



GENERAL SESSION

February 16, 2011

**Program Topic: Mortgage and Real Estate
Licensure Exemption for Attorneys –
Foreclosure Issues**

**Presented by: *Business/Labor/Public Utilities & Technology/
Workforce Services/
Community & Economic Development***

**Director: Rebecca Reese
Co-Chair: Raylene Ireland**

**Speakers: Scott Sabey – Co-Chair, Governmental Relations Committee
Utah State Bar Association**

**Rep. LaVar Christensen (R) Dist. 48; Salt Lake County
(Sandy, Draper) – Sponsor, HB93 Mortgage and
Real Estate Licensure Exemptions for Attorneys**

Mr. Sabey said when **HB93** came before the House Business & Labor Committee, the Utah State Bar had an objection on constitutional grounds. He said the bill was prompted, as many are, by a constituent issue. These constituents were attorneys owning title companies who felt the State Division of Real Estate (DRE) was wrongfully dealing with them.

Under the Constitution, both the Bar and the courts function under the judicial rather than the legislative branch. There are some exceptions. If areas of legal practice have been “unbundled” so that others can perform them, a structure is set up to manage that. In such cases, the Judiciary surrenders authority to regulate. Title companies are an example, since many states have no title companies.

In Utah, we have a strong title industry regulated by the DRE. If an attorney practices as

a title officer (selling title policies), he must be licensed by the DRE. The issue with **HB93** concerned home loans with a fixed time period. Last year, this section of the code was modified, but with poor wording. The change said that those handling mortgages must be licensed by the DRE. The broad wording covered not only loan origination, but also loan modification. The Bar contends that an attorney negotiating with a lender on behalf of a client to *modify* the terms of an existing contract is practicing law and should be exempt from regulation by the DRE. The Bar does not seek to be exempt from regulation when *originating* loans.

It was clear to the Business & Labor Committee that the disagreement between competing interests was not large. The committee asked Rep. Christensen to meet with the interested parties and come to an accord. One of the attorney owners of a title company offered to

draft a revision. It was drafted, reviewed and approved. **HB93** was amended accordingly and passed out of committee. It is now on the third reading calendar of the House.

Mr. Sabey described the Utah State Bar Association as an “Integrated” Bar. This means in order to practice law in Utah, an attorney *must* belong to the Bar, which is also an administrative arm of the court. As such, it is required to provide technical and legal assistance to all branches of government.

The Office of Legislative Counsel drafts bills. The office cannot, however, be expert in all areas of practice. The Bar can send a draft bill to specialist attorneys for comment and direction. **HB93** didn’t receive such a review, probably because the change appeared to be innocuous.

Rep. Christensen described another bill he is sponsoring (not mentioning it by name, although it appears to be **HB326 Trust Deed Foreclosure Changes**). It deals with the home foreclosure crisis. Although a loan is often initiated locally, that loan can be sold and resold, often to an out-of-state lender. When the 120-day foreclosure window starts, communication with the lender is difficult and accountability is next to impossible.

Who do you go to, he asked, to obtain mortgage relief? Mortgage companies specialize in loan origination. The real estate business, regulated by the DRE, has certain bounds within which they must work to avoid practicing law. (They use forms created by attorneys but are trained in their use.)

In the midst of the loan foreclosure crisis, a new industry sprang up to help people modify their loans, but they offered false hope. Companies charging up-front fees often would not assume final accountability. The DRE became concerned that attorneys creating these companies were not qualified to negotiate a loan modification. This resulted in the original **HB93** that required attorneys to be licensed by the DRE, even for a loan modification business. The amended bill reflects DRE concerns regarding unqualified attorneys who are essentially operating full-service mortgage businesses.

Elaborating on his foreclosure mediation bill, **HB326**, Rep. Christensen said he believes this bill is the most important one he has ever sponsored. Currently, a notice of default is recorded and sent to the homeowner. This starts a 90-day clock, during which the homeowner in default must bring the loan current by paying all back payments and penalty fees. Often now, the desperate homeowner files for bankruptcy to stop the foreclosure.

Since mandatory mediation is complex and time consuming, this bill proposes another option. **HB326** would require the lender to designate a point of-contact having authority to negotiate the loan contract. The bill would allow monthly payments to be made that would stop the 90-day clock (tolling) for one month for each payment made for up to six months, during which negotiations could more reasonably occur. Rep. Christensen said many lenders have indicated their willingness to participate in this alternative solution.

