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MEMORANDUM

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**TO:** Members of the Colorado Mortgage Lenders Association  
**FROM:** Dieter J. Raemdonck  
**DATE:** May 17, 2017  
**SUBJECT:** 2017 Legislative Summary

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Members,

The First Regular Session of the Seventy-First General Assembly adjourned *sine die* on May 10th, wrapping up 120 days of work for the people of Colorado. The session was primarily dominated by two big issues: budget and transportation. After years of debate, legislators reached a compromise on the infamous hospital provider fee. By moving the fee into an enterprise fund, legislators were able to free several hundred million dollars in the budget, and thus avoid devastating cuts to rural hospitals. On the other hand, legislators were unable to reach a compromise on a proposed measure to refer a tax increase to the voters for greater transportation funding. In terms of real estate and lending, the big news out of the session this year is that we finally reached a compromise on construction defects reform. While it does not go as far as some in our industry might like, it is a positive step in the right direction (more to come on that topic). The following memorandum provides a brief overview of the bills that the Legislative and Regulatory Affairs Committee (LARAC) reviewed and tracked this year. But before we get to that, three quick comments:

1. Terry Jones (Chair of LARAC) proved yet again why he continues to be an indispensable member of the Committee, and CMLA in general. A huge thank you to Terry.
2. Cary Whitaker (Vice-Chair of LARAC) deserves thanks for taking on a leadership role this year, as well as providing insights and information that were incredibly valuable.
3. The members of LARAC did an outstanding job this year. With their help, we were able to avoid some troubling new laws, while also advocating for common-sense changes in the state.

### **Bills CMLA Supported**

#### [HB 1157 – Bank and Credit Union Reliance on Certificate of Trust](#)

Summary: Currently, a bank may rely on a certificate of trust when trustees open a trust deposit account. The bill requires trustees to provide additional information in a certificate of trust. The bill also permits a bank (or credit union) to rely on a certificate of trust for any transaction between the bank and the trustees unless the bank has knowledge that the certificate of trust is contrary to the trust agreement.

Status: Signed by Governor; Passed House 62-3, Senate 35-0

#### [HB 1169 – Construction Defect Litigation Builder’s Right to Repair](#)

Summary: The bill clarifies that a construction professional has the right to receive notice from a prospective claimant concerning an alleged construction defect; to inspect the property; and then to elect to either repair the defect or tender an offer of settlement before the claimant can file a lawsuit seeking damages.

Status: House Committee on State, Veterans, and Military Affairs Postpone Indefinitely

#### [HB 1279 – Construction Defect Actions Notice Vote Approval](#)

Summary: Before an executive board of a homeowners association (HOA) can initiate a construction defect lawsuit, this bill requires that the board first:

1. notify all unit owners of the HOA and the builder(s) of the development of any plans to bring a construction defect lawsuit;
2. convene a meeting for the board and the developer to present relevant facts and arguments to HOA unit owners; and
3. obtain the approval of a majority of the unit owners.

The bill dictates various disclosures that must be included in the notification to HOA unit owners and construction professionals, and sets deadlines for the board to provide the notifications, convene a meeting, and collect votes for or against a construction defect lawsuit.

Status: Passed both chambers unanimously

Comment: This bill is the vaunted construction defect compromise. While it does not contain the mandatory mediation/arbitration or right to cure provisions that many stakeholders sought (for years), it is definitely a step forward. Once this compromise was reached, the other construction defect-related bills were either killed outright, or left on the calendar to die.

#### [SB 038 – Registration of Home Inspectors](#)

Summary: Under current law, home inspectors are not subject to regulation by any state agency. Section 1 of the bill makes it unlawful for a person to act as a home inspector without first registering with the department of regulatory agencies (DORA). Section 2 requires a review of the board's duties and functions in registering home inspectors after 5 years under the existing sunset laws.

Status: Senate Committee on State, Veterans, and Military Affairs Postponed Indefinitely

#### [SB 45 – Construction Defect Claim Allocation of Defense Costs](#)

Summary: In a construction defect action in which more than one insurer has a duty to defend a party, the bill requires the court to apportion the costs of defense, including reasonable attorney fees, among all insurers with a duty to defend. An initial order apportioning costs must be made within 90 days after an insurer files its claim for contribution, and the court must make a final apportionment of costs after entry of a final judgment resolving all of the underlying claims against the insured. An insurer seeking contribution may also make a claim against an insured or additional insured who chose not to procure liability insurance for a period of time relevant to the underlying action. A claim for contribution may be assigned and does not affect any insurer's duty to defend.

