

MINUTES OF MEETING
Kansas Real Estate Commission
January 15, 2013

The Kansas Real Estate Commission held its regular meeting on Thursday, January 15, 2013 at 9:00 a.m. at Three Townsite Plaza, Suite 200, 120 S.E. 6th Avenue, Topeka, Kansas.

Commissioners Present:

Tim Holt, Member
Marilyn Bittenbender, Member
Errol Wuertz, Member
Shirley Cook, Member

Staff Present:

Sherry Diel, Executive Director
Kelly White, Director of Licensing & Education
David Pierce, Director of Enforcement
Alexandra Blasi, Attorney
Laurel McGinnis, Legal Assistant

Kansas Real Estate Commission Legal Counsel Present:

Sarah Fertig, Deputy Attorney General

Members of the Public Present:

Alison Cochran
Casey Cole
M. Sally Riley
Derek Brown
Larry Rickard

Call to Order

Mr. Holt called the meeting to order at 9:15 a.m.

Approval of Minutes

Motion was made by Ms. Bittenbender, seconded by Mr. Wuertz to approve the minutes of the August 23, 2012 meeting. Motion carried unanimously.

Motion was made by Mr. Wuertz, seconded by Ms. Bittenbender to approve the minutes of the August 29, 2012 special meeting. Motion carried unanimously.

Motion was made by Ms. Bittenbender, seconded by Mr. Wuertz to approve the minutes of the October 18, 2012 meeting. Motion carried unanimously.

Motion was made by Ms. Bittenbender, seconded by Ms. Cook to approve the minutes of the November 8, 2012 meeting, as amended, to reflect Mr. Wuertz was not in attendance. Mr. Wuertz abstained. Motion carried.

Motion was made by Mr. Wuertz, seconded by Ms. Bittenbender to approve the minutes of the December 13, 2012 meeting. Motion carried unanimously.

At 9:20 a.m. Mr. Holt recessed the KOMA meeting in order to address the scheduled KAPA proceedings.

Conference Hearing *In the Matter of Christopher Mba*, Docket No. 4265

A conference hearing *In the Matter of Christopher Mba*, Docket No. 4265 regarding the denial of his application for late renewal of his salesperson's license pursuant to K.S.A. 58-3043(a)(2), (a)(3), (a)(4), (a)(5), (b), (f)(1) and (f)(2) and K.S.A. 58-3050(a)(1) and K.A.R. 86-1-19(b) was not held because Applicant failed to appear.

Conference Hearing *In the Matter of Alison Cochran*, Docket No. 4215

A conference hearing *In the Matter of Alison Cochran*, Docket No. 4215 regarding the denial of Ms. Cochran's application for a broker's license pursuant to K.S.A. 58-3039(d)(1), (e) and (g) and K.S.A. 58-3043(a)(4) was held.

Conference Hearing *In the Matter of Casey Cole*, Docket No. 4195

A conference hearing *In the Matter of Casey Cole*, Docket No. 4195 regarding the denial of Ms. Cole's application for a salesperson's license pursuant to K.S.A. 58-3039(a), (g), (h), K.S.A. 58-3043(a)(4), (a)(5), (b), (d), (f)(1) and (f)(2), K.S.A. 58-3047(b), K.S.A. 58-3050(a)(1), (a)(4) and (a)(5) and K.A.R. 86-1-19(a)(3) was held.

At 10:20 a.m. Mr. Holt declared a 10 minute recess.

Conference Hearing *In the Matter of M. Sally Riley*, Docket No. 4194

A conference hearing *In the Matter of M. Sally Riley*, Docket No. 4194 regarding the denial of Ms. Riley's application for renewal of her salesperson's license was held. Mr. Holt recused himself from the hearing and deliberations.

Ms. Bittenbender concluded the hearings at 11:37 a.m.

Reconvene KOMA Meeting

Mr. Holt reconvened the KOMA Meeting at 12:10 p.m.

