

Commercial Issues and Actions – Top Priorities

Spring 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► **ISSUE: *1031 Like Kind Exchanges:*** Tax reform proposals released in the 113th Congress repealed Section 1031, and the President’s budget for Fiscal Year 2015 proposes limits on the deferral provisions of it.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. The House Republicans released their “Blueprint for Tax Reform” in the summer of 2016, which made no mention of repealing or limiting 1031s; the President’s tax reform plan, released in April 2017, was similarly silent on it.

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NAR surveyed its membership to gauge how REALTORS® use Section 1031, and how their businesses will be affected if it is repealed.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. The Dodd-Frank “Commercial Risk Retention” rule, which went into effect in 2016, is meant to ensure that institutions which package securities have “skin in the game,” by requiring a 5% risk retention obligation by commercial mortgage backed securities (CMBS) sponsors. As written, the rule is overly broad and treats even historically low-risk transactions as risky. From Basel III, the “High Volatility Commercial Real Estate” (HVCRE) designation went into effect at the beginning of 2015, and increased the risk-weight of commercial acquisition, development, or construction (ADC) loans from 100% to 150%, making commercial loans less attractive to lenders. 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 proposed legislation, joining a letter thanking him for his work on the issue. 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 placed the onus on Congress to give states the authority to require sales tax collection on online purchases in 1992, but it has yet to do so; in its absence, states have lost billions of dollars in uncollected sales tax, and online retailers are at an advantage over the brick-and-mortar sellers who must charge it. In April 2017, both S.976, “The Marketplace Fairness Act,” and H.R. 2193, “The Remote Transactions Parity Act,” were introduced. S. 976 is cosponsored by Senators Lamar Alexander (R-TN), Mike Enzi (R-WY), Dick Durbin (D-IL), and Heidi Heitkamp (D-ND); H.R. 2193 is cosponsored by Representatives Kristi Noem (R-SD), Steve Womack (R-AR), Jason Chaffetz (R-UT), Steve Stivers (R-OH), Lou Barletta (R-PA), John Conyers (D-MI), Jackie Speier (D-CA), Peter Welch (D-VT), Suzan DelBene (D-WA), and David Cicilline (D-RI). Both bills are the same as versions introduced in the previous Congress that NAR supported.

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 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 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.