



The Voice of Real Estate in North Carolina

## **Highlights of the 2009 Legislative Session North Carolina Association of REALTORS®**

The “Long Session” that concluded in August certainly lived up to its name this year. The session began in January and after a grueling six month-plus debate on the budget, state lawmakers finally constructed a budget that could gain enough votes in each chamber as well as the approval of the Governor.

The 2009 session also included discussion and enactment of major substantive legislation, such as legislation that significantly amends the state coastal insurance program and a bill that bans smoking in most restaurants and bars.

In its governmental affairs advocacy, the North Carolina Association of REALTORS® has always fought to protect property owners’ rights, increase housing affordability and promote homeownership. And with the current real estate market, and the economy in general, facing real challenges, the NC Association of REALTORS® focused especially on ways to improve the industry and the businesses of our members.

The following is a summary of the legislation of interest to REALTORS® that was considered by the 2009 General Assembly. The summaries are grouped by subject matter.

### **Tax Issues**

#### **2009 State Budget - No Targeted Taxes on Real Estate or REALTORS®**

State legislators working to adopt the budget were facing a multi-billion dollar deficit and were contemplating several tax ideas of enormous concern for REALTORS®. Some of these ideas included the following:

- Taxing services.
- Increasing the privilege license tax from \$50 to \$200.
- Taxing LLCs.
- Eliminating personal income tax deduction for mortgage interest.
- Eliminating the personal income tax deduction for property taxes.

However, the NC Association of REALTORS® successfully halted all of these tax ideas.

The \$19 billion state budget approved by the General Assembly and signed by the Governor includes nearly \$1 billion in new taxes, approximately \$2 billion in spending cuts and more than \$1 billion in federal stimulus funds. The tax increases include the following:

- A one cent increase in the sales tax until July 1, 2011.
- Surcharges on corporate income taxes of 3 percent for the next two years.
- Surcharges on personal income taxes of 2 or 3 percent, depending on income level, for the next two years.
- Permanent increases in cigarette and alcohol taxes.
- Taxing digital downloads.

Our victories in defeating these tax proposals harmful for our industry cannot be celebrated for too long. There will continue to be an examination of the state's tax code. House and Senate finance committee leaders will continue to meet this Fall to review the tax code and consider the idea of restructuring our state tax system. There could even be a special legislative session to consider such reform. The NC Association of REALTORS® will continue to be engaged in this issue.

### **Transfer Taxes**

North Carolina homeowners remained undefeated with regard to the real estate transfer tax. On a snowy Tuesday in a special election held in February in Avery County, voters once again rejected the Home Tax.

After 24 straight losses at the polls, some local officials are frustrated that the public adamantly refuses to grant them authority to impose a transfer tax on residents selling their property. The county commissioners association even pursued legislation that would allow counties to impose these taxes without voter approval. The NC Association of REALTORS® prevented this legislation from even being introduced.

Interestingly enough, local leaders have campaigned for the passage of these measure the same way they campaigned for the failed tax in communities across the state – with your tax dollars. NC REALTORS® waged an ongoing battle against their efforts. Others took notice:

<http://www.capitol-monitor.org/its-your-money/taxpayer-funded-advocacy-gover.php>.

In the effort to once and for all stop transfer taxes, **Sen. David Hoyle (D – Gaston)**, reintroduced legislation to repeal the county authority to put the transfer tax on the ballot: <http://takeaction.realtoractioncenter.com/ct/Rpd57aM1ySpo/> **SB 915 (Repeal County Land Transfer Tax):**

<http://www.ncga.state.nc.us/Sessions/2009/Bills/Senate/PDF/S915v1.pdf>.

Sen. Hoyle introduced a similar bill last session, **SB 1951 (Repeal Transfer Tax)**, which was adopted by an overwhelming majority (38-6) vote in the Senate chamber but was never heard in the House. A bill similar to **SB 915** was introduced in the House, **HB 1431 (Repeal Land Transfer Tax)**, introduced by **Reps. Thom Tillis (R-Mecklenburg)**,

**Curtis Blackwood (R-Union), Nelson Dollar (R-Wake) and Shirley Randleman (R-Wilkes):**

<http://www.ncga.state.nc.us/Sessions/2009/Bills/House/PDF/H1431v1.pdf>.

Unfortunately, the House leadership continues to block passage of this legislation despite the fact that a recent statewide poll shows that 83 percent of the public oppose the transfer tax. While neither bill was heard in committee this year, they are both eligible for the 2010 session.

### **Homebuyer Tax Credit**

#### **Mortgage Certificate Credit (MCC) Program**

Earlier this year, **Governor Beverly Perdue** authorized the NC Housing Finance Agency to expand its Mortgage Certificate Credit program by 1,500 homes. The MCC program enables first-time homebuyers to take a tax credit up to \$2,000 every year they occupy their home. This is in addition to the itemized mortgage interest deduction that all homeowners can claim. It is estimated that the program could save NC homebuyers more than \$30 million. Sheila Pierce, Chair of the Association's Legislative Committee noted that, "[t]he N.C. Association of REALTORS® commends Governor Perdue on the expansion of the MCC program and her commitment to stabilizing the housing industry in NC. We are thrilled to continue working with the NC Housing Trust Fund and the ongoing success of the Mortgage Certificate Credit program."

