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HOT TOPIC ALERT

GOVERNMENT RESPONSES TO CLIMATE CHANGE



The impacts of climate change are becoming increasingly supported by scientific evidence and less disputed than in years past. Federal, state, and local governments are continuing to respond, and the reverberations are being felt across nearly all industries and professions, including real estate. Further, as consensus regarding climate change and the need to cut greenhouse gas emissions grows, so too does consumer interest in buying “green,” including green homes and appliances.

In this Hot Topic Alert, we provide a current snapshot of the state of climate change issues in the United States, including state and federal responses with a focus on those actions that may directly or indirectly impact the real estate transactions, the profession, or the market. We also touch on how the National Association of REALTORS® and its local and regional associations are educating professionals and consumers on green real estate options and advocating for effective regulation and legislation that does not adversely impact homeowners or real estate professionals.

WHAT IS “CLIMATE CHANGE?”

[Climate change](#) is a long-term change in a geographic region’s climate. Climate is the average weather conditions, such as temperature, rainfall, and humidity, occurring in a region over a long period. The length of a change is what distinguishes climate from weather. For example, if it rains in Chicago one day and is sunny the next, that is a change in weather. If average annual rainfall in Chicago over a 30-year period has increased markedly from the prior 30-year period, that is change in climate.

Climate change not a new phenomenon. The earth has gone through many periods of climate change in its history ranging from long periods of warmth to ice ages. [According to NASA](#), in the past 650,000 years there have been seven periods of glacial advance and retreat. However, discussion of climate change and the degree of concern about it have drastically increased in the past two decades. Why the increased attention to this longstanding phenomenon? Because scientists believe to a high degree of probability that the current climate changes are attributable to human activity and is occurring at a more rapid pace than typical natural cycles of climate change.

Over the past century, the burning of coal and oil—regarded as a primary human cause of climate change—is believed to have caused concentrations of heat-trapping “greenhouse gases” to increase significantly. These gases prevent heat in the earth’s near-surface atmosphere from escaping into space, thereby acting like the glass panels on a greenhouse. Although greenhouse gases play an essential, and partially beneficial, role in keeping the planet warmer than it otherwise would be, as the concentrations of these gases have increased, average temperatures have risen above past levels.

Carbon dioxide is the primary greenhouse gas caused by human activity. According to [EPA Estimates](#), in 2019, carbon dioxide accounted for 80% of such greenhouse gas emissions. There are multiple sources of human attributable carbon dioxide emissions. Building and transportation sectors both contribute heavily to these emissions. The EPA estimates that transportation accounts for 35% of the United States’ carbon dioxide emissions, electricity accounts for 31%, industry accounts for 16%, residential and commercial accounts for 18%, and other sources account for 8%.

Currently, the global climate is warming at a rate that NASA describes as “[unprecedented over millennia](#).” [Indicators](#) and impacts of this change in climate include shrinking glacier volume, more frequent extreme weather events, rising sea level, changes in humidity, exacerbated precipitation trends (i.e. more snow and rain in areas in storm paths and increased drought in areas outside in areas outside of the paths), and longer and more severe fire seasons.

The impacts of climate change, unfortunately, are more than just feeling warmer or noticing more thunderstorms. Climate change has a detrimental and sometimes, deadly impact on humans, animals, and plants. For example, during the 2021 heat wave across the Pacific Northwest, an estimated [112 people died in Washington State](#) alone. As another example, the devastating wildfires in Australia between 2019 – 2020, which has been [linked to climate change](#), killed at least 34 people, damages around 6,000 buildings, and killed about 1.5 billion animals.

In years past, there was heavy debate over whether global warming was occurring at all and if so, if it was attributable to human conduct. Today, both are widely accepted. Debate focuses more on the degree of impact humans are having, what the United States and world should do about it, and which industries are in most need of regulation and reform. Increasingly, there is a push towards an integrated, [collaborative approach](#) that recognizes there is no single source that can be blamed for human attributable global warming and thus, no single solution that can help remedy the impact.

IMPACT OF CLIMATE CHANGE ON THE REAL ESTATE PROFESSION

There is no business or profession that is exempt from the impact of climate change. The impacts on the real estate profession are manifold. Key areas of impact include weather damage to properties themselves, regulatory changes, and changes in consumer demand.

Climate change poses hazards to all types of properties. Some of the properties that are seeing the most acute and immediate impacts are coastal areas. Rising sea levels and more extreme weather events are causing erosion, flooding, and wind damage at increasing rates. Coastal properties are likely to continue to see more frequent property damage, and in the worst-case scenarios, complete destruction of properties, as a result of climate change. Inland properties are not exempt from climate risks. They too face ever growing risk of damage from extreme weather including fires, hail, river flooding, drought, and high winds.

