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June 30, 2015 EDITION

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Legislative Issues Process

REALTOR® Issues

The issues presented herein are those identified by each local association in the state, and vetted through the NVAR Legislative Committee. Your Lobbying Team is actively working on drafting and steering legislation that will address those issues.

Other Real Estate Related Legislation

As bills are introduced, your Lobbying Team reviews each one and identifies those that have a potential impact on the industry,

The dust has finally settled after the legislative session, and the Governor has either signed or vetoed all the bills that made it to his desk. How did REALTORS® fare this session? Grab a beverage and take a seat, this is a long one...

Taxes

Throughout the election season in 2014, we were bombarded with information about Question 3, The Education Initiative aka the Margin Tax. What everyone did agree on is that more funds were needed to support education in our state. As a result of Question 3 being defeated at the ballot box, it became evident that some new taxes would have to be enacted during the legislative session.

This session was setting up very similarly to 2003:

- Republican Governor (Guinn in 2003, Sandoval in 2015)
- \$1B+ budget hole
- Governor offers a proposal (Guinn's gross receipts tax in 2003, Sandoval's business license fee in 2015)
- Business community divided

At the end of the day, the 2015 legislative session ended on time, with a new revenue structure in place – very different than the end result in 2003 (multiple special sessions, Supreme Court decision reversing tax package).

You will remember that Governor Sandoval proposed a three-prong "New Nevada" during his State of the State speech back in January:

- Comprehensive education reform
- Education initiatives
- Broadening of the tax base

your clients, and everyone's quality of life. All bills with a potential effect are then presented to the Legislative Management Team for guidance on each bill. Your Lobbying Team then takes appropriate action to protect you, your business and our quality of life.

Tracker

If you have not bookmarked the [2015 Legislative Session page](#) on nvar.org yet, you should go take a look: we have a link to the tracking list and an archive of this legislative update. It is typically updated on Fridays. It is password-protected, so make sure you have your user name and password handy.

Contact

For more information, please contact:

- NVAR President [Kevin Sigstad](#)
- NVAR Legislative Chair [Brad Spires](#)
- NVAR CEO [Teresa McKee](#)

Subscription

The Nevada REALTOR® Advocate is sent to all members accepting emails from NVAR. [If you would like to unsubscribe from this newsletter, you can do so by clicking here.](#) This newsletter will be published once a week throughout the 2015 Legislative Session. [Archives of the Nevada REALTOR® Advocate are available here.](#)

So what happened?

First, the Governor's original proposal was introduced as [SB252](#). It proposed to create a new business license fee, using gross receipts to determine which tax bracket a business fell under, and the brackets were different depending on a business' industry category. The plan created problems for small businesses, and did not have a minimal entry point, i.e. no matter how little a business made, every single business was paying at least \$400 per year on top of an existing state business license which was also scheduled to increase.

In response to this original proposal, the Assembly Republicans proposed an alternative, [AB464](#). This bill did not rely on gross receipt as the basis for revenue, and instead focused on the Modified Business Tax (MBT), also referred to as the payroll tax. It would have increased the rate from 1.17% to 1.56%, and lowered the payroll thresholds from \$85,000 per quarter to \$50,000 per quarter. It also would have removed the health care exemption. The main criticism for this proposal was that it was not broad based, as approximately 6% of the businesses in the state currently pay the MBT. The Assembly Plan would have broadened that threshold to approximately 10% of businesses in Nevada.

In the end, the new tax provisions were rolled into [SB483](#), which turned out to be a hybrid of the SB252 and AB464. Here are the main provisions of SB483:

- Changes the MBT:
 - Increases general business' rate from 1.17% to 1.475%
 - Increases mining's rate from 1.17% to 2%, to bring mining's rate in line with the financial institutions'
 - Allows a 50% credit for Commerce Tax paid
 - Reduces the threshold for payment from \$85,000 per quarter to \$50,000 per quarter
 - Keeps the health care deduction
 - Keeps the annual state business license fee at \$200 for some businesses, and increases it to \$500 for others, depending on the way the business is structured (consult your accountant!)
 - Creates the Commerce Tax for businesses with gross receipts over \$4 million
 - Calculation of the tax takes the business' gross receipts minus \$4 million, and multiplies the result by an industry specific multiplier – for real estate, the multiplier is 0.25% or 0.0025 (not 25%! We're talking a quarter of a percent)
 - Increases the cigarette tax
 - Extends or removes the sunset on certain taxes

As originally proposed, SB483 also had a provision for the collection of data on service sales, which we felt would be used to accurately project the potential revenue of a sales tax on services. We are happy to report this was stricken from the bill.

