

To: Land Title Association of Colorado
From: Cathy Wanstrath, LTAC lobbyist
Subject: **Legislation of Interest to LTAC (killed bills will be shown once as such, then deleted from future reports)**
Date: February 14, 2010

H.B. 1007 (Rep. Judd, Sen. Brophy): **"Concerning an Adjustment of Fees Charged by a County Clerk and Recorder for Filing a Document with the County."** THIS IS AN LTAC BILL, IN COOPERATION WITH THE COUNTY CLERKS AND THE BAR ASSOCIATION. Currently a county clerk charges \$5/page to file certain documents, with an additional fee for documents that require multiple entries in the grantor/grantee index. This bill would modify these fees by charging \$10 for the first page of a document and \$5 for each additional page and eliminating the additional fee for documents that require multiple entries in the grantor/grantee index. **ON 2ND READING IN HOUSE. Amended to clarify that motor vehicle documents are not included.**

H.B. 1046 (Rep. Tyler, Sen. Hudak): **"Concerning the Recorded Date of Receipt of Property Tax Payments by a County Treasurer's Office when the Payment has no United States Postal Service Postmark."** The bill specifies that, if a payment that has no USPS postmark is actually received in the treasurer's office no later than 5 days after the due date, the treasurer shall record the due date as the date of payment. If the payment is actually received in the office 6 or more days after the due date, the treasurer shall record the date of actual receipt as the date of payment. (Howe, Pankonin) **LTAC WILL MONITOR ONLY. PASSED THE HOUSE. ON 2ND READING IN SENATE.**

H.B. 1056 (Rep. Frangas, Sen. Carroll): **"Concerning the Disposal of Business Records Containing Personal Identifying Information."** The bill prohibits a public or private entity in Colorado that uses paper or electronic documents or records during the course of business that contain personal identifying information from disposing of such documents unless, prior to the disposal of the documents, the entity shreds the paper document or erases the electronic document, rendering it "indecipherable and irretrievable". **ASSIGNED TO HOUSE JUDICIARY COMMITTEE.** (J. Wolff, R. Rosenthal)

H.B. 1084 (Rep. Acree, Sen. Williams): **"Concerning Measures to Encourage the Voluntary Cleanup of Unoccupied Real Property."** Under current law, a person who goes into the yard of a foreclosed home or other unoccupied property to clean up trash, remove weeds, or water the lawn may be considered a trespasser and, if the person injures himself/herself while doing so, may have a claim against the landowner for negligence. This bill specifies that such persons, who are **unpaid and volunteer** to do such cleanup, have the implied consent of the landowner to do so, and are owed an intermediate duty of care concerning hazardous conditions on the property that is more than is owed to trespassers, but less than is owed to guests or business customers. Sections 2 and 3 of the bill amend the civil and criminal trespassing laws, respectively, to exempt persons who engage in such activity, but only to the extent of that activity and so long as they do no actual damage to the property. This bill has no direct impact on the title industry. **POSTPONED INDEFINITELY.** (Schreiber, Evans)

H.B. 1085 (Rep. J. Kerr, Sen. Tapia): **"Concerning Land Surveying, and in connection therewith, Altering Licensure Criteria for Land Surveyor Applicants and Specifying Procedures for Issuance of a Surveyor's Affidavit of Correction."** It is the affidavit portion of the bill that is of interest. The bill outlines the errors that may be corrected by a surveyor's affidavit of correction, which is then submitted to the county clerk/recorder for recording. Section 6 of the bill requires court orders that establish corners or boundaries of disputed land boundaries to be filed in the grantor-grantee index of the county or counties in which the land lies. We need to determine exactly where the county clerk would record this (would the name of the grantor and grantee be known through this process?) **PASSED THE HOUSE, amended at the request of the County Clerks, who are now okay with the bill. SCHEDULED 2/22 IN SENATE BUSINESS/LABOR/TECHNOLOGY COMMITTEE.** (Compton, Robinson)

H.B. 1107 (Rep. Fischer, Sen. Carroll): **"Concerning Limitations on the Inclusion of Agricultural Lands within Urban Renewal Areas."** The bill places limits on when an urban renewal area may contain agricultural land. Section 4 of the bill requires urban

renewal plans to include a legal description of the urban renewal area, including the legal description of any agricultural land proposed for inclusion within the urban renewal area pursuant to the conditions specified in the bill. LTAC will monitor for potential underwriting issues. **PASSED THE HOUSE.** (Howe, Berg)

