

Commercial Issues and Actions – Top Priorities

Fall 2017

► **ISSUE: *1031 Like Kind Exchanges:*** Tax reform proposals released in the 113th Congress repealed Section 1031, and the President’s budget for Fiscal Year 2015 proposes limits on the deferral provisions of it. Although there no tax reform legislation was introduced in the 114th Congress, these proposals may still be incorporated into future tax reform plans. Multiple tax reform plans - the House Republican Blueprint, the President’s tax reform plan, and the “Big 6” Unified Framework – are silent on 1031.

NAR Action: NAR participates in multiple coalitions to protect Section 1031 from repeal or limitation. As part of these coalitions, NAR has commissioned multiple studies on the negative economic effect of repealing Section 1031, on real estate and the entire economy. NAR participated in multiple media events to unveil these studies, including press briefings, meetings with the Treasury, and meetings with key Congressional Committees and offices. In 2015 NAR surveyed its membership to gauge how REALTORS® use Section 1031, and how their businesses will be affected if it is repealed. NAR continues to monitor this, and will oppose any plans to repeal or limit its use.

► **ISSUE: *Commercial Lending rules:*** Various regulations have increased the scrutiny that commercial loans come under by lenders, including Dodd-Frank and the Basel III Accords. Currently active is the Basel III “High Volatility Commercial Real Estate” (HVCRE) rule, a designation that went into effect at the beginning of 2015, increasing the risk-weight of commercial acquisition, development, or construction (ADC) loans from 100% to 150%. This higher risk-weight makes commercial loans less attractive to lenders, and the underlying rule is undeveloped and unclear in how it should be applied. In April 2017, Rep. Pittenger (R-NC) introduced H.R. 2148, “Clarifying Commercial Real Estate Loans,” which clarifies the HVCRE risk weight rules and which borrowers they apply to.

NAR Action: NAR has weighed in on several hearings on this issue, stressing the importance of well-tailored regulations that do not overly-burden lenders, especially smaller ones. In the 114th Congress, NAR supported legislation from Rep. French Hill (R-NC) that would have widened the exemption from the commercial risk retention rule to include low-risk transactions. NAR has also supported Rep. Pittenger’s H.R. 2148, which would provide much-needed clarity to lenders on what types of loans are “HVCRE,” and how a loan can be removed from that category. NAR is part of an industry coalition working towards regulatory reform, and will continue to advocate for such legislation in the 115th Congress.

► **ISSUE: *Marketplace Fairness:*** The Supreme Court directed Congress to deal with the issue of state sales tax on remote purchases in 1992, but thus far no legislation on the issue has been passed. States have lost billions of dollars in uncollected sales tax since then, and online retailers are at an advantage over the brick-and-mortar sellers who must charge it. S.976, “The Marketplace Fairness Act,” cosponsored by Sens. Alexander (R-TN) and Enzi (R-WY) and H.R. 2193, “The Remote Transactions Parity Act,” cosponsored by Reps. Noem (R-SD) and Womack (R-AR) have been introduced in the 115th Congress; both are the same as bills introduced in the previous Congress that NAR supported. Additionally, a South Dakota law allowing the state to collect sales tax from online retailers was challenged, and the appeals have gone up to the Supreme Court, which is expected to hear arguments on the case in late 2017.

NAR Action: NAR supports legislation that creates parity at the point-of-sale between brick-and-mortar and online retailers. NAR participates in the Marketplace Fairness Coalition, and works with the Judiciary Committee and House and Senate sponsors to resolve the issue. NAR has also joined a real estate industry amicus brief to the U.S. Supreme Court for the South Dakota law case, *South Dakota v. Wayfair, Inc. et al.* NAR will continue to advocate for passage of this important legislation throughout the 115th Congress.

► **ISSUE: *Marketplace Lending:*** The Department of Treasury issued a report in May 2016 describing what it understands to be the current state of play for marketplace lending, which is a catch-all term for online lending such as social finance, crowdfunding, or peer to peer lending. The report highlighted the role that these lenders play in the economy, but also expressed concern for the overlapping regulations governing these entities, and the loopholes created by these regulations.

NAR Action: NAR submitted a letter to regulators highlighting the growing role that these lenders play in real estate, and the need for balancing innovation and regulation. The letter also referenced NAR’s commitment to innovation and data privacy.