So let's get back to this new Commerce Tax for a minute. Because it uses gross receipts in the calculation, some people have been saying that it's just the same as Question 3 that was soundly defeated last November. There are significant differences between the two measures, so let's take a look.

	Margin Tax (Q3)	Commerce Tax
Different Tax Rates	Significantly higher: 2% on all businesses	Ranges from 0.059% to 0.331% depending on business category. Highest possibility is 1/6 of Q3's rate
Different Tax Basis	Estimate total NV revenue, then take 1 of 3 deductions: <ol style="list-style-type: none"> 1. Cost of labor, or 2. Cost of goods sold, 3. 30% standard deduction Compliance and calculation complex	Revenue minus \$4M, then multiply by rate. No complex margin calculation.
Different Definitions of Taxable Revenue	Borrowed definition from that used for TX margins tax. Did not contemplate: <ul style="list-style-type: none"> • Pass-through revenue • Adjustment of health care revenues to reflect Medicare/Medicaid and indigent service • Current tax on gross insurance premiums • Circumstances created for mining taxation by Net Proceeds of Minerals tax 	All special circumstances were contemplated and addressed. Borrowed definition of revenue from Ohio's Commercial Activity Tax.
No Fiscal Cliff and More Protection for Small Businesses	Small businesses would be hurt by fiscal cliff. Once over \$1M, they would bear 100% tax liability.	Small businesses are protected. Standard exemption of \$4M, ensuring the tax only applies to largest businesses.
Significantly Different Dollar Amounts Raised	Q3 would have made NV among the highest business tax states in	Allows NV to remain competitive,

the country. It would have generated \$750-850M annually.

regionally and nationally. Designed to generate \$121M annually, with 50% credit for tax paid to be applied against MBT

If you remember way back when we were discussing Question 3 in the months leading up to the election, we showed you an example (prepared by RCG Economics) of a brokerage with \$15,186,000 in gross revenue and \$13,956,000 in operating expenses. Under Question 3, that brokerage would have had a tax liability of **\$139,902**. Your Lobbying Team was successful in getting pass-through revenue exempted from SB483, therefore it is our understanding that the same brokerage's tax liability under the Commerce Tax would be **\$0**.

One last word about a sales tax on services – everyone wants to know whether we'll see that rear its ugly head in the future. The short answer is that it is still a possibility. However, during a joint hearing of the Assembly Ways and Means and Senate Revenue committees, Chris Nielsen, the Governor's Deputy Chief of Staff, stated the following:

"The MBT, as simple as it is, disproportionately affects certain industries: health care, construction industry, and others. Since we do not have a services tax, by adding a Commerce Tax component, it captures the service tax industries in what we think is a fair and equitable manner, especially when we balance it with this modified business tax credit. We think we've put together a very thoughtful, very fair and most importantly, as Mr. Aguero pointed out, capturing that revenue from these Fortune 500 companies, who not only come in here to make money off of Nevada businesses but they make money off of state government, the agencies. That's really what we're trying to accomplish here today."

On another note, we did avoid a significant increase on commercial property tax. [AB412](#) would have reset the tax cap on certain commercial property to a minimum of 6%. Under current law, the cap is up to 8% based on assessed value (10-year history) and changes in CPI – for affected properties, the cap is currently at 3%, as calculated by the Nevada Department of Taxation. While this bill was targeting Strip properties, it did wrap up other commercial projects, which was a concern for our commercial agents. In the end, this bill did not move forward and will not become law. However, we expect more work on this issue over the interim.