After review and discussion regarding proper service of the Notice of Hearing, Mr. Mba's failure to appear at the hearing scheduled for 9:30 a.m., Mr. Mba's failure to appear by 12:15 p.m. and no phone messages or emails from Mr. Mba indicating he could not attend the hearing *In the Matter of Christopher Mba*, Docket No. 4265, motion was made Ms. Bittenbender, seconded by Mr. Wuertz to issue a default order to Mr. Mba for failure to appear. Motion carried unanimously.

After review and discussion *In the Matter of Alison Cochran*, Docket No. 4215, motion was made Mr. Wuertz, seconded by Ms. Bittenbender to deny Ms. Cochran's application for a broker's license for failure to understand brokerage relationships and lack of experience. Motion carried unanimously.

After review and discussion *In the Matter of Casey Cole*, Docket No. 4195, motion was made by Mr. Wuertz, seconded by Ms. Bittenbender to approve Ms. Cole's application for a salesperson's license with issuance contingent on Ms. Cole complying with the following conditions: (1) Applicant shall affiliate with a Kansas supervising broker or branch broker within 180 days; (2) Applicant shall submit a letter from the supervising or branch broker acknowledging Travis County, Texas Case No. 3011853 and stating that the broker is willing to supervise Applicant; and (3) if Applicant fails to comply with the conditions for issuance staff will bring the application back before the Commission for further review and order. Motion carried unanimously.

After review and discussion *In the Matter of M. Sally Riley*, Docket No. 4194, motion was made by Ms. Bittenbender, seconded by Mr. Wuertz to approve Ms. Riley's application for renewal of her salesperson's license with the following conditions: (1) Applicant shall submit documentation to the Commission of Applicant's successful completion of the four-hour Kansas real estate law course within 90 days. Such course shall not count toward Applicant's continuing education requirements; (2) Applicant shall submit to the Commission a letter describing Applicant's understanding of the requirements of K.A.R. 86-1-19 and K.A.R. 86-3-15, and how her previous actions violated certain provisions of those regulations within 30 days; and (3) If Applicant fails to comply with the foregoing conditions by the applicable deadline, the Commission shall reconsider Applicant's license and may take disciplinary action against Applicant's license. Motion carried unanimously. Mr. Holt abstained. Motion carried.

Staff report regarding distribution of staff workload

Ms. Diel reported staff continues to work on identifying and implementing time and cost saving efficiencies.

A. Accuracy and timeliness

Due to a staff shortage and the volume of phone inquiries, Licensing has developed issues with timely and accurately processing paperwork. Ms. Diel informed the Commission that staff will stagger phone coverage in order to allow staff to work without interruption. This will result in more accurate data entry. Staff is also in the process of creating Microsoft Word templates for the issuance of routine correspondence. Ms. Diel also informed the Commission that Ms. Blasi will now handle certain technology issues previously handled by the Director of Licensing.

B. Frequently asked questions

Ms. Diel informed the Commission that all departments receive routine inquiries that could be effectively handled with frequently asked questions on the Commission's web site. While the web site currently has frequently asked questions, staff is working on expanding the information available to licensees and the public online. Staff is also working on amending Commission forms to provide licensees with a more user-friendly format including the creation of pdf fillable forms.

- C. Application submission checklist
Staff would like to update the checklist to include additional information that would be helpful for applicants. In particular, documentation concerning criminal offenses is often times missing or incomplete. An improved checklist would also aid staff in the timely review of applications.
- D. Docket system
Ms. Diel informed the Commissioners that Ms. Blasi created an upgraded and expanded version of the docket database currently used by the Commission. The new database provides numerous features previously unavailable to staff and will increase efficiency. Ms. Blasi is also now drafting orders and the new concise format and presentation will be easier for applicants to understand and will also result in the timely issuance of orders.
- E. Case Management system
Ms. Diel informed the Commission that Ms. Blasi is currently creating a case management database for Enforcement. Currently, Enforcement does not have an electronic tracking system in place. The new database will allow for tracking features that were previously unavailable such as statistics related to violation type. Statistics will also be beneficial in creating the Commission's budget.
- F. Newsletter
Ms. Diel presented the Commissioners with a sample newsletter created by Ms. Blasi. Ms. Diel requested that the Commission consider issuing an electronic newsletter quarterly. Staff would like for the newsletter to be an educational tool for licensees as well as a resource for Commission news and regulatory updates. The Commission discussed whether disciplinary matters should be included in the newsletter. Ms. Diel commented that instead of including a list of disciplinary actions, the Commission could use the nature of the violation as a teaching tool. Mr. Wuertz commented that Mr. Jarboe does something similar for the Kansas Association of Realtors®. The Commission instructed Ms. Diel to proceed with publishing a quarterly newsletter and not to publish discipline actions or summaries. The Commission also agreed that staff no longer needs to draft summaries at the conclusion of disciplinary actions.

