

PUBLIC HEARING

before

ASSEMBLY REVISION AND AMENDMENT OF LAWS COMMITTEE

on

ASSEMBLY BILLS NOS. 1319, 1603, 2198 and 2199  
(Land Development)

Held:  
April 18, 1973  
Assembly Chamber  
State House  
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Brian T. Kennedy (Acting Chairman)  
Assemblyman Michael M. Horn  
Assemblyman John N. Dennis

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ASSEMBLYMAN BRIAN T. KENNEDY (Acting Chairman):

If I could have your attention, please. We are about to begin the public hearing scheduled for 10 A.M. this morning on Assembly Bills 1319, 1603, 2198 and 2199. These bills all concern the regulation of certain large land developments.

I am Assemblyman Brian Kennedy from Monmouth County and I will be chairing the public meeting this morning.

Are there any persons in the Chamber representing either Assemblyman Mabie, Assemblyman Hamilton or Assemblyman Fay, who desire to testify? (No response)

I believe there is a John D. Conroy representing Assemblyman Hamilton. Is he in the Chamber? (No response)

Is there a representative here for Assemblyman Benjamin Mabie of Ocean County? (No response)

Is there a representative here for Assemblyman John Fay of Middlesex County? (No response)

Is there a representative here of the New Jersey Real Estate Commission? Mr. Fleming, would you identify yourself, please?

C A R L L. F L E M I N G, JR.: Yes. My name is Carl Fleming and I am President of the New Jersey Real Estate Commission. I would like to testify on Assembly Bill 1603.

As President of the Real Estate Commission, we are directly responsible for the regulation of the interstate land sales business. I believe that this type of bill is very good, very necessary, and needed in the State of New Jersey at this time.

I would like to just make note for the record that at this time the New Jersey Real Estate Commission has introduced in the State Senate Senate Bill No. 2113, which is quite similar to Assembly Bill No. 1603 that we are discussing this morning.

The New Jersey Real Estate Commission has been working for the last year and a half with various other State governmental bodies, specifically the Department of Consumer Affairs, in trying to have Senate Bill No. 2113 fit in and not overlap existing state legislation. We believe that Senate Bill 2113 best meets the requirements of the people of the State of New Jersey. And the Assembly Bills we're discussing here today, we would appreciate having tied into or coordinated with the Senate Bill introduced by Senators Tanzman and Bateman.

One of the differences in the bills is that the Real Estate Commission bill excludes intrastate land sales, that is lands that are sold within the State of New Jersey. We did this because this is primarily covered under an Assembly Bill passed in 1969, known as the Geriatrics Act, which now regulates the sale of condominiums and intrastate lands in the State of New Jersey.

In our regulation of the industry, we have found that some of the primary problems are today, first of all, the problem of getting a developer to register. And speaking with HUD officials in Washington, we have been informed that to the best of their knowledge approximately 45 to 50 percent of the developers who should register are not registered. They do not register because state laws are weak in the sense that we cannot go beyond state boundaries to stop a developer who may be sitting in the State of Pennsylvania and who is advertising in the New Jersey newspapers and doesn't register with the New Jersey Real Estate Commission. Under the existing statutes and under the so-called Fay Bill we would still not be able to get control or seek direct control over that developer who flaunts the law because he's outside of our jurisdiction. The so-called Bateman-Tanzman Bill would give us this authority. We feel that's very important.

Secondly, the bill that the New Jersey Real

Estate Commission - the Senate Bill that we are recommending sets up a very important department. We recognize the fact with the inadequate staff that we have and with the number of sales meetings that take place in the State of New Jersey - these lands are sold at so-called dinner meetings, and now is called The Homestead where people are brought in to a dinner at a hotel or restaurant and given a free dinner, and they must report these dinners to us and they must be approved by the Real Estate Commission. But we only have five investigators to cover the whole State, including the 40,000 licensees which we now have. They work all day and it's very difficult to get compensatory time in order to have these people police or monitor these sales presentations in the evening at the hotels.

We feel that this is very important. And any bill, whether it's the Assembly Bill or Senate Bill, that is passed without an appropriation to set up a proper staff to implement it, to make sure that it's administered properly so that the people would really be protected, would be meaningless. The Fay Bill makes no provision for an appropriation. The Senate Bill does, which would set up a separate department of interstate land sales regulation within the Real Estate Commission, and it sets up an appropriation of \$100,000 a year that we feel will put real teeth and give real protection to the people of New Jersey.

Another provision of the Senate Bill that we like is that it tends -- under the present legislation, which the Fay Bill again goes along with, which I say is good, is a so-called full disclosure bill, which means that as long as the developer says he's telling the truth, whatever he sells, as long as he's not lying, it's okay. We believe that there should be stricter merit requirements in some of these offerings and that we have the right to turn down offerings that we feel are not in the public

interest, that are gyp deals or aren't good, solid land sales that people should buy. We feel, again, that is very important.

Our bill, I say "our bill", I mean the Senate Bill, the Tanzman-Bateman Bill, calls for annual renewal fees and consolidation of filing fees, which again is another serious problem. Most of the land sales are under ten to twelve year contracts. The first inspection is made - and by the way, the Fay Bill does not call for a physical inspection of the property. Our bill calls for inspection by a member of the Real Estate Commission to make sure that what the man says is true. But a more serious problem is, how do we know that the developer, who promises today and takes the down payment and takes the monthly payments from the consumer, will be around ten years from now to deliver that deed when most of the payments are made. How do we get that type of protection?

The Senate Bill provides for a continuing review, yearly inspection review, progress report, to make sure that the developer is putting in the things he said he's doing, the promised roads, sewers, homes, whatever is supposed to go in. There is a certain schedule he must comply with that has to be followed up year after year. The bill that we prefer has that provision.

It is for these reasons, the important reason of consumer protection. The Fay Bill does very well in many respects. It provides for legal remedies, and we think that's good. But we also know that perhaps more important than legal remedies is the prevention of things happening to consumers.

The consumer has \$500 in a situation and he realizes then that it is bad. He then has recourse to the courts and he can go to an attorney. It may cost him as much as \$1,000 or \$1,500 to get back his \$500. Well, it's obvious that he probably will not pursue that course.

The intent of our bill is to get the direct

control over the developer to prevent these things being offered, to prevent sales abuses from happening without proper administration or jurisdiction, to prevent misrepresentation in the beginning and to have a qualitative analysis of the filing so that only good land can be sold in New Jersey and that the bad developers, who don't register and who are selling bad land, cannot be allowed to sell.

I believe that our bill, Senate Bill 2113, as introduced by Senators Bateman and Tanzman, best covers these requirements and would be in the best interest for the honorable people of the State Assembly to try to bring this bill into that type of context.

Thank you very much.

ASSEMBLYMAN KENNEDY: Thank you, Mr. Fleming.

I note that Assemblyman Fay has arrived.

Jack, would you like to testify now?

J O H N J. F A Y, JR.: I would just like to go into a brief history of the bill and also to comment on the bill itself and also on Mr. Fleming's statement.

The fact of the matter is that the most serious, the most important purchase anyone makes in his lifetime is when they buy a home. And the disreputable builder, not only in the State but outside the State, in the last ten years in particular, sends out exotic literature, going from the Pocono Mountains out to Arizona and Colorado and down into Florida. And I think the New York Times, a year ago, rendered a very, very important public service by showing, in an expose, that some people were being hurt very badly. And I think what's pouring the salt into the wounds is that those who are being hurt are those who can least afford it. Many of them are senior citizens getting ready to move to a retirement area, and young married people who couldn't afford homes in the metropolitan area who were

being drawn in and taken advantage of and being hurt very seriously.

So it was because of this series of articles that I first brought this to Legislative Services and asked them to draw this bill.

I do accept some of the points that were made and I do accept some of the recommendations, and I would advocate and vote for Senator Tanzman's bill if it came on the floor first, - particularly the recommendation made here for staffing. If \$100,000 is the figure, I would recommend it to the Committee, that in A-1603 we should put \$100,000 for staff.

Another thing that I have thought of, as this has developed, is that if the Real Estate Commission is not geared or is not staffed, possibly the Consumer Protection Department could be responsible for it or at least partially responsible along with the Real Estate Commission.

To me an important factor is that we are still a growing state. While we do have an awful lot of people moving out of our State to Pennsylvania or to Florida or to Arizona or California, the fact of the matter is we have people moving into our State and we do have a responsibility to them and to the citizens of our State.