Reforms

All this talk about taxes... But did we get the reforms Governor Sandoval announced in his State of the State back in January? Yes, the state of Nevada is seeing some reforms being implemented to balance out the additional taxes imposed on its citizens and businesses.

First, significant tort reform was passed in 2015:

- Construction defect reform ([AB125](#))
- Trespassing on private property (higher standard of care in favor of the property owner) ([SB160](#))
- Hiring of outside counsel by Attorney General ([SB244](#))
- Medical malpractice ([SB292](#))

We also saw significant education reform be adopted:

- More focus on creating charter schools/achievement school districts ([AB448](#))
- Breakup of the Clark County School District ([AB394](#))
- Collective bargaining restrictions on school administrators; administrators reapply for positions ([SB241](#))
- Education School Accounts ([SB302](#))
- More schools in Washoe and Clark counties ([SB119](#))
- Teacher shortages ([SB511](#))
- Teachers' school supplies reimbursement account ([SB133](#))
- Pay for performance ([AB483](#))
- Read by 3 ([SB391](#))
- School breakfast ([SB503](#))
- Safe learning environment ([SB504](#))

Some other accomplishments also included:

- Uber/Lyft coming to a community near you
- Medical school for UNLV
- More staffing for DMV
- Collective bargaining reform

Real Estate Division Budget

In [AB475](#), Administrator J.D. Decker presented his original proposal with the following provisions:

- Increased licensing fees
- Change licensing period from 4 years to 2 years
- Make the Real Estate Division a self-funded agency

What most of you may not realize is that the licensing and other fees that real estate agents pay to the Real Estate Division bring a net surplus to the General Fund to the tune of \$2.8 million. What does that mean? The fees you pay go to the General Fund, and the Legislature allocates some of it back to operate the Real Estate Division – but they keep approximately \$2.8 million in the process.

With that in mind, is it fair to raise your licensing fees? NVAR did not think so, and the Association vehemently opposed any increases in your licensing fees. So Administrator Decker came back with an amended proposal, which had the following provisions:

- No increase in licensing fees
- Increases in all other fees and new fees added
- Change in licensing period from 4 years to 2 years
- Making the Real Estate Division a self-funded agency

This proposal still kept the \$2.8 million surplus going to the General Fund. While it did not increase the licensing fees, it still asked real estate agents to shoulder the burden of increased fees. Again, NVAR opposed those increases. So what did the Real Estate Division budget look like in the end? Take a look:

- No increase in licensing fees
- No increases in other fees, no new fees created
- Change in licensing period from 4 years to 2 years
- Division remains funded through the General Fund

NVAR also lobbied hard on your behalf to make sure the seven positions that were threatened to be eliminated without an increase in your fees would be funded, in order to protect the service level currently provided by the Real Estate Division. It is also worth noting that the other licensees under the Real Estate Division saw increases in their licensing fees (HOAs, timeshare). So if you live in an HOA or hold a timeshare license, sorry -- your fees are going up! But if you are a REALTOR®, your fees will not be increasing.

Other Policy Issues

Eminent Domain

NVAR's priority going into this year's session was to close the door once and for all on the eminent domain scheme being proposed by Mortgage Resolution Partners (MRP) around the country. In this scheme, a local government seizes mortgage notes and conveys the notes to MRP. You may remember that the City of North Las Vegas had actually entered into an agreement with MRP back in the spring of 2013 to do just that. Thankfully, Mayor Lee and the City Council eventually decided to rescind their agreement – but NVAR felt the need to clarify state law to make sure this was no longer an allowable use of eminent domain in our state.

Working with Assembly Minority Leader Marilyn Kirkpatrick, NVAR helped craft [AB201](#) to protect Nevada from such a scheme going forward. We are happy to report that the Governor signed AB201 into law on May 25, 2015, and it became effective that same day.

Contractors Bills

We kept a close eye on several bills affecting contractors throughout the session, as we knew the Contractors Board would be looking at unraveling the provisions added to NRS in 2013 regarding your ability to arrange for some basic repairs to be done on your clients' properties under certain circumstances. While there were attempts to remove that ability, we are happy to report that there is no change to the law implemented in 2013 in that regard.

