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An Important and Major Legal Explanation on Colorado Evictions

(COVID Related) with a lot to digest.

By Brandon Ceglian, Ceglian Law

In October, Governor Jared Polis issued Executive Order D 2020 227, hereafter ("Order 227). The Order has major new changes, here are the takeaways:

Amends/Extends: Amends/Extends the previous October 15, 2020 Executive Order D 2020 223 ("Order 223") (attached) by extending the duration

of Order 223 for an additional thirty (30) days to December 21, 2020. So, Order 227 continues the Order 223's requirement to issue thirty (30) day money demands for all residential and commercial evictions and providing the four (4) CDC forms, per my previous emails. I do expect Governor Polis to continue this Order 223/227 Order to the end of the year at least.

Join ICOR, Dec. 9th from 6-8 pm

The Fluid World of Colorado Rentals in Pandemic & the Biden Housing Plan **3. Financial Hardship Defense:** The DOLA Declaration applies only to persons that "...demonstrate a financial hardship due to COVID-19," by signing and returning the DOLA Declaration to the Landlord. This is substantially the same as the CDC Declaration. Recent CDC Guidance states that Landlords are allowed to attack the

Resident's CDC Declaration, but Gover-

nor Polis's Order 227 does not specify one way or the other. I assume Courts will be inclined to also allow an adverse hearing on the DOLA Declaration as they have done with the CDC Declaration. This hearing is case-by-case, requires evidence, and we do charge hourly for such a hearing.

2. Same Drill as CDC, but More Teeth: The DOLA Decla-

ration follows the same drill as the CDC Declaration, in

that if the Resident provides you a sworn DOLA Declaration form the eviction is stopped and management/

counsel must decide next steps on a case-by-case basis.

The Resident may provide Landlord either the DOLA

Declaration OR the CDC Declaration.

4. Duration: The Order 227 expires in thirty (30) days (December 21, 2020) It is not sure why the Order 227 did not go out to the end of the year — like the CDC Order does—but probably because Governor Polis prefers thirty (30) day orders that he can review/renew periodically—and I think politically he prefers to string this along month-by-month to avoid litigation by an organized attack in the courts. Accordingly, I would expect this new Order 227 to be extended to track the CDC Order timeframe and go out to the end of the year (at least).

Continued on page 2

Adds:

1. New Form DOLA Declaration: Directs the Department of Local Affairs (DOLA) to draft a new eviction Declaration form ("DOLA Declaration") very similar to the CDC Declaration Form. At this time, there is no directive to provide the new form to Residents but I expect this will come once the DOLA form issues and perhaps a DOLA cover letter. To put this in context, Order 227 issued as a result of DOLA's Eviction Task Force report that felt concern about a flood of evictions if the CDC Eviction Order is struck down by courts or rescinded...so essentially this is a stop-gap measure — but with more teeth. The information for the DOLA Declaration is found in the Polis 227 Order attached, and you will see it essentially tracks the CDC Declaration Form.



"I Appreciate Your Patience; We Now Return to Your Regularly Scheduled Program!"

When I returned to ICOR in January, little did I know just exactly what 2020 would hold. In January and February, I hit the ground running trying to focus on the current market and the needs of our members. I recall a new member coming up to me during one of our TrueNorth Group Planning Sessions, and said to me, "I don't know who you are, but I see what you are doing and have done to ICOR in a short amount of time and I need to get to know you!"

Well, if you know me (...and ICOR), you know what you get is going to be completely different than any other learning and networking opportunity in the state of Colorado. What you might not of know is that the just before COVID, our back office had some glitches, and ICOR was in the process of rolling out a new website, a digital learning center, a updated newsletter, a monthly statewide market update, and the new Investor Confidence Index. That is FIVE NEW programs, in addition to the TrueNorth Planner and the iCORE Skills Series. I mean, when we bring value, WE REALLY BRING VALUE!

I look at ICOR differently than any other group in the state, and being a member of the ICOR community means that when you look at yourself

and your business, you take real estate a little more serious than others. And because I value your time, I'm going to make it a point to ensure that you have the resources you need to make quick informed decisions on navigating the Colorado real estate market. More importantly, we're in the middle of a pandemic, and I've said this too many times, but I never thought the market would be this hot given the circumstances. So, with that said, I am working on programming for the first half of next year. Last week, in a conversation with Northern Colorado member, Brad Weed, he reminded me that real estate investing is local. The past year we have focused on overall strategy and now my goal is to focus on the application of local investing. We at ICOR are committed and dedicated to use all our resources to make our members more successful (in whatever way you measure it).

