Legislative Review ~2017~
The 2017 legislative session was incredibly intense, active, and challenging by many accounts. It required both political parties to find agreement on the solutions to substantial problems facing Colorado, as the Democrats again controlled the House and the Republicans controlled the Senate. This busy legislative environment offered plenty of opportunities for debate over both partisan bills and stakeholder-built compromises.

This year, CAR worked with the House and Senate leadership of both parties, our industry partners, and the business community to enact key pieces of priority legislation. HB-1279 reforms the construction litigation environment that has stifled condo and townhome development in Colorado. Under the bi-partisan compromise, at least four years in the making, homeowners will now have a choice in whether or not they pursue litigation that could affect their ability to sell or refinance their home.

SB-215 continues the Division of Real Estate and the Real Estate Commission. CAR was actively involved from the very beginning to define the components of the legislation that will continue to regulate our members for the next decade. The bill creates a definition of standard forms used in real estate transactions and gives the Real Estate Commission flexibility to publicize rules that determine how brokers can demonstrate their knowledge and experience to become managing brokers. The bill also amends existing law on referral fees to conform to federal law and allows broker licenses to be renewed uniformly on December 31st, rather than varying calendar anniversary dates.

CAR also worked diligently this year to prevent a few bad ideas from becoming permanent public policy. From unnecessary publication of broker commissions on marketing materials to increased fees and taxes on real estate transactions, CAR was there to inform policymakers on why these bills could have detrimental effects on the real estate industry. As always, it is absolutely crucial that we strive to take proactive stances on these and any other issues that are important to us while continuing to be the voice for real estate in Colorado.

The Colorado Association of REALTORS® 2017 Legislative Policy Committee (LPC) sought to adhere to the goals set forth by its Legislative Policy Statements. The 2017 Policy Statements, approved by the Board of Directors, establish guidelines to support legislation which ensures economic vitality, provides jobs and housing opportunities, preserves the environment, protects property owners, and builds better communities. Members of the LPC actively participate in subcommittees to review and recommend action on specific bills that fall within these guidelines. There were 37 active and committed REALTOR® members on the LPC this year – representing local boards and associations across the state. Both commercial and residential REALTORS® were represented. As the gavel went down on May 10, 2017, in each chamber of the General Assembly, the LPC had actively reviewed 87 bills and took a position on 44 of them.

Lastly, CAR would like to extend our sincere gratitude to Representatives Alec Garnett, Lori Saine, Senate Minority Leader Lucia Guzman, and Senator Jack Tate for sponsoring HB-1279 and Representative Matt Gray and Senator Kevin Priola for sponsoring SB-215. There were also many other legislators that deserve our heartfelt appreciation for their dedication to Colorado and REALTOR® interests. On behalf of REALTORS® across Colorado – Thank you!
Top Issues

Business & Taxation:
A vibrant economy creates jobs and expands the tax base. CAR closely monitors legislation which affects economic vitality and business competitiveness.

HB-1310 – Residential Landlord Application Screening Fee –
The bill would have limited the tenant application screening fee that a landlord could charge to a prospective tenant to only cover actual costs. Additionally, landlords would have been required to provide tenants who paid the fee a disclosure of anticipated expenses or an itemized receipt of expenses incurred. If the fee exceeded the actual costs, the landlord would have been required to return the overage to the tenant and a penalty would have been established for landlords that did not comply with these requirements.

CAR opposed this bill because it created unduly burdensome regulations on landlords, especially when many of them already provide tenants a receipt in their normal operating procedures. Moreover, market forces might be a better deterrent for bad actors that are not currently providing these receipts to prospective tenants.

The actual cost in the legislation does not cover the complete picture of costs because it does not include the employee and, often, third party verification time to process receipts. That portion of costs would likely be passed onto the consumer and increase the costs of rent instead of serving to lower fees. The liability for non-compliance created by this legislation was not consistent with similar topical statutes, such as security deposit notice and cure provisions.

Position: OPPOSE
Status: Postponed Indefinitely by Senate State, Veterans, & Military Affairs Committee

HB-1358 – Disclose Amounts Payable To Real Estate Brokers –
This bill would have required a broker in a real estate transaction to disclose their commission in writing for any sale or lease of real estate, either as part of the contract or in another document. Brokers would also have been required to disclose their fees or the basis for calculating their fees on all marketing materials relating to any specific property, including on-line multiple listing services (MLS).