The Monmouth County story that I read about in last week's paper concerning a highly reputable builder with a national and international reputation - if you could have a fiasco like that with one of the top builders, you can imagine how people could get wiped out with a less reputable and less responsible builder.

But after all is said and done, I think the point has been made by Mr. Fleming, it has been made through the press - I refer to the April 5th, 1973 story in the Newark Star Ledger where Mr. Jahnke, Secretary-Director, notes 150 complaints in one month. So we are not being melodramatic and we are not trying to create a

scare that doesn't exist. It does exist. The problem is very real. I admit it is also complex but the dilemma can be solved either with the Senate Bill or my bill or most certainly with amendments going either way. But I do feel that your Committee has an immediate responsibility and I am hoping you will be able to give this top priority and vote either this bill out or -- could you tell me whether the Senate Bill has been passed or not?

MR. FLEMING: No, I don't know. I believe it's in committee.

ASSEMBLYMAN FAY: What's the number of the bill?

ASSEMBLYMAN HORN: 2113.

ASSEMBLYMAN FAY. Again, just speaking as an Assemblyman, all too often in the case where we have Senate Bills and Assembly Bills, where the Assembly might accept the responsibility and decide to move into an area, I'm sorry to say that we don't always find the same movement in the Senate. So if we could all be sure, as members of the Assembly, that this bill would be coming over, that would be one story. But not knowing that and not knowing how to find that out for a fact, I do insist that my bill is open for amendments. And I am sure, between Mr. Fleming and Senators Bateman and Tanzman and myself, that we could come up with the needed amendments to this bill.

ASSEMBLYMAN KENNEDY: Assemblyman Fay, do you have any objections whatsoever to any of the contents of Senate Bill 2113?

ASSEMBLYMAN FAY: I have to admit that I haven't gone through it that carefully. Again, this is the first time I've heard it explained. I wasn't aware of the closeness of the two bills, but I would like to have the opportunity to read it in order to make recommendations.

ASSEMBLYMAN KENNEDY: I see. Thank you.

I would like to point out that at this time Assemblyman Jack Dennis has arrived - he seems to have disappeared for the moment - and on my far right now is Assemblyman Michael Horn who is also a member of the Revision and Amendment of Laws Committee.

Assemblyman Horn, do you have any questions?

ASSEMBLYMAN HORN: I'm sorry I am late, first of all.

Just one question. You don't mind answering questions about the bill, do you?

ASSEMBLYMAN FAY: Not at all.

ASSEMBLYMAN HORN: What was the purpose of putting in the 14 day rescission clause on page 3.

ASSEMBLYMAN FAY: This was a recommendation of Legislative Services who told me, when they were doing the research for it, they were using model legislation and also using the State of Florida's law. I think this is a point that should be made, that many states in the Union already have disclosure laws because of the need and because of the great number of abuses. So it's an arbitrary two week period that was recommended.

The New York Times' story pointed out that because of our closeness - Connecticut, Pennsylvania, New York and New Jersey - New York did have a law, a strong law, and they pointed out that New Jersey did not have this kind of protection.

ASSEMBLYMAN HORN: What's the purpose of such a clause, to give the purchaser a chance to change his mind?

ASSEMBLYMAN FAY: Yes.

ASSEMBLYMAN HORN: Thank you.

ASSEMBLYMAN KENNEDY: Thank you, Assemblyman Fay.

ASSEMBLYMAN FAY: Thank you.

ASSEMBLYMAN KENNEDY: Is there a representative here from the New Jersey Builders Association?

MEMBER OF AUDIENCE: He will be here in ten or fifteen minutes.

ASSEMBLYMAN KENNEDY: All right.

Has the representative of Assemblyman Mabie appeared? (No response)

Or Assemblyman Hamilton?

Would you state your full name, please?

J O H N C O N R O Y: I am John Conroy and I have a prepared statement here to read. It relates to Assembly Bill No. 1319

A-1319 is a bill which would require developers who arrange for mortgage financing to disclose in the original contract that mortgage guaranty insurance may be required by lending institutions in those cases where the lending institution does require mortgage guaranty insurance. The sole purpose of the bill is disclosure to the purchaser of the fact that mortgage guaranty insurance is required.

Mortgage guaranty insurance is a means whereby purchasers of residential real estate are enabled to obtain private mortgage financing for up to 90% of the fair market value of the real estate. It is frequently called "MAGIC" which is an incorrect acronym for M.G.I.C. which stands for Mortgage Guaranty Insurance Corporation, one of the principal companies engaged in the mortgage guaranty insurance business.

M.G.I.C. opens up the residential real estate market to those who formerly could only consider purchasing through government programs such as the FHA or VA guaranteed mortgages. It is a growing and valuable instrument in helping to meet an acute housing shortage in New Jersey and making available to those of relatively modest means the opportunity for home ownership.

M.G.I.C. was authorized in New Jersey by Chapter 248 Laws of 1968. There have been amendments to this law since that time. The need for A-1319 arises

from the fact that some persons have entered into contracts for the purchase of a home calling for 90% mortgage financing without knowing until the bank commitment is received that the bank will require mortgage guaranty insurance. Since mortgage guaranty insurance companies do charge substantial premiums for the insurance written, it is important that the prospective purchaser know from the outset that the mortgage guaranty insurance may be required so that he can ascertain the cost and the desirability of entering into this type of mortgage financing.

The sponsor of A-1319, Assemblyman William Hamilton, has discussed with Assemblyman Brian Kennedy, of the Committee, a necessary amendment to the bill, which is in Section 2, line 4, to delete "private mortgage insurance" and substitute "mortgage guaranty insurance" and we ask your support for this consumer-oriented piece of legislation.

I will be glad to try to answer any questions in regard to this bill or, if I can't, I will just write them down and talk them over with Assemblyman Hamilton.

ASSEMBLYMAN KENNEDY: Thank you, Mr. Conroy.

Do you have any questions, Assemblyman Horn?

ASSEMBLYMAN HORN: Yes, just one question.

The purpose of the bill seems very laudable. Why does it only apply to those who are defined as the developer in the act. If the purpose of the act is, which I think is laudable, to protect people applying for a mortgage, to at least give them notice that they are going to have certain fees to pay, which I think is good, why does it apply only to developers?

MR. CONROY: It's a limited bill. Actually there are other charges put on by the bank, service charges, etc., in relationship to M.G.I.C. However, the initial contact with the buyer, through the developer type financier, should give a full disclosure of all the

expected expenditures. And it's limited to that particular instance. I am sure there are other things that could be added to this bill to have the full disclosure in all types of buying situations for homes and land, but it just isn't directed in this particular bill.

ASSEMBLYMAN HORN: Thank you.

ASSEMBLYMAN KENNEDY: Do you know what, Mr. Conroy, prompted Assemblyman Hamilton to introduce this bill? I mean, did he find that this was a serious problem with regard to the homeowner not being aware of this initially? Because somewhere along the line, after signing a contract and before the mortgage commitment could be granted, the would-be homeowner does have to sign a mortgage commitment accepting the commitment spelling out the terms of the commitment.

MR. CONROY: Right.

ASSEMBLYMAN KENNEDY: Is there a problem here?

MR. CONROY: Well, I think there is a problem. Of course, the extensiveness of it could be documented, but in his own practice he has run across several situations in which people didn't know until they actually received the financing agreement from the bank that there would be this additional charge, which I think runs up to 1/4%, for the insurance and then actually the service charge is tacked on to that. And this would just be disclosure of the extra percentage for the insurance.

ASSEMBLYMAN HUNT: Isn't it more than just 1/4%? Aren't there also some substantial closing fees, points and what-not?

MR. CONROY: I don't think that M.G.I.C goes into points. I think that's FHA.

ASSEMBLYMAN KENNEDY: Under this type of a transaction it is a substitute for points?

MR. CONROY: Right.

ASSEMBLYMAN KENNEDY: It's another term and

I believe the buyer pays, if you want to call it, 1 point at the closing and I believe the rest of a half point is spread out over the term of the mortgage.

MR. CONROY: Right.

ASSEMBLYMAN KENNEDY: Mr. Conroy, when you see Assemblyman Hamilton, would you discuss with him the point raised by Assemblyman Horn of the possibilities of broadening the scope of the bill to include perhaps all contracts and not just contracts relating to developers with regard to M.G.I.C.?

MR. CONROY: Yes, sir.

ASSEMBLYMAN KENNEDY: Do you have anything further?

ASSEMBLYMAN HORN: Yes, just one question.