Status: Senate Committee on Appropriations Postponed Indefinitely

Comment: This bill was initially introduced as a compromise bill in the construction defects battle. Unfortunately, the pro-reform crowd opposed the bill, and it stalled in the Senate while other conversations took place. Once the agreement was reached on 1279, the other bills, including this one, were relegated to the recycling bin.

#### [SB 97 – Vacated Alleys Presume Included in All Deeds](#)

Summary: Under current law, a conveyance by warranty deed carries the presumption that the grantor's interest in an adjoining vacated street, alley, or other right-of-way is included with the property whose legal description is contained in the deed. However, this presumption does not apply to other types of deeds or to a lease, mortgage, or other conveyance or encumbrance. The bill removes the language containing the presumption from the warranty deed statute and relocates it, with amendments, so as to broaden the application of the presumption of conveyance of an adjoining vacated right-of-way to include not only warranty deeds but also all forms of deeds, leases, and mortgages and other liens.

Status: Governor Signed; Passed Senate 33-1, Passed House 51-14

Comment: We worked with the Bar Association (the primary proponent of this bill) to amend the language to include a deed of trust in the list of real property conveyances or encumbrances contemplated by this bill.

#### [SB 127 – Originator Exemption Mortgages to Family Members](#)

Summary: Current law defines a mortgage loan originator as an individual who offers or negotiates terms of a residential mortgage loan, including to any family member, but there is an exemption for a parent who acts as a loan originator in providing loan financing to his or her child. The bill expands the exemption to include up to 3 loans per year without compensation, other than interest, between family members, and directs the board of mortgage loan originators to define family member by rule.

Status: Governor Signed; Passed House 63-1, Passed Senate 34-0

Comment: We worked very hard with the Bar Association, Realtors, Bankers, and others over the summer and into the fall to draft sensible language for this bill.

#### [SB 155 – Statutory Definition of Construction Defect](#)

Summary: The bill separately defines and clarifies the term construction defect in the Construction Defect Action Reform Act.

Status: Senate laid over (killed on calendar)

#### [SB 156 – Homeowners’ Association Construction Defect Lawsuit Approval Timelines](#)

Summary: The bill states that when the governing documents of a common interest community require mediation or arbitration of a construction defect claim and the requirement is later amended or removed, mediation or arbitration is still required for a construction defect claim. Section 3 also specifies that the mediation or arbitration must take place in the judicial district in which the community is located. The bill also requires that, before a construction defect claim is filed on behalf of the association:

- The parties must submit the matter to mediation before a neutral third party; and
- The board must give advance notice to all unit owners, together with a disclosure of the projected costs, duration, and financial impact of the construction defect claim, and must obtain the written consent of the owners of units to which at least a majority of the votes in the association are allocated.

Status: House Committee on State, Veterans, and Military Affairs Postponed Indefinitely; Passed Senate 23-12

### **Bills CMLA Opposed**

#### [HB 1112 – Immunity Unauthorized Practice of Profession](#)

Summary: The bill provides immunity from civil and administrative penalties for the unauthorized practice of a profession by an individual who meets certain requirements.

Status: House Committee on Judiciary Postpone Indefinitely

#### [HB 1290 – Colorado Secure Savings Plan](#)

Summary: The bill establishes the Colorado secure savings plan (plan), which is a retirement savings plan for private-sector employees in the form of an automatic enrollment payroll deduction individual retirement account. Employers with a specified number of employees in the state are required to participate in the plan, but any employer may choose to participate in the plan. The bill would have created a board of trustees to oversee the program.

Status: Senate Committee on State, Veterans, and Military Affairs Postpone Indefinitely; Passed House 37-28

### **Bills of Interest**

#### [HB 1026 – Reverse Mortgage Repayment When Home Uninhabitable](#)

Summary: Under current law, the borrower in a reverse mortgage transaction is relieved of the obligation to occupy the subject property as a principal residence if

the borrower is temporarily absent for up to 60 days or, if the property is adequately secured, up to one year. The bill adds a third exception to the principal-residence requirement to cover situations in which a natural disaster or other serious incident beyond the borrower's control renders the property uninhabitable. The maximum time allowable for a temporary absence under these circumstances is 5 years.

