

**MINUTES OF THE  
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-fourth Session  
March 16, 2007**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:05 a.m. on Friday, March 16, 2007, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Randolph J. Townsend, Chair  
Senator Warren B. Hardy II, Vice Chair  
Senator Joseph J. Heck  
Senator Maggie Carlton

**COMMITTEE MEMBERS ABSENT:**

Senator Michael A. Schneider (Excused)

**GUEST LEGISLATORS PRESENT:**

Senator Terry Care, Clark County Senatorial District No. 7

**STAFF MEMBERS PRESENT:**

Wil Keane, Committee Counsel  
Jeanine Wittenberg, Committee Secretary  
Scott Young, Committee Policy Analyst  
Lynn Hendricks, Committee Secretary

**OTHERS PRESENT:**

Michael E. Stoberski, Rawlings, Olson, Cannon, Gormley & Desruisseaux  
Gail J. Anderson, Administrator, Real Estate Division, Department of Business  
and Industry  
Darren J. Welsh, Esquire, Prudential Americana Group, Realtors

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Rocky Finseth, Nevada Association of Realtors  
Teresa B. McKee, Nevada Association of Realtors  
Robert Jensen, Nevada Trial Lawyers Association  
Charlie Mack, Mack Realty  
Debbie Uehara, Executive Secretary, Certified Court Reporters' Board of Nevada

CHAIR TOWNSEND:  
I will open the hearing on Senate Bill (S.B.) 258.

**SENATE BILL 258**: Makes various changes concerning real estate brokers, real estate broker-salesmen and real estate salesmen. (BDR 54-966)

CHAIR TOWNSEND:  
"I should note for the record—my wife is a licensee. She is also a broker, licensed in the State of Nevada through the Real Estate Division."

SENATOR TERRY CARE (Clark County Senatorial District No. 7):  
I am submitting this bill by request. There are several contradictory passages in current law, primarily in *Nevada Revised Statute* (NRS) 645. That has led to inconsistent judgments, orders and rulings. This bill is intended to correct this.

MICHAEL E. STOBERSKI (Rawlings, Olson, Cannon, Gormley & Desruisseaux):  
Over the last 12 years, I have almost exclusively represented real estate professionals in litigation. I have handled hundreds of cases and been through the statutes in litigation time and time again. The main problem we have is the word "agency." The term "real estate agent" is a term of art. The word "agent" carries with it a host of common-law obligations. If you are someone's agent, you can act on their behalf and bind them legally; a real estate licensee cannot do this without a power of attorney or other authority. Because the real estate statutes use the term "agent," lawyers have tried to claim that real estate licensees are actually agents for their clients. Removing the word "agent" wherever it appears and substituting "licensee" will bring clarity to the laws. In at least 75 percent of my cases, the first \$5,000 to \$10,000 spent by both sides is trying to get the sides to agree on this point. Attorneys who are not familiar with the law will try to allege agency duties that realtors do not owe. For example, on a contract, there is a signature block for the seller and for the authorized agent. I have had a number of cases where the authorized agent signs below where the seller signs, and then the buyer tries to enforce the contract against the seller because the agent signed. Taking the word "agent"

out of the statute would save taxpayers money across the board by reducing and simplifying litigation.

Section 1 of the bill clarifies the duties owed by licensees. The statutory duties of a licensee are listed in NRS 645.252, 645.253 and 645.254. In addition, NRS 645.251 has abolished principles of common-law duties. That is, if you want to sue a real estate professional in Nevada, you need to look to NRS 645 to determine what his or her duties actually were. You cannot simply decide a licensee has a duty to paint your house and expect a judge to uphold it. Revising the statutes to specify exactly what duties are and are not owed by the licensee will bring clarity to the legal system.

Sections 4 and 5 make changes to NRS 113, which deals with the seller's disclosure statement. Current statute makes "the seller or his agent" responsible for delivering this form. Although the statute is clearly designed to penalize the seller for failure to disclose defects, attorneys are using the term "or his agent" to sue the licensee for treble damages. This is not what NRS 113 was intended to do. Since the licensee's duty to deliver the disclosure form is part of NRS 645, we want to delete it from NRS 113 completely.

Section 2 deals with the standard of care under NRS 645.252. A licensee clearly has to disclose all the facts about the property he knows. However, the statute also makes the licensee responsible for facts he "should have known," and this is a huge source of controversy in litigation. It is not fair to impose a standard that cannot be measured. By whose standards are we to determine what a licensee "should have known"? Section 2 of the bill sets the standard of care to things the licensee has to know to get a license. This would eliminate claims against Realtors for things they had no way of knowing.

