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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
August 20, 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 Shirley Wiseman
Commissioner Billy Joe Beckham

KREA Staff

Robert Laurence Astorino, Executive Director
John Hardesty, General Counsel
Hannah Carlin, Education Coordinator
Angie Reynolds, Administrative Specialist III
Scott Moseley, Investigator

Guests Present

AH	GG	Linda Flickinger
Alex Gladdis	Janie Wilson	Lisa Stephenson
Amberee Hensley	Jeff Smith	Margie Harper- HKAR
Betsey Bryant	Jenny Field	Nicole DeBooth
Dana Williamson	Jim DeMaio	Paul Ogden
Dennis Stilger	John Borders	Peggy Smith
Fred Rogers	Joshua Collins	Rhonda Richardson
Fred Rogers	Joyce Sterling	Todd Thornton
Fred Rogers	Judy Ball	Twilla Williams
Gay Wilson	Katherine Hix	Virginia Lawson
Gayle Osborne	Lauren McMillon	Willy Harden

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 9:01 a.m. on August 20, 2020. Roll call was taken and a quorum was present. Guests in attendance were welcomed and introductions of guests, staff, and commissioners were made.

Approval of Meeting Minutes

Commissioner Disney made a motion to approve the **July 16, 2020** Commission Meeting Minutes. Commissioner Cline seconded the motion. With all in favor, the motion carried.

Education and Licensing Report

Ms. Carlin reported that this was the first month since the pandemic had begun that she was able to pull PSI data. So she presented the commission with four sets.

1. PSI Testing Statistics

July 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	75.00	1	25.00	4
Broker- National	3	75.00	1	25.00	4
Broker- State	2	25.00	6	75.00	8
Salesperson- National	99	75.00	33	25.00	132
Salesperson- State	82	57.34	61	42.66	143
TOTAL	190	65.07	102	34.93	292

July 2020 (Repeat)

Type of Exam	Passed	% Passed	Failed	% Failed	Total Exams
License Reciprocity- Broker	0	0.00	0	0.00	0
License Reciprocity- Salesperson	0	0.00	0	0.00	0
Broker- National	1	14.29	6	85.71	7
Broker- State	5	100.00	0	0.00	5
Salesperson- National	28	39.44	43	60.56	71
Salesperson- State	42	61.76	26	38.24	68
TOTAL	76	50.33	75	49.67	151

2020 (First Time)

Type of Exam	Passed	% Passed	Failed	% Failed	Total Exams
License Reciprocity- Broker	2	50.00	2	50.00	4

License Reciprocity- Salesperson	8	80.00	2	20.00	10
Broker- National	53	66.25	27	33.75	80
Broker- State	49	56.98	37	43.02	86
Salesperson- National	472	74.10	165	25.90	637
Salesperson- State	396	58.58	280	41.42	676
TOTAL	980	65.64	513	34.36	1,493

2020 (Repeat)

Type of Exam	Passed	% Passed	Failed	% Failed	Total Exams
License Reciprocity- Broker	2	66.67	1	33.33	3
License Reciprocity- Salesperson	1	100.00	0	0.00	1
Broker- National	21	41.18	30	58.82	51
Broker- State	30	57.69	22	42.31	52
Salesperson- National	114	35.85	204	64.15	318
Salesperson- State	180	52.79	161	47.21	341
TOTAL	348	45.43	418	54.57	766

2. Licensing Statistics

As of August 13, 2020

Type	Active	Inactive	TOTAL
Sales Associate	11,105	5,507	16,612
Broker	3,976	778	4,754
TOTAL	15,081	6,285	21,366

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			
September			
October			
November			

December			
TOTAL	527	80	607

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

2020 Instructor Training Courses

Lexington Bluegrass Association of Realtors

Course Name	Instructors	Training Hours
Real Estate Instructor Professionalism	Craig Grant	3

2020 Reciprocal License Law Courses

a. Kentucky Realtor Institute

- i. Course Number: 23127
- ii. Instructor(s): Art Reed, Dennis Stilger
- iii. Total Hours: 40

2020 Continuing Education Courses

At Your Pace Online

Course Name- Course Number	Instructors	CE Hours
Kentucky Core Course (17936)	Sheri Wycherley	6 law

Kentucky CCIM Chapter

Course Name- Course Number	Instructors	CE Hours
2020 Tax Update: Commercial Real Estate (23124)	Andy Ackerman, Stephen Lukinovich	1 law
Commercial Real Estate Finance COVID-19 Impact Series: Retail and Shopping Center Landlords (23120)	Douglas Walter	1 law
Commercial Real Estate Outlook - Looking Past COVID 19 (23123)	Justin Baker, James Dahlem, R. Douglas Martin, Carter Miller	1 law
Current Office Market Trends (22728)	Brent Dolen, Tony Fluhr, David Hardy, Pat Richardson	1 elective
Industrial Real Estate Panel (22729)	Walker Price, Tom Sims, Robert Walker, Mark Wardlaw	1 elective
Land Use Law Update (23119)	Clifford Ashburner, Richard Tanter	1 law

