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KREC PUBLIC COMMENT HEARING

DATE: June 22, 2022

TIME: 10:00 am

LOCATION: PPC Conference Room 127CW

*** This meeting also occurred via Zoom Teleconferencing, pursuant to KRS 61.826***

Commission Members Present

Commissioner Chair, Lois Ann Disponett
Commissioner Larry Disney
Commissioner James Simpson
Commissioner Jennifer Brown-Day
Commissioner Anthony Sickles

KREA Staff

Robert Astorino, Executive Director
Molly Cassady, General Counsel
Brian Travis, Investigator
Terri Hulette, Executive Administrative Secretary
Angie Reynolds, Administrative Specialist III
Aaliyah Boller, KREC Intern

Guests Present

Sue Ann Collins
Ken Warden
Ron Bossart
Jim DeMaio, RASK
Linda Cecil

Brenda Goslin
Jason Vaughn
Sandy Newell
John Hughes
Tim Corrigan

Earlene Woods
Steve Cline
Angi Cline
John Smither
Jeff Smith

David Chandler
Ashley Pugh
Cori Zaring
Pam Featherstone
Dennis Stilger
Norman Jones
Cinda Hatfield
Jocelyn Graddock
Jen Swendiman
David Conner

Ben Schreber
Marie Estepp
Tara Wilson
Janie Wilson
John Summers
Julie Sizemore
Al Blevins
Charles Hinkle
Nicole Knudtson
Douglas Myers

Paul Del Rio
Linda Wiley
Linda Fernandez
Ron Sickles
Kim Sickles
Richard Wilson
Mike Inman
William G. Marnhout

Call to Order and Guest Welcome

The Kentucky Real Estate Commission Public Comment Hearing meeting was called to order through video teleconference by Commission Chair, Lois Ann Disponett, at 9:00 a.m. on **June 22, 2022**. Roll call was taken, and a quorum was present. Guests in attendance were welcomed and introductions of guests, staff, and Commissioners were made.

Commission Chair Disponett noted that there will be a meeting in July that will address every comment submitted before the Commission. That date has yet to be set. The deadline for all written comments is June the 30th by 11:59 p.m.

Scheduled Speakers

Speaker One

Mike Inman

Current President of Kentucky REALTORS® (KYR)

Mr. Inman introduced himself and past president, Mr. Charles Hinkle, who is also a current member of their leadership committee. KYR represents more than 12,800 members who are involved in all aspects of real estate. On their behalf, Mr. Inman thanked the Commissioners and staff for the opportunity to address this matter.

KYR is concerned that the proposed changes will have a negative impact on the industry. KYR would like to make the following recommendations and the reasons as to why KYR feels these changes would be more beneficial to the profession its KREC members.

Before this meeting, KYR polled the leadership of Kentucky Realtors, which involves the leadership of 19 Boards and Associations across the state. Their response was unanimous concerning the proposed changes to the forms. Which are as follows:

Form 400 – A Guide to Agency Relationships:

1. We believe this form has become too long and cumbersome for the consumer. If the consumer does not have the desire to read this form to completion, the licensee must then relay the form's intent and then have the consumer sign it. This is not good practice for consumer protection. A shortened version of this form is needed to help the consumer.

In addition to the length of the form, the added information does not help or aid the consumer, but rather does not provide clarity of the exact role the licensee actually plays in the transaction.

The previous form was clearer and more concise, which we believe to be more beneficial to the consumer.

2. We do not believe the phrase "This is not a contract" is needed in two different places on the form.

Form 401B and 401S – Agency Consent Agreement - KYR proposes the following recommendations:

1. The Consumer Guide to Agency Relationship (Form 400) takes care of "Part A" on both Forms. To our members, "Part A" seemed to be redundant and not needed since Form 400 would cover this requirement.
2. In section IV on page 2 of Form 401B and 401S, "Transactional Brokerage" and "Unrepresented Party" are listed. However, in "Part A" on page 1, these two terms are not listed under "type of agent". We recommend adding "Transactional Brokerage" and "Unrepresented Party" to the list of "types of agent" in "Part A" on page 1.
3. Above the Buyer/Tenant's signature lines in "Part A", the first sentence reads: "I (we) consent to the above relationships as we enter into the real estate transaction." If "Part A" is going to remain on this form, we recommend changing the word "transaction" to the word "contract".