#### **Down payment assistance up to \$8,000**

Homebuyers who need help with the down payment and closing costs may qualify for interest-free, deferred second mortgages up to \$8,000. You pay \$1,000 from your own funds, and the loan pays up to \$8,000 of the balance. (This is not the federal tax credit that's part of the American Recovery and Reinvestment Act of 2009).

Payment on the principal isn't due until 30 years from the date of the loan. Payment is due earlier if you sell, transfer, or refinance your home; if your loan goes into default; or if the home ceases to be your principal residence.

To qualify for the \$8,000 down payment assistance, your income and the home's sales price must fall within limits that are lower than those for a first mortgage without down payment assistance. Homes built before January 1, 1978 and homes that are tenant-occupied, are not eligible for NCHFA down payment assistance.

More information is available at:

<http://www.nchfa.com/Homebuyers/HBwhatweoffer.aspx>.

### **Homebuyers Tax Credit**

NC Association of REALTORS® staff worked with legislators in both chambers in an effort to secure a state homebuyers' tax credit as a means of stimulating the housing sector and improving the economy in general. While several bills were introduced, the State's financial issues did not allow them to be acted upon. The legislation introduced had a great deal of support and was as follows:

**Reps. Ric Killan (R – Mecklenburg), Jim Crawford (D – Granville), Julia Howard (R – Davie), and Pryor Gibson (D – Anson)** introduced **HB 663 (North Carolina Ten in Ten Plan)**: <http://www.ncga.state.nc.us/Sessions/2009/Bills/House/PDF/H663v1.pdf> which would provide homebuyers with a \$10,000 tax credit.

**Sen. David Rouzer (R-Johnston)** introduced **SB 818 (New or Existing Home Purchase Credit)**, <http://www.ncga.state.nc.us/Sessions/2009/Bills/Senate/PDF/S818v1.pdf>, which would provide homebuyers a \$15,000 tax credit over five years for the purchase of a permanent residence.

**Sen. David Hoyle (D-Gaston)** introduced **SB 912 (Home Purchase Stimulus)**, <http://www.ncga.state.nc.us/Sessions/2009/Bills/Senate/PDF/S912v1.pdf> which provides for a \$10,000 tax credit over five years for the purchase of a permanent residence. The legislation set aside a total of \$100 million for this credit on a first come, first serve basis. **Reps. Michael Wray (D-Northhampton), William Wainwright (D-Craven), Bill Owens (D-Pasquotank) and Hugh Holliman (D-Davidson)** introduced the House companion bill, **HB 1240 (Home Purchase Stimulus)**, <http://www.ncga.state.nc.us/Sessions/2009/Bills/House/PDF/H1240v1.pdf>.

All of these bills are eligible for the 2010 session.

## **Homeowners Insurance and the Beach Plan**

During the past eight months the North Carolina Association of REALTORS® has been highly engaged in homeowners' insurance issues and legislation. As a result of this involvement, legislation was enacted at the state level that will benefit insurance consumers and improve the real estate market.

At the heart of the issue is the North Carolina Insurance Underwriting Association, commonly known as the "Beach Plan". The Beach Plan is a state insurance program that offers insurance to coastal property owners who are not otherwise able to obtain it on the voluntary market.

Last year, a legislative study committee reviewed the effect that a significant hurricane would have on the insurance companies in NC and specifically the Beach Plan. There was concern about whether the Beach Plan would have enough money to pay for claims attributable to a major storm. Insurers were concerned that costs could get passed along to them if a major storm hit the state. Others wondered whether this would result in some smaller insurance companies going bankrupt and/or insurance companies deciding to not provide coverage in the state. All of this would cause availability and affordability problems.

At roughly the same time, the Beach Plan announced an increase in Beach Plan deductibles (deductibles will move from a flat amount to 2 percent). In addition, the Beach Plan increased the amount of the surcharges that it applies to the voluntary market rates when establishing the Beach Plan rates (increased from 5% to 15% on wind and hail policies and from 15% to 25% for full homeowners' policies). These

increases in deductibles and the surcharge were ultimately stayed by a trial court pending further review by the NC Court of Appeals.

On a related note, voluntary market rate changes were approved recently as well. In 57 counties of the state, rates will increase as a result of these changes. Most notably, the coastal markets will see significant rate increases. In the other 43 counties, the rates will actually go down by a small percentage.