As we head into the end of the year, my one request is that you make ICOR a priority in 2021! I guarantee that almost everything is here that you need. And if it's not, let me know! New members, say hello and let me know how I can help, and existing members, its been too long not to say hello! A happy holiday to you and see you soon for your regularly scheduled programming at ICOR!

An Important and Major Legal Explanation on Colorado Evictions Continued from page 1

- **5. Lease End/Terminating Periodic Tenancy:** A big change is that this new Order 227 specifically includes not only money demand evictions but also "end of lease term" holdovers and termination of periodic tenancies (like month-to-month). This is rough, because this loophole is how/where we have been getting evictions to go through. Because of this and the continued eviction moratoriums, I advise more than ever to increase security deposits if the market will bear it.
- **6. Failure to Comply/Quit for Repeat Violation:** Another big change is that this new Order 227 now prohibits non-monetary evictions for "Failure to Comply" and "Notice to Quit for Repeat Violation." This is shocking, given all the things a bad Resident can do to a property's reputation and goodwill, not to mention the frustrations of rulebreakers that will certainly get all Residents upset and uneasy. This is not to say you shouldn't post demands to comply, but we cannot proceed to evict until the order lifts the eviction will be on hold until the Order 227 expires or CDC Order (whichever is invoked by Resident). Additionally, taking future rent could be construed as waiving the non-compliance with rules violations and so if you want to enforce an eviction for rule breaking then we would

want to structure a payment acceptance agreement to expressly state that. Because of this and the continued eviction moratoriums, I advise more than ever to increase security deposits if the market will bear it.

7. Substantial Violations: Fortunately, evictions for substantial violations may still proceed. This is a different standard then a basic rule/lease violation, as it requires intentional/reckless destruction of the property or criminal conduct. Testing positive for Covid is not considered a "substantial violation" by the terms of the Order. This is frustrating for some properties that have reported to me they are now experiencing conflict on-site with people not wearing masks and not following protocols after testing positive for Covid.

This is getting more and more complicated for everyone, and questions abound!

Join ICOR at our December Meeting on 12.9.20 for The Fluid World of Colorado Rentals in Pandemic & the Biden Housing Plan": What You Need to Know Now About Your Rentals



Keeping Good Financial Records



While this may not be the most interesting part of your rehab project, it will have significant impacts. You already know this, but we still run across many people that either don't know how to keep good financial records or question its value.

How to keep records

It is best to keep records for each individual project. An LLC might help to keep things organized as well as provided asset protection. There are two sets of records that need to be kept: a balance sheet and a profit and loss (P&L). Fortunately, these are easy to keep track of, and can be done via a computer program, a spreadsheet, or even paper.

P&L

Broadly speaking, you are going to come up with a budget, then record actual expenses in those same categories, and then keep track of the variances to know where you are.

There are 3 main ways to keep a budget: by room, by line item (or trade) and by stage. With a little creativity, these can be combined as well.

By room

This has two main advantages: 1. It provides a convenient 'punch list' to determine completion and 2. Figuring out what is worthwhile can be done by comparing cost vs value, for example: https://www.remodeling.hw.net/cost-vs-value/2019/

By line item / trade

This method the project is tracked by major category. This is especially useful if you are making extensive use of sub-contractors.

Major stages of a rehab are: acquisition & prep, demo, build, finish, sell. Each of these stages have specific steps and can therefore be budgeted and tracked.

Once you decide how you'd like to track your expenses, determine a budget by line item, and then track expenses in those categories. Remember, overages are part of every project, it is important to document those as they will help you better prepare the next budget.

Balance Sheet

This sounds complicated but it just is tracking what the project owns and owes. Frequently, the only asset owned is the property being rehabbed, and the only liability being owed the money borrowed for the project. Assets - Liabilities = Equity, which is your profit at the end of the project.

Why to keep records

Have you ever watched cricket? Most Americans think it is an unintelligible and boring sport, with arcane rules. But the biggest complaint is that it is impossible to tell how points are scored. Golf or watching a marathon may not be your thing, but at least you can follow the rules and know how the score is kept. Watching a game without knowing the score or how it's measured is frustrating at best, and you're unlikely to get someone to participate with you. Keeping records for business is no different: it's the way to keep score, to tell whether you are wasting your time and to convince others to participate with you.

Additionally, records will make discussions with partners easier and increase trust through visibility, make regulatory filings easier and more timely (IRS, state and local, etc) and reduce audit exposure when/if that occurs, helps you plan resources such as capital and labor, will minimize interest expenses by only borrowing money when needed, and makes everything quicker. An ounce of accounting is worth a pound of catch-up.



