

## NC Association of REALTORS®

### Vision Quest Meetings

#### 1st Quarter Meetings

Winston Salem, NC

January 26 - 27

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**What Happened:** The following information comes from handouts provided at the Legislative Committee Meeting from the NCAR Governmental Affairs Staff.

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## 2012 Legislative and Regulatory Issues

### Landlord Tenant Law Revisions

During the 2011 session, at the request of the NC Association of REALTORS® and the NC Apartment Association, **Representatives Julia Howard (R-Davie), John Blust (R-Guilford) and Shirley Randleman (R-Wilkes)** introduced **House Bill 493 (Landlord Tenant Law Changes)**, <http://www.ncga.state.nc.us/Sessions/2011/Bills/House/PDF/H493v2.pdf>. The North Carolina Association of REALTORS® has worked with legislators and stakeholders to advocate for this bill, which will amend the laws related to the landlord-tenant relationship. It is our goal to address several items of importance to our members including the eviction process timeline which is often extremely lengthy and greatly increases the landlord's costs which will subsequently continue to increase the cost of housing.

After an exciting round of events in the House, the legislation passed and was sent to the Senate Judiciary II Committee. The bill was not heard in the rush of the close of session but the NC Association of REALTORS® Government Affairs staff continues to work with our allies and the bill sponsors to ensure the legislation will be ready to move quickly in May.

### Bed Bugs

As these creepy crawlers have infested the nation, they are wreaking havoc on our skin and landlords. As such, the North Carolina Association of REALTORS® and the North Carolina Apartment Association requested the introduction of legislation from **Representative Darrell McCormick (R-Yadkin)**. He sponsored **House Bill 721 (Landlord/Tenant/Bed Bug Liability)**,

<http://www.ncga.state.nc.us/Sessions/2011/Bills/House/PDF/H721v2.pdf>, which passed the House this session. This legislation attempts to provide for the quick and effective remediation of a bedbug infestation in rental housing, while balancing the liability for both the landlord and tenant. HB 721 accomplishes this by establishing a defined set of expectations for both parties, including when the tenant is responsible for the costs of remediation and when that responsibility falls to the landlord.

There is still concern from several affordable housing advocate groups and we are working with them to try and find some common ground. HB 721 is eligible for the short session, and the NC Association of REALTORS® will continue to work closely with our members, the NC Apartment Association, experts from the pest control industry and the housing advocate groups to achieve the best possible outcome for our property managers and their clients.

### Homeowners Associations

The House Select Committee on Homeowners Associations was reappointed for the interim again this year and has held two meetings so far to determine what issues the public feels need to be addressed by the General Assembly. Before the long session began, a similar committee met and introduced **House Bill 165 (Planned Community & Condo Act Amends)**, introduced by **Representatives Jennifer Weiss (D-Wake), Bill McGee (R-Forsyth), Julia Howard (R-Iredell) and Beverly Earle (D-Mecklenburg)**, <http://www.ncga.state.nc.us/Sessions/2011/Bills/House/PDF/H165v5.pdf> which was passed in 2011. This legislation was passed that requires homeowners association boards to approve of any foreclosure proceedings and require disclosure of the existence of restrictive covenants. The legislation also required that any lien on a home by an association be in place for 90 days before foreclosure.

Since that time, the NCAR and NC Bar Association Joint Forms Committee have met and determined that our forms needed to be changed. The Residential Property Disclosure Act requires the seller's be provided with an option to make "no representation" on the items listed in the form. Based on the Residential Property Disclosure Act, as revised by HB 165, the Committee members no longer felt that the forms could require the seller to provide Homeowners Association information because the Legislature has clearly indicated that sellers do not have to make any representations about Homeowners Associations, or even that an Homeowners Association exists. This has resulted in the potential of buyers getting less information on the existence of Homeowners Associations.

While we hope to have some resolution of that issue in the short session, additional legislation may be introduced by the Committee. However, the nature of that legislation has yet to be determined. A public hearing was scheduled to be held on January 23, after which time we should have a better understanding of the Committee's direction. The NCAR Government Affairs staff will continue to monitor any additional issues and work to correct any problems with the disclosure requirements.

**Zoning/Design & Aesthetic Controls - This is expected to pass the house in the short session in May and then will be signed by the Governor**

Another bill that made it halfway through the legislative process in 2011 was **Senate Bill 731 (Zoning/Design & Aesthetic Controls)**, <http://www.ncleg.net/Sessions/2011/Bills/Senate/PDF/S731v3.pdf>, sponsored by **Sen. Dan Clodfelter (D-Mecklenburg)**. This legislation was introduced to prevent local governments from overstepping the intent of laws giving cities and counties the authority to enact zoning ordinances related to health, safety and general welfare of its communities by expanding those ordinances to include aesthetic and design standards. As this went beyond the boundary of the law, it unnecessarily increases the cost of housing, and evades personal property rights.

