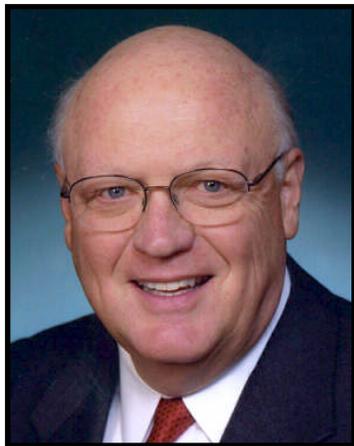


Kentucky Real Estate NEWS

A Publication of the Kentucky Real Estate Commission

Commissioner Jim Huff Reappointed



On November 16, 2011, Governor Steve Beshear reappointed James “Jim” H. Huff to a 4-year term as Commissioner. This is his 7th appointment to the Commission.

Mr. Huff was originally appointed in 1981 by Governor John Y. Brown. Although Mr. Huff has not served continuously, he has been on the Commission for a total of 22 years. Obviously, the licensees of the Commonwealth of Kentucky benefit from Mr. Huff’s many years of service.

Mr. Huff began his real estate career as a sales associate in 1972. In 1975, Mr. Huff opened the 1st Huff Realty in Ft. Mitchell. Over

the next 30 years, he grew the company into the 2nd leading residential real estate brokerage in Greater Cincinnati. In March 2006, Mr. Huff solidified the Huff name as a leader in the local real estate market by brokering a deal that resulted in Huff Realty’s acquisition by HomeServices of America, Inc., a Berkshire Hathaway affiliate, the second largest home services provider in the United States.

A few of Mr. Huff’s other accomplishments include: Director of the Association of Real Estate License Law Officials, REALTOR® of the year in 1981 by Kenton-Boone Board of REALTORS®, and Past President of the Kenton-Boone Board of REALTORS®. He also established the statewide errors and omissions insurance program for real estate licensees, and he contributed to the establishment of property management regulations while serving as a Commissioner.

Mr. Huff currently serves on the Greater Cincinnati/Northern Kentucky International Airport Board and is an Advisory Board Member of the Federal Reserve Bank of Cleveland, Cincinnati

Branch. He is a past member of the Tri-County Economic Development Corporation. He also served as chairman, secretary and board member for the Northern Kentucky Chamber of Commerce and has served on numerous other boards throughout Northern Kentucky. He is also a renowned personality in the tri-state area and avidly supports and contributes to its communities.

Mr. Huff resides in Ft. Mitchell, Kentucky with his wife, Bert. They have two adult children, Susan and Rodney, and they are the proud grandparents of Jessica, Jamie, Maria, Justin, Jacob and Emily.

Welcome back, Commissioner Huff!

C O N T E N T S	
Comments from the Chair	2
From the Director’s Desk	3
Offers and Multiple Offers	4
The Safe Act	5
March Madness	6
Group E & O Contract	7
Renewal Sessions	7
Puffery in Advertisements	8
Disciplinary Actions	9
Mark Your Calendars	11
Reminder to Principal Brokers	11

Don’t Forget to Renew Your License Online
Renewal Payments Must Be Received By March 31, 2012
More Information Can Be Found On Pages 6 - 7



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Mary O'Wheatley
Tracy Delgado

Comments from the Chair

by: **Bob Roberts,**
Chair



EXPLANATION OF NEW KREC-APPROVED ALTERNATE AGENCY FORMS

It is my honor and privilege to serve as the Chair of the KREC. I would like to take this opportunity to explain a few new agency forms approved and available for licensees who work with landlords and tenants.

These new forms, which are listed below, were developed in response to an increase in the demand for licensees to represent prospective landlords and tenants. The KREC created these alternate Agency Disclosure Statements and Consumer Guide model policies at the end of last year. The alternate forms, which are dated December 2011, will not be required by law until

Administrative Regulation 201 KAR 11:400 has been amended through the regulatory process. In the meantime, licensees may use the alternate forms whenever they have customers or clients who are involved in either the lease/rental of residential property or the purchase/sale of it. In other words, use of either the original agency forms or the alternate ones is approved by the KREC. The alternate forms can be accessed from the KREC's website (www.krec.ky.gov) under "Legal," "Forms & Contracts."

