

To: Land Title Association of Colorado
From: Cathy Wanstrath, LTAC lobbyist
Subject: **Legislation of Interest to LTAC**
Date: June 5, 2008---FINAL REPORT FOR 2008 SESSION

(Names in parentheses are Legislative Committee members assigned to these bills. Killed bills have been deleted.)

H.B. 1007 (Rep. Looper, Sen. Tapia): 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 reverses the process of "flagging" in the real property records all properties within the path of the Super Slab, by making "void" any written notice, disclaimer of interest or map previously recorded by the toll road company. 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. **Amended in Senate to add a required disclosure on the seller's property disclosure of any proposed or existing transportation project that affects the real property. Effective 1/1/09, and note that this is much broader than just toll roads. SIGNED BY THE GOVERNOR 6/2.** (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 January 1, 2009. **SIGNED BY THE GOVERNOR 3/26.** 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. **SIGNED BY THE GOVERNOR 3/17.** (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. 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 bill was amended to apply only to health insurers.)* **SIGNED BY THE GOVERNOR 4/25.** (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.
SIGNED BY THE GOVERNOR 4/21. (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, **but leaves the decision to the local government.** This is a complete rewrite of the original bill, although the essence remains the same. **SIGNED BY THE GOVERNOR 5/29.** (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 **all or a part of the property taxes** levied on the subject property the nonprevailing party has paid. **Completely rewritten, so reference the revised version.** **SIGNED BY THE GOVERNOR 4/25.** (Berg, Sloan)

H.B. 1153 (Rep. Roberts, Sen. Morse): "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. **SIGNED BY THE GOVERNOR 4/17, unamended.** (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. **SIGNED BY THE GOVERNOR 4/23.** (Hatter, Stubbs)

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, assuming party 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. **SIGNED BY THE GOVERNOR 4/21.** (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." **UNAMENDED. SIGNED BY THE GOVERNOR 3/19.** (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. **SIGNED BY THE GOVERNOR 4/17.** (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. Effective 7/1/08. **SIGNED BY THE GOVERNOR 3/26.** (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 (\$200,000). This is a bill initiated by DORA. **In the Senate 5/1 an amendment was added to create an Insurance Ombudsman under the Executive Director of DORA to assist consumers with insurance information and problems. This would be funded by a 15 cent charge on each insurance policy sold in Colorado. DORA and the Division of Insurance don't want this, because it duplicates the jobs being done by 7 employees currently in the Division of Insurance. Insurance companies worked to oppose this amendment, which is apparently the whim of a single senator. Finally amended 5/6 to eliminate this amendment and the funding, and simply require DORA to report to the Joint Budget Committee in September 2008 on the need for an Insurance Ombudsman, and costs associated with such. SIGNED BY THE GOVERNOR 6/5.** (Rice, Ruybal) (Note: I have been invited to a meeting at DORA 7/8/08 to discuss the need for an insurance ombudsman.)

H.B. 1228 (Rep. Green, Sen. Gordon): "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**, 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". PASSED THE HOUSE, with the above amendments. SIGNED BY THE GOVERNOR 4/21.** (Bode, Kujawski)

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 the House, 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. Further amended in the Senate to refine language worked out with the Colorado Bar Assn. The State Department of Health Care Policy and Financing had concerns about the bill, and how it may impact Medicaid estate recovery. Following a meeting with them, LTAC agreed to an amendment stating that, for purposes of Medicaid estate recovery, joint tenancies are

deemed to be equal. **SIGNED BY THE GOVERNOR 4/25.** (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. **SIGNED BY THE GOVERNOR 4/14. (A working group has developed new forms, which will be Bradford Forms when finalized.) Effective date 7/1/08.** (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 was deleted, needing more work by the task force that wrote this bill. This was the section on which LTAC had noted concern.** **SIGNED BY THE GOVERNOR 3/31.** (Condie, Kujawski)

