



December 22, 2023

Via Email

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

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

Dear Secretary Griswold:

Thank you for the opportunity to submit additional comments to this proposed rule. We understand the need for transparency in pricing and your goal to be sure that consumers are not being overcharged for a notarial act. **However, as we outlined in our previous letter dated December 18, 2023, in the context of a real estate transaction, disclosure of the fees associated with that transaction are already required by both federal and state law.** Requiring additional, duplicative, disclosure of closing fees as required by this proposed rule creates an undue burden on the title industry, creates a risk of higher cost to consumers for closing services, consumer confusion, and potentially, unnecessary delay in the closing of real estate transactions, which could result in financial penalties for the consumer. Because closing services provided by title companies are regulated, and the fees for these services are approved and disclosed by the Colorado Division of Insurance, the consumer is not exposed to significant risk of being overcharged by a notary public in the context of a real estate transaction, and as such, this rule change is overly burdensome, harmful, and unnecessary.

Additionally, after listening to the comments made at the Public Hearing, and re-visiting the language in the proposed rule, LTAC has concerns that this proposed rule exceeds the rulemaking authority of the Colorado Secretary of State under C.R.S. §24-21-527(1) by attempting to dictate how service providers charge and invoice for non-notarial services. Under C.R.S. §24-21-527(1) the Secretary of State is authorized to promulgate rules "to implement this part 5 in accordance with article 4 of this title 24." Part 5 of Article 4 of this section governs notarial officers and notarial acts, which is defined as "...an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the law of this state. The term includes taking an acknowledgement, administering an oath or affirmation, taking a deposition or other sworn testimony, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying a copy, and noting a protest of a negotiable instrument." C.R.S. §24-21-502(6). **Part 5 of Article 4 does not apply to any acts or services that an individual**

provides that is outside of a notarial act; thus, the Secretary of State's rulemaking authority does not include regulation of charging or invoicing for non-notarial services.

The proposed rule applies to "charges for any service *in addition to the notarial act*". Thus, the language in the proposed rule establishes that the rule exceeds the rulemaking authority of the Secretary of State.

LTAC is not suggesting that the title industry services and fees not be regulated; we believe that regulation is an essential component of ensuring that the consumer is protected. However, the current title industry regulations, as promulgated by the Colorado Division of Insurance, are sufficient and appropriate. Any overlapping regulations from a separate regulatory body, without the authority or jurisdiction to promulgate such rules, will only create an undue burden on the industry in violation of the State Administrative Procedure Act. As such, LTAC requests that the proposed rule change be abandoned, or modified significantly to remain within the scope of the Secretary of State's rulemaking authority.

Alternatively, LTAC respectfully requests an exception to the proposed rule in accordance with our earlier written comments provided prior to the Public Hearing, and reiterated by Robert Howe at the hearing on behalf of LTAC. An exception to a Secretary of State Rule is not unprecedented; notary publics that are employees of a title insurance company and are performing their notarial services in support of a real estate transaction, are permitted to utilize their closing file in place of a formal notary journal. This is an example of a narrow exception to a rule governing notary publics that is appropriate in the context of a real estate transaction, and continues to promote the overall goal of consumer protection; the exception we are requesting in this instance is precedented, appropriate, and beneficial to both the consumer and the title industry.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Penny McKelroy". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Penny McKelroy, CTIS, CESS

President

cc: LTAC Board