The following is a list containing the form names and numbers for your convenience.

Alternate Agency Forms - New

- | | |
|--------------------|--|
| <u>A109</u> | Explanation of Alternate Agency Forms
[December 2011] |
| <u>A110</u> | Alternate Form —Consumer Guide to Agency Relationships Model
[December 2011] |
| <u>A111</u> | Alternate Form —Agency Disclosure Statement –Buyer
[December 2011] |
| <u>A112</u> | Alternate Form —Agency Disclosure Statement –Seller
[December 2011] |
| <u>A113</u> | Alternate Form —Consumer Guide to Agency Relationships Model Policy for Designated Agency and Dual Agency—
[December 2011] |



Comments from the Executive Director

By: Michael W. Wooden,
Executive Director

The last several months have been hectic at the KREC. The call volume and workload increases at the end of the year due to the December 31st continuing education deadline. Many of the calls are from licensees asking about their specific requirements. I would like to encourage licensees to utilize the KREC Database, which can be accessed through the KREC website. The database is a valuable tool and is available even when the KREC office is closed. I would also like to encourage licensees to complete their education requirements as early in the year as possible. Our website contains a complete list of approved providers and a current schedule of Kentucky Core Course offerings. Waiting until the end of the year does not allow the time necessary to reschedule courses that are full or when emergencies arise.

In January, the final testing phases of the online renewal system were completed. The online renewal system looks very similar to last year,

except there are several new enhancements. Licensees can now make contact information changes while renewing their license, and several “user-friendly” features have been added.

The system opened up for principal brokers on February 21, 2012 and on March 1, 2012 for all other licensees. So far, the KREC has received many favorable comments. Licensees have told us the online system is very easy, and we are receiving overwhelming positive feedback about the ability to pay online. The KREC is currently working on an online licensing system that will be available all year for licensee transactions.

I would like to thank Education Director Deirdre Cummings for her hard work and commitment to this project. I would also like to thank her entire department for putting in many long hours designing, testing and improving the KREC online renewal system.

In closing out 2011, I thought I would take this forum to provide you with several interesting licensee statistics. I often get questions about licensee totals, the number of new licensees, and how many complaints are received. I have compiled a list below with totals for 2011. I also included information on current licensee statistics.

2011 KREC STATISTICS

Legal Phone Inquiries	3,680	Principal Brokers	3,293
Legal E-mail Inquiries	1,660	Active Broker Associates	1,268
E-mails Received from Website	1,595	Active Sales Associates	7,946
Signed Settlement Agreements	30	Escrow Brokers	1,357
Complaints Received	153	Escrow Sales Associates	9,826
Cases on Commission Agenda	234	New Sales Associates	549
		New Broker Associates	122

TOTAL LICENSEES 23,690



Bob Roberts



Linda Cecil



Ken Perry



Glenn Thomas



Jim Huff

Submission of Offers & Handling Multiple Offers

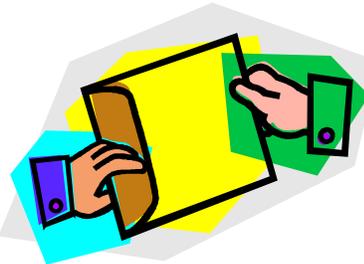
The following is an excerpt from the *Kentucky Real Estate Professionals and the Law* and is provided because of the recurring issues that are raised regarding offers. It can be found in Section 2:43 of the textbook.

201 KAR 11:045 gives some guidance to agents and brokers as to how to handle the presentation of multiple offers. That regulation states that "each licensee shall, without delay, submit all written offers to lease or purchase real estate for which the licensee is agent to his principal or owner-client for the decision of the owner-client for his acceptance or rejection." The regulation goes on to state "each licensee, who represents a prospective purchaser, shall, without delay, submit all written offers to lease or purchase real estate from his client, to the owner of the property or to the owner's real estate agent if he is represented by a real estate agent." According to these regulations, the agent must submit all offers to his or her principal without delay. This statute does not mean that the agent must stop whatever he or she is doing and deliver the offer. However, it does mean that the agent should contact his or her principal immediately and arrange to meet as soon as is practically possible so that the client will have ample time to consider the offer before the time period for expiration has elapsed.

