CHAPTER 17 - RELATED REAL ESTATE LAWS

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CHAPTER 17 – RELATED REAL ESTATE LAWS

Notes:

PREOWNED HOME WARRANTY SERVICE CONTRACTS

12-61-602. Definitions.

As used in this part 6, unless the context otherwise requires [in relevant part]:

(3)(a) Preowned home warranty service contract" means any contract or agreement whereby a person undertakes for a prepaid fee, with respect to a specified period of time, to maintain, repair, or replace any or all of the following elements of a specified preowned home:

(I) Structural components, such as roof, foundation, basement, walls, ceilings, or floors;

(II) Utility systems such as electrical, air conditioning, plumbing, and heating systems, including furnaces; and

(III) Appliances such as stoves, washers, dryers, and dishwashers.

b) "Preowned home warranty service contract," does not include any contract or agreement whereby a public utility undertakes for a predetermined fee, with respect to a specified period of time, to repair or replace any or all of the elements of a specified preowned home as specified in subparagraphs (II) or (III) of paragraph (a) of is subsection (3).

(4) "Preowned home warranty service company," referred to in this part 6 as the "company," means any person who undertakes a contractual obligation on a preowned home through a preowned home warranty service contract.

(5) "Person" includes an individual, company, corporation, association, agent, and every other legal entity.

(6) "Preowned" means a single-family residence, residential unit in a multiple-dwelling structure, or mobile home on a foundation which is occupied as a residence and not owned by the builder-developer or first occupant.

12-61-611. Purchase of service contract not to be compulsory.

No company selling, offering to sell, or effecting the issuance of a preowned home warranty service contract under this part 6 shall in any manner require a Home buyer or seller, or prospective home buyer or seller, or person refinancing a home to purchase a preowned home warranty service contract.

12-61-611.5. Contract requirements.

(1) Every preowned home warranty service contract shall contain the following information:

(a) A specific listing of all items or elements excluded from coverage;

(b) A specific listing of all other limitations in coverage, including the exclusion of pre-existing conditions if applicable;

(c) The procedure that is required to be followed in order to obtain repairs or replacements;

(d) A statement as to the time period, following notification to the company, within which the requested repairs will be made or replacements will be provided;

(e) The specific duration of the preowned home warranty service contract, including an exact termination date that is not contingent upon an unspecified future closing date or other indefinite event;

(f) A statement as to whether the preowned home warranty service contract is transferable;

(g) A statement that actions under a preowned home warranty service contract may be covered by the provisions of the "Colorado Consumer Protection Act" or the "Unfair Practices Act", articles I and 2 of title 6, C.R.S., and that a party to such a contract may have a right of civil action under such laws, including obtaining the recourse or penalties specified in such laws.

12-61-612. Penalty for violation.

Any person who knowingly violates any provision of this part 6 commits a class 2 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S. Each instance of violation shall be considered a separate offense.

12-61-614. Prohibitions.

It shall be unlawful for any lending institution to require the purchase of preowned home warranty insurance as a condition for granting financing for the purchase of said home.

NONDISCLOSURE OF INFORMATION PSYCHOLOGICALLY IMPACTING REAL PROPERTY

38-35.5-101. Circumstances psychologically impacting real property - no duty for broker or salesperson to disclose.

(1) Facts or suspicions regarding circumstances occurring on a parcel of property which could psychologically impact or stigmatize such property are not material facts subject to a disclosure requirement in a real estate transaction. Such facts or suspicions include, but are not limited to, the following:

(a) That an occupant of real property is, or was at any time suspected to be, infected or has been infected with human immunodeficiency virus (HIV) or diagnosed with acquired immune deficiency syndrome (AIDS), or any other disease which has been determined by medical evidence to be highly unlikely to be transmitted through the occupancy of a dwelling place; or

(b) That the property was the site of a homicide or other felony or of a suicide.

(2) No cause of action shall arise against a real estate broker or salesperson for failing to disclose such circumstance occurring on the property which might psychologically impact or stigmatize such property.

DISCLOSURE – COMMON INTEREST COMMUNITY – REQUIREMENT FOR ARCHITECTURAL APPROVAL

38-35.7-102. Disclosure - common interest community - requirement for architectural approval.

(1) In every purchase and sale of residential real property in a common interest community:

(a) The seller shall cause to be furnished to the buyer, at the seller's expense, all documents required by section 38-33.3-223 at least ten days before closing in the case of a sale by owner or within the time limits set forth in section 38-33.3-223 in the case of a brokered transaction.

(b) (I) The seller shall provide the buyer with a disclosure statement in bold-faced type that is clearly legible and in substantially the following form:

"THE BUYER HEREBY ACKNOWLEDGES THAT THE BUYER HAS RECEIVED COPIES OF THE DECLARATION, COVENANTS, BYLAWS, AND RULES AND REGULATIONS OF THE HOMEOWNERS' ASSOCIATION OF THE [NAME OF COMMON INTEREST COMMUNITY], IN WHICH THE PROPERTY IS LOCATED, AND THE BUYER UNDERSTANDS THAT THESE DOCUMENTS CONSTITUTE AN AGREEMENT BETWEEN THE ASSOCIATION AND THE BUYER. BY SIGNING THIS STATEMENT, THE BUYER ACKNOWLEDGES THAT THE BUYER HAS READ AND UNDERSTANDS THE ASSOCIATION'S DECLARATION, COVENANTS, BYLAWS, AND RULES AND REGULATIONS. THE BUYER ALSO UNDERSTANDS THAT BY COMPLETING THIS PURCHASE, THE BUYER IS RESPONSIBLE FOR PAYING ASSESSMENTS TO THE ASSOCIATION. IF THE BUYER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO COLLECT THE DEBT.

THE BUYER ALSO UNDERSTANDS THAT ANY CHANGE TO THE EXTERIOR OF THE PROPERTY MAY BE SUBJECT TO ARCHITECTURAL REVIEW AND APPROVAL. FAILURE TO SECURE SUCH REVIEW AND APPROVAL COULD BE A VIOLATION OF THE DECLARATION AND COULD RESULT IN REMEDIAL ACTION BEING TAKEN BY THE ASSOCIATION."

(II) It shall be the responsibility of the seller to obtain from the purchaser a signed acknowledgment of receipt of the information and disclosure statement described in this section, whether such acknowledgment is incorporated in the contract of purchase and sale or otherwise, at the time of closing and to deliver such signed acknowledgment to the association as soon as is practicable thereafter. In the event of the failure by the seller to provide such information and disclosure statement, the purchaser shall have a claim for relief against the seller for all damages to the purchaser resulting from such failure plus court costs; except that, to the extent that the buyer's damages resulted from the association's failure or refusal, without legal justification, to provide documents within its control to the seller despite the good faith efforts of the seller to obtain them, or because the association did not maintain records as required by Section 38-33.3-317, the seller shall not be liable.

(2) This Section shall not apply to the sale of a unit that is a time-share unit, as defined in Section 38-33-110 (7).

SOIL AND HAZARD ANALYSES OF RESIDENTIAL CONSTRUCTION

6-6.5-101 Disclosure to purchaser – penalty.

(1) At least fourteen days prior to closing the sale of any new residence for human habitation, every developer or builder or their representatives shall provide the purchaser with a copy of a summary report of the analysis and the site recommendations. For sites in which significant potential for expansive soils is recognized, the builder or his representative shall supply each buyer with a copy of a publication detailing the problems associated with such soils, the building methods to address these problems during construction, and suggestions for care and maintenance to address such problems.

(2) In addition to any other liability or penalty, any builder or developer failing to provide the report or publication required by subsection (1) of this section shall be subject to a civil penalty of five hundred dollars payable to the purchaser.

(3) The requirements of this section shall not apply to any individual constructing a residential structure for his own residence.

UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT

15-1-1301. Legislative declaration - purpose - short title.

(1) The general assembly hereby finds, determines, and declares that:

(a) The public interest requires a standard form of power of attorney that an individual may use to authorize an agent to act for the individual in dealing with the individual's property and financial and other affairs;

(b) A statutory form offering a set of optional powers is necessary to enable the individual to design the power of attorney best suited to the individual's needs in a simple fashion and be assured that the agent's authority will be honored by any third party with whom the agent deals, regardless of the physical or mental condition of the principal at the time the power is exercised;

(c) When any person creates a power of attorney substantially the form set forth in section 15-1-1302, any third party may rely in good faith on the acts of the agent within the scope of the power of attorney without fear of liability to the principal. However, the form set forth in section 15-1-1302 is not exclusive, and persons may use other forms of power of attorney.

(2) This part 13 shall be known and may be cited as the "Uniform Statutory Form Power of Attorney Act".

15.1-1303. Durable power of attorney.

A power of attorney legally sufficient under this Part 13 is durable to the extent that durable powers are permitted by any other law of this state and the power of attorney contains language, such as "this power of attorney will continue to be effective even though I become disabled, incapacitated, or incompetent", showing the intent of the principal that the power granted may be exercised notwithstanding later disability, incapacity, or incompetency.

15-1-1304. Construction of powers generally.

(1) By executing a statutory power of attorney with respect to a subject listed in section 15-1-1302(1), the principal, except as limited or extended by the principal in the power of attorney, empowers the agent, for that subject to:

(a) Demand, receive, and obtain by litigation or otherwise, money or other thing of value to which the principal is, may become, or claims to be entitled; and conserve, invest, disburse, or use anything so received for the purposes intended;

(b) Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction, and perform, rescind, reform, release, or modify the contract or another contract made by or on behalf of the principal;

(c) Execute, acknowledge, seal, and deliver a deed, revocation, mortgage, lease, notice, check, release, or other instrument the agent considers desirable to accomplish a purpose of a transaction;

(d) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to, a claim existing in favor of or against the principal or intervene in litigation relating to the claim;

(e) Seek on the principal's behalf the assistance of a court to carry out an act authorized by the power of attorney;

(f) Engage, compensate, and discharge an attorney, accountant, expert witness or other assistant;

(g) Keep appropriate records of each transaction, including an accounting of receipts and disbursements;

(h) Prepare, execute, and file a record, report, or other document the agent considers desirable to safeguard or promote the principal's interest under a statute or governmental regulation;

(i) Reimburse the agent for expenditures properly made by the agent in exercising the powers granted by the power of attorney; and In general, do any other lawful act with respect to the subject.

15-1-1305. Construction of power relating to real property transactions.

(1) In a statutory power of attorney, when properly recorded, the language granting power with respect to real property transactions empowers the agent to:

(a) Accept as a gift or as security for a loan, reject, demand, buy, lease, receive, or otherwise acquire, an interest in real property or a right incident to real property;

(b) Sell, exchange, convey with or without covenants, quitclaim, release, surrender, mortgage, encumber, partition, consent to partitioning, subdivide, apply for zoning, rezoning, or other governmental permits, plat or consent to platting, develop, grant options concerning, lease, sublease, or otherwise dispose of, an interest in real property or a right incident to real property;

(c) Release, assign, satisfy, and enforce by litigation or otherwise, a mortgage, deed of trust, encumbrance, lien, or other claim to real property which exists or is asserted; power granted maybe exercised notwithstanding later disability, incapacity, or incompetency.

(d) Do any act of management or of conservation with respect to an interest in real property, or a right incident to real property, owned, or claimed to be owned, by the principal, including:

(I) Insuring against a casualty, liability, or loss;

(II) Obtaining or regaining possession, or protecting the interest or right, by litigation or otherwise;

(III) Paying, compromising, or contesting taxes or assessments, or applying for and receiving refunds in connection with them; and

(IV) Purchasing supplies, hiring assistance or labor, and making repairs or alterations in the real property;

(e) Use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;

(f) Participate in a reorganization with respect to real property or a legal entity that owns an interest in or right incident to real property and receive and hold shares of stock or obligations received in a plan of reorganization, and act with respect to them, including:

(I) Selling or otherwise disposing of them;

(II) Exercising or selling an option, conversion, or similar right with respect to them; and

(III) Voting them in person or by proxy;

(g) Change the form of title of an interest in or right incident to real property;

(h) Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

RELIEF OF RESIDENTIAL TAXPAYERS FROM LIEN OF SPECIAL DISTRICT TAXES FOR GENERAL OBLIGATION INDEBTEDNESS

Certification and Notice of Special District Taxes for General Obligation Indebtedness

32-1-1601. Legislative declaration.

The General Assembly hereby finds and declares that special districts are political subdivisions and instrumentalities of the State of Colorado and local governments thereof. The General Assembly further finds that defaults in payment of general obligation debts and the possibility of further defaults by some special districts have resulted in a general loss of confidence by investors in bonds and undertakes of all types issued or to be issued by local governments of the state and have impose severe hardship on investors in general obligation bonds of special districts and upon owners of residential real property within such districts. The General Assembly further finds that this Part 16 is necessary to protect the credit reputation of local governments of this state, to restore confidence of investors in local government obligations, and to protect owners of residential real property within special districts.

