

ABOR Observer FEBRUARY 2012

A rundown of the government and business activity over the last month, with particular focus on issues and items that are important to the Real Estate community.

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ATTORNEY GENERAL ANNOUNCES COLORADO WILL RECEIVE \$204.6 MILLION IN FORECLOSURE-RELIEF FUNDS UNDER MULTISTATE SETTLEMENT

DENVER — Colorado Attorney General John Suthers announced today that Colorado has joined a \$25 billion multistate settlement with the five largest national banks, Bank of America, JPMorgan Chase, Wells Fargo, Citi and Ally, who account for 60 percent of the home loan servicing market, to end problematic business practices and to help distressed homeowners. The settlement — the second largest multistate consumer protection settlement — will deliver \$204.6 million worth of relief for Colorado homeowners.

Under the terms of the settlement, Colorado, which served on the executive committee that oversaw the settlement negotiations, will receive:

- \$73.3 million that will be available to grant principal reductions on loans to make a modification possible. Approximately 40 percent of these funds will also be available to ease the effects of foreclosure, including waiving deficiency balances, enhanced cash-for-keys payments and blight prevention;
- \$52.5 million in cash to the state;
- \$46.3 million worth of refinancing benefits to underwater borrowers; and,
- \$32.49 million in payments to homeowners who lost their homes to foreclosure between January 1, 2008 and December 31, 2011.

Nationally, the banks have agreed to:

- Commit a minimum of \$17 billion directly to borrowers through a series of national homeowner relief options, including principal reduction. Given how the settlement is structured, servicers will actually provide up to an estimated \$32 billion in direct homeowner relief.
- Commit \$3 billion to a mortgage refinancing program for borrowers who are current, but owe more than their home is currently worth.
- Pay \$5 billion to the states and federal government (\$4.25 billion to the states and \$750 million to the federal government).
- Provide homeowners with comprehensive new protections through new mortgage loan servicing and foreclosure standards.
- Be overseen by an independent monitor will ensure mortgage servicer compliance.

“This agreement delivers real help to homeowners affected by the banks’ dual tracking and other improper mortgage- and foreclosure-related processes,” Suthers said. “As a result of this settlement, the banks will end a series of problematic processes that put homeowners at a severe disadvantage during the foreclosure process. This settlement will not solve every problem with the housing market, but it goes a long way to helping homeowners in distress now and leveling the playing field for consumers.”

The settlement is the second largest multistate consumer protection enforcement settlement after the 1998 tobacco litigation settlement. This agreement is the result of a massive civil law enforcement investigation and initiative that includes state attorneys general and state banking regulators across the country and nearly a dozen federal agencies. It holds banks accountable for past mortgage servicing and foreclosure fraud and abuses and provides relief to homeowners. With the backing of a federal court order and the oversight of an independent monitor, the settlement stops future fraud and abuse.

Customers of the five settling banks who lost their homes to foreclosure between January 1, 2008 and December 31, 2011 may be eligible for restitution under the settlement. The independent, third-party administrator of the settlement hopes to contact affected victims by the end of the summer. Customers of the five settling banks who are still in their homes but either behind on their payments or underwater should contact the banks directly through dedicated toll-free contact numbers to determine if they are eligible for assistance:

- **Bank of America** - 1-877-488-7814
- **Chase** - 1-866-372-6901
- **Citi** - 1-866-272-4749
- **GMAC/Ally** - 1-800-766-4622
- **Wells Fargo** – 1-800-288-3212

The Office of the Attorney General will work with the Governor's Office and the General Assembly to ensure that the \$52.5 million Colorado directly receives under the settlement will be used for purposes including foreclosure prevention, housing-counseling services, additional legal services for distressed homeowners, promotion of loan-modification opportunities and anti-blight efforts.

The settlement changes the way the banks do business. Under the agreement, the banks will be required to stop the use of robo-signing, end the process of dual tracking of loans, provide a single point of contact for consumers as they move through the loan-modification processes, create an online portal for consumers to get information about where they are in the loan-modification process, and abide by a strict set of deadlines for dealing with loan modifications. The settlement also requires that the banks post payments they receive to homeowners' accounts within two business days of receiving them.

The foreclosure practices of the banks will be subject to strict oversight by an independent monitor who will provide regular reports to the participating states. The banks will be subject to stiff fines if they violate the terms of the agreement.

The settlement does not grant any immunity from criminal offenses and will not affect criminal prosecutions. The agreement does not prevent homeowners or investors from pursuing individual, institutional or class action civil cases against the five servicers. The pact also enables state attorneys general and federal agencies to investigate and pursue other aspects of the mortgage crisis, including securities cases.