The Commission deliberately left out a specific time frame in the regulation. Some transactions may involve unique circumstances, such as out-of-state or vacationing clients. However, "without delay" literally means as soon as possible. With today's technology, it is advisable to maintain contact with out-of-state or vacationing clients through their cell phones, e-mail addresses, or

fax numbers, so that the agent can immediately contact the clients upon the receipt of an offer.

An agent may never conceal or fail to submit an offer for any reason, including the agent's belief that the offer is too low and that the seller will refuse it. The obligation imposed under the regulation is consistent with the broker's obligation to disclose to his or her principal all facts within his or her knowledge pertaining to the subject matter of the agency relationship. In addition, if a prospective purchaser wants to make a written offer, the licensee is obligated to reduce that offer to writing and present that offer to the seller, no matter how low the offer is.



Contrary to the belief of many agents and consumers, the license law does not require the listing agent to submit offers to the seller in the order received, provided that all offers are promptly tendered. If numerous offers are delivered to an agent within a short period of time, and before the agent has had an opportunity to deliver the offers to his or her principal, the agent should present all offers to the seller or principal at the same time. Buying real property is not a first-come, first-served proposition.

A real estate licensee must always present all offers as soon as possible after receipt. An agent should not, under any circumstances, wait until the seller has accepted or countered before presenting a second offer. Imagine the seller's horror if he or she were to accept an offer for \$100,000 only to find out that an offer for \$120,000 was waiting in the wings. It is important to be especially careful when there are multiple offers and one of the buyers is represented by

Continued on Page 5

Submission of Offers & Handling Multiple Offers

Continued from Page 4

the listing agent while others are represented by other agents. If the agent does not present the offer as timely as possible, suspicion will be raised as to whether the other agents' offers were held back because of the possibility of a dual commission payment. The seller should always decide which offer to choose. While the real estate agent is there to offer advice as a professional, it is important to allow the seller to choose the offer he or she ultimately desires, especially in a multiple-offer situation. If the agent cannot get to the seller's home or office immediately, it is best to call or fax the seller to let him or her know that another offer has come in and that he or she needs to consider it before making a decision on prior offers.

If a seller is presented with several offers, the agent must instruct the seller that the seller may accept or

counter only one of those offers. If a seller provides a counteroffer to two offers, the seller may be obligated to sell the property to two different parties and may subject himself or herself to legal ramifications, such as a lawsuit.

In addition, an agent must be especially careful in handling offers after the client has an outstanding counteroffer. For example, if a seller has rejected an offer and countered for a different price and allows the purchaser twenty-four hours to accept or reject the counteroffer, he or she must withdraw that counteroffer before accepting any other offers. A consumer may always legally withdraw an offer or counteroffer before acceptance, unless it is in the form of an option contract. An option contract is a "contract made to keep an offer open for a specified period, so that the offeror cannot revoke the offer during that period." If the seller wishes to withdraw the counteroffer, it is imperative that the agent contact the buyer or the buyer's agent, preferably in writing, to ensure that the withdrawal has been properly effected.

THE SAFE ACT - Where are we now?

**BY: Jennifer Fields, Attorney
Borders and Borders PLC**

Many of you have been asking for the current status of the SAFE Act. The evolution of the law has been gradual over time and can get somewhat confusing.

BACKGROUND

Congress passed the SAFE Act ("Secure and Fair Enforcement for Mortgage Licensing Act") in 2008. The SAFE Act requires that anyone who originates mortgage loans to be a registered originator. Prior to the SAFE Act, there was no national registration system for mortgage lenders. The purpose of registration is to make sure that all loan officers meet certain standards and that bad actors can be held accountable. Registration requires an application and a fee but also passing a rather rigorous test. Congress required that all states pass a similar law by 2010.

