

MINUTES OF THE MEETING
Kansas Real Estate Commission
November 21, 2016

The Kansas Real Estate Commission held its regular meeting on Monday, November 21, 2016 at 9:00 a.m. at Three Townsite Plaza, Suite 200, 120 SE 6th Avenue, Topeka, KS 66603.

Commissioners Present:

Joe Vaught, Chairperson
Bryon Schlosser, Vice-Chairperson
Errol Wuertz, Member
Sue Wenger, Member
Connie O'Brien, Member

Staff Present:

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

Kansas Real Estate Commission Legal Counsel:

Sarah Fertig, Assistant Attorney General
Lisa Mendoza, Assistant Attorney General
Rachael Longhofer, Assistant Attorney General
Wes Smith, Assistant Attorney General

Members of the Public:

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

Call to Order

Mr. Vaught called the meeting to order at 9:04 a.m.

Approval of the Minutes of the October 12, 2016 Meeting

Motion was made by Mr. Schlosser, seconded by Mr. Wuertz, to approve the minutes from the October 12, 2016 meeting. Motion carried unanimously.

Mr. Vaught recessed the KOMA meeting at 9:10 a.m. for KAPA deliberations.

Mr. Vaught reconvened the KOMA meeting at 9:41 a.m.

KOMA/KORA Review

Ms. Fertig and Ms. Mendoza provided a review of the Kansas Open Meetings Act (KOMA) and the Kansas Open Records Act (KORA). As the Commission is subject to both of these laws, this was a review of how these acts affect the business of the Commission and the responsibility of the Commissioners on a day to day basis.

KOMA guarantees members of the public the right to observe the governmental entities that govern them at work. Every time the Commission meets to do business, it must be open to the public. A meeting occurs under KOMA when three conditions are met: a) there is a majority of the members of the body, this is three or more members for the Commission, b) there is interactive communication in person, by telephone or by any other medium, and c) the business or affairs of the body are discussed. This means three or more Commissioners at social or industry events should avoid discussions of business. Interactive communication has taken place when there is two-way conversation; for example, an email from one Commissioner to the rest of the members is one-way communication, but when there is a reply, it becomes two-way. KOMA does not require the Commission to create an agenda prior to a meeting, but if one is created, it must be available to the public. Minutes of the meeting are the responsibility of the agency. KOMA only requires the motions to go into executive session to be recorded; the agency determines the level of detail to be included in the minutes. KOMA does not address the conduct of meetings or other procedural matters. The venue for the meeting does not have to be changed based on the number of people attending, but the Commission cannot deliberately restrict the size of the venue to prevent the public from observing. The Commission is not required to permit comment by the public, it is at their discretion. The public may use a camera or other recording device to record the meeting, subject to reasonable rules to prevent disruption of the meeting, safety hazards or other legitimate concerns.

Violations of KOMA result in a fine to be personally paid by the Commissioner for each violation. In an email chain, this would be a fine for each email. The Commission is not required to provide notice of their meetings unless it has been requested by a member of the public. In an emergency situation, notice may be only a few hours. An executive session permits the Commission to discuss certain subjects in private. The motion to enter into executive session must be entered recorded in the minutes and contain three parts: a) a brief description of the topic to be discussed without revealing confidential information, b) a reference to one of the topics for executive session permitted by KOMA, and c) the time and place at which the open meeting will resume. Only the members of the body holding the executive session have the right to attend, they may include others if it is believed their information is necessary. A binding decision can only be made in an open meeting; the Commission may reach a consensus agreement in executive session. It is not forbidden to discuss what occurred in executive session, but it is not encouraged.

KORA permits the public to review or get copies of public records. The act governs the procedure public agencies must follow when a public record is requested, categorizes public records, and determines under what circumstances an agency may withhold records. Public records are made, maintained, created or possessed by a public agency. The records created by the Commissioners during their work for the Commission are public records. This includes any

emails they may send. Records may be in any form, including electronic. Some parts of a record may be closed if it is of a sensitive or personal nature concerning an individual, if it affects confidential information or if it's necessary for the effective and efficient administration of a governmental program. In response to questions by Commissioners, Ms. Fertig explained emails of a transitory nature may be deleted, but they should retain those that are substantive. Mr. Wisner also advised the Commissioners, if a staff member is copied on any email, they do not need to retain it because it will be retained under the state email retention plan. If a Commissioner receives a request for records, it needs to be forwarded to Mr. Wisner as soon as possible. KORA requires a response to the request within three days. KORA allows the Commission to charge a fee for these records to recover actual costs. The staff hourly rate for records is \$20.00 per hour plus any additional costs incurred. Simple reports are charged \$15.00.

Mr. Vaught recessed for a short break at 10:24 a.m.
Mr. Vaught reconvened the meeting at 10:33 a.m.

