

Kentucky Real Estate NEWS

A Publication of the Kentucky Real Estate Commission

GUIDANCE FOR A UNIQUE LEGAL SITUATION: Relocation Company Contracts & KREC Interpretation of 201 KAR 11:250, Section 2(2)

By: **Denise Payne Wade**
Staff Attorney

The duties of the KREC's Legal Department include the responsibility of responding to its "Hotline" license law questions. These questions occasionally involve unique situations in which novel issues are raised about certain license law requirements. At times, these situations reveal the existence of confusion among licensees over license law requirements, leading to the inevitable question: What is a licensee to do?

The purpose of this article is to share with licensees a scenario for which KREC guidance was requested, along with the KREC's recently-issued interpretation of the applicable license law requirement, 201 KAR 11:250, Section 2(2). The issue, which was a new one for the KREC, surfaced during real estate transactions centers on relocation company contracts with seller-clients of licensees and the signature requirement in 201 KAR 11:250. Section 2(2) of that regulation states: **"An offer to purchase or a counteroffer prepared by or at the direction of a licensed agent shall include the... [d]ate and time of signing of the offer or counteroffer for all parties who sign...."**

The scenario for which KREC guidance was sought follows:

Relocation companies are entering into contracts with owners that state the company will purchase the property for a set amount if it does not sell. The owner/seller lists the property with a principal broker. At that time, the owner/seller signs the listing. When an offer is presented to the owner/seller, the owner/seller negotiates the offer, but refuses to sign it. The owner/seller requires the agent to allow the relocation company representative to sign the offer... As a matter-of-fact, the relocation company instructs that the owner/seller's name not be on the offer at all.

KREC INTERPRETATION OF 201 KAR 11:250, SECTION 2(2): "Parties," as that term is used in 201 KAR 11:250, Section 2(2), include relocation companies and third-party companies involved in the particular type of transaction described in the above scenario.

It should be noted that companies involved in transactions like the above have a contractual interest in the real property of the licensee's seller-client. This interest is acquired under the terms of a title transfer type agreement between the company and the seller-client. It should

also be noted that a licensee's seller-client who is involved in one of these transactions is often required to make, by agreement, an immediate title transfer, by deed, of his or her listed property to the company.

Consequently, and to summarize, a real estate purchase offer/contract that is prepared by or at the direction of a licensee and, thereafter, signed by a representative of a relocation/third-party company (rather than by the licensee's seller-client who signed the listing contract only) satisfies the signature requirement in 201 KAR 11:250, Section 2(2), if the relocation/third-party company has a contractual interest in the listed property of the licensee's seller-client.

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**Kentucky**
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Issue No. 218, Summer 2012

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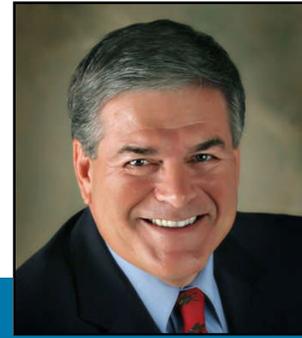
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Comments from the Chair

by: **Bob Roberts,**
Chair



During the month of March, the Kentucky Real Estate Commission "KREC" conducted the annual license renewal process for all active and escrow real estate brokers and salespersons. This was the second year of implementing the mandated requirement that all renewals be completed online.

The online renewal process was very successful due mainly to the positive feedback of licensees and system users that the KREC received over the past two license renewal periods. The constructive comments and suggestions from licensees were carefully considered and resulted in many modifications and updates to the online process and KREC website.

On behalf of the KREC commissioners and staff, thank you for your cooperation, assistance, and patience in making the online renewal process a success. Please know that commissioners and staff

are committed to further improvements to the system and welcome your comments and efforts to improve the process. KREC's technology team, which includes administrative and licensing staff, CORE Systems Development, Inc. and Kentucky.Gov, continue to work on system improvements and expanded options to enhance system utilization by Kentucky's real estate licensees.

With the conclusion of license renewal, licensees may be interested in reviewing the chart below which summarizes current year licensee statistics with data looking backward five years. The chart demonstrates the current trend in the decline in the number of real estate brokers and salespersons (both active and escrow). Whether these declining statistics and trends continue will depend largely upon the health of the real estate market as well as Kentucky's overall economy.

