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DeGazon-Sponsored Bill With Far-Reaching Implications for Local Real Estate Industry Held in Committee

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A measure that could seriously change the Virgin Islands' current real estate licensing laws was held in the Committee on Economic Development, Regulations, and Agriculture during a hearing last week, with testifiers expressing a number of concerns with the measure. Sponsored by Senator Allison DeGazon, Bill No. 33-0350 seeks to amend V.I. Code to update the requirement for real estate broker and sales associate licensure in the territory.

Attorney Nesha Christian-Hendrickson, president of the Virgin Islands Bar Association (V.I.B.A.), outlined in her testimony that there were several significant issues that have prevented

V.I.B.A. from supporting the bill.

The first issue she addressed was changes the measure seeks to make to the VI Real Estate Commission. If Bill 33-0350 were to pass as is, it would amend 27 V.I.C. § 421a(b) to alter the composition of the Virgin Islands Real Estate Commission. These changes would require the commission to "include at least one representative from each of the following districts: St. Croix, St. John and St. Thomas/Water Island and limit the commission from having no more than three members reside in any district."

"This would create districts that are inconsistent with how districts are defined in the Virgin Islands," said Ms. Christian-Hendrickson. "Separating St. Thomas and St. John into separate districts would permit a situation in which the commission could be comprised of three representatives from St. Thomas, three from St. John, and only one from St. Croix. This would leave roughly half of the Virgin Islands with only one-sixth the representation given to the other half."

Ms. Christian-Hendrickson then pointed to the lack of due process and the absence of a code of ethics in the bill. The proposed measure would require the Real Estate Commission to enforce discipline on licensees, and require the commission to notify the Division of Banking and Insurance and the Director of Banking and Insurance on the enforcement or disciplinary actions taken. However, Ms. Christian-Hendrickson pointed to U.S Supreme Court Ruling *Dixon v. Love*, 431 U.S. 105, 112 (1977), which reads, "Suspension of issued licenses involves state action that adjudicates important interests of the licensees. In such cases, the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment."

"It does not appear there are sufficient procedural safeguards in place to comply with the requirements of due process," Ms. Christian-Hendrickson said. She added that the measure does not adopt or appear to authorize the commission to adopt a code of ethics governing licensed brokers' conduct. "Without such a code, it is unclear what standards the commission is expected to use in disciplinary enforcement. Further, licensees will have no ability to judge what conduct is ethical before facing disciplinary action, creating additional due process concerns," she said.

Along with Ms. Christian-Hendrickson, Richard Evangelista, commissioner of the Department of Licensing and Consumer Affairs, expressed that while the proposed measure seeks to modernize the existing law in the territory, it also disrupts a harmonious balance between creating opportunities for real estate and property management professionals while ensuring that the community's best interest is at the forefront.

"In the last more than three decades, there have been many changes both in the federal laws and in the stateside and territorial practice that have affected the real estate profession," said Mr. Evangelista. "These changes have required in the interest of protecting Virgin Islanders the setting of higher standards for Virgin Islands real estate licensees that will better reflect our current times, and that are more consistent with the nation's best practices."

While some testifiers voiced their concerns with the bill, others felt that the proposed measure was the first step in the right direction in modernizing the real estate licensing law, which was implemented 52 years ago.

Fortunata Pascal, the 2020-2021 vice president of the Virgin Islands Territorial Association of Realtors (V.I.T.A.R.), said, "Updating the language and the requirements to meet current real estate practices takes advantage of decades of lessons learned across the nation, and provides consumers the protections and tools necessary to help them make the right decisions."

Agreeing with Ms. Pascal's sentiments, Ava Gail Bourdon, the 2020-2021 president of V.I.T.A.R., told lawmakers, "The framework of Bill 33-0350 sets a solid base for generations to come. The proposed updates to this bill would bring this statute into the 21st Century."

St. Croix Attorney Lydia Moolenar, in a letter to Ms. DeGazon, said, "Your position that the law is 52 years old is of no moment as the United States Constitution is more than 250 years old and still fully functioning."

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