Form 402 – Seller's Disclosure of Property Condition – KYR proposes the following recommendations:

1. Our members believe the removal of the "Unknown" column is ill-advised. Landlords, executors, or other parties may not know the answer as "Yes" or "No." Also, the use of the "unknown" box ensures that "reckless fraud" is avoided. For example, an owner that does not live in the property that marks "No," to the fact that the basement doesn't leak when he/she has no idea, has arguably committed reckless fraud. A person acts recklessly when making a representation which he/she does not have knowledge about. Again, our members believe the removal of the "unknown" column would be a mistake and we strongly recommend keeping the "unknown" column on Form 402.

Though “unknown” may have been used incorrectly in the past, the answer is not elimination of this column, but to provide more education. There are many times when a seller may not know the answer to some questions about their property. Another example might be not knowing the age of the HVAC unit or furnace in a property. To protect the consumer buying the property, it is important for sellers to fill these answers in as responsibly and as correctly as possible, but for there to be an understanding that there are many things that are unknown. If one bought a foreclosed property, they would not necessarily know all its history, but only what they (the previous owners) have done to the home.

Again, our members believe the removal of the “unknown” column would be a mistake and we strongly recommend keeping the “unknown” column on Form 402.

2. We do not believe any changes are necessary to Form 402’s current format.

KYR wants to ensure that the consumer is fully aware of all the information necessary to make a wise and informed decision when purchasing and/or selling a home. However, it is not the role of the licensee to require the consumer to have a complete understanding of the extensive verbiage of the real estate industry when it comes to their personal real estate transaction. It is the responsibility of real estate licensees who are professionals to advise the consumer in making their decisions. The proposed changes in the forms may harm the consumer by confusing them with useless terminology and even more so with the seller’s disclosures when a seller marks “No”, and the consumer acts on inaccurate information. This could also cause damage to the sellers who fill out the forms and now are open to liability for “falsifying” a document. KYR strongly encourages the Commission to reconsider this action.

Speaker Two

Doug Myers

Representing the Greater Louisville Association of Realtors (GLAR)

GLAR represents approximately 5300 real estate agents. GLAR is an elected a board of Directors. It is on their behalf that Mr. Myers thanked the Commissioners and staff for the opportunity to address this matter.

While GLAR supports KREC’s decision to make changes to the forms, they would like to respectfully request the Commission acknowledge and consider the following recommendations.

- 1. GLAR recommends against removing the ‘unknown option from Form 402.**

Rational: Many sellers are not the parties that occupy the property. These sellers may give an answer that they believe to be true but is incorrect because of their lack of knowledge. Such sellers often do know some things that they would disclose or would rather not use

the “As Seller(s) I/we refuse to complete this form and acknowledge that t the real estate agent will so inform the buyer “option.

2. GLAR recommends not striking 201 KAR 11:121. Standards of Professional Conduct Section 6: Agency Consent Agreement. (2)(e).

Rational: Unless otherwise changed in the KRS or the KAR, Kentucky operates under common law principles of the agency. In December 2019, the common law practice of Perspective Client Confidentiality was mandated by 201 KR 11:011 definitions of 201 KAR Chapter 11 (13)(b)1. “[Confidentiality is provided with such information] Is provided to a licensee by a client or Prospective Client to a real estate transaction;

Statute follows:

201 KAR 11:011. Definitions for 201 KAR Chapter 11.

(13) "Confidential information" means:

(a) Information received or sent, verbally or in writing including transaction paperwork and files, by a licensee, that may materially compromise the negotiating position of a client or prospective client.

(b) Confidential information includes information that is not required to be disclosed by law; and

1. Is provided to a licensee by a client or prospective client to a real estate transaction;

(34) “Prospective Client” means a person or entity who is not entered into a written or oral agreement with the principal broker to provide real estate brokerage services, but to whom a license offers real estate brokerage services, or from whom a licensee receives confidential information related to a contemplated real estate transaction.

3. Example of need for this regulation and disclosure on KREC form 401B and KREC form 401S.

When an agent obtains information about the motivation of the party on the other side of a transaction, the agent usually shares the information with their client, if the information assists their client in writing an offer that is favorable to them.

Following is an exception to this practice.

“Agent A of ABC Realty” and “Agent X of XYZ” each obtained confidential information concerning the seller’s motivation from a seller during a separate listing consultation. The seller is now Perspective Client of both agents.

“Agent A of ABC Realty” obtains the listing and enters into a Seller Agency relationship. “Agent X of XYZ” shows the agents property to a buyer and writes an offer for the property. “Agent X of XYZ” must protect the confidentiality of the seller (who is a Perspective Client) and is required to disclose to the buyer that such information will not be shared. Failure to make this disclosure to the buyer would constitute a breach of fiduciary duties to the buyer, who is a client. Conversely, sharing the information would be a breach of the duty of the confidentiality to the seller who is a Perspective Client.

