

Speech by:
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National Association of Real Estate
Law Licensing Officials
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Let me tell you how much I appreciate this opportunity to come to Miami and meet with this distinguished group. This is a special pleasure for me because I have such high regard for the Real Estate Licensing Board in my own State and I welcome a chance to meet their colleagues from throughout the nation. I welcome a chance to tell you about some of the things we are doing in North Carolina and to share with you my philosophy of licensing boards in general.

I think I should tell you at the beginning that I am very jealous of individual rights. Our society is rooted in the precepts of dignity, integrity and liberty of the individual. I wouldn't have it any other way and I don't think you would either.

Such a society, emphasizing the principal of personal liberty and embracing the right of every citizen to the enjoyment of the fruits of his own labor, consequently, has certain responsibilities to its citizens. Let's look at two of them.

First it must provide for them those services that they cannot very well provide for themselves: schools, roads, medical care and facilities, medical care for the mentally ill,

and the mentally retarded. I was a State Senator for twelve years and it was primarily to this responsibility that I devoted my efforts.

Second, it must guarantee to the citizens of the state PERSONAL LIBERTY AND FREEDOM, which embraces more than protection from the unlawful acts of others, but the right of the individual to be free to enjoy the faculties with which he has been endowed by his Creator - to live and work where he will, to earn his livelihood by any lawful calling, and to pursue any legitimate business, trade or vocation.

It is to this second responsibility that I turn my attention today and, frankly, I must admit I am concerned by the direction of our government in this area.

It has become increasingly apparent to me that we have forgotten one of the key reasons why many of the early settlers of this Country made the long and perilous journey to these shores. It is easy enough for most of us to remember that religious persecution drove men like Roger Williams and William Penn to seek a new life here in America. It is easy enough to remember that the desire for wealth and personal fortune inspired Queen Isabella to finance the voyage of Columbus to the New World and prompted Elizabeth to sponsor the expedition of Sir Walter Raleigh.

However, we have allowed ourselves to forget that many persons whose names are not found in the index of American history books came to America for a far more elemental reason. Untold numbers, simple people with a simple desire, came in order to pursue the livelihood of their choice by escaping the oppressive and exclusive guild system which controlled the professions in England and on the Continent.

This is unfortunate for it appears that this "memory lapse" may account for the great volume of professional licensing legislation being enacted in every state of this nation, bringing us closer and closer to an officially sanctioned American guild system. I know that this is true in my State and every time a new bill is presented, the argument is the same: the profession is susceptible to fraud and dishonesty, therefore we must license those who practice it.

I ask you, "What profession is not?" It is obvious that every one is and equally obvious that no matter how desirable it is to protect our people from fraud and dishonesty, we cannot undertake to license and regulate every occupation for there is no business or occupation which is not likely to have its quota of dishonest men.

The right to work and earn a livelihood is a property right that may not be lawfully denied except under the police power

of the -tate in the public interest for reasons of health, safety or public morals. It follows, then, that the right to license and regulate is an extraordinary power of the State, and the limits of police power are exceeded when the government undertakes by regulation to rid ordinary occupations and callings of the morally decadent.

The answer to fraud and dishonesty in ordinary businesses is not to continue extending the licensing power of the state but to provide criminal and civil laws to protect the public from unfair and deceptive trade practices and to provide effective legal machinery for enforcing these laws. For this reason I have established an aggressive Consumer Protection Division in my office and obtained from our Legislature some of the broadest consumer protection laws in the Nation. This is the way of the future, I think, - responsible, realistic, but vigorous enforcement of reasonable laws designed to protect the consumer and the legitimate businessman.

It is important to pause for a moment and to state unequivocally that I believe the licensing of real estate salesmen and brokers is a legitimate function of the state. The profession you seek to regulate is clothed with a substantial public interest and must be regulated for the purpose of protecting and promoting the general welfare of the people.

The business of acting as intermediary between seller and purchaser in real estate transactions, the business of a real estate broker or salesman, is a lawful business or calling, and any one has a right under the constitutional guaranties of liberty and pursuit of happiness to follow it. Nevertheless it is a business which may be conducted in such a manner as to promote an undesirable state of local, economic excitement and unrest; which may easily result in a degree of public distress analogous to that produced by mismanagement of a banking institution. The real estate broker is brought by his calling into a relation of trust and confidence. Opportunities to extract illicit gains by concealment and collusion are constantly available and licensing authorities such as you must be just as constantly vigilant and ready to move against those who violate their public trust.

What, then, is the future of Real Estate Licensing, conceded by all of us to be a legitimate exercise of the state's licensing power? Perhaps the answer lies to some degree in its history and the history of some other licensing boards.

Historically some licensing boards, not necessarily real estate, have been used by persons already in the profession as a guise to exclude new persons from joining the profession and thus controlling competition. The very able Secretary of the North Carolina Licensing Board, Joe Schweidler, has furnished

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me with some interesting statistics in this regard on North Carolina and the other 49 states.

As of October 19, 1971, there were 9,400 licensed real estate brokers in North Carolina and 2,807 salesmen for a total of 12,207 licensees. Between September 1970 and September 1971, 2,185 persons took the broker's examination; of these 68% passed and 32% failed. During this same one year period, 1,421 persons took the salesmen's exam. Of these, 70% passed and 30% failed.