I wonder if we're really getting at the source of the problem here. In my limited experience with M.G.I.C. mortgages, which I think are very good and they do open up home ownership to people who might not ordinarily get it and at substantially less closing costs to these purchasers, - when is it determined that it will be a M.G.I.C. mortgage? I'm not sure that it's determined at the time the contract is signed or at the time the person who arranges for the financing decides to apply for M.G.I.C. insurance. Do you understand my question?

MR. CONROY: Yes, I understand. I think that most developers would actually have some kind of a pre-agreement with the bank or the financing institution that they were going to, you know, offer M.G.I.C. to their potential customers as a sales item.

ASSEMBLYMAN HORN: So it would be known when the contract of sale is entered into that it's probably going to be a M.G.I.C. mortgage.

MR. CONROY: Are you discussing at what time the developer actually has knowledge?

ASSEMBLYMAN HORN: What time someone knows.

MR. CONROY: Well, I think that initially when a developer goes into selling off his plot he will know just exactly how he is going to finance the different sales. And, as I say, I think the M.G.I.C. is offered as a sales item.

ASSEMBLYMAN HUNT: I would concur with Assemblyman Kennedy's request that you speak with Assemblyman Hamilton about whether or not at some point the purchaser ought to have notice that it's going to be a M.G.I.C. mortgage even if he's not buying in a development of three or more parcels. If it's a good bill for them, it's a good bill for a person who buys a resale house.

MR. CONROY: Right.

ASSEMBLYMAN HUNT: Thank you.

ASSEMBLYMAN KENNEDY: Thank you, Mr. Conroy.

Is there a representative from the New Jersey Builders Association here who would like to testify? (No response)

Is Mr. Carl A. Bertoch of the National Land Council in the Chamber?

MR. BERTOCH: Yes, but I don't think it's necessary for me to testify.

ASSEMBLYMAN KENNEDY: All right, Mr. Bertoch.

Is there anyone else here in the Chamber who would like to testify?

Mr. Rubin, would you state your full name, please?

A L B E R T R U B I N: Albert Rubin. I am President of the New Jersey Association of Realtor Boards.

I appear before you as President of the 10,000 member New Jersey Association of Realtor Boards to express the Association's position on two of the four bills on the agenda today - Assembly 1319 and 1603.

The New Jersey Association of Relator Boards supports Assembly Bill 1319. Our investigation has disclosed no widespread problems to the purchaser because

of the requirement that "private mortgage insurance" may be required to qualify the individual for a conventional mortgage loan. We agree with the sponsor of A-1319 that in those instances when PMI is needed the purchaser should be made aware of the fact and should be informed of the additional cost, etc. Heretofore PMI was not an important factor in the financing of homes in New Jersey. However, with the restrictions and limits imposed by the Department of Housing and Urban Development through the Federal Housing Administration, PMI is becoming more important a tool in the financing of housing.

We urge that A-1319 be released from Committee for a full vote by the General Assembly as soon as possible.

If you have any questions on this one first, or would you rather I go to the other one.

ASSEMBLYMAN KENNEDY: That's all right.

MR. RUBIN: Our position on Assembly Bill 1603 is another matter. Reluctantly, we must oppose A-1603.

I emphasize reluctantly because the Realtors Association was one of the prime movers in the early 1960's to amend the New Jersey Real Estate License Law to include authority for the New Jersey Real Estate Commission to regulate "promotional sales of out-of-state property." To date, the record of the Real Estate Commission under the present statute has been commendable. NJARB feels the provisions of A-1603 would completely redirect the efforts of the Real Estate Commission through inclusion of "subdivisions" of lands of 50 or more lots within the State. We feel this provision is unnecessary and would only result in increased red tape and unneeded bureaucratic control of land development in New Jersey.

Our Association has not been able to find any abuse of the public on "in state land development" that would necessitate controls as advocated under A-1603.

There are many other technical problems with the bill which we fear would increase the burden to regulate the "out-of-state land sales" on the staff of the Real Estate Commission without any assurance of increased public protection.

NJARB is supporting Senate Bill 2113 as the more desirable approach to update and improve the statute dealing with "out-of-state land promotion". S-2113 sets up and funds a division within the Real Estate Commission whose sole responsibility will be the regulation of out-of-state land promotional activity.

We urge this Committee to hold up action on A-1603 in favor of S-2112.

While my next comment is not directed to the factual issues contained in A-1603, I feel that it should be a part of this record. The present staff of the New Jersey Real Estate Commission could not possibly perform the functions contained in the Real Estate License Law as it now exists and the additional duties forced upon them by A-1603. The present staffing problem of the Real Estate Commission we hope will be alleviated by the present State budget and enactment of S-2113 which appropriates the necessary funds for a continued, expanded regulation of out-of-state land promotion.

In closing, while we commend the sponsor of A-1603 for the concern demonstrated, we feel a more realistic approach is contained in S-2113.

Thank you.

ASSEMBLYMAN KENNEDY: Thank you, Mr. Rubin.

I would like to point out that Assemblyman Jack Dennis is now at the head table.

Assemblyman Horn, do you have any questions?

ASSEMBLYMAN HORN: Yes. I'm sorry I'm not familiar with S-2113, although I hope to become familiar with it very shortly. S-2113 covers out-of-state land sales? Is that right?

MR. RUBIN: Yes.

ASSEMBLYMAN HORN: And does not cover inter-state land sales.

MR. RUBIN: As I understand it.

ASSEMBLYMAN HORN: Thank you.

ASSEMBLYMAN KENNEDY: Assemblyman Dennis, do you have any questions at all?

ASSEMBLYMAN HORN: I have one more question. Would A-1603 have any deterrent effect in your opinion on the construction of new housing in the State?

MR. RUBIN: No.

ASSEMBLYMAN HORN: Thank you.

ASSEMBLYMAN KENNEDY: Mr. Rubin, none of us here really has had an opportunity to study Senate Bill 2113 but, based upon the prior testimony we heard here this morning I understand that there is much similarity between the two bills, and the basic distinction appears to be that perhaps the Senate Bill goes a little further than the Assembly Bill.

Now I have a little difficulty here in understanding why you are opposed to one bill and yet favoring a second bill which has been presented here this morning as going perhaps further than the first bill.

Have you had an opportunity to study the Senate Bill 2113?

MR. RUBIN: I have read it. You said it in your last sentence. 2113 is a better bill, better worded, covers more and most important it funds the cost of all that is being asked of it, wherein 1603 does not fund the Real Estate Commission. As it is now, I am sure you are well aware, the Commission does a tremendous job considering their understaffing and underfunding. And here they would be able to do what is being asked of them and would be properly funded to do the job.

ASSEMBLYMAN KENNEDY: Are you opposed to the intent and purpose of A-1603?

MR. RUBIN: Basically, no, because the intent is similar to, as we stated, 2113 but we feel that 2113 is a better bill.

ASSEMBLYMAN KENNEDY: I see. Thank you. Are there any further questions of Mr. Rubin? Thank you, Mr. Rubin.

MR. RUBIN: Thank you very much.

ASSEMBLYMAN KENNEDY: Is there anyone else here in the Chamber this morning who would like to testify on any of the bills under consideration?

MR. JAHNKE: As Secretary-Director of the Real Estate Commission I may be able to offer you a little information on these peices of legislation and on the staffing, if you would like.

ASSEMBLYMAN KENNEDY: Fine. Would you state your full name, please.

C A R L J A H N K E: Carl Jahnke, Secretary-Director of the New Jersey Real Estate Commission.

I may say at the outset that it's encouraging to note that the bill by the Senate, which deals with the question of a proper appropriation, has gotten concurrence from Assemblyman Fay here this morning. I will have to emphasize that it's a delight to hear that the concern for the proper implementation of this bill is present in both houses.

The distinctions which can be made between the two bills I approach from an internal view, from the implementation of the bill, actually putting it to work.

I find in the Fay Bill, initially, certain problems with time schedules for hearings, for conclusions, for orders, for determinations by the Commission.

As you gentlemen may be aware, the Commission meets once a week. It is staffed by members of the industry, by a public representative and a representative of the State Government. They meet every Tuesday and they deal with an enormous number of matters. I have

brought a weekly schedule just to give you gentlemen some indication of what they do on a weekly basis.

Not to impose upon them the additional burden of these hearings, these determinations, these orders, within a short period of time, it seems to me is one of the serious problems.

The wording of 1603 indicates that if action is not taken within a specific period of time then a registration from out-of-state automatically would be accepted.

I will call your attention to - if I may have just a moment -- one section I would point out to you is Section b, sub b, of 6. It appears on page 5.

