By: Tim Gordon
Denver Office

In order to deliver its FasTracks project on time and within a reasonable budget, the Regional Transportation District (RTD) has asked private companies to come up with creative ways to finance and build various parts of the project. In fact, RTD has been soliciting proposals from private companies to “partner” with for FasTracks. While a public-private initiative has a specific statutorily defined meaning under Colorado law,1 RTD describes the concept as follows:

Public-Private Partnerships, or PPPs as they are often called...[are]...a contract wherein a single private entity, typically a consortium of private companies, is responsible and financially liable for performing all or a significant number of functions in connection with a project.2

The Colorado Department of Transportation (CDOT) has also been aggressive in its efforts to attract PPP proposals. In 2009, the General Assembly created the High-Performance Transportation Enterprise (HPTE),3 a government-owned business within CDOT, specifically to pursue PPP contracts as a means of completing transportation projects.4

In contrast to typical design-bid-build procurement, public entities like RTD and CDOT see PPP as an opportunity to have private entities conceive and propose creative ways of delivering—and perhaps maintaining, operating, and even financing—a public project. Design-Build is one type of PPP project delivery method, as well as Design-Build contracts where the private entity also maintains, operates, or finances the project, or a combination of the three.5 “The public agency contracts with private companies to design, build, finance, operate and/or maintain a project through a combination of some or all of these components.”6

In addition to being allowed to solicit proposals,7 Colorado law allows private entities to make unsolicited proposals.8 Planning, conceiving, and preparing a creative proposal for a PPP project takes a lot of resources, and any such proposal will obviously include sensitive proprietary information. Once a proposal is in the hands of a public entity, it can be subject to, and discoverable under, the Colorado Open Records Act (CORA).9 Private entities submitting proposals should be careful to safeguard against improper completion and understand how CORA operates.

Applicability of CORA

Generally, under CORA, any document maintained or kept by a state agency is considered to be a “public record.”10 And, barring an exception, all public records are

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Footnotes for this article may be found on page 7

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Tim Gordon represents construction and commercial real estate clients in complex disputes, and he understands the interrelationship between long-term real estate development, project construction, and property management. Contact Tim at 303.295.8173 or at tgordon@hollandhart.com.
By: Melissa Orien Beutler  
Salt Lake City and Las Vegas Offices

On June 6, 2012, the U.S. Green Building Council (USGBC) announced that it is delaying the release of LEED 2012, originally scheduled for release at the November 2012 Greenbuild conference in San Francisco. The USGBC has indicated this decision was solely the result of the industry and strong indications that the market will require additional time to be able to comply with the new program mandates.

The fact that the industry believes it will require additional time to consider and comply with proposed new revisions seems to be a strong indication that the technical requirements of the new changes are significant. As a result of the delay, the originally titled LEED 2012 will be renamed LEED v.4.

Industry commentators appear to widely agree that LEED v.4 indicates a substantial step by the USGBC to tighten the requirements necessary to obtain a LEED-certified building and to focus on post-construction operation and energy efficiency. The comment period for the currently proposed changes will remain open until June 2013. Given that the comment period is still open, the revision is subject to additional change. Highlights of the currently proposed changes are as follows.

### What Is Changing (from LEED 2009):

The revisions will fall primarily into three different categories:

1. **New Credit Categories**
2. **Changes to Technical Content**
3. **Revised Point Distribution**

These changes will include new prerequisites, new credits, and (possibly) new minimum program requirements.

### What the Target Goal of the Changes Is:

The changes are intended to:

- Increase the technical rigor of the system.
- Expand market sectors using LEED.
- Focus on building performance post-construction.

### What the New Credit Categories Are:

There are three new credit categories:

1. **Integrated Process**: Credits in this category are aimed at integrating the design, construction, and operations and maintenance processes in green projects.
2. **Location and Transportation**: This category primarily relocates credits previously found in the Sustainable Sites category. This category highlights the importance of these issues.
3. **Performance**: Credits in this category focus on performance measurement and verification to transition from construction to operation. Its focus includes items such as metering, commissioning, and utility consumption data reporting.

### What Additional Market Sectors Are Included:

Additional compliance paths will be created for the following additional market sectors:

- New and Existing Data Centers
- New and Existing Hospitality Projects
- New Warehouses and Distribution Centers
- Existing Schools
- Existing Retail

### Additional Items to Consider:

- Existing credits will be re-weighted to advance technical rigor.
- The professional credential system is not expected to change with v.4.
- Current projects using LEED 2009 will not need to change systems after commence-ment of construction.
- The system is expected to hit the market in late 2013.
- Comments and feedback can be submitted to the USGBC until June 2013.

