

# SB17-097 VACATED ALLEYS PRESUME INCLUDED IN A

Senators **MARTINEZ-HUMENIK**, COURT, GARDNER, LUNDBERG, MORENO

Representative **COLEMAN**

## PURPOSE

- SB17-097 clarifies the ownership of streets or alleys that have been vacated by local government.
- The bill creates a legal rule that treats the vacated right-of-way as part of each owner's property whether it is described or not, unless the documents show that the parties intended to keep it separate.

## BACKGROUND

When a public right-of-way such as a street or alley is vacated by the city or county, ownership of the vacated area passes automatically to the landowners on either side of the former right-of-way. These owners usually treat the newly-acquired land as part of their ownership parcels. When they go to sell or mortgage their property, however, it is very common for owners to forget that their property descriptions do not include the additional land. If there has been a death or divorce before the oversight is discovered, it can be difficult or impossible to obtain the cooperation from a former owner necessary to correct the error.

The solution is to create a legal rule that treats the vacated right-of-way as part of each owner's property whether it is described or not, unless the documents show that the parties intended to keep it separate. That is what the drafters of C.R.S. 38-30-113(1)(d) attempted to do when that subsection (d) was added in 2005. Unfortunately, the language was placed in the middle of a statute dealing with a different subject, so the new rule does not apply as broadly as it should.

The statute into which the 2005 language was inserted deals with the statutory "short form" general warranty deed. As a result, the new rule applies only when that specific form of deed is used. A variety of other types and forms of deeds are in common use. These include special warranty deeds, quitclaim deeds, bargain and sale deeds, personal representative's deeds, beneficiary deeds, and so forth.

## BILL ACTION

- SB17-097 moves the 2005 language out of C.R.S. 38-30-113 and creates a new section, C.R.S. 38-30-104.5.
- It also clarifies that the rule regarding automatic inclusion of vacated rights-of-way applies regardless of the type of deed used, and also applies to mortgages, deeds of trust, liens, leases and other documents affecting title to real property.
- SB17-097 also preserves the option, as stated in the existing law, to exclude a vacated right-of-way if the intention to exclude it is stated in the applicable document.
- There is no fiscal impact.

