



SANTA CRUZ ASSOCIATION OF REALTORS® LEGISLATIVE WATCH

FEDERAL UPDATE

Congress Returns to D.C. for 5 Week Legislative Session

Members of Congress have returned to Washington, D.C. In the next five weeks, Congress will embark on an ambitious schedule to complete its unfinished work before the 2006 elections.

During this session, NAR will focus its advocacy efforts on two issues of vital importance to REALTORS®: small business health plans and enacting a permanent separation between banking and real estate.

For more information about these issues, visit the Government Affairs page on the NAR (www.realtor.org) website.

NATIONAL ASSOCIATION OF REALTORS® UPDATE

NAR Asks Supreme Court to Overturn OCC Decision

The U.S. Office of the Comptroller of the Currency (OCC) is misinterpreting federal law and unlawfully preempting states' rights to oversee mortgage lenders and other state-chartered corporations, the NATIONAL ASSOCIATION OF REALTORS® (NAR) told the U.S. Supreme Court in a friend-of-the-court brief filed Friday.

The OCC issued rules in 2004 contending it, and not states, has authority to oversee state-chartered corporations like mortgage lenders if they're operating as subsidiaries of national banks.

States have historically maintained what's known as "visitorial powers" over state-chartered corporations that are affiliated with national banks, so the OCC rules mark a change in established practice.

In its brief filed with the U.S. Supreme Court, NAR argues that Congress in the National Bank Act

clearly intended to limit the OCC's visitorial powers to national banks and not extend that authority to bank subsidiaries.

"The comptroller has unlawfully concluded that the section of the National Bank Act that provides it with exclusive visitorial powers over national banks also preempts state authorities from exercising state-law visitorial powers over operating subsidiaries," NAR says in its brief.

NAR opposes the OCC preemption regulation because it creates an uneven playing field.

"We believe that the OCC has misinterpreted federal law by extending preemption privileges to operating subsidiaries, such as mortgage companies, allowing them to circumvent state real estate lending and licensing laws," NAR President Thomas M. Stevens says.

The case, *Watters v. Wachovia Bank*, is an appeal from a case heard earlier this year by the U.S. Court of Appeals for the Sixth Circuit, in Michigan, brought by Linda M. Watters, the commissioner of the Michigan Office of Insurance and Financial Services. The case also raises a constitutional issue, specifically the 10th Amendment, regarding states' rights. NAR and the Michigan Association of REALTORS® filed a joint friend-of-the-court brief in that case.

STATE UPDATE

Court Limits Real Estate Commissioner's Power to Revoke License

The California Department of Real Estate (DRE) cannot revoke a real estate license for the commission of any crime. The crime used as a basis for the license revocation must substantially relate to the functions the licensed profession and must be either a felony or a crime involving moral turpitude. This was the ruling of a



California appellate court in the recent case of *Petropoulos v. Department of Real Estate* (2006 WL 2498015).

This case resolves the interplay between two sections in the California Business & Professions Code. Section 10177(b) allows the DRE to suspend or revoke a real estate license if the licensee is convicted of (or pleads guilty to) a felony or a crime involving moral turpitude. Section 490, on the other hand, allows a licensing board, such as the DRE, to suspend or revoke a license if the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the licensed profession.

In this case, real estate broker Jim Petropoulos pled guilty to misdemeanor battery for a domestic violence incident and no-contest for another incident. Three years later, the DRE filed a disciplinary action against Mr. Petropoulos. Because, among other things, Mr. Petropoulos and his then girlfriend gave highly inconsistent accounts of their altercation, the DRE failed to establish clear and convincing evidence that Mr. Petropoulos “acted with the sort of ‘readiness to do evil’ or ‘baseness, vileness or depravity’ that generally characterize crimes of moral turpitude.” The DRE thus conceded that “under the facts of the convictions in this case there is no moral turpitude” as required for a misdemeanor under section 10177(b). The Real Estate Commissioner nevertheless revoked Mr. Petropoulos’s license by relying solely on section 490.

Mr. Petropoulos filed a writ of mandate to set aside the DRE’s decision. He argued that sections 10177(b) and 490 are not two independent grounds for disciplinary action, but that section 490 restricts the DRE’s power to take disciplinary action under section 10177(b). The Court of Appeal agreed.

Looking at the legislative history of section 490, the Court stated, “the starting premise for both the 1972 and 1974 amendments was that the [licensing] boards

enjoyed too much discretion under their licensing statutes, and were exercising it in an arbitrary and standardless fashion to further penalize licensees for crimes that had no bearing on . . . their fitness to practice their profession.” The Court concluded that section 490, standing alone, does not authorize DRE to suspend or revoke a salesperson or broker’s license but that it must be read in conjunction with 10177(b) which requires underlying non-felony crimes to involve moral turpitude in order to discipline a licensee.

The Department of Real Estate is considering an appeal of the decision to the California Supreme Court or a request for depublication of the opinion.

California Association of REALTORS® Legislative Update

California Association of REALTORS® (C.A.R.) lobbyists are working on three key bills this week at the Capitol. What follows is a brief summary of the bills, which focus on the real estate broker license requirements; affordable housing developments; and requirements related to obtaining density bonuses. Please feel free to contact your Government Affairs staff if you have questions about any of these pieces of legislation.