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open for inspection by anyone. So, how do private entities protect sensitive information contained in PPP proposals from falling into the hands of competitors or other market participants who could use the information against them?

The Public-Private Initiative Guidelines published by the Transportation Commission of Colorado warns anyone considering submitting a proposal that CORA will apply to the submittal:

All proposals submitted to CDOT become the property of CDOT and are subject to the Colorado Open Records Act (§§ 24-72-201 et seq., C.R.S.). Proposers are advised to familiarize themselves with the provisions of the Colorado Open Records Act. In no event shall the State, the Commission, or CDOT be liable to a proposer for the disclosure of all or a portion of a proposal submitted under these Guidelines.

CDOT’s Procedures for Reviewing and Evaluating Unsolicited Proposals for Public-Private Initiative Agreements with Nonprofit Entities contains an almost-identical warning. And according to the HPTE Guidelines, “[a]ll material submitted by Bidders in response to Solicitation Documents will be the property of the Enterprise.” Thus, it will also be subject to CORA.

Additionally, when a private entity submits an unsolicited proposal, a likely result is that the state will solicit competitive proposals. Specifically, if an unsolicited proposal would require the state to spend over $50,000 in any fiscal year, then the state must first provide competitors with an opportunity to submit competing proposals. And in soliciting competitive proposals, the state must disclose “the general nature and scope of the unsolicited proposal, including the location of the transportation system project, the work to be performed on the project, and the terms of any private contributions offered and public benefits requested concerning the project.” So, an entity submitting an unsolicited proposal can expect that some information will be shared with competitors, if the project is to go forward.

Protection for Proprietary Information

Despite the presumption in favor of disclosure of public records, CORA does provide some protection against the disclosure of proprietary information. Specifically, the custodian responding to a request to review public documents shall deny a request for inspection to the extent the records constitute trade secrets, privileged information, or confidential commercial or financial data furnished by or obtained from any person, corporation, LLC, partnership, firm, or association.

HPTE’s procedures and guidelines contain protocols intended to protect confidential information. Pursuant to the HPTE Guidelines, anyone making an unsolicited proposal may identify appropriate material as proprietary or confidential. HPTE will then consider whether it can, and how to, solicit competitive proposals without disclosing the purported proprietary and confidential information. If HPTE determines that it cannot properly solicit competitive proposals without disclosing some of the information designated as proprietary or confidential, then it may either negotiate with the party that submitted the unsolicited proposal to determine what information may be disclosed for purposes of soliciting competitive proposals, or determine not to proceed any further.

Similarly, when companies submit solicited proposals to HPTE, they may designate certain materials as proprietary or confidential. And once HPTE makes a final determination with respect to a solicited proposal, all material submitted by any bidders is considered public record, with the exception of the material designated proprietary or confidential.

Under the Commission Guidelines, CDOT states that it will provide notice to the private entity that submitted a proposal if CDOT receives a request under CORA for all or a portion of the proposal. The party that submitted the proposal may then assert, in writing, whether there are any claimed exemptions under CORA relating to its proposal. And if a lawsuit is brought to compel disclosure, then the party that submitted the proposal must take primary responsibility for defending against the action, including indemnifying CDOT. Otherwise, CDOT warns that it may disclose the information.

In its Requests for Statements of Interest (RFSoI), CDOT echoes much of this information, and provides additional information about CORA:

Documents submitted pursuant to this RFSoI will be subject to the Colorado Open Records Act, C.R.S. §§ 24-72-201, et. seq. Information clearly marked as confidential and proprietary will be kept confidential by CDOT, unless otherwise provided by law. The Colorado Open Records Act provides that “Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data furnished by any person” to a state agency will not be produced in response to an open records request. CDOT will notify the Qualified Party if a request is made for such information, and the denial is challenged, so that the Qualified Party may take any action it deems necessary to defend the challenge. The Qualified Party, not CDOT, shall be the entity responsible for defending against Colorado Open Records Act disclosures for any records claimed by the Qualified Party to be confidential and proprietary.

Merely designating financial material as “confidential” under HPTE’s protocol does not render it protectable under CORA. Instead, financial material can only qualify for protection if its disclosure would likely impair the government’s future ability to gain necessary information, or cause substantial harm to the competitive position of the person providing the information. A party seeking information may ultimately file a lawsuit to compel disclosure if certain information is withheld.

