

What has RPAC Done for Me Lately?

June 2017



Construction Litigation Reform:

- CAR and the Homeownership Opportunity Alliance championed legislation that is the first step in the right direction to build more attainable housing for all Coloradans while also protecting homeowners and giving them a voice in whether or not to pursue litigation. After more than four years of negotiations on construction litigation reform, this year the bill hits the Governor's desk.
- This informed consent compromise bill does not prevent individual owners who have a legitimate construction issue from seeking a legal remedy. But it protects homeowners by ensuring they are aware of a potential lawsuit that could impact selling or refinancing their home and tightens up voting procedures so a majority of homeowners must approve initiating a legal action against a builder rather than leaving that decision to a homeowner association board.
- The compromise bill does several things:
 - **Sets a 90 day tolling of the statute of limitations**
 - The delay in the allowed time period to file a lawsuit may only occur once, regardless of whether there is an amendment to the notice of filing a lawsuit (notice of claim).
 - **Establishes Voting/Ballot integrity**
 - A list of voters/unit owners must be shared with anyone served with the notice of claim (builders, contractors, architects, etc.).
 - Only one vote per unit owner and they can only vote one time.
 - (This prevents the HOA Board from reviewing votes before the close of the voting period and then trying to change the minds of those that voted against pursuing litigation.)
 - **Applies to all HOA's, both pre and post 1992**, when the Colorado Common Interest Ownership Act (CCIOA) was enacted.
 - **Defines "Affiliate" in the Voting Exclusions Section**
 - Narrowly tailored to define an affiliate as "someone that has a controlling interest in one of the development parties, or their spouse."
 - **Common elements** (ex: the clubhouse or pool) **can be repaired at \$50,000 or less without a vote, all higher amounts must be voted on before commencing litigation.**
 - This prevents litigation, whether on a common element or on the residential units that clouds the title and can prevent unit owners from selling or refinancing their property.
 - **Bank-owned properties are not precluded from voting**
 - **Non-responsive voters will not be counted but builder/developer defendants can challenge in Court those unit owners declared non-responsive by the HOA Board**

Status: Signed by the Governor. For additional information, [click here](#).

Licensed Real Estate Brokers and Subdivision Developers Sunset:

[SB17-215](#), the Sunset bill sets forth the regulation for brokers until 2026. Every 9-10 years our Division and Real Estate Commission is up for its review at the legislature and. In the 2017 session of the General Assembly CAR was actively involved from the very beginning to define the components of the legislation that will continue to regulate our members for the next 10 years.

- CAR amended the bill 6 times throughout the legislative process to improve the bill for our members:
 - In initial pre-hearings, CAR successfully removed the DORA Sunset Report recommendations that our Members told us they didn't like:
 - Rec 9 that made changes to the development of the annual update course
 - Rec 2 that suggested attorneys be more involved in broker transactions by requiring attorney-client relationships, that also contradicted longstanding legal precedent under the *Conway Bogue's Decision* (standard forms)
 - In the Senate, CAR helped cultivate the bill language:
 - CAR retained language that conformed Colorado law with the federal law under RESPA and maintained protections against referral fees for brokers
 - CAR removed unnecessary language that made the experience requirements for a property manager broker member of commission member unduly burdensome and restrictive
 - In the House, CAR clarified the Commission's authority and resolved a long standing issue over standard forms for the profession in coordination with other stakeholders
 - CAR added language allowing the Commission the authority to promulgate rules that raise the standards for becoming an employing broker who supervises other brokers
 - CAR added language that broadly defines what a standard form is to ensure our members have wider latitude to practice without involving an attorney in every single aspect of a real estate transaction.

Status: Signed by the Governor.

Prevent Marijuana Diversion to Illegal Market:

[HB17-1220](#), The legislation places limits on the number of medical or recreational use marijuana plants that can be possessed or grown on a residential property to 12 plants unless a medical caregiver or patient registers with the state. Large residential marijuana grows and the manufacturing operations they often bring with them have many consequences including obvious health and safety concerns, an increase of both human and automobile activity that is inconsistent with many residential neighborhood environments, extensive odors related to marijuana growth and harvest, and potential stigmatization of adjacent properties. CAR worked with the Governor's office and other stakeholders to decrease the marijuana grey market and its effects on real estate.

