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LEGISLATIVE POSITION STATEMENT

(Approved by the MAR Board of Directors on September 12, 2008)

The Montana Association of REALTORS® (MAR) represents over 4,600 real estate brokers, property managers, and salespersons who are members of the Association. The 2008 MAR Political Affairs Committee and MAR staff examine a multitude of issues that concern the industry and property owners and make policy recommendations to the MAR Board of Directors. This position statement is the Association's official guide for identification of legislative issues and formalization of legislative positions.

QUALITY OF LIFE PRINCIPLES

REALTORS® recognize the need to sustain and enhance the quality of life enjoyed by Montana's citizens. We believe we can build better communities by supporting quality growth and seeking economic and housing opportunities that embrace the environmental qualities we value, while protecting property owners.

PROTECTING PROPERTY OWNERS

REALTORS® believe that private property rights are fundamental to our free-market system and are a cornerstone upon which this nation was founded. The United States and Montana Constitutions recognize and protect the right to own property. A strong economy depends upon preserving the right to freely own, use, and transfer real property.

ENSURING ECONOMIC VITALITY

REALTORS® believe a strong economy with full employment for our citizens throughout the state remains the single biggest key to our quality of life. A healthy economy sustains vibrant communities for living and working. Commercial and residential growth, in turn, sustains a healthy economy. Economic development brings new opportunity and improved quality of life for Montanans by increasing jobs, tax base, purchasing power, diversity, availability of goods and services and offering community revitalization and improvement. An increased tax base is crucial to government's ability to deliver necessary public services and maintain infrastructure to serve the needs of the community.

PROVIDING HOUSING OPPORTUNITIES AND CHOICE

REALTORS® believe home ownership is the cornerstone of the American Dream and deserves a preferred place in our system of values. Home ownership contributes to community responsibility; civic, economic, business and employment stability; and family security and well being. Every citizen should have the opportunity to own safe, decent, and affordable workforce housing near where they work, shop, and play. That choice is critical to increasing home ownership. Furthermore, these objectives should be met through market-driven approaches that foster a wide range of urban and rural housing choices at all price levels. Accommodating growth relieves pressure on housing prices and provides increased opportunities for home ownership.

PRESERVING OUR ENVIRONMENT

REALTORS® recognize the incredible gift that Montana's natural environment offers to our state's citizens. Furthermore, we recognize the importance of parks, open space, and the environment to our quality of life and therefore the marketability of surrounding property. To maintain our state's quality of life, REALTORS® support policies that encourage good stewardship and responsible use of natural resources, as well as appropriate management of our public lands and unique natural environment. In order to protect the environment, REALTORS® believe government must accommodate quality commercial, industrial, and residential growth using innovative planning techniques and incentives, while recognizing the importance of local decision making, private property rights, the value of a healthy economic sector, and affordable workforce housing ownership opportunities.

BUILDING BETTER COMMUNITIES

REALTORS® believe communities flourish best when they offer a high quality of life at a reasonable cost. Livable communities offer a variety of affordable workforce housing choices, nearby employment opportunities, a viable business sector, good schools, safe neighborhoods, quality public services, ample recreation and park areas, open space, efficient transportation systems, and the infrastructure that provides the framework for the quality of life we enjoy in our communities. Governments should encourage quality growth through policies that sufficiently fund infrastructure needs such as roads and water and sewer that lay the essential groundwork for growth in all sectors of our local economies.

HOUSING

HOME OWNERSHIP

REALTORS® shall continue efforts, within the framework of a democratic free enterprise system, to place home ownership within reach of all who desire it. Home ownership directly impacts neighborhoods, communities, and the state's economic stability.

Homeowners have a stake in their communities. Homeowners pay property taxes, providing a major source of revenue for government. Homeowners are more likely to participate in community, political, and charitable causes. Housing at affordable prices makes our communities attractive to businesses that want to relocate to our state. Housing is a major driver of the economy, representing the largest expenditure that consumers make.

All persons have a right to own real property and to exercise the benefits of home ownership without undue encroachment or intrusion by government, groups, or individuals.

FAIR HOUSING

REALTORS® subscribe to the policy of fair housing. The primary objective of REALTORS® is to provide the American Dream of home ownership to all those who aspire to achieve it. We believe equal opportunity in housing can best be achieved through observance of the law, education, and mutual cooperation of the real estate industry and the public in a free and open housing market. The Federal Fair Housing Law assures all people the right to freely choose where they will live.

REALTORS® accept the responsibility to promote awareness among real property consumers of the obligations and advantages of strict compliance with the spirit, as well as the letter, of the Federal Fair Housing Law.