A private entity that submitted a proposal would have standing to intervene in any court action brought to compel production of potentially confidential material under CORA. The party seeking to protect the information against disclosure would also have the burden of proving that information qualifies for protection. Otherwise, there is a presumption under CORA in favor of disclosure. If the documents sought to be disclosed contained some protected information and some information that would not qualify for protection, then the court may direct that the protected information be redacted.

So, both CORA and the CDOT/HPTE guidelines and procedures provide opportunities to protect against the disclosure of confidential and proprietary information. But the protection is not automatic, and care must be taken to protect such information from disclosure. To help protect against the disclosure of any confidential or proprietary information, consider taking the following steps:

1. designate in a conspicuous way any content deemed proprietary or confidential contained in the proposal;
2. do not abuse the privilege and over-designate material as confidential, but instead apply it only to material that would cause substantial harm to the competitive position if disclosed; and
3. promptly respond to any notifications from the state regarding any CORA requests for the material.
The Scope (and Limitations) of the Attorney-Client Privilege when Communicating with In-House Counsel

By: Sean Hanlon
Denver Office

The attorney-client privilege offers valuable protection against disclosure of communications to and from legal counsel made for the purpose of seeking, obtaining, or providing legal advice. The attorney-client privilege exists to promote full and frank communication between a client and its lawyer. This privilege extends both to outside and in-house counsel.

But the scope of the privilege is not nearly as broad as companies— and their employees— often believe or hope it to be. The mythical breadth of the attorney-client privilege is frequently bolstered by outside counsel who filter any corporate communication to a company’s in-house counsel into the “privileged and not to be disclosed” box. In reality, the attorney-client privilege is recognized to a very limited extent, and it is both narrowly and strictly applied by the courts. This is especially true with regard to communications made to and from in-house counsel, whose role and duties often involve a mixture of business and legal advising. The attorney-client privilege does not prevent disclosure of business communication or advice. With regard to legal advising, such communication must be confidentially communicated to the client when made, and such confidentiality must be maintained in order to avoid waiver of the privilege.

To protect and preserve the attorney-client privilege, corporate employees should be aware of its true scope and limitations. When a company claims the privilege, communications with in-house counsel are highly scrutinized by the opposition and by the courts. Accordingly, in-house counsel ought to educate their corporate clients about what is and is not protected by the attorney-client privilege and the differences between legal and non-legal advice.

The Attorney-Client Privilege: Communications with In-House Counsel

The attorney-client privilege protects certain, but not all, communications between a company’s employees and in-house counsel. Unprotected communication may arise when in-house counsel advises on subjects that are more business than legal, or when in-house counsel is involved in the company’s business discussions as a matter of course. As a result, the attorney-client privilege—when asserted to protect communications involving in-house counsel, as well as documents addressed to or from in-house counsel—is highly susceptible to challenges on the ground that in-house counsel is giving business advice and not legal advice.

In United States v. U.S., 449 U.S. 383 (1981), the U.S. Supreme Court recognized that

> defining the scope of the privilege for in-house counsel is complicated by the fact that these attorneys frequently have multi-faceted duties that go beyond traditional tasks performed by lawyers. In-house counsel have increased participation in the day-to-day operations of large corporations.

Id. at 395.

When the following criteria are met, the attorney-client privilege attaches and will protect communications between a company’s employees and the company’s in-house counsel:

1. Corporate employees must have made the communication to corporate counsel acting as such, for the purpose of providing legal advice to the corporation.
2. The substance of the communication must involve matters that fall within the scope of the corporate employee’s official duties.
3. The employees themselves must be sufficiently aware that their statements are being provided for the purpose of obtaining legal advice for the corporation.
4. The communications also must be confidential when made and must be kept confidential by the company.

Id. at 394.


When challenged, the party asserting the attorney-client privilege has the burden of proving all of the essential elements, which have been summarized as follows:

1. Where legal advice of any kind is sought
2. from a professional legal adviser in his capacity as such,
3. the communications relating to that purpose,
4. made in confidence
5. by the client,
6. are at his instance permanently protected
7. from disclosure by himself or by the legal adviser,
8. except the protection be waived.