Real Estate Licensees - Statistics and Trends

	June 2012	June 2008	Five-Year Change
Active Brokers	4,234	4,737	- 503
Active Salespersons	7,880	10,595	- 2,715
Escrow Brokers	1,197	1,369	- 172
Escrow Salespersons	8,464	10,284	- 1,820
Totals	21,775	26,985	- 5,210



Comments from the Executive Director

By: Michael W. Wooden,
Executive Director

Several major bills passed the 2012 Kentucky General Assembly of interest to real estate licensees. These bills included: House Bill 409 (Revisions to the "Slayer Statute" and to Kentucky's "Mortgage Licensing and Regulation Act"); House Bill 433 (Amendments to the Kentucky Condominium Act); House Bill 425 (Changes to KREC's Education, Research, and Recovery Fund; and, House Bill 533 (Prohibition of Private Transfer Fees). The provisions of House Bill 409 and House Bill 433 are summarized in other articles contained in this newsletter (HB 409, pages 4 & 7 and HB 433, page 6). Following is information of interest to licensees regarding House Bill 425 and House Bill 433.

House Bill 425, sponsored by Representative Danny Ford (R - Mount Vernon), was introduced at the request of the Kentucky Real Estate Commission and intended to improve the budget management and financial accountability of the Kentucky Real Estate Commission's two budget accounts, including the Trust and Agency Account (agency operations) and the Education, Research, and Recovery Fund.

The legislation revised and expanded current statutory language regarding the purposes of KREC's Recovery Fund as outlined in KRS 324.410 to include individuals "seeking a real estate license." The language allowed existing programming to continue and expanded the purposes of the Education, Research, and Recovery Fund to include pre-license educational programming.

The bill also allowed the Recovery Fund to augment or transfer funding to KREC's Trust and Agency Account when needed to address potential cash flow deficiencies, budget shortfalls, and reimbursement of personnel, administrative, operational, and capital expenses incurred by the Trust and Agency Account, provided these costs are incurred pursuant to the statutory purposes of the Recovery Fund. The total amount that can be transferred is capped at \$250,000 annually.

House Bill 533 was introduced as part of the Kentucky Association of Realtor's legislative agenda and relates to KRS Chapter 382. The bill's primary sponsor was Representative Fred Nesler (D - Mayfield). The purpose of the legislation was to ban third-party transfer fees. A private transfer fee is a charge that is required to be paid to a developer, home owner association, or individual at closing each time a property is sold.

The legislation provided that private transfer fees, whether recorded or not, shall be prohibited and any contract, covenant, or other instrument that attempts to create a private transfer fee obligation shall be void and unenforceable. Any person who records or enters into an agreement imposing a private transfer fee obligation shall be liable for any and all damages resulting from the imposition of the fee obligation on the transfer of an interest in the real property including but not limited to the amount of any transfer fee paid by a party to the transfer.

Copies of House Bill 425, House Bill 533, and all bills referenced in this newsletter can be obtained on the Legislative Research Commission's website at [<http://www.lrc.ky.gov/record/12RS>].

2012 COMMISSIONER APPOINTMENT NOTICE

Any real estate licensee wishing to be considered for a 4-year term as a Kentucky Real Estate Commissioner should contact the Kentucky Association of REALTORS®. An application and detailed requirements are available at www.kar.com and by mail. To qualify, one must have been a resident of Kentucky for 10 years and have held a Kentucky real estate license for 10 years. The deadline for submission is August 6, 2012 to KAR, 161 Prosperous Place, Lexington, KY 40509. Questions may be directed to susiehelm@kar.com or call KAR at 1-800-264-2185.



Bob Roberts, Chair



Linda Cecil, Vice-Chair



Ken Perry



Glenn Thomas



Jim Huff

The Owner-Financing Exemption & Other Mortgage Law Registration and License Exemptions

By: Denise Payne Wade, Staff Attorney



On April 11, 2012, Governor Beshear signed into law House Bill 409 ("HB 409"). It includes amendments to a couple of statutes in Kentucky's Mortgage Licensing and Regulation Act (KRS 286.8-010 to 286.8-285), which govern the activities of a person acting in the capacity of a mortgage loan broker, a mortgage loan company, a mortgage loan processor, and/or a mortgage loan originator. Because Kentucky's real estate license laws allow a real estate licensee to serve in the dual capacity of a real estate licensee and loan originator, if the requirements in 201 KAR 11:121 Section (1)(7), are met, this article will briefly discuss HB 409's amendments to KRS 286.8-290 and KRS 286.8-020.

