

Government Affairs Update

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Barbara Koelzer, Regional Government Affairs Director

barbara@ires-net.com

303.886.5675

Loveland

Three Candidates for Ward 3: Deputy City Clerk Beverly Walker confirmed three candidates officially made the ballot for the April 11 Ward 3 special election: Steve Olson, John Keil and Howard Dotson. Olson is a CPA and board member of the Northern Colorado Legislative Alliance. Keil is a hemp farmer who has lived here for 2 years. Dotson is a pastor and political activist who has lived here for about a year. LBAR will interview the candidates later this spring.

Planning Commission Reviews New Development Code: On Jan. 23, the Planning Commission held a public hearing on proposed changes related to development procedures proposed for the new Unified Development code. Sarah Warnock, Chair-Elect of LBAR told the Commission LBAR strongly supports the new code both conceptually and specifically in terms of the proposed procedures. Ms. Warnock was the only member of the public to attend and comment during the public hearing.

The Commission was generally supportive of the procedures although a few minor changes were suggested. The next task relates to new infill and corridor design standards. A committee of local stakeholders will have its first opportunity to discuss this topic on February 16. The City Council is reviewing each task or component of the Unified Code separately at a study session and will adopt the Code in entirety using the public hearing process later this year.

COLORADO ASSOCIATION OF REALTORS®

CAR Attorney Testifies at Pre-Hearing: On January 25th, CAR General Counsel, Scott Peterson testified at the pre-hearing on the Division of Real Estate Sunset before the Senate Business, Labor and Technology Committee. This pre-hearing was an opportunity for the committee to hear from the Department of Regulatory Agencies' Policy Analyst and stakeholders on the DORA Sunset Report. Peterson shared CAR's comments on the report, explaining that CAR believes the Division and Commission should be continued and continue to regulate licensees.

Peterson also informed the committee of our support for Recommendations 4, 5, and 7, which would increase the qualifications necessary to become an employing broker (4), amend state statutes dealing with referral fees to conform

with RESPA (5), and revise license renewal dates from anniversary dates to December 31 of each year (7).

However, CAR strongly disagreed with Recommendation 2, related to “standard forms”, which is troublesome for members. Removing “standard” and “including those” language is inconsistent with established legal precedent stemming from the Conway Bogue case that has defined the practice of real estate brokers for the past sixty years. In this case, the Colorado Supreme Court determined that when a broker fills out a form given to them by their clients, it does not constitute unauthorized practice of law.

If this ruling were changed by the Sunset recommendation a real estate licensee would only be able to complete forms that are promulgated by the Real Estate Commission and any other form, no matter how innocuous, would need to be prepared by an attorney. These simple tasks could include filling in the parties on a lease or completing a builder’s new construction contract with the sale price and closing date.

Finally, CAR also addressed Recommendation 9 at the pre-hearing. CAR informed the committee that requiring the Commission to develop guidelines for the annual commission update course instead of developing the course itself will curtail the supply of instructors, and thereby restrict the availability of course offerings. It would also overburden the Division who would need to not only develop the guidelines, but also approve, police and audit the classes developed by the instructors.

The Senate Business, Labor and Technology Committee will take these comments from stakeholders and the DORA policy analyst into consideration in drafting a bill. That bill will be calendared for future hearings in committee and follow the regular legislative process.

Legislative Update: Here’s an update on some of the positions adopted by the Legislative Policy Committee (LPC) –

SB-038 “Registration Home Inspectors” sponsored by Senator Nancy Todd. Support. Status – Postponed indefinitely.

CAR positioned SB 17-038 as a consumer protection bill that addressed requirements for professionals wishing to undertake the important responsibility of home inspection without creating a burdensome barrier to entry for new businesses. This bill required a person to register with the Department of Regulatory Agencies, pay a registration fee, show proof of liability insurance and a surety bond and submit fingerprints for a criminal background check. The bill passed out of the State, Veterans and Military Affairs Committee but was killed by the Senate Finance Committee on Feb. 9.

SB-85 “Increase Documentary Fee & Fund Attainable Housing” OPPOSE. **Status - Postponed indefinitely.** This bill would raise the doc fee for recording or filing to five dollars. The first dollar would go towards electronic filing costs under existing law and the remaining four dollars would go towards a statewide attainable housing investment fund.

CAR believes increased documentary are akin to transfer taxes and fees; they are regressive. They wind up creating barriers to homeownership by impacting those that can least afford it because they increase the amount of money needed to purchase a home. The bill was killed in the Senate’s State, Veterans and Military Affairs Committee on Feb. 13.

