# LIST OF CHAPTERS

# **VOLUME 1**

Chapter 1	THE CONSTRUCTION PROCESS ANI	<b>D PARTIES</b>
-----------	------------------------------	------------------

Matthew J. Ninneman, Esq. Clinton L. Coberly, Esq. Kevin D. Poyner, Esq.

# Chapter 2 LICENSING REQUIREMENTS FOR THE PARTIES TO THE

**CONSTRUCTION PROCESS** 

Karl A. Berg, Jr., Esq.

# **Chapter 3 PRIVATE CONSTRUCTION CONTRACTS**

Stephen A. Hess, Esq.

# **Chapter 4 STATE CONSTRUCTION PROJECTS**

Milton "Skip" L. Smith, Esq.

Ryan J. Klein, Esq.

Allison Tungate Mikulecky, Esq.

#### Chapter 5 CITY, COUNTY, AND SPECIAL DISTRICT CONSTRUCTION PROJECTS

Edward J. Blieszner, Esq.

#### Chapter 6 INSURANCE FOR THE CONSTRUCTION PROJECT

Joe A. Ramirez, Esq. Catherine C. Crane, Esq.

# Chapter 7 THE OWNER OF THE CONSTRUCTION PROJECT

John R. Riley, Esq.

William J. Searfoorce, Jr., Esq.

Shawn A. Eady, Esq. Max S. Stich, Esq.

#### Chapter 8 ARCHITECT/ENGINEER LIABILITY

Chloe Mickel, Esq. Brian Molzahn, Esq.

#### **Chapter 9 CONSTRUCTION PROJECT LENDERS**

Michael E. Lindsay, Esq. Neal J.G. McConomy, Esq.

### **Chapter 10** THE CONTRACTOR

Stephen A. Hess, Esq.

#### Chapter 11 SUBCONTRACTORS AND MATERIALMEN

J. Kevin Bridston, Esq.

# **Chapter 12 CONSTRUCTION SURETIES**

L. Jay Labe, Esq. Edgar L. Neel, Esq. Jerome M. Joseph., Esq.

#### Chapter 13 ENVIRONMENTAL LAW IN THE CONSTRUCTION INDUSTRY

Elizabeth A. Mitchell, Esq.

### **VOLUME 2**

# **Chapter 14 RESIDENTIAL CONSTRUCTION**

Ronald M. Sandgrund, Esq. Scott F. Sullan, Esq. Leslie A. Tuft, Esq.

# Chapter 15 DEFECTIVE CONSTRUCTION PERFORMANCE

Thomas C. Bell, Esq.

# Chapter 16 EXPRESS AND IMPLIED WARRANTIES IN CONSTRUCTION LAW

Jonathon D. Bergman, Esq. David C. Holman, Esq.

### **Chapter 17 DISPUTES OVER CONTRACT CLAUSES**

Albert B. Wolf, Esq.

# **Chapter 18 CONSTRUCTION DISPUTES**

Karl A. Berg, Jr., Esq.

# **VOLUME 3**

# Chapter 19 MECHANICS' LIENS

Timothy W. Gordon, Esq.

#### **Chapter 20 DAMAGES IN CONSTRUCTION CLAIMS**

Kenneth D. Robinson, Esq.

#### **Chapter 21 ARBITRATION AND MEDIATION OF CONSTRUCTION DISPUTES**

Robert E. Benson, Esq.

# **Chapter 22 EMPLOYMENT AND IMMIGRATION LAW IN THE COLORADO**

**CONSTRUCTION INDUSTRY** 

Austin E. Smith, Esq. Christopher L. Thomas, Esq.

### **Chapter 23 COLORADO CONSTRUCTION STATUTES**

Buck S. Beltzer, P.E., Esq. Michael Davis, Esq.

TOC-2 (4/18)

**Chapter 24 PROCEDURAL ASPECTS OF CONSTRUCTION LITIGATION** *Laurie K. Choi, Esq.* 

# Chapter 25 COLORADO STATE AND LOCAL TAXATION OF THE CONSTRUCTION INDUSTRY

Alan Poe, Esq. Rachel Poe, Esq.

# Chapter 26 CONTRACT CLAUSES MANAGING, ALLOCATING, AND

TRANSFERRING CONSTRUCTION PROJECT RISKS

J. Kevin Bridston, Esq.

# **Chapter 27 DELAY IN CONSTRUCTION CONTRACTS**

Mary Kay Monville, Esq. Hon. Mark D. Thompson Jeffrey D. Phipps, Esq.

# **Chapter 28** INTELLECTUAL PROPERTY LAW IN THE CONSTRUCTION

INDUSTRY — A PRACTICAL GUIDE

Scott S. Havlick, Esq. Kenneth C. Winterton, Esq. Darin L. Brown, Esq.

### Chapter 29 FEDERAL GOVERNMENT CONSTRUCTION CONTRACTS

Charles R. Lucy, Esq.

### **Chapter 30 GREEN BUILDING: A PRIMER FOR ATTORNEYS**

Evan L. Randall, Esq. Rebecca W. Dow, Esq. Laurie K. Choi, Esq.

#### Chapter 31 LAND USE AND ZONING

James B. Borgel, Esq. Andrea Austin, Esq.

### **Chapter 32 PUBLIC-PRIVATE PARTNERSHIPS**

Charlotte Robinson, Esq.

#### **HELPFUL RESOURCES**

# **VOLUME 4**

**APPENDICES** 

TABLE OF CASES

TABLE OF STATUTES

SUBJECT INDEX

# TABLE OF CONTENTS

# **VOLUME 1**

Chapter 1	THE CONSTRUCTION PROCESS AND PARTIES		
	§ 1.1	INTRODUCTION	
	§ 1.2	TRADITIONAL PROJECT DELIVERY	
		§ 1.2.1—Phases Of A Traditional Design-Bid-Build Project Development § 1.2.2—Use Of AIA Standard Form Documents In Project Delivery By Traditional Design-Bid-Build Methodology	
	§ 1.3	DESIGN-BUILD AS AN "ALTERNATE" METHOD OF PROJECT DELIVERY	
		§ 1.3.1—Growth Of Design-Build § 1.3.2—"Fast-Track" Defined And Distinguished § 1.3.3—"Design-Build" Defined § 1.3.4—Objective And Philosophy Of Design-Build § 1.3.5—Variations On The Design-Build Model § 1.3.6—Understanding The Risk Of Design-Build § 1.3.7—What Projects Are Good Design-Build Candidates? § 1.3.8—Owner's Responsibilities On A Design-Build Project § 1.3.9—Duties Of The Design-Build Entity § 1.3.10—Benefits Of Design-Build § 1.3.11—Disadvantages Of Design-Build	
	§ 1.4	CONSTRUCTION MANAGEMENT	
		<ul> <li>§ 1.4.1—Definition Of A Construction Manager</li> <li>§ 1.4.2—The Need For A Common Vocabulary</li> <li>§ 1.4.3—Role Of A CM</li> <li>§ 1.4.4—CM As Advisor Or Agent</li> <li>§ 1.4.5—CM At Risk</li> <li>§ 1.4.6—When Is The Addition Of A CM Warranted?</li> <li>§ 1.4.7—Advantages Of A CM</li> <li>§ 1.4.8—Disadvantages Of A CM</li> <li>§ 1.4.9—CM Contract Resources</li> </ul>	
	§ 1.5	INTEGRATED PROJECT DELIVERY (IPD)	
	<b>§ 1.6</b>	PAYING FOR THE WORK	
		§ 1.6.1—Fixed Price § 1.6.2—Cost Plus Fixed Fee § 1.6.3—Cost Plus Incentive Fee	

- § 1.6.4—Time And Materials
- § 1.6.5—Unit Price

# § 1.7 SUMMARY

# Chapter 2 LICENSING REQUIREMENTS FOR THE PARTIES TO THE CONSTRUCTION PROCESS

### § 2.1 INTRODUCTION

- § 2.1.1—General Considerations
- § 2.1.2—State Scheme
- § 2.1.3—Licensing Philosophy
- § 2.1.4—License Required To Do Business

#### § 2.2 ARCHITECT LICENSING LAW

- § 2.2.1—Entitlement To Practice
- § 2.2.2—Entities Allowed
- § 2.2.3—When A License Is Required
- § 2.2.4—Architecture Defined
- § 2.2.5—Exemptions
- § 2.2.6—Qualification Process
- § 2.2.7—Stamping Requirements
- § 2.2.8—Discipline And Penalties
- § 2.2.9—Professional Landscape Architects

#### § 2.3 ENGINEER LICENSING LAW

- § 2.3.1—Entitlement To Practice
- § 2.3.2—Entities Allowed
- § 2.3.3—When Licensing Is Required
- § 2.3.4—Engineering Defined
- § 2.3.5—Exemptions
- § 2.3.6—Qualification Process
- § 2.3.7—Responsible Charge
- § 2.3.8—Reciprocity
- § 2.3.9—Sealing And Signing Requirements
- § 2.3.10—Discipline And Penalties

# § 2.4 CONTRACTOR LICENSING LAW

- § 2.4.1—Introduction
- § 2.4.2—Contractor Defined
- § 2.4.3—Specialty Contractors
- § 2.4.4—Civil Liability
- § 2.4.5—Design-Build Services
- § 2.4.6—Construction Management Services

TOC-6 (4/18)

