

The impact of federal policies on real estate

July 13, 2022 | 12:00 – 1:00 PM

Time	Agenda item
12:00	<p>Welcome and introductions Ted Thurn, Senior Director, Government Affairs, IREM[®]</p>
12:05	<p>Real estate like-kind exchanges Dan Wagner, SVP Government Relations, The Inland Real Estate Group, LLC</p> <p>Mr. Wagner will explain what a like-kind exchange is, describe how they are used to finance economic development and support local communities, and examine the potential unintended consequences of legislative changes.</p>
12:20	<p>Affordable housing/ Choice in Affordable Housing Act (S.1820/H.R. 6880) Susan Monaghan, CPM[®], Executive Director, Cumberland Housing Authority</p> <p>Just about everyone agrees there is an affordable housing shortage, but who's responsible and how to fix it is a murkier picture.</p> <p>Ms. Monaghan will provide an overview of the affordable housing shortage and discuss the "Choice in Affordable Housing Act," a bipartisan piece of legislation that will increase investment and reduce programmatic barriers to attract and retain robust housing provider participation in the Section 8 Housing Choice Voucher (HCV) program.</p>
12:35	<p>The Secure and Fair Enforcement (SAFE) Banking Act Melissa Kuipers Blake, Brownstein Hyatt Farber Schreck</p> <p>Ms. Blake will talk about the SAFE (H.R. 1996) Banking Act, which would create a safe harbor for federally insured financial institutions to provide banking services for legitimate cannabis-related businesses (or businesses that tangentially work with them) in states that have legalized cannabis.</p>
12:50	<p>Audience Q&A</p>

Retaining the 1031 Like-kind exchange

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. Essentially, this tool "kills two birds with one stone" by encouraging both the sale of one property and the purchase of the replacement property. These transactions are vital to economic stability.

Background

With a total value of approximately \$5.26 trillion, commercial real estate's contribution to the nation's economy is enormous. Real estate activity accounts for nearly one-quarter of taxes collected at all levels of government (this includes income, property, and sales taxes). The real estate industry is one of the leading employers in the United States. Real estate assets and investment drive gains in economic productivity

"Like-kind exchanges" under Section 1031 of the Internal Revenue Code allow property owners to defer taxes on gains realized from the sale of "like-kind" real property until a future date. The like-kind exchange technique is fundamental to the real estate investment sector. The current law provides investors with the maximum flexibility in managing their real estate portfolio. Real estate is essentially an illiquid asset that requires substantial commitments of cash. Flexibility is needed to assure the free movement of property and capital.

A like-kind exchange does not avoid taxation.

Taxes are still paid in the great majority of cases, whether upon the sale of the replacement property, incrementally through increased taxes from forgone depreciation, or by inclusion in a decedent's taxable estate.

A like-kind exchange encourages development and spurs economic activity.

Exchanges stimulate real estate transactions and encourage U.S. businesses to reinvest in their domestic operations, as domestic and foreign property are not like-kind. By avoiding a tax-induced "lock up" of properties, like-kind exchange rules increase the frequency of property transactions and ensure a more dynamic real estate sector that drives real estate reinvestment and construction activity.

According to a 2021 study by Ernst and Young, like-kind exchanges are expected to support 568,000 jobs, contribute \$27.5 billion in labor income and \$55.3 billion of value added to the U.S. gross domestic product in 2021. The research also found like-kind exchanges will generate \$7.8 billion in federal, state and local taxes.

Like-kind exchanges help the environment.

Like-kind exchanges are used in conservation easements to improve water quality, reduce soil erosion, maintain wetlands and sustain critical wildlife habitat. These exchanges enable landowners to acquire replacement farm or rangeland in less environmentally sensitive areas.

Congressional actions to date

A repeal of Section 1031 for gains greater than \$500,000 has been included in several proposals. It is important to continue educating legislators about the importance of the like-kind exchange to the real estate industry.

Choice in Affordable Housing Act (S.1820/H.R. 6880)

Federally assisted housing puts people into homes who otherwise would have challenges obtaining safe and decent housing. Providing assistance to low-income earners helps them find housing and helps real estate managers and owners fill vacancies. IREM Members own and manage over 60% of all federally assisted housing and public housing units in the United States.

Background

The Choice in Affordable Housing Act (S. 1820/H.R. 6880) is bipartisan legislation that aims to increase private sector participation in the Section 8 Housing Choice Voucher (HCV) Program. The House bill was introduced by Reps. Emanuel Cleaver (D-MO-05) and John Katko (R-NY-24) in March. This bill parallels Senate legislation (S. 1820) introduced last May by Sens. Chris Coons (D-DE) and Kevin Cramer (R-ND).