Staff request regarding Commission policies and procedures

Ms. Diel identified several areas where expenditures could be reduced or staff workload could be reduced.

- A. Phone system
Ms. Diel explained that answering phones has affected staff's ability to timely and accurately process licensure paperwork. Licensing is currently staffed at less than half its previous levels. Ms. Diel also explained that most phone calls pertain to frequently asked questions that are available on the Commission's web site. The Commission gave Ms. Diel permission to switch to an automated phone system due to the Commission's limited resources.

B. Inactive postcards.

Ms. Diel explained the current inactive post card procedure, the costs associated with printing and mailing postcards and the amount of staff time devoted to the procedure. Ms. Diel also explained that a licensee may check their current status on the Commission web site. The Commission gave permission to Ms. Diel to stop sending inactive postcards unless a licensee is terminated and staff receives a letter from the broker, directed to the licensee, in lieu of the licensee's signature on the inactivation request. In the case of all other inactivation requests, no post cards or emails need to be sent to the broker and licensee because the inactivation form was signed.

C. Incomplete paperwork

Ms. Diel explained that Licensing receives a significant amount of incomplete forms. Due to limited resources, writing letters and making phone calls in an effort to obtain a completed form is inefficient. Also, the time devoted to licensees who submit incomplete forms delays the processing of complete forms. Staff is currently drafting new forms in an effort to further alleviate the problem. The Commission gave approval to staff to return incomplete paperwork unprocessed to the sender with a form letter containing instructions concerning the required information /documentation that is missing.

D. Summary proceeding order letters

Ms. Diel presented the Commissioners with samples of simplified transmittal letters for summary proceeding orders that omit deadlines. Utilizing the new letters will allow for the use of Microsoft Word templates and will result in timely processing of Commission orders. The Commission gave approval to Ms. Diel to begin use of the simplified letters when a summary proceeding order is issued.

E. Bad check policy

Ms. Diel explained that under the current policy when a back check is received a summary proceeding order is issued assessing a \$50 fine. The new procedure would provide an opportunity for the payee, via a demand letter, to submit replacement funds within 15 days along with a \$30 processing fee prior to an order being issued. Insufficient funds received by ks.gov would result in issuance of an order because two demand letters have already been sent by that agency. The new policy also raises the fine from \$50 to \$100. The Commissioners approved Ms. Diel implementing the new bad check policy and fine structure and retaining the policy that a licensee who submits a bad check must pay with a money order, cashier's check or credit card and that if a licensee should make a subsequent payment by bad check, within three years, their license shall be suspended.

F. Guidelines

Ms. Diel presented the Commissioners with guidance documents for staff approval/denial of original and renewal applications. Ms. Blasi explained the guidance documents to the Commissioners. Motion was made by Mr. Wuertz, seconded by Ms. Bittenbender to approve Policy No. 2013-01, Staff Approval/Denial of Original Applications and Policy No. 2013-02, Staff Approval/Denial of Renewal Applications. Motion carried unanimously.

G. Triage Policy

Ms. Diel presented the Commission with a copy of the current triage policy used by the disciplinary committee (I-Team). She explained that because of the budget shortfall staff is currently developing a detailed guidance document to further prioritize complaint processing and to restrict or eliminate the types of complaints handled by the Commission. Once a recommended draft is approved by the disciplinary committee the Commissioners will be provided with the proposed policy for review.