# **EXHIBIT**

Exhibit 2A—Contractor Licensing Information By City/Municipality And County

Chapter 3	PRIVATE CONSTRUCTION CONTRACTS		
	§ 3.1	INTRODUCTION	
	§ 3.2	CONTRACT PRINCIPLES AND INTERPRETATION	
		§ 3.2.1—Contract Language § 3.2.2—Contract Interpretation	
	§ 3.3	FORM OF PRIVATE CONSTRUCTION CONTRACTS	
	§ 3.4	IMPLIED RIGHTS AND OBLIGATIONS	
		<ul> <li>§ 3.4.1—Good Faith And Fair Dealing</li> <li>§ 3.4.2—Implied Warranty Of Plans And Specifications</li> <li>§ 3.4.3—Workmanlike Construction</li> <li>§ 3.4.4—Uniform Commercial Code Warranties</li> <li>§ 3.4.5—Colorado Trust Fund Law</li> </ul>	
	§ 3.5	BIDDING FOR PRIVATE CONSTRUCTION CONTRACTS	
		§ 3.5.1—Freedom To Contract	
	§ 3.6	PRIVATE SUBCONTRACTS AND PURCHASE ORDERS	
		§ 3.6.1—Pay-When-Paid Versus Pay-If-Paid Clauses	
Chapter 4	STATE CONSTRUCTION PROJECTS		
	§ 4.1	INTRODUCTION	
	§ 4.2	PROCUREMENT OF CONSTRUCTION SERVICES: PROCEDURES AND REQUIREMENTS	
		§ 4.2.1—Invitations For Bids § 4.2.2—Invitations For Best Value Bids § 4.2.3—Requests For Proposals § 4.2.4—Multi-Step Sealed Bidding § 4.2.5—Small Purchases § 4.2.6—Sole Source Procurements	

	§ 4.2.7—Emergency Procurements § 4.2.8—Competitive Negotiation § 4.2.9—Market Research
§ 4.3	PROCUREMENT OF SUPPLIES AND SERVICES BY THE STATE AND ITS AGENCIES
§ 4.4	PROCUREMENT OF ARCHITECTURAL, CONSTRUCTION MANAGEMENT, AND OTHER PROFESSIONAL SERVICES
§ 4.5	COLORADO VENDOR SELF SERVICE
<b>§ 4.6</b>	PREQUALIFICATION OF BIDDERS
§ 4.7	SPECIFICATIONS
§ 4.8	CANCELLATION OF SOLICITATIONS AND REJECTIONS OF BIDS OR PROPOSALS
§ 4.9	MISTAKES IN BIDS
§ 4.10	CONFIDENTIALITY
§ 4.11	COST PRINCIPLES
§ 4.12	COST OR PRICING DATA
§ 4.13	BOND REQUIREMENTS
	§ 4.13.1—Bid Bonds § 4.13.2—Performance And Payment Bonds Or Other Acceptable Sureties
§ 4.14	PAYMENTS AND RETAINAGE
§ 4.15	BID PROTESTS
	§ 4.15.1—Forum § 4.15.2—Standing § 4.15.3—Remedies
§ 4.16	CONTRACT CONTROVERSIES
	§ 4.16.1—Sovereign Immunity § 4.16.2—Forum And Remedies
§ 4.17	SUSPENSION AND DEBARMENT

TOC-8 (4/18)

# § 4.18 **SUBCONTRACTORS** § 4.18.1—Subcontractor Listing Requirements § 4.18.2—Designation Of Subcontractors Or Suppliers § 4.18.3—Prompt Payment § 4.18.4—Liens § 4.18.5—Pass-Through And Liquidating Agreements § 4.19 **PREFERENCES** § 4.20 MBE/WBE/DBE SET-ASIDES § 4.21 **OTHER CONSIDERATIONS** § 4.21.1—No Damages For Delay Clauses § 4.21.2—Indemnification And Hold Harmless Provisions § 4.21.3—Privatization § 4.21.4—Types Of Contracts § 4.21.5—Books And Records § 4.21.6—Employment For Public Works § 4.21.7—Conflicts Of Interest In Government Contracts § 4.21.8—Performance Of Services Outside The United States Or Colorado § 4.21.9—Use Of Foreign-Produced Goods § 4.21.10—Procurement Training § 4.21.11—Ethics § 4.22 **BRIDGE AND HIGHWAY CONTRACTS** § 4.22.1—Competitive Sealed Bidding § 4.22.2—Protests § 4.22.3—Correction Action, Suspension, Debarment § 4.22.4—Design-Build Contracts For Transportation Projects **EXHIBIT** Exhibit 4A—Checklist: Time Limits CITY, COUNTY, AND SPECIAL DISTRICT CONSTRUCTION PROJECTS **INTRODUCTION** § 5.1 § 5.2 **GENERAL CONSIDERATIONS** NATURE OF PUBLIC ENTITIES AND AUTHORITY TO § 5.3 **CONTRACT** § 5.4 **CONSTITUTIONAL PROVISIONS**

(4/18) TOC-9

Chapter 5

§ 5.5	GENERAL STATUTORY PROVISIONS
§ 5.6	GENERAL PUBLIC IMPROVEMENT STATUTES
§ 5.7	OTHER COUNTY CONSTRUCTION ENTITIES
	§ 5.7.1—County Public Improvement Districts
	§ 5.7.2—County Local Improvement Districts
§ 5.8	CITIES AND TOWNS
	§ 5.8.1—Structure And Classification
	§ 5.8.2—Home Rule
	§ 5.8.3—General Powers
	§ 5.8.4—Urban Renewal Authorities
	§ 5.8.5—Downtown Development Authorities
	§ 5.8.6—Special Improvement Districts In Municipalities
	§ 5.8.7—Municipal Improvement Districts
	§ 5.8.8—Business Improvement Districts
§ 5.9	SPECIAL DISTRICTS
§ 5.10	OTHER STATUTORY ENTITIES
§ 5.11	CONTRACTING METHODS
	§ 5.11.1—Design/Build Contracting
	§ 5.11.2—Bidding Statutes
	§ 5.11.3—Choice Of Bidder
	§ 5.11.4—Bid Mistakes And Withdrawal Of Bids
	§ 5.11.5—Standing To Challenge Bid Awards § 5.11.6—Cost Plus Contracting
§ 5.12	BOND REQUIREMENTS
3 - 1	
§ 5.13	REQUIRED AND PROHIBITED CONTRACT PROVISIONS
	§ 5.13.1—Damages For Delays
	§ 5.13.2—Appropriated Funds
	§ 5.13.3—Prohibited Indemnification Provisions
	§ 5.13.4—Other Miscellaneous Provisions
§ 5.14	WITHHOLDINGS FROM PROGRESS PAYMENTS (RETAINAGE)
§ 5.15	CLAIMS FOR NON-PAYMENT
§ 5.16	FUNDING AND APPROPRIATIONS
9 5 17	ALTEDNATIVE DISDUTE DESCRIPTION DOOVISIONS

TOC-10 (4/18)

# INSURANCE FOR THE CONSTRUCTION PROJECT Chapter 6 **OVERVIEW § 6.1** § 6.1.1—Insurance Policy Sections And General Terms § 6.1.2—Occurrence Versus Claims-Made Policies § 6.1.3—Duty To Defend And Reservation Of Rights § 6.1.4—Insured's Right To Independent Counsel And Advice § 6.1.5—Declaratory Judgment And Garnishment Actions § 6.1.6—Statutory Violations And Bad Faith § 6.2 **BUILDER'S RISK COVERAGES** § 6.2.1—Purpose And Use Of Builder's Risk Policies § 6.2.2—Named Insureds § 6.2.3—Insuring Agreement § 6.2.4—What Property Is Insured § 6.2.5—Exclusions To Coverage § 6.2.6—Significant Terms And Conditions § 6.2.7—Practice Pointers § 6.3 PROFESSIONAL LIABILITY INSURANCE § 6.3.1—Nature Of The Claim And Litigation Factors § 6.3.2—Items To Consider With Deductibles And SIRs § 6.3.3—Considerations For Claims-Made Policies § 6.3.4—Notice Provisions § 6.3.5—Policy Exclusions **§ 6.4** THE COMMERCIAL GENERAL LIABILITY INSURANCE **POLICY** § 6.4.1—Overview § 6.4.2—Standard Coverages AUTOMOBILE INSURANCE § 6.5 **§ 6.6 EXCESS AND UMBRELLA INSURANCE** ALTERNATIVE FORMS OF COVERAGE FOR A PARTICULAR § 6.7 OR SPECIALIZED SITUATION § 6.7.1—Project Policies § 6.7.2—Wrap-Up Programs

(4/18) TOC-11

§ 6.8

**SUMMARY** 

# Chapter 7 THE OWNER OF THE CONSTRUCTION PROJECT INTRODUCTION § 7.1 THE OWNER'S ROLE IN THE CONSTRUCTION PROCESS § 7.2 § 7.2.1—Selection Of A Project Delivery System § 7.2.2—Selection Of Design Professionals § 7.2.3—Selection Of A Contractor And Construction Contracts § 7.3 **DUTIES AND RESPONSIBILITIES OF THE OWNER** § 7.3.1—Responsibility For Owner-Supplied Information § 7.3.2—Responsibility For Sufficiency Of Plans And Specifications § 7.3.3—Adequate Financing § 7.3.4—Payment § 7.3.5—Insurance § 7.3.6—Participation In Alternative Dispute Resolution § 7.3.7—Obligation Of Good Faith And Fair Dealing § 7.4 POTENTIAL LIABILITY OF THE OWNER § 7.4.1—To Design Professionals/Consultants § 7.4.2—To General Contractor § 7.4.3—To Construction Manager § 7.4.4—To Subcontractors/Materialmen § 7.4.5—To Workers § 7.4.6—To Lender § 7.4.7—To Adjacent Property Owners § 7.4.8—To Third Parties POTENTIAL CLAIMS OF THE OWNER § 7.5 § 7.5.1—Limitations Period For Claims By Owner § 7.5.2—Impact Of The Economic Loss Rule On Owner Claims § 7.5.3—Against Architect/Engineer § 7.5.4—Against General Contractor § 7.5.5—Against Construction Manager § 7.5.6—Against Subcontractors And Materialmen § 7.5.7—Against Lender And Surety § 7.5.8—Against Building Code Enforcement Officials

TOC-12 (4/18)

#### **Chapter 8 ARCHITECT/ENGINEER LIABILITY**

#### § 8.1 INTRODUCTION

#### § 8.2 THEORIES OF LIABILITY

- § 8.2.1—Negligence
- § 8.2.2—Contract
- § 8.2.3—Strict Liability (Negligence Per Se)
- § 8.2.4—Types Of Litigation

