

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-third Session
February 28, 2005**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:20 a.m. on Monday, February 28, 2005, in Room 2149 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark E. Amodei, Chair
Senator Maurice E. Washington, Vice Chair
Senator Mike McGinness
Senator Valerie Wiener
Senator Terry Care
Senator Steven Horsford

COMMITTEE MEMBERS ABSENT:

Senator Dennis Nolan (Excused)

GUEST LEGISLATORS PRESENT:

Senator Dean A. Rhoads, Northern Nevada Senatorial District

STAFF MEMBERS PRESENT:

Nicolas Anthony, Committee Policy Analyst
Kelly Lee, Committee Counsel
Barbara Moss, Committee Secretary

OTHERS PRESENT:

Walter Leberski
Alan Glover, Clerk/Recorder, Carson City
Dave Dawley, Assessor's Office, Carson City
Rocky Finseth, Nevada Land Title Association
Dave Evans

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CHAIR AMODEI:

The hearing is open on Senate Bill (S.B.) 64.

SENATE BILL 64: Clarifies that owner of interest in real property may convey his interest to grantee in deed which becomes effective upon death of owner as sole separate property of grantee without necessity of filing of quitclaim deed or disclaimer by spouse of grantee. (BDR 10-539)

SENATOR DEAN A. RHOADS (Northern Nevada Senatorial District):

Senate Bill 64 addresses the distribution of estates and clarifies the owner of an interest in real property. Mr. Leberski, who works for a law firm in Elko and is an expert on these matters, will explain the bill.

WALTER LEBERSKI:

In 2003, during the 72nd Legislative Session, a bill was passed that allows a person to have a deed that would become effective upon his or her death. It was a worthwhile bill and avoided probate costs in small estates.

Over the past two years, a question arose. After a person dies and the deed takes effect, the estate normally would go to the children of the deceased. However, since Nevada is a community property state, it is possible the spouses of the children could acquire some ownership. In normal probate, when property is distributed in this manner, it is the sole and separate property of the distributees. The question remains open in S.B. 64.

The proposed amendment to S.B. 64 (Exhibit C) seeks to clarify property received in that manner is the sole and separate property of the grantees. The amendment follows statutes on heirs and probate.

SENATOR CARE:

Does this issue constitute inheritance? If so, it would be sole property.

MR. LEBERSKI:

Although it acts like inheritance, it is not. You are correct, Senator Care, if it is an inheritance it would be sole and separate. A person could make a conveyance to a friend. The question is: Is it an inheritance if it does not go through a probate procedure? That point is unclear.

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SENATOR CARE:

What happens in the case of a married couple who have decreed, "Whatever I have is yours, and whatever you have is mine?" If S.B. 64 passes, the property would then become sole and separate property. Would the grantee then have to make a gift from the community property?

MR. LEBERSKI:

Nevada Revised Statute (NRS) 111.109 says the property can be conveyed as community property with right of survivorship; therefore, nothing needs to be done and the amendment would not affect it. Wording that could clarify the issue would be, "Acquired as sole and separate property, if appropriate." If it was conveyed as community property to a husband or wife through death, it would not be appropriate.

ALAN GLOVER (Clerk/Recorder, Carson City):

I represent the Recorder's Association of Nevada. This statute was a nice little concept when passed in the 72nd Legislative Session. The Carson City Clerk/Recorder's office has recorded approximately one dozen of these deeds. The recorder's problem is technical in nature, but it is more of a problem for assessors.

The recorder's concern is when the final deed is done, the new grantee should file an affidavit of death similar to an "Affidavit—Death of Joint Tenant" ([Exhibit D](#)). The filing would make clear to the office of the recorder that title has changed hands and alert the assessor as to whether transfer tax is due and payable. If a person deeds to his or her children, no tax is due; however, if a person deeds to a niece, nephew or next-door neighbor, it is a tax issue.

I am amenable to conferring with Senator Rhoads and Mr. Leberski to work out the technical side of S.B. 64.