Staff report on I-Team Statistics

Ms. Diel reported that statistics will be provided at the February meeting due to the I-Team meeting occurring after the Commission meeting this month.

At 1:29 p.m. Mr. Holt declared a break for 10 minutes

Salesperson Applications

Lisa Palmer

Applicant answered "Yes" to Question No. 5 on her application and self-reported a criminal offense. After review and discussion regarding the nature of the offense, the passage of time and Applicant's lack of additional criminal offenses, motion was made by Mr. Wuertz, seconded by Ms. Cook to approve Applicant's application for a salesperson's license. Motion carried unanimously.

Jothan Schiller

Applicant answered "Yes" to Question No. 5 and 6 on his application and self-reported several criminal offenses, including a conviction for Assault-3rd degree for which he is currently serving probation. After review and discussion regarding the nature and severity of the offenses and Applicant's pending probation, motion was made by Mr. Wuertz, seconded by Ms. Bittenbender to deny Applicant's application for a salesperson's license. Motion carried unanimously.

Josh Spiek

Applicant answered "Yes" to Question No. 5 and 6 on his application and self-reported two criminal offenses. After review and discussion regarding the nature of the offenses, Applicant's age at the time of the offenses and Applicant's efforts at rehabilitation, motion was made by Ms. Bittenbender, seconded by Mr. Wuertz to approve Applicant's application for a salesperson's license restricted to his proposed supervising broker for a period of two years. Motion carried unanimously.

Broker Applications

Madgy Ibrahim

The application of Mr. Ibrahim was presented for review by the Commission. After review and discussion regarding the number of years Mr. Ibrahim had been licensed, his transaction experience, knowledge of Kansas brokerage relationships and related experience, motion was made by Ms. Bittenbender, seconded by Mr. Wuertz, to approve Mr. Ibrahim's application for a broker's license subject to the restriction that he may not be a supervising broker or branch broker for any associated or affiliated licensees until further order of the Commission. Motion carried unanimously.

Renewal Applications

Jesse Berlin

The renewal application of Mr. Berlin was presented for review by the Commission. After review and discussion regarding an anonymous complaint regarding tax liens owed by the Applicant and the Applicant's information regarding his attempts to remedy the lien, motion was made by Ms. Bittenbender, seconded by Ms. Cook to table the Applicant's renewal application until the February 14, 2013 meeting, pending receipt of a letter from Applicant regarding his compliance with a request for documentation from the IRS and the status of the offer in compromise.

Shobe Smith

Applicant answered "Yes" to Question No. 2 on his late renewal application and self-reported a criminal offense. After review and discussion regarding the nature of the offense, Applicant's lack of additional criminal offenses and Applicant's efforts at rehabilitation, motion was made by Ms. Bittenbender, seconded by Ms. Cook to approve Applicant's application for late renewal of his salesperson's license. Motion carried unanimously.

Lawrence West

The renewal application of Mr. West, tabled from the December 13, 2012 meeting, was presented for review by the Commission. Staff provided the Commission with an update regarding the pleadings provided by the Applicant and notified the Commission that additional criminal offenses were discovered. Staff also reported that the information received from Mr. West appears to be inconsistent with statements he made to the disciplinary committee. Motion was made by Ms. Bittenbender, seconded by Mr. Wuertz to instruct staff to send a letter to Applicant requesting additional information and to table the application until the February 14, 2013 meeting. Motion carried unanimously.

Consider request of Jake Zillner to change his supervising broker

The request of Jake Zillner to change his supervising broker was presented to the Commission for review. After review and discussion regarding Mr. Zillner's pending diversion and a pending disciplinary action in Commission Docket No. 3963, motion was made by Ms. Bittenbender, seconded by Mr. Wuertz to deny Mr. Zillner's request to change his supervising broker. Mr. Holt recused himself. Motion carried.

