

# Washington REALTORS®

## Property Rights Task Force Final Report

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REALTORS® understand that Initiative 933, the “Property Fairness Initiative”, addresses an important issue for Washington citizens. It is a complex issue that REALTORS® take seriously. For that reason, REALTORS® formed the Property Rights Task Force to thoroughly analyze this proposal before making a decision to support, oppose or remain neutral. The Task Force focused on the potential impacts of the Initiative relative to the REALTORS® efforts to promote balanced communities where Washington residents can live, work and play.

### **RECOMMENDATION:**

The Task Force spent several months gathering and reviewing information from several sources, including proponents, opponents and independent third parties. After carefully considering all sides of the issue against the backdrop of Washington REALTORS® strong commitment to property rights and our state’s Quality of Life, the Task Force recommends that Washington REALTORS® take a neutral position on this complex issue.

### **FINDINGS:**

- The Task Force met three times beginning March 16, 2006, to evaluate the potential impacts of the Property Fairness Initiative (I-933) for the purpose of formulating a position statement recommendation to the REALTORS® Legislative Steering Committee.
- At the April meeting the Committee reviewed: 1) a copy of the Initiative; 2) a Washington REALTORS® staff analysis of the Initiative; 3) a National Association of REALTORS® analysis prepared by the law firm of Robinson/Cole; 4) Initiative Proponents Overview; 5) Initiative Opponents Overview; 6) APA Analysis; 7) AWC Analysis; and 8) Oregon Supreme Court Opinion on Measure 37. The Task Force also listened to presentations from proponents and opponents of the Initiative from representatives of the Farm Bureau (proponents’ position) and the Washington Chapter of the American Planning Association (opponents’ position) followed by a question and answer period.

- Dan Wood of the Washington State Farm Bureau, the organization that originated I-933, spoke in support of the Initiative. Mr. Wood provided an overview of the Initiative, reported on recent government actions to implement the Growth Management Act which impacted people’s private property rights and prompted action to prepare the Initiative, and discussed some of the excessive government regulations and actions that damage the use and value of private property, including the Critical Areas ordinances adopted by King County and the condemnation of property for the Seattle monorail project. Finally, Mr. Wood gave an overview of the Oregon Measure 37 experience.
  
- Joe Tovar, Washington Chapter of American Planning Association, spoke in opposition to the Initiative and provided the Task Force with: an overview of the Initiative; noted that the Initiative was poorly written and vague; difficult to determine how government should respond since terms not clearly defined; discussed Oregon’s Measure 37, noting that I-933 included a similar idea that government should “pay property owners when regulations impact use of property or waive the requirements of the law”; noted the cost to governments to compensate property owners would cost taxpayers several thousands of dollars if not more should they decide not to waive a regulation; the uncertainty for realtors and their clients with respect to the uses that might be allowed next to a property and liability for realtors; the initial confusion leading local governments to significantly slow their review processes as they process claims; and the potential for lawsuits.
  
- On July 2006, the Task Force held a conference call with Harlan Levy, the Government Affairs Director for the Oregon Association of REALTORS (OAR) who shared his thoughts on I-933; and the OAR experience with Measure 37. Points covered in this discussion included:
  - a. Highlights I-933: Discussed concerns regarding the potential loss of flood insurance; and the fact the Initiative does not exempt the Gorge Management Act (affecting Skamania, Klickitat counties, etc.).
  
  - b. Oregon’s Experience with Measure 37:
    - Political Approach on Measure 7 (2000 Ballot Measure in Oregon) and Measure 37: The OAR decided to adopt a neutral position on both of the measures on the grounds that they are a business association. OAR determined that decisions relating to the Association’s positions on measures and initiatives must be based upon their impact on the real estate industry, not on ideological principals. They were concerned that requiring compensation would lead to higher taxes.
  
    - This neutral position has served the Oregon REALTORS® well. They have a lot of credibility with policy makers and have been able to work with both parties to “pick up the pieces” after the passage of Measure 37.

