

2008 LEGISLATIVE UPDATE

SECOND REGULAR SESSION OF THE SIXTY-SIXTH
GENERAL ASSEMBLY

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I. Real Estate and Real Estate Records

A. HB 08-1007 THE MODIFICATION OF STATUTORY PROVISIONS ENACTED BY THE GENERAL ASSEMBLY DURING THE 2006 LEGISLATIVE SESSION THAT IMPOSE CERTAIN REQUIREMENTS ON PRIVATE TOLL COMPANIES FOR THE PURPOSE OF ALLEVIATING CONSEQUENCES OF THOSE PROVISIONS THAT MAY AFFECT REAL PROPERTY

- **Amends:**
 - CRS § 7-45-101
 - CRS § 7-45-102
 - CRS § 7-45-103
 - CRS §7-45-104
 - CRS § 7-45-105
 - CRS § 7-45-108
 - CRS §7-45-109
 - CRS §7-45-110
 - CRS § 38-2-101
 - CRS §38-35.7-105

- **Summary:**
 - This Bill attempts to remedy some of the real estate title problems caused by prior legislation that required toll road companies to record notices of intent to put a toll road through certain areas.
 - Under this Bill, rather than recording in the real property records a notice of the proposed route of a toll road, the toll road companies are directed to mail notice to potentially affected property owners and to local planning commissions who are directed to make the notices public.
 - The Bill declares void any previously recorded notice or disclaimer of interest recorded by a toll road company.
 - Title insurance companies are directed to exclude such void notices from any documents they prepare.
 - Bill also states that no cause of action shall be available based on the recording of a notice or disclaimer.
 - Bill states that private toll road companies cannot condemn land for roads.
 - Only the State Department of Transportation can do so if the proposed toll road is incorporated into the comprehensive statewide transportation plan.

B. HB 08-1148 THE SUFFICIENCY OF THE ASSERTION OF A CLAIM FOR TITLE TO REAL PROPERTY BY ADVERSE POSSESSION UNDER COLORADO LAW

- **Amends:**
 - CRS § 38-41-101

- **Summary:**

- For an adverse possession action filed on or after July 1, 2008, and in addition to any other requirements specified in the current law, a person may acquire fee simple title to real property by adverse possession only upon satisfaction of each of the following conditions:
 - The person and any predecessors in interest of the person, as applicable, have satisfied all of the elements of a claim for adverse possession required under common law.
 - The person claiming by adverse possession, or the person's predecessor in interest, had a good faith belief that the person was the actual owner of the property, and the belief was reasonable under the circumstances.
- In order to prevail on a claim asserting a claim of title to real property by adverse possession, this Bill requires the person asserting the claim to prove each of the elements of the claim by clear and convincing evidence.
- The Bill exempts certain provisions of the act from a claim for adverse possession for the purpose of establishing a prescriptive easement.
- The Bill prohibits a person from maintaining an adverse possession claim under circumstances where the claim would deprive certain charitable organizations of title to undeveloped land.
- Where the person asserting a claim of title to real property by adverse possession prevails on such a claim, this Bill authorizes the court to determine, based on the facts and circumstances of the case, whether to award the non-prevailing party an amount representing the fair market value of the property that is the subject of the claim, as well as an amount representing any property taxes or other assessments levied on the subject property the non-prevailing party has paid from the commencement of the limitation period.
 - The court must conduct an evidentiary hearing, conducted separately and after the entry of the order awarding title to the adverse possessor.

C. HB 08-1195 THE RETURN OF A RELEASE OF A DEED OF TRUST AFTER RECORDING

- **Amends:**
 - CRS § 38-39-102
 - CRS § 38-39-107
 - CRS § 38-39-108
 - CRS § 38-39-109
- **Summary:**
 - This Bill specifies that the public trustee shall be provided with a current address of the original grantor, assignee, or current owner when a request is made to release a deed of trust.

- The Bill specifies that, after recording the release of a deed of trust, the County Clerk and Recorder shall return the release to the original grantor, assignee, or current owner using the address provided to the public trustee.
- The Bill also specifies that, if the release is returned to the county clerk and recorder as undeliverable or unable to forward, the County Clerk and Recorder shall retain the release according to office policy.
- The Bill clarifies that, if an original grantor, assignee, or current owner seeks a copy or a certified copy of the release after recording, the original grantor, assignee, or current owner shall be subject to appropriate copy fees.
- Essentially, this Bill adds a new subsection to CRS § 38-39-102 requiring that the release of a deed of trust submitted to the public trustee must contain the current address of the original grantor, assignee or current owner.
 - This address must be provided by the holder of the original evidence of debt.
 - The statutory forms for the release of deed of trust are modified to include a place for the address.
 - After recording, the public trustee is directed to return the recorded release to the original grantor, assignee or current owner.

D. HB 09-1248 JOINT TENANCY IN REAL PROPERTY

- **Amends:**
 - CRS § 38-31-101
- **Summary:**
 - This Bill governs the creation of joint tenancies and establishes how a joint tenant may sever a joint tenancy.
 - This Bill codifies the common law “Doctrine of the Four Unities of Time, Title, Interest and Possession.”
 - The Bill also provides that the interests in a joint tenancy may be equal or unequal.
 - The interests are presumed to be equal unless the recorded document specifies unequal ownership. This presumption:
 - Is conclusive as to all persons who obtain an interest in property held in joint tenancy when such persons are without notice of unequal interests and have relied on an instrument recorded pursuant to CRS § 38-35-109.
 - Is rebuttable for all other persons.
 - A joint tenant may sever the joint tenancy between himself or herself and all remaining joint tenants by unilaterally executing and recording an instrument conveying his or her interest in real property to himself or herself as a tenant in common.

- The joint tenancy is severed upon the recording of the instrument.
- If there are two or more remaining joint tenants, they will continue to be joint tenants among themselves.
- Filing a petition in bankruptcy shall not sever a joint tenancy.
- Upon death of a joint tenant, the deceased joint tenant's interest is terminated.
 - In the case of one surviving joint tenant, his/her interest in the property continues free of the deceased joint tenant's interest.
 - In the case of two or more surviving joint tenants, their interests continue in proportion to their respective interests at the time the joint tenancy was created.