HOUSING AFFORDABILITY

Housing prices are rising in many communities throughout Montana. Consequently, the American Dream of homeownership is beyond the reach of many in Montana.

Workforce housing is affordable, or is “attainable,” when people who work in the community can obtain decent, safe housing in that community without undue financial burden and when home ownership is an achievable aspiration for a broad range of households. Lack of housing supply drives up housing prices and places homes out of reach of many families hoping to buy their first home.

Growing regulatory restrictions on development, coupled with decreasing financial resources of many communities for making needed infrastructure improvements, contribute to rising housing costs. Production and rehabilitation of housing has become more difficult, more time consuming, and therefore more expensive.

Availability of housing for all income levels is absolutely necessary for balanced and healthy growth of the state and its individual communities. Available and suitably located housing is critical to workforce recruitment and performance. A community’s workers must be able to afford a place to live, while their employers need to attract and maintain a workforce with salaries that allow their companies to stay competitive in the global market. When fewer people can afford housing, it becomes increasingly difficult for companies to attract and retain a qualified workforce. Our ability to maintain a healthy economy requires a sufficient supply of housing that is affordable to workers.

SUPPLY AND DEMAND OF HOUSING

The price of housing, like that of any other economic good, results from the interplay between supply and demand. An increase in demand for housing bids up the prices of currently available homes. Land use and growth controls have distorted this natural economic process by imposing regulatory requirements that delay new housing construction and raise development and construction expenses.

REGULATORY REFORM

Government regulations and fees can add to the cost of housing. Government should recognize that fees, compliance costs, and additional interest charges add significantly to the final cost of a home. Implementing the following recommendations can reduce housing costs:

1. Public policy relative to environmental protection should prioritize environmental concerns and take into account the overall impact of protection programs and implementing regulations on the cost of housing.
2. Local and state governments should provide more predictability and accountability in the land use and development approval process in order to reduce the delays, uncertainties, and risks of housing production.
3. Development standards should not exceed reasonable requirements to assure public health, safety, and welfare.
4. Local governments should adopt procedures for equitably allocating the cost of infrastructure associated with new development, without unfairly burdening new homeowners with costs more appropriately shared by all taxpayers.
5. Governments should recognize the additional costs imposed through transfer taxes, impact fees, local land use regulations, and the subdivision review process impair the market’s ability to ensure affordable housing for all economic segments of the community. Economic segments are defined as follows: entry level housing (tied to local wages); affordable housing (80 percent and below of local median family income); and workforce housing (80 to 120

percent of local median family income). Where possible, they should avoid imposing additional costs on housing.

HOUSING FINANCE PROGRAMS

REALTORS® support efforts to stimulate private development of affordable housing through tax incentives and exemptions. Down payment and closing costs are often major barriers to home ownership. Home ownership assistance is an effective economic development and job creation tool.

While REALTORS® support affordable housing programs to provide financial and in-kind assistance, we recognize that government cannot build enough housing, or provide enough assistance, to solve the affordability gap that confronts our state's families.

The only way to close the gap is to increase the supply of housing by reducing government-imposed barriers that drive up the cost of housing. Ultimately, that is the single most important action to address housing affordability challenges.

LANDLORD/TENANT RELATIONS

REALTORS® support landlord/tenant laws that provide equitable treatment for both owner and tenant. This can best be achieved by uniform application and enforcement of the Landlord/Tenant Law to ensure fairness and due process for both landlord and tenant. The law should clearly lay out the rights and responsibilities for both the landlord and tenant of residential property. It is important that tenants have remedies for their grievances. It is equally important that the property owner's investment is protected and that both tenants and landlords honor the terms and conditions under which property is rented.

RENTAL HOUSING

Similar to the price of home ownership, the price of rent is influenced by the market. Rental prices increase when vacancy rates are low. The best tool local government has for addressing increases in rental rates is to encourage an adequate supply of rental units by avoiding the imposition of regulations that drive up the cost of development and discourage new construction. REALTORS® strongly oppose any type of rent control or restrictions that reduce property values and deter investment in rental housing.

LAND USE AND ENVIRONMENT

Citizens of Montana value our state's unique natural environment. It plays an important part in defining our quality of life and provides both economic and recreational opportunities for our citizens. How we protect our environment, while relying on it for so many facets of our way of life, is one of our biggest challenges.

NOTIFICATION

A fundamental component of land use regulations is due process protections for landowners, including proper and adequate notification of land use regulations. Notification shall be direct personal written notification to all landowners of record directly affected by the regulations.