There are problems with the bill as drafted. Section 2, subsection 4, paragraphs (d), (e) and (f) should be deleted, since they are clear duties of licensees. We have included, however, under section 2, subsection 4, paragraph (c), that the licensee does not have the duty to conduct an inspection or investigation of the property. The statute currently says the licensee has no duty to review the inspector's report, so it is not a big jump to say the licensee does not have the duty to inspect. Spelling this out in statute will bring clarity to the litigation world and the real estate practice.

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SENATOR CARLTON:  
Who does have the duty to inspect?

MR. STOBERSKI:  
The licensee has the duty to recommend a home inspection. The buyer, as part of due diligence, should get a home inspection and review it. They should not be relying on the licensee to check light switches, climb up on the roof to examine the shingles or see if the septic tank has been cleaned. The statute currently says if the inspector says the septic tank is fine, the licensee can relay this to the client without personally inspecting the septic tank. The licensee does not have the responsibility to verify the accuracy of statements made by professionals.

SENATOR HARDY:  
If I understand what you are saying, we now have a statutory scheme in which the consumer may assume the licensee has reviewed and agreed with the inspection report, when in fact he may not have. The current statutory scheme may tend to perpetuate the ability of an unscrupulous licensee to say everything is fine when it is not. We need to shift the responsibility to someone who knows what they are doing.

MR. STOBERSKI:  
Clearly, under current statute, if a licensee lies, he will be in trouble.

SENATOR HARDY:  
But there could be something glaringly wrong with a house that the licensee is not qualified to spot. In that case, while he might not be intentionally lying, he might be telling his client the house is fine when it is not.

MR. STOBERSKI:  
I would like to add that this proposed bill is against my personal pecuniary interest. The more uncertainty there is in the law, the more lawsuits I file, the more motions I file and the more money I make. This is not good for me or my law firm, but it is good for real estate professionals in Nevada.

GAIL J. ANDERSON (Administrator, Real Estate Division, Department of Business and Industry):

I have serious concerns about some of the changes proposed in this bill. The principle of agency is a major principle in real estate practice throughout the country. That concept needs to be explored and discussed.

One of my major concerns is that the proposal appears to require a licensee's clients to determine what duties they want performed by the licensee. This makes a presumption that the client is sophisticated and aware enough to know what duties to ask for. Currently, Nevada law includes basic required duties that are outlined in NRS 645.251, 645.252 and 645.254. This would negate those duties and specifically require a written contractual relationship for certain duties to be performed. As to the comments regarding NRS 113, that also needs further discussion and exploration. The licensee does not prepare those disclosures but does need to see that they are part of the package given to the buyer.

I am hoping we will have the opportunity for more detailed discussion on this bill.

DARREN J. WELSH, ESQUIRE (Prudential Americana Group, Realtors):

I have written testimony in support of the modified form of this bill presented by Mr. Stoberski ([Exhibit C](#)).

SENATOR CARLTON:

My problem is not with the language being added in section 2, subsection 1, paragraph (a), as much as with the language being deleted. When the removal of the language about the exercise of reasonable care and diligence is considered with the addition of section 1, subsection 2, I have concerns. We are basically telling people they only have to know what they were taught.

MR. STOBERSKI:

The language being deleted in section 2, subsection 1, paragraph (a), creates an exception that swallows the entire rule. How do you judge what a person should have known? That is a matter of individual opinion. We are trying to help the judiciary by making the standard measurable.

SENATOR CARLTON:

I do not believe you are trying to defend incompetence, but you are taking out the clause that says licensees must be careful and diligent.

MR. STOBERSKI:

The standard that licensees must exercise reasonable care and diligence will always be there. This section is about disclosure, not about performance of the job. Certainly, licensees must disclose any material facts. The question is whether they have to hunt for material facts or if they can simply disclose what they see.

ROCKY FINSETH (Nevada Association of Realtors):

We are opposed to the bill in its current form. We look forward to working with the subcommittee and sponsor to correct some of our concerns.

TERESA B. MCKEE (Nevada Association of Realtors):

I will briefly touch on our concerns in each section. In section 1, one of our concerns is that brokerage agreements are between clients and brokers, not clients and licensees.

I agree with Senator Carlton's argument regarding section 2. I have an additional argument that goes deeper than that, but we can discuss it in subcommittee. I disagree that the proposed language does what we need it to do. I am pleased at the removal of section 2, subsection 4, paragraphs (d), (e) and (f). Paragraph (c) in this same subsection may have some merit, but we think the duties listed in paragraphs (g) and (h) are appropriate duties of real estate agents, and thus paragraphs (g) and (h) should be deleted.

I have not looked in depth into the change in section 3. It looks like that might be a viable correction.

In section 4, we have a problem with the removal of the agency concept. We agree with Ms. Anderson about the importance of agency, though perhaps it does need some clarification and additional direction.

We feel it is important to protect Realtors and all licensees, and reducing litigation is in our interests. We want to work with Mr. Stoberski to correct the problems.