CAR led the effort to defeat this bill because it was initiated by one company to codify its own business model and improve its bottom line by recommending legislation that would force its business plan on an entire industry. HB-1358 did not provide any additional information to consumers that are not already available to them. Fees are disclosed to all brokers through the MLS among all parties and their brokers through their respective brokerage agreements. Further, a real estate commission is completely voluntary, negotiable, and often varies depending on the type of transaction. Consequently, broker compensation and fees are already transparent to the appropriate consumers – the parties to the real estate transaction.

As expected, this legislation was viewed as highly unnecessary and, as a result, died in the first committee of reference. In fact, several committee members from both sides of the political aisle conveyed that they believe the free market should be allowed to work between flat-free and full service brokers/agents, and further, that government should not be asked to intervene on behalf of one company.

Position: OPPOSE
Status: Postponed Indefinitely by Business Affairs and Labor Committee

SB-132 Revised Uniform Law On Notarial Acts – SB-132 repeals the current state laws regulating notaries public and enacts the national Uniform Law Commission’s Revised Uniform Law on Notarial Acts. In Colorado, the Secretary of State (SOS) commissions notaries, investigates complaints, conducts trainings and on-line exams, and reviews vendor applications. The bill was amended a few times throughout the legislative process to address modernizing notary responsibilities, facilitate electronic recording processes, and recognize notarial acts from other jurisdictions.

CAR supports the concept of electronic and remote notarization as an innovation that could be a good business practice for real estate transactions. This legislation addresses the technology that could be forthcoming in the future, and CAR was involved in a large stakeholder process to ensure that the legislation did not allow remote notarization to cause any difficulties with real estate transactions, especially those that cross state jurisdictional lines.

In this process, CAR also considered the potential concerns by the SOS’s office, charged with implementing the notarial practice changes and the regulation of notaries. CAR worked with several groups to ensure that rules are not promulgated for remote notarization prior to studying the issues thoroughly and understanding any potential challenges or obstacles that need to be resolved prior to enacting remote notarization. Examples of such potential hurdles could include fraudulent or credible witness
complications and concerns that remote notary transactions could make Colorado property subject to the laws of other states instead of Colorado law.

**Position:** AMEND  
**Status:** Signed by the Governor

**SB-285 Downtown Development Authorities Fairness Act**  
SB-285 would have made several changes to statues that govern Downtown Development Authorities (DDA) created on or after January 1, 2018. First, it would have required any DDA development plan that includes tax-increment financing (TIF) to include representatives from counties, school districts, and special districts whose property taxes are allocated under the plan to serve on a DDA Board of Directors. Moreover the legislation would have required notification and negotiation of the intergovernmental agreement to regulate the sharing of incremental property tax revenue between the DDA, the municipality, and the taxing entities prior to implementation of the development plan. If the parties could not find agreement in 120 days, they were required to pursue mediation.

CAR opposed this bill because it made DDAs harder to implement and initiate in the future. Like prior legislation aimed at reforming urban renewal projects, this legislation would have taken away the flexibility of municipalities to reduce blight, and reinvigorate poorly performing geographic locations that are no longer providing economic value and meeting the community needs of local citizens. The legislation would have placed additional regulations on an existing process that already has plenty of oversight and it would have restrained this useful economic development tool for many local communities.

**Position:** OPPOSE  
**Status:** Postponed Indefinitely by Senate Finance Committee

**Housing:**

CAR values the importance of affordable housing and homeownership incentives which can enhance and revitalize communities.

**HB-1279 Construction Defect Actions Notice Vote Approval**  
CAR, along with the Homeownership Opportunity Alliance, championed compromise legislation that represents a good first step in the right direction to build more attainable housing for all Coloradans, while also protecting homeowners and giving them a voice in whether or not to pursue litigation. After more than four years of negotiations on construction litigation reform, we are thrilled to announce that Governor Hickenlooper signed the bill on May 23rd.

The informed consent bill does not prevent individual owners who have a legitimate construction issue from seeking a legal remedy. But, more importantly, it protects homeowners by ensuring that unit owners are aware of a potential lawsuit that could impact selling or refinancing their home. The legislation requires a majority of homeowners to approve initiating a legal action against a builder rather than leaving that decision solely to a homeowner’s association board.

HB-1279 also includes an opportunity for builders and homeowners to meet and attempt to resolve any disputes instead of immediately pursuing litigation. This bill could help reduce the frequency and magnitude of construction lawsuits and may allow the market to start building the attainable housing product that Colorado citizens need.