Consumers interested in learning more about the multistate agreement can visit www.NationalMortgageSettlement.com or www.coloradoattorneygeneral.gov/mortgagesettlement.

If consumers believe they have been affected by the banks' problematic processes or have experienced any form of foreclosure fraud, they can file a complaint at www.coloradoattorneygeneral.gov/complaint. To learn more about Colorado's ongoing fight against mortgage and foreclosure fraud, visit the Office of the Attorney General's [Mortgage Fraud Information Center](#).

Homeowners facing foreclosure also should contact the Colorado Foreclosure Hotline at 1-877-601-4673 or visit www.coloradoforeclosurehotline.org. The hotline works with homeowners in or facing foreclosure. Homeowners who call the free hotline can speak with a housing counselor about their options.

Mike Saccone, Communications Director
Office of the Attorney General
Colorado Department of Law
1525 Sherman St., 7th floor
Denver, Colorado 80203
w.303-866-5632
c.303-548-2086

From the Board of Realtors Luncheon —

Stewart Title economist predicts market improvements for Aspen

Dr. Ted Jones, chief economist at Texas-based Stewart Title, cited a combination of local, state and national statistics in predicting that Aspen's real estate market stands to gain in the near term.

Jones, speaking at the Aspen Board of Realtors luncheon in January, noted that Aspen's visitation rates are up over past years, that Colorado's overall housing picture is improving ahead of the rest of the country, and that the nation's money supply is at an all time high. All of which sets the stage for stronger prices in the real estate market.

He pointed out that sales of single family homes, townhomes and condominiums have increased nationally for the last two years, signaling that the market has reached bottom.

"People have been sitting on their money for several years now," Jones told a full house at the Aspen Meadows "Eventually, they will start spending it, and when they do, you will boom here."

Jones' blog can be seen at <http://blog.stewart.com/ted/>

NAR – This is for your information only...please do not reprint this section

This coming Monday, February 13, 2012, the Obama Administration will release the President's budget submission. While this document will contain detailed information on spending and revenue proposals, along with policy proposals and initiatives with significant budgetary implications it is only the first step of a multi-step budgetary process for the federal government. NAR is bringing this to your attention in anticipation of two particular areas of the budget proposal that could generate questions from your members. A possible request for additional resources for the Federal Housing Administration and a proposal to limit the level of itemized federal income tax deductions to 28%.

NAR has learned that the budget proposal MIGHT include a specific request from the Department of Housing and Urban Development (HUD) for a subsidy for the FHA program. Given the importance of FHA in many markets throughout the country NAR is concerned that this potential request could call into question the safety and soundness of FHA. In a market already grappling with uncertainty, questions about the safety and soundness of FHA have the potential to impede the forward progress of some markets.

Should you face questions from the media regarding FHA here are some talking points to help develop answers:

- FHA is playing a critical role in today's housing market
- FHA was designed to perform this role in a time of crisis in the housing market
- Overall, the market downturn has had a negative impact on FHA's fiscal stability which is why NAR has supported FHA reforms designed to strengthen the overall soundness of the program
- Ultimately, Congress would have to determine if FHA requires additional resources

Regarding the limits on itemized federal income tax deductions, NAR anticipates the budget proposal, as it has for each of the past 3 years, is likely to call for a reduction in the value of itemized deductions FOR UPPER INCOME TAXPAYERS ONLY. The value of their deductions would be reduced from the 33 and 35% brackets to 28%. This proposal would, of course, have an impact on the Mortgage Interest Deduction (MID). NAR policy is opposed to ANY changes in the current law regarding the MID. Like the potential FHA proposal, this item could have a chilling effect on the market if members and consumers were to believe it was an actual change in the law. It is important to remind your members should they have questions about the budget proposal that it is simply a proposal and does not represent anything but a starting point for a long budget process.

Should you face questions from the media regarding MID here are some talking points to help develop answers:

- Policy changes in the budget proposal would have to be enacted by Congress
- Congress knows NAR is opposed to changes in the MID; we want to make sure this benefit remains intact for millions of middle-class Americans
- Almost half of all members of the House have co-sponsored a resolution to keep the MID unchanged

- NAR will be aggressively protecting the MID throughout the long federal budget process

If you have any questions, please contact your NAR Lobbyist or Political Field Representative.

Aspen —

Mayor calls for end to infill incentives

Aspen Mayor Mick Ireland called for significant amendments to the city's land use code that would set new height limits on mixed-use buildings with high-end condos. He says the units are often used as second homes and sit empty for much of the year, and "hollow out" the downtown core.

