CCIM INSTITUTE

Experts in Commercial Investment Real Estate
Affiliate of the National Association of REALTORS®

Statements of Policy

Revised and Approved by the CCIM Institute Board of Directors – October 2016

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Foreword

CCIM Institute's Government Affairs Division staff prepares updated versions of the Statement of Policy and Current Positions for all chapter presidents, legislative liaisons, CCIM Institute committee chairmen and interested members. CCIM Institute encourages all chapters to utilize this information for monitoring and legislative purposes and promotes active participation in federal, state and local legislative matters. CCIM Institute Government Affairs Division staff is available to research general legislative issues of concern to CCIMs upon request. Briefing papers on various topics are also available to concerned members.

The success and growth of CCIM Institute's legislative program depends on member participation at the federal, state and local level. Please take an active role in legislative matters and do not hesitate to contact CCIM Institute for assistance.

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The CCIM Institute Government Affairs Division monitors all local, state, and federal legislation and regulations affecting the commercial investment real estate industry. It also serves as the liaison between CCIM Institute and the various governmental agencies concerned with commercial investment real estate.

Adopting Statements of Policy

The Government Affairs Subcommittee is responsible for recommending statements of public policy and CCIM Institute positions on current issues.

When the Government Affairs Subcommittee is in session at semiannual CCIM Institute meetings in April and October, positions or policy statements may be adopted with a simple majority vote. The positions and public policy statements are then submitted to the Member Services Committee, the Executive Committee and, subsequently, the Board of Directors for approval.

2016 Government Affairs Subcommittee

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Environment & Energy Policy

ASHRAE

The mission of the American Society of Heating, Refrigeration and Air-Conditioning Engineers' (ASHRAE) is to advance the arts and sciences of heating, ventilating, air conditioning and refrigeration to serve humanity and promote a sustainable world.

There are two Standards/Guidelines that are relevant to commercial real estate:
1. ASHRAE Standard 62.2-2013: Ventilation and Acceptable Indoor Air Quality in Low-Rise Residential Buildings; and
2. ASHRAE Standard 90.1-2013: Energy Standard for Buildings Except Low-Rise Residential Buildings

The scope of 62.2-2013 applies to spaces intended for human occupancy within single-family houses and multi-family structures of three stories or fewer above grade, including manufactured and modular houses. This standard considers chemical, physical, and biological contaminants that can affect air quality.

The scope of 90.1-2013 includes—

a. the minimum energy-efficient requirements for the design, construction, and a plan for operation and maintenance of:
   1. New buildings and their systems
   2. New portions of buildings and their systems
   3. New systems and equipment in existing buildings
   4. New equipment or building systems specifically identified in the standard that are part of industrial or manufacturing processes

b. Criteria for determining compliance with the requirements.

Position Statement

The CCIM Institute is committed to the maintenance of the health and safety of all occupants in buildings. We believe that the commercial investment real estate industry, on the whole, is maintaining a high standard of indoor air quality compliance with the incentives already in place through current government and market influences.

We are opposed to the ASHRAE voluntary standard and offer the following comments: ASHRAE's standard is so technical in nature as to require an owner/property manager who does not have a technical background to hire a building engineer to make an analysis for each building. Minimum outdoor airflow rate standards are unrealistic in many situations and not acceptable as written. Complying with these standards may be cost prohibitive. Applying these set standards may increase the cost of new construction significantly, as well as compliance costs in present buildings. Therefore, a clear distinction needs to be made that these standards may not be suitable or realistic for all building types and locations. Although written to be voluntary, the standards may be interpreted by some local building officials as guidelines for compliance. Subsequently, the voluntary nature of the standards should be of primary emphasis in their presentation. (11/96, updated 10/07, 04/11, 10/14)

Asbestos

Asbestos is a known carcinogen that, before the discovery of its heath risk, was widely used in insulation, ceiling and acoustic tile, vinyl floors, and other building materials between 1930 and 1976. However, it only poses a threat when it becomes friable and can be inhaled. It poses a serious and costly problem for owners and managers who must assess its condition and take appropriate steps to reduce the health hazard resulting from it, and there is a great deal of disagreement over the best way to deal with asbestos.

Position Statement

The CCIM Institute encourages the EPA to develop a guidance document for building owners and managers similar to the "Green Book." The Institute urges the EPA to declare two different clearance levels for the two different mineralogical types of asbestos. The different types represent different levels of hazard/risk. The Institute also urges the EPA to adjust current policy relating to the size and type of fiber found. In order to measure, adjustments need to be made in the microscopy standards as well as the EPA's standards.

Furthermore, the CCIM Institute urges the EPA to update the "science" of asbestos to reflect that low levels, as indicated by existing research of fibers, may not be a significant health risk. We also urge the EPA to research and consider the benefits of managing asbestos rather than removing it. Scientific evidence indicates that asbestos fibers pose a health risk only when they become airborne. In most cases, asbestos left undisturbed will result in less airborne fibers than would normally be experienced by removal efforts.

Because a large percentage of existing asbestos is not friable, proper management of it in place will result in low and safe levels of airborne asbestos and could be determined by air monitoring or some other scientific method. With a "safe" level established, building owners could follow guidance documents, test for clearance, and have some objective way of "ensuring safety" for occupants. In the case of future lawsuits, an owner could then show adherence to guideline documents and demonstrate that the "safe" level was attained. (11/00; updated 10/08, 04/12, 10/16)

Brownfields

Brownfields are defunct, derelict, or abandoned commercial or industrial sites, often tainted by the presence or potential presence of hazardous substances, pollutants, or contaminants. In 1980, the Environmental Protection Agency began the Superfund program as a means of cleaning up hazardous waste sites. But without the certainty that they were protected from undue liability, property owners and developers are very reluctant to undertake development on such sites. The Small Business Liability Relief and Brownfields Revitalization Act, enacted in 2001, expanded the EPA's assistance programs and created a shield for innocent developers against Superfund liability for contamination that occurred at a site prior to their purchase of the property. It also prohibits - except in certain limited circumstances - Superfund cleanup enforcement against any party who cleans up a contaminated property under a state brownfields cleanup program.

Costs of environmental remediation are also an issue. In August 1997, the Federal Brownfields Tax Incentive was created as part of the Taxpayer Relief Act, permitting environmental cleanup costs associated with brownfields to be deducted in the year the costs are incurred. This incentive was temporary, and the most recent extension expired in 2005. As a result the full cost of cleanup once again must be capitalized into the cost of the land and cannot be recovered until the property is sold. This program was originally set to expire in 2009 but was extended through December 31, 2011. As of March 2012 there were no significant legislative actions to extend federal tax incentive programs for brownfields. There are state based incentive or grant programs developers and property owners may take advantage of since the federal program expired.

Position Statement

The CCIM Institute emphatically opposes holding a present property owner liable for actions of a former property owner. Recognizing the litigious nature of today's society, the CCIM Institute supports measures such as established standards for inspection that a prudent owner can implement to help shield the owner from undue liability by providing a baseline for defense. If an owner were able to contract with a firm that had met state approved standards of inspection methods, then there could be little or no room for doubt that the owner acted in good faith. However, the CCIM Institute also strongly supports the concept of not requiring inspections to be performed on all properties. Rather, inspections should be required only if there is a desire to involve the innocent landowner defense should it be needed. Once a site has been completed, federal law should recognize the finality of successful hazardous waste cleanup efforts by limiting EPA's authority to re-open completed cleanups.

Furthermore, the federal government should continue to provide adequate funding for cleanup and redevelopment of our nation's brownfields sites and enhance the cost recovery of environmental remediation and cleanup expenditures by providing either current deduction or short amortization periods for those costs. The CCIM Institute favors tax expenditures that allow cost recovery of environmental remediation and cleanup expenditures in the year the costs are incurred. (11/00; updated 10/08, 04/12, updated 10/16)

Clean Air Act

In the U.S. Supreme Court case of Massachusetts vs. Environmental Protection Agency (2007), twelve states and several U.S. cities brought suit against the EPA to force the agency to regulate carbon dioxide and other greenhouse gas emissions under authorities granted by the Clean Air Act (CAA). Prior to the court case, the EPA argued that they lacked authority to regulate emissions, and therefore would not.

The Supreme Court ruled in a 5-4 decision that the Clean Air Act does give the EPA authority to regulate tailpipe emissions, as well as discretion in regulating carbon dioxide emissions. The decision also required the EPA Administrator to determine whether greenhouse gas emissions contribute to air pollution which may pose a threat or danger to public health.

On December 7, 2009, the EPA finalized findings identifying 6 greenhouse gases that contribute to air pollution that may endanger public health. This is known as the ―endangerment finding‖ and provides the basis for EPA regulation of greenhouse gas emissions under the Clean Air Act. The endangerment finding took effect on January 14, 2010 leading the EPA to institute new federal tailpipe standards for greenhouse gases.

The promulgation of tailpipe emissions regulations for light-duty motor vehicles would automatically trigger greater, overarching regulation of greenhouse gas emissions under the Clean Air Act, specifically Prevention of Significant Deterioration (PSD) and Title V permitting requirements.

Currently, applicability levels for PSD and Title V permitting requirements begin at 250 tons of carbon dioxide equivalent per year. New buildings and buildings undergoing significant modifications would fall under the new rule requirements. Any new or existing source exceeding 250 tons per year without an existing Title V permit would have 1 year to submit a Title V permit application.

On October 27, 2009, the EPA proposed a new rule to tailor applicability standards for greenhouse gas (GHG) emissions from stationary sources under the Prevention of Significant Deterioration (PSD) and Title V programs of the Clean Air Act (CAA). Stationary sources include any building or stationary facility that emits greenhouse gases. At current CAA levels (250 tons per year), small sources such as small to mid-sized office buildings, apartment buildings, schools, hospitals, and other buildings could be subject to costly and burdensome permitting requirements.

On May 13, 2010, the EPA issued a final rule known as the Tailoring Rule to establish thresholds for GHG emissions, including CO2. The EPA will implement the new regulations using a phased in approach. The first step will begin on January 2, 2011, and will apply only to emitters that fall under current Title V and PSD permitting requirements. The second step, beginning July 1, 2011, will phase in additional large sources of GHG emissions. New or existing sources that emit, or have the potential to emit, 100,000 tons per year (tpy) will become subject to Title V and PSD permitting requirements.

EPA‘s Step 3 of the GHG Tailoring Rule, issued on June 29, 2012, continues to focus GHG permitting on the largest emitters by retaining the permitting thresholds that were established in Steps 1 and 2. In addition, the Step 3 rule improves the usefulness of plant wide applicability limitations (PALs) by allowing GHG PALs to be established on CO2e emissions, in addition to the already available mass emissions PALs, and to use the CO2e-based applicability thresholds for GHGs provided in the "subject to regulation" definition in setting the PAL on a CO2e basis. The rule also revises the PAL regulations to allow a source that emits or has the potential to emit at least 100,000 tons per year of CO2e, but that has minor source emissions of all other regulated NSR pollutants, to apply for a GHG PAL while still maintaining its minor source status.

The Tailoring Rule includes a provision prohibiting the EPA from subjecting any source with emissions below 50,000 tpy CO2 to PSD or Title V requirements until April 30, 2016. However, throughout the phasing in of the Tailoring Rule, the EPA will research streamlining techniques to make the permitting program more efficient, allowing for further expansion to even smaller sources of emissions. The EPA published the final rule in the Federal Register on June 3, 2010.

Policy Statement

CCIM Institute supports the rule in that higher applicability thresholds will enable most real estate professionals to avoid costly and burdensome permitting requirements. As the United States continues to struggle to overcome the recession, energy regulations that negatively impact the economic and competitive viability of the business community would be of great detriment to the national economy. Efforts by the EPA to more appropriately place the burden of emissions standards on those who contribute the highest level of emissions are in the best interest of CCIM Institute members.

The CCIM Institute does not support expansion of the Tailoring Rule to include smaller sources of GHG emissions. It is possible that commercial buildings, multi-family residential buildings, and other sources would be included and required to obtain Title V permits. This process would be overly burdensome and costly to the commercial real estate industry, and would inhibit the recovery of the fragile commercial real estate market and overall economic recovery.

The CCIM Institute supports all clean air incentive programs, but opposes programs that create mandatory requirements that impose costly burdens on business and real estate. Further, the CCIM Institute opposes a regulatory approach to environmental rulemaking, and supports environmental change through the legislative process.

The Institute also supports the Clean Air Act in which a portion deals with transportation control measures such as improved mass transit, traffic flow improvement, ride-sharing assistance, and transportation corridor parking. These measures play an important role in the improvement of air quality while also improving the quality of urban life by making it easier and more attractive for people to get to downtown areas, for example central business districts and inner city areas.

However, controls such as road use charges, parking surcharges, vehicle restricted zones, and trip reduction ordinances, not only restrict access to downtown areas but also will not have a significant effect on reducing pollution. Access restrictions will only relocate the problem of emissions from one place to another without reducing it. (6/99; updated 10/06, 10/10, 4/14)

Climate Change

Recent studies and news accounts tout the dangers of climate change. These reports, combined with the desire to lessen America's dependence upon foreign oil, have created a groundswell for legislation dealing with energy conservation and reduced carbon dioxide emissions.

According to the Department of Energy, residential and commercial buildings account for 41 percent of total U.S. Energy Consumption at a cost of roughly $400 billion, in 2013.

According to the EPA, commercial buildings account for almost 20% of our nation's greenhouse gas emissions. Commercial and residential energy usage has declined over the last thirty years on a per square footage level. The Fifth U.S. Climate Action Report indicated that total U.S. emissions rose by 8 percent from 1990 through 2011, while U.S. GDP increased by 66%.

In February 2011, the President announced the Better Buildings Initiative to make commercial buildings 20 percent more efficient by 2020.

In February 2015, the President signed Executive Order 13693 that will cut Federal greenhouse gas emissions 40 percent over the next decade from 2008 levels –

saving taxpayers up to $18 billion in avoided energy cost – and increase the share of electricity the Federal Government consumes from renewable sources to 30 percent.

In August 2015, the President and EPA announced the Clean Power Plan, a regulation which seeks to cut carbon pollution from existing power plants by 30% through the next two decades. Along with Executive actions taken by the Obama Administration aimed at doubling the fuel efficiency of cars made in the United States, and limits on the carbon dioxide emission emitted from new power plants, these regulations signal the increasing urgency with which administrators and legislators are dealing with the issue of climate change.

Position Statement
CCIM Institute strongly supports positive incentives for energy conservation activities. We support energy tax credits and voluntary programs like Energy Star and EPA's Green Lights.
Recognizing the serious concerns of global warming, CCIM Institute supports the development of voluntary standards for reducing greenhouse gas emissions. We support the use of sustainable materials in the construction of buildings, and programs that reduce the "carbon footprint" of real estate assets. However, requirements to retrofit existing buildings must take into consideration the needs of the buildings and costs associated with such changes. Additional research is necessary to determine to what level greenhouse gases are affecting the environment versus natural climactic changes humans cannot control.

Thus, we strongly urge that Congress focus on voluntary standards for new construction and existing properties. (4/07, 10/11, 10/15)

Electric and Magnetic Fields

The National Institute of Environmental Health Sciences (NIEHS) defines electric and magnetic fields (EMFs) as invisible lines of force associated with the production, transmission, and use of electric power such as those associated with high-voltage transmission lines, secondary power lines, and home wiring and lighting. EMFs also arise from the motors and heating coils found in electronic equipment and appliances.
Humans have constant exposure to EMFs. NIEHS scientist have reviewed more than two decades of research in EMFs, they have concluded that the overall pattern of results suggests a weak association between increasing exposure to EMFs and an increased risk of childhood leukemia. The few studies that have been conducted on adult exposures show no evidence of a link between residential EMF exposure and adult cancers, including leukemia, brain cancer, and breast cancer. Based on these reviews, the NIEHS recommends continued education on practical way of reducing exposure to EMFs.

There has been inconsistent evidence of the effects of EMFs in the workplace. Because of the uncertainty, no federal limits for worker exposure to EMFs have been placed in the U.S. Although the National Institute for Occupational Safety and Health (NIOSH) has not considered EMFs a work hazard, NIOSH does recommend reducing EMFs exposure.

Position Statement
The CCIM Institute believes that all property should be safe, sanitary, and decent. The CCIM Institute is concerned about the potential health risks that may be

associated with telecommunications and power distribution within a property, and believes information regarding scientific evidence on the effects of electromagnetic fields should be further evaluated. (6/99; updated 04/08, 10/11, 10/15)

Energy

Energy policy is a priority for governmental bodies in the U.S. and abroad. There are several legislative initiatives around the country to conserve and reduce energy consumption. Among the most prominent energy conservation strategies are electric vehicles, wind turbines and solar panels. Additionally, President Obama announced in February 2011 the Better Buildings Initiative to make commercial buildings more energy efficient by 2020 and accelerate private sector investment in energy efficiency.

Local governments and private businesses are incorporating electric vehicle charging stations in their development plans. Energy concerns with electric car charging stations entail the effects from an increase of power especially during peak charging times after an evening commute.

Several states and the federal government have devoted large investments into wind energy and the equipment to create wind farms. In September 2011, the DOE awarded $43 million to spur wind energy research and development projects.

Solar panels are becoming more popular and technology is advancing for optimum solar usage. Under the DOE, programs like the SunShot Initiative or Solar America Communities offer support to local governments or private organizations investing in solar energy.

Position Statement

The CCIM Institute supports the concept of conservation policies and the use of energy efficient technology in building design and construction. However, we oppose mandatory national standards for building energy conservation. Specifically, CCIM Institute opposes mandatory installation, purchase, or usage guidelines for energy conserving products. Additionally, CCIM Institute opposes government mandated practices and policies to achieve zero-net-energy commercial buildings.

Instead, CCIM Institute encourages positive incentives for conservation activities such as energy tax credits and encouraging an increased emphasis on energy efficient technology by the nation's building industry through incentives. CCIM Institute supports federal guidelines that would provide states directions on energy conservation.

Increased conservation and domestic expansion are essential to our nation's security and economic prosperity. The nation should strive for greater energy self-sufficiency through further development of existing sources, decontrol of energy prices and the development of all new sources of domestic and alternative energy to reduce our dependence on foreign energy supplies.

We also believe the federal government should work to identify reliable sources of domestic and renewable energy, and promote development of these energy sources by reducing regulatory burdens and price restrictions. Furthermore, in the absence of competitive market forces, the federal government may need to step-in to protect consumers. In relation, the Institute believes in the initiative to expand and explore new and various sources of domestic energy supplies to provide relief to consumers by helping to create an economical balance of demand/supply.

In this growing economy, it is vital that consumers (both individual and business) have access to reliable, reasonably priced energy. CCIM Institute encourages its members to conserve energy and reduce demand in their facilities. We encourage voluntary participation in programs such as EPA's Building Program, Green Lights Program and Energy Star Program. (6/99; updated 04/08, 10/11, 10/15)

Energy Emission Trading

One option for reducing pollution and greenhouse gas emissions is a program called emissions trading, or "cap and trade". This type of program provides economic incentives to achieve reductions in emissions. Under this approach, regulated industries can buy and sell what are, in effect, permits to pollute. Usually a governmental agency will set a limit on the amount of pollutants that a company or organization can emit. Each company will be allocated a number of credits equal to its limit. Companies that reduce their emissions below the threshold can then sell or trade their credits to companies that exceed the cap.

A recognized successful implementation of such a program is EPA's Acid Rain Program, which has led to a significant – and more cost-effective – reduction in emission of sulfur dioxide (SO_2), a precursor to acid rain. In the US, only direct emitters such as power plants and utilities are allocated credits. They are then permitted to buy and sell credits, based on their ability to exceed the regulatory requirements. Some organizations have proposed allowing owners of real estate to participate in this type of program to encourage reduction in greenhouse gas emissions.

The feasibility of emissions trading for buildings is unknown. It would require all buildings to participate in energy audits to determine current emissions levels. Voluntary participation wouldn't work, as trade programs require all actors – "good" and "bad" to participate. In addition, it will be hard to quantify direct vs. indirect emissions. Direct emissions come from the operation of boilers, gas fireplaces, etc. Indirect emissions are those from using purchased energy such as electricity.

Cap and Trade programs require participants to commit to a level of emissions reduction. These requirements also include associated activities like monitoring and verifying emissions levels. These activities add cost. Lastly, some emissions from buildings are at least partially caused by tenants. It would be difficult for property owners to control the actions of tenants that may contribute to emissions.

On the other hand, many argue this is an incentive-based approach that would be more workable than energy efficiency mandates. In addition, allowing property owners to sell credits would help pay for energy efficient improvements in buildings.

In August 2015, the EPA finalized its Clean Power Plan regulation that would reduce carbon dioxide emissions from power plants. Under the final rule, EPA would require states to meet CO_2 emission targets.

Each state will have the flexibility to select the measure it prefers in order to achieve the CO_2 emission reduction goals. States will also have the ability to shape their own emissions reduction pathways over the 2022-29 period.

The final rule also gives states the option to work with other states on multi-state approaches, including emissions trading that allow their power plants to integrate their interconnected operations within their operating systems and their opportunities to address carbon pollution.

Position Statement
Providing an economic incentive, in the form of credits, would encourage energy efficiency improvements and assist in paying for those upgrades. CCIM Institute supports this market-based incentive for energy efficiency. CCIM Institute supports federal funding of a cost/benefit analysis and research into the feasibility of an emissions trading program, including the participation and input from CCIM Institute, for the real estate industry. (updated 10/11, 10/15)

Energy Star and "Green" Buildings

EPA Buildings Program

EPA‟s Energy Star Buildings program, formerly known as the EPA Buildings Program, is a voluntary energy-efficient and greenhouse gas emission reduction program for U.S. commercial buildings. This voluntary government and industry partnership makes it easy for businesses and consumers to save money and protect the environment through comprehensive energy management strategies and integrated approaches to building new and upgrading existing commercial buildings.

Energy Star also identifies energy-efficient products and technologies to increase energy savings, make businesses more competitive, and help to realize a cleaner environment. The program offers participants information on groundbreaking energy-efficient technologies in heating, ventilation, and air conditioning (HVAC) systems as well as other components and equipment of commercial buildings. ENERGY STAR provides a label on over 60 product categories for the home and office. These products deliver the same or better performance as comparable models while using less energy and saving money.

Real estate professionals are marketing ENERGY STAR and/or energy efficient properties to interested buyers. There are new internet search engines that allow for "green" identification fields.

The three most widely recognized ―green‖ certification programs are the following:

- Leadership in Energy and Environmental Design (LEED)
- ENERGY STAR
- Home Energy Rating System (HERS®) index

The LEED certification is awarded through the U.S. Green Building Council (USGBC). New construction and major renovations, existing buildings (operations and maintenance), commercial interiors (fit outs by tenants) Core and shell (total building without fit outs), are examples of the type of property that can be LEED certified. ENERGY STAR buildings that are certified achieve a specified rating of energy efficiency and indoor air quality. The HERS® program is maintained through the Residential Energy Services Network (RESNET®) which applies only to a home‟s energy efficiency level.

Position Statement

The CCIM Institute supports the goals of the EPA Buildings/Energy Star program and encourages commercial property owners to voluntarily participate in the program. The CCIM Institute also urges the EPA to maintain the voluntary, non-regulatory nature of this program in order to maximize its benefits. (6/99; updated 04/08, 04/11, 10/14)

Environment

Efforts to control pollution and to protect natural resources must be balanced with efforts to increase (a) energy efficiency and independence, (b) economic vitality, and (c) productivity of natural resources (air, water, land and minerals).

