

BEFORE THE REAL ESTATE COMMISSION  
STATE OF COLORADO

Petition No. 2004-01

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**ORDER OF THE COLORADO REAL ESTATE COMMISSION**

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**IN THE MATTER OF "LTAC's PETITION FOR RECONSIDERATION, FOR  
DECLARATORY ORDERS UNDER RULE I and REQUEST FOR STAY"**

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The Colorado Real Estate Commission (the "Commission"), having reviewed the above-captioned petition of Land Title Association of Colorado ("LTAC") for the issuance of a declaratory order, reconsideration and stay filed with the Commission on June 21, 2004, and being fully advised in the premises therefor, hereby finds and orders as follows:

**ORDER REGARDING PETITION FOR DECLARATORY ORDER**

1. The petition of LTAC requests that the Commission issue a declaratory order regarding paragraphs 7.a. and 12.a. of the contract to buy and sell real estate forms promulgated and adopted by the Commission on May 5, 2004 pursuant to subsections q, r and s of Commission Rule F-7. These contract forms are identified in Rule F-7 as form numbers CBS1-05-04, CBS2-05-04 and CBS3-05-04, respectively.

2. The petition of LTAC also requests that the Commission issue a declaratory order regarding the Closing Instructions and Earnest Money Receipt form promulgated and adopted by the Commission on May 5, 2004 pursuant to subsection ll of Commission Rule F-7. This form is identified in Rule F-7 as form number CL8-05-04.

3. The petition of LTAC was considered by the Commission at its regularly scheduled public meeting held on July 7, 2004.

4. Pursuant to Commission Rule I-1, I-2 and I-3, the Commission declines to rule on the petition for the issuance of a declaratory order because the petition does not generally raise a question as to the applicability to LTAC or its members of the rules and forms complained of. Rather, the petition as a whole makes clear that LTAC complains that the rules are objectionable specifically because of their applicability to LTAC and its members, therefore rendering the relief under Commission Rule I inappropriate. Further, to the extent that, and assuming only for the purposes of this order that, the petition raises the question of the applicability to LTAC and its members regarding paragraph 7.a. of the contracts to buy and sell real estate, such a declaratory ruling, if resolved in LTAC's favor, would result in the existence of a separate Commission ruling regarding the use of the forms not contained within the body of the contract forms themselves, a condition that is contrary to the public purpose for which the forms were promulgated by the Commission.

5. The petition of LTAC for the issuance of a declaratory order fails to meet all of the requirements and criteria set forth in Commission Rule I-1, I-2 and I-3.

6. Therefore, the Commission hereby exercises its discretion under Commission Rule I and declines to issue a declaratory order pursuant to LTAC's petition. By the issuance of this Order, the Commission disposes of the petition pursuant to Commission Rule I-2.

7. However, the Commission elected to treat LTAC's petition for the issuance of a declaratory order as one for the repeal and/or amendment of Rule F-7 q, r, s and ll, pursuant to section 24-4-103(7),C.R.S. An emergency rulemaking hearing was convened by the Commission on July 7, 2004, immediately following the consideration of and ruling on LTAC's petition. The petition was considered and made part of the official record of that emergency rulemaking proceeding.

#### **ORDER REGARDING REQUEST FOR RECONSIDERATION AND STAY**

8. The above-captioned petition filed by LTAC also requests that the Commission reconsider and stay the effective date of the rules and related forms referred to above.

9. The requests for reconsideration and stay are hereby denied. Although section 12-61-106, C.R.S. may make a stay of the effective date of a rule technically possible, such action would be in conflict with and contrary to the Colorado Administrative Procedure Act, section 12-61-103, et seq. and the public interest because Rule F-7 has already been published in the Colorado Code of Regulations with an effective date of June 30, 2004. A stay of Rule F-7 q, r, s and ll would cause confusion with respect to the status of the required forms to be used by licensed real estate brokers and the status of those other provisions of the contract and closing instructions not affected by LTAC's petition.

10. However, the Commission elected to treat LTAC's petition for reconsideration and stay as one for the repeal and/or amendment of Rule F-7 q, r, s and ll, pursuant to section 24-4-103(7),C.R.S. An emergency rulemaking hearing was convened by the Commission on July 7, 2004, immediately following the consideration of and ruling on LTAC's petition. The petition was considered and made part of the official record of that emergency rulemaking proceeding.

Dated this 12<sup>th</sup> day of July, 2004

Debbie E. Campagnola

Debbie E. Campagnola

Director

Colorado Real Estate Commission

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **FINAL AGENCY ORDER** upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at

Denver, Colorado, this 13th day of July 2004 addressed as follows:

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