U.S. v. Evans, 113 F.3d 1457, 1461 (7th Cir. 1997).
Attorney-Client Privilege Mythology

Some myths have developed over the years regarding the scope of the attorney-client privilege as it pertains to in-house counsel that give corporate employees a false sense of security. One myth—while true in the abstract—is that the attorney-client privilege is applied equally to outside and in-house counsel. Of course, in-house counsel have the same capacity to have privileged communications with clients as outside counsel. But in reality, communications between a corporate client and its in-house counsel are more highly scrutinized because in-house counsel are more frequently engaged in communications of which the dominant purpose is for business, rather than legal, advice. A “communication is not privileged simply because it is made by or to a person who happens to be a lawyer.” Diversified Indus. Inc. v. Meredith, 572 F.2d 596, 602 (8th Cir. 1977). To be privileged, the communication must be made for the purpose of seeking, obtaining, or providing legal assistance. “For example, the privilege is not applicable when the attorney acts merely as a negotiator for the client or is providing business advice.” Costco Wholesale Corp. v. Superior Court, 219 P.3d 736, 743 (Cal. 2009).

Under the teachings of Upjohn, it is clear that the attorney-client privilege “only protects disclosure of communications; it does not protect disclosure of the underlying facts by those who communicated with the attorney.” Upjohn, 449 U.S. at 395. The privilege does not extend to business advice nor does it protect clients from factual investigations. Id. at 395-96. Simply communicating facts to counsel does not place them into a “non-disclosable sphere.” Custom Designs & Mfg. Co. v. Sherwin-Williams Co., 39 A.3d 372, 378 (Pa. Super. 2012).

While the privilege extends equally to qualifying communications with either outside or in-house counsel, the communications with in-house counsel are often further complicated—and more scrutinized—because “in-house attorneys are more likely to mix legal and business functions.” Bank Brussels Lambert v. Credit Lyonnais SA, 220 F. Supp. 2d 283, 286 (S.D.N.Y. 2002). Consequently, in-house counsel should educate the corporate employees on this topic in order to minimize surprises when an opposing litigant seeks discovery of a communication between a corporate employee and in-house counsel.

Lessons from Acosta v. Target Corporation

In March 2012, a federal court in Illinois gave substantial treatment to the in-house counsel attorney-client privilege, and the conundrum of legal and business advice from in-house counsel. Acosta v. Target Corp., slip copy, 2012 WL 787492 (N.D. Ill. 2012). As explained in Acosta, for the attorney-client privilege to attach, “[t]he purpose of the communication must be the obtaining or providing of legal advice, not a business discussion. A business that gets marketing advice from a lawyer does not acquire a privilege in the bargain.” Id. at *6 (internal quotation marks and citation omitted).

The attorney-client privilege protects only communications related to the giving or seeking of legal advice; funneling other communications past an attorney will not make them privileged. Where a document is prepared for simultaneous review by legal and non-legal personnel and legal and business advice is requested, it is not primarily legal in nature and is therefore not privileged. However, documents communicating legal advice to non-legal personnel are within the attorney-client privilege, as well as documents reflecting discussions among executives of legal advice. Thus the mere fact that a document is sent to many non-legal and few legal personnel is not determinative of whether it is privileged. The principal consideration is the nature of the document: whether it primarily requests or gives legal or business advice. Id. at *6.

The attorney-client privilege does not attach simply by copying an in-house lawyer on an e-mail or inviting that lawyer to a meeting. If no request for legal advice is made and the input from in-house counsel is business-related and not primarily legal in nature, the privilege will not attach. Id.

While the client is the holder of the attorney-client privilege, the privilege can be waived. This is particularly true if the attorney-client communication was made in the presence of third parties. In the corporate context, such a waiver of the privilege may occur even if the communication is made in the presence of other employees—if those employees “did not need access to that information.” Id. at *7. An individual’s scope of employment is “highly relevant to the question of maintenance of confidentiality.” Id.

To avoid waiver of the privilege, a company must demonstrate that the communication at issue was confidential when given and that the confidentiality has been maintained. Id. If a company fails to restrict access to the confidential legal communication to those needing it, and if a company fails to prevent general disclosure of it within the company, the privilege may be inadvertently waived.

Conclusion

The scope of attorney-client privilege is limited in extent and narrowly confined by the courts. The privilege only applies to communications between the attorney and client made for the purpose of seeking, obtaining, or providing legal advice. For communications between corporate employees and in-house counsel, the attorney-client privilege is highly scrutinized because of the mixed business and legal roles often performed by in-house counsel. As a result, and in order to protect and preserve the privilege, corporate employees must be aware of boundaries and limits of the attorney-client privilege.
Is Arbitration or Mediation Right for Your Construction Dispute?