ASSEMBLYMAN KENNEDY: To which bill are you referring?

MR. JAHNKE: 1603, the Assembly Bill, providing a 20 day period for hearing, upon request for a hearing. You will find it in lines 26 to 30.

Now the Commission, of course, has no quarrel at all with the hearing itself. Certainly public hearings should be essential in all of these matters. The only concern we have is with the time schedule involved. The Commission meets once a week. It deals with many matters. It is not properly staffed to prepare these additional orders. This is why I would like to emphasize to you gentlemen and just point out the importance of the proper appropriation to implement this bill. Without that appropriation the bill is meaningless because we would not be in a position to make it work.

I just wanted to bring that to your attention.

Now if there are some questions from you gentlemen that I might be able to help you with, I would be delighted to do so.

ASSEMBLYMAN KENNEDY: Assemblyman Dennis, do you have any questions?

ASSEMBLYMAN DENNIS: No.

ASSEMBLYMAN KENNEDY: Assemblyman Horn?

ASSEMBLYMAN HORN: Other than its effect on the Commission, can you briefly outline - of course, we have Assembly 1603 - Senate 2013. Does that cover in-state as well as out-of-state?

MR. JAHNKE: No, it does not cover in-state.

ASSEMBLYMAN HORN: It only covers out-of-state.

MR. JAHNKE: It concerns itself only with the out-of-state land business.

ASSEMBLYMAN HORN: Thank you.

ASSEMBLYMAN KENNEDY: Mr. Jahnke, does Senate Bill 2113 - have you had an opportunity to study that bill?

MR. JAHNKE: Yes.

ASSEMBLYMAN KENNEDY: Does that bill have any disclosure provisions for New Jersey developers?

MR. JAHNKE: For New Jersey developers?

ASSEMBLYMAN KENNEDY: Yes.

MR. JAHNKE: No. It deals only with out-of-state developers.

ASSEMBLYMAN KENNEDY: Do you know whether or not Assemblyman Fay's Bill has this disclosure provision for New Jersey developers?

MR. JAHNKE: Assemblyman Fay's bill deals with - in its first definition under 1(a) - subdivision means any land located within or outside.

ASSEMBLYMAN KENNEDY: So he does have this provision.

MR. JAHNKE: Yes. That's correct. Now, again, to get back to the staffing problem, to now regulate or attempt to regulate these in-state developers imposes again upon the Commission an additional burden, staffwise. They are people we do not regulate now or investigate now.

ASSEMBLYMAN KENNEDY: Do you think there is a need to regulate?

MR. JAHNKE: I must be honest with you. I'm not in a position to answer that. I'm not sure whether there is a need or not, frankly.

ASSEMBLYMAN KENNEDY: It would appear that evidently Assemblyman Fay does think there is a need. Would you agree with that?

MR. JAHNKE: Apparently.

ASSEMBLYMAN KENNEDY: Fine. I have no further questions.

MR. JAHNKE: Thank you.

ASSEMBLYMAN KENNEDY: Is there anyone else who would like to testify?

Would you state your full name, please.

J A M E S R U D D: My name is James Rudd. I live in Meadow Brook Village in Jackson, New Jersey, which is a retirement village for people over 52.

This is in reference to Bills 2198 and 2199.

I have spent with many other senior citizens from Ocean County considerable time with Mr. Alito, Mr. Bryan, and Mr. Mabie. These two bills presented are an outcome of these conferences to try to reduce the difference between cooperatives and condominiums as far as the protection given to senior citizens on cooperatives. At the present time, based upon personal experiences of four years in Ocean County, there is a tremendous difference and I can state, based upon lawyers that I have consulted, that a good many lawyers in the State are not fully informed as to the difference between the two.

But it is a matter of record that there is a full disclosure act which covers condominiums and since this has been in effect, which is two or three years - I believe it became effective the first part of 1971, but I am subject to correction on that - there have been a lot less problems with condominiums than there have been with co-ops. Mr. Alito and Mr. Bryan both suggested that the first step to get further protection for senior citizens would be at least incorporating this full disclosure act more promptly.

To take, if I may, a couple of concrete examples to illustrate the basis of this statement, I, personally, got involved when I was expecting to retire the latter part of '68 and was urged to change my selection because of view. This was in the fall of the year. The section that I was in, based upon the prospectus filed with the Bureau of Securities which supervises cooperatives, stipulated there would be 20 buildings in that area. When I returned from Florida, I found there were 22 buildings and I no longer had a view. But a lot of

the people weren't affected by that and we couldn't get a cooperative situation on it. This goes back four years.

To take something more concrete, I have here a copy of a letter sent to one of our members December 15, 1972, in which the gentleman across the aisle, Mr. Vogler, had been over talking with a Ms. - I don't know whether it is Miss or Mrs. - Carlin, a Consultant for Housing for the Elderly. She could not give him the answer because this again is a condominium. But she did call Mr. Krepski, Chief of the Bureau of Securities. She could not get him in. She eventually did make contact with him and kindly wrote this letter to Mr. Vogler. I will quote from this letter: "Mr. Krepski indicated that only the courts have the power to compel the corporation to produce the records of their meetings." In other words, here was a prospectus filed with the Bureau of Securities that had no maturity date for the term of the initial trustees. And the Chief of the Bureau of Securities tells you to go to court to find out what it is and this prospectus was accepted by the Bureau of Securities.

These things do not exist with the Full Disclosure Act. So it is the first step forward to stop making a lot of senior citizens second class in this state. Because unfortunately in the Town of Jackson, a speculator-builder gets an awful lot of help. But I would say, based upon personal experience, this gets down to the ethics of the developer. You get a good, ethical builder - and I spent 40 years in construction and I have shaken hands on jobs for a quarter of a million dollars and completed them without a signed contract. That wasn't in the 1970's.

Take most of the builders now -- and I have a list here from Mr. Kramer, supplied to Mr. Mabie, which is a partial list of the co-ops -- of the ones that I recognize on this list, there is only one that the

members of the co-op have not been forced to go to court to protect their interest and pay maybe \$10,000 or \$15,000 to a lawyer.

When a person retires, this doesn't seem fair. As one gentleman stated here, it costs a man \$10 thousand or \$15 thousand in legal fees to get back \$500. So what does he do? He lays down and takes it, but this doesn't seem to be right.

I strongly urge that you give consideration to taking this first step of at least putting the co-ops nearer the category of condominiums.

Thank you for your time and, if there are any questions, I am still here.

ASSEMBLYMAN KENNEDY: Thank you.

Assemblyman Horn, do you have any questions?

ASSEMBLYMAN HORN: Mr. Rudd, I am sorry Assemblyman Mabie isn't here. Maybe you can help me on this. This is a package of two bills, is that right?

MR. RUDD: That's right.

ASSEMBLYMAN HORN: I assume Assembly 2198, which takes the cooperative situation out of the Uniform Security Law so that it can be put ---

MR. RUDD: Excuse me. The Uniform Security Law definitely excludes cooperatives.

ASSEMBLYMAN HORN: Oh, it does.

MR. RUDD: I am not a lawyer and I never expected to be over here when I retired. As I understand from Mr. Alito and Mr. Bryan, 2198 takes the exclusion of cooperatives out of your Full Disclosure Act.

ASSEMBLYMAN HORN: I see.

MR. RUDD: 2199 then turns around and puts all the regulations for a co-op under the supervision of the Full Disclosure Act.

ASSEMBLYMAN HORN: Thank you.

ASSEMBLYMAN KENNEDY: Thank you.

Assemblyman Dennis, do you have any questions?

ASSEMBLYMAN DENNIS: No.

ASSEMBLYMAN KENNEDY: Fine. Thank you very much, sir.

Is there someone else who cares to testify?

O T T O V O G L E R: My name is Otto Vogler of Meadow Brook Village, Jackson, New Jersey.

I just want to reiterate what Mr. Rudd has said. I have been the former President of the Meadow Brook Association, which was formed basically for the protection of the residents, the senior citizens. I could mention the problems we have gone through with different committees. I have gone up to the Bureau of Aging and met with Mrs. Carlin and gone over the same things that Mr. Rudd has said - also with Mr. Mabie.

I have been living there for four years and the problems we have had with the builder, who is also the managing agent, and the trustees, for seven years, is unbelievable.

I strongly urge you give full support to this bill, to put this under the Full Disclosure Act. Because every time we have gone to the Bureau of Securities, all they say is, "You signed a legal contract. We have nothing to do with it."