AIR QUALITY

REALTORS® support the need to monitor and maintain standards of air quality that are based on sound scientific evidence. Individual state and/or local governments should have jurisdiction over air quality in their area. This will enable communities to make exceptions for particular projects and time of year. We

also believe significant efforts should be focused on seeking out alternative energy sources and providing positive incentives to industries seeking to reduce identifiable atmospheric pollutants.

CONSERVATION EASEMENTS

REALTORS® support the rights of private property owners to use conservation easements. However, due to the potential for long-term impacts resulting from restricting the land base available for communities to grow, and for development and other economic uses, we encourage limited term easements, as opposed to easements in perpetuity.

LOCAL CONTROL

REALTORS® believe that local governments, in close cooperation with their citizens, should be responsible for decisions regarding land use and building better communities.

Planning for the classification and use of land must adequately consider the needs of housing, agricultural, commercial, and industrial growth, as well as quality of life and a healthy local economy. Local land use planning should not hinder the market's ability to provide for a variety of housing types, mixes, densities, and pricing to meet the needs of all segments of our population.

ENDANGERED SPECIES ACT

REALTORS® support a balanced approach to designating and recovering endangered species. The impacts to our economy and individual property rights must be part of the recovery solution. Efforts to amend the Endangered Species Act should include:

- greater consideration of economic impacts and impacts on the rights of private property owners earlier in the listing process;
- more recognition for the important role landowners play in the recovery process (We encourage the use of incentives for species protection, rather than emphasizing restrictions and penalties. We also believe property owners should be compensated when use of their land is adversely affected by implementation of the ESA.);
- increased local involvement in habitat protection plans; and
- continual review and expedited removal of species from endangered status if supported by verifiable scientific evidence.

ENVIRONMENTAL RESTRICTIONS ON LAND USE

REALTORS® believe environmental restrictions on the use of land and water should be based on both verifiable scientific and economic considerations. While science is an important tool in land and water resource management, science should not be the only criteria for action, but should be balanced with other factors such as fairness to private landowners, consideration of best management practices, and economic development.

GRAZING RIGHTS

REALTORS® recognize that agriculture plays an important role in our economy and our way of life in Montana. It is particularly important to rural communities. Maintaining access to public lands for grazing is important to preserving the agricultural industry. We support fair grazing fees that take into account the differences between managing public and private land, and policies that respect investments made by the lessee.

TIMBER

REALTORS® believe in protecting the rights of property owners. For that reason, we oppose legislation or regulation that would not allow export of timber from private land, as well as government regulation that would prohibit the use of resources from privately-owned land without just compensation.

SANITATION IN SUBDIVISION

REALTORS® believe sanitation in subdivision issues are a matter of science. Only those with applicable training and expertise should make decisions about wastewater treatment systems and other requirements associated with sanitation approval.

SUBDIVISION

REALTORS® believe subdivision law should be used to set forth objective, predictable, and equitable criteria for dividing land. Subdivision law should:

- provide for a well-defined and timely review process at the local level,
- preserve a right of appeal from the decision of the governing body,
- consider any applicable growth policy as advisory only, and
- assure accountability from all parties involved in the review process.

REALTORS® understand that local governments are currently using the subdivision review process not only to regulate the actual division of land, but also to control and regulate the development and use of the land itself, as well as the use of water resources. This is inefficient and inappropriate. REALTORS® support local governments using the subdivision review process to regulate only the actual division of land. This “division centered” subdivision review process would prohibit the use of land use regulations, building regulations, or fire regulations in local government subdivision regulations. Instead, subdivision regulations would concentrate on survey, monumentation, easements, and access issues.

BROWNFIELDS

Brownfields are former industrial and commercial facilities where redevelopment is complicated by real or perceived environmental contamination. Revitalization of brownfields benefits communities by increasing the tax base, creating jobs, and rejuvenating areas. Revitalization efforts are hampered by the uncertainty of liability risks under current law. REALTORS® support reform of the liability system to reduce the uncertainty of risk associated with contaminated property. We support efforts to clarify the innocent landowner defense to liability for both current and future property owners.

SUPERFUND

REALTORS® believe that the Environmental Protection Agency (EPA) should initiate changes in the administration of the Comprehensive Environmental, Response, Compensation and Liability Act (CERCLA) more commonly known as the Superfund Program. Reform should include:

- actual physical identification of Superfund site boundaries before the nomination and listing of an area;
- specific programs and deadlines to clean up the site that are available for public review;
- the ability for communities to be de-listed administratively without an Act of Congress; and
- adoption of the Gore amendments (Liability for response costs shall be established based on the following factors: toxicity of materials a person contributed to the site, volume of hazardous material a person contributed to the site, the length of time a person contributed hazardous

materials to the site, and the efforts used by a person to comply with standing laws and regulations.).