H.B. 1118 (Rep. J. Kerr, Sen. Hudak): "Concerning the Regulation of Distressed Real Property by a Board of County Commissioners." The bill specifies that the regulation of distressed real property is a matter of purely local concern and adds an enumerated power so that the board of county commissioners may adopt ordinances related to this matter. **ON 2ND READING IN HOUSE.** (Burns, J. Wolff)

H.B. 1129 (Rep. Bradford, Sen. Harvey): "**Concerning Consequences Related to a Higher Actual Valuation of Property for the Purpose of Levying the Property Tax.**" Requires a taxpayer to initially pay property tax based on the valuation from the previous year if the value of land or improvements increases by more than 300% and is not based on a change in classification of the land or improvements or an addition or modification thereto, and if the taxpayer is appealing the increase in valuation. Requires a revised tax statement to be sent to a taxpayer after a final order or decision on appeal. **POSTPONED INDEFINITELY.** (J. Wolff, Bernard)

H.B. 1133 (Rep. Massey): "**Concerning Amendments to the 'Colorado Foreclosure Protection Act'.**" The bill repeals subpart 3 of the "Colorado Foreclosure Protection Act", enacted in 2006, and the corresponding definition of an "equity purchaser". It retains subpart 2, regulating foreclosure consultants. **ON 2ND READING IN HOUSE.** (Jones, Pankonin, Compton)

H.B. 1141 (Rep. T. Carroll, Sen. Tochtrop): "**Concerning a Requirement for Mortgage Companies to be Registered by the Division of Real Estate.**" Requires mortgage companies to register with and be regulated by the Division of Real Estate under the "Mortgage Loan Originator Licensing and Mortgage Company Registration Act." Sets standards for mortgage companies to be registered, including that they be registered on the nationwide mortgage licensing system and registry created by federal law in 2008. **PASSED THE HOUSE, amended. SCHEDULED 2/23 IN SENATE BUSINESS/LABOR/TECHNOLOGY COMMITTEE.** (Burns, Rosenthal)

H.B. 1151 (Rep. Swalm, Sen. Williams): "**Concerning the Disclosure in Connection with the Sale of Residential Real Property of Its Proximity to an Airport.**" The bill requires the Real Estate Commission, by rule, by January 1, 2011, to require each seller's property disclosure for residential real property to disclose the proximity of the property to an airport, airpark or military airfield, if the property is within 5 miles of such an airport. The obligation to provide the disclosure is upon the seller. **POSTPONED INDEFINITELY 2/10.** (Edwards, Robinson)

H.B. 1158 (Rep. C. Gardner, Sen. Hodge): "**Concerning Clarification of the Right to Use Wind Resources.**" The bill clarifies the ownership of the right to use wind flowing across real property within this state, and specifies that, for purposes of determining the priority of uses between a severed mineral interest and a severed wind interest, the first interest severed is dominant. Nothing in this bill would affect wind interests acquired prior to the effective date of the bill. **LAI D O V E R U N T I L M a y 1 7 (k i l l s t h e b i l l).** (Cook, Evans, Fix)

H.B. 1168 (Rep. Levy, Sen. Steadman): "Concerning a Limitation on the Ability of an Insurer to Obtain Repayment of Benefits from an Injured party who Recovers Damages from the Party Responsible for the Injury in Situations when the Injured Party Would Not be Fully Compensated if the Benefits are Repaid to the Insurer." This bill would essentially eliminate subrogation for insurance companies. When an injured party recovers damages that he/she believes are not sufficient to fully compensate him/her, the injured party must notify the insurer in writing that the recovery obtained is less than the sum of all of the injured party's damages. The insurer would have to file a civil action or seek a declaratory judgment to determine "the extent to which the payer of benefits may be entitled to share in the recovery." The "payer of benefits" is defined, and the definition includes "...other insurance policy or plan, or any other payer of benefits", so it appears to cover all lines. **SCHEDULED 2/22 IN HOUSE**

JUDICIARY COMMITTEE. Amendments expected, including definition of "payer of benefits".
(Jones, Walter)