If approved, the proposal would roll back the "infill" legislation passed in pieces in 2003 through 2005. For instance, it would impose a new height cap of 28 feet for any buildings containing free-market residences in the downtown and lodging zone districts. The current limit is 47 feet.

Ireland cited the buildings on Hyman Ave. that housed the once-popular Mother Lode and Crystal Palace restaurants. Both were sold during the real estate boom. Neither has a business tenant, and the luxury penthouses in the 40-plus-foot-tall Mother Lode addition remain unsold.

Planning consultant Stan Clauson, said "the free-market bashing has gone far enough." Mixed-use buildings with a free-market residential component are an important part of local development, and many residents of those condos are contributing members of the community, he said.

Deal to save Benton Building, Little Annie's goes to full council

Downtown developer Nikos Hecht agreed to pay around \$1 million in affordable housing fees and other concessions after negotiations with two City Council members over the fate of the Benton Building and Little Annie's.

Hecht also reportedly agreed to pay a \$369,000 parking mitigation, and for streetscape improvements.

Hecht and his development group plan to develop a mixed-use building at the corner of Hunter and Hyman. As part of the potential deal, city officials cut the number of affordable housing units required.

Hecht agreed to break the residential component in the building into two units, instead of one as proposed. He may still ask for an exemption from the 2,500-square-foot cap in city zoning, which could prove a sticking point for the full City Council.

Hydro election appears likely

Aspen City Clerk Kathryn Koch is reviewing 953 petition signatures submitted by opponents of a hydro electric plant on Castle Creek. The petition is expected to force an election to overturn the land-use approval for a Castle Creek Energy Center.

The city is proposing to install a 1.1 megawatt-capacity hydroelectric generator under the Castle Creek Bridge that would fed by water from Castle and Maroon creeks.

Galena Community Connection advances with council support

The newly envisioned Galena Community Connection would create pedestrian and bicycle enhancements on Galena Street to link downtown retail areas with the Galena Plaza next to the library and Rio Grande Park.

The improvements would include measures to reduce parking and traffic, wider sidewalks, more green spaces, improved bike trails, a more user-friendly plaza next the library, a new roof for the parking garage and improved natural filtration for storm water systems.

Aspen Walk back in play

Aspen City Council put off a final decision on the proposed Aspen Walk residential development, urging a new architect on the project to further reduce its size. The latest plan calls for 14 free-market condos and 11 affordable housing units in a three-building complex to replace decades-old apartments at 414 Park Ave. and 404 Park Circle. The property is currently in receivership and new architects from Cottle Carr Yaw are working with a court appointed receiver to gain approval.

The receiver said a revised proposal would be ready for a Feb. 27 vote. A foreclosure sale is expected in March.

Unit owners sue developers at Dancing Bear

The homeowners association at the Dancing Bear Lodge on Durant Ave. is suing the project's developer and a prospective buyer over ownership of a wine room and two employee units.

The suit alleges that buyers of the fractional units were given assurances that ownership of those amenities were part of their purchase. The current developer-owners of the project, Dancing Bear Land LLC and Tanzbar DB Holdings LLC, have not yet transferred ownership to the homeowners association.

Council splits on AACP hearings

With a 3-2 vote, Aspen City Council members Torre, Derek Johnson and Adam Frisch rejected pleas from planning and zoning commissioners to adopt the Aspen Area Community Plan as written. Several members of both the city and county planning boards signed a letter calling for adoption without further revision.

In explaining his position, Johnson said the community expects to be able to comment before it is adopted. Public hearings in the coming weeks will weigh various aspects of the plan and consider amendments suggested by city planning staff.

X Games attendance down 5 percent

Attendance at this year's Winter X Games totaled 108,000 this year, down 5 percent from last year's total of 114,200. Saturday was the busiest day, with 45,000 people coming to the games.

Country Day to relocate during campus makeover

Aspen Country Day School will relocate to the Aspen Meadows/Institute campus for the 2012-13 school year while the Castle Creek campus it shares with the Aspen Music Festival and School undergoes a major makeover. Country Day will use all or portions of the Boettcher Building, Harris Hall and the Benedict Music Tent, as well as modular classrooms in the Paepcke Auditorium parking lot and Gillespie Street parking lot.

Taxi for Tips driver Phil Sullivan jailed

District Judge Gail Nichols sentenced rogue Aspen cab driver Phil Sullivan to 15 days in county jail for his second contempt-of-court conviction in less than a year. Sullivan, who is not licensed to operate a cab, gives rides around the upper valley and takes tips for the service. He served a week in March 2011 for contempt of court.