Position Statement
The CCIM Institute supports legislation or regulations that require complete disclosure of information pertaining to hazardous waste on property that is to be sold or leased. However, provisions should be included to relieve intermediaries of liability when they are unknowingly involved in property transactions where hazardous waste has been generated, stored or disposed.

The CCIM Institute supports the wise use and management of our planet's water resources so that residential, commercial and industrial development can proceed unencumbered in the future. States' water rights and regional customs as they have developed over the years should be considered by all levels of government. We also recognize the importance of well-developed infrastructure in ensuring adequate water quality and quantity. The Federal Government should ease the current bureaucratic delays on approving local and regional water supply and storage projects.

The CCIM Institute believes that the federal government cannot and should not assume all the responsibility for eliminating pollution problems. State and local governments should participate fully in such decisions, free of the threat of federal sanctions.

The CCIM Institute opposes those aspects of environmental and natural resource legislation that amount to uncompensated condemnation of private property through government actions. It is essential that the rights of private property owners be fully recognized in federal programs and laws. (6/99; updated 04/08, 10/11, 10/15)

Indoor Air Quality

The indoor air quality of buildings will have a dramatic effect on our daily lives. According to the Environmental Protection Agency indoor pollution sources such as mold, oil, gas, coal, wood or tobacco products release gases or particles into the air which primarily cause indoor air quality problems in buildings. Inadequate ventilation can increase indoor pollutant levels by not bringing in enough outdoor air to dilute emissions from indoor sources and by not carrying indoor air pollutants out of the home. High temperature and humidity levels can also increase concentrations of some pollutants. Other possible indoor pollutants are cleaning products, HVAC systems, radon, pesticides, wet or damp carpet, or asbestos-containing insulation.

Standards for indoor air quality are established by American Society of Heating, Refrigerating, and Air-Conditioning Engineers (Standard 62-2013, "Ventilation for Acceptable Indoor Air Quality).

Position Statement
The CCIM Institute is committed to the maintenance of the health and safety of all occupants in buildings. The Institute is concerned with the problem of air quality in buildings and believes that CCIMs should be continually informed as to the potential hazards to tenants and employees from indoor air contaminants such as asbestos, radon, volatile organic compounds (VOCs), and lead. The Institute will make every effort to disseminate the available information to assist CCIMs in their ability to provide adequate solutions to indoor air quality problems without the imposition of unnecessary government action. The Institute believes that the federal government cannot and should not assume all the responsibility for eliminating pollution problems. State and local governments should participate fully in such decisions.

Any regulation of indoor air contaminants in buildings should be based on scientifically-proven significant levels of exposure and hazard to the public. Such regulation should allow reasonable time periods in which to comply with regulations, provide flexibility in how to comply, require comprehensive training and certification for treatment or abatement contractors and laboratory technicians, and provide for a "prioritization" of regulation with respect to the particular hazard posed by certain building types and classes as well as geographic location. With Notice given to tenants of the presence of possible indoor air contaminants property owners should be held harmless from damage claims.

Specifically, however, the Institute supports the provision of tax credits to property owners on their federal, state and local tax returns for buildings that require treatment or abatement of indoor air contaminants as a result of complying with applicable government regulation. Further, the Institute supports the position that properties receive real estate tax credits to recognize the fact that the imposition of building codes in many instances forced owners to use materials which were later discovered to pose health risks and which they must now bear the cost to remove. (6/99; updated 04/08, 10/11, 10/15)

Innocent Land Owner

Real estate transactions involve risk. These risks include contaminated land such as brownfields. It is the responsibility of the buyer to conduct research and obtain the appropriate information about the land of interest.

Position Statement
The CCIM Institute emphatically opposes holding a present property owner liable for actions of a former property owner. However, the CCIM Institute is fully aware of the litigious nature of today's society and supports measures that a prudent potential buyer, owner and/or agent can implement to help shield the potential buyer, owner and/or agent from undue liability. In doing so, CCIM Institute recommends standards of inspection for an environmental audit be established and implemented by the states. Such a standard could save real estate investors substantial sums of money and avoid increasing liability from the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or "Superfund" by providing a baseline for defense. The CCIM Institute also firmly believes 'brownfields' and any other state and federally defined environmentally contaminated sites must be

included in Superfund application. If a potential buyer, owner and/or agent were able to contract with a firm that had met state approved standards of inspection methods, then there could be little or no room for doubt that the potential buyer, owner and/or agent acted in good faith.

The CCIM Institute also strongly supports the concept of not requiring inspections to be performed on all properties. Rather, inspections should be required only if there is a desire to involve the innocent landowner defense. (6/99; updated 04/08, 10/11, 10/15)

LEED Program

The U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) is a voluntary third-party certification program and is the international rating system for "identifying and implementing practical and measurable green building design, construction, operations and maintenance solutions." LEED gives building owners and operators the tools they need to have an immediate and measurable impact on their buildings' energy performance. LEED promotes a whole-building approach to sustainability by recognizing performance in five main credit areas: sustainable site, water efficiency, energy and atmosphere, materials and resources, and indoor environmental quality.

There are several rating systems for LEED projects. There are LEED certification programs for New Construction, Existing Buildings, Commercial Interiors, Retail, Schools, Homes, Neighborhood Development, Healthcare, and Core & Shell rating systems.

This voluntary program provides guidance for businesses and real estate professionals to potentially save money and protect the environment through LEED certification programs. Many building owners consider LEED certification an extra "selling point" or advantage over other properties for potential buyers or tenants.

Position Statement
CCIM Institute recognizes the concepts of the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) program and encourages commercial property owners to voluntarily participate in the program. CCIM Institute also urges Congress and the federal government to maintain LEED as a third-party voluntary, non-regulatory program and not a government mandated program in order to maximize its benefits. (10/09, 04/13)

Lead

Lead exposure is highly hazardous to human health and development, especially to children. Lead can enter the bloodstream through breathing or swallowing lead dust, or by eating soil or paint chips containing lead. If a pregnant woman is exposed to lead, it can harm even her unborn child. Improperly removing lead based paint can increase the risk of exposure for the individual removing the paint, as well as other building occupants.

The presence of lead in paint, which was widely used until it was banned in 1977, has been a concern for CCIMs. Although lead was used until 1977, the concentration of lead contained in paint was much greater prior to 1950. After 1950, the amount of lead in paint was significantly reduced. Several abatement methods exist ranging from painting over lead contaminated paint to dry scraping of the paint. Some methods, most notably the later, create lead dust which has proven to be more harmful and a greater cause of lead poisoning than the paint itself.

CCIM Institute members respect and follow the Federal Lead-Based Paint Hazard Reduction Act of 1992, including the Lead-Based Paint Disclosure Rule. Such compliance has resulted in a dramatic decrease in the number of lead paint poisonings. According to the Housing and Urban Development Department (HUD), the average blood/lead level in young children declined 25% from 1996 to 1999.

As of October 2013, the EPA is considering proposed rules for Lead: Renovation, Repair, and Painting Program for Public and Commercial Buildings, expanding beyond residential regulatory requirements. In May 2010, the EPA issued an Advance Notice of Proposed Rulemaking for lead-based paint in commercial spaces. The EPA has faced a number of lawsuits with environmental advocates over implementation of the Toxic Substances Control Act. Environmental groups claim the EPA has not done enough to reduce lead-based paint exposure and the potential dangers of lead-based paint in public buildings.

In June, 2013, EPA held a public hearing on the Commercial Rule. CCIM, in conjunction with IREM and NAR, testified at that hearing. The testimony focused on three specific points: 1) EPA has not conclusively determined the degree to which lead hazards exist in public and commercial buildings; 2) residential buildings are definitively different than public and commercial buildings –in tenancy, construction, operation and maintenance; and 3) EPA does not have sufficient research on lead hazards in public and commercial buildings; and has not conducted adequate outreach with governmental entities, who own and lease a significant proportion of commercial and public buildings.

The EPA expects to release a final rule for public and commercial buildings by July 2016.

Position Statement
The CCIM Institute is concerned that the removal of lead-based paint is done in a manner that is both safe and economically feasible. CCIM Institute also recognizes that lead poisoning is a more serious threat to children who ingest or breathe lead paint or dust. Therefore, regulations that concern abatement procedures should be tailored to protecting children. Abatement efforts that require the removal of paint which is inaccessible to children, or in little danger of being exposed, merely squanders scarce financial resources that could be used to remove accessible paint in other units and properties. Abatement efforts should also be weighted in regard to the years that lead concentration in paint was the highest.

CCIM Institute believes the Federal Lead-Based Paint Reduction Act has been a proven success. The Institute opposes any changes that would confuse the industry and the public. Instead, the Institute urges the Housing and Urban Development Department (HUD) and the Environmental Protection Agency (EPA) to continue education, outreach, and enforcement of this important law.
(11/03; updated 10/06, 04/10, 10/13, 4/14)

Radon

Radon is a colorless, odorless gas that occurs naturally from the breakdown of uranium that exists deep within the earth. Radon is a source of radiation and the number one cause of lung cancer among non-smokers in the United States. In 2005, the Surgeon General issued a national health advisory urging Americans to prevent this silent radioactive gas from seeping into their homes and building up to dangerous levels. Because radon emanates from the ground upward, it tends to affect a property's basement, ground floor, and sometimes first floor. Although radon can affect upper floors through HVAC systems, the danger is significantly reduced at higher levels. The threat radon poses should be of concern to CCIMs. CCIM Institute urges owners to take voluntary action to reduce or eliminate radon. State and/or local governments typically have specific requirements for radon testing and/or notice requirements of residential and commercial buildings.

Position Statement

The CCIM Institute opposes any form of mandatory testing for the presence of radon gas tied to the real estate transaction process. A decision to test or not test should be left to the discretion of the seller/lessor and potential purchaser/lessee. Premises may be tested only if mutually agreed upon by the parties. If the purchaser/lessee demands a test, it would be at their expense and they would have to provide the seller/lessor with a copy of the test results.

With regard to the selling or leasing of commercial properties, the CCIM Institute would not oppose legislation which mandates that, prior to entering into a sales contract/lease, it is the responsibility of the seller/lessor to 1) provide a radon hazard information pamphlet, and 2) disclose any known radon hazard in the premises, as well as, any radon inspection report of which the seller/lessor is aware. However, legislation requiring that disclosure statements be "read and understood" creates potential liability problems for sellers/lessors and their agents. It should be sufficient that the purchaser/lessee acknowledge that they have received the information since it would not be possible for the seller/lessor or their agent to determine the extent to which the potential purchasers/lessees have fully comprehended the information.

The CCIM Institute would also support language in any radon bill limiting the liability of sellers and lessors who comply with the bill's provisions. In addition, we support the inclusion of legislative or regulatory language prohibiting lending and insurance institutions from refusing to lend or grant liability insurance on properties solely because of the presence of radon. CCIM Institute opposes making radon testing a pre-requisite for any federally-backed mortgage insurance guarantee under FHA, Rural Housing Service, Veterans Administration or any other government or quasi-governmental entity. CCIM Institute opposes efforts to prohibit the making of a federally-related mortgage loan on residential properties identified to be affected by radon gas if such a property can be shown, through appropriate testing methods, to meet indoor air quality guidelines for radon as established by the appropriate federal agency. (11/02; updated 4/09, 10/12, 10/16)

Toxic Mold

Fungi are present almost everywhere in indoor and outdoor environments. Concern about indoor exposure to toxic mold has been increasing in the real estate industry as a few well publicized cases have increased public awareness that exposure to toxic mold may cause a variety of health effects and symptoms, including allergic reactions. It is important to understand that mold itself is not toxic but certain molds can produce toxins. In 2012, according to the Centers for Disease Control and Prevention, "contradicting research results exist regarding whether toxigenic mold found indoors causes unique or rare health conditions such as bleeding in the lungs. Research is ongoing in this area."

Mold is a type of fungus and is different from plants, animals and bacteria. Molds decompose dead organic material such as leaves, wood and plants. Molds can also infect living plants and animals. In order to propagate, mold needs food, oxygen, a temperature between 40 degrees and 100 degrees F, and most importantly water. Mold is a real estate problem because it can consume wood, products made from wood, and the paper facing on gypsum board (drywall).

Not all molds are harmful, but some can cause disease or are opportunistic, which can cause disease in people who may be immuno-compromised. Everybody is affected to a varying degree by mold exposure because it is present in almost every indoor and outdoor activity. There is neither an established dose-response relationship nor is there an established safe level of exposure.

Position Statement

We encourage all governmental bodies to conduct scientific study of indoor mold prior to promulgating any regulations or legislation relating to toxic mold.

Further, CCIM Institute encourages the development of consumer oriented information by appropriate government agencies and entities which fairly and accurately portrays the commercial real estate related issues raised by mold, such as information about the conditions which allow for mold growth, and the need for buyers and tenants to make their own determination of whether further investigation of mold is needed based upon the information available to them and their agents. This information should be the product of an authoritative governmental agency (e.g., CDC, EPA) or recognized independent authority that will be accepted by consumers, business and government (e.g., Harvard, Johns Hopkins, American Lung Association).

CCIM Institute encourages the adoption of state laws that provide a defense to claims against commercial real estate brokers who have truthfully disclosed any known mold problems or conditions and provided buyers/tenants with specified disclosure information regarding mold. To assist commercial real estate professionals where such laws have not been adopted, the CCIM Institute along with the National Association of REALTORS (NAR), the Institute of Real Estate Management (IREM) and other real estate organizations will explore the development of measures that can be recommended for use by commercial real estate professionals to minimize their exposure to liability for mold. These should include dissemination by commercial real estate professionals of authoritative information about the implications and effects of mold in real estate. Such measures may also include recommendations to the parties of a real estate transaction (buyers, sellers, lessees and lessors) as to how and when to consult with appropriate, qualified experts for any desired advice and guidance about mold, and avoiding conduct that may infer that real estate brokers, managers and appraisers are experts in the field of mold or its effects.

The CCIM Institute, in conjunction with NAR and other affiliates, should investigate current practices and continuously monitor the impact of mold on the availability of property insurance coverage. As may appear necessary, the CCIM Institute should also seek, or encourage state chapters to seek, legislative or regulatory relief to avoid any interruption in the availability of that insurance caused by mold. The CCIM Institute supports the development of a federal mold hazard insurance program akin to the flood hazard insurance program.

The CCIM Institute, in conjunction with NAR and other affiliates, should review the availability of errors and omissions insurance coverage for real estate professionals for claims based on bodily injury or property damage associated with mold. To the extent such coverage is not available, or may appear likely to become unavailable, the CCIM Institute should work with carriers and/or seek legislative or regulatory relief to avoid any interruption in the availability of errors and omissions insurance. The CCIM Institute supports the establishment of federal tax credits that reimburse a taxpayer for expenses paid during a taxable year for mold inspection and remediation.

The CCIM Institute encourages the development of and will assist in the dissemination of information regarding new means of reducing the impact of mold, such as anti-microbial paints. These new methods may enhance the ability of owners to effectively remediate mold problems long term. (6/02; updated 11/02, 4/09, 10/12, 10/16)

Volatile Organic Compounds

Volatile organic compounds (VOCs) are found in many sources that should concern CCIMs, including (but not limited to) paint, carpeting, wood preserves, and strippers and solvents. Gases emitted from these products can cause eye, nose, and throat irritation; headaches, loss of coordination, nausea; damage to liver, kidney, and central nervous system. Further health effects are still being studied. They are particularly harmful to people with respiratory problems. The use of VOCs is heavily regulated in manufacturing.

Position Statement
The CCIM Institute urges the Environmental Protection Agency (EPA) to further study VOCs and their health effects. The CCIM Institute supports the policy dialogue, which the EPA has initiated prior to specific rule making proceedings. CCIM Institute hopes that the EPA solicits meaningful input from concerned parties, including CCIMs, during this dialogue. We believe that diligent work and cooperation prior to the rule making will result in final regulations that are workable and beneficial to everyone. (11/00; updated 10/08, 04/12, 10/16)

Water Conservation

The United States as a nation possesses abundant water resources and has developed and used those resources extensively. The future health and economic welfare of the nation’s population are dependent upon a continuing supply of fresh uncontaminated water. Many existing sources of water are being stressed by withdrawals to meet offstream needs (a water use that depends on the diversion or withdrawal of water from a surface- or ground-water source) along with increasing instream-flow requirements (a water use that occurs within the stream channel for such purposes as hydroelectric-power generation, navigation, recreation, etc.) to meet human and environmental needs.

A national water rights system does not exist. Instead, state water laws have evolved under different traditions and conditions. In Western states, the first to put water to beneficial use has a right superior to later claimants. This Colorado doctrine is also known as "first-in-time is first-in-right." Eastern states generally apply riparian rules, based on common law, that tie water rights to ownership of adjacent land and require state permits for use. Over time, some states have adopted variations on both and courts in the West have addresses newcomer's ability to gain water rights. While a national water rights system is not in place, the federal government does reserve water rights for land set aside from the public domain thereby reserving sufficient water to satisfy the purpose for which the reservation was established. This principle is referred to as the "reserved right" doctrine and has been upheld by the courts. These reserved rights by the federal government are controversial due to the undetermined scope of the quality and nature of those rights. Regardless of the doctrine the states and the federal government follow, the entire country is increasingly faced with the need to balance water demand with available supply due to the ever-expanding population and subsequent need for new development.

The United States Geological Survey (USGS) began compiling water data in 1950 and it conducts the survey at 5-year intervals. According to the USGS surveys, there was a general increase in water use from 1950 to 1980 and a general decrease between 1980 and 1995. From 1995 to 2005 water use rates were relatively stable. The decrease between 1980 and 1995 is attributed to higher energy prices in the 1970s (causing a greater collective consciousness about conservation), a large drawdown in ground-water levels in some areas increasing the cost of irrigation water, a down-turn in the farm economy reducing demands for irrigation water, and a transition from water-supply management to water-demand management encouraging more efficient use of water. In addition, new technologies in the industrial sector that require less water, improve plant efficiencies and increase water recycling along with higher energy prices, and changes in laws and regulations to reduce the discharge of pollutants resulted in decreased water use and less water being returned to the natural system after use. The enhanced awareness of the general public to water resources and active conservation programs in many States has contributed to reduced water demands

Commercial Water Use

Commercial water use includes water for motels, hotels, restaurants, office buildings, other commercial facilities, and civilian and military institutions. During 1995, commercial water use was an estimated 9,590 million gallons per day or 16 percent more than during 1990. According to the USGS, the large increase in commercial water use has more to do with different sources of information, changes in how the estimates are calculated, and how fish hatcheries and military establishments are reported, rather than actual changes in water use. USGS did not collect data on commercial water use in 2000 and therefore a percent change since 1995 is unavailable.

Commercial, residential and industrial conservation and recycling have become increasingly common over the past 20 years. Severe droughts have been the greatest impetus for these efforts. Water utilities offer payments, rebates and incentives for adopting conservation measures like retrofitting (low-flow faucet aerators, showerheads and toilets), landscape efficiency (Xeriscaping™), and reuse and recycling of "graywater", or treated wastewater for non-potable (non-drinkable) water uses. According to the USGS, these conservation efforts have made a significant impact on the amount of water resources used for commercial purposes.

Residential Water Submetering

Traditionally, the cost of water usage has been included in the monthly rental charged to residential tenants, regardless of how much water is actually consumed in each unit. Due to increased costs to property owners for water and sewage services in the past decade, property owners have to measure water consumption more closely and accurately. The practice of submetering (installing secondary meters) provides property owners with the ability to measure consumption unit by unit and distribute consumption costs accurately to each resident.

Without a meter to measure individual usage, there is less incentive to conserve or stop water leaks, since the other tenants and or landlord may pay all or part of those costs. Submetering creates awareness of water conservation since the tenant will pay for all of their usage and any leaks they allow to remain unrepaired. Conservation also allows property owners to keep the cost of rent reasonable and fair for all units regardless of how much water they consume.

Usually, submetering is placed in situations where the local utility cannot or will not individually meter the utility in question. Utility companies are often reluctant to take on metering individual spaces for several reasons. One reason is that rental space tenants tend to be more transient and are more difficult to collect from. By billing only the owner, they can place liens on real property if not paid. Utilities also generally prefer not to have water meters beyond their easement or the property boundary, since leaks to a service line would be before the meter and could be of less concern to a property owner. Other reasons include difficulty in getting access to meters for reading or plumbing not suitable for submetering.

The Safe Water Drinking Act (SWDA), originally passed in 1974 to regulate the public's drinking supply, was revised in 1996 to minimize regulatory burdens and allow for flexibility in state's interpretation of the Act. Enforcement of the Act, which does address submetering is considered a "public water system" (PWS) and subject to considerable requirements and compliance measures. The Act states if a distributor of water bills separately for the service, that activity is classified as a "sale" and is subject to regulations outlined in the SWDA. If the provider includes the charges for water in the rental fee, then a sale has not occurred within the context of the Act. It is irrelevant whether a profit is made from the submetering activity.

Some states have broadly interpreted the EPA's definition of a PWS and have allowed submetering to be classified as a "consecutive water system" (one that receives its waters from another PWS or "parent", i.e., a municipal water source), allowing for greater flexibility in monitoring requirements and compliance activities. However, some states have taken a strict line of the EPA's definition of a PWS and have mandated excessive and burdensome requirements and regulations for properties and entities that submeter water. Similar discrepancies in the interpretation of "selling" water have also occurred.

Position Statement

The CCIM Institute supports the continued voluntary usage of water conservation efforts such as retrofitting, landscape efficiency, reuse of graywater, education programs, water-use audits, pressure management, surface and ground water storage banks, water accounting and loss control by commercial real estate where feasible. States and localities should have the authority and flexibility to determine what types of measures are most suitable for their state or location with the assistance of guidelines from federal government agencies like the Environmental Protection Agency.

The CCIM Institute supports state efforts and initiatives that encourage economic growth while promoting the sustainability of water resources. Regulations, requirements and penalties should be minimized in order to foster commercial growth due to commercial real estate's measurable and continued commitment to water conservation. The CCIM Institute understands that the quantity of water available has a direct impact on the quality of water for all uses. In addition, the CCIM Institute supports the states in their efforts to maintain control over water use issues.

The practice of submetering has proven to be effective in promoting water conservation. Submetering provides an equitable method for property owners to accurately distribute water usage costs to tenants, thereby controlling operating expenses and rent increases. Studies have shown that in properties that are submetered residents generally consume 18% to 39% less water than those with one shared water meter. CCIM Institute supports legislation at the state and local level that allows property owners to engage in water submetering without subjecting the owners to burdensome regulatory and compliance requirements. CCIM Institute supports submetering where individual metering is cost prohibitive. CCIM Institute also encourages the EPA and state and local water authorities to exclude those practicing submetering activities as public water systems. The water source provider needs to continue to assume responsibility for the quality of the water. (11/00; updated 4/09, 10/12, 10/16)

Federal Issues – General

Certification Of Buildings Under The "Implementing Recommendations Of The 9/11 Commission Act of 2007"

On August 16, 2007, President Bush signed into law the ―Implementing Recommendations of 9/11 Commission Act of 2007‖ (H.R. 1), which includes a provision that requires the Department of Homeland Security (DHS) by spring, 2008, to set up a program for certifying private sector entities as meeting a ―voluntary‖ national standard for emergency preparedness. The legislation was in fact the 9/11 Commission Report allowing it to move quickly through the Senate for final passage with no debate or hearings.

