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Kentucky Real Estate Authority
Kentucky Real Estate Commission

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COMMISSIONERS

Lois Ann Disponett, Lawrenceburg
Raquel Elaine Carter, Lexington
Steve K. Cline, Bowling Green
James G. Simpson, Dry Ridge
Larry D. Disney, Winchester
Joy E. Amann, Ludlow
Gus Hauser, London

KENTUCKY REAL ESTATE COMMISSION
(KREC)

MEETING MINUTES
September 17, 2020

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

Commission Members Present

Commissioner Chair, Lois Ann Disponett
Commissioner Joy Amann
Commissioner Larry Disney
Commissioner James Simpson

Commissioner Steve Cline
Commissioner James Oliver
Commissioner Raquel Carter

KREA Staff

Robert Laurence Astorino, Executive Director
John Hardesty, General Counsel
Hannah Carlin, Education Coordinator
Angie Reynolds, Administrative Specialist III
Brian Travis, Investigator
Angie Thomas, Staff Assistant

Guests Present

Alex Gaddis
Brian Walters
Douglas Myers
Janie Wilson
Jarrod Nunnally
Jeff Smith
Jessica Reeves, NKAR
Jim DeMaio
Joyce Sterling

Lauren McMillon
Linda Flickinger
Lisa Stephenson
Lisa Stephenson
Margie Harper- HKAR
Nichole Knudtson
Pam Carroll
Paul Ogden
Rene Rogers

Richard Wilson
Steve Stevens
Todd Thompson
Todd Thornton
Virginia Lawson
606-505-5084
859-396-1616

Call to Order and Guest Welcome

The Kentucky Real Estate Commission meeting was called to order through video teleconference by Commission Chair, Lois Ann Disponett, at 9:05 a.m. on September 17, 2020. Roll call was taken and a quorum was present. Guests in attendance were welcomed and introductions of guests, staff, and commissioners were made.

Swear In New Commissioners At this time the new Commissioners Gus Hauser and Raquel Carter were sworn in by Angie Thomas, KREA Staff Assistant and notary public.

Approval of Meeting Minutes

Commissioner Disney made a motion to approve the **August 20, 2020** Commission Meeting Minutes. Commissioner Cline seconded the motion. With all in favor, the motion carried.

Education and Licensing Report

Ms. Carlin presented the Commission the following:

1. PSI Testing Statistics

August 2020 (First Time)

Type of Exam	Passed	% Passed	Failed	% Failed	Total Exams
License Reciprocity- Broker	1	100.00	0	0.00	1
License Reciprocity- Salesperson	3	42.86	4	57.14	7
Broker- National	6	66.67	3	33.33	9
Broker- State	5	55.56	4	44.44	9
Salesperson- National	124	74.25	43	25.75	167
Salesperson- State	103	58.86	72	41.14	175
TOTAL	242	65.76	126	34.24	368

August 2020 (Repeat)

Type of Exam	Passed	% Passed	Failed	% Failed	Total Exams
License Reciprocity- Broker	0	0.00	0	0.00	0
License Reciprocity- Salesperson	2	66.67	1	33.33	3
Broker- National	3	100.00	0	0.00	3
Broker- State	2	100.00	0	0.00	2
Salesperson- National	25	40.98	36	59.02	61
Salesperson- State	42	60.87	27	39.13	69

TOTAL	74	53.62	64	46.38	138
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2020 (First Time)

Type of Exam	Passed	% Passed	Failed	% Failed	Total Exams
License Reciprocity- Broker	3	60.00	2	40.00	5
License Reciprocity- Salesperson	11	64.71	6	35.29	17
Broker- National	59	66.29	30	33.71	89
Broker- State	54	56.84	41	43.16	95
Salesperson- National	596	74.13	208	25.87	804
Salesperson- State	499	58.64	352	41.36	851
TOTAL	1,222	65.66	639	34.34	1,861

2020 (Repeat)

Type of Exam	Passed	% Passed	Failed	% Failed	Total Exams
License Reciprocity- Broker	2	66.67	1	33.33	3
License Reciprocity- Salesperson	3	75.00	1	25.00	4
Broker- National	24	44.44	30	55.56	54
Broker- State	32	59.26	22	40.74	54
Salesperson- National	138	36.41	241	63.59	379
Salesperson- State	221	53.90	189	46.10	410
TOTAL	420	46.46	484	53.54	904