C.A.R. is the sponsor of AB 1963 (Leslie) Real Estate Broker’s License, which is expected to be heard on the Assembly Floor Thursday, April 20th. Existing law requires most applicants for a broker’s license (in addition to exam passage) to demonstrate a valid salesperson’s license and two years experience in general real estate. Current law also provides that the Real Estate Commissioner may grant a license to an applicant without experience who demonstrates graduation from a 4-year college or university. C.A.R. is sponsoring AB 1963 to require the same two years of “general real estate” experience for degree holders that currently applies to





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all other applicants. This bill will not change the other mechanisms for demonstrating equivalency such as an individualized petition by a licensee from another state for recognition of his or her experience.

C.A.R. is sponsoring AB 2526 (Arambula) Affordable Housing Developments, which is scheduled to be heard in the Assembly Local Government Committee on April 19th. C.A.R. is co-sponsoring AB 2526 to defer local government development fees until occupancy permits are issued for housing developments with at least 49% lower-income units in cities that offer meaningful incentives. This legislation will enable developers to build lower cost units at a rate that will allow them to be placed on the market with lower construction costs.

C.A.R. is the sponsor of SB 1177 (Hollingsworth) Density Bonus, which is expected to be heard on the Senate Floor on Thursday, April 20th. In recent years, C.A.R. has sponsored legislation to improve the use of the state's density bonus law by passing legislation to make the law more easily understood and functional. This year, C.A.R. is sponsoring SB 1177 to prohibit local governments from examining the financial records of housing developers seeking a density bonus when they apply for a waiver of, or reduction in, development standards. Requiring developers to open their records to local government in order to prove that a waiver or modification of development standards is necessary gives local governments the opportunity to dictate, for example, the developer's profit, the type of appliances, marketing strategies and design styles that should be included in the development. Additionally, since local governments are NOT financially contributing to the subdivision, they should not have the right to inspect these financial records. The bill was recently amended, by the author, to clarify the intent of how a waiver or concession will

be considered.

SANTA CRUZ COUNTY UPDATE

There are two issues pending before the Santa Cruz County Board of Supervisors that pertain to the real estate industry.

The Public Works Department has been asked to develop a comprehensive policy regarding real estate "For Sale" signs, including enforcement and fees to redeem confiscated signs, and return to the Board on September 12, 2006.

A public hearing will be held on the morning of September 26, 2006, to consider the 2007 Growth Goal, as recommended by the Planning Director.

Please look to future Legislative Watch articles for updates on these issues.

Are You Ready to Vote?

With the passage of Labor Day and the onset of fall, days get shorter, the weather becomes cooler, and football season kicks off with great optimism and expectations. In politics, Labor Day is also the traditional starting point for campaigns to rev into high gear with Election Day in sight.

For REALTORS®, voting is the critical tool to electing officials who support homeownership, private property rights and the interests of real estate. The difference between voting and not voting is not simply a choice between two candidates. It is the difference between a Legislature that supports private property rights and one that takes those rights away. It is the difference between a City Council that promotes homeownership opportunities and one that does not. It is the difference between passing initiatives that protect REALTORS® from shakedown lawsuits and allowing them to be sued without any real injury or clients. And it is the difference between electing representatives who respect the REALTOR® voice



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and those who ignore it. As November 7 approaches, remember the impact you can have on government and the impact that it can have on you.

In the June primary election, only 28 percent of California's registered voters cast ballots. When you consider that only three-quarters of the state's eligible voters are even registered to vote, the full picture of voter apathy is appalling. With the importance of elections to our livelihoods, one would think that REALTORS® are dedicated voters. Sadly, this is not the case. By all accounts, the voting history of California REALTORS® mirrors that of the general public. Why is this? Many voters, REALTORS® included, complain that their vote is not important. The reality is that every vote is important; especially in state and local elections, where the outcome can have a direct impact on REALTORS®.

The decisions made by elected officials affect our lives every day, from the taxes we pay to the roads we drive on to the schools our children attend. That's why it's important to participate in the political process and help choose your elected officials by exercising your right to vote.

Before you can vote in an election, you must be registered. You must re-register if you have moved or changed your name since the last election. Registration can be done by mail; the forms are available online through the Secretary of State's Website at <http://www.ss.ca.gov>, and at all government buildings, (Post Offices, libraries, DMV, etc.).

Please join SCAOR and C.A.R. in the effort this year to register new voters. If you are not currently registered to vote, please do so. SCAOR REALTORS® should give voter registration cards to your clients at closing. Send them out with your marketing materials, or have a voter registration display in your office. C.A.R. encourages

every California REALTOR® to register at least TWO new voters before the October 23, 2006, the voter registration deadline for the November 7, 2006 general election.

If you plan to be out of town or otherwise engaged on Election Day, vote absentee. Registered voters can apply for an absentee ballot by mail between October 9, 2006 and October 31, 2006. Applications must be submitted to your county elections officials no later than 5 p.m. on October 31, 2006.

Don't wait until the last minute - register or re-register now. If you don't know how or where you can register to vote, please use the following information to contact the County Clerk-Recorder:

County Clerk-Recorder: Richard W. Bedal
Phone: 831-454-2060
Fax: 831-454-2445

County Elections Department Address:
701 Ocean Street, Room 210
Santa Cruz, CA 95060-4076

And finally, DONT' FORGET TO VOTE on Tuesday, November 7, 2006. Polls are open from 7 a.m. to 8 p.m. If you need the location of your polling place, please call your county elections office.

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.