Panel Discussion: COVID-19 Impact on Commercial Leasing (23126)	Craig Collins, Dalton Dreisbach, Tandy Patrick, Anthony Schnell	1 law
Risk Based Management and Closure of Contaminated Properties (22731)	Max Bridges, Mark Fackler	1 law
What's New with Opportunity Zones (23125)	Christopher Coffman, Mariah Gratz, Emily Meyer	1 law

Kentucky Realtor Institute

Course Name- Course Number	Instructors	CE Hours
Kentucky Core Course (23118)	Larry Disney, Art Reed	6 law

McKissock

Course Name- Course Number	Instructors	CE Hours
Commercial Real Estate 101 (23128)	Robert Fleck	3 elective
JMan's Tech Tools (23129)	Robert Fleck	3 elective

The CE Shop

Course Name- Course Number	Instructors	CE Hours
Section 1031 Tax Exchanges (23130)	Jill Malloy, Michael McAllsiter	3 elective

2020 Continuing Education and Post-License Education Courses

Heart of Kentucky Association of Realtors

Course Name- Course Number	Instructors	CE Hours	PLE Hours
Keeping It Between the Lines (22602)	Pam Featherstone	3 law	1 agency, 1 fair housing, 1 risk management
KREC Licensee Compliance (22309)	Pam Featherstone	3 law	3 licensee compliance

2020 Broker Curriculum Courses

Century Real Estate School

Course Name- Course Number	Instructors	Broker Curriculum Hours
Broker Law (22476)	Lucy Brooks, Steve Medved	48

Kentucky Realtor Institute

Course Name- Course Number	Instructors	Broker Curriculum Hours
Brokerage Management (22673)	Art Reed, Dennis Stilger	48

2020 Instructors

- a. Andy Ackerman
- b. Clifford Ashburner
- c. Justin Baker
- d. Max Bridges
- e. Christopher Coffman
- f. Craig Collins
- g. James Dahlem
- h. Brent Dolen
- i. Dalton Dreisbach
- j. Mark Fackler
- k. Pam Featherstone
- l. Tony Fluhr
- m. Kourtney Funk
- n. Mariah Gratz
- o. David Hardy
- p. Stephen Lukinovich
- q. R. Douglas Martin
- r. Emily Meyer
- s. Carter Miller
- t. Tandy Patrick
- u. Walker Price
- v. Pat Richardson
- w. Anthony Schnell
- x. Tom Sims
- y. Richard Tranter
- z. Robert Walker
- aa. Douglas Walter
- bb. Mark Wardlaw

Commissioner Beckham made a motion to approve the list of applications. Commissioner Amann 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. **187443** - This licensee was cancelled on March 31, 2020 for failure to renew. In the hardship letter attached, the licensee claims she forgot to renew because her email provider was experiencing issues and she had to change her email address.

Commissioner Disney motioned to deny. Commissioner Simpson 2nd. Having all in favor, motion carried.

2. **251088** - This licensee was cancelled on March 31, 2020 for failure to renew. According to the hardship letter, the licensee could not afford the renewal fees due to COVID. He was advised to place his license in inactive status. It is unclear if he received that advice from KREC staff or from someone outside of the agency.

Commissioner Amann motioned to deny. Commissioner Cline 2nd. Having all in favor, motion carried.

Ms. Carlin presented the following request to the full Commission for review and consideration with the following actions be taken by the Commission:

It was recently discovered that the licensing database system has not properly been canceling licensees who originally went active then inactive and failed to complete their PLE within two years of originally going active. After speaking to cabinet leadership and General Counsel, it is believed that the best way to remedy this is to contact the individuals that have fallen into this category and to give them an extension to December 31, 2020 to finish their PLE while in inactive status. Failure to do so would result in cancelation of their license. This currently involves around 95 licensees who never received notice that their PLE was overdue.

Commissioner Amann made the motion to extend the deadline to December 31, 2020 to all individuals affected by the error in the system. Commissioner Disney 2nd. Having all in favor, motion carried.

1. Keith Bischoff License – Once someone has passed the exam, then they are required by regulation to submit their application to the Commission within 60 days of passing. If they fail to submit their application within that 60 day window than the application is void and they will need to take the test again and submit a new application. Mr. Bischoff passed the exam on May 5th 2020, though KREC did not receive the application until July 14th 2020, putting the licensee outside of the 60 day period. According to the licensee it was difficult for him to obtain a copy of his FBI finger prints and he wanted to send a complete application. Mr. Bischoff is asking the Commission for an extension of two week as to make the deadline.

