Public Policy Positions

Foreword

IREM's Government Affairs staff annually prepares updated versions of the IREM's legislative Statements of Policy for all IREM Members. The Institute encourages all chapters to utilize this information as a guide in monitoring legislative and regulatory issues, and to assist in promoting active participation from members in state, local and federal legislative matters. IREM's Government Affairs staff is available to research general issues of concern to property managers upon request.

The success and growth of IREM's government affairs program depends on member participation at the federal, state and local level. Please take an active role in the public policy-making process and do not hesitate to contact IREM for assistance.

IREM's Legislative Affairs Division monitors all local, state, and federal legislation and regulations affecting the real estate management industry. It also serves as the liaison between the Institute and the various governmental bodies and agencies concerned with real estate management.

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Adopting Legislative & Public Policy Positions

The IREM Legislative and Public Policy Committee is responsible for adopting statements of policy and IREM positions on current issues. When the Legislative and Public Policy Committee is in session at semiannual IREM meetings in the spring and fall, positions or policy statements may be adopted with a simple majority vote. The positions and policy statements are then submitted to IREM's Executive Committee and, subsequently, the Governing Council for approval.

Because many IREM policy statements concern legislation and other issues that may need to be addressed in a more timely manner, the Legislative and Public Policy Committee has the final authority to adopt positions and policy statements between meetings. When the situation warrants, the Legislative and Public Policy Committee can respond with a policy statement regarding an urgent issue in as little as twenty-four hours. However, when the committee is not assembled in session, a two-thirds vote of the committee is required to approve the statement.

Chapter Legislative and Regulatory Activity

Article I, Section 2 of IREM National's Statement of Policies outlines the responsibilities and guidelines of legislative and regulatory activity by IREM chapters.

2.6.1 No chapter shall undertake any program of attempting to influence legislation or regulations by state or local authorities when the outcome of such activity would be contrary to policies or positions taken by the Institute or the NATIONAL ASSOCIATION OF REALTORS. When any such program is undertaken, the chapter must limit its position to the parameters set out in the Institute's Statement of Policy on that issue or any Institute policy that relates, even indirectly, to the issue in question. In the event there is no official Institute policy on the issue in question, lobbying efforts must be confined to the position of the respective local REALTOR® board(s). In the event the local REALTOR® board(s) has adopted no position on the issue in question, the chapter may adopt such policy as it deems appropriate with prior approval of such policy by the Institute. In all cases, the chapter is encouraged to keep Institute headquarters informed of all such activity and seek guidance where appropriate. The Institute shall provide information to a chapter relative to established Institute policies and positions pertaining to legislation and regulations.

2.6.2 Chapters may, as needed, hire consultants, such as lobbyists, to assist in their state and local legislative projects, provided that they take measures to ensure that all state and local laws and regulations concerning lobbying activities are followed.

2.6.3 If a chapter uses the IREM name and/or logo to express a position regarding public policy, the position shall be identified as being taken by the chapter. In cases where there is more than one chapter in the relevant jurisdiction (region, state, etc.) and the chapters have agreed on a position, the position shall be identified as being taken by "IREM Chapters of (JURISDICTION)."

2.6.4 Chapters must avoid lobbying activities that might have a detrimental tax impact on the Institute and its members. "Grassroots" lobbying, which is defined as attempts to reach the general public rather than just association membership, should also be avoided. Lobbying activities must be directed to the impact that proposed legislation would have on the real estate community. In the event questions arise as to the scope of an issue, the Institute and legal counsel should be consulted.

2.6.5 Chapters may solicit their members for contributions

Questions regarding this section should be directed to IREM National's Legislative Affairs staff.

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Public Policy

Economic Stimulus

Background

The commercial real estate market has come to a virtual standstill. With credit markets frozen, many owners are finding it difficult to obtain business loans for capital improvements or refinance existing mortgages. With property owners unable to refinance their commercial structures, there has been an increase in delinquencies and foreclosures.

Without action to liquefy credit markets, new construction and development projects will most certainly be affected. Credit markets are terrorized by the fear that debt may be deemed less valuable shortly after it is issued. Commercial real estate deals are on hold these days as buyers and sellers wait for the credit crunch to ease and the economy to rebound.

Rising unemployment rates have also contributed to a decrease in demand for commercial space. Some economists project that the unemployment rate could rise to over ten percent in 2009. As a result, vacancy rates, particularly for office and retail space, have increased while rental rates have decreased.

Position

IREM urges Congress and the federal government to provide favorable relief to the commercial real estate industry in the next planned economic stimulus package. IREM recommends the following three provisions be included in the next stimulus package:

- Availability of small business loans
- Short-term loans for capital improvements
- Refinancing for mortgages

Additionally, IREM encourages Congress and the federal government to consider the following goals and solutions which support the three recommendations above:

Goal: Stabilize and Provide Liquidity to the Commercial Real Estate Credit Markets, Including Mortgage-backed Securities

Solutions:

- Make mark-to-market accounting rules more flexible, including use of discounted cash flow analysis for valuing assets in illiquid markets.
- The Treasury and Federal Reserve should exercise their authority to implement and/or expand the Term Asset-Backed-Securities Loan Facility (TALF). The TALF should be encouraged to purchase commercial mortgage-backed securities and conventional commercial real estate loans.

Goal: Maintain or Enhance Federal Tax Policies that Strengthen the Commercial Real Estate Market

Solutions:

- Retain current capital gains rules as they apply to appreciated property, like-kind exchanges and carried interests, in particular by keeping the capital gains tax rate at the existing 15%. Suspend passive loss rules.

- Improve the depreciation, depreciation recapture and leasehold improvement rules without triggering the Alternative Minimum Tax.
- Reduce the investment impediments caused by the passive loss rules by providing a temporary suspension of the rules for designated investments.
- Attract new investment in existing real estate by providing higher income limits and expenditure limits to the so-called "small investor" provisions of the passive loss rules.

Goal: Stimulate and Support the Commercial Real Estate Industry through Investment

Solutions:

- Provide federal funding for capital improvements to our nation's infrastructure (transportation, roads, energy grids, etc.)
- Encourage the commercial real estate industry's investment in energy efficiency and "green" building initiatives through tax and other incentives, and not through legislative and regulatory mandates that artificially raise the cost of construction and operation of commercial real estate properties.

(Adopted 7/09)

The Federal Budget and Monetary Policy

We support the principle and concept of reaching a balanced budget in all political jurisdictions. Balanced state, local, county and national budgets should be maintained by reducing unnecessary expenditures and by sun-setting, capping and/or reducing the growth of programs and services that are not essential.

Stimulation of employment, growth of productivity, and inflation control are absolutely essential.

Accordingly, we urge policies that encourage savings and capital investment in housing structures, and equipment. We believe that a restrictive monetary policy should be used against inflation only to the extent necessary to supplement rigorous fiscal responsibility. Tight money policies are discriminatory in their nature, striking first and hardest at long-term mortgage credit for housing and smaller business investments without regard to their economic importance in national priorities.

Tax increases should be considered only if all spending reductions prove insufficient to significantly reduce deficits and any such increases must not create disincentives to savings and investment. In the case of a budget surplus, excess funds should be used for tax and/or debt reduction. A program to reduce the national debt must be formulated and implemented. Congress should exercise fiscal discipline by eliminating wasteful and unnecessary spending.

(6/86, updated 4/03, 10/08)

Terrorism Insurance

Background

IREM originally took a position on terrorism insurance in November, 2001, shortly after 9/11, in response to the insurance industry's announcement that they would no longer cover terrorism claims. The insurance industry, as well as a coalition of real estate groups, petitioned the federal

government to step in and assist the real estate industry. Without proper insurance, it would be very difficult for property owners to manage or acquire properties or to refinance loans.

The Terrorism Risk Insurance Act (TRIA) was enacted in 2002, establishing a federal backstop for commercial property and casualty insurers arising from terrorism. TRIA required property and casualty insurance companies in all fifty states to offer terrorism insurance coverage when they underwrote property and casualty insurance; and any existing state exclusions to the contrary were voided. The Treasury Department would pay insurers 90 percent of claims after insured losses exceeding $10 billion in year one, $12.5 billion in year two, and $15 billion in year three. The Treasury would pay until insured losses exceeded $100 billion. The law did not have a federal standard for the awarding of punitive 3 damages in terror-related suits brought against property owners and as a result state laws on punitive damages prevailed.

TRIA was designed to provide a bridge to a time when the private insurance markets would function again. Following TRIA's enactment, terrorism insurance coverage became readily available, thus enabling billions of dollars of transactions previously stalled to go forward. The primary reasons TRIA successfully expanded terrorism insurance capacity are: 1) the program required the federal government share the risk of loss from terrorist attacks with the insurance industry; and, 2) the program required insurers offer terrorism insurance coverage to policyholders on the same terms and conditions as other property and casualty insurance.

IREM lobbied for legislation extending TRIA, which was set to expire at the end of 2005, during the 2005 IREM Capitol Hill Visit Day. Fortunately, the Terrorism Risk Insurance Extension Act of 2005 was signed into law by the President in December, 2005, ensuring that terrorism coverage would still be available and affordable to the commercial real estate industry. The program has been extended through 2007.

In response to a request from the House Financial Services Committee, the Government Accountability Office (GAO) undertook a study on the availability of Nuclear Biological Chemical and Radiological (NBCR) insurance.

The findings of the GAO report on the market for NBCR insurance were released in September, 2006 and illustrated that property/casualty insurers still generally sought to exclude such coverage from their commercial policies. In doing so, insurers rely on long-standing standard exclusions for nuclear and pollution risks. Commercial property/casualty policyholders generally reported that they could not obtain NBCR coverage. The report showed that commercial property/casualty insurers generally remain unwilling to offer NBCR coverage because of uncertainties about the risk and the potential for catastrophic losses, according to industry participants. Insurers face challenges in consistently estimating the severity and frequency of NBCR attacks for several reasons, including accounting for the multitude of weapons and locations that could be involved and the difficulty or perhaps impossibility of predicting terrorists' intentions. Without the capacity to reliably estimate the severity and frequency of NBCR attacks, which would be necessary to set appropriate premiums, insurers focus on determining worst-case scenarios.

On December 26, 2007, President Bush signed into Law the Terrorism Risk Insurance Program Reauthorization Act of 2007 (TRIPRA). The seven-year extension of the federal terrorism risk insurance program makes three major changes to the TRIA program: (1) the definition of "act of terrorism" under TRIA is expanded to allow the certification of acts "domestic terrorism"; (2) the legislation clarifies the operation of the $100 billion annual program cap; and (3) the new law

changes the manner in which the mandatory portion of post-event policyholder surcharges would be collected.

IREM partnered with other industry leaders and joined the Coalition to Insure Against Terrorism (CIAT). In July 2010, IREM reached out to members and inquired about their experiences with terrorism insurance and their ability to obtain the coverage. The questions mainly focused on the availability, affordability, and need of coverage as well as the impact of the Terrorism Risk Insurance Program Reauthorization Act of 2007. In short, there was little awareness by the members of this type of coverage. Those who were aware mentioned it was provided by their carrier and grouped along with other perils such as flood and earthquake insurance. Members also mentioned that the threat may be geographical in nature and some areas/cities may be more prone to this type of activity. The responses and comments were compiled and sent on behalf of the Coalition to Insure Against Terrorism to the President's Working Group on Financial Markets ("PWG") in August, 2010.

On December 31st, 2014, the 2007 TRIA reauthorization was allowed to expire after Congress could not come to agreement on the terms of an extension.

On January 12, 2015, President Obama signed the Terrorism Risk Insurance Program Reauthorization Act of 2015 into law. The law renews TRIA for six years, through 2020. The new law changes the trigger amount for the federal backstop to $200 million, an increase of $100 million. Also the mandatory recoupment amount is raised to $37.5 billion, from $27.5 billion.

Position

The Institute of Real Estate Management is very concerned about escalating insurance costs and the lack of coverage for events related to terrorism and war. Prior to the events of September 11, 2001, property and casualty and general liability insurance policies typically covered damages resulting from acts of terrorism, although most excluded damages relating to acts of war. Without this coverage, the real estate industry will be at grave risk. A healthy real estate market is critical to our nation's economy. We urge Congress and the Administration to pass legislation that would provide federal reinsurance coverage for the nation's property and casualty insurers against losses caused by acts of terrorism or war.

(11/01, updated 10/06, 10/10, 4/15)

Federal Natural Disaster Insurance

Background

In some areas of the country property insurance is costly, if not impossible to obtain. Because of recent hurricanes and the outlook for dramatic hurricane seasons for a decade to come, many private insurers have simply been pulling out of the market rather than face enormous risk. Other insurers are canceling or dramatically increasing premiums on existing policies. Disaster reinsurance funds at both the state and federal level can help bring stability to the insurance market. A federal program that protects states prone to natural disasters such as hurricanes, earthquakes, tornadoes, volcanoes, and other natural disasters, without penalizing those states less at risk, would provide property owners the opportunity to purchase coverage appropriate to their risk level. As we have seen in the recent catastrophe along the Gulf Coast, without such a federal backstop, all citizens will be paying for the costs of such disasters.

One such program is the National Flood Insurance Program (NFIP). Created in 1968 by Congress, NFIP provides flood insurance to homeowners, renters, and businesses that are located in participating communities. In order to participate, the community must adopt and enforce ordinances that meet or exceed FEMA requirements in order to mitigate their flood risk.

Position

IREM is very concerned about the availability and affordability of property insurance. When property owners cannot obtain insurance, the entire real estate market is at risk. A healthy real estate economy is vital to our national interest. We urge Congress to develop a solution to this problem. A federal reinsurance program that is funded through contributions from insurers or state catastrophic insurance programs will help communities recover from disasters while preventing taxpayers from bearing many of the costs associated with such disasters.

(Adopted: 4/06. Updated: 4/10, 10/16)

National Flood Insurance Program (NFIP)

Background

The National Flood Insurance Program (NFIP) is a unique partnership among federal, state, and local governments that helps mitigate flood risk and provides affordable flood insurance to those who need it most. It was created by the U.S. Congress in 1968 through the National Flood Insurance Act of 1968. NFIP flood insurance is sold through private insurance companies and agents and is backed by the federal government.

If the program expires, flood insurance will become more costly or even unavailable. The NFIP partners with over 22,000 communities to reduce flooding nationwide and holds 5.1 million policies representing 1.3 trillion in insurance coverage. It provides over 90% of all flood insurance nationwide and close to 100% of flood insurance coverage for individually owned properties and small- to mid-size commercial properties.

The NFIP aims to reduce the impact of flooding on private and public structures by providing affordable insurance to property owners, renters, and businesses and by encouraging communities to adopt and enforce floodplain management regulations. These efforts help mitigate the effects of flooding on new and improved structures. Overall, the program reduces the socio-economic impact of disasters by promoting the purchase and retention of general risk insurance, and specifically, flood insurance.

It is important to note that everyone lives in a flood zone; it's just a question of whether it is a low, moderate or high risk area. Land areas that are at high risk for flooding are called Special Flood Hazard Areas (SFHAs) or floodplains. A building located within an SFHA has a 26 percent chance of suffering flood damage during the term of a 30-year mortgage.

For a property that is located in a Special Flood Hazard Area (SFHA) and was financed through any federally-regulated entity (such as banks that carry FDIC insurance), by law the lender must require the owner to purchase and regularly renew flood insurance.

As it is currently structured, the NFIP is not financially sustainable over the long term. According to the Congressional Budget Office, the premiums paid into the program are not expected to cover

claims in catastrophic loss years, and the program has already borrowed substantially to make up the difference.

The NFIP also offers contents insurance for renters, homeowners, and business owners. Renters can purchase up to $100,000 of contents coverage. Homeowners, who are made aware of this insurance assuming they purchase their home with a federally-insured lender, can purchase up to $250,000 of building coverage and up to $100,000 of contents coverage. Unless they are advised by the property manager or landlord, renters are not notified that they are in a SFHA or of the availability of flood insurance. Business owners can purchase up to $500,000 each of both building and contents coverage.

Position
IREM believes a strengthened National Flood Insurance Program (NFIP) combined with a robust private market is needed to maintain access to flood insurance in all markets over the long term so that it remains a viable option for property owners. For this reason, IREM supports the long-term reauthorization of the NFIP together with reforms to ensure its ongoing sustainability for property owners. Such reforms include:

- Development of more robust, cost effective private flood insurance options,
- provision of federal assistance and resources for property owners to build to higher standards, mitigate the risk of flooding, and keep insurance rates affordable,
- improvements to flood map accuracy, and
- improved and more affordable NFIP pricing policies.

(Adopted 6/07, updated 9/19)

Federal Taxation

Any tax revisions or increases enacted by the Congress should encourage savings and investment. Further, we urge Congress to:

- reject or repeal discriminatory provisions which limit and/or disallow the traditional deductions of certain interest expenses and real property taxes, investment interest deductions and deductions for interest and taxes paid during the construction period of a project;
- strengthen the depreciation and recapture provisions applicable to the sale of real property by rejecting or repealing discriminatory provisions which limit or disallow existing deductions and by making subject to recapture only that portion of depreciation taken that exceeds straight line depreciation;
- make permanent rapid amortization provisions for rehabilitation of low-income housing;
- maintain workable laws providing for the use of tax-exempt mortgage revenue and industrial development bonds while assuring that the program does not unduly compete with or replace the private marketplace;
- enact provisions which would disallow or adversely limit losses sustained through accounting procedures;
- enact legislation to allow owners who directly convert buildings to condominiums and cooperatives to qualify for full capital gains tax treatment;
- maintain a graduated investment tax credit available for old and historic structures; and

- reject proposals for enactment of a flat tax or other alternative taxation systems that serve as a disincentive for investment in real estate by limiting or repealing traditional real estate-related tax deductions for; mortgage interest, state and local property taxes, depreciation, capital gains, and other operating and business expenses.

(6/86, updated 4/05, 10/09, 4/13)

Capital Gains

Background

The appropriate level of taxation for capital gains (the amount realized when property held for investment is sold) has been a subject of tax policy debate throughout the history of the income tax. Capital gains have been taxed at rates well below the maximum tax rate for ordinary income for at least 50 years (with the exception of the period from 1986 – 1990). During the past 30 years that rate has ranged from a high of 49% to the current rate of 15% - due to the passage of the Jobs and Growth Tax Relief Reconciliation Act of 2003, also known as the "Bush Tax Cuts." The current rate is temporary and was originally set to expire at the end of 2010 but has been subsequently extended through the end of 2012. When capital gains tax rates were reduced to 15% from 20% in 2003, the depreciation recapture rate remained at 25%. Prior to 1997, depreciation recapture amounts were taxed at the same rate as capital gains.

In 2013, President Obama signed the American Taxpayer Relief Act of 2012 into law. Although the Act made many of the tax cuts permeant, some modifications were made. For those with income over $400,000 the top marginal tax rate on long-term capital Gaines was raised from 15% to 20%.

Position

IREM believes that it is in our nation's best interest for Congress to encourage real estate investment in the United States by creating a tax system that recognizes inflation and a tax differential in the calculation of capital gains from real estate; while stimulating economic investment; and consequently, leveling the playing field for those who choose to invest in commercial real estate.

(Adopted: 6/97. Updated: 4/03, 10/08, 9/12, 10/17)

Depreciation

Background

The Economic Recovery Tax Act of 1981 created a depreciable life of 15 years for all real property placed in service after December 31, 1980. The depreciable life for property placed in service after March 15, 1984 was extended to 18 years and for property placed in service after May 8, 1985, the depreciable life was extended to 19 years. Depreciation rules changed again when the tax reform act of 1986 was enacted. The depreciable life of a non-residential property changed to 31.5 years and the depreciable life of a residential property changed to 27.5 years.

Yet again, the enactment of the 1993 tax act changed depreciable life for a nonresidential building to 39 years (residential property remained at 27.5 years). The 39-year depreciation life applies to properties placed in service on or after May 13, 1993.

The extension of the depreciable life to 39 years was intended to be in return for favorable passive loss tax law and other tax law changes in 1993. Unfortunately, (see position on passive loss) the Internal Revenue Service (IRS) did not interpret the 1993 law in such a way to be favorable to commercial real estate thereby eliminating almost any benefit to the commercial real estate industry.

In 2010, President Barack Obama signed into law the "2010 Tax Relief Act" which allowed for 100% bonus depreciation for part of 2010 and all of 2011 on qualifying assets. Furthermore, the law allowed for 50% bonus depreciation through 2012. Also, it temporarily extended 15-year depreciation recovery period for leasehold improvements through 2011.

In 2015, the Protecting Americans from Tax Hikes Act of 2015 (PATH Act) was signed into law. The PATH Act further extended bonus depreciation through 2019 and made the 15-year depreciation recovery period for leasehold improvements permanent.

Position

The current 39-year time frame does not accurately reflect the useful life of a building and its components. IREM supports depreciation reform for nonresidential and residential real estate that secures a significantly shorter cost recovery period for commercial real estate without adding complexity or creating artificial acceleration of deductions, and specifically:

- Upon recognition of capital gain, taxpayers should be able to use sales costs to first reduce the depreciation recapture portion of the gain;
- Suspended losses should also go to reduce depreciation recapture;
- An installment sale as gain is recognized over a period of time, that a percentage of gain from appreciation and depreciation recapture be used in reporting gain;
- A partially tax deferred exchange, gain from appreciation, and depreciation recapture should be reported on an allocated percentage basis.

Any other proposed regulation that affects the reporting of capital gain by commercial, industrial or investment real estate taxpayers be reported in the most advantageous manner for the taxpayer:

IREM is pleased that the National Association of REALTORS® (NAR) also supports a depreciable life for real estate that accurately reflects the economic life of the property. IREM requests NAR to assist IREM in lobbying for the adoption of favorable regulations.

(Adopted: 4/03. Updated: 10/08, 9/12, 10/17)

Tenant Improvements

Background

The real estate definition of tenant improvement is money or any other financial incentive to a lessee, by the lessor, to cover either partially or wholly, the cost of any structural changes (items such as upgraded electrical equipment, cable, reconfigured interior space, telecommunications equipment and technological updates), to a space in preparation for occupancy by the lessee.

The Economic Recovery Tax Act of 1981 created a depreciable life of 15 years for all real property placed in service after December 31, 1980. For property placed in service after March 15, 1984, the depreciable life was extended to 18 years, and for property placed in service after May 8, 1985, to 19 years. In 1986, the Tax Reform Act was enacted into law. This changed depreciation rules

considerably. It changed the depreciable life of a non-residential property to 31.5 years, and the life of residential to a depreciable life of 27.5 years.

The cost for tenant improvements is amortized over the depreciable life of the nonresidential building, not, as in prior law, over the term of the lease. The current depreciable life for a nonresidential building is 39 years, while the depreciable life of a residential property is 27.5 years. This 39-year depreciation applies to properties placed in service on or after May 13, 1993. This is an outdated time frame, as it does not reflect the useful life of a building and its components. In 2010, President Barack Obama signed into law the 2010 Tax Relief Act temporarily extended 15-year depreciation timeline for qualifying leasehold improvements through 2011.

In 2015, the 15-year depreciation period for leasehold improvements was made permanent by the Protecting Americans from Tax Hikes Act of 2015 (PATH Act).

Position

IREM is in support of legislation to decrease the length of depreciable lives for tenant improvements. IREM supports legislative language that would allow the remainder of tenant improvement costs to be written off upon the expiration of a lease, not over the depreciable life of a structure.

(Adopted: 4/03. Updated 10/08, 9/12, 10/17)

Carried Interest

Background

Most real estate partnerships, particularly those engaged in real estate development, are organized with general partners, who contribute their expertise (and, occasionally, some capital) and limited partners who contribute money and property (capital) to the enterprise. Generally the profits of the partnership are divided primarily among the limited partners who contribute capital. A common practice among real estate partnerships, however, is to permit the general partner to receive some of the profits through a "carried interest," even when the general partner has contributed little or no capital to the enterprise. The general partner's profits interest is "carried" with the property until it is sold.

During the time that the real estate is held, the general partner receives compensation in the form of ordinary income. The limited partners receive both ordinary income from operations and capital gains income from any profits generated during the year. When the property is sold, the limited partners receive their profits distributions (the earnings on the capital they have invested) as capital gains. The general partner also receives the value of its carried interest as capital gains income.

In recent years, Congress has proposed treating the income from the carried interest as ordinary income. Legislation would treat all income from a carried interest of a real estate partnership (and other types of investment partnerships, as well) as income from services, subject to ordinary income tax rates. Typically in many pieces of legislation, the tax rate on income from a carried interest would increase, from 15% to a maximum of approximately 35%.

A carried interest is designed to act as an incentive for a general partner to maintain and enhance the value of the real estate so that the operation of the property is a value-added proposition. The

issue of carried interest is critical to both the recovery of commercial real estate, as well as the overall economic recovery. Under the American Tax Payer Relief Act of 2012, carried interest will increase to 20 percent for individuals with an adjusted gross income more than $400,000 and married couples with AGI more than $450,000. Individuals/couples below the $400,000/$450,000 AGI level will pay 15 percent on carried interest. This legislation is effective as of January 1, 2013.

Position

IREM opposes any proposal that would eliminate capital gains treatment for any carried interest of a real estate partnership.

(Adopted 10/07, updated 10/09, 10/13, 8/15)

Small Business Health Plans

Background

A significant number of America's 50 million uninsured citizens are self-employed individuals or work for small employers who cannot afford to offer quality health insurance benefits to their workers. When surveyed, small business owners cited rising health insurance costs as the primary factor leading them to discontinue coverage for employees. On average small businesses pay eight to 18% more than their larger counterparts for the same coverage. Some have argued that the lack of competition is a major factor leading to premium increases.

A recent report by the American Medical Association found that a single insurer held 50 percent or more of the market in nearly 70 percent of local markets across the nation. According to the Robert Wood Johnson Foundation, in 30 states, one insurer covers more than half the citizens who purchase individual health insurance, To combat this issue in the past, proposals to allow associated groups to provide health insurance coverage through small business health plans (SBHPs), also called association health plans, have been advanced. SBHPs will allow small businesses to band together through their professional or trade associations to purchase health coverage or, alternatively, self-insure. By allowing groups to pool their buying power, spread their risk across a large employee base, eliminate layers of overlapping regulations and thus lower the administrative costs per employee, supporters argue that SBHPs will allow small businesses to offer affordable health care coverage to employees.

SBHPs would be regulated under a single set of federally-prescribed rules and permitted exemptions from costly state regulations that large corporate and union health plans already enjoy under the Employee Retirement Income Security Act (ERISA). The permitted exemptions from state regulations will allow small businesses to band together across state lines. Proponents have argued that SBHPs will increase small businesses' bargaining power with health care providers and lower their overhead costs by as much as 30 percent.

Once proposed, a SBHP is defined as a group health plan that offers fully-insured or self-insured medical benefits, has been certified by the Department of Labor and is operated by a board of trustees with complete fiscal control and responsibility for all operations. The association sponsoring the plan must have been in existence for at least 3 years for purposes other than providing health insurance coverage. All employers participating in the SBHP must be members or affiliates of the association sponsoring the plan. Covered individuals may be active or retired employees, owners, officers, directors, partners or their beneficiaries. Administrators of a plan may

not discriminate among eligible participants or 'cherry pick' risks. Likewise, premium contribution rates cannot be based on the health status or claims experience of plan participants or on the type of businesses involved.

Supporters of the proposal argue that while some small businesses now provide health coverage through program sponsored by trade and professional associations, these programs are hampered by administrative burdens and the high cost of having to comply with the requirements of up to 50 state insurance regulators, including state-mandated benefit requirements. In the small group and individual insurance market, one-fourth to one-third of every premium dollar is estimated to be spent on administrative costs; in the larger group plans, these costs are as small as 5 to 10 percent of every premium dollars.

Over the next few years health insurance reform will undergo several changes since President Obama signed the Affordable Care Act in March of 2010. According to the White House, the Affordable Care act will:

1. Establish a small business health care tax credit to help small businesses afford the cost of covering their workers
2. Create Health Insurance Exchanges to increase bargaining power and reduce administrative costs
3. End price discrimination again small businesses with sick workers
4. Increases health care security to unlock entrepreneurship
5. Reduces the hidden tax on small business employees with health insurance
6. Reduces premiums in the small group market

Position

IREM supports the passage of health reform measures that will address the access and affordability problems that the self-employed and small employers face when looking for health coverage.

(4/05, updated 10/09, 10/13, 8/15)

Expensing of Security Equipment

Background

Businesses spend countless dollars increasing and improving building security. Petty crime and vandalism are no longer the biggest threats to our security. Property owners and businesses are working to protect American's workforce and the physical assets of our country. Buildings of all types and sizes are undergoing this effort, at significant expense to improve and install security detecting and protection equipment. Deductions include all directly expensed security equipment/systems as well as maintenance expenses associated with them. Supplies necessary to operate a security program such as uniforms, batteries, control forms, access cards, etc. Building owners across the country report that their security related operating budgets have increased substantially and are still climbing. These expenses currently are deducted over a 5-7 year period.

Position

IREM supports the expensing of security equipment in the year it is placed in service. Security improvements benefit all those who work, shop, or visit the property, as well as those in surrounding properties; therefore, they should be fully deductible under the U.S. tax code.

(4/03, confirmed 10/06, updated 3/11, 5/17)

Passive Loss Limitation

Background

The 1986 Tax Reform Act contained a provision known as passive loss limitation. These rules limited the amount of deductions for losses from passive activities to the amount of income those activities generate. Passive activities are defined as those in which a taxpayer does not materially participate, and any rental activity. Thus, rental activity was deemed to be inherently passive even if rental activity is the principle business of the taxpayer, or is an integral part of the taxpayer's real estate business. The act was originally intended to broaden the tax base, and to abolish many existing tax shelters.

The Budget Reconciliation Act of 1993 included a passive loss tax law change. The intent of the new passive loss tax law is to allow individuals whose primary business is real estate to deduct rental property losses from their income. This is fair because other business professionals are permitted to deduct business losses from income.

The act stated that in order to deduct passive losses from rental activity, an individual must be a material participant in the real estate trade or business, and spend more than 750 hours and a minimum of 50% of their time in various real estate activities.

The current problem lies with the final rules and interpretation of the legislation by the Internal Revenue Service. The regulations released in February 1995 by the IRS were unfavorable to the real estate industry. As written, these regulations still treated rental real estate activity differently than other real estate activity. Final rules on passive loss were released in December 1995. These rules were an improvement to those released earlier in the year, but there still exists a separation in the definition of rental real estate activity.

The intent of the passive loss tax provision, which was released in December 1995, was to allow individuals whose primary business is real estate to deduct rental property losses from income. Retroactively effective January 1, 1995, these regulations state that a taxpayer that materially participates in rental activity does not necessarily have to interpret this rental activity as passive. Thus, losses on this activity can be used to offset non-passive income.

Taxpayers must qualify in two ways. The taxpayer must perform at least 750 hours of real estate activities in which the taxpayer materially participates and more than half the time annually must be spent in these real estate activities. Additionally, if the taxpayer works in the real estate field, he or she must own at least 5% of the business in order for the time worked to count (if the taxpayer is not 5% owner the entire year, the portion of the year that the taxpayer is 5% owner may be prorated for that time.)

Furthermore, in order to protect individual investors, the passive loss rules included an exception to assure that individuals with moderate incomes could continue to invest in real estate as individual owner-landlords. Under the exception, an individual with less than $100,000 of adjusted gross income (AGI) could deduct up to $25,000 of losses from rental real estate from other non-real estate income. The $100,000 income threshold was phased out at $150,000.

The exception was not indexed for inflation. Had it been indexed for inflation, the adjusted AGI amount would now be $182,495 and the phase out at $150,000 would now be $273,742. In addition, the $25,000 cap on allowable losses would now be $45,624. The failure to index has had the effect of diminishing the pool of likely investors who would operate as real estate investors or part-time landlords. On top of this, inflation has not kept pace with real estate prices, so the gap is even greater.

The real estate industry is still working for further improvements to the passive loss rules, including provisions that would integrate, and treat equally, passive loss rules for rental activity with those rules for other investment activity.

Position

IREM believes that active or material participants in real estate should be allowed to deduct all cash and non-cash rental losses against their other income and should be afforded the same benefits that other businesses have within the tax code. As part of the Budget Reconciliation Act of 1993, Congress qualified that real estate professionals who spend at least 750 hours and half their time annually in real estate activities will be permitted to use losses on rental real estate to offset any income. Also, current passive loss rules allow for an exception for individuals with less than $100,000 adjusted gross income to deduct up to $25,000 of losses from rental real estate from other non-real assets.

IREM urges the IRS to revise passive tax loss regulations to mirror the original intent of federal legislators in enacting a change made in 1993 to the passive loss tax law, specifically removing the 5% ownership provision.

Additionally, IREM urges the IRS to index the exception rules for inflation.

Adopted: 11/87; 6/92 Confirmed*: 1/91, 11/93, 6/96; 11/93; 11/98 Updated:10/13*

Real Estate Mortgage Investment Conduits (REMICs)

Background

Real Estate Mortgage Investment Conduits (REMICs) are a tax vehicle created by Congress in 1986 to support the housing market and investment in real estate by making it simpler to issue real estate backed securities. A REMIC is an investment vehicle by which commercial and residential mortgages are pooled into classes and issued as mortgage backed securities to investors in the secondary mortgage market. Commercial mortgage-backed securities (CMBS) are the second largest source of commercial and multifamily real estate financings and represent more than $850 billion outstanding.

While the current volume of REMIC transactions reflects their important role in this market, certain changes to the tax code will eliminate impediments and unleash even greater potential. Of all outstanding securitized debt, roughly a quarter is attributable to commercial loans. The securitization of commercial loans is viewed as unattractive to borrowers because of the limitations the federal rules place on the loan once it is securitized. Current rules that govern REMICs often prevent many common loan modifications that facilitate loan administration and ensure repayment of investors. For example, it is difficult for a mall, whose mortgage is held as part of a REMIC, to demolish a portion of the building to construct space for a new anchor store. Under

current rules, for any change to collateral, a property owner must obtain a tax opinion, if the opinion finds that more than 10% of the collateral is modified, the renovation cannot go forward.

Legislation governing REMICs has been in place for over twenty years. While it has been instrumental in increasing the flow of capital to residential properties, the rules governing loan modifications have had a dampening effect on the securitization of commercial loans. Because securitization contributes to the efficiency of and liquidity of the secondary market for mortgage loans, it is hoped that changing the REMIC rules will lower the cost of commercial real estate borrowing and spur real estate development and re-habilitation.

The 2007 Financial Crisis brought the issue of mortgage backed securities to national attention. Improper Wall Street activity regarding REMICs in part precipitated the financial crisis. Essentially, fund managers combined good mortgages with bad mortgages, repackaged them into large collateralized debt obligations (CDO's), obtained AAA ratings for them, and sold them as securities to investment funds that included everything from pension funds to 401K's. While the real estate and mortgage market continued to expand, the funds performed exceedingly well. As trouble in the real estate market began, the true risk associated with the funds came to light, and investors in mortgage backed securities were left holding the bag.

Position

We support legislation which amends the REMIC rules to allow more common modifications to property, such as:

- Preparing space for tenants (Tenant expansions and building additions): For example, tenant improvements would not be considered a significant modification. Under current rules, a tax opinion must be obtained before demolishing/tenant improvements begin. If the space comprises more than 10% of the REMIC collateral, the change could be denied.
- Special problems for retail space: For example, landlords could more easily reconfigure space to accommodate large anchor tenants and their requirements that only specific types of tenants occupy adjoining space so that instances where space "goes dark" because lease agreements could not be met are minimized.
- Sale of adjoining parcels: For example, legislation that would allow the sale of adjacent property that does not have any economic value to the landlord. Under current rules a tax opinion is necessary to determine whether sale materially alters the collateral --if it does, the sale would be blocked, even though the proceeds would be used to bolster reserves as required by the lender or pay down the loan.
- Addition of collateral to support building renovations and expansions: Legislation that would allow the posting of additional collateral in connection with the demolition or expansion of a property.

Under the proposal stated above, modifications to a qualified mortgage would be allowed, provided:

- The final maturity date of the obligation may not be extended, unless the extension would not be a significant modification under applicable regulations;
- The outstanding principal balance of the obligation may not be increased other than by the capitalization of unpaid interest; and
- A release of real property collateral may not cause the obligation to be principally secured by an interest in real property, other than a permitted defeasance with government securities.

- The alteration may not result in an instrument or property right that is not debt for federal income tax purposes.

(4/04, updated 4/09, 10/13, 4/15)

Consumer Price Index

Background

According to the Bureau of Labor Statistics (BLS), Consumer Price Index (CPI) "is a measure of the average change in prices paid by urban consumers for a fixed market basket of goods and services."

Some of the samples the BLS uses to calculate CPI are:

- Urban areas selected from all U.S. urban areas
- Selected households within each selected urban area
- Retail establishments from which these consumers purchased goods and services
- Specified and unique items-goods and services purchased by these consumers
- Housing units selected from each urban area for the shelter component of CPI

Price indexes are available for the U.S. and two population groups: CPI for All Urban Consumers (CPI-U) which covers approximately 87 percent of the total population and CPI for Urban Wage Earners and Clerical Workers (CPI-W) which covers 32 percent of the population.

The CPI-U includes expenditures by urban wage earners and clerical workers, professional, managerial, and technical workers, the self-employed, short-term workers, the unemployed, retirees and others not in the labor force. The CPI-W includes only expenditures by those in hourly wage earning or clerical jobs.

Serious consideration of altering the methodology of calculating the CPI has not been made since 1998 when the Advisory Commission to Study the CPI made recommendations to the U.S. Senate Finance Committee. The method of calculating CPI, according to the commission, overstates the true cost of living. The commission recommended the CPI be calculated in such a way to better convey the cost of living. One of the recommendations was the sampling of goods and services be total U.S. sampled, not geographically. The commission also suggested that the calculation of CPI take into account the purchase of goods made on a less regular basis such as automobiles and household appliances. These recommendations would, according to the commission, create a more accurate formula for calculating CPI. Commercial landlords reliant upon CPI-based rent escalations would stand to realize less future rent if the indices were revised as proposed. Further, they could suffer hard dollar losses arising from the impact of CPI index changes on operating cost escalations due to lease caps. In 1999, the BLS shifted from an arithmetic to a geometric mean formula, which has reduced the annual growth rate of the CPI by less than 0.3 percentage points.]

In FY2014, President Obama included an alternative to the traditional CPI, known as chained-CPI, into his budget proposal. Chained CPI seeks to improve on the traditional CPI by incorporating decisions made by consumers to forgo certain good and services, or switch to cheaper ones, as prices rise. This nuance would significantly alter projections for federal entitlement spending in the years to come, and supporters say it would be a positive steps towards deficit reduction.