These figures indicate to me that the North Carolina Real Estate Licensing Board is not following a practice of trying to exclude persons from entering the real estate profession.

On the other hand, figures published by the National Association of Real Estate Law Officials for the period from June 30, 1970 through June 30, 1971, indicate that the licensing boards in ten states failed more than half of the applicants for brokers' licenses and that in five states more than half of the applicants for a broker's license also failed to pass the examination during this same period.

It is hard to draw the line, but my personal view is that if more than half of the applicants taking the brokers' and salesmen's exams are not passing the examination, something is wrong. Either the licensing board is trying to exclude others from entering the profession or the educational program

available to prospective licensees is not adequate; or perhaps both of these factors are playing an important part in the unfortunate end result.

We live in a day when the protection of civil liberties has become increasingly a matter of wide public concern. Licensing boards which arbitrarily exclude persons from their profession without due regard to the public interest which they are authorized to protect may expect to find themselves as defendants in civil suits primarily in the federal courts. And they may expect to be the losers - and rightfully so.

In the future licensing boards of every kind should turn their attention to "inclusion" rather than "exclusion" and work to find ways to accomplish this. I am pleased that North Carolina has taken steps in this direction.

I have mentioned educational opportunities for prospective brokers and salesmen. In my opinion, it is incumbent upon licensing boards to foster good educational programs for prospective licensees. In fact, North Carolina law requires that an applicant for a license as a real estate broker shall have been actively engaged as a licensed real estate salesman in his state for at least six months prior to making application for a license as a broker or that he shall furnish evidence satisfactory to the Board of experience in real estate transactions or the completion of a study or a combination of experience and study of real estate transactions which the board shall find equivalent to six months experience as a licensed salesman.

Within the last few years, North Carolina has established a system of community colleges throughout the State and 24 of these community colleges now offer courses in real estate which are approved by the Licensing Board. There are 25 private schools which also offer approved courses in our State. We are proud that we have 49 courses available to prospective licensees, and I hope that those of you here today will foster educational opportunities for prospective licensees in your state.

That a good education in real estate is essential to a broker or a salesman has been proved time and again in North Carolina. The office of the Attorney General is legal counsel to the Licensing Board. During the past year, our Board has revoked two licenses, has suspended three, and has held approximately 75 informal hearings on complaints filed against licensees.

These hearings vividly illustrate that in many instances a licensed broker or salesman simply is ignorant of what the law requires of him in connection with real estate transactions. These hearings have also vividly demonstrated that in a majority of cases, it is not the new licensee who is ignorant of the law but persons who have been in the profession for many years, frequently those practicing under the "Grandfather Clause". The point is obvious - not only must educational requirements be strengthened prior to licensing, but continuing education of those already in the profession is a necessity.

In March of 1970, the North Carolina Real Estate Licensing Board started publishing a quarterly bulletin. It is sent to all licensed brokers and salesmen and is designed primarily as an educational publication for those already in the field.

For instance, in the first issue, there was an article on "Truth in Lending" and advertising of real estate credit. The first issue also contained an article on the revised form of real estate licenses. Included were relevant opinions of the Attorney General interpreting the North Carolina Licensing law and any changes in the law made by the General Assembly.

Interestingly enough, the bulletin also contains articles about disciplinary action taken by the Board against licensees. The Board hopes that licensees will think twice before deliberately violating the law if they know that any action taken against them will be made known to all other licensees in the State.

This bulletin is a practical and effective means of continuing education. But continuing education requires money. In North Carolina, the Licensing Board is self-sustained and receives no funds whatsoever from the State. I imagine that the same is true in most of the other states. Fortunately, in North Carolina the Board has had sufficient funds to adequately carry on its statutory duties and responsibilities.

The Board, realizing the need of continuing education, requested the 1971 Session of the North Carolina General Assembly

to broaden its authority with reference to continuing education. The Legislature granted such authority and the Board is now authorized to expend expense reserve funds, and, I quote, "... For the purpose of conducting education and information programs relating to the real estate brokerage business, for the information, education, guidance and protection of the general public, licensees, and applicants for license. The education and information programs may include preparation, printing and distribution of publications and articles, and the conduct of conferences, seminars, and lectures."

You will note that in the quotation I just read, there appeared the words "for the purpose of ... protection of the general public ...".

As I have said before, it is absolutely essential that all licensing boards, including real estate licensing boards, keep as their primary purpose, the protection of the public. Licensing boards should never be used to limit those entering the profession, to foster a guild system, to raise revenue, or to assert political power and influence. I am not suggesting that all licensing boards have been used in this manner, but clearly some have and all are susceptible to such misuse.

I have made the statement in North Carolina on several occasions that I believe the North Carolina State Real Estate Licensing Board is doing a good job, is following the intent and

purpose of the statutes under which it was organized, and is ever mindful of its primary purpose, the protection of the public.

If I could leave any thought with you today which you would carry with you back to your own state, it would be that the future of real estate licensing boards in this country is dependent on public confidence and support.

I believe that you have such support today, and, in order to maintain it, I urge you to continue to foster programs that will protect the public through the competence and integrity of your licensees.

I urge you to so conduct your business that there can never be any question that all qualified persons can be admitted to the real estate profession and allowed to practice this profession if they so desire. I urge you to be fair and, just as importantly, to make sure the public perceives what you are doing as being fair. This is the key to public confidence and support and the key to a bright future for real estate licensing boards.

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