The law mandates DHS adopt a voluntary private sector accreditation and certification standard that promotes emergency preparedness, that may be customized to fit the unique characteristics of various industries within the private sector, including real estate. In order to carry out its certification program, DHS is required to select a qualified nongovernmental entity to accredit qualified third parties who will actually perform the certification of real estate. DHS adopted the National Fire Protection Association (NFPA) 1600 standard.

The NFPA 1600 Standard on Disaster/Emergency Management and Business Continuity Programs, 2007 edition, as written, is of minimal impact to real estate owners and managers and lacks specifics. The 2010 edition of the NFPA 1600 was released and expanded to emphasize the importance of —leadership‖ and "commitment." The 2013 edition was released and has an array of changes. The committee recognized specific chapters and improved requirements for Business Continuity. Composition of the 2016 edition of NFPA 1600, —Standard on Disaster/Emergency Management and Business Continuity Programs‖ is well underway with a project drop date of January 2016. CCIM Institute is concerned that the third-party or parties selected to certify real estate will charge commercial real estate practitioners a fee to be certified.

Although the new law is voluntary, the law could lead to several end results. It may become the market and legal standard of care in the real estate industry. Most importantly for real estate practitioners, the standard may allow for the insurance and credit-rating industries to look closely at a company‗s compliance with the NFPA 1600 standard or any other DHS selected standard in evaluating its insurability and creditworthiness.

Position Statement

The CCIM Institute submitted comments about the voluntary certification standard that DHS was scheduled to adopt. The CCIM Institute opposes mandatory certification for real estate owners and managers for a fee. The CCIM Institute supports voluntary standards that are not onerous on real estate professionals. . (10/07, 04/11, 10/14)

Consumer Price Index

According to the Bureau of Labor Statistics, the CPI represents changes in prices of all goods and services purchased for consumption by urban households. User fees (such as water and sewer service) and sales and excise taxes paid by the consumer are also included. Income taxes and investment items (like stocks, bonds, and life insurance) are not included.

Price indexes are available for the U.S. and two population groups: CPI for All Urban Consumers (CPI-U) which covers approximately 87 percent of the total population and CPI for Urban Wage Earners and Clerical Workers (CPI-W) which covers 32 percent of the population.

The CPI-U includes expenditures by urban wage earners and clerical workers, professional, managerial, and technical workers, the self-employed, short-term workers, the unemployed, retirees and others not in the labor force. The CPI-W includes only expenditures by those in hourly wage earning or clerical jobs.

Serious consideration of altering the methodology of calculating the CPI has not been made since 1998 when the Advisory Commission to study the CPI made recommendations to the US Senate Finance Committee. The method of calculating CPI, according to the commission, overstates the true cost of living. The commission recommended the CPI be calculated in such a way to better convey the cost of living. One of the recommendations was the sampling of goods and services be universally sampled, not geographically. The commission also suggested that the calculation of CPI take into account the purchase of goods made on a less regular basis such as automobiles and household appliances. These recommendations would, according to the commission, create a more accurate formula for calculating CPI. The only change to the methodology in the past decade has been a shift from an arithmetic to a geometric mean formula, implemented in 1999, which has resulted in a slower growth rate of 2/10 of a percentage point annually.

Position Statement

The CCIM Institute believes that a significant change in the current method of calculating the Consumer Price Index could negatively impact the business of property owners, tenants and managers. Therefore, the CCIM Institute believes that the current method of calculating the CPI needs to be more accurate, however, careful consideration should be given to the effects that would occur in the real estate marketplace as a result of these changes and any change should include a plan for a long enough transition period where the old and new calculation would be used to minimize any negative impact on the commercial real estate industry and to give time to modify leases. (6/97; updated 10/07, 04/11, 10/14)

Budget and Monetary Policy

According to the Federal Reserve, the term "monetary policy refers to the actions undertaken by a central bank (Federal Reserve) to influence the availability and cost of money and credit to help promote national economic goals." Real estate is impacted by monetary policy especially when it comes to interest rates on loans, liquidity availability from financial institutions, and employment/job creation. Further, businesses will base employment decisions off supply and demand of goods and services in the open market.

Along with monetary policy, fiscal/budget policy will greatly influence an economy. In a perfect marketplace, fiscal and monetary policies delicately balance each other out to create economic prosperity. Fiscal policy refers mostly to tax and government spending. Inflation rates usually are dependent on the balance of fiscal and monetary policy decisions. The real estate sector and individual households suffer dramatically when inflation and the cost of living rise disproportionally to the economy or income.

Position Statement

To achieve a balanced budget, the President and Congress must emphasize restraint in growth in all categories of federal spending to eventually achieve a balanced budget. Exception to this restraint can be made for programs designated for the creation or maintenance of infrastructure aiding transportation, communication and municipal utilities, as those expenditures will contribute to the eventual reduction of the debt through economic growth. The CCIM Institute supports the formulation and implementation of programs and initiatives that reduce the national debt.

Stimulation of employment, growth of productivity and inflation control is absolutely essential. The CCIM Institute urges policies that encourage savings and capital investment. We believe that a restrictive monetary policy should be used against inflation only to the extent necessary to supplement rigorous fiscal responsibility. Tight money policies are discriminatory in their nature, striking first and hardest at long-term mortgage credit for housing and smaller business investments without regard to their economic importance in national priorities.

Tax increases should be considered only if all spending reductions prove insufficient to significantly reduce the Federal deficit and any such increases must not create disincentives to savings and investment. In the case of a budget surplus, excess funds should be used for tax and/or debt reduction. Furthermore, CCIM Institute opposes federal tax cuts that would result in tax increases at the state and/or local level.

The CCIM Institute supports the principle and concept of reaching a balanced budget in all political jurisdictions. Balanced national, state, local, and county budgets should be maintained by reducing unnecessary expenditures, sun setting, capping and/or reducing the growth of programs and services that are not essential. (11/03; update 10/09, 04/13)

Economic Stimulus

The commercial real estate market has fallen on hard times. With credit markets frozen, many owners are finding it difficult to obtain business loans for capital improvements or refinance existing mortgages. With property owners unable to refinance their commercial structures, there has been an increase in delinquencies and foreclosures.

Without action to liquefy credit markets, new construction and development projects will most certainly be affected. Credit markets are terrorized by the fear that debt may be deemed less valuable shortly after it is issued. Many commercial real estate deals are on hold as buyers and sellers wait for the credit crunch to ease and the economy to rebound.

As of 2016, the Term Asset-Backed Securities Loan Facility (TALF) operated from March 2009 through June 30, 2010. TALF was established to meet lending needs including small businesses. According to the Federal Reserve the facility was closed for new loan extensions against newly issued commercial mortgaged-backed securities.

Position Statement

CCIM Institute urges Congress and the federal government to provide favorable relief to the commercial real estate industry in the next planned economic stimulus package. CCIM Institute recommends the following three provisions be included in the next stimulus package:

1. Increased availability of small business loans
2. Provision of short-term loans for capital improvements
3. Enable sound mortgages to be re-financed

Additionally, CCIM Institute encourages Congress and the federal government to consider the following goals and solutions which support the three recommendations above:

I. Goal: Stabilize and Provide Liquidity to the Commercial Real Estate Credit Markets; this is to include mortgage-backed securities, provided that future lending by these lenders will be responsible and subject to a high degree of accountability.

Solutions:

- Make mark-to-market accounting rules more flexible, including use of discounted cash flow analysis for valuing assets in illiquid markets.
- The Treasury and Federal Reserve should exercise their authority to implement and/or expand the Term Asset-Backed-Securities Loan Facility (TALF). The TALF should be encouraged to purchase commercial mortgage-backed securities and conventional commercial real estate loans. Other federal programs such as the Private-Public Investment Program (PPIP) and Troubled Asset Relief Program (TARP) are also tools that will help provide liquidity to the commercial real estate credit markets.

II. Goal: Maintain or Enhance Federal Tax Policies that Strengthen the Commercial Real Estate Market

Solutions:

- Retain current capital gains rules as they apply to appreciated property, like-kind exchanges and carried interests, in particular by keeping the capital gains tax rate at the existing 15%. Suspend passive loss rules.
- Improve the depreciation, depreciation recapture and leasehold improvement rules without triggering the Alternative Minimum Tax.
- Reduce the investment impediments caused by the passive loss rules by providing a temporary suspension of the rules for designated investments. Attract new investment in existing real estate by providing higher income limits and expenditure limits to the so-called "small investor" provisions of the passive loss rules.

III. Goal: Stimulate and Support the Commercial Real Estate Industry through Investment

Solutions:

- Provide federal funding for capital improvements to our nation's infrastructure (transportation, roads, energy grids, etc).
- Encourage the commercial real estate industry's investment in energy efficiency and "green" building initiatives through tax and other incentives, and not through legislative and regulatory mandates that artificially raise the cost of construction and operation of commercial real estate properties. (4/09, 10/12)

Spending Limitation

The CCIM Institute supports the principle and concept of reaching a balanced budget in all political jurisdictions. Balanced national, state, local, and county budgets should be maintained and strived for by reducing expenditures, sunsetting, capping and/or reducing the growth of programs and services. (6/97; updated 10/07, 10/10, 4/14, 10/16)

FASB-Lease Accounting

Background and Objective: The Financial Accounting Standards Board (FASB) and International Accounting Standards Board (IASB) proposed lease accounting changes that would bring nearly $1.3 trillion in leased assets back onto companies' balance sheets, with roughly 70 percent being real estate leases. Under the proposal, companies would be required to use a —right-of-use‖ accounting model where both lessees (renters) and lessors (property owners) recognize assets and liabilities arising from lease contracts. Currently, accounting rules allow many businesses to classify leases as operating expenses, which do not appear on their balance sheets. Both FASB and IASB believe these changes would improve transparency as well as provide investors with more consistent and concise financial reporting. However, if enacted, this proposal could negatively impact the financial stability of many businesses, which could prolong our nation‗s economic recovery.

If enacted, this proposal would impact businesses of all sizes, especially lessees and lessors of commercial real estate. With more bloated balance sheets, some companies may see their debt-to-equity ratios increase and find it more difficult to obtain credit, especially those with heavy debt loads or still recovering from the recession. The proposed accounting changes could also complicate compliance with debt covenants or agreements between the bank and borrower, which usually prohibit companies from borrowing more than they are worth. By capitalizing new and/or existing leases, some businesses could be over their debt covenant and be in default of their loan. This could force some firms to put up more equity on existing loans or even have their credit lines revoked.

Additionally, the elimination of off-balance-sheet financing would be detrimental to commercial property owners. More frugal lessees will want less space and shorter-term leases without renewal options or contingent rents, which will decrease cash flow for property owners. Shorter-term rents will likely reduce the borrowing capacity of many commercial real estate lessors, who rely on leases and the value of the property as collateral in order to obtain financing. Ultimately, property owners would be forced to increase rent rates due to market uncertainty and reduce tenant improvements due to shorter recovery periods. Conversely, this change could encourage firms to consider buying instead of leasing commercial real estate. The accounting proposal comes at an inopportune time with the commercial real estate industry in the midst of a financial crisis, and nearly $1.4 trillion in loans due by 2014 and an already very limited capacity to refinance.

FASB/IASB will likely finalize their proposal in 2014. The effective date of this proposal will likely be in 2017, where virtually all new and outstanding leases would be subject to the new accounting standard.

Position Statement

CCIM Institute is concerned that the new lease accounting proposal will be detrimental to our nation‗s economy by reducing the overall borrowing capacity of many commercial real estate lessees and lessors. Also, CCIM Institute is opposed to lease accounting standard changes that would treat the income producing real estate business as a financing business on company balance sheets. Such a step would not accurately depict the unique characteristics of the investment real estate sector and in turn discounts the usefulness of the industry‗s financial statements. (2010, updated 4/14)

Mark-to-Market Statement of Policy

Background: The Financial Accounting Standards Board (FASB) enacted a rule forwarded to the Securities and Exchange Commission (SEC) called FAS 157, known as mark-to-market, in 2007. This rule effectively changed the valuation technique of all publicly CMBS programs, mortgage pools, and investment vehicles that provided the vast majority of all liquidity for both the residential and commercial real estate markets in this country. The effects of this action did not begin to show up on the balance sheets of banks, pension funds, insurance companies, and public companies until auditors began to deliver their audit reports in the second, third, and fourth quarters of 2008. The write down of the balance sheets of these publicly and privately traded companies created havoc in the world's financial markets and further eroded the valuation of these companies, and subsequently the market value of virtually all publicly traded mortgage pools worldwide.

Under the rules mandated by Financial Accounting Standards Board under "FAS 157", establishing "fair value" required the auditor to mark to market the financial instruments of debt using a completely different set of standards than that which was previously set forth in the Uniform Standards of Professional Appraisal under FIRREA. Under the rules of FAS 157, the accountant (who serves as the appraiser for CMBS pools, is not bound by the principals of FIRREA for evaluation of debt instruments secured by real estate and publicly traded debt instruments) must use three levels to mark to market: Level 1: active trading market, Level 2: observable market data, and Level 3: auditor discretion or discounted cash flow. Just like the commercial real estate appraisal business, Level 1 would require the auditor find comparables which, in today's market, are almost non-existent. Level 2 represents observable market data which, also in today's market, offers little or no trading of Commercial Mortgage Backed Securities. Level 3 is the use of Discounted Cash Flow Analysis - also known as the income approach in evaluation models used by the RTC, FDIC, GAO, and all the other government agencies from 1989-2009.

CCIM Institute recognizes the substantial impact of this rule and supports action to have FAS 157 either repealed or replaced by a new set of rules similar to the valuation approaches under the Unified Standards of Professional Appraisal.

In September 2009 FASB provided an update on Fair Value Measurements (Topic 820). FASB amended the proposed requirements for investments that do not have a readily determinable fair value such as real estate investments. For investments in commercial real estate for example, the value will be estimated using the net asset value calculation. Net asset value is calculated by the following formula:

NAV=Fund Assets-Fund Liabilities/Outstanding Shares

In January 2016 FASB issued its final "Recognition and Measurement" accounting standard. The new standard comes five and a half years after the initial proposal required marking all financial assets and liabilities to market on the balance sheet. Under the new standard, only changes in the fair value of equity investments will be required to be recorded through income.

Policy Statement

The CCIM Institute recommends to Congress and the Administration a policy which mandates mark to market rules be applied consistently to all assets whether they be hard real estate assets (buildings, etc.), or securitized debt pools which have real estate as its collateral. Only when we have consistent valuation models for both loans and the buildings securing these loans can we begin to return to stability in the commercial real estate market.
(07/09; updated 10/12, 10/16)

Right to Work Laws

Background

Labor laws have been debated and highly political in the United States since one of the first recorded strikes by the Philadelphia printers in 1786. The most significant labor laws related to collective bargaining and right-to-work laws are the National Labor Relations Act of 1935 (the Wagner Act) and the Labor-Management Relations Act of 1947 (the Taft-Hartley Act).

The Wagner Act created the National Labor Relations Board (NLRB) and provided the legal means for employees to collectively bargain with employers. In essence the bill provided a framework for labor union organization and a mediator (NLRB) between employees and employers to protect and enforce labor laws.

In 1947, Congress had a transition of political party leadership. The Wagner Act was amended by the new leadership with passage of the Taft-Hartley Act (overriding a veto by the President). Included in the Act is the right-to-work law clause also known as 14(b). This section of the Taft-Hartley Act gave power to states granting them the ability to enact right to work laws. States with a right to work law prevent mandatory union membership. Further, the resident of a right to work state cannot be forced directly or indirectly to join a union or pay union dues.

Currently, there are twenty-six states with right to work laws: Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Michigan, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin and Wyoming.

The economic health of each state is critical to job creation. Factors that attract businesses include right to work laws, low taxes and sustainability. A long term ability to survive in a specific market will greatly impact the location of establishing a business. Each state is different, which is why job creation and labor laws are very complex. Constricting labor laws may have several effects; most damaging to U.S. workers is a transfer of jobs abroad.

The economic performance rate of right to work states have a tendency to be higher than non-right to work states. It is certain that states must balance their budgets, care for their citizens and provide businesses with attractive incentives to start or expand operations.

As demand for a particular product or service develops, the uncertainty of the economy and labor laws hinder expansion in the United States. A viable solution for many business owners is to expand overseas; the labor laws are less intimidating and foreign governments are eager to please U.S. investors. Stability in employment opportunities within the U.S. ensure stability for housing and commercial space.

Position Statement

The CCIM Institute supports right to work laws. These laws allow elected officials within each state to assess their economic needs. It is clear that successful business owners (small or large) will consider labor costs for their operating location.

Logistical decisions are increasingly competitive with globalization. Foreign countries are offering attractive labor costs.

The CCIM Institute continues to monitor the current debate within the circuits and the need for the Supreme Court to rule on whether "right-to-work" provisions violate the U.S. Constitution's Taking Clause. We will continue to oppose any effort to overturn the section of the National Labor Relations Act that allows states to pass right-to-work measures as well as the statutes in all 26 states that support such laws.

It is imperative that entrepreneurs, small businesses and multinationals of U.S. origin, seek business locations within U.S. borders. As job creation occurs, U.S. citizens need job opportunities. According to the U.S. Bureau of Labor Statistics, the national unemployment rate was 5 percent as of September 2016. Job opportunities and consistent income for individuals support a healthy economy. It is critical for CCIM Institute to support stability in employment which then supports stability for housing and commercial space. (04/12, updated 10/16)

SBA 504 Loan Refinancing Program

Background

The Small Business Administration (SBA) offers several loan programs to qualifying small businesses. The 504 or Certified Development Company (CDC) Loan Program supports U.S. for-profit small businesses by offering financing tools to build upon successful growth and development. Loan support of small business has the option of producing higher occupancy of commercial real estate. Subsequently the community benefits by job creation and a broader tax base. The loans are long-term with fixed rates that tend to offer significant savings to the borrower. Loans require the business owner to put at least ten percent down. Typically, eligible projects for the 504 Loans include land and building occupancy, machinery and/or equipment purchases.

The Small Business Jobs Act of 2010 temporarily extended the 504 Loan Program for wider refinancing options. This extension was advantageous because it offered another lending opportunity for existing commercial real estate. On September 27, 2012, refinancing opportunities enacted by the Small Business Jobs Act expired.

Summary Comparison of Jobs Act 504 Refinance Program with Permanent 504 Refinance Program

	Under Jobs Act	Permanent 504 Refinance Program
Refinancing for business expenses (working capital)	Allowed	Not eligible as a project cost
Percentage of 504 Loan that could include refinancing	All of 504 Loan=40% (typical 504 loan breakdown 40% from SBA, 50% from private lender, 10% from borrower)	Project may include a limited amount of debt refinancing if project involves expansion of a small business applicant, any amount of existing indebtedness that does not exceed 50% of the cost of the expansion may be refinanced
Job Creation	Business expansion is NOT required	Business expansion is required
Start-up Business	Not eligible	Eligible

The SBA 504 Loan Refinancing Program was made permanent in May 2016. The SBA began accepting applications from small business owners on June 24, 2016.

Position Statement
The CCIM Institute supports the SBA 504 Loan Refinancing Program and Congressional action to extend refinancing options through the Small Business Jobs Act. The SBA Loan Refinancing Program helps to ensure small business flourish through uncertain economic times. Extending this program will provide more time for private capital to return to the market.
(Created 10/12, 10/16)

Housing Policy

Residential Smoking

Smoking laws and policies vary in each state, city, and building and there is no federal legislation addressing smoking in residential buildings. Where no smoking laws exist, the building owner may, if they think necessary, establish smoking policies within their building.

There is an extensive list of health risks associated with smoking. Research shows that indoor air quality is significantly reduced with second hand smoke. Furthermore, there are fire hazards associated with smoking inside a building or home.

Position Statement
CCIM Institute is concerned over the health and well-being of individuals, the environment, and visitors of residential buildings. When no federal, state or local smoking laws exist, residential property owners may decide what is in the best interest for their occupants and maintenance of the property.
(04/11, 10/14)

Secondary Mortgage Market for Multifamily

As Congress considers the future of the Government Sponsored Enterprises (GSEs, i.e. Freddie Mac and Fannie Mae), much of the focus is on the future of single-family mortgage finance. But the GSEs also securitized nearly $2 trillion in multi-family loans; which have not experienced the dramatic losses seen in the single-family portfolio.
Even during the recent economic downturn, multifamily loans are performing well. Delinquencies are 0.10% for Fannie Mae and 0.02% for Freddie Mac.
Private capital is necessary for the continued stability of this housing sector, but without a government guarantee, this capital cannot be sustained. The government‘s role is needed to be sure that there is a stable, counter-cyclical, and affordable source of capital for affordable, and market-rate rental multifamily housing nationwide.

Position Statement
The secondary mortgage market is critical to the stability of the multifamily housing, and necessary to continue to meet the ongoing demand for rental housing. Apartments house more than 15 million American families. The GSEs have provided liquidity in this market and allowed housing providers to keep up with demand for rental housing.

CCIM Institute believes the role of the government in the secondary mortgage market is necessary for a liquid, fully- functioning mortgage market for multifamily properties. (04/11, 10/14)

Department of Defense Housing Initiative

The condition of Department of Defense (DOD) on-base housing in the 1990s warranted a response. The on-base housing at that time consisted of thirty- to forty-year-old rental-type housing that was deteriorating in part because of inadequate maintenance.

Congress established the Military Housing Privatization Initiative (MHPI) in 1996 as a tool to help the military improve the quality of life for its service members and families by improving the condition of their housing. The MHPI was designed and developed to attract private sector financing, expertise, and innovation to provide necessary housing faster and more efficiently than traditional Military Construction processes would allow. The MHPI Military Services are authorized to enter into agreements with private developers selected in a competitive process to own, maintain, and operate family housing via a fifty-year lease.

MHPI addresses two significant problems concerning housing for military Service members and their families: (1) the poor condition of DOD owned housing, and (2) a shortage of quality affordable private housing. Under the MHPI authorities, DOD works with the private sector to revitalize military family housing through a variety of financial tools including direct loans, loan guarantees, equity investments, conveyance or leasing of land and/or housing/and other facilities. Military Service members receive a Basic Allowance where they can choose to live in private sector housing, or privatized housing.

Position Statement

The CCIM Institute supports the concept of the Department of Defense (DOD) working in conjunction with the private sector to provide affordable on- and off-base housing and other facilities to military personnel and their families.

Through cooperative agreements and/or joint ventures with the private sector, military personnel would be provided better quality housing and other facilities at less cost to the government than if they constructed them independently. Working with the private sector not only saves taxpayer funds; it also puts money back into the local economies surrounding military installations.

Working in conjunction with the private sector also allows for unit sizes to be determined based on local needs and markets, making the properties available to conversion to civilian housing, if the military installation shrinks or closes. Federal private sector endeavors such as this are a positive solution to the present need for increased quality housing as more families are assigned to existing bases in reaction to recent base closures. Not only will it reduce required military housing staff, it could also open opportunities for private sector investments.

The Institute encourages the legislation be amended to address the following views and concerns of Institute members:

1. **Establishing Year-Round Leases to Guarantee Rental Income in Unexpected Deployment or Transfer**

The private sector may have a difficult time agreeing to long-term leases with DOD, based on past base closures' effects on the industry. An exception would be for wartime/emergency deployment of U.S. military forces for national defense, a thirty-day minimum written notice to vacate privilege should be offered to military personnel. Legislation mandating this privilege should specifically state that this minimum notice can only be invoked by military personnel who are called to serve or are transferred in times of war or unexpected military deployment and who then present the landlord with military documents so ordering the assignment of transfer.

