Good and Bad Proposed Federal Legislation

by Dave Corsi, MREIA Legislative Chair and Vice President, NJ Association of Real Estate Professionals

In 2010, real estate investors are facing huge changes, courtesy of Washington. As both political parties gear up for the 2010 elections, the rhetoric will flow and a lot of legislation will be proposed. If 2009 is any indication, 2010 is going to be a doozey. *Washington never sleeps!* Lawmakers are always cooking up new legislation so we must be on our guard and always be ready to contact our elected officials and let them know our views.

Estate Tax. Effective January 1, 2010, estate taxes are repealed. That's good news but the repeal is only effective for one year. If Congress does not pass new legislation in 2011 the estate tax will return to the 2001 guidelines. Thus, an estate will only be allowed an exemption of $1 million, with the excess being taxed at 55%. Although the one-year repeal of the estate tax is a good sign, it is being coupled with an expansion of the capital gains tax on inherited property. This is a new tax for many smaller estates. Under the old rules many of these heirs would have paid nothing. **The upshot is that many estates that would have avoided paying taxes are now going to be hit with a capital gains tax on the inherited side.**

H.R. 1728 "Mortgage Reform and Anti-Predatory Lending Act" This bill was passed by the House of Representatives on May 7, 2009 and sent to the Senate where it was assigned to a Senate sub-committee. The "intent" of the bill is to impose requirements on those who practice "predatory lending practices" such as mortgage brokers, servicers, appraisers, etc.
Who would be subject to the requirements?

- Sellers who provide owner financing more than once every 36 months.
- Interest-only loans

One major point needs to be made: **seller carry back financing is not a loan.** Unfortunately, the authors of this bill do not seem to understand that a seller is not lending money. Periodic payments are being received as terms and conditions of the sale. Another scary provision gives "carte blanche" to Federal banking regulatory agencies to impose additional rules and regulations.

After H.R. 1728 passed the House, The NJ Association of Real Estate Professionals went on the offensive, contacting and meeting with legislators in the House and Senate to explain the problems with this legislation. Thanks to a great suggestion by Pete Fortunato, we also contacted AARP and got them on board in opposing the bill. The theory behind their opposition was that a lot of senior "mom and pop" property owners who were looking to support themselves by selling property they have owned for years, and living off the monthly cash flow, would not be able to if this bill passed and became law. Our efforts appear to be paying off.

Currently the Senate seems to be in no hurry to move H.R. 1728. We are closely monitoring the situation and will alert Noteworthy readers (they buy and sell notes) if the situation changes. Remember, we must stay vigilant. Contact your Senators and let them know your views. When Washington is in session, you never know what mischief will be created!

H.R. 3440 "Installment Sales Bill" This is a bill that we have all been waiting for. It can help rejuvenate the real estate industry and provide real stimulus. Its passage would also act to negate H.R. 1728. The Bill would allow "dealers" in real estate (builders, rehabbers, and flippers,) to pay taxes due on the sale as the payments are received.
The current law disallows these groups from taking installment sale tax treatment. It has had a huge negative impact on the real estate and note industry over the last twenty years. H.R. 3440 would give the builders, dealers and flippers the incentive to go out and create thousands of seller financed notes and mortgages.

Passage of H.R. 3440 would give the discount note-buying industry thousands of notes and mortgages to buy, create additional revenue, increase employment and also help to take the strain off financial institutions which ultimately means taxpayer relief. H.R. 3440 has received strong bi-partisan support from both parties and has a reasonable shot at being passed. The banking industry, homebuilders and trade unions have voiced support as well, **but we also need your help.** We must make sure their voices are heard on H.R. 3440 and the other pieces of legislation. The comment we keep hearing from members of Congress is, "are there voters in my district who will contact me, urging my support or opposition for this bill?"

We are anticipating that H.R. 3440 will become part of the tax reform package that Congress will be working on in early 2010. We are being given a golden opportunity; let's make the most of it. Contact you Congressman and Senators and let them know you support H.R. 3440. And urge others (family, business associates and friends) to do the same.

Editor's Note: kudos to our Dave Corsi; he wrote the legislation for H.R. 3440 and also met with legislators to educate them about its benefits.