SANTA CRUZ ASSOCIATION OF REALTORS® LEGISLATIVE WATCH

NAR Questions Federal Regulators' Expansion of Bank Powers

Expanded authority to engage in real estate development activities granted to two of the nation's largest banking conglomerates by the Office of the Comptroller of the Currency (OCC) last month brings national banks uncomfortably close to being allowed to engage in commercial real estate brokerage and puts them in conflict with the Gramm-Leach-Bliley (GLB) Act, the National Association of REALTORS® warned this week.

NAR President Tom Stevens said NAR plans to file a Freedom of Information Act (FOIA) request to determine whether the OCC has authorized other banks to engage in real estate activities that may violate the letter or spirit of federal law, including Gramm-Leach-Bliley and the National Bank Act, and bring banks one step closer to engaging in commercial real estate brokerage.

Bank of America and PNC Financial Services Group Inc. received permission from the OCC in December for two major real estate projects that exceed typical bank real estate development permitted to accommodate a bank's business. PNC will invest $122 million in a complex near its Pittsburgh, PA, headquarters that will include a 30-story building for offices, a 150-room hotel and 32 condominiums. PNC employees are projected to occupy 22 percent of the new office and hotel space. Bank of America plans to develop and own a 150-room, 15-story Ritz-Carlton hotel as part of its headquarters complex in Charlotte, N.C., and to use more than 37.5 percent of the rooms on an annual basis.

NAR is concerned that one of the banks expects to use only 22 percent of the hotel and office space for its employees and customers, leaving the remainder for non-bank public activity, and that it is developing condominium units for immediate sale solely to make the project "economically viable." In addition, bank occupancy of the second project may not exceed 50 percent. Of further concern to NAR, OCC based its approval of the projects on Interpretive Letters written in 1993, but which were not publicly released until December 19, 2005.

"These regulatory approvals bring banks closer to controlling commercial real estate projects from top to bottom. Should banks, with all the advantage of a federal banking charter, be allowed to use their cheaper capital and control of credit to bring about the same consolidation in real estate brokerage that they have already brought to their own business, consumers will surely suffer," said Stevens.

Beyond filing a Freedom of Information Act request to determine the full scope of the OCC's actions authorizing real estate development activities for national banks, Stevens did not speculate on whether NAR would take additional steps to challenge the OCC rulings.

The National Association of REALTORS® has led real estate industry opposition to a rule proposed by the Federal Reserve and the Treasury Department in 2001 that would have allowed federally chartered national bank conglomerates to enter residential and commercial real estate brokerage and property management. Congress has passed legislation blocking a final rule every year since then. On November 30, 2005, President George W. Bush signed into law the Fiscal Year 2006 Transportation, Treasury and HUD Appropriations Act that contains another one-year prohibition against the rule. This is the fourth consecutive year that NAR has been successful in gaining enactment of this prohibition.

Trial Lawyer Seeks to Qualify "Open MLS Act" for 2006 Ballot

A proposed ballot initiative, called the Open MLS Act of 2006, has been submitted to the Office of the Attorney General for the State of California for preparation of a title and summary. The initiative's proponent is Mr. David Barry, a San Francisco attorney. Mr. Barry has a long and contentious history with organized real estate and has been the attorney of record for several lawsuits involving both NAR and C.A.R., including attacks on the MLS and the REALTOR® trademark.

June Barlow, Vice President and General Counsel for C.A.R. has said that she believes Barry's effort is "ill-conceived."

"There's no need for an effort like this because free enterprise has worked well for a number of years," Barlow said, adding that it "shows a lack of confidence" in attempting to place the issue before the voters.

The purpose of the initiative is to establish a "California-wide residential multiple listing service open to the public and realty agents alike." The proposed open MLS would contain listings of homes for sale and rent and provide free access to buyers and renters.

Under the initiative, any licensee entering into a contract with a seller who requests a MLS listing would be required to list that residential property in the open MLS. The operator of the MLS would not be able to claim any copyright protection in the listing compilation or any part of the data. Any person, upon written request, could receive any or all of the non-confidential data in the MLS once every 24 hours at no charge. The initiative also establishes sanctions, fines, and the right to "bring an action…in any superior court" for damages and/or attorney's fees. An individual need not sustain damages to bring suit.

