

MINUTES OF HEARING - COMMITTEE ON COMMERCE - 55TH NEVADA
ASSEMBLY SESSION - FEBRUARY 18, 1969

Present: Wood, Torvinen, Capurro, Mello, Bowler, Espinoza
and Hafen

Absent: None

Also Present: Don McNelley, Real Estate Administrator; Pete Kelley, Nevada Association of Realtors; Ted Mattson, Nevada Association of Realtors; Robert Bowers, Secretary, Nevada Association of Realtors; Fred M. Schultz, Reno Board of Realtors; Jim Watson and Jack Allison, Signet Homes, Inc.; Bob McDonald, D.C. Marek and Art Wood, Incline Village, Inc.; Frank Offenhauser, Builders Association of Northern Nevada; James Warrington and Barbara Phillips, Warrington & Associates, Incline Village; Doramae Jakobson, Incline Village and Mr. _____ Edmondson, Builder.

Chairman Wood convened the hearing at 10:10 a.m. and noted that the purpose was to hear both proponents and opponents of A.B. 105, modifying real estate license exemption provisions, said bill dealing with the sale of real estate and the management of real estate. He requested all comments be directed to the chair and identification prior to commenting. Introductions were made around the room and thereafter Mr. Wood opened discussion on the Bill. He noted that A.B. 105 had been introduced on January 28 by the committee and referred back to the committee.

Mr. Robert C. Bowers: I am speaking on behalf of the Nevada Realtors Association and our purpose is quite simple. To protect the interests of those persons buying real estate. There have been many problems in this particular area and we want to prevent this from happening in the future. The licensee must conform with the rules and regulations; if he does not, he will be investigated by the real estate commission and will place his license in jeopardy. This is not true with the unlicensed individual. There are those who's only motivation is to make as much money as possible then move on to another area and do the same thing again. Of course that does not refer to all, but many. The department in the past has received complaints regarding some of these transactions, but were powerless to do anything about it because they were not licensed. Bulletins received from our organization nationally show other problems in the State. Our attorneys will tell you that they are holding the licensed salesman liable for their actions; however, with the people who are employees and not licensed, there is no recourse. We want to make this more controlled and A.B. 105 does.

Mr. Don McNelley: I spoke to you before about this bill and I would like to present it again. The purpose of this bill is to require licenses of persons selling for compensation. This is a modification of NRS 645-240 which does include a licensing exemption for regular employees of an owner. It is quite proper for one who is regularly employed to assist in other transactions which are incidental to his regular duties. But when working as full time salesman for the company; it leaves the company responsible for

Page -2-

February 18, 1969

seeing that they could put the same trust in him as they could a licensee who would have a regular office, sales training, experience in closing sales and cooperation of the lenders. This has been demonstrated many times by the complaints received in my division from people who had assumed they were dealing with a licensed salesman. They have no protection of the license law nor the recovery law enacted two years ago in NRS 645.841. The complaints are usually unfulfilled promises. This bill I believe was to be amended on page 2 stating that the manager of a hotel, motel, auto or trailer park or his employees were under the exemption among other things. There was a modification discussed on this by your committee and I am not aware of the final decision. This modification would also apply to subparagraph (f).

Chairman: Reference to the discussion held here on February 11, the committee in considering felt that the words in italics on page 2, lines 11 through 14 were somewhat ambiguous in that it centered around "or his employees" in each of the sentences. It was suggested we change this, but the amendment has not been drawn at this time. We would delete the period and continue on with "performing duties of renting, leasing or collection of monies for rentals." This would be done in both (e) and (f), however no formal action has been taken in this regard.

Mr. Fred Schultz: In being a proponent of this bill, let me first give you the background on the growth of real estate business. In 1920 we had wide open spaces and not many real estate people; no laws and no licensing department. In the 1940's Nevada was growing and reasons for licensing the people in the State were valid reasons. Since then, they have been brought to the establishment of a book which we consider our "Bible" that every real estate person uses. Now there is a situation where there are ample licensees to sell the property put on the market by the owners. We with licenses are professionals in the field and educated to do better than the average person. Even though we have this type of stature, we are classed with the unprofessional and unlicensed sales person who is here today when the action is good and gone when it gets bad. There is no distinction made as far as the people are concerned. The people feel the salesmen they are dealing with are licensed. We need to control this to guard the public of Nevada.

