INSTITUTE OF REAL ESTATE MANAGEMENT

Legislative Statements of Policy

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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Business issues

Agency disclosure

IREM 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.

Bankruptcy

Single asset bankruptcy

IREM believes that the ninety-day automatic stay should apply to all properties, with no cap on the value of the asset. There should be adequate provisions that allow for the extension of the ninety-day stay to formulate a reorganization plan for successive like periods of time in highly complex cases.

Shopping center bankruptcy

IREM believes 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.

Debtors-in-possession should be expected to expeditiously appraise their leaseholds and assume or reject their leases. 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.

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.

Tenant bankruptcy

IREM is opposed to an automatic stay allowing continued occupancy by a debtor tenant due to the filing of personal bankruptcy.

In addition, the Institute supports efforts to 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 supports clarification within the bankruptcy code to better address condominiums and cooperatives and ensure fair treatment of all parties affected by the bankruptcy.

Commercial broker lien laws

IREM supports commercial broker lien laws to ensure contractual payment for property managers and brokers.

Community assessment protection lien

IREM supports state legislation that strikes a balance between the protection of the security of the lenders and the need to enforce collection of assessments by authorizing 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.

Consumer price index

IREM believes that the current method of calculating the Consumer Price Index (CPI) needs to be more accurate in conveying the true cost of living. Careful consideration should be given to the effects that would occur in the real estate marketplace as a result of changes to the current method of calculating the CPI which could negatively impact the business of property managers. Changes in methodology 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.

Credit risk retention

IREM supports fiscally responsible lending practices for all financial institutions to ensure a certain level of "skin in the game". Overly burdensome paperwork and tight lending requirements significantly hinder and slow commercial real estate transactions.

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 ensures businesses are not liable for the negligent acts of third parties unless contributory negligence exists.

Immigration reform

IREM supports a federal system that ensures that all workers be verified for their legal employment status. We support a web accessible employer verification system that is 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.

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.

Private property rights

IREM opposes legislation that arbitrarily infringes on the basic right of the individual to acquire, possess and freely transfer real property.

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.

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.

Use of eminent domain

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. The power of eminent domain should only be exercised for 'public use' as guaranteed by the Fifth Amendment.

Criminal Offenses

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)

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)

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)

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)

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)

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)

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

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)

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)

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)

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)

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)

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)

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)

Fair Housing & Discrimination

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.

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.

Fair Housing and Equal Opportunity

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.

Mrs. Murphy Exemptions

The Mrs. Murphy Exemption exempts owner-occupied properties with four or fewer rental units 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.

IREM believes that all properties should be subject to the same laws and regulations that require fair and equitable treatment of renters regardless of the size of the property.

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.

Housing Affordability

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)

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)

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)

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)

HUD Reforms: Bankruptcy

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)

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)

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)

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)

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)

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)

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)

Insurance

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)

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)

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)

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)

Landlord/Tenant

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)

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)

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)

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)

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)

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)

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)

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)

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)

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)

Tax

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)

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)

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)

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)

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)

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)