

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Eighty-second Session  
March 20, 2023**

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:00 p.m. on Monday, March 20, 2023, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Melanie Scheible, Chair  
Senator Dallas Harris, Vice Chair  
Senator James Ohrenschall  
Senator Marilyn Dondero Loop  
Senator Rochelle T. Nguyen  
Senator Ira Hansen  
Senator Lisa Krasner  
Senator Jeff Stone

**STAFF MEMBERS PRESENT:**

Patrick Guinan, Policy Analyst  
Karly O'Krent, Counsel  
Blain Jensen, Committee Secretary

**OTHERS PRESENT:**

Mackenzie Warren Kay, Real Property Law Section, State Bar of Nevada  
Michael Buckley, Chair, Real Property Law Section, State Bar of Nevada

CHAIR SCHEIBLE:

I will open the hearing on [Senate Bill \(S.B.\) 223](#).

[SENATE BILL 223](#): Revises provisions relating to real property. (BDR 2-657)

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SENATOR DALLAS HARRIS (Senatorial District No. 11):

Senate Bill 223 was brought by the Real Property Law Section of the State Bar of Nevada. Ms. Warren Kay and Mr. Buckley are the experts in this area and will walk the Committee through the bill.

MACKENZIE WARREN KAY (Real Property Law Section, State Bar of Nevada):

A memorandum ([Exhibit C](#)) on S.B. 223 includes a section-by-section breakdown, because the bill does touch on quite a bit and is highly technical. The Nevada State Bar has various practice groups of attorneys around the State that interface with *Nevada Revised Statutes* (NRS) in specific areas. The Real Property Law Section made S.B. 223 an omnibus bill doing several things. Sometimes, it rearranges NRS by moving sections to different chapters to make sense. There are no substantive changes made. Other sections that Mr. Buckley will touch on give clarity and remove outdated provisions. Each of the amendments has a common goal to provide predictability in the law for our real estate attorneys as they are interfacing with these various laws.

MICHAEL BUCKLEY (Chair, Real Property Law Section, State Bar of Nevada):

We deal with these NRS all the time and every once in a while, we encounter sections that need tweaking to provide clarity. I have divided this suggestion into six general provisions, and I can point out the pages if you are interested.

The first change is sections 1 to 4 that deal with record of lis pendens or a notice that a lawsuit has been filed affecting real estate. The existing language says where the property or "some" part is located; we want to change that to where the property or "any" part so wherever the property is, that county has a record of the lawsuit in terms of the lis pendens itself. In sections 10 to 13, which are the recordings that deal with a foreclosure, the changes to need to be recorded in every county where the property is located.

The second proposal is in sections 5 and 14 and amends NRS 40.255. Section 5 is dealing with legal proceedings on evictions primarily. The law was amended in 2019, and a number of sections in NRS 40.255 dealt with the relationship between landlord and tenant rather than any proceeding. Our proposal is to move these provisions out of the chapter dealing with proceedings and put them in NRS 118A which deals with the Residential Landlord and Tenant Act.

Our third proposal, section 6, deals with NRS 40.504. This area deals with what happens if a property owned by a lender or mortgaged to a lender is contaminated environmentally. The definition of "hazardous substance" includes a reference to the Uniform Fire Code of 1988. There is no such document anymore so this proposal removes that reference.

The fourth proposal is section 7; NRS 106.220 requires documents relating to subordination of a "lien" must be recorded, and there is a reference to any "interest" in property as well as a "lien." Many leases contain a provision where the tenant agrees that the lease would be subordinate to the landlord's mortgage under certain conditions. The way the statute presently reads, it could be interpreted that you would have to record any lease that had subordination provisions. Reading legislative history, the statute is intended to only deal with mortgages, and we clarified that language.

Our fifth proposal deals with the definitions in NRS 107, and this originally was a proposal from our Real Property Law Section. I made it clear in the memo that I am speaking for the members of the Executive Committee, not members of the section or State Bar. The Executive Committee is a 15-member group of lawyers who practice real estate throughout the State. In 2019, we gathered a number of definitions in NRS 107 that are used in more than one statute. Our proposal then put these general definitions in NRS 107.015. A reference to "surety" and "surety bond" in NRS 107.079 dealt with a statement from a beneficiary. The definitions were moved out of that section into the general definition section. But the word "surety" is also used in another section. The definition section refers to a "surety bond," but NRS 107.095 refers to a "surety" that is somebody who is a guarantor of a mortgage loan. We wanted to take the definition out of the general section and put it back into the specific section, so it is not confusing. There are two conflicting meanings of that term in statute.

The last proposal deals with NRS 645.8801 and the regulation of real estate brokers. A real estate broker can make a claim for commission against escrow proceeds and the escrow agent must do something about that claim; this deals with commercial real estate only. One of the things that an escrow agent can do is put the money into court. The statute says once the escrow agent puts the money in a court, the escrow agent is relieved of liability. We are just closing the circle here and want to make clear that once the escrow agent

deposits the money in court, the broker needs to withdraw his claim against the escrow agent.

SENATOR STONE:

You say the agent refers the commission demand to a court rather than an escrow agent. Can you give me an example of that?

MR. BUCKLEY:

The statutes are designed first to make clear that the broker does not have a claim on the real estate, but the broker has a claim on the seller's escrow proceeds. What would happen if the seller and the broker got into a dispute where the seller refused to pay the broker the agreed-upon commission or there is a dispute about the commission? The broker is entitled by statute to deliver a notice to the escrow agent and say we have a claim against this and you are subject to our claim for commission. The broker cannot disperse these proceeds to the seller unless we resolve our claim. The escrow agent can either try to resolve that claim or say, we do not know who is right and who is wrong. We will just put the money into court to let the broker and the seller figure it out in court. At that point, the escrow agent is out of the argument. It is a common thing in escrow.

SENATOR STONE:

Basically, it is a dispute between the broker and seller on the claim to a commission. Obviously, the escrow agent does not want to get in the middle of the legal debacle for which he or she does not have the skills to adjudicate, so you just send it to court and let them deal with it, right?

MR. BUCKLEY:

Yes, that is correct.

MS. WARREN KAY:

Mr. Buckley, if you could address section 15, we may have skipped over that in the presentation.

MR. BUCKLEY:

Section 15 is where we move the language out of NRS 40 and put it into the residential landlord and tenant chapter. Without any substantive change, we just took it out of one chapter and put it into another.

The Residential Landlord and Tenant Act in NRS 118A details a number of requirements that a lease has to have in the procedures and dealings of residential property. There is an exemption if the tenant is the buyer of the property. What we added here makes more sense if the tenant is the seller who stays in possession. There is an exemption for that relationship because the seller knows more about the property than the new buyer or landlord. We have just added an exemption for 90 days after the seller buys the property.

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CHAIR SCHEIBLE:

I will close the hearing on S.B. 223 and adjourn the Senate Judiciary Committee at 1:18 p.m.

RESPECTFULLY SUBMITTED:

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Blain Jensen,  
Committee Secretary

APPROVED BY:

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Senator Melanie Scheible, Chair

DATE: \_\_\_\_\_

<b>EXHIBIT SUMMARY</b>				
<b>Bill</b>	<b>Exhibit Letter</b>	<b>Introduced on Minute Report Page No.</b>	<b>Witness / Entity</b>	<b>Description</b>
	A	1		Agenda
	B	1		Attendance Roster
S.B. 223	C	2	Mackenzie Warren Kay / Real Property Law Section, State Bar of Nevada	Bill Summary Memorandum