The climate hazards for coastal and inland properties have made getting insurance for high-risk areas, such as coastal and fire-prone properties, even more difficult and expensive. Climate hazards are also impacting the structure of mortgages. [For example, banks are increasingly requiring higher down payments for mortgages](#) for coastal homes. It is not uncommon for down payments for such mortgages to be 40%, double the traditional 20% down payment. Interestingly, [demand for waterfront properties](#) remains high despite the ever increasing risk of loss due to climate hazards. Some [hypothesize](#) this will change and eventually demand for such properties will decrease.

The most tragic example of the potential for climate change to wreak havoc on real property is the collapse of Champlain Towers South, a 12-story south Florida condominium in Surfside, Florida. The collapse caused [nearly 100 deaths](#) and many injuries. At the time of writing, evaluations of the underlying cause of the collapse are ongoing. However, it is hypothesized that one or more environmental factors, [exacerbated by climate change](#), influenced the collapse. The horrific collapse is likely to bring changes to coastal building codes and inspection procedures in the region and beyond in order to avoid similar incidents in the future.

A positive effect of the increasing awareness of climate change among members of the public is a higher demand for “green,” i.e. environmentally conscious, buildings in both the residential and commercial markets. Green and sustainable construction is one of the [fastest growing industries](#) in the United States. The US green building market is so robust that it is anticipated to reach [\\$99.8 billion by 2023](#).

The increasing popularity of green properties poses some risk that the term “green” can be used as a meaningless marketing tool when advertising properties. Fortunately, this risk is mitigated by the uniform certification systems that have developed, most notably the LEED® certification and the *ICC 700* National Green Building Standard®. The [Leadership in Energy and Design](#)

(“LEED®”) rating system is the most widely used in the world. It is administrated by the U.S. Green Building Council (USGBC), is a feature-oriented certification system, and is a point-based system that awards four rating levels, Certified, Silver, Gold, and Platinum based on the number of points earned across different categories. The categories considered are: location and transportation, sustainable site, water efficiency, energy and atmosphere, indoor environmental quality, and innovation and design. Each type of project has its own specific rating criteria; for example, building design and construction is differentiated from interior design, and construction and homes have their own category under the LEED®” system.

Another certification option is the [ICC 700 National Green Building Standard®](#) (“NGBS”), which offers certification for single and multi-family residential properties. Like the LEED system, the NGBS offers different rating levels: Bronze, Silver, Gold, and Emerald. The most current edition of the NGBS was prepared by the joint work of the International Code Council (“ICC”) and the National Association of Home Builders (“NAHB”). The system is the first to be approved by the American National Standards Institute. The version of the standards approved in 2020 has expanded its scope to include, among other things, certification of the mixed-use residential buildings that are becoming popular in urban and suburban communities.

GOVERNMENTAL RESPONSE TO CLIMATE CHANGE

Currently, the federal government’s initiatives in response to climate change come largely from the US Environmental Protection Agency (“EPA”), and from Executive Orders. Congress has considered many bills related to climate change over the past two decades, but it has proven difficult to get comprehensive climate change legislation passed at the federal level.

Currently, most of the federal government’s responses to climate are voluntary, incentive-based programs. The [EPA’s leading role](#) in the federal response includes: measuring emissions data; reducing admissions through regulation and partnerships; evaluating and reporting on policy options, costs, and benefits; developing international partnerships; conducting scientific research; and working with local communities including tribal governments to plan and build climate resiliency programs. Pursuant to [Executive Order 13990](#), Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, the EPA has also begun developing additional regulatory rules that will govern and provide standards in transportation, oil and natural gas, and power sectors.

One of the most well-known EPA programs among consumers is its [Energy Star®](#) program, which is a joint program of the EPA and the U.S. Department of Energy that is geared toward helping consumers save money while protecting the environment through the use of energy efficient products and practices. Household products, commercial buildings and plants, and even residential buildings that meet strict energy efficiency guidelines set by the EPA and the Department of Energy can obtain can seek Energy Star® approval. When approval is received, the Energy Star® label can be used in marketing. The label allows consumers to find more easily energy efficient appliances and homes thereby helping them save money and decrease environmental impact.

