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VOTING COMMISSIONERS

Lois Ann Disponett, Chair
Billy Joe Beckham, Smiths Grove
Shirley W. Wiseman, Lexington
Steve K. Cline, Bowling Green

KENTUCKY REAL ESTATE COMMISSION

MEETING MINUTES

October 2, 2019

Commission Members Present

Commissioner Chair, Lois Ann Disponett
Commissioner Steve Cline
Commissioner Shirley Wiseman

KREA Staff

Gail Russell, Secretary of the PPC
Marc Manley, Acting General Counsel
Tony Cotto, PPC Executive Advisor
H.E. Corder II, Executive Director
Hannah Carlin, Education Coordinator
Shannon Buzard, Board Administrator and Executive Administrative Secretary

Guests Present

Richard Wilson, KYR
Rene Rogers, C Rene Rogers LLC
Janie Wilson, NKAR
Sue Ann Collins, NKAR/Teamwork RE
Rhonda Richardson, Homeservices KY/Huff Realty

Call to Order and Guest Welcome

The Kentucky Real Estate Commission meeting was called to order by Commission Chair, Lois Ann Disponett, at 1:01pm on October 2, 2019. Roll call was taken and a quorum was present. Guests in attendance were welcomed and introductions of guests, staff, and commissioners were made.

Regulation Review

Acting General Counsel Manley presented to the Commission an outline of the KREC Administrative Regulations and Statements of Consideration for 201 KAR 11:121, 201 KAR 11:170, 201 KAR 11:190, 201 KAR 11:210, and 201 KAR 11:220.

The Commissioners discussed all public comments and proposed responses to the comments to be



contained in the Statements of Consideration for 201 KAR 11:121, 201 KAR 11:170, 201 KAR 11:190, 201 KAR 11:210, and 201 KAR 11:220.

In subject matters of 201 KAR 11:121 Standards of Professional Conduct:

Radon – Following discussion of the public comment, Commissioner Wiseman made a motion to accept General Counsel’s recommended response. Commissioner Cline seconded the motion. Having all in favor the motion carried.

Prospective Clients - Following discussion on the public comment, Commissioner Cline made a motion to accept General Counsel’s recommended response and agree with commenter to delete the word “fiduciary.” Commissioner Wiseman seconded the motion. Having all in favor, motion carried.

Contract vs. Offer – Following discussion on the public comment, Commissioner Cline motioned to disagree with the commenter’s comment and declined the commenter’s proposal. Commissioner Wiseman seconded the motion. Having all in favor the motion carried.

Contract Termination - Following discussion on the public comment, Commissioner Wiseman motioned to accept the commenter’s proposal and the Commission will delete the relevant language. Commissioner Cline seconded the motion. Having all in favor the motion carried.

Legal Entity vs. Corporate Entity - Following discussion on the public comment, Commissioner Cline motioned to accept the commenter’s comment and the Commission will amend the administrative regulation in conformity with the commenter’s proposal. Commissioner Wiseman seconded the motion. Having all in favor the motion carried.

Third Party Ability to Complete an Offer - Following discussion on the public comment, Commissioner Cline motioned to disagree with the commenter’s comment and declined to adopt the commenter’s proposal. Commissioner Wiseman seconded the motion. Having all in favor the motion carried.

Use of the Term - “Re-Listing” - Following discussion on the public comment, Commissioner Cline motioned to agree with the commenter’s comment and accept the commenter’s proposal. The Commission will rename the relevant form to “Seller – Initiated Listing Form”. Commissioner Wiseman seconded the motion. Having all in favor the motion carried.

Clarifying Process and Sequence? - Following discussion on the public comment, General Counsel stated he agreed with the commenter’s comment and suggested to amend the regulation to provide clarity to the sequence in which a seller under a current listing contract can approach a new licensee to obtain a subsequent listing. Commissioner Wiseman motioned to amend the regulation in conformity with the General Counsel and the commenter’s proposal. Commissioner Cline seconded the motion. Having all in favor the motion carried.

Commission Guide to Agency - Following discussion on the public comment, Commissioner Disponett motioned to agree with the commenter’s proposal to amend the regulation to clarify the Commission owns the Consumer Guide. Commissioner Cline seconded the motion. Having all in favor the motion carried. Commissioner Wiseman motioned to delete the language authorizing licensee personalization of the Commission Guide to Agency. Commissioner Cline seconded the motion. Having all in favor the motion carried. Commissioner Cline moved to amend the General Counsel’s proposed response to be consistent with the amendments voted upon. Commissioner

Wiseman seconded the motion. Having all in favor the motion carried.