Mr. Ted Mattson: This is not an unreasonable request or act. Other states have this identical provision in their laws. California requires licenses for everyone selling on a commission basis. We will not hurt anyone because it is relatively easy to get the salesman's license. It is a little more difficult for the broker license. It would help the subdividers to have the people selling their product licensed. A person who is required to have a license may wonder why the person selling across the street does not need one. If it were causing any undue harm on someone, it might be different, but I don't see any problem here.

Page -3-

February 18, 1969

Chairman Wood then stated that we would hear the opponents on this bill at which time Mr. McDonald introduced Mr. Marek, President of the Incline Village, Inc.

Mr. D.C. Marek: I will say first that I feel that Incline Village, Inc. is the bulls eye for this legislation. The most significant thing in Incline Village's situation is that we are selling real estate property to Californians and our salesmen have California licenses. We are, however, selling Nevada real estate. This legislation would therefore affect our operation. We are only three miles over the state line, but are under the jurisdiction of Nevada law. Our buyers are almost 100% californians. Since we began in June this has been the trend. The requirement is not onerous; all of our salesmen could take the examination; they have the background and experience to pass them. But they do not have the residency requirements. We have been using regular employees since August and they have not applied for the examination because of this. Most of them will never be qualified for the Nevada license because they will never live in Nevada. We have two kinds of market programs; the first of which is referred to as our on-site line-sales program and we use approximately 10 to 14 salesmen, all of who have California licenses. Some of them are residents of Incline Village. With this program they deal with the client brought to the project by invitation, offered free lodging for one night during which they tour the property and if successful, close the transaction. The other program is similar with the exception that they make appointments and meet with the prospective buyer in California. These salesmen are all bound by an employee agreement, which was approved by Mr. McNelley, which must be signed and acknowledged by both the employee and the owner of the real estate.

We have had some instances in the past but no problems recently. They do not show other property than the corporation's and only sell that property owned by Incline Village, Inc. Whether the deal has been consummated or just placed in escrow, if they should become unsatisfied, we will refund their money. We have no unhappy people in Incline Village; there are no inequities; we have no loose system and should someone want to have their contract cancelled, we do so. We have a money-back guarantee practically. If the deal should be completed and he should later be unsatisfied, the complaint comes to us. We have to keep our customers satisfied or our business would suffer.

Mr. Arthur Wood: I want to add one thing, with respect to the comment made by Mr. Bowers and Mr. McNelley regarding the protection of the public. The salesman is in a different position than the owners of the property. We tried to work with the brokers when we first started business. The majority of the sales were in California and there is no way possible that Incline Village in the present concept could use Nevada real estate brokers unless they could be licensed in another way. The California broker has to live here; but California law allows the Nevada broker to be accepted in California. There is no way for us to operate your way. Talking about protection of the

Page -4-

February 18, 1969

buyers, California has the strictest subdivision act in the area. We have to qualify every piece of property before we can sell it in the State. They work up a very elaborate report and before it can be sold, the buyer has to sign it and let it be known that they understand the terms. That goes far beyond anything we have in Nevada. I have argued over the years that Mr. McNelley is more interested in protecting the commission of the licensee than the public. If you had a home today, you could not afford to sell it at the price you would ordinarily. Because the broker gets 6% where our employees are hired for somewhat less than that; the price of the house is going to go far out of sight because the salesman has to be paid his commission.

Mr. McDonald then pointed out that the Builders Association is in opposition to this bill and Chairman Wood stated that he had been contacted by the group in this regard.

Mr. Jim Watson: The bill seems to be based on generalities. How many people have been involved and how many of these complaints have been against licensed realtors in comparison with the unlicensed employees. I am sure in some instances the complaints have been made against licensed salesmen. In the subdivision business, remember that the builder is licensed under the contractor's board. He is bonded through requirements of that board. The complaints come back to us, the builder, and if we want to stay in business, they just don't happen. We are alarmed about this bill because it will up the price of a house. Lumber this year has gone up 100% along with other materials such as concrete and salaries. If we have to ask more on the sale of the house because of the commission to the salesman, it will be ridiculous. Some have said we could hire a salesman to sell the house for us at less than 6% but that is wrong. He works for a broker. We at Signet Homes are violently opposed to this.