HOA Bills

There were a number of bills addressing HOA issues this session (as is usually the case), but there was very little appetite from the legislators' point of view to move forward on

most of the proposals. In the end, only a handful of HOA related bills did make it through the process. One of the bills that did pass – and on which we lobbied on your behalf – dealt with the composition of HOA boards. [SB174](#) was well intentioned as the sponsor of the bill wanted to avoid collusion on HOA boards, namely between family members (husband/wife, parent/child, siblings, etc.). The bill originally contained a provision that said that if a person owned more than one unit, he/she could not serve on the board. NVAR felt that provision overreached and that an owner of more than one unit would have an even greater interest in the health of the HOA. We were able to get that provision removed from the bill. The Governor signed SB174 into law on June 4, 2015, and it will become effective on October 1, 2015.

Construction Defects

Driven by the construction industry, [AB125](#) aimed at reforming construction defects litigation. Among other things, it puts a stop to automatic attorney's fees being awarded. This was one of the quickest bills to move through the Legislature. The Governor signed AB125 on February 24, 2015, and it became effective that day.

Timely Recording of Conveyance

[AB183](#), introduced by Assemblyman Elliott Anderson, requires the grantee of real property under an agreement for a deed in lieu of a foreclosure to record the conveyance with the county recorder within 30 days. If the deed is not recorded, it makes the grantee liable for attorney's fees and costs. NVAR supported this measure. The Governor signed AB183 on May 21, 2015, and it will be effective on October 1, 2015.

Deficiency Judgments

[AB195](#) corrects some provisions from [AB273](#) of the 2011 session. It was brought forward to address concerns in the secondary market, where deficiency judgments are sold only for pennies on the dollar. A lot of litigation has happened since the 2011 law was put into place. In the end, the opponents and proponents reached an agreement. The Governor signed AB195 into law on May 25, 2015, and it became effective that day.

Misleading Advertising in Real Estate

Assemblywoman Ellen Spiegel brought [AB264](#) forward after she had a bad experience with an ad involving a rental property that was misleading. This bill was intended to punish real estate licensees posting ads that were misleading or inaccurate. Because the bill targeted real estate licensees – for whom there are already provisions governing especially misleading advertising – instead of the general population, it really did not address the problem Ms. Spiegel had experienced. Because of that, NVAR opposed the bill. In the end, AB264 did not make it out of the process and will not become law.

Squatters

[AB386](#) sought to address the issue of an occupant without a valid lease, especially in instances where the occupant produces a fake lease. In some instances, the occupant may have forged a lease, and in others the occupant may legitimately have entered into a lease with someone pretending to be the true owner of the property. In those cases, the police are unable to enforce trespassing laws because they are unable to determine whether the lease is valid. Legislators had to balance the need for an owner to recover their property and protecting occupants who were victims of a crime when they entered into a lease with someone who was not the rightful owner. AB386 establishes a process for owners to recover their property quicker. It does not change landlord-tenant law. The Governor signed AB386 into law on June 10, 2015, and it becomes effective on October 1, 2015.

Real Estate Commission Makeup

Currently, at least two members of the five-member commission must be from the southern district, and at least two must be from the northern district. [AB410](#) changes that composition to three members from Clark County, one member from Washoe County, and one member from the other areas of the state. Originally part of a larger issue changing compositions of a multitude of boards across the state, all other boards and commissions were removed from AB410, only keeping changes to the Real Estate Commission's makeup. The Governor signed AB410 on June 9, 2015, and it becomes effective on July 1, 2015, with a staggered implementation as the terms of the current commissioners expire. NVAR has received a commitment from the bill sponsor to look into the possibility of expanding the Real Estate Commission from five to seven members during the next legislative session in order to ensure a minimum of two Washoe County representatives on the Commission.

Real Property Transfer Tax

[AB411](#) was brought forward by Assemblyman Ira Hansen, and proposed to increase the real property transfer tax and the room tax to benefit the Washoe County School District. The argument was to bring those taxes' rate to parity with those in Clark County. Ultimately, this bill did not pass and will not become law.