- First the bill, maintains local control. If your local jurisdiction has a regulation on the books, that law is the ruling authority
- If there is no local jurisdiction law, then statewide plant count for marijuana cultivating is limited to 12 plants on a residential property

- However, for those local jurisdictions that do not have a local plant count limit, the statewide limit of 12 plants can be increased to 24 plants if the medical marijuana patient or caregiver registers with the state licensing authority, provides notice to that local jurisdiction and follows any local jurisdiction disclosure and inspection requirements pertaining to their cultivation of marijuana plants.
- CAR supported this legislation because the grey market creates an opportunity for property uses that are wholly inconsistent with basic concepts of zoning and appropriate property use. In many cases, these “residential” grow operations are effectively “commercial” uses that are immediately adjacent to or, in some cases, attached to, the places our fellow Coloradans call “home.”
- Taken together these consequences can interfere with a homeowner’s quiet enjoyment of their most sacred place... their home. Further, the current medical marijuana grow regulations do not respect the financial investment residential property owners have made in what is often their single largest investment... their home.

Status: Governor will sign on June 8, 2017.

Real Estate Commission Transparency Bill:

[House Bill 17-1358](#), would have required a broker in a real estate transaction (e.g., buyer's agent, seller's agent, transaction-broker) disclose in writing for any sale or lease of real estate, either as part of the contract or otherwise their commission. Brokers would also have been required to disclose their fees or the basis for calculating their fees on all marketing materials relating to any specific property, including on-line multiple listing services

- As expected, this legislation was viewed as highly unnecessary and, as a result, was killed in the first committee by a vote of 11-2. In fact, several committee members conveyed that they believe the free market should be allowed to work between flat-free and full service brokers/agents, and further, that government should not be asked to intervene on behalf of one company.
- CAR actively worked to defeat this bill initiated by one company to codify its own business model and improve its bottom line by recommending legislation that would force its business plan on an entire industry. HB-1358 was entirely unnecessary and did not provide any additional information to consumers that are not already available to them. Broker compensation and fees are already transparent to the appropriate consumers – the parties to the real estate transaction.
- Fees are disclosed to all brokers through the MLS and among all parties and their brokers through their respective brokerage agreements. Further, a real estate commission is completely voluntary, negotiable and often varies depending on the type of transaction.

Status: Died in Committee on April 27, 2017.

Documentary Fees and Transfer Taxes:

[SCR 17-002](#), The Senate Concurrent Resolution would have deleted the prohibition in TABOR on new or increased transfer tax rates on real property and established a transfer tax of 1/10th of one percent of the value of the real property in the deed for the privilege of transferring the title to real property.

[HB17-1309](#), would have doubled the existing documentary fee for the recording of real estate deeds and instruments with half of the money allocated to the county treasurer and the other half of the money

allocated to the Colorado Housing and Finance Authority to create a housing investment fund to support new and existing affordable housing programs.

- Although REALTORS® understand the need for affordable housing in Colorado, one of our bedrock principles is that you cannot make housing more affordable by making it more expensive. CAR is an affordable housing advocate. We have supported legislative initiatives designed to create more affordable housing options. The creation and extension of the state Low Income Housing Tax Credit (LIHTC) program, and legislation that allocated a portion of the state's unclaimed property trust fund to support programs that provide rental assistance and promote construction and rehabilitation of low-income rental housing are just a couple examples.
- Last year, CAR passed legislation to create first-time homebuyer savings accounts to help Coloradans save for purchasing their first home. Additionally, we have donated more than \$7 million through the Colorado Association of REALTORS® Housing Opportunity Foundation (CARHOF) to promote safe, decent and affordable housing for all in Colorado.