E. HB 08-1266 THE FILING OF NOTICES RELATED TO LIENS WITH THE SECRETARY OF STATE

• **Amends:**

- | | |
|-----------------|---------------------|
| ○ CRS § 4-9-518 | ○ CRS § 4-9-529 |
| ○ CRS § 4-9-523 | ○ CRS § 4-9.5-107 |
| ○ CRS § 4-9-525 | ○ CRS § 4-9.7-101, |
| ○ CRS § 4-9-526 | 102, 103, 104, 105, |
| ○ CRS § 5-9-527 | 106, 107, 108, 109 |

• **Summary:**

- This Bill allows a secured party, as well as, a debtor to file a correction statement to a financing statement in order to perfect a security interest or agricultural lien. The Bill states that the filing of a correction statement does not amend the financing statement.
- Bill eliminates the requirement that the Secretary of State (Secretary) provide information on federal tax lien notices to persons requesting information on records filed with the Secretary.
- Bill eliminates the requirement that the fee for filing and indexing a record submitted to the Secretary in writing be at least twice the amount of the fee for a record communicated by another medium authorized by the Secretary.
- Bill prohibits the Secretary from making a record publicly accessible until the Secretary removes any taxpayer identification numbers in the record to the extent practicable.
- Bill allows the Secretary to remove a social security number, employer identification number, electronic mail address, telephone number, password, pass code, and other personal identifying information from a record before making the record publicly accessible.
- Bill allows the Secretary to remove such personal information from a currently public record upon receipt of a request showing good cause and supported by documents required by the Secretary of State.
- Bill requires the Secretary to retain the unaltered record from which information is removed for public access and to allow inspection of the

unaltered record only for good cause, notwithstanding the Open Records Law.

- The Bill enacts the Colorado Statutory Lien Registration Act, which specifies the information that a notice of a designated statutory lien (notice of lien) or an amendment to a notice of lien (notice of amendment) filed with the Secretary shall or may contain.
 - Bill states that a notice of lien or notice of amendment shall not contain a social security number, employer identification number or individual taxpayer identification number unless required by law.
 - Bill specifies the circumstances in which the Secretary shall or may refuse to accept a notice of lien or notice of amendment for filing.
 - Requires the Secretary to mark, maintain, and index notices of lien and notices of amendment.
 - Requires the Secretary to notify a person who presents a notice of lien or notice of amendment for filing if the Secretary refuses to accept the notice.
 - Bill allows the Secretary to remove a notice of lien from the Secretary's records one year after the notice expires.
 - Bill requires the filing office to provide to any person upon request, specified information regarding any notice of lien or notice of amendment on file with the office that designates a particular owner.
 - Bill states that a notice of lien or notice of amendment that the Secretary wrongfully refuses to accept is effective as a filed record except as against a purchaser of the property described in the notice who gives value in reasonable reliance on the absence of the record in the records of the Secretary.
- The Bill directs the Secretary to adopt rules to implement the act.

II. Development

A. HB 08-1053 THE ELECTRONIC SUBMISSION OF PLATS TO A LOCAL GOVERNMENT ENTITY

- **Amends:**

- | | |
|-------------------|---------------------|
| ○ CRS § 15-10-501 | ○ CRS § 15-12-712 |
| ○ CRS § 15-10-502 | ○ CRS § 15-12-722 |
| ○ CRS § 15-10-503 | ○ CRS § 15-12-808 |
| ○ CRS § 15-10-504 | ○ CRS § 15-14 - 112 |
| ○ CRS § 15-10-505 | ○ CRS § 15-14-210 |
| ○ CRS § 15-12-602 | ○ CRS § 15-14-318 |
| ○ CRS § 15-12-607 | ○ CRS § 15-14-414 |
| ○ CRS § 15-12-611 | ○ CRS § 15-14-430 |
| ○ CRS § 15-12-705 | ○ CRS § 15-16-102 |

- CRS § 15-16-103
- CRS § 15-16-306

- **Summary:**

- This Bill permits any local government official/county surveyor who is in charge of the Survey Plat Records File and Index System for his/her jurisdiction to establish a program to accept plats for recording and filing by any electronic means deemed appropriate by such official/county surveyor.

B. HB 08-1141 SUFFICIENT WATER SUPPLIES FOR LAND USE APPROVAL

- **Amends:**

- CRS § 29-20-103
- CRS § 29-20-301
- CRS § 29-20-302
- CRS § 29-20-303
- CRS § 29-20-304
- CRS § 29-20-305
- CRS § 29-20-306

- **Summary:**

- This Bill recognizes the regional impact within and between river basins of securing an adequate supply of water to serve proposed land developments.
 - It is important that local governments receive reliable information regarding the adequacy of proposed developments' water supply, so that the local governments may make informed decisions about the issuance of development permits.
- The Bill requires applicants for real estate development permits, for developments with more than 50 units or single family equivalents (SFEs), to demonstrate that proposed water supply is sufficient and sustainable to serve the proposed development.
- This Bill requires any: county, home rule municipality, or statutory city, town, territorial charter city or city, before giving a preliminary or final approval of an application for rezoning, PUD, conditional or special use permit, subdivision, development or site plan or similar application for new construction of more than fifty units or SFEs to determine that the proposed water supply is sufficient and sustainable to serve the peak daily, monthly and yearly water supply requirements of the proposed development.
- To enable the applicable local government to make such determination, the applicant is required to submit:
 - Peak daily, monthly and yearly water supply requirements for the proposed development, identifying, in a report prepared by a registered professional engineer, all water needs for the proposed development.

- A letter from the state engineer commenting on the report prepared by the professional engineer and determining whether the proposed water supply is adequate.
- If the water is to be supplied by a water supply entity, a letter from the entity stating the water supply entity's commitment and ability to satisfy the water supply requirements of the proposed development. This letter must include a description of the physical source of the supply that will be used, the present demand on the water supply entity, the projected demand on the supply entity based on commitments for service not yet supplied and the amount of uncommitted firm supply the water supply entity has available for future commitments.

