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Authority Boards
Kentucky Real Estate Commission
Kentucky Real Estate Appraisers Board
Kentucky Board of Auctioneers
Kentucky Board of Home Inspectors

Heather L. Becker, General Counsel
Kentucky Real Estate Authority

SPECIAL MEETING
Kentucky Real Estate Commission
MEETING MINUTES
November 14, 2018

Commission Members

Lois Ann Disponett, Chair
Joe Hayden
Tom Waldrop
Steve Cline

Commission Members Absent

Billy Beckham
Shirley McVay Wiseman

KREA Staff

H.E. Corder II, Executive Director
Heather L. Becker, General Counsel
Haley Bradburn, Board Administrator
Nick Van Over, KREC Licensing Coordinator
Hannah Carlin, KREC Education Coordinator

Guests Present

Nicole Knudtson, Kentucky Realtors
Janie Wilson, Northern Kentucky Association of Realtors
Sandye Hackney, BCTC
Lisa Stephenson, GLAR
Vickie Grimes, GC Real Estate School/Exit Realty Heartland

A special meeting of the Kentucky Real Estate Commission was called to order by the Commission's Chair, Lois Ann Disponett, at 10:07 AM on Wednesday, November 14, 2018. Guests in attendance were introduced and welcomed.

Matt Thacker, PPC staff member and Notary Public, swore in newly appointed Commissioner Steve Cline.

Roll call was taken and a quorum was present.

Regulatory Review Discussion

Counsel Becker gave a brief overview of what the Commission has accomplished to this point. She shared that the advertising regulation has been significantly overhauled with needed updates, including addressing the topic of social media. At least one more meeting will occur with Commissioner Hayden to review education, and possibly a full Commission meeting will be needed to discuss definitions and standards of conduct. Currently, December is still the filing target date, however, with review of the KREC forms, it may be extended to January.

Discussion on 201 KAR 11:011, Definitions

Commissioner Hayden shared the following overview of proposed or amended definitions for discussion:

11:011 – Definitions

- Agent – One, or more, licensees designated by the Principal Broker in accordance with KRS 324.121, to provide real estate brokerage services to a Client or Prospective Client.
Double back on designated agent definition
- Agency – The specific Agent relationship mutually agreed upon in writing between the Principal Broker and the Client or Prospective Client. The relationship will be either Designated Agent, Designated Agency, or Dual Agency, though other types of Agency are permitted with the mutual consent of all parties to the agreement.
- Dual Agency – A type of Agency where a Principal Broker or the Agent is designated to be the Agent for all Clients in a Transaction.
- Licensee – A person licensed as a Broker or Sales Associate in accordance with KRS Chapter 324, and the administrative regulations promulgated thereunder, to perform acts of real estate brokerage.
- Consumer – A person or legal entity with whom the licensee interacts, but does not provide consultation services for a contemplated transaction or otherwise perform acts of real estate brokerage.
- Prospective Client – A person or legal entity who has not entered into a written agreement with a Principal Broker to provide real estate brokerage services, but with whom the Principal Broker provides consultation services for a contemplated transaction or otherwise performs acts of real estate brokerage.
- Client – (1) A person or legal entity who has entered into a written agreement with a Principal Broker for provision of real estate brokerage services; or (2) A person or legal entity with whom or for whom a Principal Broker completes a contract or lease for a

transaction. For the purposes of selling or leasing real estate, the Client shall be the person or legal entity authorized to sell or lease the real estate.

- Agency Agreement – The document used by the Principal Broker to enter into a written Agency agreement with a Client or Prospective Client. In accordance with 324.121, the document may be used by a Principal Broker to designate one, or more, licensees to act as an Agent. *The Agency Agreement shall declare the specific type of Agency known at the time of signing and shall be updated with written consent accordingly if the specific type of Agency should change.* Agency Agreement is currently known as “Agency Disclosure Statement.” The italicized language here should be added directly into the actual regulation rather than in the definition.
- Company – A legal entity formed to offer real estate brokerage services. *If only a single broker is affiliated with the Company, that broker shall be the Principal Broker. If more than one licensee is affiliated with the Company, one broker shall be designated the Principal Broker. The legal name of the Company and the Principal Broker shall be reported to the Commission.* Again, the italicized language here will be added directly into the actual regulation rather than in the definition.
- Education Cycle – *needs to be defined, once we know what cycle is*

It was noted that the definition of “Party” will be removed and “Prospective party” will likely be removed as well due to other tweaks. Two new definitions will be “Initial Sales Associate” and “Without Delay.” Discussion was held regarding the definition of “Company.” Concern was expressed that there are Sole Proprietorships with a social security number only that are not registered with Secretary of State as not everyone operates an LLC. Legal advised that the standard Merriam-Webster definition of a common word can be used. Commissioner Waldrop brought up some discussion points regarding the “Client” definition where there is a tenant broker in addition to buyer broker. Commissioner Cline expressed the importance of keeping commercial real estate separate from residential real estate.

Discussion on 201 KAR 11:121, Professional Standards of Conduct

Commissioner Hayden shared that section one (1), Improper Conduct was clarified and simplified the referral fee section. It was noted that the Principal Broker can advertise fees charged for services. The Commission discussed statutory disclosures, seller disclosure of property condition, and condominiums (not under KREC purview). The Commission also discussed separating seller-client from buyer-client in subsection two (2) of section four (4). Another discussion included deadline and date range of counteroffers and the seller disclosure form and the question of selling “as is” and “never lived in.” It was agreed that the seller disclosure form needs revisions to reflect statutory requirements. The Commission also discussed how to address licensees not disclosing information. Counsel Becker advised that this can be accomplished through education, mandated pre-licensing and PLE. Commissioner Hayden posed a question about builders renting out property for one (1) year or so and then selling as new construction. Discussion will continue on section four (4). The Commission also addressed section five (5). They advised possibly changing the section name from “Prospective party disclosures” to “Prospective client disclosures.” Discussion was held on the Guide to Agency Relationships. Counsel Becker suggested that the agency may provide the Agency Guide at initial contact and shall provide by a certain timeframe. A member

of the public suggested calling the guide “What Every Prospective Buyer Needs to Know” for easier identification to catch attention. Commissioner Hayden offered the solution to create a guide to agency relationships (titled something different later) similar to the current one, but with updates. He advised the top portion include a notice of obligations and lay out the timeframe of when this occurs. Other discussion was held on agency agreement.

Other Discussion

The Commission decided that they would try to cover the education regulation review tomorrow at their regular Commission meeting if time allowed and they would hold a separate meeting for professional standards in the future.

Public Comments

No public comments received during the public comment portion of the meeting.

Next Meeting

The next regular meeting of the Kentucky Real Estate Commission is November 15, 2018 at 9:00 AM at the Kentucky Real Estate Authority, 656 Chamberlin Avenue, Suite B, Frankfort, KY 40601.

Meeting Adjournment

The Commission adjourned at 1:17 PM.