

**REAL ESTATE COMMISSION TELECONFERENCE MEETING
MARCH 8, 2013
DEPARTMENT OF BUSINESS AND INDUSTRY
2501 EAST SAHARA AVENUE, SECOND FLOOR CONFERENCE ROOM
LAS VEGAS, NEVADA 89104**

MARCH 8, 2013

2:00 P.M.

1-A) INTRODUCTION OF COMMISSIONERS IN ATTENDANCE.

Marc Sykes, David Boyer, Norma Jean Opatik, Richard Johnson, Paul Murad
Deputy Attorney General Rose Marie Reynolds acting as Commission Counsel.

1-B) INTRODUCTION OF DIVISION STAFF IN ATTENDANCE.

Gail Anderson, Administrator; Joanne Gierer, Legal Administrative Officer.

2) PUBLIC COMMENT

None

3-A) FOR POSSIBLE ACTION: DISCUSSION AND DECISION REGARDING 2013 LEGISLATIVE BILLS AND BILL DRAFT REQUESTS (“BDR”) THAT RELATE TO NRS CHAPTERS 116, 116A, 116B AND 645 WHICH MAY IMPACT THE REAL ESTATE COMMISSION AND REAL ESTATE DIVISION.

Senate Bill 186

Ms. Gierer stated that this bill revises provisions governing real property. Ms. Gierer stated that it does not appear to apply to NRS 645 but has been provided to the Commission to make that determination. Ms. Gierer stated that this bill references NRS 116, 119A and another chapter of NRS.

Commissioner Boyer stated that this bill does not address NRS 645.

Senate Bill 128

Ms. Anderson stated that this bill is regarding business brokers. Ms. Anderson stated that this bill does not amend NRS 645 but NRS 90.

Commissioner Opatik stated that she is concerned about this bill. Commissioner Opatik stated that she took a buyer’s broker continuing education course on line and it was all regarding securities. Commissioner Opatik stated mom and pop operations should not be included in this bill.

Commissioner Murad stated that when someone is selling ownership in a LLC format or other corporate entity, that is considered a security sale. Commissioner Murad stated that when companies have contracts that are in the name of that entity, businesses would be selling their whole contract. Commissioner Murad stated that any concerns are valid. Commissioner Murad stated that lots of money and time is spent dealing with this issue.

Commissioner Opatik stated that people will come into the business sold in her town and not want to buy the contracts. Commissioner Opatik stated that they want the assets of the business.

Commissioner Boyer stated that his son is a business broker in another state. Commissioner Boyer stated that the concern is not in doing transactions that do not involve the sale of a corporate entity or stock entity. Commissioner Boyer stated that licensees do not want to be caught up in needing a securities license when they really do not need one. Commissioner Boyer stated that the public is not being harmed if the exceptions to the securities rules are allowed. Commissioner Boyer stated that there is still the ability to find the business broker guilty of violations of NRS 645 if they do other things to error the transaction.

Ms. Anderson stated that the Secretary of State Office has concerns. Ms. Anderson stated that the Secretary of State has jurisdiction over NRS 90. Ms. Anderson stated that State law cannot supersede federal law and that the federal government needs to carve out the exception.

Commissioner Sykes stated that he disagrees with Commissioner Boyer. Commissioner Sykes stated that he has been involved in commercial transactions where there probably should have been a business broker involved because of goodwill and/or inventory. Commissioner Sykes stated that a real estate licensee being involved in equity sales makes him very uncomfortable.

Len Krick, Business Broker for thirteen years and vice chairman and co-founder of the Nevada Business Broker Association, commented. Mr. Krick stated that he has spoken to committee members and the sponsors of the bill. Mr. Krick stated that he had a conference in Ross Miller's office with Diana Foley, head of Securities Division, who suggested that licensees get their Series 63. Mr. Krick stated that this is impossible. Mr. Krick stated that he is going to propose that the language is changed so that the language conforms with the Securities Exchange November 2006 CPI No Action letter. Mr. Krick stated that when his securities attorney drafted the bill, he extended things to be broader than the exact language of the federal no action letter.

Michael DeLee commented. Mr. DeLee stated that section (h) of Senate Bill 128 states that the commission paid to the business broker does not change regardless of the manner in which the sale is concluded. Mr. DeLee stated that section (d) of Senate Bill 128 deals with the role that the business broker would be taking once the decision is made to step back and let other professionals take the lead. Mr. DeLee stated that Senate Bill 128 proposes an exemption from holding a securities license.

Linda Nyman, First Choice Business Brokers, commented on the differences between areas and counties that have larger or smaller deals. Ms. Nyman stated that this situation may not come up very often. Ms. Nyman stated that licensees cannot act in the best interest of clients when licensees run in the other direction afraid of Mr. Krick's hot seat. Ms. Nyman stated that licensees are asking for an exemption because licensees are not trying to become broker dealers. Ms. Nyman stated that licensees want to make sure that they are doing what they are supposed to be doing by law, following guidelines and agents are handling it properly.