New trails, habitat protection in works for Sky Mountain Park

"Shale Trail," a 1.5-mile single track running up the Shale Bluffs side of Sky Mountain Park, is part of an ambitious plan to develop more than 16 miles of trails on the 845-acre open space. This coming summer's plans for the former Droste property also include habitat protection for roughly 300 acres.

Police seek rogue artist

Aspen police are looking for the culprits who plastered Aspen street maps — touched up with black markings and illustrations of eyeballs — on the outside of the Aspen Art Museum, Pitkin County Library and a public restroom at Wagner Park.

Snowmass Village —

Property owners paying for Related-Hypo dispute

Jim DeFrancia, the one time receiver for Base Village and an executive with Destination Snowmass Services, criticized Related Cos. and its local entities for using their legal standing as the former developer of Base Village to force up interest rates paid by the development's metro district to an unsustainable rate.

DeFrancia said Related's actions have resulted in 10 percent interest on \$32.6 million in bonds, forcing the metro districts deeper into debt and putting a burden on all property owners in Base Village. He said that through a series of moves last fall, Related was able to convert metro district debt into guarantor bonds that it holds.

The issue is the subject of a lawsuit between the consortium of banks that own Base Village and Related. The banks allege that Base Village Owner, LLC fraudulently moved money related to the bonds to Related WestPac as part of the maneuvers to take control of the metro district debt. Both are Related entities. Related Colorado

Related Colorado President Dwayne Romero denied the allegations in a statement issued at the end of January.

"We have recently filed an answer to the metro bond complaint affirming our rights under agreements that were negotiated with the banks back in 2008 and under relevant agreements that have been signed by the banks since that time," he said.

Lodging rates remain strong through December

Both Aspen and Snowmass Village experienced the busiest Christmas and New Year's holiday week in five years, with Aspen's daily occupancy peaking at 94 percent on Dec. 29 and Snowmass' peaking at 84 percent on the same night. January bookings are up 14.6 percent in Aspen and 6.3 percent in Snowmass Village.

Droste brothers in legal fight over Brush Creek land sale

Members of the Droste family are suing each other over how to allocate \$17 million received for their 841-acre spread in Brush Creek.

Peter Droste seeks compensation from brother Bruce Droste for approximately \$1 million spent over 15 years to obtain land-use approvals and entitlements, as well as to cover legal fees from the family's unsuccessful lawsuit challenging county regulations. Peter Droste claims in the suit that his brother is "benefiting from unjust enrichment."

But Bruce Droste claims that whatever reimbursements that were due at the time of sale have been made. The family sold their land to Pitkin County Open Space and Trails at the end of 2010.

Latest rent disputes over Base Village total \$1.3 million

In a lawsuit, Destination Snowmass Services maintains that Snowmass Hospitality, a lodging management company that runs the Mountain Chalet and Snowmass Inn and other properties, owes more than \$360,000 in rent for office space and an arrival/check-in facility in Capitol Peak Lodge in Base Village.

Snowmass Hospitality denies owing money due to an understanding with the previous owner of the development "was not required to be paid until the Base Village project became profitable."

Meanwhile, Snowmass Hospitality filed a separate complaint against the previous owners, Base Village Owners LLC, seeking \$1 million in unpaid rent for a sales office on the Snowmass Mall. Related Colorado, a sister company of Base Village Owner, sold Base Village condominiums out of the office.

National Geographic, PBS to feature Zeigler find

A short article on the fossil find at Snowmass Village will appear in the February issue of National Geographic magazine, available on newsstands Jan. 31. Additionally, "Ice Age Death Trap," a one-hour "Nova" program, will air on Rocky Mountain PBS at 8 p.m. on Feb. 1. It follows scientists as they uncover bones of mammoths, mastodons and other giant extinct beasts of the Pleistocene Era.

Basalt —

Judge upholds RFTA's eminent domain claim

The Roaring Fork Transportation Authority's eminent domain action to seize land for a parking lot and bus stops in Basalt was approved last month by District Court Judge Gail Nichols.

RFTA will pay a \$600,000 deposit to the court registry to gain immediate title of the approximately half-acre parcel. The owners of the land waived their right to challenge RFTA's action reserved the right to seek additional compensation. The family's appraisal valued the land at \$1 million. RFTA offered \$585,000.

RFTA has a second eminent domain action pending for an adjacent, three-quarters of an acre parcel. The owner is not contesting the action.

Retirement community considered in Basalt

A proposal by the Aspen Medical Foundation for a continuing-care retirement community in Basalt include 75 apartments and one-story cottages, 20 assisted-living units and a nursing home. It also includes affordable housing for between 75 and 100 workers and a day-care facility.

