

MINUTES OF THE MEETING
Kansas Real Estate Commission
July 18, 2016

The Kansas Real Estate Commission held its regular meeting on Monday, July 18, 2016 at 9:00 a.m. at Three Townsite Plaza, Suite 200, 120 SE 6th Avenue, Topeka, KS 66603.

Commissioners Present:

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

Staff Present:

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

Kansas Real Estate Commission Legal Counsel:

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

Members of the Public

Patrick Vogelsberg, Kansas Association of Realtors
Mark Barker, Career Education Systems
Steve Kornspan, HomeSPOT

Call to Order

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

The public comment on the agenda was removed by request of the individual

Approval of the Minutes of the June 20, 2016 Meeting

Motion was made by Mr. Vaught, seconded by Mr. Wuertz, to approve the minutes from the June 20, 2016 meeting. Motion carried unanimously.

Conference Hearing in the Matter of Christine Frazier, Docket No. 16-5789

Ms. Wenger recessed for a short break at 9:23 a.m.
Ms. Wenger reconvened the meeting at 9:28 a.m.

Public Comment: Proper Handling of Earnest Money

Ms. Wenger addressed the agenda item “Proper Handling of Earnest Money”. This item had originally been requested by Cheryl Hubert, a broker in Wichita, Kansas, but was removed at her request. Ms. Hubert proposed making the listing and buyers’ agents equally responsible for ensuring earnest money is deposited timely and in compliance with K.S.A. 58-3062(a)(19). There have been issues with brokers refusing to allow licensees to present offers until the earnest money has been received. Kansas license law does not require earnest money to be received to present an offer. The statute requires earnest money to be deposited within five (5) business days unless otherwise provided by in written agreement. Ms. Fertig believes this is a local practice issue rather than a license law issue. The Commission took no action on this item.

Ms. Wenger recessed for a short break at 10:07 a.m.
Ms. Wenger reconvened the meeting at 10:16 a.m.

Gifts and Gratuities Revisions

This is a continuation of the discussion from the last Commission meeting. Ms. Fertig presented a revised draft of the gifts and gratuities policy incorporating comments and suggestions from Commissioners and staff. Mr. Schlosser expressed concern regarding the change from a cash amount to a percentage of the sale. Ms. Fertig advised if establishing a dollar amount is important to the Commission it would best be addressed by a regulation. Ms. Fertig will present a revised draft of the guidelines at the August meeting and draft a regulation establishing the dollar amount that can be received.

FY2016 Legal Action Summary Review

Mr. Wisner provided an overview of the legal actions taken by the Commission in FY 2016. There is a significant increase in warning letters. This increase is due to both a shift in Commission philosophy and changes to the tracking methods. Actions against supervising brokers have decreased, while affiliated licensees have risen. The Commission no longer cites the broker for failure to supervise in as many situations. Instead, staff evaluates the situation to determine if the broker is responsible for the actions of the affiliated licensee. Licenses on indefinite restricted and/or conditioned status continue to decrease as the Commission moves towards more definite periods. Disciplinary hearings have decreased. Mr. Wisner feels it is tied directly to adding more detail to the orders so respondents have fewer questions on why they are being disciplined.

Licensee, Education and Exam Report

Ms. White informed the Commission there were 14,577 licensees as of July 5, 2016. This is up by 360 since this time last year and 1,116 since July 2014.

In June, staff approved three elective continuing education courses, denied one course on residential property management and approved one mandatory broker course.

Ms. White explained a change in the reports for the passing rate by school. “Kansas Real Estate Commission” and “Kansas Real Estate Commission – Waiver” will be replaced by “Waiver – Equivalent Requirements Met”. This is a more accurate description for individuals taking the exam by waiver.

Ms. White reviewed exam performance by fiscal year. There were 600 more exams graded in FY 2016 over FY 2014. In FY 2016 the overall pass rate was 68%, compared to 72% in FY 2014 and FY 2015. There was a significant decrease in the pass rate for brokers. In FY 2016, the overall pass rate was 62%, FY 2015 was 81% and FY 2014 was 79%.

Ms. White presented an overview of original salesperson’s licenses issued for the past three fiscal years. There has been a steady increase in the number of licensees, 1,109 in FY 2014, 1,337 in FY 2015 and 1,467 in FY 2016. A quarterly breakdown showed greater numbers of licenses issued in the spring (April through June) and summer (July through September).