Federal approaches to climate have changed dramatically along with the past few presidential administrations. President Biden and his administration have made it clear that addressing climate change will be a priority. Within the first year of the administration, numerous [actions addressing climate change](#) have already been taken. In his first month of office, President Biden issued two

executive orders related to climate change: the [*Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*](#) and the [*Executive Order on Tackling the Climate Crisis at Home and Abroad*](#). Among other things, these orders required rejoining the [Paris Agreement](#) on climate, set policy objectives, updated greenhouse gas emission benchmarks, called for use of federal buying and real property management powers to help combat the crisis, and outlined a climate agenda including climate related economic opportunities like clean energy jobs. Additionally, the [Office of Climate Change and Health Equity](#) was recently established under the umbrella of the Department of Health and Human Services. The new office recognizes the health impacts of global warming – such as the potential link between wildfire smoke and premature births – and seeks to understand and address these effects.

President Biden’s rejoining of the Paris Agreement on his first day in office was both expected and important. The [Paris Agreement](#) is the first legally binding international agreement on climate change issues. It has been adopted by virtually every nation in the world. The Agreement is multifaceted and involves commitments to the reduction of greenhouse gas emissions as well as offering of financial assistance from more developed countries to those without as substantial of financial resources. Former President Trump withdrew the US from the Agreement on the rationale that it was [unfair](#) that US was required to curb carbon usage while India and China could use fossil fuels. The withdrawal became effective on November 4, 2020, making the US the only country to have withdrawn from the agreement. President Biden’s actions to rejoin the Agreement are largely viewed as a [positive step](#) for the US and the world.

Although federal action is increasing at a rapid pace, state and local responses to climate change have been the most vigorous. State action tends to come in a few forms: climate change planning, incentive programs, and legislative and regulatory action. While the types of actions are similar, the details vary. Every state’s scheme regarding climate change and energy use is different. In addition, because these issues are rapidly evolving, state and local responses are also evolving rapidly in response. For this reason, it is important for REALTORS® to make efforts to stay apprised of local and regional regulations, statutes, and incentive programs in order to properly advise their clients regarding both opportunities and potential hurdles related to climate change and energy efficiency.

Thirty-three states have either implemented or are in the process of implementing some type of [climate change plan](#) to address present concerns and to plan for the future. State planning and measurement efforts typically include the creation of a state advisory board, the completion of a greenhouse gas inventory, or the development of a state climate change action plan. Often these efforts are undertaken in an interrelated and simultaneous fashion. Climate change action plans help states identify and evaluate possible and practicable policies to reduce their greenhouse gas emissions, by using a combination of public- and private-sector programs.

Almost every state has taken some type legislative or regulatory action to address the issue of energy conservation. Some of those efforts have been directed at—or will impact—real estate and real estate transactions. The scope of these efforts has varied, with some jurisdictions imposing new requirements on real estate sales and others relying on incentives to encourage upgrades and retrofits to all homes. Notably, a large majority of jurisdictions have adopted an energy code for

both residential buildings and for commercial buildings. The Energy.gov website provides ongoing [tracking of residential and commercial state energy code adoption](#).

Virtually all states offer other [incentives](#) to increase energy efficiency in buildings. Tax incentives are common and come primarily in the following forms:

- Income tax deduction or credit for the purchase of alternative energy equipment or for the cost of energy conservation measures;
- Some property tax incentive for alternative energy systems or energy efficient buildings that exempts the system from the tax or excludes the system's value from the assessed value of the real property on which the system is installed;
- Exemptions or special sales or excise tax treatment to energy efficiency related equipment; or
- Temporary sales tax exemptions, or “holidays,” for energy efficient appliances or fixtures.

California’s approach is an often cited example of a comprehensive long-term approach to climate change that considers land-use and transportation issues together. The state’s [Global Warming Solutions Act](#), passed in 2006, provides ambitious requirements for reduction of greenhouse gas emissions in the state. The Act requires, among other things, that the [California Air Resources Board](#) develop a plan for reducing emissions, and update that plan every five years. The Act’s goals led to the passage of California’s [Sustainable Communities and Climate Protection Act](#), which aims to align land use with transit planning in order to reduce vehicle dependency, thereby reducing vehicle emissions. The Act requires California Metropolitan Planning Agencies (MPOs) to create a Sustainable Communities Strategy (SCS) that, as [explained by the UC Berkley Center for Housing Innovation](#), “identifies the locations and types of development needed to lower vehicle miles traveled and meet greenhouse gas emission reduction targets.”

Finally, in addition to federal and state action, many cities and counties have taken the green focused action at the local level. The types of local programs are as varied as the cities themselves, ranging from city-wide green building programs to solar access requirements to local carbon neutrality requirements. For example, in Annapolis, Maryland, the [Ordinance](#) requires that any single family home in excess of 3,250 square feet in size must achieve an LEED energy rating. The city of [Lacey, Washington](#), provides that when the city plants trees, the City must give “due consideration to valid solar access needs together with any specific solar access policies that may hereafter be adopted.” [New York City](#) has set the goal of becoming carbon neutral by 2050, by requiring energy efficiency improvements to 900,000 buildings, strong adoption of all-electric cars, a “dramatic” switch to renewable power generation, and a transition toward low-carbon fuels, such as renewable natural gas and hydrogen.