SB-45 “Equitable Allocation of Costs of Defending a Construction Defect Claim” NEUTRAL. Status – not yet calendared. CAR staff says this bill won’t solve the problem. The only reason the LPC didn’t oppose it is because it is co-sponsored by the Speaker of the House and Senate President. Industry attorneys that have reviewed the bill are unsure whether it can be salvaged by revisions if the bill moves forward.

SB-86 “Authorize Local Governments Inclusionary Housing Programs” OPPOSE. Status - Postponed indefinitely. *Introduced by Senator Steve Fenberg (Boulder SD-18).* This bill would clarify the existing rent-control statute and allow local governments to adopt inclusionary housing programs. These inclusionary housing programs can include: a) setting aside a percentage of new development for affordable units, developer incentives to promote affordable housing, cash-in-lieu or land dedication to local governments, specifying periods of time that housing remains affordable or targeting a certain income range. The bill was killed in the Senate’s State, Veterans and Military Affairs Committee on Feb. 6.

STATE

Legislative Leaders Setting Stage for Compromise? Per the *Denver Business Journal* House Speaker Crisanta Duran would support legislation requiring more homeowners to approve a construction-defects lawsuit and providing more information to those condominium owners about the effect of legal actions. It’s the Speaker’s first indication that she is willing to go beyond SB-45 to do something to jump-start the state’s stalled condo-construction market.

The Denver Democrat reiterated that she has little interest in any bill that would force disputes between condo owners and builders into alternative dispute resolution such as binding arbitration. Her stance sets the stage for what

changes in current law may be reasonably easy to push through the Legislature this year and which could be contentious.

Duran's statements came just days before state Senate Republicans are expected to introduce a new package of construction-defects bills to complement Senate Bill 45, a bipartisan measure introduced on the Legislature's opening day. State Senate President Kevin Grantham, R-Cañon City, said he plans to roll out a number of bills, potentially dealing with issues like alternative dispute resolution and informed consent, though he didn't elaborate on the details.

Duran seems willing to consider changes related to the number of condo owners in a HOA needed to approve litigation, and informed consent, ensuring owners understand the implications of a lawsuit filed by a HOA. Although she may not be convinced of the merits of arbitration, this may be a moot point. The Colorado Court of Appeals ruled that homeowners association boards cannot remove clauses from contracts that require alternative dispute resolution in the event of defects claims. The Colorado Supreme Court is now expected to hear appeals on that case in March.

NATION

HUD Suspends FHA Mortgage Insurance Premium Rate Cut: One of President Trump's first executive orders suspended a 25-basis point fee reduction for FHA mortgage insurance premiums. NAR estimated that the fee reduction would have opened homeownership to an additional 30,000 to 40,000 homebuyers. The reduced premium would save the average FHA borrower \$500 a year in insurance costs.

The Department of Housing and Urban Development (HUD) says the decision is intended to strengthen the FHA's reserve fund, the Mutual Mortgage Insurance Fund. In response, NAR's President said, "According to our estimates, roughly 750,000 to 850,000 homebuyers will face higher costs, and 30,000 to 40,000 new homebuyers will be left on the sidelines in 2017 without the cut. We're disappointed in the decision but will continue making the case to reinstate the cut in the months ahead."

Highest Court to Hear WOTUS: The Supreme Court has agreed to take up the dispute over which lower courts have jurisdiction to hear challenges to the Obama administration's Clean Water Rule. The Court will reconsider the 6th U.S. Circuit Court of Appeals' decision to hear legal challenges over the rule, which is also known as Waters of the U.S., or WOTUS.

More than 30 states and many industry and farm groups, including NAR, have challenged the joint U.S. EPA-Army Corps of Engineers rule redefining what waterways and wetlands receive protection under the Clean Water Act. Last February, the Ohio-based 6th Circuit ruled 2-1 that it had jurisdiction to hear the

challenges. The 6th Circuit also issued a nationwide stay of the rule pending the resolution of the litigation.

The decision by the Supreme Court to review the 6th Circuit decision is a big setback for the previous administration, which has sought to keep the litigation in the appellate court and avoid fights in district courts that might be more sympathetic to challengers of the rule. The fate of the litigation remains murky, though, given that President Trump will likely take steps to eliminate the rule.

Senate Democrats Unveil Infrastructure Plan: Senate Democrats unveiled a \$1 trillion infrastructure plan, an [11-page blueprint](#) that shovels money into roads, bridges, waterways, airports—basically anything that needs building or fixing, intended to boost jobs. In total, top Democrats said it would create 15 million jobs over the next decade—a number designed to appeal to President Donald Trump, who has made infrastructure investment and job creation a top priority. Only one problem, experts say that job estimate is wildly unrealistic. Read more, here: <http://tinyurl.com/demsinfrastructureplan>