When the amendment to KRS 286.8-290 becomes effective on July 12, 2012, the list of mortgage loan originators that are exempt from the registration and regulatory requirements of KRS 286.8-255 will include: "Any natural person including all entities owned in whole or part by that natural person that make no more than four (4) loans each calendar year." In other words, KRS 286.8-290, as of that date, will allow a person who is not "registered" with the Department of Financial Institutions ("DFI") as a mortgage loan originator to engage in loan origination in Kentucky if, and only if, the person provides four or fewer mortgage loans per calendar year. Notably, an existing mortgage loan originator exemption in KRS 286.8-290 will remain, unchanged, in the statute. It exempts from the registration requirement: "A person who originates a mortgage loan secured by a dwelling; and 1. Who is

exempted by an order of the [DFI] commissioner; and 2. Whose exemption would not be contrary to the registration requirements of the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto."

The aforementioned "four-mortgage-loans-per-calendar-year" cap is also included in the DFI licensure exemption for mortgage brokers/companies in KRS 286.020, as amended. Consequently, the list of mortgage loan companies and mortgage loan brokers that will be exempt from the licensure requirements will include the following, effective July 12, 2012:

Any person other than a natural person, including any affiliate of that person, that makes in the aggregate no more than four (4) mortgage loans within a calendar year with its own funds and secured by residential real property owned by the person making the mortgage loan, provided that the mortgage loan is made without the intent to resell the mortgage loan, and provided that the person does not hold itself out to the public as being primarily in the mortgage loan business.

To obtain additional information about Kentucky's registration and license requirements for mortgage loan brokers, mortgage loan companies, mortgage loan processors, and mortgage loan originators, you should visit the website of the Kentucky Department of Financial Institutions (kfi@ky.gov) or contact that agency, toll free, at (800) 223-2579 or at (502) 573-3390.

WHY FAIR HOUSING STILL MATTERS IN 2012

Article Provided By:



When referring to fair housing, one is usually talking about the Fair Housing Act amended in Title VIII of the United States Civil Rights Act of 1968. It was signed by President Lyndon B. Johnson. Also applicable in Kentucky are fair housing laws amended in Kentucky Revised Statutes Chapter 344, the Kentucky Civil Rights Act, which was signed by Governor Edward Breathitt in 1968. These laws prohibit discrimination in housing on the basis of color, disability, familial status (families with children under the age of 18), national origin, race, religion, sex, and retaliation. These classes are protected from discrimination in the sale and rental of housing, home improvement, mortgage lending, home insurance, and in other real estate-related transactions. Pursuant to these laws, on the basis of any protected class, it is unlawful to refuse to sell, rent or lease a property, discriminate on the terms and condition, deny any services or facilities relating to housing, or refuse to make reasonable accommodations or modifications for qualified individuals with a disability.

It has been more than 40 years since the enactment of the Fair Housing Act, yet many Americans still experience discrimination in housing. **The National Fair Housing Alliance, a reputable national fair housing organization, states that about four million fair housing violations occur each year.** Less than one percent of the violations are reported. The U. S. Department of Housing and Urban Development (HUD) reports that in 2010, 10,155 fair housing complaints were filed across the United States. Of these complaints, 4,839 were based on disability, 3,483 on race, 1,560 on familial status, 1,177 on national origin, 1139 on sex, 287 on religion, 219 on color, and 707 on retaliation.

In Kentucky, HUD reports that in 2010, 126 fair housing complaints were filed at the Kentucky Commission on Human Rights, Lexington-Fayette Urban County Government Human Rights Commission, Louisville Metro Human Relations Commission, and HUD, itself. The Lexington Fair Housing Council, a private non-profit agency that handles fair housing complaints, received 103 fair housing inquiries in 2011. Of these inquiries, 47 were based on disability, 16 on race, 14 on familial status, eight on national origin, 16 on sex, one

on religion, and one on sexual orientation. The Lexington Fair Housing Council reports that many of these inquiries were conciliated before a formal complaint was pursued. Conciliations are similar to settlements in civil suits.

