

To: Land Title Association of Colorado
From: Cathy Wanstrath, LTAC lobbyist
Subject: **Legislation of Interest to LTAC**
Date: February 23, 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. **SCHEDULED 2/26 IN 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. SCHEDULED 2/27 IN SENATE AGRICULTURE COMMITTEE**. (Evans, Compton, Howe)

H.B. 1053 (Rep. McNulty, Sen. Harvey): "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. ON 2ND READING IN SENATE**. (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 reason for the bill is concern about merger of large health insurers, and the sponsor indicated she will amend the bill to apply only to health insurers.)* **HEARD IN HOUSE BUSINESS AFFAIRS COMMITTEE 2/7; SCHEDULED FOR VOTE 2/28**. (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. **TO HOUSE APPROPRIATIONS 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. **PASSED THE HOUSE, amended. SCHEDULED 3/5 IN SENATE 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. **ON 2ND READING IN HOUSE.** (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. **PASSED THE HOUSE, amended. SCHEDULED IN SENATE JUDICIARY COMMITTEE 3/5.** (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, Sen. Taylor): "Concerning the Return of a Release of a Deed of Trust after Recording". 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, **but an amendment allows the PT the discretion to release a DOT instead of rejecting it if the required information is not provided.** 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. **PASSED THE HOUSE, amended.** (Ruybal, Stubbs)

H.B. 1202 (Rep. McGihon, Sen. Shaffer): "Concerning the Enactment of the 'Uniform Foreign-Country Money Judgments Recognition Act.'" This is an update of the existing uniform law enacted in 1962, reflecting court cases since then. It states that a foreign country judgment is enforceable in the same manner and to the same extent as a judgment rendered in this State. It allows a court in Colorado to NOT recognize such a judgment if "the judgment was rendered under a judicial system that does not provide impartial

tribunals or procedures compatible with the requirements of due process of law." **PASSED THE HOUSE, unamended.** (Sloan, Cranmer)

H.B. 1212 (Rep. M. Carroll, Sen. Tapia): "Concerning the Continuation of the Real Estate Commission, and in connection therewith, Repealing the Requirement for Group Errors and Omissions Insurance, Authorizing Service of Process by Mail, Repealing the Licensure of Real Estate Salespersons, Modifying Continuing Education Requirements, Altering the Membership of the Commission, Repealing the Licensing Reciprocity Requirement, Expanding the Grounds for Discipline, Authorizing Name-Based Criminal History Background Checks, Requiring Fines to be Deposited in the General Fund, and Altering the Hiring Authority for Employees of the Division of Real Estate." The sunset review continuation of real estate licensure. **ON 2ND READING IN HOUSE.** (Sloan, G. Wolff)

H.B. 1213 (Rep. Liston, Sen. Tochtrop): "Concerning the Continuation of the Regulation of Insurance Producers by the Division of Insurance, and...Continuing the Functions of the Division of Insurance Related to the Licensing of Insurance Producers until July 1, 2019..." This is a routine sunset review bill. Eliminates the requirement that the Commissioner of Insurance reject the registration of any insurance producer whose name is similar to that of another registered insurance producer. **ON 2ND READING IN HOUSE.** (Bernard, Rosenthal)

H.B. 1216 (Rep. Ferrandino, Sen. Romer): "Concerning the Creation of the Consumer Outreach and Education Program within the Department of Regulatory Agencies". The purpose of this program is to inform consumers of their rights regarding regulated professions and occupations, decrease regulatory violations, and ensure public awareness of consumer protection information available from the department. Funded by a new surcharge on fines from violations related to regulated professions and occupations. **TO HOUSE APPROPRIATIONS COMMITTEE.** (Rice, Ruybal)

H.B. 1228 (Rep. Green): "Concerning Financial Responsibility for Unfair Business Practices in the Sale of Insurance". **THIS IS A DIVISION OF INSURANCE BILL.** Authorizes the Commissioner of Insurance to collect restitution from insurance producers and insurance companies for wrongful acts. Requires an insurer to be financially responsible for the unfair business practices of an insurance producer authorized to sell a product or plan of the insurer, if the insurer knew or should have known about the unfair business practices. The bill was **amended** in committee, and will be further amended on the floor, clarifying that an insurance company is only liable for the actions of its agent when that agent is acting on behalf of that insurer. (If a producer who writes for many insurers commits a wrongful act, not all companies for which he writes will be liable.) **Following a meeting with the Commissioner of Insurance and staff on 2/22, the Division agreed to leave "knew or should have known" language in the bill, which they had removed in committee, and define unfair business practices as "violations of Title 10".** **ON 2ND READING IN HOUSE.** (Bode, Kujawski)

H.B. 1237 (Rep. Judd): "Concerning the Regulation of Qualified Intermediaries". This bill resulted from the DORA sunrise report on 1031 entities. The main question for LTAC is whether qualified intermediaries who are regulated banks or title insurance companies should be exempt or partially exempt from requirements of this bill. **SCHEDULED 2/28 IN HOUSE BUSINESS AFFAIRS/LABOR COMMITTEE.** (Burks, Holland)

H.B. 1248 (Rep. J. Kerr, Sen. Veiga): "Concerning Joint Tenancy in Real Property". **THIS IS AN LTAC-INITIATED BILL.** Defines joint tenancy and establishes how a joint tenant may sever a joint tenancy. States that, "Filing a petition in bankruptcy by a joint tenant shall not sever a joint tenancy." This bill was made necessary by the Colorado Supreme Court decision in Canterbury v. Taylor. **Amended in committee, following negotiation with sections of the Colorado Bar Association, to allow for unequal joint tenancies. The amendment clarifies the result of the death of one joint tenant.** **ON 2ND READING IN HOUSE.** (Edwards, Rice)