Exemption for Specific Employment Agreement Terms – Following discussion on the public comment, Commissioner Wiseman motioned to decline to adopt the commenter’s proposal for exemptions. Commissioner Cline seconded the motion. Having all in favor the motion carried.

Licensee Agency Relationships – Following discussion on the public comment, Commissioner Cline motioned to disagree with the commenter’s comment and declined to adopt the commenter’s proposal regarding “single agency”. Commissioner Wiseman seconded the motion. Having all in favor the motion carried.

Digital Transmissions - Following discussion on the public comment, Commissioner Cline motioned to agree with the commenter’s response. The Commission accepted to adopt the commenter’s proposal with also revisions regarding KRS Chapter 369. Commissioner Wiseman seconded the motion. Having all in favor the motion carried.

Succession Plans - Following discussion on the public comment, Commissioner Cline motioned to agree with the commenter’s comment and accept the Commenter’s proposal regarding broker succession plans and to insert “a new principal broker” into the text to provide more clarity. Commissioner Wiseman seconded the motion. Having all in favor the motion carried.

Handling of Confidential Information - Following discussion on the public comment, Commissioner Wiseman motioned to agree with the commenter’s comment and accept the Commenter’s proposal to require a broker implement policies in handling confidential information. Commissioner Cline seconded the motion. Having all in favor the motion carried.

Requirements for Principal Broker who appoints a Designated Agent - Following discussion on the public comment, Commissioner Wiseman motioned to accept the commenter’s proposal. The Commission will re-insert previous regulatory language regarding duties of staff assisting multiple licensees in dual and designated agency situations and the need to keep confidential information secure. Commissioner Cline seconded the motion. Having all in favor the motion carried.

Single Agency in forms - Following discussion on the public comment, Commissioner Cline motioned to revise the proposed agency forms by returning to the original forms but to include transactional brokerage to the form. Commissioner Wiseman seconded the motion. Having all in favor the motion carried.

Seller’s Agent Responsibilities – Following discussion on the public comment, Commissioner Wiseman motioned to agree with the commenter’s comment and to amend the administrative regulation to require the seller’s agent to notify the buyer’s agent in writing of the date and time in which the buyer’s offer was presented to the seller. Commissioner Cline seconded the motion. Having all in favor the motion carried.

Referral Fees – Following discussion on the public comment, in which the commenter asked whether Section 1 authorizes licensees to pay and receive referral fees if they does not violate RESPA, Commissioner Wiseman motioned to respond to the commenter’s question by responding “no.” Commissioner Cline seconded the motion. Having all in favor the motion carried.

Use of Term “Consumers” in relation to Referral Fees - Following discussion on the public comment, in which the commenter asked whether inducements would authorize paying referral fees

to unlicensed parties, Commissioner Wiseman motioned to disagree with the commenter's interpretation and state the regulation does not authorize that activity. Commissioner Cline seconded the motion. Having all in favor the motion carried.

Alternative Written Agreements with Clients - Following discussion on the public comment, Commissioner Cline motioned to amend the regulation to require clients to waive or modify the default brokerage services in writing if the client chooses not to accept all default services in order to ensure the client is at least aware of what default services they may be opting out of. Commissioner Wiseman seconded the motion. Having all in favor the motion carried.

Earnest Money Deposits - Following discussion on the public comment, Commissioner Wiseman motioned to respond to the commenter's comment by stating the provision does not take away the "3 day rule". The 3-day rule relates to the time period for depositing earnest money actually received into an escrow account, not the time period in which earnest money is collected from the buyer. Commissioner Cline seconded the motion. Having all in favor the motion carried.

Required Disclosures - Following discussion on the public comment, Commissioner Cline motioned to disagree with the commenter's comment and interpretation of the current language in the provision and declined to adopt any changes to the provision. Commissioner Wiseman seconded the motion. Having all in favor the motion carried.

Principle Broker departures from a Brokerage - Following discussion on the public comment, Commissioner Disponett made a motion that the language of the provision addresses the commenters concerns and no additional changes are necessary. Commissioner Wiseman and Commissioner Cline seconded the motion. Having all in favor the motion carried.