C. SB 08-034 AUTHORIZATION FOR COUNTY GOVERNMENTS TO CONSIDER TRANSPORTATION FACTORS IN REVIEWING AN APPLICATION FOR LAND USE APPROVALS IN CONNECTION WITH THE SITING OF A FACILITY FOR PERSONS WITH SPECIAL NEEDS

- **Amends:**
 - CRS § 30-28-115
- **Summary:**
 - In connection with an application for development approval of the siting of a new facility to be used exclusively as a group home for the aged, for persons with developmental disabilities, or for at-risk adults under the county's zoning or other land development regulations, this Bill authorizes the county to request the applicant of a land use approval (subdivision, PUD, zoning, or "other") to submit a transportation plan showing how the operators of the facility intend to meet the transportation needs of the residents of the facility.
 - The Bill further specifies that the sufficiency of the transportation plan *may* be considered by the country in reviewing the application.
 - However, the transportation plan may not, by itself, constitute grounds for denying the application.
 - This Bill applies to applications submitted after July 1, 2008.

D. SB 08-158 THE INCLUSION FOR URBAN RENEWAL PURPOSES OF UNINCORPORATED LAND WITHIN A COUNTY THAT IS CONTIGUOUS TO A PORTION OF AN URBAN RENEWAL AREA LOCATED WITHIN A MUNICIPALITY

- **Amends:**
 - CRS § 31-25-112.5
- **Summary:**

- This Bill permits an urban renewal plan, urban renewal project, or urban renewal area to include unincorporated territory outside the boundaries of a municipality but contiguous to a portion of the urban renewal area located within the municipality.
 - The Bill prohibits such territory from being included in the plan, project, or area without the consent of the Board of County Commissioners exercising jurisdiction over the unincorporated territory proposed for inclusion, as well as, the consent of each owner of real property within the unincorporated area proposed for inclusion.
 - In addition to the procedures for approval of a proposed urban renewal plan by the governing body of the municipality proposing the plan, the Bill imposes additional requirements that must be met for the inclusion of the unincorporated territory in the urban renewal plan, project or area.
- Any urban renewal plan may be modified with the approval of the Board of County Commissioners, the governing body, and the authority.
- The Bill permits an urban renewal authority, a municipality, and a county to enter into an intergovernmental agreement to further effectuate the purposes of the act.

III. Landlord and Tenant

A. HB 08-1356 LANDLORD TENANT RELATIONS

- **Amends:**

- | | |
|-------------------|-------------------|
| ○ CRS § 13-40-111 | ○ CRS § 38-12-506 |
| ○ CRS § 13-40-123 | ○ CRS § 38-12-507 |
| ○ CRS § 38-12-501 | ○ CRS § 38-12-508 |
| ○ CRS § 38-12-502 | ○ CRS § 38-12-509 |
| ○ CRS § 38-12-503 | ○ CRS § 38-12-510 |
| ○ CRS § 38-12-504 | ○ CRS § 38-12-511 |
| ○ CRS § 38-12-505 | |

- **Summary:**

- The purpose of the Bill is to clarify, simplify, modernize and revise the law governing the rental of dwelling units and the rights of obligations and landlords and tenants, while encouraging landlords and tenants to improve the quality of housing.
- This Bill prohibits a landlord or tenant who prevails in a forcible entry and detainer action from recovering attorney fees, unless the residential rental agreement contains a provision for either party to obtain attorney fees.
- The Bill creates a warranty of habitability in every rental agreement for a residential premises.

- In every rental agreement, the landlord is deemed to warrant that the residential premises is fit for human habitation.
- Bill established that the warranty of habitability is breached if:
 - (1) A residential premises is uninhabitable or unfit for the uses reasonably intended by the parties.
 - (2) The residential premises is in a condition that is materially dangerous or hazardous to the tenant's life, health, or safety; and
 - (3) The landlord has received notice of such condition described and failed to cure the problem within a reasonable time.
 - Bill establishes the notice a landlord must receive.
- Bill prohibits misconduct by a tenant or a person under the tenant's control from constituting a breach of the warranty.
- Bill prohibits a deficiency in a common area from rendering residential premises uninhabitable, unless it materially and substantially limits the tenant's use of his or her dwelling.
- Bill establishes that a residential premises is considered uninhabitable when it substantially lacks specified characteristics.
 - *I.e.* running water, heating facilities, electrical lighting, plumbing waterproofing/weather protection, and locks on exterior doors.
 - Bill permits a tenant in certain circumstances to assume responsibility for one or more of these characteristics.
- The Bill imposes upon every tenant of a residential premises a duty to use that portion of the premises within the tenant's control in a reasonably clean and safe manner.
 - Bill establishes what constitutes a failure to keep a premises in a reasonably clean and safe manner.
- Bill prohibits tenant from knowingly, intentionally, deliberately, or negligently destroying, defacing, damaging, impairing, or removing any part of a dwelling unit or knowingly permitting any person within their control to do so.
- Bill establishes a tenant's remedies for breach of the warranty of habitability, including self-help, termination of the rental agreement, injunctive relief, and damages.
- Bill establishes who may allege the breach, when the breach may be used as a defense, requirements for using the breach as a defense to a claim for possession, and defenses to the allegation of a breach.
 - Certain information is required related to the use of a breach of warranty of habitability as a defense to a claim for possession to be included in the summons for a forcible entry and detainer action.
- Bill prohibits a landlord from retaliating against a tenant who proves a breach of the warranty of habitability.
 - A landlord will be liable for retaliation only when the tenant proves that a landlord breached the warranty of habitability.