Home Rule

Nevada is a Dillon's Rule state, which means local government only have powers and authorities that the state has specifically granted them except for health, safety and welfare. [SB29](#) and [AB493](#) create limited home rule (local government have the authority not specifically prohibited by the state) to counties and cities. Those bills do not give taxing authority to local governments. SB29 (counties) was signed by the Governor on June 8, 2015, and becomes effective on July 1, 2015. AB493 (cities) was signed by the Governor on June 9, 2015, and becomes effective on July 1, 2015.

Rollover Bonds

[SB119](#) reauthorizes rollover bonds for school districts. It allows for numerous schools to be built in Clark and Washoe counties over the next few years. [SB207](#) also reauthorizes rollover bonds – it was introduced as an emergency measure when it looked like SB119 would get stuck due to political maneuvering. In the end, the Governor signed SB207 on March 4, 2015, and SB119 on March 6, 2015. Both bills were effective as of the date of the Governor’s signature.

Independent Contractor Status

The issue of independent contractors has been one the Legislature has been grappling with for the past few sessions. While [SB224](#) was not targeting real estate licensees, it could have had wide-ranging impacts on you and your business if the language was not crafted properly. The real targets of this legislation are the employers who have employees but treat them as independent contractors. The key for real estate licensees will be able to meet the test for independent contractors status provided that you have both a tax ID number (SSN or EIN) AND all required state or local business license and to maintain your real estate license. Additionally, a real estate licensee has to meet at least three out of five additional criteria.

During the discussions, NVAR made sure that special consideration was made for the unique relationship created by NRS 645 between a broker and his/her agents. One area that might still affect real estate licensees might be in cases where an agent hires a personal assistant – make sure you compensate assistants in the proper fashion given the changes brought forth by SB224 (we recommend that you consult your accountant to be sure, or contact NVAR's Legal Hotline). The Governor signed SB224 into law on June 2, 2015, and it became effective that same day.

Additional School District Funding

[SB411](#), introduced by Senator Debbie Smith, is an attempt to deal with the critical capital funding needs for the Washoe County School District (WCSD). You may remember that this issue was discussed in the 2013 legislative session through [AB46](#). NVAR supported SB411.

AB46, passed in 2013, allowed the county commission to increase sales tax in Washoe County by a quarter percent, and increase property tax -- again in Washoe County only -- by \$0.05 per \$100 of assessed value. The measure was widely supported in Washoe County, as the WCSD's only major source of funding (the 2002 rollover bond) expired in November 2012, leaving the school district with no way to generate capital funding to maintain its buildings.

However, when the proposal came in front of the Washoe County Commission, the Commission opted not to increase the sales tax nor the property tax, leaving the WCSD with no way to generate capital funding.

SB411 gives the power to the board of trustees of a school district to establish a Public Schools Overcrowding and Repair

Needs Committee to recommend the imposition of one or more taxes to fund the capital projects of the school district. That committee then submits its recommendations to the county commission, and in turn the commission is required to submit the question to the voter at the 2016 general election, and requires the commission to adopt an ordinance accordingly if the measure is approved by the voters. The school district's ability to form such a committee expires on April 2, 2016. The Governor signed SB411 on June 8, 2015, and it became effective that day.

Fire Sprinklers

Local governments can adopt ordinances on a wide range of issues, including fire sprinklers. When looking at the International Residential Code (IRC) for fire sprinklers, you can find out that both the 2009 and 2012 editions of the IRC recommend that fire sprinklers be required to be installed in all new homes regardless of "livable space" -- a term that is not clearly defined. This is significant because the IRC regulates residential construction in 49 states.

[SB477](#) was introduced to limit local governments' ability to just adopt the IRC as recommended. It requires local jurisdictions to go through an extensive process to justify the adoption of fire sprinkler requirements if they decide to adopt an ordinance for new home construction. SB477 was signed by the Governor on June 4, 2015, and became effective that day.

Extinguishment of First Lien Rights in HOA Foreclosure

Sponsored by Senators Aaron Ford and Scott Hammond, [SB306](#) is a bipartisan bill aimed at addressing a recent Supreme Court decision concerning the extinguishment of a lender's first lien rights by an HOA. This bill attempts to establish an orderly process under which an HOA can foreclose on a property while providing the lenders an opportunity to cure the extinguishment by the HOA prior to foreclosure. It also provides for a right of redemption of 60 days after the HOA foreclosure extinguishing the first lien rights.