Kentucky's version, passed in June 2009, mirrored the federal law. It required that anyone originating loans go through the registration process as outlined above. The primary exceptions to the rule were in the following cases: a.) lending to immediate family members; b.) a seller-financing if the property was the seller's primary residence (defined as currently the seller's primary residence); or c.) the subject property was non-residential.

The law created quite a stir. Real estate professionals were concerned about further limiting financing options in a market of contracting lending opportunities. In short, people were having a hard time getting loans and were seeking alternative financing options and this law restricted those options.

Gradually over time, there was more understanding of the application of the law. The Kentucky Department of Financial Institutions ("DFI") has stated that the law does not apply, for example, to "investor to investor" transactions. Their position, supported by the definition within the statute, is that the law is directed to residential mortgage loans to consumers, meaning individuals who are borrowing the funds for a personal, family, or household purpose. So if one investor sold to another, who would not be living in the property, but rather borrowing the money for a commercial (profit-making) purpose, the original investor who carried the financing would not have to be a registered originator or lender.

CURRENT STATUS

There were lots of rumblings regarding the SAFE Act in the real estate community both nationally and locally. In 2011, the Kentucky real estate community, along with DFI, petitioned the Kentucky General

Continued on Page 11

It's March Madness at the KREC!

It doesn't matter what kind of license you have, or if your license is active or in escrow, **ALL** licenses expire on March 31, 2012 and **MUST** be renewed through the KREC online renewal program. If you do not renew your license by March 31, 2012, you will be subject to a late renewal fine and license cancellation. The KREC is open Monday through Friday, 8:00 a.m. - 4:30 p.m. There will be a computer available for your use in our lobby. We will also travel to three locations throughout the state to assist licensees with online renewal. Please see page 7 for dates and locations. Just remember, March 31, 2012 falls on a Saturday and our office will be closed. ***Your payment and renewal MUST be received by March 31, 2012.***

Will I Receive A Renewal Notice?

The KREC mailed renewal notice reminders to all licensees. Principal brokers were mailed a renewal package with information about firm registration and renewal. Active sales associates and brokers were mailed a yellow postcard. Licensees who did not renew online last year received a letter containing a temporary password. If you did not receive anything from the KREC regarding renewal, it most likely means that you have not updated your home address/business address. Not receiving a renewal notice is not an acceptable excuse for not renewing on time and not updating your address. Not updating your address is a violation of license law.

Changes From Last Year

A big change this year is that licensees will be able to update their personal information, such as home address, phone number, and e-mail through the online system. Licensees will also be able to make a name change, if necessary. It is so important to keep all of your information up-to-date with the KREC in order to receive important important information.

Where Do I Go To Renew?

The online renewal system is accessed through the KREC website at www.krec.ky.gov. The renewal link is located under the "Welcome to KREC" link. Click on the link that says "Online Renewal."

Where Do I Find My License Number?

The renewal notice mailing include your license number. Also, you can always find your license number and other valuable information on our website. Click on the KREC Database, check the disclaimer, type in

your last name and first name and click "START THE SEARCH." Click on the (+) sign next to your name and your record will appear.

What If I Forgot My Password From Last Year?

Do not worry; it is easy to reset your password yourself. At the renewal login screen click "Forgot Password." You will then answer the two security questions and a temporary password will be e-mailed to the e-mail address we have on file. If you do not have an e-mail on file or you have not updated your e-mail, your password will have to be reset by a KREC staff member.

Can I Update My Contact Information?

Yes, it is very important to make sure your home address and e-mail address are correct. Last year, many licensees entered an e-mail address of a friend or relative. Make sure you will receive those e-mails because the KREC sends important information and notices to your personal contact e-mail address.

Will I Receive A Payment Confirmation?

Once your license is renewed you will receive a confirmation upon completion. It will say, "PAYMENT CONFIRMATION - Your payment has been processed successfully." You will also receive an e-mail confirmation. Keep this for your records.

When Is The Renewal Payment Due?

Payment must be received by March 31, 2012 at midnight. Avoid the late renewal fine and renew on time. The KREC will not accept renewals after March 31, 2012 without a late renewal fine.