Chairman: We are now open for discussion and I direct your attention to the fact that you ask your questions through the chair and not have an across-the-table discussion, so to speak.

Jakobson: Mr. Watson, why do you yourself have a license if you feel your people should not have them. And why should we be required to have a license if the people you hire don't need one?

Watson: We are not in the business of selling real estate other than our own. We are in the business of selling homes that we own ourselves.

Chairman: Please confine your questions to the aspect of A.B. 105 not to the owner sales type program vs. the general home solicitation.

Mr. Ted Mattson: This bill was instituted by the people in Clark County two years ago. There is a provision in the statutes requiring brokers to cooperate with subdividers.

February 18, 1969

Mr. D.C. Marek: The salesmen the public is working with are licensed people, in California, but we have the non-residency problem here.

Mattson: We are not advocating that they have real estate offices, but we feel the people the subdivider hires should be licensed and responsible. I get the idea that you think we want you to have us sell your property for you. This is wrong. But if you are paying a commission to your salesmen, they should be licensed. Maybe the difficulties would be in the effective date of this act. Suppose it was not to be effective for six months to a year?

McDonald: It would be almost an impossible situation. These salesmen are licensed in California. They are not going to uproot their entire home and families and move them to Nevada. Most of their sales are made in California anyway. They can't do this to comply with the act.

Mattson: I thought you said most of your people were residents of Incline Village. We are not asking you to bring them from California.

Chairman: (To McNelley) A subdivider who is open for business 10 to 12 hours a day and has two or more people to assist him in his work, how does this meet with the Real Estate Code?

McNelley: Under the present law, if you have regular employees selling property just for the owner of the property, it is all right. As a maintenance man for 8 hours a day and four hours a day selling property, under the new act the regular employee selling property full time would need a license, but the maintenance man would not so long as he did not receive additional compensation. This would just be incidental to his regular chores.

Chairman: What if a subdivider has 100 acres of land and he wanted to have a salesman in the office from 8:00 to 8:00. He had a man with a license and needs another man. How does he get a professional license for him?

McNelley: If he were from out of state, the act allows for the issuance of a temporary certificate. There is no examination required. The licensee simply makes application and it is then signed by both parties, the Nevada licensed broker and the out-of-state salesman. We check with other state and see if there is anything against the man to prevent the issuance of the certificate. It may seem like a loose arrangement, but is for the purpose of allowing someone to come into the state and work until such time as his residency requirement has been filled. Under the rules and regulations, the Nevada broker is responsible for each action that the out-of-state broker performs. If something happens, the Nevada broker has placed his own license in jeopardy.

Assembly Committee on Commerce

Page -6-

February 18, 1969

Chairman: On the average, what is the element of time involved here? How long does it take after application has been made?

McNelley: After being requested by the Nevada broker, he signs it, the out-of-state broker signs it and then upon receipt of the photo-stat copy of his out-of-state license, he can get his certificate. We don't ask for the FBI check in other states until after the certificate has been issued; so it is just a matter of a few days.

Also, while I am talking here, I would like to clarify something that Mr. Marek said regarding the approval of his sales agreements. I did not approve this, I asked for a brochure of the forms that would be used in his business. At no time did I approve any of them.

Marek: I guess what I should have said was that he did not disapprove the forms.

Mr. Frank Offenhauser: I would like to read a letter which has been addressed to Chairman Wood from our association. (letter read to the committee and attached hereto) This letter is intended to acquaint you with our thoughts of this bill and to urge you to reject this and similar bills.

Mello: I would like to ask Mr. Bowers a question. Sir, is it true that you have an organization in the state wherein you set the commission fees?

Bowers: Yes, we do have an organization; but no, we do not set any commission fees. That would be a restraint of the trade.

Mello: Isn't it true that your commission fees are set at 6%?

Bowers: The fees depend on the business in the certain areas. We have a suggested schedule, but no one is forced to adhere to it. We are all independent.

Mello: But you do have the organization that suggest this schedule? What is the going fee right now?

Bowers: We have about 20 different suggested schedules and our suggested price right now is 6% on improved property. When we take a contract we have been committed to sell the property. The amount set forth in the contract is what we use. If this bill passes, the people themselves will in some cases use the same people at the same fees, but will be more assured that the salesman is a licensed man. I do not want to be in their line of business in subdividing property, but I do want them to be licensed.