Chained CPI remains controversial, as it would result in lower cost-of-living-adjustments for seniors, and has not been included in an official budget.

Position

IREM believes that a significant change in the current method of calculating the Consumer Price Index could negatively impact the business of property managers. Therefore, IREM believes that the current method of calculating the CPI needs to be more accurate. However, careful consideration should be given to the effects that would occur in the real estate marketplace as a result of these changes and any change should include a plan for a transition period where the old and new calculation would be used to minimize any negative impact on the commercial real estate industry.

(11/04, updated 4/09, 10/13, 4/15)

Employee Free Choice Act

Background

Under the rules of the National Labor Relations Act, when a certain number of workers demonstrate a desire for union representation, a federally-supervised private ballot election is conducted by the National Labor Relations Board (NLRB). The Employee Free Choice Act, also known as "check card" legislation, was introduced in March, 2009 in the U.S. House of Representatives. The Senate introduced a companion bill the next day. The bills would have fundamentally changed the process for union elections and the collective bargaining process, making it easier for labor unions to organize employees into unions.

Both pieces of legislation died in the 111th Congress.

As proposed, The Employee Free Choice Act, would:

- Require the NLRB to certify union representation when a majority of employees sign a card favoring a union. The NLRB would not be required to conduct a private election.
- Impose a strict 90-day time limit for reaching an initial collective bargaining agreement. If an agreement is not met during this time, either party can request mediation from the Federal Mediation and Conciliation Service (FMCS).
- Following mediation, the legislation permits the FMCS to impose a 2-year binding contract on employers and employees. Neither party may appeal the decision.

Position

IREM urges Congress to oppose the Employee Free Choice Act. IREM supports the right of employees to choose whether to be represented by a labor union through a federally supervised private election. A secret ballot election ensures that employees are protected from coercion and intimidation.

(Adopted 7/09, 10/13, 10/15)

Energy

Background

Energy is a vital part of the world economy and of America's way of life. Fluctuating energy costs, decreased demand, supply concerns, technological advances, and environmental considerations are changing the way we use energy and how we think about our future energy situation. As electricity and gas are a necessity rather than a luxury, discussion has surfaced regarding creating a free

market to encourage competition, which in turn should bring lower utility rates. It should be noted, however, that electricity's elements are different from the other utilities in its generation, transmission, and distribution. While the transmission and distribution costs are somewhat fixed and may remain regulated, the generation of electricity may provide for the most competition and benefit for consumers. Additionally, as the demand for electricity and gas continues to increase, energy efficiency and conservation are sorely needed.

Over the past several years we have seen new initiatives intended to conserve energy. President Obama introduced the Clean Power Plan in the summer of 2015. This plan puts in place strict limits on pollution, specifically on energy producers. Also, in August of 2015 the first phase of the Tenant Star program was launched. This voluntary program is similar to Energy Star, but targeted at tenants in rental units.

Position

The free market system is the most appropriate means of attaining energy conservation and production goals. Increased conservation and domestic expansion are essential to our nation's security and economic prosperity. The nation must strive for greater energy self-sufficiency through further development of existing sources, decontrol of energy prices and the development of all new sources of domestic energy to reduce our dependence on foreign energy supplies.

We support the concept of conservation policies and the use of energy efficient technology. However, we strongly oppose mandatory national standards for building energy conservation. Specifically, IREM opposes mandatory installation, purchase, or usage guidelines for energy conserving products. Instead, we encourage positive incentives for conservation activities such as energy tax credits and an increased emphasis on energy efficient technology by the nation's building industry.

We support the security of all energy distribution systems (electrical grid, gas transmission pipelines, etc.) as the systems are the necessary backbone for the delivery of our energy needs.

It is vital that consumers (both individuals and businesses) have access to reliable, reasonably priced energy. IREM encourages its members to conserve energy and reduce demand in their facilities and to be proactive in educating tenants on programs and practices that can help conserve energy. We encourage voluntary participation in programs such as EPA's Building Program, Green Lights Program, Energy Star Program, Tenant Star Program, the U.S. Green Building Council's LEED program and Canada's Green Globe program.

(5/01, updated 4/05, 10/09, 10/13, 1/14, 9/15)

Data Security

Background

As technology has evolved and become vital for businesses, a growing number of public and private entities that keep and maintain personal information, such as financial account information, have become victims of secuFrity breaches. These breaches have exposed fundamental security flaws in the way that companies handle consumers' personal information. Individual privacy has been compromised and these breaches have put consumers at an elevated risk of becoming victims of identity theft. As of January, 2016 47 states, the District of Columbia, Puerto Rico and the Virgin

Islands have enacted legislation requiring notification of security breaches involving personal information.

The number of Congressional proposals to counteract identity theft multiplied in the spring of 2005 after ChoicePoint Inc., a commercial data broker, announced that in February it may have improperly sold the personal information of almost 163,000 individuals. ChoicePoint was consequently investigated by the Federal Trade Commission. In January, 2006, the company agreed to pay $15 million to settle charges it violated consumer privacy rights, but did not admit any wrongdoing.

Then, the substantial security breach at the U.S. Department of Veterans Affairs (VA) on May 3, 2006—widely publicized by the media—triggered more legislators on Capitol Hill to introduce data security legislation. The laptop and external disk drive, containing information on 26.5 million veterans and 1.2 million active duty personnel, of a VA employee were stolen from the employee's residence. The Secretary of the VA was not informed of the breach until May 16 and the public was not informed until May 23. The VA breach prompted Congress to narrow their focus as to when the public should be notified if sensitive data is lost or stolen.

Several House and Senate committees engaged in creating data security legislation during the 109th Congress. The Senate Judiciary Committee, Senate Commerce Committee, House Energy and Commerce Committee, and House Financial Services Committee each held mark-ups and passed legislation. The House and Senate worked to find compromise between varying proposals.

Legislative proposals primarily addressed jurisdictional authority, procedures to be followed by businesses when clients' sensitive personal information is stolen, or when businesses should notify their clients.

Meanwhile, the House Financial Services Committee passed H.R. 4127, the "Financial Data Protection Act of 2006" on June 2. H.R. 4127 prescribes consumer notification requirements and prohibits charging the related consumers for the cost of the notices and file monitoring regarding data security breaches. H.R. 4127 preempts state laws governing consumer reporter data security responsibilities, except any laws governing professional confidentiality or limiting the purposes for which information may be disclosed. This legislation never received a House vote and died in the 109th Congress.

In December, 2009 the "Data Accountability and Trust Act" passed the U.S. House and would require any organization that experiences a breach of electronic data containing personal information to notify all U.S. individuals whose information is breached. The law requires that the Federal Trade Commission to also be notified. In addition, organizations would be required to designate an information security officer and establish a data security policy. The policy would have to address the collection of personal information and include a process for identifying and correcting system vulnerabilities and disposing electronic data. The bill was approved by the House, but was never reported out of the Senate Committee on Commerce, Science, and Transportation.

During the 114th Congress (2015-2016) several similar bills were introduced, including the Data Accountability and Trust Act (H.R. 580), the Personal Data Notification and Protection Act of 2015 (H.R. 1704), the Secure and Protect Americans' Data Act (H.R. 4187), The Data Security and Breach Notification Act of 2015 (H.R. 1770), the Data Breach Notification and Punishing Cyber Criminals

Act of 2015 (S. 1027), and the Data Security and Breach Notification Act of 2015 (S. 177). As of August, 2016 none of these bills have received a floor vote in their respective chamber.

In the spring of 2010, IREM became aware of a change in how credit reporting agencies interact with property managers and other businesses and professionals. Credit reporting agencies may begin to enforce on-site visual inspections by a third party of the business premises of each subscriber or headquarters location of the subscriber (property management company in this case). The third party would need to verify the business is legitimate, that they have permissible purpose to order the reports and they are storing the reports securely and destroying any unnecessary reports. Best practices include having a lockable filing cabinet, a shredder, and a password protected computer (depending on how the company receives their reports).

This new guideline came out of a civil suit filed against ChoicePoint by the United States Attorney General on behalf of the Federal Trade Commission. The court's decision detailed that organizations requesting credit checks for business purposes are required to have on-site visual inspections conducted by an independent third party at the client's expense. The court made this decision in connection with the Fair Credit Reporting Act (FCRA). It is important to note that this new rule is not in the FCRA, but instead an interpretation by the court in response to the lawsuit. Although the on-site inspections are not required by the FCRA, it is probable that most credit reporting organizations will require them in order to be in compliance.

IREM legislative staff is monitoring this issue along with all pertinent legislation due to its concern commercial real estate professionals could be included in the scope of the legislation and real estate managers would have to comply by notifying clients when data is breached.

Position

IREM has identified two main concerns with data security and consumer notification legislation. First, those bills that contain specific provisions and mechanisms that trigger notifying the consumer of a security breach, and IREM is concerned with assuring the reasonableness of the trigger mechanism and notification process. Second, the costs of compliance with state and/or federal laws would be of major concern to property managers, thus pointing to the reasonableness thresholds above referenced. IREM encourages Congress to approve legislation which is not onerous on property owners and managers or their clients. Small businesses should not be liable for the negligent acts of third parties unless contributory negligence exists.

IREM strongly encourages its members to use best practices protect the confidential personal information of their clients.

(Adopted: 10/06. Updated: 10/10, 10/16)

Electronic Advertising

Background

Spam, or junk e-mail, is disliked by consumers for several reasons. They argue it clogs up e-mail programs and is time consuming because the consumer must sift through the mass of junk mail to find desired messages. Internet service providers complain that it also increases their transmission costs, which are often passed on to users in the form of higher fees.

On December 16, 2003, President Bush signed the "Can Spam" Act. The law does not ban unsolicited commercial e-mails, but does identify a series of practices that must be observed by senders, including:

- Including a legitimate return e-mail and physical postal address;
- Including a functioning opt-out mechanism, clear and conspicuous notice of the opportunity to opt-out and requiring senders to honor any such opt-out request;
- Including a clear and conspicuous notice that the message is an advertisement or solicitation; and
- Clearly identifying messages with pornographic or sexual content as such.

In addition, the law prohibits senders from falsifying or disguising their true identity and bans the use of incorrect, misleading or fraudulent subject lines. In a 2005 Federal Trade Commission report, it was determined that the Can Spam Act was successful. The success was two-fold; many online marketers now follow the mandatory "best practices" provisions, and law enforcement is now properly equipped with effective tools to bring suit against illegal spammers.

As of 2010, 37 states have enacted laws regulating spam and unwanted electronic advertising. The majority of these statutes apply to fraudulent e-mail and other laws pertain to unsolicited bulk e-mail.

Text messages sent to a mobile phone using an auto dialer are banned by the FCC under the Telephone Consumer Protection Act, unless consent was previously given.

Position

IREM opposes indiscriminate, unsolicited spamming. However, IREM recognizes that electronic commerce is a significant emerging technology for advertising. IREM opposes burdensome regulations which would hinder the responsible utilization of such advertising practices.

(11/98, updated 4/09, 10/13, 4/15)

Electronic Signatures/Disclosures

Background

With the expansion of technology, many transactions are now being conducted electronically with a paperless process. In 2000, President Bill Clinton signed the Electronic Signatures in Global and National Commerce Act (E-SIGN). This law provides a framework for the use electronic signatures and electronic records by according electronic signatures the same legal effect, validity and enforceability as manual signatures. It does not, however, require any person to agree to use or accept electronic records or electronic signatures.

E-SIGN also allows most disclosures to be made in electronic form, provided the recipient has consented to receiving electronic disclosures. It does not make any changes to the content of those disclosures or any party's rights or responsibilities under such disclosures. The replacement of paper disclosures with electronic ones will result in cost and time savings for many real estate practitioners. It will save funds on paper, postage, and storage space for disclosures and authorizations. In addition, this type of legislation marks a step toward streamlining the real estate transaction.

E-SIGN preempts state laws that do not recognize electronic signatures and addresses private-sector interstate or foreign consumer, commercial, or financial transactions that deal with real property, personal property, or services. It also allows states to establish standards and formats for records that are filed with state agencies. The National Conference of Commissioners on Uniform State Laws has approved model legislation that meets the requirements for avoiding preemption. To date, 47 states, the District of Columbia, and the U.S Virgin Islands have adopted UETA. Illinois, New York, and Washington have not adopted UETA, but all three have enacted similar legislation to recognize electronic signatures.

Position

Provided that regulatory and logistical provisions for sufficient systemic internal controls exist, the Institute of Real Estate Management supports the use of electronic signatures, disclosures, and authorizations. The use of such technology will streamline many real estate transactions and allow for easier record keeping.

IREM applauds the enactment of E-SIGN on the federal level and of UETA in 47 states and the District of Columbia. IREM encourages those states that have not already done so to adopt UETA.

(11/99, updated 4/03, 10/07, 10/11, 5/16)

Internet Sales/Use Taxes

Background

Currently, the Internet Taxation debate for property managers revolves around the issue of how collection of such a tax affects state and local tax revenues. Sales tax *can* be charged on Internet purchases; however states cannot require online retailers to collect the tax on their own. In 1992, the U.S. Supreme Court case Quill vs. North Dakota, the Court determined that states could not compel out-of-state sellers to collect their sales taxes because the burden would be a violation of interstate commerce. Since Congress has the power under the Commerce Clause to regulate interstate commerce, they can create a level playing field for local merchants. In fact, the Supreme Court stated in the Quill decision that the problem "is not only one that Congress may be better qualified to resolve, but also one that Congress has the ultimate power to resolve." If legislation is passed and online retailers who do not have physical stores are required to collect and pay sales taxes, a major advantage for online retailers will be removed leaving the market more competitive.

The main components of state and local revenue are income taxes, real estate/property taxes and sales taxes. Not taxing the increasing Internet sales as they replace brick and mortar sales may result in a significant decline in the sales tax revenues for state and local government. If sales tax revenues decrease, state and local governments will have to increase other taxes, namely real estate, property, and income taxes.

In addition, if Internet merchants and their goods continue to effectively receive an exemption from sales taxes, they have an unfair competitive advantage over brick and mortar merchants in our communities. According to a 2011 study from the University of Tennessee, each $1 million of new retail sales in traditional brick-and-mortar establishments adds 3.61 jobs. The same $1 million in new sales at Amazon's average is expected to create 0.88 jobs. One out of every 11 U.S. jobs is shopping center-related. This could cause consumers to divert their shopping from stores in shopping centers and on free-standing sites to tax-free online merchants.

In March of 2015 the Marketplace Fairness Act of 2015 was introduced in Congress. If enacted, this bill would authorize each state to compel all sellers who do not qualify for a small seller exemption to collect sales and use taxes. In order to qualify for the exemption, a business must have less than $1 million in remote sales per year.

Position

IREM adopts the following policies relating to Internet sales/use taxes:

IREM supports consistent state/local sales/use taxes for economically equivalent transactions in the state or locality in which the goods are delivered.

State/local sales/use tax consequences should be consistent for economically equivalent transactions. IREM supports a level playing field for local in-store retailers and remote merchants (including Internet merchants). IREM believes that local and state governments should enforce existing taxes, rather than create new taxes. IREM firmly opposes any new programs that would impose taxes on the cost of such services, such as fees and other costs associated with the purchase and ownership of real estate.

IREM opposes federal sales tax on Internet purchases.

Federal legislation should not preempt state efforts to address their own sales and use tax issues. IREM believes the key issues associated with the Internet tax debate affect state and local government revenues. Accordingly, we believe state and local legislative action is appropriate, and we encourage state legislative action that would:

- Provide consistent sales tax consequences for economically equivalent transactions; and
- Simplify state/local processes for reporting and collection of sales/use taxes.

Therefore, we do not support federal legislation that—without the consent and participation of state governments—would preempt state efforts to address their own sales and use tax issues consistent with this position.

(11/04, updated 11/09, 10/13, 9/15)

Housing Financing

Position

We urge continued efforts to maintain a strong role for thrifts in supplying mortgage capital, such as the maintenance of a "Qualified Thrift Lender" asset test, as well as the preservation of existing tax incentives for mortgage lending institutions. At the same time, we recognize the need to develop new sources of mortgage financing to meet future housing needs. To that end, we support the following:

Legislative and regulatory proposals which encourage pension fund investment in mortgages while maintaining the current "arm’s length" standards contained in the Employee Retirement Income Security Act (ERISA) regulations; and

Continued development of highly-marketable, mortgage-backed securities designed to attract new investment in housing from non-traditional sources. In particular, Trusts for Investment in Mortgages (TIMs), a vehicle to improve the ability of mortgage-backed securities to compete in the marketplace, should be adopted. The Federal National Mortgage Association (Fannie Mae) and the

Federal Home Loan Mortgage Corporation (Freddie Mac), as major participants in the secondary mortgage market, should be included.

(6/86, updated 11/04, 4/09, 10/13, 4/15)

Rent Control

Background

We are opposed to government control of rents. We believe that a property owner has the right to strive for rents that will encourage investment in new construction ventures and existing property. While we are equally opposed to excessive rent increases, we firmly believe that a property should be allowed to produce sufficient income to accommodate the basic needs of its residents.

Rent controls create problems more serious than those they are intended to resolve. Rent control legislation threatens not only the traditional rights of citizens, but significantly affects the housing inventory by hastening the deterioration and loss of existing housing, while it discourages the construction of new housing.

Furthermore, by lowering the value of multifamily property, rent controls affect a community's tax base by causing a disproportionate shift of the tax burden to other types of real estate, especially single-family homes and commercial properties. This shift can potentially curtail vital municipal services. The expense of complying with rent control laws and regulations inevitably increases the cost of housing to the consumer, and the expense of enforcing rent control adds to the cost of local government.

Position

We support the availability of affordable housing for all as a responsibility of the total society, and we defend the right of Americans to own property free of unreasonable controls. Congress, HUD and numerous other agencies have invested many billions of dollars in urban areas as a means of satisfying taxpayers' needs for growth and development.

Wherever local rent controls have been initiated, the history of each impacted community has been to change growth to no-growth and development to economic malaise. In these communities the already massive infusion of federal funds is threatened; accordingly, we believe Congress and the Administration could assist in discouraging further controls by imposing a cap on housing fund allotments to those municipalities that choose to implement rent controls.

We also urge elected officials at all levels of government to oppose rent control as being counterproductive to the best interests of all segments of society and the economic well-being of the nation.

(6/86, updated 4/05, 10/09, 10/13, 8/15)

Immigration Reform

Background

The Department of Homeland Security (DHS) developed a voluntary employee verification system that can confirm a worker’s eligibility to work legally in the U.S. The initial pilot program, called

Basic Pilot, used Social Security numbers and citizenship status to check the legal employment status of workers or prospective workers.

There are some who criticize the program because it does not require employers to verify the documents they receive from employees are accurate. These groups believe this system has created a large black market for counterfeit documents. On the other side, there are those who believe the Basic Pilot system is highly inaccurate and therefore provides no protection from hiring illegal workers. Lastly, there are those who believe making such a program mandatory is too high a burden on American businesses.

In 2007, the Basic Pilot program was renamed E-verify, and was subsequently improved from its last version. The new program added features including an automatic system that would flag a person and require an employer to perform a second assessment of the employee. A photo matching section was added to the system. This would match the photo on an employee's permanent resident card to the photo in the system. Since the 2007 renaming, E-verify has undergone consistent changes and improvements to better enable an employer to check the immigration status of a potential employee.

DHS introduced the E-verify Self Check system in 2012. It is a voluntary, free service that allows individuals to check the status of their employment eligibility in the U.S. This system is still being rolled out slowly, and should continue to evolve in the coming year.

Position

IREM supports an employer verification system like the current federal system that ensures that all workers be verified for their legal employment status. As currently exists, we support that the system be free for employers and that employers are held harmless from errors made by the federal system. In addition, IREM supports a guest worker program that will allow employers to temporarily hire legal foreign workers when other qualified workers are unavailable. IREM recommends that any federal employee verification system have web-based access with documentation of use capability.

(Adopted: 4/06. Updated: 3/12, 10/17)

Bankruptcy

Background

There are four aspects of bankruptcy law that specifically impact the property management industry. They are:

- Single Asset Bankruptcy
- Shopping Center Bankruptcy
- Rental Housing Abuse
- Common Interest Communities

Position

Single Asset Bankruptcy

IREM members have had experience on both sides of the bankruptcy issue. We as owners/managers, possess a unique perspective on bankruptcy issues since we have lost substantial income from tenants who have misused bankruptcy laws to avoid paying their rent;

and occasionally as bankruptees who need time to reorganize their property. This gives us a unique perspective on bankruptcy issues.

As there seems to be no justification for differentiation between properties based upon their value, and certainly property values differ in different geographic jurisdictions, we believe that the 90 day automatic stay should apply to all properties, with no cap on the value of the asset. However, with some properties, extensive work is needed to formulate a successful reorganization plan in the occurrence of bankruptcy. Therefore, there should be adequate provisions that allow for the extension of the 90 day stay for successive like periods of time in highly complex cases when the debtor demonstrates to the Court that substantive progress (specifically, not wasting the asset and providing timely payments) has been achieved and benchmarked in the development and implementation of a plan of reorganization.

Shopping Center Bankruptcy

IREM believes that protections afforded shopping center owners under the Bankruptcy Code must be strengthened and protected by Congress and respected by the courts. Central to these initiatives are the following fundamental concepts:

Debtors in possession should be expected to expeditiously appraise their leaseholds and assume or reject their leases. Extensions beyond the initial sixty day deadline should be the exception rather than the rule and not exceed sixty day increments. Courts granting debtors-in-possession multiple series of extensions totaling one year or more to assume or reject leases is contrary to Congressional intent and unfair to shopping center owners.

Continuous operations clauses are the product of arm's length negotiations between landlord and tenants and breach of the clauses should be grounds for lease termination and other equitable relief due the landlords.

Landlords are routinely excluded from creditors' committees. Therefore, courts should allow creditors to petition to be included on such committees.

Debtors in possession seeking to assign their leases should be bound by use clauses and restrictions, as tenant mix and protections of exclusives are material to the survival and success of shopping centers. Assignments should be limited to bona fide operators of retail businesses and not include temporary tenants or licensees or investment entities buying portfolios of leases to re-tenant as sub-landlords.

The definition of shopping center as provided for in the Bankruptcy Code, should be sufficiently broadened as to encompass all multi-tenanted neighborhood, community, regional, specialty and outlet centers and malls. Bankrupt tenants should not be able to escape the shopping center protections afforded landlords by motions to the court that narrowly define shopping centers.

Debtors-in-possession and trustees should be strictly held to an obligation to pay all post-petition rent, percentage rent, operating expenses and other charges as an administrative expense of the bankruptcy estate until lease resolution.

Rental Housing Abuse

The declaration of personal bankruptcy allows tenants to delay eviction and remain in their leaseholds without paying rent during the pendency of court proceedings by denying the validity of legitimate debt or other stalling tactics. This causes the owner additional rent loss and legal costs.

Apartment owners and managers in some parts of the country have experienced a marked increase in the number of personal bankruptcy declarations among tenants -- many for the sole purpose of avoiding payment of rent. Such a practice is clearly an abuse of federal bankruptcy law.

The members of the Institute of Real Estate Management support the concept of federal legislation that would provide relief from current federal law which imposes an automatic stay allowing continued occupancy by a debtor tenant due to the filing of personal bankruptcy. In addition, the Institute supports federal legislative efforts to effectively correct the problems caused by the inconsistent administration of bankruptcy laws between districts and the unreasonable delays in collecting occupancy charges and assessments from bankrupt owners and tenants.

Common Interest Communities

IREM believes that Congress did not intend that bankrupt owners in condominiums and cooperatives should be given a "free ride" at the expense of their neighbors. Judges in these cases have expressed regret that the bankruptcy code is overly narrow and that the problems facing common interest communities were not taken into consideration.

(4/05, updated 10/09, 10/13, 10/15)

Liability Insurance and Tort System Reform

Background

The Class Action Fairness Act (S. 5) was signed into law on February 18, 2005. The law established a uniform set of criteria for determining when a multi-state class-action lawsuit can be moved from state court to federal court. IREM lobbied in support of this legislation.

Previously, federal courts had jurisdiction over lawsuits dealing with a federal question and cases in which all plaintiffs are citizens of jurisdictions different than all defendants, and each claimant has an amount in controversy in excess of $75,000.

The Act authorizes federal courts to hear class-action suits involving over $5 million where the case is outside the home state of the defendants or less than one-third of the class is located in the home state of the defendants. If two-thirds or more of the class members are from the defendant's home state, the case would not be subject to federal jurisdiction. The federal court can recuse jurisdiction when more than one third of the class resides in the same state as the defendant, based on six specific factors.

The objective in moving the suits to federal courts is to make it significantly more difficult for the lawsuits to be approved. The guidelines are also intended to limit the ability of plaintiff attorneys to "venue-shop" when filing class action suits. The law cracks down on "coupon settlements" in which plaintiffs get little but their lawyers get big fees. It links lawyers' fees to the amount of coupons redeemed.

IREM remains concerned about the rising costs and availability of liability insurance due to a variety of reasons, including:

- the broad interpretation and extension of liability in all areas;
- action that has allowed a boom in lawsuits or the "right to sue;"
- judicial unwillingness to "throw out" frivolous cases; and
- unwarranted and extraordinarily high awards given in some cases by judges and juries.

Position

We encourage Congress to enact legislation that will restore the availability of liability coverage at realistic rates for the professional community via reform of the existing tort system. We encourage IREM chapters to be involved in these issues as they relate to proposals in their states. Alternatives to this end include the development of a no-fault, limited award system; dispute resolution via out-of-court arbitration with punitive damage limitations; abolishing contingency fee law-suits; and statutes of limitations that would require prompt filing of lawsuits. Reforms such as these can only be brought on by acute public awareness and sustained efforts to bring costs down and to curtail unnecessary litigation.

(6/88, updated 11/03, 10/08, 10/13, 4/15)

National Housing Trust Fund

Background

The National Housing Trust Fund was created through a provision in the Housing and Economic Recovery Act (HERA) of 2008. The NHTF, under the Department of Housing and Urban Development, aims to provide neighborhoods and communities with monies to build, preserve, and rehabilitate affordable homes for low income families and households. It is a permanent program and at least 80% of the funds must be utilized for preserving and rehabilitating rental housing. Units funded through the NHTF are required to maintain affordability for at least 30 years. The remaining 20% can be used for other various home ownership activities, such as closing costs, down payment assistance, administrative costs and rehabilitation.

HERA requires Fannie Mae and Freddie Mac to transfer a certain percentage of their new business to help fund the Trust. Since enactment of the legislation in 2008, Fannie Mae and Freddie Mac have been placed into conservatorship. With the Federal Housing Finance Agency (FHFA) acting as their conservator, Fannie Mae and Freddie Mac were directed to halt contributions to the Trust indefinitely due to their own respective undercapitalization issues.

In 2016 HUD announced that $174 million would be available through the NHTF. This marked the first allocation of funds since the creation of the Fund.

Position

IREM supports the development and preservation of affordable housing. IREM supports the creation of a National Housing Trust Fund that does not take money from other federal, state, or local housing programs. Further, IREM supports placing these funds in a lockbox that cannot be borrowed against for other federal budgetary purposes. IREM opposes Trusts whose sources of funding negatively impact housing prices or transaction fees. IREM also supports putting for-profits and non-profits on equal footing as eligible trust fund recipients.

(Adopted: 10/07. Updated: 3/12, 10/17)

Low-Income Housing Tax Credits

Background

The Low Income Housing Tax Credit (LIHTC or Housing Credit) program was created by the Tax Reform Act of 1986 as an alternate method of funding housing for low- and moderate-income

households, and has been in operation since 1987. Every year, each state is limited to a total annual housing tax credit allocation of $1.75 per resident, which they, in turn, allocate to qualified affordable rental properties that are either newly constructed or substantially rehabilitated. Tax Credits must be used for new construction, rehabilitation, or acquisition and rehabilitation.

The housing credit works by providing a dollar-for-dollar reduction in the federal tax liability of corporations and individuals that invest equity in these qualifying properties. Property developers use the credit to attract equity investments by private sector investors - usually corporations - that, in turn, use the credits to offset their federal tax liability. The investors are at risk of losing these federal tax credit benefits if the properties are not well maintained and not reserved for low income families who do not exceed established income limits. The housing credit has been a permanent part of the tax code since 1993.

Position

IREM supports federal programs that encourage the development and preservation of affordable housing. We support the development and enactment of tax incentives that encourage economic growth while making capital available at an affordable cost.

Since 1986, the Low-Income Housing Tax Credit program has produced nearly one million safe, decent and affordable homes. It is also a cornerstone of the revitalization of low-income communities and contributes substantially to economic growth, generating thousands of jobs and billions of dollars in wages and federal taxes annually.

IREM supports the continuation of the Low-Income Housing Tax Credit, and encourages legislation that will increase this valuable development tool.

(Adopted 10/07. Updated: 3/12, 10/17)

Child Care

Position

The Institute believes that resolution of the child care issue in this country can best be achieved by encouraging voluntary, flexible personnel policies and employee benefits, and by encouraging responsible local community groups and private agencies to continue as providers of child care services. At the same time, the Institute opposes the mandating of sites for child care and supports leaving this decision to the property owners and managing agents.

If you have paid for child care, you may be eligible to claim a federal tax credit through the Child and Dependent Care Credit. Interested parties may obtain more information about this potential credit at https://www.irs.gov/uac/newsroom/claiming-the-child-and-dependent-care-tax-credit.

(6/89; updated 11/97, 10/07, 10/11, 5/16)

Anti-Crime Legislation

Background

The National Crime Victimization Survey (NCVs) has been administered by the Bureau of Justice Statistics since 1972 in order to help create a national crime index. In 2014, the most recently published report, both violent and property crime rates continued a downward trend. Violent

crimes include rape or sexual assault, aggravated assault, and simple assault. The NCVS is based on victim interviews, so the report cannot accurately measure homicides. In 2014, the overall violent crime victimizations per 1,000 persons age 12 or older was 20.1, with 1.1 rapes and sexual assaults, 2.5 robberies, 4.1 aggravated assaults, and 12.4 simple assaults.

For property managers, the most common crime is property crime, which includes burglary, theft, and motor vehicle theft. In 2014, for every 1,000 households 118.1 reported being the victim of a property crime including 23.1 burglaries, 90.8 thefts, and 4.1 motor vehicle thefts. Such crimes threaten the stability of entire families, businesses, and communities. In response to the frequent occurrence of property crimes, property managers continue to feel the pressure to ensure the security of residential, multifamily, commercial, industrial, and retail properties as well as tenant safety.

In recent years, the courts have determined that property managers are liable for some crimes committed on or around the properties they manage. Interpretations of landlord/tenant laws have been broadened, widening the scope of the definition of negligence on the part of owners and managers. Property managers need to be aware of today's climate of intensified legislative focus on tenants' rights and the proliferation of suits against property owners and managers. This is especially true in cases where crime and security are involved. Commercial tenants and residents should be aware that prevention of crime is also their responsibility. To combat crime many property managers are involved in Neighborhood Watch Programs and make use of websites providing detailed information about registered sex offenders and gang activity.

Position

Crime represents a serious threat to the management of any property. IREM believes property managers and owners have an obligation to provide an environment, as safe as reasonably possible, for a property's residents, customers, employees, guests, and commercial tenants. In addition, property managers are responsible to owners for the reasonable protection of the property's physical assets.

Therefore, in light of the societal problems caused by such crimes, IREM supports tough anti-crime measures which will help property managers to better address crime and reduce criminal activity on their properties and in their communities through their day to day activities and capacities as managers.

IREM supported many of the provisions contained in the Violent Crime Control and Law Enforcement Act of 1994, including:

- Continued expansion of community policing in cities and towns across America through creation of Community Oriented Policing Services (COPS).
- Creation of community boot camps, which give young people discipline, training, and a better chance to avoid a life of crime, and provide criminal drug addicts with drug rehabilitation treatment.
- Increased penalties for gun offenses, imposition of federal death penalties for killing a federal law enforcement officer and other heinous crimes.
- Increased penalties for various crimes against children and crimes in which minors are used, and creation of a national tracking system for those convicted of child abuse or criminal offenses against minors. The tracking issue is addressed in legislation referred to as Megan's Law.

- Provides for increased penalties for possession of firearms and illegal drugs in or around schools.
- Provides for enhanced controls on illegal entry into the United States.
- Ensures swift and sure punishments once criminals have been found guilty of violent offenses.
- Provides for new death penalty crimes and procedures and life imprisonment for three-time recidivists and creates new criminal penalties for gang violence.

The year before the Violent Crime Control and Law Enforcement Act of 1994 was enacted; the Brady Handgun Violence Prevention Act was signed into law. IREM supports keeping handguns out of the hands of criminals and therefore supported the Brady bill, which requires a five-day waiting period before the purchase of a handgun.

While Congress has made progress in passing legislation intending to prevent both children and adults from sexual abuse, IREM calls for tougher penalties for interstate stalking of women and for recidivist sex offenders, as well as stronger rights for crime victims.

IREM has long supported several anti-crime measures that have recently been in the spotlight. For instance, stiff penalties for providing material support to terrorists and terrorist-related activities.

There are two programs in particular IREM supports the state and/or federal government appropriation of funds. One, a system of regional prisons based on a state/federal partnership, which require state cost sharing and implementation of various measures to crack down on criminals. The other, grants to create federal "safe school" districts to help local school districts improve security.

In regards to the legal system, IREM supports the reform of habeas corpus procedures, raised standards for court appointed legal counsel, and limits to appeals.

(Adopted: 11/93. Updated: 6/98, 10/06, 10/10, 10/16)

Federal Megan's Law

Background

The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act ("Wetterling Act") was passed as part of the Federal Violent Crime Control and Law Enforcement Act of 1994. The groundbreaking law setup requirements for states to create and implement a sex offender registry. The law requires any individual who is convicted of a criminal offense against a minor or who is convicted of a sexually violent offense to register their current address. In addition, any individual that is deemed a "sexual predator" is required to register their address.

In 1994, seven-year old Megan Kanka, from New Jersey, was sexually assaulted and murdered by a twice-convicted sex offender who had moved into a home across the street from the Kanka family. In response to this tragedy, New Jersey passed "Megan's Law," a statute that requires the registration of convicted sex offenders once they have left the correctional system, and community notification of the identity and location of "high-risk" sex offenders. County prosecutors determine whether released offenders fall into the low-, moderate-, or high-risk categories.

President Clinton signed a national Megan's Law on May 17, 1996 that echoed the New Jersey statute, requiring states to establish a community notification system. Megan's Law is section (e) of

the Wetterling Act. The objectives of this law are similar to New Jersey's: the continued monitoring and observation by local authorities of released sexual offenders. The federal law requires a state's law enforcement agency to collect and release this information when necessary to protect the public. The law does not impose any limitations on the standards and procedures that states may adopt for determining when public safety necessitates community notification.

When Megan's Law was enacted real estate professionals voiced their apprehension. Specifically, concerns were raised regarding possible material disclosure, liability, and notification requirement issues 24 of property owners and managers under Megan's Law. While over a decade has passed since the law was enacted, property managers still feel they are exposed. Property managers face risks associated with a failure to provide adequate notice about the presence of convicted sex offenders who subsequently engage in criminal conduct, but then managers may be subjected to potential liabilities for violations of privacy laws protecting offenders and their families. Very few states have specified requirements for property managers to follow to comply with existing laws. Property managers should become familiar with state enforcement of Megan's Law as well as state privacy law requirements.

The Wetterling Act was amended again in 1998, when its requirements were changed to include heightened registration requirements for sexually violent offenders, registration of federal and military offenders, registration of nonresident workers and students, and participation in the National Sex Offender Registry (NSOR). The registry may be accessed by visiting http://www.nsopr.gov/.

In July 2006, President Bush signed The Adam Walsh Child Protection and Safety Act into law. It acts as a supplement to Megan's Law with new registration requirements and a three-tier system for classifying sex offenders with regard to their risk level to the community. The Act also instructs each state to apply identical criteria for posting offender data on the Internet.

In July 2006, President Bush signed The Adam Walsh Child Protection and Safety Act into law. It acts as a supplement to Megan's Law with new registration requirements and a three-tier system for classifying sex offenders with regard to their risk level to the community. The Act also instructs each state to apply identical criteria for posting offender data on the Internet.

Position

The passage of a federal Megan's Law was the result of a tragic incident which should be treated with respect and sensitivity. IREM fully supports the federal government's policy to protect children from convicted sexual offenders and its operation of the National Sex Offender Public Registry as a means to reach its objective.

(11/96; updated 11/97, 10/06, 10/10, 9/14)

Private Property Rights

Background

The Fifth Amendment of the Constitution states that "No person shall be deprived of property without due process of law; nor shall private property be taken for public use without just compensation." However, due to the current jurisdictional structure of our judicial system for the litigation of private property takings cases, that constitutional right is being threatened.

Currently, property owners do not have the option of directly pursuing a Fifth Amendment "takings" claim in federal court. Private property owners whose rights have been trampled must choose between suing for injunctive relief in the Federal district courts or monetary relief in the U.S. Court of Federal Claims. If the owner wishes both to invalidate the government's action and seek compensation at the same time, then separate suits must be filed in both courts. Many times the government argues that one court cannot decide on the relief sought until the other court has made a determination on the relief within that court's jurisdiction. This split jurisdiction forces property owners to file multiple lawsuits in multiple courts in order to gain relief. This shuffling of claimants between district court and the Court of Federal Claims is known as the "Tucker Act Shuffle," and the process frequently is long and costly.

Position

Governments shall not arbitrarily infringe on the basic right of the individual to acquire, possess and freely transfer real property, and shall protect private property rights as referred to in the 5th and l4th Amendments of the United States Constitution.

We support legislative implementation of the 5th Amendment's guarantee of compensation when property rights are taken. Every person should have the right to acquire real property with confidence and certainty that the use or value of such property will not be wholly or substantially eliminated by governmental action at any level without just compensation or the owner's express consent.

We recognize the need for all levels of government to be able to exercise legitimate police powers in the regulation of private property to protect the health, safety and general welfare of its citizens. However, when government actions or regulations are not founded within legitimate police powers, the government should be required to pay just compensation for the unlawful takings of the owner’s property right and burden placed on the property owner.

In addition, IREM supports legislation, which will provide property owners expeditious access to administrative and judicial systems at all levels - local, state and federal - to pursue Fifth Amendment takings claims or relief from other property rights violations.

