

MINUTES OF THE MEETING
Kansas Real Estate Commission
December 7, 2020

The Kansas Real Estate Commission held its regular meeting on Monday, December 7, 2020, at 9:00 a.m. by telephone conference call

Commissioners Present:

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

Staff Present:

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

Kansas Real Estate Commission Legal Counsel:

Athena Andaya, Deputy Attorney General
Sarah Shipman, Deputy Attorney General
Jane Weiler, Assistant Attorney General

Members of the Public:

Mark Barker
Laine Barnard
Kimberly Bishler
Kimberly Goudy
Kathy McCarty
Mark Tomb

Call to Order

Mr. Wuertz called the meeting to order at 9:02 a.m. and called the roll to signify presence at the open meeting via conference call.

Approval of the Minutes of the October 19, 2020 Meeting

Mr. Schlosser moved the minutes of the October 19, 2020 meeting be approved. Mr. Vaught seconded the motion. Motion carried unanimously.

Final Review of Proposed Legislation

The Commission reviewed and made minor changes to the final draft of proposed statutory changes to effectuate a limitation on the sale of real estate without a license in order to protect public health, safety, and welfare (K.S.A. 58-3035, K.S.A. 58-3036 and K.S.A. 58-3037), to provide authority to discipline unlicensed persons conducting activities requiring a Kansas real estate license and to provide authority for the Commission to issue an administrative fine and a cease and desist order (K.S.A. 58-3065), and to add subpoena power (K.S.A. 74-4202).

Mr. Schlosser moved to present to the legislature for approval the proposed revisions as further amended to K.S.A. 58-3035, K.S.A. 58-3036, K.S.A. 58-3037, K.S.A. 58-3065 and K.S.A. 74-4202. Mr. Vaught seconded the motion. Motion carried unanimously.

Review of Proposed Regulation Changes – Records, Trust Accounts and Transaction Identification Numbers

The Commission reviewed the final draft of proposed regulation changes to amend K.A.R. 86-3-10, K.A.R. 86-3-18, K.A.R. 86-3-21, and K.A.R. 86-3-22 as approved by the Division of Budget, Department of Administration, and Office of the Attorney General. The proposed changes would clarify the requirements for records to be retained by brokers, clarify requirements for trust account records, simplify transaction identification numbering procedures related to broker records, and remove redundant language.

Mr. Schlosser moved to approve the proposed changes to K.A.R. 86-3-10, K.A.R. 86-3-18, K.A.R. 86-3-21, and K.A.R. 86-3-22 and to provide notice of a public hearing at 9:00 a.m. on February 15, 2021 to consider adoption of the proposed regulations on a permanent basis. Ms. Wenger seconded the motion. Motion carried unanimously.

Compliance Report

The oldest disciplinary file pending staff review is from January 2, 2020. The oldest disciplinary file pending review by the attorney general's staff is from October 22, 2019. The oldest complaint under investigation (not on hold) is from April 25, 2020.

Staff completed 65 compliance reviews in FY2021. An additional 91 brokers were contacted but had no transaction records to review. During nine follow up compliance reviews, 44% had no violations or only minor violations.

Compliance courses are scheduled for January 21 and April 1, 2021 for BRRETA and January 28 and April 7, 2021 for Broker Supervision.

Education and Communication Report

Staff approved one Kansas Real Estate Broker Management course and eight elective continuing education courses from October 1 to October 31, 2020. One elective course was denied.

In FY2021, Pearson Vue administered 1,409 exams with an overall pass rate of 59%. Seven brokers and 135 salespersons tested based on requirements met in another state. Brokers had a 57% pass rate, and salespersons had an 87% pass rate.

Mr. Schlosser, Mr. Vaught, Ms. Wenger and 24 school representatives attended the Commission's virtual Educators Meeting on October 27, 2020. Staff solicited final thoughts and ideas on the current Principles of Real Estate and Kansas Practice Course outlines and will present revised outlines for approval at the February Commission meeting.

The November 2020 newsletter was successfully emailed through the new GovDelivery system to 98% of licensees.