The legislative study committee recommended making certain changes to the Beach Plan. **HB 1305 (Beach Plan Changes)**, <http://www.ncga.state.nc.us/Sessions/2009/Bills/House/PDF/H1305v7.pdf>, introduced by **Rep. Hugh Holliman (D-Davidson)**, included many of the recommendations of the study committee. And although there were several other bills introduced that dealt specifically with one insurance issue or another, the momentum was clearly behind a comprehensive bill such as **HB 1305**.

The NC Association of REALTORS® Legislative Committee, Executive Committee and Rapid Response Team were all involved in deliberating and analyzing these issues. A motion that the Executive Committee support coastal counties on insurance issues was adopted as was a motion to request NAR to consider reinstating the Insurance Task Force and revisit the Insurance issues as they affect North Carolina. The NC Association of REALTORS® also hosted a “webinar” on homeowners’ insurance issues and the Beach Plan that provided REALTORS® from across the state the opportunity to learn more about homeowners insurance issues. And the NC REALTORS® Issues Mobilization Committee funded a research project evaluating the economic impact of insurance changes on the real estate industry and comparing our state’s Beach Plan to similar plans in other states.

As a result of all of this input and analysis, the NC Association of REALTORS® focused its advocacy efforts on the following:

- Seeking fairer rates, surcharges and deductibles.
- Mandating that the Beach Plan surplus be retained.
- Advocating for mitigation credits for both the Beach Plan and the voluntary market.
- Opposing the reduction of maximum property coverage limits.
- Supporting the creation of rate territories that are drawn based upon risk.
- Supporting more transparency, including greater access to Beach Plan activities and more public notice for proposed rate increases.
- Supporting the ability for Beach Plan policyholders to pay in installments.

The NC Association of REALTORS® successfully lobbied for several significant changes to the legislation in both the House and Senate. With these improvements, the bill now makes huge strides to improving not only the Beach Plan but the property insurance market for the entire state.

The legislation that was enacted does the following:

- Retains Surplus – the bill requires that the accumulated surplus of the Beach Plan be retained.
- Beach Plan Surcharges
  - Locks surcharges in at five percent (5 percent) for wind and hail coverage and fifteen percent (15 percent) for full homeowners policies. As noted above, the Beach Plan had recently increased these surcharges to fifteen percent (15 percent) and twenty-five percent (25 percent), respectively. And unlike prior law, the Beach Plan cannot increase these surcharges without an act of the General Assembly.
  - Additionally, the Beach Plan’s ability to adopt surcharges on Dwelling and Commercial Policies was removed from the legislation.
- Named Storm Deductible – the higher Beach Plan deductible applies only if there is a named storm event. And this deductible was lowered from two percent (2 percent) to one percent (1 percent).
- Mitigation Credits – a provision allowing policyholders to receive credits for “the presence of mitigation and construction features” applies to both the Beach Plan and the voluntary market. Under the House version of the bill, these credits would have only applied to the Beach Plan.
- Installment Plan for Payments – beginning on May 1, 2010, the Beach Plan is required to file an installment plan for premium payments with the Commissioner of Insurance. Property owners were previously unable to make installment payments and instead were required to pay the full yearly premium up front.
- Contents Coverage – contents coverage will be equal to forty percent (40 percent) of the replacement value of the structure (currently the contents coverage is seventy percent (70 percent)). The legislation requires a decrease in premium that corresponds with the decreased contents coverage.
- Catastrophe Recovery Charge – in the event that losses to the Beach Plan exceed available surplus, reinsurance and other funding sources, the Beach Plan is authorized to assess member companies up to \$1 billion. Once the Beach Plan determines that all participating companies have paid the assessment, subject to the verification from the Commissioner of Insurance, the companies may charge a “catastrophe recovery charge” not to exceed ten percent (10 percent) of the annual policy premium on policies written statewide.
- Coverage Limits – the maximum coverage limit for homeowners and dwelling policies was set at \$750,000.
- Accountability, Disclosure and Public Notice –
  - The bill directs the Legislative Research Commission to study all aspects of the Beach Plan’s operation and the insurance ratemaking process.
  - The legislation will require annual audits of the Beach Plan.
  - In addition, the Plan will be required to fulfill any requests for information that it receives from the public.
  - Finally, the NC Rate Bureau must give public notice in two newspapers of statewide circulation within ten business days after filing for an increase in rates.

- Rate Territories – the bill requires the Rate Bureau to evaluate and revise rate territories to provide more fairness in the establishment of rates.

This has been a great team victory, as many REALTORS® and local board staffers have been involved. The NC REALTORS® Government Affairs team will continue to work diligently as this bill becomes law and is implemented.

On a related note, NAR has taken action to further evaluate natural disaster and insurance issues. This will be an on-going effort and the first meeting on these issues was held in Washington, D.C. on August 17 and 18. NC Assoc. of REALTORS® Legislative Committee Chair Sheila Pierce is our representative on the committee.

## **Home Inspections**

### **Home Inspector Legislation**

The N.C. Assn. of REALTORS® staff began working on changes to the home inspector licensure statutes earlier this year prior to the start of the Long Session. Staff was able to craft legislation substantially overhauling these statutes to the benefit of real estate consumers and REALTORS®.

