



The Voice of Real Estate in North Carolina

## **2009 Legislative Session Summary REALTORS® Commercial Alliance North Carolina Association of REALTORS®**

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

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

In its governmental affairs advocacy, the North Carolina Association of REALTORS® has always fought to preserve and promote the right to own, transfer and use real property. And with the current real estate market, and the economy in general, facing real challenges, the NC Association of REALTORS® focused especially on ways to improve the industry and our members’ businesses.

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

### **Tax Issues**

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

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

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

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

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

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

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

## **Property Insurance and the Beach Plan**

### **Property Insurance and Beach Plan Legislation**

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

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

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

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

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

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

The legislative study committee recommended making certain changes to the Beach Plan. **HB 1305 (Beach Plan Changes)**, introduced by **Rep. Hugh Holliman (D-Davidson)**, included many of the recommendations of the study committee. And although there were several other bills introduced that dealt specifically with one insurance issue or another, the momentum was clearly behind a comprehensive bill such as **HB 1305**.

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

The legislation that was enacted, (**HB 1305** - <http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H1305v7.pdf>), does the following:

- Retains Surplus – the bill requires that the accumulated surplus of the Beach Plan be retained.
- Beach Plan Surcharges
  - Locks surcharges in at 5% for wind and hail coverage and 15% for full homeowners policies. As noted above, the Beach Plan had recently increased these surcharges to 15% and 25%, respectively. And unlike prior law, the Beach Plan cannot increase these surcharges without an act of the General Assembly.
  - Additionally, the Beach Plan's ability to adopt surcharges on dwelling and commercial policies was removed from the legislation.
- Named Storm Deductible – the higher Beach Plan deductible applies only if there is a named storm event. And this deductible was lowered from 2% to 1%.
- Mitigation Credits – a provision allowing policyholders to receive credits for “the presence of mitigation and construction features” applies to both the Beach Plan and the voluntary market. Under the House version of the bill, these credits would have only applied to the Beach Plan.
- Installment Plan for Payments – beginning on May 1, 2010, the Beach Plan is required to file an installment plan for premium payments with the Commissioner of Insurance. Property owners were previously unable to make installment payments and instead were required to pay the full yearly premium up front.

- Contents Coverage – contents coverage will be equal to 40% of the replacement value of the structure (previous contents coverage was 70%). The legislation requires a decrease in premium that corresponds with the decreased contents coverage.
- Catastrophe Recovery Charge – in the event that losses to the Beach Plan exceed available surplus, reinsurance and other funding sources, the Beach Plan is authorized to assess member companies up to \$1 billion. Once the Beach Plan determines that all participating companies have paid the assessment, subject to the verification from the Commissioner of Insurance, the companies may charge a “catastrophe recovery charge” not to exceed 10% of the annual policy premium on policies written statewide.
- Coverage Limits – the maximum coverage limit for homeowners and dwelling policies was set at \$750,000.
- Accountability, Disclosure and Public Notice –
  - The bill directs the Legislative Research Commission to study all aspects of the Beach Plan’s operation and the insurance ratemaking process.
  - The legislation will require annual audits of the Beach Plan.
  - The Plan will be required to fulfill any requests for information that it receives from the public.
  - The NC Rate Bureau must give public notice in two newspapers of statewide circulation within ten business days after filing for an increase in rates.
- Rate Territories – the bill requires the Rate Bureau to evaluate and revise rate territories to provide more fairness in the establishment of rates.

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

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

## **Environmental Legislation**

### **Jordan Lake Rules**

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

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

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

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

### **Falls Lake Rules**

Legislation designed to protect water quality, but that would have consequently impacted property rights and the real estate industry, was modified to accommodate the goal of protecting drinking water supplies while not over regulating land use. **SB 1020 (Improve Upper Neuse Basin Water Quality)**, <http://www.ncga.state.nc.us/Sessions/2009/Bills/Senate/PDF/S1020v5.pdf>, introduced by **Sen. Josh Stein (D-Wake)**, was scaled back to only apply to the Upper Neuse Basin and Falls Lake. And the rules that are adopted will only be temporary and will be reviewed based upon stakeholder input, including that of the NC Association of REALTORS®.

### **Coastal Hazard Disclosure**

**Rep. Pricey Harrison (D-Guilford) and Rep. Carolyn Justice (D – Pender)** reintroduced legislation, **HB 605 (Coastal Hazard Disclosure)**, <http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H605V1.pdf>, that would mandate new disclosures for certain coastal property. Property owners would have to determine whether the new disclosure requirements apply to their property. The legislation would require the Real Estate Commission to amend the Residential Property Disclosure Statement to include information about “coastal hazards,” such as annual erosion rates,

setback requirements, 100-year storm recession estimates, high hazard flood areas, inlet hazard areas and flood elevation levels.

The bill also directs the Coastal Resources Commission to adopt a new disclosure form that would require the disclosure of similar information. In addition, the Coastal Resources Commission would be given broad authority to require the disclosure of additional information as it sees fit. The new Coastal Resources Commission form would apply to the sale of lots, residential property and commercial property. It is interesting to note that the Real Estate Commission stated that it was troubled by certain aspects of the coastal disclosure legislation.

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

#### **Telecommunications Preferred Provider Contracts SB 889 (Utilities/Carrier of Last Resort),**

<http://www.ncga.state.nc.us/Sessions/2009/Bills/Senate/PDF/S889v4.pdf>, introduced by **Sen. Don Vaughan (D-Guilford)**, requires a developer that enters into an exclusive contract with a telecommunications service provider to provide telecommunications services within a subdivision to notify the purchaser of real property within the subdivision of this fact.