4. 201 KAR 11:011, Definitions for 201 KAR Chapter 11

(13) “Confidential Information” information means:

(a) information received or sent, verbally or in writing, including transaction paperwork and files, by licensee, that may materially compromise the negotiating position of a client or perspective client.

(b) Confidential information includes information that is not required to be disclosed by law; and

1. Is provided to a licensing by a client or prospective client to a real estate transaction;
2. Described or affects the client or prospective clients bargaining position or motivation; or
3. Is designated in writing as confidential by the client or prospective client.

(34) “Prospective Client” means a person or entity who is not entered into a written or oral agreement with the principal broker to provide real estate brokerage services, but to whom a license offers real estate brokerage services, or from whom a licensee receives confidential information related to a contemplated real estate transaction.

201 KAR 11:121. Standards of Professional Conduct.

Section 1. Improper Conduct.

(e) Failure to satisfy one (1) or more of the following duties owed to the licensee’s prospective client:

1. Good faith,
2. Fair dealings; and
3. the duty of confidentiality;

Section 5. Perspective client disclosures

(2) The Commission’s Agency Consent Agreement shall provide:

(e) Disclosure of prior contact with a former prospective client who is involved in the presently contemplated real estate transaction.

5. KREC Forms 401B and KREC Form 401S

GLAR recommends adding an option to disclose prior contact with a former prospective client who is involved in the presently contemplated real estate transaction as required by:

Supporting regulations.;

201 KAR 011:121 - Standards of Professional Conduct.

Section 6. Agency Consent Agreement.

(2) the commissions agency consent agreement shall provide.

(e) Disclosure of prior contact with the former prospective client, who is involved in the presently contemplated real estate transaction.

6. RE: KREC Form 401S part A

GLAR recommends deleting the “check one” instruction from the line that states “At this time, licensee is retained as the following type of agent: “check one”.

Rationale: Seller may choose if they want to give permission for Dual Agency to their Listing Agent.

At the time of listing the property is the best and most appropriate opportunity to have this discussion and obtain written consent if Dual Agency is desired.

If the Listing Agent encounters a Buyer who wants to write an offer on the property, the Listing Agent must either disclose on the KREC form 201B that the Buyer is an Unrepresented Party or seek and receive permission to be a Dual Agent from both the Seller and the Buyer prior to writing the offer.

The current format of the KREC Form 401S suggests that the agent could seek permission for Dual Agency after they have written a Dual Agency offer.

For this Rationale:

201 KAR 11: 121. Standards of Professional Conduct.

Section 6. Agency Consent Agreement.

(1) prior to entering into a written agreement to provide real estate brokerage services or completing, or directing the completion of, a contract, offer, or release for a real estate transaction:

(a) The licensee shall complete and deliver the Agency Consent Agreement to the prospective client; and

(b) Seek and obtain written consent to the Agency Consent Agreement from the prospective client.

7. RE: KREC Form 401B part A

GLAR recommends deleting the “check one” instruction from the line that states “At this time, licensee is retained as the following type of agent: “check one””.

Rationale: Buyer’s may choose if they want to give permission for Dual Agency to their Buyer’s Agent.

At this time maybe the best and most appropriate opportunity to have this discussion and obtain written consent if Dual Agency is desired.

A Buyer’s Agent may have a suitable listing prior to representing the Buyer or may obtain a suitable Listing after establishing the relationship with the Buyer. Once an agent becomes a Buyer’s Agent, they must have permission for Dual Agency prior to showing the Buyer a listing where the same agent is the Listing Agent. In this scenario, Dual Agency is the best choice if the Buyer’s Agent is to represent the Buyer and the Seller, but only if both have given permission for Dual Agency.

For this Rationale:

201 KAR 11: 121. Standards of Professional Conduct.

Section 6. Agency Consent Agreement.

- (1) prior to entering into a written agreement to provide real estate brokerage services or completing, or directing the completion of, a contract, offer, or release for a real estate transaction:
 - (a) The licensee shall complete and deliver the Agency Consent Agreement to the prospective client; and
 - (b) Seek and obtain written consent to the Agency Consent Agreement from the prospective client.

Speaker Three

Angi Cline

Current President of Realtors Association of Southern Kentucky (RASK)

Ms. Cline introduced herself. RASK represents 752 members. It is on their behalf that Ms. Cline thanked the Commissioners and staff for the opportunity to address this matter.