We believe any reforms to the Act should include incentive programs for industries to facilitate a more rapid abatement of the hazardous materials. Also, we believe Superfund monies should emphasize clean up and not legal fees.

Provisions should be included in legislation and regulation to relieve intermediaries of liability when they are unknowingly involved in property transactions where hazardous waste has been generated, stored, or disposed.

WATER RIGHTS

REALTORS® believe it is important for the State of Montana to complete the water rights adjudication process in a timely manner in order to protect existing water rights and assure water availability for future needs, including domestic use. Failure to complete adjudication makes Montana vulnerable to downstream states who take water for their needs while impacting recreational opportunities and other water-related activities in Montana. When adjudication is complicated by the water compacting process, we strongly support allowing the State Reserve Water Rights Compact Commission to enter into an Interim Agreement with the parties involved. We support the present system of appropriation of water rights through state water law.

REALTORS® also believe that while the proper review of new appropriations of water and changes in existing appropriations is necessary to protect existing senior users, such review should not be used in such a manner as to maintain zero change in stream conditions or as a method of regulating land use and development. REALTORS® fully support the constitutional right of all Montanans to appropriate waters of the state for beneficial uses as provided by law.

REALTORS® support the development and implementation of clear and consistent rules for the permitting of new appropriations of water and changes in existing appropriations, applied equally to applicants and objectors. The laws of Montana have established independent systems for the regulation of water quality and water rights, and REALTORS® believe that such a system should be maintained.

WATER QUALITY

REALTORS® understand that clean water is a key element of a healthy environment. Montana's water nondegradation law is one of the toughest in the nation. We support the Montana Water Quality Act and continued state primacy in establishing standards and criteria aimed at protecting our health and safety as long as they are based on scientific evidence.

EXEMPT WELLS

REALTORS® believe that exempt wells must be preserved. The use of exempt wells to provide water for residential purposes is, in part, a response to the difficulties and costs associated with the process of applying for new beneficial use permits and transferring existing water rights. REALTORS® support establishing a more efficient water rights permitting process and implementation of that process in a clear and consistent matter.

WETLAND

REALTORS® believe any wetland legislation should include:

- the standardized definition for wetlands identification from the *Corps of Engineers Wetlands Delineation Manual* (Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas);
- an efficient, coordinated permitting process; and
- fair compensation, including the use of wetland mitigation banking.

NOXIOUS WEEDS

REALTORS® believe the spread of noxious weeds is one of the most significant problems facing the state of Montana. It is a serious threat to Montana's wildlife, agricultural production, recreation, and property values. We support efforts at the federal, state, and local levels to control and eradicate noxious weeds.

OUTSTANDING RESOURCE WATERS (ORW)

REALTORS® believe Montana's water quality laws and regulations provide a high standard of protection for our streams and water bodies. We support a well-defined process, as well as the use of clear and consistent criteria, for designation of Outstanding Resource Waters in the state. Designation must take into account the rights of property owners and the potential social and economic impacts of ORW designation on our local communities.

EMINENT DOMAIN

Governments shall not arbitrarily infringe on the basic right of the individual to acquire, possess, and freely transfer real property, and shall protect private property rights as stated in the United States and Montana Constitutions. Every person has the right to acquire real property with confidence and certainty that the use or value of such property will not be wholly or substantially eliminated by governmental action at any level without just compensation or the owner's express consent.

We recognize that all levels of government exercise legitimate police powers in the regulation of private property to protect the health, safety, and general welfare of its citizens. However, when a government entity exercises its eminent domain authority, it should do so only when necessary to advance a true public use. The government should provide persuasive, objective evidence that the project, and the resulting public use, will in fact be realized. Local government's eminent domain authority should not be used to condemn private property to benefit a private entity for economic development purposes.

When a government entity exercises its eminent domain power to condemn private property for public use, the government should provide just compensation to affected property owners that covers not only the value of the property condemned but also all other reasonable and necessary costs resulting from the condemnation action, including but not limited to hiring legal counsel, obtaining temporary housing, lost business revenue, and severance damages. We support legislation that will provide property owners expeditious access to administrative and judicial systems at all levels of government to pursue takings claims or relief from other property rights violations.

The federal government should not establish criteria for the use of eminent domain by state and local governments. Montana should establish its own rules and laws governing eminent domain without interference from the federal government.

PUBLIC LANDS

REALTORS® support a multiple use approach to management of our public lands. Montanans take part in a wide range of activities on public lands including camping, hunting, fishing, and other pursuits. While all of us should be good stewards of our public lands, we should take care not to impose policies that unnecessarily restrict access for those who enjoy outdoor recreation and value our natural environment.

