

TAR LEGISLATIVE UPDATE

A Publication of the Tennessee Association of REALTORS®

Volume 2, Issue 1

July 2008

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Dear Fellow Realtor®

It's hard to believe another legislative session has come and gone. Once again TAR was 100 percent successful with its legislative agenda. The reason we're so successful is because of active Realtors® like YOU! While we expected nothing less, it has become clear that the discussion of local option transfer taxes will re-emerge in 2010, so the importance of remaining involved in the political process cannot be emphasized strongly enough. This is going to be a huge issue, so we must be ready.

The TAR staff and Legislative Affairs Committee tracked approximately 200 House and Senate bills during this legislative session. Diane Hills, TAR Governmental Affairs Committee vice chairwoman, led our efforts to follow legislation with our fantastic "On the Hill" Team of Russ Farrar and J.A. Bucy.

While the largest single legislative accomplishment was passage of the Copper Theft Reform bill, the bills that we defeated and amended should be seen as equally significant victories. Be sure to take a look at those: It's impossible to put a price on how much some of those provisions (such as requiring Realtors® to be immigration agents) would have cost our members.

This year, we kept the objective established by 2007 committee chairwoman Fontaine Taylor: making sure members have the resources and information they want at their fingertips. With the assistance of the TAR technical team, more information than ever before was posted on the TAR Web site. Posted items included summaries of the scrap metal legislation and other bills, all published Legislative Updates, NAR's Federal Issues briefs, and legal briefs about the Condominium Act rewrite and the Uniform Landlord and Tenant Act. The following report will present the highlights of the 2008 legislative session for TAR's Governmental Affairs team, but if you want to know more, visit the TAR Web site for the rest of the story.

Thanks again for your continued involvement with TAR, the political process and the "Realtor® Party!"

Christie Wilson
2008 TAR Governmental Affairs Chair

SB 2400 / HB 2344 Regulation of Scrap Metal Dealers – Stopping Copper Theft

Since last year, Realtors® have led the fight to stop the epidemic of scrap metal, especially copper theft. This year we continued fighting with a coalition of the Homebuilders, Realtors®, Chiefs of Police, Memphis Area Chamber of Commerce, Tennessee Municipal League and Tennessee Wholesale Beer Distributors.

The bill passed both legislative bodies unanimously and garnered more than 70 bill sponsors in the House and 14 in the Senate. While this new bill may not curb all copper and scrap metal theft in Tennessee, we believe it requires the scrap metal industry to be a partner in trying to stop the practice, and we hope it will give law enforcement a few tools to find the criminals. Furthermore, Tennessee is working with border states Kentucky and Arkansas in an effort to assist them in implementing similar laws. In a state with lengthy borders like Tennessee, it's important that we make sure criminals can't just cross the state lines to evade the regulations.

As you may remember, the major challenge on the bill developed from scrap metal dealers rejecting local ordinances, which could be stronger than the new proposed state law. This opposition was specifically pointed toward Memphis, where the Memphis Area Association of Realtors® and the Memphis Area Homebuilders Association worked closely with the Memphis City Council to pass local regulations to stop the illegal activity. The practice in question is called "tag and hold," where scrap metal dealers are required to hold the items they purchase for up to five days. Law enforcement and the district attorneys

general have said that requiring the material to be kept for a few days greatly increases their chances of catching the individuals who stole the material. "Tag and hold" is NOT part of the statewide legislation due to the challenges in getting legislative support for the provision, but it is included in the local Memphis ordinance. MAAR sent a letter to TAR requesting opposition to the scrap metal dealers' request to weaken the law by superseding local ordinances. TAR's Legislative Affairs Committee directed TAR staff to do everything necessary to keep the Memphis ordinance in place and to pass a strong statewide law.

The major vote on the Memphis issue came in the House Criminal Practice Subcommittee, where on a vote of 3-2, Representatives Janice Sontany, D-Nashville, Henry Fincher, D-Cookeville, and Eric Watson, R-Cleveland, stood with the Realtors® to oppose superseding local ordinances such as those in Memphis. After the amendment to weaken the bill was defeated in subcommittee, passage of the legislation became much easier.

After the bill passed the legislature, a group of scrap metal dealers filed a lawsuit in federal court claiming that the local ordinance in Memphis was in violation of the U.S. Constitution's Commerce Clause, the 14th Amendment and the Fifth Amendment's Takings Clause. The dealers asked the court to temporarily suspend the enforcement of the state and local ordinances dealing with scrap metal. On June 3, a federal judge in Memphis rejected the lawsuit. The scrap metal dealers will likely appeal this issue to the 6th Circuit Appeal Court in Cincinnati.