The above statistics show that the basis of disability accounted for 48 percent of the complaints, 34 percent were based on race, and 15 percent were based on familial status. These trends represent a challenge for Kentucky taking into account the current state demography. The U.S. Census Bureau American Community Survey reports that 711,057 Kentuckians have a disability. The 2010 U.S. Census shows the state is becoming more diverse. It shows that living in Kentucky are 337,520 African Americans, 132,836 Hispanics, 48,930 Asians, 10,120 Native Americans, and over 55, 551 people with other ethnicities.

The Kentucky Housing Corporation in 2009 published a report titled, *The Analysis and Impediments to Fair Housing*. The study shows that many "residents in Kentucky lack knowledge of their fair housing laws and rights." In addition, it states that "the housing stock in Kentucky is not adequately accessible" and that "the majority of the state [of Kentucky] has inadequate landlord-tenant protection." Kentucky lacks an enforceable Uniform Residential Landlord and Tenant Act (URLTA). The URLTA provides balanced rights and responsibilities for tenants and landlords and provides equal housing opportunity. Currently, the URLTA is a state law that gives local governments the authority to choose whether or not to adopt the provisions. About 18 cities and counties have adopted the law.

It is evident that inequality in housing is still pervasive. Housing discriminatory practices hurt many Kentucky families. The need to increase public awareness about fair housing is as important as it was when the fair housing laws were passed in 1968. As we reflect on fair housing during the U.S. and Kentucky Fair Housing Month of April, the public is challenged with the question, 'What can I do to eradicate housing discrimination so that every Kentuckian will have the opportunity to prosper regardless of one's disability, race, color, sex, religion, national origin, or familial status?'

To learn more about fair housing laws, every person's right to fair housing, and how to comply with fair housing laws, please contact the Ky. Commission on Human Rights at 1.800.292.5566.



Kentucky's Condominium Law & Its Protections For Condominium Purchasers and Sellers

(Revised May 2012)

By: Denise Payne Wade, KREC Staff Attorney



On April 11, 2012, amendments to Kentucky's January 1, 2011 Condominium Act (hereafter, the "2011 Condo Act") became effective. These laws, as amended, include provisions to further protect condominium purchasers and sellers. For example, the *Protection of Condominium Purchasers* section of the 2011 Condo Act includes ethical standards for board members and officers of a condominium association, which were not included in the law as enacted in 2011. Moreover, a board member is required to "discharge his or her duties as an officer or a member of the executive board, including his or her duties as a member of a committee: (a) in good faith; (b) on an informed basis; and (c) in a manner he or she honestly believes to be in the best interests of the corporation."

Under the amended law, a condominium association is still required to complete a certificate containing information about: restrictions, assessments or other fees, expenses, reserves for capital expenditures, and any lawsuits or unsatisfied judgments against the association. However, there are a few changes to the law regarding the required content for the certificate. Consequently, the KREC-approved Condominium Seller's Certificate form (Form M107) has been revised. The revised form, which may be used to satisfy the certificate requirement in the amended 2011 Condo Act, can be accessed from the KREC's website (www.krec.ky.gov).

Notably, the amended 2011 Condo Act clearly states that the certificate is not required in the case of: (1) a gratuitous disposition of a unit, (2) a disposition pursuant to a court order, (3) a disposition by a government or governmental agency, (4) a disposition by foreclosure or deed in

lieu of foreclosure; (5) a disposition to a person in the business of selling real estate who intends to offer those units to purchasers, and where the purchaser has modified or waived the statutory certificate requirements by agreement, or (6) a disposition that may be canceled at any time and for any reason by the purchaser without penalty. If none of these exemptions apply, then the condominium certificate requirements must be satisfied.

Licensees should become familiar with the statutory requirements concerning the provision of the Condominium Seller's Certificate. For this reason, the KREC has prepared an outline of the certificate requirements in KRS 381.9203, which includes the rights, responsibilities and protections that they provide for purchasers, sellers, and the licensees who represent them. The outline (Form M108) can also be accessed from the KREC's website.

Finally, if a licensee has a seller-client who does not know, or is uncertain about, whether the property to be sold is or is not subject to the requirements of the amended 2011 Condo Act, then the licensee should advise the seller-client to contact a private attorney. A private attorney can review the documents that govern the association (particularly, the declaration or master deed)-and, thereafter, provide the seller with the legal advice that he or she needs. **Neither a licensee nor the commission can provide this service.** Note: Kentucky's updated condominium law provisions are not included in Kentucky's real estate license laws, KRS Chapter 324. They are found in KRS Chapter 381 and can be accessed from the following website: <http://www.lrc.ky.gov/KRS/381-00/chapter.htm>.