Given the lack of attainable housing in Colorado, and especially in the Denver Metro area, CAR believed the statutory environment demanded a policy reform that could enable young professionals, new families, and seniors who want to downsize to be able to recognize the social benefits of owning a condo or townhome. Colorado has one of the lowest unemployment rates in the country. HB-1279 could give employers the confidence they need to maintain their business operations or choose to relocate their businesses to Colorado because now their employees could seek attainable housing options that allow them to plant roots and become active and contributing members of their local communities.

A special thank you to Colorado REALTORS® who participated in the Calls-for-Action over the years to help us get the bill through the legislature in 2017; it is your continued engagement that helped us work with legislators to reach a successful outcome this year.

**Position:** SUPPORT  
**Status:** Signed by the Governor

**HB-1309 Doc Fee To Fund Affordable Housing**  
HB-1309 would have doubled the existing documentary fee for the recording of real estate deeds and instruments, allocating half of that money to the county treasurer and allocating the other half to the Colorado Housing and Finance Authority to create a housing investment fund to support new and existing affordable housing programs.

CAR is an affordable housing advocate. In fact, we have supported several legislative initiatives designed to create
more affordable housing options, including: the creation and extension of the state Low Income Housing Tax Credit (LIHTC) program; legislation that allocated a portion of the state's unclaimed property trust fund to support programs that provide rental assistance and promote construction and rehabilitation of low-income rental housing; and last year, CAR championed legislation to create first-time homebuyer savings accounts to help Coloradans save for purchasing their first home. Moreover, CAR has donated more than $7 million through the Colorado Association of REALTORS® Housing Opportunity Foundation (CARHOF – now CRF) to promote safe, decent, and affordable housing for all in Colorado.

Although REALTORS® clearly understand the need for affordable housing in Colorado, one of our bedrock principles is that you cannot make housing more affordable by making it more expensive. HB-1309 had several flaws:

First, documentary fees hurt the very families they are intended to help because such a fee is regressive. These fees disproportionately impact low-to-moderate income earners by asking them to spend a much larger percentage of their income on such fees than higher income earners. It also creates a barrier to homeownership. Down payment funds, including closing costs, remain a significant barrier to homeownership, especially for low-to moderate-income households.

Second, real estate documentary fees are not reliable funding sources because they are extremely sensitive to market forces. The frequency of these transactions and the value of property vary in relation to the strength of the economy, which makes them a poor revenue source to consistently fund the affordable housing needs of Coloradans. Additionally, these documentary fees are narrowly based only on the small percentage of residents in a jurisdiction that move into a new home each year. Unlike a sales or income tax that is more broadly based, the number of residents that make changes in their home ownership each year is relatively small compared to the rest of the population that is renting or already owns a home in which they currently reside.

Finally, documentary fees are likely unconstitutional. The Colorado Supreme Court has weighed in on the issue of taxes versus fees, and ruled that fees levied must be directly related to the services being performed. New fees that pay or fund something not directly related to the cost of service are actually taxes, and as such, violate TABOR’s requirement that citizens are entitled to vote on new taxes.

Position: OPPOSE
Status: Postponed Indefinitely by State, Veterans, & Military Affairs Committee

---

SCR 002 – Real Estate Transfer Tax For Affordable Housing – SCR-002 would have removed the prohibition in TABOR on new or increased transfer tax rates on real property and established a transfer tax of 1/10th of one percent of the value of the real property in the deed for the privilege of transferring the title to real property.

First, transfer taxes, like documentary fees, raise the cost of transactions and those increased costs hurt the very families they are intended to help. These taxes disproportionately impact low-to-moderate income earners, first-time home buyers, and seniors – those that can least afford it – by asking them to spend a much larger percentage of their income on transfer taxes.

For example, a 1% transfer tax on a home valued at $205,000 would cost $2,050 in transfer taxes. That tax creates a barrier to homeownership. Down payment funds, including closing costs or fees, remain a significant barrier to homeownership, especially for first-time homebuyers who have no equity from a prior home sale to put towards the transfer tax costs and for lower income earners who responsibly save money to purchase a house.

Second, real estate transfer taxes, like documentary fees, are not reliable funding sources. Real estate transfer taxes and documentary fees are extremely sensitive to market forces. The frequency of these transactions and the property value vary in relation to the strength of the economy, which makes them a volatile revenue source to consistently fund the affordable housing needs of Coloradans.