What Is The Late Renewal Fine?

Any renewal fee received after March 31, 2012 will be assessed a \$100.00 fine. Renewal payments received after May 15, 2012 will be assessed a \$200.00 fine.

Where Can I Find More Information?

You can find more information on our website under the "Frequently Asked Renewal Questions" link.

What Is The Deadline?

Your payment must be received in our office by March 31, 2012. The Commission will not accept renewal fees beyond the deadline without a late renewal fine. Don't forget, March 31, 2012 is a Saturday and the KREC office will be closed.



Group Errors and Omissions Insurance Contract Renewed With RISC

The KREC is very pleased to announce that the group errors and omissions insurance contract was renewed with Rice Insurance Services Company, LLC ("RISC"), under the same terms and conditions as last year. The group carrier for the 2012/2013 program is Continental Casualty Company, one of the CNA companies. As always, licensees in the Commonwealth will have the option of purchasing group coverage (this year's annual rate is \$107.00 (plus taxes & fees)) or they may elect to purchase private coverage. If private coverage is being purchased, licensees must have Form #500 filled out by their insurance carrier and download it in the online renewal system for approval.

The group program with RISC offers licensees a \$100,000.00 limit of liability, a \$0 deductible, and a \$1,000,000.00 annual aggregate. RISC offers several endorsements, at no additional expense to the licensee, as part of the group policy. Other endorsements, such as appraisal coverage, higher limits, and conformity can be purchased directly from RISC. Upon approval from the insurance department, a new optional residential investment property coverage endorsement will be offered this year.

For more information about the group program, please see RISC's contact information below.

Rice Insurance Company, LLC.

Website: www.risceo.com (click on Kentucky)

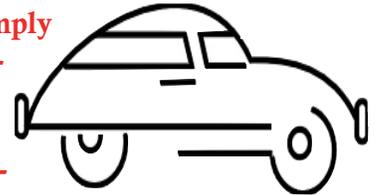
Phone: 502-897-1876 or Toll Free: 1-800-637-7319

Dial Ext. 1 for Individual Endorsements & General Information

Dial Ext. 2 for Claims & Dial Ext. 3 for Firm Excess Coverage

KREC Will Hold Online Renewal Assistance Sessions

The KREC will once again be going on the road to assist licensees with online renewal. If you do not have access to a computer or if you are simply uncomfortable using a computer, please stop by one of the three locations below, and a KREC staff member will be happy to assist you. Also, the KREC office will have a computer available in our lobby for licensees to use that do not have access to a computer. Below are the various locations and sessions. You do not need an appointment.



March 15, 2012 (10:00 a.m. - 3:00 p.m. EST)
Lexington-Bluegrass Association of REALTORS®

March 16, 2012 (10:00 a.m. - 3:00 p.m. EST)
Northern Kentucky Association of REALTORS®

March 21, 2012 (10:00 a.m. - 3:00 p.m. EST)
Somerset-Lake Cumberland Board of REALTORS®

WHAT TO BRING?

Principal Brokers will need their firm registration number, which was mailed to their office address on file at the KREC and the escrow account information for each firm.

Anyone who did not renew online last year will receive a letter with their temporary password. You must bring this with you in order for us to be able to assist you.

Everyone will need a credit card, debit card, or your bank account number and bank routing number.

Everyone will need to know their e-mail address.

What Licensees Need to Know About PUFFERY IN ADVERTISEMENTS: The Difference Between "Puffing" & "False Advertising"

By: Y. Denise Payne Wade,
Acting General Counsel, KREC

v. Papa John's Intern., Inc., 227 F.3d 489 (5th Cir. 2000), states:

Solicitation of clients and customers is an important aspect of a real estate professional's daily business, as is advertising. Restrictions apply to both. For example, KRS 324.117(1) prohibits intentionally false, misleading, or deceptive advertising.