Status: Senate Committee on State, Veterans, and Military Affairs Postponed Indefinitely; Passed House 38-27

Comment: CMLA opposed this bill as introduced. We worked very hard make the proponents aware of the impact that this bill would have on reverse mortgages in Colorado. We were able to delay the bill long enough in committee in the House to get input from FHA and convince legislators that this would be a bad idea. Ultimately, the sponsors agreed to amend the bill to refer the subject to the Wildfire Matters Review Committee over the summer, at which point we moved to a neutral position.

#### [HB 1199 – Foreclosure Sale Process](#)

Summary: The bill excludes information relating to violations of the requirement for a single point of contact or dual tracking from the published notice that precedes a foreclosure sale. The bill also clarifies that the deadline for a public trustee or sheriff (officer) conducting a foreclosure to continue a foreclosure sale is the scheduled date and time of the sale; and what happens if a foreclosure sale violates an automatic stay under the federal bankruptcy code. The procedures that apply if a foreclosure sale is set aside by court order are established to mirror the procedures that follow a rescission of a public trustee sale. In addition, a person rescinding a foreclosure sale is no longer required to send envelopes along with their rescission paperwork.

Status: House Committee on Local Government Postpone Indefinitely

#### [HB 1238 – Relocate Title 12 Credit Debt Services](#)

Summary: Current law directs the office of legislative legal services to study the organizational recodification of title 12, Colorado Revised Statutes, which relates to professions and occupations. To implement the initial recommendations of the study, the bill relocates the laws related to debt management and collection services from articles 14, 14.1, 14.3, and 14.5 of title 12.

Status: Sent to Governor; passed both chambers unanimously

#### [HB 1309 – Documentary Fee to Fund Affordable Housing](#)

Summary: Currently, when the total consideration paid by the purchaser in a real property transaction exceeds \$500, the county clerk and recorder collects a one cent documentary fee for each \$100 of such consideration for the recording of real estate deeds or other instruments in writing. This bill would have raised the fee by \$.02 in order to fund a statewide affordable housing fund, to be administered by the Colorado Housing and Finance Authority.

Status: Senate Committee on State, Veterans, and Military Affairs Postpone Indefinitely; Passed House 35-29

### [HB 1311 – Seller's Disclosure Estimated Future Property Tax](#)

Summary: No later than January 1, 2018, the bill requires the property tax administrator to make available a tool to estimate residential property taxes on the division of property taxation's website.

Summary: Senate Committee on Finance Postpone Indefinitely; Passed House 39-26

### [HB 1349 – Assessment Ratio for Residential Real Property](#)

Summary: The bill sets the ratio of valuation for assessment for residential real property at 7.2% for property tax years commencing on and after January 1, 2017, until the next property tax year that the general assembly adjusts this ratio.

Status: Passed both chambers unanimously

### [HB 1358 – Disclose Amounts Payable to Real Estate Brokers](#)

Summary: The bill requires that, in any sale or lease of real estate, the amounts payable to anyone acting as a broker in the transaction (e.g., buyer's agent, seller's agent, transaction-broker) be disclosed in writing, either as part of the contract or otherwise, and accounted for. If the amount payable is allocated between the parties, the portion for which each party is responsible must be separately stated. Brokers are 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.

Status: House Committee on Business Affairs and Labor Postponed Indefinitely

### [HB 1363 – Exempt New Energy Requirement if not Subordinate Lien](#)

Summary: Current law authorizes a homeowner to finance certain energy efficiency improvements to the home through a loan pursuant to the property assessed clean energy (PACE) program. The program requires an applicant to file a title commitment on the home and a hearing must be held in order to seek a voluntary subordination of existing liens to the program's junior lien. The bill exempts a homeowner from the title commitment and hearing requirements if the owner is not seeking to subordinate the priority of existing liens.

Status: Passed House 60-5, Passed Senate 35-0

### [SB 85 – Increase Documentary Fee and Fund Attainable Housing](#)

Summary: Currently, each county clerk and recorder collects a surcharge of one dollar for each document received for recording or filing in his or her office. The surcharge is in addition to any other fees permitted by statute. Section 2 of the bill raises the amount of the surcharge to \$5 for documents received for recording or filing on or after January 1, 2018. The fee would be used to fund projects that support new or existing programs that provide financial assistance to low-income

households for the purpose of financing, purchasing, or rehabilitating residential property.