As part of reaching the goal of providing voucher holders access to high-opportunity areas, Congress should increase resources in the HCV program to attract and retain landlords, who are key partners. According to HUD, an average of 10,000 housing providers have left the HCV program each year between 2010 and 2016. Landlords can be reluctant to accept vouchers due to payment standards, the administrative process, and negative perceptions of voucher holders. However, many landlords are willing to accept vouchers with basic supports in place, such as having a staff liaison or risk management.

Critical reforms in the bill include

- Provide \$500 million to create a Housing Partnership Fund. The funds would be distributed for:
 - PHAs to offer a signing bonus to a landlord with a unit in an area with less than 20% poverty;
 - PHAs to provide security deposit assistance, so that tenants can better afford to meet required deposits and landlords are assured greater protection against damages; and
 - HUD to provide a financial bonus to PHAs that retain a dedicated landlord liaison on staff.
- Inspection reciprocity so that owners and operators already subject to other federal inspection protocols satisfy HCV requirements.
- Allow for “pre-approval” of units where a new housing provider participant can request an inspection of units and use that inspection to lease to a participating resident within 60 days.
- Application of Small Area Fair Market Rent (SAFMR) methodologies in more jurisdictions to ensure accuracy of payments and alignment with market rates, including an exception to prevent SAFMR calculations from decreasing rent payments.

Congressional actions to date

In June 2021, S. 1820 was referred to the Senate Committee on Banking, Housing, and Urban Affairs. In March 2022, H.R. 6880 was referred to the House Committee on Financial Services.

We urge members to contact their Senators and Representatives and ask for their support for Choice in Affordable Housing Act.

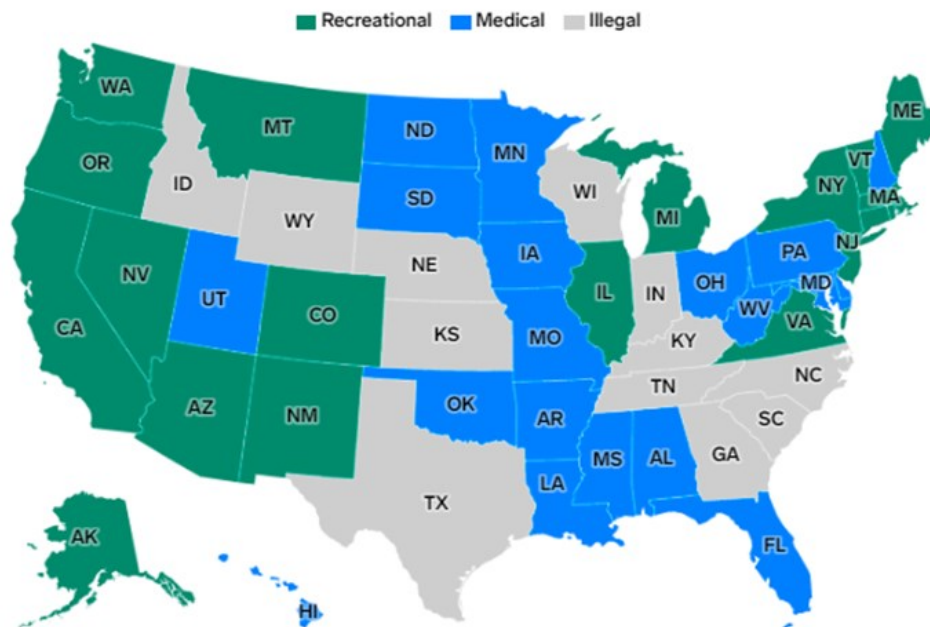
For more information contact Ted Thurn, Senior Director, Government Affairs at IREM.Legislation@irem.org or (312) 329-6021.

IREM[®] (Institute of Real Estate Management) supports the passage of H.R. 1996, the Secure and Fair Enforcement (SAFE) Banking Act. The Act would create a safe harbor for federally insured financial institutions to provide banking services for legitimate cannabis-related businesses (or businesses that tangentially work with them) in states that have legalized cannabis.

Background

- 38 states and the District of Columbia have passed legislation authorizing the use of cannabis for either medical or recreational use. The cannabis industry within those states is estimated to have brought in more than \$10 billion in sales and \$1 billion in tax revenue.
- Cannabis is still classified as a Schedule I controlled substance under the Controlled Substances Act, meaning FDIC-insured banks cannot accept money from cannabis businesses or they risk running afoul of anti-money laundering laws. This includes not just cannabis growers and retailers, but also any business that works with them such as trucking companies used for transport and rent paid for storage or retail space.
- The prohibition has resulted in these businesses being forced to operate on a cash-only basis. This not only creates security concerns for the businesses and the communities they serve, but also makes tracking and regulating the industry much more difficult.

