

To: Land Title Association of Colorado
From: Cathy Wanstrath, LTAC lobbyist
Subject: **Legislation of Interest to LTAC (End of session report. The Governor has 30 days to act on bills.)**
Date: May 7, 2007

S.B. 6 (Sen. Takis, Rep. J. Kerr): "Concerning Authorization for the Abolition of a Redundant, Nonsignalized, and Unattended At-Grade Railroad Crossing without a Hearing before the Public Utilities Commission." This bill was brought by the railroads because they have many such crossings, which pose a safety and liability problem for them. (There are over 1200 places between Denver and Cheyenne where railroad tracks cross roads; of course many of them are ranch roads.) The bill came through the Transportation Legislation Review Committee, which means many interests already have signed off on it. The bill allows the entity responsible for supervising and maintaining the highway or road at any crossing at grade of any public highway or road over the tracks of a railroad corporation to abolish the crossing without a hearing before the Public Utilities Commission under certain circumstances. The corporation must provide 60 days notice by posting a notice at the crossing, and the property owners and other entities such as the county have the right to object. The crossing to be abolished cannot be the only access to property. **SIGNED BY THE GOVERNOR 4/2. Note: The railroads plan to address additional issues this summer through the Transportation Legislation Review Committee, and will keep LTAC informed about the legislation they will propose.** (Edgar, Carlson, Evans)

S.B. 40 (Sen. Tochtrop, Rep. Marshall): "Concerning the Prohibition of a Financial Institution from Conducting Operations on the Premises of an Affiliate Engaged in Nonfinancial Activities." Prohibits a financial institution from establishing or maintaining its principal office, a loan production office, a deposit production office, a branch or "an electronic communications device" on or within 1.5 miles of premises owned, leased or otherwise controlled by an affiliate that engages in commercial activities. "Commercial activities" are defined as activities in which a bank holding company, national bank, or a national bank financial subsidiary may not engage under federal law. **Amended to exempt industrial banks that were insured depository institutions before 10-1-03, and whose parent company is a financial institution.** **SIGNED BY THE GOVERNOR 3/16.** (Sutherland, Holland)

S.B. 45 (Sen. McElhany, Rep. McGihon): "Concerning Fees for Providing Public Records". Sets the fee that a custodian may charge for copies of certain public records at ten cents per standard page, or a fee not to exceed the actual cost of providing the copy, printout or photograph of a public record in a format other than a standard page. Where a fee for a copy is specifically prescribed by law, the specific fee shall apply. This is in response to recent news reports of excessive charges for public records, and the bill is supported by the Press Association. As amended, the bill would reduce from \$1.25 per page to **25 cents/page** the fee county clerks and others could charge for copies of paper documents. However, the committee also removed language from the bill about adding the cost of labor to retrieve records, not to exceed \$15, so case law will continue to prevail in this regard. **SIGNED BY THE GOVERNOR 4/19.** (Compton, G. Wolff)

S.B. 85 (Sen. Veiga, Rep. Massey): "Concerning Additional Consumer Protections Relating to Real Estate Transactions." Broad title, but as written it applies only to mortgage brokers. Prohibits a mortgage broker from improperly influencing a real estate appraisal, and makes improper influencing a deceptive trade practice. Authorizes revocation of a mortgage broker's registration for improperly influencing an appraisal, or if the broker has, within the past 5 years, been enjoined by a court in any state from brokering a mortgage. *As amended, eliminates the \$200 cap on registration fees, so that now fees will be whatever it takes to "offset the direct and indirect costs of implementing" the mortgage brokers registration.* **Also amended to clarify that reverse mortgages are not prohibited.** **TO THE GOVERNOR.** (Bernard, Jones)

S.B. 90 (Sen. Kopp, Rep. J. Kerr): "Concerning County Authority to Vest Title to a Vacated Roadway". This is an addendum to present law on vacated roadways. This bill would allow a board of county commissioners to provide that title to a vacated roadway shall vest in one or more individuals or legal entities subject to a private-access easement to benefit certain designated properties. The documents supporting such a vacation would have to be recorded in the appropriate county clerk's office, per the existing CRS 43-1-202.7.