Status: Senate Committee on State, Veterans, and Military Affairs Postponed Indefinitely

### [SB 132 – Revised Uniform Law on Notarial Acts](#)

Summary: The bill enacts the Revised Uniform Law on Notarial Acts (the Act), as amended by the National Conference of Commissioners on Uniform State Laws in 2016.

Status: Passed Senate 26-9, Passed House 64-0

Comment: This is the infamous “remote notary” bill. Notarize, a remote notary service company, attempted to amend language into this bill to permit remote notarization in Colorado. The amendment was successful in the Senate, but we were able to reach an agreement to take the language out of the bill in the House. In return, stakeholders (CMLA, Bar, Bankers, Land Title Association, and Secretary of State) agreed to hold meetings in the interim to determine what language to allow remote notarization might make sense in Colorado. We anticipate that there will be legislation on this topic next year.

### [SB 157 – Construction Defect Actions Notice Vote Approval](#)

Summary: The bill requires that, before the executive board of a unit owners' association (HOA) in a common interest community brings suit against a developer or builder on behalf of unit owners, the board must:

- Notify all unit owners; and
- Except when the HOA contracted with the developer or builder for the work complained of or the amount in controversy is less than \$100,000, obtain the approval of a majority of the unit owners after giving them detailed disclosures about the lawsuit and its potential costs and benefits. The bill also limits the amount and type of contact that a developer or builder that is potentially subject to a lawsuit may have with individual unit owners while the HOA is seeking their approval for the lawsuit.

Status: Senate Committee on Business, Labor, and Technology Postpone Indefinitely

### [SB 215 – Sunset Licensed Real Estate Brokers and Subdivision Developers](#)

Summary: The bill continues the division of real estate, the real estate commission, and the regulation of real estate brokers and subdivision developers for 9 years, until 2026. It also consolidates the various cash funds used for several licensing functions and programs administered by the division of real estate into a single cash fund.

Status: Passed Senate 34-1, Passed House 54-10

Comment: Initially, we sought an amendment regarding the consolidation of the cash funds to remove mortgage loan originator cash funds from the bill. However, in

consultation with the Division, we ultimately decided against an amendment. Instead, the Division will provide information/documentation to ensure that funds are being used appropriately.

### [SB 216 – Sunset Continue Fair Debt Collections Act](#)

Summary: The bill implements the recommendations of the sunset review and report on the continuation of the Colorado Fair Debt Collection Practices Act (Act) by Continuing the Act through 2028; Defining what is expected of a collection agency that purchases, sells, or attempts to collect on a purchased debt; and Clarifying that when a collection agency attempts to collect on a debt, the Act applies, by removing language from the definition of debt.

Status: Passed Senate 33-1, Passed House 43-20

Comment: Though we were (very) late to the game on this bill, through hard work by several LARAC members, we were able to secure an amendment that avoided application of this bill to lawyers/law firms that act as (unlicensed) collections agents. Had we not acted, this bill would have impacted the lending industry, and the manner in which we handle defaults.

### [SB 301 – Energy-Related Statutes](#)

Summary: This bill did an awful lot, but in particular it exempts a homeowner from the title commitment and hearing requirements if the owner is not seeking to subordinate the priority of existing liens and clarifies that housing authorities can use PACE as a completely voluntary assessment (basically mirrors language in 1363).

Status: Passed Senate, substantially amended in House, Senate moved to adhere to its position, bill died.

Legislators introduced 681 bills this year, of which 270 failed (for a variety of reasons) to become law. Between members of LARAC and myself, we reviewed each of those bills for potential relevance to CMLA. After review and discussion, CMLA took an active position (support, oppose, or amend) on fourteen bills. We achieved the desired result on nine of those bills. However, if we take out the four construction defects bills that did not pass as a result of the compromise reached on HB 1279, our success rate improves to nine out of ten bills.

Over the next few months, we will be actively involved in meetings and discussions regarding:

- Remote notarization (will be organized by the Colorado Secretary of State's Office);
- Working with the Colorado Bar Association to develop a definition of "Family Member" for presentation to the Board of Mortgage Loan Originators pursuant to SB 127;
- The continued work on the MLO program sunset review currently underway at DORA;
- The formation of (and reports from) the Affordable Housing Subcommittee.

Thank you all for a great year! It is a privilege to represent you at the Capitol.