DEVELOPMENT TAXES

In 2008 the TAR Governmental Affairs Committee adopted a position statement opposing new development taxes and alteration of the County Powers Relief Act (CPRA): It is the position of the Tennessee Association of REALTORS® that the County Powers Relief Act of 2006 should be allowed to remain unamended in an effort to access its viability in 2010 as the legislation allows. We further oppose any taxes or fees that could inhibit home sales in Tennessee.

TAR's legislative team was successful in defeating SB 4225, which was requested by the City of Columbia. This bill would have enacted an adequate facilities tax of \$1.50 per square foot of residential development and \$3.00 per square foot for commercial development. The team also stopped SB 3352, which would have permitted a municipality or county to continue increasing a fee or tax rate under the following circumstances: If the municipality or county had established the tax or fee by a private act prior to the CPRA's becoming law, it would be able to increase that tax or fee by amending the original private act.

SB 2834 / HB 3770

Realtor® License Plate

With another unanimous legislative vote and victory, Realtors® will now have the opportunity to show their pride and commitment to their profession and organization by sporting the new Tennessee Realtors® license plate. While this process wasn't necessarily contentious, it was complicated. As usual, there were a number of organizations that also wanted

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2008 LEGISLATION OF INTEREST

HB 4116, a Bredesen administration bill sponsored by Rep. Curt Cobb (REALTOR® and member of the Middle Tennessee Association of Realtors) and Sens. Jim Kyle, D-Memphis, and Andy Berke, D-Chattanooga, requires applicants for licenses as mortgage lenders, mortgage loan brokers, mortgage loan servicers or mortgage loan originators to complete an educational training course. The bill also requires such applicants to consent to a criminal background check and to provide a set of fingerprints with the application. The bill authorizes the Commissioner of Financial Institutions to deny licensure to an applicant who refuses to consent to the criminal background check. TAR offered full support to the Governor's Office and the Department of Financial Institutions in securing passage of the bill. The legislation passed the General Assembly with minor opposition.

HB 3116, by Rep. Tom DuBois, R-Columbia, and Sen. Dwayne Bunch, R-Cleveland, requires the Department of Environment and Conservation to conduct a study to determine the feasibility of creating an online database for the disclosure of subsurface sewage disposal systems. TAR supported this legislation because having all the statewide information in one location would lessen continuing confusion about the disclosure of septic systems. We have offered our services to the Department of Environment and Conservation in any way that might help facilitate getting such a system online for our members. The legislation passed both the House and Senate unanimously.

SB 2935, which became the Tennessee Condominium Act of 2008, is an update of the Horizontal Property Act of 1963. The Tennessee Bar Association and its Real Property Subcommittee crafted this legislation and accepted an

amendment that satisfied the concerns of TAR's legal counsel. The bill did pass with minor amendments, and TAR members have had the ability since February to read the legislation and summary on the TAR Web site. At this time TAR's legal counsel is preparing additional information to distribute to TAR members who are active in the condominium market.

HB 2639, by Rep. Craig Fitzhugh, D-Ripley, increases the maximum aggregate principal amount of bonds and notes that the Tennessee Housing Development Agency may have outstanding at any one time from approximately \$2 billion to nearly \$3 billion. TAR took a position of support on the legislation because this bill will directly impact the ability of low-income Tennesseans to purchase good, affordable housing. The legislation passed with no opposition.

SB 2885, expands the Uniform Landlord and Tenant Act in Tennessee. The law has traditionally applied only to counties with a population of more than 68,000 except Rutherford, Sullivan, Washington and Williamson. These four counties were carved out by the General Assembly when the Uniform Landlord and Tenant Act was originally passed. This exemption was overturned in a 2007 court case that stemmed from a situation in Sullivan County. The counties to which the Uniform Residential Landlord and Tenant Act now applies are Anderson, Blount, Bradley, Davidson, Hamilton, Knox, Madison, Maury, Montgomery, Rutherford, Sevier, Shelby, Sullivan, Sumner, Washington, Williamson, and Wilson. Information for TAR members who are also landowners or property managers in the counties affected by the law has been posted on the TAR Web site.