2. Licensing Statistics

As of September 14, 2020

Type	Active	Inactive	TOTAL
Sales Associate	11,215	5,525	16,740
Broker	3,988	775	4,763
TOTAL	15,206	6,300	21,503

New Licenses Issued in 2020 (by month)

Month	Sales Associate	Broker	Total
January	102	16	118
February	87	21	108
March	97	19	116
April	49	11	60
May	15	4	19
June	35	1	36
July	142	8	150
August	125	4	129
September			
October			
November			
December			
TOTAL	652	84	736

The September 2020 **Continuing Education Applications** were reviewed for compliance with 201 KAR 11:170 and recommended to the Commission for approval by Hannah Carlin.

Education Providers

- a. Thornton's Real Estate Academy (DBA Great Way to Learn)

Sales Associate Pre-license Courses

Century Real Estate School

Course Name- Course Number	Instructors	Pre-license Hours
KY 96-Hours Salesperson Pre-license Course (22273)	Lucy Brooks, Steve Medved	96
Principles and Practices (60 online & 36 classroom) (21959)	Lucy Brooks, Steve Medved	96

HomeServices Real Estate Academy

Course Name- Course Number	Instructors	Pre-license Hours
Principles and Practices of Real Estate (60 hours online, 26 hours classroom) (21941)	William Tom Huber, Kristen Lawson, Donna Miller, Doug Myers	96
Principles and Practices of Real Estate (21942)	Dana Anderson, Cliff Eddleman, William Tom Huber, Kristen Lawson, Donna Miller, Bill Miracle, Doug Myers, Rhonda Richardson, Rene Rogers	96

Hondros College

Course Name- Course Number	Instructors	Pre-license Hours
Kentucky Real Estate Sales Associate (22633)	David "Al" Batteiger	96

Kentucky Realtor Institute

Course Name- Course Number	Instructors	Pre-license Hours
Principles and Practice (23132)	Sandy Huwel, Dennis Stilger	96

The CE Shop

Course Name- Course Number	Instructors	Pre-license Hours
Kentucky 96-Hour Salesperson Pre-license Course	Jill Malloy, Michael McAllister	96

Continuing Education and Post-License Education Courses

Lexington Bluegrass Association of Realtors

Course Name- Course Number	Instructors	CE Hours	PLE Hours
Common Problems that Lead to Real Estate Jail (23133)	Virginia Lawson	3 law	3 elective
Ripped from the Headlines- Fair Housing (23135)	Rene Rogers	3 law	3 fair housing

Somerset-Lake Cumberland Association of Realtors

Course Name- Course Number	Instructors	CE Hours	PLE Hours
6 Easy Ways to Ruin Your Life: Antitrust Issues in Real Estate (22928)	Art Reed	3 law	1 elective, 2 risk management
You Bet Your License (22929)	Art Reed	3 law	1 elective, 2 risk management

Broker Curriculum Courses

HomeServices Real Estate Academy

Course Name- Course Number	Instructors	Broker Curriculum Hours
Broker Law (21943)	Donna Miller, Doug Myers	48
Brokerage Management (21944)	Donna Miller, Doug Myers	

Instructors

- a. Regina Schaal
- b. Jeffrey Todd Thornton

Commissioner Amann made a motion to approve the list of applications. Commissioner Simpson seconded the motion. Commissioner Disney abstained from the motion. Remaining all in favor, motion carried.

Ms. Carlin presented the **2020 renewal hardship requests** to the full Commission for review and consideration of waiving the \$200 fine with the following actions be taken by the Commission:

1. **176350** - The licensee is cancelled for failure to renew the license by March 31, 2020. The licensee cites COVID-related issues as the reason the license was not renewed. The licensee requests the Commission to waive the \$200 late renewal fee.

Commissioner Cline made the motion to deny. Commissioner Simpson 2nd. Having all in favor, motion carried.

2. **Sales Associate Application 265592** - The applicant passed the exam and submitted an application before submitting fingerprints to the Kentucky State Police for a background check. KRS 324.045(5)(c) requires applicants to, “complete the criminal history check within the ninety (90) calendar days prior to the date the license application is received by the Commission.” Failure to submit the background check within that timeframe voids the

applicant's test scores. The applicant and his principal broker request the Commission to waive this requirement and allow Commission staff to accept the exam scores and issue the license once a background check is received.