32-1-1602. Definitions.

As used in this part 16, unless the context otherwise requires:

(1) "General obligation debt" means an obligation of a special district created by a resolution of the special district authorizing the issuance of bonds or a contract, the obligations of which are backed by a pledge of the full faith and credit of the special district and a covenant to impose mill levies without limit to retire the bonds or fund the contractual obligation.
(2) "Special District" shall have the same meaning as provided in section 32-1-103 (20).

32-1-1603. Separate mill levies - certification to county commissioners.
After July 1, 1992, special districts which levy taxes for payment of general obligation debt shall certify separate mill levies to the Board of County Commissioners, one each for funding requirements of each such debt in accordance with the relevant contracts or bond resolutions which identifies each bond issue by series, date, coupon rate, and maturity and one for the remainder of the budget of said district.

32-1-1604. Recording.
Whenever a special district authorizes or incurs a general obligation debt, a notice of such action and a description of such debt in a form prescribed by the director of the division of local government of the department of local affairs shall be recorded by the special district with the county clerk and recorder in each county in which the district is located. The recording shall be done within thirty days after authorizing or incurring the debt.

32-1-1605. Limitations on actions - prior law.
Any claim for relief under section 32-1-1504, as it existed prior to July 1, 1992, shall be commenced on or before January 1, 1993, and not thereafter.

10-11-122. Title commitments.
(1) Every title insurance agent or title insurance company shall provide, along with each title commitment issued for the sale of residential real property as define in Section 39-1-102 (14.5), C.R.S., a statement disclosing the following information:
(b) That a certificate of taxes due listing each taxing jurisdiction shall be obtained from the county treasurer or the county treasurer's authorized agent.
(2) Failure of a title insurance agent or a title insurance company to provide the statement required by subsection (1) of this section shall subject such agent or company to the penalty provisions of section 10-3-111 but shall not affect or invalidate any provisions of the commitment for title insurance.

38-35.7-101. Disclosure - special taxing districts - general obligation indebtedness.
(1) Every contract for the purchase and sale of residential real property shall contain a disclosure statement in bold-faced type which is clearly legible and in substantially the following form:

"Special taxing districts may be subject to general obligation indebtedness that is paid by revenues produced from annual tax levies on the taxable property within such districts. Property owners in such districts may be placed at risk for increased mill levies and excessive tax burdens to support the servicing of such debt where circumstances arise resulting in the inability of such a district to discharge such indebtedness without such an increase in mill levies. Purchasers should investigate the debt financing requirements of the authorized general obligation indebtedness of such districts, existing mill levies of such district servicing such indebtedness, and the potential for an increase in such mill levies."

(2) The obligation to provide the disclosure set forth in subsection (1) of this section shall be upon the seller, and, in the event of the failure by the seller to provide the written disclosure described in subsection (1) of this section, the purchaser shall have a claim for relief against the seller for all damages to the purchaser resulting from such failure plus court costs.

Note: The above disclosure required by 38-35.7-101 is preprinted in the Real Estate Commission approved Contract to Buy and Sell Real Estate forms.

COLORADO CONSUMER PROTECTION ACT

Colorado Statute 12-61-113(1) (c.5) C.R.S., lists as a cause for disciplinary action and possible revocation of a real estate license, the conviction of a violation of 6-1-105(1) C.R.S. known as The Colorado Consumer Protection Act. The civil penalties for conviction include a payment of up to $100,000.00 to the state general fund and three times the amount of actual damages to the injured party in a private civil action. Printed below are the substantive portions of the law as it relates to the real estate industry.

6-1-104. Cooperative reporting.

The district attorneys may cooperate in a statewide reporting system by receiving, on forms provided by the attorney general, complaints from persons concerning deceptive trade practices listed in sections 6-1-105 and part 7 of this article and transmitting such complaints to the attorney general.

6-1-105. Deceptive trade practices.

(1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person:

(a) Knowingly passes off goods, services, or property as those of another;

(b) Knowingly makes a false representation as to the source, sponsorship, approval, or certification of goods, services, or property;

(c) Knowingly makes a false representation as to affiliation, connection, or association with or certification by another;

(d) Uses deceptive representations or designations of geographic origin in connection with goods or services;

(e) Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services, or

property or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith;

(f) Represents that goods are original or new if he knows or should know that they are deteriorated, altered, reconditioned, reclaimed, used, or second hand;

(g) Represents that goods, food, services, or property are of a particular standard, quality, or grade, or that goods are of a particular style or model, if he knows or should know that they are of another;

(h) Disparages the goods, services, property, or business of another by false or misleading representation of fact;

(i) Advertises goods, services, or property with intent not to sell them as advertised;

(j) Advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

(k) Advertises under the guise of obtaining sales personnel when in fact the purpose is to first sell a product or service to the sales personnel applicant;

(l) Makes false or misleading statements of fact concerning the price of goods, services, or property or the reasons for, existence of, or amounts of price reductions;

(m) Fails to deliver to the customer at the time of an installment sale of goods or services a written order, contract, or receipt setting forth the name and address of the seller, the name and address of the organization which he represents, and all of the terms and conditions of the sale, including a description of the goods or services, stated in readable, clear, and unambiguous language;

(n) Employs "bait and switch" advertising, which is advertising accompanied by an effort to sell goods, services, or property other than those advertised or on terms other than those advertised and which is also accompanied by one or more of the following practices:

(I) Refusal to show the goods or property advertised or to offer the services advertised;

(II) Disparagement in any respect of the advertised goods, property, or services or the terms of sale;

(III) Requiring tie-in sales or other undisclosed conditions to be met prior to selling the advertised goods, property, or services;

(IV) Refusal to take orders for the goods, property, or services advertised for delivery within a reasonable time;

(V) Showing or demonstrating defective goods, property, or services which are unusable or impractical for the purposes set forth in the advertisement;

(VI) Accepting a deposit for the goods, property, or services and subsequently switching the purchase order to higher-priced goods, property, or services; or

(VII) Failure to make deliveries of the goods, property, or services within a reasonable time or to make a refund therefor;

(o) Knowingly fails to identify flood-damaged or water-damaged goods as to such damages;

(p) Solicits door-to-door as a seller, unless the seller, within thirty seconds after beginning the conversation, identifies himself or herself, whom he or she represents, and the purpose of the call:

(p.3) (I) Solicits a consumer residing in Colorado by telephone as a seller, unless the seller, within one minute after beginning the conversation, identifies himself or herself, whom he or she represents, and the purpose of the call or repeatedly causes any telephone to ring or engages any person in a telephone conversation repeatedly or continuously with the intent to annoy, abuse, or harass any person at the telephone number called.

(II) The provisions of this paragraph (p.3) shall not apply to a telephone solicitation between a seller and a consumer if there is an existing business relationship between the seller and the consumer at the time of the telephone solicitation or if the call is initiated by the consumer.

(q) Contrives, prepares, sets up, operates, publicizes by means of advertisements, or promotes any pyramid promotional scheme.

(r) Advertises or otherwise represents that goods or services are guaranteed without clearly and conspicuously disclosing the nature and extent of the guarantee, any material conditions or limitations in the guarantee which are imposed by the guarantor, the manner in which the guarantor will perform, and the identity of such guarantor. Any representation that goods or services are "guaranteed for life' or have a "lifetime guarantee" shall contain, in addition to the other requirements of this paragraph (r), a conspicuous disclosure of the meaning of "life" or "lifetime" as use in such representation (whether that of the purchaser, the goods or services, or otherwise). Guarantees shall not be used which under normal conditions could not be practically fulfilled or which are for such a period of time or are otherwise of such a nature as to have the capacity and tendency of misleading purchasers or prospective purchasers into believing that the goods or services so guaranteed have a greater degree of serviceability, durability, or performance capability in actual use than is true in fact. The provisions of this paragraph (r) apply not only to guarantees but also to warranties, to disclaimer or warranties, to purported guarantees and warranties, and to any promise or representation in the nature of a guarantee or warranty; however, such provisions do not apply to any reference to a guarantee in a slogan or advertisement so long as there is no guarantee or warranty of specific merchandise or other property.

(u) Fails to disclose material information concerning goods, services, or property which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction;

(v) Disburses funds in connection with a real estate transaction in violation of section 38-35-125 (2), C.R.S.

(y) Fails, in connection with any solicitation, to clearly and prominently disclose immediately adjacent to or after the description of any item or prize to be received by any person the actual retail value of each item or prize to be awarded. For the purposes of this paragraph (y), the actual retail value is the price at which substantial sales of the item were made in the person's trade area

or in the trade area in which the item or prize is to be received within the last ninety days or, if no substantial sales were made, the actual cost of the item or prize to the person on whose behalf any contest or promotion is conducted; except that, whenever the actual cost of the item to the provider is less than fifteen dollars per item, a disclosure that "actual cost to the provider is less than fifteen dollars" may be made in lieu of disclosure of actual cost. The provisions of this paragraph (y) shall not apply to a promotion which is soliciting the sale of a newspaper, magazines, or periodicals of general circulation or to a promotion soliciting the sale of books, records, audio tapes, compact discs, or videos, when the promoter allows the purchaser to review the merchandise without obligation for at least seven days and provides a full refund within thirty days after the receipt of the returned merchandise or when a membership club operation is in conformity with rules and regulations of the federal trade commission contained in 16 C.F.R. 425.

(z) Refuses or fails to obtain all governmental licenses or permits required to perform the services or to sell the goods, food, services, or property as agreed to or contracted for with a consumer;

(aa) Fails, in connection with the issuing, making, providing, selling, or offering to sell of a motor vehicle service contract, to comply with the provisions of article 11 of title 42, C.R.S.;

(cc) Engages in any commercial telephone solicitation which constitutes an unlawful telemarketing practice as defined in section 6-1-304;

(Note: 6-1-304 C.R.S., concerning telemarketing fraud, became effective July 1, 1993 and requires registration with the Attorney General of commercial telephone solicitors. The act provides that a person or an affiliate of a person does not need to register if that person or an affiliate of that person is regulated by the Colorado Real Estate Commission.)

(ee) Intentionally violates any provision of article 10 of title 5, C.R.S.;

(gg) Fails to disclose or misrepresents to another person, a secured creditor, or an assignee by whom such person is retained to repossess personal property whether such person is bonded in accordance with section 4-9-629, C.R.S., or fails to file such bond with the attorney general;

(hh) Violates any provision of article 16 of this title;

(jj) Represents to any person that such person has won or is eligible to win any award, prize, or thing of value as the result of a contest, promotion, sweepstakes, or drawing, or that such person will receive or is eligible to receive free goods, services, or property, unless, at the time of the representation, the person has the present ability to supply such award, prize, or thing of value;

(kk) Violates any provision of article 6 of this title;

(ll) Knowingly makes a false representation as to the results of a radon test or the need for radon mitigation;

(ss) Violates any provision of part 33 of article 32 of title 24, C.R.S., that applies to the installation of manufactured homes;

(2) Evidence that a person has engaged in a deceptive trade practice shall be prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

(3) The deceptive trade practices listed in this section are in addition to and do not limit the types of unfair trade practices actionable at common law or under other statutes of this state.
(Note: Repealed provisions, or subsections irrelevant to the field of real estate – i.e., "animal care facilities" – have been intentionally omitted from this text.)

6-1-113. Damages.
(1) The provisions of this article shall be available in a civil action for any claim against any person who has engaged in or caused another to engage in any deceptive trade practice listed in this article. An action under this section shall be available to any person who:

(a) Is an actual or potential consumer of the defendant's goods, services, or property and is injured as a result of such deceptive trade practice; or

(b) Is any successor in interest to an actual consumer who purchased the defendant's goods, services, or property; or

(c) In the course of the person's business or occupation, is injured as a result of such deceptive trade practice.

(2) Except in a class action or a case brought for a violation of section 6-1-709, any person who, in a private civil action, is found to have engaged in or caused another to engage in any deceptive trade practice listed in this article shall be liable in an amount equal to the sum of:

(a) The greater of:

(I) The amount of actual damages sustained; or

(II) Five hundred dollars; or

(III) Three times the amount of actual damages sustained, if it is established by clear and convincing evidence that such person engaged in bad faith conduct; plus

(b) In the case of any successful action to enforce said liability, the costs of the action together with reasonable attorney fees as determined by the court.

(2.3) As used in subsection (2) of this section, "bad faith conduct" means fraudulent, willful, knowing, or intentional conduct that causes injury.

(2.5) Notwithstanding the provisions of subsection (2) of this section, in the case of any violation of section 6-1-709, in addition to interest, costs of the action, and reasonable attorney fees as determined by the court, the prevailing party shall be entitled only to damages in an amount sufficient to refund money actually paid for a manufactured home not delivered in accordance with the provisions of section 6-1-709.

