

From: George J. Gioiella -(joy-ella) HUD/FHA 203 Consulting
[mailto:george@carolinaes.com]
Sent: Friday, June 19, 2009 2:30 PM
To: 'Bruce Rudd'; inspector01@earthlink.net; rzechini@ncrealtors.org;
lmartin@nchba.org; mcarpenter@nchba.org
Subject: FYI - Chew on this!

While you may believe you have a lock on SB1007 – you do not.

You haven't seen anything yet from me – wait until Monday! In the near future the home inspectors involved in this will have to answer ethics complaints for violating the NCHILB Standards. As for the rest of you, including the lobbyists there will be an investigation and you will go the way of Jim Black.

Not protecting the public, that is arrogance, greed, putting your own and corporate special interests before the good of the public, and bypassing the Board are your downfall. My conclusion is that you have more nerve than brains.

However, there is an option for you so if you are interested please contact me.

Have a great weekend.

Proverbs 16:18 Pride goes before destruction, And a haughty spirit before stumbling.

George J. Gioiella – (joy-ella)
[Independent Investigative Journalist](#)
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George,
I am going to try one last time to respond to you using logic and reason.

If you read the points below and still disagree with me, then so be it. I am forwarding this to all Licensure Board members and a few others as well.

- The bill (SB1007) establishes a formal training procedure for prospective Home Inspectors and eliminates the obviously broken and much abused associate program. This is clearly in the interest of the general public and the Home Inspection profession.
- The bill establishes a waiting period and requirement to keep your enabling license for those using the contractor's, architect's or engineer's exemptions in order to help eliminate abuse of these privileges. Again, clearly in the interest of the general public and the Home Inspection profession.
- The bill establishes a requirement to report criminal convictions to the Licensure Board. Clearly in the interest of the general public and the Home Inspection profession.
- The bill increases financial responsibility and establishes a requirement for general liability insurance- with parameters to be set by the Licensure Board- in case we damage the property we are inspecting or make a serious mistake. Clearly in the interest of the general public and responsible elements of the Home Inspection profession.

- The bill requires anyone reactivating an inactive license to make up his or her CE requirements, up to 24 hours. Clearly in the interest of the general public and the Home Inspection profession.
- The bill increases educational requirements for home inspectors and permits the Licensure Board to increase the required number of hours up to 20 per year. Clearly in the interest of the general public and the Home Inspection profession.
- The bill requires an Inspector writing up a defect as a violation on N.C. state residential building code to know what he is talking about and discourages irresponsible Inspectors from trying to require an older home to be brought up to current standards. Clearly in the interest of the general public (sellers are part of the general public, too- we have had this conversation before) and the Home Inspection profession (reduces our liability).
- The bill specifically places safety items in the summary, at the Inspector's discretion, and insulates us from a runaway Licensure Board made up of political appointees trying to change the rules on us. This is what we were fighting for two years ago. If you truly have the best interests of the general public and the Home Inspection profession at heart, you should support this wholeheartedly.

I know that there are elements of the bill that well meaning, intelligent people can disagree over. There are a few items that I would change, too, given the opportunity. Probably none of the parties involved in the negotiations- NCLHIA, NC ASHI, NCAR or the NC HBA- is completely happy with everything in the bill. That probably means we got it about right. However, on balance, the bill is undeniably favorable to both the general public and the Home Inspection profession in this state. This bill will not solve all the problems we have, and will probably inadvertently create a few new ones nobody could foresee, but it is a big step in the right direction. What people need to understand is that we are in this for the long term. If things do not work out as intended we will still be here to come back and make changes as needed in 2-3 years when we can see how things are playing out.

You have every right to disagree with the bill, and to make your opinions known, however you also have a responsibility to the profession to do so in a non destructive way that does not harm the image of Home Inspectors in the Legislature and with other stakeholders. You have an incredible level of energy and a desire to do what you think is right, and that is admirable, but for the good of everyone, including yourself, please learn to use that energy in a constructive manner. If you can do this you can still be a strong force for good in our profession.