H.B. 1188 (Rep. Curry, Sen. Hodge): **"Concerning Clarification of the Scope of the Existing Right of Navigation of Guides Employed by River Outfitters."** Clarifies that a guide employed by a licensed river outfitter and the guide's passengers may float on waterways that have historically been used for commercial float trips without committing civil or criminal trespass if they gain access to the waterway from public land or from private land with consent, and make only incidental contact with the beds and banks of the waterway while floating and portaging. Limits a landowner's liability to such persons to damages willfully or deliberately caused by the landowner unless the person is an invitee or licensee of the landowner. Nothing in this river outfitters law affects water rights. (Howe, Berg) **ON THIRD READING IN HOUSE.**

H.B. 1220 (Rep. Priola, Sen. Schwartz): **"Concerning the Sunset Review of the Functions of the Division of Insurance Related to the Regulation of Specified Lines of Insurance, and in connection therewith, Continuing the Functions of the Division Related to the Regulation of Property and Casualty, Automobile and Other Insurers that do not Offer Health, Life, Property, Casualty, or Automobile Insurance through July 1, 2017."** This is a routine "Sunset" bill, officially continuing the Division of Insurance. As always, the details are key because the bill will pass. We will try to keep unfriendly amendments off the bill, while making amendments to the bill as introduced by the Dept. of Regulatory Agencies. Specifically, insurers are focused on Sections 4, 5 and 7. In the latter, we hope to remove any ability of the Division of Insurance to make public results of insurers' self-audits. **SCHEDULED 2/16 IN HOUSE BUSINESS AFFAIRS/LABOR COMMITTEE.**

H.B. 1240 (Rep. Ferrandino): **"Concerning the Foreclosure Deferment Process for Residential Properties."** The bill clarifies House Bill 09-1276, passed last year, that established a 90-day foreclosure deferment period for eligible borrowers. The bill requires the "Notice of Opportunity for Foreclosure Deferment" include a telephone number for the holder, and if applicable, the attorney for the holder and the P.T. foreclosure number. This notice may not be posted prior to the date the P.T. determines that the documents filed for the commencement of the foreclosure are complete and accurate. Section 5 of the bill prohibits an eligible borrower from qualifying for a foreclosure deferment if the borrower has transferred title to the property to another party. **SCHEDULED 2/16 IN LOCAL GOVERNMENT COMMITTEE.**

H.B. 1249 (Rep. Labuda, Sen. Johnston): **"Concerning Expedited Residential Foreclosure Sales."** This is a bill from the Governor's Office. Currently, the initial foreclosure sale date for residential property by a public trustee is set between 110 and 125 calendar days after the recording of the notice of election and demand. For a 5-year period, the bill creates a method for an eligible holder of an evidence of debt to elect to have an expedited sale of residential property, which will occur between 40 and 55 calendar days after the recording of the NED. A court must issue an order for expedited sale, and a copy of the order must be filed with the public trustee. The court shall only issue an order if, among other things, the property has been abandoned or the grantor requests the order for expedited sale. Various changes are made to the P.T. process in case of an expedited sale. **ASSIGNED TO HOUSE STATE AFFAIRS COMMITTEE.** (Edgar, Walter)

H.B. 1275 (Rep. Baumgardner, Sen. Newell): **"Concerning a Requirement that the Location of a Private Burial be Recorded."** The bill requires a landowner to record information about a private burial with the county clerk, setting standards for the recording including the deceased person's name, location of burial, dates of birth and death, cause of death, the legal description of the property where the body is interred and the reception number for the death certificate. Requires a burial permit to contain a notice of the recording requirements. This bill comes from the County Coroners Association. **SCHEDULED 2/16 IN LOCAL GOVERNMENT COMMITTEE.** (Rosenthal, Berg)

H.B. 1276 (Rep. Levy, Sen. Mitchell): **"Concerning the Sale by a Railroad Company of its Right-of-Way for the Operation of a Public Passenger Rail Service."** The bill permits any railroad company to sell its right-of-way for the operation of a public passenger rail service, which the bill defines as any passenger service that runs on rails or

electromagnetic guideways. No rail service provider operating public passenger rail service shall be required to offer its right-of-way for use by any other rail service provider by operation of Colorado law after an order of abandonment has been issued. **SCHEDULED 3/1 IN HOUSE JUDICIARY COMMITTEE.** (Robinson, Howe)