H.B. 1260 (Rep. Hodge, Sen. Penry): "Concerning the Regulation of Manufactured Homes". This bill is a major revision in the process of titling manufactured homes, including the use of several new forms that will evidence changes in the location and/or ownership status of such homes. All these new forms (e.g. Certificate of Permanent Location; Certificate of Removal; Certificate of Destruction) will be recorded with the county

clerk. This bill is the product of a months-long effort by participants including LTAC; the Rocky Mountain Home Association; county clerks, treasurers and assessors; the state agencies who regulate manufactured housing; lenders such as CHFA; and attorneys who work in this area. ALL LTAC MEMBERS WHO WORK EXTENSIVELY WITH MANUFACTURED HOUSING SHOULD REVIEW THIS BILL. **ON 2ND READING IN THE HOUSE, amended.** (Berg, Cook)

H.B. 1266 (Rep. Witwer, Sen. Veiga): "Concerning the Filing of Notices Related to Liens with the Secretary of State". Allows a secured party as well as a debtor to file a correction statement to a financing statement to perfect a security interest or agricultural lien. Eliminates the requirement that the secretary of state provide information on federal tax lien notices to persons requesting information on records filed with the secretary. Makes numerous other changes to the process of filing and maintaining lien records in the office of the secretary of state. **Note: Section 7 of the bill will be deleted, needing more work by the task force that wrote this bill. This was the section on which LTAC had noted concern.** **ON 2ND READING IN HOUSE.** (Condie, Kujawski)

H.B. 1275 (Rep. T. Carroll): "Concerning Certain Organizations that Incorrectly Filed the Annual Report Required to Maintain Property Tax-Exempt Status". Forgives the balance of property taxes owed by a religious, charitable or educational organization on or after the effective date of this bill, **if** the organization filed an application for exemption and was granted an exemption from general taxation on real and personal property; filed the required annual report but filed it incompletely or incorrectly; and was denied tax-exempt status as a result of the incomplete or incorrect filing and received a property tax bill. **ON 2ND READING IN HOUSE.** (Hatter, Schreiber)

H.B. 1306 (Rep. Riesberg): "Concerning Payment of Amounts Due under a Construction Agreement." This is a "prompt payment" bill brought by subcontractors, and follows months of negotiation with representatives of various business groups, including general contractors and commercial realtors. It authorizes retaining a portion of the payment due a subcontractor to ensure that work is properly completed, but limits retaining greater than 5% on the first half of a project. Authorizes the subcontractor to request release of the retained fees and requires release within 90 days. Clarifies that a release is not a waiver of claims. No direct impact for title insurance. **TO HOUSE APPROPRIATIONS COMMITTEE.** (Rosenthal, Edgar)

NEW H.B. 1340 (Rep. Kefalas, Sen. Boyd): "Concerning the Establishment of the Colorado Housing Investment Fund, and, in connection therewith, Increasing the Documentary Fee on Real Estate Transactions Subject to Voter Approval to Fund Affordable Housing." The second bill from the affordable housing advocates, this one requiring a vote of the people because TABOR would prohibit such an increase without a vote. This proposal would raise the doc fee from 1 cent per \$100 to 5 cents per \$100 of "total consideration" paid by a residential real estate purchaser, on and after January 1, 2009. For commercial or industrial or vacant land transactions, the doc fee would go from 1 cent to 2 cents per \$100. **SCHEDULED 3/5 IN HOUSE FINANCE COMMITTEE.**

NEW H.B. 1343 (Rep. Stafford, Sen. Wiens): "Concerning Limitations on the Development of Transportation Infrastructure by Nongovernmental Entities." Another attempt at reversing the Super Slab toll road situation. **This one voids the existing claim (Ray Wells' claim.)** Prohibits a private toll road company from specifying and mapping a transportation corridor in its filed formation document, and voids any 3-mile corridor specified and mapped in a filed formation document filed before the effective date of this act. Allows a company to construct a toll road or highway only pursuant to a public-private initiative. Eliminates existing statutory requirements about notice of a toll road being recorded with the appropriate county clerk. 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. **In contrast to H.B. 1007, this one contains no legal protections for title insurers.** **SCHEDULED 2/26 IN HOUSE TRANSPORTATION COMMITTEE.** (Condie, Ruybal)

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. **ON 3RD READING IN SENATE.** (Holland, Bernard)

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. **PASSED THE SENATE, unamended. SCHEDULED IN HOUSE BUSINESS AFFAIRS/LABOR 2/25.** (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. **POSTPONED INDEFINITELY.** (Bernard, Jones)

S.B. 162 (Sen. Boyd, Rep. Riesberg): "Concerning Interest on Fiduciarily Held Real Estate Accounts for the Purpose of Financing the Provision of Affordable Housing, and, in connection therewith, Creating the Fiduciary Earnings for Affordable Housing Fund and the Fiduciary Earnings for Affordable Housing Foundation". **LTAC IS OPPOSED TO THIS BILL.** Requires any closing and settlement services provider to pool and commingle trust money received from clients or beneficial owners in connection with escrows and closings. Requires the closing and settlement services provider responsible for the trust money to give notice to all parties to the transaction that the trust money, absent direction from the parties, will be placed in a fiduciary account that may generate interest and that such interest will be donated to the affordable housing foundation. Requires the financial institution in which a commingled account is maintained to pay the interest earned on the account, less service charges, to the affordable housing foundation "to enhance the availability of affordable housing throughout the state". **SCHEDULED IN SENATE HEALTH/HUMAN SERVICES COMMITTEE ON 2/27, LATE MORNING.** All LTAC members are encouraged to read this bill, and contact YOUR Senator to express opposition. **The Colorado Association of Realtors, Colorado Bankers Association and the Independent Bankers of Colorado also oppose this bill.**