

MINUTES OF MEETING

Kansas Real Estate Commission

May 8, 2014

The Kansas Real Estate Commission held its regular meeting on Thursday, May 8, 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

Staff Present:

Sherry C. Diel, Executive Director
Alexandra Blasi, Attorney
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

Call to Order

Mr. Wuertz called the KOMA meeting to order at 10:10 a.m.

Results from KAPA Proceedings

John Akers

The Commission approved Applicant's salesperson application subject to the condition that should Applicant wish to transfer or reactivate to another supervising broker, the new proposed supervising broker must submit a letter acknowledging that he or she is aware of Applicant's prior conduct, has read prior all prior Commission Orders and is willing to provide adequate supervision and instruction to Applicant. Motion carried unanimously.

Mr. Akers left the meeting at 10:13 a.m.

Approval of the February 12, 2014 Meeting Minutes

Motion was made by Ms. Wenger, seconded by Ms. Bittenbender to approve the minutes of the February 12, 2014 meeting. Motion carried unanimously.

Approval of the March 13, 2014 Meeting Minutes

This item was deleted from the agenda. The March 13, 2014 minutes will be prepared for the Commission's review at its June 2014 meeting.

Consider Brian J. Reed's request to open a company named Re/Max Preferred

The Commission considered Mr. Reed's request to open a company named Re/Max Preferred. Ms. Diel reported that Mr. Reed's company, Re/Max Preferred, will be associated with the Re/Max franchise. There is a company named Reece & Nichols Preferred Realty currently operating in the same area as a franchise of Reece & Nichols Realtors, Inc. and a company named Preferred Realty currently operating with no association to a franchise. After review and discussion regarding Mr. Reed's request and any possibility this new company name might cause confusion to the public, motion was made by Ms. Bittenbender, seconded by Ms. Wenger to grant Mr. Reed's request to open a company named Re/Max Preferred. Motion carried unanimously.

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

At its April 10, 2014 meeting, the Commission considered Mr. Wray's request to open a company named Agent Ace, Inc. and transfer his license to this new company. At that time, the Commission referred the request to the Investigation Committee for a recommendation. Because the company is not actually offering the services required by law, the Investigative Committee (I-Team) made the recommendation to deny the request based on the Commission's authority to deny a company name that may be misleading to the public. After review and discussion regarding Mr. Wray's request, motion was made by Ms. Bittenbender, seconded by Ms. Cook to deny Mr. Wray's request to open a company named Agent Ace, Inc. and transfer his license to this new company. Motion carried unanimously.

Establishing timeframes for requesting criminal pleadings

Ms. Diel requested that staff be allowed to waive the requirement that criminal pleadings be requested from applicants if there have been no criminal offenses committed during the past 10 years and there has never been a felony offense in the applicant's criminal history. A Record of Docket/Action would be sufficient documentation for staff to document the criminal history for license application purposes. This type of waiver would create staff efficiencies and help prevent backlogs in the processing of license applications. Additional pleadings could be requested based upon the Record of Docket/Action if deemed necessary. The Commissioners granted this request.

Printing replacement licenses at no charge

The Commission considered a request from staff to allow the printing of replacement licenses at no charge for brokers whose offices were damaged by the recent tornadoes in Baxter Springs, Kansas for a period of one year. After review and discussion regarding this request, motion was made by Ms. Wenger, seconded by Ms. Cook to approve the printing of replacement licenses at no charge for supervising or branch brokers whose offices were damaged by the recent tornadoes in Baxter Springs, Kansas for a period of one year. Motion carried unanimously.