- Creative Taxing Schemes: The State of Oregon does not have REET except for Washington County where it is grandfathered. With Measure 37, jurisdictions are waiving regulations because there is no money to pay for compensation.
- Creative taxing schemes are beginning to show up. There is a proposal for a “Development Rights Equalization Assessment” which is a type of capital gains tax. The legislation adopting this proposal was stopped but Portland is now considering this proposal and established a task force to look into a windfall tax/givings tax which is similar to the 2005 bill in the Oregon legislature. The City of Eugene is also looking at this type of tax.
- Spot Zoning: OAR has been concerned about the lack of certainty for property owners and REALTORS®.
- Lack of Predictability: The real estate market is in flux; it no longer has predictability. Property owners (and buyers) no longer know what use will be allowed next door. REALTORS® are concerned about liability for buyer’s agents because of that uncertainty. The state association is working to protect buyer’s agents and has developed an information flyer for buyer advising that: Measure 37 passed; that agents do not give any legal advice; and that the buyer should consult an attorney.
- Large Issue with Measure 37 (Not an issue for I-933): The large issue for this Measure is the date of acquisition of property in the Measure. Currently, the Oregon Attorney General has issued a decision stating that Measure 37 does not allow transferability of development rights. That is, the development right of the property owner does not transfer to the new owner after the sale of property. This has been an issue for those property owners who have successfully completed a subdivision of their land but now are facing this issue after the sale of a lot. The new property owners of the subdivision lots who are trying to get a building permit are experiencing permit denials due to the transferability of development rights issue.
- Impact on Housing: Measure 37 has resulted in some new homes being built, primarily on agricultural land that previously could not have a residential unit. A majority of Measure 37 claims have resulted in waiver of regulations, rather than payment by the state or local government.
- The Task Force Chair provided an update of the Task Force’s work to date at the Washington REALTORS® Fall Conference. A memo highlighting efforts of the Task Force was circulated to Legislative Steering Committee members as well as those attending the meeting. Comments were taken from Committee members and Association members.  
  
Comments generally favored the Association taking a neutral position on the Initiative. Concerns were raised about the overreaching land use regulations adopted by local governments in implementing the state’s Growth Management Act (GMA). However, there was also much concern about the reaction by local governments in conducting permit review and

approvals if the Initiative passes. Concerns were voiced about the good regulatory work done since 1996 that would be undone, the cost on government for implementing the Initiative and the likelihood of lawsuits resulting in uncertainty for REALTORS® and their clients. Others supported the Initiative in spite of the defects in its language because it was important to send a message to both the legislature and local governments that the legislation passed as part of the GMA implementation has gone too far and I-933 is a way for people's voices to be heard.

- Finally, the Task Force researched and provided to Association members a number of websites that provided the full text of I-933 as well as sites supporting and opposing the Initiative. Websites included the Property Fairness Initiative from the Secretary of State's site, the Property Fairness Coalition (supporting Initiative), the Community Protection Coalition (opposing the Initiative), and TVW's coverage of an Association of Washington Cities Panel on I-933 held on July 20, 2006.
- The Washington REALTORS® embrace and strongly support protecting private property rights. REALTORS® believe that private property rights are fundamental to our free-market economic system and a cornerstone upon which this nation was founded. The Association's Vision statement reads:

"Recognizing the need to sustain and enhance the quality of life enjoyed by Washington's citizens, REALTORS® support the efforts to build better communities through quality growth, economic vitality and housing opportunities that embrace the environmental qualities we cherish, while protecting property owners' ability to own, use and sell property."
- During the past five years, the Washington REALTORS® has worked closely with the state Legislature and local county and city jurisdictions on legislation that would result in an equitable balance between property rights, the environment and sustainable economic development. Efforts of the Association to pass substantive legislation that results in an improved quality of life and balanced communities where people can live, work and play have been frustrated. While Initiative I-933 addresses some of these frustrations, it also creates additional concerns.
- The Task Force identified the following positive points regarding the Initiative:
  - Measure will curtail enforcement of planning and zoning regulations adopted since 1996, particularly restrictions on types of uses and amount of property that can be used.
  - Measure requires government to either reimburse property owners when regulations passed devalue or restrict the use of property, or waive implementing regulations. In Oregon, claims have resulted in waiver rather than compensation.
  - Sends government a strong message about protecting property rights
  - Allows the market to determine what land is developed and the type of development, may result in some additional housing supply.