**Senators David Hoyle (D-Gaston) and Don Vaughan (D-Guilford)** introduced the legislation incorporating these changes, **SB 1007 (Amend Home Inspector Licensure Laws)**, <http://www.ncga.state.nc.us/Sessions/2009/Bills/Senate/PDF/S1007v7.pdf>.

This legislation was passed unanimously by the General Assembly and will improve home inspection reporting and increase the professionalism of the home inspection industry. In addition to the hard work of the Senate sponsors, the sponsors of the legislation in the House (**Rep. Pryor Gibson (D-Anson)** and **Rep. Thom Tillis (R-Mecklenburg)**) were tireless in advocating for this legislation.

### **Home Inspection Reports**

Perhaps the greatest concern from REALTORS® regarding home inspections is accuracy and the manner in which items are reported. The increased educational requirements discussed below will certainly address this issue. But in addition, changes to the reporting requirements were made that clear up ambiguities and provide greater certainty for inspectors, their clients and REALTORS®.

With respect to reporting, the following changes were made:

- The requirement to include items that “adversely affect the habitability of the dwelling” on the summary page was deleted, as this phrase is highly ambiguous and proved to cause interpretation and enforcement issues.
- Normal wear and tear does not necessarily mean that a system or component is not functioning.
- Issues requiring further examination may still be included on the summary page, but they must be accompanied by a statement of some tangible evidence causing the concern.

- If a violation of the building code is cited, there must be verification of the construction date and code in effect at the time. This information must be included in the report and the entire inspection must be conducted according to that code. Thus, a home inspector cannot require that a home be “brought up to Code.” And the Home Inspector Licensure Board may adopt rules regarding citing the Building Code that are even more stringent.

### **Licensing and Education**

The legislation changes the licensing procedure from an apprentice-style approach to one that requires pre-licensing education of up to 200 hours. This is intended to produce better trained and educated home inspectors. In addition, all existing home inspectors are required to take 48 hours of instruction over the next three years on inspection techniques and reporting requirements.

### **Other Changes**

The bill also increases the insurance requirements of home inspectors by requiring that they have general liability insurance of at least \$250,000. In addition, home inspectors must disclose any criminal convictions or disciplinary actions to the licensing board and inactive licensees must catch up on continuing education hours prior to re-activating their license.

## **Appraisals**

### **HVCC Moratorium and Appraisal Management Companies**

North Carolina Association of REALTORS® staff has been working closely with the National Association of REALTORS®, our Congressional delegation, the state legislature and state regulatory agencies to address recent issues with appraisals in North Carolina and across the country.

The implementation of the HVCC (Home Valuation Code of Conduct) has led to appraisal management companies (AMCs) having an increased role in the real estate appraisal process. And in some instances, this is causing outcomes that are negatively impacting the real estate industry.

The HVCC has been in effect for more than three months and it is adversely affecting home sales. A recent survey by NAR found that 76 percent of respondents report a delay in closings and more than 35 percent have lost at least one closing since May 1, 2009. All of this may be causing a delay in the economic recovery and the end result will be a cycle of further declines in home prices, which will hamper the economic recovery and lead to a greater number of foreclosures.

During the 2009 legislative session of the NC General Assembly, we advanced legislation that would require Appraisal Management Companies to be regulated. This legislation, **SB 829 (Regulation of Appraisal Management Companies)**, <http://www.ncleg.net/Sessions/2009/Bills/Senate/PDF/S829v3.pdf>, introduced by **Sen. Clark Jenkins (D-Edgecombe)**, was approved by the Senate and will be eligible in the

House next session. We will continue to reach out to the various interested parties in North Carolina as we look toward the 2010 Legislative Session.

In addition, NC REALTORS®' staff has asked the NC Appraisal Board, the NC Real Estate Commission and the Attorney General to support an 18-month moratorium on the HVCC so these issues may be addressed. Due to our efforts, in conjunction with NAR, Reps. Howard Coble, Bob Etheridge, Virginia Foxx, Walter Jones, Patrick McHenry, Mike McIntyre, and Heath Shuler have all cosponsored the moratorium legislation.

We will continue to work with NAR, the state's regulatory agencies and our elected officials at the state and national levels to come to a quick and positive resolution of these issues.

## **Environmental Legislation**

### **Jordan Lake Rules**

In an effort to protect the water quality of Jordan Lake, the state Environmental Management Commission (EMC) adopted rules with extremely high implementation costs and that would require environmental retrofits of existing development. The NC Association of REALTORS® submitted comments during the rulemaking process, and we were partially successful in having the rules modified. But the rules were ultimately approved without addressing our major concerns.

Thus, we took steps to address this issue at the General Assembly. Several bills were introduced to disapprove these rules. The N.C. Association of REALTORS® staff worked with our local REALTORS® and business and local government allies to remove the requirements placed on existing development and lessen any other negative impacts on our State's housing sector.