(Updated 11/04, 4/09, 9/14)

Data Quality

Background

The Information Quality Act of 2001 required the Office of Management and Budget (OMB) to issue government-wide guidelines for ensuring and maximizing the quality of information (including statistical information) disseminated by federal agencies. The guidelines establish quality standards for all information disseminated by Federal agencies after October 1, 2002, regardless of when that information was first disseminated. The guidelines define four statutory terms for information quality: quality, utility, objectivity, and integrity. Agencies must implement "pre-dissemination" review processes for all information, and must also include "administrative mechanisms" that allow affected persons to seek and obtain the correction of information that does not comply with the OMB and agency standards.

Position

The Institute strongly supports data quality and integrity. In order to accomplish the goals of many regulations – health and safety – solid scientific research must be used. We strongly support and promote the quality, objectivity, utility, and integrity of federal government information. Furthermore, all research findings must be transparent, so experts in the private sector can review the findings and verify them. Without data quality, there will be no public trust of government actions.

(Adopted 11/02, confirmed 4/09, 9/14)

FASB Lease Accounting Changes

Background

The Financial Accounting Standards Board (FASB) and International Accounting Standards Board (IASB) proposed lease accounting changes that would bring nearly $1.3 trillion in leased assets back onto companies' balance sheets, with roughly 70 percent being real estate leases. Under the proposal, companies would be required to use a "right-of-use" accounting model where both lessees (renters) and lessors (property owners) recognize assets and liabilities arising from lease contracts. Currently, accounting rules allow many businesses to classify leases as operating expenses, which do not appear on their balance sheets. Both FASB and IASB believe these changes would improve transparency as well as provide investors with more consistent and concise financial reporting. However, if enacted, this proposal could negatively impact the financial stability of many businesses, which could prolong our nation's economic recovery.

If enacted, this proposal would impact businesses of all sizes, especially lessees and lessors of commercial real estate. With more bloated balance sheets, some companies may see their debt-to-equity ratios increase and find it more difficult to obtain credit, especially those with heavy debt loads or still recovering from the recession. The proposed accounting changes could also complicate compliance with debt covenants or agreements between the bank and borrower, which usually prohibit companies from borrowing more than they are worth. By capitalizing new and/or existing leases, some businesses could be over their debt covenant and be in default of their loan. This could force some firms to put up more equity on existing loans or even have their credit lines revoked.

Additionally, the elimination of off-balance-sheet financing would be detrimental to commercial property owners. More frugal lessees will want less space and shorter-term leases without renewal options or contingent rents, which will decrease cash flow for property owners. Shorter-term rents will likely reduce the borrowing capacity of many commercial real estate lessors, who rely on leases and the value of the property as collateral in order to obtain financing. Ultimately, property owners would be forced to increase rent rates due to market uncertainty and reduce tenant improvements due to shorter recovery periods. Conversely, this change could encourage firms to consider buying instead of leasing commercial real estate. The accounting proposal comes at an inopportune time with the commercial real estate industry in the midst of a financial crisis, and nearly $1.4 trillion in loans due by 2014 and an already very limited capacity to refinance.

While a hard deadline has not yet been set, the current time frame for when these new standards officially go into effect is roughly late 2015 to early 2016.

Position

IREM is concerned that the new lease accounting proposal will be detrimental to our nation's economy by reducing the overall borrowing capacity of many commercial real estate lessees and lessors. Also, IREM is opposed to lease accounting standard changes that would treat the income producing real estate business as a financing business on company balance sheets. Such a step would not accurately depict the unique characteristics of the investment real estate sector and in turn discounts the usefulness of the industry's financial statements.

(Adopted 10/10, updated 2/14)

Private Transfer Fees

Background

On August 12, 2010, the Federal Housing Finance Agency (FHFA) proposed a regulatory guidance for public comment that would restrict Fannie Mae, Freddie Mac and the Federal Home Loan Banks from investing in mortgages with private transfer fee covenants. This guidance would extend to mortgages and securities purchased by the Federal Home Loan Banks or acquired as collateral for advances, as well as to mortgages and securities purchased or guaranteed by government sponsored enterprises (GSEs). This action would end the use of private transfer fees in 60 to 70 percent of the real estate market.

A private transfer fee, sometimes called a "flip tax," is a one-time fee paid when a home is sold. Typically the fee, usually a fraction of 1% of the home sale price, in some cases helps fund community homeowners associations or other not-for-profit organizations.

FHFA is reacting to a recently new practice by which developers charge the fee as an ongoing source of revenue. Some association covenants require transfer fees to third parties, unaffiliated with the property or community association. The New York Times has cited Freehold Capital Partners as a prime mover in this effort. Freehold, based in New York is a real estate financing firm headed by Joseph B. Alderman III, a Texas developer. The firm claims to have signed up more than 5,000 developers as clients who are interested in these fees as a future revenue stream against which they could borrow or sell debt securities, according to the New York Times. It is this practice from FHFA appears to be attempting to shield the GSEs.

However, many homeowners associations and condominium associations use transfer fees to benefit the community and residents. These are a way to spread the costs of infrastructure or other benefits over time, and limit the immediate financial impact on residents.

In March 2012, the Federal Housing Finance Agency issued a final rule prohibiting Fannie Mae, Freddie Mac, and Federal Home Loan Banks from dealing in mortgages encumbered with private transfer fees. While the FHFA does not have the authority to ban covenants for private transfer fees, the final rule effectively ensures they will no longer be used by banning Fannie Mae, Freddie Mac, and Federal Home Loan Banks from buying mortgages with private transfer fee agreements.

In addition, nearly 40 states have banned private transfer fees.

Private transfer fees paid to homeowners associations and certain not-for-profit organizations are not included in the rule. The rule does make an exception for fees that are used for the benefit of the residents of the property, with specific definitions for the benefits.

Position

IREM understands the opposition to private transfer fees* that are hidden fees and serve no benefit to the community or residents of the condo or homeowner association. However, many such fees are disclosed and are used to the benefit of the residents. We believe limiting the use of such fees could limit the amenities and benefits available to residents. Therefore, IREM recommends that FHFA and FHA include an exemption for those associations who fully disclose their fees, and who utilize those fees for the direct benefit of the community.

*Exempt from the term "transfer fee" are fees that are paid directly to the property management company, bookkeeping company, whomever is handling the association's ownership lists, accounting books and records and generation of the new owner information packages. The fee is not paid to the Association, nor are these fees included in the annual budget creation.

These fees are charged in direct relation to the additional services required when there is an ownership change. The additional bookkeeping tasks of closing the previous owners ledger / account, setting up the new owners for accounting purposes, mailing the new owner information or a new owners packet, possibly recoding entry systems, providing key fobs, gate keys or gate openers, etc.

The fee is not used, or depended upon, as a source of income to the benefit to the community association or the residents. The fee is not a revenue stream for the association to be used for operating costs or long-term component replacement reserves, as the fee is not paid to the association. The fee is earned and paid to the entity performing the additional tasks that are required purely as a result of the sale transaction.

All costs incurred by the management company, bookkeeping company etc are disclosed to real estate agents when they seek the association's governing documents and also to the escrow / title company prior to the close of escrow.

(Adopted 10/10, updated 1/21/14)

Small Business Administration's 504 Refinancing Program

Background

Under the Small Business Jobs Act, the Small Business Administration (SBA) enacted a temporary program allowing small businesses to refinance eligible fixed assets in its 504 program. The program commenced on February 17, 2011 and began accepting applications for loans on February 28. This program provided small businesses the opportunity to lock in long-term, stable financing, and finance eligible business expenses as well as protect jobs and hire additional workers. It was estimated that nearly 8,000 businesses across the United States took advantage of this program. The temporary program provided up to $7.5 billion in SBA-guaranteed financing, with a total project cost of $17 billion.

This temporary program is not to be confused with SBA's 504 permanent loan program approved under the American Recovery and Reinvestment Act (Stimulus) in 2009. The temporary program expired on September 27, 2012.

As part of the *Consolidated Appropriations Act of 2016* that was passed by Congress in December of 2016, the 504 Refinance Program was permanently reinstated. Through this legislation, the SBA is

authorized to approve up to $7.5 billion in lending authority under the 504 Debt Refinancing Program in addition to the $7.5 billion already in place for the 504 Loan Program. However, the SBA is only authorized to do so in fiscal years during which there will not be any subsidy costs to the government.

Position

IREM supports this temporary refinancing program as it provides loans to small business owners, and could particularly be effective in the real estate sector. It is crucial for commercial real estate practitioners to consider utilizing this program. Financing from commercial banks is sparse. Small business owners may use the 504 refinancing loans for employee salaries, rent, utilities, inventory, pay off or down credit debt, or other financial obligations.

(Adopted 10/12. Updated: 10/17)

Regulatory Issues

Unmanned Aerial Vehicles (Drones)

Background

Unmanned aerial system (UAS), sometimes called an unmanned aerial vehicle (UAV) or drone, is defined by the Federal Aviation Agency (FAA) as "the unmanned aircraft (UA) and all of the associated support equipment, control station, data links, telemetry, communications and navigation equipment, etc., necessary to operate the unmanned aircraft. The UA is the flying portion of the system, flown by a pilot via a ground control system, or autonomously through use of an on-board computer, communication links and any additional equipment that is necessary for the UA to operate safely."

Drones have been used more frequently in recent years for various reasons. For the purpose of real estate and property management, professionals use drones to inspect large buildings, obtain aerial views and photographs of commercial and large multifamily properties, among other uses.

In February, 2015, the FAA published proposed rules pertaining to the commercial use of drones. In summary, the proposed rule includes language that would:

- Limit the weight of an unmanned aircraft to be no more than 55lbs (25kg);
- Require the unmanned aircraft remain within the visual line-of-sight (VLOS) of the operator or visual observer;
- Limit the use of the unmanned aircraft to daylight-only (official sunrise to official sunset, local time).

IREM will comment on these proposed rules and be active during the rulemaking process to ensure regulations are fair and reasonable to the real estate community.

Position

IREM applauds the FAA for their timely release of proposed rules to govern the commercial use of drones. Although IREM is generally pleased with the proposed rule language, IREM encourages the FAA to adopt rules that would allow limited commercial drone use during nighttime hours. Real estate managers and owners often use drones for Infrared Thermographic imaging and this can best be done in the dark nighttime hours.

IREM respects the need for the safe use of unmanned aircraft, and encourages IREM Members to take measures to use drones safely, responsibly, and within the confines of the law.

(Adopted 4/12/15)

Certification of Buildings Under the "Implementing Recommendations of the 9/11 Commission Act of 2007"

Background

On August 16, 2007, President Bush signed into law the "Implementing Recommendations of 9/11 Commission Act of 2007" (H.R. 1), which includes a provision that requires the Department of Homeland Security (DHS) by spring, 2008, to set up a program for certifying private sector entities

as meeting a "voluntary" national standard for emergency preparedness. The legislation was, in fact, the 9/11 Commission Report allowing it to move quickly through the Senate for final passage with no debate or hearings.

The law mandates the DHS to adopt a voluntary private sector accreditation and certification standard that promotes emergency preparedness, which may be customized to fit the unique characteristics of various industries within the private sector, including real estate. In order to carry out its certification program, the DHS is required to select a qualified nongovernmental entity to accredit qualified third parties who will actually perform the certification of real estate. DHS adopted the National Fire Protection Association (NFPA) 1600 and it has been endorsed by many different organizations including the U.S. Department of Homeland Security under their category of "Standards for Business Continuity and Emergency Preparedness." According to the NFPA, the NFPA 1600 addresses "...the development, implementation, assessment, and maintenance of programs for prevention, mitigation, preparedness, response, continuity, and recovery."

The NFPA 1600 Standard on Disaster/Emergency Management and Business Continuity Programs, 2007 edition, as written, is of minimal impact to real estate owners and managers and lacks specifics. The 2010 edition of the NFPA 1600 was released and expanded to emphasize the importance of "leadership" and "commitment." The most recent edition, the "NFPA 1600: Standard on Disaster/Emergency Management and Business Continuity/Continuity of Operations Programs" was released in 2016. The next edition is expected to be published in 2019, but a first draft is expected to be released on September 7, 2017. IREM is concerned that the third-party or parties selected to certify real estate will charge real estate owners and managers a fee to be certified.

Although the law is voluntary, it could lead to several end results. It may become the market and legal standard of care in the real estate industry. Most importantly for real estate practitioners, the standard may allow for the insurance and credit-rating industries to look closely at a company's compliance with the NFPA 1600 standard or any other DHS selected standard in evaluating its insurability and creditworthiness.

Position

In regards to the voluntary certification standard that the DHS is to adopt, IREM opposes mandatory certification for real estate owners and managers for a fee. IREM supports voluntary standards that are not onerous on real estate professionals.

(Adopted 10/07, 10/11, 5/17)

Banks of Mailboxes

Background

The U.S. Postal Service (USPS) provides standards governing mail receptacles, including those installed in apartments and other buildings. Apartments and other multiple-family dwelling must install and maintain mail receptacles that are approved by the USPS in the interest of promoting USPS efficiency, safety and mail security. Standard STD-4B, created in 1975, set forth the detailed requirements concerning the manufacture and testing levels for receptacles. In 2006, Standard 4C went into effect and replaced the previous standard.

In 2003, the USPS proposed a new mailbox standard to accommodate the growing volume and improve mail safety and security. The USPS used a consensus process to revise the federal apartment mailbox standard. IREM participated in the Consensus Committee convened by the USPS. IREM was very satisfied with the agreed-to recommendations that were incorporated into the proposed rule.

The "Standards Governing the Design of Wall-Mounted Centralized Mail Receptacles" final rule was released on September 3, 2004. The new standard created a new form factor and increased the minimum size requirement by 50% to 12 x 15 x 3. Additionally, the standard requires parcel lockers at a ratio of 1:10. The standard also introduced suggested design types, while eliminating the vertical form. Security requirements for the entire receptacle were strengthened.

Most important, the standard applies only to new construction and substantial rehabilitation. Existing buildings are encouraged to replace existing boxes at the end of their useful life with the new mailbox standard, but there is no requirement. The standard went into effect on September 3, 2006.

Position

IREM urges caution in requiring retrofitting of mailboxes and modes of delivery in all property types where banks of mailboxes are required or will be required. There are many buildings which may not have space to comply with the new size and/or configuration of the mailboxes. All modifications to mailboxes and modes of delivery must comply with related federally mandated accessibility standards. IREM would like to be involved in any future discussions regarding proposals to modify the existing standard or create a new standard.

(4/03, updated 1/14)

Americans with Disabilities Act of 1990

Background

In the summer of 1990, the ADA (Americans With Disabilities Act) was signed by President Bush. The regulations implementing this legislation were originally written in 1991. Standards on administrative and procedural requirements, and design and construction compliance, are expressed in the Americans with Disabilities Act Accessibility Guidelines (ADAAG). ADAAG covers Titles II and III of the ADA, which relate to accessibility guidelines for buildings and facilities and nondiscrimination by public accommodations and in commercial facilities.

July 26, 2010, marked the 20th anniversary of the signing of the Americans with Disability Act of 1991. In July, 2010, several changes were approved and published by the Department of Justice ("Department") as a final rule to Title III. Amendments to this final rule were made in March, 2011. These final rules went into effect on March 15, 2011. Compliance with the 2010 Standards for Accessible Design does not go into effect until March 15, 2012. A summary of these changes include:

1. Adoption of the 2010 ADA Standards for Accessible Design. The Department has adopted revised ADA design standards that include the relevant chapters of the Access Board's 2004 ADA/ABA Accessibility Guidelines as modified by specific provisions of this rule.
2. Effective Date. The rule became effective March 15, 2011. On March 15, 2012, compliance with the 2010 Standards will be required for new construction and alterations and barrier removal. In the period between September 15, 2010 and March 15, 2012, covered entities

may choose between the 1991 Standards and the 2010 Standards. Covered entities that should have complied with the 1991 Standards during any new construction or alteration of facilities or elements, but have not done so by March 15, 2012, must comply with the 2010 Standards.

3. Element-by-Element Safe Harbor. The rule includes a general "safe harbor" under which elements in covered facilities would not be required to be brought into compliance with the 2010 Standards until the elements were subject to a planned alteration.
4. Ticketing. The rule provides guidance on the sale of tickets for accessible seating.
5. Service Animals. The rule defines "service animal" as a dog that has been individually trained to do work or perform tasks for the benefit of an individual with a disability. The rule states that other animals, whether wild or domestic, do not qualify as service animals.
6. Wheelchairs and Other Power-Driven Mobility Devices. The rule adopts a two-tiered approach to mobility devices, drawing distinctions between wheelchairs and "other power-driven mobility devices."
7. Effective Communication. The rule includes video remote interpreting (VRI) services as a kind of auxiliary aid that may be used to provide effective communication.
8. Reservations Made by Places of Lodging. The rule establishes requirements for reservations made by places of lodging, including procedures that will allow individuals with disabilities to make reservations for accessible guest rooms during the same hours and in the same manner as other guests
9. Timeshares, Condominium Hotels, and Other Places of Lodging. The rule provides that timeshare and condominium properties that operate like hotels are subject to Title III. The rule also provides guidance about the factors that must be present for a facility that is not an inn, motel, or hotel to qualify as a place of lodging.

Source: ADA.gov

In addition, the ADA does not allow plaintiffs to collect damages for violations to the law. Only attorneys representing the plaintiff's suit are allowed to collect compensation from accessibility decisions to cover court costs. In some instances, this stipulation has been abused and individuals have used the ADA as a means to file frivolous lawsuits against commercial property owners to collect compensation for court costs.

Also, it is important to note that compliance to the new ADA regulations must be achieved unless doing so creates undue financial and/or administrative burden(s) or disturbs tenants.

Position

In continuing with its commitment to provide and encourage equal opportunity to all people, IREM heartily endorses an end to discrimination against individuals with disabilities, which is also the stated purpose of the Americans with Disabilities Act of 1990 and consequently the revisions in 2010. We encourage the regulatory agencies charged with the responsibility of enforcing the Act to adopt fair and workable regulations to ensure and facilitate timely compliance by public accommodations.

To this end, the Institute of Real Estate Management encourages further definition of the terms "undue hardship," "readily achievable," "maximum extent feasible," and "reasonable accommodation/modification" to better reflect the degree of responsibility of employers, property owners, and managers in complying with the ADA.

While market pressures and honorable initiatives have already resulted in expanded accessibility, we recognize the necessity to create a significant obligation for the private sector to join in on ending discrimination. However, we cannot deny that employers and businesses often exist and operate under precarious economic conditions, especially in current times. Congress realized this and included factors to consider in determining the extent of private sector obligation under the Act in order to protect businesses from overwhelming financial burdens. Currently the term "technically feasible" does not include a cost factor. Only under some circumstances will cost be considered as an exception to compliance with ADA requirements. This could place a prohibitive cost on the private sector, causing a financial hardship. We recommend including "financial burden" as a reasonable criteria when determining any obligation of compliance with ADAAG for existing facilities and alterations. IREM urges members to create a plan of future modifications that would include any major changes to comply with new ADA regulations.

The philosophy behind the ADA is to make places and opportunities accessible to those with disabilities. We support legislation and public policy that would provide a notice and cure provision in ADA regulations whereby those facing possible sanctions under the law would be entitled to written notice of the alleged violation in combination with a reasonable time to rebut and/or cure the alleged violation before facing economic sanctions and/or litigation, except in the most grievous of circumstances involving a repeat pattern and practice of actual violations. This would allow these properties to make necessary corrections if violations exist, without incurring substantial litigation costs, allowing available monies to be preserved and used for compliance, and not litigation costs. To be successful and to achieve its programmatic and legislative intent, the ADA needs to refocus from the litigation arena to barrier removal. Legislation providing ample notice and time for business owners to make necessary modifications prior to facing economic sanctions and litigation would allow businesses to correct violations of the ADA and provide the intended level of access to disabled persons required in the legislation.

(11/90, updated 07/00, 10/07, 10/11, 9/14)

Americans of Disabilities Act of 1990: Revised Standards

Position

Comments on regulations for the Americans of Disabilities Act of 1990 (ADA) and the Architectural Barriers Act of 1968 (ABA) are due May 31, 2005. Published September 30, 2004, the ADA regulation document contains information on guidelines, implementation and revised standards.

The ADA requires the Department of Justice (Civil Rights Division) to adopt standards that are "consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board". These regulations are not effective to the public until the Department of Justice adopts a final ruling on the revised ADA standards.

Question 1. Should the effective date of the proposed revised ADA Standards be modeled on the effective date used to implement the current ADA Standards – eighteen months after publication of the final rule – or a shorter period?

IREM Response: Neither. It is almost imperative that the effective date of the proposed new rule allow a minimum of eighteen months and possibly even more time depending upon the "triggering event" after the publication of the final rule. It is not uncommon for the project design time to span

18-24 months from inception to permit submittal, with additional time, 6-18 months, for the building permit process, and then an additional 24-36 months to complete the construction. Any time period set by DOJ needs to take into consideration the immense amount of time needed up front to get a project designed, permitted and then finally built. Any changes in the plans after the building permit has been applied for adds considerable to the project cost because of the need to go back, redesign and revise plans that have been completed. It is even more difficult to incorporate changes when the building is already under construction. IREM does realize that designers need to be aware of potential changes and IREM does provide notification to members so they can anticipate and be aware of upcoming changes. However even with that knowledge, it is very difficult to anticipate compliance for a final rule that takes years to develop and then has no specific schedule for when it will be published. DOJ needs to be reasonable in setting compliance time frames allowing sufficient time for the changes to be incorporated into the project during the design phase.

Effective Date: Triggering Event

Question 2: The Department is asking the public to identify any facilities for which the current triggering events might prove unworkable. Are there facilities covered by the revised ADA Standards that are subject to Title III for which first occupancy/physical alteration do not apply in the new construction/alteration context?

IREM Response - New Construction: The effective "triggering event" for current the Access Board's revised ADA Accessibility Guidelines (ADAAG) is the major issue that created the problem in obtaining compliance with the current ADAAG and for that matter Fair Housing Accessibility Guidelines (FHAG). For new construction a "triggering event" based on "first occupancy" or even "first use" is quite unrealistic based on the time frame involved in getting a project to the point of "first occupancy" or "first use." From project inception to "first occupancy" or "first use" may be four years or more with the minimum being as discussed in IREM's response to Question 1. 18-24 months for the design phase, 6-18 months for the permitting stage, and then 2-3 years for the construction phase before the building is ready for "first occupancy" or "first use." The 18 month time period proposed as the "time period" for compliance will require developers to redesign buildings that are already under construction. Mandating changes to buildings already approved for construction and already being built places a very unfair burden on developers. It is even more difficult to comply with a rule that can be published at anytime without constraints to meeting any schedule. At minimum the rule for new construction should be 18 months before the application for the building permit. Designers would then be on notice early in the design stage at a time when they can make changes while the plans are still being developed.

IREM Response – Existing Buildings: The "triggering activity" for existing buildings can be different than the "triggering activity" for new construction. However, it needs to take into consideration the issues being addressed in Question 3 concerning "safe harbor", and it needs to be responsive to what has or has not been done to the existing building for compliance with current ADAAG.

Existing Buildings That Comply With Current ADA Standards: Building that have been designed and constructed to comply with current ADAAG or that have been modified to comply with current ADAAG should be grandfathered and not be required to update to the new ADAAG. The exception being any new work or changes in the portions of the building that comply with current ADDAG,

must comply with the new updated ADAAG. The 18-month "triggering event" for buildings that comply with current ADAAG can be based, as it is now, on the commencement of the alteration or construction.

Existing Buildings That Do Not Comply With Current ADA Standards: Buildings that do not comply should be required to be updated to the new ADAAG requirements as they are currently required to be updated to ADAAG.

Safe Harbor

Question 3. Should the Department provide any type of safe harbor so that elements of facilities already in compliance with the current ADA Standards need not comply with the revised ADA Standards?

IREM Response: A very definite YES. A "safe harbor" should be granted to any and all buildings, facilities, or elements that comply with current ADAAG as long as they are not modified or changed. Modifications and changes should be done in accordance with the new ADAAG. The concept of grandfather or "safe harboring" for existing buildings is well established and is the basis for determining if building complies with the appropriate building, fire or other construction code. Building, Fire, and other codes specifically apply to new construction, alterations, or modifications made after the effective adoption date of the code. Buildings in existence at the time of the adoption of the new code are grandfathered as long as they comply with the code in existence at the time they were construction. The enforcement date for a new building, fire and other code is published well in advance by the adopting governmental agency, and it is not uncommon for the actual enforcement date to be 6, 12 or even, in the case of places like California, 3 years later.

Buildings under construction with a valid building permit are allowed to be constructed to the code being enforced at the time the building permit was issued. Buildings under construction are not required to be redesigned or required to meet the requirements of the newly adopted code. The same should be true for ADAAG compliance and thus the reason for the comments under "triggering event" in response to Question 2 and that the "trigger event" should be based on the application for the building permit.

(Adopted 4/05, updated 1/14)

Federal Ownership and Leasing of Public Buildings

Background

In the past, the Institute of Real Estate Management expressed its concern regarding legislative attempts to reduce the amount of space the federal government leases, through the General Services Administration (GSA), from the private sector. The majority of the growth in GSA's inventory has been in leased space. According to the FY 2016 Federal Real Property Report, the Federal Government leased 294 million square feet of building space from private entities. This number represents a decrease in leasing over since 2013.

GSA operates under legislative authority, as granted by the Public Buildings Act, to house Federal tenants in appropriate space and provide related services to allow those tenant agencies to conduct business and achieve their missions. GSA frequently evaluates its inventory, to ensure that it contains the right types of properties to house the agencies that come to GSA for space solutions.

In addition, the GSA works closely with stakeholders, including the Office of Management and Budget, and Congress through the annual appropriation process and authorization of funds to operate, lease and build Federal structures.

The GSA Public Buildings Service has thoroughly reviewed its building inventory and is working to align its real estate portfolio with its mission and customer needs. This initiative is part of an overall strategy to restructure this portfolio so that limited resources are more efficiently and effectively utilized.

The in order to increase efficiency, the GSA will sometimes lease vacant space in certain properties at market rates to businesses and other government entities. However, out-leasing remains a minor part of GSA's program. As of September 2004, less than 1% (3.0 million RSF) of its total RSF (344.3 million RSF) was out-leased to the private sector and GSA's largest out-leases are driven by Federal legislation.

On October 5, 2009, President Obama issued Executive Order (EO) 13514 – Federal Leadership in Environment, Energy, and Economic Performance. EO 13514 requires all federal agencies to analyze their needs and make performance goals, practice energy conservation, and practice environmental conservancy. The GSA requires its lessors to be LEED rated and be committed to energy conservation practices.

On March 25th, 2015, President Obama issued EO 13693 Planning for Federal Sustainability in the Next Decade. EO 13693 built upon EO 13514 by introducing new requirements, as well as expanding existing ones.

Position

Members of the Institute of Real Estate Management continue to support the maintenance of the existing check and balance system, which is the cornerstone of our nation's democratic form of government. It is important that our elected officials retain authority over the Executive Branch infrastructure. While GSA has a fiduciary responsibility to manage and maintain building assets under their custody and control on behalf of the American people, GSA cannot spend any significant funds on construction or rehabilitation without Congressional approval.

We would encourage the GSA to continue to function in a manner more characteristic of private sector business, to be both accountable for expenditures and to maintain a level of cost-consciousness.

The Institute supports GSA's efforts to meet Federal office space needs using commercial leased space from the private sector to the maximum extent practicable. Further, the Institute supports GSA's efforts to construct new buildings using lease construction to meet much of the Federal government's need for general-purpose space requirements not available in the commercial real estate market. When GSA does construct new buildings, those are predominantly special purpose buildings such as courthouses or in markets where available space insufficient or not practical for meeting the government's needs. In recent years, GSA has only occasionally built general-purpose office buildings. GSA's annual new construction program is made up of almost entirely of special purpose space, courthouses and border stations, with requirements that are not readily available in the market place.

The Institute supports GSA's portfolio strategy approach to managing Federal real property that should lead the agency to a lean and profitable inventory of property from which to meet the needs

of Federal tenants. We are also pleased to see that GSA is not expanding out-leasing efforts in vacant space.

We applaud GSA's efforts to utilize space available from the commercial market and support their efforts to construct Federal space only when the type and quantity of space needed is not commercially available.

(Adopted: 11/87. Updated: 4/05, 10/08, 3/12, 10/17)

Government Intervention, Regulation and Control

Position

We support broad regulatory reform such as that pursued by Congress and the concept of greater accountability of agency rule-makers to elected officials and support a viable substitute to the legislative veto, which was considered unconstitutional by the 1983 Supreme Court case, INS v. Chadha. Further, we endorse the need to shift the burden of proof in justifying agency regulations toward the agency.

(6/86, updated 11/04, 10/09, 9/12)

Financial Entities' Involvement in Real Estate

Position

IREM opposes changes or interpretations in present federal regulations which would permit any banks or bank holding companies or subsidiaries to enter the field of property management beyond properties owned by these institutions. In principal, IREM supports the elimination of unnecessary or counter-productive government regulations.

However, in the case of banks, bank holding companies or subsidiaries and thrift institutions which hold a unique position in the business and financial world, we are opposed to changes or interpretations in the present federal regulations which would, for example, permit their entry into certain activities.

We further urge the appropriate regulators to use their authority to restrain the expansion of real estate activity by state financial entities and their federal counterparts. The Institute continues to support and encourage the omission of the following from any list of governmental or regulatory-approved financial institution real estate activities:

- Providing residential, commercial (and facility) property management services for third parties;
- management of owners' associations for condominiums, cooperatives, planned unit developments and commercial projects;
- acquiring improved commercial real estate to be held for rental; and
- acquiring improved commercial real estate for remodeling, renovating or demolishing and rebuilding for sale or rental.

Practices of this nature will remove the "safe haven" character of the institutions and compromise their fiduciary position, having a traumatic effect on the business of third-party independent

property management by depriving this industry of its rights to compete in the marketplace without undue influence by banking and/or financial service entities.

(6/86, updated 11/04, 4/09, 4/15)

Civil Asset Forfeiture

Background

Civil Asset Forfeiture laws are being used to combat drug dealing and in the past these laws have been revised. The old laws allowed the government to take your property without indictment, hearing or trial. They needed only show that there was 'probable cause' to think that an illegal activity occurred on the property, or the property was gained from the proceeds of an illegal act. To contest a seizure, a property owner had only 10-20 days to file a claim, and was required to pay $5,000 or 10% of the value of the property as bond. Further, if you could not afford an attorney, one was not being provided for you. These laws required a property owner to prove his/her innocence, while our country is founded on the principal of "innocent until proven guilty".

The Civil Asset Forfeiture Reform Act of 2000, introduced by Congressman Henry Hyde (R-IL), and signed into law by President Bill Clinton was designed to reform the aforementioned laws and enacted the following changes:

- Places the burden of proof on the government by requiring them to show a "preponderance of the evidence";
- Allows for the appointment of counsel to indigents;
- Allows for the recovery of attorney's fees
- Ensures that property owners who took reasonable steps to prevent illegal activities on or with their property cannot be subject to forfeiture;
- Eliminates the cost bond requirement from owners;
- Gives a property owner up to 30 days to contest a forfeiture;
- Allows innocent property owners the right to sue for negligence or loss of property due to forfeiture; and
- Allows the property to be returned to the owner pending final disposition, if hardship would otherwise result.

Civil Asset Forfeiture has come under significant scrutiny recently as a result of several high-profile cases involving the law. Stipulations regarding where the assets end up, and how they can be recovered vary in different states. Recently, Texas placed tight restrictions on the law after abused were uncovered. However, Utah recently rolled back previous reforms.

Position

Illegal drugs are a most serious national problem. The Institute of Real Estate Management supports the swift, timely eviction of drug dealers. However, seizure of rental property where there may be an innocent owner constitutes a taking of private property without just compensation. IREM urges that the federal government, when enacting seizure procedures, require proof of owner complicity in the illegal drug activity before authorization for seizure of real property can be granted. The government should not be allowed to seize property without clear and convincing proof of that property owner's involvement in the crime. Further, those owners whose property is seized must be given time to contest the forfeiture and access to legal counsel. If found innocent, a

property owner must have the ability to receive compensation for negligence or loss of property due to seizure.

(Adopted 11/01, confirmed 4/09, updated 2/14)

HUD Reforms: Civil Money Penalties

Background

The Secretary of HUD has the authority through federal court to impose civil money penalties against general partners and certain managing agents of multifamily mortgagors in addition to the current language (Section 537) of imposing civil money penalties on multifamily mortgagors. The current law in Section 537 authorizes the imposition of civil money penalties for certain violations of (A) an agreement entered into as a condition of a transfer of physical assets, a flexible subsidy loan, a capital improvement loan, a modification of the mortgage terms, or a work-out agreement; or (B) the regulatory agreement executed by the mortgagor. The penalties can even occur when the general partner of a mortgage or does not provide "management for the project that is acceptable to the Secretary" such as failing to maintain the property, and failing to provide access to accounting records of a property.

HUD regulation 24 CFR Part 30.45 provides guidance on procedures for civil money penalties. The regulation states that a mortgagor may respond to a notice from HUD of possible penalty and, subsequent to the response, a review of the notice by the Housing Civil Penalties Panel may occur. A hearing process before an administrative law judge would occur next if a penalty was suggested by a majority vote of the Housing Civil Penalties Panel. A mortgagor may appeal the administrative law judge's decision to the Secretary. After the Secretary's final decision, judicial review is possible.

Prior to the penalty, the mortgagor may request an administrative hearing which is appealable to the U.S. Court of Appeals. Under the existing law, a civil money penalty may not exceed $25,000.

Position

The Institute of Real Estate Management is aware that there are cases of "recalcitrant owners and managing agents" that HUD must address. However, the Institute believes that adding managing agents to the proposed civil penalties authority represents overkill on the part of HUD and is an inappropriate response to these problems for the following reasons:

A. General Comments:

Present remedies available to HUD adequately address these cases. Such remedies include HUD's current ability to initiate receivership hearings on a property. The Institute believes that placing a property in receivership is an extreme measure and a sufficient tool for HUD to use in extreme cases. Addressing managing agents, administrative sanctions such as suspension, termination, and debarment are current available options.

Use of this authority could be arbitrary. Adequate proof standards for administrative review must be assured. Due process should be afforded before civil money penalties are enforced on general partners or managing agents. During due process it must be determined which party is actually in control of making a specific decision. In most cases, managing agents take direction from general partners or mortgagors.

The application of civil penalties as proposed is open to abuse. The possibility exists that a difference of opinion could be deemed a "violation" by HUD and penalized. What constitutes a reasonable, proper, or necessary expense may be subject to interpretation or conflict between HUD and managing agents or owners, and may even vary from one HUD region to another. At a minimum, there should be ample notice to those deemed to be in violation to give them an opportunity to correct problems. Also, the Institute believes that it is difficult for HUD to keep informed of the current professional management practices needed for sophisticated decision-making given the shortage of staff.

If the managing agent identifies a problem that is under the control of the owner or general partner and, the managing agent documents that problem and informs HUD of that potential problem, the managing agent should be held harmless and civil money penalties should not be imposed on that managing agent. The managing agent shall only be liable for his or her own gross acts of unlawful misconduct or negligence.

The "identification of problem" action will build ill-will between the owner and agent and will provide for a negative working relationship and possible lawsuits against the managing agent.

When actions occur that may be questionable, the managing agent shall get written approval from HUD before the action is pursued. However, it's unclear as to when and under what situations this procedure needs to be followed.

Any civil money penalties imposed should stay with the property and be used for the benefit of the property. When civil money penalties are imposed, where do the funds go?

When civil money penalties are imposed, they should not be punitive. The penalties should be only compensatory to recoup the cost of damages and, as stated above, should be used for the benefit of the property. In the case of the managing agent, punitive damages are, in essence, applied to the managing agents by potential loss of the management contract.

IREM believes that objectivity is of primary importance at each stage of the civil money penalties process including the deliberations of the Housing Civil Penalties Panel (HCPP). According to 24 CFR Part 30, the panel is composed of four individuals at the Assistant Secretary or Deputy Assistant Secretary level or their designees. With the composition of the panel only coming from this level of HUD employees, where is the objectivity? Is this a "preaching to the choir" situation? IREM feels that this panel will lack objectivity and that, under the current selection process, there is no way to make the panel objective.

The following comments refer to SS 30.325, "Under this subsection, the HCPP also may propose civil money penalties on any project mortgagor who knowingly and materially violates its regulatory agreement by:

> "Paying out any funds except for reasonable operating expenses and necessary repairs, without the prior written approval of the Secretary."

Under this part, who determines reasonable and necessary? These terms are unclear, are too broad, and interpretation by HUD tends to be extremely subjective.

> "The interest of any general partner in any right to manage or receive the rents and profits from the mortgaged property, without the prior written approval of the Secretary."

Some general partner interests in a property are extremely small and, consequently, insignificant. Under current operating procedures at HUD, the Department is not a consenting party to the contract between the owner and the managing agent. Under this section, the verbiage implies that HUD is a consenting party. With this said, the right to manage now starts to get clouded. IREM's viewpoint is that HUD should be concerned in situations where the general partner has majority interests in the property.

> "Remodeling, adding to, reconstructing, or demolishing any part of the mortgaged property or subtracting from any real or personal property of the project, without the prior written approval of the Secretary."

IREM does not understand the intent of this section because general remodeling and, to some extent, reconstruction are normal processes in operating a property and are done on a weekly or even daily basis. Will a new process be required by HUD to provide written approval for every remodeling or reconstruction done to the property?

> "Paying for services, supplies, or materials which exceed $500 and substantially exceed the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished."

The key words here are "ordinarily paid." Who at HUD will determine what is ordinarily paid?

> "Failing to maintain at any time the mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other related papers (including failure to keep copies of all written contracts or other instruments) in reasonable condition for proper audit and for examination and inspection at any reasonable time by the Secretary or any duly authorized agents of the Secretary."

Many managing agents could be in violation of one or more of these items.

For example, it is nearly impossible to find a set of "as-built plans" for a given property. With the number of mechanical equipment or apparatus requirements on a given property, someone could find one or more that aren't properly maintained. This item appears to be a "catch all" category to provide a greater degree of subjective discrimination for HUD.

> "Failing to furnish the Secretary, by the expiration of the 60-day period beginning on the first day after the completion of each fiscal year, with a complete annual financial report based upon an examination of the books and records of the mortgagor prepared and certified to by an independent public accountant or a certified public accountant and certified by an officer of the mortgagor unless the Secretary has approved an extension of the 60-day period in writing which extension shall be granted the mortgagor demonstrates that failure to comply is due to events beyond its control."