(2.7) Notwithstanding the provisions of subsection (2) of this section, in case of any violation of section 6-1-105(1)(ss), the court may award reasonable costs of the action and attorney fees and interest and in addition, the prevailing party shall be entitled only to damages in an amount sufficient to refund moneys actually paid for the installation of a manufactured home not installed in accordance with the provisions of part 31 of article 32 of title 24, C.R.S.

(3) Any person who brings an action under this article that is found by the court to be groundless and in bad faith or for the purpose of harassment shall be liable to the defendant for the costs or the action together with reasonable attorney fees as determined by the court.

(4) Costs and attorney fees shall be awarded to the attorney general or a district attorney in all actions where the attorney general or the district attorney successfully enforces this article.

6-1-703. Time shares - deceptive trade practices.

(1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person engages in one or more of the following activities in connection with the advertisement or sale of a time share:

(a) Misrepresents the investment, resale, or rental value of any time share; the conditions under which a purchaser may exchange the right to use accommodations or facilities in one location for the right to use accommodations or facilities in another location; or the period of time during which the accommodations or facilities contracted for will be available to the purchaser;

(b) Fails to allow any purchaser of a time share a right to rescind the sale within five calendar days after the sale;

(c) Fails to provide conspicuous notice on the contract of the right of a purchaser of a time share to rescind the sale either by telegrams mail, or hand delivery. Notice of rescission is considered given, if by mail when filed for telegraphic transmission, or if the seller's place of business; or

(d) Fails to refund any down payment of deposit made pursuant to a time share contract within seven days after the seller receives the purchaser's written notice of rescission.

6-1-709. Sales of manufactured homes – deceptive trade practices

(1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person:

(a) Engages in conduct that constitutes an unlawful manufactured home sale practice as described in section 6-1-606. [earlier in this chapter]

DISCLOSURE – METHAMPHETAMINE LABORATORY

CONCERNING MANDATORY DISCLOSURE IN CONNECTION WITH THE PURCHASE OF RESIDENTIAL REAL PROPERTY OF WHETHER THE PROPERTY HAS BEEN USED AS A METHAMPHETAMINE LABORATORY.

38-35.7-103. Disclosure - methamphetamine laboratory.

(1) A buyer of residential real property has the right to test the property for the purpose of determining whether the property has ever been used as a methamphetamine laboratory.

(2) (a) Tests conducted pursuant to this section shall be performed by a certified industrial hygienist or industrial hygienist, as those terms are defined in section 24-30-1402, C.R.S. If the buyer's test results indicate that the property has been used as a methamphetamine laboratory but has not been remediated to meet the standards established by rules of the state board of health promulgated pursuant to section 25-18.5-102, C.R.S., the buyer shall promptly give written notice to the seller of the results of the test, and the buyer may terminate the contract.

(b) The seller shall have thirty days after receipt of the notice to conduct a second independent test. If the seller's test results indicate that the property has been used as a methamphetamine laboratory but has not been remediated to meet the standards established by rules of the state board of health promulgated pursuant to section 25-18.5-102, C.R.S., then the second independent hygienist shall so notify the seller.

(c) If the seller receives the notice referred to in paragraph (b) of this subsection (2) or if the seller receives the notice referred to in paragraph (a) of this subsection (2) and does not elect to have the property retested pursuant to paragraph (b) of this subsection (2), then an illegal drug laboratory used to manufacture methamphetamine shall be deemed to have been discovered and the owner shall be deemed to have received notice pursuant to section 25-18.5-103 (1) (a), C.R.S. Nothing in this section shall prohibit a buyer from purchasing the property and assuming liability pursuant to section 25-18.5-103, C.R.S., provided that on the date of closing, the buyer shall provide notice to the department of public health and environment of the purchase and assumption of liability and further provided that the remediation required by section 25-18.5-103, C.R.S., shall be completed within ninety days after the date of closing.

(3) (a) Except as specified in subsection (4) of this section, the seller shall disclose in writing to the buyer whether the seller knows that the property was previously used as a methamphetamine laboratory.

(b) A seller who fails to make a disclosure required by this section at or before the time of sale and who knew of methamphetamine production on the property is liable to the buyer for:

(I) Costs relating to remediation of the property according to the standards established by rules of the state board of health promulgated pursuant to section 25-18.5-102, C.R.S.;

(II) Costs relating to health-related injuries occurring after the sale to residents of the property caused by methamphetamine production on the property; and

(III) Reasonable attorney fees for collection of costs from the seller.

(c) A buyer shall commence an action under this subsection (3) within three years after the date on which the buyer closed the purchase of the property where the methamphetamine production occurred.

(4) If the seller became aware that the property was once used for the production of methamphetamine and the property was remediated in accordance with the standards established pursuant to section 25-18.5-102, C.R.S., and evidence of such remediation was received by the applicable governing body in compliance with the documentation requirements established pursuant to section 25-18.5-102, C.R.S., then the seller shall not be required to disclose that the property was used as a methamphetamine laboratory to a buyer and the property shall be removed from any government-sponsored informational service listing properties that have been used for the production of methamphetamine.

(5) For purposes of this section, "residential real property" includes a: Manufactured home; mobile home; condominium; townhome; home sold by the

owner, a financial institution, or the federal department of housing and urban development; rental property, including an apartment; and short-term residence such as a motel or hotel.

ILLEGAL DRUG LABORATORIES

25-18.5-101. Definitions.

As used in this article, unless the context otherwise requires:
(1) “Board” means the state board of health in the department of public health and environment.
(2) “Drug laboratory” means the areas where controlled substances, as defined by section 18-18-102, C.R.S., have been manufactured, processed, cooked, disposed of, or stored and all proximate areas that are likely to be contaminated as a result of such manufacturing, processing, cooking, disposing, or storing.
(2.5) “Governing body” means the agency or office designated by the city council or board of county commissioners where the property in question is located. If there is no such designation, the governing body shall be the health department, building department, and law enforcement agency with jurisdiction over the property in question.
(3) “Property” means anything that may be the subject of ownership, including, but not limited to, land, buildings, structures, and vehicles.
(4) “Property owner”, for the purposes of real property, means the person holding record fee title to real property. “Property owner” also means the person holding the title to a manufactured home.

25-18.5-102. Illegal drug laboratories – rules.

The board shall promulgate rules that establish the acceptable standards for the cleanup of illegal laboratories used to manufacture methamphetamine. The rules shall consider the findings of the hazardous materials and waste management division of the department of public health and environment in the July 2003 report titled “Cleanup of Clandestine Methamphetamine Labs Guidance Document” or a successor document outlining best practice standards for methamphetamine laboratory cleanup.

25-18.5-103. Discovery of illegal drug laboratory – property owner – clean-up – liability.

(1) (a) Upon notification from a peace officer that chemicals, equipment, or supplies indicative of an illegal drug laboratory are located on a property, or when an illegal drug laboratory used to manufacture methamphetamine is otherwise discovered and the property owner has received notice, the owner of any contaminated property shall meet the cleanup standards for property established by the board in section 25-18.5-102; except that a property owner may, at his or her option and subject to paragraph (b) of this subsection (1), elect instead to demolish the contaminated property. If the owner elects to demolish the contaminated property, the governing body or, if none has been designated, the health department, building department, or law enforcement agency with jurisdiction over the area where the property is located may require the owner to

fence off the property or otherwise make it inaccessible to persons for occupancy or intrusion.

(b) An owner of any personal property within a structure or vehicle contaminated by illegal drug laboratory activity shall have ten days after the date of discovery of the laboratory or contamination to remove or clean his or her personal property according to board rules. If the personal property owner fails to remove the personal property within ten days, the owner of the structure or vehicle may dispose of the personal property during the cleanup process without liability to the owner of the personal property for such disposition.

(2) Once a property owner has met the clean-up standards and documentation requirements established by the board, as evidenced by a copy of the results provided to the governing body, or has demolished the property, compliance with subsection (1) of this section shall establish immunity for the property owner from a suit for alleged health-based civil actions brought by any future owner, renter, or other person who occupies such property, or a neighbor of such property, in which the alleged cause of the injury or loss is the existence of the illegal drug laboratory used to manufacture methamphetamine; except that immunity from a civil suit is not established for the person convicted for the production of methamphetamine.

(3) A person who removes personal property or debris from a drug laboratory shall secure the property and debris to prevent theft or exposing another person to any toxic or hazardous chemicals until the property and debris is appropriately disposed of or cleaned according to board rules.

25-18.5-104. Entry into illegal drug laboratories.

If a structure or vehicle has been determined to be contaminated or if a governing body or law enforcement agency issues a notice of probable contamination, the owner of the structure or vehicle shall not permit any person to have access to the structure or vehicle unless the person is trained or certified to handle contaminated property pursuant to board rules or federal law.

25-18.5-105. Drug laboratories – governing body – authority.

(1) An illegal drug laboratory that has not met the cleanup standards set by the board in section 25-18.5-102 shall be deemed a public health nuisance.

(2) Governing bodies may enact ordinances or resolutions to enforce this article, including, but not limited to, preventing unauthorized entry into contaminated property; requiring contaminated property to meet cleanup standards before it is occupied; notifying the public of contaminated property; coordinating services and sharing information between law enforcement, building, public health, and social services agencies and officials; and charging reasonable inspection and testing fees.

COMMON INTEREST COMMUNITY DISCLOSURE

38-35.7-102. Disclosure - common interest community - obligation to pay assessments - requirement for architectural approval.

(1) On and after January 1, 2007, every contract for the purchase and sale of residential real property in a common interest community shall contain a disclosure statement in bold-faced type that is clearly legible and in substantially the following form:

THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR SUCH COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNER'S ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.

(2) (a) The obligation to provide the disclosure set forth in subsection (1) of this section shall be upon the seller, and, in the event of the failure by the seller to provide the written disclosure described in subsection (1) of this section, the purchaser shall have a claim for relief against the seller for actual damages directly and proximately caused by such failure plus court costs. It shall be an affirmative defense to any claim for damages brought under this section that the purchaser had actual or constructive knowledge of the facts and information required to be disclosed.

(b) Upon request, the seller shall either provide to the buyer or authorize the unit owners' association to provide to the buyer, upon payment of the association's usual fee pursuant to section 38-33.3-317 (3), all of the common interest community's governing documents and financial documents, as listed in the most recent available version of the contract to buy and sell real estate promulgated by the real estate commission as of the date of the contract.

(3) This section shall not apply to the sale of a unit that is a time share unit, as defined in section 38-33-110 (7).

EQUITY SKIMMING

18-5-802. Equity skimming of real property.

(1) A person commits the crime of equity skimming of real property if he knowingly:

(a) Acquires an interest in real property which is encumbered by a loan secured by a mortgage or deed of trust and the loan is in arrears at the time

he acquires the interest or is placed in default within eighteen months after acquiring such interest in real property; and

(b) Fails to apply all rent derived from his interest in the real property first toward the satisfaction of all outstanding payments due on the loan and second toward any fees due to any association of real property owners which charges such fees for the upkeep of the housing facility, or common area including buildings and grounds thereof, of which the real property is a part before appropriating the remainder of such rent or any part thereof for any other purpose except for the purpose of repairs necessary to prevent waste of the real property.

(2) Repealed.

(3) Equity skimming of real property is a class 5 felony.

(4) It shall be an affirmative defense to this section:

(a) That all deficiencies in all underlying encumbrances at the time of acquisition have been fully satisfied and brought current and that, in addition, any regular payments on the underlying encumbrances during the succeeding nine months after the date of acquisition have been timely paid in full;

(b) That any fees due to an association of real property owners for the upkeep of the housing facility, or common area including buildings and grounds thereof, of which the real property is a part have been paid in full.

(5) The provisions of this section shall not apply to any bona fide lender who accepts a deed in lieu of foreclosure or who forecloses upon the real property.

(6) The provisions of this section shall not apply to any bona fide purchaser who acquires fee title in any real property without agreeing to pay all underlying encumbrances and takes fee title subject to all underlying encumbrances, if the following written, verbatim warning was provided to the seller in capital letters of no less than ten-point, bold-faced type and acknowledged by the seller's signature:

WARNING: PURCHASER WILL NOT ASSUME OR PAY ANY PRESENT MORTGAGE, DEEDS OF TRUST, OR OTHER LIENS OR ENCUMBRANCES AGAINST THE PROPERTY. THE SELLER UNDERSTANDS HE/SHE WILL REMAIN RESPONSIBLE FOR ALL PAYMENTS DUE ON SUCH MORTGAGES, DEEDS OF TRUST, OR OTHER LIENS OR ENCUMBRANCES AND FOR ANY DEFICIENCY JUDGMENT UPON FORECLOSURE.I HAVE HAD THE FOREGOING READ TO ME AND UNDERSTAND THE PURCHASER, , WILL NOT ASSUME ANY PRESENT MORTGAGES, DEEDS OF TRUST, OR OTHER LIENS OR ENCUMBRANCES AGAINST THE PROPERTY DESCRIBED AS:
DATE: _____ SELLER(S) NAME AND SIGNATURE: _____

COLORADO FORECLOSURE PROTECTION ACT

6-1-1102. Legislative declaration.