Mello: Some of the real estate people must be misinformed; they think if they charge less than the going rate, they will be thrown out of the association.

Assembly Committee on Commerce

Page -7-

February 18, 1969

Bowers: That is a lie. We have thrown out few people in the 14 years since it was formed and then only for incompetence and fraud.

Mello: If we were to make the subdividers employ licensed salesmen, and if he employs them at anything he wants to pay them, can they still be members of the association?

Bowers: Yes.

Mello: Then, would you contact some people for me because they seem to have some very different ideas about it.

Bowers: I would be happy to do so. Are these salesmen or brokers?

Mello: Both.

Bowler: Would you say that Incline Village, Inc. program is unique inasmuch as it is practically on the state line and the majority of their customers are Californians?

Art Wood: 99% of them are.

Mattson: (To Watson) Your proximity is practically the same. Do you have the same problem?

Watson: No, I don't believe so. The primary problem is as I am sure everyone is aware; the fact of costs. It could be a sort of straw that breaks the camel's back. Say for instance there are about 50% of the people today who want desperately to have their own home but are unable to qualify. If we add another \$500 to \$1000 to the sales price, how many more are we keeping from buying homes. These added costs come in the form of points, interest or commissions on top of the higher cost of materials.

Bowler: What percentage of sales are your homes with regard to California and Nevada buyers?

Watson: Almost all are in Nevada. They are FHA, VA and conventional.

Bowler: What is the Realtor's Association objection to this unique position of Incline Village, Inc.? Regarding the State Regulations?

McNelley: It has been mentioned before, I believe. Mr. Marek made reference that Incline Village Inc. is the bulls eye of this legislation. It did not start there. Las Vegas, where First Western Savings & Loan Association had so many units, they formed their own sales program the same as Incline Village. However, it is a bit different because they are hiring people in Nevada. There are no out-of-state brokers involved in that situation.

Assembly Committee on Commerce

Page -8-

February 18, 1969

Bowler: It does not differ much because in the Incline Village program, they sell initially to Californians in California, but they would come to Nevada to close the sale.

Espinoza: I am a real estate broker in Nevada. You do have a problem in this area. What we are talking about could work in other areas but not in yours. It would require California brokers to work with Nevada brokers. The law providing that Nevada broker be present and go through this with you step by step during the transaction of property sales..... it would be on improved property. You are so closely situated to California, I don't know how you could attract only Nevadans. Those licensed salesmen have to work with a licensed broker. They would have to employ a real estate office. They do have a hard situation to work with in this area. I don't know what can be done because our laws are prepared for Nevada, but I recognize the problem. I don't entirely agree that it is more expensive for you to use real estate brokers than your own personnel. They will give good rates if you have good action. The 6% on a single shot can be brought down considerably on a house to house basis in subdivisions. Clark County works that way.

Art Wood: We have tried to work with brokers and we are so far apart that in 6 months they only made 8 sales. They were able to come and go as they pleased. So we hired our own man and told him the procedures. After that, we had 13 sales in 10 days. The broker is in business for himself and we can't find him when we need him. The employee is on the job or else, like a bricklayer, we lay him off.

Jakobson: Why does it work in California? It is the same as what we are asking for here. We are educated people selling real estate. We should all be educated in the field that we are in. People without licenses are not even able to answer questions regarding real estate. If you asked them to explain a metes and bounds description, they could not do it. I feel they should be educated.

Torvinen: After listening to this, I think there should be a basis for compromise. See what you think of this. Say we provide that licensed builders and developers can hire salesmen as long as they are licensed somewhere. If he is licensed, no matter where, he is qualified. Another thought might be to remove the restriction on the broker agreement. If a broker wants to take on 15 people from California, that is his responsibility. As an attorney, I have to work with lawyers from other than Nevada and do so with the understanding that he is qualified. This would be a way of compromise.

McDonald: Do you mean that if I had 100 buyers from California, their salesmen could be associated with one broker from Nevada?

Assembly Committee on Commerce

Page -9-

February 18, 1969

Torvinen: As long as they were licensed in the State of California. As long as the person operating is a licensed real estate man from somewhere. These FBI reports, I don't know about that. I feel that the place to go would be the Real Estate Commission. They should be contacted to see if there is a license in good standing for the individuals.