The managing agent has influence but no control over the auditor. Where it is clear that the audit will be late, a managing agent can ask for an extension, however, HUD could still rule that the managing agent is in violation. Again, this is a situation where a managing agent has responsibility but no control.

(Adopted 11/93, updated 4/05, 8/12)

HUD Reforms: Excess Income

Background

HUD's current system for reporting and filing excess income allows the excess income to be used to offset uncollectible rents in Section 236 Projects. This has been very beneficial to operators of the 236 projects who are particularly affected by uncollectible rents. The problem of uncollectible rents is compounded by HUD regulations which require an additional ten days to be given to a tenant before evicting the tenant for unpaid rent.

During this time, expenses for the operator continue but there is still no rent being collected. Higher basic rents also add to the problem. On September 1, 2008 it became mandatory that owners and management agents of Section 236 projects must submit form HUD-93104, "Monthly Report of Excess Income," to HUD on a monthly basis. All owners and agents must file this form regardless of actual excess income collected.

Position

The Institute recommends that HUD make no changes to the existing policy dealing with Section 236 "Excess Income." At the same time, the Institute further recommends that all existing statutes and regulations continue to be enforced to see that all excess income is remitted to HUD in a timely fashion.

(Adopted 11/90, updated 4/05, 8/12)

HUD Reforms: Bankruptcy

Background

Past proposals to amend Section 105 and 362 of the Bankruptcy Code (Title 11 of the United States Code, as recodified by the Bankruptcy Reform Act of 1978) have attempted to exempt from the automatic stay provisions of the Bankruptcy Code those acts taken by the Secretary of HUD or Agriculture toward foreclosure (including acts to obtain possession or for the appointment of the receiver) on multifamily projects with liens that are insured or held by the Secretary of Housing and Urban Development, or by the Secretary of Agriculture pursuant to title V of the Housing Act of 1949. Past proposals also would have excluded other acts to protect the Secretaries' financial position or interest in bankruptcy situations relating to these projects from the automatic stay where a right (for example, to offset funding otherwise due to a debtor) is provided for under contract, regulatory agreement, regulation, or statute.

Such amendments to Section 105 would make clear that the acts covered by these changes to Section 362 are not subject to a bankruptcy court's discretion to issue stay orders.

Position

IREM finds such proposals to amend section 105 and 362 of the Bankruptcy Code (Title 11 of the United States Code as recodified by the Bankruptcy Reform Act of 1978) unacceptable for several reasons as follows:

- The proposal could in fact be unconstitutional because it does not provide for due process.
- The existing bankruptcy law has withstood the test of time and has in the past allowed for the due process of law; therefore, it should remain intact.

The Institute believes that the examples that HUD gives to support its proposed reform are isolated incidents and represent aberrations rather than the norm.

(11/89, updated 1/91, 4/05, 8/12)

OSHA Reform Legislation

Background

The Occupational Safety and Health Act was enacted in 1970 as the centerpiece of a national commitment to end the human and economic toll caused by workplace injuries and illnesses and "to assure so far as possible every working man and woman in the nation safe and healthful working conditions." OSHA was created during an atmosphere of work place accidents and fatalities caused, in many instances, by unscrupulous employers. Since the passage of this legislation, much progress has been made in providing Americans with safer and healthier jobs. The occupational fatality rate has decreased by one-half of what it was in 1970, even as the number of workers has increased by one-half.

In the 111th Congress, (2009-2010) OSHA reform legislation, the "Protecting America's Workers Act," was introduced in the U.S. House of Representatives. It would have expanded OSHA coverage to federal, state, and local government employees among other provisions. It died in committee in 2010, but may come up again in the future.

Improved workplace safety and health is an important aspect of the government's commitment to better jobs for all Americans resulting in a more productive and profitable economy. Some believe that tougher OSHA standards will achieve such results. OSHA reform legislation threatens harsh new penalties, both civil and criminal.

Critics maintain that existing OSHA standards are enforced unevenly due to a lack of adequate agency resources. Thus, companies with good safety records are regularly inspected while poorly performing companies are never visited. Critics also contend that OSHA's regulations, when they are completed at all, are lengthy, complicated, and nitpicky. Enforcement of OSHA regulations is sometimes more concerned with the number of citations and the amount of penalties than with injury rates. A recent survey of medium to small businessmen by the National Association of Manufacturers cited OSHA regulations, along with product liability reform, at the top of the list in terms of government actions that were impeding economic growth and job creation.

Position

IREM believes employers have a responsibility to provide workers with a safe and healthy work environment, and to eliminate hazards and prevent injuries and illnesses due to employment to the best degree practicable. Workers, in turn, also have a responsibility to provide a safe and healthy working environment for themselves and their co-workers. While the Institute recognizes that safe and healthful working conditions and practices are in the best interest of both employers and employees, we are opposed to certain specific aspects of OSHA Reform legislation due to their negative effect on the real estate industry.

In many instances, OSHA has served as an enforcement tool to ensure that employee health and safety is not ignored. But for the vast majority of employers, existing government resources can be better utilized by providing expertise, consultation services, and training and by encouraging employers and employees to make safety and health a priority in the work place. Marketplace

business incentives already exist to ensure proper working conditions. Skyrocketing insurance premiums for workers' compensation insurance, the expense of training new workers, and the fact that risky jobs demand higher pay ensures worker safety and health issues are paramount in the minds of all employers.

IREM opposes any legislation that will unduly add, without a corollary benefit, to the regulatory burden that is already choking businesses, especially small- and medium-sized businesses, and will be onerous to property managers and owners.

(11/93, revised 4/03, 10/08, Updated 3/12)

International Building Codes

Background

In 1994, the International Code Council (ICC) was formed to draft a comprehensive and coordinated set of model new construction codes to replace the three regional codes used by most jurisdictions - the National Codes developed by the Building Officials and Code Administrators International (BOCA), the Standard Codes developed by the Southern Building Code Congress International (SBCCI) and the Uniform Codes, developed by the International Conference of Building Officials (ICBO). These codes are generally developed on a regional basis, resulting in widely varying guidelines and an inconsistent set of regulations.

Representatives of these three organizations came together to form the ICC with a goal of replacing the three regional codes with a single set of International Codes. Released in 2000, the International Codes include new editions of the International Building Code (IBC), International Fire Code, International Residential Code (IRC), International Mechanical Code, International Fuel Gas Code, International Energy Conservation Code, International Property Maintenance Code, International Plumbing Code, International Private Sewage Disposal Code, ICC Electrical Code and the International Zoning Code.

To date, the International Building Code has been adopted at the state or local level in all 50 states and the District of Columbia. The International Residential Code (IRC) has been adopted in 48 states, plus the District of Columbia. New editions of the IBC are published every three years.

In March 2006, HUD issued a final report identifying the variances between the design and construction standards for handicapped accessibility required by the Fair Housing Act and the new International Codes. In its report, HUD said the model building codes reflect the majority of the technical requirements of the Fair Housing Act.

The ICC International Codes are maintained yearly through a public hearing and review process.

Position

IREM supports the concept of one uniform model building code to establish consistency and uniformity across the nation.

We encourage the International Code Council to continue an open dialog with the real estate community and other interested organizations through the annual review process, insuring the most up to date and timely codes and issues are addressed and adopted. IREM also encourages HUD to continue to maintain an open dialog and monitor future updates of the Codes to ensure they are consistent with the Fair Housing Act and ADA's accessibility requirements. Building

officials' incorporation of Fair Housing accessibility standards into local building codes and equal enforcement of those standards will reduce the risk of introduction of non-accessible housing into the market and the dislocation that non-accessibility creates.

(11/00, updated 11/01, 10/07, 10/11, 1/14)

Disparate Impact Housing Theory

Background

On February 8, 2013, the Department of Housing and Urban Development (HUD) issued a final rule to formalize its existing identification of discriminatory effects liability under the Fair Housing Act ("Act"). The new rule establishes a national standard for determining whether a particular housing practice violates the Act.

Within the rule, HUD implemented a burden shifting test that requires the charging party to first prove that a practice results in, or would predictably result in, a discriminatory effect on the basis of a protected class. If the charging party is successful proving their case, the burden then shifts to the defendant. The defendant must then prove that the practice taken into question is indeed necessary to achieve one or more of its substantial, legitimate, nondiscriminatory interests. If satisfied, the charging party may still establish liability by proving that the substantial, legitimate, nondiscriminatory interest could be served by a practice that has a less discriminatory effect.

The concern with the final rule is that a business reason, such as imposing a minimum economic standard, may fall into the category of creating an unintended disparate impact on a group of citizens. Another concern is the method of proving one's case is inconsistent with traditional judicial processes. Historically, in the U.S. judicial system, the charging party, the plaintiff(s), has the burden of proving their lawsuit. It should not be different in this situation.

IREM members participated in an NAR working group to determine fair and reasonable policy statement language regarding disparate impact.

Position

We believe in a housing market free from discrimination. We oppose policies and practices which are known to have a disparate impact on any demographic group defined by race, color, religion, national origin, sex, handicap, familial status, sexual orientation, or gender identity. We support the right to continue a policy or practice that has or could have a known disparate impact if there is a legitimate business purpose for the practice or policy and that purpose cannot be accomplished in a readily identifiable and not unduly burdensome means with a less discriminatory impact. We oppose actions by governments, groups or individuals which require unreasonable research by IREM members into whether policies or practices do indeed have such a disparate impact, or which inhibit the implementation of otherwise sound business practices.

Burden of Proof:

- We believe the burden for proving that a policy or practice has a discriminatory effect lies with the party alleging discrimination.
- We believe that once a policy or practice has been shown to have a disparate impact, or that it will likely have a disparate impact, the IREM member or other practitioner implementing the policy or practice need only demonstrate a legitimate business purpose for the policy or practice.

- We believe that the party alleging discrimination has the obligation to demonstrate that there is a readily achievable, less discriminatory alternative to achieving the legitimate business purpose of the policy or practice without being unduly burdensome to the IREM member or other practitioner.

Remedies for Policies or Practices which have a Disparate Impact:

- We believe that unless an IREM member or other practitioner knew or reasonably should have known of the discriminatory effect of a policy or practice, the only remedy for such a discriminatory practice should be correcting the action to remove the discriminatory effect unless there is no other readily achievable, less discriminatory alternative to achieving the legitimate business purpose of the policy or practice without being unduly burdensome to the IREM member or other practitioner.
- We believe that whether or not a housing market is free from discrimination should be measured by the impact of actions, policies and practices and not solely by the demographics of people living in particular neighborhoods or buildings.

(Adopted 10/13)

Credit Risk Retention

Background

The Dodd-Frank Act of 2010 mandates changes to the financial regulatory system in the United States. Of the many rules and regulations falling under Dodd-Frank, a Final Rule for a credit risk retention requirement was published in December of 2014. The full text of the rule can be found here. Section 941 requirements were adopted to ensure a certain level of "skin in the game"

The rule applies to all forms of assets that can be securitized, including commercial real estate (CRE) and commercial loans. The rule requires a five percent risk retention requirement, unless asset-backed securities (ABS) backed exclusively by loans meet specific standards to qualify for the proposed zero percent rate.

The rule defines CRE loans as those secured by five or more residential units or by non-residential real property, with the primary source of repayment to be derived from rental income, from the proceeds of the sale, refinancing, or permanent financing of the property. Land development and construction loans, loans on raw or unimproved land, loans to real estate investments trusts (REITs) and unsecured loans are excluded.

A qualifying commercial real estate (QCRE) loan must meet five requirements for assurance of repayment. Property value and risk management are to be exempt from the risk retention requirements.

1. Ability to Repay—the originator must conduct an analysis of the borrower's ability to repay all outstanding debt by looking back two years at the borrower's credit history.
2. Loan Terms—Debt Service Coverage (DSC) of at least 1.7 is required, although 1.5 is permitted for properties with a demonstrated history of stable net operating income (NOI).
3. Loan-to-Value (LTV) Requirement—the combined LTV cannot be more than 65 percent.
4. Valuation of the Collateral—the originator of a QCRE must determine that the purchase price for the property secures the loan and reflects the current market value of the

property. The agencies want to ensure that the collateral is sufficient to recover any unpaid principal in the event of default and the borrower has sufficient equity in the property.

5. Risk Management and Monitoring Requirements—there are certain covenants to be included in the loan documents, which are intended to facilitate the ability of the originator to monitor and manage credit risk over the full term of the loan.

There are exemptions in the rule for any residential, multifamily, or health care facility mortgage loan asset, or securitization based directly or indirectly on such asset, that is insured or guaranteed by the United States Government or an Agency of the United States.

The rule provides that Fannie Mae and Freddie Mac will not have to meet the risk retention requirements. Any temporary successor to Fannie Mae or Freddie Mac would also be exempt from the risk retention requirements.

Position

IREM supports fiscally responsible lending practices for all financial institutions. However, the Final Rule on credit risk retention requirements is not a viable solution to curb overzealous and past lending practices. In fact, we believe the Final Rule significantly hinders CRE transactions.

More specifically, the DSC of 1.5 to 1.7 is too high. Historically, a DSC of 1.2 to 1.3 has worked and will continue to do so. Furthermore, the combined LTV of not more than 65 percent is too tight for most transactions.

There is also a prohibition on pledging the retained risk as collateral. This forces a buyer to make a much larger down payment.

The credit problems stem from careless underwriting. The lending rates should not change. The Final Rule on risk retention requirements punishes responsible and honest borrowers with increased paperwork and overly tight lending requirements. The rules also have administrative setbacks as they lack flexibility. Instead, they increase staffing and personnel expenses. These excessive guidelines create a burdensome amount of paperwork that further complicates an already complex process.

Overall, the risk retention requirement slows the process of CRE loan transactions and adds to the uncertainty currently stalling the market. If these transactions lose momentum, the United States will not regain its healthy economic flow toward a full recovery mode.

(Adopted: 9/11. Updated: 10/16)

Housing

Assistance Animals in Multifamily Housing

Background

The Fair Housing Act (FHA) prohibits landlords from discriminating against tenants or prospective tenants based on disability, race, color, national origin, religion, sex, or familial status. Under the FHA, housing providers have a further obligation to accommodate people with disabilities who, because of their disability, require trained service animals or other types of assistance animals to perform tasks, provide emotional support, or alleviate the effects of their disabilities.

Recent years have seen an increase in reasonable accommodation requests for assistance animals, particularly in properties with no-pets policies or properties that impose weight or breed limitations or charge pet deposits or fees. These requests frequently are made using verification of the assistance animal provided by obtained online and from sources with little or no knowledge about the individual or the animal.

Position

IREM supports the rights of persons with disabilities to make reasonable accommodation requests so they may have equal opportunity to use and enjoy a dwelling.

IREM supports property owners and managers having the ability to take the necessary steps to alleviate potential abuse by tenants and prospective tenants who fraudulently claim their pets are assistance animals and to ensure that the benefit of reasonable accommodation applies to only those who rightfully need the accommodation.

To this end, IREM encourages the U.S. Department of Housing and Urban Development (HUD) to issue clear guidance regarding assistance animals or take other actions to alleviate potential abuse and ensure that reasonable accommodation is provided only to those who need it.

(Adopted 9/2019)

Tenant Protection in Property Foreclosure

Background

As home foreclosures continue to grow, tenants are being evicted from their rental homes, often with no advance notice of the action. Seventeen states and many localities have existing laws requiring disclosure of foreclosure action to tenants, but not all areas do. Also, in many cases, the bank or lending institution can be unaware that tenants are residing in the property.

Legislation has been introduced to attempt to protect tenants and ensure they are not evicted without notice in the case of a property foreclosure. Specifically, the legislation requires the "immediate successor in interest" of a foreclosed property to provide the tenant with at least 90-days notice before requiring the tenant to vacate the property. In addition to the 90-day notice, the bills require that the tenant may stay, beyond the 90-day notice period to the end of the lease term, if the "successor in interest" does not intend to reside in the property as a principal residence. This legislation would preempt state and local laws, unless existing law was more protective to tenants.

It is unclear in many cases whether the "immediate successor in interest" is the bank, lending institution, or the new purchaser of the property following a foreclosure. That may depend upon state law.

Position

IREM believes notification of tenants is important whenever displacement may occur. We would support requirements that banks and lending institutions be required to notify tenants of a pending foreclosure on the property. IREM would support that tenants, if all rents are paid and current, and are in compliance within all other requirements of the lease, could remain in the property through the end of the lease, assuming the subsequent owner does NOT intend to use the property as a principal residence.

(Adopted 7/09, updated 1/14)

Section 8 Tenant Protection in Property Foreclosure

Background

As home foreclosures continue to grow, tenants are being evicted from their rental homes, often with no advance notice of the action. Under current law, a Housing Choice voucher tenant does not lose their subsidy as a result of foreclosure, but currently may have to find a new place to live.

Legislation has been introduced to require that the "immediate successor in interest" of a foreclosed property be subject to the pre-existing lease and Housing Assistance Payment (HAP) contracts for Housing Choice voucher tenants. This would apply to tenants in conventionally financed properties who received Housing Choice vouchers (not project-based assistance). Through changes in the language to the HAP contract, the legislation attempts to subject a new owner, who is the "immediate successor in interest," to the existing HAP contract that was agreed to by the previous owner.

Position

IREM supports requirements that banks and lending institutions be required to notify tenants of a pending foreclosure on the property. IREM would support that Housing Choice voucher tenants, if all rents are paid and current, and are in compliance within all other requirements of the lease; could remain in the property through the end of the lease, assuming the subsequent owner does NOT intend to use the property as a principal residence. IREM would oppose a requirement that subsequent owners of rental property be subject to a HAP contract (and the requirements attendant to that contract) without disclosure of such a contract prior to sale of the property to a subsequent owner.

(Adopted 7/09, updated 1/14)

Fair Housing and Equal Opportunity

Background

The Institute of Real Estate Management strongly believes in equal opportunity in housing and supports the right of all people to freely choose where they will live without the constraint of prejudice or discrimination. We believe that equal opportunity in housing can best be achieved through continued leadership, observance of law, education and mutual cooperation of the real

estate industry and the public through a free and open housing market. The Federal Fair Housing Law, which we strongly support, provides for the right of all people to freely choose where they will live without regard to race, color, religion, sex, national origin, handicap or familial status.

In addition, the law should protect the rights of those individuals, such as the elderly, who freely choose to live in an adults-only environment by allowing adults-only sections of apartment complexes and by easing the regulatory requirements regarding qualifying as elderly housing.

The Institute of Real Estate Management is deeply concerned with Fair Housing legislation that would broaden the definition of "handicapped" to include those individuals who are known to be non-recovering alcoholics and/or drug abusers. IREM is sensitive to the human needs of these individuals but at the same time the membership is aware of the need for safety of other residents and of the property owner/managing agent's liability for acts committed by third parties. Legislation to be enacted must protect the owners/agents from the risk of liability for possible violence and personal injury that could occur to, or be caused by, non-recovering alcoholics, and/or drug abusers who would be residents of multifamily dwellings. In addition, the Institute feels its members are not equipped nor do they currently employ personnel who are trained and experienced in dealing with non-recovering alcoholics and/or drug abusers. Physical facilities are not typically available on multifamily housing sites in which to provide the necessary counseling services. The Institute membership knows that the welfare and safety of current residents, specifically elderly residents, may well be threatened by non-recovering alcoholics and/or drug abusive residents. Furthermore, owners and managers of multifamily housing must be able to establish occupancy standards where none exist to protect the safety and welfare of all residents.

The Institute also stresses the need to clearly define the terms "reasonable," "reasonable period," and "reasonable amount of money," and other terms not clearly defined in the final regulations to the Fair Housing Amendments Act of 1988.

Professionalism in Fair Housing and Equal Opportunity

IREM is dedicated to the high ethical standards as provided by our designations and Code of Professional Ethics. We encourage and applaud the actions of our members and their management companies who adhere to Fair Housing and Equal Opportunity principles.

We invite our membership to actively participate in and promote professionalism in the area of Fair Housing and Equal Opportunity by utilizing our continuing education courses, publications, articles, and programs. We believe that Fair Housing and Equal Opportunity efforts should be supported in order to maintain and improve the quality of life in our communities.

We urge our members to engage in Fair Housing and Equal Opportunity practices and other activities that foster continued excellence in the area of property management. We believe our efforts are best served through community leadership and continued education of our members. We applaud the actions of communities which have implemented Fair Housing and Equal opportunity without federal assistance and continue to encourage the involvement of the private sector.

Classes Protected From Discrimination

The Fair Housing Act prohibits discrimination on the basis of race, color, religion, sex, handicap, familial status, or national origin. On February 3, 2012, a final rule was entered into the Federal Register which implements HUD policies ensuring that its core programs, specifically rental

assistance, are open to all individuals regardless of sexual orientation, gender identity, or marital status.

Twenty states, the District of Columbia and over 200 localities have added sexual orientation and/or gender identity as a protected class to their fair housing ordinances or statutes. The National Association of REALTORS® added prohibitions against discrimination on the basis of sexual orientation or gender identity to the Code of Ethics and NAR's Code of Ethics and the Fair Housing Partnership reflect the prohibitions of the federal law.

As a national organization, IREM's policies should reflect national, state and local policies. Consequently, IREM's positions on fair housing should include the protected classes under federal fair housing law and should consider other protected classes included in state and local law. IREM recognizes the inclusion of sexual orientation and gender identity as an additional protected class.

Accessibility

The Fair Housing Act of 1988 requires that seven basic accessibility features be designed and constructed in all multifamily buildings built after March, 1991. These requirements include: accessible building entrances on an accessible route; accessible common and public use areas; usable doors (by a person on a wheelchair); accessible routes into and through the dwelling unit; accessible locations for light switches; electrical outlets, thermostats and other environmental controls; reinforced walls for grab bar installation; and usable kitchen and bathrooms.

Some buildings which were designed and built after the March, 1991 date do not meet the specified requirements of the Fair Housing Act. Some of these buildings have since been sold to owners who had no part in the design or construction of the building, but have been named as respondents in Fair Housing Act complaints. HUD maintains that successors in interest may be charged for violating the Fair Housing Act even if they had no involvement. HUD has also stated that successors in interest may be appropriate respondents to assure that "changes required to remedy violations can be accomplished."

IREM acknowledges the importance of Fair Housing practices. However, we believe that successors in interest should not be held liable for compliance designs made during the design and construction of multifamily properties. While we believe that the law should be upheld, the responsibility of these decisions should remain on those who were originally involved with the planning, design, and construction of the buildings.

IREM asserts that in the absence of final rules, there were no clear and specific guidelines for architects and developers to follow until the final rule was reissued in April of 1998, seven years after the effective date of the statute. In the interim period, until the guidelines were reissued, those architects and developers who made a good faith effort to comply with the intent of the law should be afforded maximum consideration in resolution of any complaints.

Furthermore, IREM does not believe that the intent of the law includes successors in interest, nor do we believe that the law intends to include costly retrofitting projects or remodeling. We feel that the law requires changes to be made if the changes are within reason.

With all of the grey areas involved with the Fair Housing Act, IREM believes that clarification of successor liability is needed prior to the enforcement of these laws.

Fair Housing Partnership: Model Affirmative Fair Housing Marketing Plans

For participation in FHA subsidized and unsubsidized housing programs for the development or rehabilitation of subdivisions, multifamily projects and manufactured home parks of five or more lots or units, federal regulations require an Affirmative Fair Housing Marketing Plan (AFHMP). The Voluntary Affirmative Marketing Agreement (VAMA), a substitute for individual AFHMPs, was eliminated to allow more creative approaches to fair housing in different firms and markets through the Fair Housing Partnership Agreement between NAR and HUD. This partnership replaces the current activities of VAMA whereby NAR and HUD would mark certain fair housing issues and concerns which need to be addressed. Strategies would be developed to positively influence these problems, followed by a subsequent evaluation to determine if implementation of such strategies was successful.

The model plan would enable Realtors® to easily comply with affirmative marketing regulations rather than through individual outlines of specific affirmative marketing activities for each project. HUD will accept the model plan in lieu of individual AFHMPs for each project.

NAR and HUD envision this type of partnership to extend to the state or local level of the Association of REALTORS® and HUD offices. While voluntary compliance through the collection of signatures may no longer be relevant, members are encouraged to continue to fulfill their fair housing commitment.

Note: In April, 2004 several of IREM's existing fair housing Statements of Policy were combined into this single, more comprehensive policy: Fair Housing (6/89), Fair Housing Accessibility (6/99), Equal Opportunity (6/88; updated 11/97), Classes Protected from Discrimination (11/92; updated 11/97), and Professionalism in Fair Housing and Equal Opportunity (11/93).

(Updated 4/09, 4/11, 1/14, 4/15)

Foreign Nationals

Background

After the September 11, 2001 attacks on the United States, property owners in several states were contacted by local law enforcement officials to provide lists of foreign nationals occupying their properties.

Position

IREM supports the Fair Housing Act, and other federal, state, and local laws that prohibit discrimination on the basis of race, color, religion, national origin, sex, familial status, disability, or sexual orientation. IREM encourages all to work diligently within these laws to assist law enforcement at all levels in investigating possible law violations in all forms of investment property.

(Updated 10/07, 10/11)

Homelessness

Background

The emergence of a permanently homeless population in America has become one of the most pressing problems our nation faces. The 2008 Annual Homeless Assessment Report to Congress: A

Summary of Findings reported that in 2008, roughly 1.6 million persons used an emergency shelter or a transitional housing program, in other words, 1 in every 190 persons in the United States is homeless and uses the shelter system. These numbers do not include the multitude of homeless, who do not take advantage of shelters and may currently be much higher due to the recent recession experienced in the United States.

Position

The Institute of Real Estate Management affirms the national goal of "a decent home and a suitable living environment for every family." The Institute believes that this commitment should encompass the entire housing ladder including the homeless and therefore urges any national housing policy to address a spectrum of housing needs. The fact that rent control in certain areas of the country is a factor contributing to homelessness should also be addressed. Rent control significantly affects the housing inventory by hastening the deterioration and/or loss of existing housing, while it discourages the construction of new housing. In addition to a national policy, the Institute encourages states and localities to identify who the homeless are and to define the scope of their respective housing problems as they relate to the homeless.

IREM believes that financial appropriations which address homeless population housing initiatives should be broad enough to include social service programs which provide for the whole individual/family. More specifically, when the developer/owner/management agent identifies a particular social concern which increases overall homelessness, that developer/owner/agent should not be deterred from addressing such a need by unnecessary constraints. Therefore, IREM strongly endorses federal funding and/or state and local initiatives and development of private and public partnerships for social service programs which might include development of personal "life skills" that empower individuals/families in such a way as to assist them from ever being homeless again. This funding should be in addition to that which provides innovative approaches to affordable housing.

(6/89, updated 12/95, 10/06, 10/10, 1/14)

Involuntary Contractual Imposition

Background

The Section 8 housing program for existing housing involves the issuance by a local government of Section 8 certificates which allow the certificate holder to rent any apartment, with the tenant paying monthly rent in an amount usually not more than 30% of the tenant's certified household income to the landlord, and the local government guaranteeing to pay the remainder of the rent, up to local fair market rent limits, based upon unit size. The property operator enters into a contract with the tenant and third party, usually the local housing authority, which pays the portion of the rent above the amount to which the tenant is directly obligated to the landlord, as a rental subsidy. The legislative construction and intent of the program was for landlord participation to be voluntary, meaning a property owner or manager is not required by the federal government to participate in the Section 8 program. Landlords who participate in the Section 8 program and accept Section 8 rental subsidy certificates must follow strict and voluminous regulatory requirements including, without limitation, specific lease terms (required and prohibited), inspection requirements and other required regulations.

In addition to the certificates, the program also grants vouchers to individuals as a form of payment for rent. It is the responsibility of the tenant to make up the difference between the amount of the voucher and the amount of the actual rent. The acceptance of the Section 8 vouchers is also voluntary.

In April 1999, the City of Chicago Commission on Human Relations found that Section 8 vouchers are a source of income and that property owners or managers must accept Section 8 vouchers unless they have a non-discriminatory reason not to do such, and that such readings are not prohibited by federal law.

Similarly, since the Chicago ruling findings or legislation in 12 states and the District of Columbia prohibit source of income discrimination. They are California, Connecticut, Maine, Massachusetts, Minnesota, New Jersey, North Dakota, Oklahoma, Oregon, Utah, Vermont and Wisconsin. Additionally, at least 39 cities and counties have enacted similar policies at the local level.

Position

IREM is supportive of the concept of government assisted housing practices. Affordable housing opportunities should be available to all citizens. There are many opportunities for the government and property owners and managers to work together to provide adequate, affordable housing to citizens. Involvement in these opportunities, however, should not be mandated by any level of government, whether it be local, state, or federal. The selection of tenants and the terms of the contractual relationship are the function of the property owner or manager, not the government. Allowing certain tenants to have different (government-mandated) provisions included in their leases is unfair to all residents of the property.

There are many valid, nondiscriminatory reasons for not participating in the Section 8 program. Participation in the program requires a property owner to sacrifice many private property rights and forces the operator to comply with burdensome government regulations and procedures which can seriously compromise the performance and financial viability of a property, which may include: entering into housing assistance payment contracts, amendments of landlord's leases, and compliance with additional required regulations not normally attendant to conventional housing. IREM recognizes that some of the regulations and logistical burdens attendant to tenant-based Section 8 tenancies needlessly inhibit private participation in the program. IREM encourages HUD and Public Housing Authorities to eliminate those burdens inconsistent with conventional housing practices.

It is the position of IREM that legislation in the states mentioned in the background, directly undermine the voluntary nature of the Section 8 program set forth by the federal government. We strongly oppose any such policies that require owners of private housing to surrender their property rights.

(Adopted: 11/99. Updated: 4/04, 8/12, 10/17)

Rental Housing

Background

Rental housing is expected to continue to be needed, even as the single family housing continues to strengthen. According to the U.S. Census Bureau, the nationwide vacancy rate for apartment buildings peaked at 11% in 2009 following the recession, but has since dropped to 7% in the first

quarter of 2017. In view of national housing growth projections and anticipated removal of dilapidated structures, our nation urgently needs to encourage the creation of additional safe, decent and sanitary housing units for a better housed America.

Position
We call on all levels of government to meet this demand by removing disincentives to financing, production and improvement of rental housing for citizens of all income levels. In this way, solutions to the rental housing crisis are attainable without reducing homeownership opportunities or interfering in the property rights of all Americans.

(6/86, updated 11/04, 10/09, 4/12)

Housing for Low-Income Families

Position
We support a national housing objective of affording every American the opportunity to live in safe, decent and sanitary housing which can best be served by means of a healthy housing market for all economic levels. Such a market can best be maintained by providing an adequate, continuous supply of mortgage money, at reasonable cost, for all segments of the economy and by special assistance in the form of funding workable programs for new, rehabilitated and existing housing for very low, moderate and middle-income families who could not otherwise afford such housing.

We believe that housing for low- and moderate-income rental occupants is best managed by the private sector and further recognize that private enterprise sponsorship is crucial to the successful operation of any federally assisted multifamily housing program. We encourage action by Congress to alleviate the hardships experienced by sponsors of projects for low-income residents through operating subsidies for restoring the economic viability of projects that are well conceived and properly managed.

(6/86, updated 4/05, 10/09)

Multifamily Housing Ownership

Position
Private ownership of real property is the foundation of our nation's free enterprise system. Every citizen has the inherent right to own property. Each citizen's right to share in the privilege of property ownership must have a preferred place in our system, publicly recognized by federal, state and local governments.

Condominium and cooperative forms of ownership are legitimate shelter resources providing important, economically attractive options for consumers. To further the goal of making this affordable form of homeownership more available, there is a need for the government agencies involved with condominium and cooperative financing to continue to streamline and update their policies.

We oppose all unreasonably restrictive requirements and moratoria regarding the conversion of rental housing units into condominium and cooperative forms of homeownership and believe that the regulation of the condominium/cooperative form of ownership should be formulated at the state level where needs can best be determined and met.

(Adopted: 6/86. Updated: 4/05, 10/09, 9/12, 9/14, 10/17)

Owner-Occupant Relations

Position

To achieve suitable housing for the entire American population, the relationship between owner and occupant should be mutually beneficial. Equity requires that any revision of owner-occupant laws must equally protect the rights of both parties. This is most important in order to attract the necessary capital investment to erect new rental housing units and to prevent the depletion of existing rental housing.

Owners of rental property should provide safe and decent housing for the needs of their rental occupants; rental occupants must recognize and accept their legal responsibility to maintain and care for the property 45 and safety of their fellow occupants. The rights given each party under basic contract law should not be abolished to create causes of action which could be used for harassment.

(6/86, confirmed 10/06, updated 10/10, 9/14)

Tenant Participation

Position

We discourage any legislation or governmental regulation which would ensure the involvement of tenants in the management decisions and functions of rental housing, which could undermine the viability of government-assisted housing and which is counterproductive to prudent management. We strongly question HUD's contention that tenant cooperation and participation are "essential" to the successful operation of a multifamily project. There is no evidence that tenant input is vital to the long-term financial or physical viability of a project.

(Adopted: 6/86)

Mrs. Murphy Exemptions

Background

Approximately 53% of this nation's residential rental units are in buildings of four units or less and single family homes, according to data from the 2009 American Housing Survey of the U.S. Census Bureau. Frequently, these are in 3 or 4 flat apartment buildings in which the owner resides in one of the units. These units are commonly referred to as "Mrs. Murphy's." The term comes from the U.S. Civil Rights Act of 1968 and was used to describe a property owner of a limited number of units whose real estate transactions did not involve the use of a broker or agent. Approximately two-thirds of the states exempt "Mrs. Murphy's" from state and local laws governing the landlord tenant relationship and fair housing practices. It is important to note the "Mrs. Murphy's" exemptions do not apply to rental advertising.

While the federal Fair Housing Act does contain the Mrs. Murphy exemption, state's fair housing laws vary on whether and to what extent they recognize the exemption. Alaska, Nevada, Ohio, and Wisconsin, for example, do not recognize the Mrs. Murphy exemption in their fair housing laws.

Many other states' fair housing laws contain provisions which limit to varying degrees the applicability of Mrs. Murphy's exemptions.

Position

IREM believes that the landlord-tenant legislation that exists across the country was put in place to protect tenants from unscrupulous property owners, both large and small. IREM also believes that fair housing legislation is designed to protect all rental tenants. The size of a rental unit makes no difference to a person victimized by unscrupulous management or housing discrimination. Essentially, "Mrs. Murphy" exemptions allow small landlords to legally deny services and benefits to rental tenants. The exemptions also allow small landlords to subject rental tenants to unfair and unsound practices that would otherwise be illegal in larger apartment buildings. The exemption allows the conduct of small landlords to be outside the scope of the law relative to discrimination against racial and religious minorities, various national origins, one's sex or sexual orientation, disabled individuals, and families with children.

Professional property managers who are not exempt from landlord-tenant and fair housing laws face stiff penalties for non-compliance. IREM believes that all individuals who rely on the housing needs of others for income should be subject to the same laws and regulations that require fair and equitable treatment of renters and ensure decent and affordable housing regardless of race, color, religion, national origin, sex, family status, disability or sexual orientation.

The Institute advocates the reversal of all existing "Mrs. Murphy" exemptions and urges state legislatures to apply landlord-tenant and fair housing laws to all residential property owners.

(11/88, updated 3/91, 10/07, 10/11, 9/14)

Housing Quality Standards

Background

Managers of affordable/insured/subsidized housing must maintain certain housing quality standards in order to receive the subsidy on a unit as defined by the Section 8 Certificate Program and Housing Voucher Program administered by the U.S. Department of Housing and Urban Development (HUD). HUD has outlined 13 key aspects of housing quality:

- Sanitary facilities
- Food preparation and refuse disposal
- Space and security
- Thermal environment
- Illumination and electricity
- Structure and materials
- Interior air quality
- Water supply
- Lead-based paint
- Access
- Site and neighborhood
- Sanitary condition
- Smoke Detector

Housing quality standards require that the unit is properly provided with utility service, among other requirements and standards. If utilities are discontinued, a unit will not meet the housing quality standards and subsidy will be discontinued. Unfortunately, housing managers are not always notified when a tenant's utilities have been turned off for failure to pay. This can result in a delay in eviction proceedings and a loss of subsidy. While eviction is an alternative to having the manager pay the utilities, a period of time can exist during which the subsidy has been discontinued and the tenant is still in occupancy. In some cases, managers may also be paying for

the utilities of the tenant facing eviction in order to maintain service and prevent damage to the unit from loss of service.

Position

IREM believes that it is the responsibility of a subsidized tenant, and not the property manager, to ensure that utility service is maintained in the tenant's unit by providing regular and timely payment of utility bills when service is provided directly to the tenant. IREM also believes that tenants who fail to maintain utility service present a danger to themselves and the property and should be duly and expeditiously evicted. In order to comply with the housing quality standards associated with subsidy programs, managers of subsidized housing should be notified by utility companies when the utilities of a subsidized tenant are turned off for failure to pay. IREM believes that it is unfair for HUD or other agencies to discontinue the subsidy when housing managers are not notified by utility companies and are unaware that utilities have been discontinued. When utility companies refuse to notify managers that utilities have been turned off, HUD should continue the subsidy until the tenant is duly evicted for failure to maintain utility service.

(Adopted: 11/91. Updated: 4/07, 8/12, 10/17)

Combating Drugs in Rental Housing

Background

IREM realizes that the problem of illegal drug activity exists in subsidized and conventionally financed all rental properties. IREM realizes that failure to address the problem in all types of property will only serve to shift the problem from one type of property to another. IREM also believes that to significantly reduce the problems associated with illegal drug activity, it is necessary to have a coordinated effort between all rental housing owners and operators.

IREM recognizes that an increasing number of states have passed legislation legalizing to varying degrees the use and cultivation of medical marijuana. The use or cultivation of marijuana for any purpose is still in violation of federal law. This legal conflict can pose a complicated situation for property managers. (Please refer to our statement of policy on medical marijuana for more information).

Position

IREM recommends, on a local basis, individuals spearhead the coordination of a drug awareness and prevention program with other rental housing organizations, large multifamily property owners in their area, and local law enforcement, with the objective of resolving and preventing drug abuse and other illegal activity problems in subsidized and conventionally financed housing. IREM chapters are encouraged to lobby local governments to strengthen local laws to enable landlords to evict those residents as soon as possible.

(11/91, updated 4/07, 3/11, 9/14)

Department of Defense Housing Initiative

Background

The condition of Department of Defense (DOD) on-base housing in the 1990s warranted a response. The on-base housing at that time consisted of thirty- to forty-year-old rental-type housing that was

deteriorating in part because of inadequate maintenance. The Pentagon sought IREM's advice and opinions as an industry expert on both the pre-draft concept of the legislation and on the proposed legislation itself in 1995. The Institute submitted official comments to the Pentagon based on extensive concerns presented by the IREM Legislative Policy Review Subcommittee (now known as the Legislative and Public Policy Committee).

