

# Important Colorado Legislation Impacting Real Estate Development, Construction, Leasing and Lending

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**Insight — February 10, 2010**

The 2010 Colorado Legislative Session is underway and the legislators are considering a number of bills that may affect your development, add costs to your business or affect property rights. We have summarized 10 bills of particular interest below.

### **Development and Property Rights**

[SB10-114 Concerning the "Colorado Taxpayer Transparency Act of 2010".](#)

This bill extends the application of the "Colorado Open Records Act" (CORA) to all writings made, maintained, or kept by any entity that receives public moneys or performs a governmental or other public function and that relate to the receipt of the public moneys or the performance of that function, which would include a metropolitan district or other quasi-governmental entity. Each contract for the performance of a governmental or other public function entered into on or after the effective date of this bill shall specify that the records and files relating to the costs or any performance measures under the contract that are made, maintained, or kept by any entity that is a party to the contract shall be open for public inspection in accordance with CORA.

[HB10-1151 Concerning the disclosure in connection with the sale of residential real property of its proximity to an airport.](#)

This bill requires each seller's property disclosure for residential real property to disclose the proximity to an airport, airpark or military airfield within five miles.

[HB10-1205 Concerning land use planning by local governments to address the impacts of land use development upon military installations in close proximity to such governments.](#)

Current law requires a local government with a military installation within its territory to submit to the commanding officer of the military installation information about proposed changes to the local government's comprehensive plan or land development regulations that would significantly affect the intensity, density or use of any territory of the local government within 2 miles of the installation. The current law does not

require submission of site-specific development applications to the military installation.

This bill substantially revises this law by requiring a local government with territory within 2 miles of a military installation (500 acres or larger in size) to submit to the installation commanding officer and the flying mission commanding officer information related to zoning changes that would affect, in any way, any area within 2 miles of the installation. The language not requiring site-specific development applications to be submitted would be deleted under this new bill. This bill also requires a county or municipal master plan to reflect the off-site impacts of a military installation using noise contour data provided by the United States Department of Defense.

The Colorado Association of Home Builders (“CAHB”) is opposing this bill. Some property owners believe it equates to a “taking,” and the bill has been described by opponents as the Pinon Canyon Maneuver Site condemnation without compensation.

### **Construction**

#### [HB10-1162 Concerning payment of amounts due under a construction contract.](#)

This bill prohibits retaining more than 5% of the payments due to a contractor to ensure that work is satisfactorily completed (retainage) for the first 50% of the work involved in a construction project. For the remaining 50% of the work, the bill prohibits retainage of more than 2.5%. More retainage may be withheld for work that is unsatisfactorily completed.

A building client (which is defined as any person who owns, manages or leases property, and who causes a building or improvement to be constructed, altered, moved or demolished or who causes land to be excavated, developed or improved, other than a public entity) is required to deposit retainage in an interest-bearing escrow account that the contractor may access with an arbitration or court order. If the building client fails to deposit the money in such an account, the building client is required to pay the contractor 15% interest on the retainage. The building client is required to pay the contractor retainage within 30 days after substantial completion of the construction project. A violator is required to pay interest plus a penalty of 15% interest.

Contractors and subcontractors are authorized to give the building client a substitute security and have retainage paid to them. The security can be treasury bonds, surety bonds, or certificates of deposits, among other security.

The CAHB is opposing this bill.

#### [HB10-1204 Concerning the inclusion of conservation standards in the plumbing code.](#)

This bill requires the plumbing code adopted by the Examining Board of Plumbers in the Department of Regulatory Agencies to include standards

for water efficiency and conservation, water-efficient fixtures and installation guidelines, and the use of locally produced materials.

### **Leasing**

[HB10-1288 Concerning the ability of a commercial real estate broker to secure payment of commissions earned, and, in connection therewith, enacting the "Commercial Real Estate Brokers Commission Security Act".](#)

This bill allows real estate brokers who procure tenants for commercial real estate, either under a listing agreement or a written compensation agreement, to enforce the payment of their leasing commissions by filing a lien on real or personal property - similar to mechanics' liens. The lien will relate back to the date of the listing or compensation agreement. The lien will not have priority over valid prior recorded liens, mortgages or encumbrance or over a mechanic's lien that is recorded after, but which relates back prior to, the recording date of the broker's notice of lien.

This bill places conditions on the real estate broker's right to the lien, including an obligation to seek mediation of the dispute; to give notice of the intent to pursue enforcement of the debt through the lien process, both before and after recording the notice of lien; and to commence a lawsuit within six months if the debt is not paid.

### **Lending**

[HB10-1141 Concerning a requirement for mortgage companies to be registered by the Division of Real Estate.](#)

This bill requires mortgage companies to register with and be regulated by the Division of Real Estate under the "Mortgage Loan Originator Licensing and Mortgage Company Registration Act". This bill sets standards for mortgage companies to be registered, including that they be registered on the nationwide mortgage licensing system and registry created pursuant to the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008". A mortgage company is defined as an entity that takes residential loan applications or offers or negotiates the terms of a residential mortgage loan, but exempts banks or savings and loan associations and credit unions.

[HB10-1249 Concerning expedited residential foreclosure sales.](#)

Currently, the initial foreclosure sale date for residential property by a public trustee is set between 110 and 125 calendar days after the recording of the notice of election and demand (notice). For a 5-year period, this bill creates a method for an eligible holder of an evidence of debt (holder) to elect to have an expedited sale of residential property, which will occur between 40 and 55 calendar days after the recording of the notice.

In order for the expedited sale to be conducted, a court must issue an order for expedited sale (order), and a copy of the order must be filed with the public trustee. The court shall only issue an order if, among other

things: (i) the property has been abandoned based on specified criteria; or (ii) the grantor of the deed of trust requests the order for expedited sale.

If an expedited sale is set, this bill mandates certain modifications to the public trustee's process for that sale.

**SB10-93 Concerning the orderly resolution of claims in foreclosures involving junior liens.**

This bill clarifies that the holder of a Certificate of Purchase of property at a public trustee's sale or sheriff's sale is entitled to pay off junior lienors during the redemption period for the amount of the lien plus allowable fees and costs. This bill requires a junior lienor to accept the tendered payment and to execute a release of the lien.

**SB10-127 Concerning a limitation on a lender's ability to collect against a debtor's personal liability when the loan is secured by collateral.**

This bill prohibits a creditor of a consumer loan and a credit union, savings and loan association, state bank, industrial bank, or mortgage lender from attempting to collect its debt from a debtor's personal liability under a secured loan that is in default, unless the lender has first attempted to collect its debt from the collateral and the proceeds from the collateral are insufficient to fully repay the sum of the outstanding loan balance and the lender's allowable costs of collection, if any.

This bill applies to any loan or mortgage loan secured by collateral entered into prior to the effective date of the bill unless the loan explicitly provides otherwise.

This bill was sponsored by the CAHB.

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*We will be providing regular updates to the status of these proposed bills and new bills that are introduced during the session relating to real estate development, construction, leasing and lending. Please contact the author, Rebecca W. Dow, Esq. at (303) 295-8413 or [rdow@hollandhart.com](mailto:rdow@hollandhart.com) for more information.*

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