#### § 8.3 EXPANDING THEORIES OF LIABILITY

- § 8.3.1—Indemnification
- § 8.3.2—Contribution
- § 8.3.3—Implied Warranty
- § 8.3.4—Strict Liability (Product Theories)
- § 8.3.5—Liability Under Accessibility Legislation
- § 8.3.6—Abnormally Dangerous Activities
- § 8.3.7—Liability For Copyright Infringement
- § 8.3.8—Software Licensing Violations
- § 8.3.9—Problems With Electronic Media
- § 8.3.10—Liability For Rendering Decisions On Disputes
- § 8.3.11—Sick Building Syndrome
- § 8.3.12—Negligent Misrepresentation
- § 8.3.13—Tortious Interference With Contract

### § 8.4 DEFENSES

- § 8.4.1—Standard Of Care
- § 8.4.2—No Duty
- § 8.4.3—Approval Of Others/Acceptance By Owner
- § 8.4.4—Non-compliance With Design
- § 8.4.5—Statute Of Limitations/Statute Of Repose
- § 8.4.6—Construction Defect Action Reform Act
- § 8.4.7—Privilege
- § 8.4.8—Indemnification Limitations/Requirements
- § 8.4.9—Selected Contractual Risk Allocation Clauses
- § 8.4.10—Owner First Costs/Betterment
- § 8.4.11—Economic Loss Rule
- § 8.4.12—Contributory Negligence/Comparative Fault
- § 8.4.13—State Of The Art
- § 8.4.14—Certificate Of Review
- § 8.4.15—Disclaimers
- § 8.4.16—Immunity

# § 8.5 PROFESSIONAL LIABILITY INSURANCE § 8.5.1—Claims-Made/Claims Made-And-Reported Policies § 8.5.2—Notice-Prejudice Rule Inapplicable § 8.5.3—Available Coverage Limits/Deductibles § 8.5.4—Practice/Project Policies § 8.5.5—Elevated Standard Of Care **§ 8.6 CONCLUSION** CONSTRUCTION PROJECT LENDERS § 9.1 **INTRODUCTION § 9.2 CONSTRUCTION LOAN COMMITMENTS** § 9.2.1—Parties To Construction Loan Commitment § 9.2.2—Loan Terms Of Commitment

Chapter 9

§ 9.3 CONSTRUCTION LOAN DOCUMENTATION

§ 9.2.6—Funding Conditions Of Lender § 9.2.7—Status Of The Borrower

§ 9.2.3—Project Definition For Commitment § 9.2.4—Disbursement And Use Of Funds

§ 9.2.8—Commitment Fees And Loan Expenses

§ 9.2.10—Miscellaneous Provisions In Commitment

§ 9.2.5—Security And Collateral

§ 9.2.9—Term Of Commitment

- § 9.4 CONSTRUCTION LOAN ADMINISTRATION
- § 9.5 CONSTRUCTION LOAN RISKS: PRIORITY OF LIENS
  - § 9.5.1—General Rule Of Priority
  - § 9.5.2—Refinements And Exceptions To General Priority Rule
- § 9.6 LENDER'S DUTIES AND LIABILITIES
  - § 9.6.1—Claims By Borrowers
  - § 9.6.2—Claims By Contractors, Subcontractors, And Suppliers
- § 9.7 BIBLIOGRAPHY OF SOURCES

TOC-14 (4/18)

# Chapter 10 THE CONTRACTOR **INTRODUCTION** § 10.1 THE CONTRACT **§ 10.2** § 10.2.1—Substantial Completion § 10.2.2—No-Damages-For-Delay § 10.2.3—Liquidated Damages § 10.2.4—Consequential Damages § 10.2.5—Indemnification § 10.2.6—Warranties/Guarantees § 10.2.7—Differing Site Conditions § 10.2.8—Changes § 10.2.9—Termination Provisions § 10.2.10—Pay-When-Paid And Pay-If-Paid Clauses § 10.2.11—Standard Of Care § 10.2.12—Other Important Contract Provisions § 10.2.13—General Comments § 10.2.14—Limitation Of Rights Under CDARA § 10.3 THE DESIGN-BUILD CONTRACT § 10.3.1—Shift Of Design-Related Risk To Contractor § 10.3.2—Insurance For Managing Design Risks § 10.3.3—Bonds For Design-Build Projects § 10.4 STATUTORY RIGHTS, DUTIES, AND RESPONSIBILITIES § 10.4.1—Trust Fund Statute § 10.4.2—Premises Liability Statute § 10.4.3—Workers' Compensation Act § 10.4.4—Occupational Safety And Health Act

Exhibit 10A—Drafting Considerations For Contractors

(4/18) TOC-15

§ 10.5

**EXHIBIT** 

**BIBLIOGRAPHY** 

# Chapter 11 SUBCONTRACTORS AND MATERIALMEN **DEFINITIONS AND DISTINCTIONS** § 11.1 § 11.1.1—Subcontractors And Sub-Subcontractors § 11.1.2—Materialmen And Suppliers § 11.1.3—The Differences: The Importance Of Distinction § 11.1.4—Materials, Supplies, And Equipment § 11.2 **CONTRACTING ISSUES** § 11.2.1—Governing Law: Common Law Or The UCC § 11.2.2—Is There A Contract? § 11.2.3—Purchase And Delivery Orders **SUBCONTRACTOR BIDS** § 11.3 § 11.3.1—Binding Nature Of Subcontractor's Bids § 11.3.2—Bid Mistakes § 11.3.3—Bid Shopping **DUTIES AND LIABILITIES OF OWNER TO** § 11.4 SUBCONTRACTORS AND MATERIALMEN § 11.4.1—Economic Loss § 11.4.2—Express And Implied Duties Of The Owner § 11.4.3—Legal Theories Against The Owner § 11.5 **DUTIES AND LIABILITIES OF CONTRACTOR TO** SUBCONTRACTORS AND MATERIALMEN § 11.5.1—Express And Implied Duties Of The Contractor § 11.5.2—Liabilities And Legal Theories DUTIES AND LIABILITIES OF OTHER SUBCONTRACTORS AND § 11.6 MATERIALMEN § 11.7 DUTIES AND LIABILITIES OF SUBCONTRACTORS AND MATERIALMEN TO OWNER

§ 11.8 DUTIES AND LIABILITIES OF SUBCONTRACTORS AND MATERIALMEN TO CONTRACTOR

§ 11.7.1—Defined By The Contract

§ 11.7.2—In Warranty § 11.7.3—In Tort

TOC-16 (4/18)

# § 11.9 COMMON SUBCONTRACTOR CLAIMS

- § 11.9.1—Delay Claims
- § 11.9.2—Acceleration
- § 11.9.3—Differing Site Conditions
- § 11.9.4—Change In Scope
- § 11.9.5—Defective Plans And Specifications

### § 11.10 INDEMNIFICATION

- § 11.10.1—Indemnification Of The Contractor By Its Subcontractors
- § 11.10.2—Contractual Indemnity
- § 11.10.3—Common Law Indemnity And Contribution

# § 11.11 INSURANCE AND WAIVER OF SUBROGATION

# § 11.12 PAYMENT AND NON-PAYMENT OF SUBCONTRACTORS AND MATERIALMEN

- § 11.12.1—Pay-When-Paid Or Pay-If-Paid
- § 11.12.2—License Requirements And Payment
- § 11.12.3—Mechanics' Liens
- § 11.12.4—Bonds
- § 11.12.5—Public Works
- § 11.12.6—Trust Fund Statute

# § 11.13 SUITS BY CONTRACTOR ON BEHALF OF THE SUBCONTRACTOR (PASS-THROUGH CLAIMS)

#### § 11.14 SUBCONTRACT CLAUSES: A CHECKLIST

- § 11.14.1—Documents Comprising The Subcontract
- § 11.14.2—Specifications
- § 11.14.3—Insurance And Bonds
- § 11.14.4—Manner Of Performance
- § 11.14.5—Time Of Performance
- § 11.14.6—Payment Terms
- § 11.14.7—Indemnification
- § 11.14.8—Warranty
- § 11.14.9—Changes To Contracts
- § 11.14.10—Final Completion, Payment, And Release
- § 11.14.11—Termination
- § 11.14.12—Dispute Resolution

# § 11.15 CONCLUSION

### § 11.16 BIBLIOGRAPHY

#### **Chapter 12 CONSTRUCTION SURETIES**

#### § 12.1 INTRODUCTION

#### § 12.2 UNDERWRITING PRINCIPLES

- § 12.2.1—Background
- § 12.2.2—Role Of The Agent
- § 12.2.3—Qualifying A Surety Bond Applicant
- § 12.2.4—Line Of Surety Credit
- § 12.2.5—Indemnity Agreements

### § 12.3 PAYMENT BONDS

- § 12.3.1—Bond Types
- § 12.3.2—Contractual Relationships Covered By Payment Bonds
- § 12.3.3—Types Of Claims Covered
- § 12.3.4—Notice Requirements
- § 12.3.5—Time Bars And Other Limitations Upon Suit
- § 12.3.6—Commencement Of Suit
- § 12.3.7—Liens On Contract Funds

#### § 12.4 PERFORMANCE BONDS

- § 12.4.1—"Performance Bond" Defined
- § 12.4.2—Performance Bond Forms
- § 12.4.3—Parties Protected
- § 12.4.4—Obligee's Duties And Benefits
- § 12.4.5—Surety Obligations And Options On Principal's Default
- § 12.4.6—Surety Defenses

### § 12.5 SUBROGATION

#### § 12.6 MISCELLANEOUS ISSUES

- § 12.6.1—Bid Bonds
- § 12.6.2—Obligee Due Diligence
- § 12.6.3—Individual Surety Bonds
- § 12.6.4—Damages For Loss Of Bonding Capacity
- § 12.6.5—Projects Involving Multiple Bonds
- § 12.6.6—Bad Faith
- § 12.6.7—Public-Private Partnership Bonding
- § 12.6.8—Effect Of Bankruptcy
- § 12.6.9—Subcontractor Default Insurance
- § 12.6.10—Tender Of Defense
- § 12.6.11—Lien Release Bonds "Bonding Over" Mechanics' Liens

#### § 12.7 GLOSSARY

TOC-18 (4/18)

