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Between *The* Lines



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CREATIVE SOLUTIONS TO THE AFFORDABLE HOUSING CRISIS



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Colorado is experiencing an affordable housing crisis. The population of Colorado has increased 25 percent since the 2000 census, nearly twice the growth rate of the US as a whole. And the population of the state is projected to double by 2050. In the meantime, wages are stagnating, and the cost of housing is skyrocketing, in part due to increased demand. According to the Colorado Department of Local Affairs, in 2000 the median rent was \$439, and the median home value \$71,400. By 2013, the median rent had nearly doubled, while the median home value had more than tripled. "In 2009-2013, half of the state's renters were paying more than \$825 per month in rent, and half of all owner-occupied units were worth more than \$236,200."

In the meantime affordable housing regulation at the local level has had very little traction. In 2000 the Colorado Supreme Court invalidated an affordable housing fee in Telluride, in the case of *Town of Telluride v. Lot Thirty-Four Venture, LLC*. The Telluride ordinance required developers to create affordable housing units for forty percent of employees generated by new developments.

The ordinance also controlled the rent that could be charged for the units. The Colorado Supreme Court found that this ordinance was an invalid form of rent control, and was preempted by state law.

Some local governments, including the City of Denver and the City of Boulder have passed inclusionary zoning requirements. Inclusionary zoning requires developers to build a certain percentage – often, 10% to 15% - of new residential units for buyers in low to moderate income brackets, or pay an in-lieu fee. However, there is very little evidence that inclusionary zoning has slowed the increase of housing prices, or provided a significant number of affordable housing units. Also, the entire concept may be declared unconstitutional by the US Supreme Court this term. The California Supreme Court recently upheld an inclusionary zoning ordinance, in the case of *California Building Association v City of San Jose*. However, the California Building Association's counsel, the Pacific Legal Foundation, has petitioned the US Supreme Court to review the case. Many court watchers predict that the court will invalidate inclusionary zoning, in light of a long line of cases requiring a nexus between the impact of a development and the property exacted to mitigate that impact. (Also, the California case only applies to for-sale housing. The Supreme



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Court had already invalidated a requirement to build for-rent housing as a violation of California's rent control statute.)

Another issue in Colorado is that development of lower cost, higher density multifamily units are stalled by the state's construction defects law. This allows for treble damages for any such defect, as well as attorney's fees and costs. Developer's lawyers assert that the availability of this remedy has contributed to an epidemic of class-action lawsuits initiated by condominium homeowner's associations against builders. The effect of these suits has been to raise the price for liability insurance for condominium developers, making the development of these units more difficult. Since condos are often more affordable means of entry into homeownership, this has contributed to an overall shortage in affordable housing in the state.

Several local governments in the Denver metro area, including Littleton, Arvada and Aurora, have passed local ordinances to help mitigate the issue of construction defects litigation. These ordinances require notice of claims and give the developer the right to repair defects, and/or require that disputes be settled in arbitration. However, it is unclear whether these ordinances will pass muster if challenged as being preempted by state law. Local governments generally only have the power granted to them by the state, and the state has not specifically given local governments the authority to regulate this type of litigation.

Given all of these hurdles, housing advocates and policy-makers in Colorado are turning their attention to non-regulatory alternatives. One option that has been underutilized in Colorado is the community land trust. While there are currently at least 33 conservation land trusts in the state, there are only 2 community land trusts - the Colorado Community Land Trust in Denver and the Rocky Mountain Community

**CP2 is pleased to announce
Jamie Baker Roskie, Esq.,
achieved an AV Preeminent
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Land Trust in Colorado Springs. (Urban Land Conservancy in Denver and Thistle Communities in Boulder are also sometimes listed as land trusts, but they follow slightly different models.) Community land trusts are non-profit organizations that build affordable housing and keep it permanently affordable by maintaining ownership of the underlying property, and leasing the house to owners through a ninety-nine year ground lease. When owners sell their property, they are allowed to retain a reasonable percentage of their equity, and the property is sold to another qualified buyer. Land trusts have been very popular in the eastern United States, but they are an under-utilized tool in the west. However, increasingly Colorado localities are considering the land trust model. For example, the City of Fort Collins recently completed an Affordable Housing Strategic Plan, in which the establishing a land trust was mentioned as an option.

Land trusts are not a complete solution to the affordable housing problem – the solution must be broader and involve both private and public developers. Along this line, the Colorado State Legislature has recently considered bills increasing affordable housing funding and tax credits for developers, and this suite of bills – in addition to another attempt to correct the construction defects law – will likely come up in the next legislative session. However, solutions like land trusts, which keep housing affordable in the long term, will be an important part of a long-term solution for affordable housing in Colorado.

BEST LAWYERS® HONORS G. BRENT COAN, ESQ. & JOHN W. MADDEN, III, ESQ.



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CP2 is pleased to announce that managing member, G. Brent Coan, Esq., and John W. Madden, III, Esq., were included in the 22nd Edition of *The Best Lawyers in America*® 2016. This is Mr. Coan's third year in a row having been selected by his peers for inclusion in *The Best Lawyers in America*® for corporate and real estate law. Mr. Madden was selected for his work in construction law.