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December @ ICOR

Monthly Meeting | December 12th 6:00 - 8:00pm

The Fluid World of Colorado Rentals in Pandemic & the Biden Housing Plan": What You Need to Know Now About Your Rentals

As we look down the barrel of another potential quarantine, and no stimulus package insight for tenants, the question becomes what will the Colorado rental market look like in 2021? In the past few months there have been orders from the CDC that expire as of 12.31.20, and the Governor's office has added guidelines in addition to the CDC. In addition, we are on the other side of the presidential election with the results that have us look heavily at the Biden housing plan. In December, we prepare for now and what is to come by assembling a panel of Colorado rental market subject matter experts to cover:

- An update on the CDC's Order and will it be extended
- What is happening at the State level and what must landlords adhere to?
- Emergency Rental Assistance for Property Owners
- Resources available to help your tenants
- Affordable Housing & the Biden Housing Plan
- The Potential Expansion of Section 8
- Corporate Tax Rate & Tax Credit Expansion
- And the reestablishment of Affirmatively Furthering Fair Housing provision of the Fair Housing Act

Joining our panel to discuss these points and take questions will be:

- Jason Jones, Property Management Operations Manager | Atlas Real Estate
- Brandon Ceglian, Landlord Tenant Attorney | Ceglian Law
- Victor Jernigan, Investor & Housing Policy Expert
- Nancy Burke, Landlord Tenant Advocate | Renters Avenue

Other ICOR Events in December

December 2nd

Debt Reimagined: Change Your Financial Trajectory

December 4-6th

Intensive Marketing & Lead Generation Bootcamp: REI Blueprint 3-Day Virtual Event

Every Friday (December 4th, 11th, & 18th)

Friday Morning Networking Real Estate Exchange (None on Nov. 27th following Thanksgiving)

Upcoming Special Event

January 30th

ICOR's Interviews with ICONs: "Was 2020 really the Worst, and is 2021 ripe with opportunity?"





ICOR's Interviews with ICONs: "Was 2020 really the Worst, and is 2021 ripe with opportunity?" JANUARY 30TH | 9 AM TO 5 PM MST

Interviews with Investors who have capitalized on 50 years of Real Estate Cycles

Join ICOR for a stellar event of the who's who of real estate investing as ICOR asks its All-Star educators interview their mentors-with a keen focus on 5 decades of real estate cycles and experience examining where we are and the best plays for future portfolios

We will take a look at the past 10 months of investing, and the best practices for this new real estate cycle. Join us for in-depth conversations and participation through question and answer sessions with these real estate icons.

Interviews include:

- Bill Cook (Creative Finance)
- Peter Fortunado (Creative Finance)
- Demetri Fefes (Colorado/Creative Finance)
- John Schaub (Buy & Hold/Seller Financing Investor)
- Jeff Watson (Retirement Acct Investing)
- Lyle Wall (Retirement Acct Investing)
- Kim Cook (Creative Finance)
- Dykes Boddiford (Asset Protection & Trusts)
- Kim Hubbard (Colorado Real Estate & Finance)
- Stan Bullis (Colorado/Creative Finance) and more announced soon!

In fact, if you don't know this list of "Who's-Who," we highly recommend googling them to see the *power* of this event.

Why attended this event...

- Some of the most creative real estate investors on the planet
- 1 on 1 Interview: ICOR's All-Star Educators interview their mentors
- 7 Interviews with investors who collectively have over 350 years of real estate experience
- Experience in all real estate strategies spanning
 50 years of Real Estate Cycles
- Bring your questions, opportunities for attendees to participate in sessions
- Tap into a wealth of knowledge to apply to your business now
- Don't know what you don't know, here is an opportunity to undo that
- Dot your "i"s and cross your "t"s for your 2021 business plan

Early Registration (until Jan. 1st) \$99 for members / \$150 for non-members

Mid Registration (until Jan. 14th) \$125 for members/ \$175 for non-members

Regular Registration (until Jan. 30th) \$149 for members/\$199 for non-members





The Misunderstandings of Whole Life Insurance

I could write a whole book on how many ways Whole Life insurance gets misunderstood. Fortunately, others already have! Assuming you have a basic understanding of the fact that one can borrow against the cash value of a whole life policy, this discussion will make more sense. I would encourage the reader to go back and read previous articles on IBC and Whole Life either way.

Interrupted Growth & Paying Interest

Someone once said to me, "Why would I want to borrow my own money and pay interest on it?" Valid question. Answer: You wouldn't want to... necessarily. Fortunately, that is not really how it works inside a properly structured policy. Conceptually speaking, what is happening is that you are borrowing "against" the cash value of your policy. You are not borrowing "from" the cash value of your policy.