The general assembly hereby finds, determines, and declares that home ownership and the accumulation of equity in one's home provide significant social and economic benefits to the state and its citizens. Unfortunately, too many home owners in financial distress, especially the poor, elderly, and financially unsophisticated, are vulnerable to a variety of deceptive or unconscionable business practices designed to dispossess them or otherwise strip the equity

from their homes. There is a compelling need to curtail and to prevent the most deceptive and unconscionable of these business practices, to provide each home owner with information necessary to make an informed and intelligent decision regarding transactions with certain foreclosure consultants and equity purchasers, to provide certain minimum requirements for contracts between such parties, including statutory rights to cancel such contracts, and to ensure and foster fair dealing in the sale and purchase of homes in foreclosure. Therefore, it is the intent of the general assembly that all violations of this part 11 have a significant public impact and that the terms of this part 11 be liberally construed to achieve these purposes.

6-1-1103 Definitions.

As used in this part 11, unless the context otherwise requires:

(1) "Associate" means a partner, subsidiary, affiliate, agent, or any other person working in association with a foreclosure consultant or an equity purchaser. "Associate" does not include a person who is excluded from the definition of an "equity purchaser" or a "foreclosure consultant".

Q&A (2) "Equity purchaser" means a person who, in the course of the person's business, vocation, or occupation, acquires title to a residence in foreclosure; except that the term does not include a person who acquires such title:

(a) For the purpose of using such property as his or her personal residence for at least one year;

(b) By a deed in lieu of foreclosure to the holder of an evidence of debt, or an associate of the holder of an evidence of debt, of a consensual lien or encumbrance of record if such consensual lien or encumbrance is recorded in the real property records of the clerk and recorder of the county where the residence in foreclosure is located prior to the recording of the notice of election and demand for sale required under section 38-38-101, C.R.S.;

(c) By a deed from the public trustee or a county sheriff as a result of a foreclosure sale conducted pursuant to article 38 of title 38, C.R.S.;

(d) At a sale of property authorized by statute;

(e) By order or judgment of any court;

(f) From the person's spouse, relative, or relative of a spouse, by the half or whole blood or by adoption, or from a guardian, conservator, or personal representative of a person identified in this paragraph (f); or

(g) While performing services as a part of a person's normal business activities under any law of this state or the United States that regulates banks, trust companies, savings and loan associations, credit unions, insurance companies, title insurers, insurance producers, or escrow companies authorized to conduct business in the state, an affiliate or subsidiary of such person, or an employee or agent acting on behalf of such person.

(3) "Evidence of debt" means a writing that evidences a promise to pay or a right to the payment of a monetary obligation, such as a promissory note, bond, negotiable instrument, a loan, credit, or similar agreement, or a monetary judgment entered by a court of competent jurisdiction.

(4) (a) "Foreclosure consultant" means a person who does not, directly or through an associate, take or acquire any interest in or title to the residence in foreclosure and who, in the course of such person's business, vocation, or occupation, makes a solicitation, representation, or offer to a home owner to perform, in exchange for compensation from the home owner or from the proceeds of any loan or advance of funds, a service that the person represents will do any of the following:

(I) Stop or postpone a foreclosure sale;

(II) Obtain a forbearance from a beneficiary under a deed of trust, mortgage, or other lien;

(III) Assist the home owner in exercising a right to cure a default as provided in article 38 of title 38, C.R.S.;

(IV) Obtain an extension of the period within which the home owner may cure a default as provided in article 38 of title 38, C.R.S.;

(V) Obtain a waiver of an acceleration clause contained in an evidence of debt secured by a deed of trust, mortgage, or other lien on a residence in foreclosure or contained in such deed of trust, mortgage, or other lien;

(VI) Assist the home owner to obtain a loan or advance of funds;

(VII) Avoid or reduce the impairment of the home owner's credit resulting from the recording of a notice of election and demand for sale, commencement of a judicial foreclosure action, or due to any foreclosure sale or the granting of a deed in lieu of foreclosure or resulting from any late payment or other failure to pay or perform under the evidence of debt, the deed of trust, or other lien securing such evidence of debt;

(VIII) In any way delay, hinder, or prevent the foreclosure upon the home owner's residence; or

(IX) Assist the home owner in obtaining from the beneficiary, mortgagee, or grantee of the lien in foreclosure, or from counsel for such beneficiary, mortgagee, or grantee, the remaining or excess proceeds from the foreclosure sale of the residence in foreclosure.

(b) The term "foreclosure consultant" does not include:

(I) A person licensed to practice law in this state, while performing any activity related to the person's attorney-client relationship with a home owner or any activity related to the person's attorney-client relationship with the beneficiary, mortgagee, grantee, or holder of any lien being enforced by way of foreclosure;

(II) A holder or servicer of an evidence of debt or the attorney for the holder or servicer of an evidence of debt secured by a deed of trust or other lien on any residence in foreclosure while the person performs services in connection with the evidence of debt, lien, deed of trust, or other lien securing such debt;

(III) A person doing business under any law of this state or the United States, which law regulates banks, trust companies, savings and loan associations, credit unions, insurance companies, title insurers, insurance producers, or escrow companies authorized to conduct business in the state, while the person performs services as part of the person's normal

business activities, an affiliate or subsidiary of any of the foregoing, or an employee or agent acting on behalf of any of the foregoing;

(IV) A person originating or closing a loan in a person's normal course of business if, as to that loan:

(A) The loan is subject to the requirements of the federal "Real Estate Settlement Procedures Act", 12 U.S.C. sec. 2601 to 2617; or

(B) With respect to any second mortgage or home equity line of credit, the loan is subordinate to and closed simultaneously with a qualified first mortgage loan under sub-subparagraph (A) of this subparagraph (IV) or is initially payable on the face of the note or contract to an entity included in subparagraph (III) of this paragraph (b);

(V) A judgment creditor of the home owner, if the judgment is recorded in the real property records of the clerk and recorder of the county where the residence in foreclosure is located and the legal action giving rise to the judgment was commenced before the notice of election and demand for sale required under section 38-38-101, C.R.S.;

(VI) A title insurance company or title insurance agent authorized to conduct business in this state, while performing title insurance and settlement services;

(VII) A person licensed as a real estate broker or real estate salesperson under article 61 of title 12, C.R.S., while the person engages in any activity for which the person is licensed; or

(VIII) A nonprofit organization that solely offers counseling or advice to home owners in foreclosure or loan default, unless the organization is an associate of the foreclosure consultant.

(5) "Foreclosure consulting contract" means any agreement between a foreclosure consultant and a home owner.

(6) "Holder of evidence of debt" means the person in actual possession of or otherwise entitled to enforce an evidence of debt; except that "holder of evidence of debt" does not include a person acting as a nominee solely for the purpose of holding the evidence of debt or deed of trust as an electronic registry without any authority to enforce the evidence of debt or deed of trust. The following persons are presumed to be the holder of evidence of debt:

(a) The person who is the obligee of and who is in possession of an original evidence of debt;

(b) The person in possession of an original evidence of debt together with the proper indorsement or assignment thereof to such person in accordance with section 38-38-101 (6), C.R.S.;

(c) The person in possession of a negotiable instrument evidencing a debt, which has been duly negotiated to such person or to bearer or indorsed in blank; or

(d) The person in possession of an evidence of debt with authority, which may be granted by the original evidence of debt or deed of trust, to enforce the evidence of debt as agent, nominee, or trustee or in a similar capacity for the obligee of the evidence of debt.

(7) "Home owner" means the owner of a residence in foreclosure, including a vendee under a contract for deed to real property, as that term is defined in section 38-35-126 (1) (b), C.R.S.
(8) "Residence in foreclosure" means a residence or dwelling, as defined in sections 5-1-201 and 5-1-301, C.R.S., that is occupied as the home owner's principal place of residence and against which any type of foreclosure action has been commenced.

FORECLOSURE CONSULTANTS
6-1-1104. Foreclosure consulting contract.
(1) A foreclosure consulting contract shall be in writing and provided to and retained by the home owner, without changes, alterations, or modifications, for review at least twenty-four hours before it is signed by the home owner.
(2) A foreclosure consulting contract shall be printed in at least twelve-point type and shall include the name and address of the foreclosure consultant to which a notice of cancellation can be mailed and the date the home owner signed the contract.
(3) A foreclosure consulting contract shall fully disclose the exact nature of the foreclosure consulting services to be provided and the total amount and terms of any compensation to be received by the foreclosure consultant or associate.
(4) A foreclosure consulting contract shall be dated and personally signed, with each page being initialed, by each home owner of the residence in foreclosure and the foreclosure consultant and shall be acknowledged by a notary public in the presence of the home owner at the time the contract is signed by the home owner.
(5) A foreclosure consulting contract shall contain the following notice, which shall be printed in at least fourteen-point bold-faced type, completed with the name of the foreclosure consultant, and located in immediate proximity to the space reserved for the home owner's signature:

NOTICE REQUIRED BY COLORADO LAW

_____ (Name) or (his/her/its) associate cannot ask you to sign or have you sign any document that transfers any interest in your home or property to (him/her/it) or (his/her/its) associate.

_____ (Name) or (his/her/its) associate cannot guarantee you that they will be able to refinance your home or arrange for you to keep your home.

You may, at any time, cancel this contract, without penalty of any kind.

If you want to cancel this contract, mail or deliver a signed and dated copy of this notice of cancellation, or any other written notice, indicating your intent to cancel to _____ (name and address of foreclosure consultant) at _____ (address of foreclosure consultant, including facsimile and electronic mail address).

As part of any cancellation, you (the home owner) must repay any money actually spent on your behalf by _____ (name of foreclosure consultant) prior to receipt of this notice and as a result of this agreement, within sixty days, along with interest at the prime rate published by the federal reserve plus two percentage points, with the total interest rate not to exceed eight percent per year.

This is an important legal contract and could result in the loss of your home. Contact an attorney or a housing counselor approved by the federal department of housing and urban development before signing.

(6) A completed form in duplicate, captioned "Notice of Cancellation" shall accompany the foreclosure consulting contract. The notice of cancellation shall:

(a) Be on a separate sheet of paper attached to the contract;

(b) Be easily detachable; and

(c) Contain the following statement, printed in at least fourteen-point type:

NOTICE OF CANCELLATION

(Date of contract)
To: (name of foreclosure consultant)
(Address of foreclosure consultant, including facsimile and electronic mail)
I hereby cancel this contract.
_____ (Date) _____ (Home owner's signature)

(7) The foreclosure consultant shall provide to the home owner a signed, dated, and acknowledged copy of the foreclosure consulting contract and the attached notice of cancellation immediately upon execution of the contract.

(8) The time during which the home owner may cancel the foreclosure consulting contract does not begin to run until the foreclosure consultant has complied with this section.

6-1-1105. Right of cancellation.

(1) In addition to any right of rescission available under state or federal law, the home owner has the right to cancel a foreclosure consulting contract at any time.

(2) Cancellation occurs when the home owner gives written notice of cancellation of the foreclosure consulting contract to the foreclosure consultant at the address specified in the contract or through any facsimile or electronic mail address identified in the contract or other materials provided to the home owner by the foreclosure consultant.

(3) Notice of cancellation, if given by mail, is effective when deposited in the United States mail, properly addressed, with postage prepaid.

(4) Notice of cancellation need not be in the form provided with the contract and is effective, however expressed, if it indicates the intention of the home owner to cancel the foreclosure consulting contract.

(5) As part of the cancellation of a foreclosure consulting contract, the home owner shall repay, within sixty days after the date of cancellation, all funds paid or advanced in good faith prior to the receipt of notice of cancellation by the foreclosure consultant or associate under the terms of the foreclosure consulting contract, together with interest at the prime rate published by the federal reserve plus two percentage points, with the total interest rate not to exceed eight percent per year, from the date of expenditure until repaid by the home owner.

(6) The right to cancel may not be conditioned on the repayment of any funds.

6-1-1106. Waiver of rights - void.

(1) A provision in a foreclosure consulting contract is void as against public policy if the provision attempts or purports to:

(a) Waive any of the rights specified in this subpart 2 or the right to a jury trial;

(b) Consent to jurisdiction for litigation or choice of law in a state other than Colorado;

(c) Consent to venue in a county other than the county in which the property is located; or

(d) Impose any costs or fees greater than the actual costs and fees.

