



Top 5 Legislative Successes at the Capitol

1) Construction Litigation Reform

CAR, along with the Homeownership Opportunity Alliance, championed compromise legislation that is the first step in the right direction to building 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 this year the bill hits the Governor's desk and he is expected to sign it.

The informed consent compromise 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 legislature also tightens up voting procedures by requiring 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. The bill also includes an opportunity for builders and homeowners to meet and attempt to resolve any disputes instead of pursuing litigation. To see the House Bill 1279 bill text, [click here](#).

2) Licensed Real Estate Brokers and Subdivision Developers Sunset:

Every 10 years the Division of Real Estate and Real Estate Commission (Commission) are up for review at the legislature. In this 2017 session, 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. This bill was sent to the Governor.

CAR amended the bill several times throughout the legislative process to improve the bill for our members:

- o First, CAR successfully removed the DORA Sunset Report recommendations that our Members told us they did not like:
 - Recommendation 9 made changes to the development of the annual update course
 - Recommendation 2 suggested attorneys be more involved in broker transactions by requiring attorney-client relationships when using standard forms, which contradicts longstanding legal precedent under the Conway Bogue decision

o Next, CAR worked with stakeholders in the Senate to:

- Retain language that conforms Colorado law with RESPA and maintains protections around referral fees
- Remove unnecessary and restrictive language concerning requirements for the new property manager seat on the Real Estate Commission

o Finally, in the House, CAR again 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
- Ensure the Real Estate Commission has the necessary flexibility to promulgate rules that determine the methods by which brokers can demonstrate their knowledge and experience to become supervising brokers

To review these changes or read the bill in its entirety, [click here](#).

3) Prevent Marijuana Diversion to Illegal Market:

[House Bill 17-1220](#), places limits on the number of marijuana plants that can be possessed or grown on a residential property. 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. CAR worked with the Governor's office and other stakeholders to decrease the marijuana grey market and its effects on real estate. The bill will be signed by the Governor.

- First, the bill maintains local control. If your 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

tion 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, their home.

4) Commission Transparency Bill:

[House Bill 17-1358](#), 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 such 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.

- As expected, this legislation was viewed as highly unnecessary and, as a result, was killed in the first committee by a vote of 11-2. In fact, several committee members from both political parties conveyed that they believe the free market should be allowed to work between flat-fee and full service brokers/agents, and further, that government should not be asked to intervene on behalf of one company.
- Fees are disclosed to all brokers through the MLS and 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.

CAR actively worked to defeat this bill. 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 was entirely unnecessary and did not provide any additional information to consumers that are not already available to them. Broker compensation and fees are already transparent to the appropriate consumers – the parties to the real estate transaction.

5) Documentary Fees and Transfer Taxes:

[Senate Concurrent Resolution 17-002](#) would have deleted 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.

[House Bill 17-1309](#), would have doubled the existing documentary fee for the recording of real estate deeds and instruments with half of the money allocated to the county treasurer and the other half of the money allocated to the Colorado

Housing and Finance Authority to create a housing investment fund to support new and existing affordable housing programs.

- Although REALTORS® 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.
- CAR is an affordable housing advocate. We have supported legislative initiatives designed to create more affordable housing options including:
 - o The creation and extension of the state Low Income Housing Tax Credit (LIHTC) program
 - o 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
 - o First-time homebuyer savings accounts to help Coloradans save for purchasing their first home.
 - o Additionally, CAR has donated more than \$7 million through CRF (Colorado REALTOR® Foundation) to promote safe, decent and affordable housing for all in Colorado.

SCR 002 and 1309 both had several flaws:

First, they hurt the very families they are intended to help because such a tax/fee is regressive. They disproportionately impact low-to-moderate income earners – those that can least afford it, which creates a barrier to homeownership. Down payment costs – including closing costs – remain a significant barrier to homeownership, especially for low-to moderate-income households.

Second, real estate transfer taxes and documentary fees are not reliable funding sources. Real estate transfer taxes are extremely sensitive to market forces, making the frequency of transactions and value of property variable in relation to the strength of the economy, which makes them a poor revenue source to fund affordable housing.

Finally, real estate transfer taxes are unconstitutional under TABOR. The concurrent resolution would have removed that prohibition against transfer taxes in the constitution. Similarly, real estate documentary fees for affordable housing are also likely unconstitutional under TABOR.

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.

Both SCR 002 and 1309 Died in Committee May 3rd.