Four of five council members and all three planning commission members present at a presentation last month expressed support. The foundation is under contract to buy the 18-acre Stott's Mill site and wanted to get an sense of how Basalt's leadership felt about the project.

Road realignment may chew up park

A consultant for Eagle County is recommending that East Valley Road be rerouted through popular Crown Mountain Park, to the south of the government building and community center. The county wants resolve stacking issues that occur at busy times as a result of the awkward design and improve pedestrian safety. The park was developed with a voter-approved property tax.

School district won't rehire superintendent

The Roaring Fork District Re-1 school board voted 3-2 to terminate the contract of Superintendent Judy Haptonstall at the end of the school year. She is in her fifth year as the school district's superintendent. She has been under considerable scrutiny for several years.

Grace Park open house set in Basalt

An open house on possible uses for Grace Park, the open space parcel next to Basalt High School, will take place from 5:30-7:30 p.m. on Feb. 2 at Basalt Town Hall. A community garden is envisioned and a BMX track for bicycles has been proposed for the 25-acre property. Trail improvements leading up onto Light Hill are also planned.

Basalt voters to decide bag ban

Basalt voters will decide in April if the town should ban plastic grocery bags and charge 20 cents for each paper bag. The ordinance in question bans plastic grocery bags and imposes a 20-cent fee on paper bags at the Clark's Market in downtown Basalt and City Market in El Jebel. It will become the law on May 1, unless voters reject it.

Pitkin County —

Push back forces county to revise winter closure recommendations

After a barrage of negative comments, Pitkin County abandoned a recommendation for winter closures of popular recreation areas with mid-valley residents, including Arbaney-Kittle and Light Hill. The county commissioners are now recommending that the Bureau of Land Management keep certain trails open year-round.

Pitkin County will host an informational meeting from 6-8 p.m. on Feb. 15 at Basalt Town Hall to discuss its recommendations.

Feds contacted about coal mining near Redstone

Grand Junction-based Raven Ridge Resources, representing an unnamed client, contacted two federal agencies about application procedures to open a coal mine in Coal Basin, near Redstone. The area hasn't been mined since the late 1980s.

Realtors, business leaders meet with Tipton on Hidden Gems

Thirteen business people from the Western Slope met with Congressman Scott Tipton for an hour in Carbondale last month, urging him to support the Hidden Gems Wilderness Proposal for Pitkin and Gunnison counties.

They included real estate brokers Bob Starodoj and Bill Stirling, developer John McBride, architects Harry Teague and Steve Novy, Rocky Mountain Institute consultant Michael Kinsley, green building materials supplier Cedar Rose, gallery and frame shop owner Sally Norwood, ranchers Bill Fales and Ty Jacober, attorney Jim Starr, electric equipment supplier Michael Gibson and welding shop owner Chris Muhr. They hailed from Aspen, Basalt, Carbondale, Glenwood Springs, Gunnison and Grand Junction.

They are part of a larger group of 176 businesses that signed a letter of support for the Hidden Gems that was sent to Tipton and U.S. Sens. Mark Udall and Michael Bennet. The Aspen Skiing Co. is the largest business to sign the letter.

Road work on summer schedule

Five major road projects are scheduled in Pitkin County this spring and summer. They include:

- Chip and seal work on Brush Creek Road from Highway 82 to the Snowmass rodeo grounds;
- Major repairs to Woody Creek Road above the Flying Dog Ranch;
- Repaving of Redstone Road;
- Resurfacing Jack Gredig Road from Highway 82 to the county landfill;
- Resurfacing Smith Hill Way, off Highway 82.

Interest in affordable housing dips

The Aspen/Pitkin County Housing Authority reported that 2011 was a slow year for sales of affordable housing, with 60 sales worth \$13.1 million. Nine resident occupied units were sold separately, adding \$5.1 million.

In addition to slower sales, there were also fewer prospective buyers. One bedroom units remained in demand, with dozens entering the lottery for each unit, but larger units typically attracted interest from fewer than 10 buyers.

Downvalley —

Carbondale voters reject Village at Crystal River

Carbondale voters overwhelmingly rejected a proposal for a large mixed-use development on a 24-acre parcel on Highway 133 known as Village at Crystal River.

The ordinance approving the project, passed by the Trustees in November, was rejected by 65 percent of voters, 1,245 to 667.

The developer, Rich Schierburg of Denver, and local investors wanted to build 125,000 square feet of commercial retail space, 164 residential units and 15,000 square feet of office space. They promised a new supermarket building as part of the plan.

Opponents built their campaign against the project around a 1 percent public improvement fee that would have been charged on all sales, and the effects of a mall development on local businesses and town character.

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