Every problem is an internal problem. We have had a problem with water. They put a well in, not even on our property. There are things of this sort. They never showed us a site plan which was fully approved by the township. Not until two years did we ever see a site plan when they asked for further development. There are so many things. A franchise tax was never paid for six or seven years. Now all of a sudden we have to pay a franchise tax plus interest for back charges for all these past years. When we inquired about it, everybody says, "Mind your own business. Leave it lie."

The same thing with taxes - there was either

collusion or dereliction of duty. We were assessed twice last year for assessments for back taxes - for two years back taxes that were not paid.

There should be full disclosure into all of these things. Thank you.

ASSEMBLYMAN KENNEDY: Thank you, Mr. Vogler. Are there any questions?

At this time, I would like to take the opportunity to welcome the young students who are in the balcony to this public hearing.

This is not a regular session of the Assembly. The three at the table here - we are Assemblymen - and when we are in session, we are seated at the various desks that you see out here in front of us.

This is a public hearing on certain legislative bills that were sent to our committee. Assemblyman Horn and Assemblyman Dennis and I all belong to the Revision and Amendment of Laws Committee. And as a part of that committee, we review certain pieces of legislation. There comes a time when we feel in reviewing legislation that we need the help and assistance of private citizens who can come forward and testify and give us some information on the bills which we are studying. That is what you see here this morning.

This is a public hearing on certain bills and the people you see out in front of us are citizens throughout the State of New Jersey who have taken the time out to come down here and help us by giving us their opinion and expertise on the legislation which we are now studying.

So now you know what is going on down here. We hope you enjoy your visit to the Assembly Chambers.

Is there anyone else who would like to testify?

I R W I N     M A R K O W I T Z: My name is Irwin Markowitz. I am an attorney. I represent several

financial institutions that finance the so-called subdivision land, that is, the raw recreation land. Really I came here to sit and listen, but after hearing you speak to these young people, I think perhaps I know something about the interstate land sales that might help you in your thinking about either of these bills or some possible permutation of them.

Basically additional disclosure is not needed for this reason: There is a Federal Interstate Land Sales Law and Regulation. It is a very pervasive piece of regulation. The registration is there. Everything that is contained in either 1603 or 2113 is now provided at the federal level; that is, any subdivider who sells an interstate must comply. So everything that is required in either 1603 or 2113 is presently lodged in Washington.

Each purchaser gets a copy of this prior to the time - whether it is at a dinner meeting, a flyer, or when he goes up to the particular development to look at his potential future dream home. The disclosure is fully made. Some of the things it discloses, if the customers would take the time to read it, would turn them back. So it is not failure of disclosure; it is failure of the disclosure to have any real meaning. You can tell a man you are going to do most anything. And, by the way, most of the developers fully and fairly disclose they are going to do full and fair things.

In addition to the federal legislation, the State of New York, which has been most closely connected with this matter in the Catskills and the Adirondack area, requires any subdivider who offers for sale in the New York market - and that's the whole New York State market - to register. This is done by television, by radio, by direct mail. Almost any developer who purports to hit the New York Metropolitan market must

performer come into New Jersey homes via the radio stations, via television. Certainly any place in the northern tier of counties that a developer beams into New York will be heard in New Jersey. So there is full and again very fair registration.

New York does something more than the Federal does. It sends site investigators out and very carefully examines the developers, requires escrow funds, and full disclosure again. So there is no lack of full disclosure to the potential New Jersey buyer, either in State or out of State, so long as the developer is selling in this market.

What is needed really is somebody to watch. And this requires a sophisticated person, someone who for a period of time knows something about this business. You can take HUD - and it is in the Department of Housing and Urban Development that the office of Interstate Land Sales is located - or the New York State Secretary of State filings and it will give you every bit of information that is required here. It is well disclosed; it is well documented. It is not a real estate matter really; it is a consumer-protection matter. Really it isn't a matter of particular expertise in real estate development because this is raw land. The gentleman talked about the builders. The people who are offering this land for sale are not builders. The most they do is put in roads and what are called amenities, sewers, curbing, perhaps a country club or a golf course. They do not build homes on the land. That happens subsequently.

So in your consideration, keep these things in mind. Number one, we are not talking about builders; we are talking about people who plot and subdivide and sell raw land. Secondly, they are at this point making at least two disclosures, one to HUD, the Office of Interstate Land Sales, and then if they sell at all

in the New York Metropolitan market - and this would cover North Jersey - they are filing with the State of New York. This being the case, additional disclosure really isn't needed.

What is needed is really a funding to provide one, two or three knowledgeable New Jerseyans to check those things over and make sure that the people who have already filed, already disclosed, are doing what they say they are going to do. So I don't think the whole mechanism of requiring an additional mimeographed seven pounds to be deposited some place in New Jersey is necessary. These gentlemen have already averted to the fact, Mr. Jahnke particularly, that the timing is so difficult to live with, and the amount of work they have to regulate - sales in New Jersey by real estate brokers -- There have been in the papers recently discussions of this block-busting business and steering and other practices of present real estate people.

This has nothing really to do with real estate sales. This has to do with consumer protection primarily and the disclosures are already fully made to other Federal and State authorities. Thank you.

ASSEMBLYMAN KENNEDY: Assemblyman Horn?

ASSEMBLYMAN HORN: Would you answer a few questions?

MR. MARKOWITZ: Certainly.

ASSEMBLYMAN HORN: Does Pennsylvania have a law similar to New York's?

MR. MARKOWITZ: It does not.

ASSEMBLYMAN HORN: Do you think it should?

MR. MARKOWITZ: The gentleman behind me just advised me it is going to. If you want to look at an act which is most pervasive. Michigan has just adopted one which had an effective date of April 1, but has a delayed date of October 1 for the implementing regulations. That is where the real work is done, in the implementing

regulations; to attempt to regulate pervasively in a statute, I think is a mistake.

The way it should really be done, because this crosses borders since the selling is done by television and radio and mail before anybody makes the in-house call or the invitation to the dinner, the Federal act should be more than a mere disclosure act. It should have all of the careful protections in it. Since it probably won't, as I say, the implementing regulations should be more geared toward protection than disclosure. Disclosure is fully made now. There are, I would guess, 47 tons of disclosure documents either at the Secretary of State's Office in New York or in Washington and they are interchangeable. They all say the same things. Having read through them, the customer is fully warned and fully told and knows very little more than when he started.

ASSEMBLYMAN HORN: Does the Federal act require that the prospective purchaser be given a copy of something?

MR. MARKOWITZ: Yes, and he has a 48-hour rescission period.

ASSEMBLYMAN HORN: And this applies to Pennsylvania?

MR. MARKOWITZ: It applies to anybody who is covered by the Interstate Sales Act and the Interstate definition is broad enough so that everybody is included. The Federal act exempts developers who register in certain states which meet their standards. Right now I think there are six states - New York, Florida, California, Hawaii, and two others which escape me at the moment, - which have standards at least as strong as the Federal.

ASSEMBLYMAN HORN: Then you are suggesting that what we really need is not any more disclosure, which we already have, but inspection and enforcement?

MR. MARKOWITZ: Precisely. To reread these filings, after both the Federal authorities and the New York State authorities have read them presumably, will do no additional good. No one discloses anything

wrongful. You don't have to. The full disclosure is a perfectly neat set of facts. The disclosure, indeed, might say that we are encumbered up to our ear lobes, and you may never get full title to the land. As long as it is disclosed, there is complete compliance.

ASSEMBLYMAN HORN: In fact, the developer is probably better off than if there were no disclosure at all?

MR. MARKOWITZ: On the contrary, the developers make full disclosure and the thicker the disclosure document, the less likely it is to be fully read. So the more completely you disclose, the more nearly you guarantee that that which you disclose won't be read very well. That is no fault of the developer. He is complying with those present laws and regulations which require him to make disclosure.

ASSEMBLYMAN HORN: I just want to draw on your expertise and knowledge of this type of act. The proposed 1603 has a 14-day rescision provision. Are you aware of any acts that have that long a period of rescision?

MR. MARKOWITZ: No, sir. Michigan, I don't think has. Excuse me. California does have a 14-day rescision period.

ASSEMBLYMAN HORN: Thank you very much.

MR. MARKOWITZ: I think that puts everybody in such a state of flux that the potential buyer isn't quite sure whether he has bought or not bought, the developer isn't quite sure whether he has a piece of property sold or not sold, and the potential financier never knows whether there is a buyer-seller relationship until long after everybody should be put to rest.

ASSEMBLYMAN DENNIS: I have one question. When you say there should be better inspection, etc., do you mean of the actual site? For instance, take Arizona. If we sent somebody out to Arizona, it would be pretty

expensive for everybody.