Commissioner Wiseman made the motioned to grant the exception and to reinstate. Commissioner Amann 2nd. Commissioner Cline voted against. Having the majority in favor, motion carried

Executive Director Comments

Director Astorino gave a **Covid-19 update**, noting that at this time he did not feel like much was going to change until there is a vaccine and a better understanding of what exactly we are fighting. Remotely conducting business, as we have been doing, will probably be through the end of the year, if not longer. Director Astorino stated that the guidance we are getting from the governor is very solid. Masks are mandated. That masks should not only be worn in the office, but while open houses are being held, while showing are conducted, and during closings. If everyone does their part we should be able to get through this pandemic together. KREC and KREA take these issues seriously.

KREA has been able to bring their four boards up to work speed, by being able to provide

business as usual. The key has not only been the technology but a very good team.

Hannah Carlin, our Education Coordinator, has been working on an initiative for education providers which will deliver a common message concerning reoccurring questions. According to Ms. Carlin, she is three weeks out from its finalization, but it is coming and will be a good quality product.

John Hardesty, our General Counsel, has spent a great deal of time attacking a metric that the Director was given as an objective by the Secretary, which was the disciplinary case backlog. We have seen a reduction from 240 open actions to 137 open actions. Director Astorino stated that General Counsel Hardesty has brought focus and intellect to this project as a priority.

On the front line, Kim Jewell, Danielle Kannapel and Terri Hulette have been affective by answering and returning calls in a prompt and professional manner. All are doing a good job. To be affective as a leader during this time period, you need reliable technology and a good team. KREC has both.

Director Astorino stated that concerning the **Reciprocity Agreements** he has contacted eight states, and out of those eight states he has been able to contact six Executive Directors of Real State. Currently there is written interest from Tennessee. They have already asked their attorney to put together a reciprocity agreement to send to KREC. So that is coming, we also have tentative interest from Indiana. Their process of licenses is different than ours, so it may be a bit tricky. He is currently following up with Missouri, West Virginia and South Carolina. Every state that borders Kentucky has been contacted. It has been an enlightening experience because he has gotten to see what other states are doing.

Another initiative that Director Astorino has been working on is a common orientation format for all new KREA boards. He is developing a video orientation to be used for all boards. He will be asking his board administrators to collect the statutes and regulations that all board members need to be familiar with. This is so each member will be able to hit the ground running without having a massive learning curve. He would like to see members within the month of their appointment be able to be knowledgeable and able to participate.

Director Astorino wants to maintain each board at full strength, whether by new appointments or reappointment by the governor. KREC will be at full strength on Friday when new appointments are announced.

This sums up what is being done for you by KREA and your KREC staff. At this time he asked if there were any questions. There were none.

Committee Reports

Education Committee

There was no Education Committee report for this meeting.

Applicant Review Committee

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

1. T. H. to deny.

2. B. B. to approve.
3. E.W. to approve.
4. T.C. to approve.
5. S.S. to approve.
6. J.C. to approve.
7. J.J. to approve proposed settlement.

Complaint Review Committee

Commissioner Cline 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:

Final Adjudications

- 18-C-042 – Complainant alleged Respondents left their brokerage sign in a client's yard for several weeks after the listing expired. Respondents denied the allegations and confirmed the sign was picked up the day after the listing expired. The property owner likewise confirmed he had no knowledge of the sign being in the yard beyond the expiration of the listing. Complainant submitted pictures allegedly showing the sign in the yard beyond the listing expiration, but there was evidence other signs belonging to Respondents had been stolen and may have been placed there by someone other than Respondents for unknown reasons. While Respondents did not file a complaint against Complainant, they alleged Complainant contacted their clients while the clients had active listings with them. Complainant denied this and there was no objective evidence of such contact. The Committee recommended dismissal of the complaint with caution letters to Complainant and Respondents.
- 18-C-050 – Complainant alleged that Respondents, agent and broker, breached their listing contract with him because they failed to properly market his undeveloped lake property, including failing to post it on their website and failing to respond to phone calls and messages from Complainant, Complainant's friends, and other interested individuals who inquired about the property. Respondents denied the allegations and explained they initially photographed the property, posted it on their website, and placed one of their signs in the yard. They provided evidence of communications with Complainant during the pendency of the listing agreement, as well as evidence Complainant did not sign and return necessary documentation for them to lower the sales price after Complainant requested to reduce it. They admitted they eventually removed the property from their website, but only after Complainant informed them he was giving the property to his son. They kept the listing agreement in place, however, because they questioned whether Complainant would attempt to list or sell the property elsewhere, which was corroborated when another agent contacted them to inquire about the existing listing because Complainant allegedly had contacted that agent to list the property. The Committee recommended dismissal of the complaint with caution.
- 19-C-001 - The question presented in this complaint was whether the Respondent, licensee's failure to disclose the property was in a floodplain constituted a failure to disclose

a known material defect in the property that substantially affected its value, in violation of KRS 324.160(4)(b), and whether Complainant's client is entitled to the return of the earnest money deposit. Complainant's client backed out of the purchase after being told by her lender she needed flood insurance because the property was located in a floodplain. Respondent was both a licensee and part owner of the development. Because the property is not, in fact, in a FEMA floodplain, as evidenced by documentation provided by the Respondent during KREC's investigation, Respondent did not misrepresent anything to Complainant or her client. Therefore, Respondent did not violate KRS 324.160. The contract controls issues regarding the earnest money deposit and in this circumstance, KREC has no authority to rule on the interpretation of or enforce contracts. The Committee recommended dismissal of the complaint.