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2016 INFLATION ADJUSTED TAX NUMBERS ANNOUNCED BY IRS

On October 21, 2015 the Internal Revenue Service announced the 2016 inflation adjusted numbers for various tax provisions:

- The Estate Tax Exclusion Amount rose from \$5,340,000 in 2015 to \$5,450,000 for 2016;
- The Annual Gift Tax Exclusion Amount that is exempted from gift tax remained the same in 2016 as it was in 2015, \$14,000 for a gift of a present interest to any person;
- The Annual Exclusion for a gift to a non-citizen spouse for 2016 is \$148,000;
- In 2016 trusts are required to pay income tax on taxable income of \$12,400 or more at the maximum income tax rate of 39.6%.



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LACK OF TITLE INSURANCE CAN WREAK HAVOC FOR BUYERS

As a matter of common practice, most buyers of real property, whether the properties are vacant, residential, or commercial, are required by a lender to obtain title insurance or are simply wise enough to seek it on their own. Further, upon obtaining a title-insurance commitment from a title company, most buyers also are savvy enough either to thoroughly investigate the title requirements and exceptions listed in the commitment or to seek legal counsel to perform such a review.

Unfortunately, experience has demonstrated that buyers of real property, due to ignorance, misplaced trust, overconfidence, or some other reason, sometimes proceed without title insurance or fail to carefully review the contents of the title commitment. This lack of due diligence can have very painful results for an unsuspecting buyer. Almost always, such painful results can be avoided through acquisition of title insurance and careful review of the contents of the title commitment.

The title commitment is helpful because, among other things, it identifies the current owner of the property, it lists various requirements the seller of the property must meet before the seller can pass insurable and marketable title along to the buyer, and lists a wide variety of encumbrances on the property and other exceptions to the seller's clean title that impact the subject property. Buyers who either fail to obtain a title-insurance commitment or fail to read it when one is prepared by the title company do themselves a great disservice.

There are many items affecting title to real property that a title commitment may reveal: outstanding deeds of trust securing a bank's mortgage loan; judgment liens against the property of a seller who is subject to a court judgement; mechanic's liens filed by persons who weren't paid for work done to benefit the property;

easements burdening the property for the benefit of adjacent property owners or others, such as access easements for use of driveways, pipeline easements, and other utility easements; rights of way such as those for roads, railroads, or ditches; farm and pasture leases; surface use agreements; municipal development agreements; recorded declarations of covenants, conditions and restrictions related to owner associations; and leases for the development of wind energy, oil & gas resources, or other minerals.

There are a wide variety of pitfalls that buyers can encounter if they don't obtain or review a title commitment before buying a property, and unaware buyers often need legal help to fix problems they encounter. People have purchased property and taken deeds from sellers who didn't actually have title to the property they purported to sell, leading to litigation. People have acquired property, only to find out later that there was an error regarding the legal description of the land, requiring a great deal of curative work to correct title errors. People have been contacted by banks after acquiring property that served as security for an unpaid mortgage loan, and been threatened with foreclosures. People have been unaware of existing oil and gas leases, and been surprised when an oil and gas producer gives them notice of planned mineral-development activities on some portion of their land.

While buyers or sellers of real property often don't want to spend extra money, the relatively small cost of a title-insurance policy is almost nothing compared with the thousands, or tens of thousands, of dollars that could be required to recover from a title problem that could have been discovered and avoided with proper due diligence. When buying real property, good practice dictates buyers should obtain title insurance and carefully review the information that can be gleaned from a title commitment that comes with it.

CP2 WELCOMES CASEY GILL TO THE TEAM



CP2 is pleased to welcome Casey Gill to the firm. Ms. Gill is the receptionist and executive assistant in the firm's Fort Collins office.

Casey Gill
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In addition to handling all calls to the firm, Ms. Gill handles supply orders and vendor relationships as well as all Fort Collins facility needs and maintenance.

Ms. Gill was born and raised in Sarasota, FL where she studied at the State College of Florida. From there, she lived in Seattle, WA for three years working as a wedding planner and trainer for a large grocery store chain.

NEED RETIREMENT ADVICE?



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Join Colorado Estate Planning Attorney, Peter Scott on Wednesday, December 16th at the Lunch and Learn Session hosted by the Community Foundation of Northern Colorado. (CE Certified)

The event is from 11:30am-1:00pm at the Community Foundation Office located at 4745 Wheaton Dr., Fort Collins, CO 80525.

Course topics include:

- Refresher courses on retirement accounts
- Clark V. Rameker, 134 S. Ct. 2242 (2014)
- Strategies to Protect the Inherited IRA

To RSVP, visit: <https://goo.gl/59HIRF>



Steve Suneson, Esq.
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Congratulations to Steve Suneson, Esq., on being appointed to the Board of Directors of the American Chamber of Commerce for the AmCham Canada—Western Chapter



R. Clay Bartlett, Esq.
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CP2 proudly congratulates R. Clay Bartlett, Esq., for being selected as a 2015 Northern Colorado 40-Under-Forty Honoree!

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