

Testimony of Carl Gotts, Co-Owner of Vacation St. Croix on

Bill No. 35-0193

**to the Committee on Government Operations, Veterans Affairs, and
Consumer Protection**

May 20, 2024

Good afternoon and thank you to Senator Joseph and other members of the Committee on Government Operations, Veterans Affairs and Consumer Protection for allowing me to testify.

My name is Carl Gotts, my wife Marti and are 35 year residents of St. Croix. In 1996 we formed Vacation St. Croix a Veteran Owned Property Management and Vacation Villa Rental Company, which has been in continual operation for the past 28 years.

I am here to offer testimony in opposition to this proposed legislation.

I do not speak for the entire Property Management industry in the Virgin Islands, but I have many times in the past addressed the various attempts by Realtors to include our business and other businesses under their thumb.

Vacation Villa Rental/Property Management are a completely different business than Real Estate Sales.

The V.I. Department of Licensing and Consumer Affairs has always recognized this, as well as many other jurisdictions including Florida, Oregon, Washington DC to name a few

Even the federal government recognizes our differences by assigning completely different SIC, Standard Industrial Classification codes and distinctions in the NAICS, North American Industry Classification System.

Our specific business is classified under the **SIC Code 7011-16**, in the category of Hotels and sub-classified under Vacation Villas. ***“Providing short term tourist accommodations within a vacation villa or residential vacation home.”*** You cannot be more exact than that.

And under the **NAICS classification 721199. “Primarily engaged in providing short term lodging and tourist accommodations.”**

The Real Estate Industry has its own separate and distinct SIC and NAICS codes, and rightly so, because they are a separate and distinct business activity from us.

As for the U.S. Virgin Islands Code we are currently governed by and are afforded the protections under the Hotelkeeper Laws of the U.S. Virgin Islands, which we would lose if we were classified as real estate.

VI Code, Title 27, Chapter 13 Hotelkeeper 401. Definitions §

The legal definitions in this section of the VI Code Defining a “Hotel”, a “Hotelkeeper or Innkeeper” and the definition of a “Guest”, and these definitions exactly describe our business, our staff and their duties, and our customers.

In Addition, to subject us to the category of real estate instead of a hotel would not only jeopardize these protections, but more importantly, if our business is considered a real estate transaction rather than a hotel transaction; **it will jeopardize our ability to collect and turn over the 12.5% Virgin Islands Hotel Taxes each month.**

Money that goes directly to fund the Virgin Islands Department of Tourism to promote travel to the U.S. Virgin Islands.

Our small firm alone collected and paid over \$415,000 in Hotel taxes over a five year period.

For Full disclosure, I am a licensed V.I. Realtor and have been for the past 30 years. I am a member of the St. Croix Board of Realtors and with that a member of the National Association of Realtors as well.

However, to be clear, I am by no means an active Realtor and my co-ownership of Vacation St. Croix, is a completely separate business and with good cause, we do not want to be associated with the National Association of Realtors.

The National Association of Realtors are desperate to increase their membership by any means necessary.

And that Senators is the real reason for this proposed legislation.

The National Association of Realtors of which all of the local Boards of Realtors are Member Boards, is currently under investigation by the United States Department of Justice and has been recently **convicted in Federal Court** of the charges of **Over-Inflated Commissions, Predatory Practices, Conspiracy and Anti-Trust violations in Federal Court.**

The New York Times headline of October 31, 2023, **“Home Sellers Win \$1.8 Billion After Jury Finds Conspiracy Among Realtors.”**

“U.S. Jury Finds Realtors Liable For Inflating Commissions, Awards \$1.78 B In Damages” reports NBC News November 1, 2023

That’s Billion with a B

There are in fact two investigations headed by the United States Department of Justice, DOJ, one Class Action case on behalf of Home Sellers which is the one I just described, and the second upcoming Class Action case on behalf of Home Buyers, which will be tried later this year.

The article goes on to state, ***“The Realtors’ group and brokerages (Just like the Brokerages here in the Virgin Islands), were ordered to pay nearly \$1.8 Billion to Home Sellers.” However, the verdict allows the court to Treble damages, which means the eventual payout will swell to more than \$5 Billion.*”**

The local Realtors will tell you there’s nothing to see here, NAR has settled this matter.

But that’s not true.

NAR has simply made a Settlement Offer of \$418M, a mere 9% of the total Judgement, but as their own Chief Legal Officer for NAR, Attorney Katie Johnson states, ***“As a Reminder, we received preliminary approval of the settlement on April 24th, but it is still subject to final court approval. The final approval hearing is scheduled for November 26, 2024.”*** Which is a full six months from now.

And over these next six months the DOJ will be reopening the investigation of NAR...and why? Because as far as the National Association of Realtors is concerned, ***“It’s Business as Usual.”***

In fact, Realtors are currently producing instructional videos on You Tube and on other Social Media sources on how to **“Work Around”** or circumvent the Court Ordered changes that are a part of this Proposed Settlement Agreement.

And this has not gone un-noticed by the DOJ and because the National Association Realtors have failed to put in place even the most basic modifications, the DOJ has been forced to resume their investigation.