LEGISLATIVE SCORECARD – 2008

Wondering how often your legislator voted with TAR? Below is a list showing how members of the General Assembly voted on three of this year's most important bills supported by the association. Use the following key to determine how each member voted:

Issue 1 – Scrap Metal / Copper Theft (SB2400/HB2865)

Issue 2 – Realtor® License Plate (SB2834, SB3017/HB2865)

Issue 3 – Governor Bredesen's Mortgage Broker Reform (SB4160/HB4116)

Y – Yes **N** – No **A** – Absent **P** – Present but not voting * – Bill Co-Sponsor

Legislator Issue 1 Issue 2 Issue 3

Sen. Mae Beavers	A*	Y	Y
Sen. Andy Berke	Y	Y	Y*
Sen. Diane Black	A	Y	Y
Sen. Dewayne Bunch	Y*	Y	Y
Sen. Tim Burchett	Y*	Y	Y
Sen. Charlotte Burks	Y*	Y	Y
Sen. Rusty Crowe	Y	Y	Y
Sen. Lowe Finney	Y	Y	Y
Sen. Raymond Finney	Y	Y	Y
Sen. Ophelia Ford	A	Y	A
Sen. Thelma Harper	P*	Y	Y
Sen. Joe Haynes	Y*	Y	Y*
Sen. Douglas Henry	Y	Y	Y
Sen. Roy Herron	Y	Y	Y
Sen. Doug Jackson	Y	Y	Y
Sen. Jack Johnson	Y	Y	Y
Sen. Bill Ketron	Y	Y*	Y
Sen. Tommy Kilby	Y	Y	Y
Sen. Rosalind Kurita	Y	Y	Y
Sen. Jim Kyle	Y*	Y	Y*
Sen. Beverly Marrero	Y*	Y	Y
Sen. Randy McNally	Y	Y	Y
Sen. Mark Norris	Y*	Y*	Y
Lt. Gov. Ron Ramsey	Y	Y	Y
Sen. Steve Roller	Y	Y	Y
Sen. Steve Southerland	Y*	Y	Y
Sen. Paul Stanley	Y*	Y*	Y
Sen. Reginald Tate	Y*	Y	Y
Sen. Jim Tracy	Y	Y*	Y
Sen. Bo Watson	Y	Y	Y
Sen. John Wilder	A	Y	A
Sen. Micheal Williams	A*	Y	Y
Sen. Jamie Woodson	Y	Y	Y
Rep. Joe Armstrong	Y*	Y*	Y
Rep. William Baird	Y*	Y*	Y
Rep. Eddie Bass	Y*	Y	Y*
Rep. Mike Bell	Y	Y*	Y
Rep. Robert Bibb	Y*	Y	Y
Rep. Stratton Bone	Y*	Y	Y
Rep. Willie Borchert	Y*	Y	Y
Rep. Rob Briley	Y*	Y	Y
Rep. Harry Brooks	Y*	Y	Y
Rep. Kevin Brooks	A	Y	Y
Rep. Tommie Brown	Y*	Y	Y
Rep. Frank Buck	Y	Y	Y
Rep. Karen Camper	–	Y	N
Rep. Stacey Campfield	Y*	Y	N
Rep. Glen Casada	Y*	Y	Y
Rep. Curt Cobb	A	Y*	Y*
Rep. Jim Cobb	Y*	Y	Y
Rep. Kent Coleman	Y*	Y	Y*
Rep. Jim Coley	Y*	Y*	P
Rep. Barbara Cooper	Y*	Y	Y
Rep. Chris Crider	P	Y	Y
Rep. Charles Curtiss	Y	Y	Y*
Rep. Vince Dean	A	Y	Y
Rep. John Deberry	A*	Y	A
Rep. Lois Deberry	Y*	Y	Y
Rep. Tom Dubois	Y*	Y*	Y
Rep. Bill Dunn	Y*	Y*	Y