# § 12.8 BIBLIOGRAPHY

#### **EXHIBITS**

- Exhibit 12A—Sample General Indemnity Agreement
- Exhibit 12B—Miller Act Payment Bond Form
- Exhibit 12C—Payment Bond Form (Colorado Public Works Act)
- Exhibit 12D—Supplier Notice (Miller Act)
- Exhibit 12E—Miller Act Complaint
- Exhibit 12F—Verified Statement Of Claim (Colorado Public Works Act)
- Exhibit 12G—Lis Pendens Notice Of Commencement Of Action (Colorado Public Works Act)
- Exhibit 12H—Miller Act Performance Bond
- Exhibit 12I—Performance Bond (Colorado Public Works Act)
- Exhibit 12J—P3 Performance Bond Form
- Exhibit 12K—P3 Labor And Material Payment Bond Form

#### Chapter 13 ENVIRONMENTAL LAW IN THE CONSTRUCTION INDUSTRY

#### § 13.1 INTRODUCTION

# § 13.2 THE LEGAL FRAMEWORK: AN OVERVIEW OF ENVIRONMENTAL LAWS AND REGULATIONS

- § 13.2.1—Hazardous Materials: CERCLA And RCRA
- § 13.2.2—The Control Of Water Pollution
- § 13.2.3—The Control Of Air Pollution
- § 13.2.4—Occupational Safety And Health

# § 13.3 SPECIFIC ENVIRONMENTAL PROBLEMS FACED BY THE CONSTRUCTION INDUSTRY

- § 13.3.1—Routine Equipment Maintenance
- § 13.3.2—Asbestos Removal And Disposal
- § 13.3.3—Polychlorinated Biphenyls
- § 13.3.4—Underground Storage Tanks
- § 13.3.5—Historic Preservation
- § 13.3.6—Land Clearing
- § 13.3.7—Threatened And Endangered Species Habitat
- § 13.3.8—Demolition
- § 13.3.9—Lead-Based Paint
- § 13.3.10—Hazardous Materials Generally

# § 13.4 ENVIRONMENTAL AGENCIES THAT REGULATE CONSTRUCTION ACTIVITIES

- § 13.4.1—Federal Environmental Agencies
- § 13.4.2—State Environmental Agencies
- § 13.4.3—Local Environmental Agencies

# § 13.5 PERMITS, REPORTING REQUIREMENTS, AND ENFORCEMENT OF ENVIRONMENTAL RULES

- § 13.5.1—Permits
- § 13.5.2—Reporting Requirements
- § 13.5.3—Enforcement

# § 13.6 ENVIRONMENTAL INCIDENTS

- § 13.6.1—Emergency Response
- § 13.6.2—Environmental Reporting
- § 13.6.3—Contractual Notice And Other Requirements
- § 13.6.4—Remediation

# § 13.7 ALLOCATION OF RISK: ADJUSTING CONTRACTUAL RELATIONSHIPS TO ALLOCATE ENVIRONMENTAL LIABILITIES

- § 13.7.1—Owners
- § 13.7.2—Design Professionals
- § 13.7.3—Contractors And Subcontractors
- § 13.7.4—Sureties
- § 13.7.5—Other Parties
- § 13.7.6—Construction Contract Clauses
- § 13.7.7—Public Contracts
- § 13.7.8—Liability To Third Parties

# § 13.8 MINIMIZING ENVIRONMENTAL LIABILITIES THROUGH INVESTIGATION

- § 13.8.1—Environmental Evaluations
- § 13.8.2—Construction Documents
- § 13.8.3—Site Inspection
- § 13.8.4—Training
- § 13.8.5—Insurance
- § 13.8.6—Bankruptcy

#### **EXHIBITS**

Exhibit 13A—Air Pollutant Emission Notice (APEN) And Application For Construction Permit

Exhibit 13B—Construction Contract Clauses

TOC-20 (4/18)

#### **VOLUME 2**

Chapter 14	RESIDENTIAL	CONSTRUCTION
------------	-------------	--------------

#### § 14.1 INTRODUCTION AND SCOPE

# § 14.2 OVERVIEW OF COLORADO LAW RELATING TO NEW HOME SALES AND CONSTRUCTION

- § 14.2.1—Common Law
- § 14.2.2—Statutes, Ordinances, And Regulations
- § 14.2.3—Colorado's Construction Defect Action Reform Act (CDARA)
- § 14.2.4—Recovering "Actual Damages" Under CDARA II
- § 14.2.5—Colorado's Homeowner Protection Act Of 2007 (HPA)
- § 14.2.6—Colorado's Construction Professional Liability Insurance Act Of 2010
- § 14.2.7—The Construction Defect Action Reform Act Of 2017 (HB 17-1279: CDARA III)
- § 14.2.8—Construction Defect Municipal Ordinances
- § 14.2.9—Metropolitan Districts

# § 14.3 POTENTIAL DEFENDANTS IN RESIDENTIAL CONSTRUCTION DISPUTES

- § 14.3.1—Builder-Vendors
- § 14.3.2—Production Builders
- § 14.3.3—Custom Builders
- § 14.3.4—Developers
- § 14.3.5—General Contractors
- § 14.3.6—Officers, Directors, And Employees
- § 14.3.7—Subcontractors
- § 14.3.8—Architects
- § 14.3.9—Soils, Structural, And Other Engineers
- § 14.3.10—Material And Product Suppliers
- § 14.3.11—Local Code Authorities
- § 14.3.12—Adjoining Landowners

# § 14.4 CONTRACT CLAIMS ARISING FROM THE CONSTRUCTION AND SALE OF A HOME

- § 14.4.1—Breach Of Contract
- § 14.4.2—Breach Of Express Warranties
- § 14.4.3—Breach Of Implied Warranties
- § 14.4.4—Proof Of Breach Of Warranty
- § 14.4.5—Causation And Damages
- § 14.4.6—Prejudgment Interest As Damages
- § 14.4.7—Attorney Fees As Damages

# § 14.5 TORT CLAIMS ARISING FROM THE CONSTRUCTION AND SALE OF A HOME

- § 14.5.1—Negligence
- § 14.5.2—Misrepresentation And Concealment
- § 14.5.3—Strict Product Liability
- § 14.5.4—Trespass And Nuisance
- § 14.5.5—Loss Of Lateral Support
- § 14.5.6—Unique Damages Issues ("Extrapolation" Evidence)
- § 14.5.7—Unique Damages Issues ("Useful Life" Evidence)
- § 14.5.8—Unique Damages Issues (Permanent Injury Single Lawsuit)
- § 14.5.9—Unique Damages Issues (Apportioning Damages In Complex Construction Disputes)

# § 14.6 STATUTORY AND RELATED CLAIMS ARISING FROM THE CONSTRUCTION AND SALE OF A HOME

- § 14.6.1—Soils And Hazard Analyses Of Residential Construction Act
- § 14.6.2—Colorado's Consumer Protection Act (CCPA) Deceptive Trade Practices
- § 14.6.3—Natural Hazards Area Statute
- § 14.6.4—Magnuson-Moss Warranty Act
- § 14.6.5—Environmental Hazards And Hazardous Wastes Laws
- § 14.6.6—Uniform Building Codes
- § 14.6.7—Colorado's Common Interest Ownership Act (CCIOA)

# § 14.7 EQUITABLE CLAIMS ARISING FROM THE CONSTRUCTION AND SALE OF A HOME

- § 14.7.1—Rescission
- § 14.7.2—Unjust Enrichment
- § 14.7.3—Restitution
- § 14.7.4—Indemnity

#### § 14.8 CLAIMS AGAINST A GOVERNMENTAL ENTITY

- § 14.8.1—Sovereign Immunity And The Governmental Immunity Act
- § 14.8.2—Waiver Of Immunity
- § 14.8.3—Scope Of The Act
- § 14.8.4—Inverse Condemnation
- § 14.8.5—Unconstitutional "Takings" And "Damaging"
- § 14.8.6—Other Constitutional Violations

# § 14.9 DEFENSES COMMONLY RAISED IN RESPONSE TO CLAIMS ARISING FROM THE CONSTRUCTION AND SALE OF A HOME

- § 14.9.1—Statutes Of Limitations And Repose
- § 14.9.2—Exculpatory And Limitation Of Liability Clauses
- § 14.9.3—Comparative Negligence And Assumption Of The Risk

TOC-22 (4/18)

- § 14.9.4—Non-Party Liability
- § 14.9.5—Mitigation Of Damages
- § 14.9.6—Integration Clauses And The Parol Evidence Rule
- § 14.9.7—Waiver And Release

### § 14.10 CLASS AND COLLECTIVE ACTIONS

- § 14.10.1—Rule 23 Class Action Certification Requirements
- § 14.10.2—Interlocutory Appeal Of Class Certification Ruling
- § 14.10.3—Common Interest Ownership Act

#### § 14.11 ALTERNATIVE DISPUTE RESOLUTION

- § 14.11.1—Basis For Ordering Arbitration
- § 14.11.2—Arbitration Procedure
- § 14.11.3—Issues Affecting Enforcement Of Arbitration Clauses
- § 14.11.4—Appealing An Order Compelling Arbitration
- § 14.11.5—Bases For Overturning Arbitration Awards
- § 14.11.6—Neutral's Duty To Disclose

# § 14.12 INSURANCE COVERAGE FOR FAULTY RESIDENTIAL CONSTRUCTION

- § 14.12.1—First- And Third-Party Coverage Distinguished
- § 14.12.2—Liability Insurance Policies
- § 14.12.3—Property And Casualty Insurance

### § 14.13 ANTICIPATED DEVELOPMENTS IN THE LAW

- § 14.13.1—Riskier Soils To Build On
- § 14.13.2—Class Actions
- § 14.13.3—Homeowner Bill Of Rights
- § 14.13.4—Consumer Protection Act
- § 14.13.5—Disclosure Laws
- § 14.13.6—Arbitration
- § 14.13.7—Insurance Coverage
- § 14.13.8—The Tort Tax
- § 14.13.9—Regulatory Attacks On Experts: Expert Testimony And Separation Of Powers
- § 14.13.10—Reactions To Post-2008 Decline In Multi-Family Housing Construction