The Washington Post reported on April 5, 2024, ***“Court Clears Path for Re-Opening Anti-Trust Probe of Realtors group”*** and Housingwire News, April 8th, ***“DOJ Will Intervene in NAR’s Commission Lawsuit Settlement.”*** And that Intervention will likely mean a rescinding of that settlement agreement

Senators, we don’t want to be any part of being associated with these Realtors, and it looks like we’re not the only ones.

The Membership rolls of the National Association of Realtors are hemorrhaging as well.

“Real Estate Agents Are Dropping Like Flies: Record Number of Agents Are Leaving the Industry”, I Sold My Home.Com, January 4, 2024

“NAR lost 26,000 Members in 2023” Real Estate News, January 3, 2024

“Membership dropped by 19,000 in February, With a Net Decline of 81,000 Members Since October” Real Estate News, May 2, 2024

Senators, 81,000 people, that’s nearly the entire population of the U.S. Virgin Islands.

The National Association of Realtors is a failing Real Estate Trade Organization who is deeply in debt, hemorrhaging money and members. And keep in mind, the Boards on all three islands are “Member Boards” of NAR.

They desperately need new blood, and specifically new dues paying members.

And this is completely what the proposed legislation in front of you is all about.

By design, the proposed legislation has intentionally given the law extremely broad definitions of Real Estate, Real Property and defining a Property Manager. They want as many Virgin Islands businesses as they can to be under their thumb

The local St. Thomas, St. Croix and St. John Boards of Realtors want to force us, and any other Virgin Islands business they can loosely categorize under their new broad definitions of “***Real Estate Property Management***” and their other term “**Units of Real Property**”

On Page 5, Line 6, states, “**Real estate**” or “**real property**”, “**means any interest or estate in land.**” That’s **ANY INTEREST** at all.

On page 3, Lines 16-19 the proposed legislation states in part, “**Property manager**” means...”***including but not limited to...property supervision or property maintenance.***”

By that intentionally broad definition, **Landscapers** would need to get this license, **Pool Service** companies as well. **Security Firms** like ADT or Ranger American, who are directly involved in “**Property Supervision.**” and would therefore be required to get this license. As well as **Vacation Rental** companies like ourselves would now be forced to get this new license and be forced to join the Board of Realtors and the National Association of Realtors.

Even though the VI Dept. of Licensing & Consumer Affairs, the Federal Government and the VI Code all agree we are not a Real Estate Business.

And certainly the management and staff of any Condominium Complex or any Marina in the Virgin Islands will fall under this broad **Property Management** definition of “**Any Property Supervision or Any Property Maintenance.**”

Senators, this law will be a nightmare to enforce.

In the proposed legislation, you will also see that term, ***“Units of Real Property”***.

According to the proposed legislation, on Page 4 lines 2,7 and 8 of the document, it defines a **“Real Estate Transaction”** as, **“the lease or rental of a Unit of Real Property.”**

By their own definition a **“Unit”** is simply any agreed upon standard unit of measurement.

As an example, a parking space can be a Unit, a **self-storage unit** can be a Unit, (It’s even in the name), even a **boat slip** can be a Unit.

So Renting that Self-Storage Unit, Paying to Park Your Car in a Private Paid Parking Lot, Renting a Conference Room at a Business Center, Renting a Boat Slip at the Marina, according to this proposed legislation, these are all Real Estate Transactions now.

The only way these Realtors can get new dues paying members, is by convincing you to pass this proposed legislation to expand their base of influence and legally force businesses like mine and others to join them.

I’m curious; did any of the local Realtors that originally brought this proposed legislation to you inform you about their extensive legal and financial problems?

I didn’t think so.

I don’t speak for anyone but myself and my company. But I do not want to be dragged into **the Boards of Realtors’ huge ongoing and continuing Litigation and Financial Problems.** And I can’t imagine anyone else would either.

Senators, please do not consider this proposed legislation!

We haven’t been convicted of ***Over Inflating our Commissions*** as these Realtors have.

We haven’t been found guilty of ***Predatory Practices and Conspiring with other Realtors*** to overcharge our clients, as they have.

Unlike these Realtors, we haven't been found in ***Violation of Federal Anti-Trust Laws.***

And more importantly, I and none of these other businesses I've mentioned have a ***\$5 Billion judgment hanging over our heads. With the likelihood of an even larger judgement when the DOJ's Class Action suit representing the Home Buyers is tried later this year.***

But if we now have to be aligned with Realtors, we will be viewed as guilty as them.

Senators, **The VI Department of Licensing & Consumer Affairs** says we do not need a Real Estate License and none of these other businesses I've mentioned do either.

The Federal Government says our business classification is completely different than Real Estate, **and any change to that will jeopardize our ability to collect Virgin Islands Hotel Taxes...**and finally.

The V.I. Code identifies our business as a Hotel and an Innkeeper, NOT Real Estate.

So in closing, ask yourself Senators, what is the real reason that these **local Realtors, who are directly associated as a "Member Board" and inseparable from the National Association of Realtors;** which is a failing, debt ridden and convicted criminal enterprise, so desperately want to pass this law?

Senators, this is their mess to clean up, not yours to clean up, and certainly not mine.