This legislation limits and specifies when a municipality or county may enact zoning ordinances related to design and aesthetic controls. While the bill passed the Senate with bi-partisan support, the House did not hear the bill last year, but it is still alive for consideration during this year's short session.

The NC Association of REALTORS® strongly supports the passage of this bill. We have met with Speaker Tillis and others on the issue and have determined he is supportive of our efforts. The NCAR Government Affairs staff will continue to work with our allies, the North Carolina Home Builders Association and North Carolina Justice Center, to affect passage this year.

### **Homeowners Insurance**

The issue of homeowners' insurance affordability and availability has been a constant area of concern in North Carolina for the last several years. In 2011, several bills were introduced dealing with the issue of rates and how our state implements rates and policies. **SB 395 (Property Insurance Rate Review Board)**

<http://www.ncleg.net/Sessions/2011/Bills/Senate/PDF/S395v1.pdf> introduced by **Sen. Thom Goolsby (R- New Hanover)**, would create the Citizens' Property Insurance Board (Board) to provide public input and accountability in the setting of property insurance rates in North Carolina. The Board would consist of 11 members representing various industries who have a wide range of knowledge and backgrounds.

Additionally, **Reps. Pat McElraft (R-Carteret), Susi Hamilton (D-New Hanover), Carolyn Justice (R-Pender) and Ray Rapp (D-Madison)** introduced **House Bill 820 (Study Beach Plan)**

<http://www.ncleg.net/Sessions/2011/Bills/House/PDF/H820v1.pdf> which would implement the study

prescribed in the 2009 legislation amending the Beach Plan. Neither bill was acted upon during this session, however, a legislative study committee was appointed to look at the issues laid out in each bill during the interim.

That committee, the Property Insurance Rate Making Committee, has met twice and will meet again two more times before the start of the short session. So far, they have heard from the insurance industry representatives, members from the real estate and building sector and other interested parties.

The NCAR Government Affairs staff and some of our local Government Affairs Directors have met with Senator Brown and other coastal legislators on the issues. We have submitted to them various ideas of things that may help in North Carolina as well as viable for passage in the NC General Assembly. Unfortunately, the problems with homeowners insurance go far beyond the borders of NC or even the US. We all understand that having insurance available is just as important as affordable insurance. However, the state cannot force insurance companies to write policies in our state.

Additionally, a group of coastal legislators held a meeting outside of the Committee meeting to hear a presentation from NC-20. This meeting was attended by many legislators, interested industry groups and the NC Commissioner of Insurance and his staff. Commissioner Goodwin and NC-20 were in agreement on many of the topics discussed and he stated that he is committed to working with all the parties involved.

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## **2012 Revisions to the NC Residential Property Disclosure Statement from the North Carolina Real Estate Commission**

In consultation with the North Carolina Association of REALTORS® (NCAR), the North Carolina Real Estate Commission (NCREC or the Commission) has proposed making the following substantive changes to the North Carolina Residential Property Disclosure Statement (RPDS). The purpose behind these changes is to streamline the language in the “lead-in” questions to make it easier to determine the information requested.

Additionally, the NCREC Staff took the opportunity to address issues about which they have heard complaints, had issues or felt needed to be addressed during a rule change. Therefore, the proposed changes also provide for additional disclosures with the primary substantive changes being proposed to the form as follows:

### **Question 17 – Septic System Permits**

#### **Sidebar: The NCREC said that this is the most important change**

The existing RPDS does not ask for information concerning occupancy limits imposed by septic tank permits. The proposed language to address this concern is, “If the dwelling is serviced by a septic system, how many bedrooms are allowed by the septic system permit?” NCAR staff recognizes that occupancy limits related to septic systems have created problems in real estate transactions and thus we do not see any reason you should not support the inclusion of this language.

### **Question 22 – Pest Infestation**

The existing RPDS inquires about infestation of wood-destroying insects and organisms, but is silent about infestations of other insect and animal pests. The Commission staff feels that if a seller is aware that their property is infested with mice, fleas, bedbugs, etc., they should disclose the same. Thus, the newly proposed question would read, “Is there any problem with a present infestation of ants, roaches, mice, rats, bats, fleas, bedbugs, or other pests in the dwelling or any structure on the property?” NCAR staff has discussed this issue at length with the Commission staff and we still disagree about the appropriate scope of this question. Pests other than termites do not affect the structures located on the property being transferred. Additionally, they are easily discovered and remedied for a much cheaper cost than termites. An inclusion such as this would cause unnecessary liability on the seller and brokers for a matter which has not been the subject of many problems.