GROWTH PRINCIPLES

REALTORS® believe it is “smart” to plan for growth. However, local governments can plan and regulate to an extent that prevents market equilibrium between the supply and demand of housing and causes prices to increase artificially. Instead of disrupting the housing market, planning and regulation should accommodate growth by providing adequate infrastructure and services. In our view, smart growth policies must:

- allow the market to accommodate growing housing needs;
- provide a wide range of housing choices for all incomes and to meet changing demographics;
- protect the rights of private property owners;
- be a comprehensive land use planning process that incorporates:
 - protection of environmentally-sensitive areas,
 - encouragement of economic growth and strength
 - long term provisions for land availability
 - preservation of existing housing stock
 - efficient use and provision of public infrastructure
 - cooperation between state, county and city governments
 - wide ranging public input;
- be incentive based rather than regulatory;
- avoid local taxes and fees as “de facto” planning or regulation;
- avoid using other political agendas, for example:
 - social engineering
 - restricting mobility
 - global warming
 - increasing revenue.

WILDLAND URBAN INTERFACE

REALTORS® recognize that those living in forested areas may face an increased risk from wildfire. We encourage property owners to create defensible space to help reduce their risk. We further encourage public land managers to prioritize efforts to reduce the fuel load in fire-prone areas of the state.

We oppose any efforts by local or state governments to arbitrarily designate a wildland urban interface for purposes of restricting development. We also oppose the use of property tax policy to regulate growth and development in forested areas. Instead, land management decisions should be made through zoning or other appropriate processes that provide due process protections for property owners.

PLANNING AND ZONING

Montana law requires communities to adopt a growth policy in order to enact zoning regulations. Moreover, Montana law requires zoning to be in accordance with an adopted growth policy. REALTORS® support this statutory connection between the adoption of growth policies and the authority to zone.

REALTORS® believe that planning and zoning shall accommodate new growth. Attempts to overregulate growth through planning and zoning invariably, and unnecessarily, complicate the process, tend to invoke public apprehension and landowner protests, and drive up the cost of development.

REALTORS® believe it is critically important that local governments refrain from using subdivision regulations, building regulations, and neighborhood plans to manage growth.

REALTORS® believe zoning, with close cooperation of landowners, can be an appropriate tool for making land use decisions because it involves public participation and provides optimum due process protections for property owners, including notice, public hearing, and protest.

TAXATION

Tax revenues allow people to work together to accomplish objectives too big for a few to do by themselves. Working through government, our tax dollars build and maintain public schools, parks, roads, highways, and utilities, and provide many other services that benefit everyone. Economic growth brings additional income and tax revenues to our communities, making it possible to support a variety of needs, such as public safety, education, recreational, and social services. To enjoy these benefits our communities offer, we must pay the taxes necessary to support the needed facilities and services.

The public expects government to provide and deliver these services. At the same time, the public expects (and deserves) that government will spend tax revenues wisely and efficiently. Government programs and services should be prioritized, and government should strive to deliver the best product or service at the lowest cost.

PRINCIPLES FOR TAXATION

Our tax structure can inhibit or promote growth and economic development in our state. When taxes imposed on business are disproportionately higher than those in surrounding states, we discourage new business from locating in Montana and discourage expansion of existing businesses. When taxes on property are too high, we discourage investment in home ownership. In order to achieve an equitable and balanced tax structure for Montana, REALTORS® believe efforts to enact tax reform should result in a revenue system that:

- *Produces revenue in a reliable manner.* Reliability involves adequacy, stability, and certainty.
- *Treats individuals equitably.* Minimum requirements of an equitable system are that it imposes similar tax burdens on people in similar circumstances and minimizes regressivity.
- *Maintains economic competitiveness.* It should not unintentionally or unnecessarily interfere with private economic decisions in the market place. It should, however, be competitive with tax systems used in other states to promote economic growth and stability. The taxes generated from a high quality revenue system should help provide a level playing field with similar treatment for all industries and all firms within a given industry within the state.
- *Facilitates taxpayer compliance and is easy to administer.* It is easy to understand and minimizes compliance costs.
- *Is composed of elements that are complementary.* All economic activity and wealth should contribute proportionally to supporting government services. Taxes should not be just a number of different methods to generate more revenue from the same source.
- *Relies on a balanced variety of revenue sources.* A broad tax base spreads the tax burden and lowers overall rates. Lower rates can improve the state's economic position and minimize the effects of external changes in the market place. One means to balance our tax system is to

consider adopting a “three-legged” stool of income, sales, and property taxes. We should avoid excessive reliance on any single source of revenue.

