



NEWSBRIEF: LEGISLATIVE UPDATE

Inside The Beltway

by Dave Corsi

Currently all eyes are on the Senate where our fearless leaders are now working on the Financial Reform Bill. Changes, amendments etc are flying so fast and furious it is difficult, if not impossible to keep track of them. Suffice to say, **they are coming after our industry and we better be prepared.**

The Senate is now debating the Wall Street Reform and Consumer Protection Act. The companion bill, HR 4173 passed the House of Representatives in December 2009. Incorporated into HR 4173 is "The Mortgage Reform and Anti-Predatory Lending Act" which was originally a part of HR 1728.

The Wall Street Reform and Consumer Protection Act (WSRCPA) calls for sweeping changes and restrictions on mortgage originators. After bailing out the "too big to fail" firms that have cost the US taxpayer in excess of \$1 trillion, Washington is looking to impose strict financial restraints on bank and mortgage originators. And **in the never ending march towards increased power and authority, Washington is looking to include private property owners under these new regulations.**

The following are the problems the Note and Cash Flow Industry will have to contend with if the legislation passes and is signed into law. Also affected will be real estate investors, rehabbers, real estate brokers and every other real estate related ancillary business. Owner financing is covered under Section 101(3) (e):

1 A "person, estate or trust that provides mortgage financing for the sale of one property in any 36 month period provided the loan is:

- a) Self amortizing
- b) Seller determines in good faith and can document this "good faith" that the buyer has a reasonable ability to repay the loan
- c) A fixed rate or is an adjustable rate that is adjustable after 5 years, subject to "reasonable, annual and lifetime" limitations on interest rate increases
- d) Meets any other criteria the "Federal banking agencies may prescribe."

Another amendment states that creditors, secured by a lien on a principal dwelling (go figure?) must establish an escrow or impound account.

Give careful consideration to d). This provision will effectively give the regulators the unilateral right to publish, revise and enforce any changes they decide to make. In short, this is un-constitutional and is what leads to tyranny.

If the above requirements are met, a seller will be "allowed" to finance the sale of his/her property. Otherwise, a seller looking to finance more than one property every three years will have to obtain a mortgage originator's license and all that entails (bonding, reporting, testing, disclosures, etc).

As we move forward, several points need to be remembered:

Owner carry back financing is **not** a loan. It is a term of the sale. The owner is not lending money; he/she is simply being paid in installments.

Seller financing was not the cause of the real estate bubble and subsequent meltdown. It was:

- Washington (“Community Re-investment Act,” regulations
- The Federal Reserve - “easy money” policies”)
- Wall Street (securitizing and selling on the secondary market in essence junk)
- Major mortgage lenders (i.e. Countrywide) offering “teaser rate” loans that anyone with an ounce of common sense knew were doomed to fail.

What you can do about this? CONTACT YOUR SENATORS! Write, fax, email and visit their offices. Tell them to vote no on HR4173. Let them know your concerns and how this legislation will hurt the little guy, particularly seniors who may be looking to liquidate their holdings and live off the income they produce. Write letters to your local papers voicing your concern. Tell friends, relatives, real estate agents etc. Contact your local realtor board and get them involved.

Keep in mind, elections are coming and make sure you get out and vote.

Dave Corsi is MREIA's Legislative Awareness Chair and Vice President, NJ Association of Real Estate Professionals.