

To: Land Title Association of Colorado  
From: Cathy Wanstrath, LTAC lobbyist  
Subject: **Legislation of Interest to LTAC**  
Date: January 26, 2008

(Names in parentheses are Legislative Committee members assigned to these bills.)

**H.B. 1007** (Rep. Looper): Concerning the Modification of Statutory Provisions Enacted by the General Assembly during the 2006 Legislative Session that Impose Certain Requirements on Private Toll Companies for the Purpose of Alleviating Consequences of those Provisions that May Affect Real Property." This bill attempts to reverse the process of "flagging" in the real property records all properties within the path of the Super Slab. Requires a title insurance company to **exclude** a void disclaimer of interest, map or notice from any documents it prepares **after the effective date of this act**. No cause of action shall be maintained based on compliance with current toll road law or this change. **ASSIGNED TO HOUSE TRANSPORTATION COMMITTEE**. (Evans, Stubbs, Condie)

**H.B. 1014** (Rep. Looper, Sen. Gordon): "Concerning a Requirement to Transfer a Well Permit upon Conveyance of Residential Real Property." Colorado law in effect since 1995 requires a buyer of a property with a small capacity well to complete a standard form notifying the State Engineer of the property description, the new owner's name and the well permit number. This process has no enforcement mechanism and is not being followed routinely. Therefore the State Engineer has asked for this bill. The bill clarifies the obligation of the buyer of a property with this type of well to complete the change in ownership form prior to or at closing. Proper use of the new 1/1/08 Contract to Buy and Sell Real Estate SHOULD include the necessary information. The role of the closer is to mail in this well permit change form within 60 days of closing "with as much information as is available". This means that if the closer cannot get the well permit number, the closer can send in the form "incomplete" and it will not be rejected. **Amended at the request of the Colorado Association of Realtors to take out the requirement that the Real Estate Commission promulgate a rule to require that each contract subject to this law INCLUDE THE WATER WELL FORM. Instead the contract "shall require the buyer to complete the appropriate form for the well..." CAR also had Section 2 of the bill deleted, which referred to action that the Commission could take against a Realtor for not complying with section 3 (c), which includes duties of the buyer and closer, not the Realtor.** Another amendment clarifies that the bill relates to wells "used for ordinary household purposes". Effective date August 7, 2008 (90-days after end of session). **PASSED THE HOUSE, amended**. (Evans, Compton, Howe)

**H.B. 1053** (Rep. McNulty): "Concerning the Electronic Submission of Plats to a Local Government Entity." Allows for the electronic recording and filing of plats, **"with appropriate permanency protocols"**. Bill requested by the Douglas County Clerk. **PASSED THE HOUSE, amended**. (Rosenthal, Hatter)

**H.B. 1131** (Rep. McGihon, Sen. Hagedorn): "Concerning Procedures Required for the Approval by the Commissioner of Insurance of Changes in Control of Insurers." Requires the Commissioner to conduct an independent investigation to determine the impact on competition resulting from a proposed merger of insurers. Requires the commissioner to issue a public report on her findings within 60 days after the filing of the insurers' statements regarding the proposed merger. If an insurer claims that information provided in the filing is proprietary, the insurer has the burden of proof on that issue. The Commissioner shall approve the merger ONLY IF several conditions are met, which is a reversal of the current process which **presumes approval** unless certain negative conditions are found. *(The Division of Insurance does not support the bill as drafted, but may agree to amendments that limit the applicability to mergers of companies with more than a given market share. The main reason for the bill is concern about merger of large health insurers, but the language covers all lines.)* **ASSIGNED TO HOUSE BUSINESS AFFAIRS/LABOR COMMITTEE**. (G.Wolff, Schreiber)

**H.B. 1135** (Rep. M. Carroll, Sen. Hagedorn): "Concerning Common Interest Communities, and in connection therewith, Invalidating Covenants that Prohibit Building Modifications to Accommodate Persons with Disabilities, Requiring Due Process in Penalty Assessment Procedures, and Providing for Alternative Dispute Resolution." This bill addresses some recent high-profile HOA disputes, none of which directly impact title insurance, but we

will continue to monitor due to its broad title. **PASSED THE HOUSE.** (Carlson, Ruybal)

**H.B. 1141** (Rep. Curry, Sen. Bacon): "Concerning Sufficient Water Supplies for Land Use Approval." Requires a local government to make a determination as to whether an applicant for a real estate development permit for a development in excess of 50 units or single-family equivalents has demonstrated that the proposed water supply is sufficient and sustainable to serve the peak water supply requirements of the proposed development. **ASSIGNED TO HOUSE LOCAL GOVERNMENT COMMITTEE.** (Cook, Kujawski)

**H.B. 1148** (Rep. Witwer, Sen. Tupa): "Concerning the Sufficiency of the Assertion of a Claim for Title to Real Property by Adverse Possession under Colorado Law." On and after July 1, 2008, in addition to any other requirements specified in current law, specifies that a person may acquire fee simple title to real property by adverse possession only upon satisfaction of **each** of the following conditions: (1) The person has satisfied all of the elements of a claim for adverse possession required at common law; and (2) The person had a good faith belief that the person was the actual owner of the property, and the belief was reasonable under the circumstances. The person asserting the claim of adverse possession must prove each of the elements by **clear and convincing evidence.** Where the person asserting a claim of title by adverse possession prevails on such a claim, the court may decide to award the nonprevailing party an amount representing the fair market value of the property that is the subject of the claim as well as an amount representing any property taxes levied on the subject property the nonprevailing party has paid. **ASSIGNED TO HOUSE JUDICIARY COMMITTEE.** (Berg, Sloan)