ENVIRONMENTAL DISCLOSURES FOR PROPERTY SALES

[At least ten states](#)¹ and Washington DC have enacted legislation that requires property owners to benchmark, report, or disclose energy consumption data for the property prior to sale. Exact requirements vary. Additionally, local ordinances may require energy related disclosures (e.g.

¹ California, Florida, Hawaii, Kansas, Maine, New Jersey, South Dakota, Utah, Vermont, Virginia, and Washington.

disclosure of energy costs or of energy efficient characteristics) prior to sale. A handful of local ordinances go a step further and require some form of an energy audit. [Austin, Texas](#), for example, imposed a mandatory energy audit requirement for home sales in that city. [Portland, Oregon](#) has similarly adopted an approach that requires that properties be scored and the energy score be disclosed. These energy audits, though well-intentioned, can unduly hinder the real estate sale transaction and [may not be very effective](#).

REALTOR® EFFORTS ON CLIMATE CHANGE ISSUES

The [National Association of REALTORS®](#) supports voluntary incentives to save energy and limit CO₂ and other emissions. NAR believes that voluntary incentives coupled with education can yield substantial results without the detriment to homeowners and parties to real estate transactions that can result when disclosures and modifications are mandated at the time of sale or energy prices are increased. NAR supports its position through both consumer and industry facing educational efforts as well as direct advocacy at the federal level. To advocate for its position, NAR has written numerous [letters to Congress](#) and [to federal agencies](#) as well as offering [Congressional testimony on occasion](#).

In 2017, NAR created an ongoing [sustainability program](#) that, among other things, aims to reduce the organization's operational impact as well as engage its REALTOR® members and associations to actively educate and participate in sustainability conversations. Through the program, NAR has held Sustainability Summits, conducted annual Sustainability Reports, and developed 15 Sustainability Strategic Priorities for the association. NAR has also developed a [Green Designation](#) that REALTORS® can earn through training. The designation helps REALTORS® have the knowledge they need to serve green conscious consumers and to market themselves.

Local and regional REALTOR® associations have and continue to play key role in expanding consumer education regarding climate and energy issues and advocating for at the local, regional, and state levels to encourage sustainability efforts without harming current or future property owners, buyers, or sellers. For example, the San Diego Association of REALTORS® (“SDAR”) successfully [opposed point of sale mandates](#) that were unfair and harmed real estate affordability. At the same time, SDAR reiterated its support for environmental and sustainability efforts that don't harm real estate consumers as a byproduct.

State and local associations are not just talking-the-talk, they are leading by example. The [Austin Board of REALTORS®](#) added solar to their building to help reduce their carbon footprint. [Aspire North REALTORS®](#), formerly the Traverse Area Association of REALTORS®, the [Santa Barbara Association of REALTORS®](#), and a number of other state and local associations of REALTORS® have LEED® certified buildings.

NAR and its member REALTORS® are part of what has become worldwide push towards addressing climate change issues. Countless other organizations, businesses, and individuals are pushing for effective governmental action in response to climate change. With so many different players, each has slightly different interests and often opinions on the best approach. NAR and its local and regional associations always look out for the best interests of real estate professionals and consumers, advocating loudly in favor of these interests when required.



CONCLUSION

Climate change is a serious issue that impacts the business of real estate in many ways. Responses to climate change from federal, state, and local governments are rapidly evolving. While today much of the applicable regulation related to real estate comes from state and local levels, that may soon change as the Biden administration prioritizes federal action related to climate change.

To best serve their clients, REALTORS® should stay apprised of the potential impact of climate risks as well as regulatory requirements for property owners and sellers.

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ADDITIONAL STATE & LOCAL RESOURCES

White Papers: Comprehensive reports prepared for NAR on issues directly impacting the real estate industry. Examples include: Rental Restrictions, Land Banks, Sales Tax on Services, State & Local Taxation, Building Codes, Hydraulic Fracturing, Foreclosure Property Maintenance, Climate Change, Private Transfer Fees.

Growth Management Fact Book: Analysis of issues related to land use and modern growth management topics include density — rate of growth, public facilities and infrastructure, protection of natural resources, preservation of community character, and affordable housing.

All available on [REALTOR® Party webpage](#) under the *State & Local Issues* tab.