ISSUE BRIEFING PAPER

Lead Committee: Transaction and Regulatory Committee
Level of Government Committee: Federal Committee

Fall 2016

ASSUMABLE LOANS

THE QUESTION:
Should the National Association of REALTORS® (NAR) create a Presidential Advisory Group (PAG, the equivalent of a C.A.R. Task Force) to review the issue of assumable loans?

ACTION REQUIRED?
Yes, C.A.R.'s leadership team is seeking action.

OPTIONS:
1. That C.A.R. ask NAR to create a Presidential Advisory Group to review the issue of assumable loans. The mission of the PAG should include consideration of NAR taking policy and action to support making mortgages assumable.

2. Other

3. Take no action

DISCUSSION

California's History
California, has had a long and unique history with the issue of mortgage assumability. In 1978, California's Supreme Court ruled in Wellenkamp v. Bank of America that a "due-on-sale" clause contained in a deed of trust securing a note on real property, constituted an unreasonable restraint on alienation in violation of California law. This resulted in all mortgages in California becoming assumable following this decision. The ability to assume mortgages greatly helped California's housing market as interest rates skyrocketed in the late 70's and early 80's. Sometimes "equity-gap" financing was used to make up the difference between the assumed loan balance and the buyer's downpayment. This led to buyers analyzing "blended" rates against new mortgage rates. However, in 1982, Congress passed the Garn-St. Germain Depository Institution Act. Included in this bill was a provision that preempted state prohibitions on "due-on-sale" clauses. This, once again, allowed lenders to enforce their due-on-sale clauses, and deny assumability

Current Market
Because of the Garn-St. Germain act's preemption of state laws, any meaningful attempts at making more mortgages assumable will need to be done at the federal level.

Following a thirty year trend of declining interest rates from the late 1980's; mortgage rates have remained at historic lows for the past three to four years. While impossible to predict when interest rates may rise, all economists agree that—sooner or later—interest rates will increase. In fact, interest rates have been low for so long an entire generation of homebuyers have never seen a mortgage with an interest rate above six-percent.

In California, where housing affordable is one of the biggest hurdles facing homebuyers, an increase of just one percent can increase a mortgage payment more than $250 a month on a median price home. This makes home prices in California more sensitive to changes in mortgage rates. Any increase will immediately make homeownership unaffordable for a measurable number of California households.

When interest rates rise, the availability of an assumable low rate mortgage on a property may become the most affordable source of financing for a new buyer. Of course, the attractiveness of that mortgage will vary depending upon how much the property has appreciated since the mortgage.

Today's Assumable Mortgages
Currently, FHA, Rural Housing, VA and some Fannie Mae and Freddie Mac adjustable rate mortgages are assumable by qualified buyers. However, 30 and 15 year fixed rate mortgages by Fannie and Freddie are NOT assumable (these loans make up the largest number of mortgages). It is worth noting, that while Fannie and Freddie mortgages are not assumable, their interest rates are at or even higher than the FHA, Rural Housing and VA rates. This may be because the FHA, Rural Housing and VA programs enjoy an explicit government guarantee.

C.A.R. Policy:
C.A.R. "SUPPORTS" assumable mortgages.

NAR Policy:
NAR does not have any policy on this issue.

Should C.A.R. ask the NAR to create a Presidential Advisory Group (PAG) to review the issue of assumable loans?