Position: OPPOSE
Status: Postponed Indefinitely in Senate Agriculture, Natural Resources, and Energy Committee

---

Regulatory:

CAR believes strongly in legislation aimed at protecting the ability to own, use, and transact real estate, taking great interest in the state of our industry.

SB-215 – Sunset Licensed Real Estate Brokers & Subdivision Developers – Every 10 years, the Division of Real Estate and the Real Estate Commission (Commission) are up for review at the Legislature. In 2017, CAR was actively involved from the very beginning to define the components of the legislation that will continue to regulate our members for the next decade.
CAR amended the bill several times throughout the legislative process to improve the bill for Colorado REALTORS®. First, CAR successfully removed the Division of Regulatory Agencies (DORA) Sunset Report recommendations that our members told us they did not like. These included Recommendation 9, which made changes to the development of the annual update course, and Recommendation 2 that suggested attorneys should be more involved in transactions, under attorney-client relationships, when brokers use standard forms – a suggestion that contradicted longstanding legal precedent under the Conway Bogue decision.

Next, CAR worked with stakeholders in the Senate to do two things: first, retain language that conforms Colorado law with RESPA while maintaining protections against referral fees. Second, remove unnecessary and restrictive language concerning requirements for the new property manager seat on the Real Estate Commission.

Finally, in the House, CAR worked with stakeholders to provide a necessary statutory definition for “standard forms” used in real estate transactions (current statute does not define standard forms or provide guidance about using standard forms). We also ensured the Real Estate Commission has the necessary flexibility to disseminate rules that determine the methods by which brokers can demonstrate their knowledge and experience to become managing brokers.

**Position: SUPPORT**

**Status:** Signed by the Governor

---

**HB-1220 – Prevent Marijuana Diversion To Illegal Market** – HB-1220 places limits on the number of marijuana plants that can be possessed or grown on a residential property to 12. Large residential marijuana grows and the manufacturing operations they often bring with them have many consequences, including obvious health and safety concerns, an increase of both human and automobile activity, extensive odors, and potential stigmatization of adjacent properties. All of which are inconsistent with residential neighborhoods.

Among 28 other states that have legalized marijuana for adult or medicinal use, 12 states ban home cultivation altogether, and no other state permits home grows of more than 16 plants. Large scale home grows of more than 16 plants more appropriately belong in an agricultural or commercial zone than in a residential neighborhood.

CAR worked with the Governor’s office and other stakeholders to limit the marijuana grey market and its effects on real estate. First, the bill maintains local control. If a local jurisdiction has a plant count ordinance, that law is the ruling authority. If there is no local law, then the new statewide plant count is limited to 12 plants in or on a residential property. However, for those local jurisdictions that do not have a local plant count limit, the statewide limit of 12 plants can be increased to 24 plants if the medical marijuana patient or caregiver registers with the state licensing authority, provides notice to that local jurisdiction, and follows any local jurisdiction disclosure and inspection requirements pertaining to their cultivation of marijuana plants.

CAR supported this legislation because large residential grows can interfere with a homeowner’s quiet enjoyment of their most sacred place: their home. Further, the current medical marijuana grow regulations do not respect the financial investment residential property owners have made in what is often their single largest investment.

**Position: SUPPORT**

**Status:** Signed by the Governor

---

**SB-038 – Registration Home Inspectors** – SB-038 would have made it illegal for a person to act as a home inspector without first registering with the Department of Regulatory Agencies. The bill would have required a home inspector to pay a registration fee, show proof of possession of minimum liability insurance coverage and a surety bond, and submit fingerprints for a criminal background check. The registration program also would have included a sunset period of five years, upon which it could be reviewed again by the legislature.

CAR supported this bill because SB-038 was a consumer protection bill that standardized some requirements for professionals wishing to undertake the important responsibility of home inspection without creating a burdensome barrier to entry for new businesses. For consumers, one of the biggest transactions they make during the course of their lifetime is the sale or purchase of a home. Home inspectors have a tremendous amount of access to a consumer’s private home and aspects of their living space.

Incidents of burglary, incorrect reporting, and even threats to personal safety are not what consumers should be worrying about as they participate in a real estate transaction. Home inspectors are the only professional in the real estate transaction that is not currently regulated who can have a significant impact on the outcome of the real estate transaction.