As defined in Section 1(3) of 201 KAR 11:011, false, misleading, or deceptive advertising is "an advertisement that is prohibited...because the advertisement: (a) [i]s contrary to fact; (b) [l]eads a person to a mistaken belief or conclusion; or (c) [k]nowingly made a representation that is contrary to fact."

In a nutshell, licensees who intentionally make false claims or statements of fact in their advertisements (or elsewhere, for that matter) risk being disciplined by the Commission for doing so. When such matters are brought to the Commission's attention, the Commission examines them closely. For this reason and because licensees make a variety of claims in advertisements, the Commission encourages licensees to be mindful of the difference between factual claims and statements of opinion-or "puffery"-when they are making important decisions about what to include in their advertisements. A brief discussion of this difference follows.

Factual claims are statements that can be proven to be true or false. So, licensees must have proof or evidence to support each factual claim or statement that they advertise about themselves or the services they provide. If none exists, then the licensee's unsubstantiated factual claims and statements should not be included in their advertisements.

Unlike factual claims, statements of opinion cannot be proven true or false. These types of statements in advertising are described as "puffery" or "puffing," which are legal terms that have been defined by federal law and discussed in many court cases. Defining them, the federal court in *Pizza Hut, Inc.*,

Puffery has been discussed at some length by other circuits. The Third Circuit has described 'puffing' as 'advertising that is not deceptive for no one would rely on its exaggerated claims.' (citation omitted). Similarly, the Ninth Circuit has defined 'puffing' as 'exaggerated advertising, blustering and boasting upon which no reasonable buyer would rely...' (citation omitted).

As the court in *Pizza Hut* notes, "[p]uffing has been described by most courts as involving outrageous generalized statements, **not making specific claims**, that are so exaggerated as to preclude reliance by consumers." (citation omitted) (emphasis added). Continuing, the court states:

Drawing guidance from the writings of our sister circuits and the leading commentators, we think that non-actionable 'puffery' comes in at least two possible forms: (1) an exaggerated, blustering, and boasting statement upon which no reasonable buyer would be justified in relying; or (2) a general claim of superiority over comparable products that is so vague that it can be understood as nothing more than a mere expression of opinion.

To conclude, being able to tell the difference between factual claims and puffery can help you avoid problems with the Commission, your competitors, and your potential clients and customers. So, exercise caution when you are making important decisions about what to include in your advertisements. Do not cross the line that separates "puffing" and "intentionally false, misleading and deceptive advertising." When in doubt, ask. Indeed, it is better to be safe than sorry.



Disciplinary Actions

**James P. Wooten, III**

Case No. 10-0133 (Knoxville, TN)

Violation: Mr. Wooten stipulated to a violation of KRS 324.160(4)(t), for failing to comply with the Commission's July 15 2009 Agreed Final Order, requiring him to complete three (3) additional hours of continuing education in law.

Disposition: Mr. Wooten agreed to have the status of his license changed from "cancelled" to "voluntarily surrendered," permanently.

Bradley Warford

Case No. 10-0163 (Paint Lick)

Violation: Mr. Bradley Warford stipulated to violations of KRS 324.160(4)(u) and (t), specifically, 201 KAR 11:121(4), for failing to act reasonably and diligently in a dual agency transaction, creating confusion and causing the untimely disclosure to his buyer-clients of the extent of flooding in the basement of his seller-client's/grandmother's property, as well as the untimely disclosure to them of the unauthorized home repairs/replacements that his seller-client made as a result of the flooding, which occurred after his buyer-clients and seller-client had entered into a binding purchase/sell contract for the property. By doing so and by, indirectly or directly, causing his seller-client's original seller's disclosure form to be improperly updated/amended, Respondent Warford improperly failed to keep his clients on a level playing field with the same body of knowledge in the dual agency transaction at issue.

Disposition: Mr. Warford agreed to pay a fine in the amount of one thousand dollars (\$1,000.00). Mr. Warford also agreed to successfully complete three (3) hours of continuing education in agency law, in addition to any hours that he is otherwise required to take.

John B. Wheatley, Jr.