Licensing Report

As of November 30, 2020, there are 18,197 licensees and 369 pending applications (97 salesperson, 15 broker and 257 fingerprint-only files).

Candidates surveyed from November 2019 to October 2020 cited COVID-19 and the national exam waiver process as primary reasons why they did not opt for the earliest available license exam date.

The revised state portion of the license exam will go live in February 2021 based on the review completed by staff and brokers serving as subject matter experts.

Director's Report

The real estate fee fund balance as of October 31, 2020 is \$1,001,626 which is up \$21,445 from July 1, 2020. Real estate fee fund receipts for FY2021 are \$374,601 which is 2% lower than estimated. Real estate fee fund expenditures for FY2021 are \$357,252 which is 1% or \$14,178 lower than estimated.

Background investigation fee fund receipts for FY2021 are \$50,760 which is 16% higher than estimated. The balance in the fund as of October 31, 2020 is \$11,955 up \$163 from July 1, 2020.

Real estate recovery fund receipts for FY2021 are \$3,664 and the balance in the fund as of October 31, 2020 is \$296,232 up \$3,114 from July 1, 2020.

The FY2021-FY2023 budget was approved by the Division of Budget as submitted.

Mr. Schlosser moved that the Commission designate and delegate to the Executive Director its authority to provide testimony to the Legislature or answers to Legislators or Legislative Committees, during the 2021 Legislative Session, including any 2021 Special Session, on policies decided by the Kansas Real Estate Commission. Further, Mr. Schlosser moved that the Executive Director is required to notify the Commission of the testimony or answers at the next meeting. Mr. Vaught seconded the motion. Motion carried unanimously.

Mr. Schlosser moved that the Commission designate and delegate to the Chairperson, or the Vice Chairperson, its authority to provide testimony or answers to Legislators or Legislative Committees, during the 2021 Legislative Session, including any 2021 Special Session, on policies that have not been finally determined by the Commission but requires an immediate response by the Commission to the requestor. Any testimony or answers to Legislators or Legislative Committees from the Chairperson, or the Vice Chairperson as the case may be, may be conveyed through the Executive Director. Further, Mr. Schlosser moved that the Chairperson, or the Vice Chairperson as the case may be, is required to notify the Commission of the testimony or answers at the next meeting, whether at a special meeting or at the regularly scheduled meeting. If the Commission

approves of the testimony or answers provided, the Chairperson, or the Vice Chairperson shall obtain ratification by the Commission. If the Commission disapproves of the testimony or answers provided, the Chairperson, or the Vice Chairperson shall immediately withdraw the prior testimony or answers and shall provide the requestor with the Commission's approved policy. Mr. Vaught seconded the motion. Motion carried unanimously.

The Commission reviewed possible 2021 legislation related to occupational licensing requirements (2020 Sub HB 2506). Mr. Wuertz encouraged Commissioners to contact their legislators to request a revision to allow the criminal history record check to be considered a component of a complete application.

Mr. Wisner and the Commissioners presented an award and expressed gratitude to Ms. White for her 36 years of service and wished her well in her retirement effective December 11, 2020.

Public Comments

Kathy McCarty stated Ms. White has been a marvelous resource and she is thrilled Ms. Nutt will be the Education Director of Education.

Mark Barker expressed his appreciation of Ms. White and presented her with the Mid-America Chapter of the Real Estate Educators Association's Distinguished Career Award for all she has done for real estate educators.

In response to a question from Mr. Wuertz, Mark Tomb indicated legislation will be introduced in 2021 to require registration of home inspectors. Examples of home inspections that failed the consumer would be helpful.

Mr. Wuertz thanked Ms. Andaya for all she has done as general counsel for the Commission and wished her well in her retirement effective December 11, 2020. Fran Oleen, Assistant Attorney General, will take over as the new general counsel starting January 4, 2021. Sarah Shipman, Deputy Attorney General, will cover general counsel responsibilities in the interim.

Adjournment

Mr. Vaught moved to adjourn the meeting. Mr. Schlosser seconded the motion. Motion carried unanimously.

Mr. Wuertz adjourned the meeting at 10:28 a.m.