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The initiative currently is pending at the Office of the Attorney General. To qualify for the ballot, initiative supporters would need to gather the signatures of approximately 373,700 registered California voters.

Santa Cruz County

County to review and revise 2006 growth rate goal

At its December 13th meeting, the County Board of Supervisors held a public hearing to set an annual growth rate for 2006. This process a part of the implementation of the Growth Management System sets an annual growth rate by capping the number of permits for market and below market rate housing units. The allocations are at the discretion of the members of the board of supervisors but consideration is taken into account for estimated population trends and potential growth impacts.

According to the California State Department of Finance, the population of unincorporated Santa Cruz County actually declined by a rate of .44 percent. That population shrinkage was significantly lower than the growth goal adopted for 2004 of .50 percent. Santa Cruz Ccounty as a whole grew at a rate of .52 percent in 2004, which is significantly less than the almost 1.5 percent growth rate for the entire state. Given this shortfall, there are approximately 100 urban and 17 rural building permits that went unused in 2005. It is at the discretion of the board as to whether or not the balance should carryover into 2006. Based on estimates for the 2006 population growth rate, however, the County Planning Commission and staff have recommended a growth rate of .50 percent or an allocation of 171 urban and 86 rural market rate units.

County to hold Public Hearings to Consider Ordinances Regarding Density Bonus Regulations

In response to changes to state law, the County Board of Supervisors will be holding a public hearing to discuss changes to the county's density bonus law. Density bonuses are extra incentives granted to developers who build housing at below market rates. C.A.R. has in previous years sponsored density bonus laws in response to attempts by local governments to circumvent incentives to developers. County staff has drafted an ordinance with changes to the general plan and local coastal plan to accommodate the newest changes to state law and will present them at the public hearing during the board's regular meeting on Tuesday, February 7, 2006.

California Association of REALTORS®

The California State Legislature reconvened on January 4, 2006. This is the begining of the second year in a two-year cycle. The following is a summary of real estate related issues, including C.A.R.'s position on each of them.

C.A.R. opposes AB 197 (Umberg) Sales of Mobilehome Parks, which died in the Assembly Housing and Community Development Committee on January 11th. Existing law requires the owner of a mobilehome park who lists for sale, or offers to sell that park to provide written notice to the residents of the park. This bill would grant mobilehome park residents an automatic right of first refusal when a mobilehome park owner decides to sell their park, or when the owner considers unsolicited third-party offers to purchase the park. C.A.R. opposes AB 197 because it changes a property owner's right to sell their property by statutorily limiting owner's options when selling their park by delaying sales transactions, and compels an owner to accept a resident offer to purchase the park.

C.A.R. has a position of amend on AB 438 (Parra) Sex Offenders, which failed passage in the Assembly Public Safety Committee on January 10th. Existing law requires the Department of Justice make information on registered sex offenders available to the public via an Internet Web site. Further, existing law requires that every lease or rental agreement for residential real property, and every contract for sale of residential real property contain a notice that this information is maintained by law enforcement authorities. This bill would provide that based upon the information made available to the public via the department Web site, a lessor of residential real property may refuse to provide housing to, or evict, a sex offender whose residence address is made available on the Web site. This bill would also provide that a lessor may inform other residents of that residential real property that a person whose residence address is made available on the Internet Web site also resides in the residential real property. This legislation was sponsored by the California Apartment Association to clarify the permitted uses of information from the Megan's Law database. CAR has been working with supporters to ensure that it does not inadvertently create additional liability.

C.A.R. would support if amended AB 770 (Mullin) and SB 551 (Lowenthal) Common Interest Developments Ombudsperson. AB 770 was approved by the Assembly Business and Professions Committee on January 12th, and is scheduled to be heard in the Assembly Appropriations Committee on January 18th. SB 551, an identical measure, passed the Senate Business, Professions and Economic Development Committee on January 9th. These bills would establish the Office of the Common Interest Development Ombudsperson, and would require the Ombudsperson to offer

training materials and courses to common interest development directors, officers, and owners, in subjects relevant to the operation of a common interest development and the rights and duties of an association or owner, as well as maintain a toll-free telephone number and Internet Web site for purposes of further providing that information and assistance. Additionally, these measures would authorize the Ombudsperson to provide assistance in resolving common interest development disputes. Homeowners would pay up to 5 dollars per year to fund the office. C.A.R. supports this measure because it provides education and an informal dispute resolution process for all homeowners to avail themselves concerning the operation of CID's while at the same time prohibiting the ombudsperson from engaging directly or indirectly in real estate licensed activities. Both authors' agreed to amend their bill, at C.A.R.'s request, to prohibit the Ombudsperson from advising or educating a person about real estate license activities.