2. Concern Regarding High Tenant Turnover

The real estate industry is concerned that, due to the transient nature of military personnel and their families, occupancy of DOD-assisted housing will not be guaranteed. High turnover is also a factor in operating costs, and allowable rental rates should reflect the transitory nature of military personnel. Lease safeguards should be provided to protect property owners from forced or sudden vacancies due to deployment or personnel transfers. There is also concern that future base closures would render a devastating economic loss to property owners and communities who partake in joint DOD housing ventures.

3. Rehab and Restoration Less Costly than Creating New Buildings

Restoring and improving existing housing to acceptable living conditions may be more practical and economical, and presents less risk to investing private property owners during the uncertainties of the military draw-down. All levels of government should cooperate in exploring creative avenues of code compliance for rehabilitative housing. CCIM Institute particularly supports rehabilitation and renovation of existing military housing and HUD housing; it is cost-efficient and may add 25 to 35 years to the life of older properties.

4. Insurance Provided by the Federal Government

The federal government should be responsible for providing mortgage insurance coverage for private sector-DOD properties. Property and liability insurance should be a cost of the project owner or owners and borne as a component of the rent.

5. Ownership of Private Sector-DOD Properties

The CCIM Institute opposes government ownership of DOD-private sector properties and believes the private sector should be responsible for maintaining ownership and control of the concerned properties. The federal government should lease the properties or use loan guarantees or other incentives, such as tax credits and bond financing to encourage private ownership. The result of private ownership of concerned properties is savings incurred by DOD and FHA. (6/99; updated 04/08, 10/11, 10/15)

Fair Housing

The Department of Justice (DOJ) and the Department of Housing and Urban Development (HUD) are jointly responsible for enforcing the federal Fair Housing Act (FHA), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability. The CCIM Institute strongly believes in equal opportunity in housing and supports the right of all people to choose freely where they will live without the constraint of prejudice or discrimination.

On February 3, 2012, HUD published a final rule to ensure that its core programs are open to all individuals and families regardless of gender identity. In 2013, the National Association of REALTORS® added prohibitions against discrimination on the basis of gender identity to the Code of Ethics.

Position Statement

As a national organization, CCIM Institute policies should reflect national, state and local policies. Consequently, CCIM Institute positions on fair housing should include the protected classes under federal fair housing law and should consider other protected classes included in state and local law. CCIM Institute recognizes the inclusion of sexual orientation and gender identity as an additional protected class. (4/11, 4/14, 3/15)

Fair Housing Accessibility

The Fair Housing Act of 1988 requires that seven basic accessibility features be designed and constructed in all multifamily buildings built after March 1991. These requirements include: accessible building entrances on an accessible route; accessible common and public use areas; usable doors (by a person on a wheelchair); accessible routes into and through the dwelling unit; accessible locations for light switches, electrical outlets, thermostats and other environmental controls; reinforced walls for grab bar installation; and usable kitchen and bathrooms.

Some buildings that were designed and built after the March 1991 date do not meet the specified requirements of the Fair Housing Act. Some of these buildings have since been sold to owners who had no part in the design or construction of the building, but have been named as respondents in Fair Housing Act complaints. HUD maintains that successors in interest may be charged for violating the Fair Housing Act even if they had no involvement. HUD has also stated that successors in interest may be appropriate respondents to assure that "changes required to remedy violations can be accomplished."

The CCIM Institute supports the goals of the Fair Housing Act, but seeks to eliminate responsibility of successors in interest and to ensure that accessibility provisions remain the responsibility of those who design and construct the buildings.

The CCIM Institute also seeks modification of the law regarding housing for physically handicapped individuals. The provision that requires 100 percent of the units in newly constructed elevator buildings be accessible (as defined in the Fair Housing Amendments Act of 1988) is a response out of proportion to the size of the problem, and a response that will be costly and cumbersome to consumers as well as the real estate industry. CCIM Institute would support providing a percentage of accessible units equivalent to the percentage of the handicapped population.

On March 5, 2008, HUD and DOJ released guidance reinforcing the right of persons with disabilities to make "reasonable modifications" to their dwellings if a structural change to their dwelling or to a common area of the building or complex in which they live is needed. The guidance is designed to strengthen housing providers and homeowners' associations' understanding of their obligations regarding the "reasonable modifications" provision of the FHA. The guidelines are available online at http://www.usdoj.gov/fairhousing.

State or local governments are adopting building codes that include the Fair Housing Act requirements. Some of the local laws reach beyond the federal mandates to provide accessibility.

Position Statement

The CCIM Institute acknowledges the importance of Fair Housing practices, however, we believe that successors in interest should not be held liable for compliance violations resulting from the design and construction of multifamily properties. While we believe that the law should be upheld, the responsibility of these decisions should remain on those who were originally involved with the planning, design, and construction of the buildings.

The CCIM Institute asserts that in the absence of final rules, there were no clear and specific guidelines for architects and developers to follow until the final rule was reissued in April of 1998, seven years after the effective date of the statute. In the interim period, until the guidelines were reissued, those architects, developers and others affected who made a good faith effort to comply with the intent of the law should have no liability in any alleged wrong-doings.

Furthermore, the CCIM Institute does not believe that the intent of the law includes successors in interest, or do we believe that the law intends to include costly retrofitting projects or remodeling. We feel that the law requires changes to be made if the changes are within reason.

With all of the gray areas involved with the Fair Housing Act, CCIM Institute believes that clarification of successor liability is needed prior to the enforcement of these laws. (6/99; updated 4/09, 10/12, 10/16)

Housing Trust Funds – National & State

Housing trust funds (HTF) are distinct funds, usually established by state or local governments, that receive ongoing public revenues which can only be spent on affordable housing initiatives, including new construction, preservation of existing housing, emergency repairs, homeless shelters, housing-related services, and multifamily building for nonprofit organizations. At least 350 housing trust funds operate in the U.S., spending over $500 million on housing opportunities each year.

On July 30, 2008, President Bush signed into law the Housing and Economic Recovery Act of 2008. Provisions in this law would use non-appropriated monies to provide grants to states to increase and preserve the supply of rental housing for low-income families. This law sets aside an amount from Fannie Mae and Freddie Mac equal to 4.2 basis points for each dollar of unpaid principle balance of new business. Grants may be used for the production, preservation, rehabilitation and operation of affordable housing. Monies will be distributed to states through a formula allocation.

Eligible recipients of grants from the states are organizations and agencies (for-profit and non-profit) that demonstrate the experience and capacity to produce the kind of housing the program calls for by: its ability to own, construct, rehabilitate, manage, and operate an affordable multi-family rental housing development; providing their experience to design, construct, rehabilitate, or market affordable housing for ownership, and their ability to provide forms of assistance, such as down payments, closing costs, or interest rate buy-downs for purchasers; the financial capacity to undertake, comply, and manage the eligible activity; and familiarity with federal, state, and local housing programs that will be used in conjunction with the grant.

Position Statement

The CCIM Institute supports the concept of safe, decent and sanitary housing, the production of new low/moderate income housing, and the preservation of the existing housing inventory. The CCIM Institute feels that the best and most efficient means of creating local low/moderate income housing is through state finance agencies, not through additional funding via interest-bearing escrow accounts, interest-bearing tenant security deposit accounts, conveyance fees on real estate transfers, arbitrage remittances from tax-exempt bond issuers, and/or a percentage of Federal Reserve Board annual profits.

This issue is a broad-based social issue that has a funding opportunity through the use of local tax sources or a low income housing line item in the respective federal or state budget. The use of housing trust interest-bearing escrow accounts will have an adverse effect on rent pricing and will adversely affect the original intent of security deposits.

CCIM Institute supports the development and preservation of affordable housing. CCIM Institute supports the creation of a National Housing Trust Fund that does not take money from other federal, state, or local housing programs. Further, CCIM Institute supports placing these funds in a lockbox that cannot be borrowed against for other federal budgetary purposes. CCIM Institute opposes Trusts whose source of funding negatively impact housing prices or transaction fees. CCIM Institute also supports putting for-profits and non-profits on equal footing as eligible trust fund recipients. (6/99; updated 4/09, 10/12, 10/16)

Section 8 Housing Voucher Program

The Department of Housing and Urban Development (HUD) oversee the Housing Choice Vouchers Program also known as Section 8 Housing. This program is intended to assist very-low income families, the elderly and the disabled to afford decent and safe housing. Section 8 is administered by local public housing agencies (PHA) that receive funding from HUD. The PHA provides 75 percent of its voucher to applicants whose incomes do not exceed 30 percent of the area median income. Median incomes vary by location. The housing voucher is paid to the landlord directly by the PHA on behalf of the family/person. The family/person then pays the balance from amount covered by the subsidy and the agreed upon rental contract.

The legislative construction and intent of the program was for landlord participation to be voluntary, meaning a property owner or manager is not required by the federal government to participate in the Section 8 program. Landlords participating in the Section 8 program and accepting Section 8 rental subsidy certificates are subject to strict and voluminous regulatory requirements, mandates and inspections, and often must include specific lease terms (required and prohibited).

In addition to the certificates, the program also provides vouchers to individuals to be used as a form of rent payment. It is the responsibility of the tenant to make up the difference between the amount of the voucher and the amount of the actual rent. The acceptance of the Section 8 vouchers is also voluntary, and often requires the landlords to follow additional regulations.

In April 1999, the City of Chicago Commission on Human Relations found that Section 8 vouchers are a source of income and that property owners or managers must accept Section 8 vouchers unless they have a non-discriminatory reason not to do so, and that such readings are not prohibited by federal law. Currently, eight states and the District of Columbia have and upheld laws that protect Section 8 recipients against discrimination by landlords. These eight states include: Connecticut, Maine, Massachusetts, New Jersey, North Dakota, Oklahoma, Oregon, and Vermont. More state legislatures are considering similar bills across the country. Additionally, some jurisdictions have made individuals and families receiving housing assistance payments a protected class under their state civil rights laws, making it a civil or even a criminal violation to opt out of the Section 8 program.

Position Statement

The CCIM Institute believes that adequate, affordable housing opportunities should be available to all citizens, and supports all federal fair housing laws, as they relate to all existing protected classes, and the concept of government assisted housing for low income households.

However, CCIM Institute finds it troubling that a property owner who chooses not to participate in an explicitly voluntary housing program can be charged with discrimination. The selection of tenants and the terms of the contractual relationship are the function of the property owner or manager, not the government, and there are many valid, nondiscriminatory reasons for not participating in the Section 8 program. Participation in the program requires a property owner to sacrifice many private property rights and forces the operator to comply with burdensome government regulations and procedures which can seriously compromise the performance and financial viability of a property.

The CCIM Institute opposes the April 1999 City of Chicago ruling and any other legislation, regulation, or ruling that threatens or directly undermines the voluntary nature of the Section 8 program set forth by the federal government. We likewise oppose efforts to establish "source of income" as a protected class under the Federal Fair Housing Act or similar measures enacted under state law. (6/99; updated 10/08, 4/12, updated 10/16)

Federal Ownership and Leasing of Public Buildings

The U.S. General Services Administration (GSA) is responsible for providing workspace and related services for over 100 federal client agencies employing approximately 1.2 million federal workers, around half of whom are located in federally owned buildings. The other half are located in over 8,100 separate leased properties. When possible, GSA locates agencies in existing government-owned space. However, if suitable government-owned space does not exist, GSA places agencies in leased space in privately owned buildings. According to GSA, more than 60 percent of GSA leases are for 10,000 square feet or less, so building owners are not competing with large corporations to compete for lease contracts.

In the past, the CCIM Institute expressed its concern regarding legislative attempts to reduce the amount of space the federal government leases from the private sector through GSA. Data has shown GSA has continued to lease increasing amounts of space from the private sector. The majority of the growth in GSA's inventory has been in leased space. Since 1964, the leased square footage has more than tripled, growing from under 50 million square feet to over 168 million square feet in 2008 and 198 million square feet in 2013. At the same time, GSA's owned inventory has remained relatively stable. GSA projects that agencies leasing private space will remain in the same buildings for the next 26 years.

GSA operates under legislative authority, as granted by the Public Buildings Act, to house Federal tenants in appropriate space and provide related services to allow those tenant agencies to conduct business and achieve their missions. GSA frequently evaluates its inventory, to ensure that it contains the right types of properties to house the agencies that come to GSA for space solutions.

In addition, the GSA works closely with stakeholders, including the Office of Management and Budget, and Congress through the annual appropriation process and authorization of funds to operate, lease and build Federal structures.

The GSA Public Buildings Service has thoroughly reviewed its building inventory and is working to align its real estate portfolio with its mission and customer needs. This initiative is part of an overall strategy to restructure this portfolio so that limited resources are more efficiently and effectively utilized.

Position Statement

Members of the CCIM Institute continue to support the maintenance of the existing check and balance system, which is the cornerstone of our nation's democratic form of government. It is important that our elected officials retain authority over the Executive Branch infrastructure. While GSA has a fiduciary responsibility to manage and maintain building assets under their custody and control on behalf of the American people, GSA cannot spend any significant funds on construction or rehabilitation without Congressional approval.

We would encourage the GSA to continue to function in a manner more characteristic of private sector business, to be both accountable for expenditures and to maintain a level of cost-consciousness.

The Institute supports GSA’s efforts to meet Federal office space needs using commercial leased space from the private sector to the maximum extent practicable. Further, the CCIM Institute supports GSA’s efforts to construct new buildings using lease construction to meet much of the Federal government’s need for general-purpose space requirements not available in the commercial real estate market. When GSA does construct new buildings, those are predominantly special purpose buildings such as courthouses or in markets where available space insufficient or not practical for meeting the government’s needs. In recent years, GSA has only occasionally built general-purpose office buildings. GSA’s annual new construction program is made up of almost entirely of special purpose space, courthouses and border stations, with requirements that are not readily available in the market place.

The CCIM Institute supports GSA’s portfolio strategy approach to managing Federal real property that should lead the agency to a lean and profitable inventory of property from which to meet the needs of Federal tenants.

We are also pleased to see that GSA is not expanding outleasing efforts in vacant space. In the past, we were also concerned about whether the GSA might expand this program. However, outleasing remains a minor part of GSA’s program. As of September 2004, less than 1% (3.0 million RSF) of its total RSF (344.3 million RSF) was outleased to the private sector and GSA’s largest outleases are driven by Federal legislation.

We applaud GSA’s efforts to utilize space available from the commercial market and support their efforts to construct Federal space only when the type and quantity of space needed is not commercially available.

(4/05; updated 04/10, 10/13)

Rent Control

Rent controls create problems more serious than those they are intended to resolve. Rent control legislation threatens not only the traditional rights of citizens, but significantly affects the multi-family inventory by hastening the deterioration and/or loss of existing units, while discouraging new construction.

Furthermore, rent control affects net operational income and thus usually lowers the value of a property. By lowering the value of multifamily property, rent controls affect a community's tax base by causing a disproportionate shift of the tax burden to other real estate, especially single-family homes and commercial properties, and potentially curtails vital municipal services. The expense of complying with rent control laws and regulations inevitably increases the cost of housing, products and services to the consumer, and the expense of enforcing rent control adds to the cost of local government.

Position Statement

CCIM Institute is opposed to governmental control of rents. The Institute believes that a property owner has the right to strive for rents that will encourage investment in new construction ventures and existing property. CCIM Institute firmly believes that a property should be allowed to produce sufficient market driven income to accommodate the basic needs of its residents and remain a sound investment for the owner.

Wherever local rent controls have been initiated, the history of each impacted community has been to change growth to no-growth and development to economic malaise. In these communities the already massive infusion of federal funds is threatened; accordingly, the Institute believes Congress and the Administration could assist in discouraging further controls by imposing a cap on housing fund allotment to those municipalities that choose to implement rent controls.

CCIM Institute also urges elected officials, at all levels of government, to oppose rent control as being counterproductive to the best interest of all segments of society and the economic well-being of the nation. (updated 10/08, 10/15)

Insurance

Disaster Prevention, Relief and Insurance

The CCIM Institute recognizes the fact that every piece of property is vulnerable to man-made and natural disaster. The Institute also understands the serious human and economic hardships that can result from such disasters. Experience has proven that while some disasters are unavoidable, others are preventable. Furthermore, experience also shows that being prepared for a disaster can minimize its damage. The CCIM Institute also recognizes the importance of swift and efficient relief and restoration after a disaster strikes.

Position Statement

The CCIM Institute urges all commercial property owners and managers to be prepared for disasters and emergencies by developing emergency procedure manuals, emergency procedure management teams and by understanding how their property's location, design, use, and occupancy will affect emergency procedure actions. Property owners and their managers should also establish cooperative relationships with the emergency management authorities in their communities. The Institute urges all property owners and their management staff to take part in continuing education of emergency procedure techniques. Devising and distributing tenant and resident emergency information is one way in which to prepare properties for emergencies.

The CCIM Institute also encourages commercial property owners who have experienced a disaster to move quickly to prevent the immediate effects of the disaster from causing or allowing further damage. Managers should then return the property to its normal condition as soon as possible.

Adequate insurance is essential to a property's recovery after a disaster. In addition to maintaining private insurance, owners and managers should be aware of any governmental insurance, relief, or aid available to them after a disaster.

The CCIM Institute encourages the federal government to establish uniform rules for administering national disaster relief programs. CCIM Institute also encourages Congress and state legislative bodies to see that they maintain a healthy reserve of funds to administer disaster relief. (*see also Terrorism Insurance)*
(11/03; updated 04/10, 10/13)

Liability Insurance and Tort Reform

The Class Action Fairness Act (S. 5) was signed into law on February 18, 2005. The law established a uniform set of criteria for determining when a multi-state class-action lawsuit can be moved from state court to federal court. CCIM Institute lobbied in support of this legislation.

Previously, federal courts had jurisdiction over lawsuits dealing with a federal question and cases in which all plaintiffs are citizens of jurisdictions different than all defendants, and each claimant has an amount in controversy in excess of $75,000.

The Act authorizes federal courts to hear class-action suits involving over $5 million where the case is outside the home state of the defendants or less than one-third of the class is located in the home of the defendants. If two-thirds or more of the class members are from the defendant's home state, the case would not be subject to federal jurisdiction. The federal court can recuse jurisdiction when more than one third of the class resides in the same state as the defendant, based on six specific factors.

The objective in moving the suits to federal court is to make it significantly more difficult for the lawsuits to be approved. The guidelines are also intended to limit the ability of plaintiff attorneys to "venue-shop" when filing class action suits. The law cracks down on "coupon settlements" in which plaintiffs get little but their lawyers get big fees. It links lawyers' fees to the amount of coupons redeemed.

The CCIM Institute remains concerned about the rising costs and availability of liability insurance due to a variety of reasons, including:

- the broad interpretation and expansion of liability in all areas;
- action that has allowed a boom in lawsuits or the "right to sue;"
- judicial unwillingness to "throw out" frivolous cases, and
- unwarranted and extraordinarily high awards given in some cases by judges and juries.

Position Statement

We encourage Congress to enact legislation that will restore the availability of liability coverage at realistic rates for the professional community via reform of the existing tort system. We encourage CCIM Institute chapters to be involved in these issues as they relate to proposals in their states. Alternatives to this end include the development of a no-fault, limited award system; dispute resolution via out-of-court arbitration with punitive damage limitations; abolishing contingency fee law-suits; and statutes of limitations that would require prompt filing of lawsuits. Reforms such as these can only be brought on by acute public awareness and sustained efforts to bring costs down and curtail unnecessary litigation. (11/03; updated 10/09, 04/13)

Limits of Liability

Generally, the owner and a fee manager of a property each carry their own insurance. Depending upon the wording of the insurance policies, which party is liable for a claim can be ambiguous. An example of such a case follows: "OTHER INSURANCE. If there is other insurance collectible for a loss covered under Coverage B, we will pay the amount of loss that is left after the full amount available under the other policy has been paid. We will not, however, pay more than the applicable Limits of Liability under this policy. However, if there is other insurance that specifically applies only in excess of this policy, this policy will be primary to that excess insurance."

Position Statement

The CCIM Institute firmly believes that insurance carried by the owner should provide primary coverage for any possible negligence committed by the owner or their agents, including brokers. CCIM Institute encourages its members to consult with their legal counsel and carefully scrutinize their insurance policies and those of the property owner and management firm for clauses that could place them in a situation of becoming the primary provider of coverage. (updated 10/09, 04/13)

Small Business Health Plans

A significant number of America’s 50 million uninsured citizens are self-employed individuals or work for small employers who cannot afford to offer quality health insurance benefits to their workers. When surveyed, small business owners cited rising health insurance costs as the primary factor leading them to discontinue coverage for employees. Some have argued that the lack of competition is a major factor leading to premium increases.

In the past, proposals to allow associated groups to provide health insurance coverage through small business health plans (SBHPs), also called association health plans, have been advanced. SBHPs will allow small businesses to band together through their professional or trade associations to purchase health coverage or, alternatively, self-insure. By allowing groups to pool their buying power, spread their risk across a large employee base, eliminate layers of overlapping regulations and thus lower the administrative costs per employee, supporters argue that SBHPs will allow small businesses to offer affordable health care coverage to employees.

SBHPs would be regulated under a single set of federally-prescribed rules and permitted exemptions from costly state regulations that large corporate and union health plans already enjoy under the Employee Retirement Income Security Act (ERISA). The permitted exemptions from state regulations will allow small businesses to band together across state lines. Proponents have argued that SBHPs will increase small businesses' bargaining power with health care providers and lower their overhead costs by as much as 30 percent.

Once proposed, a SBHP is defined as a group health plan that offers fully-insured or self-insured medical benefits, has been certified by the Department of Labor and is operated by a board of trustees with complete fiscal control and responsibility for all operations. The association sponsoring the plan must have been in existence for at least 3 years for purposes other than providing health insurance coverage. All employers participating in the SBHP must be members or affiliates of the association sponsoring the plan. Covered individuals may be active or retired employees, owners, officers, directors, partners or their beneficiaries. Administrators of a plan may not discriminate among eligible participants or ‗cherry pick' risks. Likewise, premium contribution rates cannot be based on the health status or claims experience of plan participants or on the type of businesses involved.

Supporters of the proposal argue that while some small businesses now provide health coverage through program sponsored by trade and professional associations, these programs are hampered by administrative burdens and the high cost of having to comply with the requirements of up to 50 state insurance regulators, including state-mandated benefit requirements. In the small group and individual insurance market, one-fourth to one-third of every premium dollar is estimated to be spent on administrative costs; in the larger group plans, these costs are as small as 5 to 10 percent of every premium dollars.

Over the next few years health insurance reform will undergo several changes since President Obama signed the Affordable Care Act in March of 2010. According to the White House, the Affordable Care act will:

1. Establish a small business health care tax credit to help small businesses afford the cost of covering their workers

2. Create Health Insurance Exchanges to increase bargaining power and reduce administrative costs
3. End price discrimination again small businesses with sick workers
4. Increases health care security to unlock entrepreneurship
5. Reduces the hidden tax on small business employees with health insurance
6. Reduces premiums in the small group market

Position Statement

The CCIM Institute supports proposals to allow bona fide associations to offer health insurance coverage to its memberships via Small Business Health Plans (SBHPs) under a single set of federally prescribed rules. (4/05, 10/11, 10/14)

Redlining

Redlining, though technically illegal, is practiced by some commercial insurers across the country. Redlining, as it pertains to property insurance, is the discrimination in intent or in effect by an insurer or insurance representative against an applicant or property on the basis of age, geographic location, religion, race, national origin, ethnicity, or income of the applicant.