CHECK OUT THE KREC DATABASE!

It Could Save You \$500.00!

What is on the Database?

The KREC database displays your license number, your original licensure date, whether your license is in active or escrow status, your license expiration date and most importantly, your continuing education record, which includes current year requirements and past-year postings.

How do I Access the Information?

Go to the KREC website (krec.ky.gov) and click on the tab that says KREC Database, which is near the top in the blue banner.

Check the box agreeing to the disclaimer.

Type in your last name and first name ONLY as it appears on your license. The system is case sensitive and you must type your name **exactly** as it appears on your license.



Click on START THE SEARCH. Several names may appear, find yours and click the [+].

All of your public information will be displayed. To see your continuing education record, simply click on the underlined continuing education option to the far right. This will display whether you need regular C.E., the Core or no C.E. at all because you are grandfathered or in escrow. It will also display any classes you took last year or this year. It does sometimes take several weeks to post your record.

The database is a valuable tool and licensees are encouraged to become familiar with their individual information. It is also a very important reminder of the two dates that are most important to real estate licensees - March 31 (license renewal deadline) and December 31 (continuing education deadline).

LICENSEES ARE NO LONGER REQUIRED TO NOTIFY THEIR CLIENTS ABOUT KENTUCKY'S "SLAYER STATUTE"

On April 11, 2012, Governor Beshear signed into law House Bill 409, which is described as "an act relating to real estate professionals." As a result of this bill, the following requirement will be removed from Kentucky's "slayer statute" (KRS 381.280), effective July 12, 2012: *"Legal, real estate, and insurance professionals shall make reasonable efforts to advise their clients of the provisions of this section prior to the execution of documents affected by the provisions of this section."* Consequently, the Commission will remove the following Notice provision from the Commission-approved contracts, which can be accessed from its website, after the amended statute becomes effective:

Notice: Each party to this contract, who is also the client of a real estate agent, hereby acknowledges that his or her agent has reasonably notified him or her about the provisions of KRS 381.280, as effective January 1, 2012 and as required under that statute, which is known as Kentucky's "Forfeiture Statute" and commonly referred to as Kentucky's "Slayer Statute."

Licensees with clients who seek legal advice concerning the application of KRS 381.280 should advise their clients to contact a private attorney because neither a licensee nor the KREC can provide this service. Licensees are not authorized to provide it because they do not possess a license to practice law, and the Commission lacks jurisdiction over such matters because Kentucky's slayer statute is not included in Kentucky's real estate license laws, KRS Chapter 324.



Disciplinary Actions



Margaret Powell

Case No. 10-0099 (Metropolis, IL)

Violation: Ms. Powell stipulated to a violation of KRS 324.160(4)(u) for engaging in improper conduct and dishonest dealing when she utilized her real estate license number on real estate appraisal reports and when she improperly utilized illegitimate addresses for comparable sales purposes in real estate appraisal reports.

Disposition: Ms. Powell agreed to permanently and voluntarily surrender her Kentucky real estate license.

Susan L. Daily

Case No. 09-0147 (Louisville)

Violation: Ms. Daily stipulated to an unintentional violation of KRS 324.160(4)(t) and KRS 324.10(4)(u) for violating KRS 324.111(3) and 201 KAR 11:245, Section 4 when she improperly handled and maintained funds in both her escrow account and her property management security deposit account causing negative balances to occur in both accounts, though no monies belonging to others were affected.

Disposition: Ms. Daily shall be placed on probation for a period of twelve (12) months, during which the Commission may conduct a random audit of her escrow account. Ms. Daily agreed to pay a fine of one thousand dollars (\$1,000.00)

and she agreed to successfully complete six (6) additional hours of continuing education in law.

Karen L. Stone

Case No. 11-0068 (Paducah)

Violation: Ms. Stone stipulated to a violation of KRS 324.160(4)(j), for pleading guilty to a felony.

Disposition: Ms. Stone agreed to pay a one thousand dollar (\$1,000.00) fine to the Commission and to accept a formal reprimand.