#### **Chapter 15 DEFECTIVE CONSTRUCTION PERFORMANCE**

#### § 15.1 INTRODUCTION

#### § 15.2 RISK OF LOSS

IMPOSSIBILITY OF PERFORMANCE/IMPRACTICABILITY

§ 15.3

URANCES  G DEFICIENT  N L  ONSTRUCTION LAW
G DEFICIENT N
G DEFICIENT N
G DEFICIENT N
G DEFICIENT N
G DEFICIENT N
G DEFICIENT N
G DEFICIENT
JRANCES
JRANCES
JRANCES
E WORK
EQUIREMENTS

TOC-24 (4/18)

#### § 16.3 IMPLIED WARRANTIES

- § 16.3.1—Definition
- § 16.3.2—Implied Warranties Of Habitability And Workmanlike Construction
- § 16.3.3—Miscellaneous

#### § 16.4 WARRANTIES AND THE UNIFORM COMMERCIAL CODE

- § 16.4.1—Applicability Of The UCC
- § 16.4.2—Express Warranties
- § 16.4.3—Implied Warranties
- § 16.4.4—Miscellaneous

#### **Chapter 17 DISPUTES OVER CONTRACT CLAUSES**

# § 17.1 PREAMBLE

#### § 17.2 CONTRACT CONTENTS (GENERALLY)

# § 17.3 INCORPORATION BY REFERENCE ("FLOW-DOWN" CLAUSES)

- § 17.3.1—Analysis
- § 17.3.2—Solution

#### § 17.4 PAYMENT ISSUES

- § 17.4.1—Introduction
- § 17.4.2—Pay-When-Paid Or Pay-If-Paid Clauses
- § 17.4.3—Security For Payment Provisos
- § 17.4.4—Payment For Extra (Changed) Work

#### § 17.5 COMPLETION TIME

- § 17.5.1—Introduction
- § 17.5.2—No-Damages-For-Delay Clauses
- § 17.5.3—Analysis
- § 17.5.4—Solution
- § 17.5.5—Force Majeure Clauses

# § 17.6 DAMAGES

- § 17.6.1—Waiver Of Consequential Damages
- § 17.6.2—Analysis
- § 17.6.3—Solution

§ 17.7 NATURE OF REMEDIES

	-		
		<ul> <li>§ 17.7.1—Introduction</li> <li>§ 17.7.2—Economic Loss</li> <li>§ 17.7.3—Acceptance Of Work</li> <li>§ 17.7.4—Engineer's Duty Of Care, Designer's Duty Of Care</li> <li>§ 17.7.5—Third-Party Beneficiary</li> </ul>	
	§ 17.8	NEGLIGENCE PER SE	
	§ 17.9	CHANGE ORDERS	
		§ 17.9.1—Importance Of Notice Provisions Concerning Change Orders § 17.9.2—Minor Changes By Architect	
	§ 17.10	ADMINISTRATIVE CLAIMS	
	§ 17.11	INSURANCE ISSUES	
		§ 17.11.1—Subrogation § 17.11.2—AIA Insurance Changes	
	§ 17.12	LIQUIDATED DAMAGES	
		§ 17.12.1—Limitations Upon The Recovery Of Liquidated Damages § 17.12.2—Possible Inapplicability Of <i>Medema Homes</i> Exception	
	§ 17.13	VOID INDEMNIFICATION PROVISIONS	
	§ 17.14	TERMINATION FOR CONVENIENCE	
	§ 17.15	ATTORNEY FEES PROVISIONS	
	§ 17.16	NOTICE OF CLAIMS	
Chapter 18	CONSTRUCTION DISPUTES		
	§ 18.1	INTRODUCTION	
	§ 18.2	CONTRACT	
		§ 18.2.1—Breach By Contractor § 18.2.2—Breach By Owner	
	§ 18.3	SUBSTANTIAL PERFORMANCE	
	§ 18.4	SPECIFIC PERFORMANCE	

TOC-26 (4/18)

# § 18.5 CONDITIONS PRECEDENT

- § 18.5.1—Pay-When-Paid/Pay-If-Paid
- § 18.5.2—Final Payment
- § 18.5.3—Alternative Dispute Resolution
- § 18.5.4—Administrative Procedures
- § 18.5.5—Relief From Bid Error

### § 18.6 THIRD-PARTY BENEFICIARY

#### § 18.7 PROMISSORY ESTOPPEL

#### § 18.8 IMPLIED CONTRACT

# § 18.9 WARRANTY

- § 18.9.1—Owners' Warranties
- § 18.9.2—Design Professionals' Warranties
- § 18.9.3—Contractors' Warranties

# § 18.10 NEGLIGENCE

- § 18.10.1—General Principles
- § 18.10.2—Contractor Negligence
- § 18.10.3—Negligence Per Se
- § 18.10.4—Negligent Misrepresentation
- § 18.10.5—Economic Loss
- § 18.10.6—Strict Liability

#### § 18.11 LIABILITY BASED ON STATUTES AND CODES

- § 18.11.1—Consumer Protection Act
- § 18.11.2—Failure To Comply With Building Codes
- § 18.11.3—Failure To Comply With Licensing Requirements

#### § 18.12 INTENTIONAL TORTS

- § 18.12.1—Interference With Contract
- § 18.12.2—Outrageous Conduct
- § 18.12.3—Abuse Of Process/Malicious Prosecution
- § 18.12.4—Fraud/Intentional Misrepresentation
- § 18.12.5—Fraudulent Concealment
- § 18.12.6—Economic Loss Rule

#### § 18.13 CONTRACTOR CLAIMS

- § 18.13.1—Delay
- § 18.13.2—Disruption
- § 18.13.3—Acceleration

- § 18.13.4—Cardinal Change
- § 18.13.5—Changes
- § 18.13.6—Differing Site Conditions

# **VOLUME 3**

Chapter 19	MECHANICS' LIENS		
	§ 19.1	INTRODUCTION	
	§ 19.2	PRIORITY AND RANKING OF LIENS	
		§ 19.2.1—Doctrine Of Relation Back/Priority Of Liens § 19.2.2—Preference For Work On "Entire Structure" § 19.2.3—Ranking Of Liens	
	§ 19.3	THE LIEN STATEMENT	
		<ul> <li>§ 19.3.1—The Lien Claimant — Who Has Lien Rights</li> <li>§ 19.3.2—The Owner Of The Real Estate</li> <li>§ 19.3.3—The Amount Of The Lien</li> <li>§ 19.3.4—The Time Factor</li> <li>§ 19.3.5—One-Year Rule And Renewing A Lien</li> <li>§ 19.3.6—The Notice Of Intent To File A Lien Statement</li> <li>§ 19.3.7—Leased Real Estate And Real Estate Under Contract To Sell</li> <li>§ 19.3.8—Blanket Liens And Apportionment</li> <li>§ 19.3.9—Condos, Townhomes, And Common Areas</li> </ul>	
	§ 19.4	NOTICE TO DISBURSER	
	§ 19.5	TRUST FUNDS	
	§ 19.6	HOW DOES BANKRUPTCY AFFECT A MECHANICS' LIEN CLAIM?	
	§ 19.7	LIEN FORECLOSURE LAWSUIT	
		§ 19.7.1—Time Requirements § 19.7.2—Lis Pendens § 19.7.3—Venue, Where To File § 19.7.4—Trial To The Court § 19.7.5—Bifurcation § 19.7.6—The Parties To The Lawsuit § 19.7.7—The Expense Of Litigation/Attorney Fees § 19.7.8—Avoiding Lien Foreclosure § 19.7.9—After A Favorable Judgment, The Sheriff's Sale § 19.7.10—Impact Of An Arbitration Clause § 19.7.11—Other Related Claims	

TOC-28 (4/18)

# § 19.8 HOMEOWNER DEFENSES

### § 19.9 BONDING LIENS

### § 19.10 WELLS AND EQUIPMENT LIENS

§ 19.10.1—Scope Of The Wells And Equipment Lien Statute

§ 19.10.2—Enforcement

#### **EXHIBITS**

Exhibit 19A—Statement Of Mechanics' Lien With Notice Of Intent To File A

Lien Statement And Affidavits of Service

Exhibit 19B—Lien Waiver

Exhibit 19C—Release Of Mechanics' Lien

Exhibit 19D—Notice Of Non-liability

Exhibit 19E—Mechanics' Lien Claimant's Notice To Disburser

Exhibit 19F—Notice Extending Time To File Mechanics' Lien Statement

Exhibit 19G—Notice Of Lis Pendens

#### Chapter 20 DAMAGES IN CONSTRUCTION CLAIMS

#### § 20.1 GENERAL PRINCIPLES

§ 20.1.1—Limitations

§ 20.1.2—Substantial Performance

§ 20.1.3—Deficient Performance

### § 20.2 THEORIES OF RECOVERY

§ 20.2.1—Breach Of Contract

§ 20.2.2—Negligence

§ 20.2.3—Contracts Implied In Law: Quantum Meruit And Unjust Enrichment

§ 20.2.4—Mechanics' Liens

§ 20.2.5—Mechanics' Lien Trust Provision

§ 20.2.6—Fraud

§ 20.2.7—Defenses To Liability For Damages

#### § 20.3 ELEMENTS OF CONSTRUCTION DAMAGES

§ 20.3.1—Labor

§ 20.3.2—Materials

§ 20.3.3—Equipment

§ 20.3.4—Other Direct Costs

§ 20.3.5—Overhead

§ 20.3.6—Interest

§ 20.3.7—Lost Profits

§ 20.3.8—Delay And Disruption

- § 20.3.9—Subcontractor Claims
- § 20.3.10—Consequential Damages
- § 20.3.11—Liquidated Damages
- § 20.3.12—Punitive Damages
- § 20.3.13—Litigation Costs
- § 20.3.14—Mental Anguish § 20.3.15—Nominal Damages
- § 20.3.16—Restitution
- § 20.3.17—Rescission

### § 20.4 PROOF OF CONSTRUCTION CLAIMS

- § 20.4.1—Actual Costs
- § 20.4.2—Jury Verdict
- § 20.4.3—Total Cost Method
- § 20.4.4—Modified Total Cost Method