Commissioner Cline made the motion to deny. Commissioner Disney 2nd. Commissioner Amann recused herself from the vote. Remaining all in favor, motion carried.

3. **Broker Application 265937-** The applicant submitted a broker application without completing any broker education courses. The applicant has been a sales associate in Kentucky for ten (10) years as well as a broker (managing broker eligible) in Indiana since 2014. To obtain a broker's license in Kentucky, the applicant needs to complete the brokerage management course, an additional forty-eight (48) hours in KREC-approved broker courses, and re-take the broker's exam. The applicant requests the Commission to consider accepting her current exam scores so long as she completes the required education within the next thirty (30) days.

Commissioner Simpson made the motion to deny. Commissioner Cline 2nd. Having all in favor, motion carried.

Ms. Carlin updated the Commission regarding the 'Train the Trainer' program. She and General Counsel (GC) are meeting to finalize the date. She anticipates that it will start the first week of October. It will be a three hour training that will fulfill the mandatory instructor training requirements that go into effect January 1, 2021. They plan to discuss the new regulations as a whole, as well as taking a deeper look into the advertising regulations, including questions regarding agency forms and how instructors should teach licensees to use them. They will also look at the overview of the education approval process and the timelines for submission. Instructors and providers should look for an email coming out in the following week that will have the official date and time of the training. She believes this to be a great opportunity to help provide consistency throughout the industry in terms of education.

At this time Commissioner Disney and Chair Disponett expressed their thanks to Ms. Carlin for putting this together in such a timely manner and the additional work that went into it.

Ms. Carlin also gave an update on the licensing department's time frame. For all physical paper submissions there is a 12 to 15 business day turnaround time. This is due to the sheer volume what KREC currently has coming in right now. The real estate market is booming and everyone is eager to get into the industry. We are receiving a high volume of phone calls, emails and paper work. Ms. Carlin encourages everyone to use the online portal when possible, especially when you need to transfer a license or submit an application, it is quicker. Online applications are taking 7 calendar days to process, that is at the longest. She asks everyone to be patient, they are working as diligently as humanly possible. The staff is working hard to provide service to all licensees and consumers.

Executive Director Comments

Director Astorino commented on what Ms. Carlin just discussed as a perfect example of what can and should be accomplished during a time of remote working due to the pandemic. We are

getting the results, it may be a little bit hard or a little different to what we are used to, but it is definitely not a reason not to accomplish outcomes. The fact that Ms. Carlin can conceive this and got it to the point of execution is testimony that this kind of thing can and will be done within the KREA boards.

He has three things that he, as the Director, has currently been working on. First, he has been working with staff to create an orientation package for all new Commission/Board members. This will help to facilitate a better understanding of where they are in the system, their duties, responsibilities and expectations of the Commission/Boards they are serving. This package will encompass three things; 1) A video that explains the Public Protection Cabinet (PPC), and what it means to be a commissioner/board member of a public protection agency; 2) Copies of the statutes and regulations pertaining to that board; 3) Information that is board/commission specific.

Next is reciprocity with other states, or a process of mutual licensing recognition between Kentucky and other states. He feels this to be a real issue for the border states. He sent out nine letters to border states and other states in proximity that would be of interest for Kentuckians to obtain licenses. To date he has received three replies, and now have an active working relationship with all three.

The first one is South Carolina, it is a statutory state, basically meaning if you honor our requirements then we will honor yours. He will have Ms. Carlin look into the educational comparability and GC to review as to what the legal wording would need to be. But as of right now, South Carolina is ready to go on this, which we cannot do until education and legal look into it, but he feels confident that it will be completed within the next 30 days.

The next state is Tennessee, the Tennessee Director Caitlin Maxwell is also a new appointee. She has been very communitive and enthusiastic, as has her Board, about the development of such a relationship. They would like to take the Ohio agreement, previously prepared by GC and send it back revised with their wording. Once received Ms. Carlin and GC will review and go from there. He believes that this can be accomplished within the next 75 days.