By: Phil Dabney and Leslie Nino
Las Vegas Office

The modern construction project is far more complex and technologically advanced than its predecessors. Likewise, construction methods and project management are vastly different from project to project. Why then would construction professionals resign themselves to traditional civil litigation as the one-size-fits-all method of dispute resolution? Thankfully, there are multiple methods of “alternative dispute resolution” or “ADR” that can be tailored to the specific needs and challenges of the construction industry. Many industry standard contracts, such as those implemented by the American Institute of Architects (AIA) or Consensus Docs, provide for some form of ADR. Although it is wise to consider adding an ADR clause to any construction contract, willing parties can mutually agree to use ADR even if their original contract did not include such an option.

The most widely used ADR methods in the construction industry are arbitration and mediation, including various hybrid methods. Many court systems will even require the parties to complete some form of mediation or arbitration before a civil case can commence before a judge.

In arbitration, a third-party neutral or arbitrator acts as the fact-finder rather than a judge or jury. In complex disputes, a panel of three arbitrators is often used with one designated as the lead arbitrator. The process of arbitration bears many similarities to traditional litigation. For example, at the end of an arbitration proceeding, the arbitrator renders a decision and an award to the prevailing party. In contrast, mediation is a process that allows the parties to be more involved in the problem-solving approach. A mediator is best viewed as an intermediary who facilitates the dispute resolution process and assists the parties in designing their own settlement, although a mediator is still a neutral third party. This facilitative role is the most notable difference from an arbitrator’s more passive duty to make a decision on the merits of the case. There are numerous advantages common to mediation or arbitration, yet each provides distinct mechanisms for solving disputes.

Selecting an Arbitrator or Mediator with Construction Experience

As the saying goes in the construction industry, if the judge doesn’t know the difference between rebar and a candy bar, he or she is not the right person to hear the case. Joking aside, the parties’ ability to choose an arbitrator or mediator with construction knowledge and familiarity with construction law is a key advantage over traditional litigation. With the limited exception of certain specialized courts, such as construction defect courts, parties with construction disputes are subject to random assignment of judges and juries, which means that individuals with little or no construction background will likely decide the case. The parties even have the ability to seek out a neutral in their particular field. Choosing the right neutral with the right expertise to oversee the dispute process could be the difference between winning and losing. Furthermore, because the parties can investigate the arbitrator or mediator’s previous outcomes and track record, this unique selection process can reassure the parties that their dispute is before a true neutral.

Timely Resolution of Disputes

A top consideration for most construction professionals is the timely resolution of any dispute. Civil lawsuits generally take years and involve burdensome pre-trial discovery and motion practice along the way. Furthermore, a civil trial can also require a lengthy trial lasting weeks or even months. On the other hand, arbitration can offer the parties a simplified forum to present their claims with little to no motion practice, modified rules for evidence and procedure, and an abbreviated discovery process. As a result, the arbitration process generally reaches resolution at a faster pace. This is especially true when the dispute is before an ADR specialist with construction knowledge, because the parties will spend less time educating him or her on industry practices and construction law.

Reducing the Cost of Dispute Resolution

Arbitration and mediation proceedings provide numerous ways for parties to achieve settlement of their dispute at a lower cost than those typically associated with litigation. This is accomplished largely by reducing the cumbersome discovery process, which can lessen expert witness fees, deposition costs, and the costs involved in locating relevant documents. The parties can also realize significant savings by spending less time in a courtroom and away from their businesses because of the limited motion practice and shorter ADR proceedings.

Creative and Amicable Solutions

When compared to traditional civil litigation, ADR proceedings are much less rigid or formal. The relaxed discovery and evidentiary rules enable the parties and their attorneys to shift their focus away from challenging the relevance or admissibility of every document and concentrate their efforts on clearly presenting their claim or defense. The relaxed setting may embolden the parties to actively participate in the process rather than deferring to their counsel as the sole negotiator and voice for the company.

Often overlooked, ADR creates another key advantage for construction professionals: ADR proceedings are far better suited to repair and preserve a business relationship between the parties going forward. This advantage carries distinct significance when the parties encounter a dispute in the early phases of a lengthy construction project. Because of its facilitative aspect, mediation is particularly effective for ongoing projects that may encounter multiple disputes from start to finish. Mediation can therefore avoid a costly shut-down or delay of the project pending resolution of the dispute.

