all licensees who were active in 2004 and any original licenses issued in or after 2004. Those licensees not active in 2004 who are handled must be printed out from microfilm records and scanned into the digitized system because it was cost prohibitive to digitize the old records that go back to the inception of the Commission. The Commissioners inquired whether records could be stored in the "Cloud." Ms. Diel has discussed this issue with OITS and learned that due to the volume of Commission records, this type of storage is cost prohibitive because of the Commission's budget constraints. This may change as Cloud services expand. Therefore, the current system of on-site servers and off-site storage is how OITS recommends records should be stored. It was the consensus of the Commission to continue to use the current microfilm reader/printing equipment until it stops working. At that time, staff should search to determine if there is a less costly alternative replacement or consideration for a reasonable cut-off for records maintenance will be made at that time.

Staff update on handling of license applications and requests for additional documentation

Ms. Diel presented to the Commission drafts of three specific requests that can be sent to applicants when additional documentation is required in order to process their license application. Because staff often has trouble obtaining additional documentation from applicants, Ms. Diel requested the Commission's approval to warn the applicants that if they fail to respond or provide the requested documentation within a reasonable timeframe, their application may be considered abandoned. If the application is considered abandoned, the applicant would be required to start over in the application process. The first request would be sent via email. If the applicant responded in a timely manner, the second request could also be sent via email. The final request would be sent by U.S. mail. If no response to the first email is received, the second and final requests would be sent via U.S. mail. The Commissioners approved the procedure on the condition that staff utilize the receipt feature when emailing requests so that staff would receive a receipt when an applicant received and/or read the emailed notice.

Ms. White left the meeting at 12:13 p.m.

Status Report on Licensing Complaints

Ms. Diel reported that progress is being made in the application review process due to the triage system implemented. When an application that is not complex is received, a summary is not required and the application can be forwarded to Ms. Diel for action/instructions. Staff time is then focused on more complicated applications that may require additional documentation.

Complaints resulted as follows: one complaint due to the lack of a summary; two complaints due to incomplete applications which required staff follow-up and one of these complaints required Commission review; and one complaint due to an incomplete application which then resulted in a complaint due to the

length of time it took the Director to review the complete application. Four complaints resulted due to the time it took for orders to be drafted.

Ms. Diel stated that standardization of restrictions/conditions would help the backlog. Those orders containing standard conditions and/or standard restrictions can be drafted by the legal assistants, which will allow staff to prepare and mail orders in a timely manner. Of the 15 applications considered at the March 2014 Commission meeting, 12 required orders. For clarification, Ms. Diel relayed that the Commission should order a restriction if they have a reason to track a licensee, i.e., if the Commission wishes to monitor the licensee's progress and ensure they are properly supervised. If the Commission simply wants the next supervising broker to be aware of the licensee's history, they should order conditions. Staff have not been able to focus on eliminating the backlog of discipline orders because of the high volume of licensure orders.

Legislative Report

SB 298 proposes eliminating the mortgage tax registration and replacing that revenue with various filing fees and would be phased in over a five year period. Ms. Diel reported that the bill passed the Senate and was referred to House Taxation. However, because this is the end of a two-year cycle, Ms. Diel does not know if a vehicle on the House side can be found or if the bill will die. Opposition to the bill was reported.

HB 2676 would amend the Commercial Real Estate Broker Lien Act, clarifying the circumstances when a broker can obtain a lien on commercial real estate. Ms. Diel prepared a fiscal note early in the session, but then the bill sat the entire session. Recently, she was asked to prepare an amended fiscal note.

HB2125 would increase licensing fees. All the Commission-related wording was stripped from the bill and replaced with language providing for an expanded Lottery bill. However, the House voted the Lottery bill down. Ms. Diel reported there was no interest for HB2125 through another vehicle or for the waiver of the 90/10 split. If implemented, waiving the 90/10 split would require the Legislature to recoup any monies lost from the State General Fund by finding like revenue elsewhere.

Ms. Diel also reported there is a bill in conference committee on the Senate side which contains a provision giving the remaining funds, either \$63,000 or \$68,000, in the Home Inspector's Fee Fund to the Commission. On the other hand, the House wants to give the remaining funds to a home inspector's trade association.

Budget Report

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

Expenditures

At 75% through the FY 2014 budget, the agency has spent about 62% of its total appropriation, a savings of approximately \$123,000. Current expenditures are at \$584,592, which is \$111,370 less than FY 2013 and \$93,764 less than FY 2012.

Encumbrances

Total encumbrances are \$39,012. According to SMART, the Fee Fund is at \$329,766. However, when the encumbrances are subtracted, the available Fee Fund balance is \$290,754.