MR. MARKOWITZ: It might be expensive, but again I would urge that this be handled in much the way convention insurance is; that is, a group of states agree on an inspector who is a knowledgeable fellow. The developer or the insurance company foots the bill for his trips, on a reasonable basis, economy air-fare out and several days at a reasonably-priced motel. He files a report and that report is available to all those who subscribe. And one knowledgeable man doing an eye-ball job on a development is worth 10 pounds ---

ASSEMBLYMAN DENNIS: The states could share this?

MR. MARKOWITZ: This is what I am urging. As I say, I came here really to listen and am speaking because as a citizen, really one knowledgeable fellow looking at the sewer plant, looking at the proposed lake, looking at the road layout - and it doesn't have to go as far as Arizona - most of the land that is sold would be sold in our contiguous states - and filing an accurate report would be much more beneficial than all of the disclosure statements which say a sewerage plant will be built. So I think there are ways to do more, more intelligently, than just merely making disclosure.

ASSEMBLYMAN HORN: Let me draw on your knowledge again for one more question. Let's assume that an Arizona land sale company advertises in a national magazine. It, of course, must file in accordance with the Federal law. Do they also have to register in each and every state that the magazine is distributed in that has such a disclosure law?

MR. MARKOWITZ: I think that this is one that is still in the air. Having filed with the Federal - and most of the states now - I am just trying to remember - I think they probably would have to, but what they do is

just put in their HUD filing and there are usually concurrent periods of time.

Now New York makes one very solid distinction. If in New York State at the time of the initiation of the transaction, at the inception, if the developer gives a deed to the customer, he doesn't have to register with New York State, but he still has to register with the Federal government because the HUD exemption is only if you have registered and been approved by New York State.

To answer your question, I am not quite certain that an advertising in a national magazine would require you to file in all those states and there are only several states that have pervasive legislation now.

ASSEMBLYMAN HORN: I see. Thank you.

ASSEMBLYMAN KENNEDY: You spoke about the Federal legislation already on the books. In making that statement, were you speaking more of Senate Bill 2113 with regards to there not being a need for it since the Senate bill, the Bateman-Tanzman bill - and I have not had an opportunity to review that particular bill before today - relates to subdivisions specifically outside of the State of New Jersey?

MR. MARKOWITZ: Right.

ASSEMBLYMAN KENNEDY: So I can understand the point you are raising.

MR. MARKOWITZ: I think the problem would be the same. In other words, we are talking now again about consumer protection in my opinion rather than real estate sales because they could just as well be selling washing machines, etc., except that there is a permanence to the land and there is a long-term aspect of the transaction. But basically what you are talking about is telling the consumer in the first instance that which you know about the property and which conforms with his

desires - Does he want a lake? Does he want a golf club? Will there be sewage disposal - fresh water? Will there be roads? How far is the nearest hospital or shopping center? - having that comply with his needs.

The second part of it is making sure that all those promises, promises, turn into reality either by funding or other safeguards. And the best way to start is by knowledgeable assessment, not necessarily a broad base of disclosure to the consumer.

ASSEMBLYMAN KENNEDY: Assemblyman Fay in his bill, in addition to referring to out-of-state property, also is concerned about the New Jersey developer, developing land here in New Jersey.

MR. MARKOWITZ: I think he is right. There is no distinction. Not to put a negative connotation, but if the customer's wishes are not to be fulfilled, it makes little difference whether he bought in Sussex County or immediately over the Delaware in the adjoining Pennsylvania county or New York State county.

ASSEMBLYMAN KENNEDY: And the Federal legislation you are referring to would cover the New Jersey developer developing land here in New Jersey?

MR. MARKOWITZ: No, it would not. Of course, by the nature of Federal law, anything that is purely an intrastate transaction is not covered by Federal law. But again the developer in New Jersey basically, in order to tap his best market, if he uses the newspapers - and this would be perhaps the New York Times - or radio or television, would seep across the border and probably be subject to interstate control. But the Federal law very distinctly, as it must, doesn't control a completely intrastate transaction.

ASSEMBLYMAN KENNEDY: Your premise here as you started off to testify was that you thought perhaps there was not a need for either bill, as I understood

your remarks, and you made reference to the Federal legislation already on the books. Yet you now acknowledge that the laws on the books, the Federal legislation you are referring to, does not really cover the New Jersey developer developing land here in New Jersey.

MR. MARKOWITZ: So then I will amend my statement to that effect, but I think that would easily be covered by somehow incorporating the Federal standards into the situation of a New Jersey developer selling solely to New Jersey, intrastate. So I think the need for the pervasive legislation to in effect shoot the ad with a shotgun is not necessary. I don't think there is that much intrastate development in New Jersey. In other words, the New Jersey developer who is developing - and New Jersey because of its size and the lack of large tracts of land is not one of the booming states in development - in order to attract a market in New Jersey in the southern part of the State must advertise in the Philadelphia regional market, and in the northern part of the State, he must advertise in the New York Metropolitan market, in order to attract sufficient buyers to sell. So I think there is an area, intrastate sales, which is not specifically covered, but I think the differential is more theoretical than real.

ASSEMBLYMAN KENNEDY: Thank you.

Any further questions?

ASSEMBLYMAN HORN: I keep thinking of more. You raised another very good point - as I look at the bills before us today with regard to the senior citizen communities and with regard to these bills - for example, Assembly 1603 imposes the jurisdiction on the Real Estate Commission - 2198 and 2199, I am not sure which agency of government is involved there - whether or not all of these, let's call them enforcement problems, should come under the jurisdiction of the

Department of Consumer Affairs. What would you think of that? Let me preface that by saying that as I recall the statement of the representative of the Real Estate Commission and as I understand the original purpose for setting up the Real Estate Commission, wouldn't this type of inspection and enforcement better come under the Office of Consumer Affairs?

MR. MARKOWITZ: Again my answer would be it is basically a consumer-protection type of legislation, with all due respect to these gentlemen, and they have their work cut out for them in terms of real estate practices. Again I reiterate this is not basically a real estate problem. I could point out to you at the Federal level, the administration is under HUD Housing and Urban Development, but in a separate office of Interstate Land Sales Regulation. They recognize that this isn't as such in the same ball game as urban core housing development, etc. And George Bernstein, the administrator, is a man whose training has been primarily in insurance enforcement. In New York State, the registration is in the Secretary of State's office and originally there were people from the Securities Department, those who were the gimlet eyes looking at securities offerings, and now they have become specialized in this field of interstate land sale. But it is in that section of the Secretary of State's office rather than in the Real Estate Department.

Again I would say this is not in any way meant to deprecate the work of the Real Estate Board, but I think the thrust of this is in the area of consumer awareness rather than in the buy and sell transaction of real estate.

ASSEMBLYMAN KENNEDY: Is there anyone else who has not testified and who would like to testify?

MR. FLEMING: I would like to speak in partial rebuttal to the gentleman's remarks. I don't believe

they are quite accurate.

ASSEMBLYMAN KENNEDY: You can speak to him outside after the public meeting.

MR. FLEMING: I happen to know George Bernstein very well. What he said is not true. There is absolutely no inspection on the Federal level.

MR. MARKOWITZ: I didn't say there was, sir. New York State makes inspections. The Federal is only a disclosure.

MR. FLEMING: George Bernstein says if the states don't get some good laws like the Fay Bill or our bill, they are going to have to do something on the Federal level. They don't want to do it because they would need a thousand people to cover the country.

ASSEMBLYMAN KENNEDY: All right.

Sir, will you give your name, please.

C A R L A. B E R T O C H: My name is Carl Bertoch. You called me earlier and I hadn't intended to make any comments, but in the light of this witness's comments concerning these two bills, I thought it might be appropriate to say a few words. Because in some respects I agree with him and in some respects I disagree with him.

ASSEMBLYMAN KENNEDY: Fine.

MR. BERTOCH: My name is Carl Bertoch. I am President of the National Land Council and an attorney from Tampa, Florida. In our private practice we represent developers and I consider myself somewhat familiar with the land sales laws around the country.

Today we have approximately 40 states that have subdivision laws that regulate out-of-state offerings.

The primarily bill you are considering today is Assemblyman Fay's bill, 1603, which does closely parallel the Federal bill in that it is a disclosure act and it is purely and simply a disclosure act. The

Bateman-Tanzman Bill, Senate Bill 2113, previously referred to, is a regulatory act. It is not a disclosure act because in its provisions it provides for the registration of the land only if certain conditions are met.