C.A.R. no longer opposes AB 790 (Yee) Real Estate Licensees, which passed the Assembly Business and Professions Committee on January 10th. Existing law provides for the licensing and regulation of real estate licensees by the Real Estate Commissioner. AB 790 would have required a real estate broker include in their written notification to the DRE, of the employment of a real estate salesperson, a specification of the activities that salesperson intends to perform. The measure would have also required individuals applying for a broker, or salesperson, license examination to include, in writing, a specification of the activities the respective licensee intends to perform. Finally AB 790 would have required brokers or salespersons that negotiate residential mortgage loans to notify the commissioner, annually in writing, and imposed a five dollar penalty for each additional day the notification had not been received. C.A.R. opposed AB 790 because, among other things, it was creating special license endorsement for mortgage brokerage. C.A.R. has historically opposed license specialization, preferring instead the single, versatile license now in place. C.A.R. was able to achieve amendments on January 4th that deleted all offensive language. The bill now prohibits a person from using certain designations or certifications awarded by any organization of real estate licensees without the authority to do so.

C.A.R. opposes AB 1020 (Hancock) Transportation Planning, which passed both the Assembly Transportation Committee on January 9th, and Assembly Local Government Committee on January 11th. AB 1020 is scheduled to be heard in the Assembly Appropriations Committee on January 18th. As introduced in 2005, AB 1020 would have required certain federally-designated metropolitan planning organizations (MPO) and certain state-designated regional transportation planning agencies (RTPA) to develop and implement improved regional travel models incorporating smart growth concepts. C.A.R. opposed AB 1020 because it not only required transportation planning agencies to consider the undefined concept of "smart growth" when planning regional transportation routes and facilities, but it also required that these agencies consider urban growth boundaries as a transportation solution. In early January 2006, the bill was amended to remove the requirement mandating federally-designated MPO's and RTPA's develop and implement improved regional travel models that incorporated "smart growth" concepts, but continued to require an evaluation of current regional travel models, and improvements to those models already underway to consider urban growth boundaries as a solution to transportation planning. Furthermore, AB 1020 required the evaluation to account for the influence of land use intensity (housing units per residential acre) on transportation and infrastructure. C.A.R. continued to oppose the bill because it sill considered the use of urban growth boundaries as a policy alternative to poor transportation planning. C.A.R. was successful this week in negotiating amendments that deleted all of the offensive language from the bill. As amended, AB 1020 will simply provide suggestions for transportation modeling to Regional Transportation Planning Agencies. These amendments are not yet in print.

C.A.R. supports AB 1164 (Bogh) Personal Income Tax Homeownership Development, which was scheduled to be heard in the Assembly Revenue and Taxation Committee on January 9th, was not heard. Existing law allows various deductions and exclusions in computing taxable income. This bill would allow a deduction, not to exceed $10,000, of the amount deposited in any taxable year in an individual homeownership development account. Furthermore, AB 1164 would exclude from the calculation of gross income, any interest earned on money deposited into an individual homeownership development account for taxable years beginning on or after January 1, 2005. The measure provides that money may be withdrawn from these accounts to pay for qualified individual homeownership development expenses, while withdrawals for other than qualified individual homeownership development expenses would be included in gross income. C.A.R. supports this measure because it promotes first time homebuyer opportunities.

