

DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

This information is supplied as an informational service only and should not be relied upon as an official record.

Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.

SB-241 - Contractor Advantage Not Meaningful Reform

Presented by
Nevada Trial Lawyers Association

May 8, 2003

ASSEMBLY JUDICIARY

DATE: 5-8-03 ROOM 3138 EXHIBIT V

SUBMITTED BY: Scott Canepa

V-10821

Market conditions don't justify SB-241

- “The valley remains one of the nation’s hottest housing markets, even as land prices creep to \$200,000 an acre and new home prices jump 8 percent a year”

V-2821

*March 5, 2003 Las Vegas Review Journal
quote from Dennis Smith-homebuilders
research*

Market conditions don't justify SB-241

- “The most important fact for the housing industry is not the immediate outlook, but that it can look forward to at least 20 more years of what historically qualifies as genuine boom times”

V-392

*January 31, 2003 quote from CBS
marketwatch*

Why are contractor insurance rates rising?

Company #8

Issue:

While the high cost of litigation is one reason for claim severity, they believe that the most critical cost driver from a claims perspective is the substandard construction practices and poor workmanship by the contractors.

V-4821

...they believe that the most critical cost driver from a claims perspective is the substandard construction practices and poor workmanship by the contractors. Their experience suggests that the diminished degree of adequate construction practices by contractors, the potential increase in exposure to toxic mold infestation, the high cost of repair and increased litigation costs forced their company into making a difficult decision.

Proposed Solution: This company did not provide a proposed solution.

Insurance company comment to division of insurance

SB-241 won't decrease insurance rates

- “This bill will not bring relief to insurance rates. The demand for housing will be unabated regardless of insurance rates. We are hoping to give responsible contractors the opportunity to make repairs and avoid litigation. It may give some predictability back to the insurance market over the next few years.”

V-5921

James Wadhams - Senate Commerce &
Labor hearing on SB-241

SB-241 Will drive insurers away

§33

- “ ...and if its passed in any state they’ll (underwriters) say well we’re on the hook early and we got high defense costs and maybe we should reconsider writing in the state”

Peter Gorman, Task Force Hearing

11/20/02

SB-241 repeals crucial consumer protection laws

- 40.650 – Penalizes contractors that refuse to:
 - Make an offer of settlement
 - Make a good faith response to the claim asserting no liability
 - Complete repairs in a good and workmanlike manner
 - Agree to a mediator or accept the appointment of mediator
 - Participate in mediation

V-7821

SB-241 repeals crucial consumer protection laws

- 40.667 – Invalidates waiver and release agreements if repairs improperly done
- 40.689 – Preferential trial settings
- 40.692 – Permits joinder of claims or parties to facilitate judicial economy

V-8921

Task force findings do not support SB-241

- No evidence of frivolous cases
- No repairs refused by homeowners in complex cases
- No decline in contractor licenses issued
- No correlation between insurance availability and housing starts

V-9821

Task force recommendation excluded from SB-241

- Contractor competency and continuing education requirements
- Certificates of merit before subs are sued
- Definition of defect that includes:
 - Code violations
 - Property damage
 - Life safety defects
 - Standard of care violation

V-10 821

SB-241 Subjects homeowners to physical and economic harm - §24

- Eliminates contractor liability until damage or injury occurs
- Will cause homeowner insurance rates to rise

V-11 §21

SB-241 misleads jurors with respect to building inspections - §24

- Inspectors only do “spot” inspections
- Inspectors can not control what happens after they leave
- Inspections do not guarantee the absence of defects
- Inspectors have legal immunity – NRS 41.033

V-12821

In The Matter Of:

**RANCHO SANTA FE HOMEOWNERS ASSOCIATION v.
PEYO COMPANY**

[15] **Q: Mr. Houk, just to be clear, am I correct in**
[16] **stating your testimony that just because a building**
[17] **has passed an inspection by the building department is**
[18] **not a certification by the building department that**
[19] **that building does not have life, safety and health**
[20] **defects in it; is that correct?**

[21] **A: That's correct.**

Original File: HOUK130.98, 150 Pages
Affix-U-Script® File ID: 2696855605

Word Index included with this Min-U-Script®

V-13021

The mandatory repair right in SB-241 is unfair §27 - §31.5

- No exception for violent contractors
- No exception for homeowners sued by contractors
- No exception for failed, flimsy or fraudulent repairs
- No exception for contractors who have already refused to repair

V-14821

The mandatory repair right in SB-241 is unfair §27 - §31.5

- Contractors board:
 - Board lacks necessary expertise in complex cases
 - Board lacks resources
 - No judicial review violates due process of law
 - Board lacks jurisdiction over non-licensees

12051-1

SB-241 Seeks unfair advantage

- Unreasonably restricts contingent fee contracts - §50
- Unreasonably limits tolling of time bar statutes - §32
- Arbitrarily limits remedies in new homes - §36
- Seeks to prevent legitimate claims through intimidation - §43
- Eliminates right to investigation costs

V-160821

SB-241 effectively eliminates class actions - §42

- Promotes judicial economy and efficiency

General Tel Co. v. Falcon, 457 US 147, 159 (1982)

- Protects the defendant from inconsistent obligations (Binding effect)

Unites States Parole Commission v. Geraghty, 445 US 388 (1980)

- Provides access to judicial relief for people who are not economically powerful

Phillips Petroleum Co v. Shutts, 472 US 797, 809 (1985)

- Exists to enforce laws and deter wrongful conduct that is not adequately regulated by government

Alyeska Pipeline Serv Co. v. Wilderness Socy, 421 US 240 (1975)

V-17821

SB-241 effectively eliminates class actions - §42

- “Inability to litigate could arise from one’s financial position or from a lack of knowledge that a cause of action exists. If the persons are unable to sue, then joinder [of separate suits] may be deemed impractical because permissive joinder presupposes a group of economically powerful parties who are obviously able and willing to take care of their own interests”

V-18821

Donelan, *Prerequisites to a Class Action*, 10 BC Indus & Com L Rev 527, 531 (1969)

Diminished market value doesn't compensate homeowners - §49

- Leads to repugnant results:
 - No exception for life, health, safety or civil rights defects
 - No exception where the homeowner wants to stay and restore the property
 - No exception for properties that can't be sold

V-19 8 21

Diminished market value doesn't compensate homeowners - §49

- Defeats purpose of reform:
 - DMV is a disputed figure and will spur related litigation
 - Will raise homeowner policy premiums
 - Contractors not insured for DMV
 - No incentive to repair when cost exceeds DMV

V-20921

Diminished market value doesn't compensate homeowners - \$49

- Rancho Sierra HOA
 - 76 condominium homes
 - Defense cost of repair = \$ 948,839.52
 - Defense DMV = \$ 190,000.00
 - HOA Reconstruction costs to date = \$1,260,556.77

V-21821