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President's message: April update - legislative progress

April 02, 2015 - Northern New England

NH CIBOR and specifically the newly formed political advocacy committee has been very active on behalf of our members and commercial property issues. So far, with the valuable assistance of NHAR put forward two bills that are currently working through the House and Senate. The first of these is SB232, exempting ground leases from the N.H. Real Estate Transfer Tax (RETT). Earlier this summer, the N.H. Department of Revenue Administration (DRA) asserted that it had the authority under the Real Estate Transfer Tax (RETT) to tax ground lease transactions whose terms were for less than 99 years. This was contrary to decades of practice by the development and legal community and seemed to run counter the DRA's own rules.

In July 2014, NHAR and NH CIBOR had challenged a DRA rulemaking change which would have explicitly granted the department such authority. The department was forced to withdraw their proposed rule. However, in order to remove any claim the DRA has that previously untaxed ground leases were now subject to the RETT, NHAR introduced Senate Bill 232, to clarify that a lease, including any sales, transfers, or assignments of any interest in the leased property, where the term of the lease, including all renewals, is less than 99 years, are exempt for the transfer tax. So far, this bill has passed the senate with flying colors and will soon be working through the house this month.

HB 495 - To allow referral fees to be paid in commercial transactions, which are currently prohibited. New Hampshire real estate law prohibits a licensee from directing a transaction to a lending institution for financing in anticipation of receiving a fee (RSA 331-A:26, XXI). The language is similar to RESPA's prohibition of referral fees to real estate professionals from settlement service companies. However, RESPA only applies to residential mortgages and specifically exempts commercial or business transactions. NH CIBOR has been working with NHAR again to drive this issue, and we both worked with Rep. Linda DiSilvestro (D-Manchester) a commercial REALTOR to introduce House Bill 495 which would align NH law with RESPA and permit Realtors in commercial transactions to accept referral fees from lending institutions. This bill has passed through the House, with some opposition from the Banking Association, and we are confident this will also pass through senate.

Once again, I will remind you all that we really do want to hear from you, please take the time to let us know what we can do to help.

You can help NH CIBOR too, we have many volunteer committees who do great work for our members. And we need more of you involved, please consider joining one of our committees today. Choose a topic you are interested in and passionate about. Visit our website for the list of committees, it will be rewarding for you.

Gerry O'Connell is the 2015 president of the New Hampshire Commercial and Investment Board of Realtors. Gerry O'Connell, KW Commercial CLCG