- 19-C-005 – Complainant alleged Respondent agent, who represented Complainant in the sale of his home and represented Complainant and the seller as a dual agent in Complainant's attempted purchase of the seller's property, violated the duties Respondent owed to him during the failed purchase transaction. Respondent obtained the necessary consent from and provided all required disclosures to Complainant and the seller related to her representation of both of them as a dual agent. As a dual agent, Respondent was required to remain loyal to both clients and was not permitted to advocate the position of one client over the other. 201 KAR 11:121 establishes the following fiduciary duties owed by a licensee to a client: loyalty, obedience to lawful instructions, disclosure, confidentiality, reasonable care and diligence, and accounting. The purchase transaction proceeded smoothly until the appraisal of the property came back \$12,500 under the agreed-upon sale price, at which time Complainant ran into financing issues. A cash buyer then approached the seller and offered just under the asking price in cash. The seller, through Respondent, requested Complainant sign a release to release the contract so the seller could sell to the cash buyer. Complainant claims Respondent failed to communicate counter offers to the seller after the appraisal issue arose, but there is no evidence Complainant made subsequent written offers. Further, Complainant's contract required closing to occur within 25-75 days after Complainant sold his home. More than 75 days after Complainant sold his home, he still had not secured financing and refused to pay the agreed upon sale price. Because Respondent owed a duty of loyalty to the seller, too, she was required to honor seller's request for a release. The Committee determined there was no evidence Respondent violated any duties owed to Complainant or any provisions of KRS 324.160, and recommended dismissal of the complaint with caution.
- 19-C-006 – Complainant alleged Respondents (her agents) rushed her through the viewing process of a home on which she made an offer and because of that, she was not aware at the time she made an offer of all of the items the seller intended to take with her from her home. She further alleged Respondents did not properly negotiate in her best interest when dealing with seller's agent, and there were many issues with the home of which she was not made aware prior to purchasing it that she has since discovered. The Committee determined there was no evidence Respondents withheld or intentionally hid information from Complainant regarding any of the above-described issues, or that they withheld information related to what

the seller intended to keep. To the contrary, the Committee felt Respondents worked hard for Complainant throughout the transaction, and negotiated at length the terms of the complex, detailed purchase agreement. The question presented is whether Respondents violated KRS 324.160. Respondents acted appropriately and, from all accounts, represented Complainants best interests at all times. Therefore, the Committee found no violations and recommended dismissal of the complaint.

19-C-065 – Complainant alleged Respondent ran an illegal, unregistered Airbnb. He further claims the city voted that because the owner of the property did not technically live in the city, she was required to obtain a conditional use permit before offering the property on Airbnb, which he claims she did not do and continued to offer the property on Airbnb. Because the complaint did not allege a violation of KREC’s statutes or regulations, KREC requested Complainant supplement the complaint to attempt to state a prima facie violation of KRS 324.160. Complainant never provided a supplement. Therefore, the Committee recommended dismissal of the complaint.

Pending Actions

18-C-084 – The Committee referred this action for further investigation as to the claims against the agent. The Committee recommended dismissal of the claims against the broker.

General Counsel noted that there is a new regulation that states that an investigation report can be requested and sent to the respondent and their attorney(s) for review. They are able to dispute any factual matters if they choose to prior to the Commission rendering a decision.

Executive Session Legal Matters and Case Deliberations

At 9:40 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 7 new applications (see above) and the 7 following case recommendations offered by Commissioner Cline:

- 18-C-042
- 18-C-050
- 18-C-084
- 19-C-001
- 19-C-005
- 19-C-006
- 19-C-065

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 Wiseman 2nd the motion. Commission Chair Disponett resumed the full Commission meeting at 10:31 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 Wiseman made the motion to adopt the **Complaint Review Committee** recommendations as discussed in the Executive Session. Commissioner Amann 2nd the motion. Having all in favor, motion carried.

Open Forum – Public Comments Only

Richard Wilson asked to speak, he is the Government Affairs Director for the Kentucky Real Estate Association. He asked to discuss the Advertising Regulation, Section (1)(a), which states that a licensee shall not advertise real estate for sale or lease without the written consent of the owner – the ‘written consent of the owner’ used to read ‘listing agreement’. He felt that the change could have unintended consequences. At this time he asked if Jim DeMaio, the local association Executive for the Realtor Association of Southern Kentucky, could speak in more detail regarding this issue.