**H.B. 1153** (Rep. Roberts): "Concerning the Oversight of Fiduciaries under the Provisions of the Colorado Probate Code". Adds a new part to the Colorado probate code concerning oversight of fiduciaries in decedents' estates, guardianships and conservatorships, and trusts. **ASSIGNED TO HOUSE JUDICIARY COMMITTEE.** (Burks, Edgar, Kujawski)

**H.B. 1178** (Rep. M. Carroll, Sen. Hagedorn): "Concerning the Regulation of Commercial Electronic Mail Messages to the Maximum Extent Permissible Under Federal Law, and in connection therewith, Enacting the 'Spam Reduction Act of 2008'". Replaces the existing "Colorado Junk Email Law" with provisions that are intended to be consistent with, and as stringent as may be adopted by, any state under the federal "CAN-SPAM Act of 2003". Defines a violation of the CAN-SPAM Act as a deceptive trade practice. Invokes the attorney general's enforcement authority and other available remedies under the Colorado Consumer Protection Act. **ASSIGNED TO HOUSE JUDICIARY COMMITTEE.** (Hatter, Stubbs)

**H.B. 1182** (Rep. McKinley): "Concerning the Withdrawal by the State of its Consent to the Acquisition of Lands within the State by the United States Government." Repeals statutory provisions pursuant to which the State of Colorado has given consent to the U.S. government for the acquisition by the U.S. government of land within the State. (Relates to the proposed expansion of the Pinon Canyon Maneuver Site.) **ASSIGNED TO HOUSE STATE AFFAIRS COMMITTEE.** (Carlson, Edgar)

**H.B. 1195** (Rep. Mitchell): "Concerning the Return of a Release of a Deed of Trust after Recording". The public trustees have already told us this bill needs work; it came from a constituent complaint. Specifies that the public trustee shall be provided with a current address of the original grantor, assignee, or current owner when a request is made to release a deed of trust. Requires that, after recording the release of a deed of trust, the county clerk shall return the release to the original grantor, assignee or current owner using the address provided to the public trustee. If the release is returned to the county clerk as undeliverable, the clerk shall retain the release according to office policy. **ASSIGNED TO HOUSE LOCAL GOVERNMENT COMMITTEE.** (Ruybal, Stubbs)

**S.B. 41** (Sen. Cadman): "Concerning the Ownership of Minerals Beneath Land Acquired by Governmental Entities, and in connection therewith, Clarifying that a Governmental Entity May Acquire Interests in Such Minerals Only to the Extent Required for Subsurface Support." Clarifies that the Transportation Commission, any other governmental entity acquiring land for road or highway purposes, or any other entity acquiring an easement or right-of-way may only acquire interests in oil, natural gas, or other mineral resources beneath the land acquired to the extent required for

subsurface support. **ASSIGNED TO SENATE AGRICULTURE, NATURAL RESOURCES AND ENERGY COMMITTEE.** (Holland, Bernard)

**S.B. 42** (Sen. Bacon, Rep. Hodge): "Concerning an Adjustment in the Salary Paid to the Appointed Public Trustee in Specified Counties". Adjusts the yearly salary of public trustees in counties of the 2<sup>nd</sup> class from \$48,500 to \$72,500 by 2010, with progressive increases between now and then. This includes Adams, Arapahoe, Boulder, Douglas, ElPaso, Jefferson, Larimer, Mesa, Pueblo and Weld. **ON 2<sup>ND</sup> READING IN SENATE.**

**S.B. 62** (Sen. Groff, Rep. Marshall): "Concerning the Authority of Certain Agencies within the Department of Regulatory Agencies to Share Information Regarding Misconduct by Entities Licensed by the Department with other Licensing Agencies within the Department". Authorizes the Commissioner of Financial Services (securities regulation, credit unions) to give information relating to the misconduct of persons regulated by the Division of Real Estate to the Division of Real Estate. Allows the Division of Banking and the State Bank Commissioner to inform a licensing agency within DORA of possible misconduct by a person or entity licensed by said agency. **ON 3<sup>RD</sup> READING IN SENATE.** (Bode, Rice)

**S.B. 84** (Sen. Hagedorn, Rep. M. Carroll): "Concerning Requirements Governing the Development of Land Constituting the Site of the Former Lowry Bombing and Gunnery Range." Prohibits any development of land located in Arapahoe County constituting all or any portion of the site of the former Lowry bombing range until either all environmental remedial decisions governing the site are complied with or the State receives money from the federal government in an amount sufficient to pay for the costs of complying with all such remedial decisions. **Requires every contract for the purchase and sale of residential real property on the Lowry site to contain a disclosure informing the buyer that the property is a former defense site and may contain unexploded ordnance, and that the quality and quantity of potable water may be unreliable.** States that the obligation to disclose is on the seller, and in the event of the failure by the seller to provide the written disclosure required by this act, the purchaser shall have a claim for relief against the seller for all damages to the purchaser resulting from the failure. **ASSIGNED TO SENATE HEALTH/HUMAN SERVICES COMMITTEE.** (Bernard, Jones)