Ultimately, **HB 239 (Restore Water Quality in Jordan Reservoir)**, <http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H239v6.pdf> introduced by **Reps. Lucy Allen (D-Franklin) and Pryor Gibson (D-Anson)**, was adopted. This bill repeals the rule that regulates existing development and replaces it with a much more sensible regulatory scheme. This is great news for property owners in the watershed.

After the enactment of **HB 239**, the N.C. Association of REALTORS® staff continued working with our local REALTORS® and business and local government allies to further improve the rules. The rules regulating new development were not addressed in **HB 239**, and thus we pushed for further legislation. **SB 838 (Amendments to Environmental Laws of 2009)**, <http://www.ncga.state.nc.us/Sessions/2009/Bills/Senate/PDF/S838v6.pdf>, introduced by **Sen. Charlie Albertson (D-Duplin)**, was amended to include a provision regarding the new development rules. This provision corrected the Jordan Lake nutrient buy down limits such that the water quality results are the same, but allowed treatment to take place off-site. This change was necessary to continue development opportunities

in the Jordan Lake watershed. This has been a long, hard fight by local REALTOR® boards and the NC Association of REALTORS® and represents a major victory for property owners in the watershed.

### **Falls Lake Rules**

Legislation designed to protect water quality, but that would have consequently impacted property rights and the real estate industry, was modified to accommodate the goal of protecting drinking water supplies while not over regulating land use. **SB 1020 (Improve Upper Neuse Basin Water Quality)**,

<http://www.ncga.state.nc.us/Sessions/2009/Bills/Senate/PDF/S1020v5.pdf>. introduced by **Sen. Josh Stein (D-Wake)**, was scaled back to only apply to the Upper Neuse Basin and Falls Lake. And the rules that are adopted will only be temporary and will be reviewed based upon stakeholder input, including that of the NC Association of REALTORS®.

## **Property Disclosure**

### **Military Installation**

**SB 795 (Real Estate Disclosure/Military Installation)**, introduced by **Sen. Tony Rand (D-Cumberland)**, <http://www.ncleg.net/Sessions/2009/Bills/Senate/PDF/S795V1.pdf>, would have required the Residential Property Disclosure Statement contain warnings about high noise and accident potential zones when the real property being transferred is located within one mile of a military installation. However, instead of proceeding with legislation on this topic, it was decided that the NC Real Estate Commission will address this issue in the rule making process. The NCREC has commenced rule making and draft rules should be available soon. NC Association of REALTORS® staff will be actively involved in the rule making procedure to ensure this rule protects consumers without unnecessarily complicating real estate transactions.

### **Mountain Property Disclosure Legislation**

Legislation to regulate mountain property transactions and require local governments to more stringently regulate development in those counties was thwarted again this past session. **Reps. Ray Rapp (D-Madison), Phil Haire (D-Jackson), and Susan Fisher (D-Buncombe)** introduced **HB 782 (Safe Artificial Slope Construction Act)**, <http://www.ncga.state.nc.us/Sessions/2009/Bills/House/PDF/H782v2.pdf>, which, among other things, would direct the Real Estate Commission to amend the residential property disclosure statement to require homeowners to research and disclose whether their property is located in an area ranked as “high or moderate relative debris/earth flow/slide hazard area.” It is important to note that the Real Estate Commission shared our concerns over the new disclosure requirements.

Although there was an attempt to create a legislative study committee to review these issues before the start of the Short Session, no such study committee was established. However, these issues may potentially be addressed by the Mountain Resources Commission which was created by **SB 968 (Mountain Resources Planning)**, <http://www.ncleg.net/Sessions/2009/Bills/Senate/PDF/S968v5.pdf>, introduced by **Sen.**

**Joe Sam Queen (D – Haywood).** NC Association of REALTORS® staff will be closely monitoring that Commission.

### **Coastal Hazard Disclosure**

**Rep. Pricey Harrison (D-Guilford)** and **Rep. Carolyn Justice (D – Pender)** reintroduced legislation, **HB 605 (Coastal Hazard Disclosure)**, <http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H605V1.pdf>, that would mandate new disclosures for certain coastal property. Property owners would have to determine whether the new disclosure requirements apply to their property. The legislation would require the Real Estate Commission to amend the Residential Property Disclosure Statement to include information about “coastal hazards,” such as annual erosion rates, setback requirements, 100-year storm recession estimates, high hazard flood areas, inlet hazard areas and flood elevation levels. The bill also directs the Coastal Resources Commission to adopt a new disclosure form that would require the disclosure of similar information. In addition, the Coastal Resources Commission would be given broad authority to require the disclosure of additional information as it sees fit. The new Coastal Resources Commission form would apply to the sale of lots, residential property and commercial property. And as with the mountain home disclosure idea discussed above, the Real Estate Commission stated that it was troubled by certain aspects of the coastal disclosure legislation.