- When there is an action for possession of the premises where the landlord is seeking to terminate the tenancy for violation of the terms of the rental agreement, there is a rebuttable presumption in favor of the landlord that his or her decision to terminate is not retaliatory.
- Bill prohibits a landlord from removing or excluding a tenant from a residential premises without resorting to court process (with specified exceptions).
 - If a landlord willingly and unlawfully removes the tenant from the premises or willfully and unlawfully causes the termination of heat, running water, hot water, electric, gas, or other essential services, the tenant may seek any remedy available under the act or any other law.
- This Bill does not apply to the following situations:
 - (1) Residence at a public or private institution, if such residence is incidental to detention or the provision of medical, geriatric, education, counseling, religious, or a similar service.
 - (2) Occupancy under a contract of sale of a dwelling unit if the occupant is the purchaser, seller or a person who succeeds to his or her interest.
 - (3) Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization.
 - (4) Transient occupancy in a hotel or motel that lasts less than thirty (30) days.
 - (5) Occupancy by an employee or independent contractor whose right to occupancy is conditional upon performance of services for an employer or contractor.
 - (6) Occupancy by an owner of a condominium unit or holder of a proprietary lease in a cooperative.
 - (7) Occupancy in an unincorporated area of a country that does not receive water, heat and sewer services from a public entity and is rented for recreational purposes (*i.e.* hunting cabin, yurt, hut or other similar structure).
 - (8) Any relationship between the owner of a mobile home park and the owner of a mobile home situated in the park.
 - (9) Occupancy under a rental agreement covering a residential premises used by the occupant primarily for agricultural purposes.
- This act would take effect on September 1, 2008

IV. Residential

A. HB 08-1014 REQUIREMENT TO TRANSFER A WELL PERMIT UPON CONVEYANCE OF RESIDENTIAL REAL PROPERTY

- **Amends:**

- CRS § 38-30-102
- **Summary:**
 - This Bill recognizes the importance of accurate data regarding well ownership, in order for the Division of Water Resources in the Department of Natural Resources (Division) to account for wells in Colorado and ensure that they are properly constructed and maintained, with the concurrent goal of notifying well owners of any safety, health, water right, or stewardship issues pertaining to their well.
 - Currently, a substantial number of real estate transactions conveying ownership of wells are not reported to the division.
 - Beginning in 2009, this Bill requires that, either prior to or at closing, a buyer of residential real estate that includes a small capacity well or domestic exempt water well must complete a form notifying the division of the change in ownership of the well (a “Change of Ownership Form”).
 - However, if the well is an existing well that had not previously been registered with the division, the buyer must complete a Registration of Existing Well form.
 - The buyer is required to complete the Change of Ownership Form because the Form contains the buyer’s name and contact information.
 - This Bill also directs the Real Estate Commission to promulgate a rule to require the transaction contracts to include a Change of Ownership Form.
 - Additionally, the Bill requires the person who performs the closing services for the transaction to submit the completed Change of Ownership Form to the Division within 60 days after closing with as much information as is available. If there is no third party closer, then the buyer must submit the Form.
 - The Bill makes the Division responsible for obtaining the necessary information from the Buyer.
 - Under the Bill, the person responsible for the closing will not be liable for delaying the closing of the transaction in order to ensure that the buyer completes the form.
 - If the closing is delayed because the buyer did not complete the form, this Bill makes clear that neither the buyer nor the seller will have any claim under this Bill for relief against the buyer, seller, person who provided the closing services, or a title insurance company.
 - Attorneys representing sellers of residential property should consider adding a provision in a sale contract that gives the seller the right to complete the Change of Ownership Form at closing if the buyer fails to file the Form and require buyer to close based on the seller’s completion of the Form.

B. SB 08-192 RESTRICTIONS AGAINST CERTAIN PICKETING IN A RESIDENTIAL AREA – Sent to Governor on 5/15/08

- **Amends:**
 - CRS § 18-9-108.5

- **Summary:**
 - This Bill recognizes that the protection and preservation of the home is a compelling state interest and that residents in Colorado are entitled to enjoy a feeling of well-being, tranquility and privacy in their homes.
 - Targeted residential picketing may cause emotional disturbances and distress to residents and does not seek to disseminate a message to the general public, but rather to harass and intrude on the privacy of the targeted resident.
 - There are a number of alternative means of communication.
 - This Bill makes it a misdemeanor crime to: 1) engage in targeted residential picketing; or 2) carry in a residential area more than one sign or a sign larger than 2 feet by 3 feet.
 - However, before a violation can occur, this Bill requires that a previous warning has been issued.
 - The fine for the misdemeanor can be no more than \$5,000 dollars.
 - This Bill also permits a local jurisdiction to adopt a more restrictive measure.
 - The Bill makes clear that picketing while marching, without stopping in front or on either side of a residence, is not unlawful.
 - Vehicles or trailers used in target picketing may not park within three residences or three hundred feet of a residence that is the subject of target picketing.
 - When signage is affixed to a vehicle containing content related to the target picketing, there will be a presumption that the vehicle is being used in target picketing.
 - This Bill does not apply to transporting the sign from the person's residence or business to a vehicle.

V. Foreclosure

A. HB 08-1365 THE FORECLOSURE OF ASSESSMENT LIENS AGAINST TIME SHARE ESTATES

- **Amends:**
 - CRS § 38-33.3-316.5

- **Summary:**
 - This Bill deals with the concern regarding mass filings and the need for separate judgments for each week/portion of the time share estate.

- This Bill allows a unit owners' association foreclosing an assessment lien against a time share estate to join in the foreclosure multiple defendant obligors (person(s) liable for the assessment levied against a time share estate pursuant to section 38-33.3-316 or the record owner of the time share estate), junior lienors (as pursuant to CRS § 38-38-100.3(12): person(s) who is a beneficiary, holder, or grantee of a junior lien), or separate time share estates (as pursuant to 38-33-110(5): either an interval estate or a time-span estate) if:
 - (1) The foreclosure action involves a single common interest community;
 - (2) The foreclosure action is commenced by a single plaintiff;
 - (3) The default remedy provisions in the project instruments on which the foreclosure action is based are substantially the same for each defendant; and
 - (4) The claim against each defendant is a foreclosure of a lien for assessments
- In a foreclosure action involving time share estates in which multiple defendants have been joined, the Bill:
 - Requires a court to sever for separate trial, any claim of the complaint in which a defense or counterclaim is timely raised by a defendant.
 - Allows the plaintiff to name all defendants joined in the action in a single published notice when notice is required.
 - Specifies that the action is a single proceeding for purposes of filing fees and service charges.
- Notwithstanding that multiple obligors with separate time share estates may be joined in a single judicial foreclosure action, each time share estate foreclosed shall be subject to a separate foreclosure sale, and any cure or redemption rights with respect to such time share estate will remain separate.
- Under this Bill, the plaintiff is deemed to have waived any claims against the defendant for a deficiency remaining after the foreclosure of the lien for assessment and for attorney fees related to the foreclosure action.

