

**THE PROBLEM:** Colorado consumers purchasing homes are being required to accept poor quality and/or incorrect title insurance commitments and policies from out-of-state title agencies. The consumer may suffer harm or loss such as the inability to use their property as they intended or being forced to pay a transfer fee that should have been the responsibility of the prior owner. Often this harm is not discovered until the consumer attempts to sell their home many years later.

**THE SOLUTION:** This bill changes Colorado's title insurance statute to require all title insurance agencies licensed in Colorado (excluding licensed attorneys) to maintain a physical presence and a minimum of one full time employee, including the responsible producer, within the State. The responsible producer is an officer, partner or director of the title insurance agency and is responsible for compliance with the laws and rules of Colorado. Therefore a knowledgeable person will be available to address concerns of Colorado buyers and sellers.

**BACKGROUND:** Title insurance, unlike other forms of insurance, is truly a local product based on local property records. Prior to issuance of a title insurance policy, an agent **MUST** perform a reasonable search of local public real estate records. That search should reveal all types of liens that affect transfer of the property including unpaid deeds of trust or mortgages, water/sewer liens, transfer fees or taxes, real property taxes, HOA liens, outstanding judgments, assessment fees and on and on. That search also must ascertain that property being conveyed as a result of foreclosure has met the necessary notice, time frames and procedures to adequately and safely transfer title to a Colorado consumer.

The Land Title Association of Colorado members receive multiple inquiries from Colorado consumers and real estate professionals concerning the inadequacy or errors in title commitments, closing documents, or other services of out-of-state title agencies.

**EXAMPLES:**

- **Public Trustee Foreclosure System.** Colorado is the only State with a Public Trustee Foreclosure system. An out-of-state agent may not have an adequate understanding of the nuances associated with a public trustee foreclosure, and consequently, its title commitment may fail to contain proper requirements addressing material deficiencies (e.g. outstanding redemption periods, omitted parties). As a result of the out-of-state agent's failure to craft an adequate title commitment, the consumers involved in the transaction and their Realtors® experience a delayed closing, or a termination of the transaction, or a significant post-closing title problem.
- **Familiarity with Property-Specific Requirements.**
  - **Mountain Communities:** Access issues are common in mountainous areas. In-state title agents are well-versed in dealing with (1) undedicated roads controlled by the United States (i.e. BLM, Forest Service), (2) situations where the owner has legal access but cannot actually get to the property because of the topography (i.e. the grade is too steep), or (3) properties that acquire access via one or more private easements that need to be insured. A Colorado consumer can be left without access to his/her property if access issues are misunderstood or ignored.
  - **Mineral rights and oil and gas leases:** The increase in oil and gas exploration in Colorado is significant to Colorado businesses, property owners and consumers. These property interests are encountered every day in Colorado but may not be understood by out-of-state title agents.
  - **Municipal Liens:** Many city utility departments levy special assessments for weed removal, snow removal, etc. The title agent must ask the city if any assessments exist in order to pay them at closing. There have been confirmed instances where a claim has been filed because of special city assessments being missed by an out-of-state title agent.
  - **Real Estate Transfer Taxes:** 15 or more communities employ a Real Estate Transfer Tax ranging from 1% to 4% of the sale price. If missed, these Real Estate Transfer Taxes aggregate and would cause consumer harm and loss when the consumer attempts to sell the property.
  - **Home Owner Associations:** Many subdivisions have more than one Homeowners association. When an association is missed, the assessments can become a lien on the property.
- **Non-Compliance with Colorado Title Insurance Laws.** Our members have chronicled the use of generic exceptions on title commitments issued by out-of-state agents. Consumers, Realtors®, and lender customers are entitled to a title commitment that fully discloses the impairments of record concerning the property to be insured, and the extent of coverage proposed.

**CONCLUSION:** Colorado's consumers have by law and regulation the expectation to receive a title insurance product that is comprehensive and reflective of Colorado unique property requirements. **Without a complete understanding of these requirements, liens may be overlooked, necessary documents omitted, and notifications improperly delayed.** By requiring a responsible producer to be located in Colorado, our real estate buyers and sellers can be better assured that the quality of product, the standard of service, and the understanding of Colorado real estate transaction is better served.

**Contact:** Cathy Wanstrath, 303-698-9748, [cathywanstrath@q.com](mailto:cathywanstrath@q.com)