This bill was not acted on by the House during this Session, but **HB 945 (The Studies Act of 2009)** specifically included it as an item that may be reviewed by a legislative study committee before the 2010 Short Session. NC Association of REALTORS® staff will be closely monitoring that study should it come to fruition.

## **Lending and Transactional Issues**

### **Consumer Protection**

**SB 974 (Consumer Economic Protection Act of 2009)**, introduced by **Sen. Tony Rand (D-Cumberland)**, <http://www.ncga.state.nc.us/Sessions/2009/Bills/Senate/PDF/S974v5.pdf>, was enacted this year. This legislation is an effort to protect the owner during the foreclosure of their primary residence. Among other things, it allows the clerk of court to delay a foreclosure proceeding where the clerk finds that there is good cause to believe that additional time or additional measures have a reasonable likelihood of resolving the delinquency without foreclosure.

### **Installment Sales and Options to Purchase**

**SB 1015 (Homeowner and Homebuyer Protection Act)**, introduced by **Sen. Josh Stein (D-Wake)**, <http://www.ncleg.net/Sessions/2009/Bills/Senate/PDF/S1015V3.pdf>, makes it unlawful for people other than the mortgagor to offer or participate in a foreclosure rescue scheme. The bill also regulates installment sales contracts (sometimes called contracts for deeds) and lease options. This bill passed the Senate with the understanding that it is by no means a finished product and needs more

discussion. The N.C. Association of REALTORS® staff is working with the bill sponsor to further refine the legislation as the bill is eligible in the 2010 Session.

### **Seller Financing and Mortgage Licensing**

In this lending environment, preserving seller financing as an option is more important than ever. Legislation introduced this session to conform North Carolina's mortgage licensing act to Federal law would have drastically limited seller financing in North Carolina.

As originally drafted, **HB 1523 (S.A.F.E. Mortgage Licensing Act)**, <http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H1523V6.pdf>, introduced by **Senator Dan Blue (D-Wake)**, the current exemption from mortgage licensing for seller financing was set to be repealed effective at the end of July, 2009. Current North Carolina law allows sellers to finance up to 5 real estate transactions per year.

While this change in state law was required by recently enacted federal legislation, the North Carolina Association of REALTORS® staff was able to obtain an amendment to preserve the current exemption from mortgage licensing for seller financing. The amendment extends the current exemption (i.e., sellers can finance up to 5 real estate transactions per year) until at least July 31, 2010, with an even longer exemption pending HUD's determination of whether or not this exemption is compliant with federal law. Staff will continue to work with NAR and other state REALTOR® associations at the federal level to keep this option available for sellers and buyers.

## **Development, Construction and Land Use**

### **Impact Fee Bill Defeated**

The NC Association of REALTORS® blocked legislation that would have provided impact fee authority to Harnett County. **HB 1007 (Harnett/Subdivision Recreation Facilities)**, introduced by **Rep. Jimmy Love (D-Harnett)**, <http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H1007v1.pdf>, which would have allowed Harnett County to charge homebuilders an impact fee for recreational services and facilities, was defeated in the House Committee on Local Government I.

### **Exaction for Development**

A bill which would have reinforced that local governments cannot charge impact fees was not acted on this session. **SB 447 (No Monetary Exaction for Development)**, introduced by **Sen. David Hoyle (D-Gaston)**, <http://www.ncleg.net/Sessions/2009/Bills/Senate/PDF/S447V1.pdf>, would have prevented counties and cities from imposing taxes, fees or monetary contributions for development when the tax, fee or contribution is not specifically authorized by state law.

This bill was specifically aimed at impact fees tied to so-called Adequate Public Facilities Ordinances (APFOs). These APFOs provide that if the local government deems that a specific infrastructure (school, water system, sewer system, etc.) cannot

accommodate the demand from proposed development then the development will not be allowed. But, if the developer pays an impact fee then the development is permitted.

The NC Association of REALTORS® will continue to push this issue in the legislature as well as in the judicial branch.

### **Building and Development Permit Extensions**

As the economy and housing sector have struggled, builders and developers have had to idle building projects while they wait for a recovery. Unfortunately, many of them face the prospect of their various development and building permits expiring. This would then require the builder/developer to go through the expensive and time-consuming approval processes all over again with no assurance that their project would be approved again.

Fortunately, NC Association of REALTORS®-supported legislation that automatically grants a six month extension of these permits was approved by the General Assembly. **SB 831 (Extend Permits Regarding Land Development)**, introduced by **Sen. Dan Clodfelter (D-Mecklenburg)**,

<http://www.ncga.state.nc.us/Sessions/2009/Bills/Senate/PDF/S831v6.pdf>, is now law. The House counterpart bill, HB 1490 (Land Development Permit Changes), introduced by **Rep. Ty Harrell (D-Wake)**,

<http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H1490V5.pdf>, contains language that specifies a process for local governments to follow when the extended or “resurrected” permits cause a water or sewer capacity problem. This bill was passed by the General Assembly to address concerns from Union County.