I think the states that have had a history of regulating the sale of promotional subdivisions have found that disclosure is not really the complete test to either protect the honest people in the business or the purchasing public.

I think it is very important that this distinction be clearly brought out.

I am somewhat aware of some of the history of the Bateman Bill and the fact that New Jersey has an interest in the so-called retirement community act, retirement subdivisions, which is administered by, I believe, the Department of Community Affairs or Consumer Affairs. This deals with in-state, local New Jersey offerings as well as out-of-state offerings and in concept the Bateman Bill was to take over the area that the Real Estate Commission has been operating in the past, and that is regulating the sale of out-of-state promotional subdivisions.

Both bills track some of the exemptions, which are also in the Federal bill, to take out residential housing, commercial housing, etc., or similar promotional schemes on which there is an obligation to build within two years. However, the Bateman Bill does specifically bring in out-of-state condominium offerings. So it is a little more comprehensive in its scope than the Fay Bill, Assembly Bill 1603.

The idea to bring in condominiums was to take care of the retirement subdivision located outside of the State and leave the Department of Community Affairs exercising its control over retirement subdivisions locally within the State. Probably there is - I don't

know if this is true - but there should be a parallel bill to eliminate the duplication of jurisdiction because at this time if there would be, say, for purposes of illustration, a retirement subdivision in the State of Florida, it would have to register with the New Jersey Real Estate Commission if it was operating through local brokers as well as with the Department of Community Affairs.

I think the Federal authorities have recognized that there are certain weaknesses in the Federal bill. Particularly, one of the exemptions that they wanted to eliminate and have proposed legislation to eliminate from their proposal is the five-acre tract, which is still retained in Assembly Bill 1603. So I think it would be appropriate to eliminate in Assembly Bill 1603 that exemption of five-acre tracts because it has been found that the problems attendant to sales of tracts five acres and larger in some of the western areas are some of the same problems that are present in sales of parcels of lesser size.

ASSEMBLYMAN KENNEDY: Thank you. Are there any questions?

ASSEMBLYMAN HORN: I'm sorry I missed this the first time you gave it. Would you again explain the distinction that you said was very important?

MR. BERTOCH: Assembly Bill 1603 is truly a disclosure act. It requires a filing of a statement of record with the Real Estate Commission, disclosing pertinent and relevant facts about the offering. It does provide penalties if you don't fully disclose. However, Senate Bill 2113 requires that an application for registration be filed and that certain affirmative findings be made by the Real Estate Commission prior to registering the land. So it requires a discretionary determination by the agency involved as to whether or not it should register the property and permit it to be offered

for sale to local residents.

ASSEMBLYMAN KENNEDY: Fine. Thank you.  
Assemblyman Dennis, do you have any questions?

ASSEMBLYMAN DENNIS: No.

ASSEMBLYMAN KENNEDY: Is there anyone else who  
would like to testify here this morning?

Assemblyman Fay?

Excuse me. Did Mr. Sendelsky arrive yet? Does  
anyone know? Is there any representative of Mr. Sendelsky  
here from the New Jersey Builders Association? I under-  
stand he is on his way.

J O H N J. F A Y, J R.: Assemblymen, I  
have had an opportunity to look at S 2113 and also to  
listen carefully to all the evidence that has been sub-  
mitted so far. I would like to make a few comments  
on them.

First, my motivation is primarily and basically  
consumer protection. There is no doubt in my mind  
that the consumer is not being protected inside the  
State and even with the Federal law, he is not getting  
the complete protection that I feel he deserves from  
the Federal government at this time. The very fact  
that it was mentioned that other states in the Union -  
Pennsylvania was mentioned and I was told this morning  
by Legislative Services that Colorado is moving into  
this area - are moving into this area is the reason  
that I still feel that we need both outside and inside  
the State protection where there is a gap and where  
the Federal government isn't as vigorous as they should be.  
We have noted the 150 complaints for that one month and  
I think we can assume that figure is holding somewhat  
stable. And I think consumer protection should be the  
major impetus for this kind of legislation.

We just can't do this with S 2113. Whereas I  
am willing to accept amendments from the Senators, I

think the Senators would also have to accept at least the recommendation of an amendment from me that the individual inside New Jersey also needs the same protection. The point was made if he is buying on this side of the Water Gap or on this side of the Delaware or this side of the Hudson, why shouldn't he have disclosure? And the fact of the matter is that the average homeowner isn't sophisticated.

It is bad enough when a person who pays \$2,000 or \$3,000 for a car gets a lemon. That is a traumatic enough experience. But it is far worse when he is spending \$20,000 to \$50,000 for a home only to find out that he didn't get what he thought he was getting, that he wasn't clever enough or astute enough to be able to read the fine print.

So I am saying if the Real Estate Commission can't do this, if they don't have the staff, so be it. The Consumer Protection Department is in its infancy. I haven't discussed this with Mrs. Fenwick, but I am sure if the moneys were supplied by the State and that is the logical place for it, it could be handled.

Of all the statements made, the one that I really choked on was the statement that there were no abuses in the State. I don't have to go three blocks away to find abuses. I don't think anybody in the State has to go very far away to find abuses that disclosure will at least help alleviate. Disclosure most certainly is needed. It is needed as much inside the State from the developers as it is outside. And the good developer doesn't have to be concerned. I don't think the 14 days is such a great problem to consummate this kind of an important purchase. I don't think that is unreasonable at all. I think the good developers who have a fine reputation will be only too glad to do this. It is the other ones we have to worry about as in any matter of abuse.

I insist that there are abuses. I insist that there are documented abuses from interstate and intrastate developers.

I again will ask that your committee do the major writing of this bill now. I want to cooperate with you 100 per cent and I hope we do have a piece of legislation to present in the near future.

ASSEMBLYMAN KENNEDY: Thank you, Mr. Fay. Are there any questions at all? (No response.)

P H I L L I P C O C U Z Z A: My name is Phillip Cocuzza. I am the Executive Vice President of the New Jersey Builders Association. I apologize to you gentlemen for bringing in the second team. Our President, Mr. Sendelsky, is on the way. I imagine he will be here momentarily. With your permission, if he does arrive, I would like to relinquish the chair to him.

Before I actually get into our statement, I would like to answer a couple of things which have already been raised and I think are probably at the heart of the problem.

It is our understanding - and again I hope you will bear with my inexperience in this area - that the full disclosure principle was brought out by Senator Williams when he first sponsored the Interstate Full Disclosure Land Sales Act, which our national association supported. I think the idea behind it was the fact that people in New Jersey might be purchasing land in Phoenix or Florida or some place like that and, of course, having no opportunity to actually physically inspect this land. On that basis, obviously it makes great sense to have full disclosure.

As far as the intrastate sales are concerned, I think it is a slightly different problem if you look at it. Number one, the people do have the ability to actually physically inspect the land here in New Jersey

if they are buying land in the State and they live here currently. It is a slightly different animal. They can physically inspect the land themselves. They don't have to have an inspector do it.

Secondly, we do have rather clear-cut, stringent subdivision control laws in the State of New Jersey. There is no question about that. We have supported amendments to these or actually a redrafting of Title 40, as you know, in 1422, which we think will even strengthen that further.

In addition to that, you must remember a Flood Plains Bill was just recently passed, which is going to alleviate part of the problem of possible sales in flood plains areas.

I think these are built-in, long-term, traditional protections for the consumers in New Jersey. We are truthfully just as consumer oriented as anyone. We want to sell a good product. And we agree wholeheartedly with Assemblyman Fay that probably the single most important purchase anyone makes in his life is a home. We want to deliver a safe home and certainly don't want to jeopardize the life savings of any New Jersey citizen when they invest in a home.

I think there are other things that are involved in this also. For instance, I think the Times' article on one of the major developers was brought up. If you were to carefully read that article, I think you would find that most of the complaints had not to do with land sales but rather with building code violations, which, of course, I don't believe 1603 directs itself to. That is an entirely different situation.

What I am actually asking for right now is that we enforce that which is on the books before we rush ahead with additional legislation. There is no question that we do have many protections in the law right now. Of course, those protections already built in

should be used properly before we rush into additional -- I shouldn't say "rush" - that is an unfair word because you are considering it here today -- before we pass new legislation. I think those laws on the books are adequate to protect the intrastate buyer of land in New Jersey.

Those are the principal comments that I wanted to actually make before I read our statement. I would like to get into our testimony now.

As I say, I apologize for our President not being here. We are going to comment briefly on all four of the bills before you today. We will speak on each one individually.