SIGNED BY THE GOVERNOR 4/20. (Burks, Rosenthal)

S.B. 157 (Sen. Ward, Rep. Rice): "Concerning Exercise of the Power of Eminent Domain by Urban Renewal Authorities". Prior to making a determination that property is located in a slum area, or that certain property itself is a slum, requires an urban renewal authority to provide notice of the determination to the county commissioners and to all property owners, residents and owners of business concerns located in the area. No area shall be designated as blighted where any part of the area has been classified as agricultural land for property tax purposes within the past 5 years, unless the part of the area classified as agricultural land constitutes less than 10 percent of the aggregate urban renewal project area. **TO THE GOVERNOR.** (Compton, Holland)

S.B. 203 (Sen. Groff, Rep. Marshall): "Concerning the Regulation of Persons Participating in Mortgage Loan Transactions, and, in connection therewith, Requiring Mortgage Brokers to be Licensed and Specifying Prohibited Acts and Grounds for Discipline of Licensees." Changes the "registration" of mortgage brokers to "licensing". Requires mortgage brokers to maintain errors and omissions insurance coverage. **Requires a DRAFT of all documents "material to a mortgage transaction" on residential real estate to be provided to the borrower at least one business day before closing. This means the deed of conveyance except in the case of a refinancing, the loan agreement, and the title documents if requested by the borrower. The bill was also amended to allow temporary licenses for mortgage brokers while the CBI background checks are done, which can take several weeks or more. TO THE GOVERNOR.** (Rice, Sloan, Cook)

S.B. 216 (Sen. Veiga, Rep. Marshall): "Concerning Additional Consumer Protections in Residential Mortgage Loan Transactions". Creates a duty of good faith and fair dealing for mortgage brokers in their communications and transactions with borrowers. Requires refinancing transactions to have a "**tangible, net benefit**" to borrowers, which term will be defined by rule. This is the standard Household Finance agreed to in order to settle a massive case against it. The amendments passed in committee remove any concerns for LTAC. **TO THE GOVERNOR.** (Schreiber, Bode)

S.B. 237 (Sen. Shaffer, Rep. Massey): "Concerning Notification of Mineral Estate Owners in Connection with Applications for Surface Development, and in Connection Therewith, Specifying Requirements for Drilling Oil and Gas Wells in the Greater Wattenberg Area." Modifies requirements for identifying mineral estate owners when a surface developer submits an application for surface development to a local government. Modifies the parties' liability and remedies regarding notification of mineral estate owners and surface and oil and gas development. The Wattenberg area is in Weld, Larimer, Adams, Broomfield and Boulder counties. If the surface and oil/gas developers cannot agree concerning such development, allows the surface developer to designate an oil and gas operations area to protect existing wells and allow for future drilling. **TO THE GOVERNOR.** (Howe, Condie)

S.B. 249 (Sen. Veiga, Rep. Rice): "Concerning the Application of Existing Regulations to Persons Performing Services in Connection with Real Estate Transactions, and Making an Appropriation." **The bill was completely rewritten.** The final version does not include licensure of independent closing/settlement service providers. (The industry could still request a "sunrise review" by the Department of Regulatory Agencies to study the need for such licensure.) The bill requires the Division of Insurance to levy an assessment on title insurers to pay for 2 employees to perform "market analysis, investigation, and enforcement of Article 11 of this title and rules adopted pursuant to said Article 11..." Requires annual reports to the legislature on enforcement actions and market trends associated with title insurance and real estate transactions, and consumer complaints. The initial surcharge will be due by September 1, 2007. As amended, LTAC dropped its opposition. **TO THE GOVERNOR.**