6-1-1107. Prohibited acts.

(1) A foreclosure consultant may not:

(a) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform;

(b) Claim, demand, charge, collect, or receive any interest or any other compensation for a loan that the foreclosure consultant makes to the home owner that exceeds the prime rate published by the federal reserve at the time of any loan plus two percentage points, with the total interest rate not to exceed eight percent per year;

(c) Take a wage assignment, lien of any type on real or personal property, or other security to secure the payment of compensation;

(d) Receive any consideration from a third party in connection with foreclosure consulting services provided to a home owner unless the consideration is first fully disclosed in writing to the home owner;

(e) Acquire an interest, directly, indirectly, or through an associate, in the real or personal property of a home owner with whom the foreclosure consultant has contracted;

(f) Obtain a power of attorney from a home owner for any purpose other than to inspect documents as provided by law; or

(g) Induce or attempt to induce a home owner to enter into a foreclosure consulting contract that does not comply in all respects with this subpart 2.

6-1-1108. Criminal penalties.

A person who violates section 6-1-1107 is guilty of a misdemeanor, as defined in section 18-1.3-504, C.R.S., and shall be subject to imprisonment in county jail for up to one year, a fine of up to twenty-five thousand dollars, or both.

6-1-1109. Unconscionability.

(1) A foreclosure consultant or associate may not facilitate or engage in any transaction that is unconscionable given the terms and circumstances of the transaction.

(2) (a) If a court, as a matter of law, finds a foreclosure consultant contract or any clause of such contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or so limit the application of any unconscionable clause as to avoid an unconscionable result.

(b) When it is claimed or appears to the court that a foreclosure consultant contract or any clause of such contract may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect, to aid the court in making the determination.
(c) In order to support a finding of unconscionability, there must be evidence of some bad faith overreaching on the part of the foreclosure consultant or associate such as that which results from an unreasonable inequality of bargaining power or other circumstances in which there is an absence of meaningful choice for one of the parties, together with contract terms that are, under standard industry practices, unreasonably favorable to the foreclosure consultant or associate.

6-1-1110. Language.
A foreclosure consulting contract, and all notices of cancellation provided for therein, shall be written in English and shall be accompanied by a written translation from English into any other language principally spoken by the home owner, certified by the person making the translation as a true and correct translation of the English version. The translated version shall be presumed to have equal status and credibility as the English version.

EQUITY PURCHASERS
6-1-1111. Written contract required.
Every contract shall be written in at least twelve-point bold-faced type and fully completed, signed, and dated by the home owner and equity purchaser prior to the execution of any instrument quit-claiming, assigning, transferring, conveying, or encumbering an interest in the residence in foreclosure.

6-1-1112. Written contract - contents - notice.
(1) Every contract shall contain the entire agreement of the parties and shall include the following terms:
(a) The name, business address, and telephone number of the equity purchaser;
(b) The street address and full legal description of the residence in foreclosure;
(c) Clear and conspicuous disclosure of any financial or legal obligations of the home owner that will be assumed by the equity purchaser. If the equity purchaser will not be assuming any financial or legal obligations of the home owner, the equity purchaser shall provide to the home owner a separate written disclosure that substantially complies with section 18-5-802 (6), C.R.S.
(d) The total consideration to be paid by the equity purchaser in connection with or incident to the acquisition by the equity purchaser of the residence in foreclosure;
(e) The terms of payment or other consideration, including, but not limited to, any services of any nature that the equity purchaser represents will be performed for the home owner before or after the sale;

(f) The date and time when possession of the residence in foreclosure is to be transferred to the equity purchaser;
(g) The terms of any rental agreement or lease;
(h) The specifications of any option or right to repurchase the residence in foreclosure, including the specific amounts of any escrow deposit, down payment, purchase price, closing costs, commissions, or other fees or costs;
(i) A notice of cancellation as provided in section 6-1-1114; and
(j) The following notice, in at least fourteen-point bold-faced type, and completed with the name of the equity purchaser, immediately above the statement required by section 6-1-1114:

NOTICE REQUIRED BY COLORADO LAW
Until your right to cancel this contract has ended, (Name) or anyone working for _____ (Name) CANNOT ask you to sign or have you sign any deed or any other document.

(2) The contract required by this section survives delivery of any instrument of conveyance of the residence in foreclosure, but does not have any effect on persons other than the parties to the contract or affect title to the residence in foreclosure.

6-1-1113. Cancellation.
(1) In addition to any right of rescission available under state or federal law, the home owner has the right to cancel a contract with an equity purchaser until 12 midnight of the third business day following the day on which the home owner signs a contract that complies with this part 11 or until 12 noon on the day before the foreclosure sale of the residence in foreclosure, whichever occurs first.
(2) Cancellation occurs when the home owner personally delivers written notice of cancellation to the address specified in the contract or upon deposit of such notice in the United States mail, properly addressed, with postage prepaid.
(3) A notice of cancellation given by the home owner need not take the particular form as provided with the contract and, however expressed, is effective if it indicates the intention of the home owner not to be bound by the contract.
(4) In the absence of any written notice of cancellation from the home owner, the execution by the home owner of a deed or other instrument of conveyance of an interest in the residence in foreclosure to the equity purchaser after the expiration of the rescission period creates a rebuttable presumption that the home owner did not cancel the contract with the equity purchaser.

6-1-1114. Notice of cancellation.
(1) (a) The contract shall contain, as the last provision before the space reserved for the home owner's signature, a conspicuous statement in at least twelve-point bold-faced type, as follows:
You may cancel this contract for the sale of your house without any penalty or obligation at any time before _____(Date and time of day). See the attached notice of cancellation form for an explanation of this right.

(b) The equity purchaser shall accurately specify the date and time of day on which the cancellation right ends.

(2) The contract shall be accompanied by duplicate completed forms, captioned "notice of cancellation" in at least twelve-point bold-faced type if the contract is printed or in capital letters if the contract is typed, followed by a space in which the equity purchaser shall enter the date on which the home owner executed the contract. Such form shall:

(a) Be attached to the contract;

(b) Be easily detachable; and

(c) Contain the following statement, in at least ten-point type if the contract is printed or in capital letters if the contract is typed:

NOTICE OF CANCELLATION

_____(Enter date contract signed). You may cancel this contract for the sale of your house, without any penalty or obligation, at any time before _____(Enter date and time of day). To cancel this transaction, personally deliver a signed and dated copy of this Notice of Cancellation in the United States mail, postage prepaid, to _____, (Name of purchaser) at _____ (Street address of purchaser's place of business) NOT LATER THAN _____(Enter date and time of day). I hereby cancel this transaction.

_____(Date) _____(Seller's signature)

(3) The equity purchaser shall provide the home owner with a copy of the contract and the attached notice of cancellation.

(4) Until the equity purchaser has complied with this section, the home owner may cancel the contract.

6-1-1115. Options through reconveyances.

(1) A transaction in which a home owner purports to grant a residence in foreclosure to an equity purchaser by an instrument that appears to be an absolute conveyance and reserves to the home owner or is given by the equity purchaser an option to repurchase shall be permitted only where all of the following conditions have been met:

(a) The reconveyance contract complies in all respects with section 6-1-1112;

(b) The reconveyance contract provides the home owner with a nonwaivable thirty-day right to cure any default of said reconveyance contract and specifies that the home owner may exercise this right to cure on at least three separate occasions during such reconveyance contract;

(c) The equity purchaser fully assumes or discharges the lien in foreclosure as well as any prior liens that will not be extinguished by such foreclosure, which assumption or discharge shall be accomplished without violation of the terms and conditions of the liens being assumed or discharged;

(d) The equity purchaser verifies and can demonstrate that the home owner has or will have a reasonable ability to make the lease payments and to repurchase the residence in foreclosure within the term of the option to repurchase under the reconveyance contract. For purposes of this section,

there is a rebuttable presumption that the home owner has a reasonable ability to make lease payments and to repurchase the residence in foreclosure if the home owner's payments for primary housing expenses and regular principal and interest payments on other personal debt do not exceed sixty percent of the home owner's monthly gross income; and

(e) The price the home owner must pay to exercise the option to repurchase the residence in foreclosure is not unconscionable. Without limitation on available claims under section 6-1-1119, a repurchase price exceeding twenty-five percent of the price at which the equity purchaser acquired the residence in foreclosure creates a rebuttable presumption that the reconveyance contract is unconscionable. The acquisition price paid by the equity purchaser may include any actual costs incurred by the equity purchaser in acquiring the residence in foreclosure.

6-1-1116. Waiver of rights - void.

(1) A provision in a contract between an equity purchaser and home owner is void as against public policy if it attempts or purports to:

(a) Waive any of the rights specified in this subpart 3 or the right to a jury trial;

(b) Consent to jurisdiction for litigation or choice of law in a state other than Colorado;

(c) Consent to venue in a county other than the county in which the property is located; or

(d) Impose any costs or fees greater than the actual costs and fees.

6-1-1117. Prohibited conduct.

(1) The contract provisions required by sections 6-1-1111 to 6-1-1114 shall be provided and completed in conformity with such sections by the equity purchaser.

(2) Until the time within which the home owner may cancel the transaction has fully elapsed, the equity purchaser shall not do any of the following:

(a) Accept from a home owner an execution of, or induce a home owner to execute, an instrument of conveyance of any interest in the residence in foreclosure;

(b) Record with the county recorder any document, including, but not limited to, the contract or any lease, lien, or instrument of conveyance, that has been signed by the home owner;

(c) Transfer or encumber or purport to transfer or encumber an interest in the residence in foreclosure to a third party; or

(d) Pay the home owner any consideration.

(3) Within ten days following receipt of a notice of cancellation given in accordance with sections 6-1-1113 and 6-1-1114, the equity purchaser shall return without condition the original contract and any other documents signed by the home owner.

(4) An equity purchaser shall make no untrue or misleading statements of material fact regarding the value of the residence in foreclosure, the amount of proceeds the home owner will receive after a foreclosure sale, any contract term, the home owner's rights or obligations incident to or arising out of the sale

transaction, the nature of any document that the equity purchaser induces the home owner to sign, or any other untrue or misleading statement concerning the sale of the residence in foreclosure to the equity purchaser.

6-1-1118. Criminal penalties.
A person who violates section 6-1-1117 (2) or (3) or who intentionally violates section 6-1-1117 (4) is guilty of a misdemeanor, as defined in section 18-1.3-504, C.R.S., and shall be subject to imprisonment in county jail for up to one year, a fine of up to twenty-five thousand dollars, or both.

6-1-1119. Unconscionability.
(1) An equity purchaser or associate may not facilitate or engage in any transaction that is unconscionable given the terms and circumstances of the transaction.
(2) (a) If a court, as a matter of law, finds an equity purchaser contract or any clause of such contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or so limit the application of any unconscionable clause as to avoid an unconscionable result.
(b) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect, to aid the court in making the determination.
(c) In order to support a finding of unconscionability, there must be evidence of some bad faith overreaching on the part of the equity purchaser or associate such as that which results from an unreasonable inequality of bargaining power or under other circumstances in which there is an absence of meaningful choice for one of the parties, together with contract terms that are, under standard industry practices, unreasonably favorable to the equity purchaser or associate.

6-1-1120. Language.
Any contract, rental agreement, lease, option or right to repurchase, and any notice, conveyance, lien, encumbrance, consent, or other document or instrument signed by a home owner, shall be written in English and shall be accompanied by a written translation from English into any other language principally spoken by the home owner, certified by the person making the translation as a true and correct translation of the English version. The translated version shall be presumed to have equal status and credibility as the English version.

6-1-105. Deceptive trade practices.
(1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person:
(xx) Violates any provision of part 11 of this article.

WATER RIGHTS AND OTHER WATER CONSIDERATIONS

I. Water Allocation Laws and Procedures

All *water in natural surface streams and* ***ground water*** *in related aquifers* (called **tributary ground water**) in Colorado is *owned by the public and is subject to the doctrine of prior appropriation*. Ground water other than tributary ground water is allocated by different rules as described below. There is a rebuttable presumption under Colorado law that all surface water and ground water in Colorado is tributary to a natural surface stream.

A water right is the right to use a portion of the waters of the state. A water right does not represent ownership of the water. It is a right to use a certain amount of water for a particular purpose under the restrictions stated in the court decree or well permit defining the water right.

The doctrine of prior appropriation is adopted and recognized in the Colorado Constitution in Article XVI, Sections 5 and 6. **Prior appropriation** means that the *first user to divert water from a stream and put the water to beneficial use has a prior right to that source of water compared to later users*. Under the prior appropriation system, water users do not share the burden of shortages. The *prior user is entitled to divert the full amount of water to meet his or her entire water need before the next junior user is allowed to divert any water*.