Status Report on Licensing Complaints

Ms. Diel presented a status report on the number of licensing complaints received by staff. Ms. Diel reported two factors have contributed to a significant reduction in the number of complaints filed: (1) the triaging system in which an application can be approved under a Guidance Document is sent directly to the Executive Director for review, and (2) having Ms. Blasi on staff as litigation counsel. There were a total of five complaints which are categorized as follows: (1) timeline for Commission review; (2) quick turnaround requested after waiting on the applicant to provide additional records; (3) concern that KBI/FBI spreadsheet on the website was not updated daily; (4) an individual did not like the agency's automated phone system;

and (5) a delay in staff requesting pleadings. There were no complaints regarding delays in preparation of an agency order.

Ms. Bittenbender stated she was pleased with the content of the responses to Mr. Wuertz's April 14, 2014 email to all licensees requesting comments and complaints. Mr. Wuertz stated he had hoped the response rate would be higher and that a survey may be considered in the future to allow for anonymous responses.

Ms. Diel reported that Sam Blasi is working part-time as a legal intern and helping draft orders. In addition, Ms. Diel relayed that a notice has been posted for an administrative assistant position to work in the Licensing Division.

Budget Report

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

Expenditures

At ten months into the FY 2014 budget, expenditures are 69% of total appropriations. If expenditures were spent equally throughout the year, total expenditures should be approximately 83%.

Other than normal expenditures, OITS has suggested the agency needs to purchase two new large servers as our current servers are more than five years old. One would be used for licensing and one for handling the electronic storage system. OITS estimated the cost of each server at \$6,000 and quotes are being obtained. Money was set aside in capital outlay to purchase one server per year. OITS is developing a plan for spreading out purchases so that not all IT equipment must be replaced at one time, which is a concern due to the budget cuts imposed to avoid a deficit in the Commission's Fee Fund.

Encumbrances

Total encumbrances are \$16,612. According to SMART, the Fee Fund is at \$330,036. However, after the encumbrances are subtracted, the available Fee Fund balance is \$313,424.

Receipts

To date in FY 2014, KREC has transferred 10% of receipts, or \$77,479, to the State General Fund and retained 90%, or \$697,335, for the KREC Fee Fund.

To date, KREC has collected \$79,655 in fines.

Recovery Fund

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

Ms. Diel reported that she will provide information on potential efficiencies for renewal applications at the June 2014 meeting. Currently, a renewal applicant is required to report criminal offenses occurring during the last six years. If an applicant attempting to renew online answers "yes" to the questions related to criminal offenses, he or she is prevented from renewing online. To date, 880 brokers and 2,532 salespersons have renewed online. Ms. Diel stated that staff will present ideas at the June meeting to

change the language for the criminal history questions so that more applicants can renew online. Ms. Blasi suggested a potential change to report any offenses since the applicant's last application.

Staff Report regarding FY 2014 – FY 2015 Budget

Ms. Diel reported that the Governor's FY 2014 – FY 2015 budget has been signed. The budget provides for a new electronic storage system to replace the Commission's obsolete system, which will be paid for out of the Recovery Fund. The Senate had proposed transferring approximately \$67,000 from the Home Inspector's Fund to the Commission's Fee Fund. That proposal failed during the Conference Committee discussions. The Home Inspector's Fee Fund monies will be transferred to a private association, the Kansas Home Inspector's Association.

Since the Commission got neither a fee increase nor the Kansas Home Inspector's funds, the Commission has no additional expenditure authority in FY 2015. Ms. Diel reminded the Commissioners that the new Licensing position will have to be paid for from savings in other areas. In addition, to make the FY 2015 budget balance, Ms. Diel had to zero fund any vacant positions.

Planning Session for FY 2015 – FY 2017 Budget

Ms. Diel proposed an effort to recoup costs related to investigations or disciplinary cases handled by the Enforcement Division. Currently, only costs such as outside counsel and court reporter fees are recouped against fine payments. Pursuant to K.S.A. 58-3050(m), Ms. Diel proposed to operate the Enforcement Division in a manner similar to a law firm whereby staff track time spent on a case and bill those staff costs against any fine monies collected. This billing system would require that reasonable costs be charged for staff time, i.e., attorneys, investigators, auditors, and legal assistants. Any funds not recouped would be forwarded to the State General Fund. The Commission provided approval for staff to begin building the billing system and to begin billing Enforcement staff costs on July 1, 2014 against the fines collected.