Many in the commercial real estate industry see an insurance company's refusal to offer property insurance to properties located in higher-risk, crime-ridden areas as unjust discrimination. Such properties experiencing location-premised redlining are often left to exist either uninsured, inadequately insured by substandard insurance carriers, or forced to pay unusually high insurance premiums based on their "risk factor" regardless of extensive security measures possibly enforced on the property.

Position Statement

The CCIM Institute is opposed to insurance marketing and underwriting practices that result from discriminatory redlining. (updated 10/09, 04/13)

Terrorism Insurance

After September 11, 2001, the insurance industry announced that they would no longer cover terrorism claims. Without proper insurance, it would be very difficult for property owners to operate or acquire properties, or to refinance loans. In 2002, the Terrorism Risk Insurance Act (TRIA) was passed as a way to ensure the availability of terrorism insurance by creating a program through which the federal government would cover a certain percentage of insurance premiums attributed to a terrorist event over a three-year period. The Act also mandated that insurers make terrorism coverage available through 2004. Specifically, the Treasury Department would pay insurers 90 percent of claims after insured losses exceeding $10 billion in year one, $12.5 billion in year two, and $15 billion in year three. The Treasury would pay until insured losses exceeded $100 billion.

In December 2005, President Bush signed into law the Terrorism Risk Insurance Extension Act (TRIEA), extending the federal backstop program for an additional two years. The extension increased the trigger point at which the federal government will provide assistance from $5 million in 2005 to $50 million in 2006 and $100 million in 2007. TRIEA was set to expire at the end of 2007; however, Congress managed to pass the Terrorism Risk Insurance Program Reauthorization Act of 2007 (TRIPRA) in late December 2007. The new law extends the federal backstop program for seven years. This legislation also includes several important provisions. Most notable, the legislation mandates the Government Accountability Office (GAO) to report to Congress on the unique terrorism coverage capacity constraints in specific markets that have suffered a terrorist attack. The law also requires the GAO to study expanding terrorism insurance coverage to include nuclear, biological, chemical, and radiological coverage in direct insurance markets. Finally, this extension directs the President's Working Group on Financial Markets to report to Congress on the long term availability and affordability of terrorism insurance.

On January 12, 2015, President Obama signed into law the Terrorism Risk Insurance Program Reauthorization Act of 2015, which amends the expiration date of TRIP to December 31, 2020.

Terrorism insurance is critical for the financing of numerous commercial real estate transactions, particularly in high risk areas. In fact, over 80 percent of outstanding multifamily and commercial mortgage debt is subject to terrorism coverage. If terrorism insurance becomes unavailable, the financing is thrown into technical default. In many cases, a jump in terrorism insurance premiums can reduce the value of commercial properties. Thus, when a commercial real estate transaction is negotiated, terrorism insurance is a key component.

Position Statement

Without adequate, affordable, and stably priced terrorism coverage, the real estate industry will be at grave risk. A healthy real estate market is critical to our nation's economy. Furthermore, if a project is financed with terrorism coverage that subsequently expires or increases in price dramatically the loan may default, the lender's risk will increase, and the value and profitability of the property will be threatened. The CCIM Institute supports legislation that will forestall an increase in premiums and maintain the availability of coverage. (11/01; updated 4/09, 10/12, 10/16)

Natural Disaster Prevention, Relief and Insurance

The CCIM Institute recognizes the fact that every piece of property is vulnerable to man-made and natural disaster. The Institute also understands the serious human and economic hardships that can result from such disasters. Experience has proven that while some disasters are unavoidable, others are preventable. Furthermore, experience shows that being prepared for a disaster can minimize its damage. The CCIM Institute also recognizes the importance of swift and efficient relief and restoration after a disaster strikes.

Position Statement

The CCIM Institute urges all commercial property owners and managers to be prepared for disasters and emergencies by developing emergency procedure manuals, emergency procedure management teams and by understanding how their property's location, design, use, and occupancy will affect emergency procedure actions. Property owners and their managers should also establish cooperative relationships with the emergency management authorities in their communities. The Institute urges all property owners and their management staff to take part in continuing education of emergency procedure techniques. Devising and distributing tenant and resident emergency information is one way in which to prepare properties for emergencies.

The CCIM Institute also encourages commercial property owners who have experienced a disaster to move quickly to prevent the immediate effects of the disaster from causing or allowing further damage. Owners and managers should then return the property to its normal condition as soon as possible.

Adequate insurance is essential to a property's recovery after a disaster. In addition to maintaining private insurance, owners and managers should be aware of any governmental insurance, relief, or aid available to them after a disaster.

The CCIM Institute encourages the federal government to establish uniform rules for administering national disaster relief programs. CCIM Institute also encourages Congress and state legislative bodies to see that they maintain a healthy reserve of funds to administer disaster relief. (11/03; updated 10/06, 10/10) (see also Federal Natural Disaster Insurance)

Professionalism

Community Revitalization

One of the nation's most challenging opportunities in housing lies in the recovery and rehabilitation of declining neighborhoods. Often, Enterprise Zones are used by state and local governments to help depressed communities turn around. An Enterprise Zone is a specific geographic area targeted for economic revitalizing. Enterprise Zones encourage economic growth and investment in distressed areas by offering tax advantages and incentives to businesses locating within the zone boundaries. The CCIM Institute supports the continued study of enterprise zones as a potentially viable framework to foster community revitalization and economic growth, provided that such an enterprise zone proposal includes a component which will receive comparable tax and regulatory benefits as those provided to business and industry.

Position Statement

The CCIM Institute urges our membership to actively participate in and promote community revitalization efforts that are designed to maintain and improve the quality of life in the neighborhoods of our cities, towns and communities. CCIM Institute applauds the actions of communities, which have implemented community revitalization programs without federal assistance and continue to encourage the involvement of the private sector to take advantage of present investment possibilities. *(see also Use of Eminent Domain for Economic Development)* (6/01; updated 4/09, 10/12, 10/16)

License Reciprocity

While states' real estate license laws currently permit issuance of a license to a nonresident, widely varying requirements for licensure often make obtaining and maintaining a nonresident's license impractical and effectively creates a barrier to licensure. Reciprocity agreements between states attempt to solve many of these logistical problems, but fall short of reaching equivalent standards nationally.

License reciprocity, the practice of states recognizing each other's real estate licenses without requiring satisfaction of full education, examination or experience requirements, is not accepted by every state. While some will waive education and examination requirements if they have a written reciprocal agreement with the nonresident applicant's state of residence, the reciprocity applies to only a few, select states. Other states require that nonresident applicants meet all of the same requirements that residents must meet even though they have met substantially similar requirements in their state of residence. Some states fall somewhere between the two preceding categories by waiving some education for some applicants and not others and/or waiving portions of their examination for some applications and not others.

There are many reasons that comprehensive licensure recognition would benefit commercial real estate professionals and consumers. Among them are:

- Real estate licensees have a constant need to cross jurisdiction borders – especially if they practice a particular specialty and represent buyers, sellers, landlords and tenants with particular requirements in several states, or their regular market is adjacent to a jurisdictional border.

- While there are some variations in laws and practices, the fundamental principles regulating the transfer of real property interests and general real estate brokerage activity have only relatively minor differences from jurisdiction to jurisdiction. Variations, for the most part, tend to be found more in terminology than in concepts.
- In 1992, the members of the European Community began allowing licensed professionals in one nation to practice in other member nations without meeting additional licensure. In 1988, the U.S. and Canada entered into a Free Trade Agreement that provides for mutual recognition of licensing and certification requirements for real estate brokerage services. The North American Free Trade Agreement of 1995 made similar provisions and included Mexico.

The courts of the United States have consistently ruled that jurisdictions may not place unreasonable barriers to a licensed professional of one jurisdiction practicing in another jurisdiction.

Position Statement
The CCIM Institute urges state legislatures to pass Cooperation Agreement statutes allowing out-of-state licensees (OSLs) to perform licensed real estate services regarding the lease, purchase, sale or other transfer of commercial real property (any real estate, other than real estate containing four or fewer residential units, which is not intended for residential purposes, and specifically raw land) within their states.

A Cooperation Agreement shall allow an OSL (or any licensee affiliated with the OSL) to enter a Transaction State (state in which a transaction is taking place) and perform licensed activities in that state or perform such licensed activities from outside the Transaction State, only if the OSL enters into a written cooperation agreement with a licensee (or other state exempted professional) of the Transaction State. That agreement shall require that all acts of the OSL within or outside the Transaction State, in furtherance of the real estate transaction, will be in close cooperation with the in-state licensee and will comply with all Transaction State laws.

The cooperation agreement should: (a) set forth the payment obligations of the parties; (b) set forth the OSL's consent to the jurisdiction of the Transaction State; and (c) allow the OSL to bring suit to enforce his or her right to payment under the cooperation agreement. The cooperation agreement can be filed with the Transaction State's real estate license commission, or it can simply serve as an enforceable contract among the licensees and the parties to the transaction.

CCIM Institute supports the following elements of reciprocity:

1. In order to be licensed in new states/jurisdictions, nonresidents must:
    a. show satisfactory proof of current licensure in the applicant's resident state/jurisdiction and pay any required fees.*
    b. sign a statement that they have read, understand and will abide by the real estate license laws of the new state/jurisdiction.*
    c. affiliate with a broker who holds a license in the nonresident state/jurisdiction, only if an individual is a salesperson or associate broker, as opposed to a managing/qualifying/designated broker who need not affiliate.
    d. provide the new state/jurisdiction with their resident license and copies of any disciplinary actions taken against them in their resident

state/jurisdiction or other state/jurisdictions. Disciplinary action in another state/jurisdiction may be grounds for license denial or revocation.*

e. file with the new state/jurisdiction a designation in writing that appoints the Real Estate Administrator/Commissioner to act as the licensee's agent concerning all judicial or legal notices that may be served on the licensee.*
f. agree in writing to cooperate with any investigation initiated by the new state/jurisdiction by promptly supplying any documents it may request.*

2. In a situation where the licensee is acting only as a referral agent and is not involved in real estate brokerage activity, a licensed broker in one state/jurisdiction may divide or share a real estate commission with a licensed broker in another state/jurisdiction.*

3. The new state/jurisdiction shall have the power to impose any sanction permitted by law on any licensee of the state/jurisdiction who performs or attempts to perform any of the acts of a licensee on property located in another state/jurisdiction without first having been properly licensed in that state/jurisdiction or not complying with that state's/jurisdiction's laws regarding real estate.*

4. Eliminate nonessential paperwork, i.e. streamline the application process and other communication between the nonresident licensee and the new state/jurisdiction.

5. Provided a licensee holds a license in another state/jurisdiction, waive all examination, education, and experience requirements and waive continuing education requirements only if the licensee has met the requirements in his/her resident state/jurisdiction. (6/01; updated 10/07, 10/11, 10/15)

* Summary of the Association of Real Estate License Law Officials (ARELLO) position.

Psychologically Impacted Property

Disclosure of psychological impacts (stigmas) remains an important issue for real estate professionals. The issue involves disclosure of facts about the owner or occupants of the property and not the facts solely associated with the real estate itself. Real estate professionals are placed in the difficult position between protecting the prior owner or occupant's privacy and civil rights and fulfilling the potential purchaser or lessee's desire to know about an owner or occupant of the property in question. Psychological impacts include: previous tenants with AIDS, murders, suicides, deaths, and criminal activities, which have, or are alleged to have, occurred on the property. Most states require some sort of disclosure, with specific regulations varying in regards to time periods and the nature of the information in question.

Position Statement

The CCIM Institute believes that all psychological impacts or stigmas which are associated with past owners or occupants of real property are not material facts, and that the disclosure of such information to a potential purchaser or lessee should not be required by law or regulation. (updated 4/09, 10/12, 10/16)

Real Property Issues

Real Estate and Financial Crisis Resolution Proposal

Background

There are many single family and commercial assets sitting in banks around the country, with over inflated valuations, therefore, not allowing tenants to lease properties at current market rental rates or buyers to purchase properties at current market values.

In 2007, the Financial Accounting Standards Board (FASB) implemented FAS 157, known as mark-to-market. CCIM Institute developed a Statement of Policy recommending the rules be applied consistently to all assets—real estate and securitized debt pools with real estate collateral. The consistent valuation of property and loans would bring more stability in real estate. Since 2007, the FASB has eased off mark-to-market accounting rules.

An innovative proposal, Real Estate and Financial Crisis Resolution, set forth by experts in commercial real estate and Texas A&M University includes a comparison of real-time collateral values to loan book values (residential and commercial collateral).

The solutions offered in the proposal are (1) a national Real-Time Valuation platform helps financial institutions accurately value loan collateral and quantify expected losses using a process that is faster and lower cost than current processes being employed. And (2) a proposal for providing capital so that banks can absorb the losses, dispose of real estate and return to profitable activities sooner rather than wasting financial and human resources on years of workout activity.

The Proposal includes a detailed analysis with three primary objectives:

1. Recognize the fact that there are at least billions of dollars in single family and commercial loans that are residing in these institutions and need to be evaluated based on today's market value. However, by doing so it triggers a problem for the bank by taking away its capitalization wherein it is now insolvent and cannot continue to make loans.

2. NAR, or some other organization, could set up a national database for residential and commercial loans that could create real-time valuation to the assets by using Real Property Resource, CCIM REDEX, or other sources, as the national platforms to tract these assets for all lenders and investors. In essence it would create a real-time valuation process for both residential and commercial properties.

3. The Federal Reserve will purchase Trust Preferred Securities (TruPS) from banks in order to give them enough Tier 1 capital to absorb the losses from asset write downs. The purpose of this capital injection is to enable banks to fully write down distressed mortgages and OREO properties to real values and sell them to investors, prospective homeowners and users of commercial properties. The goal is to clear bank balance sheets of all distressed assets so that the market knows the financial system is healthy and ready to return to profitable lending. Regulators should require banks to sell real estate assets in order from most distressed to least distressed until banks are well below excessive concentration limits. This will give them enough lending capacity

and capital to finance new loans backed by real estate that is reset to the real market values. It is important to note that this exercise combined with the implementation of Real-Time Value to determine Fair Value will leave our financial system prepared to migrate to Fair Value accounting under the International Finance Reporting System, IFRS, December 15, 2014.

4. Banks will use the proceeds from future profits and/or capital raises to pay dividends on the TruPS and repurchase them from the Federal Reserve. This will naturally reverse growth in the money supply created by the Fed when it purchases the TruPS. This proposal effectively gives banks the ability to amortize the near term losses from asset dispositions over the life of the TruPS which can be up to 30 years. A schedule of appropriate incentives could be implemented to speed repurchase of TruPS from the Fed.

Position Statement

CCIM Institute supports the concept of the Real Estate and Financial Resolution Proposal that includes a comparison of real-time collateral value to loan book value. It is important to strategically research and develop systems that support a financial recovery in the real estate market place. (04/11, 3/15)

Civil Asset Forfeiture

Civil asset forfeiture laws are used by law enforcement to combat drug dealing. The Civil Asset Forfeiture Reform Act of 2000, did away with many of the unfair provisions of the original laws and created protections for innocent property owners. Specifically, the Act made the following changes: 1) Created an innocent owner defense; 2) placed the burden of proof on the government by requiring them to show a preponderance of the evidence; 3) allowed for appointment of counsel for indigents; 4) eliminated the cost bond requirement from owners; 5) allowed for the recovery of attorney's fees; 6) allowed innocent property owners the right to sue for negligence or loss of property due to forfeiture; 7) allowed the property to be returned to the owner pending final disposition, if hardship would otherwise result, and; 8) extended the time allowed to file a claim to 30 days.

Position Statement

Illegal drugs are a serious national problem. The CCIM Institute supports the swift, timely eviction of drug dealers. However, seizure of rental property where there may be an innocent owner constitutes a taking of private property without just compensation. The CCIM Institute supports protections for innocent property owners including access to legal counsel, adequate time to contest the forfeiture and the ability to receive compensation for negligence or loss of property due to seizure, and opposes any seizure procedures through which real property can be seized without clear and convincing proof of the property owner's involvement in the alleged criminal activity. (11/97; updated 11/01, 4/09, 10/12, 10/16)

Bankruptcy - Housing

On October 17, 2005 the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) went into effect. This legislation was the biggest reform to the bankruptcy laws since 1978. The legislation was enacted after years of lobbying efforts by real estate practitioners and was intended to prevent perceived abuses of the bankruptcy laws.

In order to improve bankruptcy law and practice, the Act emphasizes the restoration of personal responsibility and integrity in the bankruptcy system. Specifically, the law lifts the automatic stay for rental housing when a bankruptcy petition is filed after the judgment of possession. More importantly, it closes the loophole which allows rental housing tenants to avoid or delay eviction by declaring bankruptcy.

Unfortunately, BAPCPA is being administered on an inconsistent basis between districts, and not applied evenly across the Country. Also, tenants who are able to pay occupancy charges are allowed unreasonable delays in paying.

Position Statement

The CCIM Institute supports federal legislative efforts to effectively correct the problems caused by the inconsistent administration of bankruptcy laws between districts and the unreasonable delays in collecting occupancy charges from bankrupt tenants.(updated 10/07, 04/11, 3/15)

Bankruptcy – Shopping Centers

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) represents the largest overhaul of the Bankruptcy Code since its enactment in 1978. Provisions in this law provide new protections for shopping center owners, called the ―Shopping Center Amendments‖. Specifically, these provisions increase the initial time for a shopping center tenant to make a decision whether to assume or reject their lease to 120 days, with one allowable extension of 90 days for cause.

This new law doubles the initial time permitted under past law, which gave tenants who declared bankruptcy 60 days to assume or reject a lease. However, courts in the past have routinely extended this time for many months or even years with the expensive and challenging burden shifting de facto to the landlords to prove that good cause does not exist.

Previously, the impact on shopping center landlords involved, at a minimum, 1) uncertainty as to whether the tenant would reject the lease on short notice and terminate rental payments, 2) the impact of that uncertainty on lease-up or sales of the centers and/or redevelopment efforts 3) if the store had gone "dark", the interruption of percentage rents, diminished retail synergy and cross sales in the center and 4) potential co-tenant exercises of rent abatement or escape provisions of leases tied to co-tenancy.

Although under the Code, landlords have rights to proceed against post-bankruptcy petition lease defaults in some cases, such as continuous operations clauses being breached, the courts have not granted the landlords' pleas for relief. The courts have not been willing to uniformly limit the tenants' assignees' use of the premises to that provided in the lease, and although the landlord is entitled to protect "exclusives" granted to other tenants, that right is at risk, because debtors are more frequently seeking narrow rulings that particular centers do not meet the definition of a shopping center and do not deserve the protections under the Shopping Center Amendments.

Landlords faced with court rulings that their centers are not "shopping centers" under the code and not afforded the Act's protections of shopping center owners face substantial disadvantages. Shopping center owners are not the only victims of the debtor tenants' gamesmanship. In-line tenants suffer significantly, although they have no standing to seek intervention in the bankruptcy courts to protect their businesses.

Position Statement

The CCIM Institute believes that protections afforded shopping center owners under the Bankruptcy Code must be strengthened and protected by Congress and respected by the courts. Central to these initiatives are the following fundamental concepts:

Debtors in possession should be expected to expeditiously appraise their leaseholds and assume or reject their leases. Extensions beyond the initial 120 day deadline should be the exception rather than the rule and not exceed the 90 day allowable extension for cause.

Continuous operations clauses are the product of arm's length negotiations between landlord and tenants and breach of the clauses should be grounds for lease termination and other equitable relief due the landlords.

Debtors in possession seeking to assign their leases should be bound by use clauses and restrictions, as tenant mix and protections of exclusives are material to the survival and success of shopping centers. Assignments should be limited to bona fide operators of business types acceptable to the landlord and not include temporary tenants or licensees or investment entities buying portfolios of leases to re-tenant as sub-landlords, unless acceptable to the Landlord.

The definition of shopping center as provided for in the Bankruptcy Code, should be sufficiently broadened as to encompass all multi-tenanted neighborhood, community, regional, specialty and outlet centers and malls. Bankrupt tenants should not be able to escape the shopping center protections afforded landlords by motions to the court that rely on narrowly defined shopping centers.

Debtors-in-possession and trustees should be strictly held to an obligation to pay all post-petition rent, percentage rent, operating expenses and all allowable charges and fees as set forth in the lease (i.e. late fees, interest, etc.) as an administrative expense of the bankruptcy estate until lease resolution. (6/98; updated 10/07, 04/11, 3/15)

Seizure of Real Property Interest

The escalating problem of illegal drug use in this country has triggered expanded use of law enforcement measures aimed at ridding communities of manufacturers and distributors of illegal drugs. Among these measures at the federal level is the seizure of real property. Any property that could be linked as an asset to known drug traffickers could be confiscated, even if the property was owned by someone other than the drug offenders.

The Comprehensive Crime Control Act of 1984 allowed authorities to seize private property whether the owner is involved in or aware of the illegal activity occurring on the property or not. While seizure of property has proven to be an effective tool for law enforcement, it raises serious concerns regarding property rights. This is especially true in the cases involving rental property used by tenants for illegal purposes. The owner of the property may not be informed in advance of the seizure and may be required to prove his/her innocence in order to reclaim the property after the fact. In many instances, authorities were able to seize and at times demolish rental properties when the owner failed to prevent drug activity. In addition, once property is seized, it is highly difficult if not impossible to ever get it back.

In 2000, Congress passed the Civil Asset Forfeiture Reform Act (CAFRA) in part to protect those property owners who have made reasonable efforts to stop the use of their property for activities involving illegal drugs and other felonies. Among other things, CAFRA shifted the burden of proof from property owners to the government, as well as allowing property to be returned to an owner in certain situations where a court determines that a resulting hardship to the owner outweighs the government‗s interest in the property.

Many states have enacted their own laws concerning civil asset forfeiture. Information regarding specific state laws can be found by accessing the following link: http://www.ccim.com/system/files/Civil_Asset_Forfeiture_0.pdf

Position Statement

Illegal drugs are a serious national problem. However, the CCIM Institute believes that seizure of rental property where there may be an innocent owner constitutes a taking of private property without just compensation. CCIM Institute urges states and localities, when enacting seizure procedures, to require proof of owner complicity in the illegal drug activity before authorization for seizure of real property can be granted. The CCIM Institute also supports the swift, timely eviction of drug dealers. (updated 10/07, 10/10, 4/14)

Single Asset Bankruptcy

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), made significant changes in Bankruptcy laws in the United States and was signed into law by President Bush on April 20, 2005. This law, which went into effect October 17, 2005, was intended to lessen abuses of bankruptcy statutes by some financially troubled debtors. It also made it more difficult for owners of single-asset real estate who face credit problems to prevent the foreclosure of their real estate.

The law provides a 90 day automatic stay to all single asset properties, with no cap on the value of the asset. Amendments to the act provide some options for extending the 90-day stay. A property owner can elongate the stay by filing a plan for reorganization with the bankruptcy court. This plan must have a reasonable chance of being achieved and is required to demonstrate how the owner will use the extended time to restructure property debt. An owner may also lengthen the stay by making payments to secured lenders at the then-applicable rate of interest on the debt.