### **Property Tax Reprieve**

Legislation to provide special tax relief to the real estate industry was approved by the General Assembly this session. **HB 852 (Defer Tax on Builders’ Inventory)**, introduced by **Reps. Margaret Dickson (D-Cumberland) Harold Brubaker (R-Randolph), Hugh Holliman (D-Davidson) and William Wainwright (D-Lenoir)**, <http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H852V5.pdf>, temporarily defers the property taxes due on unsold, new homes which have never been occupied, for up to three years or until the house is sold. The tax deferment is only on the home and not the underlying property. The increased property taxes generated by improving the land with a home would be due when the home is sold. This law is effective January 1, 2010.

### **Mountain Development**

As discussed above in the Property Disclosure section, legislation to regulate mountain property transactions and require more stringent regulation of construction practices in the mountains by local governments was not approved by the General Assembly this past session. **HB 782 (Safe Artificial Slope Construction Act)**, <http://www.ncga.state.nc.us/Sessions/2009/Bills/House/PDF/H782v2.pdf>, introduced by **Reps. Ray Rapp (D-Madison), Phil Haire (D-Jackson), and Susan Fisher (D-Buncombe)**, would have forced local governments to adopt and implement development ordinances for construction covering certain areas of the western part of

the state. In response to opposition from REALTORS® from the western part of the state and most other mountain legislators, this bill was amended to provide for a study of landslides with public hearings on the topic. Ultimately, the amended bill was not enacted and no such study committee was created.

However, the General Assembly did enact legislation which establishes a Mountain Resource Planning Commission to “encourage quality growth and development while preserving the natural resources, open spaces, and farmland of the mountain region of Western North Carolina.” **SB 968 (Mountain Resources Planning)**, <http://www.ncga.state.nc.us/Sessions/2009/Bills/Senate/PDF/S968v5.pdf>, introduced by **Sen. Joe Sam Queen (D-Avery)**, creates a 17-person commission to research, discuss and address issues affecting mountain resources, growth and development, and infrastructure needs. The N.C. Association of REALTORS® will work with local REALTORS® in the western part of the state to be actively engaged in the workings of this new Commission.

## **Housing Affordability**

The NC Association of REALTORS® has always fought to keep housing affordable in North Carolina. We are proud to report that a NC Association of REALTORS®-backed bill has been enacted that makes it unlawful to deny the approval of a real estate project based on the fact that it will include affordable housing units.

**SB 810 (Affordable Housing/No Discrimination)**, <http://www.ncga.state.nc.us/Sessions/2009/Bills/Senate/PDF/S810v7.pdf>, introduced by **Sen. Floyd McKissick (D-Durham)**, makes it a violation of the North Carolina Fair Housing Act to discriminate in land-use decisions or permitting based on the fact that the development contains affordable housing for families or individuals below 80 percent of area median income, among other criteria. The bill does allow decisions to be based on considerations of an over-concentration of affordable housing and other criteria such as traffic and environmental concerns. This is landmark legislation as North Carolina is the first state in the nation to include affordable housing as a protected class in its Fair Housing law.

## **School Calendar**

Several pieces of legislation were introduced this year that would have affected the school calendar law enacted by the General Assembly in 2004. None of these bills were enacted.

The NC Association of REALTORS® and our vacation rental managers supported the 2004 legislation that requires schools to open no earlier than August 25 and end no later than June 10. This legislation was important in that it has allowed greater opportunities for family vacations, participation in camps, non-school education and summer employment.

The bills introduced during the 2009 session can be grouped into two categories: statewide bills amending the 2004 law and local bills providing exemptions from the state law for certain local schools. There were twelve such local bills introduced. Of these, four were heard in committee and the NC Association of REALTORS® and our vacation rental managers worked with a coalition of other groups to defeat these measures in committee.

Regarding statewide legislation, the House approved **HB 593 (Change School Start Date)**, <http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H593V3.pdf>, introduced by **Reps. Paul Luebke (D-Durham), Martha Alexander (D-Mecklenburg), Bob England (D-Cleveland) and Ray Rapp (D-Madison)**, which would permit school districts to start classes as early as the second Monday in August. The Senate never acted on this legislation and even though the bill is eligible next session, it is extremely unlikely that the bill will even be considered by the Senate.

Additionally, a bill to extend the school year for three days past the June 10th end date due to inclement weather was approved by the House. **HB 636 (Sch. Cal. Changes for Inclem. Weather/Em. Cond.)**, <http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H636V2.pdf>, introduced by **Rep. Phil Haire (D-Haywood)**, was passed by the House. The bill was not heard in the Senate and its prospects for consideration next session are slim.

