

# Circle the Wagons, They're A-comin'!

*by David Corsi, Past President, MRELA*

Throughout the nation, real estate investors are coming under the scrutiny of state legislatures and New Jersey is no exception. There are several bills that have been introduced in Trenton that may severely impact our industry.

In April, Bill A-4068 The "Real Estate Installment Contract Act" was introduced by Assemblyman John Burzichelli. The bill describes real estate installment contracts, stating they must be in writing and disclose any charges, fees or services separate from the purchase price, the principal amount owed, a copy of a loan amortizations schedule showing the due date, amount of each payment, puts restrictions on the seller to hold or place mortgages on the property and requires the contract to be recorded at the county courthouse.

In May, State Senator Shirley Turner D – Mercer, introduced in the State Senate Bill S-2699: "The Foreclosure Consulting and Anti-Fraud Act." At the same time, Assemblymen Gary Schaer D – District 36, Neil Cohen D - District 20 and John Burzichelli D - District 3 introduced a sister bill in the State Assembly; Bill A-4214: "The Foreclosure Rescue Fraud Prevention Act." **These bills would greatly curtail an investor's activities in the pre-foreclosure and distressed sale market.** Foreclosure Consultants are defined to include "purchasers of properties in default as well as bankers, mortgage brokers, real estate brokers and agents, etc.

## **Main points to the Bill include:**

- \*Distressed Properties are defined as owner-occupied 1-6 family units which are more than 90 days delinquent on any loan secured by the property. The 90 days part can be troublesome. Just one small example: if you are attempting to buy a property in default and pass the 90 day mark without the purchase being completed, a whole new set of rules will take over on the 91<sup>st</sup> day.
- \* Severely restricts purchase-leaseback-option deals. Besides the inherent dangers of this type of strategy from a usury point of view, this bill would allow for punitive damages against the investor.
- \* Requires the investor to pay 82% of Fair Market Value for the property. Not to overstate the obvious, but how do you determine what 82 % is, and 82% of what? How is "Fair Market Value" determined? Many properties in foreclosure are in need of major repairs. Is the 82% figure after repair value, or in its current state?
- \* The "Stop Foreclosure Consulting" types of businesses will be under the Commissioner of Banking. Distressed property purchasers will be required to have annual audits conducted by an independent auditor, and be required to use certain disclaimers and language in their advertisements and paperwork
- \* If any part of the conveyance is found to be in violation of the provisions set forth in this legislation, the transfer may be rescinded by the distressed owner **within two years of the date of the transfer!** Yes, you read that correctly. Think about the implications. Potentially the deal could be undone up to two years after it was completed. Questions abound: 1. Would you fix up the property within the two year time frame? 2. Can you sell the property within those two years? 3. Would a title insurance company insure good title during (and possibly after) those two years?

\* Violations of the bill's provisions provide for civil penalties of up to \$10,000 for the first offense and \$20,000 for each subsequent offense

This small sampling of the contents of these bills point to the obvious. If these bills become law, they will have a chilling effect on the activities of and the profitability of real estate investors, banks, construction trades, property insurance and title insurance companies, etc.

This is just the opening round. **As foreclosures increase, and the property tax situation worsens, the state legislators will need to come up with additional revenue and real estate investors will be on their radar.** It would not be at all surprising to see the legislature come up with some type of plan that if a property is non-owner occupied, that property would pay higher taxes than similar owner-occupied houses. The above proposed legislation and concerns about what they will come up with next, shows why it is so important for investors to get involved..

A couple of years ago, MREIA was instrumental in fighting legislation that would have **required** property owners to allow pets in their units. We were successful. but it was only one victory. The battle over individual property rights, the cornerstone of our nation, continues and we can't let our guard down.

**Write letters, faxes and emails to your Assemblymen and State Senators. Let them know how you stand on these issues.** Should you become aware of any pending legislation that would have an impact on real estate investing please let the leadership of MREIA know about it. And be prepared to circle the wagons.