Water is appropriated, and a water right is created, by actions of the person who makes the appropriation. *Physical diversion* of water from a stream or a tributary aquifer, and application of that water to beneficial use, *creates a water right. No further administrative or judicial action is necessary*.

Under the prior appropriation system, the value and reliability of a water right is a function of its priority with respect to other water rights on the same stream system. In order to prioritize water rights, Colorado has adopted a statutory system of water right adjudication to determine the date of appropriation and priority of a water right with respect to other water rights. Adjudication means filing an application and proving to the court all of the aspects of a particular water right appropriation. The court then issues a decree that recites the relevant facts proved. The current adjudication statute is called the Water Right Determination and Administration Act of 1969, found at C.R.S. §§ 37-92-101 et seq. *Although a water right is created upon application of water to beneficial use, a water right owner is not entitled to have his or her water right administered within the priority system until he or she obtains a decree from a court confirming the water right priority*.

Surface water includes all water in rivers, streams, lakes, wetlands and other natural waterways, and diffuse runoff. **Ground water that is hydraulically connected to surface water**—*meaning that the ground water is replenished by surface water percolating into the ground or the ground water seeps into surface water bodies*—**is also considered tributary ground water**. *Tributary ground*

water is subject to the doctrine of prior appropriation as a part of the surface water body to which it is hydraulically connected. Thus, wells withdrawing water from the South Platte alluvium (the shallow aquifer that is tributary to the South Platte River) are considered tributary to the South Platte River and are subject to senior surface water rights on that river. This means that wells withdrawing water from the South Platte River tributary aquifer may not be able to operate to withdraw water when they are not in priority with respect to senior surface water rights.

A surface water right or tributary ground water right is represented by a decree from a court that confirms the priority date and other important aspects of the water right, including the type of use (irrigation, domestic, commercial, industrial, or other uses), the amount, the time of use, the point of diversion, and the place of use. A water right decree does not usually determine the ownership of a water right. It only states the identity of the claimant of the water right, who is usually but not always the owner. A water right is initially owned by the person or entity that actually diverted the water and applied it to beneficial use.

For administrative purposes, Colorado has been divided into seven water divisions, which are generally co-extensive with the seven major river basins that originate in the state. For instance, the South Platte River Basin is Water Division No. 1 and the Arkansas River Basin is Water Division No. 2. Each division has its own Water Court that has exclusive jurisdiction over all water matters in that division.

Water rights are administered, meaning that they are enforced, by the State Engineer's Office. Each water division has a division engineer's office that administers water rights in that division. Each division engineer supervises a number of water commissioners who are the people that actually tell water users whether they can legally divert water under their water right at any given time. Water commissioners are the local police of the water administration system.

Ground water in Colorado is allocated under several different rules depending upon its physical characteristics. As explained above, tributary ground water is subject to the doctrine of prior appropriation and is administered in conjunction with surface water rights in the river system to which it is tributary.

Another type of ground water classification, created by the legislature in the Ground Water Management Act of 1965, C.R.S. §§ 37-90-101 et seq., is *ground water that is within areas known as* ***designated ground water basins***. Designated ground water basins are geographic areas containing ground water that (1) in its *natural course would not be available to and required for the fulfillment of decreed surface water rights*, or (2) is in areas *not adjacent to a continuously flowing natural stream in which ground water withdrawals have constituted the principal water usage for at least 15 years prior to designation of the basin*.

The basins are created by the Ground Water Commission through a formal hearing and order process. A *modified doctrine of prior appropriation is applied in designated ground water basins*, meaning that prior appropriation is applied but *water levels in aquifers are allowed to decline over time even if this results in senior water rights losing their water supply*. Rights to use designated ground water are represented by well permits issued by the Ground Water Commission. *Colorado has eight designated ground water basins, which are generally located on the eastern plains*.

Ground water may be so physically separated from surface water by impermeable layers or great distances so as to have little or no hydraulic connection with surface water. If such ground water is located outside of a designated ground water basin, and its withdrawal will not *within 100 years deplete the flow of a natural stream* at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal, it is classified as **non-tributary groundwater**. By statute, C.R.S. § 37-90-137(4), the right to use non-tributary ground water is generally *allocated based on the ownership of the overlying land, rather than the prior appropriation system*. The owner of the overlying land may obtain a right to use nontributary ground water by obtaining a *well permit* from the State Engineer's Office, *or may seek to have the Water Court determine* the non-tributary ground water rights before drilling a well. Ground water within the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers in the area known as the Denver Basin (a kidney shaped area along the Front Range of Colorado between Greeley and Colorado Springs) is presumed to be non-tributary. Nontributary ground water also occurs in other parts of the state.

The Colorado legislature has also defined a unique category of ground water located outside the boundaries of a designated ground water basin within the Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifers in the Denver Basin. Water within this classification is water that would otherwise not meet the definition of non-tributary ground water, and is known as "not non-tributary" ground water. **Not non-tributary ground water** is also generally *allocated on the basis of land ownership*. Like non-tributary ground water, the owner of the overlying land may obtain a right to use not non-tributary ground water by obtaining a well permit from the State Engineer's Office or may seek to have the Water Court determine the not non-tributary ground water rights before drilling a well.

To avoid injury to senior surface water rights, the law now requires a judicially approved augmentation plan before junior tributary ground water rights and not non-tributary ground water rights can be pumped and used. *An augmentation plan allows a water user to divert water out of priority so long as adequate replacement is made to the affected stream system and water rights in quantities and at times so as to prevent injury to the water rights of others*. Water rights can only be used for the purposes described in the applicable decree or permit and

pursuant and subject to all of the other terms and conditions in the applicable decree or permit. For instance, an irrigation water right cannot be used for domestic or industrial purposes. The type, time and place of use, and other aspects of water rights can generally be changed if the change will not injure other water rights. Adjudicated water rights, including rights to non-tributary and not non-tributary ground water, must be changed in a proceeding filed in the applicable Water Court. Designated ground water rights must be changed in a proceeding filed with the Ground Water Commission. The change is usually evidenced by a change of water right decree issued by the Water Court or a changed well permit issued by the Ground Water Commission.

Surface and tributary ground water rights are subject to **loss by abandonment**. Abandonment occurs when there is a *sustained period of non-use of the water right coupled with an intention to abandon*. An intention to abandon can be inferred from an unreasonably long period of non-use. Abandonment of a water right *can occur without any official court or administrative action or the execution of any document*. Thus, when investigating the status of a water right, potential abandonment must always be considered.

II. Well Permits

A well is any structure or device used for the purpose or with the effect of obtaining ground water for beneficial use from an aquifer. A permit issued by the State Engineer's Office is required to construct a well, except in designated ground water basins where the well permit is issued by the Ground Water Commission. The State Engineer's Office maintains records of all well permits issued in the state.

A well permit for tributary ground water can only be issued by the State Engineer's Office if there is unappropriated water available for withdrawal by the proposed well and the vested rights of others will not be materially injured. Because most rivers in Colorado are already over-appropriated (meaning that there is often not enough water to satisfy existing water rights) this standard cannot be met in many areas of Colorado. To allow some low density development in rural areas, there is a rebuttable presumption of no injury to other water users or existing wells if a proposed well will have a production capacity of less than 15 gallons per minute, and will be either (a) the only well on a residential site located in a subdivision approved before June 1, 1972, and the well will be used solely for ordinary household purposes inside a single-family dwelling and will not be used for irrigation; or (b) the only well on a tract of land of 35 acres or more. These are commonly called "exempt" or "household use only" wells.

A well permit for non-tributary ground water and not non-tributary ground water is issued by the State Engineer's Office based on overlying land ownership. The well permit will only allow withdrawal of 1% of the amount of water calculated to exist in the aquifer underlying the land per year.

(*See* "**WHAT TYPE OF WELL PERMIT CAN I GET?**" later in this chapter.)

III. Conveying and Encumbering Water Rights

Water rights are represented by a number of different documents. *Surface water rights, tributary ground water rights, non-tributary ground water rights and not non-tributary ground water rights are usually represented by* ***Water Court decrees***. Rights to tributary ground water, non-tributary ground water and not non-tributary ground water may *also* be represented by **well permits**. *Designated ground water rights are usually represented by well permits*. Water rights owned by mutual ditch or reservoir companies (commonly called ditch rights or reservoir rights) are usually represented by shares of stock in the mutual ditch or reservoir company because the company itself usually owns the water rights. Water rights in all of these forms are conveyed by a deed that should be recorded in the applicable county clerk and recorder's office in the same manner as a land deed. Well permits should also be conveyed by an assignment that is filed with the State Engineer's Office. Shares of stock in a mutual ditch or reservoir company are also conveyed by assignment and other procedures required by the company.

Water rights in all of these forms can also be encumbered by a deed of trust, except that a deed of trust usually may not encumber shares of stock in a mutual ditch or reservoir company. Security interests in shares of stock must be obtained and perfected under the terms of the Colorado Uniform Commercial Code.

Whether a particular deed to land conveys surface or tributary ground water rights depends upon the intention of the grantor, which is determined from the express terms of the deed. Thus, a deed may describe specific water rights that are conveyed. If a deed is silent as to surface or tributary ground water rights, the intentions of the grantor are to be determined by the circumstances, such as whether the water right is or is not incidental to and to the beneficial enjoyment of the land. Where a deed is silent no presumption arises as to the intent of the parties in regard to the transfer of surface or tributary ground water rights. The inclusion of a water right in a deed will not by itself prevent a later determination of abandonment.

The presumption is different with respect to non-tributary ground water. Rights to nontributary ground water are presumed to pass with the land in a deed and are encumbered by a deed of trust encumbering the land, unless these rights are explicitly excepted from the deed.

A party claiming that the non-tributary ground water was not transferred or encumbered with the land has the burden of proving that fact.

C.R.S § 38-30-102. Water rights conveyed as real estate – well permit transfers – legislative declaration – definitions.

(1) The general assembly:
(a) Finds that the division of water resources in the department of natural resources needs timely and accurate data regarding well ownership in order to efficiently and accurately account for wells and to ensure that wells are properly constructed and maintained;
(b) Determines that current data concerning well ownership is inadequate and that a substantial number of residential real estate transactions that transfer ownership of a well are not reported to the division;
(c) Determines that current and accurate data is necessary for the state to notify well owners of any health, safety, water right, or stewardship issues pertaining to their ground water well; and
(d) Declares that this section is intended to provide the division with the information it needs to properly carry out its statutory duties.
(2) In the conveyance of water rights in all cases, except where the ownership of stock in ditch companies or other companies constitutes the ownership of a water right, the same formalities shall be observed and complied with as in the conveyance of real estate.
(3) (a) As used in this subsection (3):
(I) “Closing service” means closing and settlement services, as defined in section 10-11-102, C.R.S.
(II) “Division” means the division of water resources in the department of natural resources.
(III) “Person” means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity.
(b) (I) On and after January 1, 2009, when a buyer of residential real estate enters into a transaction that results in the transfer of ownership of a small capacity well listed in section 37-90-105 (1) (a) or (1) (b), C.R.S., or a domestic exempt water well used for ordinary household purposes that is listed in section 37-92-602 (1) (b) or (1)
(e), C.R.S., the buyer shall, prior to or at closing of the transaction, complete a change in ownership form for the well in compliance with section 37-90-143, C.R.S.; except that, if an existing well has not yet been registered with the division, the buyer shall complete a registration of existing well form for the well.
(II) The residential real estate contract approved by the real estate commission created in section 12-61-105, C.R.S., shall require the buyer to complete the appropriate form for the well and, if no person will be providing a closing service in connection with the transaction, to file the form with the division within sixty days after closing.
(c) (I) If a person provides a closing service in connection with a residential real estate transaction subject to this subsection (3), that person shall:
(A) Within sixty days after closing, submit the appropriate form to the division with as much information as is available, and the division shall be responsible for obtaining the necessary well registration information directly from the buyer; and
(B) Not be liable for delaying the closing of the transaction in order to ensure that the buyer completes the form required by subparagraph (I) of paragraph (b) of

this subsection (3). If the closing is delayed pursuant to this subsubparagraph (B), neither the buyer nor the seller shall have any claim under this section for relief against the buyer, the seller, the person who provided closing services, a title insurance company regulated pursuant to article 11 of title 10, C.R.S., or any person licensed pursuant to article 61 of title 12, C.R.S.
(II) If no person provides such closing service, the buyer shall submit the appropriate form within the deadline specified in sub-subparagraph (A) of subparagraph (I) of this paragraph (c) and pay the applicable fee.