ROBERT JENSEN (Nevada Trial Lawyers Association):

We are opposed to S.B. 258. I understand Mr. Stoberski's position with respect to this matter, but what may be lost in the shuffle here is the ordinary citizen. When I buy a house, I rely greatly on the real estate agent, who is the professional in this field. What I think this bill is trying to do, under the guise of trying to define the agent's duties, is to circumscribe their duties. It is taking away the court's discretion to look at litigation on a case-by-case basis and decide when facts should have been known by a reasonably prudent agent. The bill is trying to hold real estate agents accountable only for what they actually know or were taught in school. While there is some litigation in this area, it is not a litigation explosion.

CHARLIE MACK (Mack Realty):

I am a commercial broker of 25 years and a past president of the Nevada Real Estate Commission, though I am not speaking on behalf of the Commission today. I have a problem with section 1, subsection 2. What most licensees learn in real estate school is how to pass the licensing exam, and I would hate for that to be the standard of care. In section 2, subsection 4, paragraphs (g) and (h), if a seller leaves blank some areas on the seller's real property disclosure, can the licensee not point that out to the seller? The licensee needs to be involved in the process of making sure everything is completed properly and the form is transferred from seller to buyer. With regard to sections 4 and 5, we are an agency state. I am concerned about any bill that would take us out of that agency status as a state. Finally, on section 3, subsection 3, paragraph (a), I see no difference between "sale" and "purchase."

VICE CHAIR HARDY:

Mr. Stoberski, please meet with Ms. Anderson and address her issues. When you have come to a meeting of the minds, we will bring this bill to subcommittee for a hearing. I will close the hearing on S.B. 258 and open the hearing on Assembly Bill (A.B.) 32.

**ASSEMBLY BILL 32**: Revises provisions related to court reporters. (BDR 54-571)

DEBBIE UEHARA (Executive Secretary, Certified Court Reporters' Board of Nevada):

This bill increases the Certified Court Reporters' Board of Nevada from three to five members and establishes a quorum as three members of the Board.

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Currently, all three Board members must be present to transact business, and this has been difficult to achieve. We try to meet once a month.

SENATOR HECK:

Could you address the changes in section 4, subsection 2, paragraph (c)?

Ms. UEHARA:

We wish to include a couple of other titles as qualifiers to sit for our certification exam, which is also approved by the National Court Reporters Association (NCRA).

SCOTT YOUNG (Committee Policy Analyst):

I believe the certified Communication Access Realtime Translation (CART) provider, the certified broadcast captioner and the certified realtime reporter mentioned in the bill are professionals who provide translation services for deaf people using the same kind of equipment as court reporters. They type spoken words so they appear on a screen in live time.

SENATOR HECK:

Does this narrow or expand the pool of people who can sit for the exam?

Ms. UEHARA:

It expands it.

SENATOR CARLTON:

Are people in these new categories required to take the exam to be employed, or is this just giving them the opportunity to become certified?

Ms. UEHARA:

They will have to take and pass the exam. Once they pass it, they can register as certified court reporters.

SENATOR CARLTON:

Currently, they do not have to register as certified court reporters in order to participate in this profession. Is that correct?



MS. UEHARA:

If they do not have a license, they are prohibited from practicing court reporting in Nevada. They are required to pass our exam first, and then they are allowed to register as court reporters.

SENATOR CARLTON:

Have people in these added categories not been court reporters before?

MS. UEHARA:

No. They can receive the certificates by participating in other programs offered by NCRA, and that qualifies them to sit for our exam.

SENATOR CARLTON:

Do they work in the courts as court reporters now?

MS. UEHARA:

No. They cannot act as court reporters until they become certified.

SENATOR CARLTON:

With that in mind, I would like to talk to some members of the Senate Committee on Judiciary about this. I like the idea of expanding the pool of people, but I need to do some research first.

MR. YOUNG:

I believe the provisions of this bill would not require, for example, a CART provider to be certified as a court reporter to continue providing CART services. However, if the CART provider wished to also qualify as a court reporter, this bill would allow the CART provider to sit for the exam as a certified court reporter.

WIL KEANE, COMMITTEE COUNSEL:

Right. This bill would not prevent anyone from continuing to do what they do now. It would just allow people who have some of these other types of certifications to be able to become—to be able to take the exam to become a licensed court reporter.

SENATOR CARLTON:

Court reporting is a specialized profession, requiring intense schooling. For this reason, I would like to talk to a couple of judges about expanding the pool.

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VICE CHAIR HARDY:

I will close the hearing on A.B. 32. Is there any other business to come before the Committee this morning? Hearing none, I will adjourn the meeting at 8:54 a.m.

RESPECTFULLY SUBMITTED:

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Lynn Hendricks,  
Committee Secretary

APPROVED BY:

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Senator Randolph J. Townsend, Chair

DATE: \_\_\_\_\_