2005 U.S. Department of Justice - Following discussion on the public comment, Commissioner Wiseman motioned to disagree with and decline to adopt the commenter's proposal as the substance of the commenter's comment is currently included in the language of the provision. Commissioner Cline seconded the motion. Having all in favor the motion carried.

Inducements that do not result in a Client Relationship - Following discussion on the public comment, Commissioner Cline motioned to disagree with and decline to adopt the commenter's proposal. Commissioner Wiseman seconded the motion. Having all in favor the motion carried.

Course Evaluation, Form 106 - Following discussion on the public comment, Commissioner Disponett motioned to disagree with the commenter's comment and the Commission declined to amend Form 106. Commissioner Wiseman seconded the motion. Having all in favor the motion carried.

Guide to Agency Relationships, Form 400/Signature Box - Following discussion on the public comment, Commissioner Cline motioned to decline inserting the commenter's requested language unto the body of the form, but to accept the commenter's request to add additional signature boxes. Commissioner Wiseman seconded the motion. Having all in favor the motion carried.

Guide to Agency Relationships, Form 400 - Following discussion on the public comment, Commissioner Cline motioned to agree with the commenter's comment regarding the time of presenting the form to a client and amend the regulation in conformity with the commenter's request. Commissioner Wiseman seconded the motion. Having all in favor the motion carried.

Agency Consent Agreement, Form 401 - Following discussion on the public comment, Commissioner Wiseman motioned to accept the Counsel's recommended response to the commenter as the commenters request has been addressed in previous motions of the meeting. Commissioner Cline seconded the motion. Having all in favor the motion carried.

Seller's Disclosure, Form 402/Bed Bugs - Following discussion on the public comment, Commissioner Wiseman motioned to decline the commenters request to include bed bugs on the form at this time, but to amend the form to include the signature lines for the buyer. Commissioner Cline seconded the motion. Having all in favor the motion carried.

Seller's Disclosure, Form 402/Provide - Following discussion on the public comment, Commissioner Wiseman motioned to agree with the commenter's request. The Commission will amend the relevant language to read "provide a completed" form. Commissioner Cline seconded the motion. Having all in favor the motion carried.

Seller's Disclosure, Form 402 - Following discussion on the public comment, Commissioner Wiseman motioned to disagree and decline the commenter's request to delete section 13 of the form. Commissioner Cline seconded the motion. Having all in favor the motion carried.

In subject matters of 201 KAR 11:210, Licensing:

Requirements to change from Inactive to Active license - Following discussion on the public comment, Commissioner Cline motioned to disagree with the commenter's request to provide exemptions for continuing education to licensees in unique employment situations and decline to amend the regulation. Commissioner Wiseman seconded the motion. Having all in favor the motion carried.

Exemptions for Commissioners - Following discussion on the public comment, Commissioner Cline motioned to disagree and decline the commenter's request to exempt Commissioners from education requirements during their terms of serving as Real Estate Commissioners. Commissioner Wiseman seconded the motion. Having all in favor the motion carried.

Pre-Licensing Education counting towards Broker's License - Following discussion on the public comment, Commissioner Cline motioned to disagree and decline the commenter's request to include the pre-licensing education requirements towards applying for broker license. Commissioner Wiseman seconded the motion. Having all in favor the motion carried.

Classroom Hours - Following discussion on the public comment, Commissioner Wiseman motioned to disagree and decline the commenter's request to amend the regulation. Commissioner Cline seconded the motion. Having all in favor the motion carried.

PLE following more than two consecutive education cycles - Following discussion on the public comment, Commissioner Wiseman motioned to disagree and decline the commenter's request to amend the regulation language to require inactive licensees to complete post licensing education again in order to reactivate. Commissioner Cline seconded the motion. Having all in favor the motion carried.

Background Checks for License Activation - Following discussion on the public comment, Commissioner Wiseman motioned to disagree and decline the commenter's request to amend the regulation. Commissioner Cline seconded the motion. Having all in favor the motion carried.

Reactivating from escrow/inactive status - Following discussion on the public comment, Commissioner Wiseman motioned to amend the regulation by placing a cap of 30 hours of continuing education to reactivate a license if the licensee would have been required to take more than 30 hours under the current text of the regulation and delay the effective date of the requirement. Commissioner Cline seconded the motion. Having all in favor the motion carried.