Ms. White presented a draft agenda for the Educators Conference to be held in October in Lawrence. PearsonVue will be making a presentation as will Crystal Puderbaugh from the Board of Regents regarding requirements for pre-license education providers. Commission staff will make a presentation and then host an Educator’s Roundtable. Mr. Wisner wanted Commission members to weigh in on this draft agenda. The Commission hasn’t held a conference like this in a long time. In the past, the conference attracted between 20-25 attendees, Ms. White is hoping for a larger number of attendees. Just prior to this meeting, PearsonVue and Commission staff will be conducting an exam review. Ms. White solicited content matter experts for the exam review from the Commissioners, at least one per district. Brokers would be a better option as the Commission is working on the broker examination in addition to the salesperson exam.

At the last Commission meeting, the Commissioners expressed a desire for more information on verifying broker transactions on the application. Ms. White will be presenting some more detail on this next month. She is contacting local associations and boards about this issue.

Ms. White is working on getting more interest in commercial continuing education courses in Kansas. She is working with the ARELLO listserv to see how other agencies increase commercial courses offerings.

Director’s Report

Mr. Wisner informed the Commission that FY 2016 real estate fee fund revenues after transfers and recovery of expenses are \$ 1,017,310. This is \$14,500 more or 1% higher than estimates. FY 2016 receipts were 19% higher than FY 2015 and 18% higher than FY 2014. Because we hit the million dollar threshold in June, the SGF transfer was cut off. FY 2016 revenues were the highest since FY2008.

FY 2016 Commission expenditures including encumbrances are \$995,201. This is 1% or \$8,800 less than estimated. \$94,000 was encumbered for the System Automation project and \$28,000

was encumbered for data cleanup and maintenance by the current RELS vendor out of FY 2016 approved expenditures.

The KREC Fee Fund Balance is currently \$448,343 which is up \$88,000 from July 1, 2015. All of the overage is unexpended encumbered funds from FY 2016.

Background investigation fee fund receipts in FY 2016 were \$109,376 which is 10% above estimates and 6% above FY 2015 revenue.

Revolving recovery fund receipts in FY 2016 were \$15,839 for a total balance of \$242,269. When the balance exceeds \$250,000 the Commission can utilize the excess balance for educational and promotional activities. Since this report was prepared, approximately \$12,000 has been receipted into the fund. It is now at the \$250,000 threshold. At the August meeting there will be a proposal on how to spend the overage.

At the August meeting Mr. Wisner will submit a proposal for expenditures and revenues for the Commission to consider for FY 2017 through FY 2019. The final budget submission to the Division of Budget is due September 15. This year legislation passed that created a performance based budget requirement. Mr. Wisner will be attending training in August on how this will affect the Commission.

Staff is working with OITS to create email accounts for Commission members. Mr. Wisner will be providing guidance on its use in the next few weeks.

Staff is working with the Board of Healing Arts and System Automation to develop a final project plan for the enhanced licensing system

Mr. Wisner has received multiple inquiries from our current landlord and other potential lessors about RFP lease requirements. Mr. Wisner believes there will be three to five final offers received. There will most likely not be a proposal for the current location, as there was no way to meet the terms of the RFP in the current space. Mr. Wisner will have an answer on moving costs at the August meeting. Even the if moving costs are more significant than we anticipate, the state has a master lease program that lets you spread out payments for capital expenditures with very low interest rates.

The public hearing on revisions to regulations 86-1-2 (revocation), 86-1-4 (revocation), 86-2-8 (revocation), 86-3-19 (disclosure of relationship; immediate family member), 86-3-26a (accurate brokerage relationship disclosure), 86-3-30 (revocation) and 86-3-31 (broker supervision) is set for October 12, 2016 at 9:00 a.m. in Wichita. This hearing and the October Commission meeting will coincide with the Kansas Association of Realtors annual meeting. The Joint Committee on Rules and Regulations will review them on September 6, 2016.

The revisions for K.S.A. 86-1-5 Fees, approved at the June meeting, were submitted for review to the Department of Administration.

ARELLO's Annual Meeting will be held in Vancouver, Canada. They will be holding a commissioner's college. Mr. Wisner is planning on attending the meeting, as he is now a district director. Mr. Vaught expressed interest in attending the meeting as well.

By general consensus, the Commission has decided to reduce the number of regular meetings to nine, eliminating the September, January and May meetings for FY 2017.

Adjournment

Ms. Wenger adjourned the meeting at 11:54 a.m.

Upcoming Commission Meeting Dates

August 29, 2016