Mr. DeMaio stated that the unintended consequences will have a ripple effect, not just in the real estate world, but will also affect a major portion of licensees. Due to all the new regulation changes that went into effect there are current KREC approved classes teaching that you do not have to have a listing agreement to advertise a listing. Therefore a licensee can approach a ‘for sale by owner’ and ask to advertise their property without a listing agreement as long as they have written consent to do so.

There is a new rule from the National Association of Realtors (NAR) called the ‘Clear Cooperation Policy’ – which is intended to assure that all buyers and sellers receive the same amount of attention concerning properties. The rules states that if you publicly advertise a property that you have to have a business agreement. Due to the language change in the regulations you could potentially have a situation where they only have an “advertising agreement” and since they do not have a listing agreement they cannot put it into the Multiple Listing Service (MLS). Even though they are abiding by the regulations are they violating the ‘Clear Cooperation Policy’? It is a conflict and more licensees will want to do the same thing. He acknowledges that it only affects realtors and is not the purview of KREC, who works to also protect the consumer. Mr. DeMaio remembers when a mandatory listing agreement didn’t exist and those that did were flimsy at best. It was due to advocates like themselves that developed the listing agreement to protect the consumer. This was to make sure that the consumer understood who was representing them, what to expect from that licensee and what went into to selling their home. With this language change it is his belief that consumers will be entering into substantial agreements without any protection or understanding of their rights. There is no mention of compensation, agency relations or who is representing them. A seller could possibly enter into the same advertising agreement with multiple licensees, causing even more confusion. Mr. DeMaio stated that he really hopes the Commission looks into changing the regulation language in 201 KAR 11:105. Advertising Sections 1 and 2 back to requiring a listing agreement.

Gayle Osborne asked to make a comment to the Commission, she stated that she has had a license for 38 years and has always paid her dues on time. In addition, she has also maintained the same email and home address. She has been inactive for the last few years. She received a letter dated April 1, 2020 notifying her that her license had been canceled. She immediately looked at her emails and she had not received any previous notice. She contacted the Commission and was told that the email had bounced back. So she provided a letter along with her email history feeling that the issue could be resolved due to her payment history and reputation. She found out later in the June meeting her request had been denied. She wants to

know why she did not receive an email or a letter notifying her of the situation. She was informed by office staff that they do not send out that type of correspondence. She claims that if 21,000 people received notification and if 1700 were canceled, as in her situation, could it have been partially due to circumstances beyond their control? She was told that she could send in a reconsideration request, which she has done. However she thought it reasonable enough to have expected someone to have done the research and if there was a technological issue with the website she and others would not be penalized for the system error. She stated that in the June meeting there were two Commissioners that wanted to waive the penalties, which she did appreciate, one even stated that if an email is bounced back it is the responsibility of the staff to contact those individuals via mail. She claims that she is a victim of the licensing database system as discussed previously by Ms. Carlin. She feels that she has provided enough evidence. That due to the usual circumstances of this past year she asked that request for reconsideration be approved.

General Counsel noted that for background information that the Commission had reviewed the request from Ms. Osborne on two separate occasions and denied it both times.

Amberee Hensley, of Louisville KY, asked to express her disappointment with the Commission for choosing to dismiss her complaint request, 19-C-006. That a realtor with as many years of experience as hers was allowed to put a contract on a home without disclosing the selling realtor's notes. She felt it was gross negligence in violation of KRS 324.160 (4)(b) and (c). She appreciates the Commission taking the time to review her complaint but she is still disappointed regarding the outcome.

Legal Report

General Counsel stated that concerning **Disciplinary Action Reporting**, there have been a number of requests concerning the details of disciplinary actions taken by the Commission. Whether it is to take disciplinary action against a licensee, to refer the complaint to a hearing or dismiss a complaint. In consideration of those requests and with the understanding that it is important to maintain transparency in the adjudication of disciplinary actions, we will start reporting a brief synopsis on cases where there has been a final adjudication, whether it be a dismissal, a withdrawal of the complaint, a final action through a settlement with a completely signed and executed agreed order or an order from a hearing, properly executed from all the appropriate parties that is no longer subject to any type of appeal.. It also helps to provide a tool for licensees and for educators to teach what disciplinary actions are taken against certain violations. Instead of sending out a newsletter, these decisions will be reported through the meeting minutes when it is addressed. If the case is still pending it will not be reported for obvious reasons. In these cases there is still a need to maintain a level of confidentiality. We will continue to report the next steps or actions recommended for a pending case. For closed cases, we will provide a brief description of the factual background, the violations found or not found, and Commission's ultimate decision. Case numbers will be included but we will not include any identifying information as to distinguish any involved parties, such as the complainant or the respondent. The one exception to that is if there is a discipline issued in the form of a formal reprimand. If this occurs it will be reflected in that month's meeting minutes. Formal reprimands will include the name of the licensee, their license number, and a description of the facts, the violation, and the action taken by the Commission.