Previously, an automatic stay was generally restricted to 90 days after the start of a bankruptcy case for owners of a single asset property valued at $4 million or less. If the property owners who were debtors continued to pay interest on the current market value of the property to their secured creditors or proposed a reasonable plan for reorganization, the stay could have been extended. Owners of single asset real estate valued at more than $4 million weren‗t limited in how long a stay could remain in effect. As a result, property was often tied up for long periods of time.

Position Statement

CCIM Institute members have had experience on both sides of the bankruptcy issue. As owners/managers who have lost substantial income from tenants who have misused bankruptcy law to avoid paying their rent and occasionally as bankruptees who need time to reorganize their property. This gives us a unique perspective on bankruptcy issues.

As there seems to be no justification for differentiation between properties based upon their value, and certainly property values differ in different geographic jurisdictions, we believe that the 90 day automatic stay should apply to all properties, with no cap on the value of the asset. However, with some properties, extensive work is needed to formulate a successful reorganization plan in the occurrence of bankruptcy.

Therefore, there should be adequate provisions that allow for the extension of the 90 day stay for successive like periods of time in highly complex cases when the debtor demonstrates to the Court that substantive progress (including not wasting the asset and providing timely payments) has been achieved and bench marked in the development and implementation of a plan of reorganization. (11/97; updated 10/07, 04/11, 3/15)

Use of Eminent Domain for Economic Development

In 2000, the City of New London, Connecticut, approved a development plan that was projected to create over 1,000 jobs, to increase tax and other revenues, and to revitalize the economically distressed city. The private developers of the land planned on constructing a hotel, health club, and offices on the waterfront property. In assembling the land needed for the project, the city's development agent purchased property from willing sellers of 135 properties and used the power of eminent domain to acquire the remainder of the property from unwilling owners of fifteen homes and businesses. The property owners of the fifteen condemned properties filed suit against the city.

The case of *Kelo et al v City of New London et al* reached the U.S. Supreme Court who answered the question of whether the city's proposed disposition of the property qualified as a "public use" within the meaning of the “takings clause” of the Fifth Amendment of the U.S. Constitution. On June 23, 2005, the Supreme Court ruled 5-4 in favor of New London, deciding the city did not violate the Fifth Amendment by condemning the non-blighted properties for a private mixed-use development. Justice John Paul Stevens, who penned the decision, wrote that economic development qualifies as a "public purpose" sufficient to satisfy the Fifth Amendment's "public use" requirement.

States may restrict the use of eminent domain for economic development if enacting more strict standards of “public use” than the federally mandated standard. At least eight states including Arkansas, Florida, Illinois, Kentucky, Massachusetts, Montana, South Carolina, and Washington had enacted laws, prior to the Kelo decision, forbidding the use of eminent domain for economic development unless it is to eliminate blighted properties. As of 2013, over 40 states have passed eminent domain legislation in response to the Kelo decision.

Position Statement

The CCIM Institute supports states' rights in deciding under what conditions eminent domain may or may not be used. The CCIM Institute, a strong supporter of private property rights, urges state legislatures to enact more strict standards of "public use" than the federally mandated standard under which eminent domain is permitted. (10/05; updated 04/10, 10/13)

Commercial Broker Lien Laws

Many states have been exploring, or have already enacted, a commercial real estate broker‘s commission lien law. These laws allow for a commercial real estate broker to obtain and foreclose upon a lien as a legal remedy against a property if the buyer/seller or lessee/lessor fails to pay the broker the agreed upon commission, as their interests in the real property may apply. Litigation to recover fees often consumes the entire fee the broker earned and would have been paid, and is not always swift, to the detriment of the real estate brokerages and commissioned agents involved in the transaction. These laws have been enacted to solve the problem of brokers going into a closing of a sale and, without mutual consent, receiving a fee lower than previously agreed, upon, or in some cases, no fee at all.

Although the language in each law varies from state to state, most laws state that the lien language must be placed in the written agreement signed by both the party the broker represents, and the real estate brokerage agency. This agreement is only typically valid with the principal broker, thus those working under the broker have no authority to place a lien.

Position Statement

The CCIM Institute supports the enactment of commercial broker lien laws in all states to serve as a safety net for brokers who previously had no means of insuring payment of the agreed upon fee for their services, other than costly legal battles.

Of special interest to commercial brokers is the need for the lien laws to be as forceful and efficient for the commercial lease transactions as for commercial real estate sales. As more and more states contemplate creation of such laws, commercial brokers will have a greater sense of security when completing a transaction, which is beneficial to not only the brokers themselves, but their clients and the commercial real estate market as a whole. (10/06, 10/10, 4/14)

Rules and Regulations

Americans with Disabilities Act (ADA)

In the summer of 1990 the ADA was signed by President George H.W. Bush. The regulations implementing this legislation were originally written in 1991, but continue to be refined. Standards on administrative and procedural requirements, and design and construction compliance are expressed in the Americans with Disabilities Act Accessibility Guidelines (ADAAG). ADAAG covers Titles II and III of the ADA, which relate to accessibility guidelines for buildings and facilities and nondiscrimination by public accommodations and in commercial facilities.

July 26, 2010, marked the 20th anniversary of the signing of the Americans with Disability Act of 1991. In July, 2010, several changes were approved and published by the Department of Justice ("Department") as a final rule to Title III. Amendments to this final rule were made in March, 2011. These final rules went into effect on March 15, 2011. Compliance with the 2010 Standards for Accessible Design does not go into effect until March 15, 2012. A summary of these changes include:

1. Adoption of the 2010 ADA Standards for Accessible Design. The Department has adopted revised ADA design standards that include the relevant chapters of the Access Board's 2004 ADA/ABA Accessibility Guidelines as modified by specific provisions of this rule.

2. Effective Date. The rule became effective March 15, 2011. On March 15, 2012, compliance with the 2010 Standards will be required for new construction and alterations and barrier removal. In the period between September 15, 2010 and March 15, 2012, covered entities may choose between the 1991 Standards and the 2010 Standards. Covered entities that should have complied with the 1991 Standards during any new construction or alteration of facilities or elements, but have not done so by March 15, 2012, must comply with the 2010 Standards.

3. Element-by-Element Safe Harbor. The rule includes a general "safe harbor" under which elements in covered facilities would not be required to be brought into compliance with the 2010 Standards until the elements were subject to a planned alteration.

4. Ticketing. The rule provides guidance on the sale of tickets for accessible seating.

5. Service Animals. The rule defines "service animal" as a dog that has been individually trained to do work or perform tasks for the benefit of an individual with a disability. The rule states that other animals, whether wild or domestic, do not qualify as service animals.

6. Wheelchairs and Other Power-Driven Mobility Devices. The rule adopts a two-tiered approach to mobility devices, drawing distinctions between wheelchairs and "other power-driven mobility devices."

7. Effective Communication. The rule includes video remote interpreting (VRI) services as a kind of auxiliary aid that may be used to provide effective communication.

8. Reservations Made by Places of Lodging. The rule establishes requirements for reservations made by places of lodging, including procedures that will allow individuals with disabilities to make reservations for accessible guest rooms during the same hours and in the same manner as other guests
9. Timeshares, Condominium Hotels, and Other Places of Lodging. The rule provides that timeshare and condominium properties that operate like hotels are subject to Title III. The rule also provides guidance about the factors that must be present for a facility that is not an inn, motel, or hotel to qualify as a place of lodging.

Source: ADA.gov

In addition, the ADA doesn't allow plaintiffs to collect damages for violations to the law. Only attorneys representing the plaintiff's suit are allowed to collect compensation from accessibility decisions to cover court costs. In some instances, this stipulation has been abused and individuals have used the ADA as a means to file frivolous lawsuits against commercial property owners to collect compensation for court costs.

Position Statement

In continuing with its commitment to provide and encourage equal opportunity to all people, CCIM Institute heartily endorses an end to discrimination against disabled individuals, which is also the stated purpose of the Americans with Disabilities Act of 1990 in joining to end discrimination against disabled individuals. We encourage the regulatory agencies charged with the responsibility of enforcing the Act to adopt fair and workable regulations to ensure and facilitate timely compliance by the private sector.

To this end, the CCIM Institute encourages further definition of the terms "undue hardship," "readily achievable," and "maximum extent feasible," to better reflect the degree of responsibility of employers, property owners and managers in complying with the ADA.

While market pressures and honorable initiative have already resulted in expanded accessibility, we recognize the necessity to create a significant obligation for the private sector to join in ending discrimination. However, we cannot deny that employers and businesses often exist and operate under precarious economic conditions. Congress realized this and included factors to consider in determining the extent of private sector obligation under the Act in order to protect businesses from overwhelming financial burdens. Currently the term "technically feasible" does not include a cost factor. Only under some circumstances will cost be considered as an exception to compliance with ADA requirements. This could place a prohibitive cost on the private sector, causing a financial hardship. We recommend including "financial burden" as a reasonable criteria when determining obligation of compliance with ADAAG for existing facilities and alterations.

The idea behind the ADA is to make places and opportunities accessible to those with disabilities. We support legislation that would provide a notice to owners of properties that have alleged ADA violations filed against them. This would allow these properties to make necessary corrections if violations exist, without the expense of going to court and tying up the court system with unnecessary litigation. To be successful, ADA needs to be accessible to businesses. Legislation providing ample time for business owners to make necessary modifications would allow businesses to correct violations of the ADA, providing accessibility to disabled patrons. (11/90, updated 6/00, 10/06, 04/10, 10

Basel Capital Accord

In 1988, the central bank governors of the Group of Ten (G-10) countries adopted the Basel Capital Accord, a set of standards that forces banks to hold more capital if they choose to provide credit for riskier assets. In 2013, the Basel Committee has expanded to 27 member countries. In the United States, federal agencies such as the Office of the Comptroller of the Currency, the Federal Deposit Insurance

Corporation and/or the Federal Reserve System have been responsible for implementing Basel Capital Accord rules.

Although considered widely successful, a second agreement, known as Basel II, was drafted in 2004. Basel II aimed to create an international standard for banking regulators to determine how much capital banks should set aside against financial risks the bank may be taking, proposing to revise the formula by which banks set their capital standards. One variable of this formula, the asset correlation, will be developed by the Federal Reserve. The Fed envisions raising the asset correlation for High Volatility Commercial Real Estate (HVRCRE) and lowering it for Income Producing Real Estate (IPRE), which could force banks to reallocate capital to areas where the capital charge is lower (example: residential mortgage holdings), undermining the flow of credit to the commercial real estate industry and thereby affecting its overall liquidity and valuation. After years of collecting comments and data from stakeholders affected by Basel II, the Basel Committee released final rules in 2010.

Following, another set of rules were introduced in 2011, Basel III. Final rules were released in July 2013. Ultimately, big banks will have to increase in the minimum capital requirements, in both quality and quantity, beginning in 2014; whereas, smaller financial institutions will begin implementation of Basel III in 2015.

Position Statement

The CCIM Institute is concerned about disproportionate, unwarranted risk weight assigned to commercial mortgages and the damage they could do to an already weakened commercial real estate industry. The fact that commercial real estate lending is treated differently overall will lead to a loss of credit opportunities in that sector.

The CCIM Institute contends that improvements in underwriting, such as requiring more borrower equity, better appraisal procedures and improved credit scoring techniques have made commercial real estate lending less volatile, as demonstrated by the industry's reduced loan loss experience over recent years. Also, through securitization vehicles like commercial mortgage backed securities (CMBS), real estate's role in the global markets has increased, which has led to better transparency and discipline, greater liquidity and a closer examination of commercial lending activity worldwide. The CCIM Institute believes that these improvements should be taken into consideration by federal regulators when making policies regarding risk weight for commercial real estate loans.

The CCIM Institute will continue to monitor developments in the implementation of the Accord, and encourages the Federal Reserve not to adopt disproportionately stringent or burdensome policies regarding commercial real estate lending.
(11/04; updated 10/06, 04/10, 10/13)

Federal Data Quality

The Information Quality Act of 2001 required the Office of Management and Budget (OMB) to issue government-wide guidelines for ensuring and maximizing the quality of information (including statistical information) disseminated by federal agencies. The guidelines establish quality standards for all information disseminated by Federal agencies after October 1, 2002, regardless of when that information was first disseminated. The guidelines define four statutory terms for information quality:

quality, utility, objectivity, and integrity. Agencies must implement "pre-dissemination" review processes for all information, and must also include "administrative mechanisms" that allow affected persons to seek and obtain the correction of information that does not comply with the Office of Management and Budget (OMB) and agency standards.

Position Statement

CCIM Institute strongly supports data quality and integrity. All regulatory actions, particularly those relating to health and safety, environmental protection, and energy efficiency, should be based on solid scientific research. We strongly support and promote the quality, objectivity, utility, and integrity of federal government information. Furthermore, all research findings must be transparent, so experts in the private sector can review the findings and verify them. Without data quality, there will be no public trust of government actions. (11/02; updated 4/09, 10/12, 10/16)

Electronic Signatures

With the expansion of technology, many transactions are now being conducted electronically with a paperless process. In 2000, President Clinton signed the Electronic Signatures in Global and National Commerce Act (E-SIGN). This law offers a framework for the use electronic signatures and electronic records by providing electronic signatures the same legal effect, validity and enforceability as manual signatures. It does not, however, require any person to agree to use or accept electronic records or electronic signatures.

E-SIGN also allows most disclosures to be made in electronic form, provided the recipient has consented to receiving electronic signatures. It does not make any changes to the content of these disclosures or any party's rights or responsibilities under such disclosures. The replacement of paper disclosures with electronic ones will result in cost and time savings for many real estate practitioners. It will save funds on paper, postage, and storage space for disclosures and authorizations. In addition, this type of legislation marks a step toward streamlining the real estate transaction.

E-SIGN preempts state laws that do not recognize electronic signatures and address private-sector interstate or foreign consumer, commercial, or financial transactions that deal with real property, personal property, or services. It also allows states to establish standards and formats for records that are filed with state agencies. The National Conference of Commissioners on Uniform State Laws has approved model legislation, the Uniform Electronic Transactions Act (UETA) that meets the requirements for avoiding preemption. To date, 47 states, the District of Columbia, and the U.S. Virgin Islands have adopted UETA. Three states Illinois, New York, and Washington have not adopted the uniform act.

Position Statement

The CCIM Institute supports the use of electronic signatures, disclosures, and authorizations. Such use of technology has helped streamline many real estate transactions, and allowed for easier record keeping. However, neither real estate practitioners nor consumers should be penalized for an inability or unwillingness to use or provide electronic signatures, disclosures, or authorizations in place of paper versions. In addition, such a policy must not have any affect on the content of disclosures, or any party's rights or responsibilities under such disclosures or authorizations.

Furthermore, CCIM Institute applauds the enactment of E-SIGN on the federal level and of UETA in 46 states, the District of Columbia, and the U.S. Virgin Islands. CCIM Institute encourages those states that have not already done so to adopt UETA. (11/99; updated 10/08, 04/12, 10/16)

Financial Institutions and Real Estate Brokerage

The Gramm-Leach-Bliley Act of 1999 permits holding companies and national bank subsidiaries to engage in any activity that is financial in nature or incidental to a financial activity. However, the Act does not authorize holding companies or subsidiaries to act as real estate brokers or managers. The Act specifically excludes real estate investment and development, unless otherwise authorized by law, as a permissible activity for bank financial subsidiaries. The Act also authorizes the Federal Reserve and the Treasury (Agencies) to expand the permissible list of financial activities, though the two Agencies must mutually agree on what a financial activity may be.

In January 2001, the Agencies issued a Joint Proposed Regulation seeking comment on whether real estate brokerage and real estate management activities are financial in nature or incidental to a financial activity. If the Agencies determine that real estate brokerage and management services are financial in nature, these activities could be declared permissible for financial holding companies and subsidiaries.

It is apparent why financial holding companies and subsidiaries would want to enter the real estate brokerage and management market. Commercial real estate transactions are averaging higher and higher prices while the transaction volume continues to climb. Pension fund advisors are looking for large, high-quality property assets to meet their asset allocation targets and are turning to commercial real estate brokers. Banks see a huge, viable market that Congress has placed outside their grasp.

In 2009 President Obama signed the FY 2009 Omnibus Appropriations Act into law which permanently prohibits a bank from entering into a real estate brokerage and management transaction.

Position Statement

The CCIM Institute opposes changes or interpretations in federal statutes and regulations which would permit any banks or bank holding companies or subsidiaries to enter the field of commercial real estate investment, brokerage and/or management.

The CCIM Institute urges the Federal Reserve Board, the Department of Treasury and Congress to use their authority to disallow financial holding companies and financial subsidiaries from expanding into the field of real estate investment, brokerage and/or management. The Institute is opposed to such expansion for the following reasons (but not limited to):

- The investment or financial aspects of commercial real estate – wealth creation, tax deduction, financial asset – are incidental to the primary purpose for which people purchase commercial real estate. People buy commercial real estate in order to operate a business;

- Financial Institutions and Real Estate Brokerage – banks are often not in a position to give unbiased representation to a buyer or a seller. They often are in an ownership, trusteeship or receivership position or at the very least stand to make additional fees from financing.
- Independent commercial real estate companies, even large and well-capitalized ones, cannot compete with the advantages gained through a federal banking charter. The federal deposit insurance system subsidizes these institutions, giving them a significant competitive boost in the market place. Congress has long recognized the power of this advantage, which is one reason why limits have been placed on banks' non-banking activities;
- Certified Commercial Investment Members (CCIMs) provide valuable services that are not financial in nature such as market analysis, lease analysis and investment analysis. While financial analysis is also essential to the CCIM skill set, it is a very specialized activity related to the link between buyers and the best property for their investment, not finding or arranging financing;
- Congress has consistently rejected state financial entities and their federal counterparts' efforts to allow them entry into the real estate brokerage and management arena, therefore, they should not be allowed to circumvent the power of Congress by appealing to the Agencies;
- Consumers will suffer if financial entities are allowed to enter the real estate market. Banks could control the real estate transaction from end-to-end, creating opportunities for extra charges and add-ons. Unconstrained integration of banking and commerce could compromise bank-lending decisions and create conflicts of interest. Also, this rule would allow banks to buy up large brokerages and then drive smaller ones out of business leaving a less competitive market and fewer choices for the consumer. (updated 10/08, 04/12, 10/16)

International Building Code

In 1994, the International Code Council (ICC) was formed to draft a comprehensive and coordinated set of model new construction codes to replace the three regional codes used by most jurisdictions – the National Codes developed by the Buildings Officials and Code Administrators International (BOCA), the Standard Codes developed by the Southern Building Code Congress International (SBCCI) and the Uniform Codes, developed by the International Conference of Building Officials (ICBO). These codes are generally developed on a regular basis, resulting in widely varying guidelines and an inconsistent set of regulations.

Representatives of these three organizations came together to form the ICC with a goal of replacing the three regional codes with a single set of International Codes. Released in 2000, the International Codes include new editions of the International Building Code, International Fire Code, International Residential Code, International Mechanical Code, International Fuel Gas Code, International Energy Conservation Code, International Property Maintenance Code, International Plumbing Code, International Private Sewage Disposal Code, ICC Electrical Code and the International Zoning Code.

These codes have not been contested by the Department of Housing and Urban Development or the Fair Housing Act standards.

The ICC International Codes are maintained yearly through a public hearing and review process.

Position Statement

The CCIM Institute supports the International Code and the concept of one uniform model building code to establish consistency and uniformity across the nation. The CCIM Institute encourages local and state governments to adopt these Codes as guidelines to adhere by.

We encourage the International Code Council to continue an open dialog through the annual review process, insuring the most up to date and timely codes and issues are addressed and adopted. The CCIM Institute also encourages HUD to continue to maintain an open dialog and monitor future updates of the Codes to ensure they are consistent with the Fair Housing Act and Americans with Disabilities Act's accessibility requirements. Building officials' incorporation of Fair Housing accessibility standards into local building codes, and equal enforcement of those standards, will reduce the risk of introduction of non-accessible housing into the market and the dislocation that non-accessibility creates. (11/00; updated 10/08, 04/12, 10/16)

Spam E-mail

Spamming is the practice of sending bulk, unsolicited electronic mail (e-mail). Some real estate businesses may use this technique as a means to attract new clients or promote property listings. Consumers dislike Spam or junk e-mail because it clogs up their account.

On December 16, 2003, President Bush signed the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act). The law does not ban unsolicited commercial e-mails, but does identify a series of practices that must be observed by senders, as follows:

- Include a legitimate return e-mail and physical postal address;
- Include a functioning opt-out mechanism, clear and conspicuous notice of the opportunity to opt-out and requires senders to honor any such opt-out request;
- Include a clear and conspicuous notice that the message is an advertisement or solicitation; and
- Clearly identify messages with pornographic or sexual content as such.

In addition, the law prohibits senders from falsifying or disguising their true identity and bans the use of incorrect, misleading or fraudulent subject lines. In late 2004, the Federal Trade Commission (FTC) issued a final ruling defining the criteria for determining the ―primary purpose‖ of an electronic mail message in order to help guide senders on which messages are subject to the CAN-SPAM requirements. These rules, which went into effect on March 28, 2005, deal primarily with the difference between ―commercial‖ messages and ―transaction or relationship messages,‖ the latter being exempt from the Act. The rule sets forth factors to be used in making a determination on ―mixed messages‖ (which include both commercial and transaction or relationship content), including placement of the advertisement, the commercial percentage of the message; and other techniques used to highlight the advertisements such as color, graphics, type size, and style.

In 2008, the FTC approved a new rule under the CAN-SPAM Act. The new rule includes four topics:

1. An e-mail recipient cannot be required to pay a fee, provide information other than his or her e-mail address and opt-out preferences, or take any steps other than sending a reply e-mail message or visiting a single Internet Web page to opt out of receiving future e-mail from a sender;
2. The definition of ―sender‖ was modified to make it easier to determine which of multiple parties advertising in a single e-mail message is responsible for complying with the Act‛s opt-out requirements;
3. A ―sender‖ of commercial email can include an accurately-registered post office box or private mailbox established under United States Postal Service regulations to satisfy the Act‛s requirement that a commercial e-mail display a ―valid physical postal address‖; and 4. A definition of the term ―person‖ was added to clarify that CAN-SPAM‛s obligations are not limited to natural persons.

Position Statement

The CCIM Institute opposes indiscriminate, unsolicited spamming; however, the CCIM Institute recognizes that electronic commerce is a significant emerging technology for communicating with both current and potential clients and consumers. The CCIM Institute opposes burdensome regulations which would hinder the responsible utilization of such communications. (11/98; updated, 4/04, 10/06. 04/11, 3/15)

Telecommunications – Forced Access

The Telecommunications Act, passed and signed by President Clinton in 1996, was written to allow for competition in the ever-changing world of technological communication. The passage of this legislation allows for broader competition and the expansion of providers in the areas of cable television, satellite broadcasts, and phone services.

Since the passage of this legislation, several proposed rules or notices of proposed rules have been written in regard to providing these services. The intent of the legislation was to create greater competition and diversity for those providing and receiving services, and to broaden the field of what services and to whom those services are provided. Some of the proposed regulations, however, are creating great concern for commercial Realtors.

As written, the Telecommunications Act facilitates the ability of those companies providing services to offer a broader range of services, and creates greater options for those seeking communications access. The act, however, oversteps many boundaries, especially those of private property rights. The rules that have been written, to this point, have included language that preempts both state and local ordinances pertaining to the ability to receive both satellite and cable communications.