IV. Disclosure of Potable Water Source

On and after January 1, 2008, Colorado law requires that a listing contract, contract of sale, or seller's property disclosure for residential land and residential improvements disclose in bold-faced type the source of potable water for the property, which can be one of the following:
1. Well (in which case a copy of the current well permit, if one is available, is to be provided); or
2. Water provider (in which case the name and other information regarding the water provider is to be provided); or
3. Neither a well nor a water provider (in which case the source of the water is to be provided).

The disclosure statement is also required to state in bold-faced type that some water providers rely, to varying decrees, on nonrenewable water (which is generally considered to be non-tributary and not non-tributary ground water described above), and advise the prospective purchaser that he or she may wish to contact the water provider to determine the long-term sufficiency of that provider's water supplies.

Residential real estate located in incorporated cities and towns is almost always supplied potable water by a water provider (that is often part of the city or town government) such as the Denver Water Board in Denver and the Aurora Water Department in Aurora. Areas located near urban areas, such as areas adjacent to Fort Collins or Loveland, are sometimes supplied potable water by the adjacent municipality and are sometimes served by independent water districts. Some cities and towns are served by independent water districts that are not part of the city or town government.

Municipalities and water districts obtain their water from surface water sources and ground water. Denver, Aurora and other large municipalities usually obtain all or most of their water from surface water rights. These surface water rights could divert water from streams large distances from the municipalities, such as the Colorado River basin in western Colorado for Denver, Aurora and other municipalities. Municipalities and water districts also obtain water from tributary, non-tributary, not non-tributary and designated ground water sources depending on their location.

Residential real estate in rural areas is most often supplied potable water from a well. The well can produce tributary ground water, non-tributary ground water, not non-tributary ground water or designated ground water depending upon the location. Such wells almost never produce water from more than one of these sources. In some cases, particularly in mountainous areas, residential real estate can obtain potable water from a small surface diversion or a spring.

38-35.7-104. Disclosure of potable water source – rules.

(1) (a) (I) By January 1, 2008, the real estate commission created in section 12-61-105, C.R.S., shall, by rule, require each listing contract, contract of sale, or seller's property disclosure for residential real property that is subject to the commission's jurisdiction pursuant to article 61 of title 12, C.R.S., to disclose the source of potable water for the property, which disclosure shall include substantially the following information:

THE SOURCE OF POTABLE WATER FOR THIS REAL ESTATE IS:
A WELL;
A WATER PROVIDER, WHICH CAN BE CONTACTED AS FOLLOWS:
NAME: _____
ADDRESS: _____
WEB SITE: _____
TELEPHONE: _____
NEITHER A WELL NOR A WATER PROVIDER. THE SOURCE IS [DESCRIBE]: _____ SOME WATER PROVIDERS RELY, TO VARYING DEGREES, ON NONRENEWABLE GROUND WATER. YOU MAY WISH TO CONTACT YOUR PROVIDER TO DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S WATER SUPPLIES.

(II) On and after January 1, 2008, each listing contract, contract of sale, or seller's property disclosure for residential real property that is not subject to the real commission's jurisdiction pursuant to article 61 of title 12, C.R.S., shall contain a disclosure statement in bold-faced type that is clearly legible in substantially the same form as is specified in subparagraph (I) of this paragraph (a).

(b) If the disclosure statement required by paragraph (a) of this subsection (1) indicates that the source of potable water is a well, the seller shall also provide with such disclosure a copy of the current well permit if one is available.

(2) The obligation to provide the disclosure set forth in subsection (1) of this section shall be upon the seller. If the seller complies with this section, the purchaser shall not have any claim under this section for relief against the seller or any person licensed pursuant to article 61 of title 12, C.R.S., for any damages to the purchaser resulting from an alleged inadequacy of the property's source of water. Nothing in this section shall affect any remedy that the purchaser may otherwise have against the seller.

(3) For purposes of this section, "residential real property" means residential land and improvements, as those terms are defined in section 39-1-102, C.R.S., but does not include hotels and motels, as those terms are defined in section 39-1-102, C.R.S; except that a mobile home and a manufactured home, as those terms are defined in section 39-1-102, C.R.S., shall be deemed to be residential

real property only if the mobile home or manufactured home is permanently affixed to a foundation.

V. Special Considerations for Irrigated Land

Often the seller of an irrigated farm, raw land or even a rural subdivision, will need to be knowledgeable about associated water rights. Due to the intricacies of water systems and irrigated farms in Colorado, it is advisable for the seller of an irrigated farm to be prepared to inform the prospective purchaser of pertinent information on the water rights. Some suggestions as to the type of information that could be disclosed are as follows:

1. If the irrigation water is delivered by a ditch or canal, there are several things to be considered:

a. The number of shares of stock in the ditch or reservoir company that serves the farm that are proposed to be sold with the farm, and whether these are all of the shares that were historically used on the farm.

b. The average annual delivery of water under the canal and what months this delivery is normally received. Further, how often, historically, the water is available to land being sold. Not all canals run their water perpetually, with the usage to the shareholder being all the time that water is in the canal. Instead, some run their water in sections, with each section taking a turn for a specified period of continuous use, then moving on to the next section. Others use the call system; water, when available, being called by the user proportionate to his or her shares.

c. The prospective purchaser may also be interested in whether the by-laws of that canal company permit the sale of the water out of and separate from the land or the canal; also, whether the water can be transferred to another point of use within the canal system. The seller of such water rights should be familiar with the transfer procedures for the particular ditch or reservoir company; which may be by deed, of course, but may also involve the transfer of the ditch or reservoir company's stock certificate. The amount of any assessment on the shares of stock by the ditch or reservoir company would also be important.

2. If the farm is irrigated with wells, the following should be considered:

a. The prospective purchaser may be interested in whether the wells are tributary, and if so, whether the wells are covered by a court adjudicated augmentation plan, whether the wells have been adjudicated in Water Court, and, if so, the date of adjudication, the priority date, and the amount allowed to be pumped. Of course the prospective purchaser could also be interested in the physical condition of the wells and their current production capacity.

b. Irrigation wells may also be located in a designated ground water basin or may produce non-tributary or not non-tributary ground water. Here again, the prospective purchaser could be interested in the above information, plus information on aquifer levels in that particular basin, as aquifers in some basins have been depleted substantially in recent years. The energy supply for the water pumps and the cost of pumping the wells may also be important to a prospective buyer in these energy-conscious times.

VI. Water Conservation and Drought Mitigation

37-60-126. Water conservation and drought mitigation planning – programs – relationship to state assistance for water facilities – guidelines.

(Editor note: The following is a portion (section (11)) of Part 126 applicable to covenant controlled communities)

(11) (a) Any section of a restrictive covenant that prohibits or limits xeriscape, prohibits or limits
the installation or use of drought-tolerant vegetative landscapes, or requires cultivated vegetation to consist exclusively or primarily of turf grass is hereby declared contrary to public policy and, on that basis, that section of the covenant shall be unenforceable.

(b) As used in this subsection (11):

(I) "Executive board policy or practice" includes any additional procedural step or burden, financial or otherwise, placed on a unit owner who seeks approval for a landscaping change by the executive board of a unit owners' association, as defined in section 38-33.3-103, C.R.S., and not included in the existing declaration or bylaws of the association. An "executive board policy or practice" includes, without limitation, the requirement of:

(A) An architect's stamp;

(B) Pre-approval by an architect or landscape architect retained by the executive board;

(C) An analysis of water usage under the proposed new landscape plan or a history of water usage under the unit owner's existing landscape plan; and

(D) The adoption of a landscaping change fee.

(II) "Restrictive covenant" means any covenant, restriction, bylaw, executive board policy or practice, or condition applicable to real property for the purpose of controlling land use, but does not include any covenant, restriction, or condition imposed on such real property by any governmental entity.

(III) "Turf grass" means continuous plant coverage consisting of hybridized grasses that, when regularly mowed, form a dense growth of leaf blades and roots.

(IV) "Xeriscape" means the application of the principles of landscape planning and design, soil analysis and improvement, appropriate plant selection, limitation of turf area, use of mulches, irrigation efficiency, and appropriate maintenance that results in water use efficiency and water-saving practices.

(c) Nothing in this subsection (11) shall preclude the executive board of a common interest community from taking enforcement action against a unit owner who allows his or her existing landscaping to die; except that:

(I) Such enforcement action shall be suspended during a period of water use restrictions declared by the jurisdiction in which the common interest community is located, in which case the unit owner shall comply with any watering restrictions imposed by the water provider for the common interest community;

(II) Enforcement shall be consistent within the community and not arbitrary or capricious; and (III) Once the drought emergency is lifted, the unit owner shall be allowed a reasonable and practical opportunity, as defined by the association's executive board, with consideration of applicable local growing

seasons or practical limitations, to reseed and revive turf grass before being required to replace it with new sod.

VII. Conclusion

From the foregoing, it should be evident that water law is a complicated subject, and the purpose of this section is to denote a few warning signals for the real estate broker. The broker should make sure of proper conveyance of the right and the validity and value of court decrees and well permits, as well as other matters. The Real Estate Commission has developed an optional use form to assist the broker in gathering data for marketing property with water rights. The Listing Firm's Well Checklist was designed to help insure that the seller and the listing broker cover all the bases in gathering data. It is not intended to become a part of a buy/sell contract, but obviously will drive the amount and type of information made available to a buyer. In many instances, it may be necessary to contact a competent water attorney, geologist and/or water engineer concerning the status of water rights and their transfer.

VIII. WATER RIGHTS GLOSSARY *(See Chapter 3 for Uniform Water Rights terms.)*

Absolute water right: A term often used to describe a water right under which water has been fully diverted and applied to beneficial use so that the water right is no longer a conditional water right, to distinguish it from a conditional water right.

Acre-foot: Volumetric measurement of water used for quantifying reservoir storage capacity and historic consumptive use and for other purposes. This is the amount of water that will cover an acre of land at a depth of one foot, or 325,851 gallons of water.

Adjudication: The judicial determination of the extent, nature and limitations of a water right appropriation in a statutory court proceeding.

Appropriation: The application of a certain portion of the waters of the state of Colorado to a beneficial use.

Appropriation date: The date defining the priority of right to divert appropriated water in times of limited water supply.

Appropriator: A person who applies water to beneficial use so as to obtain a water right.

Aquifer: A subsurface water-bearing geological structure capable of storing and yielding water to streams, springs, or wells.

Augmentation: A detailed program to increase the supply of water available for beneficial use in a water basin or portion thereof by the development of new or alternate means or points of diversion, by a pooling of water resources, by water exchange projects, by providing substitute supplies of water, by the development of new sources of water, or by any other appropriate means.

Beneficial use: The use of that amount of water that is reasonable and appropriate under reasonably efficient practices to accomplish, without waste, the purpose for which the appropriation is lawfully made.

Conditional water right: A right to perfect a water right with a certain priority upon the completion, with reasonable diligence, of the appropriation upon which such water right is to be based.

Consumptive use: The amount of water that is consumed during its beneficial use so that it does not return to the waters of the state of Colorado.

Cubic foot per second (cfs): Measurement of flow rate of water in a running stream, a ditch or canal, or a pipeline. Water flowing at one cfs will deliver 448.8 gallons per minute or 648,000 gallons per day. One cfs flowing for 24 hours equals 1.983 acre-feet of water.

Direct flow water right: A water right that gives the owner thereof the right to divert water from a specified water source at a specified rate of flow for current use.

Historic use: The use to which a specified water right has previously or historically been put.

Junior appropriator: An appropriator whose right to use specified water is subject to a prior or senior right of another appropriator of the same water source.

Non-adjudicated or unadjudicated water right: A water right that has not been submitted to the appropriate court for adjudication. An unadjudicated water right is junior in priority to all water rights from the same source that have been adjudicated.

Point of diversion: The location at which water is removed from its natural course or location by means of a ditch, canal, flume, reservoir, bypass, pipeline, conduit, well, pump, or other structure or device.

Priority: The seniority, by date, as of which a water right is entitled to divert water and the relative seniority of a water right in relation to other water rights deriving their supply from a common source.

Senior appropriator: An appropriator whose water right has priority over another appropriator having a right to use water from a common water source. Storage water right: A water right that gives the owner thereof the right to divert and store water from a specified water source in a specified volumetric amount for current or future use.

Water right: A real property right, either absolute or conditional, to use, in accordance with its priority, a certain portion of the waters of the state of Colorado by reason of the appropriation of such water, as confirmed by a Water Court decree or a Ground Water Commission well permit.

SOURCES OF INFORMATION

Rules, regulations and statutes may be obtained from the Colorado Division of Water Resources, at 1313 Sherman St., Room 818, Denver, CO 80203. Its website is: **http://www.water.state.co.us**

For further information, such as helpful publications, etc., the following agencies should be contacted: The Colorado Division of Water Resources; the Colorado Water Conservation Board; Colorado State University, Civil Engineering Department; and the United States Geological Survey, Water Resources Branch, Denver Federal Center.