As far as 1319 is concerned, this measure would require that, in any instance where a developer arranges for mortgage financing, he also indicate (in bold type) on the sales contract that private mortgage insurance may be required by the lending institution.

We believe that this is a just and reasonable requirement and that such a measure would represent a greater degree of understanding on the part of the home buyer as it regards the contract for purchase.

However, there is one slight amendment - for the sake of practicality - which we would recommend.

The bill provides that the act shall take effect immediately. Since adoption of the measure would entail a change - albeit not of content - in the standard contract, builders will need "a grace period" during which new standard contracts (with bold print where necessary) must be designed and printed.

We would advise that the bill be amended to provide that it take effect no sooner than 90 days after it is signed into law. This should provide sufficient time for builders to obtain re-designed contracts.

In all other respects, the measure has our full support.

Going off the statement again, in answer to Assemblyman Horn's question, at which point the M.G.I.C. insurance is invoked, I think, if you read the bill, it says - it should contain this catchall phrase in there, because mortgage insurance may be at some time required. So if that becomes a standard phrase in the builder's contract, at whatever point it becomes active, it doesn't make any difference, because it would be in all the contracts. That is the reason we give the industry 90 days to redo their contracts.

As far as 1603 is concerned, I am going to summarize here for you because I think you have heard most of this.

Let us just say that we fully support S 2113 because we think it is directed toward the interstate as opposed to the intrastate. On that basis, we support it.

As far as A 2198 and A 2199 are concerned, really our expertise is not very broad in these particular areas. We have referred this to our attorney who has worked I think on the actual preparation of the full disclosure law for condominiums and he strongly recommended that we support both these measures to incorporate cooperatives. As I say, we do support both of the measures as written.

If you have any questions, I would be glad to answer them.

(Complete statement of the New Jersey Builders Association can be found beginning on page 47.)

ASSEMBLYMAN KENNEDY: So you see the need for consumer protection with regard to land outside of New Jersey, but not within New Jersey; is that correct?

MR. COCUZZA: From the point of view that it is probably difficult for the average person who is going to buy these lands to physically inspect them. I think intrastate you don't have that problem. If a

guy lives in Somerset County and he is going to buy something in Ocean County, he could actually physically inspect that. Plus you have the additional safeguard that before that land could be subdivided in Ocean County, it has to pass the local planning board. And we know what is required of our local planning boards as far as subdivision approval is concerned.

In addition, you do have new laws recently on the books as concerns flood plains which could be a problem. Of course, that is going to restrict whatever development may take place in the flood plains or even flood fringe areas since they have broadened it considerably with that legislation.

Let me make one other general point, if I may. I frankly haven't researched this, but I have a real gut reaction to it. I have been before the Legislature and similar bodies on many occasions where legislation was being considered and I have made the same plea I am going to make now.

Many of these things cost money to do. I have no idea what the additional cost would be with this. I frankly don't know. Maybe it is \$100 - maybe it is \$1,000 a house. Whatever it is, please understand that this is not a cost to the builder. It is a passed-on cost to the consumer in the price of a house. What we are saying is, oftentimes the Legislature passes legislation, well-meaning, but it is in a sense redundant because there is another law on the books. And what we do is end up increasing the cost and it is sloughed aside by saying, "Well, pass it on the homeowner; it doesn't cost the builder anything." We are not down here pleading for the builder because he doesn't absorb the cost. He passes it on.

If you add \$10 here for this thing, \$100 there, \$1,000 for open burning or whatever the question may be, you are increasing constantly the cost of the house.

Plus you add to that inflation and the rising cost of land, etc. We are just feeding inflation and the \$20,000 house of ten years ago or five years ago, for that matter, maybe today is selling for \$40,000.

We are penalizing the homeowner or the potential homeowner with these added costs all the time and continually taking more and more people off the potential home-buying market.

I think we have to consider this. Because we are trying to protect our citizens and there is no question we should. But let's do it with some reasonableness and not protect them so much that they can no longer afford to buy a house.

ASSEMBLYMAN KENNEDY: Thank you.

Are there any questions?

ASSEMBLYMAN HORN: Just a comment. I think the point you made about developers in New Jersey having to go through so much just to get their subdivision approval is a very good one. It seems to me we are at the point now where a developer has to sell his soul to get a subdivision approval. I guess in a way it is good because it ultimately inures to the benefit of the prospective purchaser because the planning boards are very much aware of some of the major items, such as flooding, drainage, sewage and those items. I think it is a good point.

ASSEMBLYMAN KENNEDY: Thank you very much.

I believe that just about terminates the public hearing this morning on the various legislation.

Is there anyone else though who wanted to testify who did not testify? (No response.)

I want to thank you all for taking the time out to come down here this morning to help out the Committee in its consideration of the legislation involved, and I declare this public hearing terminated.

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(Hearing concluded.)

SUBMITTED BY PHILIP COCUZZA

STATEMENT

BY

LEONARD SENDELSKY, PRESIDENT  
NEW JERSEY BUILDERS ASSOCIATION

ON

A-1319, A-1603, A-2198, A-2199

BEFORE

ASSEMBLY COMMITTEE ON  
REVISION AND AMENDMENT OF LAWS

TRENTON, NEW JERSEY

APRIL 18, 1973

Good morning. My name is Leonard Sendelsky and I am the President of the New Jersey Builders Association. The Association is made up of nearly 1700 builders, material suppliers, subcontractors, lending institutions, utilities and others who earn their livelihood through the building industry.

In addition, the Association hopes to help solve many of the housing problems which face our State and, to that end, lends its efforts and its voice where it deems appropriate.

Each of the four measures under consideration today will affect the housing picture in New Jersey and my comments, be they brief in some instances, will be directed toward each bill individually.

A-1319

This measure would require that, in any instance where a developer arranges for mortgage financing, he also indicate (in bold type) on the sales contract that private mortgage insurance may be required by the lending institution.

We believe that this is a just and reasonable requirement and that such a measure would represent a greater degree of understanding on the part of the home buyer as it regards the contract for purchase.

However, there is one slight amendment --- for sake of practicality --- which we would recommend.

The bill provides that the act shall take effect immediately. Since adoption of the measure would entail a change --- albeit not of content --- in the standard contract, builders will need "a grace period" during which new standard contracts (with bold print where necessary) must be designed and printed.

We would advise that the bill be amended to provide that it take effect no sooner than 90 days after it is signed into law. This should provide sufficient time for builders to obtain re-designed contracts.

In all other respects, the measure has our full support.

A-1603

Oftentimes several different bills are introduced, each with the same purpose or avowed end. Such is the case with A-1603 and S-2113, both of which provide for full disclosure by developers of certain subdivided lands.

And, as is often the case, one of the bills achieves its end in a much more reasonable, yet equally effective manner.

For while the principles of the Full Disclosure Act are amenable to our Association, we believe it unnecessary to include lands within the State of New Jersey under its provisions. That is not the purpose of the Full Disclosure Act and would only prove to be a costly and time-consuming nuisance for the State's landowners.

Actually, the inclusion of inter-state land transactions would be superfluous, since such transactions are already governed by the Federal Full Disclosure Act --- a measure which was introduced by New Jersey Senator Harrison A. Williams.

Reports from the New Jersey Real Estate Commission, the body which would administer the revised law, indicate that there has been a minimum of problems concerning intra-state land dealings. Hence, there would seem to be little reason for such land to be included --- as it is in A-1603.

In addition, under the provisions of A-1422, the proposed revision of the Land Use and Zoning Law, any such information would be required to be on file with the County Clerk.

Finally, if the Commission was forced to assume the additional burden of intra-state land responsibility, it would place a tremendous strain upon the personnel and budget of this limited-resource body.

Our recommendation, after reviewing both A-1603 and S-2113, is a rejection of the former as impractical, and support for the latter as reasonable.

A-2198, A-2199

Both of these measures represent amendments to existing statutes --- amendments necessitated by the growing popularity of the condominium as a residential dwelling unit.

A-2198 would amend the Uniform Securities Law by exempting transactions in a share or membership interest of a cooperative housing corporation or association.

Such an exemption is welcomed since the inclusion of such transactions would not only be a red tape-frought nuisance, but also a duplication of effort since full disclosure would be achieved under the aforementioned S-2113. For filing under the Uniform Securities Law is a time-consuming and overly-detailed process.

A-2199 would include a share or membership interest of a cooperative housing corporation or association under its definition of "unit".

In both cases, our Association envisions no problems concerning either measure and gives to each our full support.

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