Patricia L. Segrest

Case No. 11-0087 (Louisville)

Violation: Ms. Patricia L. Segrest stipulated to a violations of KRS 324.160(4)(u) and KRS 324.160(4)(t) for violating 201 KAR 11:250, Section 1(8); 201 KAR 11:121, Section 1(4)(b); and 201 KAR 400, Section 3(5), for: (1) not following her seller-client's lawful instruction to timely provide to the buyers of her seller-client's property, certain information that her seller-client had given to her for that purpose; (2) not properly extending a listing contract; and (3) not timely completing and presenting an agency disclosure statement to her seller-client.

Disposition: Ms. Segrest agreed to pay a one thousand dollar (\$1,000.00) fine and to accept a formal reprimand.

William T. Pogue, Jr.

Case No. 10-0043 (Owensboro)

Violation: Mr. Pogue stipulated to a violation of KRS 324.160 (4)(t), when he inadvertently caused an advertisement to be placed on his website, which incorrectly stated that he was a member of the Owensboro Board of REALTORS®, the Kentucky Association of REALTORS® and the National Association of REALTORS®, which he immediately removed once notified; and he stipulated to a violation of KRS 324.160(4)(t) for failing to timely pay the fine imposed in KREC Case No. 09-0060.

Disposition: Mr. Pogue agreed to pay a fine to the Commission in an amount totaling seven hundred and fifty dollars (\$750.00) and he agreed to accept a formal reprimand.

Constance L. Cobane

Case No. 10-0152 (Nicholasville)

Violation: Ms. Cobane stipulated to a violation of KRS 324.160(4)(u) and KRS 324.160(4)(t), specifically, 201 KAR 11:121, Section 1(4)(a) and (e), resulting from her inadvertently engaging in improper conduct when she expressed, to her buyer-client and to a representative of her buyer-clients' lender of choice, her displeasure about her buyer-client's desire to use a lender other than Respondent's son after her son had spent time and money pro-

Disciplinary Actions Continued from Page 8

cessing the loan at her buyer-client's request.

Disposition: Ms. Cobane, in order to avoid additional legal fees and costs, agreed to pay a fine in the amount of five hundred dollars (\$500.00) and to successfully complete six (6) additional hours of continuing education in law, with at least three (3) of those hours having a specific focus in agency law. Ms. Cobane also agreed to accept a formal reprimand and she agreed that she shall not engage in the complained-of conduct in a future identical or similar situation.

Jennifer Herald Divine

Case No. 10-0022 (Richmond)

Violation: Ms. Divine stipulated to violations of KRS 324.160(4)(t) for violating 201 KAR 11:400 by failing to complete an agency disclosure statement for a seller-client and for failing to provide an agency disclosure statement for a prospective buyer-client, thereby rendering it impossible to ascertain whether she was acting in the capacity of a "partner" of her real estate investor/buyer-client, or solely as an agent representing her seller-clients, or as a dual agent. She also stipulated to violating KRS 324.160(4)(u) for improperly reducing the price of her seller-clients' property, in reliance upon a disputed verbal authorization from her seller-clients and, thereafter, directly or indirectly, causing the reduced price

to be advertised on a multiple listing service.

Disposition: Ms. Divine 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, in addition to any hours already required by law.

Sandra Sparks

Case No. 11-0063 (Louisville)

Violation: Ms. Sparks 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 Case #09-0179.

Disposition: Ms. Sparks agreed to pay a fine in the amount of three hundred seventy-five dollars (\$375.00) and to accept a formal reprimand.

Ever Wonder What Goes on in a Commission Meeting?

KREC is Coming to Lexington

When? Where? What Time?

July 18, 2012

Hyatt Regency

(Hyatt Suites, 2nd Floor)

401 West High Street

Lexington, KY 40507

9:00 a.m.

Please join us. We hope to see you there!!

What Licensees Need to Know About... A Limited Function Referral Office & "Referral Agents"

*By: Denise Payne Wade
Staff Attorney*

The KREC has discovered the existence of confusion over the license law requirements that govern the activities of licensees who are affiliated with a Limited Function Referral Office ("LFRO") or otherwise engaged solely in a referral-only type business. Specifically, some of these licensees -- commonly

referred to in the real estate industry as "referral agents" -- assume that they are not subject to all of the license law requirements that apply to active licensees, particularly the continuing education requirements, because they simply refer clients or customers to other licensees. This is an incorrect assumption by licensees that could subject them to a KREC fine and or other disciplinary action. To avoid this and to hopefully eliminate the confusion, the following reminders are provided:

Reminder #1: "Real estate brokerage," as defined in KRS 324.010(1), includes "a single, multiple, or continuing act of...referring or offering to refer for the purpose of securing prospects, any real estate or the improvements thereon for others for a fee, compensation, or other valuable consideration."

