

Summary of HB24-1085 Limitation on Actions Against Appraisers

Representatives: Lisa Frizell (Douglas County-Republican)
Judy Amabile (Boulder County-Democrat)

Senators: Bob Gardner (El Paso County-Republican)
Joann Ginal (Larimer County-Democrat)

The Colorado Coalition of Appraisers, a coalition of seven member organizations that represent more than 1,000 real estate appraisers in the State of Colorado, set out to proactively initiate state policy to protect the appraisal industry. This was the first time the CCA unanimously decided to pursue their own bill. Their first step was to secure a bill sponsor, which is a legislator that will work to ensure the passage of a bill they sponsor. The coalition and their lobbyist approached Representative Frizell in the final weeks of the 2023 Legislative Session. With Representative Frizell's background as an assessor, she was an obvious fit for an appraisal related bill. The CCA lobbyist proposed the idea of running a bill to protect the appraisal industry through tort reform, to prevent frivolous lawsuits on the small businesses the CCA represents. She quickly agreed that this was a good idea and became the industry's primary champion. Throughout the summer, fall, and winter of 2023 the CCA and their lobbyist along with Representative Frizell worked to draft HB24-1085. This included stake holding with other real estate groups while connecting with other legislators who could be potential sponsors of the bill.

During the pursuit of a Democratic bill sponsor in the House of Representatives (the goal was to have a bi-partisan supported bill) the coalition was approached by the Colorado Trial Lawyers Association who had heard about the bill from one of the legislators that was engaged on the topic. In our first meeting with this group, the trial attorneys indicated to the CCA that there is a vast difference between a statute of limitation and a statute of repose. This is when the group collectively decided to pursue a statute of repose, which created a strict timeline on when lawsuits that could be brought and offered a much stronger protection. The goal was to have a cap on litigation at 5 years, aligning with USPAP guidelines. The bill crafted a definition to ensure the timeline would begin at the "date of report" which was defined as the moment an appraisal report was completed and transmitted to the client. After the date of report, an action against a real estate appraiser could be brought within 5 years of that report and not a minute after.

After working with the banking groups, such as the credit unions, the Colorado Bankers Association, and the independent banks, we added language to exempt fraudulent appraisers. This addition was done in good faith and ultimately brought these groups to a neutral position. No other real estate entity had any concerns with the bill. Unfortunately, the Colorado Mortgage Lenders Association and the Colorado Trial Lawyers Association remained fully opposed to the bill regardless of any compromises CCA was willing to make. The CMLA did not offer ANY compromise as they did not desire to see a protection on the appraisal industry. This was because of their own protectionary perspective, their desire to mitigate losses on defaulted loans, and ensure the avenue to sue the original appraiser for negligence remained in tact. Also, Colorado is the only state out of the other 14 states who have passed similar policy to have opposition from the mortgage lenders. The Colorado Trial Lawyers Association strongly oppose any statute of repose for any industry because they see these policies as "closing the doors to the courts".

HB24-1085 was introduced on the second day of the legislative session on January 10th 2024. The bill was scheduled for its hearing in front of the House Business Affairs & Labor Committee on February 1st. Although the bill should have been assigned to the House Judiciary

Committee the democratic bill sponsor, Representative Amabile, requested to send the bill to the Business committee that she is the Chairwoman of and that Representative Frizell is also a member of. The House Business Committee consists of 11 members, 8 Democrats and 3 Republicans. The CCA and their lobbyist spent countless hours strategizing and engaging their member organizations on three email campaigns before the hearing. A specific group of appraisers was hand picked through these strategy sessions to testify and bring a diverse amount of information to the committee to make the case for the need of the bill. There were 16 individuals from the appraisal industry with diverse backgrounds and experiences that testified on February 1st. The bill passed on a bi-partisan vote of 7-4. After a successful committee hearing the bill was then heard in front of the entire House of Representatives of 65 members. There was no debate on the bill and it passed the entire chamber with large, bi-partisan support with a vote of 46-18 (1 member was excused) on February 12th.

With this positive momentum, the CCA and their lobbyist re-grouped and began crafting their strategy for the Senate. The bill was formally introduced in the Senate on February 20th and was assigned for it's hearing in front of the Senate Judiciary Committee on March 18th. Between the time of the bills introduction and its hearing, the CCA heard from one of their appraiser colleagues that the Mortgage Lenders were unhappy with the positive momentum of the bill and were planning to come with more opposition testimony and a stronger approach. This information led the appraiser coalition to change some of the prior hearings testimony and engage their national allies at the Appraisal Institute to assist them with remote testimony. With two rounds of email campaigns going to the four members of the committee, Senator Gardner was the fifth member and one of the bill sponsors, the CCA headed into the hearing with no Democrat commitments to support the bill and only the support of the Republicans. The Judiciary Committee consists of 5 members, 3 Democrats and 2 Republicans. After another long hearing, it was clear the three Democrats on the committee were not convinced the policy was needed simply because there were very few examples of appraisers facing frivolous lawsuits outside of the five year timeframe. By the time the final vote was cast, the bill had been lost on party lines, 3-2.

Leaving the hearing the CCA and their lobbyist were disappointed by the result, specifically with the Democrats that could not understand the value of this protection for appraisal small businesses. It was clear that the opposition, although well funded and powerful, was not the reason for the bills defeat. It is known now that the CCA needed more examples and personal stories of litigation outside of the 5 year time period to better justify the need for the policy. Although, the group made it very clear that the disclosure forms and E&O insurance rates were a large part of the problem, the need for more personal stories was evident.

It has only been a few days since the bill was lost, but the CCA and their lobbyist are working on next steps for the 2025 legislative session and the future success of another bill. This includes outreach to appraisers who have faced litigation and outreach to the over 2,000 appraisers who are not involved in any of the seven member organizations. The need for more widespread involvement can only benefit next years policy. With this year being an election year, this November, and a new crop of legislators, the CCA is better prepared to create a legislator education campaign on this issue and its importance. The CCA is hopeful for success as they approach their second attempt to passing this needed policy.