We are preparing a "**Train the Trainer**" **Education Program** which will cover many things, but it will primarily focus on the new regulatory requirements put into place at the end of December of last year and beginning of this year. We will focus on the advertisement regs

because it seems to have created a lot of confusion and inconsistent application. Though we do not have a set date of when this will be provided to educators, he and Ms. Carlin are currently working on that program now. They are hoping to have it completed by the end of September or the beginning of October. It should be a useful resource to educators. Though it hasn't been discussed, it may turn into something that they can translate to the educational programs for the licensees as well. He knows that there has been some frustration concerning the application of the new regs and he hopes that this will provide some clarity for the future.

Concerning the **Docket Update**, we are continuing to move forward with as many cases as possible. This is not a fast process and we appreciate your patience, especially to the licensees and attorneys on this call that he has spoken to concerning various complaints. We will continue to work through those and any new complaints, as to get those reviewed and on to the next step of the process as quickly as possible.

General Counsel thanked his staff for doing great work in assisting in moving those cases forward. He also thanked Commissioners Cline and Simpson for their hard work on the Complaint Review Committee. They are always well prepared when it comes to examining the information that needs to be taken into consideration while reviewing the complaints. They are real estate professionals with a good understanding of the laws and the requirements of licensees in this industry..

The **Escrow Account Issue** relates to a question that was received recently, the individual who stated that recently several brokerages have started to direct earnest money or escrow deposits to third parties such as title companies to hold the funds. One of the prominent companies informed this individual that they had KREC's approval to do so. The individual was concerned about that and how could this be happening, because it is a risk for the brokerage and parties involved in the contract because they consider their monies safe and correctly held. The individual notes KRS 324.111 that states that a principal broker shall maintain an escrow account that is to be maintained in Kentucky and identified to the Commission in writing. That section also requires that all contract and earnest money deposits be placed in that account without unreasonable delay. The individual wanted to make KREC aware if they were not and wanted to know how this could be happening because title company accounts are not registered with the Commission. Therefore the Commission has no authority and cannot conduct an audit or, in an emergency situation, freeze an account. The individual also asked how a broker can be assured that a third party, who is presumably not governed by these statutes, complies with the 60 day release. The individual stated that as a principal broker he takes comfort that there are laws that govern the escrow account with the buyers offer stated that the escrow money will be in the buyer's broker's account. However if it is being held elsewhere how can one be assured that the representative of the other party in the transaction is properly protecting the account? What happens to the money while in the account of someone other than the real estate broker? Such as the funds being comingled, misappropriated, or removed not in accordance with the contract.

General Counsel stated that they have looked into the issue. KREC never permitted this. That this was never communicated to anyone and that if someone believes or has reported that to someone else, it is not accurate. General Counsel wanted to briefly touch on the requirements of KRS 324.111 – he also noted that he is the attorney for the Commission, he does not give legal advice to the industry or the public.

General Counsel read through the statute 324.111 as to clarify the requirements.

...324.111 (1) A principal broker shall maintain an escrow account or accounts, separate from the individual or office account, in which all contract deposits and money belonging to others shall be deposited without unreasonable delay. The escrow accounts shall be maintained within the State of Kentucky and shall be identified to the commission in writing...

General Counsel stated that based on the statute, doing what is described by the individual is problematic and would arguably be a contradiction of KRS 324.111. The statute is very clear as to what is required. The Commission does not have the authority to deviate from the requirement of the statute. The Commission cannot excuse failures to comply with this statute even if there is a reasonable explanation. General Counsel understands that this arises most often in the situation of bank owned foreclosure properties that are being sold by HUD or Fannie Mae. In those situations it is his understanding that those companies require escrow deposits to be held by the buyer's preferred closing agent, which is normally an attorney with a title company.

Before General Counsel turned it over to the Commission members to discussed, he asked three questions of them; 1. How pervasive is this? 2. How often does this happen in practice? 3. What are their thought about this?

Commission Chair Disponett noted that in the contracts for Fannie Mae and HUD it does state that the good faith deposit will go with the buyer's selected closing agent. She stated that about a year ago there were some attorneys that wanted to hold the funds because many times during a closing the agent would forget to bring the money or never collected it. But that had nothing to do with the bank owned companies.

Commissioner Disney asked Commission Chair Disponett because of her experience if she had ever experienced this before and she replied no. He also asked General Counsel if there could be a federal law that would have trumped the state statute. General Counsel said that was one consideration, and it could be something that the Commission wanted to consider, because it would have to be a statutory revision.

Commissioner Amann noted that she had been reading the comments and that if the broker has money belonging to others, the funds must go into that escrow account, but a purchase contract often directs where the earnest money is supposed to go. There may be situations where the funds never come into the possession of the broker. Another situation is new construction, a builder in fact may be the one to hold on to those funds if an agent is representing a builder. Often that builder will hold that money into an escrow account. In addition to online auctions that also contractually have the earnest money is directed to them. This would also influence the way earnest money is held regarding a reciprocity situation. That the General Counsel would have to look at clarifying this in that first paragraph of the statute where it states that 'contract deposits and money belonging to others' it is silent on as to how the money is directed by those contracts. So she feels they would need to be added in combination.