Art Wood: Then they could work with one cooperating broker; the restriction would be changed?

Torvinen: You would have to have a broker on your staff.

Phillips: When I moved to Nevada I still had a license in California. I had to sign a financial responsibility statement that the State of California could sue me even though I was living in Nevada. I think maybe the answer would be to make sure they can still be gotten to even though they did not live here. Right now there is nothing that we can do.

Bowers: I believe the cooperating broker only has to go there one time physically and show the property.

Mr. Edmondson: I am a builder. In this bill, what will happen to Union Federal with regards to them disposing of their foreclosure properties?

Mattson: The owner of the property can sell his own property according to this bill. Union Federal owns the property that they have foreclosed on so there would be no problem there. The thing would be with commissions paid.

McDonald: Even if we just paid salaries, we would be under this bill.

Mattson: Say I buy a lot in Incline Village. Anyone can sell it to me. I want to sell it again so I go to you and you tell me you can't do it because you no longer own it; that I have to get someone else to sell it for me. I think it would be advantageous for you to have your people licensed.

McDonald: We don't want to be fo-ced to use this if it is going to be a disadvantage to our customers.

Capurro: (To Watson) This difference in Reno - do you feel your employees could pass the examination?

Watson: Yes, in time.

Capurro: Would you be against putting a time limit on this to enable your people to become qualified?

Watson: But there would still be a problem. He needs a broker.

Assembly Committee on Commerce

Page -10-

February 18, 1969

Capurro: Don't you think it would be to your advantage to have a licensed salesman?

Watson: No particular advantage.

Capurro: But we have the laws to protect the people and it is the same as insurance salesmen. If you operate in that field, you should come under the laws.

Watson: Our objection is that it puts a burden on the investor and the public. The increase of costs. I feel it would be a burden.

Bowers: Well, let's take for instance the salesman at Stead. He came to us and asked what he needed to do and then he did it. He has now joined our organization.

Chairman: It is difficult for legislators from various walks of life to cope with technical situations in a short length of time. It would seem to me as a layman, not as chairman, that there is a specific time element involved here. I feel this should be given a lot more thought.

Art Wood: Why would it be a good idea to shelf this and try to re-work it? You cannot cleanse it with this type of legislation. Look what happened with the improvement district and S.B. 408. In my opinion you have to go too fast on this. And it will not solve the problems.

Chairman: I think the committee has some good opinions on this. Mr. Torvinen has pointed out some things close to what I had in mind. We can strive to make some progress in this area. At this time we will do a study on the bill. It will not be acted on today. We may come up with something along the lines mentioned.

Mr. Chairman then recessed the meeting and reconvened at 11:45 with all present with exception of Hafen and Espinoza.

Chairman: While A.B. 105 is fresh in our minds. In my opinion, these people are too far apart to work between themselves.

Torvinen noted that Mr. Bowers was going to get together with the builders on this. Also in thinking about the fact that there are some licensed real estate brokers in opposition to the bill as well as the home builders association. After further discussion, it was determined to hold action until the bill is brought back out by the chair.

A.B. 113: Amendments have been prepared and received as requested by the committee. Bowler moved that A.B. 113 be given a Do Pass; Torvinen seconded and it was unanimously passed.

Page -11-

February 18, 1969

A.B. 101: It was noted that this bill on multiple licensing needed a lot of work on it before any action is taken. Mello moved that A.B. 101 be referred to Chairman Wood for further study and contact with the Gaming Industry; seconded by Bowler and unanimously passed.

A.B. 102: Discussion was held on the position the state is in because of the deposit money law established two years ago. In view of the fact that Senator Dodge has a new bill in to rectify the situation, Bowler moved that A.B. 102 be postponed indefinitely; Chairman Wood noted that there was no action necessary here and that we would defer the bill until order of the chair.

A.B. 253: Chairman Wood stated that there was an amendment due on this bill also and that it would be brought up at another meeting.

A.B. 254: Commission is preparing amendments for this bill also and until they are received this bill will be deferred.

Chairman Wood then noted that Tuesday and Thursday meetings would be held at 10:00 a.m. in Room 58 through cooperation of the Ways and Means Committee and if any other meetings are necessary during the week, the meeting place will be announced. Meeting adjourned.