Other Considerations

As the number of construction professionals using ADR to resolve disputes has risen, many within the industry have accepted...
ADR as a viable and advantageous method for resolving construction disputes. However, some critics have suggested that ADR—arbitration in particular—now suffers from many of the same pitfalls as traditional litigation. For instance, opponents assert that arbitration can take just as long as a civil lawsuit for final resolution. This is conceivable in certain instances where the parties—or the arbitrators—request multiple time extensions or continuances of the proceedings. Yet significant savings of time can still be achieved with specific safeguards in place, such as agreements to limit the number of days for the arbitration hearing, limit the nature and extent of discovery, or to impose deadlines for final resolution. In addition, the parties could also embrace technological solutions to facilitate faster resolution. One suggestion is to use videoconferencing to hold “virtual hearings,” which would greatly reduce travel time and related expenses as well as scheduling conflicts.

Controversy has also emerged over whether arbitration truly provides a cost savings for the parties involved in a construction dispute. Critics contend that the expected savings evaporate once the arbitrator’s hourly fees because they would not be subject to the same hourly fee by a judge handling traditional civil suits. However, construction professionals can still realize savings by agreeing to the limitations and deadlines previously discussed and by thoroughly vetting any potential arbitrator to ensure that he or she is a skilled case manager who will assertively manage the process.

Each construction dispute presents unique circumstances and considerations for the affected parties. The decision of whether to pursue some form of ADR or proceed in court to resolve a dispute largely depends on whether the parties are willing to participate. To illustrate, mediation will probably not be an effective method for parties that are unwilling, deeply entrenched, and refuse to accept any responsibility for any conduct that may have caused or contributed to the dispute. Conversely, parties that are motivated to resolve a dispute without exorbitant expense or bloodshed are much more likely to achieve an amicable resolution through ADR. This important decision should be made with the advice of a construction attorney who is well versed in ADR proceedings and eager to reach a resolution that best meets your needs and goals.

FOOTNOTES FOR “KEEPING YOUR PUBLIC-PRIVATE INITIATIVE PRIVATE” ON PAGES 1 AND 3

3. C.R.S. § 43-4-806(2)(a)(I).
4. HPTE Articles of Incorporation, Article III.
5. RTD FasTracks Public-Private Partnerships (PPPs) Fact Sheet, 6/22/07.
7. C.R.S. § 43-1-1202.
8. C.R.S. §§ 43-1-1203 & 43-1-1201(6).
15. C.R.S. § 43-1-1203(6)(a); see also HTPE Guidelines at ¶ 3.5(a).
17. C.R.S. § 24-72-204(3)(a)(IV).
18. HTPE Guidelines, ¶ 3.3.
19. Id.
20. Id.
21. Id. at ¶ 4.9.
22. Id.
24. Id.
27. Id. at 166.
28. IBEW, 880 P.2d at 163 (subcontractor allowed to intervene to protect against disclosure against financial information in bid documents).
29. Id. at 168.
30. Id. at 165.
**NEWS & EVENTS**

**Colorado: Property Descriptions**
The Colorado Supreme Court held in a June 2012 ruling that the property description in a deed of trust must include the property description, and not just the property mailing address.


**Colorado: Mechanics’ Liens**
The Colorado Court of Appeals held in a December 2011 ruling that a change in ownership does not bar application of the relation back doctrine in a mechanics’ lien proceeding. The Court noted that the project itself had not changed. Instead, the parties agreed that the project undertaken by Water Tower Builders was the same project commenced by Zion. This is important, since the relation-back doctrine applies to when work first commences “on the project.” The Court also noted that, if a change in ownership could prevent the application of the relation-back doctrine, then owners could avoid its application simply by transferring the property to a related entity during construction.


**Colorado: Mechanics’ Liens**
In an unpublished decision, the Colorado Court of Appeals held in April 2012 that the relation-back doctrine only applies to work that is performed under contract with the property owner, even if the party who contracted for the work eventually buys the property.


**Melissa Orien Beutler,** of Las Vegas and Salt Lake City, and **Dave Zimmerman,** of Salt Lake City, recently spoke at the ABA Forum on the Construction Industry Annual Convention in April 2012 in Las Vegas.

**Buck Beltzer,** of Denver, was recently named Chair of the ABA Forum on the Construction Industry’s Design Division (Division 3).

**Sean Hanlon,** of Denver, recently completed a secondment to the Denver City Attorney’s office, where he prosecuted a multitude of criminal charges through 21 trials (11 jury, 10 bench).

**Kevin Bridston,** of Denver, just finished up his second semester as an Adjunct Professor teaching Construction Law at the University of Denver.

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