Thanks for listening,
 Fred J. Herndon
inspector01@earthlink.net
 N.C. Home Inspector's License # 322
 President, North Carolina Licensed Home Inspector Association

George Gioiella's – Reply to Fred Herndon and Company

From: Fred Herndon [mailto:inspector01@earthlink.net]
Sent: Saturday, June 20, 2009 6:32 PM
To: 'George J. Gioiella -(joy-ella) HUD/FHA 203 Consulting'; 'Bruce Rudd'; rzechini@ncrealtors.org; lmartin@nchba.org; mcarpenter@nchba.org; 'John Guy'; Bob Scott; garrywalker@nc.rr.com; 'Chris Ferguson'

Cc: Gerald Canipe; David Jones; cottagetocastle@charter.net; Marion Peeples; John Hamrick; tsummer@aol.com; triebel@mindspring.com; Chris.Noles@ncdoi.gov
Subject: RE: FYI - Chew on this!

George,

I am going to try one last time to respond to you using logic and reason.

[George J. Gioiella - (joy-ella)] One of the first things I learned during my Jesuit education is "Begin with a false premise and you shall draw a false conclusion" I wrote and taught a home inspector continuing education course along these lines; Problems of Inspection Knowledge - Epistemology - Reality and The Mind - Separating Reality/Truth From What We Believe, that is removing all doubt before drawing a conclusion and forming a premise.

As for your using logic and reason it seems you fall far short of the mark. You folks began your relationship with the realtors and home builders based on a completely false premise, which is, that you are somehow empowered and qualified to bypass the Board and prepare legislation for mandatory pre-licensing or changes to the Standards. The Board is the legally empowered body and its members duly appointed for home inspection governance – not you folks, the realtors or homebuilders.

You argument that the Board has not moved quickly enough is at the very least specious. It is the 2003-08 terrorist hijacking of the Board by realtors and homebuilders with the aid of Sen. David Hoyle's 2007 legislation that consumed the Board's attention and recently your usurpation of the Board's authority is what causes lack of progress. The realtors were not successful with their agenda to control the home inspection process for their benefit, (which I have explained and discussed many times in published articles posted on my web site, http://www.guardresinc.com/files/eletter/george_j.htm) so they came to you folks and you bought into their deal.

You, not skillfully I may add, but conveniently play down the downside of your legislation. You mention that it may create problems down the road, often referred to as 'unintended consequences' or 'collateral damage'. It seems to me this is a massive understatement. Briefly let's explore a few of the possible unintended consequences. By empowering and encouraging home inspectors to quote building codes based on history, realtors will say with empowerment from your legislation, and they will be informed by the NC Association of Realtors, that the inspector needs to remove items like the lack of smoke alarms, ground fault interrupters, two wire systems and many more items because at the time the home was built code did not require these items. Over the years how many times have inspectors heard this from realtors? By changing the standards and removing 'Adversely affects the habitability of the dwelling' you remove a criterion that originates in 1942 with the original Federal Housing Administration.

As for Mr. Rudd's replacement, 'Documented visible evidence' perhaps he has been alone with his own ego too long. Fred, do you really believe that if SB1007 is passed that the realtors and home builders will bother with you afterwards? If you do I have some bonds in the new bridge to the Outer Banks I will sell you. All of the changes to the Standards in SB1007 are fatally flawed and in no way will protect the public - they are indefensible and clearly will tie the hands of Board's rule making for years to come, if not permanently.

Morally, as it should, the question arises, Qui Bono, to whose benefit is SB1007? Obviously the realtors and home builders because they will have control of the home inspection board and if politics and history have taught us anything, once the camel gets its head in the tent the rest will follow. But, who else will benefit? It is common knowledge that your association, The North Carolina Licensed Home Inspector Association NCLIHA and NC- American Society of Home Inspectors NC-ASHI are flat broke.

You support increasing the existing twelve hours of continuing education to twenty hours, which seems to be redundant with the advent of mandatory pre-licensing education – all of the new home inspectors should be very well trained. As for the forty eight new hours for existing inspectors you clearly state that NCHLIA an NC-ASHI will provide this over a three year period. With an average continuing education unit cost of \$22.00 per hour that is well over one million dollars. Not a bad payday, but this noticeably brings into question your motives in supporting SB1007. Might there also be more referrals for inspections and other sweeteners from the special interest to you and your cohorts?