License Recognition - Following discussion on the public comment in which the commenter requested clarity regarding the education requirements necessary for license recognition, Commissioner Cline motioned to amend the regulation to delete license recognition and replace license recognition with license reciprocity. The education requirements would be established pursuant to future reciprocity agreements. Commissioner Wiseman seconded the motion. Having all in favor the motion carried.

In subject matters of 201 KAR 11:170, Education Providers:

Broker Curriculum - Following discussion on the public comment, Commissioner Wiseman motioned to agree with the commenter's request. The Commission will edit and amend the relevant language. Commissioner Cline seconded the motion. Having all in favor the motion carried.

Referring to Real Estate Schools as "recognized programs" - Following discussion on the public comment, Commissioner Wiseman motioned to disagree and decline the commenter's request to amend the regulation. Commissioner Cline seconded the motion. Having all in favor the motion carried.

Provider verification - Following discussion on the public comment, Commissioner Cline motioned to disagree with the commenter's comment and decline the Commenter's request. Commissioner Wiseman seconded the motion. Having all in favor the motion carried.

Additional Training - Following discussion on the public comment, Commissioner Wiseman motioned to disagree and decline the Commenter's request to further define "additional training" necessary for a student prior to retaking the exam following a failed attempt. Commissioner Cline seconded the motion. Having all in favor the motion carried.

Duplicative Course Content Requirements - Following discussion on the public comment, Commissioner Wiseman motioned to agree and accept the commenter's proposal. The Commission agrees to amend the relevant language to clarify when course content is submitted and approved. Commissioner Cline seconded the motion. Having all in favor the motion carried.

Notice or warning for courses completed after December 21 - Following discussion on the public comment, Commissioner Wiseman motioned to agree and accept the commenter's proposal. The Commission agrees to amend the relevant language regarding "continuing education". Commissioner Cline seconded the motion. Having all in favor the motion carried.

Subject of Discipline - Following discussion on the public comment, Commissioner Wiseman motioned to amend the regulation to clarify that the education provider can be subject to discipline. Commissioner Cline seconded the motion. Having all in favor the motion carried.

Specific process for mandatory Educator Training Course - Following discussion on the public comment, Commissioner Wiseman motioned to amend the regulation to delay the effective date for

when an instructor is required to complete the mandatory educator training course. Commissioner Cline seconded the motion. Having all in favor the motion carried.

Exemption for Instructors - Following discussion on the public comment, Commissioner Cline motioned to disagree and decline the Commenter's proposal regarding "instructor exemptions". Commissioner Wiseman seconded the motion. Having all in favor the motion carried.

Instructor Approval- Following discussion on the public comment, Commissioner Disponett motioned to disagree and decline the Commenter's proposal to approve instructors for two years rather than one. Commissioner Wiseman seconded the motion. Having all in favor the motion carried.

Multiple Complaint requirement - Following discussion on the public comment, Commissioner Cline motioned to disagree and decline the Commenter's proposal to require multiple complaints be filed against an instructor prior to disciplinary action being taken. Commissioner Wiseman seconded the motion. Having all in favor the motion carried.

In subject matters of 201 KAR 11:190, Complaints and Discipline:

Sworn Statement of Compliant Form 300 - Following discussion on the public comment, Commissioner Cline motioned to disagree and decline the Commenter's proposal to amend form 300. Commissioner Wiseman seconded the motion. Having all in favor the motion carried.

Emergency Hearings - Following discussion on the public comment, Commissioner Cline motioned to agree with the commenter's proposal and the Commission will amend the relevant language of the regulation to provide the process in which an emergency order is signed and upon who it can be served. Commissioner Wiseman seconded the motion. Having all in favor the motion carried.

In subject matters of 201 KAR 11:220, E&O Insurance:

Summary of Comments and Responses - Following discussion on two public comments, one in favor of the phrase "common customs in the market" and the other opposing the language, Commissioner Wiseman motioned retain the phrase "common customs of the market" and decline amending the regulation. Commissioner Cline seconded the motion. Having all in favor the motion carried.

Executive Session Legal Matters and Case Deliberations

There was no executive session for this meeting.

New Business

No new business was discussed this meeting.

Next Committee Meeting

The next regular meeting of the Kentucky Real Estate Commission will be held on October 17, 2019 for 11:00 am, at 656 Chamberlin Avenue, Suite B, Frankfort, KY 40601.

Meeting Adjournment

Commissioner Wiseman made a motion to adjourn meeting with Commissioner Cline seconding motion and there being no objections, the meeting adjourned at 4:05pm.