B. HB 08-1402 ADDITIONAL PROTECTIONS FOR HOMEOWNERS FACING FORECLOSURE

- **Amends:**
 - CRS § 38-38-102.5
 - CRS § 24-32-719
- **Summary:**
 - This Bill requires a lender to give the borrower written notice at least 30 days in advance of a change in the interest rate or other factors affecting the size of a payment on a residential mortgage loan, and to

provide contact information for the lender's representative and the Colorado foreclosure hotline in case the borrower is unable to make regular payments after the change.

- In a hearing for a court order authorizing a foreclosure sale, this Bill establishes the sale date as 90 days in the case of certain residential mortgages if the debtor shows either that: 1) required documentation was not duly served on the debtor; or 2) that a representative of the debtor did not engage in good-faith loss mitigation efforts (defined as efforts to work with the borrower to extend or reconstruct the loan).
- The Bill repeals the 90-day delay provision after 3 years.
- Bill requires the filing of notices to the debtor and affidavits of compliance with good-faith loss mitigation efforts along with the notice of election and demand to initiate a public trustee's sale.
- This Bill excludes credit sales.
- The Bill also deals with outreach efforts to prevent foreclosure.
 - The Bill creates the Foreclosure Prevention Grant Fund to assist local housing authorities, public non-profit corporations, or private non-profit corporations in providing outreach and notice of foreclosure prevention assistance to person in danger of foreclosure and to communities with high foreclosure rates.

VI. Governments and Governmental Regulation

A. HB 08-1074 THE ELIMINATION OF PROVISIONS OF THE "OUTDOOR ADVERTISING ACT" RELATING TO DATES PRIOR TO WHICH NONCONFORMING ADVERTISING DEVICES MUST HAVE BEEN ERECTED

- **Amends:**

- CRS § 43-1-403
- CRS § 43-1-413

- **Summary:**

- This Bill amends the Outdoor Advertising Act, which regulates signs, billboards and other advertising along the highway system.
- Prior to this Bill, only those nonconforming advertising devices (advertising devices that were legal at the time of installment but are no longer permitted) erected before January 1, 1971 were allowed to be maintained.
- The Bill establishes that *any* nonconforming advertising device may continue to be maintained at the same location at which it was lawfully erected, eliminating the January 1, 1971 limitation.
- Thus, any device that was legal at the time of installment, whenever installment may have occurred, is considered a nonconforming advertising device and may remain.

B. HB 08-1125 ADDITIONAL REQUIREMENTS ON SPECIAL DISTRICTS WITH AUTHORIZED BUT UNISSUED GENERAL OBLIGATION DEBT UNDER THE “COLORADO LOCAL GOVERNMENT AUDIT LAW”

- **Amends:**
 - CRS § 29-1-605
 - CRS § 29-1-606
- **Summary:**
 - This Bill amends the Local Government Audit Law to require special districts to draft a report specifying the amount of authorized, but unissued, general obligation debt and any plans to issue that debt, as well as, to submit the audit report, or an exemption from audit, to the local government that approved the formation of the special district.

C. HB 08-1212 THE CONTINUATION OF THE REAL ESTATE COMMISSION, AND, IN CONNECTION THEREWITH, REPEALING THE REQUIREMENT FOR GROUP ERRORS AND OMISSIONS INSURANCE, AUTHORIZING SERVICE OF PROCESS BY MAIL, REPEALING THE LICENSURE OF REAL ESTATE SALESPERSONS, MODIFYING CONTINUING EDUCATION REQUIREMENTS, ALTERING THE MEMBERSHIP OF THE COMMISSION, REPEALING THE LICENSING RECIPROCIITY AGREEMENT, EXPANDING THE GROUNDS FOR DISCIPLINE, AUTHORIZING NAME-BASED CRIMINAL HISTORY BACKGROUND CHECKS, REQUIRING FINES TO BE DEPOSITED IN THE GENERAL FUND, AND ALTERING THE HIRING AUTHORITY FOR EMPLOYEES OF THE DIVISION OF REAL ESTATE

- **Amends:**
 - CRS § 12-61-123
 - CRS § 24-34-104
 - CRS § 12-61-103.6
 - CRS § 12-61-107
 - CRS § 12-61-303
 - CRS § 12-61-101
 - CRS § 12-61-102
 - CRS § 12-61-103
 - CRS § 12-61-103.5
 - CRS § 12-61-105
 - CRS § 12-61-109
 - CRS § 12-61-110
 - CRS § 12-61-110.8
 - CRS § 12-61-113
 - CRS § 12-61-114
 - CRS § 12-61-117
 - CRS § 12-61-118
 - CRS § 12-61-119
 - CRS § 12-61-203.5
 - CRS § 12-61-702
 - CRS § 12-61-718
 - CRS § 12-61-802
 - CRS § 12-61-803
 - CRS § 12-61-808
 - CRS § 12-61-811
 - CRS § 12-61-905
 - CRS § 12-61-912
 - CRS § 6-1-1103
 - CRS § 8-70-136
 - CRS § 29-26-101
 - CRS § 12-61-110.5
 - CRS § 12-61-105
 - CRS § 12-61-103
 - CRS § 12-61-113

