In the Loop Realty Newsletter

Amerival

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BAH, HUMBUG!!

BY: Albert M. Cerone, IFAS, FELLOW

TO ALL THOSE WHO DENY THE CHRISTMAS SPIRIT!! *I've had enough* of those people who find it easy to jocularly denounce Christmas. No one should denounce anyone's religious beliefs. I accept all faith based religions and I believe a

God does exist and He accepts all of us who believe in Him. And, if God is a He or Her, I don't care; and, if He or Her is Yellow, White, Red or Black, I still don't care.

Christmas has behind it a religious concept believed by many and should be respected by all. Christians want all people of all religions to enjoy the beautiful loving spirit of the season. Christians welcome all into their lives, families and homes at all times, not just at Christmas. The spirit of the season is that which we want to share with all people.

So, join us in a -

MERRY CHRISTMAS

HAPPIEST STATES IN U. S. **-** The Gallup Organization published a Well Being Index which considers, overall evaluation of peoples lives, emotional health, physical health, healthy behavior (i.e., does one smoke or exercise) and job satisfaction. Following is the ranking with best first. Utah, Hawaii, Wyoming, Colorado, Minnesota, Maryland, Washington, Massachusetts, California & Arizona. The point differential between # 1 & # 10 is a mere 2.4. Now, where does New Jersey stand in the rankings??? We're 25th which makes us the "average" American??? Well, not really but it does mean we are centrist. Oddly, the lowest ranked is W. Virginia. Go figure! So, as the normal people in the United States, let's have a wonderful happy and carefree Christmas season. Just keep Smiling!

LONG BRANCH LAND USE CASE- This is a classic land use case for the classroom. In Long Branch several parcels of property were designated by the municipality as redevelopment areas. The property owners had a period of time by statute to contest the designation. Apparently, they exceeded the time limit by 13 years. However, during that time they did approach the municipality with plans for development in 1997, 2000 and as late as April of 2009. It appears that the city was willing to accommodate them. But the owners believed that looming in the background was the city's right of Eminent Domain which scared buyers off from the property. Thus, they are seeking what is termed an inverse condemnation in which a property owner seeks court assistance in forcing an Eminent Domain action. Eminent Domain is the taking of property for the general benefit of the public but for just compensation. This in translation means that the condemning authority must pay market value which is the value at the Highest and Best Use of the property at time of the taking. Highest and Best Use is that use which will yield the highest net return for that property. So, what is your verdict?

APPRAISAL FRAUD OR MORTGAGE FRAUD?- It is tiresome to continually hear about fraud in mortgage lending, but it still goes on. Here's an interesting fact which was posted on a recognized national website. Appraisal fraud is up by 46 % from 3rd Qtr. 2008 to 3rd Qtr. 2009. Shocking? More interesting when one realizes that HVCC (Home Valuation Code of Conduct) was put in place the beginning of the 2nd Qtr of 2009. So, what did the HVCC, the brain child of New York's Attorney General, Andrew Como accomplish? Not a damned thing. So much for prohibiting loan officers from talking to appraisers. Proof the government doesn't have a clue!!

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APPRAISAL FRAUD- The question to ponder is, does appraisal fraud really exist. Yes it does, but not in the way the vast majority of people believe. The comprehension of fraud in the minds of the lay people and the general public, fraud is clearly marked by a collusion of people in the lending process to dupe the unsuspecting or usurp monies wrongfully from lenders. Yes, some of that goes on but it is very doubtful that any significant amount of fraudulent activity in mortgage lending is just that. That type activity is criminal, planned and executed with obvious ill intent.

For over 20 years I have specialized in Appraisal Liability cases. I have worked on both ends of the spectrum, for and against appraisers. Although "20 years experience" is not a good opening in a voir dire for testimony, I can offer it here… and with all honesty. There is an abundance of fraud when one considers the definition of the word out of context of case law or the mind of an attorney thinking with specificity to a case. You may read definitions setting forth some of the following; a deceptive practice to gain unfair or unlawful gain; trickery, false or spurious. The problem with the *words* is they conjure an image of a characterization of illegality or inappropriate behavior of a person. This characterization is of the person and not of one's level of education, experience and training. Considering the definitions of "fraud", one is easily led to the characterization and not the reason behind the alleged act. There is fraud and far too much of it, but not by plan or deceptive practices by an appraiser knowingly of the wrongfulness of the act, appraisal preparation and writing.

Good appraisal practice mandates that an appraiser do those things that will create a supportable and defensible appraisal and not create any writing that will mislead the general public and others who will rely upon the appraisal.