The third state is Indiana. While Indiana has expressed interest in working with us, their educational requirements do not line up with ours. He asked the Indiana Director, Deanna Alexander, to look over what they would propose to us verses what we would propose to them. He is not quite sure how long this may take, but he assumes it may be over 75 to 90 days out.

Missouri and West Virginia have also expressed interest, so he is currently reaching out to their Directors for a second time and hasn't heard back from either yet. Virginia, Florida and Illinois have been contacted but there has been no response back. All these things are currently being worked on and are being driven forward.

He would like to report that the Disciplinary Docket, thanks to GC and staff, has been reduced significantly. When he was hired he was charged with the objective of reducing the current back logged complaint docket of 248 cases. Within a just three months, GC and staff have been able to reduce that number down to 135 cases, he is hoping to have that number reduced to 100 or less by the end of the year.

Committee Reports

Education Committee

There was no Education Committee report for this meeting.

Applicant Review Committee

Commissioner Amann read the report of the Application Review Committee and the Committee's recommended action on each licensee:

1. C.M. to approve.
2. J.N. to approve.
3. B.W. to defer for further investigation.

Complaint Review Committee

Commissioner Simpson read the report of the Complaint Review Committee, and the Committee's recommended action on each Complaint, to be further discussed in Executive Session. The Committee's recommendations are as follows:

Formal Reprimands

16-C-010 - Formal Reprimand of Wes Black, Sales Associate, License No. 215150

The Commission hereby sanctions and formally reprimands Wes Black for violating KRS 324.160(4)(q) and (v). The Commission also hereby sanctions Mr. Black for violating KRS 324.160(4)(t) by violating 201 KAR 11:105, Section 1 and 201 KAR 11:121, Section 2(1)(c) 3 and 5.

Mr. Black admitted that he violated KRS 324.160(4)(q) and (v) by failing to furnish copies of the listing contract, Seller Disclosure of Property Condition form, Agency Disclosure Statement-Seller form, and Consumer Guide form to his client, Complainant. Black acted with gross negligence in failing to furnish those documents, which is required by KRS 324.160(4)(q).

Furthermore, in failing to furnish those documents, Mr. Black also admits that he violated 201 KAR 11:121, Section 2(1)(c) 3 and 5 by failing to satisfy his fiduciary duties of disclosure and reasonable care and diligence to Complainant.

Mr. Black admitted that he violated 201 KAR 11:105, Section 1 by advertising the Complainant's listed property without a written listing agreement signed by Complainant. Between October 31, 2015 and January 26, 2016, Mr. Black acted as Complainant's agent without a written listing agreement signed by Complainant. On January 26, 2016, Mr. Black prepared a second listing contract for Complainant's property, but never obtained Complainant's signature.

KREC will suspend Mr. Black's sales associates license for thirty (30) calendar days. During that time, Mr. Black may not engage in real estate brokerage of any kind.

Mr. Black is required to complete a commission-approved core course within ninety (90) calendar days of entry of the Agreed Order.

Formal Reprimand of Bonnie Mays, Broker, License No. 179699

The Commission hereby sanctions and formally reprimands Respondent, Bonnie Mays, for her violation of KRS 324.160(6).

Ms. Mays agreed that she violated KRS 324.160(6) by failing to exercise adequate supervision over the activities of her affiliated licensee, Wes Black. She admitted that her office was at fault for not ensuring they obtained the required signed documents and that this was her oversight.

In addition to a formal reprimand, Ms. Mays accepted discipline in the form of completion of a broker management course within 180 days of entry of her Agreed Order.

18-C-055 - Formal Reprimand of J. Hukill, Sales Associate, License No. 219251

The Commission hereby sanctions and formally reprimands Respondent, J. Hukill, for violating KRS 324.160(4)(p), which prohibits a licensee from "publishing or circulating an unjustified or unwarranted threat of legal proceedings or other action." The basis for this violation is that in the context of a real estate transaction where the Complainants, prospective buyers, considered backing out of the deal due to alleged deficiencies with the property, Ms. Hukill made an unjustified and unwarranted threat of legal action against Complainants. The specific threat indicated Ms. Hukill had spoken to an attorney who told her the sellers (her clients) had met their legal obligations for the transaction, and she and her clients would sue Complainants if they did not proceed with the sale. However, this statement was false as Ms. Hukill had never spoken to an attorney about this matter. In a deposition, she testified she had spoken with an agent in her office who spoke with her father, an attorney, and her client sellers had indicated to Ms. Hukill they intended to sue for breach of contract.

