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CCIM Institute
Experts in Commercial Investment Real Estate

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Legislative Bulletin of the CCIM Institute Volume IX, Number 5, December 2004

2005 Capitol Hill Visits - Save the Date!

The 2005 CCIM Capitol Hill Visits will take place on Wednesday, April 20, 2005 in Washington, D.C. immediately following the CCIM Institute Spring Business Meetings in Chantilly, VA. Join your CCIM and IREM colleagues for this exciting opportunity to educate and exchange ideas with your Senators and Representatives on commercial real estate issues.

For more information and to register, contact Cheré LaRose-Senne at (312) 329-6033 or at clarose@cciminstitute.com.

Federal Tax Update

While the Administration has not yet settled on the details of a tax reform package, there is certainly movement towards the establishment of some kind of economic strategy. The Administration announced an “economic conference” to be held on December 15, 2004 but has not yet provided information to Congress or the Treasury about the agenda of that meeting. In addition, the President is expected to appoint members to a tax reform study commission by the end of the year.

Shortly after the November 2 election, House Speaker Dennis Hastert announced a tentative 2005 agenda that included one tax issue: to make the 2001 Bush tax cuts permanent. In 2001, the top tax rate was cut from 39.6% to 35%, with commensurate cuts for each bracket. The 35% rate, along with the other brackets, will revert to pre-2001 levels unless the law is changed.

Finally, the estate tax repeal is currently in effect only for 2010 and would revert to its pre-2001 system of very high rates and small exclusions in 2011. Congress is expected to choose modification of the estate tax by reinstating it, but only for very large estates. A restructured estate tax would likely retain stepped up basis and the tax rate would be relatively low.

1031 Tenants in Common (TIC) Transactions Work Group

The CCIM Institute is participating in the National Association of Realtors Tenants in Common (TIC) working group, in an effort to provide clarity for those in the TIC industry who are caught between two sets of laws and regulations -- those that pertain to securities and those that pertain to real estate. The goals of the TIC work group are to provide clarity regarding when TIC interests must be brokered as a real estate transaction and when it must be brokered as a security and to provide clarity on the extent and nature of real estate licensee participation in the sale of TIC interests that constitute securities. The second goal will be met by working with the appropriate regulators to offer guidance on how real estate licensees perform services and how they should be compensated for the marketing and sale of real estate.

At this time, the TIC work group is maintaining dialogue with the National Association of Securities Dealers (NASD) and the Securities Exchange Commission (SEC). The NASD is expected to issue guidance to its members on TICs some time in January and the TIC work group is encouraging the NASD to allow a registered broker/dealer to join with a real estate licensee in a TIC transaction. The SEC is currently in the process of evaluating a “no action” request submitted by a NAR member firm. This “no action” letter requests support of a fee-splitting arrangement between broker/dealers and real estate licensees in TIC transactions.

The CCIM Institute will continue to update members on the evolution of this important issue. If you have comments, suggestions or information regarding this issue, please contact Cheré LaRose-Senne at clarose@cciminstitute.com or at (312) 329-6033.

Banks in Real Estate Stopped for Another Year

The 108th Congress again approved a one-year ban on allowing banks into real estate brokerage and property management. The Senate had included a permanent prohibition, but this was removed by the Speaker of the House. The CCIM Institute will continue to work with the National Association of Realtors®

(NAR) to oppose banking in real estate brokerage and property management in the upcoming 109th Congress.

For more information on banks in real estate and other policy issues affecting the commercial investment real estate industry, go to the CCIM Institute Statements of Public Policy at: https://www.ccim.com/members/govaffairs/pdf/master_SOP_4_04.pdf

Terrorism Insurance Update

The Terrorism Risk Insurance Act (TRIA), passed in 2002, is a three-year program designed to ensure terrorism insurance availability following the economic impacts of catastrophic terrorist attacks. The legislation mandated that insurers make terrorism coverage available during the first two years and made the provision of terrorism coverage optional for the third year. The legislation is scheduled to sunset at the end of 2005. TRIA's "make available" requirement was set to expire at the end of 2004; however, it was extended through 2005 by the Secretary of the Treasury in response to a weak reinsurance market and concerns raised by the CCIM Institute and others that insurers would drop out of the terrorism insurance market if TRIA became an optional program. Despite this victory, TRIA is set to expire, in its entirety, in 2005. In light of expiration, it is likely that insurers will include a provision in newly negotiated policies to make terrorism insurance coverage contingent on the passage of a TRIA extension. The CCIM Institute will continue to push for a TRIA extension bill (through the end of 2007) in the 109th Congress.

Proposed Federal Insurance Legislation

The House Financial Services Committee is expected to debate a proposal to deregulate state insurance markets early next year. Committee Chairman Michael Oxley (R-Ohio) and subcommittee Chairman Richard Baker (R-LA) have announced their intention to introduce legislation in 2005 that would preempt existing state laws regulating most lines of insurance and deregulate insurance rate structures and policy forms. Oxley and Baker believe that action on these issues will resolve recent problems with the lack of affordable insurance products.

The National Association of Realtors® (NAR) has an Insurance Task Force to address the affordable insurance issue. At their annual meeting in November, NAR adopted policy opposing these legislative efforts. The Insurance Task Force believes that replacing the current state-based insurance regulatory system with a system of mandatory, uniform national standards for personal and commercial property insurance would eliminate the ability of the states to regulate insurance rates and preempt existing state insurance laws and regulations. In arriving at this policy, the task force agreed that insurance markets are not always competitive and that the proposal's preemption of state insurance laws are not in the best interests of the nation's consumers, property markets or local economies.