C.A.R. opposes AB 1259 (Daucher) Regional Housing Need, which was scheduled to be heard in the Assembly Local Government Committee on January 11th, was dropped by the

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author at C.A.R.'s request. Existing law requires the housing element of the general plan of a city or county to include a program with a 5-year schedule of actions that the local government is undertaking or intends to undertake in order to meet its share of the regional housing need. As originally written, AB 1259 would have changed the pro rata shares in which ad valorem property tax revenues were allocated among entities in a county if they had exceeded the Regional Housing Needs Allocation (RNA), by 80%. C.A.R. opposes statewide resale price controls on all homes, and statewide rent control. Due to C.A.R.'s opposition the author decided not to pursue this measure as originally drafted. In early January 2006, the author amended the bill to authorize a city, county, or city and county to self-certify its housing element and any amendments to it if the city, county, or city and county meets or exceeds its regional housing need allocation which could act as an incentive to enact or enforce inclusionary zoning or rent control.

C.A.R. opposes AB 1450 (Evans) Land Use Density Bonus, which passed the Assembly Local Government Committee on January 11th with significant amendments. The 20 year old state density bonus law allows housing developers to include a few more units in a development then would otherwise be allowed in order to build affordable housing. Current law also allows housing developers to receive identifiable and financially sufficient incentives or concessions from the locality. AB 1450 would have authorized local governments to require that the resale or transfer of the unit be subject to its prior approval and subject to reasonable restrictions and conditions. This measure would have given local government the ability to refuse to approve a resale or transfer of the unit at less than 95% of its fair market value, and allowed local government to require additional and unlimited restrictions and conditions on the resale to ensure the continued affordability and occupancy by households of moderate income for at least 30 years. C.A.R. opposed AB 1450 because it unraveled the work of the Legislature with extremely long term price restrictions on homeownership which were totally unrealistic and would have hurt first time homebuyers. During the Assembly Local Government Committee Hearing C.A.R. proposed hostile amendments to the bill, and was successful in removing all controversial aspects of the measure. The amendments accepted effectively made no change to current law. The author has decided not to peruse this measure at this time due to C.A.R.'s amendments that were accepted.

C.A.R. opposes unless amended AB 1469 (Negrete McLeod) Manager Licensing of Mobilehome Parks, which passed the Housing and Community Development Committee on January 11th, and is scheduled to be heard in the Assembly Appropriations Committee on January 18th. Existing law governs the administration and management of mobilehome parks. This bill would require the Department of Housing and Community Development to establish a mobilehome park licensing and certification program and task force, and would require all mobilehome park owners with 50 or more spaces to provide proof that they employ a resident manager in the park who has successfully completed the licensing and certification program. C.A.R. has negotiated amendments exempting real estate licensees' from these requirements, but they have yet to appear in a printed version of the bill.

C.A.R. opposes SCA 8 (Simitian) Parcel Tax, which has been eligible to be heard on the Senate Floor since January 4th, has yet to be taken up on the floor. In January of 2005, C.A.R.'s Board of Directors adopted the report of C.A.R. Vote Threshold Reduction Task Force. The Task Force recommended that vote threshold reduction proposals be considered on a case by case basis. SCA 8 proposes to allow the same 55% vote for approval of school parcel taxes as is currently in place for school bonds. After consideration, C.A.R. opposes SCA 8 because the parcel tax funds allowed by the measure are much broader in application than the earlier bonds which are limited to capital costs.

C.A.R. opposes unless amended SB 540 (Kehoe) Tenancy: Signs and Flags, which is scheduled to be heard in the Senate Judiciary Committee on January 17th. Existing law regulates the terms and conditions of residential tenancies, and prohibits a landlord from interfering with a tenant's quiet enjoyment of the premises. As introduced, SB 540 would have permitted residential tenants to affix, in any manner, numerous non commercial signs on or around the leased premises as long as the signs do not violate federal, state or local law. C.A.R. opposed this measure because landlords could have lost control over the appearance of the rented property because the measure allowed an unlimited number of noncommercial signs, affixed in any manner on or around the leased premises. As amended, the measure permits residential tenants to post campaign signs on or around the leased premises as long as each of the signs are not more the nine feet square in size. C.A.R. will continue to oppose this measure because it still subjects landlords to the possibility of losing control over the appearance of the rented property by allowing tenants to post an unlimited number of campaign signs.

Please Note: The Legislative Watch is prepared by the Santa Cruz Association of REALTORS®. The Legislative Watch is only a summary not intended to provide legal advice and should always be verified for accuracy. For more information on a local agency, please call SCAOR at (831) 464-2000 to contact the Local Governmental Relations Liaison assigned to that agency or municipality.