The concern for fraudulent appraisals stems from the S & L Crisis in the late 1980's & early 1990's. However, in retrospect the major perpetrators were the lenders, heads of banks and appraisal companies…… and not the general appraisal population throughout the U. S. At that time, a scapegoat was needed by both the banks and the federal government. The appraisal community was the smallest professional group involved in the lending process. Hence, USPAP, the Appraisal Foundation and the other government appraisal boards put in place. Many of us argued this "fix" as misguided but mostly as a ploy to move the attention of the debacle from the banks and feds to the appraisers who were unable to legally defend themselves because they were and still are just an agglomerate of splinter organizations desperate to save their reputations and incomes. And as the adage says, *too little, too late.*

The new powers to be decided that this would not happen again with federal and state mandates for specific appraisal education and stringent licensing laws in place. And, so began the financial plunder of the appraisal profession by the government; and, that is all it accomplished.

USPAP is and will continue to be a work in progress because we live in changing times and every time there appears to be a leak in this fictional tidal wall, another restriction or demand is added. Today, every appraiser is required to take a 7 hour USPAP review every license cycle. Having sat through these sleep inducing classes, I assure you that there is no benefit to the expended time. Often changes to USPAP are typically superfluous to the actual appraisal preparation and reporting; and, that's the better ones often provided by a few of the remaining appraisal associations which have yearly diminished membership. You ask why? Because the vast majority of appraisers are mortgage appraisers who received education from private schools of which many were and are strictly profit oriented. Only the basic prescribed educational training needed to pass the required exam are related; and, often by giving exams that contain the questions used in the classes. However, these school graduates must complete a required number of appraisal experience hours under the tutelage of licensed appraisers. Unfortunately, a great many of these licensees underwent the same nocuous education and also didn't have true professional guidance. The basis for appraisal guidance was and is mostly from FNMA and Freddie Mac guidelines which provide an unrealistic schematic of an "acceptable appraisal". And here lies the blame. For years the "guidelines" were set forth and interpreted as dictates for an acceptable appraisal. Lender underwriting was even less informed, thus adding to the wrongful pressure placed on appraisers. In fear of losing clients and income appraisers bent to the pressures and became *Stepford Appraisers.* So, it began and still is with ills begetting more ills. So, the practices continued and the ***CON'T***

cancer spread. The appraisal organizations were more concerned with training professional appraisers but it was and is expensive to belong to one of the organizations. The creation of licensing put all appraisers regardless of professional organization affiliations on the same level. This was good for fairness to good appraisers without regard to preconceived elitism associated with some of the organizations but it also placed truly unprepared appraisers on the same level as professionally prepared ones. And, they are in two distinct leagues.

Some of the appraisal schools for years professed that the Cost Approach was not a necessary valuation method and should be avoided. FHA and VA supported that position as did FNMA. Well, after a lot of pressure from the appraisal professionals, this was altered. However, the lending guidelines still promote the falsehood of omitting the Cost Approach. The appraisers reading this know all the other falsehoods and there is no sense boring the non-appraiser readers. But the fraud's mostly perpetrated are by the mortgage appraisers who make false statements about including an honest Cost Approach or distances of comparables from a subject, etc. when in fact they know they never completed a Cost Approach and the map for comparable sale locations are manipulated, etc. This is intentional and it is fraud but to the badly trained and minimally educated appraiser there's nothing wrong with these practices…. because when you ask them, they answer, "Well, doesn't everybody do it?" Now, you know the real problems we face. And, these appraisers have entered other areas of appraisal practice because now there's less demand for mortgage appraisers. Business professionals, beware! Know who you hire and their capabilities. Don't be penny wise and dollar foolish!

ESTATE TAX UPDATE- On the following page is an article written by one of the financial people at CNNMoney. It is provided by Ralph A. Legge, Jr., VP and Senior Trust Advisor for Wachovia Bank in Monmouth and Ocean Counties. Mr. Legge regularly advises his clients, business associates and friends of ongoing financial impacts and opportunities. For the record Ralph Legge is unpretentious and very well informed. His success speaks for itself and his clients are his greatest advertising. I attribute his success to his incomparable knowledge, caring, considerate and personable demeanor; and, his honest business practices. The article on the following page is very informative and very recent. If you have any questions, you can contact Mr. Legge at 732-219-6231. A return phone call is always only moments away.

JOKES FROM ALL RELIGIOUS & ETHNIC SECTIONS: ENJOY!

From the Jewish Alps– The Catskills-

Someone stole my credit cards, but I'm not reporting it. The thief spends less than my wife.

There was a beautiful woman knocking on my hotel door all night. I finally had to let her out.