DAVE DAWLEY (Assessor's Office, Carson City):

The assessor keeps records of property taxes and mails tax bills to the current owners. When there are subsequent changes to an original grant deed, the assessor's office needs to know the identity of the actual owner. When the original grantee dies, a tax bill is sent to the heirs. The assessor's office is uncomfortable to even change a mailing address without receiving something in writing. People can lose the property if the taxes are not paid. The assessor's

office requests an affidavit of death be recorded to notify all parties of the ownership of the property.

ROCKY FINSETH (Nevada Land Title Association):

The Nevada Land Title Association sponsored an Assembly bill draft request (BDR) which clarifies a number of the concerns expressed by the assessors and recorders. The BDR actually takes it one step further and prescribes a form that would be recognized by title organizations.

DAVE EVANS:

I work for Western Title Company, Inc., in Reno. The company submitted a BDR before knowing the Nevada Land Title Association submitted a similar one. We are not in opposition; however, we developed formats for recording beneficiary deeds and how to get rid of beneficiary deeds. When NRS 111.109 went into effect, most title insurers in the State of Nevada were reluctant to advise on or insure these types of transactions due to difficulties and concerns. The underwriters were confused, and many legal firms wrote "what if?" letters. We are attempting to clarify these issues.

The inheritance issue needs clarification. Similar to probate, when a person inherits a piece of property, it is assumed to be sole and separate. Case law states if a person is married and contributes community property assets, makes payments with community property checking accounts and puts additions on the property with community property assets, subsequent community property interest is created. In that event, the title industry will require a spousal deed.

Clarification is needed as to whether the law will be usurped in the future or whether, at the time of conveyance of the beneficiary deed, it is presumed sole and separate. Otherwise, we are in complete compliance with the Assembly BDR.

CHAIR AMODEI:

Does the Committee object to working with Senator Rhoads and Mr. Leberski to craft appropriate language for the amendment to S.B. 64? If there is no objection, I request Messrs. Glover, Dawley, Finseth and Evans to confer with Kelly Lee, Committee Counsel, to craft an amendment subject to the review of Senator Rhoads and Mr. Leberski. The amendment will then be returned to the Committee for further discussion. The record will reflect that intention.

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SENATOR RHOADS:
I have no objection.

CHAIR AMODEI:
The hearing is closed on S.B. 64 and open on S.B. 65.

SENATE BILL 65: Revises provisions governing compensation of jurors.
(BDR 1-540)

CHAIR AMODEI:
Senator Rhoads requested S.B. 65 not be heard in the Committee hearing today.

I note Ron Titus, Court Administrator (statutory title) and Director of the Administrative Office of the Courts, signed in to testify but is not present. In an effort to complete the record, I will request a memo from Mr. Titus explaining his concerns about S.B. 65 and the reason he prevailed upon Senator Rhoads to sponsor the bill.

The hearing is closed on S.B. 65.

This is the last day to submit Committee BDR requests. The Committee has five pending BDR requests: (1) to make various changes to provisions governing statutory liens; (2) to revise provisions relating to licensed gaming establishments, submitted on behalf of the Palms Casino Resort in Las Vegas, which would allow a gaming licensee to charge admission to various areas in a casino; (3) to revise bail provisions, requested by James Wadhams; (4) to define burglary, requested by the Washoe County Sheriff's Office; and (5) to do an interim study on truth in sentencing guidelines.

SENATOR WASHINGTON MOVED TO INTRODUCE FIVE PENDING BILL DRAFT REQUESTS REGARDING LIENS, ADMISSION TO CERTAIN PORTIONS OF LICENSED GAMING ESTABLISHMENTS, BAIL REVISIONS, DEFINITION OF BURGLARY AND AN INTERIM STUDY ON TRUTH IN SENTENCING.

SENATOR MCGINNESS SECONDED THE MOTION.

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THE MOTION CARRIED. (SENATOR NOLAN WAS ABSENT FOR THE
VOTE.)

CHAIR AMODEI:

There being no further business to come before the Committee, the hearing is
adjourned at 9:58 a.m.

RESPECTFULLY SUBMITTED:

Barbara Moss,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: _____