Reported by Stuart Gygi

General Session 11

Program Topic: Utah State School Board – Election or Appointment?

Presented by: *Education*

Director: Jo Ann Neilsen

Co-Chairs: Leslie Dalton & Natalie Gordon

**Speakers: Rep. Chris Herrod (R) Dist. 62; Utah County (Provo)
Sponsor – HJR15 Joint Resolution Amending
State Board of Education**

**Rep. Joel Briscoe (D) Dist. 25 SL & Summit Counties (SL east
bench & western Summit County)
– Speaking against HJR15**

Note: **WSLC Director JoAnn Neilson** presented information on three resolutions being considered by the legislature. Passage of any would change the way Utah State School Board members are placed into office and would modify the Utah State Constitution, which requires a public vote. Today's presentation is to provide voter information. The three resolutions are as follows:

SJR1 Joint Resolution on State board of Education Authority – Sponsor, Sen. Chris Butters (R). This joint resolution proposes to amend the Utah Constitution to modify a provision to clarify that control and supervision of the public education system would be vested in the State Board of Education. The membership of the board would be elected as provided by statute.

SJR9 Joint Resolution – Governance of Public and Higher Education – Sponsor, Sen. Stuart Reid (R). This joint resolution proposes to amend the Utah Constitution to modify provisions to the governance of public and higher education, which would be vested in the Governor, as provided by statute.

HJR15 – Joint Resolution Amending State Board of Education Provisions – Sponsor, Rep. Chris Herrod (R). This joint resolution would give appointment of members of the State School Board to the governor, requiring confirmation by the Senate.

Rep, Chris Herrod (R) presented information on **HJR15**. He asked how many WSLC members knew their school board member and suggested most people do not know who represents them. There are 15 positions on the board. To select members, a nominating committee interviews candidates and sends names to the governor. He narrows the field to two candidates and the public chooses one by vote.

Some believe the governor has the responsibility to oversee the board; others believe accountability lies with the voting public. Legislators are also often asked to step in and micro-manage education. Accountability has been a problem. Rep.

Herrod would like to give authority to the governor to appoint members of the State School Board. This change will place the accountability squarely with the Governor. There has been much squabbling over this issue over the years, so this change will resolve the issue.

Rep. Herrod agreed that State School Board member is one of the Utah's most important jobs. The Utah funding mechanism, which gives education 60% of the state budget, makes this a major issue. He believes the governor is more directly responsible to the public than school board members, who are generally not well known by voters.

Responding to questions, Rep. Herrod said non-partisan state school board campaigns are often sparsely funded. Partisan support would help. He again stressed the importance of board members likening school board appointments to cabinet positions.

Information on who the governor would appoint would affect his own election. School board members currently represent more constituents than do senators; 15 school board districts as opposed to 29 senate districts. It is a citizen's responsibility to be informed and willing to take the responsibility to vote.

Rep. Joel Briscoe (D) agrees that State School Board accountability is unclear. However, he is against this resolution and believes that members of the school board should be placed in office by direct election.

Board members do have an indirect accountability. For example, if a special interest group is displeased with a member, it can influence the nominating committee to eliminate his or her name from the list sent to the governor. Conversely, often constituents are happy with a member and do not understand why he or she was not given a spot on the ballot.

Rep. Briscoe's believes it better to encourage a bill calling for direct, non-partisan election of state school board members. The Utah constitution provides for non-partisan public vote for good reason, he said. Our government was designed to be somewhat cumbersome to allow time for thought and debate. The United States has more elections than any other democratic county. Citizens must take responsibility to be informed.

He believes having sole authority to appoint state school board members would give the governor enormous power. If passed, **HJR15** would allow him to appoint the State School Board, the State Superintendent, and members of the higher education Board of Regents.

Responding to questions, Rep. Briscoe mentioned there are other bills besides the three mentioned that address this process. They include two that support direct election by Rep. Jim Nielson (R) and Sen. Carol Moss (D), and a third that would make the position partisan. Approval of any of these resolutions during the 2011 legislative session will require a constitutional amendment.

Reported by Marilyn Simister

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