Christian Laughter– From wherever they laugh-

Q. Why do they say Amen & not Awoman?

A. The same reason they sing Hymns instead of Hers!

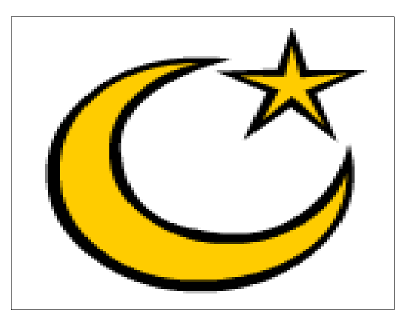
A drunk stumbles into a confessional. After not hearing anything for a while, the Priest knocked on the partition. The drunk said, "forget it buddy, there's no paper in here either."

A dying man calls his lawyer and accountant to his

bedside. Upon arrival they asked why he summoned them. He answered, "Jesus died between two thieves, and that's how I want to go."

Muslims don't traditionally imbibe in sense of humor, so there are few "funny" jokes. Here's one I found.

A poor Muslim woman prays out loud each day on her front porch saying, "Alhamdulillah or "Allah be praised". Her neighbor, an atheist, kept shouting to her, "There ain't no Lord". One night he heard her asking Allah for food as she was quite hungry. He went to the grocery store and bought a lot of food and left it on her porch. The next morning she finds her gift, and shouts, "Thank you Allah for my gift." The atheist jumps from behind a bush and yells, "I bought them you old fool, not Allah!". The old woman shouts, "Allah, you not only sent groceries, you made the devil pay for them."



Estate tax: Cancel the death knell

By Jeanne Sahadi, CNNMoney.com senior writer

December 4, 2009: 7:18 AM ET

NEW YORK (CNNMoney.com) -- Next year was supposed to be a great year for you to die. Not great for you, of course, but for your heirs who would inherit your wealth completely tax free. It turns out that probably won't be the case. The federal estate and gift tax is set to expire on Dec. 31 and be repealed for all of 2010. But no one expects lawmakers will let that happen. And those who have been campaigning for its permanent repeal are likely to be disappointed, too. The debate is no longer whether to get rid of the estate tax altogether, but rather what the parameters should be for the long run.

The House on Thursday voted 225 to 220 in a mostly party-line vote to permanently extend the tax in its current form. That means the first $3.5 million of a person's estate - and the first $1 million of gifts - would be exempt from the tax. And the highest rate applied to the taxable portion of an estate would be 45%. Those levels don't snag a lot of folks. Of the roughly 2.5 million Americans expected to die in 2009, only 5,500 - or 0.25% - will have estates large enough to be taxable, the Tax Policy Center estimates.

The House bill would increase the deficit by $234 billion over 10 years, according to the Joint Committee on Taxation. That's because even though current law would repeal the tax for one year, it reinstates it by 2011 at an exemption level of just $1 million, which would mean an increasing number of estates would be subject to the tax as years went by.

The House bill now moves to the Senate, but its prospects there are less clear. For one thing, there are competing ideas in the upper chamber for what a permanent estate tax should look like. One leading bipartisan proposal in the Senate would set the exemption amount at $5 million and set the top estate tax rate at 35%. Most Republicans advocate for the lowest estate tax possible, but Democrats "are not of one mind on this," said Clint Stretch, managing principal of tax policy at Deloitte Tax.

So there is a chance that a lower estate tax could garner sufficient support when the Senate takes up the issue. Practically speaking, however, it's unlikely to do so before the end of the year. With health care dominating the day, it will be hard to get serious legislation in edgewise. But don't be fooled: The Senate is likely to rally around a short-term fix and pass a one-year extension of the tax at 2009 levels by Dec. 31.

"The Senate is a wondrous place. The impossible becomes possible when it has to," Stretch said. Here's why: If Congress waits until next year to temporarily extend the tax, making it retroactive to Jan. 1, it creates a lot of headaches. Consider the person who makes a large gift in early 2010 before lawmakers act. He would make the gift assuming that it has no tax consequences because, in fact, that would be the case when the gift is made. But if lawmakers then turn around and restore the tax, making it retroactive to Jan. 1, the gift could be retroactively subject to tax or reduce the gift-giver's $3.5 million lifetime exemption. If that's the case, lawmakers can expect to hear some serious what-for from wealthy constituents.

Of course, while the federal estate tax may be a headache for the few, far more Americans will have to pay another estate tax. Nearly half of all states have an estate tax, an inheritance tax or both. And typically states' exemption levels are much lower than the federal estate tax exemption.

PROVIDED BY:

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