STATE OF COLORADO
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER RESOURCES

GUIDE TO COLORADO WELL PERMITS, WATER RIGHTS, AND WATER ADMINISTRATION - January 2008

WHAT TYPE OF WELL PERMIT CAN I GET?

The following discussion applies to those areas of the state outside the designated ground water basins.

There are two different classes of wells: those that are *exempt* from water rights administration and are not administered under the priority system, and those that are *non-exempt* and are governed by the priority system. This section will explore the different ground water well permits that are available.

Exempt Wells

There are several types of exempt well permits whose uses vary depending upon the situation. Uses are limited specifically by the conditions of approval stated on the permit when it is issued. In most cases, exempt well permits limit the pumping rate to no more than fifteen gallons per minute. Generally, wastewater disposal systems are required to be of the nonevaporative type, such as standard septic tank and leach field systems, where the return flow from the use of the well is returned to the same stream drainage system in which the well is located.

Except in limited cases, an exempt well permit will not be issued where either a municipality or a water district can provide water to the property. In most cases, no more than one exempt well permit will be issued for a single lot.

Household Use Only Wells - These types of well permits are issued for ordinary household uses in one single-family dwelling and do not allow for outside water or livestock watering. Generally, individuals may obtain this type of permit if they own a lot in a subdivision that was created prior to June 1, 1972, or the parcel was created by an exemption to the subdivision laws by the local county planning authority. Use Form GWS-44 in applying for this type of permit.

Standard domestic water well in Weld County

Domestic and Livestock Wells – These types of well permits are issued on tracts of land of 35 acres or more where the proposed well will be the only well on the tract, or on tracts of land of less than 35 acres in limited areas of the state where the surface drainage system is not over-appropriated or where the well will produce from a deeper source, thus having minimal impact on surface water rights.

Depending on under what provisions the well permit is issued, the well may be able to serve up to three single-family dwellings, irrigate one acre or less of lawn and garden, and provide water for the individual's domestic animals and livestock. The maximum flow rate for this kind of residential well is 15gpm and must be verified when permit is applied for. Use Form GWS-44 in applying for this type of permit. Neither of the two types of wells described above can provide water for commercial uses.

Commercial Exempt Wells - These types of well permits are available for small businesses located on lots that were created prior to June 1, 1972, or by an exemption to the subdivision laws. The use of the well is limited to a commercial business, like a convenience store, and is limited to the pumping of one-third acre-foot (108,600 gallons) of water per year. The uses of water are restricted to drinking and sanitation facilities inside a single business. Outside water uses are not allowed. Well metering devices are required. Examples of commercial uses that would *not* qualify under this provision are motels, commercial kennels, horse-boarding operations, and any commercial business with outside uses. These uses are non-exempt and a well permit would not be available in over-appropriated areas of the state without augmentation. Use both Forms GWS-45 and GWS-57 in applying for this type of permit.

Unregistered Existing Wells – The above types of well permits are available for any existing unregistered well that was put to beneficial use prior to May 8, 1972, serving up to three homes, irrigating home gardens and lawns, and watering the user's own domestic animals and livestock. The well can be registered for the historic uses if those uses are no greater than those allowed for a domestic and livestock well permit. Personnel of the Division of Water Resources will conduct a field investigation to verify the well's existence, and the historic uses being claimed on the permit application. The investigations are routinely conducted by the local water commissioners who work under the direction of the division engineer of the water division in which the well is located. Currently, there is no fee charged for the investigation. Owners may also register wells used for commercial purposes if the well was put to beneficial use prior to May 8, 1972, and the amount of ground water diverted does not exceed one acre-foot per year (325,850 gallons) for drinking and sanitary purposes inside the home only.

Poinsettia farm in the Upper Black Squirrel Designated Basin.

A question frequently asked is, "*Does the state require landowners to register wells that were put to beneficial use prior to May 8, 1972 for exempt purposes?*" The state cannot require people to register these wells until the well needs to be redrilled. However, there are benefits to registering these wells. The benefits include making it faster to obtain approval if the well needed to be redrilled, or the owner intended to sell the land. Most potential buyers and lending institutions want assurance that the well on the property is usable and registered with the state. Use Form GWS-12 in applying to register an existing well.

Monitoring and Observation Wells – These types of well permits are for the construction of a well to be used for the purpose of locating water, pump or aquifer testing, monitoring ground water, or collection of water quality samples. A monitoring and observation well may be converted from an existing monitoring and observation hole and permitted for the uses as stated above, or as a recovery well or a dewatering system. A well-constructed under a monitoring and observation well permit may be converted by permit to other uses. Use Form GWS-46 in applying for this type of permit.

Center Pivot Irrigation in Paradox.

Replacement Wells - These types of well permits are for the purpose of replacing or deepening an existing well. The uses allowed under the original well transfer over to the new well. In some areas of the state, replacing the new well or deepening the existing well to a different water source (or aquifer), could affect the uses allowed on the new well, or the ability to get a new permit for production from a different water source. Use Forms GWS-44 or 45, depending on the use of the original well, in applying for this type of permit.

Geoexchange Systems - These types of permits are for the construction and installation of loop fields in geoexchange systems. A geoexchange system is defined as a heat pump or heat exchange system having a horizontal or vertical closed-loop portion consisting of pipe buried in trenches, boreholes, or wells (ground-source), or submerged in a body of water (water-source), in which a heat exchange medium (fluid or vapor) is circulated and fully contained within the pipe or tubing. The purpose of the closed loop is to provide for the transfer of heat between the circulating fluid or vapor and the ground or water. Although these systems do not appropriate subsurface fluids, they do utilize the earth's geothermal properties, therefore, requiring a permit. Prior to issuance of a permit, the applicant must become certified. For more information regarding the certification and permitting process, refer to the Geothermal Rules. A copy of the rules can be obtained for a nominal fee from the Division of Water Resources, or accessed through the website http://water.state.co.us , click on Rules and Regulations. Use Form GTC in applying for certification and Form GWS-72 for a permit to construct geoexchange system loop fields.

Non-Exempt Wells

Any type of use other than those described above are usually for nonexempt purposes. In over-appropriated areas of the state, new non-exempt wells must replace any out-of-priority stream depletions in time, place, amount, and quality by having augmentation water available. A plan for augmentation must be approved by the water court to prevent injury to senior water right holders by replacing the amount of water consumed by the non-exempt uses. Development of plans for augmentation usually require the services of a water resource consulting engineer and water attorney. Nonexempt well permits typically allow pumping rates and annual withdrawals of ground water in excess of those allowed by

exempt well permits. New non-exempt wells must be located more than 600 feet from any other production well not owned by the applicant unless the State Engineer, after a hearing, finds that circumstances in a particular instance warrant issuing the permit, or after proper notice has been given to other well owners as outlined in the Colorado State Statutes.

Irrigation well in the Arkansas River Basin

Irrigation, Commercial, Municipal, & Industrial – Although not intended to be a complete listing, these types of well permits include the more common non-exempt type uses. Typical examples of these four use categories include center-pivot crop irrigation systems, commercial business operations with inside and outside uses, central water distribution systems providing drinking water to residential subdivisions and municipalities, and water used in the manufacturing of a product. Use Form GWS-45 in applying for this type of permit.

Subdivision Wells with Augmentation Plans – If a lot was part of a subdivision created after June 1, 1972, for most areas of the state, the well uses will be governed by a plan for augmentation and whatever uses the plan specifies. Any uses beyond those allowed by the plan for augmentation would have to be added to the existing plan, if possible, through a water court process, or alternatively, a new plan approved by the court. Use Form GWS-44 in applying for this type of permit.

Replacement Wells - These types of well permits are for the purpose of replacing or deepening an existing well. The uses allowed under the original well transfer over to the new well. In some areas of the state, replacing the original well with a new well or deepening the existing well to a different water source (or aquifer) than the original well, could affect the uses allowed on the new well, or the ability to get a new permit for production from a difference water source. Use Forms GWS-45 and 44, depending on the use of the original well, in applying for this type of permit.

Well construction near Northglenn

Gravel Pit Wells – These types of well permits are issued for gravel pit operations where ground water is exposed. The passage of Senate Bill 89-120 by the Colorado Legislature provided that any gravel pit in operation after December 31, 1980, that exposed ground water to the atmosphere, must replace all out-of-priority depletions of ground water. It also required that a well permit be obtained from the State Engineer for use of the ground water. Existing gravel pits that exposed ground water to the atmosphere, but ceased activity prior to

January 1, 1981 are not required to be permitted or replace depletions from evaporation (refer to Sections 37-90-137(11)(a), 37-90-107, 37-80-120(5), and 37-92-305(12)(a), CRS, for specific requirements regarding gravel pit wells). Colorado state statutes can be accessed from the state of Colorado website http://colorado.gov . Use Form GWS-27 in applying for this type of permit.

Pond Wells – These types of permits are for the construction of new ponds, or the permitting of existing ponds, that expose ground water. For new proposed ponds that will expose ground water, a non-exempt well permit must be obtained from the State Engineer prior to construction since the pond would be considered a well by statutory definition. All of the laws governing the construction and use of wells apply. In over-appropriated areas of the state, a plan for augmentation would have to be obtained to replace any out-of-priority depletions caused by the pond, or the pond must be lined to prevent the interception of ground water. Use Form GWS-45 in applying for this type of permit.

Backyard fish pond.

Recovery Wells – These types of well permits are issued for wells to be used for the purpose of removing contaminants from, or otherwise remediating, ground water. In over-appropriated areas of the state, a plan for augmentation would be required if the consumptive use of ground water for the entire recovery project exceeds 1/30 of an acre-foot (10,862 gallons) per year Use Form GWS-45 in applying for this type of permit.

Geothermal Wells – These types of well permits are issued for wells to be used for the purpose of exploring for, monitoring of, or using geothermal resources, or re-injecting geothermal fluids. For more information regarding the permitting and use of this type of well, refer to the Geothermal Rules. A copy of the rules can be obtained for a nominal fee from the Division of Water Resources, or accessed through the website http://www.water.state.co.us , click on Rules and Regulations. Use Form GWS-45 in applying for this type of permit and include supplemental documentation as required by the rules.

Dewatering Systems – These types of well permits are for a permanent well, drain, sump or other excavation constructed for the purpose of keeping the water table below a desired level. A dewatering system may be converted by permit from a monitoring and observation hole, dewatering well, or recovery well. Use Form GWS-45 in applying for this type of permit.

Other Structures

The types of borehole structures discussed below can be constructed upon filing of a proper Notice of Intent to Construct with the State Engineer's Office. Notices must be

submitted at least three days prior to construction. Faxed notices are acceptable. The borehole structures must be constructed within ninety days of the date of notice. A separate notice must be provided for each 40-acre quarter/quarter section in which a borehole structure will be constructed. More than one borehole structure can be constructed on the same quarter/quarter section, provided the number of boreholes are indicated on the notice.

Monitoring and Observation Holes – These are temporary holes constructed after proper notice and in accordance with the Water Well Construction Rules. A Well Construction and Test Report (Form GWS-31), referencing the acknowledged notice number, must be submitted within sixty days after constructing the hole. A monitoring and observation hole must either be abandoned in accordance with the rules within one year of construction or converted by permit to a monitoring and observation well, recovery well, or dewatering system. If abandoned, a Well Abandonment Report (Form GWS-9) must be submitted within sixty days after abandoning the hole. A monitoring and observation hole cannot be converted to a production well other than a recovery well or a dewatering system. Use Form GWS-51 when providing Notice of Intent to Construct this type of structure.

Test Holes (that penetrate through a confining layer) – These holes are any excavation or other ground penetration for the purpose of geotechnical, geophysical or geologic investigation, or collecting soil or rock samples. A test hole that penetrates through a confining layer must submit proper notice before construction. A test hole shall not remain open longer than twenty days, and must be abandoned in accordance with the rules. An Abandonment Report (Form GWS-9) must be submitted within sixty days after abandoning any test hole that penetrates through a confining layer. Use Form GWS-51 when providing Notice of Intent to Construct this type of structure.

Dewatering Wells – These wells are any excavation or other ground penetration for temporary dewatering purposes exclusively related to construction projects. A dewatering well may be constructed only after proper Notice, and must be plugged and abandoned within one year of being constructed. Upon written request for variance, and as warranted by project considerations, the one-year abandonment requirement may be extended. For non-construction projects or when long-term dewatering is required, application can be made for a dewatering system using Form GWS-45. Use Form GWS-62 when providing Notice of Intent to Construct this type of structure.

Water Rights Administration on East River

For more detailed information regarding any of the above well uses, contact the Denver office, Ground Water Information at 303-866-3587, or one of the seven Water Division offices. Permit application forms are available from the Denver office and Division offices, or from the Division of Water Resources' website at http://www.water.state.co.us .