H.B. 1278 (Rep. Ryden, Sen. Carroll): **"Concerning the Creation of an Ombudsman for Matters Arising under the 'Colorado Common Interest Ownership Act.'" Common interest communities are created by contract, through recorded documents containing mutually binding covenants that homeowners and HOAs must enforce through private legal action. There is no state agency supervising the operation of HOAs or enforcing compliance with the requirements of state law. This bill creates the office of the HOA ombudsman to advocate on behalf of unit owners, mediate disputes and act as a clearing house for information on the governing law. Of course, this is paid for with a surcharge on registration fees of HOAs that are organized as nonprofit corporations. ASSIGNED TO HOUSE BUSINESS AFFAIRS/LABOR COMMITTEE.** (Cook, Bernard)

H.B. 1288 (Rep. Nikkel, Sen. Williams): **"Concerning the Ability of a Commercial Real Estate Broker to Secure Payment of Commissions Earned, and in Connection therewith, Enacting the 'Commercial Real Estate Brokers Commission Security Act.'" This bill was initiated by the Colorado Association of Realtors, and addresses a problem of commercial brokers sometimes not being paid for leases they secure. The bill would allow a broker to place a lien on property when they have procured tenants for commercial real estate and not been paid. The broker must give 30 days notice of intent to seek a lien, and seek mediation of the dispute before placing the lien. The bill establishes conditions that must be met before the lien attaches, including recording notice of the lien in the office of the clerk and recorder of the county in which the commercial real estate is located. SCHEDULED 3/1 IN HOUSE JUDICIARY COMMITTEE.** (Schreiber, Evans, Condie)

H.B. 1290 (Rep. Stephens): **"Concerning Procedures for Small Planned Communities to Elect to Exempt themselves from Certain Provisions of the 'Colorado Common Interest Ownership Act.'" Allows small HOAs (20 or fewer units) to vote to exempt themselves from most of the provisions of CCIOA. An HOA can reverse this decision and accept full coverage under CCIOA, but must wait at least 2 years between the effective dates of the elections. SCHEDULED 2/23 IN HOUSE LOCAL GOVERNMENT COMMITTEE.** (Cook, Bernard)

H.B. 1328 (Rep. Miklosi, Sen. Schwartz): **"Concerning the 'New Energy Jobs Creation Act of 2010', and, in connection therewith, Creating the Colorado New Energy Improvement District and Authorizing the District to Fund New Energy Improvements by Issuing Special Assessment Bonds Payable from Special Assessments Levied on Eligible Real Property Owned by Persons who Voluntarily Join the District in Order to Have the District help Them Fund New Energy Improvements to the Eligible Real Property." This is very similar to the bill Rep. Miklosi introduced last session and killed, pledging to work with lenders on an acceptable means of helping people finance energy saving improvements to their homes. Unfortunately this bill is completely unacceptable to the lenders, most notably because the lien for this "district" would have priority over a first mortgage. ASSIGNED TO HOUSE STATE AFFAIRS COMMITTEE.** (Edgar, J. Wolff)

S.B. 45 (Sen. Morse, Rep. A. Kerr): **"Concerning Increasing the Rights of Homeowners, and, in connection therewith, Enacting the 'Homeowner Protection Act of 2010.'" Current law requires the holder of a residential mortgage to send written notice to a debtor 30 days prior to filing a foreclosure. This bill changes the time to 60 days and requires the notice to include various information. The holder would be required to negotiate for a mutually acceptable agreement prior to commencing a foreclosure. If such an agreement is not reached, and the holder commences foreclosure, the debtor would have the right to participate in mediation with the holder (paid for, of course, by the holder). There is much opposition to this bill from lenders and the Foreclosure Hotline, among others, and concern that the sponsor intends to use the title of this bill to amend in a construction defects bill. ASSIGNED TO SENATE STATE AFFAIRS COMMITTEE; NOT ON CALENDAR NOW.** (Edgar, Jones, Walter, Pankonin)

S.B. 76 (Sen. M. Carroll): **"Concerning Unreasonable Insurance Claims Settlement Practices." This is a repeat of her unsuccessful bill from last year, but with a broad title that is of concern in itself. The bill defines as an unfair claim settlement practice and a deceptive act or practice in the business of insurance the practice of providing**

compensation to induce or encourage the decision to deny or delay resolution of a claim or to cancel or rescind an insurance policy. In civil actions in which a jury is to determine whether an insurer's delay or denial of a claim was reasonable, the bill allows the court to instruct the jury that the willful payment of a financial incentive is prohibited and may be considered if the prohibited conduct caused or contributed to the delay or denial and the claimant's injury, damage or loss. Section 3 of the bill establishes a presumption of unreasonableness when a claim for benefits is denied or delayed and the person who makes the decision to delay or deny payment of the claim receives any personal financial incentive, including compensation, to deny or delay the claim. **Section 3 was deleted by amendment in committee. ON 2ND READING IN SENATE.** (Compton, Rosenthal, Robinson) **LTAC OPPOSES THIS BILL and testified against it.**