Mike Faust, First Choice Business Brokers, commented. Mr. Faust gave an example of when an asset sale turned into a stock sale. Mr. Faust stated that by not allowing some exemption for business brokers to get involved in these kinds of transactions limit the ability of the small business man in Nevada to have the benefit of licensees service in helping them sale their business.

Ron Smith, First Choice Business Brokers, commented. Mr. Smith gave the Commission examples of asset sales that were converted into stock sales.

Jim Handler, LVCBS, commented. Mr. Handler stated that the main purpose of a business broker is to be of service to their clients who are not sophisticated in the selling of a business.

Kathy Smith, LVCBS, commented. Ms. Smith stated that she has been through the experience of an asset sale converting to a stock sale. Ms. Smith stated that this issue happens in rural counties also. Ms. Smith urged the Commission to support the proposed legislation.

Commissioner Murad moved that the Commission take a position in support of Senate Bill 128, that the Commission prepare a written statement and designate a spokesperson to comment and speak on the subject. Seconded by Commissioner Boyer.

Commissioner Sykes stated that he would like to speak against the motion. Commissioner Sykes stated that the Division is sometimes apolitical and this is one of those times when being apolitical would be a better place for the Commission. Commissioner Sykes stated that there might be unintended consequences tied to this piece of legislation and would vote against the motion.

Motion carried 3 to 2 with Commissioner Sykes and President Johnson opposed.

Commissioner Murad moved to write the statement in support of the bill. Seconded by Commissioner Boyer. Motion carried.

Assembly Bill 34

Commissioner Murad stated that the Commission should support this bill since it came from the Division.

Commissioner Sykes stated that the Commission for Common-Interest Communities and Condominium-Hotels should support this bill and not the Real Estate Commission.

Gail Anderson suggested that Commissioners Murad and Boyer submit personal written testimony in support of Assembly Bill 34. Ms. Anderson stated that this bill is very political.

President Johnson stated that there needs to be an impact but agrees with Ms. Anderson that an input should be on a personal versus a Commission wide support of the bill.

Commissioner Murad moved that the Commission support portions of Assembly Bill 34 that the Commission is comfortable with. Motion died for lack of a second.

Commissioner Sykes moved that the Commission take no action on Assembly Bill 34. Seconded by Commissioner Boyer. Motion carried 4 to 1 with Commissioner Murad opposed.

Senate Bill 186

Steve Kitnick, continuing education provider, commented. Mr. Kitnick asked that the Commission revisit Senate Bill 186 and take action to support it. Mr. Kitnick stated that he delivered his course on deficiency judgments. Mr. Kitnick stated that a course that the Commission approved for law and legislation credit that talks about NRS 11.190 and timeframes. Mr. Kitnick stated that they talk about NRS 40.455, Assembly Bill 471, Senate Bill 414 from 2009 and Assembly Bill 273.

Commissioner Opatik stated that this bill would protect the public.

Commissioner Boyer stated that he would support the Commission supporting the bill.

Commissioner Opatik moved that the Commission support Senate Bill 186 as it would protect the public. Seconded by Commissioner Murad. Motion carried 4 to 1 with Commissioner Sykes opposed.

3-B) FOR POSSIBLE ACTION: DISCUSSION AND DECISION REGARDING DATE, TIME, PLACE AND AGENDA ITEMS FOR UPCOMING MEETINGS.

Gail Anderson stated that the Commission has a meeting scheduled for May 7-9, 2013. Ms. Anderson stated that this meeting might need to be cancelled.

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Gail Anderson stated that she presented the Division’s budget at budget hearings. Ms. Anderson stated that the Governor’s recommended budget recommends the restoration of 7.4 positions which includes two licensing staff, two compliance investigators for real estate, administrative assistant in the compliance section, administrative assistant in the administrator’s office from part time to full time, an administrative assistant for projects section and an administrative assistant for the administrator’s office. Ms. Anderson stated that one of the concerns at the hearing was that the funding in the Governor’s recommended budget is from the Attorney General’s settlement fund. Ms. Anderson asked if the Commission would consider taking a position to support the Governor’s recommended budget and the restoration of these positions.

Commissioner Boyer moved that the Commission support the Governor’s recommended budget in terms of restocking the Division. Seconded by Commission Sykes. Motion carried.

President Johnson agreed to review and sign something regarding the motion.

4) Public Comment

None.

5) Commissioner Comments

Commissioner Murad thanked Ms. Anderson for keeping the Commission informed on legislative matters.

6) For possible action: Adjournment

Meeting adjourned on March 8, 2013 at 4:24 p.m.