Consider request from Jerry Reece to add a company by the name of Prudential Kansas City when a similarly named company recently closed in the same marketing area

The request of Jerry Reece to add a company by the name of Prudential Kansas City was presented to the Commission for review. Ms. Diel notified the Commission that a company named Prudential Kansas City recently closed in the same marketing area. According to documentation provided by Mr. Reece, the Prudential Kansas City franchisee opted out of the Prudential contract and the name became available for franchise purposes. A letter from the franchisor approving the proposed brokerage name is enclosed. As an alternative, Ms. Diel also provided the Commission with additional name options presented by Mr. Reece. Motion was made by Mr. Wuertz, seconded by Ms. Bittenbender to deny the name Prudential Kansas City pursuant to K.S.A. 58-3079 and to approve the name "Prudential KC Properties." Motion carried unanimously.

Executive Session to discuss Attorney-Client Privileged Matter

At 2:47 p.m. motion was made by Ms. Bittenbender, seconded by Mr. Wuertz to enter into executive session for 10 minutes to discuss an attorney-client privileged matter. The Commissioners, Ms. Diel and Ms. Fertig were present for the executive session.

Mr. Holt reconvened the meeting at 3:00 p.m. and announced Ms. Diel has authority to enter into a consent agreement *In the Matter of Dale Williamson*.

Ms. Cook left the meeting at 3:01 p.m.

Consider Commission's 2013 Legislative Agenda

Ms. Diel presented the Commissioner's with the Revisor of Statutes' draft of the fee increase bill and technical bill.

Staff Report on Prior Authorization for testing services

Ms. Diel reported that Purchasing approved the prior authorization to enter into a contract extension with PearsonVue. This will allow for sufficient time to prepare a request for proposals. Ms. Diel will also work with Purchasing on the content of the request for proposals.

Education Report

The Education Report was received by the Commissioners.

Budget Report

The Budget Report was presented including Expenditures and Real Estate Receipts as of November 2012.

KREC's available fee fund balance is \$360,448.00. Available cash is the Commission's current balance less encumbrances. Ms. Diel reported \$18,400 in encumbrances will not be used and will be released at some point during the fiscal year. Ms. Diel noted we are half way through the year and expenditures are at 47.41%.

KREC has transferred 10% of receipts to the State General Fund from July 2012 – December 2012 or \$45,470 and kept 90% of receipts from fees or \$409,800 for the KREC fee fund for the current fiscal year.

KREC collected \$32,216.76 in fines for FY 2013 for the State General Fund. The Revolving Recovery Fund balance is \$305,120.

Ms. Diel reported that the Department of Administration will now charge \$.02 per address on email blasts sent by the Commission to licensees.

Ms. Diel reported that 26 brokers and 121 salespersons renewed online.

Director's Report

The Commissioners received the Director's Report.

Ms. Diel notified the Commissioners that a petition for judicial review was filed *In the Matter of Eric Henderson*, Docket No. 4021.

Public Comment

Larry Rickard addressed the Commission. Mr. Rickard asked who may make additions to the Commission agenda. Ms. Fertig advised Mr. Rickard that the additions to the Commission are made at the discretion of the Commissioners. Mr. Rickard also commented that it would be helpful if responses could be provided to the Commissioners by the public at the time agenda items are discussed. Ms. Fertig noted that public comments and participation during the meeting are at the discretion of the Commission.

Mr. Rickard asked if the litigation reporting requirement included landlord/tenant actions. Ms. Fertig directed Mr. Rickard to K.A.R. 86-3-15(a)(1) for guidance.

Mr. Rickard also stated that he receives complaints from licensees about advertising. He commented that licensees should first address complaints with the licensee or the supervising broker before going to the Commission. He suggested that perhaps the Commission could disseminate statistics on advertising complaints.

The Commission thanked Mr. Rickard for his comments.

Adjournment

Mr. Holt adjourned the meeting at 3:18 p.m.

Next Meeting Dates: February 14, 2013 by telephone conference
 March 14, 2013 in Topeka

ATTEST:

Date: _____

Tim Holt, Vice Chairperson

Marilyn Bittenbender, Member

Errol Wuertz, Member

Shirley Cook, Member