Finally, **HB 1306 (Restore Flexibility to School Calendar)**, <http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H1306V2.pdf>, introduced by **Reps. Becky Carney (D-Mecklenburg), Douglas Yongue (D-Hoke), Will Neumann (R-Gaston) and Marvin Lucas (D-Cumberland)**, and which would essentially repeal the 2004 legislation, was amended to establish a study of these issues. However, the amended bill was not adopted by the legislature and the study was not included in **HB 945 (The Studies Act of 2009)**.

## Miscellaneous

### **Commercial Broker Lien**

A bill which would allow a commercial real estate broker to attach a lien to a property for which they are owed a commission for a sale or lease transaction was introduced by **Reps. Darrell McCormick (R- Yadkin) and Pryor Gibson (D-Anson)**. **HB 1356 (Commercial Real Estate Broker Lien Act)**, <http://www.ncga.state.nc.us/Sessions/2009/Bills/House/PDF/H1356v1.pdf>, passed the House Committee on Commerce, Small Business, and Entrepreneurship but was not addressed further this session. The issue is the subject of a study committee authorized by **HB 945 (The Studies Act of 2009)** and the NC Association of REALTORS® will most certainly be involved.

### **Annexation**

In response to concerns about municipalities abusing their annexation authority, legislation was adopted by the House. **HB 524 (Annexation – Omnibus Bill)**,

<http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H524V5.pdf>, introduced by **Reps. Bruce Goforth (D-Buncombe), Paul Luebke (D – Durham), Earl Jones (D – Guilford)** and **Edgar Starnes (R – Caldwell)**, started out as the product of a legislative study of annexation issues. The legislation would require municipalities to provide water and sewer services to newly annexed areas within three years, with a prohibition on further annexations by a municipality until it provides such services and requires a referendum for involuntary annexations, under certain circumstances, which would be held among residents in both the city limits and in the proposed annexation area. The Senate did not address the legislation this year but it will be eligible for consideration in 2010.

### **Bans on Use of Telephones and Texting while Driving**

Several bills were introduced this session to ban the use of certain technology while operating a motor vehicle. Of these, **HB 9 (No Texting While Driving)**, <http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H9V5.pdf>, introduced by **Reps. Garland Pierce (D-Scotland), Pricey Harrison (D-Guilford)** and **Larry Hall (D-Durham)**, was the only one enacted. **HB 9** bans motorists from sending and reading emails and texts while driving. Beginning December 1, 2009, motorists who are in violation of this new law could face a fine of \$100 plus court costs. The law includes exceptions for emergency responders, as well as people who use voice-activated technology or access global navigation systems.

### **Transportation**

In an effort to address the state's public transportation needs, the General Assembly passed **HB 148 (Congestion Relief/Intermodal Transportation Fund)**, <http://www.ncga.state.nc.us/Sessions/2009/Bills/House/PDF/H148v6.pdf>, introduced by **Reps. Becky Carney (D-Mecklenburg), Lucy Allen (D-Franklin), Deborah Ross (D-Wake)** and **William McGee (R-Forsyth)**. The bill allows all 100 of North Carolina's counties to raise sales taxes to pay for public transportation projects. Wake, Durham, Orange, Forsyth and Guilford Counties could implement a half-cent sales tax and the remaining 94 counties could implement a quarter-cent sales tax to be used for public transportation. The tax can be levied only if the voters of the county approve the tax in a referendum vote and the boards of commissioners and the relevant local transportation authority have adopted a financial plan for the proceeds. Mecklenburg County already has an extra half-cent on the sales tax for transportation and therefore could not raise it further. The bill also allows all counties to raise their vehicle registration fees to a maximum of \$7.00.

## **Studies**

Before the start of next session, the N.C. Association of REALTORS® Government Affairs team will be working with the various study committees established by the General Assembly this Session. There is a wide range of issues that will be studied over the interim and many could impact the real estate industry. **HB 945 (The Studies Act of 2009)**, <http://www.ncga.state.nc.us/Sessions/2009/Bills/House/PDF/H945v6.pdf>, introduced by **Rep. Ronnie Sutton (D-Robeson)**, provides the authority for the study

committees. Here are some of the topics that we will be actively involved with during the legislative interim:

- Sanitary Districts
- Mountain Recourses/Steep Slope
- Disclosure of Coastal Hazards
- Public Participation In Setting Insurance Rates
- Mechanic's Liens on Real Property
- Commercial Real Estate Broker Liens
- Ordinances Banning Clotheslines
- Green Building Code
- Property Tax Relief Programs and Exemptions
- Siting of Wind Energy Facilities
- Transfer Development Rights
- Changes to NC's Banking Laws and the Consumer Finance Act
- Regional Economic Development
- Insurance Rate Filing Process Reformation
- Homeowners Associations
- Transportation Funding Distribution
- Water Allocation
- Water and Wastewater Infrastructure
- Sustainable Growth
- NC Saves Energy Program Creation
- Impact and Use of Temporary Erosion Control Structures
- NC's Energy Future
- Consolidation of Environmental Policy and Rule-Making Functions into one Entity