Receipts

To date in FY 2014, KREC has transferred 10% of receipts, or approximately \$70,636, to the State General Fund and retained approximately 90%, or \$635,720, for the KREC Fee Fund. This revenue total calculates to \$63,370 more than FY 2013 and \$5,863 more than FY 2012. These figures are somewhat expected as revenues are historically higher in even-numbered years.

To date, KREC has collected approximately \$69,272 in fines.

Ms. Diel reported positive spending versus deficit spending year-to-date for FY 2014. In a revenue-to-expenditure comparison for July 1, 2013 – March 31, 2014, there is a \$51,285 savings in FY 2014, compared to a \$123,612 deficit in FY 2013, and a \$48,500 deficit in FY 2012.

Recovery Fund

The balance in the Recovery Fund is \$316,120.

If the bill providing for replacement of the obsolete electronic storage system update passes, the Recovery Fund will be reduced by approximately \$100,000. Ms. Diel advised that the Recovery Fund has experienced slow growth the past few years. In FY 2012, the Recovery Fund had a balance of \$279,377. By FY 2013, it had only grown \$26,341 and by FY 2014, it had only grown by \$10,401, or about \$36,000 in two years.

Staff Report on I-Team Statistics

The I-Team Statistics were received by the Commissioners. Ms. Diel reviewed the fiscal year reports. The first report lists all cases closed and the outcome of the 76 cases, which does not include audit cases. The second report lists those complaints closed with no legal docket being opened. The third report shows that 116 complaints are currently open. Ms. Diel reported that since Christmas, a higher than usual volume of more serious complaints had been filed.

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 March 2014, 10 brokers and 180 salespersons took the licensure exams. A total of 9 of those taking the broker's exam passed, for a passing rate of 90%, and a total of 120 passed the salesperson's exam, for a passing rate of 67%.

For Calendar Year 2014, 37 brokers and 464 salespersons sat for the licensure exams. A total of 34 passed the broker's exam, for a passing rate of 92%, and a total of 315 passed the salesperson's exam, for a passing rate of 68%.

Director's Report

The Commissioners received the Director's report.

Ms. Diel reported she had received notice that Mr. Befort had accepted a position as General Counsel with the Office of the Kansas State Bank Commissioner.

Ms. Diel reported that the Investigation Committee had met and would be filing an emergency proceeding regarding the misappropriation of funds. With Mr. Befort's departure, there may be a delay in issuing this filing. Ms. Diel explained that emergency proceedings are provided for under K.S.A. 58-3050(j). In an emergency proceeding, the individual is immediately suspended once the order is issued and a hearing is conducted as soon as possible. The Commission must provide proof that whatever discipline imposed is justified. Depending on the outcome of the hearing, further discipline may be imposed, including revocation and fines.

Because Commissioners deal with rehabilitation regarding DUI issues (time involved, severity of offense, etc.), Ms. Diel provided two different perspectives regarding the expungement of DUI's as discussed by the Legislature. The Legislature has proposed expunging DUI's after five years instead of the current 10 years.

Ms. Diel reported a reduction in licensees, for a total count of 13,539 licensees.

Mr. Wuertz declared a 10 minute break at 12:47 p.m.

Mr. Wuertz reconvened the meeting at 12:57 a.m.

Executive Session to Discuss a Personnel Matter

Based upon a motion made by Mr. Vaught, seconded by Ms. Wenger, Mr. Wuertz recessed the KOMA meeting at 12:58 p.m. for 15 minutes to enter into an executive session to discuss a personnel matter. Those in attendance include the Commissioners.

Mr. Wuertz reconvened the KOMA meeting at 1:20 p.m.

Executive Session to Discuss a Personnel Matter

Based upon a motion made by Mr. Vaught, seconded by Ms. Wenger, Mr. Wuertz recessed the KOMA meeting at 1:25 p.m. for 15 minutes to enter into an executive session to discuss a personnel matter. Those in attendance include the Commissioners and Ms. Diel.

Mr. Wuertz reconvened the KOMA meeting at 1:40 p.m.

Public Comments

No one was present to offer public comments.

Upcoming Commission Meetings

Based upon the Commission's discussion regarding upcoming meeting schedules, Mr. Wuertz reported that the May 8, 2014 meeting will be held by telephone, the June 19, 2014 meeting will be held by telephone, and the July 10, 2014 meeting will be held in person at the Commission's Topeka office.

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

Adjournment

Mr. Wuertz adjourned the meeting at 1:41 p.m.