The CCIM Institute will continue to work with NAR on opposing legislation of this kind.

REMIC Update

The REMIC coalition (consisting of NAR, the CCIM Institute as an affiliate of NAR), the Mortgage Bankers Association and the Real Estate Roundtable) was unsuccessful in having language that would modernize REMIC rules (H.R. 4113)inserted into HR 4250 the JOBS Act. During the conference between the House and Senate, Ways and Means Chairman Bill Thomas (R-CA) stated that no new amendments were to be accepted. Senator Gordon Smith (R-OR) offered the REMIC amendment, then promptly withdrew it. Encouragingly, several conferees noted that REMIC modernization was worthy goal to be considered next year.

In the meantime, the CCIM Institute will work with its coalition partners to find avenues where the REMIC rules may be modernized through regulatory changes.

The REMIC legislation, H.R. 4113/S. 2422, would have eased the rules governing loan modifications that have had a dampening effect on the securitization of commercial loans. For more information on REMIC and other policy issues affecting the commercial real estate industry, go to the CCIM Institute Statement of Public Policy at: https://www.ccim.com/members/govaffairs/pdf/master_SOP_4_04.pdf

Junk Fax Prevention Act

The Senate passed S. 2603, the Junk Fax Prevention Act, after resolving objections made from Senator Barbara Boxer. Unfortunately, the Senate version contains an amendment establishing a Federal Commission on Boxing (a pet project of Sen. John McCain, R-Ariz.) that does not have the support of key House members. The bill is expected to die in conference. Since an agreement was reached by all parties on the core tenants of the bill, it is likely that a reintroduction of the legislation will be met with swift and favorable action in the 109th Congress starting work early next year.

The Junk Fax Prevention Act would correct the problems created by new Federal Communications Commission (FCC) fax regulations when they required a sender to have the expressed written invitation or permission of the recipient prior to sending an unsolicited fax advertisement thereby doing away with the “established business relationship” definition.

In late summer 2004, the FCC issued a stay of the fax rules which is set to expire on July 1, 2005.

FEMA Flood Mapping

As part of the Department of Homeland Security FY2005 appropriations bill, Congress has fully funded the Federal Emergency Management Agency's (FEMA) $200 million request for funds to update and computerize the federal floodplain maps. CCIM Institute supports FEMA's multi-year flood map modernization program because of the important role flood map's play in the real estate transaction. FEMA has thus far received $550 million toward the program, the final cost of which is estimated at $800 million.

Also, the National Association of Realtors submitted commentary on a pilot program designed to mitigate insured properties that have been flooded numerous times. The Federal Emergency Management Agency (FEMA) was mandated by Congress to create the Severe Repetitive Loss Properties Pilot Program. This program will require those property owners who have placed four or more claims on the National Flood Insurance Program to either mitigate to prevent additional flooding or pay higher flood insurance premiums. NAR's comments emphasized that the Pilot Program should focus on those properties that have experienced the greatest property losses due to flooding, and the importance of notifying and communicating with property owners during the mitigation and acquisition process.

Consumer Report Disposal

The Fair and Accurate Credit Transactions Act of 2003 (FACT Act) required several federal agencies to adopt consistent and comparable rules regarding the proper disposal of consumer report information and records. In June 2004, the National Association of Realtors (NAR), the CCIM Institute and the Institute of Real Estate Management (IREM) submitted commentary on the proposed rules stating that the proposed rules were reasonable and consistent with current practice in the residential and commercial real estate industry.

The final rules were published by the Federal Trade Commission (FTC) on November 24, 2004. The final rule allow flexibility for businesses who possess consumer information to properly dispose of such information by taking “reasonable measures” to protect against unauthorized access to or use of the information in connection with its disposal. The rule provides examples of “reasonable measures” but they are not to considered exclusive or exhaustive methods for compliance. The examples include physical destruction using paper shredders, destruction or erasure of electronic media and independently auditing the methods of a disposal company’s operations.

For a copy of the final rule, please contact Cheré LaRose-Senne at clarose@cciminstitute.com or at (312) 329-6033. Thank you to all of those CCIMs who assisted the government affairs staff with reviewing the proposed rule prior to submitting commentary!

Internet Tax Moratorium

President Bush signed the Internet Tax Nondiscrimination Act (ITNA)on Friday, December 3, 2004 reinstituting the moratorium on state and local government Internet access taxes retroactive to its expiration on November 1, 2003 and extending the moratorium through November 1, 2007. The Internet tax moratorium was originally enacted to prevent state and local governments from imposing new or discriminatory taxes on Internet access.

Property Tax Proposal in Kansas

This fall, the Kansas Department of Revenue stated that it would seek a change in state law which prohibiting licensed professionals from obtaining their licenses until their taxes were paid in full. The department's rationale is that 17.8% of various licensed professionals have not filed a tax return or have an unpaid balance. Approximately, 12.5% of Kansas Real Estate Commission licensees have an unpaid tax bill. CCIM Institute would argue that this proposal violates professionals' right to privacy and obviously threatens their employment and subsequent income. CCIM Institute government affairs staff will be monitoring any legislation introduced in Kansas regarding this issue next year.

2005 CCIM Institute Legislative Affairs Subcommittee Leadership
Chair, Stephanie Short, CCIM
Vice Chair, Lou Nimkoff, CCIM

CCIM Institute Legislative Affairs Staff
Cheré LaRose-Senne, Legislative Liaison, (312) 329-6033, clarose@cciminstitute.com
Chuck Achilles, IREM VP Legislative & Research, (312) 329-6020, cachille@irem.org