Case Nos. 08-0202 & 09-0193 -

Violation: Mr. John B. Wheatley, Jr. stipulated to unintentional violations of KRS 324.160(4)(b), (u) and (t); specifically, 201 KAR 11:121, Section 1(4), resulting from the confusion, delays, and conflicts of interest he unintentionally created while negotiating the short sales in question in a manner that he mistakenly believed provided full disclosure and transparency to all involved, based upon his misunderstanding of the private legal advice that he had sought and obtained prior to implementing his short sale program.

Disposition: Mr. Wheatley agreed to have his license placed on probation for nine (9) months. In addition, he agreed to pay a fine in the amount of one thousand dollars (\$1,000.00) and to complete three (3) hours of continuing education in contract law and three (3) hours in agency law, in addition to any hours he is otherwise required to complete.

Sally Taylor

Case No. 09-0123 (Floyds Knobs, IN)

Violation: Ms. Sally Taylor stipulated to a violation of KRS 324.160(4)(t) for violating 201 KAR 11:121, Section 1(4)(e) for

failing to act reasonably and diligently when she failed to provide a level playing field, in a dual agency transaction, creating confusion and causing the untimely disclosure, to her buyer-clients, of the need to obtain an engineering soil analysis for the vacant lot that they purchased and the need to have the property inspected by a structural engineer to determine the feasibility of her buyer-clients' building plans, which information she had received from her seller-client/colleague. By doing so and by also improperly delegating to her seller-client/colleague the responsibility of providing certain information about the property to her buyer-clients, Respondent Taylor created further confusion and failed to keep the clients on a level playing field with the same body of knowledge in the dual agency transaction.

Disposition: Ms. Taylor agreed to pay a fine in the amount of one thousand dollars (\$1,000.00) and to successfully complete three (3) hours of continuing education in agency law, in addition to any hours she is otherwise required by law to complete.

William "Bill" Dean

Case No. #11-0070

Violation: Mr. William "Bill" Dean stipulated to violation of KRS 324.160(4)(u) for, directly or indirectly, causing unauthorized listing price changes and contract extensions, resulting from his undocumented and improper use of e-mailed communications with his seller-client.

Disposition: Mr. Dean agreed to pay a fine in the amount of one thousand dollars (\$1,000.00).

Disciplinary Actions

Continued from Page 9

Linda R. Willson

Case No. 10-0124 (Lexington)

Violation: Ms. Linda R. Willson stipulated to a violation of KRS 324.160(4)(u) for improperly reducing the price of her seller-clients' property and, thereafter, showing it to a prospective buyer after Ms. Willson's listing for the property had expired, acting upon the verbal consent that she had obtained from one of her seller-clients, rather than upon the written consent of both seller-clients involved, as required.

Disposition: Ms. Willson agreed to pay a fine in the amount of five hundred dollars (\$500.00) and to accept a formal reprimand.

Ryan P. Van Daniker

Case No. 11-0041(Lexington) -

Violation: Mr. Ryan P. Van Daniker stipulated to a violation of KRS 324.160(4)(t) for violating KRS 324.020(2) by accepting a \$500.00 referral fee prior to the reactivation of his canceled license, due to oversight.

Disposition: Mr. Van Daniker agreed to pay a fine in the amount of five hundred dollars (\$500.00).

Anna F. Kirby-Hunt

Case No. 09-0162 (Marion)

Violation: Ms. Anna F. Kirby-Hunt stipulated to violations of KRS 324.160(4)(t); specifically, 201 KAR 11:400, Section 3 (5)(c) for failing to properly complete the agency disclosure form and 201 KAR 11:400, Section 3 (1) & (3)(c) for failing to provide a Consumer Guide to Agency

Relationships.

Disposition: Ms. Kirby-Hunt agreed to pay a fine in the amount of five hundred dollars (\$500.00), and to complete three (3) hours of continuing education, in agency law, in addition to any hours she is otherwise required. She also agreed to accept a formal reprimand.

Mr. John W. Chappell

Case No. 09-0162 (Fredonia)

Violation: Mr. John W. Chappell stipulated to a violation of KRS 324.160(6) for failing to adequately supervise his sales associate, Anna F. Kirby-Hunt, to ensure that her aforementioned violations of the agency disclosure requirements would not occur.