The Federal Housing Finance Agency (FHFA) did testified in favor of the bill, but also stated it did not go far enough. Based on the concerns expressed by FHFA, Senator Hammond attempted to amend SB306 to prohibit first and second lien rights extinguishment in an HOA foreclosure, but the amendment did not make it in the final version. The title industry also expressed concerns about their ability to issue title insurance for properties who were acquired through an HOA foreclosure.

We may see this issue again next session. In the meantime, there could be harmful consequences on lending in Nevada. The Governor signed SB306 on May 27, 2015, and most provisions become effective on October 1, 2015.

Impound Accounts for HOA Assessments

Another way to handle the problem created by the extinguishment of first lien rights in an HOA foreclosure was proposed this session: [SB260](#) would have required banks to create impound accounts for HOA dues. The concept was that if the banks are paying the HOA dues, they would obviously know when they are unpaid, and therefore know that their first lien rights are in jeopardy. In the end, this proposal was problematic for the banks, and could have impacted the loan to income ratios for borrowers. This bill did not pass and will not become law.

Prohibition of First Lien Rights Extinguishment in HOA Foreclosure

[AB359](#) would have prohibited the extinguishment of first and second lien rights in an HOA foreclosure action. While it did pass out of the Assembly, the clock on the 2015 legislative session ran out before the bill made it to the Senate. This bill did not pass and will not become law.

Communications

Throughout session, NVAR did its best to keep you abreast of what was going on through various channels:

- The Nevada REALTOR® Advocate was sent to your email every Friday, highlighting the most important bills being debated that week, and the archives are available on [nvar.org](#).
- Local associations' legislative meetings featured a member of the Lobbying Team to debrief you on the hot issues each month
- A tele town hall was held on June 30 – every member was called and had the opportunity to participate and ask questions! If you missed it, look for an audio recording by mid-July on [nvar.org](#).

One Voice

REALTORS® truly are at the pinnacle of their political power in Carson City – and Legislative Chairman Brad Spires and the entire NVAR Leadership are doing a spectacular job of harnessing that power judiciously to protect you and your business. At the end of the day, legislators know that "REALTORS® speak with one voice" – and that is power in itself.

We would like to extend our sincere thanks to the NVAR leaders who lead the charge throughout the legislative session:

- Legislative Chairman Brad Spires (SNAR)
- President Kevin Sigstad (RSAR)
- Legislative Vice Chairman Keith Kelley (GLVAR)
- Legislative Management Team members:
 - Tina Africk (GLVAR)
 - Noah Herrera (GLVAR)
 - Keith Lynam (GLVAR)
 - Greg Martin (ECAR)

- Chris Plastiras (IVBOR)
- Dave Tina (GLVAR)

We would be remiss if we didn't acknowledge the incredible leadership and support that NVAR staff provides to our legislative efforts. Special thanks go to:

- CEO Teresa McKee
- Legal Counsel Tiffany Davis
- Government Affairs Coordinator Karen Walker

And lastly, our legislative efforts wouldn't be complete without our partnership with Carrara Nevada and its staff:

- Rocky Finseth
- Jenny Reese
- Heather Lunsford
- Isabelle Beaumont-Frenette

2015 SESSION BY THE NUMBERS

The 78th Session of the Nevada Legislature began on February 2, 2015, and adjourned sine die on June 1, 2015..

BILLS

# of BDRs	1294
# of Senate Bills	552
# of Assembly Bills	525
Bills Tracked by NVAR	81

DEADLINES

3/16	Bill Introductions by Legislators (302 introduced in 3 days)
3/23	Bill Introductions by Committees (156)
4/10	First House Committee Passage (246)
4/21	First House Passage (15)
5/1	Economic Forum
5/15	Second House Committee Passage (40)
5/22	Second House Passage (12)
6/1	Sine Die



Prepared by Carrara Nevada for the Nevada Association of REALTORS®

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