H.B. 1047 (Rep. Massey, Sen. Veiga): "Concerning Additions to the List of Educational Resources from Which Approved Continuing Education Credits for a Real Estate Agent May be Taken." This bill comes from the Colorado Association of Realtors. They are replacing in statute a section that they believe was inadvertently taken out a couple of years ago. Their intent is to restore the ability of their state association and local affiliates to offer continuing education for credit to their members. **SIGNED BY THE GOVERNOR 3/14, unamended** (Schreiber, Hatter)

H.B. 1156 (Rep. Looper, Sen. Gordon): "Concerning the Disclosure of Water Sources in

Connection with the Sale of Residential Real Property." The bill as amended charges the Real Estate Commission to require by rule that, in any sale of residential real property, the seller disclose the source of water for the property. It is left to the REC to decide whether this disclosure is in the listing contract, the contract of sale, or the seller's property disclosure. However, the Colorado Assn. of Realtors favors the seller's property disclosure and believes that is what the REC will decide. If the source is a well, requires the disclosure to include a copy of the well permit "if one is available". Effective date 1-1-08. **Amended to include contracts not subject to the Real Estate Commission, such as FSBOs. Also includes apartments. TO THE GOVERNOR.** (Compton, Cranmer, Evans)

H.B. 1157 (Rep. Garcia, Sen. Veiga): "Concerning Real Estate Foreclosures". This is mostly a technical cleanup bill to last year's broad revision of foreclosure statutes. This bill is being promoted by the public trustees and the Colorado Bar Association. One major change relates to the process for rescission of a public trustee sale. LTAC offered several amendments, which the sponsor and other stakeholders accepted, including a requirement that the public trustee will record the Order Authorizing Sale and the mailing lists and supplements. The right to rescind a sale will be reserved only for the foreclosing lender. All other issues (homeowners' associations) have been resolved for the present. Effective date changed to 1-1-08. **TO THE GOVERNOR.** (Howe, Edwards, Rice)

H.B. 1175 (Rep. Madden, Sen. Fitz-Gerald): "Concerning a Limitation on the Operation of Industrial Banks at Commercial Locations." This is the Colorado Bankers' Association approach to limiting the big-box stores from entering the banking industry. (The Independent Bankers of Colorado have S.B. 40). Promotes the federal policy of prohibiting the mixing of banking and commerce by specifying that no industrial bank may accept deposits or make loans at a commercial location unless it is owned by a financial holding company. **SIGNED BY THE GOVERNOR 3/14.** (Sutherland, Holland)

H.B. 1197 (Rep. Fischer, Sen. Bacon): "Concerning the Authority of a County to Abate Conditions that Contribute to a Violation of a General Stormwater Quality Permit Issued to the County by the Department of Public Health and Environment." Colorado Counties, Inc. initiated this bill. Allows a board of county commissioners to adopt an ordinance to develop, implement and enforce the stormwater management program required by the permit issued to the county, for property located within unincorporated portions of the county. If the property owner refuses to perform the abatement of a condition that causes violation of the permit, the county can do so and may place a lien on the property for their costs of the abatement. **The lien shall have priority based on its date of recording.** LTAC amendment was included, clarifying that the lien will be recorded with the county clerk/recorder. **SIGNED BY THE GOVERNOR 4/9.** (Edgar, Howe)

H.B. 1225 (Rep. J. Kerr, Sen. Tapia): "Concerning Land Surveys". Makes several unrelated changes to law relating to land surveys/surveyors. One example: Specifies that any uncertain line, uncertain corner, or uncertain boundary of an existing parcel of land that is recorded with the clerk and recorder of the county in which the land is located and that is in dispute may be determined and permanently established by written agreement of all affected parties. If the map or plat is prepared by a licensed professional land surveyor, the monuments shall be set for any line, corner or boundary included in the agreement. **SIGNED BY THE GOVERNOR 3/30.**(Berg, Wolff)

H.B. 1252 (Rep. Roberts, Sen. Isgar): "Concerning the Accommodation of the Rights of Surface Owners with Respect to Oil and Gas Operations." Requires oil and gas operators to employ practices that minimize adverse impacts to the use and value of the surface when such practices are technologically sound and economically practicable. Establishes that use of the surface in excess of that which would cause minimum adverse impact is unreasonable and excessive and constitutes a trespass. **TO THE GOVERNOR.** (Cranmer, Sloan)