One of those rules is the satellite dish rule, which currently states that generally commercial buildings may, at the request of the occupant, have satellite dishes two meters or less in diameter on their property. The rule also states that renters or lessees of a multi-family building may have satellite dishes of no more one-meter in diameter on the rented or leased property. These rules preempt any state or local ordinance that may say otherwise. The end result may be, as stated in an FCC notice of proposed rulemaking, that owners and brokers of those commercial and multifamily facilities will have little or no say in what may be placed on their buildings. This rule also raises questions of liability and safety concerns. There are additional major concerns for the multi-family property owner with the frequent moving of tenants and the resulting permanent damage to the property itself from the placement of the satellite dish and all of the wiring and how that wiring is run to the individual tenant�much apartment. Under these rules, owners have little say as to the location, installation and appearance of the dish and wiring. Frequently, installers select placement of dishes with little to no regard for the aesthetics of installation or how they run wires, frequently crisscrossing prior installations and over other tenant windows. Once the tenant moves, those dishes and wires remain and overtime, create more damage to the property.

Another proposed regulation is the inside-wiring rule. This regulation would also infringe on the private property rights of owners of commercial investment properties. This regulation would allow unlimited access to property for inside wiring for communications services. This regulation will severely hinder the right of a building owner to decide what services best will serve the occupants of the owner‛s building.

In January 2001, the FCC came very close to regulating access through the Building Access Order and Notice of Proposed Rulemaking. Its provisions follow:

• Building owners are prohibited from entering into ―exclusive contracts‖ with telecommunication providers for service in commercial buildings (including industrial and retail).

• Contracts may not contain clauses restricting access to other telecommunication providers. We have only begun to see the rules that will be promulgated on the Telecommunications Act.

We must continue to communicate to the Federal Communications Commission, the agency implementing the Telecommunications Act, the importance of maintaining private property rights for owners of commercial property, and to continue to stress the importance of limiting the communication infrastructure and structural changes of facilities to those that are required for safety and other concerns of the property owner.

State Legislatures across the country have seen recurring proposals of mandatory or forced access legislation. Specifically, several states are debating whether to permit telephone companies to offer cable service without having to first acquire a local cable franchise. Presently, only Texas, Rhode Island, and Indiana have established mandatory access in favor of telephone companies to office buildings and multiple dwelling units. Additionally, 18 states and the District of Columbia have some type of ―mandatory access‖ rules in favor of the local franchised cable provider.

These laws raise a number of legal and practical questions for real estate practitioners. For example, it is unknown whether the mandatory access rights currently benefited by franchised cable operators will be extended to telephone companies if an individual state implements telecommunication franchise-free legislation.

There is also the question of whether cable and phone companies are limited in a mandatory access case to provide only cable service. For example, if a telephone company is given access to supply cable in a building over the owner�been opposition, can the owner legally prohibit the company from offering phone service? A second legal question is whether the property owner has breached an exclusive contract with an existing provider if the owner gives ―providing access‖ to the telephone company as required by law.

Position Statement

The CCIM Institute believes that owners of commercial investment real estate should have the right to choose and manage the telecommunications systems serving their tenants and facilities. Should a tenant need a service not provided for by the system in place, i.e. emerging technologies that service should negotiate directly with the owner for access. For all forms of telecommunications system installation, maintenance and service, entry into private property should be provided pursuant to a negotiated agreement between the property owner/manager and the service provider--not by legislative fiat. Negotiation on a competitive basis will allow for consideration of the level of expertise, professionalism and reputation of the potential service provider. Owners should have the right to negotiate mutually accepted terms and conditions for granting access to building space and the valuable tenant markets contained within.

The CCIM Institute is opposed to unrestricted access to buildings by service providers, which would require building owners to guarantee building access to a potentially unlimited number of service providers and assume much, if not all, of the costs and liabilities associated with such access. Existing buildings have limited space available for installation and maintenance of telecommunications systems. Unlimited access could force owners to incur exorbitant costs for expansion and renovation of riser cable space.

Federal and state governments should not interfere in the relationship between building owners and managers, tenants and telecommunications service providers regarding the complex process of accessing valuable building infrastructure space. Private competition and free enterprise are the best means by which to provide a level playing field for all telecommunications service providers and to ensure that the telecommunications needs of occupants are being met.

The CCIM Institute feels that owners should be compensated for granting access to their properties and for any actual damage incurred while the property is being wired for cable, telephone and/or any other similar system. (6/96; updated 10/07, 04/11, 3/15)

Terrorism Readiness

Terrorism attacks, bomb threats, chemical warfare, and shooting sprees have reinforced the immediate need for commercial real estate professionals to prepare effective emergency procedures and educate their staff on the proper response if a bomb or other type of terrorist emergency occurs on the premises. With the World Trade Center Bombings in 1993, the Murrah Federal Building bombing in Oklahoma City in 1995, the terrorist attacks in New York City and Washington, D.C. on September 11, 2001, anthrax cases, and an increase in public space gun violence such as the shooting at a movie theater in Aurora, Colorado on July 20, 2012, all reinforce the need for effective emergency procedures and notification methods. Every property, whether an apartment building, shopping center, large office tower, or industrial park is vulnerable and a potential target for terrorist activity.

Position Statement

The CCIM Institute is concerned with the increase in terrorist attacks on the innocent public both here in the United States and abroad. Although most terrorist incidents cannot be prevented, CCIM Institute believes that there are measures the commercial real estate industry can take to help in possibly reducing the number of casualties and injuries caused as a result of terrorist acts. The CCIM Institute is affiliated with the Real Estate Information Sharing and Analysis Center (ISAC), which allows all CCIM Institute members to receive national security alerts as soon as they are released by the U.S. Department of Homeland Security (DHS). Terrorism-related bulletins issued by the DHS are also available online to provide real estate owners and managers with the latest guidelines and updates pertaining to building security.

CCIM Institute encourages all commercial real estate professionals, where appropriate, to work with federal, state and local law enforcement agencies to develop special emergency procedures in case of a terrorist act. It is then the responsibility of the property owner or manager to communicate these emergency procedures to all tenants. Furthermore, the Institute encourages staff and legal counsel to review lease agreements for modifications dealing with terrorism. We also encourage federal, state and local entities as well as commercial real estate professionals to review leases for similar modifications. (11/99; Revised 11/01, 4/06, 4/09, 10/12, 10/16)

NFPA 1600 Emergency Preparedness Standard Statement of Policy

Since 2007, CCIM Institute has been monitoring legislation passed by Congress that requires the Department of Homeland Security (DHS) to establish a program for certifying private sector entities as meeting a voluntary national standard for emergency preparedness. DHS adopted the National Fire Protection Association (NFPA) 1600 standard for emergency preparedness on June 15, 2010.

Position Statement

Upon reviewing the proposed NFPA 1600 standard, a special workgroup of CCIM Institute members have raised the following concerns about the NFPA 1600 standard:

- The regulations in NFPA 1600 are complicated and difficult to understand. It is unclear what it will take for a building to be in compliance with the standard.
- CCIM Institute members feel that compliance with the NFPA 1600 standard should remain voluntary.
- Each property is unique; therefore a single, uniform standard is not appropriate for all types of property and all areas of the country.
- Mandatory state building codes already exist to provide a standard of safety. Additionally, many property owners and managers already have an emergency preparedness plan in place.

(Updated 04/13)

Preparation for a Flu Pandemic

A flu pandemic, such as avian or swine, poses a large threat to the global economy. For example, a human outbreak of the bird flu could cost the U.S. economy $675 billion, according to the U.S. Congressional Budget Office (CBO). The general slowdown in economic activity would reduce gross domestic product (GDP). Business confidence would be injured, the supply of labor would be restricted (owing to illness, mortality, and absenteeism spurred by fear of contracting the disease), supply chains would be strained if transportation systems were disrupted, and arrears and default rates on consumer and business debt would probably rise modestly.

Economic activity would slow, but it would not halt completely. The CBO reminds us experiences with such catastrophes as natural disasters and terrorist attacks have demonstrated the ability of people to cope with and adapt to extremely difficult circumstances. Moreover, the advances in technology of recent years would allow many companies to conduct business via electronic communications, permitting their employees to work from home.

A potential influenza pandemic represents a dilemma for investors, highlighted in the March 2006 Citigroup report A Global Update for Investors: Avian Flu. Extreme uncertainty over the likelihood, timing, and virulence of a pandemic creates a difficult and seemingly volatile investment landscape. Front-line industry "winners" would include drug companies, healthcare providers, cleaning product manufacturers, and home entertainment providers, in addition to telecommunications and internet technology companies on the second-line. Insurers, airlines, hotels, shopping malls, and the travel and hospitality industry could suffer profit losses.

The CCIM Institute recognizes the possibility of a flu pandemic in the U.S. We are aware of the potential economic and social disruption an influenza pandemic could cause. Experience in preparing for, and recovering from, terrorist acts and natural disasters has emphasized the importance of emergency preparedness. Both the public and private sectors have seen how important preparation is in reducing damages.

Position Statement

The CCIM Institute urges all commercial brokers to familiarize themselves with the dangers associated with a possible pandemic and assess the impact one could have on their businesses, properties, employees, and clients. Commercial brokers should prepare their businesses and properties for a pandemic by establishing policies to be implemented during a pandemic and determining what resources would need to be allocated to employees and clients at such time. Communication is key before and during any disaster. Consideration should be given to communicating with public health officials and other businesses in the community. Prior to and during the potential pandemic, proposed federal and state legislation may affect investment property. The CCIM Institute legislative staff will monitor and communicate this legislation to its membership.
(4/06; updated 04/10. 10/13)

Uniform Standards of Professional Appraisal Practices

The Uniform Standards of Professional Appraisal Practice (USPAP) was developed in an effort to create a set of uniform standards for appraisers by the Appraisal

Standards Board (ASB), a unit of the Appraisal Foundation. The standards are published every other year with possible revisions.

The most relevant sections in the USPAP to CCIM Institute members are Standards 4 and 5. These two sections deal primarily with those appraisers who do consulting work. CCIMs do such activities as market analyses, financial analyses, and/or feasibility studies, which are listed in these standards. The language in this revised document of Standards 4 and 5 goes beyond the scope of appraisal for which the document was created. This creates new standards for the field of consulting, in which a large number of our membership is active.

CCIM Institute's concern is that because the final standards are published by the Appraisal Standards Board, it will be submitted to the states, who may decide that either (1) to have any real estate practitioner who does consulting activities (like those outlined in the standard) be subject to an "appraisers license"; or (2) that a separate license be developed which covers the activities identified in the standard as "consulting". The potential for either or both ideas may be fueled by recognition of increased license fee revenues, and/or a general belief that such actions would benefit the real estate industry as a whole.

Under the Dodd-Frank Act of 2010, it became law that real estate practioners are required to report any appraisals violating the standards set forth under USPAP.

Position Statement

The CCIM Institute is opposed to any language, such as Standards 4 and 5, found in the Uniform Standards of Professional Appraisal Practice (USPAP) and state license laws that would negatively affect the typical business activities of commercial real estate professionals (either directly or indirectly) and may require them to pursue another license or certification. CCIM Institute supports the elimination of Standards 4 and 5, and similar language, from the USPAP. CCIM Institute further supports any other clarifications that would protect the day-to-day operations of a commercial real estate professional. (Revised 6/99; updated 10/08, 04/12, 10/16)

Unmanned Ariel Vehicles (Drones)

Technological advances have made it cost effective to take pictures and videos from drones, aka Unmanned Ariel Vehicles (UAVs). Real estate professionals are very interested in using this new technology to take videos and pictures to create dynamic marketing pieces for property listings. However, the Federal Aviation Administration (FAA) prohibits any commercial use of UAVs until regulations are created that protect safety, privacy and national security. Such prohibited use of unmanned aerial vehicles may lead to the assessment of substantial fines and penalties.

The FAA Modernization Act of 2012 charged the FAA to develop a regulatory framework by 2015 that would integrate UAVs into the national airspace, while ensuring safety, privacy and national security. The FAA is on track to develop these regulations within the statutory timeframe.

Position Statement

The CCIM Institute advises members that the use of unmanned aerial vehicles for real estate marketing is currently prohibited by the Federal Aviation Administration.

The CCIM Institute supports efforts to create new federal regulations to allow for the future commercial use of unmanned aerial vehicle technology by the real estate industry. (3/15)

Utility Deregulation

For most of the twentieth century, energy utilities were publicly held monopolies. But in the last 20 years, federal legislation has cleared the way for competition by private generators and suppliers. The Natural Gas Wellhead Decontrol Act of 1989 and the Energy Policy Act of 1992 provided for the deregulation of the natural gas and electricity generation industries, respectively, with the goal of reducing energy costs via the open market creating competition among electric providers.

Originally, electric power industries were awarded rate-regulated franchises by the federal government in order to promote this power type across the country. As electricity has became a necessity rather than a luxury, discussion has surfaced regarding creating a free market to encourage competition, which in turn should bring lower electricity rates. It should be noted, however, that electricity's elements are different from the other utilities in its generation, transmission, and distribution. While the transmission and distribution costs are somewhat fixed and may remain regulated, the generation of electricity may provide for the most competition and benefit for consumers.

Among the many issues that must be considered when discussing the terms of energy utility deregulation are: stranded costs, or decline in the value of electricity-generating assets and the inability to recover capital investments; the potential loss of state and municipal revenue, and the impact this will have on property taxes and fees; how competition-induced rate changes will affect consumers of different purchasing volume; and the continued role of government regulators in preserving safety and reliability.

One issue that must be considered when discussing the terms of deregulation is "capital costs." (previously considered "stranded costs".) Capital costs are defined as those costs the federal government allows the utility companies to recover over an extended period of time (about thirty years), and which would not be recovered if competition were introduced. The government has required the companies to provide services for consumers and has assured them that certain costs to provide such services could be recovered over time. Should competition be introduced and industries forced to lower rates, the industries may not be able to compete and would thus be forced into bankruptcy--defeating the purpose of competition. The need to abide by a contractual agreement regarding stranded costs between the federal government and industry is understandable; however, the validity of what is considered a capital cost should be verified to ensure that the costs are not the result of faulty financial judgments.

Additional concerns include the loss of state and municipal revenues from the industries, which may result in higher taxes to make up for the loss.

While industry and some commercial consumers may benefit from the increased competition, smaller consumers, such as property owners and managers and residential consumers may not benefit as much considering the electrical volume they consume. Aggregation is therefore a likely option for those who may not benefit solo. An aggregator is defined as "any marketer, broker, public agency, city, county or special district, that combines the loads of multiple end-use customers in facilitating the sale and purchase of electric energy, transmission, and other services on behalf of these customers." Some organizations are forming their own aggregates to benefit the most.

Position Statement

The CCIM Institute appreciates the need to restructure the energy utility industry and believes it must be done carefully to ensure that all parties involved (present providers, future providers and all consumer types, including multifamily and commercial property owners) are treated fairly in the deregulation of the utility.

The CCIM Institute believes that deregulation of our electric and gas utilities should be done at the state level, not the federal level, to ensure that the individual consumers and businesses will have the greatest representation in determining the impact on their particular area. Energy system reliability should not be compromised by deregulation, therefore, adequate safeguards should be included in deregulation plans to ensure the integrity of the generation, transmission, and local delivery systems. Deregulation should also allow for long-term energy contracts, for all consumers to lock in prices on utilities.

The costs of deregulation should not be borne by the consumer. Although some states and municipalities could feel some loss in tax revenue, any shortfall resulting from deregulation should not be passed onto the property owner in the form of higher property taxes or other taxes or fees. Since electricity deregulation would not allow electricity producer to recover capital costs, recovery of these costs should be paid for by all ratepayer categories on an equal basis. Deregulation plans should also allow power production facilities to retain their ownership rights, when they meet deregulation requirements. Lastly, deregulation plans should include price controls so that energy costs cannot be substantially raised simply as a result of deregulation. (6/01; updated 10/06, 04/10, 10/13)

Data Security

As technology has evolved and become vital for businesses to thrive, a growing number of public and private entities that keep and maintain personal information, such as financial account information, have become victims of security breaches. These breaches have exposed fundamental security flaws in the way that companies handle consumers' personal information. Individual privacy has been compromised and these breaches have put consumers at an elevated risk of becoming victims of identity theft.

The number of Congressional proposals to counteract identity theft multiplied in the spring of 2005 after ChoicePoint Inc, a commercial data broker, announced that February it may have improperly sold the personal information of almost 163,000 individuals. ChoicePoint was consequently investigated by the Federal Trade Commission. In January, 2006, the company agreed to pay $15 million to settle charges it violated consumer privacy rights, but did not admit any wrongdoing.

Then, the substantial security breach at the U.S. Department of Veterans Affairs (VA) on May 3, 2006—a major breach widely publicized by the media—triggered more legislators on Capitol Hill to introduce data security legislation. The laptop and external disk drive, containing information on 26.5 million veterans and 1.2 million active duty personnel, of a VA employee were stolen on May 3 from the employee's residence. The Secretary of the VA was not informed of the breach until May 16 and the public was not informed until May 23. The VA breach prompted legislators to narrow their focus to *when* the public should be notified if sensitive data is lost or stolen.

The House Energy and Commerce Committee passed H.R. 3997, the "Data Accountability and Trust Act" (DATA), on June 2, 2006. DATA would require persons or entities possessing consumers' personal information in electronic form to establish security practice procedures for the protection of such information. If a breach of information security occurred, then the entity would have to notify the Federal Trade Commission (FTC) and affected individuals. DATA would preempt state information security laws.

Meanwhile, the House Financial Services Committee passed H.R. 4127, the "Financial Data Protection Act of 2006" on June 2. H.R. 4127 prescribes consumer notification requirements and prohibits charging the related consumers for the cost of the notices and file monitoring regarding data security breaches. H.R. 4127 preempts state laws governing consumer reporter data security responsibilities, except any laws governing professional confidentiality or limiting the purposes for which information may be disclosed.

There are specific regulations placed upon certain industries; for example, Health Insurance Portability and Accountability Act for medical records, Fair Credit Reporting Act for consumer reporting data, etc.

In June 2013, the Senate introduced S. 1193 that would create reasonable measures to protect and secure data in electronic form. Breach notification is included in S. 1193 although the 46 states (and District of Columbia) with existing breach notification laws would be preempted.

Policy Statement
The CCIM Institute has identified two main concerns with data security and consumer notification legislation: 1.) those bills that contain specific provisions and mechanisms that trigger notifying the consumer of a security breach, and 2.) the costs of compliance with state and/or federal laws would be of major concern to commercial real estate brokers. The CCIM Institute encourages Congress to approve legislation which is not onerous on commercial real estate brokers or their clients.

The CCIM Institute strongly encourages its members to protect the personal information of their clients.
(10/06; updated 04/10, 10/13)

Credit Risk Retention

The Dodd-Frank Act of 2010 mandates changes to the financial regulatory system in the United States. Of the many rules and regulations falling under Dodd-Frank, a final rule for a credit risk retention requirement was released in October 2014.

The rule applies to all forms of assets that can be securitized, including commercial real estate (CRE) and commercial loans. The rule requires a five percent risk retention requirement, unless asset-backed securities (ABS) backed exclusively by loans meet specific standards to qualify for the proposed zero percent rate.

The rule defines CRE loans as those secured by five or more residential units or by non-farm, non-residential real property, where the primary source of repayment would come from the proceeds of sale or refinancing of the property or underlying rental income from entities not affiliated with the borrower.

A qualifying commercial real estate (QCRE) loan must meet four requirements for assurance of repayment, property value, and risk management to be exempt from the risk retention requirements.

1. Ability to Repay—the originator must conduct an analysis of the borrower's ability to repay all outstanding debt. Looking back two years at the borrower's credit history.

2. Loan-to-Value (LTV) Requirement—the combined LTV cannot be more than 65 percent.

3. Valuation of the Collateral—the originator of a QCRE must determine that the purchase price for the property secures the loan and reflects the current market value of the property. The agencies want to ensure that the collateral is sufficient to recover any unpaid principal in the event of default and the borrower has sufficient equity in the property.

4. Risk Management and Monitoring Requirements—there are certain covenants to be included in the loan documents, which are intended to facilitate the ability of the originator to monitor and manage credit risk over the full term of the loan.

There are exemptions for any residential, multifamily, or health care facility mortgage loan asset, or securitization based directly or indirectly on such asset, that is insured or guaranteed by the United States or an agency of the United States.

Fannie Mae and Freddie Mac will not have to meet the risk retention requirements. Any temporary successor to Fannie Mae or Freddie Mac would also be exempt from the risk retention requirements.

Position Statement

CCIM Institute supports fiscally responsible lending practices for all financial institutions. However, the rule on credit risk retention requirements is not a viable solution to curb overzealous and past lending practices. In fact, we believe the rule will significantly hinder CRE transactions.

More specifically, the DSC of greater than or equal to 1.5 is too high. Historically, a DSC of 1.2 to 1.3 has worked and will continue to do so. Furthermore, the combined LTV of not more than 65 percent is too tight for most transactions.

There is also a prohibition on pledging the retained risk as collateral. This forces a buyer to make a much larger down payment.

The credit problems stemmed from careless underwriting. The lending rates should not change. The rule on risk retention requirements punishes responsible and honest borrowers with increased paperwork and too tight lending requirement.

The rule also has administrative setbacks as they lack flexibility and instead increase staffing and personnel expenses. These excessive guidelines create a burdensome amount of paperwork that could further complicate an already complex process.

Overall the risk retention requirement will slow the process of CRE loan transactions, in addition to the uncertainty currently stalling the market. If these transactions lose momentum, the United States economy will not regain its healthy flow to move into a full recovery mode. (10/11, updated 10/15)

Tax Policy

1031 Like Kind Exchange

Section 1031 of the Internal Revenue Code allows investors to defer capital gains taxes on the exchange of like-kind properties. 1031, or tax-deferred, exchanges hold great advantages for both investors and CCIMs. An exchange is defined as a reciprocal transfer of real property that has certain tax advantages over a sale. "Like-kind" is defined as any real property for any other real property if said property(ies) is held for productive use in trade or business or for investment.

A qualified intermediary (QI) facilitates the tax-deferred exchange by holding the net sales proceeds from the seller/exchangers relinquished property in an account that prevents constructive receipt by the seller/exchanger. The QI then releases the funds upon settlement of the substitute property by the seller/exchangers. The use of a QI when entering into a tax-deferred exchange is mandatory when the QI safe harbor is elected. The QI cannot be a related party to the seller/exchanger in any way that would allow the seller/exchanger to influence the QI to release the funds prematurely.

Upon closing the sale of a property, there is a 45-day period in which an investor must identify properties they would like to exchange into and a 180 day period (which includes the 45 days) in which to close on the identified property. The new property price has to be at least equal to the net sales price of the old property. If not, the investor pays tax on any cash, boot, or net mortgage relief received.

Position Statement

The 1031 Like-Kind Exchange is an integral part of a CCIM's transaction portfolio. Therefore, every phase of the transaction should be retained. The CCIM Institute opposes any federal regulatory or legislative action that jeopardizes the ability of investors to partake in this tax-deferred real property transaction. Safeguards should be available to protect the real estate investor's assets during every phase of the transaction, particularly during the phase when the qualified intermediary holds property and funds on behalf of the investor. The CCIM Institute opposes any regulation or legislation that would render the transaction more difficult and/or less appealing to investors. (updated 10/09, 04/13)

Capital Gains

The appropriate level of taxation for capital gains (the amount realized when property held for investment is sold) has been a subject of tax policy debate throughout the history of the income tax. During the past 30 years the rate has ranged from a high of 49 percent to 15 percent. When capital gains tax rates were reduced to 15percent from 20percent in 2003, the depreciation recapture remained at 25percent. This inequality puts real estate investment at a disadvantage when compared to non-depreciable assets such as stocks. Prior to 1997, depreciation recapture amounts were taxed at the same rate as capital gains.