Staff Report on I-Team Statistics

The I-Team Statistics were received by the Commissioners. Ms. Diel reviewed the fiscal year report through April 30, 2014. The first report shows there were 81 cases that closed with some kind of action or no action. The second report reflects there were 45 complaints that were opened, but no legal docket was opened. The third report shows that there are currently 122 complaints open. Ms. Diel reported a large increase in the number of complaints filed since January 2014. Mr. Pierce reported that an upswing in the number of complaints filed during the second half of the fiscal year is not unusual.

Request from I-Team

Ms. Diel reported that Jerry Gray has informed staff that effective at the end of calendar year 2014 he will no longer serve on the I-Team. Ms. Diel reported that the I-Team membership needs a commercial representative. Ms. Bittenbender will provide Ms. Diel a potential contact.

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. Pearson Vue's report shows that a larger than usual number of salespersons took the exam in April 2014. This resulted in Licensing staff issuing the highest number of original licenses in April since the economic downturn.

In April 2014, 6 brokers and 208 salespersons took the licensure exams. A total of 6 of those taking the broker's exam passed, for a passing rate of 100%, and a total of 157 passed the salesperson's exam, for a

passing rate of 75%. For Calendar Year 2014, 43 brokers and 672 salespersons sat for the licensure exams. A total of 40 passed the broker's exam, for a passing rate of 93%, and a total of 472 passed the salesperson's exam, for a passing rate of 70%.

Ms. Diel reported that the data entry work performed by staff is much easier for an in-person course versus an at-home or distance education course. The Kansas Association of Realtors (KAR) has a new program that produces a roster-like report for submission of continuing education course information. Commission staff is working with KAR to add necessary content to the report which would enable staff to enter continuing education credits into the licensure system much more efficiently than entering separate distance education course certificates. If KAR is able to add the content to the report, staff will contact Career Education Systems to inquire if similar reports are available.

Director's Report

The Commissioners received the Director's report.

Ms. Blasi joined the Commission part-time as litigation counsel on April 25, 2014, pursuant to a short-term Memorandum of Understanding with the Department of Commerce. Ms. Blasi provided statistics on Commission orders produced between January 1, 2014 and April 25, 2014. As of April 25th, 12 licensing orders, six disciplinary orders, and 13 Consent Agreements and Final Orders (Consent Agreements) had been issued. As far as pending hearing requests, six were pending before the Commission and 23 were pending with the Office of Administrative Hearings. Two of the six requests pending before the Commission have been scheduled for the July 10, 2014 Commission meeting.

Since April 25, three Consent Agreements have been mailed, nine Consent Agreements are pending and will likely settle, seven orders have been drafted, 11 Consent Agreements have been signed, one motion for summary judgment has been drafted, and one emergency order is in the drafting stage. This leaves a total of 40 licensing and disciplinary orders to complete. Of these 40 orders, 29 have not been reviewed to determine the extent of revisions needed and 11 disciplinary files have no order yet drafted. By the June 2014 meeting, Ms. Blasi hopes to be current on all orders, including those resulting from I-Team decisions.

From this point forward, the Commission Chairman will be signing Summary Proceeding Orders, Consent Agreements, and warning letters.

Public Comments

No one was present to offer public comments.

Upcoming Commission Meetings

Mr. Wuertz reported that the June 18, 2014 and July 10, 2014 meetings will be held in person at the Commission's Topeka office. The Commissioners will set a date for the August 2014 meeting, which will be held by teleconference, at the June 18, 2014 meeting.

Ms. Diel reported that the budget will be due in September. Historically, the Commission has scheduled a late August meeting and has not held a meeting in September.

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

Adjournment

Mr. Wuertz adjourned the meeting at 11:25 a.m.