Congress established the Military Housing Privatization Initiative (MHPI) in 1996 as a tool to help the military improve the quality of life for its service members and families by improving the condition of their housing. The MHPI was designed and developed to attract private sector financing, expertise, and innovation to provide necessary housing faster and more efficiently than traditional Military Construction processes would allow. The MHPI Military Services are authorized to enter into agreements with private developers selected in a competitive process to own, maintain, and operate family housing via a fifty-year lease.

MHPI addresses two significant problems concerning housing for military Service members and their families: (1) the poor condition of DOD owned housing, and (2) a shortage of quality affordable private housing. Under the MHPI authorities, DOD works with the private sector to revitalize military family housing through a variety of financial tools including direct loans, loan guarantees, equity investments, conveyance or leasing of land and/or housing/and other facilities. Military Service members receive a Basic Allowance where they can choose to live in private sector housing, or privatized housing. The amount of money that must be allocated for the MHPI depends on the scored cost of the projects that have been approved for a given fiscal year.

Through the MHPI, the DoD has spent over 12 billion in development costs awarding private companies with over 60 projects, creating more than 130,000 units. Additionally, 40 more projects with $10 billion in development costs are underway to create 60,000 more units.

Position

The Institute of Real Estate Management supports the Department of Defense (DOD) working in conjunction with the private sector to provide affordable on- and off-base housing to military personnel and their families.

Through cooperative agreements and/or joint ventures with the private sector, military personnel is provided better quality housing at less cost to the government than if they had constructed additional military housing independently. Working with the private sector not only saves taxpayer funds; it also puts money back into the local economies surrounding military installations.

Working in conjunction with the private sector also allows for unit sizes to be determined based on local needs and markets, making the properties available to conversion to civilian housing, if the military installation shrinks or closes. Federal private sector endeavors such as this are a positive solution to the present need for increased quality housing as more families are assigned to existing bases in reaction to recent base closures. Not only does it reduce required military housing staff, it also opens up opportunities for private sector investments.

The Institute would prefer the legislation to be amended to address the following views and concerns of Institute members:

1. Establishing Year-Round Leases to Guarantee Rental Income in Unexpected Deployment or Transfer

The private sector may have a difficult time agreeing to long-term leases with DOD, based on past base closures' effects on the industry. An exception would be for wartime/emergency deployment or transfer of military personnel with short notice. IREM believes that in times of war and unexpected deployment of U.S. military forces for national defense, a thirty-day minimum written notice to vacate is a privilege that should be offered to military personnel. Legislation mandating this privilege should specifically state that this minimum notice can only be invoked by military personnel who are called to serve or are transferred in times of war or unexpected military deployment and who then present the landlord with military documents so ordering the assignment of transfer.

2. Concern Regarding High Tenant Turnover

The property management industry is concerned that, due to the transient nature of military personnel and their families, occupancy of DOD-assisted housing will not be guaranteed. High turnover is also a factor in operating costs, and allowable rental rates should reflect the transitory nature of military personnel. Lease safeguards should be provided to protect property owners from forced or sudden vacancies due to deployment or personnel transfers. There is also concern that future base closures would render a devastating economic loss to property owners and communities who partake in joint DOD housing ventures.

3. Rehab and Restoration Less Costly than Creating New Buildings

Restoring and improving existing housing to acceptable living conditions may be more practical and economical, and presents less risk to investing private property owners during the uncertainties of the military draw-down. All levels of government should cooperate in exploring creative avenues of code compliance for rehabilitative housing. IREM particularly supports rehabilitation and renovation of existing military housing and HUD housing; it is cost-efficient and may add 25 to 35 years to the life of older properties.

4. Insurance Provided by the Federal Government

The federal government should be responsible for providing mortgage insurance coverage for private sector-DOD properties. Property and liability insurance should be a cost of the project owner or owners and borne as a component of the rent.

5. Ownership of Private Sector-DOD Properties

The Institute opposes government ownership of DOD-private sector properties and believes the private sector should be responsible for maintaining ownership and control of the concerned properties. The federal government should lease the properties or use loan guarantees or other incentives, such as tax credits and bond financing. The result of private ownership of concerned properties is savings incurred by DOD and FHA.

(Adopted: 11/01. Updated 4/07, 10/07, 3/12, 10/17)

Mark-to-Market HUD Multifamily Portfolio Re-engineering

Position

The Institute of Real Estate Management (IREM) generally supports the concept of debt reduction combined with restructured rent subsidy levels on FHA-insured projects which receive project-

based assistance in order to reduce the federal government's escalating long-term costs of maintaining such programs and to achieve debt reduction and reduced federal spending. However, our support for the so-called "mark-to-market" process is contingent upon the preservation of viable existing affordable housing opportunities for low-income families and individuals, limits on tenant dislocation, and protections of the rights of project owners and managers.

IREM believes HUD-assisted portfolio re-engineering should be conducted with the following principles in mind:

The federal government should be responsible for ensuring the maintenance of the stock of properly-operated Section 8 low-income housing. Private investors would have neither created nor maintained the valuable Section 8 housing resource were it not for the proactive involvement of the federal government. HUD's desire to abruptly end its commitments to these programs represents a profound change in the delivery of low-income housing and could result in owner disinvestment and tenant displacement.

Neither the private sector nor state and local governments are necessarily equipped nor willing to accept responsibility for preserving this valuable housing stock created by federal programs. For HUD to abandon these projects would be irresponsible and unfair to tenants, owners, managers, and the surrounding communities. IREM believes the federal government should maintain its commitment to these programs in a manner conducive to achieving reduced spending and limited bureaucratic interference.

Section 8 rental subsidy contracts should be abrogated. "Mark-to-Market" activities should coincide with contract expiration and should be conducted with the consent and cooperation of project owners and managers allowing for consideration of unique physical and financial project characteristics. Upon Section 8 contract expiration, projects should have the option to convert to conventional housing at the owner’s discretion. The physical and financial condition, tenant make-up, local government affordable housing plans, and community characteristics should all be factors in determining the future of the project.

"Mark-to Market" should be limited to Section 8 New Construction/Substantial Rehabilitation (NC/SR) projects whose contract rents are higher than local prevailing rents for similar housing units. Section 8 project-based contracts on older assisted properties are the first contracts scheduled to expire. Nearly half of these older assisted units (Loan Management Set-Aside Units) are occupied by elderly and disabled residents. Rent levels for these units are generally below market rent. Marking up to market rent level produces no cost savings to the federal government and provides no benefits to tenants, owners, managers, or communities. Residents face being priced out of such units if rents are raised.

Mark-to-Market should be limited to NC/SR projects whose rents, through no fault of the owner, are above market rent levels and whose contracts begin to expire in 1998. This group of projects is the most suitable candidate for mark-to-market due to their anticipated ability to survive after experiencing debt restructuring coupled with rent reduction.

Project-based Section 8 assistance should be maintained. Owners should be allowed to determine whether project-based or tenant-based assistance shall be provided after debt restructuring. While IREM supports a reformed tenant-based rental assistance program, we are opposed to the total elimination of project-based housing assistance which would prove detrimental to many existing

projects, cause tenant dislocation, and discourage future development of additional low-income housing units.

It is unclear how savings will be achieved by converting project-based assistance to tenant-based subsidies, especially after rents are adjusted to reflect market rent levels. IREM members' experience reveals that tenant-based subsidies actually cost more than project-based assistance to administer. At best, there is not significant savings with the use of certificates and vouchers versus project-based assistance. Overly-bureaucratic requirements associated with existing certificate and voucher programs have resulted in owners choosing not to participate, further limiting housing options for low-income individuals and families.

The project-based subsidy has traditionally provided unique housing opportunities for low-income tenants. Many projects offer special services and were designed to meet the housing needs of special populations like the elderly and disabled. Such housing accommodations are unavailable or cost-prohibitive in the private rental market. In addition, lenders will choose not to participate in project debt restructuring without the guarantee of project-based assistance attached to housing units.

FHA mortgage insurance should be provided on restructured mortgages. FHA mortgage insurance is essential for financing projects whose cash flow is supported by HUD rental subsidies. Private mortgage insurers have chosen not to participate in subsidized housing projects in the past due to the perceived risk associated with such housing. Investors and private mortgage insurers will be increasingly unwilling to participate in deals involving federal government subsidies due to the uncertainty of the future of such funding.

Owners should be protected from adverse tax consequences associated with mark-to-markets. Depending on how debt restructuring is accomplished, owners may face significant tax consequences associated with mark-to-market. "Cancellation of indebtedness" income tax penalties may apply to owners of projects whose debt is restructured. HUD should work with Congress to fashion legislation that protects owners from "cancellation of indebtedness" income treatment before any mark-to-market process is begun. Alternatively, mark-to-market should be conducted in such a manner to avoid any negative tax implications for project owners. Absent protection from adverse tax treatment, owners will resist participation in mark-to-market and/or will undoubtedly engage in litigation to achieve such protection.

Mark-to-market demonstration projects should be conducted to test various debt restructuring methods. IREM supports the concept of a mark-to-market demonstration program like that included in the FY 1996 VA, HUD and Independent Agencies Appropriations bill. The demonstration, conducted on a limited number of varied projects, would allow for an examination of the results of this untested concept. The uncertainty of the results of mark-to-market is partly responsible for the concern expressed by all stakeholders. Demonstration projects will allow for program adjustments and will help build support for mark-to-market.

HUD should use available tools to identify and sanction "bad" owners. IREM believes the vast majority of project-based Section 8 apartments is properly managed and provides safe, decent and affordable housing for low-income individuals and families. An inordinate amount of negative publicity associated with a small portion of the entire project-based portfolio has skewed the perception of privately-owned, federally-assisted affordable housing projects. HUD currently has the authority to bring appropriate sanctions and penalties against owners and managers who fail

to properly operate their properties. However, in many instances, the Department has failed or has been slow to use these tools to protect residents from poorly performing owners and managers.

IREM members have a great interest in the maintenance of HUD-assisted multifamily housing programs which were created to provide quality housing to the nation's neediest citizens. We believe this goal will only be achieved through the provision of proper, ethical and professional property management of the existing housing stock. We look forward to working with HUD to ensure the continuation of successful federal affordable housing programs.

(2/96, Updated 4/08)

Pets in Conventional Housing

Background

The right of conventional and non-elderly subsidized housing owners or managers to elect whether or not to accept pets and set the terms for acceptance has been an issue to IREM and its members for decades. Federal law, as it applies to federally assisted elderly housing, was enacted in the late 1970's. This statute mandates the acceptance of pets under certain conditions.

Recently, some advocacy groups have focused on attempting to encourage owners to accept pets on all types of rental properties. Some municipalities have passed ordinances requiring that landlords cannot enforce no-pet policies for other types of rental housing, not just federally assisted.

It should be noted that, under the Federal Fair Housing Act, service animals for disabled individuals are not considered pets, and as such, "No Pet" policies do not apply, and pet fees cannot be charged.

Position

IREM believes that rental property owners and managers should retain their right to determine pet policies for each rental property on a property specific basis and that these policies should not be mandated by municipalities or other governmental bodies. Legitimate reasons exist for private property owners to choose to not have pets on their properties. The safety of residents and the quiet enjoyment of their home may be materially jeopardized by the presence of pets under a variety of scenarios. First, common household pets increase the normal and customary wear and tear on a rental unit. Second, apartment residents do not always control their pets and properly dispose of animal waste. Even carefully controlled and well-behaved pets increase the maintenance costs of a unit, often through harm to the walls and floor covering/floors, and increased incidence of fleas and other pests, both during habitation by a resident and after the resident has moved. Furthermore, many people have pet-related health issues such as allergies and cannot live in an environment that allows pets. Owners and managers of rental properties have to be able to provide people with pet-related health issues a safe, pet-free environment in which to live.

Finally, there are liability and property rights issues to consider. The presence of pets in rental housing can result in increased tort risks to the owner and manager. Primary are the costs of liability incurred by an owner or manager because of the possibility of injury to a resident or visitor to the property by a pet. Tenants, guests. and others have sought damages from the owners and managers whom they allege know, or should have known, of a pet's vicious tendencies. In addition, injury to a pet may need to be covered by the owner or manager's insurance as well.

IREM acknowledges the positive impact pets can have on an individual's life, However, IREM also understands that not all individuals choose to have pets or live in rental properties that allow pets. IREM strongly believes in the legal right of the property owners to determine whether or not to allow pets into a multiple unit rental property. Because of this, IREM opposes any legislation that requires owners or managers of rental property to allow pets in their units.

(1/00, confirmed 4/08, 10/11, 9/14)

Secondary Mortgage Market for Multifamily

Background

As Congress considers the future of the Government Sponsored Enterprises (GSEs, ie Freddie Mac and Fannie Mae), much of the focus is on the future of single-family mortgage finance. But the GSEs also securitized nearly $2 trillion in multi-family loans; which have not experienced the dramatic losses seen in the single-family portfolio.

Even during the recent economic downturn, multifamily loans are performing well. Delinquencies are below 0.8% for Fannie Mae and 0.3% for Freddie Mac. This is less than 1/6 the single-family delinquency rate.

Private capital is necessary for the continued stability of this housing sector, but without a government guarantee, this capital cannot be sustained. The government's role is needed to be sure that there is a stable, counter-cyclical, and affordable source of capital for affordable, and market-rate rental multifamily housing nationwide.

In May, 2014, Senators Tim Johnson and Mike Crapo introduced legislation which would require Fannie Mae and Freddie Mac to spin off their multifamily businesses into subsidiaries within one year of enactment, with the ultimate intention of these subsidiaries becoming stand-alone businesses.

Also, Johnson-Crapo would wind down Fannie Mae and Freddie Mac, and replace them with a Federal Mortgage Insurance Corporation. Within the FMIC would be an Office of Multifamily Housing.

Comprehensive GSE reform is an ambitious goal which will require an enormous amount of political will, effort, and most of all, time. As such, Johnson-Crapo passed the Senate Banking Committee without overwhelming support, and GSE reform legislation may not be called for a vote until the next administration. However, the Johnson-Crapo bill is an encouraging sign that legislators recognize the differences between single-family and multifamily in the secondary mortgage market.

Position

The secondary mortgage market is critical to the stability of the multifamily housing, and necessary to continue to meet the ongoing demand for rental housing. Apartments house more than 15 million American families. The GSEs have provided liquidity in this market and allowed housing providers to keep up with demand for rental housing.

IREM believes the role of the government in the secondary mortgage market is necessary for a liquid, fully- functioning mortgage market for multifamily properties. There is a need for a multifamily conduit and alternative sources of multifamily underwriting and mortgages.

(Adopted 4/11, updated 9/14)

Management and Occupancy Review (MOR)

Background

Project Based Section 8 properties are required to be reviewed annually by the Performance-Based Contract Administrator (PBCA). The reports, called Management and Occupancy Reviews (MORs), include a look at general appearance; security; follow up from inspections; maintenance and operating procedures; tenant files; leasing processes; and document review. Within 30-days a completed report is sent to the owner/management agent.

IREM members have used these reports for internal processing and to improve performance. They are also used to demonstrate to Congress that the HUD portfolio is well managed so as to ensure continued support of the program.

The MOR program was temporarily suspended due to a lack of staff able to carry our inspections, but was reinstated in 2016.

Position

IREM believes that MORs are an important part of the management review process. MORs help the performance of a property and demonstrate strong management operations and areas for improvements. They are also helpful in demonstrating to Congress that the HUD portfolio is well managed so as to ensure continued support of the program. HUD should ensure that MORs are conducted on a regular basis, and reports provided to owner/managers in a timely manner.

(Adopted: 10/12. Updated: 10/17)

Environment & Energy

Climate Change

Background

Recent studies and news accounts tout the dangers of climate change. These reports, combined with the desire to lessen America dependence upon foreign oil, have created a groundswell for legislation dealing with energy conservation and reduced carbon dioxide emissions.

According to the EPA, commercial buildings account for almost 20% of our nation's greenhouse gas emissions. Commercial and residential energy usage has declined over the last thirty years on a per square footage level. The Fifth U.S. Climate Action Report indicated that greenhouse gas emissions increased by 17 % from 1990-2007, while the U.S. GDP increased by 65%.

In January, 2010, the President put forth an Executive Order requiring all federal agencies to reduce greenhouse gas emissions by 28 % by 2020.In June 2014, the Environmental Protection Agency proposed the Clean Power Plan, a regulation which seeks to cut carbon pollution from existing power plants by 30% through the next two decades. Along with Executive actions taken by the Obama Administration aimed at doubling the fuel efficiency of cars made in the United States, and limits on the carbon dioxide emissions emitted from new power plants, these regulations signal the increasing urgency with which administrators and legislators are dealing with the issue of climate change.

Position

IREM strongly supports positive incentives for energy conservation activities. We support energy tax credits and voluntary programs like Energy Star.

Recognizing the serious concerns of global warming, IREM supports the development of voluntary standards for reducing greenhouse gas emissions. We support the use of sustainable materials in the construction of buildings, and programs that reduce the "carbon footprint" of real estate assets. However, requirements to retrofit existing buildings must take into consideration the needs of the buildings and costs associated with such changes. Additional research is necessary to determine to what level greenhouse gases are affecting the environment versus natural climactic changes humans cannot control.

Thus, we strongly urge that Congress focus on voluntary standards for new construction and existing properties.

(Adopted 4/07, updated 3/11, 9/14)

Energy Emission Trading

Background

One option for reducing pollution and greenhouse gas emissions is a program called emissions trading, or "cap and trade." This type of program provides economic incentives to achieve reductions in emissions. Under this approach, regulated industries can buy and sell what are, in effect, permits to pollute. Usually a governmental agency will set a limit on the amount of

pollutants that a company or organization can emit. If these emissions limits are surpassed, the organization must pay a fine.

Each company will be allocated a number of credits equal to its limit. Companies that reduce their emissions below the threshold can then sell or trade their credits to companies that exceed the cap.

The feasibility of emissions trading for buildings is unknown. It would require all buildings to participate in energy audits to determine current emissions levels. Voluntary participation wouldn't work, as trade programs require all actors – "good" and "bad" to participate. In addition, it will be difficult to quantify direct vs. indirect emissions. Direct emissions come from the operation of boilers, gas fireplaces, etc. Indirect emissions are those from using purchased energy such as electricity.

Cap and Trade programs require participants to commit to a level of emissions reduction. These requirements also include associated activities like monitoring and verifying emissions levels. These activities add cost. Some emissions from buildings are at least partially caused by tenants. It would be difficult for property owners to control the actions of tenants that may contribute to emissions.

On the other hand, many argue this is an incentive-based approach that would be more workable than energy efficiency mandates. In addition, allowing property owners to sell credits would help pay for energy efficient improvements in buildings.

Several emission trading systems have been enacted at either the state or regional level. Of these, none directly apply to real estate, but to power plants and certain entities considered major emitters.

Position

Providing an economic incentive, in the form of credits, would encourage energy efficiency improvements and assist in paying for those upgrades. IREM supports voluntary, market-based incentives for energy efficiency. IREM supports federal funding of a cost/benefit analysis and research into the feasibility of an emissions trading program for the real estate industry.

(Adopted 4/08, 10/11, 4/16)

Energy Conservation

Background

Federal regulations have been proposed which calls for government regulation of energy-using products used in the building premises. With the above position in mind, IREM has expressed a position on the following issues:

Position

The free market system is the most appropriate means of attaining energy conservation and production goals. Increased conservation and domestic expansion are essential to our nation's security and economic prosperity. The nation should strive for greater energy self-sufficiency through further development of existing sources, decontrol of energy prices and the development of all new sources of domestic energy to reduce our dependence on foreign energy supplies.

Further, we support the concept of positive incentives for conservation activities such as energy tax credits and an increased emphasis on energy efficient technology by the nation's building industry.

IREM supports legislation that encourages voluntary energy efficient improvements to buildings. These include tax credits for energy efficient commercial building property expenditures, tax deductions for energy management devices, and tax credits for residential solar energy property expenditures.

However, we strongly oppose mandatory national standards for building energy conservation. Specific IREM positions opposing mandatory installation, purchase, or usage guidelines for energy conserving products include the following:

Mandatory Purchase and Installation of Heat Pump Water Heaters (HPWHs)

In 2015 the Appliance and Equipment Standards Program, implemented by the Department of Energy, began requiring the use of HPWHs in certain properties.

IREM opposes the mandatory purchase and installation of HPWHs due to the following reasons:

Property owners will be forced to incur out-of-pocket expenses in order to convert to an HPWH from an electric water heater. The cost of initial retro-fit and renovation to install HPWH systems, the purchase and installation of condensate drainage lines to remove moisture (one pint/hr) created during normal HPWH operations, the cost of training of property staff to repair and maintain the sophisticated HPWH system, and the possible expense of purchasing an alternative DOE-approved system if a unit requires additional space and layout would create a prohibitive installation cost of HPWHs.

IREM seriously doubts the validity of HPWH savings in cold weather. Outdoor HPWHs are inoperable in weather below 40 degrees F and extra costs are incurred for the purchase of alternative winter heating systems.

The U.S. Government provides insufficient incentives for property owners and managers to comply with mandatory conversion, as they reap little economic incentives for their incurred capital investments and structural inconveniences.

IREM opposes combining HPWHs and electric-resistant water heaters into a single product class, as it will set a single product efficiency standard and eventually eliminate electric-resistance water heaters from the market. In response to the added expense of compliance, property owners may be forced to cut back on or neglect property maintenance, upkeep, and repairs.

Minimized Use Options of Fluorescent Lamp Ballasts

The Energy Independence and Security Act of 2007 (H.R. 6) was signed into law on December 19, 2007. The law includes a section titled "Energy Savings Through Improved Standards For Appliance and Lighting" which focuses on manufacturers, not building owners or managers. Manufacturers of lighting, including light bulbs and lamps, are directly affected the law.

The law does not state when building owners and managers must have the updated appliances and lighting in place. Rules may be promulgated regarding the products that could affect real estate owners and managers.

In 2010, it was mandated that manufacturers could no longer make T12 magnetic ballasts. These ballasts will be prohibited beginning in July, 2012 by Department of Energy regulations. This event marks the increased efforts to regulate energy emissions and conservation.

IREM continues to oppose restriction of choice in fluorescent lamp ballasts and believes the industry should be given reasonable time to deplete current ballast supplies and receive incentives of refunds or rebates to resell unused ballasts back to manufacturers. The rapidly growing market for energy-efficient magnetic ballasts and electronic ballasts indicates that they should be allowed to compete in the lighting system market. Market restriction would lessen the flexibility and performance of lighting systems and negate energy savings otherwise attained in the existing market. Property managers and owners should have the right to choose their product preference to allow compatibility with other building systems effecting performance, such as TV infrared remote controls and lighting system designs.

In December of 2011 Congress voted to defund the enforcement of the lightbulb performance requirements. Although, having been in place for four years the light bulb manufacturers had already retooled their production lines, making reverting back very unlikely.

Mandatory Replacement of Window or Through-Wall Room Air Conditioners

IREM opposes mandatory replacement of currently installed room air conditioners with larger compressors because of the burdensome retrofit and replacement costs property owners will be forced to incur. Retrofit costs will be incurred for either the window and frame containing the air conditioner, or the building walls and exterior (in the case of a through-wall unit). In many of these cases, the existing housing and sleeves will not accommodate a larger size compressor. Also, according to the US Energy Department, room air conditioners are in many instances a better option than central air. While they tend to be less energy efficient, they are more focused, cooling only where it is needed. This in turn results in less overall energy used.

Since the multi-family industry has an "aging" inventory with more than 70 percent of buildings built before 1980 (cited 2009), an exception should be made for these units on the basis of economic feasibility and undue burden on property managers and owners. Further, the federal government should continue the Energy Star program that allows tax credits for certain units.

(6/86, updated 4/02, 4/08, 10/11, 4/16)

Environment

Position

Efforts to control pollution and to protect natural resources must be balanced with efforts to increase (a) energy efficiency and independence, (b) economic vitality, and (c) productivity.

We support legislation and/or regulations that require more complete disclosure of information pertaining to hazardous waste on property that is to be sold or leased. However, provisions should be included to relieve intermediaries of liability when they are unknowingly involved in property transactions where hazardous waste has been generated, stored, or disposed.

We support the wise use and management of our nation's water resources so that residential, commercial, and industrial development can proceed unencumbered in the future. States' water rights and regional customs as they have developed over the years should be considered by all

levels of government. We also recognize the importance of well-developed infrastructure in ensuring adequate water quality and quantity.

We believe that the federal government cannot and should not assume all the responsibility for eliminating pollution problems. State and local governments should participate fully in such decisions, free of the threat of federal sanctions.

We oppose those aspects of environmental and natural resource legislation that amount to uncompensated condemnation of private property through government actions. It is essential that the rights of private property owners be fully recognized in federal programs and laws.

(6/86, updated 11/05, 10/09, 8/12, 5/17)

EPA Energy Star Program

Background

EPA's ENERGY STAR Buildings program is a voluntary energy-efficiency program for U.S. commercial buildings. It explores profitable investment opportunities available in most buildings using proven technologies. The program allows partners to reduce total building energy consumption, saving $362 billion on utility bills, and reducing greenhouse gases by 2.5 billion tons since 1992. The program continues to be a success with more than 19,000 organizations participating.

Position

IREM supports EPA's Energy Star program as a means for reducing energy costs. IREM agrees to be an endorser of this program, and will encourage our members to use proven energy-efficient technologies to eliminate waste and cut energy costs.

(Adopted: 11/97. Updated: 4/07, 3/11, 10/16)

Indoor Air Quality

(also see Appendix III)

Position

The members of IREM are committed to the maintenance of the health and safety of all occupants in buildings, and are ready to take actions that might be necessary to meet prescribed qualifications. We understand the issues with air quality in buildings and believe that our members should be informed as to the potential hazards to tenants and employees from indoor air contaminants such as asbestos, radon, mold, volatile organic compounds (VOCs), and lead. We will make every effort to disseminate the available information to assist the general membership in their ability to provide adequate solutions to indoor air quality problems without the imposition of unnecessary and burdensome government regulations. We believe that the federal government cannot and should not assume all the responsibility for eliminating pollution problems. State and local governments should participate fully in such decisions.

Any regulation of indoor air contaminants in buildings should be based on scientifically proven significant levels of exposure and hazard to the public. Such regulation should allow reasonable time periods in which to comply with regulations, provide flexibility in how to comply, require comprehensive training and certification for treatment or abatement contractors and laboratory

technicians, and provide for a "prioritization" of regulation with respect to the particular hazard posed by certain building types and classes as well as geographic location.

Specifically, however, we do support the provision of tax credits to property owners on their federal, state and local tax returns for buildings that require treatment or abatement of indoor air contaminants as a result of complying with applicable government regulation. Further, we support the position that properties receive real estate tax credits to recognize the fact that the imposition of building codes in many instances forced owners to use materials which were later discovered to pose health risks and which they must now bear the cost to remove.

Asbestos

Asbestos is a known carcinogen, which, before discovery of its heath risk, was widely used in insulation, ceiling and acoustic tile, vinyl flooring, and other building materials between 1930 and 1976. However, it only poses a threat when it becomes friable and can be inhaled. It creates a serious and costly problem for real estate managers who must assess its condition and take appropriate steps to reduce the potential health hazard resulting from it. There is a great deal of disagreement over the best way to deal with asbestos.

The Institute urges the EPA to declare two different clearance levels for the two different mineralogical types of asbestos. The different types represent different levels of hazard/risk.

The Institute urges the EPA to adjust current policy relating to the size and type of fiber found. In order to measure, adjustments need to be made in the microscopy standards as well as the EPA's standards.

Finally, the Institute urges the EPA to update the "science" of asbestos to reflect that low levels, as indicated by existing research, of fibers may not be a significant health risk. Further, we urge the EPA to research and consider the benefits of managing asbestos rather than removing it. Scientific evidence indicates that asbestos fibers pose a health risk only when they become airborne. In most cases, asbestos left undisturbed will result in less airborne fibers than would normally be experienced by removal efforts.

Because a large percentage of existing asbestos is not friable, proper management of it in place will result in low and safe levels of airborne asbestos. This could be determined by air monitoring or some other scientific method. With a "safe" level established, building owners could follow guidance documents, test for clearance, and have some objective way of "ensuring safety" for occupants. In the case of future lawsuits, an owner would show adherence to guideline documents and demonstrate that the "safe" level was attained.

Radon

Radon is a colorless, odorless gas that occurs naturally from the breakdown of uranium, which exists deep within the earth. Radon is a source of radiation and has been linked to lung cancer-related deaths. Because radon emanates from the ground upward, it tends to affect a property's basement, ground floor, and sometimes first floor. Although radon can affect upper floors through HVAC systems, the danger is significantly reduced at higher levels. The threat that radon does pose should be of concern to real estate managers and IREM urges owners to take voluntary action to reduce or eliminate radon. Any federal radon gas legislation should be based on scientific evidence verifying radon's harmful effect on humans.

IREM opposes any form of mandatory testing for the presence of radon gas tied to the real estate transaction process. A decision to test or not test should be left to the discretion of the seller/lessor and potential purchaser/lessee. Premises may be tested only if mutually agreed upon by the parties. If the purchaser/lessee demands a test, it would be at their expense and they would have to provide the seller/lessor with a copy of the test results.

With regard to the selling or leasing of single and multifamily properties, the Institute would not oppose legislation which mandates that, prior to entering into a sales contract/lease, it is the responsibility of the seller/lessor to 1) provide a radon hazard information pamphlet, and 2) disclose any known radon hazard in the premises, as well as, any radon inspection report of which the seller/lessor is aware. However, legislation that requires that disclosure statements be "read and understood" creates potential liability problems for sellers/lessors and their agents. It should be sufficient that the purchaser/lessee acknowledge that they have received the information since it would not be possible for the seller/lessor or their agent to determine the extent to which the potential purchasers/lessees have fully comprehended the information.

IREM would also support language in any radon bill limiting the liability of sellers and lessors who comply with the bill's provisions. In addition, we support the inclusion of legislative or regulatory language prohibiting lending and insurance institutions from refusing to lend or grant liability insurance on properties solely because of the presence of radon. We oppose making radon testing a pre-requisite for qualifying for any federally-backed mortgage insurance guarantee under FHA, Rural Housing Service, Veterans Administration or any other government or quasi-governmental entity. We oppose efforts to prohibit the making of a federally-related mortgage loan on residential properties identified to be affected by radon gas if such a property can be shown, through appropriate testing methods, to meet indoor air quality guidelines for radon as established by the appropriate federal agency.

Lead

The presence of lead in paint, which was widely used until it was banned in 1977, has been a concern for real estate managers, especially those who manage federally assisted properties. Although lead was used until 1977, the concentration of lead contained in paint was much greater prior to 1950. After 1950, the amount of lead in paint was significantly reduced. Several abatement methods exist ranging from painting over lead contaminated paint to dry scraping of the paint. Some methods, most notably the latter, create lead dust that has proven to be more harmful and a greater cause of lead poisoning than the paint itself. The largest and most expensive undertaking to abate lead-based paint has occurred in federally assisted housing at the order of the Department of Housing and Urban Development.

The Institute is concerned that the removal of lead-based paint is done in a manner that is the safest and most economically feasible. Because federally assisted housing typically involves low and moderate-income families, displacement of these families during abatement of lead-based paint creates additional hardships. The Institute also recognizes that lead poisoning is a most serious threat to children who ingest or breathe lead paint or dust. IREM supports abatement procedures that are tailored to protecting children. Abatement efforts that require the removal of paint which is inaccessible to children, or in little danger of being exposed, merely squanders scarce financial resources which could be used to remove accessible paint in other units and properties. Abatement

efforts should also be weighted in regard to the years that lead concentration in paint was the highest.

On March 6, 1996, the Environmental Protection Agency (EPA) and the Department of Housing and Urban Development (HUD) issued final regulations on Title X of P.L. 102-553, the Residential Lead-Based Paint Hazard Reduction Act. The regulations deal specifically with disclosure of the presence of lead-based paint in properties built before 1978 (the year lead-based paint was banned for use in most homes and buildings), which are up for sale.

The regulations went into effect on September 6, 1996 for owners of more than four residential dwellings, and on December 6, 1996 for owners of fewer than four. Specifically, property owners and managers who rent target housing must:

- Disclose the presence of known lead-based paint and/or lead-based paint hazards in the home and any available reports on lead in the housing.
- Give renters the EPA pamphlet entitled Protect Your Family from Lead in Your Home, or another EPA-approved lead hazard information pamphlet.
- Include certain warning language in the lease as well as signed statements from all parties verifying that all requirements were completed.
- Retain signed acknowledgment for three years as proof of compliance.

On September 15, 1999, HUD issued its final lead-based paint regulation for federally-owned residential property and housing receiving federal assistance; these policies will implement the Section 1012-1013 requirements of the Residential Lead-Based Paint Hazard Reduction Act of 1992, or Title X These regulations went into effect on September 15, 2000.

On June 18, 2010, the U.S. Environmental Protection Agency (EPA) issued an amendment to the final Renovation, Repair and Painting Rule (RRP Rule), effective April 22, 2010. The RRP Rule requires that contractors who work in residential buildings built before the 1978 outlaw of lead based paint be certified by a government-approved trainer and follow particular safety rules. The ruling aims to reduce the amount of lead dust created during home renovation and repair, and affects tens of millions of homes, including multifamily units.

The RRP Rule requires that certified firms engaging in repair, renovation, or painting activities that disturb lead based paint be certified by the EPA. It applies if asbestos abatement disrupts over 6 square feet of painted surface per room in an interior, or over 20 square feet of painted surf ace on an exterior, or involves window replacement or demolition of painted surfaces. Some of the requirements outlined in the RRP Rule include information distribution to building occupants to notify them of the work being conducted, obtaining written certification from the adult occupant that the information has been received, postage of signs defining the work area, isolation of the work area by covering all ducts with taped down plastic, closing window and doors and covering them with plastic sheeting, covering the floor with taped down plastic, negatively pressurizing the work space, storing daily waste under containment that prevents the release of dust, disposing of the waste in a sealed bag approved by the EPA, placing all waste in a lined container and disposing of it into an EPA approved site.

IREM members respect and follow the lead paint hazard disclosure law. Such compliance has resulted in a dramatic decrease in the number of lead paint poisonings. According to HUD, the average blood lead level in young children declined by 25% from 1996 to 1999 alone. We believe the

lead paint disclosure law has been a proven success. We oppose any changes that would confuse the industry and the public. Instead, we urge HUD and EPA to continue education, outreach, and enforcement of this important law.

Volatile Organic Compounds (VOCs)

Volatile organic compounds (VOCs) are found in two sources that should concern real estate managers: 1) oil-based paint, and 2) carpeting. VOCs react with the sun to form ozone or smog, which can irritate the eyes and respiratory system. Further health effects are still being studied. They are particularly harmful to people with respiratory problems. The use of VOCs is heavily regulated in manufacturing. They are used in a variety of consumer products, including oil based paint, varnish, shellac, stains, and rust and fire inhibitors. They are also present in emissions from new carpeting.

The Institute urges the Environmental Protection Agency (EPA) to further study VOCs and its health effects. The Institute supports the policy dialogue, which the EPA has initiated prior to specific rule making proceedings. The Institute hopes that the EPA solicits meaningful input from concerned parties, including real estate managers, during this dialogue. We believe that diligent work and cooperation prior to the rule making will result in final regulations that are workable and beneficial to everyone.

(11/90; updated 4/06, 4/10, 4/13)

Electromagnetic Fields

Background

Electromagnetic fields are created by the movement of electrical current through wires. These fields are created in high-voltage/high tension wires as well as wiring used in household appliances.

Although some believe that electromagnetic fields are a health risk, no conclusive evidence to support that claim exists. Many questions about the health effects of electrical currents remain unanswered.

In 1992, Congress authorized a study to determine whether or not exposure to electromagnetic fields produced by the generation, transmission, and use of electric energy affects human health. After studying the matter for six years, the National Institute for Environmental Health Sciences (NIEHS) found that "the probability that EMF exposure is truly a health hazard is currently small. The weak epidemiological associations and lack of any laboratory support for these associations provide only marginal scientific support that exposure to this agent is causing any degree of harm." Since the NIEHS study in 1998, the question of the impact of electromagnetic fields has subsided. In June, 2002, NIEHS compiled a "question and answer" document pertaining to electromagnetic fields titled, Electric and Magnetic Fields Associated with the Use of Electric Power." This is simply a document to better understand electromagnetic fields and the unknowns associated with it.

Position

IREM believes that all housing should be safe, sanitary, and decent. IREM is concerned about all potential health risks that may be associated with a property, and believes that more information is needed regarding scientific evidence on the effects of electromagnetic fields.

To that end, IREM supported the creation of this research program, and welcomes further research that will help ensure that all housing is as safe as possible. Given the lack of credible scientific evidence of a connection between exposure to electromagnetic fields and health problems, IREM opposes any effort to impose undue legislative or regulatory burdens on the property management industry in connection with electromagnetic fields.

(6/92, updated 4/03, 10/08, 9/12, 5/17)

Superfund and Innocent Land Owner Legislation

Background

In 2001, Congress passed legislation that provides a specific definition for an innocent land owner under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or "Superfund". The law requires that, in order to use the innocent land owner defense, a purchaser must conduct a Phase I environmental audit of a property immediately prior to or at the time of acquisition. The law does not require inspection to be done for all properties, just those where an innocent land owner defense may be used in the future. Previously, it was up to the courts to decide what an innocent land owner is, and state's attorneys general and the Justice Department were of the mind that no such thing as an innocent land owner exists.

The Environmental Protection Agency published a final rule, which went into effect on November 1, 2006, setting federal standards for the conduct of all appropriate inquiries. The final rule establishes specific regulatory requirements for conducting all appropriate inquiries into the previous ownership, uses, and environmental conditions of a property for the purposes of qualifying for certain landowner liability protections under CERCLA. All appropriate inquiries must be conducted in compliance with the set standards to obtain protection from potential liability under CERCLA as an innocent landowner, a contiguous property owner, or a bona fide prospective purchaser.

