

Legislative Update
Tennessee Association of Realtors®
For the week ending May 2, 2008

TAR LICENSE PLATE UPDATE

As mentioned in the last update, TAR's license plate legislation in a procedural move was rolled into House Bill 2865, which is being referred to as the Omnibus License Plate Bill and is being sponsored by the chairmen of the House and Senate Transportation Committee (Senator Jim Tracy and Representative Phillip Pinion). Annually the General Assembly assigns one bill to be the legislation that handles a number of plate requests. The Senate version of the legislation passed out of the Senate Finance Ways and Means Committee this week. The House bill was deferred in the House Budget Subcommittee for another week.

The challenge in being lumped in with other entities in an omnibus bill is that any problem that occurs in one portion affects the whole bill. In this case, the legislation was deferred because there were groups who are asking the General Assembly for a new license plate but who do not want to abide to the financial agreement. Currently the law allows the applying non-profit to collect 50% of the new money generated for the license plate. In TAR's case the money will be directed to TREF. 40% of the new plate sales goes to the Tennessee Arts Commission and 10% back to the state for administration. In this case, there are groups in the 2008 Omnibus bill who do not want 40% to be given to the Tennessee Arts Commission, as has been the process since 1998. Thus the legislation is stalled during negotiations.

However, with over 2,100 Realtors already signed up supporting the new plate, there is little worry that the legislation won't pass this year. We just have to wait around and help facilitate the process.

COMMERCIAL REAL ESTATE ISSUE EMERGES (with some borrowed language)

Each year, late in the Tennessee legislative session, the Administration and the Tennessee Department of Revenue (TDOR) release what they call the Technical Corrections Bill. The Bill typically contains multiple targeted changes to state tax law. This year, there is a great concern dealing with a provision of the legislation that would charge Franchise and Excise Tax on limited liability corporations that are family owned known as FONCES.

From a bill summary:

The Bill would eliminate the current FONCE F&E Tax exemption of those LLCs and LPs with rental real estate, other than single-family rental residences, if such rents and other disqualified income exceed one-third of the income of the entity. Rents from duplexes and other multi-unit residential property, commercial property, and industrial property will no longer generate qualifying income. Parties with rental real estate currently utilizing the FONCE exemption should take notice of these provisions.

While this legislation does not specifically deal with the process of buying and selling real estate it could have a negative impact on TAR members who use the FONCE provision for their family rental property. TAR staff is currently communicating our concern with members of the General

Assembly. Further we have pushed out the information on the legislation to commercial members, especially in urban and suburban areas of the state. If you would like to take a look at the language of the bill use <http://www.legislature.state.tn.us/bills/currentga/Amend/SA1563.pdf>

LANDLORD AND TENANT BILL MOVING FORWARD

The Tennessee landlord and tenant law has traditionally only applied to counties with a population over 68,000 except Williamson, Rutherford, Sullivan and Washington. These four counties were carved out by the General Assembly. This exemption was overturned in court in 2007 in a case that stemmed from a situation in Sullivan County.

In 2007 the TN BAR Association asked TAR to be neutral on legislation to clean up the law in keeping with the court case. TAR's Governmental Affairs Committee did take a monitor position in December 2007 and again in March of 2008 on the legislation. However, just because the Realtors were neutral on the issue doesn't mean there hasn't been legislative opposition from legislators whose areas would be un-exempted. There has been doubt whether the legislation would pass. The State Attorney General has now opined that the exemption of these four counties was unconstitutional. After being stalled for several weeks, the legislation is scheduled to be heard on the Senate floor on May 7 and in House Budget Subcommittee that same day. If you would like to read the Attorney General's comments on the legislation, they can be retrieved from <http://www.tn.gov/attorneygeneral/op/2008/OP/OP80.pdf>

Under this bill, the counties to which the Uniform Residential Landlord and Tenant Act would apply are Maury, Sevier, Anderson, Bradley, Wilson, Madison, Blount, Washington, Williamson, Sumner, Montgomery, Sullivan, Rutherford, Hamilton, Knox, Davidson, and Shelby. It is believed that this legislation will pass this year and the also expected that the General Assembly will continue to discuss whether or not to have statewide application of the landlord and tenant act versus these selected high-population counties.