Respondent Hukill admitted to the above-referenced violation. In addition to this formal reprimand, Ms. Hukill agreed to discipline in the form of a CORE class, which shall not count towards her statutory requirement to attend core every four years.

The Commission dismissed the complaint against Ms. Hukill's principal broker.

Final Adjudications

- 14-C-007 – Complainants alleged Respondent, seller's agent, led them to believe they were purchasing approximately 2.25 acres of land and that the existing front yard was theirs to the road when, in reality, the property was landlocked, which they learned through a letter from the owner of the surrounding property two weeks after closing. Respondent provided evidence she relied on the Bullitt County PVA information, which appeared to show frontage, for the acreage and other property information when listing it. Complainants were represented by their own agent, who also did not discover the issue. Respondent never personally spoke to Complainants until closing or showed them the property. Notably, Complainants waived the right to survey the property, and had the right to do so if they desired. Respondent allegedly spoke to the adjoining property owner shortly before closing, but the contents of that conversation were unclear and the adjoining owner could not recall if he told Respondent the subject property was landlocked in the phone call. Respondent no longer holds a real estate license and the recovery fund is not implicated here. Thus, the Committee recommended dismissal.
- 15-C-028 – Complainant, seller, alleges she sold a home where she had conducted significant repairs through a company owned by Respondent's son. Respondent was her agent. Complainant did not disclose any of the repairs on the Seller's Disclosure of Property Condition form, but claimed Respondent instructed her to do so. Respondent disputed this and further provided evidence she did not review or sign the form. The form specifically stated, "unless otherwise advised, the seller has not conducted any inspection of generally-inaccessible areas such as the foundation or roof. It is not a warranty of any kind by the seller or the agent representing any seller in the transaction." It also explicitly stated the Seller's Disclosures "are not the representations of the agent." Based on the evidence provided to the Commission, the Committee determined the agent committed no violation and recommended dismissal of the Complaint.
- 18-C-085 - The issue presented is whether Respondent, sellers' agent, should have, and failed to, ensure the Seller's Disclosure form was updated to disclose mold issues to Complainant. Mold was discovered in the home and an issue arose regarding the failure of the seller's and/or their agent to disclose it. The evidence established Respondent disclosed the mold problems and remedial work once he learned of them in November 2018. However, he did not ensure the Seller's Disclosure form was updated. Respondent placed this oversight on the seller's, who are responsible for updating the form. Because Respondent apparently verbally disclosed the issues as

soon as he learned of them, the Commission recommended a dismissal with a letter of caution.

19-C-036 - KREC initiated this complaint against Respondents, principal broker and agent. The complaint alleged the agent failed to complete her required post-licensing education (PLE) and thereafter continued to perform real estate brokerage and receive commissions for such brokerage. Further, the complaint alleged, and the evidence established, the principal broker knew about the agent's ongoing unlicensed brokerage and not only failed to stop it, but encouraged the agent to continue the unlicensed brokerage while her license was cancelled. Likewise, the principal broker made misrepresentations and false statements in sworn statements provided to the Commission.

The Committee recommended that KREC accept a proposed Agreed Order, which sanctioned the agent for violating KRS 324.020(1) (unlicensed real estate brokerage) and KRS 324.160(2) (engaging in and receiving compensation for real estate brokerage while the licensee's license is canceled). The basis for the violation was the agent practiced real estate brokerage, advertised her real estate services, and received compensation for real estate brokerage from June 1, 2018 through September 17, 2018, while her license was canceled, and while she knew her license was canceled, for failure to complete PLE. The agent admitted to committing the violations.

