

Commercial Issues and Actions

November 2014

► **ISSUE: *TRIA Reauthorization*:** The Terrorism Risk Insurance Act (TRIA) will expire at the end of 2014 unless Congress reauthorizes it. In July of 2014 the Senate passed S.2244, a seven-year reauthorization bill which makes few changes to the program, by a vote of 93-4. In the House, the Financial Services Committee, passed a five-year reauthorization bill along party lines, but it would make many changes to the program with the ultimate effect of weakening it, and it does not have enough support to pass the House.

NAR Action: NAR is a steering-committee member of the Coalition to Insure Against Terrorism (CIAT), and as part of it participated in a months-long effort to meet with Congressional offices to educate them on the program and encourage its long-term reauthorization. NAR has sent many letters to both the House and Senate ahead of Committee hearings and votes on TRIA, urging its long-term reauthorization and stressing its importance to Commercial Real Estate. Additionally, NAR has held two “Calls for Action” among its Commercial members, encouraging support for the Senate bill.

► **ISSUE: *Marketplace Fairness Act*:** The Marketplace Fairness Act authorizes states to levy state- and local-taxes on online purchases made by residents. This both levels the playing field somewhat between e-commerce retailers (who frequently do not charge state sales tax) and traditional “brick-and-mortar” shops, and brings much needed tax revenue to the states in which the buyers live. In 2013 the Senate passed its version, S. 743, but it is unpopular with House Republicans. Passing it is one of Senate Majority Leader Harry Reid’s top priorities for the lame duck (most likely by attaching it to the Internet Tax Freedom Act).

NAR Action: NAR is a member of the Main Street Fairness Coalition, which advocates for the Marketplace Fairness Act. It has sent letters to the Senate and the House Judiciary Committee in support of the bill, and joined coalition letters with other industry groups encouraging its passage. As its chances of passage in the 113th Congress are unclear, if it does not, NAR will continue to advocate for similar legislation in the 114th Congress.

► **ISSUE: *Lease Accounting*:** The joint Federal Accounting Standards Board and International Accounting Standards Board (FASB/IASB) lease accounting project began in 2006, and final lease accounting rules have yet to be released. Two “Exposure drafts” have come out, in 2010 and 2013. While the FASB has moved from its original proposal of capitalizing *all* leases onto balance sheets to a dual-approach in which some are recognized as operating leases and some are capital leases (a divergence from the IASB, which is pursuing a single approach), the rules have not yet been finalized. Final rules are expected in the first half of 2015, effective in 2018.

NAR Action: NAR has been very active on lease accounting, sending comment letters to the SEC and the FASB throughout the process, expressing concerns with the proposals and explaining why they will be detrimental to Commercial Real Estate and the economy as a whole. NAR also works in coalition with other real estate industry groups to meet with interested Members of Congress to educate them on the proposals, and has aided in several “Dear Colleague” letters to the SEC expressing concerns with the Exposure Drafts.

► **ISSUE: *1031 Like-Kind Exchanges*:** While tax reform did not happen in the 113th Congress, both the House and Senate tax-writing committees nevertheless produced plans for it, and in both Section 1031 Like-Kind Exchanges were eliminated; additionally, the President’s proposed budget for FY 2015 would have capped them. These proposals, though no longer an immediate issue, could be used as blueprints for future tax reform plans, signaling a grave threat to a tax provision very important to Commercial Real Estate and the national economy.

NAR Action: NAR has consistently stressed the importance of 1031 Like-Kind Exchanges to Congress, and is working hard to get ahead of any future tax-reform proposals which threaten them. It participates in two 1031-focused coalitions, comprised of industry groups concerned with both real estate and personal property exchanges. NAR is studying all aspects of 1031 Like-Kind Exchanges to collect as much data – empirical and anecdotal – as possible to bring to Capitol Hill in defense of this important tax provision.

► **ISSUE: EPA Lead Paint Proposed Rules:** Under the Residential Lead-Based Paint Hazard Reduction Act, the EPA regulates renovation, repair and painting (RRP) activities in pre-1978 residential properties. Currently, the Agency is considering extending those rules to all commercial and public buildings but first is required to determine whether or not RRP activities in these properties create a lead hazard that harms occupants. The EPA first started this process in 2010 anticipating a preliminary rule to be issued in summer 2015.

NAR Action: NAR is part of a coalition of regulated stakeholders working to develop data that will inform EPA's development of a hazard determination and, if necessary, a proposed rulemaking, and to use in response to the EPA's request for information to assist in the process. NAR has been an active participant in the regulatory process through testifying at hearings, submitting comment letters, and attending meetings with agency staff to discuss the proposed rule and EPA's processes in developing it.

► **ISSUE: Waters of the US:** In April 2014, the EPA and the Army Corps of Engineers jointly proposed a rule to "clarify" which water bodies are "waters of the U.S." and regulated under the Clean Water Act. The rule would greatly expand what waters would fit this definition and come under federal protection. Depending on the "U.S. water" definition, the Act will require expensive, time-consuming federal permits to develop private property near most water bodies -- not just those which are navigable. NAR believes that only Congress can fundamentally alter the Clean Water Act and will continue to oppose any efforts, whether through agency guidance or proposed regulation, to expand the Act's reach or otherwise infringe on property rights. NAR strongly opposes the proposed rule and will be submitting comments both on the rule as well as the draft study.

NAR Action: NAR is working closely with industry partners and the Waters Advocacy Coalition to refute the conclusions of the study and conduct an economic impact analysis of the proposed regulation.

► **ISSUE: Unmanned Aerial Vehicles/Drones:** Technological advances have made it cost effective to take pictures and videos from drones, aka Unmanned Aerial Vehicles (UAVs). Real estate professionals are interested in using this new technology to take videos and pictures to create dynamic marketing pieces for property listings. Current Federal Aviation Administration (FAA) policy prohibits any commercial use of UAVs until regulations are created that protect safety, privacy and national security. The FAA Modernization Act of 2012 charged the FAA with creating regulation that will safely integrate UAVs into the National Air Space (NAS). The rule is anticipated to come out in early 2015.

NAR Action: NAR has been actively working with the FAA to educate staff on the possibilities of using UAV technology in real estate. NAR has participated fully in the regulatory process by submitting comment letters at each opportunity.

► **ISSUE: *Dodd–Frank Wall Street Reform and Consumer Protection Act*:** Commonly known as the Dodd-Frank Act, this 2010 act created some of the most sweeping financial regulation in the country in response to the recession of 2008. Dodd-Frank created many new rules and regulations, and created new agencies and oversight offices. The total implementation of the Dodd-Frank provisions will not be completed for several years, but NAR has been intently following the development of each rule and entity. Some of the most active engagements have been on rules addressing Qualified Commercial Real Estate, asset-backed securities, and risk retention. NAR has also been working closely with the Consumer Finance Protection Board (CFPB), a new agency created from Dodd-Frank regulation. In 2015, one of the most active rules will come into effect dealing with bank capital requirements (Basel III). NAR has written letters to the relevant banking regulators addressing concerns with the new requirements. NAR has also written letters to the same regulators addressing new risk retention rules for banks that are part of the Dodd-Frank implementation.

NAR Action: NAR, in coalition with other industry partners, has sent letters to the relevant House and Senate Committees expressing support for the extension and enhancement of the 179D deduction by providing a sliding scale of incentives that correlate to actual and verifiable improvements in a retrofitted building’s energy performance. NAR continues to engage with bank regulators as new rules are put into place that would impact commercial lending.