#### Chapter 21 ARBITRATION AND MEDIATION OF CONSTRUCTION DISPUTES

#### § 21.1 INTRODUCTION/SCOPE OF CHAPTER

#### § 21.2 ARBITRATION — GENERALLY

- § 21.2.1—Public Policy And The Common Law Of Arbitration
- § 21.2.2—Arbitration: Applicable Law, Rules, And Procedure
- § 21.2.3—Applicability Of State Or Federal Law To Arbitration Disputes: Preemption
- § 21.2.4—Arbitration Agreements
- § 21.2.5—Arbitration Of Particular Kinds Of Claims
- § 21.2.6—Conditions Precedent To Arbitration
- § 21.2.7—Enforcement Of The Arbitration Agreement
- § 21.2.8—Initiation/Commencement Of Arbitration
- § 21.2.9—Representation Of Parties By Attorneys And Non-Attorneys
- § 21.2.10—Provisional Remedies
- § 21.2.11—The Arbitrator
- § 21.2.12—Prehearing Procedures
- § 21.2.13—Judicial Enforcement Of Pre-award Rulings And Orders
- § 21.2.14—The Arbitration Hearing
- § 21.2.15—The Award
- § 21.2.16—Post-award Proceedings
- § 21.2.17—Judgment On The Award Attorney Fees And Litigation Expenses
- § 21.2.18—Jurisdiction Of The Courts And Arbitrator
- § 21.2.19—Venue
- § 21.2.20—Appeal Of The Trial Court's Orders And Judgments
- § 21.2.21—Scope Of Review By Appellate Courts

TOC-30 (4/18)

§ 21.3	ARBITRATION OF CONSTRUCTION DISPUTES
	<ul> <li>§ 21.3.1—Introduction</li> <li>§ 21.3.2—Conditions Precedent To Construction Arbitration</li> <li>§ 21.3.3—Arbitration Of Mechanics' Lien And Miller Act Claims</li> <li>§ 21.3.4—Remedies</li> <li>§ 21.3.5—Arbitration Initiated By Homeowners Associations (HOA)</li> <li>§ 21.3.6—Arbitrations With Colorado Department Of Transportation (CDOT)</li> <li>§ 21.3.7—Arbitration Of Federal Subcontractor Claims</li> <li>§ 21.3.8—Flow-Down Arbitration Clauses</li> <li>§ 21.3.9—Joinder Of Parties, Consolidation Of Arbitrations, Splitting Claims, And Intertwining Claims</li> </ul>
§ 21.4	MEDIATION AND THE DISPUTE RESOLUTION ACT
	§ 21.4.1—Generally § 21.4.2—Settlement § 21.4.3—Ethical And Honesty Standards § 21.4.4—Judicial Power To Order Mediation § 21.4.5—Enforcement Of ADR Agreements And Requirements § 21.4.6—Mediation As A Condition Precedent
§ 21.5	COLORADO INTERNATIONAL DISPUTE RESOLUTION ACT
§ 21.6	"ARBITRATION" UNDER THE DENVER REVISED MUNICIPAL CODE
§ 21.7	DISPUTE REVIEW BOARDS
§ 21.8	EARLY NEUTRAL EVALUATION AND FACT FINDING
§ 21.9	ARBITRATION AND MEDIATION WITH THE FEDERAL GOVERNMENT AND ITS AGENCIES
§ 21.10	ARBITRATION IN CONSTRUCTION DISPUTES: SHOULD IT BE USED?
§ 21.11	DESIGNING AN ALTERNATIVE DISPUTE REVIEW SYSTEM
§ 21.12	BIBLIOGRAPHY

# Chapter 22 EMPLOYMENT AND IMMIGRATION LAW IN THE COLORADO CONSTRUCTION INDUSTRY

#### § 22.1 INTRODUCTION

#### § 22.2 AT-WILL EMPLOYMENT AND ITS EXCEPTIONS

- § 22.2.1—At-Will Employment
- § 22.2.2—At-Will Exception: Implied Contracts And Promissory Estoppel
- § 22.2.3—At-Will Exception: Wrongful Discharge Against Public Policy
- § 22.2.4—At-Will Exception: Express And Implied Covenants Of Good Faith And Fair Dealing

#### § 22.3 FEDERAL AND STATE ANTI-DISCRIMINATION LAWS

- § 22.3.1—Federal Anti-Discrimination Laws
- § 22.3.2—Colorado Anti-Discrimination Act
- § 22.3.3—Avoiding Discrimination Claims In Hiring
- § 22.3.4—Sexual Harassment And Hostile Work Environment

#### § 22.4 MISCELLANEOUS WORKPLACE CLAIMS

- § 22.4.1—Defamation And Reference Checks
- § 22.4.2—Invasion Of Privacy
- § 22.4.3—Intentional Infliction Of Emotional Distress (Outrageous Conduct)
- § 22.4.4—Misrepresentation
- § 22.4.5—Colorado Whistleblower Act

#### § 22.5 LEAVES OF ABSENCE

- § 22.5.1—Family And Medical Leave Act
- § 22.5.2—Americans With Disabilities Act
- § 22.5.3—Uniformed Services Employment And Reemployment Rights Act
- § 22.5.4—Genetic Information Nondiscrimination Act
- § 22.5.5—Pregnancy Discrimination Act
- § 22.5.6—Voting Leave
- § 22.5.7—Jury Duty Leave
- § 22.5.8—Leave For Victims Of Domestic Violence
- § 22.5.9—Parental Involvement In K-12 Education Act
- § 22.5.10—Workplace Accommodations For Nursing Mothers Act

#### § 22.6 FEDERAL AND STATE WAGE LAWS

- § 22.6.1—Fair Labor Standards Act
- § 22.6.2—The Colorado Wage Claim Act
- § 22.6.3—Colorado's Minimum Wage
- § 22.6.4—Independent Contractor Misclassification

TOC-32 (4/18)

§ 22.7	OCCUPATIONAL SAFETY AND HEALTH ACT
§ 22.8	NATIONAL LABOR RELATIONS ACT
§ 22.9	COLORADO WORKERS' COMPENSATION ACT
§ 22.10	LABOR PEACE ACT
§ 22.11	THE CHANGING WORLD OF IMMIGRATION
	§ 22.11.1—Overview Of Developments In Immigration Law § 22.11.2—Scrutiny In Applications For Benefits § 22.11.3—Employment-Based Nonimmigrant Temporary Visas § 22.11.4—Immigrant Visa Process — Permanent Residence § 22.11.5—Limitations On Visa Options § 22.11.6—Developments In Immigration Enforcement § 22.11.7—RICO § 22.11.8—Criminal Liability § 22.11.9—Colorado Laws
COLORA	ADO CONSTRUCTION STATUTES
§ 23.1	INTRODUCTION AND OVERVIEW
§ 23.2	PUBLIC VERSUS PRIVATE CONTRACTS
§ 23.3	STATUTES RELATING TO PROCUREMENT
	<ul> <li>§ 23.3.1—Generally: Construction Bidding For Public Projects</li> <li>§ 23.3.2—Designation Of Supplier On Public Contracts Prohibited</li> <li>§ 23.3.3—The Colorado State Buildings Division</li> <li>§ 23.3.4—Methods Of Awarding State Contracts</li> <li>§ 23.3.5—Requests For Proposals</li> <li>§ 23.3.6—Procurement By Best Value</li> <li>§ 23.3.7—Procurement For Professional Services By Qualifications-Based Selection (Mini-Brooks Act)</li> <li>§ 23.3.8—Reverse Auction</li> </ul>
§ 23.4	STATUTES RELATING TO PROJECT DELIVERY
	§ 23.4.1—Integrated Project Delivery Method § 23.4.2—Design-Build Project Delivery For Transportation Projects § 23.4.3—Public-Private Partnerships § 23.4.4—Construction Managers § 23.4.5—Energy Performance Contracting

(4/18) TOC-33

Chapter 23

# § 23.5 STATUTES GOVERNING LICENSING FOR DESIGN PROFESSIONALS AND CERTAIN CONTRACTORS

- § 23.5.1—Architects
- § 23.5.2—Engineers
- § 23.5.3—Land Surveyors
- § 23.5.4—Contractors, Plumbers, And Electricians

#### § 23.6 PAYMENT-RELATED STATUTES

- § 23.6.1—Bonds (Little Miller Act)
- § 23.6.2—Retainage
- § 23.6.3—Prompt Payment
- § 23.6.4—Trust Fund Act
- § 23.6.5—Mechanics' Liens
- § 23.6.6—Notice To Disburser

# § 23.7 STATUTES IMPACTING CONTRACT CLAUSES

- § 23.7.1—No Damages For Delay
- § 23.7.2—Indemnification: Public Projects
- § 23.7.3—Indemnification: Private Projects
- § 23.7.4—Pay If/When Paid

#### § 23.8 DISPUTES

- § 23.8.1—Colorado Law Applies
- § 23.8.2—Remedies Sections Relating To Public Entities
- § 23.8.3—Statute Of Limitation
- § 23.8.4—Statute Of Repose
- § 23.8.5—Certificate Of Review Required To Sue Professional
- § 23.8.6—Qualified Immunity For Services Rendered In An Emergency
- § 23.8.7—Contributory/Comparative Negligence
- § 23.8.8—Governmental Immunity Act
- § 23.8.9—Suspension And Debarment
- § 23.8.10—Premises Liability
- § 23.8.11—Performance, Payment, And Substitution Bonds
- § 23.8.12—Liquidated Damages
- § 23.8.13—Warranties
- § 23.8.14—Arbitration
- § 23.8.15—Colorado Open Records Act

#### § 23.9 INSURANCE

- § 23.9.1—Bad Faith
- § 23.9.2—Coverage For Construction Defects
- § 23.9.3—Workers' Compensation And The Construction Industry

TOC-34 (4/18)