**Position: SUPPORT**

**Status:** Postponed Indefinitely by Senate Finance Committee
Land Use:
CAR supports legislation which protects private property rights, including notification to surface owners, eminent domain and condemnation issues, and local control of land use planning.

SB-50 – Consolidate Forest Risk and Health Grant Programs
SB-50 consolidates existing state grant programs related to forest management under the Colorado State Forest Service at Colorado State University. The bill gives the University the authority to spend unencumbered balances in certain cash funds, and establishes eligibility and funding criteria for these grant programs.

CAR amended the language to focus the consolidated grant on forest restoration and wildfire risk mitigation. Both are critical investments in reducing the likelihood of catastrophic wildfires that could destroy homes, property, and essential community infrastructure, especially in the Wildland Urban Interface areas. CAR continues to support legislation that furthers the mission of Colorado Project Wildfire, which enables Colorado REALTORS® to partner with other like-minded fire prevention organizations across our state to bring education and awareness, as well as access to fire mitigation resources, directly to residents in their local communities.

Position: SUPPORT
Status: Signed By the Governor

Water:
REALTORS® recognize that one of the most important elements contributing to quality of life is the protection of the environment, including water, air quality, parks, and open space.

HB-1273 – Real Estate Development Demonstrates Water Conservation
HB-1273 required that applications for real estate development permits include adequate water conservation and demand management measures to reduce water needs and prohibit local governments from approving permits that fail to demonstrate these types of conservation and demand measures.

CAR worked to ensure that the new regulatory burdens established by the bill did not hinder existing local government processes or stifle building permits by using undefined or ambiguous language to describe the conservation measures. Together with stakeholders, we were successful in working with the bill sponsors to amend the bill to make the regulations permissive rather than mandatory on local governments. This revision allowed the bill to be narrowly tailored to address the minority of bad actors rather than the majority of good actors who already take conservation measures into account when they plan and apply for development permit approvals. HB-1273 still faced opposition in the Senate as an unnecessary bill that was a solution in search of a problem, and consequently it ultimately died in committee.

Position: NEUTRAL
Status: Postponed Indefinitely by State Veterans, & Military Affairs Committee
Thank You Leaders!

SPECIAL THANK YOU TO LPC MEMBERS, LEADERSHIP AND STAFF

Members of LPC come from all corners of the state and actively participate in various subcommittees to review and recommend action on specific bills. There were 37 active and committed REALTOR® members on the committee this year. CAR depends on countless volunteer hours from its devoted members to be successful. Your hard work and dedication demonstrates that you truly care about your profession and the future of the industry in which you work – Thank you!

2017 COLORADO ASSOCIATION OF REALTORS® LEGISLATIVE POLICY COMMITTEE

Metro District: Sunny Banka, David Barber, Ann Connelly, David DeElena, Bill Fung, Dave Kupernik, Stew Meagher, John Mitchell, Ryan Mulstay, Aaron Radvin, Jon Roberts, and Sabrina Zunker

Mountain District: Mike Budd, Bob Fullerton, Janene Johnson, Jackie McPheeters, Dave Moloney, and Jack Pretti

Northeast District: Kurt Albers, Deanna Dyer, Sean Dougherty, Will Flowers, Michelle Jacobs, Greg Rittner, and Dale Souther

Northwest District: Vicki Burns, Lois Dunn, Ann Hayes, and Micah George

Southeast District: Barbara Asbury, Jack Beuse, Donna Major, David Madone, and George Nehme

Southwest District: Shane Dawson, Jarrod Nixon, and Geoff Overington

Subcommittee Chairs:
Business & Tax: Sunny Banka
Housing: Stew Meagher
Land Use: Jack Beuse
Regulatory: David Barber
Water: Barbara Asbury

Leadership/Staff:
CAR Chair: Mark Trenka
CAR Chair-elect: Ann Hayes
Government Affairs Division Chair: Dave Kupernik
LPC Chair: Janene Johnson
LPC Vice-Chair: Sean Dougherty
CAR CEO: Tyrone Adams
CAR VP of Government Affairs: Ted Leighty
CAR Government Affairs Manager: Elizabeth Peetz
CAR Government Affairs Coordinator: Madeline Cain
CAR Contract Lobbyist: Jason Hopfer
CAR Contract Lobbyist: Amy Attwood

Local Government Affairs Directors:
Clarissa Arellano
Nick Bokone
Ken Hotard
Barbara Koelzer
Duncan McArthur
Peter Wall