Then again, other than an occasional HUD/FHA 203k Consulting project my only other involvement in the home inspection industry, (at least for the remainder of this year when I will be completely retired to writing and fishing), is my home inspection software company Guardian Residential Inspection Program and Carolina Educational Seminars, which is limited to teaching the Pass the Exam six times a year. Passage of SB1007 would provide the opportunity for an upgrade to the software for which I can charge a hefty fee and with all the contractors wanting to get into home inspection so they can also do the repairs, I expect attendance at the Pass the Exam will soar!

However, choices and decisions must always have a moral aspect that ends with the benefit to the largest number of people and does the most good for them. No matter how much it may benefit me financially, I am fiercely opposed to S1007.

A. Elements of the Rule of Law

In his book *The Morality of Law*, American legal scholar Lon Fuller identified

eight elements of law which have been recognized as necessary for a

society aspiring to institute the rule of law. Fuller stated the following:

1. Laws must exist and those laws should be obeyed by all, including government officials.
2. Laws must be published.
3. Laws must be prospective in nature so that the effect of the law may only take place after the law has been passed. For example, the court cannot convict a person of a crime committed before a criminal statute prohibiting the conduct was passed.
4. Laws should be written with reasonable clarity to avoid unfair enforcement.
5. Law must avoid contradictions.
6. Law must not command the impossible.

7. Law must stay constant through time to allow the formalization of rules;
however, law also must allow for timely revision when the underlying social and political circumstances have changed.
8. Official action should be consistent with the declared rule.

SB 1007 violates the existing licensing law because it ignores the rule of law in bypassing the duly legislated and appointed licensing board and secondly contradicts the existing administrative law, which is not being changed in SB1007 in several areas:

Chapter 143, Article 9F

North Carolina Home Inspector Licensure Board

§ 143-151.43. Short title.

This Article is the Home Inspector Licensure Act and may be cited by that name.

§ 143-151.44. Purpose.

This Article safeguards the public health, safety, and welfare and protects the public from being harmed by unqualified persons by regulating the use of the title "Licensed Home Inspector" and by providing for the licensure and regulation of those who perform home inspections for compensation.

§ 143-151.49. Powers and responsibilities of Board.

- (a) General. - The Board has the power to do all of the following:
- (1) Determine the qualifications and fitness of applicants for a new or renewed license.
 - (2) Adopt and publish a code of ethics and standard of practice for persons licensed under this Article.
 - (3) Issue, renew, deny, revoke, and suspend licenses under this Article.
 - (4) Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons licensed under this Article and to enforce this Article.
 - (5) Employ professional, clerical, investigative, or special personnel necessary to carry out the provisions of this Article.
 - (6) Purchase or rent office space, equipment, and supplies necessary to carry out the provisions of this Article.
 - (7) Adopt a seal by which it shall authenticate its proceedings, official records, and licenses.
 - (8) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.
 - (9) Establish fees as allowed by this Article.
 - (10) Publish and make available upon request the licensure standards prescribed under this Article and all rules adopted by the Board.
 - (11) Request and receive the assistance of State educational institutions or other State agencies.
 - (12) Establish continuing education requirements for persons licensed under this Article.
 - (13) Adopt rules necessary to implement this Article.

(b) Exam. - In developing a licensing examination to determine the knowledge of an applicant, the Board must emphasize knowledge gained through experience.

.1103 PURPOSE AND SCOPE

- (a) Home inspections performed according to this Section shall provide the client with a better understanding of the property conditions, as inspected at the time of the home inspection.

SB1007, as does the existing Summary Section, which was added to accommodate the realtors Offer to Purchase and obfuscates obvious defects the homebuyer has a right to know about violates .1103 (a) and the First Amendment Freedom of Speech by restricting what inspectors may or may not put in the Summary Section.

From a moral point SB1007 don not serve the greater good of society, in particular the home buying public.

Lastly, how dare you or anyone else lecture me on my comportment? Frankly, I cannot decide which you possess more of arrogance or ignorance, ne that as it may don't ever lecture me to further your own interests. Particularly since the difference in what motivates us is clearly defined. I am, and for a long as I choose will be a force for good in the home inspection business. As an investigative journalist and I speak for no one but myself, from day one I am a home inspector and homebuyer advocate! Your failure to stand for the rule of law, for something good and right, leaves you to fall for anything, any self serving, ego feeding whim, and obviously you have.

Know that in the next few days I will do everything in my power to defeat SB1007.

George J. Gioiella – (joy-ella)