# § 23.10 CONSTRUCTION CODES AND DEFECTS

- § 23.10.1—Colorado Construction Defect Action Reform Act
- § 23.10.2—Municipal Construction Defect Reforms
- § 23.10.3—Residential Soil And Hazard Analysis And Disclosure For New Construction
- § 23.10.4—Residential Building Energy Conservation Act Of 1977
- § 23.10.5—Building Codes And Energy Efficiency
- § 23.10.6—Consumer Protection Act
- § 23.10.7—Colorado Excavation Requirements Statute
- § 23.10.8—Destruction Of Survey Monuments
- § 23.10.9—Construction Standards For Buildings To Accommodate Persons With Disabilities
- § 23.10.10—Manufactured Homes Industry Regulation
- § 23.10.11—Unfair Or Discriminatory Housing Practices Against Persons With Disabilities Prohibited

# § 23.11 EMPLOYMENT AND UNEMPLOYMENT

- § 23.11.1—Immigration: Employment Eligibility Verification
- § 23.11.2—Immigration: Compliance With Federal Law
- § 23.11.3—Unemployment Benefits And The Construction Industry

#### § 23.12 ENVIRONMENTAL, ENERGY, AND SAFETY

- § 23.12.1—Environmental
- § 23.12.2—Energy
- § 23.12.3—Safety

#### § 23.13 UNIFORM COMMERCIAL CODE

§ 23.13.1—Possible Application Of The Colorado Uniform Commercial Code
To Construction Contracts

#### § 23.14 HOME RULE CITY ORDINANCES AND CONSTRUCTION

§ 23.14.1—Home Rule Cities In Colorado

#### Chapter 24 PROCEDURAL ASPECTS OF CONSTRUCTION LITIGATION

### § 24.1 INTRODUCTION

§ 24.1.1—Types Of Claims And Actions

#### § 24.2 STANDING

# § 24.3 CHOOSING A COURT

- § 24.3.1—Personal Jurisdiction
- § 24.3.2—Subject Matter Jurisdiction
- § 24.3.3—Venue
- § 24.3.4—Forum Selection
- § 24.3.5—Alternative Dispute Resolution (ADR) Clauses
- § 24.3.6—Choice Of Law

#### § 24.4 AFFIRMATIVE DEFENSES

- § 24.4.1—Waivable Defenses
- § 24.4.2—Statute Of Limitations
- § 24.4.3—Exhaustion Of Administrative Remedies

#### § 24.5 CERTIFICATE OF REVIEW

# § 24.6 PRO RATA LIABILITY

- § 24.6.1—Claims Subject To The Statute
- § 24.6.2—Designation Of Responsible Non-parties
- § 24.6.3—Allocation Of Responsibility
- § 24.6.4—Comparative Fault

#### § 24.7 ACTIONS AGAINST GOVERNMENTAL ENTITIES IN COLORADO

- § 24.7.1—Notice Of Intent To Sue
- § 24.7.2—Sovereign Immunity

#### § 24.8 FEDERAL CONSTRUCTION CLAIMS

- § 24.8.1—Miller Act Claims
- § 24.8.2—Federal False Claims Act
- § 24.8.3—Federal Contracts

# § 24.9 COUNTERCLAIMS, CROSS-CLAIMS, AND THIRD-PARTY PRACTICE IN CONSTRUCTION LAW

- § 24.9.1—Rule 13: Counterclaim And Cross-Claim
- § 24.9.2—Rule 14: Third-Party Practice

# § 24.10 MISCELLANEOUS PROCEDURAL ISSUES

- § 24.10.1—Garnishment Of CGL Policy Proceeds
- § 24.10.2—Economic Loss Rule
- § 24.10.3—Damages Cannot Be Recited In The *Ad Damnum* Clause/Prayer For Relief

TOC-36 (4/18)

# Chapter 25 COLORADO STATE AND LOCAL TAXATION OF THE **CONSTRUCTION INDUSTRY** § 25.1 INTRODUCTION § 25.2 STATE AND LOCAL SALES AND USE TAXES § 25.2.1—What Is Sales Tax? § 25.2.2—What Is Use Tax? § 25.2.3—Which Jurisdictions Impose Sales Or Use Tax? § 25.2.4—Which Sales Are Taxable? § 25.2.5—Which Services Are Taxable? § 25.2.6—What Constitutes A Taxable Use? § 25.2.7—How Is Sales Tax Paid? § 25.2.8—How Is Use Tax Paid? § 25.2.9—How Do The State Sales And Use Taxes Apply To The Construction Industry? § 25.2.10—Exemptions From State Sales And Use Taxes § 25.2.11—Special Issues Involving State-Administered Local Sales And Use § 25.2.12—Special Issues Involving Home Rule Cities **PROPERTY TAX** § 25.3 § 25.3.1—General Description Of Property Tax § 25.3.2—Determination Of Value § 25.3.3—The Assessment, Levy, And Collection Process § 25.3.4—Application Of Property Taxes To The Construction Industry § 25.4 STATE INCOME TAX § 25.4.1—General Description Of The Colorado Income Tax § 25.4.2—Determination Of Net Income Derived From Sources Within Colorado § 25.4.3—Affiliated Groups Of C Corporations § 25.4.4—Application Of Apportionment Formula To Contractors

# Chapter 26 CONTRACT CLAUSES MANAGING, ALLOCATING, AND TRANSFERRING CONSTRUCTION PROJECT RISKS

LOCAL OCCUPATION TAXES

#### § 26.1 INTRODUCTION

§ 25.5

§ 26.1.1—Overview

§ 26.1.2—Types Of Risks Created By Construction Projects

- § 26.1.3—Means Of Managing, Allocating, And Transferring Construction Project Risks
- § 26.1.4—Contractual Methods Of Management, Allocation, And Transfer Of Construction Project Risks

# § 26.2 PROCEDURAL CLAUSES FOR MANAGEMENT, ALLOCATION, AND TRANSFER OF RISKS

- § 26.2.1—Overview
- § 26.2.2—Choice Of Law Clauses
- § 26.2.3—Forum Selection Clauses
- § 26.2.4—Notice Of Claim Clauses
- § 26.2.5—Contractual Statutes Of Limitations
- § 26.2.6—Clauses Defining Commencement Of Statute Of Limitations
- § 26.2.7—Mediation Clauses
- § 26.2.8—Arbitration Clauses
- § 26.2.9—Waiver Of Trial By Jury
- § 26.2.10—No Discovery Clauses
- § 26.2.11—Change Order Requirements
- § 26.2.12—Warranties

#### § 26.3 DAMAGE LIMITATION CLAUSES

- § 26.3.1—Overview
- § 26.3.2—Limitations On Types Of Damages For Which A Party Can Be Liable
- § 26.3.3—Limitations On Recovery Of Incidental And Consequential Damages
- § 26.3.4—Liquidated Damages Clause
- § 26.3.5—No Liability For Punitive Damages
- § 26.3.6—No Damages For Delay
- § 26.3.7—Release Of Claims
- § 26.3.8—Limitations On Total Amount Of Damages
- § 26.3.9—Liability For Attorney Fees And Costs
- § 26.3.10—Exculpatory Clauses: No Liability For Negligence
- § 26.3.11—Indemnity Clauses Generally
- § 26.3.12—Indemnification For Losses From One's Own Negligence And Acts
- § 26.3.13—Waiver Of Mechanics' Lien Rights
- § 26.3.14—Pro Rata Liability Clause
- § 26.3.15—Disclaimer Of Remedies And Warranties
- § 26.3.16—Damages Limited To Insurance
- § 26.3.17—Damages And Delays Due To Weather
- § 26.3.18—Force Majeure Clauses
- § 26.3.19—Differing Site Conditions
- § 26.3.20—Site Investigation
- § 26.3.21—Material Price Escalation Clauses

TOC-38 (4/18)

# § 26.4 CLAUSES ALLOCATING THE COST OF COVERING RISKS

- § 26.4.1—Insurance Coverage
- § 26.4.2—Payment Bonds
- § 26.4.3—Performance Bonds
- § 26.4.4—Bid Bonds

# § 26.5 SHOULD YOU INCLUDE RISK MANAGEMENT, ALLOCATION, AND TRANSFER CLAUSES IN THE CONTRACT?

- § 26.5.1—Overview
- § 26.5.2—Are The Clauses Generally Valid And Enforceable?
- § 26.5.3—Even If The Clauses Are Valid And Enforceable, Do You Want To Use The Clauses?

### § 26.6 CONCLUSION

# § 26.7 BIBLIOGRAPHY

#### Chapter 27 DELAY IN CONSTRUCTION CONTRACTS

#### § 27.1 GENERAL PRINCIPLES

- § 27.1.1—The Role Of Scheduling In The Construction Process
- § 27.1.2—Scheduling Methods

### § 27.2 TYPES AND SOURCES OF DELAY

- § 27.2.1—Excusable Delays
- § 27.2.2—Non-excusable Delays
- § 27.2.3—Compensable Delays
- § 27.2.4—Concurrent Delays
- § 27.2.5—Change Orders
- § 27.2.6—Differing Site Conditions
- § 27.2.7—Acceleration

#### § 27.3 KEY CONTRACT CLAUSES

- § 27.3.1—Time Is Of The Essence
- § 27.3.2—Time For Completion Of The Contract
- § 27.3.3—Schedule Clause
- § 27.3.4—No-Damages-For-Delay Clause
- § 27.3.5—Liquidated Damages Clause
- § 27.3.6—Waiver Of Consequential Damages
- § 27.3.7—Termination Clause

# § 27.4 THE DELAY CLAIM

- § 27.4.1—CPM Schedules As A Tool For Determining Responsibility For Delay
- § 27.4.2—Practical Considerations In Delay Claims
- § 27.4.3—Economic Loss
- § 27.4.4—Documenting And Preparing Claims
- § 27.4.5—Damages
- § 27.4.6—Mechanics' Liens

# Chapter 28 INTELLECTUAL PROPERTY LAW IN THE CONSTRUCTION INDUSTRY — A PRACTICAL GUIDE

#### § 28.1 INTRODUCTION

#### § 28.2 PATENT LAW

- § 28.2.1—Design Patents Related To Ornamental Buildings And Ornamental Building Features
- § 28.2.2—Patent Infringement