### **Question 24 – Additions or Structural Changes**

#### **Sidebar: More clarification needs to be made**

The existing RPDS includes the language “room additions or other structural changes”. The NCREC staff believes that the word “room” should be removed because it is a limiting factor not contemplated by the

statute and can be interpreted to exclude porches, garages, and other portions of the structure which are not “rooms”. As a result, the newly proposed language would read, “Are there any structural additions or other structural changes to the dwelling or other buildings on the property?” NCAR staff is comfortable with the language as proposed.

#### **Question 25 – Violation of Laws and Ordinances**

The NCREC staff believes that language in Question 25 of the existing RPDS could be interpreted to apply only to local government ordinances and private covenants. They believe such an interpretation might allow a seller to withhold information about violations of federal or state land use laws and regulations. The newly proposed question specifically includes violations of state and federal law, “Have you been notified that the property is in violation of any federal or state law, local zoning ordinances, restrictive covenants, or other land-use restrictions, or building codes (including the failure to obtain proper permits for room additions or other changes/improvements)?” NCAR staff believes the additional language and clarifications are unnecessary and are adequately covered by other questions in the document. Additionally, NCAR has opposed requiring disclosure of similar items when bills have been introduced at the General Assembly.

#### **Question 27 – Noise, Odor and Smoke**

The existing question dealing with the nuisance issues does not address potential issues arising from airports located nearby. As a result, Commission staff has proposed changing the existing language in this question to: “Is there any noise, odor, smoke, etc from commercial, industrial, airport or military sources which affects the property?” As we have previously expressed on numerous occasions, NCAR staff has concerns about requiring the disclosure of noise from airports due in large part to the potential for this provision to be used irrationally against a seller and broker.

#### **Question 28 – Land Conservation Restrictions**

The existing RPDS does not expressly contemplate disclosure of land conservation restrictions. Due to the recent proliferation of various land conservation programs at all level of government and in the private sector, Commission staff believes it is necessary to include the following question on the revised RPDS, “Is the property subject to any land use restrictions imposed by land conversation programs?” Again, NCAR staff has concerns about the potentially burdensome nature to a seller and/or a broker of identifying whether a property is subject to such restrictions and we therefore will continue working with the Commission staff to identify why there is a need for this item.

#### **Question 30 – Contracts, Lawsuits, Foreclosures, Etc.**

The existing RPDS includes a question about any potential contracts, lawsuits, foreclosures or other judgments against the property. There is not a provision for the disclosure of pending leases or rental agreements. The Commission staff believes that a residence subject to a tenant’s rights is a common occurrence and something about which the seller should know and disclose. Therefore, the proposed question is, “Is the property the subject of any lawsuits, foreclosures, bankruptcy, leases or rental agreements, judgments, tax liens, proposed assessments, mechanic’s liens, materialmen’s liens, or notices from any governmental agency that could affect title to the property?” NCAR staff is comfortable with the inclusion of this language in the RPDS.

#### **Timeline for Enactment**

The NCREC staff is hoping to follow the timeline below with an ultimate effective date of all the rules of July 1, 2012. **A public hearing on the proposed rules is tentatively scheduled to be held at the Real Estate Commission office at 9:00 am on March 7, 2012 North Raleigh Hilton.** Written comments are also due that day to the Commission. Assuming the Commission approves the proposed rules at their meeting on March 7th, the rules will then be sent to the Rules Review Commission (RRC) for review at either their April 19th or May 18th meeting. If the rules are approved by the RRC, July 1st would be the likely effective date. If for some reason the rules were not approved by the RRC at their April or May meeting, the Real Estate Commission would need time to correct potential problems and the rules would therefore most likely not be effective until January 1, 2013. Further, should NCAR and the NCREC not agree with the changes, NCAR could request that the General Assembly to take up any disputed matters during the short session.

#### **What do you think?**

As a REALTOR® and active practitioner of real estate in North Carolina, it is very important that your views and opinions are heard by the North Carolina Real Estate Commission on this and other issues. Please review the proposed changes to the RPDS and offer your comments directly to the Commission either in writing or in person at 9:00am on March 7th. If you plan to attend the public hearing, the Commission offices are located at 1313 Navaho Drive, Raleigh, NC 27609. If you would like to submit written comments, please do so by mailing them to the North Carolina Real Estate Commission, Legal Services Division, P.O. Box 17100, Raleigh, NC 27619 or faxing them to (919) 981-5023. You are of course also welcome to submit your comments to NCAR staff as we will be attending the meeting on March 7th.

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**Sidebar:** For the entire report please go to [www.ncrealtors.org](http://www.ncrealtors.org)