### **Development, Land Use and Commercial Issues**

#### **Commercial Broker Lien**

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

#### **Impact Fee Bills Defeated**

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

In addition, when a local bill dealing with annexation and school construction was before the House Committee on Finance, the bill sponsor sought to amend his bill to give the local government the ability to collect fees from developers for a cultural arts and recreation facility. This impact fee authority in the amended **SB 346 (Kannapolis Deannexation/Expedite Schools)**, introduced by **Sen. Fletcher Hartsell (R-Cabarrus)**, <http://www.ncga.state.nc.us/Sessions/2009/Bills/Senate/PDF/S346v7.pdf>, was spotlighted by **Rep. Julia Howard (R-Davie)**, who quickly moved to remove this provision. REALTOR® staff spoke out against the provision and ultimately the bill was enacted without the impact fee.

### **Notice/Internet Posting of Local Government Fee Increases**

A bill which requires local governments, water and sewer authorities and sanitary districts to notify the public of their intentions to raise fees passed this session. **SB 698 (City/County/Sanitary District Fees/Internet)**, introduced by **Sen. Julia Boseman (D-New Hanover)**, <http://www.ncga.state.nc.us/Sessions/2009/Bills/Senate/PDF/S698v7.pdf>, requires these entities to post any fee increases on their websites at least 7 days prior to the first meeting when such increases are considered.

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

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

Fortunately, NC Association of REALTORS®-supported legislation that automatically grants a six month extension of these permits was approved by the General Assembly. **SB 831 (Extend Permits Regarding Land Development)**, introduced by **Sen. Dan Clodfelter (D-Mecklenburg)**, <http://www.ncga.state.nc.us/Sessions/2009/Bills/Senate/PDF/S831v6.pdf>, is now law. The House counterpart bill, **HB 1490 (Land Development Permit Changes)**, introduced by **Rep. Ty Harrell (D-Wake)**, <http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H1490V5.pdf>, contains language that specifies a process for local governments to follow when the extended or “resurrected” permits cause a water or sewer capacity problem. This bill was passed by the General Assembly to address concerns from Union County.

### **Mountain Development**

Legislation to regulate mountain property transactions and require more stringent regulation of construction practices in the mountains by local governments was not approved by the General Assembly this past session. **HB 782 (Safe Artificial Slope Construction Act)**, <http://www.ncga.state.nc.us/Sessions/2009/Bills/House/PDF/H782v2.pdf>, introduced by **Reps. Ray Rapp (D-Madison), Phil Haire (D-Jackson), and Susan Fisher (D-**

**Buncombe**), would have forced local governments to adopt and implement development ordinances for construction covering certain areas of the western part of the state. In response to opposition from REALTORS® from the western part of the state and most other mountain legislators, this bill was amended to provide for a study of landslides with public hearings on the topic. Ultimately, the amended bill was not enacted and no such study committee was created.

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

### **Land Use Appeals**

#### **SB 44 (Appeals of Quasi-Judicial Land Decisions)**,

<http://www.ncleg.net/Sessions/2009/Bills/Senate/PDF/S44v5.pdf>, introduced by **Sen. Ellie Kinnaird (D – Orange)**, sets out the details of who can appeal a court decision on land use, how it is to be appealed and when the appeal can be made. NC Association of REALTORS® staff worked on changes over a series of months with other stakeholders to ensure that the existing rights of property owners will not be diminished.

### **Building Code Council**

A bill that would have divided the State Building Code Council into separate residential and commercial boards was introduced by **Sen. Dan Clodfelter (D-Mecklenburg)** this session. **SB 911 (North Carolina Building Code/Council Changes)**, <http://www.ncleg.net/Sessions/2009/Bills/Senate/PDF/S911V1.pdf>, would also adopt the International Building Code as the state building code. The bill was not acted on this past session and is presumably not eligible for next year’s session.

## **Miscellaneous**

### **Bans on Emailing and Texting while Driving**

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

### **Scrap Metal Theft Prevention**

Several bills aimed at preventing the theft of scrap metals by restricting how it can be resold were introduced this session in both the House and Senate. **HB 323 (Prevent the Theft of Scrap Metals)**, <http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H323V5.pdf>, introduced by **Reps. Thom Tillis (R-Mecklenburg) and Jim Gulley (R-Mecklenburg)**, ultimately passed after consensus was reached among the stakeholders. This REALTOR®-supported legislation is intended to reduce the theft of such items as air conditioner evaporator coils and copper pipes from residential and commercial properties by requiring more information from the person selling the scrap metal. The bill also forbids a recycler from purchasing central air conditioner evaporator coils or condensers unless the person selling the materials is in the business of installing, replacing, maintaining, or removing these items, and in this instance payment must be made by check or money order unless the recycler retains a photograph of the person selling the materials.

### **Studies**

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

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

- Mountain Recourses/Steep Slope
- Disclosure of Coastal Hazards
- Mechanic's Liens on Real Property
- Commercial Real Estate Broker Liens
- Green Building Code
- Property Tax Relief Programs and Exemptions
- Transfer Development Rights
- Regional Economic Development
- Insurance Rate Filing Process Reformation
- Transportation Funding Distribution
- Water Allocation
- Water and Wastewater Infrastructure
- Sustainable Growth
- Consolidation of Environmental Policy and Rule-Making Functions into one Entity