General Counsel reiterated that she was saying that the money would need to be deposited into the escrow account as it came into the possession of the agent. Commissioner Amann explain that yes that was what she was saying and it has also been her experience as such. General Counsel noted that he would take a look into that. He also noted that the statement of the 'contract deposits and money belonging to others' raises some concern from some people in the industry. But the law does require all monies and deposits be deposited into the broker's escrow account. Contracts cannot override law.

Commissioner Disney noted that there were a lot of comments from the live chat as how to resolve. He stated that it will not be resolved today. Commissioner Simpson agreed but also pointed out that most practitioners place the money in escrow unless the contract stipulates otherwise. Now we know that it is against State law, so there will need to be a statutory change or clarification. Commissioner Amann agreed that there will need to be more well-defined clarification due to the multitude of moving parts.

Commissioner Cline stated that KREC needed to be really careful when it came to relinquishing control of the escrow accounts. If it gets outside of their profession then they have no authority or means to audit these accounts. General Counsel stated they he, himself had the same concern and had heard the same concern from others. If the contract deposit is allowed to be held in an account that they have no jurisdiction over, there is no oversight, and no ability to freeze in case of an emergency situation, then what happens if those funds are misappropriated? Whereas if the funds are held in an escrow account as advised by statute KRS 324.111, then the Commission has jurisdiction over the escrow accounts, the accounts are reported to the Commission, and maintained in the state of Kentucky.

General Counsel stated that it was something that will be looked into and that a statute change is something that the Commission could consider. The change would say something along the lines of “shall be deposited into those accounts unless otherwise provided for in the purchase contract.” Commissioner Amann pointed out that Ms. Rhonda Richardson had commented from the live chat that contract language should control, but in the absence of specific terms in the contract adhere to KRS 324.111 and 201 KAR 11:121 Section 3, (2)(b) which states that the contract should state who holds the escrow. Commissioner Amann feels that this should be clarified further.

Commissioner Disney noted that from the comments they were receiving in the live chat that this is an evolving issue and that it is not an open and shut case. That it warrants further investigation.

Commissioner Chair Disponett thanks General Counsel for bringing it to their attention and asked if General Counsel would look into it further and get back to the Commission with his findings. General Counsel noted that he would.

At this time General Counsel asked if the Commissioners had any additional comments.

Commissioner Amann asked General Counsel to revisit his comments concerning the **“Train the Trainer” Education Program** concerning the Advertise regulation. She wanted to ask about the other bodies governing the practitioners, such as the NAR and specifically the ‘Clear Cooperation Policy’ as to what can and cannot be done concerning the impact of the MLS?

She asked for him to review both documents at the same time, bearing in mind that practitioners are trying to find their balance between the two. General Counsel informed the Commission that KREC does not have any jurisdiction or authority over any type of any National, State or Local Associations. Though there may be other concerns, the listing agreement v. written consent issue appears to primarily be more of an issue regarding the affect on the MLS. KREC has no authority over the MLS. It was his understanding that there were underlying reasons for why the decision was made to change the wording from ‘listing agreement’ to ‘with consent of the owner’. It is definitely within the purview of the Commission to go back and change it back. That is something that the Commission members will need to discuss.

General Counsel stated that the responsibility of KREC is to license and regulate licensees and protect the consumer. Consumers are protected if they have sufficient notice of what they are entering into. And when a licensee is required to obtain the ‘written consent of the owner’ - it is the owner’s prerogative to sign and accept, just as it is the same prerogative of an uncomfortable licensee to ask for a ‘listing agreement’ as opposed to the ‘written consent of the owner’. The same would apply to realtors who enter into advertisement agreements with builders and/or developers. If they do not feel comfortable in doing so, it is their prerogative to choose whether to enter into that agreement or not.

General Counsel stated that when he looks into the other he will review the ‘Clear Cooperation Policy’ as well.

Commissioner Chair Disponett thanked General Counsel. She updated the Commission that they will be continuing the use of **Zoom** for the Education Programs. That it is still enforced and being accepted at this time.

As **new business** Director Astorino stated that he was happy to report that there had been two worthwhile meetings with Commissioners Cline, Disney, and Simpson concerning the issue of a **Statewide State Sales Contract**. As he stated from the beginning this is a long process and there are many things to consider. This involves looking at what a mandatory contract would look like. The Commissioners have researched a wide variety of states nationally and he feels that it was fair to say that very few have mandatory sales contracts, such as Utah. But the vast majority do not. It appears that local and regional Associations control for the most part, what members do. Greater Louisville Association of Realtors (GLAR) is an example. Director Astorino noted that he was curious to see how far apart these contracts may or may not be. Commissioner Simpson has a sales contract draft that he hasn’t presented to the subcommittee yet, which they will have to look at first. Being that they are in the early stages of the process and have only met twice, it will be a little while before they will be able to make a decision as to where this will all go, if it is going anywhere at all. As he had pointed out in the subcommittee meetings there are some legal concerns regarding mandatory anything right now. In addition, it is a very long process because it would require statutory change versus the creation of a form contract.

