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MEMORANDUM

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**TO:** Colorado Mortgage Lenders Association Members

**FROM:** Dieter J. Raemdonck

**DATE:** May 23, 2018

**SUBJECT:** 2018 Legislative Session Report

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Members,

The Second Regular Session of the Seventy-First General Assembly adjourned sine die on May 9, 2018. During the course of the 120-day session, CMLA weighed in on numerous bills that would impact the lending industry specifically, and more broadly impact businesses of all sizes across the state. Under the excellent direction of Chairman Terry Jones and Vice Chair Cary Whitaker, the Legislative and Regulatory Affairs Committee ("LARAC") monitored eighteen bills and took a position of either support or oppose on nine of those. I am pleased to report that we achieved the desired outcome on eight of those nine bills.

**Bills CMLA Supported**

[House Bill 1174](#) by Reps. Arndt (D-Ft. Collins) and Gray (D-Broomfield) and Sen. Priola (R-Adams County) continues the Board of Mortgage Loan Originators for an additional ten years. The bill also:

- Commences the 60-day period within which the board must act on a license application when all necessary documentation has been received, rather than on the date that the application is initially received;
- Aligns educational requirements for initial licensure with the SAFE Act;
- Aligns standards for disqualifying prior convictions with the SAFE Act; and
- Encourages the Governor to appoint to one of the 3 seats assigned to a loan originator an employee of a Colorado-based mortgage company.

Result: passed House 48-15, passed Senate 32-3, and sent to the Governor

[House Bill 1195](#) by Reps. Pabon (D-Denver) and Bridges (D-Cherry Hills) and Sen. Tate (R-Centennial) would have created a state income tax credit for a donation a taxpayer makes to an eligible developer to be used for new affordable housing projects. Result: The Senate Committee on State, Veterans, and Military Affairs postponed the bill indefinitely.

[House Bill 1224](#) by Rep. Willett (R-Grand Junction) and Sen. Gardner (R-Colorado Springs) adds mediation to professional licensing disciplinary actions initiated by state agencies. Result: passed the House 65-0, passed Senate 33-1, and sent to the Governor.

[House Bill 1233](#) by Speaker Duran (D-Denver) and Rep. Lawrence (R-Douglas County) and Sens. Fenberg (D-Boulder) and Gardner (R-Colorado Springs) authorizes a parent or legal guardian to

request that a consumer reporting agency place a security freeze on either a minor, or an individual who is a ward of the representative. The reporting agency is not allowed to charge a fee for the freeze. Result: passed House 61-2, passed Senate 35-0, and was signed by the Governor.

[Senate Bill 007](#) by Sens. Guzman (D-Denver) and Tate (R-Centennial) and Speaker Duran (D-Denver) and Rep. J. Becker (R-Ft. Morgan) renames and extends the low-income housing tax credit to the affordable housing tax credit and extends the credit to 2024. Result: passed Senate 26-7, passed House 43-22, and was sent to the Governor

[Senate Bill 210](#) by Sen. Tate (R-Centennial) and Reps. Arndt (D-Ft. Collins) and Hooton (D-Boulder) aligns state law with respect to appraisal management companies with federal regulations. Result: passed Senate 35-0, passed House 41-24, and was sent to the Governor

### **Bills CMLA Opposed**

[House Bill 1063](#) by Rep. Williams (R-Colorado Springs) would have required a consumer credit reporting agency to obtain consumer consent before furnishing the report to a third party. It also would have required any reporting agency to develop a procedure by which the consumer could, if his or her data had been hacked or otherwise altered, request that his or her file be turned over to the consumer, have any files or records relating to that consumer be purged from the agency's records, and request that the agency no longer record and retain any information related to that consumer. Result: The House Committee on State, Veterans, and Military Affairs postponed the bill indefinitely.

[House Bill 1298](#) by Reps. Pettersen (D-Lakewood) and Bridges (D-Cherry Hills) and Sens. Donovan (D-Vail) and Todd (D-Aurora) would have created the Colorado Secure Savings Plan Board, which would have been tasked with studying the feasibility of creating a mandatory private sector retirement plan (automatic enrollment payroll deduction). Result: passed House 36-28, Senate Committee on State, Veterans, and Military Affairs postponed the bill indefinitely.

[Senate Bill 109](#) by Sen. Gardner (R-Colorado Springs) and Reps. Garnett (D-Denver) and Wist (R-Centennial) would have allowed notaries public to perform a notarial act on behalf of an individual who is not in the notary's physical presence. We participated in numerous stakeholder meetings over the summer, working with representatives from the Secretary of State, Title Companies, Realtors, Bankers, The Colorado Bar Association and Notaries (both paper and electronic) to attempt to reach a compromise. Though we were encouraged by draft legislation we reviewed in the fall, we were disappointed in the introduced version of this bill and sought amendments to address three main concerns: this bill contained provisions that would have permitted the sale of customer data (generally with consent via a click box), would have required the notary to record the entire notarial act and permitted the recording of the entire transaction. The bill would also have required the notary to maintain that recording for ten years. With respect to the data sale, the committee believed that customer data, which would have been available and indeed required in a way that goes well-beyond current law with respect to "paper notaries", should not be transferrable or sold aside from actions necessary to complete the notarial act or the underlying transaction (i.e. sold for commercial gain). Further, the committee believed that recording the notarial act posed two problems: 1. It would subject more personal information to potential breach, and 2. Having a recording of the notarial act would potentially result in litigation to challenge the underlying transaction (could include a mortgage or other documents related to a real estate transaction). The committee had hoped for amendments to the bill to prohibit the sale of data and limit the recording to only identity verification and the actual signing of the documents. Unfortunately, we could not

reach an agreement with the proponents, and thus reluctantly opposed the bill as drafted. Result: passed Senate 34-1, House Committee on Appropriations postponed the bill indefinitely.