- CRS § 12-61-110
- CRS § 12-61-111
- CRS § 12-61-204
- CRS § 12-61-408
- CRS § 12-61-615
- CRS § 12-61-106

- **Summary:**

- This Bill continues the existence of the Real Estate Division (DRE) (including the Real Estate Commission), which was due to sunset on July 1, 2008, until July 1, 2017. The DRE will continue, with the changes listed below.
 - Repeals the requirement that the Commission provide a group errors and omissions insurance policy.
 - Error and omission insurance remains required for every licensee, but the DRE is not longer required to arrange a group policy.
 - Authorizes service of process on real estate brokers by mail rather than upon the Secretary of State.
 - Previously, if personal service to the individual was not possible, service was to be made on the Secretary of State. Under this Bill, if personal service cannot be made, service may be made on a registered agent of the broker, and if the registered agent cannot be reached, then service may be made be made by registered or certified mail.
 - Repeals the licensure of real estate salespersons
 - This means that there are only licensed real estate brokers.
 - Increases the Continuing Education requirements for real estate brokers.
 - Expands the grounds for discipline.
 - A license can now be revoked if within the last 5 years the licensee has had his or her license revoked, suspended for fraud, deceit, material misrepresentation, theft or the breach of fiduciary duty in this state or another state.
 - This includes licenses for mortgage brokers, appraisers, real estate brokers, insurance producer, attorney, securities broker, investment advisors, and investment traders.

D. HB 08-1275 CERTAIN ORGANIZATIONS THAT INCORRECTLY FILED THE ANNUAL REPORT REQUIRED TO MAINTAIN PROPERTY TAX-EXEMPT STATUS

- **Amends:**

- CRS 39-3-137
- CRS 39-9-109

- **Summary:**

- Under this Bill, any organization with tax exempt status that owes taxes on real or personal property, will not be required to pay the

balance of the taxes owed, only if the organization meets the following requirements:

- The organization is a religious, charitable or education organization exempt from general taxation.
 - The organization has been granted tax-exempt status.
 - The organization has filed an annual report required for the continuation of property tax-exempt status, but the report was determined to be incomplete or otherwise incorrect when filed; and
 - The organization was denied tax-exempt status as a result of the incomplete or incorrect report and received a property tax bill for those years.
- The waiver of the balance of taxes owed is contingent on the State Board of Equalization reestablishing the organization's tax-exempt status.

E. SB 08-062 THE AUTHORITY OF CERTAIN AGENCIES WITHIN THE DEPARTMENT OF REGULATORY AGENCIES TO SHARE 103 INFORMATION REGARDING MISCONDUCT BY ENTITIES LICENSED BY THE DEPARTMENT WITH OTHER LICENSING AGENCIES WITHIN THE DEPARTMENT

- **Amends:**

- CRS § 11-30-117.5
- CRS § 11-44-107
- CRS § 11-102-305
- CRS § 11-102-306

- **Summary:**

- This Bill authorizes the State Commissioner of Financial Services to inform a licensing agency within the Department of Regulatory Agencies of possible misconduct by a person or entity licensed by said agency.
 - This means that the State Commissioner is authorized to give information relating to the misconduct of persons regulated by the Division of Real Estate (*i.e.* brokers or salespersons) to the Division of Real Estate.
 - Further, the Commissioner is authorized to give the DRE any records or information relating to the misconduct.

VII. Environmental/Sustainability

A. HB 08-1099 MODIFICATION TO ENVIRONMENTAL CONTROL PROVISIONS, AND, IN CONNECTION THEREWITH, AUTHORIZING THE WATER QUALITY CONTROL COMMISSION, INSTEAD OF THE STATE BOARD OF HEALTH, TO HEAR DRINKING WATER PENALTY

APPEALS; MODIFYING THE PROCEDURES FOR WATER DISCHARGE PERMIT APPLICATIONS; AND AUTHORIZING THE SOLID AND HAZARDOUS WASTE COMMISSION, INSTEAD OF THE STATE BOARD OF HEALTH, TO ADOPT RULES REGARDING, AND SET THE BOND AMOUNT FOR, WASTE TIRE HAULERS.

- **Amends:**

- CRS § 25-1-114.1
- CRS § 25-8-202
- CRS § 25-8-502
- CRS § 25-15-302
- CRS § 25-17-204

- **Summary:**

- The Bill authorizes the Water Quality Control Commission, rather than the State Board of Health, to hear appeals of penalties imposed for violations of minimum general sanitary standards and regulations for drinking water.
- The Bill eliminates the requirement that the Division of Administration (Division) in the Department of Public Health and Environment notify a water discharge permit applicant within 45 days after receipt of the application that the application is incomplete.
- Bill modifies several procedures related to water discharge permit applications.

B. SB 08-037 INCREASED FLEXIBILITY OF THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT IN ENFORCING THE HAZARDOUS WASTE LAWS

- **Amends:**

- | | |
|----------------------|--------------------|
| ○ CRS § 25-15-101 | ○ CRS § 25-15-323 |
| ○ CRS § 25-15-317 | ○ CRS § 25-15-324 |
| ○ CRS § 25-15-318(2) | ○ CRS § 25-15-325 |
| ○ CRS § 25-15-318.5 | ○ CRS § 25-15-302 |
| ○ CRS § 25-15-319 | ○ CRS § 24-30-1404 |
| ○ CRS § 25-15-320 | ○ CRS § 24-75-102 |
| ○ CRS § 25-15-321(6) | ○ CRS § 25-17-106 |
| ○ CRS § 25-15-321.5 | ○ CRS § 25-17-203 |
| ○ CRS § 25-15-322 | ○ CRS § 30-20-120 |

- **Summary:**

- This Bill was created because certain environmental remediation projects may leave residual contamination on the subject properties at levels which have been determined to be safe for specific uses, but not all uses, and may incorporate engineered structures which must be maintained or protected against damage to remain effective.

