

Legislative Issues

34th Annual

Illinois Association of REALTORS®

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March 23, 2010

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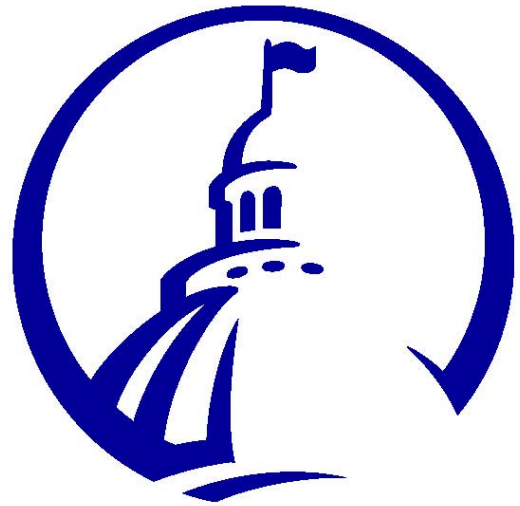
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IAR Initiative: Prohibit Transfer Fee Covenants

Senate Bill 3747 (Sen. Wilhelmi/Rep. Fritchey) SUPPORT

- ✓ **Senate Bill 3747** creates the **Transfer Fee Covenant Act** to provide that “transfer fee covenants” are against the public policy of the State of Illinois, and are not binding or enforceable. **In essence, the bill prohibits the imposition of transfer fee covenants.**
- ✓ In creating a “transfer fee covenant” a private person or entity records a covenant on real property which provides that **subsequent purchasers of the real estate must pay a fee to the creator of the covenant** upon the transfer of title to the real estate.
- ✓ The IAR believes that these transfer fee covenants, if allowed to proliferate, could cause immense problems in the transferability of real property, and, depending on the terms of the covenant, they may make a particular home purchase unattractive to future buyers, and leave the current property owner unable to buy their way out of the covenant and unable to sell their property.
- ✓ We are not aware of any transfer fee covenants being recorded yet in Illinois. They have been established in California. Examples of transfer fee covenants elsewhere require the buyer to pay between .5% and 1.75% of the sale price to the covenantor and others. **This transfer fee would need to be paid to the creator of the covenant every time the property is sold or conveyed. On a \$200,000 home, this would equate to between \$1,000 and \$3,500 per transaction.**
- ✓ Many legal observers believe that these transfer fee covenants attempt to create a new estate in real property that will not be recognized, ultimately, by the courts under several legal principles.
- ✓ **Passed the Senate, thank Senators. Offer position paper to House members.**

Tax Assessments: Short Sales and Foreclosures

Senate Bill 3334 (Sen. Lauzen/Rep. Farnham) - SUPPORT

- ✓ Under current law, distressed property sales – like short sales and foreclosures – are not counted in determining assessed values or in calculating the property tax multiplier. With distressed sales making up one third or more of the marketplace in many areas, **the IAR SUPPORTS amending the Property Tax Code to provide that the impact that distressed sales have on property values is reflected in the assessment of property for tax purposes.**
- ✓ **SB 3334 (Lauzen/Farnham)** amends the Property Tax Code to provide that boards of review and the Property Tax Appeal Board shall consider “compulsory sales” of comparable properties for the purpose of revising and correcting assessments. Also provides that the Department of Revenue shall include foreclosure sales and short sales in its sales ratio studies.
- ✓ At the present time, the bill does not apply to Cook County, as it has a unique and complex system that classifies property for tax purposes.
- ✓ **Passed the Senate, thank Senators. Ask House members for support.**



Title Insurance: Oppose State-Mandated Fees for Closing Protection

House Bill 5409 (Thapedi) is an initiative of the Department of Financial and Professional Regulation. The bill requires that in order for a **title insurance agent** to act as an escrow agent in a real estate closing, the title insurance agent must either be authorized to be an escrow agent by a written contract with the title insurance company, or the title insurance company must issue a "**closing protection letter**" protecting the parties to the transaction for the acts and omissions of the title insurance agent.

