

Commercial Issues and Actions – Top Priorities

October 2016

► **ISSUE: *1031 Like Kind Exchanges:*** Tax reform proposals released in the 113th Congress repealed Section 1031, and the President’s budget for Fiscal Year 2015 proposes limits on the deferral provisions of it.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 was no tax reform legislation 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 makes no mention of repealing or limiting 1031s.

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NAR surveyed its membership to gauge how REALTORS® use Section 1031, and how their businesses will be affected if it is repealed.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 Risk Retention Rules:*** A portion of Dodd-Frank, the Commercial Risk Retention rule is scheduled to go into effect on December 24, 2016. This rule is intended 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 that Dodd-Frank was not intended to regulate as risky. In 2016, Rep. French Hill (R-AR) introduced H.R. 4620, the Preserving Access to CRE Capital Act, which would provide some relief from the overly-broad regulations by widening the Qualified Commercial Real Estate (QCRE) exemption to the rule. This common-sense bill would allow low-risk single asset/single borrower (SASB) and interest-only CMBS transactions to qualify for QCRE, preserving liquidity rates and borrowing costs for those markets reliant on CMBS financing.

NAR Action: NAR has sent letters to several Congressional hearings on this rule, explaining the unintended consequences for liquidity and borrowing rates its overly-broad language will have on secondary and tertiary markets throughout the country. NAR has also worked in a coalition with other commercial real estate groups to advocate for reforms to QCRE. NAR sent a letter in support of H.R. 4620 for its mark up in March 2016, at which it was approved by the House Financial Services Committee.

► **ISSUE: *Marketplace Fairness:*** In 2015 Senators Enzi (R-WY) and Durbin (D-IL) introduced S. 698, the “Marketplace Fairness Act of 2015,” which gives authority to state governments to collect sales taxes on online purchases delivered to their states, leveling the playing field between brick-and-mortar and e-commerce retail businesses and assisting the states in collecting billions of uncollected state sales taxes. Rep. Chaffetz (R-UT) and Womack (R-AR) have introduced a House version, H.R. 2775, the “Remote Transactions Parity Act.” In the summer of 2016, Chairman Goodlatte of the House Judiciary Committee circulated draft language of his compromise proposal; while the language was an improvement over past plans, it still presents major issues, including not creating parity at the point of sale.

NAR Action: NAR joined a coalition letter in support of H.R. 2775 and sent a letter thanking its sponsors for introducing it. NAR participates in the Marketplace Fairness Coalition, and has met with the Judiciary Committee, sponsors of the Senate bill, and House Leadership offices to try to resolve this issue in the 114th Congress. NAR will continue to support S.698 and H.R. 2775, and urge Congress to pass this legislation.

► **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.