- This Bill authorizes the creation, modification and termination of a notice of environmental use restrictions by the Department of Public Health and Environment for property that contains residual environmental contamination after completion of an environmental remediation project.
 - Colorado law currently provides that “Environmental Covenants” (*i.e.* restrictive covenants) may be used by the owners of such properties in such cases to provide an enforceable means of ensuring the conduct of any required maintenance, monitoring and operation thereof, and the enforcement of any restrictive uses of such lands.
- This Bill expands the law to allow the Colorado Department of Public Health and Environment to “encumber” such properties using instruments entitled “Restrictive Notice” or “Notice of Environmental Use Restrictions” without obtaining the signature of the owner of such affected properties.
 - This may be done at the request of such owners or may be accomplished unilaterally by the Department.
- Notice requirements:
 - The Bill requires the Department to make a good faith attempt to reach an agreement with the owner of the subject property regarding a consensual covenant or notice, and requires prior written notice:
 - to all persons holding an interest of record in the real property that will be subject to the Restrictive Notice;
 - to all persons known to have an unrecorded interest in the property; and
 - to all affected persons in possession of the property prior to the creation/recording thereof.
 - Bill requires notices of environmental use restrictions, including modifications and terminations, to be recorded in the real estate records.
 - It authorizes the use of a notice of environmental use restrictions in lieu of an environmental covenant.
 - Notice is binding on current and subsequent owners of the affected land.
- The Bill requires the Department to provide a comment period of 30 days prior to the recording of such Restrictive Notice against the affected property.
- The Bill provides that the Department may not issue a Restrictive Notice against a parcel of land involved in a remediation project which is not owned by a person who is being required to remediate the contamination unless such person consents in writing.
- The Bill authorizes the Solid and Hazardous Waste Commission to set annual fees by rule for generators of hazardous waste and for facilities that treat, store, or dispose of hazardous waste.

- Specifically, fees shall be set at a level that, when combined with an appropriate share of available federal grant moneys, will generate revenues approximating the actual reasonable program costs attributable to such facilities.
 - Exemptions:
 - Bill exempts professional service contracts for superfund remediation, Brownfields redevelopment, and natural resource damage repair, replacement, or restoration from the requirement that the contracts be executed and encumbered within 6 months after the date on which the appropriation that includes the project for which the professional services are required becomes law.
 - Bill exempts appropriations for the Superfund (the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980), Brownfields, and natural resource damage programs from the requirement to expend appropriations within the fiscal year of the appropriation.

C. SB 08-117 LOCAL GOVERNMENT TREATMENT OF SOLAR ENERGY DEVICE PERMITS

- **Amends:**
 - CRS § 30-28-113
 - CRS § 31-15-602
- **Summary:**
 - This Bill amends existing law to prohibit cities and counties from charging a fee in excess of \$150 for a building permit to install a solar energy device.
 - The purpose of this Bill is to provide statewide uniformity and certainty regarding the fees that can be assessed for permitting an active solar device.

D. HB 08-1069 A PROHIBITION AGAINST OPERATING A MOTOR VEHICLE ON PUBLIC LAND UNLESS THE PUBLIC LAND IS AUTHORIZED FOR SUCH USE BY THE CONTROLLING LAND MANAGEMENT AGENCY, AND, IN CONNECTION THEREWITH, AUTHORIZING PEACE OFFICERS TO ENFORCE THE PROHIBITION

- **Amends:**
 - CRS § 33-6-124
 - CRS § 33-14.5-108
- **Summary:**
 - The purpose of this Bill is to reverse the long-standing practice regarding motor vehicle travel restrictions on federal public land. Instead of being authorized except where restricted, motor vehicle

travel will be prohibited unless explicitly authorized (by either: maps, signs, or route markers).

- The new state law prohibitions are not intended to restrict either:
 - The Wildlife Commission’s authority to regulate motor vehicle traffic on lands subject to the Commission’s jurisdiction; or
 - Any valid motor vehicle travel authorizations that Colorado businesses or individuals may currently have or may acquire in the future.
- This Bill prohibits a person from operating a motor vehicle on public lands, trails, or roads, unless the land is signed or otherwise authorized for such use by the controlling land management agency.
 - A violation of this prohibition is a misdemeanor, punishable by a fine of \$100, and, if the person was engaged in hunting, fishing, trapping, or a related activity, a penalty of 10 hunting license suspension points.
 - If the violation takes place in a federal wilderness area, the Bill establishes a fine of \$200, and, if the person was engaged in hunting, fishing, trapping or a related activity, a penalty of 15 hunting license suspension points.
- This Bill allows peace officers to enforce the prohibition

VIII. Colorado Common Interest Ownership Act

A. HB 08-1135 COMMON INTEREST COMMUNITIES, AND IN CONNECTION THEREWITH, INVALIDATING COVENANTS THAT PROHIBIT BUILDING MODIFICATION TO ACCOMMODATE PERSONS WITH DISABILITIES, REQUIRING DUE PROCESS IN PENALTY ASSESSMENT PROCEDURES, AND PROVIDING FOR ALTERNATIVE DISPUTE RESOLUTION

- **Amends:**
 - CRS § 38-33.3-106.5
 - CRS § 38-33.3-209.5
 - CRS § 38-33.3-124
- **Summary:**
 - This Bill modifies provisions of the Colorado Common Interest Ownership Act.
 - The Bill invalidates any declarations, by-laws, rules or regulations of a common interest community that would prevent reasonable modification to a unit to afford a person with disabilities full use and enjoyment of the unit in accordance with the Federal Fair Housing Act of 1968.
 - The Bill calls for “due process” for the imposition of fines by a common interest community.

- Bill requires a common interest community to adopt and follow a written policy governing the imposition of fines and requires a “fair and impartial fact finding process” on whether the alleged violation actually occurred and whether the unit owner is the one who should be held responsible.
- Bill articulates that the process may be “informal” but must guarantee the unit owner notice and an opportunity to be heard.
- The “impartial decisionmaker” is defined as a “person or group of persons who have the authority to make a decision and do not have any direct personal or financial interest in the outcome.”
 - A possible interpretation of the purpose of this is to take the decision away from the HOA board members who may be using the enforcement process to carry out their own personal goals.
 - If the informal decision maker determines that the unit owner should not be responsible, the common interest community is prohibited from charging that unit owner with the association’s costs or attorneys’ fees incurred in asserting the claim.
- The Bill encourages the use of alternative dispute resolution for any disputes arising between associations, unit owners, managers, declarants or any other parties.
 - Any controversy arising between an association and a unit owner arising out of the provisions of this bill may be submitted to arbitration, on agreement of the parties, prior to the commencement of any legal proceedings.
 - This amends the prior law that required mediation in the event that either party requested it. Now, mediation will occur only by the agreement of the parties.
 - The mediation agreement may be presented to the court as a stipulation.
 - Either party may terminate the mediation process without prejudice.
 - If either party violates the stipulation, the other party may apply immediately to the court for relief.
 - The declaration, bylaws or rules of the association may specify that disputes shall be resolved under the Uniform Arbitration Act or by another means of dispute resolution under the Dispute Resolution Act.