Legislator Issue 1 Issue 2 Issue 3

Rep. Jimmy Eldridge	Y*	Y*	Y
Rep. Joanne Favors	Y*	Y	Y
Rep. Dennis Ferguson	Y*	Y*	Y
Rep. Henry Fincher	Y*	Y*	Y*
Rep. Craig Fitzhugh	Y*	Y*	Y*
Rep. Richard Floyd	Y	Y	N
Rep. Dale Ford	Y*	Y*	Y
Rep. George Fraley	Y*	Y	Y
Rep. Brenda Gilmore	Y*	Y	Y*
Rep. Dolores Gresham	Y*	Y	Y
Rep. Jim Hackworth	Y*	Y	Y*
Rep. G.A. Hardaway	Y*	Y*	Y*
Rep. Bill Harmon	Y*	Y*	Y*
Rep. Mike Harrison	Y*	Y	Y
Rep. Beth Harwell	Y	Y	Y
Rep. David Hawk	Y*	Y*	Y
Rep. Joey Hensley	Y*	Y*	N
Rep. Matthew Hill	Y	Y	Y
Rep. John Hood	Y*	Y	Y
Rep. Curtis Johnson	Y	Y*	Y
Rep. Phillip Johnson	Y*	Y	Y
Rep. Sherry Jones	Y	Y	Y*
Rep. Ulysses Jones	Y*	Y	Y
Rep. Brian Kelsey	Y*	Y	N
Rep. Mike Kernell	Y	Y	Y
Rep. John Litz	Y*	Y	Y
Rep. Ron Lollar	Y*	Y*	Y
Rep. Jon Lundberg	Y*	Y*	Y
Rep. Susan Lynn	Y*	Y	N
Rep. Mark Maddox	Y*	Y*	Y
Rep. Debra Maggart	Y*	Y	Y
Rep. Judd Matheny	Y*	Y	Y
Rep. Jimmy Matlock	Y	Y	Y
Rep. Joe McCord	Y*	Y*	Y
Rep. Gerald McCormick	Y	Y	Y
Rep. Steve McDaniel	Y*	Y	Y
Rep. Michael McDonald	Y*	Y	Y
Rep. Steve McManus	Y*	Y	Y*
Rep. Larry Miller	Y*	Y	Y
Rep. Richard Montgomery	Y*	Y*	Y
Rep. Gary Moore	Y*	Y	Y
Rep. Jason Mumpower	Y	Y	Y
Speaker Jimmy Naifeh	Y*	Y	Y
Rep. Frank Niceley	P	Y	Y
Rep. Gary Odom	Y*	Y	Y*
Rep. Doug Overbey	Y*	Y	Y
Rep. Phillip Pinion	Y*	Y*	Y
Rep. Joe Pitts	Y*	Y*	Y*
Rep. Mary Pruitt	Y*	Y	Y
Rep. Jeanne Richardson	Y	Y	Y
Rep. Randy Rinks	Y*	Y	Y
Rep. Dennis Roach	Y*	Y*	Y
Rep. Donna Rowland	Y	Y	Y
Rep. Charles Sargent	Y*	Y	Y
Rep. Johnny Shaw	Y	Y	Y
Rep. David Shepard	Y*	Y	Y*
Rep. Janis Sontany	Y*	Y	Y
Rep. Park Strader	A	A	A
Rep. Eric Swafford	Y	Y	P
Rep. John Tidwell	Y*	Y	Y
Rep. Harry Tindell	Y*	Y*	Y
Rep. Curry Todd	Y*	Y	Y
Rep. Joe Towns	Y*	Y	Y*
Rep. Larry Turner	Y	Y	Y
Rep. Mike Turner	Y	Y	Y
Rep. Nathan Vaughn	Y*	Y	Y
Rep. Eric Watson	Y*	Y	Y
Rep. Ben West	Y	Y	Y*
Rep. Kent Williams	Y*	Y	Y
Rep. John Mark Windle	Y*	Y	Y
Rep. Leslie Winningham	Y*	Y	Y
Rep. Eddie Yokley	Y*	Y*	Y

OTHER LEGISLATION DEFEATED / ALTERED BY TAR

HB 70, which would have prohibited the sale or rental of real estate to illegal aliens, was taken off notice by the bill sponsor at the request of TAR.

HB 649, which would have required gated communities to have systems that allow for emergency vehicles (at the cost to the community), was amended by the bill sponsor to the liking of the Homebuilders Association of Tennessee and the Tennessee Apartment Association with the support of TAR.

HB 3262, which would have required developers to do noise studies if building a duplex or more units near major roads (at the cost of the developer). TAR and the Homebuilders opposed the legislation because of the financial burden associated with the testing and the philosophical slippery slope associated with disclosure of the obvious. The bill was debated for two weeks in committee and was defeated.

SB 2619 would have required County Commission approval before remains in cemeteries could be moved. The Homebuilders, governmental planning organizations, The Tennessee County Commissioners Association and the County Services Association were opposed to the legislation as drafted. As amended, the bill now includes a much less extensive requirement: The proponent of the action must first publish a notice in a newspaper of general circulation within the county in which the gravesite or crypt is located prior to filing an action in chancery court in order to transfer remains. All parties supported the amendment.