H.B. 1275 (Rep. T. Carroll, Sen. Isgar): "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. **SIGNED BY THE GOVERNOR 4/14.** (Hatter, Schreiber)

H.B. 1365 (Rep. McFadyen, Sen. Gibbs): "Concerning the Foreclosure of Assessment Liens against Time Share Estates". Allows a unit owners' association foreclosing an assessment lien against a time share estate to join in the foreclosure action multiple defendant obligors, junior lienors, or separate time share estates if the **judicial** foreclosure action involves a single common interest community, each time share estate foreclosed is subject to a separate foreclosure sale, and cure and redemption rights remain separate. The intent is to save money on the foreclosure process (filing fees, publication costs) when several timeshares in the same development are delinquent. Amended to state that, if a delinquent time-share owner gives a deed in lieu of foreclosure, the outstanding assessment will be forgiven. **Amendments in committee removed LTAC concerns. Effective date August 5, 2008. SIGNED BY THE GOVERNOR 5/28.** (Holland, Jones)

H.B. 1402 (Reps. Gagliardi and Ferrandino, Sen. Bacon); "Concerning Additional Protections for Homeowners Facing Foreclosure." **LTAC opposed the introduced version of this bill.** Among other provisions, it would have allowed a judge in a foreclosure action to extend the sale date an additional 90 days if the debtor showed that certain disclosures were not made by the lender, or if the lender did not make "good faith mitigation efforts" to cure a default. The definition of "good faith mitigation efforts" included refinancing the loan, extending the term of the loan, reducing the principal, or modifying the interest rate. **Due to strong opposition from lenders, title insurance and many other groups, the bill was amended in committee to two provisions, and the rest of the bill was scrapped.** The bill now (1) Makes a \$100,000 general fund appropriation to the Division of Housing for community outreach to reduce foreclosures, and (2) Requires a lender, at least 30 days after default, to mail a notice to the debtor including the phone number for the Colorado Foreclosure Hotline, and the direct telephone number of the lender's loss mitigation department. Applies to foreclosure actions filed on and after August 1, 2008. **SIGNED BY THE GOVERNOR 6/5.**

H.B. 1407 (Rep. Romanoff, Sen. Gordon): "Concerning Strengthening Penalties for the

Unreasonable Conduct of an Insurance Carrier". This is a so-called "bad faith" bill, which in its introduced form covered all lines of insurance. It significantly increases the penalties that the Insurance Commissioner can impose for the violation of any law, rule or order of the Commissioner (amended version **triples** such penalties; **original version quintupled** them). The bill expands the definition of "restitution" to include lost time from work and attorneys' fees. Insurance interests from all lines have worked against this bill, but the trial bar is working to pass it. The Division of Insurance testified in support of the bill. **AMENDED TO EXCLUDE TITLE INSURANCE FROM THE MAJOR PARTS OF THE BILL.** (Amendment was offered and successfully defended on the House floor by Rep. Al White on behalf of LTAC.) **SIGNED BY THE GOVERNOR 6/5.**

S.B. 41 (Sen. Cadman, Rep. Curry): "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 **through condemnation** interests in oil, natural gas, or other mineral resources beneath the land acquired to the extent required for subsurface support. **SIGNED BY THE GOVERNOR 4/25.** (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. **SIGNED BY THE GOVERNOR 3/24.** (Bode, Rice)

S.B. 207 (Sen. Groff, Rep. T. Carroll): "Concerning the Provision of Statistical Data on Insurance Producer Examination Applications". Requires an application for an insurance producer examination to request demographic information from each applicant. Requires the application to specify that an applicant does not have to provide information concerning gender, native language, or race or ethnicity. Requires the Commissioner of Insurance to annually prepare and publish a report regarding the demographic information gathered from the application. **Amended to EXCLUDE Social Security number from the demographic information requested.** **SIGNED BY THE GOVERNOR 5/28.** (Carlson, G. Wolff)