States where cannabis is legal



Note: Updated as of May 27, 2022.

Congressional actions to date

- In the 117th Congress, H.R. 1996 (The SAFE Banking Act) was passed by the House 321-101 on April 19, 2021. On April 20, the bill was referred to the Senate Committee on Banking, Housing, and Urban Affairs, but has not moved out of Committee.



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Hi, we're IREM®

We're an international institute for property and asset managers, providing complete knowledge to take on real estate management's most dynamic challenges. That means knowledge prepared for the day-to-day and the one-of-a-kind: from solving the latest tenant crisis to analyzing market conditions.

For over 85 years, our members have made us the world's strongest voice for all things real estate management. Today, almost 20,000 leaders in commercial and residential management call this home for learning, certifications, and networking

Founded: Chicago, Illinois, 1933

Membership: Approximately 20,000 individuals; 500+ companies

Number of chapters: 80 domestic; 16 international

2021 leadership:

President: Barry Blanton, CPM®
Blanton Turner, AMO®, Seattle, WA

President-Elect: Renee Savage, CPM®, CCIM
SavageCRE, Inc, AMO®, San Diego, CA

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MEB Management Services, AMO®, Phoenix, AZ

CEO/Executive Vice President:
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IREM Certified Sustainable Property:

Practical, affordable sustainability. A green building certification for existing office properties, multifamily communities, shopping centers, medical office buildings, and senior housing communities, the IREM CSP allows owners and managers to collaborate on sustainability programs for their entire portfolios, not just a select few properties. Learn more at irem.org/gogreen.

IREM members' areas of expertise by property type:

Residential

- Affordable housing
- Public housing
- Apartments
- Condos/Co-ops/HOAs
- Manufactured housing
- Military housing
- Senior housing
- Single family housing
- Student housing

Commercial

- Industrial/warehouse
- Land parcel
- Medical buildings
- Office buildings
- Parking garages
- Self-storage
- Shopping centers/retail

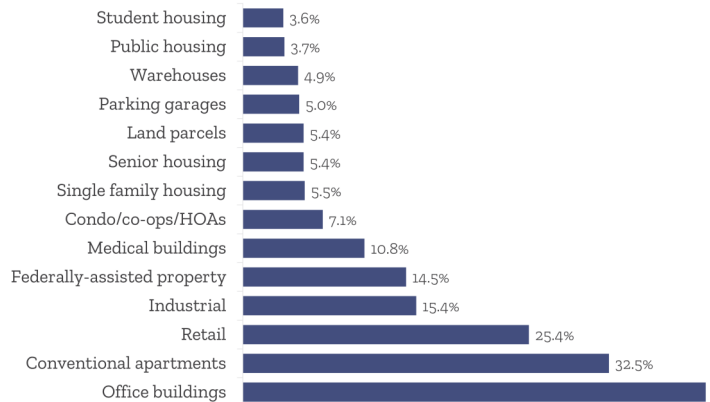
IREM professional training subjects include:

- Finding ways to boost efficiency, trim waste and sustain value
- Shepherding assets to success at every level, from site maintenance to loan analysis to investment
- Gaining financial acumen to create, maximize and sustain value
- Economics of real estate investments
- Using leading-edge marketing and leasing strategies for competitive advantage and generating higher returns for clients
- Strengthening client relationships
- Protecting tenants, residents and owners through maintenance and risk management

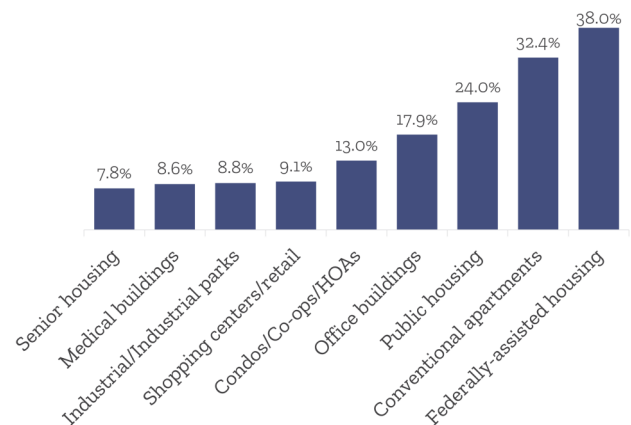
The CPM designation by the numbers:

- \$9.3 billion purchasing power annually
- \$2.1 trillion in real estate property assets managed
- 11.6 million residential units managed
- 10.1 billion sq. ft. of commercial space managed

Property types managed



Percentage of U.S. market managed



Americans with Disabilities Act

In continuing with its commitment to provide and promote equal opportunity for all people, IREM heartily endorses an end to discrimination against individuals with disabilities. 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. Fair and workable policies should include considering "financial burden" as a reasonable criterion when determining any obligation of compliance with ADAAG for existing facilities and alterations.