S.B. 77 (Sen. Heath, Rep. Ferrandino): **"Concerning Regulation of Appraisal Management Companies."** In compliance with federal law, Colorado currently requires the licensing of real estate appraisers. The Division of Real Estate claims that recently adopted federal guidelines now require mortgage lenders to use entities known as appraisal management companies, which hire licensed real estate appraisers, to value property for lending purposes. (THE FIRST DISPUTE IN THE COMMITTEE WAS WHETHER FEDERAL GUIDELINES ACTUALLY REQUIRE USE OF AMCs; professional appraisers say "no".) This bill authorizes the board of Real Estate Appraisers in the Division of Real Estate to regulate appraisal management companies. The definition of "Appraisal Management Company" at the beginning of the bill includes terms such as "real estate closing services provider, and "settlement services provider", but **title companies are not affected unless some part of the company engages in appraisals or appraisal review work.** Erin Toll indicated that the Division of Real Estate will offer an amendment to clarify that title insurance companies and mortgage companies are exempted, if any appraisal reviews they do are "incidental to their primary course of business". **HEARD IN SENATE BUSINESS/LABOR/TECHNOLOGY COMMITTEE, TAKEN OFF THE TABLE FOR WORK ON AMENDMENTS. RESCHEDULED FOR 2/16.** NOTE: Testimony on this bill was very negative toward these Appraisal Management Companies, with several witnesses and legislators wondering why they are even allowed, since they appear to add no value to the real estate process. (Greg Wolff, Pankonin)

S.B. 93 (Sen. Lundberg, Rep. DelGrosso): **"Concerning the Orderly Resolution of Claims in Foreclosures Involving Junior Liens."** Under current law, the successful bidder at a foreclosure sale receives a certificate of purchase entitling the successful bidder to a confirmation deed upon the expiration of all redemption periods unless the property is redeemed by a junior lienor. However, in some situations, a junior lien is purchased by someone who refuses to accept payment from the COP holder and then exercises the statutory right to redemption afforded to lienors who have not been paid. The bill clarifies that the holder of the COP is entitled to pay off junior lienors for the amount of the lien plus allowable fees and costs. The junior lienor would be required to accept the tendered payment and to execute a release of the lien. **SCHEDULED 2/15 IN SENATE BUSINESS/LABOR/TECHNOLOGY COMMITTEE.** (Pankonin, G. Wolff, Edgar)

S.B. 114 (Sen. Carroll, Rep. Weissmann): **"Concerning the 'Colorado Taxpayer Transparency Act of 2010'."** **The bill AS AMENDED** extends the application of the Colorado Open Records Act (CORA) to all writings made, maintained, or kept by any entity that receives public moneys **AND** performs a governmental or other public function and that relate to the receipt of the public moneys **AND** the performance of that function. Each contract for the performance of a governmental or other public function entered into on or after the effective date of the bill shall specify that the records and files relating to the costs or any performance measure under the contract that are made, maintained or kept by any entity that is a party to the contract shall be open **to unfettered access by any public agency that is party to the contract and the official custodian for such records.** (The public inspection language was taken out.) **ON 2ND READING IN SENATE.** (Berg, Compton)

S.B. 127 (Sen. Cadman, Rep. Frangas): **"Concerning a Limitation on a Lender's Ability to Collect Against a Debtor's Personal Liability when the Loan is Secured by Collateral."** The bill prohibits a creditor of a consumer loan and a credit union, S&L, bank or mortgage lender from attempting to collect its debt from a debtor's personal liability under a secured loan that is in default, unless the lender has first attempted to

collect its debt from the collateral and the proceeds from the collateral are insufficient to fully repay the sum of the outstanding loan balance. **SCHEDULED 2/15 IN SENATE BUSINESS/LABOR/TECHNOLOGY COMMITTEE.** (Compton, Rosenthal)