Disposition: Mr. Chappell agreed to pay a fine in the amount of five hundred dollars (\$500.00) and to successfully complete three (3) hours of continuing education, in agency law, in addition to any hours he is otherwise required to complete; and to accept a formal reprimand.

Joseph S. Dickerson

Case No. 11-0067

(Elizabethtown)

Violation: Mr. Joseph S. Dickerson stipulated to a violation of KRS 324.160(4)(t) for violating a lawful Order of the Commission by untimely paying a fine imposed in another Commission case.

Disposition: Mr. Dickerson agreed to pay a fine in the amount of five hundred dollars (\$500.00).

Ms. Barbara Popp

Case No. 09-0123 (New Albany, IN)

Violation: Ms. Barbara Popp

stipulated to a violation of KRS 324.160(4)(t) for violating 201 KAR 11:121, Section 1(4)(e) for failing to act reasonably and diligently when she failed to ensure that information that was in her possession, as principal broker in a dual agency transaction, was provided to her buyer-clients. This failure created confusion and caused the untimely disclosure, to her buyer-clients, of certain information about the property that she had, indirectly or directly, received in a packet from her seller-client/affiliated-licensee.

Disposition: Ms. Popp agreed to pay a fine in the amount of five hundred dollars (\$500.00).

Patricia "Patty" Maupin

Case No. 11-0085 (Taylorsville)

Violation: Ms. Patricia "Patty" Maupin stipulated to a violation of KRS 324.160(4)(u), resulting from her failure to take proper and timely action to eliminate uncertainty about her listed property's heating system before stating definitively (and incorrectly), in advertisements and to a prospective purchaser, that the property was heated by a heat pump.

Disposition: Ms. Maupin agreed to pay a fine in the amount of three hundred fifty dollars (\$350.00) and to accept a formal reprimand.





Mark Your Calendars!



What? Remote Commission Meeting

When? July 18, 2012 at 9:00 a.m.

**Where? Hyatt Regency Lexington
401 West High Street
Lexington, KY 40507**

Please make plans to join us. We look forward to seeing you!

**The KREC office
will be closed on:**

**April 6, 2012 (1/2 Day)
(Good Friday)**

**May 28, 2012
(Memorial Day)**

**July 4, 2012
(Independence Day)**

THE SAFE ACT - Where are we now?

Continued from Page 5

Assembly to pass a law that would allow an exemption, in the event that HUD passed an allowance, to let a person make a mortgage loan as long as that person didn't make more than a certain number of mortgages per year. This law, passed in early 2011, allows the Commissioner of DFI to grant further exemptions to the state law by executive order IF HUD passed similar exemptions first.

In June 2011 HUD passed a rule explaining that the SAFE Act would not cover those who are "not in the business" of giving mortgages, meaning someone "habitually" originates mortgage loans in a business-like transaction. Although somewhat helpful, it still

begged the question: "What do they mean by a 'habit' of giving mortgages?"

On January 5, 2012, our DFI gave some great clarity to this exemption. By executive order, DFI now allows a natural person to make up to four mortgages per calendar year without being a registered originator, provided that the individual does not make these loans on such a regular basis as to appear to actually be in the business of a mortgage loan originator.

Today the exemptions to the SAFE Act almost outweigh the rule when it comes to private financing. Currently, the SAFE Act does not apply to the following: 1.) com-

mercial properties; 2.) loans for a commercial purpose (investor to investor transactions); 3.) loans to immediate family members; 4.) seller financing where the property was the seller's primary residence, vacation home or inherited property; or 5.) a natural person who gives no more than four mortgages a year.

The SAFE Act does apply to an entity, such as an LLC or a Corporation, providing financing, regardless of the number of mortgages made in a calendar year, and to individuals giving more than four mortgages in one calendar year.

The law, as it stands now, does a good job maintaining the quality of loan originators without unnecessarily burdening the real estate market.

Reminder to Principal Brokers

Principal Brokers MUST register and renew BEFORE their broker associates and sales associates can renew.