- *Is accountable to taxpayers.* Tax laws should be explicit, not hidden, and the public should be adequately informed about the effect of any proposed changes. Taxes, as well as tax expenditures, should be evaluated regularly to assess their impact and effectiveness.

ESTATE (DEATH) TAX

REALTORS® believe it should be the inherent right of any person to pass the fruits of his or her labor to the person or persons of his or her choice. In order to preserve family farms and businesses, we support estate tax relief and/or repeal.

PROPERTY TAX

REALTORS® recognize the continuing burden placed on homeowners by rising property taxes and support efforts to provide property tax relief. We support existing programs to provide assistance to those most at risk of being taxed out of their homes. We oppose, however, any reform efforts that create a shift in the tax burden from one group of taxpayers to another.

REALTORS® believe that our property tax system should preserve the market value concept as a means of providing uniformity and equity in the valuation of all property. Property reappraisal should not result in a windfall increase of property taxes paid by Montanans.

REALTY TRANSFER TAX

REALTORS® strongly oppose the imposition of a realty transfer tax in Montana. This tax puts a major burden on the buyers and sellers at the time of settlement and places an unreasonable burden on real property ownership and economic development. First-time home buyers are especially impacted since the tax would increase the amount of cash needed at closing, the most difficult hurdle for many buyers. Imposition of a transfer tax would adversely affect housing affordability for all Montanans.

NONRESIDENT REAL ESTATE SALES OR TRANSFERS

REALTORS® support Montana's auditing authority to pursue nonresidents that fail to pay taxes they may owe on capital gains realized from the sale of Montana real property. We do not support requiring a withholding at the time of sale.

REALTORS® believe that like-kind transfers of real estate bring capital investment to Montana and improve our economy. Often times, nonresidents that exchange into the state wind up exchanging out. Although nonresident exchanges leaving the state may result in a capital gain, a vast majority of these exchanges rarely result in an event taxable by the State of Montana because of the federal deferability of the gain. Therefore, it makes little practical sense to create an expensive tax compliance policy that requires a withholding or tax lien on outbound like-kind exchanges. The costs will invariably outweigh the benefits while discouraging capital flow into the state.

LOCAL TAXATION AND FEES

In general terms, a particular levy is considered a fee if the revenue generated is dedicated to a service and is reasonably calculated or properly estimated based on the cost of the service itself, and levied only on those to whom the service is extended.

A levy is considered a tax if it is a general revenue raising provision, levied on all persons or entities without regard to a particular class, not related to a particular service, and used to provide general governmental service.

Both fees and taxes can affect the cost and availability of housing. For that reason, REALTORS® believe local government should take care to utilize the appropriate tool for meeting its revenue needs. Fees must be adopted in accordance with legal requirements for determining nexus and proportionality, and should be assessed only when local government has clearly demonstrated a need for additional revenue.

REALTORS® may support local option taxes if local government specifies which projects or services would be provided by specific tax revenues to accomplish targeted purposes for a specified period of time and are subject to a vote of the people. Once the specified time has expired, the tax and projects should sunset.

REALTORS® may support new taxes for infrastructure, provided new funds do not supplant existing revenues already budgeted for capital projects and that such taxes are project specific and bonded against for a specific period of time.

REALTORS® may also support new taxes for maintenance, provided that such new funds do not supplant existing revenues directed toward such maintenance nor decrease the level of funding from existing sources. Also, such new funding must provide a measurable difference in the level of service.

SALES TAX ON BUSINESS AND PROFESSIONAL SERVICES

REALTORS® may support a sales tax on consumer goods and business and professional services as part of overall tax reform if it can be demonstrated that there is an overall benefit to the taxpayer, that all services are taxed equitably, and it is accompanied by a substantial and permanent reduction or elimination of another tax.

We will oppose any effort to impose a sales tax on business inputs, construction materials, or the sale of homes as it would discourage business activity, investment, and economic development. Services that are associated with the purchase of real estate should be treated as part of the investment costs of the transaction and not be taxed.

CAPITAL GAINS TAX

A capital gain is an increase in the value of an asset, as in stock or real estate, between the time it's bought and the time it is sold. REALTORS® believe reducing the capital gains rate would encourage real estate investment and stimulate the economy. We support continued efforts to lower the tax on capital gains.

STATE INCOME TAX

Economic development may be hampered when a state's tax rates are significantly out of line with those in competing and/or neighboring states. When entrepreneurs consider where to locate, they are influenced by the total amount of individual income taxes they will pay. That is especially true of high income individuals whose decisions are influenced by the combined federal/state marginal tax rate determined by federal tax policy and the tax policy of each individual state. Because of its importance to furthering economic growth and investment, REALTORS® support efforts to ensure our marginal income tax rate remains competitive.