Further Discussion on Rebates, Gifts and Gratuities

At the October 12, 2016 meeting the Commission discussed creating a regulation defining rebate to provide guidance for the industry. Ms. Fertig presented a revised draft of the regulation for consideration. Ms. Fertig added language stating a rebate requires the knowledge of all parties and is contingent on the transaction closing based on a recommendation from the Commission. A provision was also added that a small gift, valued at \$100.00 or less, would not be considered an unlawful rebate. Commissioners expressed concern about the monetary value stated in the caveat, as it may imply any amount over \$100.00 would be considered a rebate. As long as the gift is given to the client after the transaction closes and was not promised or agreed to in advance, the monetary value is not an issue. Ms. Fertig will incorporate suggestions and revisions will be presented at the December meeting.

The Commission received a request for an advisory opinion on a loyalty card presented to a client after closing. Mr. Wisner will advise the requestor the Commission does not issue advisory legal opinions.

Revisions to Staff Approval Guidelines for Applications

Mr. Wisner presented revisions to the guidelines for staff to approve certain applications. Staff has requested clarification of some of the guidelines regarding transaction history and experience. Staff received confirmation transactions in which the applicant was a team member are not eligible transactions when applying for a broker license. It would also clarify staff could only approve a broker applicant for a restricted license if they have more than two years' experience with 20 or more transaction but fewer than 40 transactions in the previous five years. A broker applicant with less than 20 transactions within the last five years would have to go to the Commission.

Motion was made by Mr. Schlosser, seconded by Mr. Wuertz, to approve the revisions to the staff approval guidelines. Motion carried unanimously.

Licensee, Education and Exam Report

Ms. White informed the Commission the total of active and inactive licensees was 14,803 as of November 1, 2016, a decrease of 110 from last month. A large group of licensees expired on October 31, 2016. Ms. White expects that number to grow as licensees submit late renewals. She rechecked the numbers on November 17, 2016 and there was a gain of 20 licensees. There were no approved or denied education courses this month.

In October there were a total of 240 exams taken with an overall pass rate of 63%. There were 27 broker exams with a pass rate of 52% and 213 salesperson exams with a pass rate of 65%. In FY17, there have been 896 exams and an overall pass rate of 68%.

The Commission held an Educators Meeting on October 25-26, 2016 in Lawrence, Kansas. The first day and a half was exam review with Pearson VUE. Commission staff met with representatives from Pearson VUE and three subject matter experts to review questions on the licensing exams. There were 21 new questions written and 260 questions were reviewed. They also discussed areas in which applicants struggled, including transaction broker agreement scenarios and the timing of written agency agreements. The afternoon of the second day was a meeting of educators. It had 21 attendees and 10 schools were represented. Commission staff, representatives from Pearson VUE and the Kansas Board of Regents made presentations. Staff also presented a breakdown of renewals by month. The meeting concluded with an educator's roundtable, discussing potential new requirements for schools and emerging trends in the education industry.

Director's Report

The Commission's budget proposal for FY17-19 has been given initial approval by the Division of Budget. The FY17 real estate fee fund receipts are \$374,344; this is 2% above estimates. FY2017 expenditures, excluding encumbrances, are \$282,559. This is 6% or \$58,000 less than estimated. This is mostly due to payments for one-time expenditures for IT and capital expenses not occurring yet this year. The Fee Fund balance is currently \$516,571. This is up \$68,000 from July 1, 2016. This carryover should drop over the next few months with the previously mentioned one-time expenditures and the FY16 encumbrances for the System Automation project. Background investigation fee fund receipts for FY17 are \$28,204; this is in line with estimates. The real estate recovery fund receipts are \$15,099, and the balance in the fund is \$257,568. As the balance exceeds \$250,000, we will be able to fund some educational projects including videos to explain the licensing process. The Commission must submit materials supporting evidence ratings of why the programs are necessary for the performance based budgeting requirements. Mr. Wisner provided a peer reviewed article for the Commissioners' review.

Commission staff has started regular bi-weekly status update meetings with System Automation and the Board of Healing Arts, the project is currently on schedule to go live in July 2017.

The office lease is being reviewed by the Department of Administration. The final contract should be ready for review by the Commission at the December meeting.

Mr. Wisner provided a copy of the draft inter-agency agreement with the Attorney General's office for Commission review.

Motion was made by Mr. Schlosser, seconded by Mr. Wuertz to approve the inter-agency agreement. Motion carried unanimously.

The draft changes to K.A.R. 86-1-5 (Fees) were reviewed by the Joint Committee on Administrative Rules and Regulations on November 16, 2016. There were no comments. The public hearing on these regulations is scheduled for February 20, 2017 at 9:00 a.m.

Mr. Wisner will be attending the ARELLO Board of Directors Meeting January 10-12, 2017 in San Diego, CA.

Mr. Wisner discussed holding the April 17, 2017 meeting in the 1st Congressional District, possibly Dodge City or Garden City.

Adjournment

Mr. Vaught adjourned the meeting at 11:48 a.m.

Upcoming Commission Meeting Dates

December 19, 2016

February 20, 2017