Position

The Institute of Real Estate Management emphatically opposes holding a present property owner liable for actions of a former property owner. However, the Institute is fully aware of the litigious nature of today's society and supports measures that a prudent owner and/or agent can implement to help shield the owner and/or agent from undue liability. In doing so, the Institute recommends that standards of inspection for an environmental audit be established and implemented by the states. Such a standard could save real estate investors substantial sums of money and avoid increasing liability from Superfund by providing a baseline for defense. If an owner and/or agent were able to contract with a state approved firm for inspection, then there could be greater certainty that the owner and/or agent acted in good faith. The Institute also strongly supports the concept of not requiring inspections to be performed on all properties. Rather, inspections should be required only if there is a desire to invoke the innocent landowner defense should it be needed. Once a site has been remediated, federal law should recognize the finality of successful hazardous waste cleanup efforts by limiting EPA's authority to re-open previous cleanups.

IREM also believes the federal government should provide adequate funding for cleanup and redevelopment of our nation's Brownfield sites. IREM supports efforts to reduce the cost burden of environmental remediation and cleanup expenditures by providing a current deduction.

(11/89; updated 4/03, 4/08, 9/14)

Amendments to the Clean Air Act: Transportation Control Measures

Background

The Clean Air Act requires states which exceed certain air pollution criteria to include "transportation control measures" in their plans to meet clean air goals. Such measures would be implemented based upon ozone and carbon monoxide levels. Among the control measures that could be required are improved mass transit, better access to transit, ride-sharing, and traffic flow improvement. Other possible measures such as flexible work schedules and programs to provide bicycle storage and bicycle lanes could put the onus on businesses. Also included are restrictions and charges on auto access to downtown areas.

Position

The Institute of Real Estate Management supports transportation control measures such as improved mass transit, traffic flow improvement, ride-sharing assistance, and transportation corridor parking. These measures play an important role in the improvement of air quality while also improving the quality of urban life by making it easier and more attractive for people to get to downtown areas, such as central business districts and inner city areas. However, controls such as road use charges, parking surcharges, vehicle restricted zones, and trip reduction ordinances, not only restrict access to downtown areas, but will not have a significant effect on reducing pollution. Access restrictions will only relocate the problem of emissions from one place to another without reducing it.

(Adopted: 11/89. Updated: 4/06, 4/10, 10/16)

Smoking in the Workplace

Background

The only way to fully protect nonsmokers from secondhand smoke is to eliminate smoking in all indoor spaces, according to the U.S. Surgeon General. In 2010, the Surgeon General issued a report titled "How Tobacco Smoke Causes Disease" stating that cigarettes are responsible for roughly 443,000 deaths each year in the U.S. and create a financial burden of $193 billion in health care costs and loss of productivity annually. The U.S. EPA has concluded that secondhand smoke can cause lung cancer in adults who do not smoke and causes roughly 3,000 lung cancer deaths per year in nonsmokers.

In 2009, the Family Smoking Prevention and Tobacco Control Act was enacted, giving the FDA explicit regulatory authority over tobacco products to protect the health of the American public. In previous years Congress considered legislation that sought to reduce involuntary exposure to tobacco smoke; however, it was not enacted into law.

In 2016, the FDA finalized a rule extending their tobacco product authority to include electronic nicotine delivery systems (ENDS) such as e-cigarettes and vape pens, cigars, pipe tobacco, gels, hookah tobacco, and future tobacco products.

States have also taken major steps in either limiting or prohibiting smoking in restaurants, office buildings and other indoor areas.

Position

IREM is concerned about indoor air quality. Environmental tobacco smoke (ETS) has been determined to be a major indoor air pollutant. The presence of tobacco smoke is a proven health hazard, a fire safety risk in buildings, and results in increased cleaning costs. A workplace ban on smoking is important to building occupants' health and to the efficient management of office and other commercial buildings. Removing the health threat of second hand smoke would protect building occupants, remove a significant liability concern for owners and tenants, and help improve overall air quality in commercial buildings.

However, commercial building tenants should be responsible for their employees' compliance with a nonsmoking policy. Building owners should not be made responsible if individual employees seek to find their way around such a ban.

(Adopted: 6/98. Updated: 4/07, 3/11, 1/14, 10/16)

Residential Smoking

Background

Smoking laws and policies vary in each state, city, and building and there is no federal legislation addressing smoking in residential buildings. Where no smoking laws exist, the building owner may, if they think necessary, establish smoking policies within their building.

There is an extensive list of health risks associated with smoking. Research shows that indoor air quality is significantly reduced with second hand smoke. Furthermore, there are fire hazards associated with smoking inside a building or home.

Position

IREM is concerned over the health and well-being of individuals, the environment, and visitors of residential buildings. When no federal, state or local smoking laws exist, residential property owners may decide what is in the best interest for their occupants and maintenance of the property.

(Adopted: 4/11. Updated: 10/16)

Water Conservation

Background

The United States as a nation possesses abundant water resources and has developed and used those resources extensively. The future health and economic welfare of the nation’s population are dependent upon a continuing supply of fresh uncontaminated water. Many existing sources of water are being stressed by withdrawals to meet off-stream needs to meet human and environmental needs.

A national water rights system does not exist. Instead, each state regulates water usage and laws pertaining to their needs. While a national water rights system is not in place, the federal government does reserve water rights for land set aside from the public domain thereby reserving

sufficient water to satisfy the purpose for which the reservation was established. Regardless of the doctrine the states and the federal government follow, the entire country is increasingly faced with the need to balance water demand with available supply due to the ever-expanding population and subsequent need for new development.

EPA WaterSense Program

In 2006 the EPA launched the WaterSense partnership program. Similar to EnergyStar, WaterSense is a voluntary program aimed at helping partners such as homebuilders, manufacturers, retailers, and other organizations decrease water consumption. Since its inception, the program has helped consumers save over 1.5 trillion gallons of water and more than $32.6 billion in utility bills. The program is growing rapidly, in 2015 246 homes earned the WaterSense designation, almost double the amount in 2014.

Commercial Water Use

Commercial water use includes water for motels, hotels, restaurants, office buildings, other commercial facilities, and civilian and military installations. During 1995, commercial water use was an estimated 9,590 million gallons per day or 16 percent more than during 1990. Three applications account for 88% of water used in commercial buildings – sanitary (e.g. toilets and sinks), landscaping, and heating and cooling. According to the USGS, the large increase in commercial water use has more to do with different sources of information, changes in how the estimates are calculated, and how fish hatcheries and military establishments are reported, rather than actual changes in water use. The USGS has not collected data since the 1995 study, thus more recent numbers are unavailable.

Water utilities offer payments, rebates and incentives for adopting conservation measures like retrofitting (low-flow faucet aerators, showerheads and toilets), landscape efficiency (Xeriscaping™), and use and recycling of "graywater", or treated wastewater for non-potable (non-drinkable) water uses. According to the USGS, these conservation efforts have made a significant impact on the amount of water resources used for commercial purposes.

Residential Water Submetering

Traditionally, the cost of water usage has been included in the monthly rental charged to residential tenants, regardless of how much water is actually consumed in each unit. Due to the increased costs to property owners for water and sewage services in the past decade, property owners have to measure water consumption more closely and accurately. The practice of submetering (installing secondary meters) provides property owners with the ability to measure consumption unit by unit and distribute consumption costs accurately to each resident.

Position

IREM supports the continued voluntary usage of water conservation efforts such as retrofitting, landscape efficiency, the use of graywater, education programs, water-use audits, pressure management, water accounting and loss control by commercial real estate where feasible. States and localities should have the authority and flexibility to determine which of these measures are most suitable for their state or location with the assistance of guidelines from federal government agencies like the Environmental Protection Agency.

IREM supports state efforts and initiatives that encourage economic growth while promoting the sustainability of water resources. Regulations, requirements and penalties should be minimized in order to foster commercial growth due to commercial real estate's measurable and continued

commitment to water conservation. Investment real estate professionals understand that the quantity of water available has a direct impact on the quality of water for all uses. In addition, IREM supports the states in their efforts to maintain control over water use issues.

The practice of submetering has proven to be effective in promoting water conservation. Submetering provides an equitable method for property managers to accurately distribute water usage cost to tenants, thereby controlling operating expenses and rent increases. Studies have shown that in properties that are sub-metered residents generally consume 18% to 39% less water than those with one shared water meter. IREM supports legislation at the state and local level that allows property owners to engage in water submetering without subjecting owners to burdensome regulatory and compliance requirements. IREM also encourages the EPA and state and local water authorities to exclude those practicing submetering activities as public water systems. The water source provider needs to continue to assume responsibility for the quality of the water.

(Adopted: 11/00. Updated: 4/02, 4/07, 3/11, 10/16)

Toxic Mold

Background

Fungi are present almost everywhere in indoor and outdoor environments. Concern about indoor exposure to toxic mold in the past decade, had been increasing in the real estate industry as a few well publicized cases have increased public awareness that exposure to toxic mold may cause a variety of health effects and symptoms, including allergic reactions. Since 2002, attention to the issue of indoor mold has decreased significantly. Property owners, managers, brokers and lessees are increasingly aware of mold as a potential health hazard due to a few well-publicized cases. However, there have only been a limited number of documented cases of health problems from indoor exposure to fungi.

Mold is a type of fungus and is different from plants, animals and bacteria. Molds decompose dead organic material such as leaves, wood and plants. Molds can also infect living plants and animals. In order to propagate, mold needs water, food, oxygen and a temperature between 40 degrees and 100 degrees F to grow. Most importantly, without water, mold cannot grow. Mold is a real estate problem because it consumes wood, products made from wood, and the paper facing on gypsum board (drywall).

Some molds can cause disease while others are opportunistic, which can cause disease in people who may be immuno-compromised. Not all molds are harmful, yet some are very toxic. Everyone is affected to varying degrees by mold exposure due to mold being present in almost every indoors and outdoors environ; however, there is no established dose-response relationship nor is there an established safe level of exposure. This absence of scientific and health-related research and data presents a risky situation for property owners, managers and other real estate industry professionals. A lack of supportable guidelines creates a tenuous situation for disclosure to a potential tenant.

Position

The Institute encourages all governmental bodies to conduct vigorous scientific study of indoor mold, prior to promulgating any regulations or legislation on toxic mold. Further, IREM encourages the development of consumer oriented information which fairly and accurately

portrays the real estate related issues raised by mold, such as information about the conditions which allow for mold growth, and the need for tenants to make their own determination of whether further investigation of mold is needed based upon the information available to them and their agents. The Institute's role is to encourage the development of the information. This information should be the product of an authoritative governmental agency (e.g., CDC, EPA) or recognized independent authority that will be accepted by consumers, business and government (e.g., Harvard, Johns Hopkins, American Lung Association).

The Institute encourages the adoption of state laws that will provide a defense to claims against real estate brokers and property managers who have truthfully disclosed any known mold problems or conditions and provided buyers/tenants with specified disclosure information regarding mold. To assist real estate professionals where such laws have not been adopted, we encourage the National Association of REALTORS® to explore the development of measures that can be recommended for use by real estate professionals to minimize their exposure to liability for mold. These should include dissemination by real estate professionals of authoritative information about the implications and effects of mold in real estate. Such measures may also encourage recommending that parties to a real estate transaction (buyers, sellers, lessees and lessors) consult with appropriately qualified experts for any desired advice and guidance about mold, and avoiding conduct that may infer that real estate brokers, managers and appraisers are experts in the field of mold or its effects.

The Institute, in conjunction with NAR, should investigate current practices and continuously monitor conditions regarding the availability of property insurance coverage and the impact of mold on the availability of that insurance. As may appear necessary, the Institute and NAR should also seek, or encourage state chapters or associations to seek, legislative or regulatory relief to avoid any interruption in the availability of that insurance caused by mold.

The Institute, in conjunction with NAR, should review the availability of errors and omissions insurance coverage for real estate professionals for claims based on bodily injury or property damage associated with mold. To the extent such coverage is not available, or that it may appear that it is likely to become unavailable, the Institute and NAR should work with carriers and/or seek legislative or regulatory relief to avoid any interruption in the availability of errors and omissions insurance.

The Institute encourages the development of and will assist in the dissemination of information regarding new means of reducing the impact of mold, such as improved anti-microbial paints. These new methods may enhance the ability of owners to effectively remediate mold problems long term.

The Institute supports the federal development of a national mold hazard insurance program akin to the flood hazard insurance program. We also support the establishment of federal tax credits that reimburse a taxpayer for expenses paid during a taxable year for mold inspection and remediation.

(11/02, confirmed 4/07, updated 3/11, 5/17)

Professionalism

Agency Disclosure

Background

In the past, the issue of agency was a concern to the real estate industry. The typical practice of the real estate professional acting as the agent or subagent of the seller or owner can no longer be assumed in the real estate transaction process. The expanded practice of buyer or tenant representation created confusion among both the general public and real estate professionals and has created the need for agency clarification among all parties regarding cooperation, compensation, and liability issues. Much of this confusion has been clarified by agency disclosure state statutes that have been widely adopted for residential brokerage transactions across the United States.

In most instances, agency responsibilities between professional property managers and owners are clearly defined in the written management agreement. However, the expanded practice of tenant representation, especially among commercial property transactions and other less traditional agency practices, had raised questions about agency responsibilities among professional property managers.

In response to industry confusion, the NATIONAL ASSOCIATION OF REALTORS® adopted a Legislative & Public Policy position on agency which states:

> The NATIONAL ASSOCIATION OF REALTORS® recognizes seller agency, buyer agency, and disclosed dual agency with informed consent, as appropriate forms of consumer representation in real estate transactions. The Association recognizes the need for all REALTORS® to be able to make individual business decisions about their companies' agency practices. Furthermore, NAR endorses freedom of choice and informed consent for consumers of real estate services when creating agency relationships with real estate licensees.

Position

The Institute of Real Estate Management recognizes property owner agency, tenant agency and, with full disclosure and informed consent, disclosed dual agency as appropriate forms of representation in residential and commercial rental property transactions. IREM recognizes the need for all CPM® members to be able to make individual business decisions about their companies' agency practices. Furthermore, IREM endorses freedom of choice and informed consent for consumers of real estate services when creating agency relationships with CPM® members and other real estate licensees.

(11/94, updated 11/05, 10/09, 9/12)

Community Revitalization

Position

One of the nation's most challenging opportunities in housing lies in the recovery and rehabilitation of declining neighborhoods. To that end, we support the continued study of enterprise zones as a potentially viable framework to foster community revitalization and

economic growth provided that such an enterprise zone proposal includes a housing component which will receive comparable tax and regulatory benefits as provided to business and industry.

Especially in this day in age, where economic volatility particularly impacts our communities, we urge our membership to actively participate in and promote community revitalization efforts which are designed to maintain and improve the quality of life in the neighborhoods of our cities, towns and communities. We applaud the actions of communities which have implemented community revitalization programs without federal assistance and continue to encourage the involvement of the private sector to take advantage of the present investment possibilities.

(Adopted 6/86, updated 9/12)

Real Estate Management Licensing

(NOTE: This Statement of Policy is to be accompanied by IREM's recommendation, "Suggested Property Management Licensing Language." See Appendix I.)

Background

The Institute wishes to communicate the importance of proper licensure as a means to ensure real estate managers are qualified, accountable, and competent individuals. The Institute also wishes to communicate its concern regarding the creation of any separate class of real estate management licensing, including, but not limited to, separate condominium manager licensing. The Institute also requests the National Association of REALTORS® include IREM leadership in deliberations on real estate management licensing with the Association of Real Estate License Law Officials (ARELLO).

Position

While the Institute of Real Estate Management acknowledges that the issue of separate real estate management licensing is a state's rights issue and should be left to the discretion of each individual state, IREM, as a national organization, believes that management of residential apartments; condominiums, cooperative and homeowner's associations; office buildings; shopping centers; and all other commercial property by independent contractors involves real estate activities and should require a license.

IREM National is opposed to separate licensing for these real estate management activities and urges all forms of real estate management, including community association management, to be under the jurisdiction of existing state real estate broker and agent (salesman) licensing laws. Specifically exempted from this are on-site managers and other on-site personnel.

Further, the Institute encourages state real estate commissions, or appropriate governmental agencies, to take a stronger interest in professional real estate management as a real estate function in order to protect the public. This should be accomplished by adding real estate management curriculum to the broker and sales courses and real estate management questions to the testing process.

(11/91, updated 4/06, 4/10, 4/13)

Community Association Management Certification/Licensing

Background

In recent years, there has been interest in creating separate state mandated certification or licensing for community association managers. Florida was the first state to pass such legislation in 1988 and Nevada has enacted a similar statute in July 1999. Illinois was the most recent state to pass similar legislation in 2010. The Community Association Institute (CAI) and the National Board of Certification for Community Association Managers (NBC/CAM), along with local support, have been an instrumental component in efforts to advance state mandated community association manager certification or licensing in other states.

In general, supporters of state mandated community association manager certification or licensing believe that managing community associations is different than real estate management of other properties and states should recognize this by requiring separate certification or licensing for those engaged in community association management. Although specific regulations can vary from state to state, generally the certification or licensing requires an exam, finger print test, certification or licensing fee, renewal fee, and some form of continuing educational requirements.

Position

The Institute of Real Estate Management believes that the management of residential apartments, condominiums, cooperatives and homeowner's associations involves real estate activities and should require a license under existing state license laws. IREM National supports professional community association management, but is opposed to a separate state mandated license or certification for community association management and urges all forms of real estate management to be under the jurisdiction of existing state real estate broker and agent licensing laws.

In states where state mandated community association manager certification or licensing already exists, IREM supports placing the ongoing regulation and management of the certification or licensing process under the jurisdiction of the state real estate commission. IREM believes that the state real estate commissions provide the most appropriate means to regulate and monitor the real estate industry and protect the consumer.

The Institute of Real Estate Management, the recognized leader in education and certification of real estate managers, provides educational courses on real estate management, which lead to specific designations awarded to real estate managers, specifically the Certified Property Manager (CPM®) and Accredited Residential Manager (ARM®). IREM encourages state legislators presently, and in the future, contemplating state mandated separate certification or licensure requirements for community association managers to consider the educational courses and designations awarded by IREM as valid criteria worthy of inclusion in the adoption of standards for potential certification or licensure.

(11/99, updated 4/06, 4/10, 4/13)

Security Deposits

Background

Most states codify the issue of whether interest on security deposits held by landlords in residential (and/or commercial) lease transactions is to benefit the landlord or tenant. In those states where the landlord is allowed to retain the interest, some of those statutes allow the landlord by written agreement to assign the interest earnings to the third party property management agency as part of the agent's compensation.

Position

The cost of administering the payment of interest earned on security deposits should be reimbursed to the managing agent to cover his or her overhead, required paperwork, and additional record keeping. Further, we feel that when the tenant is legally entitled to the interest earnings the interest should only be paid to those tenants who have been in occupancy for 12 months or more and complied with all lease requirements because of the small amount of interest that will be earned.

This will hold true in all cases, except in those instances where the state laws make it possible for banking institutions to administer these funds, in lieu of the managing agent.

(Adopted: 6/86. Updated: 11/05, 4/10, 10/16)

Reporting of Security Deposit Interest

Background

Many states and localities are required by law to pay interest of security deposits held on behalf of a tenant. When interest earned is over ten (10) dollars, the real estate company is required to distribute a 1099 form. According to the Internal Revenue Service (IRS), a copy of the 1099 form must be sent to the tenant no later than January 31 and to the IRS no later than February 28 of the following year. Obviously, this is a very burdensome and costly activity, even for the Internal Revenue Service who collects the tax.

Given the high administrative and computer costs associated with generating these forms and with obtaining and verifying the social security numbers, it would seem that the cost to the federal government and private enterprise greatly outweigh the revenue obtained by taxing such small interest amounts. Additionally, this policy seems discriminatory in light of the fact that a 1099 form provided for services is required only when the amount exceeds $600.

Position

The Institute believes that the ten (10) dollar limit for reporting interest on security deposits with a 1099 form is unnecessarily burdensome and is discriminatory to real estate businesses. The Institute strongly recommends to Congress and the IRS that the minimum limit for reporting interest on security deposits be raised to $150 dollars.

(Adopted: 6/91. Updated: 11/05, 4/10, 10/16)

Wage/Hour Applications

Position

In our capacity as employers running the gamut from large diversified corporations to small one- or two-person operations, this industry provides jobs for a significant percentage of the nation's minimum wage and part-time employees.

Migrant, seasonal, and temporary workers comprise a large portion of the labor force that works for minimum wage. However, at the same time this group does not necessarily represent the most stable labor market either from an employee or employer standpoint. We are fully aware of and sympathetic to the need to provide reasonable and equitable compensation to the nation's work force.

While the members of the Institute recognize the need to periodically review and adjust the minimum wage, we support a one-time-only increase rather than a three to five year phase-in. Additionally, we recommend that there be an exemption from such increase of certain classes of wage-earners (most notable, students or unskilled temporary part-time workers like those described above).

We respectfully urge Congress to consider this method of increasing the national minimum wage level so as not to place a projected burden on the employers/businesses along with an unknown general economic projection.

(6/88, updated 11/05, 4/10, 4/13)

Workers' Compensation Insurance

Background

Previously the National Council on Compensation Insurance (NCCI) had advised insurance carriers to apply the definition of building maintenance and repair to real estate management personnel who, as part of their office duties, collect rent and show vacant apartments.

IREM worked in a coalition focusing on workers' compensation reclassification of real estate management personnel for a more suitable rate-to-risk classification in the mid-1990s.

Position

IREM members are concerned about adequately providing workers' compensation coverage to real estate employees, but IREM also believes that the level of insurance should appropriately reflect the inherent risk of individual occupations. For this to be possible, occupational definitions used by workers' compensation insurance carriers must correctly reflect the true nature and job responsibilities of the individuals to whom they are applied.

The Institute believes that for purposes of workers' compensation insurance, real estate management personnel who perform office duties and, as part of their job, collect rents, and show vacant apartments, should be classified as real estate agents or collectors.

Some carriers have classified these individuals as building maintenance and repair personnel, which carries a much higher rate because the definition is ordinarily applied to individuals with much more hazardous occupations.

(Adopted: 6/91. Updated: 6/98, 4/08, 10/16)

Workers' Compensation and Liability Insurance Responsibility

Background

Owners of income producing property are increasing pressure to have property managers assume responsibility for liability insurance by becoming a primary carrier instead of a secondary carrier. This action would shift the risk that has traditionally belonged to owners to property managers. Additionally, owners are also shifting the burden of workers' compensation to property managers. These actions have created very negative situations for some property management operations.

Position

IREM believes that shifting the burdens and risks associated with workers' compensation and liability coverage from property owners to property managers is both unrealistic and unfair. Workers' compensation and liability coverage has traditionally been the responsibilities of property owners and, unless the management company agrees to assume these responsibilities with the complete understanding of the burdens and risks associated with them, they should remain the responsibility of property owners.

(Updated 4/08, 4/15)

Fair Housing Partnership: Model Affirmative Fair Housing Marketing Plan

Position

For participation in FHA subsidized and unsubsidized housing programs for the development or rehabilitation of subdivisions, multifamily projects and manufactured home parks of five or more lots or units, federal regulations require an Affirmative Fair Housing Marketing Plan (AFHMP). The Voluntary Affirmative Marketing Agreement (VAMA), a substitute for individual AFHMPs, was eliminated to allow more creative approaches to fair housing in different firms and markets through the Fair Housing Partnership Agreement between NAR and HUD. This partnership replaces the current activities of VAMA whereby NAR and HUD would mark certain fair housing issues and concerns which need to be addressed. Strategies would be developed to positively influence these problems, followed by a subsequent evaluation to determine if implementation of such strategies was successful.

The model plan would enable Realtors® to easily comply with affirmative marketing regulations rather than through individual outlines of specific affirmative marketing activities for each project. HUD will accept the model plan in lieu of individual AFHMPs for each project.

NAR and HUD envision this type of partnership to extend to the state or local level of the Association of REALTORS® and HUD offices. While voluntary compliance through the collection of signatures may no longer be relevant, members are encouraged to continue to fulfill their fair housing commitment.

(11/97, Updated 4/06, 4/15)

Disaster Prevention, Relief and Insurance

Background

IREM recognizes the fact that every piece of property is vulnerable to man-made and natural disaster. We also understand the serious human and economic hardships that can result from such disasters. Experience has proven that while some disasters are unavoidable, others are preventable. Furthermore, experience also shows that being prepared for a disaster can minimize its damage. We also recognize the importance of swift and efficient relief and restoration after a disaster strikes.

The Terrorism Risk Insurance Program and the National Flood Insurance Program are two examples of government programs which allow real estate managers to be prepared for and minimize economic damage as a result of unavoidable disasters.

Position

IREM urges all real estate managers to be prepared for disasters and emergencies by developing emergency procedure manuals, emergency procedure management teams and by understanding how their property's location, design, use, and occupancy will affect emergency procedure actions. Real estate managers should also establish cooperative relationships with the emergency management authorities in their communities. We urge all real estate managers and their management staff to take part in continuing education of emergency procedure techniques. Devising and distributing tenant and resident emergency information is one way in which to prepare properties for emergencies.

IREM also encourages real estate managers who have experienced a disaster to move quickly to prevent the immediate effects of the disaster from causing or allowing further damage. Managers should then return the property to its normal condition as soon as possible.

Adequate insurance is essential to a property's recovery after a disaster. Managers should encourage owners to carry sufficient coverage. In addition to maintaining private insurance, managers should be aware of any governmental insurance, relief, or aid available to them after a disaster.

IREM encourages the federal government to establish uniform rules for administering national disaster relief programs. We also encourage Congress and state legislative bodies to see that they maintain a healthy reserve of funds to administer disaster relief.

(11/90, updated 4/06, 4/10, 9/14)

Terrorism Readiness

Background

Terrorist attacks, bomb threats, and chemical warfare have reinforced the need for property managers to prepare and educate their staff on how to properly respond if a bomb or other type of terrorist emergency occurs on the premises. With the World Trade Center Bombing in 1993, the Murrah Federal Building bombing in Oklahoma City in 1995, the terrorist attacks in New York City and Washington, D.C. on September 11, 2001, and various terrorist threats since 2001, the need for effective emergency procedures is immediate. Every property, whether an apartment building,

shopping center, large office tower, or industrial park is vulnerable and a potential target for terrorist activity.

Position

The Institute is concerned with the increase in terrorist attacks on innocent public both here in the United States and abroad. Although most terrorist incidents cannot be prevented by actions of property managers, the Institute believes that there are measures the real estate industry can take to help in possibly reducing the number of casualties and injuries caused as a result of terrorist acts. The Institute encourages all property owners and managers to work with law enforcement agencies to develop special emergency procedures in case of a terrorist act. It is then the responsibility of the property owner or manager to communicate these emergency procedures to all tenants and property management staff. The Institute has various publications on this topic.

Furthermore, the Institute encourages staff and legal counsel to review standard management agreements for modifications dealing with terrorism. We also encourage federal, state and local entities as well as property management owners and managers to review standard leases for similar modifications.

(11/99; updated 11/02, 4/08, 4/13)

Preparation for an Avian Flu Pandemic

Background

Avian influenza, also known as the "bird flu," is a contagious animal disease that infects birds and some mammals. It usually does not spread to people; however, several instances of human infections have been reported since 1997. The H5N1 strain was isolated for the first time in a human patient in Hong Kong in May 1997. As of August 2010, 299 humans worldwide have died as the result of the H5N1 bird flu virus. The virus is currently in several Asian countries, including China, Indonesia, Thailand, and Vietnam. It has now spread to Europe and parts of Africa (most prevalent in Egypt).

The World Health Organization (WHO) warned in late 2004 that the H5N1 bird flu could spark a flu pandemic that would likely kill millions of people. The United Nations health agency expressed its concern much of the world is unprepared for such a pandemic and countries need to increase their emergency preparedness in order to reduce the virus' potential impact. Recently, WHO has reported human cases of avian influenza A (H5N1) in Asia, Africa, the Pacific, Europe and the Near East. Indonesia and Vietnam have reported the highest number of H5N1 cases to date. The United States has not experienced a high number of human cases to date; however, the bird flu is still a real threat.

President Bush signed into law $3.8 billion in funding for bird flu preparedness on December 30, 2005. Federal officials warned they could restrict travel or take other necessary steps to block a pandemic caused by the bird flu or any other super-influenza strain.

The global economy is being threatened by a pandemic. A human outbreak of the bird flu could cost the U.S. economy $675 billion, according to the U.S. Congressional Budget Office (CBO). The general slowdown in economic activity would reduce gross domestic product (GDP). Business confidence would be injured, the supply of labor would be restricted (owing to illness, mortality, and absenteeism spurred by fear of contracting the disease), supply chains would be strained as

transportation systems are disrupted, and arrears and default rates on consumer and business debt would probably rise modestly.

Economic activity would slow, but it would not halt completely. The CBO reminds us experiences with such catastrophes as natural disasters and terrorist attacks have demonstrated the ability of people to cope with and adapt to extremely difficult circumstances. Moreover, the advances in technology of recent years would allow many companies to conduct business via electronic communications, permitting their employees to work from home.

The threat of a potential mutated bird flu pandemic represents a dilemma for investors, highlighted in the March 2006 Citigroup report A Global Update for Investors: Avian Flu. There is extreme uncertainty over the likelihood, timing, and virulence of a pandemic. Front-line industry ―winners‖ would include drug companies, healthcare providers, cleaning product manufacturers, and home entertainment providers, in addition to telecommunications and internet technology companies on the second-line. Insurers, airlines, hotels, shopping malls, and the travel and hospitality industry could suffer profit losses.

The Institute of Real Estate Management recognizes the very real possibility of the avian flu spreading to the U.S. We are aware of the potential economic and social disruption an influenza pandemic may cause. Recent experience in preparing for, and recovering from, terrorist acts and natural disasters has emphasized the importance of emergency preparedness. Both the public and private sectors have seen how important preparation is in reducing damages.

An excellent resource for businesses is the Business Pandemic Influenza Planning Checklist created by the U.S. Department of Health and Human Services and made accessible on their web site. For informational resources and news updates, real estate managers are urged to visit the Center for Disease Control website.

Position

The Institute of Real Estate Management urges all real estate managers to familiarize themselves with the dangers associated with a possible pandemic and assess the impact one could have on their businesses, properties, employees, and clients. Real estate managers should prepare their businesses and properties for a pandemic by establishing policies to be implemented during a pandemic and determining what resources would need to be allocated to employees and clients at such time. Communication is key before and during any disaster. Consideration should be given to communicating with public health officials and other businesses in the community. Prior to and during the potential pandemic, proposed federal and state legislation may affect investment property. IREM legislative staff will monitor and communicate this legislation to its membership.

(4/06, updated 10/10, 9/15)

Limits of Liability

Background

Generally a fee manager and an owner of the property each carry their own insurance. Depending upon the wording of the insurance policies, which party is liable for a claim can be ambiguous. An example of such a case follows: "OTHER INSURANCE. If there is other insurance collectible for a loss covered under Coverage B, we will pay the amount of loss that is left after the full amount available under the other policy has been paid. We will not, however, pay more than the applicable

Limits of Liability under this policy. However, if there is other insurance that specifically applies only in excess of this policy, this policy will be primary to that excess insurance."

Position

The Institute of Real Estate Management firmly believes that insurance carried by a fee manager should cover his or her firm's possible negligence and should not be the primary coverage for properties managed. The Institute encourages its members to carefully scrutinize their insurance policies and those of the property for clauses that could place them in a situation of becoming the primary provider of coverage. The Institute also wishes to communicate to the insurance industry that fee managers should be recognized as agents of the owner and should be named as additional insured at no additional cost.

(11/89, updated 10/10, 3/16)

Promoting Professional Management in Public Housing

Background

HUD's Department of Public Housing has expressed its desire to have professional property managers more involved in administration of public housing. They recognize the benefits that a property manager with experience in the private market can bring to public housing. HUD encourages IREM members to seek out opportunities to serve as commissioners on public housing authorities' boards. HUD is pursuing the idea of appointing a property manager to each local housing authority board where it is not a conflict of interest.

Position

IREM supports the Department of Public Housing's efforts to increase participation of property managers in the administration of public housing. IREM sees this as a potential growth area and joins HUD in encouraging IREM members to serve on public housing boards.

(11/89, updated 11/05, 4/13)

Certification of FmHA Site Managers

Background

The Farmers Home Administration (FmHA) is presently considering the possibility of a nationwide certification program for their site managers. They recognize the need for qualified management staff and realize its effect on tenant relations and business decisions. They have been approached by associations, including IREM, that are interested in providing educational programs. FmHA will not endorse any one program but welcomes input from qualified groups. At present, training and certification of onsite managers is implemented at the discretion of each state's director.

In September 1989, California initiated a certification program for FmHA site managers with the expectation that all site managers would achieve certification within one year from that date. The program is being offered primarily through the Rural Builders Council (RBC) although other qualified entities are invited to submit programs for approval. The California certification requirement also includes annual recertification.

Position

IREM supports FmHA's emphasis on professional management and its efforts to organize a nationwide certification program. The "Successful Site Management" course has been adapted in the past for HUD managers and could be adapted for FmHA as well, either for use nationally or on a state-by-state basis through IREM Chapters. The Chapter Federal Housing Liaison Committee encourages the Education Division to modify the "Successful Site Management" course after IREM's Research Department conducts appropriate research to determine the market. The Chapter Federal Housing Liaison Committee also encourages the FmHA staff to take this proposed course.

(11/89, updated 11/05, 4/13)

Military Lease Clauses

Background

In response to situations that have arisen due to U.S. troops committed to war, legislation has been enacted which essentially amends the Soldiers and Sailors Relief Act of 1940. The Servicemembers Civil Relief Act of 2003 (SCRA) allows military personnel to break a lease if they are transferred for 90 days or more. It would apply only in cases where deployment was unexpected, as it was with recent military actions. The legislation would apply to both reserve and enlisted military families. Due to the recent increase in deployment, the Act has also been extended to include those serving in the National Guard and their families.

The protections afforded by the SCRA only apply if the cost of rent is below a certain amount. The cost limit was set at $2,400 per month in 2003, but is adjusted each year to match the Consumer Price Index housing component that is published by the Bureau of Labor Statistics of the Department of Labor.

If a landlord files an eviction, the court may stay the proceedings for 90 days. The judge may lengthen or shorten this time period as they see fit. The judge may also adjust the obligations of lease in an attempt to preserve all parties' interests. If a stay is granted, the court may grant the landlord relief.

Position

It is with great respect to our servicemen and their families that IREM endorses special treatment of military families called to active duty. IREM members understand the emotional and financial hardship that can befall military families during times of war and military crisis. To allow real estate managers to do their utmost to ease these hardships, we would like to endorse fair and equitable handling of early lease termination for activated military personnel.

We feel that in times of war and unexpected deployment of U.S. military forces for national defense, a thirty day minimum written notice to vacate is a privilege that should be offered to military personnel. Legislation mandating this privilege should specifically state that this minimum notice can only be invoked by military personnel who are called to serve or are transferred in times of war or unexpected military deployment and who then present the landlord with military documents so ordering the assignment or transfer.

This privilege should only be exercised when the military personnel activated or transferred has met all the terms, covenants and conditions of his or her lease and is current on his or her payment

of rent and other monies due the landlord. Under these circumstances, activated military personnel should be released from all further liability to the landlord.

We also believe that this privilege should be fully extended to individuals serving in the reserve branches of the armed forces who are called to serve during times of war. However, we do not feel that a mere offer of local on-base military housing is an adequate cause for the early release from a rental agreement.

IREM understands that the need for this legislation has emerged from widespread transfer, activation and reassignment of military personnel resulting from unexpected deployment of military forces.

While IREM endorses this legislation, the Institute encourages its members, even in the absence of a legislative mandate, to include special termination clauses for unexpected transfer or reassignment of military personnel which respect the military individual's circumstance in a manner that does not jeopardize a property's viability. By doing so, real estate managers can avoid detrimental effects of legislative mandates and unfavorable public relations.

(2/91, updated 4/06, 10/10, 3/16)

Psychologically Impacted Properties

Background

Disclosure of psychological impacts (stigmas) remains an important issue for real estate practitioners. The issue involves disclosure of facts about the owner or occupants of the property and not the facts solely associated with the real estate itself.

A real estate practitioner may be placed in the difficult position between protecting the prior owner or occupant's privacy and civil rights and fulfilling the potential purchaser or lessee's desire to know about an owner or occupant of the property in question. Psychological impacts include: previous tenants with AIDS or criminal activity including murders and suicides that have, or allegedly have, occurred on the property. Many states including California, Colorado, Connecticut, Delaware, District of Columbia, Idaho, Illinois, Iowa, Georgia, Louisiana, Maryland, Massachusetts, Missouri, Nevada, New Mexico, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Virginia, and Wisconsin have all enacted laws addressing disclosure requirements for psychologically impacted properties. However, what constitutes a psychologically impacted property, and what disclosure is required or prohibited varies from state to state. While AIDS and HIV may fall under a states psychologically impacted properties laws, people with HIV or AIDs are classified as being disabled under federal housing law, and therefore must be treated as a protected class.

Position

IREM believes that all psychological impacts or stigmas which are associated with past owners or occupants of real property are not material facts and need not be disclosed to a potential purchaser or lessee.

(6/92, updated 4/07, 3/11, 5/17)

Drug-Free Workplace

Background

Under the Drug-Free Workplace Act of 1988, contractors who work with the federal government must certify that they maintain a drug free workplace. Contractors must also certify that they have a published statement notifying employees that unlawful manufacturing, distributing, dispensing, possessing or using controlled substances is prohibited in the contractors' workplace. The published notice must also specify the actions that will be taken against employees who violate the prohibition.

Contractors must also establish an on-going drug-free awareness program to inform employees about the dangers of drug abuse, the policy about drug abuse, available drug counseling and rehabilitation programs and the penalties about drug abuse violations that occur in the workplace. Employees engaged in the performance of the contract are to be furnished with the published statement and must be notified in writing that the condition of employment shall require the employee to abide by the terms of the statement. All employees convicted under a criminal drug statute must notify their employer who in turn must notify the contract officer.

The employer must also take appropriate personnel action with respect to the employee, including requiring the employee to participate satisfactorily in an approved drug abuse assistance or rehabilitation program. Employers must also make a good faith effort to continue to maintain a drug-free workplace.

The Drug-Free Workplace Act applies to all property managers who contracts with the federal government. This includes, but is not limited to, property managers who manage property for the General Services Administration (GSA), the Department of Housing and Urban Development (HUD), the Resolution Trust Corporation (RTC), the Farmers Home Administration (FmHA), and the Veterans Administration (VA).

Position

Drug abuse is a problem which affects all employers. While the Drug-Free Workplace Act applies only to employers who contract with the federal government, IREM believes that the goals and intent of the program are beneficial to all private sector employers. Therefore, IREM encourages its members to voluntarily subscribe to the provisions of the Drug-Free Workplace Act as they can be applied to nongovernmental contractors.