TRANSPORTATION AND INFRASTRUCTURE

Infrastructure, including repair and maintenance of existing infrastructure as well as building new infrastructure, is an important investment in the growth of society, the economy, and our quality of life. Infrastructure – roads, bridges, water and sewer systems, along with schools and parks – provides the essential foundation to a healthy economy. Investing in well-planned, properly financed public infrastructure helps accommodate and direct growth to benefit the whole community.

Sufficient funding of infrastructure is a critical investment in our communities. Infrastructure provides the backbone for our community's quality of life, the framework for economic development, and lays the essential groundwork for accommodating residential, commercial, and industrial growth.

Financing infrastructure projects encourages economic growth and development. The construction of these projects will encourage investments in job-producing private development, and expand the tax base.

REALTORS® recognize the need for new infrastructure. REALTORS support the concept of proportional reimbursement and strongly urge all municipalities to utilize this tool.

Our state's economic growth is threatened by the lack of sufficient infrastructure funding. We must provide a vision for achieving economic vitality and quality of life through a coordinated and prioritized infrastructure investment strategy. Due to limited resources to fund an ever-expanding set of needs, we should ensure efficient use of taxpayer dollars, and determine how to effectively target our expenditures and prioritize projects based on a specified set of criteria. Further, we must increase investments in transportation and infrastructure to provide funding for projects necessary to accommodate growth, such as roads, water and sewer, and parks. Where possible, infrastructure investments should be coordinated with projected growth needs.

IMPACT FEES

REALTORS® understand that additional infrastructure may be needed to support new development. We also believe that proper development makes a positive impact on the local tax base and on the range of housing choices available in our communities. Any fees assessed by local government such as impact fees and/or development fees (including dedications in lieu of fees and linkage) should not hamper or deter development in Montana communities.

Because impact fees ultimately drive up the cost of a home, they should not be used for any other purpose than to defray the cost of providing public capital improvements which are directly attributed to new development. In no case should fees be used to correct existing deficiencies or to fund a disproportionate share of the cost of off-site improvements. Furthermore, public education facilities are the responsibility of the community at large and should not be disproportionately assessed against new homeowners and businesses.

REALTORS® oppose any legislative proposals that seek to change the Montana Impact Fee Enabling Act of 2005. The methodology established by the enabling act ensures that impact fees do not exceed the cost of financing new or expanded infrastructure required by the development from which impact fees are collected. The methodology also is designed to ensure that impact fees cannot be utilized to finance new or expanded infrastructure that is not directly related to the development from which impact fees are collected. These requirements are referred to as "rough proportionality" and "rational nexus" by the U.S. Supreme Court. Without nexus and proportionality, impact fees cannot pass constitutional muster.

FISCAL POLICY

Government needs to recognize the people who pay the government's bills are the same people who are struggling to make house payments, buy a car, or save money for their children's education. Every dollar taken away from working families and business to pay for government means less money in the economy to create jobs, opportunities, and tax revenues.

REALTORS® believe a balanced state budget should be maintained by reducing unnecessary administrative expenditures, prioritizing programs and services, and eliminating those that no longer achieve their purpose. Fiscal accountability and responsibility should be encouraged at all levels of government.

UNFUNDED MANDATES

REALTORS® support measures to assure that all state mandates are fully funded and that a sunset review process is implemented to update the fiscal impact and determine the effectiveness of all mandated programs. Mandates that are found to be obsolete or ineffective should be eliminated.

BUSINESS

REALTORS® believe the free enterprise system is the most efficient method of producing wealth, and government power must be limited for the free market system to function effectively. Limited government, individual liberty, and free enterprise are the foundations of the free society.

BANK INVOLVEMENT IN REAL ESTATE BROKERAGE

REALTORS® oppose expanding the authority of banks and bank holding companies to enable them to engage in real estate brokerage activities. We oppose any changes in Montana law that would grant state-chartered financial institutions powers which are not granted to federally-chartered institutions, or permit them to engage in real estate activities without standards and safeguards which will ensure a level playing field.

CONSERVATION CONSTRUCTION STANDARDS

REALTORS® support energy conservation and the practice of conservation standards in new construction. We support these standards on a voluntary basis and support the concept of positive incentives for conservation activities. We oppose a mandatory conservation standard for new construction as it could become a barrier to affordable workforce housing for some Montanans.