#### § 28.3 TRADE SECRET LAW

#### § 28.4 COPYRIGHT LAW

- § 28.4.1—Copyright Protection In Architectural Works
- § 28.4.2—Limitations To Copyright Protection
- § 28.4.3—Copyright Infringement
- § 28.4.4—Moral Rights In Visual Artworks Building Murals And Sculptures
- § 28.4.5—Common Copyright Pitfalls And How To Avoid Them

#### § 28.5 TRADEMARK LAW

- § 28.5.1—Truth In Advertising
- § 28.5.2—Avoiding Consumer Confusion Searching And Clearing
- § 28.5.3—Avoiding Consumer Confusion Non-Traditional Trademarks
- § 28.5.4—Branding Large Developments The Pitfall Of Geographic Descriptiveness
- § 28.5.5—Security Interests And Chain Of Title In Intellectual Property

#### **Chapter 29 FEDERAL GOVERNMENT CONSTRUCTION CONTRACTS**

#### § 29.1 INTRODUCTION

#### § 29.2 SOURCES OF FEDERAL CONSTRUCTION LAW

TOC-40 (4/18)

# § 29.3 FEDERAL CONTRACT BASICS

- § 29.3.1—Uniform Contract Format
- § 29.3.2—Required Provisions And Clauses

### § 29.4 PROCUREMENT PROCESS

- § 29.4.1—Sealed Bidding
- § 29.4.2—Competitive Negotiation
- § 29.4.3—Debriefings
- § 29.4.4—Additional Requirements
- § 29.4.5—Intellectual Property And Data Rights
- § 29.4.6—Import/Export Statutory Requirements

#### § 29.5 PROTESTS

- § 29.5.1—Agency Appeal
- § 29.5.2—Comptroller General/Government Accountability Office Appeal
- § 29.5.3—U.S. Court Of Federal Claims
- § 29.5.4—SBA Size, Status, And NAICS Code Appeals Or Protests

#### § 29.6 SOCIAL POLICY CONSIDERATIONS

- § 29.6.1—Labor Standards
- § 29.6.2—Award Preferences For Small Business Concerns
- § 29.6.3—Small Disadvantaged Business (SDB) Programs
- § 29.6.4—SDB Size Limitations And "Affiliations"
- § 29.6.5—The Buy American Act
- § 29.6.6—Contractor Code Of Business Ethics And Conduct
- § 29.6.7—Environmental Considerations And Waste Disposal

### § 29.7 ECONOMIC CONSIDERATIONS

- § 29.7.1—Cost Principles
- § 29.7.2—Cost Accounting Standards
- § 29.7.3—Bonding Requirements

#### § 29.8 PERFORMANCE

- § 29.8.1—Changes
- § 29.8.2—Differing Site Conditions
- § 29.8.3—Delays

#### § 29.9 PAYMENT

- § 29.9.1—Prompt Payment Act
- § 29.9.2—Contract Debt And Retainage
- § 29.9.3—Subcontractor Debt And Retainage
- § 29.9.4—Payment Limits

# § 29.10 TERMINATION

- § 29.10.1—Termination For Convenience
- § 29.10.2—Termination For Default
- § 29.10.3—Termination By Contractor

#### § 29.11 **DISPUTES**

- § 29.11.1—Board Of Contract Appeals
- § 29.11.2—U.S. Court Of Federal Claims
- § 29.11.3—Appellate Review
- § 29.11.4—Appeal Alternatives

# § 29.12 SUBCONTRACTOR ISSUES

- § 29.12.1—Government Control
- § 29.12.2—Payment
- § 29.12.3—Claims And Disputes

#### § 29.13 CONCLUSION

#### **EXHIBITS**

Exhibit 29A—Acronym Glossary
Exhibit 29B—Mandatory Flow-Down Provisions

# **Chapter 30** GREEN BUILDING: A PRIMER FOR ATTORNEYS

- § 30.1 GREEN BUILDING: AN INTRODUCTION
- § 30.2 GREEN BUILDING TECHNIQUES
- § 30.3 GREEN BUILDING STANDARDS
  - § 30.3.1—The LEED System
  - § 30.3.2—ENERGY STAR
  - § 30.3.3—Green Globes
  - § 30.3.4—Model Green Home Building Guidelines/ICC 700 National Green Building Standard
  - § 30.3.5—Standard 189.1
  - § 30.3.6—Sustainable Sites Initiative
  - § 30.3.7—BOMA 360 Performance Program
  - § 30.3.8—The Living Building Challenge
  - § 30.3.9—International Green Construction Code

### § 30.4 CRITICISMS OF GREEN BUILDING

TOC-42 (4/18)

§ 30.5	LAWS AND LEGISLATION		
	0.20.5.1	C D '11' I	

- § 30.5.1—Green Building Incentive Pilot Program
- § 30.5.2—Limitation On Fees For Approval Of Solar Energy Devices
- § 30.5.3—Net Metering Laws
- § 30.5.4—Removal Of Restrictions On Renewable Energy Generation Devices And Conservation Measures
- § 30.5.5—Tax Incentives
- § 30.5.6—Requirement To Offer Solar Energy Systems In New Homes
- § 30.5.7—Requirement To Offer Water Efficiency Options In New Homes
- § 30.5.8—Inclusion Of Conservation Standards In The Plumbing Code
- § 30.5.9—Clean Energy Finance Program; Energy Saving Mortgage Program
- § 30.5.10—Renewable Energy Finance Act
- § 30.5.11—Colorado C-PACE Program Authorized Under New Energy Jobs Creation Act Of 2010 And Of 2013
- § 30.5.12—Phase-Out Of Sale Of Low-Efficiency Plumbing Fixtures

# § 30.6 RECENT FEDERAL LAWS OF NOTE

#### § 30.7 CONCLUSION

#### Chapter 31 LAND USE AND ZONING

#### § 31.1 INTRODUCTION

#### § 31.2 ZONING

- § 31.2.1—Municipalities And Counties Designate Appropriate Uses For Property
- § 31.2.2—Changes In The Designated Use Of Property
- § 31.2.3—Zoning Appeals

#### § 31.3 SUBDIVISION

#### § 31.4 PUBLIC ACCESS AND RIGHTS OF WAY

- § 31.4.1—Transferable Development Rights
- § 31.4.2—Exactions, Dedications, And Impact Fees
- § 31.4.3—Regulatory Takings And Vested Rights

# § 31.5 CONCLUSION

Chapter 32	PUBLIC-PRIVATE PARTNERSHIPS				
	§ 32.1	INTRODUCTION			
	§ 32.2	DEVELOPMENT OF PUBLIC-PRIVATE PARTNERSHIPS			
	§ 32.3	VARIETIES OF PUBLIC-PRIVATE PARTNERSHIPS			
		§ 32.3.1—Design-Build-Maintain (DBM) § 32.3.2—Design-Build-Operate (DBO) § 32.3.3—Design-Build-Operate-Maintain (DBOM) § 32.3.4—Design-Build-Finance-Operate-Maintain (DBFOM) § 32.3.5—Design-Build-Finance-Operate-Maintain-Transfer (DBFOMT) § 32.3.6—Build-Operate-Transfer (BOT) § 32.3.7—Build-Own-Operate (BOO) § 32.3.8—Buy-Build-Operate (BBO) § 32.3.9—Developer Finance § 32.3.10—Enhanced Use Leasing Or Underutilized Asset (EUL) § 32.3.11—Lease-Develop-Operate Or Build-Develop-Operate (LDO Or BDO) § 32.3.12—Lease-Purchase § 32.3.13—Sale-Leaseback § 32.3.14—Tax-Exempt Lease § 32.3.15—Turnkey			
	§ 32.4	WHAT PROJECTS ARE P3 CANDIDATES			
	§ 32.5	ISSUES INVOLVED IN P3 PROJECTS			
	§ 32.6	P3 PROJECTS IN COLORADO			
		§ 32.6.1—Legal Authority § 32.6.2—Eagle P3 Project § 32.6.3—US 36 Project § 32.6.4—Central 70 Project § 32.6.5—Other Projects			
	§ 32.7	FINANCING A P3 PROJECT			
	§ 32.8	WHETHER TO USE P3			

# HELPFUL RESOURCES

GLOSSARY OF CONSTRUCTION TERMS

SELECTED ARTICLES FROM THE COLORADO LAWYER

TOC-44 (4/18)

#### **VOLUME 4**

#### **APPENDICES**

# An Introductory Note to the 2007 AIA and Consensus DOCS Form Documents

# Appendix A AMERICAN INSTITUTE OF ARCHITECTS (AIA) DOCUMENTS

- 2007 Revisions to AIA Contract Documents
- AIA Document A101–2017 Standard Form of Agreement Between Owner and Contractor (Stipulated Sum)
- AIA Document A102–2017 Standard Form of Agreement Between Owner and Contractor (Cost of the Work Plus a Fee with a Guaranteed Maximum Price)
- AIA Document A103–2017 Standard Form of Agreement Between Owner and Contractor (Cost of the Work Plus a Fee Without a Guaranteed Maximum Price)
- AIA Document A201–2017 General Conditions of the Contract for Construction
- AIA Document A312–2010 Instructions Performance Bond and Payment Bond
- AIA Document A312-2010 Performance Bond and Payment Bond
- AIA Document B101–2017 Standard Form of Agreement Between Owner and Architect
- AIA Document B102–2017 Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services
- AIA Document B201–2017 Standard Form of Architect's Services: Design and Construction Contract Administration

# Appendix B CONSENSUSDOCS DOCUMENTS

- ConsensusDocs 200: Standard Agreement and General Conditions Between Owner and Constructor (Lump Sum Price)
- ConsensusDocs 240: Standard Agreement Between Owner and Design Professional
- ConsensusDocs 300: Standard Tri-Party Agreement for Integrated Project Delivery

# Appendix C ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE (EJCDC) DOCUMENT

EJCDC Document C-700 — Standard General Conditions of the Construction Contract (2013)

# Colorado Construction Law

TABLE OF CASES		
TABLE OF STATUTES		
SUBJECT INDEX		

TOC-46 (4/18)