As sanctions, the agent agreed to pay a fine in the amount of \$500.00; have her license suspended for thirty (30) days, probated for one year; complete eighteen (18) hours of continuing education – six (6) hours in law, six (6) hours in ethics, and six (6) hours in advertising – before December 31, 2021, in addition to and separate from the continuing education hours already required for that period of time, and submit proof of completion of same; and disgorge to the Commission \$5,000.00 of earned real estate commission that she received while her license was canceled from June 12, 2018 to September 18, 2018. Further, the agent agreed to testify against the principal broker at a disciplinary hearing, if necessary

The Committee recommended KREC accept a proposed Agreed Order, which sanctioned the principal broker for violating KRS 324.160(6) (failing to adequately supervise an affiliated licensee and failing to prevent an unlawful violation by the affiliated licensee about which the principal broker knew); KRS 324.150(4)(t) (violating any administrative regulation issued under the provisions of KRS Chapter 234, namely, 201 KAR 11:190 Section 6 for misrepresenting facts in a sworn statement); and KRS 324.160(4)(u) (engaging in improper and dishonest dealing). The basis for the violation of KRS 324.160(6) is the principal broker failed to adequately supervise the agent to ensure she timely completed her PLE requirements

and, when she did not timely complete those requirements, to ensure she did not practice real estate brokerage without a license. Further, the principal broker failed to prevent the agent from committing the unlawful violation of brokering real estate without a license, and, in fact, facilitated and condoned the agent's violation. The basis for the violation of KRS 324.150(4)(t) is the principal broker violated 201 KAR 11:190 Section 6 by misrepresenting facts in a sworn statement. She stated in her Sworn Answer that, "unbeknownst" to her, the agent continued to transact real estate after her license was canceled. Her Sworn Answer contained similar statements throughout regarding her alleged lack of knowledge. These statements were false and constituted misrepresentations in a sworn statement. The principal broker not only knew the agent was brokering real estate without a license, but encouraged it and expressed relief when the agent "didn't get caught." In response to the agent's question regarding whether she should attend upcoming closings after her license was cancelled, she advised the agent to "[j]ust proceed on. Just be careful." Later, she told the agent, "Yes let me know when you get license reinstated. So glad you didn't get caught."

The basis for the violation of KRS 324.160(4)(u) is the principal broker engaged in dishonest and improper dealing when she knew the agent had a canceled license, encouraged and condoned her brokerage of real estate without a license, and misrepresented to the Commission through sworn statements her knowledge of and involvement in the agent's misconduct.

As sanctions for the above-described violations, the principal broker agreed to pay a fine to the Commission in the amount of \$500.00; have her broker's license suspended for three (3) years beginning October 15, 2020; and complete a forty-eight (48) hour broker management course prior to the expiration of the three (3) year suspension period for her broker's license.

19-C-063 – Complainants, buyers, alleged Respondent, buyer's agent, showed them a property in August 2018 and misrepresented the property line. They claim they believed they were buying nearly twice as much property as they ended up with and didn't realize the sale did not include purchase of the adjoining parcel, which the seller retained. Respondent categorically denied the allegations and evidence established that when visiting the property, Complainants asked about the property lines. Complainants claimed Respondent told them it went to the ditch line. Respondent claimed, and other statements corroborated, that Respondent called the seller's agent, placed him on speaker phone, and he described his understanding of the property line, which was that the current owner mowed it all. Further, there were two ditch lines one the property. The MLS listing included the plat, which showed the area in question covered two separate parcels. Complainants never requested a survey of the

property. Based on the evidence, the Committee recommended dismissal of the complaint.

Pending Actions

18-C-035 - Complainant requested withdrawal of his complaint against the Respondents, buyer's broker and agent. The Committee recommends permitting withdrawal of the complaint against these individuals.

As against seller's broker, the Committee found evidence of violations and recommended KREC authorize general counsel to attempt settlement of the case for a \$1,000 fine and 12 hours of continuing education (6 hours in law and 6 hours in ethics.)

As against seller, a licensee, the Committee recommended KREC authorize general counsel to attempt settlement of the case for: (1) a \$1,000 fine, (2) 12 hours of continuing education, 6 hours in law and 6 hours of ethics, this is in addition to his yearly continuing education requirements. (3) a one-year suspension of his license (continuing required continuing education as if still licensed without exception), and (4) a formal reprimand.

18-C-084 - The Committee recommended KREC dismiss the Complaint against the principal broker. It recommended KREC authorize general counsel to attempt settlement of the case with the Respondent, agent, for six (6) hours of continuing education, three (3) hours in law and three (3) hours of advertising, as discipline.

General Counsel noted that there is a new regulation that states that after an investigation report is complete, KREC's investigator will send a letter informing the respondent(s) they may request a copy of the final report to dispute any factual matters if they choose to prior to the Commission reviewing the report.