FOREIGN LAND OWNERSHIP

REALTORS® support the right of foreign investors to freely acquire property in Montana. We oppose laws and regulations which in any way curtail these rights. We believe foreign investors in Montana real estate should be subject to the same rates of taxation as U.S. investors. Systems for taxing foreign investors and reporting requirements on the foreign investor and/or his salesperson should be designed to minimize the reporting burden.

INDEPENDENT CONTRACTOR

Real estate licensees are specifically exempt from Montana's Workman's Compensation Act and are exempt as independent contractors from the Unemployment Compensation requirements. REALTORS® believe that as current law requires, the Internal Revenue Service qualifications should provide the maximum criteria that can be imposed to qualify for independent contractor status.

LIABILITY FOR ENVIRONMENTAL DEFECTS

REALTORS® support the elimination of liability of the lender, salesperson, and innocent seller of environmentally defective properties. It has become increasingly difficult to secure financing for properties that may hold concealed environmental defects. Underground storage tanks, asbestos, lead-based paint and pipes, meth labs, mold, and contaminated septic systems are examples of these latent defects. We feel this difficulty is in part caused by financial liability for cleanup of contaminated properties.

LICENSE LAW

The laws and regulations of the State of Montana should be consistent with the demands of our open and free consumer-oriented market. Fees paid for licensing should be used for serving the licensees and the interest of the general public.

POINT OF SALE SERVICE

Where a real estate broker/salesperson provides a service in addition to or different from those he/she is obligated to provide, that broker/salesperson is entitled to remuneration for these services, provided that full and written disclosure is made to and accepted by all clients and customers to the transaction in advance of undertaking to perform such services. REALTORS® are opposed to legislative and regulatory efforts to limit the payment of remuneration for these additional services. We oppose the acceptance of fees by real estate brokers/salespersons for the simple referral of customers or clients to mortgage lenders and providers of other settlement related services.

PROPERTY SEIZURE

REALTORS® support and encourage the development and implementation of community programs designed to alleviate illicit drug activity. However, we are concerned that the rights of innocent property owners be upheld in all cases of the forfeiture of real property for illegal drug activity. Innocent real property owners are those who had no knowledge of the use of their property or who, if they had such knowledge, made reasonable efforts to terminate the use of their property for illegal drug activity. To this end, we believe it is crucial for any legislation addressing the forfeiture of real property because of illegal drug or other activity to contain language which protects the rights of innocent owners.

SALES PRICE DISCLOSURE

REALTORS® support maintaining the confidentiality of the information filed on the Realty Transfer Certificate.

TRANSFER OF PROPERTY

REALTORS® believe the transfer of property is an action between two parties and should be able to be completed and recorded in a timely and free manner. We oppose utilizing this function to impose any administrative reporting by state and local government.

CONSUMER PROTECTION

REALTORS® believe that sellers of real property should disclose known conditions (including defects) of said property at the time it is offered for sale or lease. Disclosure must be within the limits of the seller's knowledge and belief. Disclosure must be a mandatory requirement.

REALTORS® further believe real estate licensees should not be held liable for false or misleading information provided by owners unless the licensee knew, or reasonably should have known, the information was false or misleading.

HOME INSPECTIONS

REALTORS® believe home inspections are an important facet of the home-buying experience, and the inspection protects consumers by helping potential homebuyers detect flaws in the home they wish to purchase. REALTORS® play an important role in educating the consumer and providing information about the necessity of a home inspection. However, REALTORS® should not be responsible or liable for the actions of the home inspector, or the process by which the consumer wishes to choose the individual or company doing the inspection.

LEAD BASED PAINT

Lead is a public health issue. REALTORS® support increased education of all homeowners about lead so they will become aware of potential health hazards. Legislative and administrative efforts should be directed at the general public, rather than focused on the real estate transaction.

RADON

REALTORS® believe that verifiable scientific evidence is necessary to support all government and private claims of health risks associated with indoor air quality problems. Because additional regulatory requirements impose costs on sellers of real property, we will oppose mandatory testing and/or regulations concerning radon testing and mitigation until such time as scientific evidence is available to indicate there is a significant risk to public health from elevated levels of radon.

METH LABS

REALTORS® recognize Montana faces a growing problem with the illegal manufacture of methamphetamines. Because properties may be impacted by the presence of contaminants associated with production of methamphetamines, we believe law enforcement authorities should be immediately notified when a meth lab is discovered in order to ensure prompt decontamination by properly trained individuals. Because the health risks associated with secondary effects of meth labs have not been quantified, adoption of any additional mitigation requirements should not impose significant costs on innocent property owners, nor should they unnecessarily delay the sale or transfer of property.