IX. Oil & Gas

A. HB 08-1414 AN INCREASE IN THE REGULATION OF THE DISPOSAL OF EXPLORATION AND PRODUCTION WASTES FROM OIL AND GAS OPERATIONS AT COMMERCIAL SOLID WASTE FACILITIES PURSUANT TO RULES BY THE SOLID AND HAZARDOUS WASTE COMMISSION

- **Amends:**
 - CRS § 30-20-109
 - CRS § 30-20-103.5

- **Summary:**
 - This Bill requires the Solid and Hazardous Waste Commission to promulgate rules for the disposal of exploration and production wastes from oil and gas operations at commercial solid waste facilities. These rules include:
 - Mandatory set-backs from occupied structures and designated outside activity areas of at least one-half mile;
 - Mandatory liners to prevent the migration of waste to ground water;
 - Waste analysis and reporting requirements to ensure that only exploration and production wastes are disposed of at such facilities;
 - Restrictions to access to the facilities in order to protect the public and wildlife;
 - Contingency plans to respond to emergencies; and
 - Financial assurance requirements for closure and reclamation costs.
 - This Bill requires existing facilities that accept exploration and production wastes to:
 - (1) Submit an application to amend the facilities' certificate of designation, within 3 months after the rules become effective; and
 - (2) Comply with the rules, other than the set-back requirements, within 24 months after the rules become effective.
 - Bill allows a local government to issue or amend a certificate of designation despite a contrary recommendation by the Department of Public Health and Environment if that recommendation is based solely on the public health or environmental impacts of the facility other than those identified pursuant to the Department's technical review.

B. SB 08-041 THE OWNERSHIP OF MINERALS BENEATH LAND ACQUIRED BY GOVERNMENTAL ENTITIES, AND, IN CONNECTION THEREWITH, CLARIFYING THAT A GOVERNMENTAL ENTITY MAY ACQUIRE INTERESTS IN SUCH MATERIALS THROUGH CONDEMNATION ONLY TO THE EXTENT REQUIRED FOR SUBSURFACE SUPPORT

- **Amends:**
 - CRS § 38-1-105
 - CRS § 43-1-203
 - CRS § 43-1-208
 - CRS § 43-1-209

- **Summary**
 - This Bill clarifies existing language in Colorado statutes regarding condemnation and eminent domain.
 - Specifically, it makes clear that the Transportation Commission, any other governmental entity acquiring land for road, highway or mass transit purposes, or any person or entity acquiring an easement or right-of-way, may not acquire interests in oil, natural gas, or other mineral resources beneath the land acquired unless such acquisition is necessary for subsurface support.
 - In other words, unless the acquiring authority determines that any oil, gas or mineral is necessary for subsurface support of the real property being condemned; such acquiring authority obtains no title to any oil, gas, or other mineral resources in the acquisition of the condemned property.

C. SB 08-202 OIL AND GAS OPERATIONS, AND, IN CONNECTION THEREWITH, PRESERVING THE COLORADO OIL AND GAS CONSERVATION COMMISSION’S AUTHORITY TO REGULATE OIL AND GAS OPERATIONS AND LIMITING METROPOLITAN DISTRICTS’ POWER TO FINANCE THE PAYMENT OF INCREMENTAL DIRECTIONAL DRILLING COSTS TO OIL AND GAS WELLS DRILLED IN THE GREATER WATTENBERG AREA – Sent to Governor on 5/12/08

- **Amends:**
 - CRS § 24-65.5-103.5
 - CRS § 24-65.5-105
 - CRS § 32-1-1004
- **Summary:**
 - This Bill is concerned with preserving the Colorado Oil and Gas Commission’s authority to regulate oil and gas operations and limiting metropolitan districts’ power to finance the payment of incremental directional drilling costs to oil and gas wells drilled in the Greater Wattenberg area.

X. Taxation

A. HB 08-1353 IMPLEMENTATION OF ADDITIONAL REQUIREMENTS TO VERIFY THE VALIDITY OF A STATE INCOME TAX CREDIT CLAIMED BY A TAXPAYER FOR DONATING A CONSERVATION EASEMENT IN THE STATE

- **Amends:**
 - CRS § 12-61-702
 - CRS § 12-61-702
 - CRS § 12-61-719
 - CRS § 12-61-721

- CRS § 24-33-112
- CRS § 24-34-104
- CRS § 39-21-113
- CRS § 39-22-522

- **Summary:**

- This Bill recognizes that Colorado's conservation easement tax credit program was designed to give landowners an incentive to preserve their land for conservation and other values that would be eliminated or compromised by development.
- Bill requires that an appraiser who conducts an appraisal of a conservation easement submit a copy of the appraisal to the Division of Real Estate (Division), rather than the Department of Agriculture and the Department of Natural Resources.
 - The appraisal must be submitted within a specified time and with an affidavit containing specified information relating to the appraisal, the appraiser and the easement being appraised.
- The Bill authorizes the Board of Real Estate Appraisers (Board) to investigate the activities of any appraiser who submits an appraisal and requires the Board to conduct the investigation upon receiving a written complaint from any person.
- The Bill gives the Board authority to take disciplinary action against appraisers who do not meet specified requirements relating to appraisals of conservation easements.
- The Bill creates a fee to be charged for each appraisal submitted to the Division to provide for the costs of administering the additional requirements.
- Bill creates the Conservation Easement Oversight Commission (Commission)
 - Bill places a number of requirements on the Commission in reviewing conservation easement transactions.
- The Bill also modifies the existing provisions that allow the executive director of the DOR to require a second appraisal for a conservation easement.