H.B. 1265 (Rep. McNulty, Sen. Tochtrop): "Concerning the Form of a Request to a Public Trustee to Release a Lien of a Deed of Trust." Specifies the written forms that may be used to request a release of a deed of trust with or without production of the original canceled evidence of debt. The Public Trustees Association initiated this bill. **Amended to include check boxes for "full" and "partial" releases. SIGNED BY THE GOVERNOR 4/9.** (Carlson, Sutherland)

H.B. 1295 (Rep. Weissmann, Sen. Takis): "Concerning the Identification of all Land Area

within the Regional Transportation District, and in connection therewith, Requiring the RTD to Map the District and further Identify the District by Written Description." Requires the RTD board to prepare and update written documents with descriptions of the area as well as maps of the district boundaries. Certified copies of the documents and maps are to be maintained at the district office, and recorded with the county clerk and recorder of any appropriate county. **TO THE GOVERNOR.** (Jones, Burks)

H.B. 1322 (Rep. Marshall, Sen. Groff): "Concerning Measures to Prevent Mortgage Fraud, and in connection therewith, Extending the Prohibition against Certain Acts to Include Mortgage Lenders, Mortgage Loan Applicants, Real Estate Brokers, Real Estate Agents, Real Estate Appraisers, and Closing Agents; Prohibiting Certain Practices; and Changing the Mental State Required to be Proven as an Element of a Violation". In provisions of law relating to false and deceptive inducements to the creation of a mortgage loan by a mortgage broker or mortgage originator, adds mortgage lenders, mortgage loan applicants, real estate brokers, real estate agents, real estate appraisers, and **closing agents** to the persons to whom the prohibitions apply. "Closing agent" is not defined. Requires mortgage brokers to make an inquiry about and to take into consideration the borrower's current and prospective income and other factors prior to recommending, brokering, or originating a residential mortgage loan. LTAC representatives met with Rep. Marshall on 3/9 to request amendments to the bill exempting title insurance companies and agents. She declined to support our amendments in committee. **LTAC delivered a comprehensive letter to the sponsors, copied to Erin Toll and Attorney General Suthers, regarding the problems with this bill.** Sen. Groff agreed to the most important amendment we requested, and it was adopted in committee 4/11. It clarifies that "**closing agent**" does not include persons or entities regulated by the Division of Insurance. **TO THE GOVERNOR.** (Cranmer, Hatter, Wolff, Rice)

H.B. 1338 (Rep. Pommer, Sen. Veiga): "Concerning the Elimination of Certain Restrictions on Legal Rights Available to Residential Property Owners with Respect to Construction Defect Actions, and, in connection therewith, Enacting the 'Homeowner Protection Act of 2007'." Makes waivers of certain basic statutory rights and remedies by residential property owners in their transactions with construction professionals void as against public policy. Significantly changes the 2003 law that provided remedies for homeowners who have disputes with builders. As amended, will still permit a requirement to participate in mediation prior to filing a suit or arbitration proceeding. The main concern of the opponents of this bill is that the trial attorneys will try to get owners in multi-family developments to file lawsuits together, and have the \$250,000 cap apply to each unit individually, for a much higher actual cap. **SIGNED BY THE GOVERNOR 4/20.** (Edwards, Holland)

H.B. 1362 (Rep. Levy, Sen. Morse): "Concerning Clarification of the Documents Required for Creation of a Common Interest Community, and in connection therewith, Specifying the Information Required to be Contained Therein." This is the late bill from the Colorado Bar Association to address a recent Appeals Court decision, Snowmass Land Company v. Two Creeks HOA. The dispute concerned whether certain rights of the developer need to be noted on the plat or map of the common interest community, when such information is already in the declarations. **TO THE GOVERNOR, unamended.** (Edgar, Compton)