Executive Session Legal Matters and Case Deliberations

At 9:50 a.m. Commissioner Disney made a motion to enter executive session, pursuant to KRS 61.810(1)(c) and (j), and KRS 61.815 to discuss proposed or pending litigation and deliberate on individual adjudications and to discuss 3 new applications (see above) and the 7 following case recommendations offered by Commissioner Cline:

- 14-C-007
- 15-C-028
- 16-C-010
- 18-C-035
- 18-C-055
- 18-C-084
- 18-C-085
- 19-C-036
- 19-C-063



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Commissioner Amann seconded the motion and the Commission entered into closed session discussion.

Reconvene Open Session and Committee Recommendations

Commissioner Simpson motioned for the Commission to come out of executive session and Commissioner Disney 2nd the motion. Commission Chair Disponett resumed the full Commission meeting at 10:39 a.m. and welcomed everyone back attending the teleconference Commission meeting.

Commissioner Disney made the motion to adopt the **Applicant Review Committee** recommendation report as discussed in the Executive Session. Commissioner Amann 2nd the motion. Having all in favor, motion carried.

Commissioner Amann made the motion to adopt the **Complaint Review Committee** recommendations as discussed in the Executive Session. Commissioner Simpson 2nd the motion. Having all in favor, motion carried.

Legal Report

At this time GC introduced the new KREC investigator Brian Travis. Mr. Travis comes from the Attorney General's office, he was in law enforcement prior to that. He has hit the ground running and is getting involved with all the current complaints under investigation. We are happy to have him aboard.

Docket Update

GC noted that the back log has been significantly reduced as previously mentioned by the Director. The legal team fully intends to maintain that momentum moving forward. The goal is to get the docket down to a manageable load where the new cases coming in do not outnumber the cases being closed out on a monthly bases. He thanked his legal team for all their hard work. GC thanked anyone on the call, whether they be a current complainant, respondent or attorney for their prompt responsiveness and involvement in these cases. One thing that will always inhibit these cases from moving forward is a lack of responsiveness from one of the involved parties. So far with many of these cases that has not been an issue, GC has been grateful for that and it has enabled these cases to move forward.

Escalation Clause Discussion

The question was presented to the Commission asking if Escalation Clauses were legal and if allowed in Kentucky. GC prefaced that he cannot provide legal advice or opinions to the industry or licensees, as a whole or individually. He is counsel for the Commission and he advises the Commission on legal matters that they deal with, such as their meetings and the conduct of

Commission business. He cannot provide legal advice on this issue. To the extent someone needs legal advice concerning this issue or any other, he would advise that they consult a private attorney. With that being said, escalation clauses commonly are used in practice. A 2005 article in the KREC newsletter from then-General Counsel opined that such clauses should not be used for Kentucky listings. The reasoning for the 2005 opinion was:

1. A licensee has a duty to treat all buyers with honesty and fair dealing. If a licensee were to reveal a buyer's offer so that it could be bettered by another buyer, this action would be unfair. Only the buyer with the escalating clause would have a fair shot at purchasing the property. Counsel at that time felt that the only fair way to handle a sale is to ask all buyers to put their best foot forward and to make their best offer.
2. Under the now-repealed 201 KAR 11:250, a purchase contract must contain certain provisions, including a purchase price. If a buyer makes an offer with an escalation clause, it cannot be a binding contract, if accepted. Rather, it would be an offer with a term left to negotiate, and then-Counsel felt such a contract would not comply with that regulation.

This was under the old regulations, regulations that were in affect back in 2005, almost 15 years ago. However, since then there has been a change to the regulation. One in particular that may change the analysis of that is an amendment to 201 KAR 11:121, Standards of Conduct – which was changed to include Section 3(2) which states, in part: (2) An offer to purchase completed by, or at the direction of, a licensee shall include the: (a) Purchase price or a valid escalation clause with the maximum purchase price. This regulation clearly contemplates the use and legality of escalation clauses, provided, however, they are valid escalation clauses and include the maximum purchase price.

As previously stated, Counsel and the Commission cannot provide legal advice or opinions to licensees or consumers. Although the above regulation suggests these clauses may be used, Counsel cautions anyone using them to consult with an attorney regarding the language of the clause and whether it would constitute a valid escalation clause. The 2005 newsletter highlights several concerns with the use of such clauses, and there certainly are more that must be considered by licensees contemplating inclusion of escalation clauses in purchase offers.