IREM will continually support legislation to create a "notice and cure" provision within Title III of the ADA. This would allow business owners the opportunity to rectify violations within a reasonable amount of time before being threatened with costly lawsuits or demand letters for a monetary settlement. IREM believes that this reform will protect building owners, while still holding them accountable for ensuring accessibility to all Americans.

Assistance animals in multifamily housing

Requests for assistance animals have increased, particularly in properties with no-pets policies or properties that impose weight or breed limitations or charge pet deposits or fees.

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' ability to ensure that the benefit of reasonable accommodation applies to only those who rightfully need the accommodation and to alleviate potential abuse by tenants and prospective tenants who fraudulently claim their pets are assistance animals.

Data security

IREM supports government efforts aimed at sharing information about possible cyber threats, establishing reasonable data security standards, and helping avert security breaches and their aftermath. IREM opposes legislation that would be overly onerous on property owners and managers or their clients.

IREM supports legislation that would ensure businesses are not liable for the negligent acts of third parties unless contributory negligence exists.

Fair Housing

IREM opposes discrimination in tenant decisions and housing practices. 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 to these protected classes, IREM supports the inclusion of sexual orientation and gender identity.

Disparate impact housing theory

We oppose policies and practices 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. In cases of legitimate business purposes where there is no reasonable alternative, we support the right to continue a policy or practice that could have a disparate impact.

IREM supports requiring that the party alleging the discrimination has the burden of proving that a policy or practice has a discriminatory effect.

Source of income as a protected class

IREM supports everyone's access to affordable housing, regardless of a person's legal sources of income. However, IREM opposes policies that force owners to enter contractual relationships with third parties.

Federally assisted housing

Federally assisted housing puts people into homes who otherwise would have challenges obtaining safe and decent housing. Providing assistance to low-income earners helps them find housing and helps real estate managers and owners fill vacancies.

IREM Members own and manage over 60% of all federally assisted housing and public housing units in the United States. Under project-based programs, the federal government, through the U.S. Department of Housing and Urban Development (HUD) contracts with private owners to fund the difference between the rent for the unit and 30% of the tenant's income.

IREM closely monitors all legislative and regulatory activity pertaining to federally assisted housing and engages with policymakers to encourage continued funding and clarification of new and existing notices and rules.

Reform and reauthorization of the National Flood Insurance Program

IREM supports the reform and long-term reauthorization of the National Flood Insurance Program (NFIP) to ensure its ongoing sustainability, encouragement of cost-effective private flood insurance options, and long-term reauthorization of NFIP so that it remains a viable option for property owners.

The NFIP is a partnership among federal, state, and local governments that helps mitigate flood risk and provide affordable flood insurance to those who need it most. If the program expires, flood insurance will become more costly or even unavailable. The NFIP provides over 90% of all flood insurance nationwide and almost 100% of coverage for individually owned properties and small to mid-size commercial properties.

Medical and recreational marijuana

An increasing number of states are legalizing marijuana to varying degrees, but it is still illegal at the federal level. This conflict between federal and state laws creates a complicated situation for real estate owners and managers. Property managers should review state and local statutes and regulations to ensure they are in compliance with medical marijuana laws and regulations. Property managers may also utilize best practices to address the issue as they see fit, such as lease addendums, with which smoking and illegal drug use can be prohibited.

IREM invites guidance from the government on how to implement policy and procedures for the properties operated by real estate owners and managers.

Pandemic preparation and response

IREM recommends real estate managers and owners of businesses and properties to establish policies and procedures determining what resources would need to be allocated to employees and clients during a pandemic.

Communicating with public health officials and related government regulatory authorities is critical as each pandemic may require different procedures depending upon how it is spread.

Real estate management licensing

IREM believes that the management of residential apartments, condominiums, cooperatives, homeowner's associations office buildings; shopping centers; and all other commercial property by independent contractors involves real estate activities and should require a license under existing state license laws. While IREM 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 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.

Rent control

IREM is opposed to government control of rents and supports a property owner's right to establish rents that produce sufficient income to accommodate the basic needs of residents and encourage investment in new construction and existing properties. IREM urges elected officials at all levels of government to oppose rent control as it significantly affects the housing inventory by accelerating the deterioration and loss of existing housing while discouraging the construction of new housing.