SB 1542 required that all homeowners association documents be attached separately to the state-mandated Property Condition Disclosure Form. As was the case in 2007, the TAR Legislative Affairs Subcommittee considered the Property Condition Disclosure Form to be a roadmap for a buyer, not a file folder to be filled with information. Furthermore, there is already disclosure of covenants and associations in the Property Condition Disclosure, and buyers and buyers' agents should be responsible for researching these issues prior to purchasing properties.

SB 4173, which was the Department of Revenue's "Technical Corrections" legislation, presented a problem because one of its provisions proposed to remove some Franchise and Excise tax exemptions for family-owned real estate corporations (also known as FONCEs). TAR's main concern was that the provision would unfairly change tax policy in the middle of the tax year, so we encouraged the Department of Revenue to delay implementation of the provision until January 1, 2009. The Department of Revenue agreed. In the final negotiations the FONCE provision was removed from the "Technical Corrections" bill, which went on the pass both the House and Senate.

RPAC – What is it and why is it important?

The REALTORS® Political Action Committee is the only PAC that champions and advances the REALTOR® political agenda. It is the muscle behind NAR's and TAR's governmental affairs program. Political action committees are made up of like-minded people who join together to maximize their political clout. Together they raise and spend money to elect or defeat candidates for public office.

At the national level RPAC helps the National Association of Realtors by giving monetary assistance to those members of Congress who have shown support to the "Realtor® Party." By electing like-minded members of Congress, NAR has worked on issues like:

- Keeping banks out of the real estate business.
- Fighting for health insurance for Realtors.
- Working to keep the FHA, Freddie Mac and Sallie Mae healthy, thus ensuring the availability of funds for future homeowners.

At the state level RPAC also helps by

electing state House and Senate members who understand the importance of the real estate market to the Tennessee economy. In the past couple of years TAR's legislative successes, which are due largely to our ability to raise RPAC dollars, include:

- Keeping the ban on under-the-table cash rebates during a real estate transaction intact.
- Requiring disclosure of a minimal level of service to the consumer for all real estate licensees.
- Defeating the local option real estate transfer tax and taking a "no new development tax" stance with the members of the General Assembly.
- Amending or defeating legislation that would put onerous or unfair requirements on licensees, such as requiring real estate licensees to determine whether or not a renter or buyer of property is a legal citizen.
- Making sure the family-owned real estate corporations (FONCEs) did not lose their tax exemption from Franchise and Excise tax in the middle of a tax year.

PLATE (cont'd from Page 2)

to have the opportunity to have license plates. Thanks to House Transportation Committee Chairman Phillip Pinion, D-Union City, House Transportation Vice Chair Bill Harmon, D-Dunlap, and Senate Transportation Chairman Jim Tracy, R-Shelbyville, the legislative pitfalls were avoided. (On a side note, Rep. Pinion is retiring this year and will be greatly missed by the real estate community.) The next step in the process will be the creation of a page on TAR's Web site where Realtors® can officially sign up for the new plate for a cost of \$35. Once the first 1,000 Realtors® sign up, we will forward the list to the Department of Revenue; the plates will be submitted in about 90 days. The Tennessee Real Estate Educational Foundation is going to be the recipient of 50 percent of the funds generated from the new plate. TREEF will receive \$17,500 from the first 1,000 plates and \$35,000 from the first 2,000 plates, and so on.

There was concern that Realtors® who decided to get the new plate could be pulled over and ticketed by the Department

of Revenue's Commercial Enforcement Division (these are the agents in cars that resemble State Trooper vehicles) for not having a commercial license plate. This has been a long-standing disagreement among the Department of Safety, the Department of Revenue and TAR regarding whether Realtors® should purchase the more expensive commercial license plates. Realtors® in a few Tennessee counties have been forced to purchase commercial plates for their private vehicles after receiving citations.

The new law states, "(d) Notwithstanding any provision of title 55, chapter 4, part 1, to the contrary, motor vehicles which are registered with Tennessee Association of Realtors® specialty earmarked license plates shall be deemed not to be commercial vehicles." Translation: Vehicles with the new Realtor® plate will not be considered commercial and thus should not be ticketed for the absence of a commercial license plate. Specifically precluding vehicles that have the new Realtor® license plate from the Commercial Enforcement Division is an important long-term member benefit.

CONTACT US

The Tennessee Association of REALTORS® (TAR) is one of the largest trade associations in Tennessee, serving more than 27,000 members. Headquartered in Nashville, TAR serves REALTOR® members, member firms, and local associations across the state. For more information:

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