- Spreads the cost of regulation over a larger percentage of the population rather than placing the burden on a relatively small group of property owners.
- Government entities will have an incentive to determine whether or not it is worth using public funds or other compensation solutions for affected landowners.
- Protects private property rights from overreaching government regulations by requiring local governments to reassess the impacts of proposed regulations.
- Provides an opportunity to reconsider regulatory approaches to accommodating growth while ensuring livable communities.
- Will place fiscal pressure on local governments to adopt a more cautionary approach toward environmental regulation and to accommodate the rights of individual land owners.
- Provides incentive to devise and implement voluntary market-based and public-private partnership approaches to land conservation and the preservation of open space/ resource lands, particularly farm and forest land.
- Initiative would close the “loophole” for partial takings. Government could not rely on leaving “some use” of a property to avoid a potential takings claim.
- The Task Force identified the following negative points regarding the Initiative:
  - Zoning restrictions could return to those in 1996, potentially reducing environmental protections and allowing growth and construction that impacts quality of life. Large, intensive commercial uses could theoretically be placed in residential neighborhoods and urban development in rural areas. Homeowner’s expectations regarding their neighborhood no longer predictable.
  - The measure appears to exempt all private property, personal as well as real property from *any* non-compensated damage to such property resulting from government regulation with only specific exceptions for limited cases and types of regulation described and are to be narrowly construed.
  - The requirement for government to determine the impact of a regulation is vaguely written with little guidance on how to assess impacts. This could cause gridlock for governmental entities, preventing adoption of new regulations.
  - Governments may be forced to raise taxes, including real estate excise taxes, to pay property owners for impact of regulations determined to be important to implementation of community goals.
  - The market place, based upon the 1996 regulatory scheme of jurisdictions, may not necessarily lead to an efficiently developed community or one that is

desirable to live in or to development conducive to efficient and cost-effective public infrastructure investments for the greater community. Actual impact on housing supply unknown, and likely would vary by jurisdiction.

- May result in local government halting or delaying the construction of capital facilities as one means of slowing growth.
  - May impact the enforcement of regulations that are either federally – mandated or have federal funding consequences thus affecting the state’s ability to claim certain federal funding support. Example is the National Flood Insurance Program.
  - May impact salmon and Puget Sound recovery efforts and/or jeopardize federal funding, leading the federal government to mandate that action be taken at the local level.
  - May lead to litigation, with courts resolving the majority of land-use problems which will be time-consuming and wasteful.
  - May delay permits at the local level. Staff time will be needed to review requested waivers as well as normal workload. Hard to know the processing costs and costs of compensation. Oregon Secretary of State estimated Measure 37 would cost state and local governments \$344 million per year in administrative costs alone.
- At the their October meeting, Task Force members recommended to the Legislative Steering Committee that the Association should take a neutral position on I-933 based upon their review and analysis of the impact of the Initiative on Washington REALTORS® Vision and Mission.

REALTORS® want to protect property owners and they have real concerns about how the implementation of the Growth Management Act (GMA) has pushed up home prices. But REALTORS® also appreciate the contributions that thoughtful planning can make to the quality of life in Washington communities.

Regardless of the Initiative’s outcome, REALTORS® have significant concerns about the state’s home affordability crisis. The GMA requires cities and counties to plan for a sufficient supply of homes to meet the demand of growth. Many, however, have inadequately planned for those homes. Others have earmarked land for residential construction, but government restrictions prevent the full use of the land required to build the desired number of homes.

Further, state and local policymakers should understand that concerns about governmental disregard for property rights is what made I-933 a viable initiative — and that frustration doesn’t go away after the election. Government inaction has allowed home prices to skyrocket out of the reach of middle-wage families. It’s a crisis that elected officials must address. Government failure to plan for an adequate supply of homes is driving the cost of homes up and driving families out of our communities.