



HOME BUILDERS ASSOCIATION OF CONNECTICUT, INC.
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*Your Home
Is Our
Business*

February 19, 2009

To: Senator Joseph Crisco, Jr., Co-Chair
Representative Stephen Fontana, Co-Chair
Members of the Insurance & Real Estate Committee

From: George LaCava (Trilacon Development Corp.), President & Board Chair
Elizabeth Verna (Verna Developers), First Vice President & Government
Affairs Committee Chair
Bill Ethier, CAE, Chief Executive Officer

Re: **Raised Bill 6449, An Act Exempting New Home Builder's Employees
From Real Estate Licensing Requirements**

The HBA of Connecticut is a professional trade association with one thousand three hundred (1,300) member firms statewide employing tens of thousands of CT's citizens. Our members are residential and commercial builders, land developers, remodelers, general contractors, subcontractors, suppliers and those businesses and professionals that provide services to this diverse industry. **We are in strong support of Raised Bill 6449.**

Background: CT's real estate licensing law ensures that third parties (i.e., real estate brokers or agents) afford some level of protection to their clients (i.e., sellers or buyers of real estate). Under section 20-329, a property owner is exempt from real estate licensing when selling or renting their own property. There are eight additional exemptions from licensing under CT law, including an owner's employees who are on-site residential superintendents or custodians, and all employees of nonprofit housing developers.

The Problem: For a for-profit home building company, the "owner" exemption is afforded to only the real person or persons who hold an ownership interest in the company. Non-owner employees of the building company are not provided this exemption and this prevents them from engaging in any activity that can be construed to be related to "negotiating or selling" the building company's own homes, such as 1) showing a model home, 2) explaining the builder's construction practices or designs, 3) walking a buyer through a subdivision showing site development practices, 4) answering questions about home features or available options, such as floor or wall coverings or a huge variety of other items, 5) answering whether a wall can be moved, a bonus room can be added, or many other changes, or 6) even to handing out a brochure to prospective customers. This interpretation of the real estate licensing law, recently enforced by DCP, is a tremendous burden on the effective management and operation of the for-profit home building business.

It is simply unreasonable to expect that all an employee can do when working with prospective buyers of new homes is say, "I'm sorry, you can speak only with the owner of the company. Here's his card." Often, the owner of the company is not on site. They are out managing many other aspects of the business or at different home building sites. Deferring a prospective home buyer not only risks losing that buyer but also does a disservice to the buyer who expects and deserves immediate attention.

Reasons to Support RB 6449: The problem above begs the question: Who, the seller or the buyer, is protected by requiring a building company's employees to be licensed as real estate brokers or salespeople to negotiate or sell their employer's own homes? We submit neither is served. **As for protecting the seller (i.e., the building company), all employees of a home building company, which includes the owner of the company, are in essence and reality the voice of the company.** Each speaks for the company in the capacity for which they were hired. No employee is a "third party" in the same shoes as real estate brokers or agents, who by law act in a third-party, fiduciary capacity in a property sales transaction.

A home building company does not need fiduciary or statutory protection from its own employees. The interests of the company are protected through the employer-employee relationship. Unlike third-party brokers or agents, employees serve under the control and direction of their employer. A company's employees should not have to be licensed as real estate brokers or agents in order to "protect the interests of their own company employer."

As for protecting buyers, most buyers today come to new home sites unrepresented by an agent. Even when an agent is involved, most must defer to the builder's employees to answer construction and pricing questions. Moreover, if a builder's employee is licensed, they represent the seller, not the buyer. And buyers can always hire their own buyer-broker. **Also, DCP protects consumers by regulating all new home construction contractors (NHCC).** NHCC, by definition, sec. 20-417a(5), "means any person [broadly defined to mean any company form] who contracts with a consumer to construct or sell a new home or any portion of a new home prior to occupancy;" (emphasis added). Prohibiting a building company's non-owner employees from negotiating or selling the company's own homes conflicts with activity authorized by the NHCC act. **A NHCC is also not relieved of responsibility under the NHCC registration act for the conduct of its employees,** reinforcing the employer-employee relationship and ensuring all employees act within the bounds of the NHCC registration act. See 20-417b(a). **The NHCC registration act provides consumers with a multitude of protection,** including payments into the NHCC guarantee fund, a statutory registration notice that must be provided to every prospective new home buyer, liability under the CT Unfair Trade Practices Act, and more. In meeting with DCP over this bill, it suggested adding several other provisions to the NHCC registration notice so consumers know they are not represented by the building company or its employees. **We, therefore, offer the attached substitute language to provide additional limitations on the employee exemption and provide more clarity to prospective buyers.**

Finally, the practice of builders using Realtors for marketing will not change with the employee exemption we seek. Many builders use Realtors for their marketing expertise, knowledge of markets and, especially, to gain access to the MLS to better market their homes. But those are all marketing issues that have nothing to do with the seller's or buyer's protections contained in real estate licensing law.

A number of other states, including Rhode Island, fully exempt the employees of all owners. Our proposal is limited to employees of properly registered new home construction contractors, addresses the unique business of new home construction and sales, limits execution of sales contracts to owners and officers and removes a significant impediment on the home building business. **We strongly urge your support of this rational, reasonable exemption to an unnecessary application of the real estate licensing law.**

Thank you very much for your consideration of this bill and our substitute language.