At this time, GC opened it up for discussion among the Commissioners, Commissioner Amann weighted in that given the current market, inventories are receiving multiple offers much more frequently than in the past. So when there is a reference to using the escalation clause she cautions that this is not the kind of clause a licensee should be offering. It refers to a valid escalation clause, which sounds to her to be legal element which would be beyond the skill set of the everyday licensee. Which could risk the licensee being misconstrued as practicing law without a license and/or the clause would not meet the standard.

GC agreed that is a valid concern, stating that there is a fine line between practicing real estate and the unlicensed practice of the law. It is worthwhile to consult an attorney in these matters.

Many brokerages have a staff attorney or attorneys that they routinely work with that are well versed in real estate law.

New Business

At this time, Commission Chair Disponett introduced new employee Tatum Herrington. Ms. Herrington will be assisting the Commission to some degree, but first and foremost she is the new Board Administrator for the Kentucky Board of Home inspectors.

Ms. Carlin stated that the Association of Real Estate License Law Officials (ARELLO) Virtual Conference set to start the end of the month. ARELLO holds two conferences each year. The conferences are very informative and it is an opportunity to be connected to likeminded individuals in the same profession from different states and countries. It is a great opportunity. The conference will be held virtually and is scheduled from September 21st through to the 28th. She and Commission Chair Disponett had attend the virtual mid-year conference in April and found many of the sessions to be applicable to everyone. The registration fee is \$75 dollars per person. If Commission members chose to attend the cost will be covered by the Commission.

Commission Chair Disponett stated that she thought the members would be impressed with the meetings. That the virtual conference was very smooth and informative. You can move among the different sessions with ease. The conference helps to develop friendship with others that can assist with issues that the Commission may be dealing with. It was at the April conference where they met and developed a reciprocity agreement with Anne Petit, the Superintendent of the Division of Real Estate and Professional Licensing of Ohio.

Commissioner Cline agreed, it is a good source for networking and offers some great learning opportunities. Oftentimes you do not have to recreate the wheel and many states are dealing with the same problems that we are. He recommends attendance to all who are interested as to help become a better commission.

Commission Chair Disponett notes that ARELLO offers a class titled “Commissioner College 101” for those interested. At this time she thanked the Director for his support regarding the opportunity to attend for both the Commissioners and staff. More information will be provided on the KREC website for interested parties.

GC stated that the fees for attendance would be paid from the Recovery Fund because it is part of the education of the Commissioners and the staff. However it would need to be authorized by the Commission.

At this time Commissioner Disney made the motion to approve the payment for necessary staff and Commission members to attend the regularly scheduled ARELLO conference. Commissioner Cline 2nd the motion. Having all in favor, motion carried.

Commissioner Cline made the motion to approve the payment for interested Commission members to attend the ARELLO offered courses of the “Commissioner College”. Commissioner Disney 2nd the motion. Having all in favor, motion carried.

Approval Per Diem

1. Commissioner Disney made a motion to approve the per diem for Commissioners Simpson and Commissioner Cline for the attendance of the September 16, 2020 Complaint Review Committee meeting. Because it was teleconferenced, there were no travel expenses. Commissioner Amann 2nd the motion. Having all in favor, the motion carried.
2. Commissioner Simpson made a motion to approve the per diem for Commissioners Amann and Commissioner Disney for the attendance of the September 16, 2020 Application Review Committee meeting. Because it was teleconferenced, there were no travel expenses. Commissioner Cline 2nd the motion. Having all in favor, the motion carried
3. Commissioner Cline made a motion to approve the per diem for the September 17, 2020 KREC meeting. Because it was teleconferenced, there were no travel expenses. Commissioner Simpson 2nd the motion. Having all in favor, the motion carried.

Meeting Adjournment

Commission Chair Disponett made the recommendation that the next KREC Commission meeting be held via teleconference on October 22, 2020 at 9:00 AM. Watch for a link for another Zoom meeting.

Commissioner Simpson made a motion to adjourn the meeting. Commissioner Disney seconded. Having all favor, the motion carried and the meeting adjourned at 11:10 a.m.