Director Astorino stated that they wanted to come up with what is best for the Kentucky licensees and how best to protect Kentucky’s consumers. Again he thanked the three Commissioners for their involvement and asked if they were so inclined, that he would like to continue this dialogue with them and only serve as a mediator and not an opponent of either. Commissioner Disney stated that he would be interested. That he knew of other forms and he would be interested in gathering as to continue this discussion. He is enthused that there are a number of forms to review within the state.

Director Astorino stated that he thought it would be a disservice not to consider those contracts as well. Because a lot of people were using them and they obviously are using them successfully.

Commissioner Simpson thanked the Director for facilitating this for them. He had stated that the Northern Kentucky Association of Realtors has given them permission to review their sales contract, which he believes is a good place to start. He hoped that other Associations would submit theirs for review as well. This will help to move forward in the creation of a product that they could use. He felt that they also needed to look at not only the contracts but the process.

Especially as to how do they get a regulation in place that allows KREC to propagate this form as opposed to that of a statutory change.

Commissioner Cline stated that he totally agreed with Commissioner Simpson. He thinks that there are things that they need to look into but that he sees a lot of advantages to having a Statewide Sales Contract.

Director Astorino stated that he was willing to put the time in if the Commissioners wanted to meet again the following month. All three Commissioners stated that they would do so gladly.

Commission Chair Disponett asked if there was any **new business**. Commissioner Cline thanked Mr. DeMaio and Mr. Wilson for speaking up. He feels that they are on to something and that the Commission needed to look into diligently. That maybe the Commission needs to make some corrections. That not everything with the statute changes came out as planned and maybe it was time to go back through those regulations and make some corrections.

Commissioner Simpson asked General Counsel what would be the next step concerning the 'written consent of the owner' versus a 'listing agreement'. General Counsel noted that he had planned to go back and review the language, but that it was at the discretion of the Commission. He believed it to be the only section cited by Mr. Wilson and any others that may correspond to the 'written consent of the owner' instead of a listing agreement.

Commissioner Amann asked if General Counsel would also look into the times on various types of properties that the owner is giving consent, but the owner is not always noted on the listing contract. Sometimes it is an agent of the owner like their attorney or a trust. She asked if the person giving that consent has to be the owner, literally or can it be an authorized agent of the owner?

General Counsel stated that it would be a fairly straight forward change. He noted a comment from the live chat, and just to clarify for everyone this would have to go through the regulation propagation process. If the Commission was to vote on this change it would take about eight to ten months to complete the change. Materials would need to be gathered as to file the change.

Approval Per Diem

General Counsel stated that there were a few other per diems that needed to be approved separately from the August per diem.

1. Commissioner Wiseman made a motion to approve the per diem for Commissioners Simpson and Commissioner Cline for the attendance of the August 19th Complaint Review Committee meeting. Because it was teleconferenced, there were no travel expenses. Commissioner Disney 2nd the motion. Having all in favor, the motion carried.
2. Commissioner Beckham made a motion to approve the per diem for Commissioners Amann and Commissioner Disney for the attendance of the August 19th Application Review Committee meeting. Because it was teleconferenced, there were no travel expenses. Commissioner Simpson 2nd the motion. Having all in favor, the motion carried
3. Commissioner Simpson made a motion to approve the per diem for the month of August

20th KREC meeting. Because it was teleconferenced, there were no travel expenses. Commissioner Wiseman 2nd the motion. Having all in favor, the motion carried.

4. Commissioner Beckham made a motion to approve the per diem for Commissioners Cline, Commissioner Simpson, and Commissioner Disney for the attendance of the August 12th Statewide Sales Contract Subcommittee meeting. Because it was teleconferenced, there were no travel expenses. Commissioner Simpson 2nd the motion. Having all in favor, the motion carried.

General Counsel noted that by the next meeting here will be two new appointments to the Commission. Commission Chair Disponett addressed that Commissioners Beckham and Wiseman would be leaving the Commission because their terms had expired. Commission Chair Disponett thanked them for their time, their interest and all their hard work.

Meeting Adjournment

Commission Chair Disponett made the recommendation that the next KREC Commission meeting be held via teleconference on September 17, 2020 at 9:00 AM. Watch for a link for another Zoom meeting.

Commissioner Beckham made a motion to adjourn the meeting. Commissioner Wiseman seconded. Having all favor, the motion carried and the meeting adjourned at 11:35 a.m.