Reminder #2: A LFRO is a real estate brokerage firm that offers referral services only; it does not offer the full range of services that are listed in KRS 324.010(1). Consequently, licensees who are affiliated with a principal broker of an LFRO will provide referral services only. These licensees often describe themselves as "referral agents." However, there is no such classification in the license laws. Under the license laws, a licensee is classified as either a "sales associate," a "broker" or a "principal broker."

Reminder #3: The KREC does not distinguish between a full service real estate brokerage firm and a LFRO. Consequently, a LFRO must have a principal broker, an escrow account, and a firm name that is registered or filed with the KREC.

Reminder #4: The affiliated licensees of a LFRO and/or licensees who provide referral-only real estate brokerage services must have an active license and carry E & O insurance coverage. They must also satisfy annual continuing education requirements, if the exemption for licensees licensed prior to June 19, 1976 does not apply to them.

Reminder #5: Pursuant to KRS 324.312(2), licensees who have placed their licenses in escrow are prohibited from engaging in any real estate brokerage activities, including those that are provided in a "referral business."

Reminder #6: There is no exemption in the license law that allows a licensee with an inactive license to engage in any real estate brokerage activity.

Reminder #7: If a fee or compensation is paid to or received by an individual for providing any real estate brokerage service (which includes referral-only type real estate brokerage services), then the individual who pays or receives the fee or compensation must hold an active license when the fee or compensation is earned, to avoid a possible license law violation. This also applies to an "escrowed" licensee, who is, likewise, prohibited from engaging in any real estate brokerage activity.

Finally, it should be noted that the focal point of Kentucky's real estate license laws is the activity in which the firm and its affiliated licensees are engaged. If an activity constitutes "real estate brokerage," as defined in KRS 324.010(1), then a licensee engaged in the activity must have an active license and satisfy all applicable license law requirements. When in doubt, ask. Don't assume!

If you have any questions about Kentucky's real estate license laws, feel free to contact the KREC's Legal Department.

Property Management Companies Owned by Affiliated Licensees: The Frequently Asked & Answered Question

*By: Denise Payne Wade
Staff Attorney*

"Property management" is defined in KRS 324.010(9) as "the overall management of real property for others for a fee, compensation, or other valuable consideration, and may include the marketing of property, the leasing of property, collecting rental payments on the property, payment of notes, mortgages, and other debts on the property, coordinating maintenance for the property, remitting funds and accounting statements to the owner, and other activities that the commission may determine by administrative regulation."



On a regular basis, affiliated licensees contact the KREC's Legal Department, expressing their desire to open and independently operate their own property management companies. These licensees inquire about the authority to do so without terminating their affiliation with principal brokers who will have no involvement at all with their property management companies. The purpose of this article is to share with licensees the most frequently asked and answered property management question that the KREC's Legal Department has addressed within the last couple of years. The question and answer are to the right:

Q: May a principal broker's affiliated licensee provide property management services for others for a fee, compensation, or other valuable consideration, if: 1) the affiliated licensee owns or has an ownership interest in a property management company that will provide these services and 2) the affiliated licensee's principal broker does not provide property management services and will not have any involvement at all with the affiliated licensee's property management company?

A: No. Property management is a real estate brokerage service that some, but not all, real estate brokerage companies offer. To provide this service, a property management company must have a principal broker who may have licensees that are affiliated with his or her property management company. However, the licensees who are affiliated with this principal broker may not be simultaneously affiliated with a different principal broker.

NOTE: A property management company, like any other real estate brokerage firm or company, must have an escrow account and a company name that is registered or filed with the KREC, as well as having a principal broker.

If you have any questions about the real estate license laws governing property management, or any other real estate brokerage activity, feel free to contact the KREC's Legal Department.

Is Your Contact Information Correct With KREC?

Having incorrect contact information with the KREC can be a costly mistake. Make sure you have updated your home and e-mail address, as well as your office address.

The KREC will
be closed on:

September 3, 2012
(Labor Day)