



representing the Colorado title insurance industry

December 18, 2023

Via Email

The Honorable Jena Griswold
Secretary of State
State of Colorado
1700 Broadway
Suite 550
Denver, CO 80206

Re: LTAC Comments to SOS Proposed Rule 2.4 to 8 CCR 1505-11

Dear Secretary Griswold:

On behalf of the Land Title Association of Colorado (LTAC), I hereby submit comments in response to Proposed Rule 2.4 to 8 CCR 1505-11:

As background, an escrow officer is an employee of a title company, a notary, and closes real estate transactions. They do not charge separately for notarization of certain closing documents. Any charges applied are part of the overall settlement service fee. This proposed rule would require a title company/escrow officer to provide an itemized invoice to the consumer before performing notarial acts associated with real estate closings. This will cause confusion for the consumer as further outlined below.

Title companies are regulated by the Colorado Division of Insurance (DOI). Closing fees in relation to the business of title insurance are approved and filed with the DOI. These filed fees are public record and are available online or upon request from the title company. In addition, the Consumer Financial Protection Bureau (CFPB) as part of the governance of lenders, requires accurate disclosures of all closing costs to the buyer within three days of the loan application on the Initial Loan Estimate form. There are specific fields for closing costs on this federally mandated form. It is standard industry practice for title companies to incorporate notary services as part of the overall closing cost and disclose that cost on both the Initial Loan Estimate form and an additional required form known as the Closing Disclosure. The Closing Disclosure form is required three days before closing. The Initial Loan Estimate Form and the Closing Disclosure form must match. Mandating a separate notarial cost disclosure for a real estate transaction will cause confusion to the consumer and could result in delayed real estate closings.

For example, under this proposed rule, the Lender must disclose a separate notary fee for each of the six documents requiring notarization on the Initial Loan Estimate. Once the property is ready for closing and the title company is preparing the final documents, it is determined that there are 10 documents which require notarization (as opposed to six). The closing would have to be delayed for the redisclosure of the charge for the additional four documents requiring

notarization, which is required by the CFPB. This could delay the closing and transfer of the property for several days.

For these reasons, LTAC proposes two alternative changes to the proposed rule, highlighted in red below, in preferential order:

Option 1

2.4.1 IF A NOTARY PUBLIC CHARGES FOR ANY SERVICE IN ADDITION TO THE NOTARIAL ACT, THE NOTARY PUBLIC MUST:

- (A) INFORM THE CUSTOMER OF THE CHARGES BEFORE PERFORMING THE NOTARIAL ACT; AND
- (B) PROVIDE AN ITEMIZED INVOICE THAT LISTS EACH SPECIFIC CHARGE.

2.4.2 IF A NOTARY PUBLIC FAILS TO ITEMIZE SPECIFIC CHARGES, THE AMOUNT CHARGED IS PRESUMED TO SOLELY COVER THE NOTARIAL ACT. IF THAT AMOUNT EXCEEDS THE STATUTORY FEE LIMIT IN SECTION 24-21-529, C.R.S., THE INVOICE IS PRESUMPTIVE EVIDENCE OF A VIOLATION OF THE REVISED UNIFORM LAW ON NOTARIAL ACTS.

2.4.3 RULE 2.4 SHALL NOT APPLY TO SERVICES PROVIDED IN CONJUNCTION WITH THE BUSINESS OF TITLE INSURANCE, AS DEFINED IN C.R.S. 10-11-102(3), TO CLOSING AND SETTLEMENT SERVICES, AS DEFINED UNDER C.R.S. 10-11-102(3.5), OR TO SETTLEMENT SERVICES, AS DEFINED UNDER C.R.S. 10-11-102(6.7).

Option 2

2.4.1 IF A NOTARY PUBLIC CHARGES FOR ANY SERVICE IN ADDITION TO THE NOTARIAL ACT, **WHICH IS REQUIRED IN ORDER TO PERFORM THE NOTARIZATION**, THE NOTARY PUBLIC MUST:

- (A) INFORM THE CUSTOMER OF THE CHARGES BEFORE PERFORMING THE NOTARIAL ACT; AND
- (B) PROVIDE AN ITEMIZED INVOICE THAT LISTS EACH SPECIFIC CHARGE.

2.4.2 IF A NOTARY PUBLIC FAILS TO ITEMIZE SPECIFIC CHARGES, THE AMOUNT CHARGED IS PRESUMED TO SOLELY COVER THE NOTARIAL ACT. IF THAT AMOUNT EXCEEDS THE STATUTORY FEE LIMIT IN SECTION 24-21-529, C.R.S., THE INVOICE IS PRESUMPTIVE EVIDENCE OF A VIOLATION OF THE REVISED UNIFORM LAW ON NOTARIAL ACTS.

The proposed language above provides consumers transparency in pricing without jeopardizing the real estate closing. The proposed rule is duplicative and unnecessary in real estate transactions. Thank you for your consideration.

Respectfully submitted,



Penny McKelroy, CTIS, CESS
President

cc: LTAC Board