### **Bills CMLA Monitored**

[House Bill 1054](#) by Rep. Rosenthal (D-Denver) and Sen. Court (D-Denver) would have required certain businesses that provide plastic shopping bags to customers to charge a \$.25 tax to the customer. The Department of Local Affairs would have been required to use the money to improve, preserve, or expand the supply of affordable housing in Colorado. The tax would have been subject to voter approval. Result: The House Committee on Local Government postponed the bill indefinitely.

[House Bill 1125](#) by Rep. Wilson (R-Salida) would have started a pilot program to create an income tax credit for a donation a taxpayer makes to a sponsor that is used for the costs associated with an employer-assisted housing project in rural areas. Result: The House Committee on Finance postponed the bill indefinitely.

[House Bill 1128](#) by Reps. Wist (R-Centennial) and Bridges (D-Cherry Hills) and Sens. Lambert (R-Colorado Springs) and Court (D-Denver) requires any covered and governmental entities that maintain records containing personal identifying information to develop and maintain policies for the destruction and disposal of those documents. The bill also expands the law regarding notification of any disclosure of the personal information as a result of a hack or other data breach. The bill provides an exemption for companies that are covered under similar Federal Law (such as the mortgage lending industry). Result: passed the House 60-0, Senate 33-0, sent to the Governor.

[House Bill 1154](#) by Reps. Hooton (D-Boulder) and Van Winkle (R-Highlands Ranch) and Sen. Jahn (D-Wheat Ridge) prohibits any person who solicits a fee for providing a copy of a deed or deed of trust from charging more than four times the amount charged by the clerk and recorder that has custody of the document. It also requires certain disclosures accompany the solicitation, and that the solicitation that is required not appear to be from an official government entity, nor appear to impose a legal duty on the individual being solicited. Result: passed the House 49-15, passed the Senate 23-11, and signed by the Governor.

[House Bill 1254](#) by Rep. Van Winkle (R-Highlands Ranch) and Sen. Smallwood (R-Parker) modifies and clarifies certain minor procedural aspects of the foreclosure process, including:

- Makes changes to the bid form used by holders;
- Prorates the amount of insurance premiums that may be claimed as costs;
- Clarifies the procedure for junior subsequent lienors to redeem a property;
- Eliminates the authority of the attorney for a holder of an evidence of debt to specify the newspaper used to publish the foreclosure notices; and
- Allows an amended combined notice to be omitted in a specified circumstance when the notice is provided by the sheriff or public trustee conducting the foreclosure

Result: passed House 64-0, passed Senate 35-0, and was signed by the Governor

[Senate Bill 003](#) by Sen. Scott (R-Grand Junction) and Reps. Hansen (D-Denver) and J. Becker (R-Ft. Morgan) repeals mostly inactive programs within the Colorado Energy Office, alters the mission of the Office, and provides funding. Last year, a version of this bill altered residential Property Assessed Clean Energy (PACE) lending in Colorado, and for that reason we monitored the bill this session. Result: passed Senate 34-1, passed House 48-14, and was sent to the Governor.

[Senate Bill 006](#) by Sen. Zenzinger (D-Arvada) and Rep. Winter (D-Westminster) would have allowed counties to impose an additional fee for recording documents in the clerk and recorder's office for the purpose of funding affordable housing projects. A side effect of this proposed bill would have been recording fees that varied county by county across the state. Result: Senate Committee on State, Veterans, and Military Affairs postponed the bill indefinitely

[Senate Bill 125](#) by Sens. Gardner (R-Colorado Springs) and Kagan (D-Cherry Hills) and Rep. Lee (D-Colorado Springs) requires title insurance entities and affiliates to hold funds belonging to others in a fiduciary capacity. Result: passed House 61-2, passed Senate 33-0, and was signed by the Governor.

[Senate Bill 193](#) by Sen. Coram (R-Montrose) and Rep. Carver (R-Colorado Springs) would have prohibited state agencies from imposing a personal qualification requirement in order to engage in a profession or occupation unless the agency can show that the requirement is demonstrably necessary and narrowly tailored to address a specific, legitimate health or safety objective. Result: passed Senate 18-17, House Committee on State, Veterans, and Military Affairs postponed the bill indefinitely.

### **Interim Activities**

As in past election years, members of LARAC will meet with a select group of incumbents and candidates for state House and Senate to introduce the members (or potential members) of the General Assembly to CMLA, discuss issues of importance to the industry, and begin to build relationships with those individuals. We will meet with approximately twenty candidates prior to Election Day.

While efforts to authorize remote online notarizations failed for a second straight year, we remain hopeful that we can reach a compromise next year. We will meet with stakeholders in the real estate community, legislators, and proponents to draft legislation that might be agreeable to all parties. We believe that this is a good opportunity for industry to advocate for legislation to authorize remote notarizations in Colorado, while protecting customer data and the integrity of the underlying transaction.

It was my sincere pleasure to represent CMLA at the Legislature in 2018. Members of the Legislative and Regulatory Affairs Committee work hard to analyze proposed legislation and determine a course of action that is in the best interest of the industry. Terry and Cary do a masterful job of evaluating bills and leading the committee, and with their steady hands at the helm, we are able to protect and promote the residential lending industry in Colorado.

DJR