(11/92, updated 4/07, 10/11, 3/16)

Insurance Redlining

Background

Redlining, though illegal, is practiced by some commercial insurers across the United States. Redlining is, as it pertains to property insurance and insurance for property management companies, the discrimination in intent or in effect by an insurer or insurance representative against an applicant or property on the basis of age, geographic location, religion, race, national origin, ethnicity, or income of the applicant.

Many in the property management industry see an insurance company's refusal to offer property insurance to properties located in higher-risk, crime-ridden areas as unjust discrimination. Such

properties experiencing location-premised redlining are often left to exist either uninsured, under-insured by substandard insurance carriers, or forced to pay unusually high insurance premiums based on their "risk factor" regardless of extensive security measures possibly enforced on the property.

Position

The Institute is opposed to insurance marketing and underwriting practices which result from discriminatory redlining.

(12/95, updated 10/07, 10/11, 3/16)

Uniform Standards of Professional Appraisal Practice

Background

The Uniform Standards of Professional Appraisal Practice (USPAP) was created in an effort to create a set of uniform standards for appraisers by the Appraisal Standards Board (ASB), a unit of the Appraisal Foundation. The document has been revised over the years with the most recent version released in 2012 and covers the years 2012 through 2013.

The most relevant sections in the USPAP, to IREM members, are Standards 4 and 5. These two sections deal primarily with those appraisers who do consulting work. CPMs complete such activities as market analyses, financial analyses, and/or feasibility studies which are listed in these standards. As defined in USPAP, ""Appraisal practice" is defined as valuation services performed by an individual acting as an appraiser. Only appraisers may offer services that are considered appraisal practice. Examples include appraisal, appraisal consulting, and collecting market data (acting as an appraiser)." In the past, the USPAP document went beyond the scope of appraisal and created new standards for the consulting, in which a large number of our membership is active. The current documents say that when required by law, regulation, or agreement, an individual must comply with USPAP. The current 2012-2013 version states:

Within appraisal practice, there are some assignments that are addressed by Standards (i.e., STANDARDS 1 through 10). The Standards describe the requirements for appraisal, appraisal review, or appraisal assignments.

However, STANDARDS 1 through 10 do not apply in the performance of all appraisal practice services. Examples include assignments (performed as an appraiser) to teach appraisal courses, provide sales data, collect market data, analyze specific elements of value (e.g., reproduction cost or functional utility), and develop educational texts. (As defined in USPAP, assignments are performed by an individual acting as an appraiser. Therefore, all assignments fall within appraisal practice.)

IREM's concern is that because the final standards are published by the Appraisal Standards Board, states may decide that either (1) to have any real estate practitioner who does consulting activities (like those outlined in the standard) be subject to an "appraisers license"; or (2) that a separate license be developed which covers the activities identified in the standard as "consulting." The potential for either or both ideas may be fueled by recognition of increased license fee revenues, and/or a general belief that such actions would benefit the real estate industry as a whole.

Position

The Institute of Real Estate Management is opposed to any language, such as Standards 4 and 5, found in the Uniform Standards of Professional Appraisal Practice (USPAP) and state license laws that would negatively affect the typical business activities of property managers and commercial real estate professionals (either directly or indirectly) and may require them to pursue another license or certification. IREM further supports any other clarifications that would protect the day-to-day operations of a property manager or commercial real estate professional.

(6/98, updated 6/99, 4/08, 9/12)

State and Local Guidelines

Medical Marijuana in Property Management

Background

As a Schedule I controlled substance under the Controlled Substances Act, marijuana is illegal at the federal level for any use. However, 23 states and the District of Columbia have passed their own legislation authorizing the use of medical marijuana to varying degrees. This conflict between federal and state laws creates a complicated situation for property managers.

Per a 2011 memo, HUD has directed public housing agencies or owners to deny admission of applicants who are using medical marijuana.

Position

It is critical for property managers to stay up to date on the legality of the cultivation, use, and sale of marijuana in their jurisdiction. The legality and regulation of medical marijuana varies not only by state, but also by local municipality. Property managers should check with local municipal officials to ensure they are up to date on medical marijuana regulations. There are tools available to property managers enabling them to deal with marijuana as they see fit, such as lease addendums, with which smoking and illegal drug use can be prohibited. Please refer to our Statement of Policy on Combating Drugs in Real Estate, Smoking in the Workplace and Residential Smoking, and our white paper on Marijuana Legalization Laws.

(Confirmed 10/14)

Use of Eminent Domain for Economic Development

Background

In 2000, the City of New London, Connecticut, approved a development plan that was projected to create over 1,000 jobs, to increase tax and other revenues, and to revitalize the economically distressed city. The private developers of the land planned on constructing a hotel, health club, and offices on the waterfront property. In assembling the land needed for the project, the city's development agent purchased property from willing sellers of 135 properties and used the power of eminent domain to acquire the remainder of the property from unwilling owners of fifteen homes and businesses. The property owners of the fifteen condemned properties filed suit against the city.

The case of *Kelo et al v City of New London et al* reached the U.S. Supreme Court who answered the question of whether the city's proposed disposition of the property qualified as a "public use" within the meaning of the Takings Clause of the Fifth Amendment. On June 23, 2005, the U.S. Supreme Court ruled 5-4 in favor of New London, deciding the city did not violate the Fifth Amendment by condemning the non-blighted properties for a private mixed-use development. Justice John Paul Stevens, who penned the decision, wrote that economic development qualifies as a "public purpose" sufficient to satisfy the Fifth Amendment's "public use" requirement.

Members of the U.S. Congress quickly reacted to the ruling. The House of Representatives adopted H.R. 340, by a super-majority vote of 365-33, deploring the Supreme Court’s ruling. In addition, the House voted 231-189 for a bill prohibiting expenditure of any federal housing, transportation, or treasury funds to enforce the judgment of the Supreme Court in the case of *Kelo* v City of New

London. On the Senate side, Senator John Cornyn (R-Texas) introduced S. 1313, creating the Protection of Homes, Small Businesses, and Private Property Act of 2005, which states that the power of eminent domain should be exercised only for "public use" as guaranteed by the Fifth Amendment and that the power to seize homes, small businesses, and other private property should be reserved only for true public purposes.

At least 25 states are considering changes to their eminent domain laws. States may restrict the use of eminent domain for economic development if enacting more strict standards of "public use" than the federally mandated standard. At least eight states including Arkansas, Florida, Illinois, Kentucky, Massachusetts, Montana, South Carolina, and Washington had enacted laws, prior to the *Kelo* decision, forbidding the use of eminent domain for economic development unless it is to eliminate blighted properties. Legislators in those states have introduced legislation increasing the difficulty for local governments to utilize eminent domain. Several other states are considering legislative proposals to restrict or prohibit the use of eminent domain for economic development.

Following the mortgage crisis many municipalities turned to eminent domain as a way to curtail the issue. For example, San Bernadino County, CA, considered using private capital to purchase current and underwater mortgage for market value, write down the principal, and refinance them with FHA loans. Many groups including NAR have expressed concern with this tactic as it could have unintended consequences. As of 2015, HUD, FHA, and Ginnie Mae have been banned from taking part in this practice.

Position

The Institute of Real Estate Management supports states' rights in deciding under what conditions eminent domain may or may not be used. IREM, a strong supporter of private property rights, urges state legislatures and local municipalities to respect the rights of property owners by limiting the circumstances under which eminent domain is permitted.

(11/05, confirmed 10/09, updated 9/15)

Methamphetamine Labs and Remediation

Background

The manufacturing of illicit methamphetamine (meth) has increased dramatically throughout the United States. The production of meth is very hazardous, involving the use of highly toxic, flammable materials creating a serious risk of fire and explosion. Aside from the production risks, the aftermath of meth production creates a serious health threat due to the residual presences of toxic materials. These labs can be easily created by the purchase of some over-the-counter items available at most stores. According to the Office of National Drug Policy, the production of one pound of methamphetamine creates 5 to 7 pounds of toxic waste and releases poisonous gas into the atmosphere.

Many states have passed laws to try and address the problem of meth production and cleanup. There are also efforts at the federal level. In 2007, Congress passed the Methamphetamine Remediation Research Act which establishes a research program to develop guidelines, based on the best currently available scientific knowledge, for the cleanup and remediation of former meth labs, including guidelines regarding preliminary site assessment and the remediation of residual contaminants.

Most recently, Congress passed HR 2923 in 2010. This bill works to curtail methamphetamine production at its source by restricting the availability of the ingredients needed to produce it. The bill requires any retailer that sells a chemical listed as schedule I to self-certify in compliance with the requirements set by the Attorney General. Also, al distributors must only sell those regulated chemicals to certified retailors

Position

The lack of established guidelines for the remediation of properties impacted by methamphetamine production creates confusion and possibly liability in the property management industry. Property owners may fall victim to unscrupulous contractors who may recommend unnecessary or unproven decontamination methods. Without appropriate research, residents can be left endangered by the health effects of meth. The Institute of Real Estate Management urges the U.S. Environmental Protection Agency to develop and implement a standard of remediation guidelines. These standards should be developed in conjunction with a federal study to determine the potential health effects of contaminated properties, and appropriate measures for safe levels of exposure. A clear set of principles is necessary to protect property owners and residents about the environmental impacts of methamphetamine production. Without scientific research in this field, methamphetamine continues to be a danger to all affected by its production. Furthermore, the burden of cleanup costs should not be the property owner's, but rather the cost of the occupant of the leased space.

(11/05, updated 10/09, 08/15)

Deregulation of Electricity

Background

The electric power industry is perhaps the last of the utility industries considered for deregulation by federal and state entities. Since the deregulation of the telephone and gas industries, there has been a growing feeling that electricity should follow suit.

Originally, electric power industries were awarded rate regulated franchises by the federal government in order to promote this power type across the country. As electricity has become a necessity rather than a luxury, discussion has surfaced regarding creating a free market to encourage competition, which in turn should bring lower electricity rates. It should be noted, however, that electricity's elements are different from the other utilities in its generation, transmission, and distribution. While the transmission and distribution costs are somewhat fixed and may remain regulated, the generation of electricity may provide for the most competition and benefit for consumers.

Congress passed the Energy Policy Act that opened the doors for competition at the wholesale (transmission) stage of the process in 1992. The Federal Energy Regulatory Commission implemented the intent of the Act in 1996 with Orders 888 and 889 with the stated objective to "remove impediments to competition in wholesale trade and to bring more efficient, lower cost power to the Nation's electricity consumers." The Commission's orders required open and equal access to jurisdictional utilities' transmission lines for all electricity producers, providing for the states' restructuring of the electric industry to allow customers direct access to retail power generation.

In recent years the utilities have publicized the benefits of a fully competitive electric environment in which competition can also occur at the generation stage of the process. Recently, state and federal legislation to deregulate the electric industry has been focused on creating laws that remove competitive barriers at the generation stage.

Position

IREM appreciates the need to restructure the electric power industry and believes it must be done carefully to ensure that all parties involved; present providers, future providers, and all consumer types, including multifamily and commercial property owners, are treated fairly in the deregulation of this utility. While industry and some commercial consumers may benefit from the increased competition as a result of deregulation of electricity, smaller consumers, such as multifamily and commercial property owners and residential consumers, may not benefit as much considering the electric utility volume they consume.

Therefore, IREM believes that deregulation of our electric utilities should be done at the state level, not at the federal level, to ensure that rates will be decreased, not increased, for the individual consumer and businesses which will have the greatest representation in determining the impact on their particular area. If the federal government mandates that states deregulate, they should allow for a reasonable time period for states to carefully prepare their deregulation plans. However, this time period should not allow state to indefinitely postpone deregulation. Electrical system reliability should not be compromised by deregulation. Therefore, adequate safeguards should be included in deregulation plans to ensure the integrity of the electrical generation, high voltage transmission, and local delivery systems. In addition, the costs of deregulation should not be borne by the consumer. Although some states and municipalities could feel some loss in tax revenue, any shortfall resulting from deregulation should not be passed on to the property owner in the form of higher property taxes or other taxes or fees. Finally, since utility deregulation would not allow electricity producers to recover capital costs; previously considered stranded costs, recovery of these costs should be paid for by all rate payer categories on an equal basis.

(11/97, updated 10/07, 10/11, 3/16)

Weatherization Grants

Background

Weatherization grants are funds provided to tenants by state Health and Human Services Departments (HHS) to compensate occupants for utility bills that they are unable to pay (in tenant-paid utility buildings).

Position

We support the concept of building owners receiving weatherization grants in accordance with existing federal regulations. We also support a low interest supplemental loan program to be used for weatherization needs.

(Updated 4/06, 10/10, 3/16)

Housing Trust Funds

Position

The Institute of Real Estate Management supports the concept of safe, decent and sanitary housing, the production of new low/moderate income housing, and the preservation of the existing housing inventory. IREM feels that the best and most efficient means of creating local low/moderate income housing is through state finance agencies, not through additional funding via interest-bearing escrow accounts. This issue is a broad-based social issue that has a funding opportunity through the use of local tax sources or a low income housing line item in the respective state's budget. The use of housing trust interest-bearing escrow accounts will have an adverse effect on rent pricing and will adversely affect the original intent of security deposits.

(Updated 11/04, 9/12)

State Unemployment Insurance Taxes

Position

We support the concept of amending the states' definition of wages subject to state unemployment insurance taxes (SUTA) to conform to the existing definition for federal unemployment insurance taxes (FUTA).

(Updated 11/05, 4/10, 4/13)

Recycling and Waste Management (Including Medical Waste)

Background

Rapidly filling landfills and new state and federal solid-waste regulations made recycling the fastest growing disposal alternative in the late 1980s. Several states have enacted legislation in the last fifteen years ranging from mandatory collection, to statewide goals, to mandated local plans. Nearly all 50 states in the Union, including the District of Columbus, have statewide recycling laws varying in stringency.-Ten states, as of 2011, have container deposit laws to encourage recycling of beverage containers. As of March, 2013, all 50 states have adopted the EPA's universal waste regulations designed to manage wastes such as batteries, pesticides, mercury-containing equipment, and bulbs/lamps. In addition, nearly every state has implemented a medical waste disposal program.

Position

The Institute of Real Estate Management strongly supports recycling programs that will reduce the use of landfills. In order to succeed, coordinated efforts between federal, state, and local governments and the waste management industry to coordinate collection and marketing of recyclable materials and, in the case of medical waste, to coordinate disposal tracking systems are essential. Without such a coordinated effort, recycling efforts may be random and non-productive. While supporting environmentally sound waste management, the Institute is very concerned that property managers are being caught in the middle when it comes to the responsibility of sorting and collection. The Institute strongly believes that the generator of waste or the vendor contracted to remove the waste should be responsible for properly disposing of the waste.

(11/89, Updated 11/05, 4/10, 4/13)

Legislative Activity

Background

Establishing local networks and working from the grassroots upward is a more effective and more credible way to approach potential legislative issues than reacting after the fact. In a concentrated effort to equip IREM chapters and individual members with the tools necessary to make a difference in real estate management-related state and local legislation, IREM created the Chapter Government Affairs Training Program in 1994. This training program, comprised of a comprehensive power point slideshow and written material, offers valuable information to all chapters and is intended to assist those chapters to improve their current level of government affairs activity.

The Institute's Government Affairs Department is a valuable resource for members of the Institute, and members are encouraged to contact staff with any legislative or regulatory requests. At the national level, IREM is part of a legislative advocacy team that constantly monitors legislative and regulatory developments in order to shape the direction of today's policy issues. IREM's Government Affairs Staff reviews all proposed state legislation of potential impact to real estate managers, including pertinent bills in the IREM State Legislative Database. Staff stays connected with Chapter Legislative Chairs to track trends in local ordinances. Additionally, members are encouraged to act on vital legislation through Calls-to-Action. Additional resources are available online through the IREM Public Policy home page.

Position

The Legislative and Public Policy Committee strongly urge Regional Vice Presidents to communicate to chapters in their regions the importance of grass roots legislative activity by individual members of IREM and to urge the chapter legislative committees to work with their counterparts in the National Association of REALTORS®, recognizing state and local NAR® boards, and other associations to develop local networking coalitions. Individuals and chapters involved in local efforts should report back to IREM National on an ongoing basis any obstacles or problems, as well as accomplishments, in order to strengthen the Institute's communications network.

(6/89, updated 4/06, 10/10, 3/16)

Drug Activity

Background

The problem of drug abuse, drug trafficking, and drug-related crime has found its way into every facet of day to day life, including all investment property such as residential, multifamily, commercial, industrial, and retail. Such activity threatens the stability of entire families, businesses and communities. As apprehension about drug activity has grown, governments, businesses and communities have become increasingly fervent in their efforts to eradicate illegal drug use and the societal problems associated with it. While every individual must share in the obligation to achieve this goal, it is important that specific responsibilities be borne only by those with the appropriate talents, skills, and resources to address them. Problems associated with illegal drug activity may not only result in damage or loss of property, but also involve mental and physical well-being, the possible loss of life, as well as the potential for increased liability of the owner or managing agent.

Consequently, interference by untrained, ill-equipped and unqualified persons may worsen the problem and create additional hazards.

Recently, property managers nationwide have become more aware of the growing problem of methamphetamine labs in rental properties. After a lab has been shut down, a property is often still contaminated with high levels of hazardous chemicals. Long and short term health effects include liver and kidney damage, neurological problems and increased cancer risks, for people living in former lab sites. This type of illegal activity is becoming increasingly problematic for commercial property owners and property managers. More and more states are passing legislation requiring property owners to disclose to real estate agents if the property was at one time used as a methamphetamine lab. Please see the IREM Statement of Policy, "Property Managers Combating Methamphetamine Laboratories: Prevention, Remediation, and Notification" that is specifically dedicated to this issue.

As of 2015, medical marijuana has been legalized in 23 states and the District of Columbia. In addition, recreational marijuana has been legalized in Colorado, Oregon, Washington, and Alaska. Under the Controlled Substances Act, marijuana has a Schedule 1 classification, and is still deemed illegal at the federal level.

Position

Members of IREM believe in a real estate manager making a reasonable effort, within his or her area of expertise, to protect tenants, owners, employees and property from the harmful effects of illegal drug activity. IREM feels that appropriate responsibility includes cooperation with law enforcement to the extent allowed by landlord-tenant laws and other state and local laws. IREM also believes that it is the manager's responsibility to familiarize law enforcement authorities with the managing agent's fiduciary responsibilities to property owners. IREM further believes that managers who act in good faith by documenting and notifying authorities of drug activity, and otherwise cooperating with authorities, do thereby protect an innocent owner's property from seizure by law enforcement authorities.

IREM recommends that real estate managers take the following steps to curb illegal drug activity:

Include reviews for criminal activity, as permitted by law, in background checks of prospective tenants and employees.

- Define and address drug activity in lease agreements and company policy.
- Advise tenants in writing that illegal drug activity will be considered a breach of lease and subject to all applicable penalties.
- Advise the proper authorities of any known drug activity.
- Document all action taken in regards to a property involved in drug activity.
- Take the same precautions with employees as are necessary when dealing with tenants.

IREM supports legislation which protects and aids owners and real estate managers in responsible administration of anti-drug efforts. Laws that treat innocent owners and managers as accomplices are counter-productive, as are laws that demand managers to assume responsibility beyond the realm of management expertise.

IREM believes that real estate managers can best address and combat drug activity through their day to day activities and capacities as managers. It is not productive, and is dangerous, to burden

managers with responsibilities better suited to law enforcement, counseling agencies, or governments.

(6/90, updated 4/06, 10/10, 4/15)

Abating Criminal Activity in Rental Housing

Background

It is a fundamental component of the residential landlord-tenant relationship that residents should be entitled to the safe and quiet enjoyment of their residential dwellings and not be exposed to unabated criminal activity. Except in those jurisdictions which have enacted enhanced rights for landlords to address criminal activity occurring upon project grounds swiftly and decisively, landlords are sometimes left with no accelerated remedies to the perpetuation of crime by tenants or their invitees. Landlords can be shouldered with a burden of proof effectively blocking action until the time of conviction, often with ongoing criminal activity continuing unabated, co-tenants living in fear and if they can afford to, relocating to other housing, to the detriment of the landlord and the relocating tenant(s).

Many jurisdictions have granted landlords accelerated remedies to address criminal drug related activities and set the standard of proof as being a preponderance of the evidence, allowing terminations of tenancies pre-conviction if the landlord can prove that it is more likely than not, that drug related activity was committed by a tenant or the tenant's invitees. This principle is nothing new and has been custom and practice in federally assisted housing for years, enabled by supporting lease addenda. Such laws do not quash the accused resident's due process rights. The accused tenant is entitled to his or her day in court to respond to the accusations. Many states have expanded the scope of criminal activity qualifying for fast track evictions to include criminal gang related activity and a few even further, to include such crimes as illegal discharge of a weapon, prostitution, infliction of bodily harm, threatening or intimidating as defined by statute, or other activities of like gravity.

Position

IREM believes that state and local governments with landlord-tenant laws should empower landlords to promptly and decisively address criminal activity on property grounds or in dwelling units by tenants and/or their invitees in a manner not in violation of the accused tenant's due process rights, when such conduct breaches the rights of co-tenants and/or puts them at potential risk. IREM endorses such statutes enveloping illegal drug and criminal gang related activity, unlawful discharge or brandishing of weapons, assault or threats of assault, and other crimes against persons or property of like magnitude occurring within the property's boundaries. IREM further endorses governments setting shortened summons periods, and a preponderance of the evidence as the landlord's burden of proof to prosecute an accelerated eviction under such conditions, with the accused given the right to present a defense and to "show cause" as to why the eviction should not proceed.

Enacting such laws will not completely eliminate all criminal activity in rental housing, but it would allow reasonable and necessary responses by landlords once crime does occur.

(6/99, confirmed 10/06, updated 3/11, 3/16)

Occupancy Policies

(NOTE: This position is to be accompanied by the IREM recommendation entitled, "Establishing Fair and Reasonable Occupancy Standards". See *Appendix II*.)

Background

Occupancy standards, which determine the maximum number of occupants that can reside in a dwelling, have always been a matter of some contention among owners and operators of residential rental property. However, with the passage of the Fair Housing Amendments Act of 1988, occupancy standards, or more specifically the lack of them, have been a serious cause of concern for property managers. Although the Fair Housing Amendments Act did not set specific occupancy standards, it did require that any standard be fair and reasonable. In 1996 Congress enacted a law stating that a 2 person per bedroom occupancy standard was acceptable in most conditions. Even this law has its own grey areas as unusually large or small rooms can have higher or lower standards. Also, fair housing experts disagree among themselves as whether or not infants count towards the occupancy of a unit.

IREM has undertaken a study of occupancy standards which has led to the development of a guideline recommendation. The guidelines are meant to provide guidance tempered with flexibility and are designed to provide clarity to the Fair Housing Amendments Act provisions pertaining to occupancy standards and to reduce litigation resulting from the current lack of clarity. The results can be found in the Appendix II.

Position

IREM shall adopt the guidelines and objectives outlined in the recommendation entitled, "Establishing Fair and Reasonable Occupancy Guidelines" and shall further recommend that IREM chapters and the real estate community in general consider the guidelines and, where appropriate and necessary, pursue their endorsement and acceptance by state and local legislative bodies.

(Updated 10/07, 10/11, 04/16)

Commercial Broker Lien Laws

Background

Many states have been exploring, or have already enacted, a commercial real estate broker's commission lien law. As of 2014, 35 states have enacted broker lien laws in some form. In states with such laws, there has been a significant decline in commission collection litigation. Litigation to recover fees often consumes the entire fee the broker earned and would have been paid, and is not always swift, to the detriment of the real estate brokerages and commissioned agents involved in the transaction. These laws have been enacted to solve the problem of brokers going into a closing of a sale, then without mutual consent, receiving a fee lower than previously agreed upon, or in some cases, no fee at all. Although the language in each law varies from state to state, most laws state that the lien language must be placed in the written agreement signed by both the party the broker represents, and the real estate brokerage agency. This agreement is only typically valid with the principal broker, thus those working under the broker have no authority to place a lien.

The period in which a lien must be filed and perfected must be reasonable given transactional parameters. An example of such need would be in one state with a current lien law where the period in which a lien must be filed is within the window of time commonplace for free rent

concessions, and often a commission is not payable in part or in whole until rent commences, thus making the lien right illusory.

Position

IREM supports the enactment of commercial broker lien laws in all states to provide adequate assurance of payment for brokers who previously had no means of insuring payment of the agreed upon fee for their services, other than costly legal battles that are not timely resolved. The concept of commercial (multi-family, office, retail, industrial, etc.) broker liens allows a real estate broker providing brokerage services to attach the monetary benefit that the property owner derives from the service provided.

Of special interest to property managers, is the need for the lien laws to be as forceful and efficient for the commercial lease transactions as for commercial real estate sales. As more and more states contemplate creation of such laws, listing commercial brokers and cooperative brokers who participate in transactions will have a greater sense of security when completing a transaction (leasing and sales), which is beneficial to not only the brokers themselves, but their clients and the commercial real estate market as a whole. For states that enact new commercial broker lien laws and for those with existing laws in place, due care needs to be given to make sure that the period in which a lien must be filed and perfected is reasonable given transactional parameters. Please refer to IREM's briefing paper, updated in August, 2010, "Commercial Lien Laws," that is specifically dedicated to this issue.

(Adopted 10/06, updated 10/10, 9/15)

Community Assessment Protection Lien

Background

In most states today, when a mortgage is foreclosed lenders do not recover enough money to pay the underlying debt and costs. Thus, the junior lienors, such as common interest associations, ultimately receive nothing.

Since the early 1960's when the Federal Housing Administration (FHA) Model State Act for apartment ownership was promulgated, priority has been given to the lien of first mortgage over the lien of common expense assessments. The FHA required mortgage priority as a condition for approval of association development and other lenders followed suit. Therefore, community associations usually received no money upon mortgage foreclosure to cover common expense assessments. In the absence of an assessment lien priority, non-defaulting unit owners must unfairly cover insurance, security, and maintenance expenses creating inequitable and unanticipated financial hardships.

Lenders holding mortgages on both defaulting and non-defaulting mortgages have a vested interest in ensuring the continuation of the maintenance of a community association's common areas during foreclosure proceedings. Such continued maintenance and general upkeep is essential to the preservation of the value of their mortgage security interests. If a significant number of units are not paying their assessments, and they are uncollectible, the burden falls on the other unit owners, weakening their equity.

The 1980 Uniform Condominium Act provides for a limited six-month association lien for common expense assessments prior to all liens and encumbrances except for those recorded before the date

of the declaration. The lien is also prior to any mortgage or deed of trust for common expense assessments assessed against all of the units in proportion to their common expense liability, and due during six months immediately preceding institution of an action to enforce the lien. The adoption of the super priority assessment lien strikes a balance between the protection of the lenders and the need to enforce collection of assessments.

22 states have enacted legislation allowing for common interest association super priority liens. In those states collections have been much easier and lenders have paid the assessments. In most cases, lenders have made the delinquent owner pay the assessment. Lenders have had no problem purchasing and selling mortgages on the secondary markets. Virtually all secondary mortgage market lenders have been purchasing mortgages in these states without objection or second thought. The community association six month lien priority has been accepted by The Department of Housing and Urban Development, the Veterans Administration, the Federal National Mortgage Association (Fannie Mae), and the Federal Home Loan Mortgage Corporation (Freddie Mac). In general, the super lien priority has not affected the availability of condominium unit financing and has had a substantial positive effect on the ability of the associations to easily and effectively collect on delinquent assessments.

On August 15, 2013, Freddie Mac announced new guidelines for their reimbursement of servicers' payment of association regular assessments in super lien states, which would be in the amount equal to the lowest of:

- The actual amount of regular assessments advanced by the servicer
- The maximum amount of regular assessments that, pursuant to the project declaration or bylaws, would take priority over the mortgage, or
- The maximum amount of regular assessments that, pursuant to applicable State statute, would take priority over the mortgage

The reimbursement requirement was amended for mortgages with note dates on or after February, 14, 2014. Reimbursement for servicers for association assessments in super lien states would be in the amount equal to the lowest of:

- For mortgages secured by property in the State of Florida — no more than 12 months (or any lesser amount provided by State statute)
- For mortgages secured by property in the State of Connecticut—no more than nine months (or any lesser amount provided by State Statute)
- For Mortgages secured by property in all other States (including States that provide an exception for Freddie Mac Mortgages, such as Nevada) — no more than six months (or any lesser amount provided by State statute)

In September 2014, the Nevada Supreme Court ruled that super priority lien can extinguish a first deed of trust on a property.

Position

IREM supports state legislation which authorizes the recovery of up to six months of community association assessments through a lien of first priority. The priority lien should apply only to monthly or periodic common expense assessments made by an association, pursuant to an annual operating budget, and due during the six months immediately preceding institution of an action to

enforce the lien. Such a provision will strike a balance between the protection of the security of the lenders and the need to enforce collection of assessments.

(12/93, updated 4/08, 4/15)

Private Activity Bonds

Background

The Tax Reform Act of 1986 imposed caps on the dollar amounts of permitted private purpose bonds, with the exception of 501(c)(3) bonds. Each state is allowed to issue private activity bonds (PAB) each year in the amount of $95 per capita or $291.87 million, whichever is greater. More than one-half of all the states qualify under the $95 per capita limit. If a state does not use the entire amount permitted under its cap, it can carry forward the difference for up to three years. Since 1986, Congress has adjusted or lifted the caps on various state or local allotments in the case of an emergency such as a natural disaster. The Internal Revenue Service created a new PAB cap formula in 2012 based off the latest population figures released by the U.S. Census Bureau. With this new formula, state and local governments are expected to receive a 1.1% increase in 2013, on average, in the cap.

Private activity bonds must do three things: 1) more than 10% of the proceeds must be used for a private business use; 2) payment on the principal or interest of more than 10% of the proceeds must be secured by, or payments derived from, a private business use; and 3) proceeds will be used to make or finance loans to non-governmental units. These bonds are also restricted by the types of privately owned public purpose projects which can take advantage of tax-exempt financing. The types of issues authorized are mortgage revenue bonds (MRBs), small-issue industrial development bonds (IDBs), certain state-voted bond issues, student loan bonds, and those for a variety of exempt facilities, including qualified residential rental projects (multi-family housing).

Position

IREM supports programs to enhance financing opportunities for eligible real estate projects. Private activity bonds allow states to assist in the development of projects to meet their needs. We support increasing private activity bond caps to allow expansion of financing opportunities.

(6/00, updated 10/08, 4/13)

Bed Bugs

Background

Over the past couple decades, the issue of bed bugs has become a prevalent problem among U.S. property managers and homeowners. Nearly eradicated in the 1940s, *Cimex lectularius* or bed bugs, made a return in the mid-1990s. These tiny reddish-brown bugs tend to nest in the bedding, furniture, clothing and carpet of residential and commercial properties. Although they are visible to the naked eye, their nocturnal behavior makes them elusive and difficult to spot. Bed bugs feed off of warm-blooded animals, and leave behind red blotches and rashes when they bite the skin. Although they are not recognized as harmful to human health, they do cause discomfort, and psychological and financial burdens.

Recently, several states have introduced legislation in an effort to mitigate the prevalence of this pest. The legislation also aims to define who is responsible for the costs associated with cleaning up properties infested with beg bugs. New York passed a law stating landlords must disclose any history of bed bugs in a building within the preceding year to prospective tenants. This law only pertains to New York City limits. New Jersey went a bit further in requiring landlords of multiple-dwelling units to provide pamphlets to tenants with information on bed bugs and preventative methods. Landlords must have bed bug infestations exterminated directly after learning about them and can face a fine if they do not comply. Additionally, Arizona, California, Florida, and Maine have enacted state wide legislation pertaining directly to bedbugs in rental housing. A full list of state laws regarding bed bugs can be found here. So far there has been no federal legislation enacted to address the nuisance of bed bugs.

Position

IREM believes that all housing should be safe, sanitary, and decent. It is important for property managers to be educated on how to protect and prevent against bed bugs. IREM urges all property managers to comply with state and federal laws pertaining to bed bugs; although laws do not exist in every state addressing this issue, it is important to stay abreast of emerging laws that may affect your company and properties. IREM supports the funding of research to examine effective ways of mitigating bed bugs. Tenants have the responsibility to keep units sanitary; if there is a presence of bed bugs they must expeditiously inform the property manager.

Adopted 4/11 (Updated 4/16)

Appendices

Appendix I: Suggested Real Estate Management Licensing Language

In order for IREM's position on licensing to be effectively implemented, the statute or regulation defining the activities of brokers, association brokers, agents (salesmen), etc., must provide for property management as an activity. This is accomplished by adding property management to the traditional list of broker activities.

(NOTE: It is likely that the language recommended below will have to be altered slightly to conform with the existing language in each state. Some states already list management as an activity within the statute.)

Broker shall mean any person who, for a fee, a commission, or any other valuable consideration or with intent or expectation of receiving the same from another, negotiates or attempts to negotiate the listing, sale, purchase, exchange, rent, lease, property management, or option for any real estate or improvements thereon, or assists in procuring prospects or holds himself or herself out as a referral agent for the purpose of securing prospects for the listing, sale, purchase, exchange, renting, leasing, managing, or optioning of any real estate or collects rents or attempts to collect rents, or holds himself or herself out as engaged in any of the foregoing activities.

Depending on how the regulatory language defines agents/salesmen, similar amendment must be made to the agent/salesman definition.

After property management has been listed as a distinct broker and agent/salesman real estate activity, property management should be defined. In some cases this would be done in administrative rules, although it may also be done in the statutory language. The model language recommended is as follows:

Property management shall mean and include actions undertaken for another, pursuant to an agreement, in exchange for a fee, commission, compensation, or other valuable consideration, in the marketing; leasing; the physical, administrative, or financial maintenance; and overall management of real property; or supervision of such actions.

By adding this defining language, property management can easily be addressed within other statutory or administrative rule-making. This is advantageous in separating property management from other broker activities when similar treatment may adversely affect property management. For example, some states have applied rules governing transactional broker accounts to property management operating accounts because no clear distinction between the different accounts or the real estate practices existed in the statutory or administrative language. By outlining property management within the law, it will be possible to address property management in specific rule making, or exempt it from rules governing other broker activities.

Exemption for On-Site Managers and Other On-Site Personnel

It is also recommended that a licensing exemption be sought for on-site managers and other on-site personnel. The recommended exemption language is as follows:

Any person employed or retained by, for, or on behalf of the agent of, or the owner, of any real estate shall be exempt from holding a license, if the person is limited in property management activities to one or more of the following activities:

- Delivery of a lease application, a lease, or any amendment thereof to any person.
- Receiving a lease application, lease, or amendment thereof, a security deposit, rental payment, or any related payment for delivery to and made payable to a property manager or owner.
- Showing a rental unit to any person, as long as the employee is acting under the direct instructions of the broker, including the execution of leases or rental agreements, provided the broker is responsible for the actions of his employees.
- Providing information about a rental unit, a lease, an application for lease, or the status of a security deposit or the payment of rent to any person.
- Assisting in the performance of property management functions by carrying out administrative, clerical, or maintenance tasks.

It should be noted that in addition to the exemption of on-site residential managers, other typical exemptions include owners; attorneys acting on behalf of a client: receivers, bankruptcy trustees, administrators, executors, civil sheriffs; or others who may be acting on behalf of a government authority and managers of agricultural property.

IREM has no formal position on these other exceptions, but generally believes that individuals engaged in real estate activities should be held to the same ethical and professional standards as licensed real estate practitioners. While many states have statutory language dealing with the above mentioned practitioners, such occupations are likely to be of secondary concern to IREM members. Consequently, IREM chapters may or may not wish to pursue either licensing or exemption requirements for practitioners other than property managers and on-site residential managers.

(11/91, updated 4/04, 4/09)

Appendix II: Establishing Fair and Reasonable Occupancy Standards

Occupancy standards, which determine the maximum number of occupants that can reside in a dwelling, have always been a matter of some contention among owners and operators of residential rental property. However, with the passage of the Fair Housing Amendments Act of 1988, occupancy standards, or more specifically the lack of them, have been a serious cause of consternation for property managers. Although the Fair Housing Amendments Act did not set specific occupancy standards, it did require that any standard be fair and reasonable.

Further complicating the issue of occupancy was the 1988 Act's inclusion of families with children under classes protected from housing discrimination. The familial status provisions in the Act do not deal in numbers, as do occupancy standards. Essentially under the Act, unless a residential rental property meets specific requirements to qualify as elderly housing, it is illegal to discriminate against families with children. This presented numerous problems for rental property owners and operators as it became increasingly difficult to separate familial status and occupancy concerns.

A 1990-1991 study of property managers conducted by the Institute of Real Estate Management (IREM) indicated that occupancy standards and familial status were the basis for over twenty seven percent of all fair housing complaints filed. The study also revealed that fifty-six percent of all threats to file complaints were based on familial status and occupancy.

Following the study, IREM created a special study committee consisting of multifamily housing experts to examine occupancy standards and make a recommendation designed to diminish the confusion and curb the excessive litigation and complaint filing associated with misunderstandings regarding occupancy and familial status. The committee considered a second body of knowledge regarding various occupancy standards and guidelines used throughout the country, as well as the pros and cons of each.

The decision of the study committee was to recommend a national guideline which is essentially a composite of occupancy policies used by notable residential real estate management firms, as well as versions of multifamily occupancy policies used or once used in programs conducted by the Department of Housing and Urban Development (HUD) and the Farmers Home Administration (FmHA). The content of the recommended guideline also conforms with the so-called Keating Memo of March, 1991. In that memo, HUD's general counsel outlines a general guideline of two persons per bedroom, subject to exception based on various factors.

It is the purpose of the recommendation submitted by IREM's study committee to expound on the Keating memo and above mentioned guidelines and to communicate and encourage those guidelines to local IREM Chapters.

However, an inherent problem in a national guideline is that universal application is sometimes inappropriate to certain markets, property types and situations. Diametrically opposed to these varying conditions is the fact that uniform and consistent application of rules is central to fair housing.

IREM has always supported fair housing and equal opportunity for all individuals. At the same time, the Institute realizes that occupancy policies are necessary for reasons of public health and safety; protection of government subsidy; efficient use and protection of the existing housing stock; and numerous other reasons.

Therefore, with the understanding that the following guidelines are meant to provide guidance tempered with flexibility, IREM recommends that IREM chapters, and the real estate community in general, consider the following guidelines, and where appropriate and necessary, pursue their endorsement and acceptance by state and local legislative bodies.