- ✓ The IAR is generally supportive of the consumer protections provided in this legislation. **The problem with this bill is that it requires that a minimum fee of \$25 be charged on the buyer/lender side, and a minimum fee of \$50 on the seller side for this protection.**
- ✓ The IAR is **OPPOSED** to this element of the bill for the following reasons:
 - ◆ The state should not be dictating what closing fees are charged in real estate transactions, or the specific amount of those fees.
 - ◆ The state should not be taking the position that because it is imposing a regulatory mandate for the protection of consumers, it is therefore obligated to ensure that the regulated entities receive compensation for this consumer protection.
 - ◆ This is no time for the state to be imposing additional costs in real estate transactions.
- ✓ In short, we are supportive of the requirement that all consumers be covered by closing protection, and **we have no problem with allowing title insurance companies to charge a fee for this protection - we simply don't think the state should be mandating that a minimum fee must be charged to consumers.**

SUPPORT Regulation of Appraisal Mgt. Companies

- ✓ With the implementation of the Home Valuation Code of Conduct by the Federal Housing Finance Agency (FHFA), mortgage lenders are now required to arrange for appraisals through third-party entities. As a result, "**Appraisal Management Companies**" (AMCs) are playing an increased role in the appraisal process.
- ✓ There are concerns that some AMCs are infringing upon the independence of appraisers in conducting independent valuations; that the AMC process sometimes leads to assigning appraisers to conduct appraisals in areas they are not familiar with; and that the AMC process is imposing unnecessary costs and delays in transactions.
- ✓ The IAR **SUPPORTS** House Bill 5868 (Saviano), which provides for the regulation of AMCs under the Illinois Real Estate Appraiser Licensing Act.



Landlord Licensing/Crime on Rental Property

- ✓ **OPPOSE** legislation to grant non-home-rule municipalities the power to license and regulate landlords. Some home rule units have enacted costly and oppressive ordinances in this area, and we oppose extending the authority to non-home-rule units.
- ✓ **WORK WITH** legislators in crafting alternative legislation for dealing with crime issues on rental property, such as [House Bill 6257 \(DeLuca/Sandoval\)](#), which provides that leases must include language advising tenants that engaging in criminal activities can result in their eviction.

Affirmative Defense to Eviction – Domestic Violence

- ✓ **OPPOSE** legislation that would create a loophole in the eviction statute, enabling problem tenants to avoid eviction using protections intended for domestic violence victims.
- ✓ **WORK WITH** legislators in crafting focused legislation that protects victims of domestic violence, yet provides landlords with clarity and the tools they need to keep occupants and guests who engage in violence off the premises. **NEUTRAL** on [HB 5523 \(Yarbrough\)](#), as amended.

Tenants Radon Protection Act

- ✓ **OPPOSE** [HB 5224 \(Reitz\)](#), which would enact the Tenants Radon Protection Act. The legislation as currently drafted requires landlords to do radon testing in certain circumstances, and allows tenants to break their lease under certain conditions if elevated radon is detected. **WORK WITH** the sponsor to determine if a reasonable alternative can be developed.

Regulation of Non-Condo Homeowner Associations

- ✓ **WORK WITH** legislators in crafting balanced legislation to protect homeowners that belong to a homeowners association, without imposing overly burdensome or costly requirements on those homeowner associations or their board members. [Senate Bill 3180 \(Wilhelmi/Pihos\)](#).

Affordable Housing

- ✓ **SUPPORT** [House Bill 6038 \(Turner\)](#), which extends the Illinois income tax credit for certain donations for affordable housing purposes. This program has been used with great success by IHDA, local governments, and non-profit housing groups, and will expire at the end of 2011 without this legislation, which extends the credit program to 2016.
- ✓ **OPPOSE** [Senate Bill 3001 \(Garrett\)](#), which allows counties to impose a fee on the recording of mortgage-related documents (initially up to \$5, with future increases allowed) to fund a county Affordable Housing Trusts Fund, with proceeds to be used for county-defined housing purposes. The IAR does not support another local fee on property owners for housing purposes without voter approval. We also feel that other resources are available for these purposes.

Real Estate License Act – Regular Employee

- ✓ **OPPOSE** efforts by the Homebuilders Association to delete or water-down the definition of “regular employee” in the Real Estate License Act. This effort is aimed at enabling independent contractors or other persons who are not a regular part of a property owner’s operations to broker the real estate without a license. **OPPOSE** [House Bill 5071 \(Black\)](#).