After the "fiscal cliff" or the American Taxpayer Relief Act became law in 2012, the current capital gains rate increased to 20 percent for individuals with an adjusted gross income more than $400,000 and married couples more than AGI $450,000.

Individuals/couples below the $400,000/$450,000 AGI level will still pay 15 percent. The change will be effective beginning in 2013.

Position Statement

CCIM Institute believes that it is in our nation's best interest for Congress to encourage real estate investment in the United States by creating a tax system that recognizes inflation and creates a meaningful differential between the tax rates for ordinary income and those for capital gains. The CCIM Institute supports a level playing field for those who choose to invest in real estate and thus opposes rates for depreciation recapture that are higher than the capital gains rate. (6/96; updated 3/03, 10/06, 10/09, 04/13) (see also *Depreciation*)

Carried Interest

Most real estate partnerships, particularly those engaged in real estate development, are organized with general partners, who contribute their expertise (and, occasionally, some capital) and limited partners who contribute money and property (capital) to the enterprise. Generally the profits of the partnership are divided primarily among the limited partners who contribute capital. A common practice among real estate partnerships, however, is to permit the general partner to receive some of the profits through a "carried interest," even when the general partner has contributed little or no capital to the enterprise. The general partner's profits interest is "carried" with the property until it is sold.

During the time that the real estate is held, the general partner receives compensation in the form of ordinary income. The limited partners receive both ordinary income from operations and capital gains income from any profits generated during the year. When the property is sold, the limited partners receive their profits distributions (the earnings on the capital they have invested) as capital gains. The general partner also receives the value of its carried interest as capital gains income.

A carried interest is designed to act as an incentive for a general partner to maintain and enhance the value of the real estate so that the operation of the property is a value-added proposition. The issue of carried interest is critical to both the recovery of commercial real estate, as well as the overall economic recovery. Under the American Tax Payer Relief Act of 2012, carried interest will increase to 20 percent for individuals with an adjusted gross income more than $400,000 and married couples with AGI more than $450,000. Individuals/couples below the $400,000/$450,000 AGI level will pay 15 percent on carried interest. This legislation is effective as of January 1, 2013.

Position Statement

CCIM Institute opposes any proposal that would eliminate capital gains treatment for any carried interest of a real estate partnership. (10/07, 10/10, 4/13, 4/14)

Depreciation

The Economic Recovery Tax Act of 1981 created a depreciable life of 15 years for all real property placed in service after December 31, 1980. For property placed in service after March 15, 1984, the depreciable life was extended to 18 years, and for property placed in service after May 8, 1985, to 19 years. Depreciation rules changed again when the Tax Reform Act of 1986 was enacted. Depreciable life of a non-residential property changed to 31.5 years, and the depreciable life of a residential property changed to 27.5 years.

Yet again, the enactment of the 1993 Tax Act changed depreciable life for a nonresidential building to 39 years (residential property remained at 27.5 years). The 39-year depreciable life applies to properties placed in service on or after May 13, 1993.

The extension of the depreciable life to 39 years was intended to be in return for favorable passive loss tax law and other tax law changes in 1993. Unfortunately, (see statement of policy on *Passive Loss*), the Internal Revenue Service (IRS) did not interpret the 1993 law in such a way to be favorable to commercial real estate thereby eliminating almost any benefit to the commercial real estate industry.

Position Statement

The current 39-year time frame does not accurately reflect the useful life of a building and its components. The CCIM Institute supports depreciation reform for nonresidential and residential real estate that secures a significantly shorter cost recovery period for commercial real estate without adding complexity or creating artificial acceleration of deductions and accurately reflects the economic life of the property. Furthermore:

7. Upon recognition of capital gain, taxpayers should be able to use sales costs basis to first reduce the depreciation recapture portion of the gain;
8. Suspended losses first go to reduce depreciation recapture;
9. An installment sale as gain is recognized over a period of time, that a percentage of gain from appreciation and depreciation recapture be used in reporting gain;
10. A partially tax deferred exchange, gain from appreciation and depreciation recapture should be reported on an allocated percentage basis.
11. Any other proposed regulation that affects the reporting of capital gain by commercial, industrial or investment real estate taxpayers be reported in the most advantageous manner for the taxpayer; and
12. Any proposed regulation that clarifies or makes easier the calculation of depreciation deductions under the "modified accelerated cost recovery system" when property is acquired in a like-kind exchange or as a result of an involuntary conversion shall be reported in the most advantageous manner for the taxpayer. (11/97; updated 3/03, 4/03, 10/06, 10/09, 04/13) (see also *Capital Gains*)

Estate Tax

The Estate Tax has long been criticized for forcing dissolution of family-held businesses and estates (an after-tax accumulation of assets on which income tax has already been paid at least once). These hardships occur after the death of one generation of ownership because of its confiscatory rates as well as the questionable "double jeopardy for taxation" to which it subjects these assets. Many family-held businesses or estates have a large net worth but lack liquid assets necessary to pay the Estate Taxes and still remain held by the deceased heirs or beneficiaries, forcing break-ups of family-held businesses, commercial real estate portfolios, farms, ranches and timberland holdings. Real estate is especially impacted as an investment venue or estate asset category because of its nature as a non-liquid asset.

The Estate Tax is a major obstacle for CCIMs and their client base who are small business owners and who own portfolios of accumulated after-tax income in the form of assets commonly known as an "Estate" and desire to pass on their businesses or their assets to their designated heirs, usually family members and charitable beneficiaries. This problem is aggravated when heirs or beneficiaries do not have sufficient liquid assets to pay the Estate Tax. In the case of non-liquid assets such as real estate or small businesses, the Estate Tax usually forces heirs or other beneficiaries to sell such assets just to pay the Estate Tax.

The American Taxpayer Relief Act of 2012 permanently modified the estate tax exclusion to $5,250,000 (for 2013), to be indexed for inflation annually with an increase in the rate from 35 percent to 40 percent, effective as of January 1,2013.

Position Statement

CCIM Institute supports the repeal of the Estate Tax but opposes the portion of the repeal that requires the use of so-called "carryover basis." If the Estate Tax were to be revised, CCIM Institute supports the lowest possible rate (but in no event a rate higher than the maximum individual tax rates) and a substantial exclusion. (6/00; updated 10/09, 04/13)

Flat Tax

The present federal income tax method is based on a graduated rate where the percentage one pays in taxes is based on income. The flat tax is based on an across-the-board tax rate for all citizens. Proponents of this alternative have suggested that the base rate could be anywhere between 15% and 20% and would notably simplify the filing process.

The flat tax is controversial in the way income levels are impacted. A major concern is that if a flat tax were implemented, it would negatively impact the entire real estate industry both residential and commercial investment properties with the loss of the mortgage interest deduction, property tax deduction, and depreciation.

It is believed that under a flat tax system, commercial investment real estate would not be allowed any deduction on interest paid, property taxes paid, or depreciation. The loss of these deductions would have a devastating effect on commercial real estate. Perhaps one of the most detrimental effects would be the loss of capital gains treatment. The full amount of gain from any real estate transaction would be taxed under this system, while the same would not hold true for other investment assets. The full sales price would be subject to the flat tax. Under a flat tax system, real estate would be treated unfairly compared to other investments which would likely make investment in real estate unattractive for potential investors.

Position Statement

The CCIM Institute implores Congress to reject proposals for enactment of a flat tax or other alternative taxation systems that serve as a disincentive for investment in real estate by limiting or repealing traditional real estate-related tax deductions for mortgage interest, state and local property taxes, depreciation, and other operating and business expenses. (6/96; updated, 3/03, 10/06, 04/11, 3/15)

Foreign Investment in Real Property Tax Act (FIRPTA)

The Foreign Investment in Real Property Tax Act (FIRPTA) was enacted in 1980 to bring tax equity between foreign investors and U.S. taxpayers buying real property in the United States. It accomplishes this goal by generally subjecting foreign sellers of U.S. Real Property Interests to a withholding tax on the proceeds of the sale. All or part of the tax withheld can be returned to the seller if a tax return is filed showing that the actual tax due is less than the withheld amount.

Similar tax treatment between U.S. and foreign investors is a worthy public policy goal, as it increases the confidence of taxpaying Americans in our federal income tax system. Allowing foreign investors to escape the taxes that identically-situated U.S. investors would have to pay on the gain from the sale of real property has the potential to outrage domestic real estate investors, put them at a competitive disadvantage compared with their foreign counterparts, and make them feel like chumps. None of these effects is good for Realtors®.

When the financial crisis began in 2008, some economists and others began calling for the repeal of FIRPTA, believing the resulting influx of foreign capital would ease the shortage of capital in the commercial market. Rather than an outright repeal of the law, however, many important stakeholders in the U.S. commercial real estate community lined up behind legislation that would modify the FIRPTA rules to a limited extent.

Legislation has been introduced in both the House of Representatives and the United States Senate (S. 1181 and H.R. 2870 – The Real Estate Investment and Jobs Act), which would ease the FIRPTA rules regarding foreign investment in U.S. Real Estate Investment Trusts (REITs) by allowing doubling the permissible amount of such investment from 5 to 10 percent.

This measure is viewed as a commonsense and reasonable way to bridge the competing public policy objectives of providing similar tax treatment between domestic and foreign investors in real property, and in attracting much-needed foreign investment in the still-struggling U.S. commercial real estate sector. This legislation also enjoys the sponsorship of an unusually high number of Members of Congress and is strongly supported by some of the most prominent players in the U.S. commercial real estate sector.

The CCIM Institute has had no specific policy on this issue. Existing CCIM Institute policy clearly supports the rights of foreign parties to invest in U.S. real property (as well as the rights of U.S. citizens to invest in foreign real estate). Existing CCIM Institute policy also provides that all resident owners of U.S. real estate should be subject to the same rules. But this principle is not explicitly extended to foreign investors by CCIM Institute current policy.

In advocating for legislation that furthers the recommendations, it is important that careful consideration be given to the risk that such efforts may create for current tax policies that benefit real estate and are a higher priority of the general CCIM Institute membership. Any changes to FIRPTA should not be made at the cost of repeal or diminution of tax provisions that currently benefit the real estate industry.

Position Statement:
The CCIM Institute believes the interests of its members are best served by tax policies that encourage foreign investment in U.S. real estate and that provide, to

the extent practicable, similar taxation between U.S. investors and foreign investors in U.S. real property. Accordingly, the CCIM Institute policy should be guided by the following principles:

1. We affirm current CCIM Institute policy that states that "We support the rights of foreign citizens to acquire, own and sell U.S. real property and the right of U.S. citizens to acquire property outside the U.S. We also support the free flow of international capital for real estate and oppose laws and regulations that impede that flow."
2. We affirm current CCIM Institute policy that states that "We believe all resident owners of U.S. real estate should be subject to the same set of rules under the U.S tax system. In addition, any unique reporting and disclosure requirements regarding foreign buyers and/or their agents should be kept to a minimum."
3. We also believe all U.S. investors and foreign investors in U.S. real estate should be subject to similar sets of rules under the U.S. tax system.

We support policies that encourage foreign direct investment in U.S. real estate through Real Estate Investment Trusts (REITs) that do not materially encroach upon the principle that all U.S. investors and foreign investors in U.S. real estate should be subject to similar sets of rules under the U.S. tax system. (10/14)

Internet Sales Tax

The US Supreme Court holding in *Bellas Hess v. Illinois and Quill Corp. v. North Dakota U.S.* ruled that due to the highly complicated and disparate interstate tax system, a state may not require a seller that does not have a physical presence within that state to collect tax on sales into that state. The court believed that such a requirement would be too complicated to impose on a business that did not have a physical presence in the state. The Court did rule that Congress has the authority to allow states to require remote sellers to collect tax.

The Internet taxation debate for CCIMs revolves around the issue of how collection of such a tax affects state and local sales tax revenues. If a merchant has a store or office in your state (i.e., a "nexus"), your state government can require that merchant to collect sales tax on your Internet purchases. Even if the merchant does not have a nexus in your state, the purchaser of an Internet good has the legal obligation to pay a "use" tax when the good arrives in your state. These transactions are difficult to monitor and consumers are not paying the "use" tax.

The main revenue sources for state and local governments include income taxes, real estate/property taxes and sales taxes, of which sales tax accounts for 30 percent. Not taxing the increasing Internet sales as they replace "brick and mortar" sales would result in a significant decline in sales tax revenues for state and local government. In order to compensate for the decline in revenue, we predict that state and local governments will have to increase other taxes, specifically, real estate, property and income taxes. <u>It is estimated that in 2012 alone, $23 billion was uncollected state revenue from remote/online sales taxes; further, increasing the necessity for Congressional action and guidance of online sales tax.</u>

In addition, if Internet merchants and their goods continue to effectively receive an exemption from sales taxes, they have an unfair competitive advantage over brick-and-mortar merchants in our communities. This could cause even more consumers to divert their shopping from local merchants to tax-free online merchants.

The leading obstacle to efforts to collect sales taxes on internet purchases is the same complicated state tax systems that led to the Supreme Court decision. The Streamlined Sales Tax (SST) Project was formed in 2000 to design, test and implement a sales and use tax system that radically simplifies sales and use taxes. Project participants include state revenue department administrators, state legislators, local governments, national retailers, trade associations, and other representatives from the business community. As of September 2013, 24 states have implemented the Streamlined Sales and Use Tax Agreement. Unfortunately, without federal direction, states are not able to enforce online collection from out of state transactions.

In 2013, Congress is strongly considering legislation that would give states the right to collect a sales tax that they are already owed. The Marketplace Fairness Act (S. 336/S.743/H.R. 684) passed the Senate in May 2013 and is under review in the House.

Position Statement

The CCIM Institute believes that economically equivalent transactions should bring similar tax consequences, and supports a level playing field for local in-store retailers and remote merchants (including Internet merchants).

The CCIM Institute believes that loss of revenue due to failure to collect sales tax on goods sold over the Internet is likely to place pressure on state and local governments to find replacement revenue in the form of increased, real estate and property taxes, income taxes, transfer taxes and/or impact fees.

The CCIM Institute is also concerned that the erosion of state and local sales tax collections will encourage state and local governments to seek to expand their sales and use tax bases. In this regard, the CCIM Institute is firmly opposed to any expansion that would impose taxes on the cost of services, such as fees and other costs associated with the purchase and ownership of real estate.

The CCIM Institute supports efforts to simplify the collection and payment of state/local sales/use taxes. State and local governments should be able to enforce existing sales and use tax laws for both intra-state and inter-state purchases. In order to establish an effective and simple means of collecting of these taxes, state and local governments first must simplify their existing state and local sales and use tax systems.

The CCIM Institute believes the key issues associated with the Internet Tax debate affect state and local government revenues. Accordingly, we believe state and local legislative action is appropriate, and we encourage state legislative action that would provide consistent sales tax consequences for economically equivalent transactions and simplify state/local sales/use taxes. We do not support Federal legislation that – without consent and participation of state governments – would preempt states' efforts to address their own sales and use tax issues consistent with this statement of policy.
(6/00; updated 10/06, 04/10, 10/13)

Passive Loss

The 1986 Tax Reform Act contained a provision known as passive loss limitation. These rules limited the amount of deductions for losses from passive activities to the amount of income those activities generate. Passive activities are defined as those in which a taxpayer does not materially participate in any rental activity. Thus, rental activity was deemed to be inherently passive even if rental activity is the principal business of the taxpayer, or is an integral part of the taxpayer's real estate business. The act was originally intended to broaden the tax base, and to abolish many existing tax shelters.

The Budget Reconciliation Act of 1993 included a passive loss tax law change. The intent of the new passive loss tax law was to allow individuals whose primary business is real estate to deduct rental property losses from their income. This was fair because other business professionals were permitted to deduct business losses from income. The act stated that in order to deduct passive losses from rental activity, an individual must be a material participant in the real estate trade or business, and spend more than 750 hours and a minimum of 50% of their time in various real estate activities.

The current problem lies with the final rules and interpretation of the legislation by the Internal Revenue Service. The regulations released in February 1995 by the IRS were unfavorable to the real estate industry. As written, these regulations still treated rental real estate activity differently than other real estate activity. Final rules on passive loss were released in December 1995. These rules were an improvement to those released earlier in the year, but there still exists a separation in the definition of rental real estate activity.

The intent of the new passive loss tax provision, which was released in December 1995, was to allow individuals whose primary business is real estate to deduct rental property losses from income. Retroactively effective January 1, 1995, these regulations state that a taxpayer that materially participates in rental activity does not necessarily have to interpret this rental activity as passive. Thus, losses on this activity can be used to offset nonpassive income.

Taxpayers must qualify in two ways. At least 750 hours must be spent in real estate activities in which the taxpayer materially participates and half the time annually must be spent in these real estate activities. Additionally, if the taxpayer works in the real estate field, he or she must own at least 5% of the business in order for the time worked to count (if the taxpayer is not 5% owner the entire year, the portion of the year that the taxpayer is 5% owner may be prorated for that time.)

Furthermore, in order to protect individual investors, the passive loss rules included an exception to assure that individuals with moderate incomes could continue to invest in real estate as individual owner-landlords. Under the exception, an individual with less than $100,000 of adjusted gross income (AGI) could deduct up to $25,000 of losses from rental real estate from other non-real estate income. The $100,000 income threshold was phased out at $150,000.

The exception was not indexed for inflation. Had it been indexed for inflation, the adjusted AGI amount would now be $182,495 and the phase out at $150,000 would now be $273,742. In addition, the $25,000 cap on allowable losses would now be $45,624. The failure to index has had the effect of diminishing the pool of likely investors who would operate as real estate investors or part-time landlords. On top of this, inflation has not kept pace with real estate prices, so the gap is even greater.

Position Statement

The CCIM Institute believes that active or material participants in real estate should be allowed to deduct all cash and non-cash rental losses against their other income and should be afforded the same benefits that other businesses have within the tax code. As part of the Budget Reconciliation Act of 1993, Congress qualified that real estate professionals who spend at least 750 hours and half their time annually in real estate activities will be permitted to use losses on rental real estate to offset any income. Also, current passive loss rules allow for an exception for individuals with less than $100,000 adjusted gross income to deduct up to $25,000 of losses from rental real estate from other non-real assets.

CCIM Institute urges the IRS to revise passive tax loss regulations to mirror the original intent of federal legislators in enacting a change made in 1993 to the passive loss tax law, specifically removing the 5% ownership provision. Additionally, CCIM Institute urges the IRS to index the exception rules for inflation. (6/96; updated 4/09, 10/12, 10/16)

Tenant Improvements/Leasehold Improvements

The real estate definition of Leasehold improvements, also known as tenant improvements (TI), are the customized alterations a building owner makes to rental space as part of a lease agreement, in order to configure the space for the needs of that particular tenant. These include changes to walls, floors, ceilings, and lighting, among others. In actual practice, these customized tenant improvements usually have a useful economic life of 5 to 10 years, which spans the average commercial lease term.

The Economic Recovery Tax Act of 1981 created a depreciable life of 15 years for all real property placed in service after December 31, 1980. For property placed in service after March 15, 1984, the depreciable life was extended to 18 years, and for property placed in service after May 8, 1985, to 19 years. In 1986, the Tax Reform Act was enacted into law. This changed depreciation rules considerably. It changed the depreciable life of a non-residential property to 31.5 years, and the life of residential to a depreciable life of 27.5 years.

The cost for tenant improvements is amortized over the depreciable life of the nonresidential building, not, as in prior laws, over the term of the lease. The current depreciable life for a nonresidential building is 39 years, while the depreciable life of a residential property is 27.5 years. This 39 year depreciation applies to properties placed in service on or after May 13, 1993. In 2004, legislation was adopted that temporarily changed the amortization period for certain leasehold improvements to 15 years, with any remaining balance deductible at the end of the lease. This provision expired on December 31, 2005.

In another temporary provision enacted on March 9, 2002, landlords (or tenants – but not both) were able to deduct 30% of the cost of leasehold improvements in the year they are placed in service. This provision applied to improvements made between September 11, 2001 and September 11, 2004.

A temporary provision permitting the cost of leasehold improvements to be recovered over 15 years has been in place from many years. This provision expired at the end of 2013. At the end of 2014, Congress renewed 15 year qualified leasehold and other temporary provision in the Tax Increase Prevention Act of 2014, but only retroactively for calendar year 2014. As a result, the provision is currently expired and must be renewed.

Position Statement

The CCIM Institute is in support of permanent legislation to decrease the length of depreciable lives for tenant improvements to the length of the lease term. The CCIM Institute supports legislative language that would allow any remainder of tenant improvement costs left upon early termination of the lease to be written off upon the termination of a lease, not over the depreciable life of a structure. (6/96; updated 8/96, 3/03, 10/06, 04/11, 3/15)

Real Estate Mortgage Investment Conduit (REMIC)

Real Estate Mortgage Investment Conduit (REMIC) is a tax vehicle created by Congress in 1986 to support the housing market and investment in real estate by making it simpler to issue real estate backed securities. A REMIC is an investment vehicle by which commercial and residential mortgages are pooled into classes and issued as mortgage backed securities to investors in the secondary mortgage market.

The 2007 Financial Crisis brought the issue of mortgage backed securities to national attention. Improper Wall Street activity regarding REMICs in part precipitated the financial crisis. Essentially, fund managers combined good mortgages with bad mortgages, repackaged them into large collateralized debt obligations (CDO�början's), obtained AAA ratings for them, and sold them as securities to investment funds that included everything from pension funds to 401K's. While the real estate and mortgage market continued to expand, the funds performed exceedingly well. As trouble in the real estate market began, the true risk associated with the funds came to light, and investors in mortgage backed securities were left holding the bag.

Position Statement

CCIM Institute supports legislation that amends the REMIC rules to allow more common modifications to property. The changes would allow for, among other things:

- Preparing space for tenants (Tenant expansions and building additions): Under the proposed change, tenant improvements would not be considered a significant modification. Under current rules, a tax opinion must be obtained before demolishing/tenant improvements begin. If the space comprises more than 10% of the REMIC collateral, the change could be denied.

- Special problems for retail space: Under the proposed change, landlords could more easily reconfigure space to accommodate large anchor tenants and their requirements that only specific types of tenants occupy adjoining space so that instances where space "goes dark" because lease agreements could not be met are minimized.

- Sale of adjoining parcels: The proposed change would allow the sale of adjacent property that does not have any economic value to the landlord. Under current rules a tax opinion is necessary to determine whether sale materially alters the collateral --if it does, the sale would be blocked, even though the proceeds would be used to bolster reserves as required by the lender or pay down the loan.

- Addition of collateral to support building renovations and expansions: The proposed change would allow the posting of additional collateral in connection with the demolition or expansion of a property.

In amending the rules, modifications to a qualified mortgage would be allowed, provided:

1. The final maturity date of the obligation may not be extended, unless the extension would not be a significant modification under applicable regulations;
2. The outstanding principal balance of the obligation may not be increased other than by the capitalization of unpaid interest; and
3. A release of real property collateral may not cause the obligation to be principally secured by an interest in real property, other than a permitted defeasance with government securities.

The alteration may not result in an instrument or property right that is not debt for federal income tax purposes. (4/04; updated 10/06, 10/10, 4/14)