Guidance Recommendation

As a general guideline, the following occupant density shall serve as a fair and reasonable occupancy guideline:

Bedrooms	Occupants – Min	Occupants – Max
0	1	2
1	1	2
2	2	4

Bedrooms	Occupants – Min	Occupants – Max
3	4	6
4	6	8
5	8	10

(Note: Minimums are usually applicable only in government subsidized housing in order to protect the subsidy. The maximum numbers apply to all housing units, whether subsidized or conventional.)

It should be noted that the above occupant density chart is not new. It has been used by HUD and FmHA and is essentially the same two-person-per-bedroom guideline recommended by HUD's general counsel. Nonetheless, it has not been formalized or nationally adopted, nor have most state and local governments adopted it.

Due to the variety of property types and configurations, the following guideline should be used in conjunction with this occupant density chart:

Bedroom Size

Each bedroom occupied by one individual shall have a minimum of seventy square feet. When more than one individual occupies a bedroom, the bedroom must contain a minimum of fifty square feet per occupant.

The above reference to square footage of bedrooms is taken from the Building Officials and Code Administrators (BOCA) Uniform Housing Code. It is identical to the Uniform Code established by the Southern Building Code Congress International (SBCCI).

Use of Recommended Guidelines in Subsidized Housing

When a subsidized housing program has an applicable policy for determining numbers of individuals per unit, the program guidelines or standards shall apply. In subsidized housing in which an occupancy guideline or standard is not provided, the guideline recommended in this paper should be pursued.

The Right to Appeal

A stated and clearly defined occupancy guideline is in the best interest of all parties concerned. While the above guideline should be suitable for a vast majority of properties, the wide variety of property types and property conditions found in the national housing stock will sometimes cause the application of a universal policy to have adverse effects on the property and/or the residents.

In these instances, owners and managers of private property should have the right to appeal any occupancy policy, including the guidelines mentioned above, that has been adopted by any governmental authority when a more restrictive or less restrictive policy is justified. When a variance in the government's occupancy policy is granted by such authority, the operator of the housing shall adopt the variance as a policy and by doing so shall be protected from discrimination complaints based on the failure to employ the government's less restrictive policy.

Property operators who feel it is necessary to seek a variance from any imposed occupancy policy imposed by local government should do so at an appropriate time. Such as:

- Following the adoption of an occupancy policy by a governmental authority.
- When it becomes evident that the governmental occupancy policy is inappropriate for a given property.
- When a change in the condition of a property makes the occupancy policy inappropriate.

Under no circumstances should variances be sought which:

- Adversely affect an existing tenant.
- Adversely affect a current rental applicant.

In order to protect the fair housing rights of existing tenants and current applicants, governmental bodies may use grandfather clauses, effective dates, or other methods determined necessary when granting a variance.

Although variances from the recommended guidelines are occasionally warranted, under no circumstances should patently discriminatory practices be the reason for or the effect of any variance or occupancy policy. Those practices include but are not limited to:

- Disallowing children in residential communities (except in legitimate elderly housing as defined by fair housing laws.)
- Restricting the number of children rather than the number of occupants allowed in a dwelling.
- Requiring surcharges or additional security deposits or fees for families with children.
- Steering families with children to or concentrating them in certain parts of a residential complex.

However, it should be the right of a private property owner/operator to:

- Require that families with children observe the same occupancy guidelines that are applicable to all tenants and potential tenants of a complex.
- Require that families which add children move into larger units when the addition of a child or children causes the applicable occupancy standard to be exceeded.

Use of this Recommendation

IREM recognizes that the use and pursuit of this recommendation is entirely at the discretion of the local IREM chapters. IREM believes that the use of an occupancy guideline, such as the one recommended, is beneficial to simplifying operations and avoiding litigation.

It must be emphasized that this recommendation consists only of guidelines which do not and cannot, in any way, supersede state, local or federal occupancy policies that are already in effect.

Some states and localities have already adopted occupancy standards. In such cases, those policies take precedence. However, IREM chapters are encouraged to compare the policy which has been adopted by the state or local legislative body to the guidelines which are recommended by IREM National. If they are substantially similar, or if the adopted policy is acceptable to IREM members, no activity in regard to the policy may be necessary. However, IREM chapters would be encouraged to pursue the creation of an appeal/variance process.

In states and localities that have impractical or unworkable occupancy guidelines, IREM chapters are encouraged to pursue amendments to conform the policies with the recommended guidelines including the appeal/variance process.

In states and localities that have no occupancy policies, IREM chapters are encouraged to pursue the adoption of the recommendation, including the appeal/variance process, to state or local legislatures.

Possible avenues for adoption of this recommendation include but are not limited to:

- State Legislatures
- City and County Councils
- Housing Agency Administrative Rules

When attempting to implement this recommendation, IREM chapters are also encouraged to seek the support and assistance of state REALTOR® Associations and Local REALTOR® Boards, other IREM chapters and other interested multifamily housing groups.

Additionally, IREM National will be communicating this recommendation to the Fair Housing and Equal Opportunity officials at the Department of Housing and Urban Development (HUD). IREM will pursue an endorsement of the recommendation by HUD which would aid in the adoption of the guidelines by state and municipal legislative bodies. IREM National will also encourage other multifamily housing organizations, and the National Association of REALTORS® to endorse and adopt the recommended guidelines.

IREM believes that these actions will help to remove the uncertainty over occupancy standards created by the absence of a specific fair and reasonable standard in the Fair Housing Amendments Act of 1988.

*IREM Fair Housing Survey Report; IREM, April, 1991.
**In Search of an Occupancy Policy: Occupancy and the Fair Housing Amendments Act of 1988; IREM, September, 1991.

(11/91, updated 10/07)

Appendix III: Indoor Air Quality Standards

IREM's position on OSHA's Notice of Proposed Rulemaking: Indoor Air Quality Standards

The members of IREM are committed to the maintenance of the health and safety of all occupants in buildings, and are ready to take whatever means necessary to meet prescribed qualifications. We believe that the property management industry, on the whole, is maintaining a high standard of IAQ compliance with the incentives already in place through current government and market influences.

IREM supports the direction the government is heading on minimizing the presence of Environmental Tobacco Smoke (ETS) in the work environment. Other stipulations in the ruling, however, are inconsistent and unnecessary for maintaining optimum IAQ in light of the extensive financial expenditures, time and record-keeping which the property owner would have to incur.

After reviewing the notice of proposed rule-making, IREM poses the following concerns:

1. Economic Feasibility

A) This proposal is overkill for property owners and property managers and will be too costly to implement. The extreme financial burden of making expensive structural modifications, training personnel, maintaining numerous records, investigating employee complaints, cost of manpower

and cost of consultants to advise on compliance standards and strategies would be one which many property owners could not afford in today's flailing real estate market. High vacancy rates of 18.4% and 11.7% in the office and retail building markets, respectively, will prohibit property owners from raising rents to compensate for these increased costs.

Any records which may be required should be kept to a minimum and relate only to preventative maintenance and repairs of the mechanical equipment pertaining to IAQ and required by the building owner. Records should only be kept at the property for a maximum of five years and be transferred with ownership.

B) This proposal will in itself be a burden to government resources, costing federal, state and local governments nearly $1.76 billion as part of OSHA's estimated $8.1 billion annual industry-wide expenses. Government buildings nation-wide account for 21.7 percent of this country's 2.39 billion square feet of office space. In addition, the building industry will incur millions of dollars annually for the added paperwork, investigations, and staff required to monitor public and private building compliance.

By encouraging employers to make IAQ compliance a priority in the work place, government entities and private industry will save on costs for endless paperwork, staff, and property modifications.

C) The estimated $1.76 billion financial burden incurred by the federal, state and local governments' compliance costs will ultimately be born by the American taxpayer.

D) Remodeling: During construction or remodeling, the tenant often contracts all of the work. The training must be among the contractors -- not the tenant or property manager's staff. In these cases, the contractors should be held liable. Building engineers must be trained in system management for both energy efficiency and acceptable IAQ treatment in buildings.

The definition of the term "remodeling" is unclear. The language of this ruling insinuates that virtually all activity will be considered remodeling. Tenant improvements and constant remodeling of space (placing office modules, bays, moving walls, equipment, etc.) would require the cost of consultant services to determine problems with airflows with each major change. The reports of these consultants, after modifications have been made, should qualify as a legitimate defense against related IAQ complaints on the property.

To avoid additional expenses, building owners or managers might shun necessary renovation or remodeling in order to avoid having to upgrade their HVAC systems.

The typical 100,000-square-foot office building experiences individual tenant turnovers three times each year. Each tenant turnover in a property requires additional structural remodeling expenses.

E) This ruling does not address compliance specifications for older buildings and would require the additional cost of consulting services to update "as-built" plans with each building modification. Many older buildings lack current "as-built" plans due to continual renovation over time.

F) New certification and training requirements of maintenance personnel will increase employers' costs for training and limit their hiring options.

G) ASHRAE's standard, which proposes to increase the requirement for external airflow in buildings, imposes an impossible financial and reconstructive burden to owners of antiquated buildings with "primitive" heating ventilation systems. Presently, the majority of pre-1989 buildings are not even designed to meet the 1989 ASHRAE standard. For example, buildings constructed in the 1970's which undergo remodeling will be required to upgrade their entire mechanical systems.

H) Under this regulation, a building owner or property manager may be required to run the HVAC when only one person is working in the building. Results of a sample study indicate an average 100,000-square-foot office building runs its HVAC system an average of 12 hours per day. Mandating 24-hour HVAC operation would add an estimated 20% increase in total operating costs. This significantly increases operating costs and energy consumption for only minor use.

2. Premature Timing of Proposed Ruling

The United States Congress is currently considering passage of the Indoor Air Quality Act of 1993 (HR 2919) which will permit and require funding for extensive research on Indoor Air Quality issues. This section in the bill is widely supported by IREM and the NATIONAL ASSOCIATION OF REALTORS®. Finalization of OSHA's proposed IAQ ruling would be premature, considering the IAQ research this congressional bill will provide, and conflicts with the intent and purpose of the proposed Indoor Air Quality Act by requiring property owners to bear the financial burden for installing a new system before extensive research can be applied.

Considering the recessive nature of the building market, many buildings unprepared to bear the extensive costs of this regulation may be forced to close. The banking industry will ultimately be burdened with numerous defaults, as many building owners will have to invest in costly modifications for properties that are only partially occupied.

(ref.: HR 2919)

3. Tax Credits

To ease the economic burden of the property owner, IREM recommends the introduction of positive incentives for compliance by providing tax credits on property owners' federal, state and local tax returns for buildings incurring expenses for mandated treatment or abatement of indoor air contaminants.

Furthermore, we recommend that properties receive real estate tax credits to recognize the fact that the imposition of building codes in many instances forced owners to use materials which were later discovered to pose health risks and which they now must bear the cost to remove.

4. Smoking Ban

A) The proposed ruling fails to address at length the procedures and options for a complete ban on smoking. IREM believes the best alternative to controlling ETS and its symptoms is for buildings to create a smoke-free environment in concordance with the Smoke-Free Act of 1993, which would ban smoking in the workplace. This approach would eliminate altogether the need for designated smoke rooms and the expensive ventilation system this rule would require. At the same time, the no-smoking ban would create a healthier workplace and reduce cleaning and maintenance costs.

Currently, nineteen states and the District of Columbia are successfully enforcing a no-smoking ban in private workplaces; 34 percent of the 85 percent of firms with smoking policies have complete smoking bans. This presents strong evidence that states and localities already are

succeeding, without federal government intervention, in producing a more cost-efficient and safer IAQ workplace environment.

B) This proposal does not discuss which governmental laws or regulations - federal, state or local - will take precedence in this issue. State and local governmental bodies may have their own, stricter standards with complete bans on smoking in the workplace. This regulation needs to address the legislative impact this regulation will have on relevant state and local laws and regulations already enacted. Otherwise, enormous confusion over compliance will emerge not only between governmental bodies, but among the property owners and managers as well.

5. Property Owner v. Tenant Liability

The burden of liability between the employer and tenant for implementing and maintaining the new IAQ standards is unclear, especially in multi-employer building relationships, where concurrence on IAQ standards and responsibilities is difficult to obtain.

OSHA needs to specifically clarify the roles and responsibilities of the landlord, tenant and even the tenant's employees in ensuring proper compliance. Requiring the tenant to develop and implement compliance through actions such as inspection and maintenance of the building creates a conflict, as most tenants do not have responsibility or control of building systems. In contrast, while many landlords of retail facilities may control all or part of the building ventilation system, the tenants and their employees have the ability to influence IAQ through their use of thermostats, which may affect airflow, and other controls or activities.

While the cost of installation may be the responsibility of the property owner, landlords have a contractual relationship with tenants, not their employees. The building owner's responsibility is that of a service provider. In some cases, the building owner may be responsible for HVAC modifications and maintenance, as well as determining building rules regarding smoking. This rule imposes nearly all of the responsibility on the landlord (employer with control over the building systems) to establish the IAQ compliance program and to assure compliance. Confusion may also arise as to the responsibilities in triple net commercial leases.

In addition, keep in mind that this regulation will not change the contractual relationship between the tenant and owner in the lease. A property owner should not be held liable for the failure of a tenant or employer to implement the ban, provided that the landlord/property manager established an ETS and IAQ system in good faith.

6. Forced Monitoring of IAQ Complaints

Forced monitoring of IAQ-related illnesses/complaints encourages bogus claims to hold the owner hostage to high absenteeism, suits and unnecessary investigations and paperwork. Property owners may be forced to pay the cost of "IAQ-related" claims for employees when in fact their illness was contracted at home or is stress/lifestyle-related.

7. Incomplete Findings

This ruling fails to provide substantial scientific evidence to support its findings, and frequently presents conflicting statements. For example, HVAC's Standard 62-1989 guidance document specifying minimum outside ventilation rates does not include explanation to support the standard and is admittedly based more on sensory comfort than ETS control.

IREM and the NATIONAL ASSOCIATION OF REALTORS® are currently researching significant issues which need to be addressed in determining the feasibility of this proposed rulemaking.

8. Relative Humidity Standard

This ruling's requirement that buildings maintain a relative humidity (RH) below 60% may be difficult for owners of buildings to maintain in extreme temperature climates. Buildings in dry ambient environments may require more than 60% RH to maintain acceptable comfort levels. While buildings in the hot and humid southeast will be required to bring in 20% more humid ambient air, many properties simply don't have the cooling capacity to dry that much fresh air out. Buildings which require more water for their cooling systems in order to meet this compliance standard could increase susceptibility of tenants to Legionnaire's Disease and harmful bacteria from molds and spores which commonly originate in HVAC duct systems.

9. 24-Hour Advance Notification

The requirement of a 24-hour advance notification to employees of work to be performed that may introduce potential air contaminants to the work area needs to be clearly defined. Daily, employees are repeatedly exposed to potential air contaminants, through janitorial maintenance, introduction of new furniture and commonly used effluents. It is highly unlikely and impractical to expect tenants to give notice to building managers for introduction of these materials on an ongoing basis.

Unless this issue is more specifically addressed, this rule would be a waste of human effort, money and time, and would encourage paranoia in the workplace.

10. "Designated Person"

The "designated person" in this ruling is not clearly defined or warranted. Since he or she is required to oversee the establishment and implementation of the IAQ compliance program and building systems inspection, as well as maintenance activities, the "designated person" must possess the relevant technical expertise. Since the rule requires the HVAC system be operating during every workshift, the "designated person" will be required for three shifts per day in many buildings. OSHA should clarify and relax this requirement.

11. Written IAQ Compliance Programs

OSHA proposes that employers develop a written IAQ compliance program, including extensive information on the building's systems, their operations and maintenance, yet gives no guidance or research information to guide them. They assume that an employer can implement the necessary controls and measures -- including the operation and maintenance of building systems, to achieve compliance.

12. Identification of IAQ-Degrading Industries and Contaminants

This proposed ruling fails to address specific industries and substances which could ultimately be responsible for some IAQ-related illnesses. OSHA focuses on HVAC systems as the main cause of IAQ problems and ignores other source contaminants. In effect, the proposed ruling places the burden on building owners to dilute rather than prevent contamination. Many assessments of IAQ pollution sources are also found to originate in the construction or renovation of buildings.

Our review of NIOSH studies support that a majority of "IAQ-related" complaints are related to thermal comfort. While important to tenant satisfaction, thermal comfort should be exclusively omitted from any definition of air contaminants or degrading factors of IAQ. No regulation should be enacted until there is a validated product risk.

13. Sufficiency of Currently Enacted Regulations

IREM disagrees with this proposed ruling's implication that the only way to ensure compliance to IAQ standards is through punitive measures as incentives. The fear of punishment with the overburden of compliance measures will eventually deteriorate the respect and cooperation OSHA currently receives from property owners.

This proposal's own findings indicate that, at the very least, 70 percent of property owners and managers are complying with IAQ standards, proving the majority of buildings meet satisfactory IAQ compliance. This is strong evidence that current government and self-regulation are highly successful.

(Adopted 9/94)

Appendix IV: ANSI I 14.1 Window Cleaning Safety Standard

IREM aims high in endorsing safe and cost-efficient maintenance of buildings and building amenities and encourages vendors and contracted services to employ the utmost precaution in their window cleaning activities. Members of the IREM Legislative and Public Policy Committee reviewed the ANSI Standard I 14.1-2001 entitled Window Cleaning Safety Standard (referred to below as "Standard"), and agreed the following issues should be addressed by ANSI:

1. The Training, Instruction, and Supervision section 3.4 is vague

Section 1.6 c states "the window cleaning contractor shall utilize workers trained in accordance with section 3.4 of this standard." Section 3.4 is vague and ambiguous as it does not define in an objective way what training, instruction, and supervision mean. Neither is "proper on-the-job training period" defined or qualified.

2. Clearer definitions needed

The Standard establishes definitions for a number of items and persons. One of those is a "competent person." This is a broad definition in that it is designated by the employer, thus there is no real standard. "Competent" will mean something different to each employer. It is unclear as to whether it is the employer or the "competent person" who "has the authority to take appropriate actions" with respect to identifying "workplace hazardous or dangerous conditions."

The next definition of concern is that of the "qualified person". The "qualified person" is "a person who, by possession of a recognized degree or certified professional standing or who, by extensive knowledge, training and experience, has successfully demonstrated the ability to solve and resolve problems relating to the subject matter and work." The definition begs the question of what a recognized degree or certificate of professional standing is. Further, the Standard does not provide an objective universal standard of training, nor does it provide for testing to qualify or certify "competent" or "qualified" persons. There is no certification by a recognized association or government agency.

3. Elaboration needed on excessive wind speed

Excessive Wind Speed is addressed in section 3.7, which prohibits window cleaners when their work area is exposed to excessive winds. Excessive winds are vaguely defined, which is a problem. Even more problematic is that the Standard does not establish who is responsible for making the decision. There should be some maximum wind speed at which everyone can agree is unsafe for

workers, the public, or the property. Real estate managers need a more objective measure than what the Standard provides.

4. Anchorages section needs to acknowledge differences between building managers and window cleaning contractors

Anchorages are addressed in section 3.9, where the burden of knowledge and expertise is unfairly placed on building owners. Building owners and management should be able to hire industry certified and qualified companies to handle their exterior window cleaning for their properties. The way section 3.9 is phrased puts building owners in the position of being equally knowledgeable with window cleaning contractors.

5. Add timeline to Building Requirements section

In section 4, Building Requirements: Applicability, it is stated, "all buildings where window cleaning is performed that employ suspended equipment shall be equipped with roof anchorages or other approved devices which will provide for the safe use of the equipment in conformance with the provision of this Standard." No timeframe for this requirement is written. There should be a phased requirement allowing building owners sufficient time to make informed decisions.

6. Clarity needed on violations

In the section 5.6—Manual Swinging Scaffolds and Boatswain's Chairs—it states: "No window cleaner shall attempt to clean any surface beyond his reach. Swinging, swaying or any other maneuver to increase the work areas shall be prohibited". A valid point is made, but the Standard fails to assign responsibility or consequences for a related violation.

7. Conflicts in Part B

In Part B- Building and Equipment Design Requirements, section 7 paragraph 7.2.6 conflicts with paragraphs 4.1.1, 7.1.1 and section 1.3.

8. The Inspection and Testing section needs to state who is a qualified person

Within section 8 addressing Inspection and Testing, the Standard speaks to original components being designed by a registered professional engineer. Signs of wear or distress are to be reviewed by a "qualified person" to determine whether testing is necessary. Remember a "qualified person" may or may not be a degreed or certified professional. A "qualified person" may be qualified by "extensive knowledge, training, and experience and has successfully demonstrated the ability to solve or resolve problems". The Standard does not establish who can define who is "qualified"; an employer can define a "competent person". This section goes on to address visual inspections by a "qualified person." This has the potential for being very subjective from one "qualified person" to another.

9. Conflicts with OSHA and non-defined terms

The Minimum Inspection and General Testing Criteria section (8.1.3 b) addresses "post installation test," which is not a defined term in the Standard. More importantly, this paragraph seems to be in conflict with OSHA requirements that would call for an ultimate load of 1250 pounds. There may be a misprint in 8.1.3 d which refers to ASME A120.1.

Under design criteria for Anchorages and Fall Protection, the Standard calls for anchorages to be inspected annually by a "qualified person." Is this a visual inspection or some kind of load test? It further states anchorages shall be re-certified when re-roofing or renovating or at periods not to exceed 10 years. Is re-certification based on a visual inspection, load test or other type of testing? Is

the re-certification good for 10 years? Will an engineer certify an anchorage system for 10 years? A more appropriate re-certification might be for a year and subject to no structural or significant changes to the anchorage area. The paragraph goes back to anchorage inspection where it speaks about an area of suspicion then talks about a test procedure, "if necessary," which is very subjective and this is being called for by a "qualified person."

The section on Certification and Re-certification should include specifications for certification and recertification and each should be consistent with OSHA.

Summary

In summary, if the intent of this Standard is the safety of workers and the public then some follow through needs to be completed. There are terms that need more complete definitions. There are terms that need more clarification. There are sections of this Standard that need simplification and consistency between the Standard itself and OSHA standards. The word "all" should mean "all." A paragraph should not call for all building to follow the Standard, and then be followed by a paragraph that contradicts the meaning of another paragraph or leaves the reader to interpretation for the purposes of finding a loophole. Standards of safety and responsibilities for knowledge and expertise should be proportionately placed on the appropriate professionals, vendors, and building owners.

(Adopted 10/06)

Appendix V: Premises Security Standards

The NFPA developed the 2006 edition of the NFPA 730 "Guide for Premises Security" in late 2005. The document is not suitable for adoption into law. NFPA 730 describes construction, protection, occupancy features, and practices intended to reduce security vulnerabilities to life and property. It covers a security vulnerability assessment, designing a security plan, interior protection, exterior protection, security guards, special events, and security measures for occupancies.

In the past IREM has written to the NFPA expressing IREM's belief that the NFPA's premises liability standards, if adopted, could cause great harm to all building owners due to the following reasons: "one size does not fit all"; increasing litigation; false sense of security for tenants; education; suggested alternatives; need for adequate research; and increased insurance premiums.

The IREM Legislative and Public Policy (LPP) Committee read the 2006 edition of the NFPA 730 "Guide for Premises Security" ("standard") in the summer of 2007.

NFPA has expertise in many areas, but not building security. IREM believes that NFPA should not be writing guidelines on premises security. IREM supports a single model building code. The International Code Council has been working towards a uniform code and IREM supports these efforts.

The LPP Committee has the following concerns with the "Guide for Premises Security"

1. Types and classes of office buildings not differentiated. In regards to Chapter 19: Office Buildings, many provisions in the chapter do not take into account the different types and classes of office buildings. Most of the provisions are predictable for a large class A office, but not for the lower class B and class C, especially when dealing with multi-tenant occupancy that has many clients visiting the location. It is not reasonable to hire a security patrol and or remote surveillance

systems to monitor a 4,000 square foot multi-tenant office building with a net operating income (NOI) of $ 19,400.

2. Using the local police for security. Provision 19.4.1.4 suggests that "the local police should be required to include the facility in patrol routes." That is feasible if a manager is managing only a few properties with a high crime rate. However, most IREM members are managing multitudes of properties and if a manager of a number of buildings in one area called the police and asked the police to include the buildings on a patrol, the police would most likely respond by suggesting the manager hire a private patrol company to patrol the area.

3. Security companies may be using the standard for their own self-interest. Provision 19.4.1.6 suggests that "management should be active in local security associations or industry trade groups as a means of sharing common security concerns and solutions." IREM is concerned that members of the NFPA, which is composed of security companies, patrol firms, and contractors, may have made that suggestion for their own self-interest.

4. Traffic control should take into account the building's class and location. In regards to traffic control at ground and street level entrances, provision 19.4.2 states that the entrances should not appear open to casual visitors and building traffic must be controlled. The NFPA should take into account that the appropriate traffic control depends on the class and location of the structure. For example, an IREM member manages a four-story multi-tenant office with predominantly counseling service occupants. Even though there are arrows painted on the pavement, some of the tenants' clients do not care and will disregard the arrows by driving in the wrong direction. In that situation, gate arms and directional spike strips would cause more problems than the cost would justify.

5. Separate lots for tenants and visitors not always feasible. Following traffic control guidelines, provision 19.4.4.2 states that parking for employees and tenants should be separate from visitor parking. Returning to the example above, it would not be practical for that property, which has mostly counseling service occupants, to section off parking for tenants versus visitors due to the vacillating nature of the mix of cars.

6. Parking identification unrealistic. Another recommendation for parking lots contained in the NFPA 730 calls for requiring tenants to affix parking identification stickers on their vehicles. In several of the buildings IREM members manage parking identification for tenants is unrealistic due to the nature of the property, the amount of tenants, and the added complication of spouses trading cars for the day.

7. Difficulty providing security on adjacent parking facilities. Provision 19.4.4.8 states that "if adjacent parking facilities, not under the control of management, are used for overflow parking, management should provide for safety and security services when the lots are in use." In regards to having the current manager to supply security services to an adjacent parking facility, IREM members question if the property is not under the current management then who is managing it? IREM members are not aware of an owner who allows tenants of another building to use his or her lot for overflow parking without some form of rent. It is the land owner's responsibility to provide security to reduce his or her liability; however, if the property manager is to provide security then the rent should be abated relative to the service provided. If the property manager of an adjacent property is providing security services then that manager could be exposing himself or herself to liability if there is a crime, such as a burglary.

8. No feasible, practical way to allow someone to see inside an elevator. Provision 19.4.6.5 states that "elevator cars should be equipped with the means to allow someone to see inside the car before entering." IREM members are frustrated that the standard does not attempt to explain how property owners and managers may accomplish that. To effectively perform what the panel is requesting, closed circuit TV's would need to be installed on all floors so that as the elevator is moving from floor to floor people could see who or what is on board. Realistically that creates more potential problems than it solves. For instance, someone would have the ability to observe an individual and which floor the individual stopped at. An assailant would have the ability to see if a vulnerable person is on board as the elevator car is approaching.

9. Access control standard does not consider cost prohibition. All exterior doors are to be equipped with automatic sensors and door locks according to provision 19.4.7.1. In buildings of a certain class and size that level of access control would make sense; however, for a broad measure covering all office buildings it is nonsensical that the drafters of the standard did not mention cost prohibitions.

10. "Do not duplicate" not a guarantee of safety. Concerning the effort to have all keys marked "Do Not Duplicate," in provision 19.4.8.13, it is a great idea in an ideal world, but in today's automated world it is unrealistic. Law-abiding tenants would heed this but the lawbreakers, for whom this idea is directed, would go to a local home improvement store and plug the key into an Access + machine to make a duplicate key. That machine will make duplicates regardless of what is written or engraved on the key.

(Adopted 10/07)

Appendix VI: ASHRAE Standard 62.1-2007 Ventilation for Acceptable Indoor Air Quality

The ASHRAE Standard 62.1 is now updated by ASHRAE on a regular basis according to the organization's continuous maintenance procedures. The purpose of the standard has consistently been to specify minimum ventilation rates and other measures intended to provide indoor air quality that is acceptable to human occupants and that minimizes adverse health effects. However, ASHRAE's means of achieving its goal have developed over the years.

The latest version of the standard, published in 2007, includes changes that impact ventilation system designers and their designs. It defines requirements for ventilation and air-cleaning system design, installation, commissioning, and operation and maintenance. All spaces intended for human occupancy are covered by the standard, except those within single-family houses and multifamily structures of three stories or less above grade. Additional requirements for industrial, health care, and other spaces may be dictated by workplace and other standards. The scope of the standard states that the provisions are not intended to be applied retroactively when the standard is used as a mandatory regulation or code.

Position

The members of IREM are committed to the maintenance of the health and safety of all occupants in buildings. We believe that the property managers are maintaining a high standard of indoor air quality compliance with the incentives already in place through current government and market influences.

The Indoor Air Quality Sub-Committee of the Legislative and Public Policy Committee reviewed the Standard and expressed the following concerns:

Because the standard is very technical in nature, a real estate manager who does not have a technical background would need to hire a licensed professional engineer to make an analysis for each building.

The standard's references to biological contaminants led members to ask if the standard takes into account factors outside of the building owner or manager's control, such as a tenant's plants or perfume.

The standard defines acceptable indoor air quality as "air in which there are no known contaminants at harmful concentrations as determined by cognizant authorities and with which a substantial majority (80% or more) of the people exposed do not express dissatisfaction." If an 80% affected occupants rule is applied then the contaminants listed in the standard may not come into play in larger buildings, but could still impact smaller buildings.

The frequency of inspections is also of concern to members. The standard states that "the ventilation system shall be operated and maintained at a minimum in accordance with the provisions of this standard." More specifically it provides that "ventilation system design, operation, and maintenance shall be reevaluated when changes in building use or occupancy category, significant building alterations, significant changes in occupancy design, or other changes inconsistent with the system design assumptions are made."

Maintenance requirements in the standard are such that a one-time review would most likely be inadequate for compliance. Many of these maintenance issues are neither realistic nor acceptable and are indicative of excessive regulation. For example, if a member was to maintain an Operations and Maintenance Manual with all of the documents suggested by ASHRAE, the member would be responsible for an unnecessarily extensive documentation system.

ASHRAE has not demonstrated that health problems or complaints are a result of a lack of proper maintenance procedures in buildings nor are AHSRAE's standards based on scientific findings.

The standard does not recognize differences in climate variations across the country.

Complying with the standard may be cost prohibitive. ASHRAE's standards may increase cost of new construction significantly, as well as compliance costs in present buildings. Therefore, these standards may not be suitable or realistic for all building types or sizes.

(Adopted 10/08)

Appendix VII: Guidelines for the Use of Human Models in Advertising

The Federal Fair Housing Act of 1988 is designed to protect the rights of individuals from discrimination in housing. The Fair Housing Act makes it unlawful "to make, print, or publish any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status, or national origin..."

Any advertising that uses human models to suggest lifestyle, through the use of an illustration, photo, or through any other reproductive means, requires reasonable representation of both majority and minority racial groups. Adequate representation of families with children and both sexes is encouraged and should be complementary of the entire area, not a specific target market. The advertisement will need to illustrate impartiality with regard to each model portrayed in the display, which in turn suggests to any interested party they have a free choice in housing.

The Institute has had a long-standing interest in fair housing and remains committed to the letter and spirit of the Federal Fair Housing Act. Our greatest concern is that people are able to choose freely, without interference, where they will live without the constraint of prejudice or discrimination. We urge our members to support these guidelines and advance our position throughout the property management industry and within our respective communities.

According to HUD, the following words, phrases and symbols may convey a discriminatory intent and should be avoided in housing advertisements. In January 1995, HUD issued a memo to provide additional guidance "on the procedures for the acceptance and investigations of allegations of discrimination under Section 804 (c) of the Fair Housing Act involving the publication of real estate advertisements."

Examples of words descriptive of dwelling, landlord, and tenants:

- White private home
- Hispanic residence
- Adult building

Examples of words indicative of race, color, religion, sex, handicap, familial status or national origin:

- Race: Black, Caucasian, Oriental, Hispanic, American Indian
- Color: white, black, colored
- Religion: Protestant, Catholic, Christian, Jewish
- National Origin: Mexican American, Puerto Rican, Chinese, Italian, Irish, Latino, Polish
- Sex: male only, female only or the exclusive use of any other words in advertisements, including those involving the rental of separate units in a single or multi-family dwelling, stating or tending to imply that the housing being advertised is available to persons only of one sex and not the other
- Handicap: crippled, blind, deaf, mentally ill, impaired, physically fit
- Familial Status: adults, children, singles, mature persons

The following are some of the preferred examples for the above:

- Estate homes
- Custom features
- Resort community
- Luxurious apartments
- Exquisite wooded setting
- Apartment with wheelchair ramp on first floor
- Housing for mentally challenged
- Beautiful, prestigious community
- Handicapped persons given priority
- Distinguished homes/Regal residence
- Community with special programs for the emotionally challenged

The following are some of the questionable examples of above:

- Private community
- Integrated neighborhood
- Prefer articulate roommate
- Ideal community for physically fit persons
- Prefer bright, healthy person to share apartment
- No persons infected with AIDS need apply
- Condominium owners restricted to those approved by board
- Any symbols or logotypes which imply or suggest race, color, religion, sex, handicap, familial status or national origin
- Any words or phrases used regionally or locally which imply or suggest race, color, religion sex, handicap, familial status or national origin

Directions to real estate for sale or rent (use of maps or written instructions)

Any reference to real estate location made in terms of racial or national origin, significant landmarks such as an existing black development (signal to blacks), or an existing development known for its inclusion of minorities (signal to whites), should not be used. The advertisement also should not contain specific directions which refer to a synagogue, congregation, parish or any other racial or national origin. These words may indicate that the landlord or owner of a dwelling has a particular preference based on race, national origin or religion.

Examples: Preferred

- North from the Beltway, right on Connecticut Avenue
- Past the Library of Congress
- From Jackson Street, right on Auburn Avenue
- I-95 South to Sterling Road

Examples: Questionable

- Take the Beltway to Exit 33 at the Mormon Temple
- Past the Martin Luther King Jr. Memorial
- Located near Ebenezer Baptist Church
- I-95 South to Seminole Indian Reservation

Area (location) description:

Name of facilities which cater to a particular racial, national origin, or religious group such as country club or private school designations, or names of facilities which are used exclusively by one sex, should not be used to describe an area.

Example: This community is located in the country-club neighborhood of Spring Gardens (permissible only if the Spring Gardens Country Club is open to all persons regardless of race, national origin or religion). * (®1991, ®1993 Newspaper Association of America, Reprinted 1993)

(11/93, updated 10/08)

Appendix VIII: Housing for the Elderly

In the United States, each day 5,000 persons reach their 65th birthday, resulting in a net gain every year of more than 500,000 senior citizens. In the last two decades, the over-65 population increased twice as fast as the rest of the population. While over one-fifth of Americans were 55 years of age or older in 1982, this group is expected to grow at a rate of 113% between now and the year 2050, according to the U.S. Bureau of the Census.

Through the normal course of economic and social change and attrition, these individuals are often left without family and/or with substantially reduced family support (both financially and emotionally). The once-common extended family, wherein adult children and parents frequently resided together has neared extinction, due to greater life expectancy, greater mobility and a general feeling for independence.

With respect to housing, the needs and living conditions of many of this nation's elderly have changed as they have aged. For many elderly, their present (or near future) housing situation may no longer be suitable for their particular needs. Older persons should not be viewed as a homogeneous group, as they represent a wide range of income levels, health and functional impairment needs, living arrangements, personal preferences, and so forth. Nevertheless, there are several characteristics of the elderly which distinguish them as a group from the population as a whole: (1) income, (2) health and functional impairment, and (3) living pattern.

From a public policy standpoint, it is up to the community to determine the types of housing that is best suited to the needs of its respective population. Many groups have addressed this issue but not necessarily from the property management viewpoint. IREM advocates that the issues be addressed at the management level in conjunction with private and public agencies and interest groups. Members of the Institute of Real Estate Management recognize this significant need and to address the special requirements and necessity for provision of viable methods of meeting the support services that many elderly require. Further, we encourage the federal government to understand the problems of the elderly. It is not IREM's desire to promote the creation of more federal programs but rather to encourage better ways of dealing with the problems for the elderly in need of assistance.

Unfortunately, there is no clear definition of just what constitutes alternative living arrangements for the elderly. Generally they represent a range of semi-independent living arrangements that are targeted to fill the gap between independent living for older residents and dependent care. There is also no consensus on either terminology used or a systematic approach in classification of alternatives. However, most of the options are usually based upon the level of support services available as part of the living arrangement.

"A Guide to the Design and Development of Housing for the Elderly," published by the New England Non-Profit Housing Development Corporation lists the various types of alternative housing where an older person might reside. This is a graduated list based on level of dependence:

1. single family house
2. mobile home
3. apartment house
4. public housing
5. retirement community
6. boarding house
7. residence with relatives
8. retirement hotel
9. home for the aged
10. community residence
11. congregate housing
12. county home
13. intermediate care housing
14. nursing home
15. hospital

The basic concerns in providing and managing housing for the elderly are costs, support services and the physical unit itself. Studies indicate that among the elderly who live in non-care housing, the features that were the most important in the choice of housing related to cost/energy efficiency, decent and ample living space.

Those who manage housing for the elderly already know that these needs are not particularly unique to the elderly. Elderly residents want and expect to be treated just like any other tenant. Dividing the above types of housing into care levels (based on required professional support services) might look like this:

Level I - Consisting totally of persons who utilize limited social programs, require no health care services and desire units conventionally furnished and serviced.

Level II - Consisting of minimal assistance with daily housekeeping, status checks, and meal options provided by "paraprofessionals" or aides.

Level III - Consisting of professionally provided services such as regular meals, housekeeping, personal and medical care and recreational activities.

Occupants residing in elderly housing developments might live very independently, if tenancy begins at a conventional retirement age. However, regardless of the type of living arrangement -- independent, semi-dependent, or dependent -- the residents continue to age and the level of personal care, meals and housekeeping support services that are required increase drastically. Problems associated with the residents' aging in place are the greatest concern for the effective/efficient management of all housing for the elderly.

Members of the Institute of Real Estate Management feel there is a need to create support systems for those requiring extended care, thus permitting continued semi-independent living. Our primary goal in serving the elderly population is to be able to provide methods of integrating the basic need services for groups within a single complex or neighborhood while at the same time preserving the safety, dignity and greatest possible degree of independence for these individuals.

It is imperative that federally funded/assisted housing programs consider the need for professional and non-professional support personnel and additional services for the elderly in appropriating funds for such housing. It is equally important to provide such services at reasonable costs in privately funded complexes and/or programs which could, in the long run, take some of the stress off public programs resulting in realistic cost savings for both public and private housing alternatives for the elderly.

(6/88)