STATE OF MISSISSIPPI

Office of the Governor

April 22, 2021

TO THE MISSISSIPPI SENATE

GOVERNOR'S VETO MESSAGE FOR SENATE BILL 2624

I am returning Senate Bill 2624: "AN ACT TO AMEND SECTION 73-35-23, MISSISSIPPI CODE OF 1972 TO REQUIRE THE REAL ESTATE COMMISSION TO ESTABLISH A PILOT PROGRAM ALLOWING ADMINISTRATIVE HEARINGS ON CERTAIN LICENSING MATTERS UNDER ITS JURISDICTION; TO PROVIDE THAT ADMINISTRATIVE HEARING OFFICERS SHALL BE STAFF ATTORNEYS EMPLOYED BY THE ATTORNEY GENERAL; TO AMEND SECTION 73-35-25, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT AN APPEAL TAKE [sic] A DEFENDANT FROM AN ADVERSE RULING OR ORDER OF THE MISSISSIPPI REAL ESTATE COMMISSION SHALL ACT AS A SUPERSEDEAS; TO AMEND SECTION 73-35-21, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING AMENDMENT; AND FOR RELATED PURPOSES."

Senate Bill 2624 allows persons licensed by the Mississippi Real Estate Commission and charged with a violation of Commission rules or procedures to bypass the Commission entirely and elect to have an administrative hearing officer (designated by the Attorney General) conduct the hearing and render a final decision on the charges. Specifically, Senate Bill 2624 confers on the administrative hearing officer "the same powers and authority in conducting hearings and rendering decisions as granted to the commission." Further, Senate Bill 2624 requires that the "clear and convincing standard of proof shall be used to examine factors during all hearings." Finally, Senate Bill 2624 amends Miss. Code Ann. § 73-35-25 to provide that if an appeal is taken to the Circuit Court from the decision of the Commission or administrative hearing officer, such appeal shall act as supersedeas until the appeal is resolved by the Circuit Court, unless the Commission can establish by clear and convincing evidence that immediate and irreparable harm will result to the public if the licensee is permitted to continue to operate.

While I am troubled that the Commission has failed to adopt comprehensive written policies and procedures to ensure consistent procedural due process is followed in connection with the handling of complaints and disciplinary proceedings, I am unwilling at this time to remove final disciplinary authority from the Commission. While there is nothing unusual about the use of a hearing officer to preside over a disciplinary proceeding, the hearing officer's findings and decision must be subject to review and final approval by the governing board or commission charged with the responsibility of licensing and regulating that profession in the State. Senate Bill

2624 completely removes the Commission from the disciplinary process at the election of the person charged with a violation and confers upon the hearing officer the full disciplinary authority of the Commission.

Additionally, while it may be appropriate to apply the clear and convincing standard of proof to alleged violations implicating charges of fraud or intentional misconduct, this heightened standard of proof should not be applied to alleged negligence-based violations of Commission rules or procedures. Finally, the proposed amendment to Miss. Code Ann. § 73-35-25 to provide that if an appeal is taken to the Circuit Court from the decision of the Commission, such appeal should act as supersedeas until the appeal is resolved by the Circuit Court is a good proposed change in the law. Such a stay of the Commission's final disciplinary decision, absent the Commission establishing irreparable harm to the public, will ensure that a licensee's appellate rights are meaningfully protected.

Despite some positive changes to current law proposed by Senate Bill 2624, I am compelled at this time to veto the bill. I encourage all stakeholders to come together for a meaningful discussion of these and other issues and attempt to reach a resolution that is agreeable to all parties prior to the 2022 Legislative session.

Respectfully submitted,

TATE REEVES
GOVERNOR

4/22/2021
8:16 A.M.