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**PROPOSED CAP AND TRADE LEGISLATION
MISINFORMATION PERTAINING TO RESIDENTIAL HOME SALES CLARIFIED**

REAL ESTATE UPDATE

This Real Estate Alert provides only general information and should not be relied upon as legal advice. For more information, contact your Patton Boggs LLP attorney or one of the lawyers listed below.

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No Licensing or Retrofit Requirements

Provisions in the proposed cap and trade legislation as introduced on May 15, 2009 and passed on June 26, 2009 by the House of Representatives (H.R. 2454) have been reported to contain licensing and retrofit requirements regarding compliance with environmental standards for sellers of real estate, including residential real estate. Those widely circulated reports have been shown to be incorrect. These erroneous reports prompted the National Association of Realtors to issue a point-counterpoint rebuttal, which NAR later provided to FactCheck.org, which can be viewed [here](#).

According to NAR, the proposed legislation does not require that commercial or residential buildings be retrofitted or that sellers have licenses to sell. Rather, it provides federal funding for states to offer financial incentives, such as loans or grants, for property owners to voluntarily decide to improve energy efficiency. In order to receive the funding, there are conditions on how states can spend the money, such as verification of energy improvements performed by private contractors, but that is only to ensure that taxpayer dollars are actually spent on the purpose for which it is intended (building efficiency improvements). There is no point-of-sale guideline or any other requirement of any sort in the House passed bill. Nowhere does this bill create a federal requirement that a property owner would have obtain license or retrofit a property to any guideline at any time – let alone at point of sale. The bill does stipulate federal guidelines to ensure that states verify that bill funding goes to financial incentives for property owners to voluntarily make improvements. The report of licensing requirements appears to be a misinterpretation of the labeling provisions discussed below.

Future of Act in Senate

The Senate version (S.1733) was placed on the Senate Legislative calendar on February 2, 2010. However, since the overall cap and trade legislation in H.R. 2454 and S. 1733 is controversial, the bill has not moved forward. The incentive provisions have been carved out of S.1733 and are proposed in several other bills all of which are currently stalled in the Senate. The differences in the various versions of the bill pertain the standards required to receive incentives and the level of incentives. NAR is not aware of any proposal that would change the incentive provisions to the rumored retrofit and licensing requirements.