1. Regarding the Agency Relationships Form Ms. Cline asked on behalf of RASK if the Commission would consider keeping the current form as it is. It is much more concise and clearer to understand; as well as a simple one-page document.
2. Regarding the Seller's disclosure of property condition form – Not to remove the ‘unknown’ column. A hard yes or no does not replace accuracy. Not having an ‘unknown’ column

pushes the Seller to answer in a way that does not give the potential Buyer accurate information. This leads the consumer acting upon information forward on the largest purchase most individuals will ever make in their lifetime. RASK pleads with the Commission to strongly reconsider removal of the 'unknown' box.

Speaker Four

John Huggins

President & CEO Coldwell Banker Legacy Real Estate Group

Mr. Huggins introduced himself. His office represents almost 200 agents. It is on their behalf that Mr. Huggins thanked the Commissioners and staff for the opportunity to address this matter.

He and his staff took these forms and shopped them to a team of selected agents for opinion. Their feedback has been echoed many times during this platform by other groups. However, concerning the Seller's disclosure form, removing 'unknown' may create a greater problem. People that have never lived inside of the home and will not mark either option – 'yes or no'. They ask that the Commission to back up and reconsider these changes. They ask that the Commission to try to make the forms more concise and user friendly for the consumer.

Speaker Five

Jim DeMaio

Chief Executive Officer of Realtors Association of Southern Kentucky (RASK)

Mr. DeMaio introduced himself. RASK represents 752 members. It is on their behalf that Mr. DeMaio thanked the Commissioners and staff for the opportunity to address this matter.

Though he is currently an inactive licensee, he concurs and agrees with all the statements as presented by RASK President Cline and Mr. Huggins. In addition to the statements as presented by KYR President Inman and GLAR representative Myers.

It is believed that the proposed changes will make it longer and more tedious for both the consumers and the agents. It is hard to keep people's attention on the filling out and comprehension of the forms, especially in the electronic age.

We ask that the Commissioners to consider not making these changes that we've addressed today. Please know that we're not just six people speaking, there are 752 people in our area of the state that don't agree with these changes. As well as KYR's membership of over 12,000 licensees that have been polled and surveyed.

Speaker Six

William G. Marnhout

Consumer

Mr. Marnhout expressed his appreciation for being allowed to speak to the Commission regarding this matter. Based on his personal experience, Mr. Marnhout felt that the seller's realtor was negligent for not disclosing that there were two individuals buried on his property. Which he later found this out through neighbors, but not at the time of the sale. Which unfortunately has caused him a lot of discord.

He asked that the Commission to consider adding the following to Statute 201 KAR 11:011:

- Fiduciary duties, requiring disclosure of any potential property defect regardless of agent's personal opinion.

And to Form 402:

- On the Preliminary disclosure, adding miscellaneous or additional information – such as; are there human remains of any form buried on the property being sold.

He appreciated the Commission removing the 'unknown' from the form. He felt that the use of 'unknown' removed any responsibility from all parties.

Public Comment

Jason Vaughn (General counsel for KYR) thanked the Commission for being allowed to address them today. He stated that he supported President Inman's previous statement to the Commission.

He asked that the Commission to not remove the 'unknown' column. He stated that the use of 'No' did not equal 'unknown' under the law.

At this time there were no additional comments. Chairperson Disponett thanked everyone in attendance, she stated that the Commission had until July 30, 2022 at 11:59 p.m. to respond to all the written comments. She reminded everyone that the deadline for all written comments is June the 30th by 11:59 p.m.

Approval Per Diem

1. Commissioner Disney made a motion to approve the per diem and travel (Disney and Disponett) for the June 22, 2022 Public Comment hearing. Commissioner Day seconded the motion. Having all in favor, the motion carried.

Meeting Adjournment

Commissioner Simpson made a motion to adjourn the meeting. Commissioner Disney seconded. Meeting adjourned at 11:05 a.m.

I, Robert Astorino, Executive Director of the Kentucky Real Estate Authority, have reviewed and pursuant to KRS 324B.060, have (Approved or Disapproved) the expenditures of the Kentucky Real Estate Commission (Insert name of Board) as described in these attached minutes.

Meeting Date June 22, 2022.

I have not reviewed, nor did I participate in discussions, deliberations, or decisions regarding, the actions of the Board as it relates to individual disciplinary matters, investigations, or applicant reviews.



Robert Astorino, KREA Executive Director

Date June 22, 2022