SCR 002 and 1309 had several flaws:

- First, they hurt the very families that they are intended to help because such a tax/fee is regressive. They disproportionately impact low-to-moderate income earners – those that can least afford it, which creates a barrier to homeownership. Down payment costs – including closing costs – remain a significant barrier to homeownership, especially for low-to moderate-income households.
- Second, real estate transfer taxes and documentary fees are not a reliable funding source. Real estate transfer taxes are extremely sensitive to market forces, making the frequency of transactions and value of property variable in relation to the strength of the economy, which makes real estate transfer taxes a poor revenue source to fund affordable housing.
- Finally, real estate transfer taxes are unconstitutional under TABOR. The concurrent resolution would remove that prohibition against transfer taxes in the constitution. Similarly, real estate documentary fees for affordable housing are also likely unconstitutional under TABOR. The Colorado Supreme Court has weighed in on the issue of taxes versus fees, and ruled that fees levied must be directly related to the services being performed. New fees that pay or fund something not directly related to the cost of service are actually taxes, and as such, violate TABOR's requirement that citizens are entitled to vote on new taxes.

Status: Both SCR 002 and 1309 Died in Committee May 3, 2017.

NAR Update

➤ **Tax Reform**

Since its inception, our income tax system has recognized the favorable effects of homeownership for families, communities and society by incentivizing homebuyers with tax benefits. The result is a home-owning society that is the envy of the world. However, tax reform plans now being discussed threaten to decimate or even wipe out the tax benefits of owning a home for 95 percent of American families. In addition to almost doubling the standard deduction, these plans would outright repeal the deduction for property taxes while gutting the Mortgage Interest Deduction (MID) for all but the richest. Ironically, a hollow shell of the MID would stay on the books, allowing proponents of this type of tax reform to emptily boast that the deduction has been preserved. NAR is working to make sure homeowners are treated fairly in tax reform, reverse the decline in first-time homebuyers, and preserve like-kind exchanges. For more information, [click here](#).

➤ **Flood Insurance**

On May 25, 2017, the House Financial Services Committee released portions of draft legislation to reauthorize and reform the National Flood Insurance Program (NFIP). The program is up for reauthorization on September 30, 2017. The committee has released six sections spanning 161 pages, addressing NFIP affordability, flood mapping, mitigation incentives, taxpayer protections, claims process, and private flood insurance. The release of the discussion drafts comes in advance of an expected legislative hearing and markup expected in early June. NAR staff is currently reviewing the bill text for consistency with NAR policy and will work with NAR's Insurance Committee to formulate an official NAR position before a committee markup. For a summary of each section, please click on these links:

- [NFIP Affordability](#)
- [Private Market](#)
- [Flood Mapping](#)
- [Claims Process](#)
- [Taxpayer Protection](#)
- [Mitigation](#)

➤ **Sustainable Homeownership**

Homeownership has always been a cornerstone of our nation and differentiates the U.S. from many countries around the world. Fiscal constraints have left lawmakers struggling to balance budgets and improve our economy. But there are critical programs that encourage homeownership — still the American dream. Failure to responsibly reform the secondary mortgage market, limit costs imposed on homeowners, ensure proper loan disclosures, and fund necessary system upgrades for federal housing programs hurts the very fabric and underpinnings of our society. NAR is working to responsibly reform the secondary mortgage market, oppose the use of g-fees for any use other than housing, and to provide proper consumer disclosures on PACE (Property Assessed Clean Energy) loans. For more information, [click here and scroll to the third page](#).

➤ **Sign up for REALTOR® Party Mobile Alerts**

More than 50,000 REALTORS® from across the country have already signed up for REALTOR® Party Mobile Alerts - have you? **Text CO REALTORS to 30644 to sign up!** You'll be among the first to know about NAR Calls for Action and more! [Click here](#) for more information.

Colorado Project Wildfire

- Developed by the Colorado Association of REALTORS®, Project Wildfire is designed to help reduce the destruction of land, property, and lives. Working in partnership with other like-minded fire prevention organizations across the state, local REALTOR® associations are bringing education and awareness, as well as access to resources, directly to residents in their local communities. To learn more about Colorado Project Wildfire, [click here](#).