

Commercial Issues and Actions – Top Priorities

February 2018

► **ISSUE: *1031 Like Kind Exchanges:*** In December 2017, Congress passed and the President signed into law H.R. 1, the Tax Cuts and Jobs Act. The bill made dramatic changes to the U.S. tax code, many of which impact real estate. A chief concern was that tax reform would repeal or limit like-kind exchanges under Section 1031; while the bill does repeal 1031s for personal property, it specifically retained them for real property.

NAR Action: NAR participates in multiple coalitions to protect Section 1031 from repeal or limitation, and with them has commissioned studies on the macroeconomic effects of repealing Section 1031, and on the provisions impact on real estate specifically. NAR was a key participant in the campaign to protect Section 1031, meetings with members of Congress (including leadership and the tax writing committees), and joining press events to support it. Retaining Section 1031 was one of the talking points for the Spring 2017 Hill visits, and NAR continually stressed its importance in letters on tax reform to the Hill.

► **ISSUE: *Commercial Lending rules:*** The Basel Committee implemented a risk-weight regime (“Basel III”) for High Volatility Commercial Real Estate (HVCRE), which includes commercial acquisition, construction, and development loans, bringing their risk weight up to 150% (previously it was 100%). This makes commercial real estate lending more expensive and thus less attractive to lenders. The federal banking agencies have proposed a new standard for the same type of loans, called the High Volatility Acquisition, Development and Construction (“HVADC”) loans. The proposal decreases the risk weight attached to these loans (to 130%), but broadens the definition of what type of loan is included by removing certain exclusions.

NAR Action: NAR has called for changes to Basel in comments to federal agencies and letters to Congress stressing the burden that overly-broad lending regulations have on commercial real estate. NAR supports H.R. 2148, the “Clarifying Commercial Real Estate Loans Act,” sponsored by Rep. Pittenger (R-NC), which clarifies which borrowers fall under the HVCRE rules. It was approved by the Financial Services Committee by a vote of 59-1 and then passed the full House in 2017. A Senate companion bill – S. 2405 – was introduced in February 2018, sponsored by Sens. Cotton (R-AR) and Jones (D-AL). NAR sent two comment letters to the banking agencies in December 2017 on their proposed HVADC rule, urging retention of the current exclusions for well-capitalized loans found in the HVCRE rule, and to consider furthering lowering the attached risk-weight.

► **ISSUE: *ADA Suit Notice Requirement:*** The Americans with Disabilities Act (ADA) does not have a notice requirement, leaving commercial property owners who may in good faith believe that their properties comply with the law vulnerable to lawsuits. Under the ADA attorneys may collect fees relating to pursuing claims of noncompliance, but the plaintiffs themselves cannot collect damages. Once a suit is filed, there is not opportunity to cure the infraction, so property owners spend time and money on attorneys and fees which could have instead gone toward fixing the issue. In recent years, these “drive-by” ADA suits, by attorneys targeting commercial properties with small, easily-correctible infractions, are on the rise.

NAR Action: NAR is in a coalition advocating for reforms to the ADA, including a notice requirement, which would give business owners an opportunity to fix violations without the need to use resources on legal costs. NAR supports H.R. 620, the ADA Education and Reform Act, a bipartisan bill sponsored by Rep. Poe (R-TX). H.R. 620 was marked up and approved by the House Judiciary Committee in September 2017, and passed the full House in February 2018. NAR is working with the Senate on companion legislation.

► **ISSUE: *Marketplace Fairness:*** Congress must grant states the authority to require out-of-state online retailers to collect and remit sales tax on purchases made by residents, which would level playing field between e-commerce and brick-and-mortar stores. The Supreme Court directed Congress in 1992 to resolve this issue, but it remains unsolved. States have since passed laws in an attempt to collect lost sales tax, resulting in court challenges; in 2018 the Supreme Court granted *cert* to a case challenging a South Dakota law. There are two bipartisan bills in the 115th Congress on this that NAR supports: S.976, “The Marketplace Fairness Act,” (sponsored by Sens. Enzi (R-WY) and Alexander (R-TN)) and H.R. 2193, “The Remote Transactions Parity Act,” (sponsored by Rep. Moen (R-SD) and Womack (R-AR)).

NAR Action: NAR participates in the Marketplace Fairness Coalition, which advocates for internet sales tax legislation. In the 114th Congress, NAR supported bills establishing internet sales tax fairness, while working with sponsors of the bills and the House Judiciary Committee and leadership to develop compromise legislation. NAR continues to lobby Congress on this issue, and joined a real estate industry amicus brief to the Supreme Court supporting granting *cert* to the SD case – *South Dakota v. Wayfair, Inc. et al.*