The Scenario. Maxwell calls his insurance carrier and asks how much cash value he has available to borrow against. They look at his cash value and tell him he can borrow \$188,000. Let's say he borrowed \$20,000 and the carrier is going to charge him 5%. It is an unstructured loan, so they let you decide how much and how often you are going to pay that back. Now you think to yourself, "I can get a loan for Bob-The-Loan-Guy for 3% so why would I borrow from here?"

Defining the terms. Uninterrupted compounding is the basic principle where something (your money), and its gains, are growing continuously on top of each other over time. Contrast that with standard compound growth where each time you pull money out, or investment growth declines, that growth is interrupted. Inside of your policy, the cash value is growing uninterrupted. That's why we use the term 'borrow against' instead of 'borrow from' when talking about taking loans inside a policy. Since they are loaning you their money, yours will continue to grow uninterrupted.

Back to the story. Our friend, Maxwell, borrowed \$20,000 against his policy. But he was 8 years into the life of his policy and it was projected to grow by \$25,000 that year. In nearly all outside situations, qualified money included, when you borrow \$20,000 from a pile of money, you have then interrupted that growth. Logically, it would only be growing off the remaining \$168,000 in the policy, but in fact, it is growing off of the original \$188,000. In this scenario his policy grew from \$188,000 to \$215,000 that year (\$27,000 growth!). He was paying a premium of \$20,000 per year, so his net growth was \$7,000.

Maxwell could have borrowed the entire \$188,000 and his policy still would have had a net growth of \$7,000 that year. This is the power of

uninterrupted compounding. Also, it should be noted that the \$7,000 in growth is not taxable by the IRS when used properly.

Maxwell made out in a few ways.

- uninterrupted compound growth in his policy
- tax free growth happening inside of his policy
- loaned his real estate investment business the money thus was able to deduct the interest
- paid himself back instead of a bank & recaptured that money to use over and over
- had an unstructured loan to himself and decided his own loan terms
- had a substantial death benefit tied to the policy that would pay everything back if he had any outstanding loans with plenty left over to leave a legacy
- will build up a large enough cash value to retire off of his policy, instead
 of a qualified account

Where else can this be done? Let us show you how.

WHAT'S STOPPING YOU?

Your real estate strategy may be missing this game changer

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How to Rent Your Property in a Competitive Market



Markets across Colorado show a stable rental economy despite the pandemic. At Atlas Real Estate, we've seen a 97.4% occupied **AND** collected rate among the 3,600 units that we manage. But keeping vacancy rates low is easier said than done. Whether you are a seasoned property manager or first-time investor these simple tips will help your property stand out against the competition.

Present your rental in its best light. More than words and descriptions, photos take center stage. Do your photos capture the space from the best angles? Are they warm and inviting? Do they utilize consistent, natural lighting? Having the home staged is not essential to leasing your home. But photos that help potential renters envision living in the space will make it more desirable. If you cannot capture the home's appeal on your own, there are ways to get high-quality photos that won't break the bank. Contact local photographers to see what they would charge for a few good photos. Fiverr.com is a website that helps freelance workers advertise their services and this is a great place to find people who specialize in real estate photography. Consider having it virtually staged, or adding a video walkthrough. Making your rental stand out with great photos will set it apart from the rest.

Price your rental based on comparative market analyses. Knowing what your home is worth to prospective renters and how it compares to other properties in the area is another key to avoiding vacancy. Comparables, commonly referred to as "comps", are used in real estate to find the fair market value of a home. To create a comp list search multiple

rental listing sites to see pricing on similar homes or units. Look for properties similar in bed/bath counts, finishes, and size. Some websites will also advertise how much interest has been shown on a property. A large amount of listing days with minimal views is an indicator the property may be priced too high. Before you list your property for rent, do your research and make sure your rental is priced competitively for your area.

Pre-lease your home before it's vacant. Protecting against vacancy should be your number one priority. A common mistake is waiting until the current resident has moved out to begin the leasing process. The earlier you list your property, the better the odds of having a lease signed prior to the current resident's move-out date. Many successful apartment communities list units up to 60-days in advance of a move-out date. Remember, a property that sits vacant for any period of time will impact your annual return on investment, ultimately costing you money. Strive to sign leases early with new lease start dates following the prior lease end date by only a few days. Give yourself a window of time to accomplish any repairs required between residents.

As an added bonus, when you pre-lease your home you have more time to screen and interview prospects instead of being rushed to make a last-minute, less-thoughtful decision.

These are just a few of the action items that professional property management companies employ every day to ensure low vacancy and happy clients. Best of luck!





Green Light, Red Light

When trying to determine if one should follow a tax strategy, some want to know if it is "black and white". What does this mean? The IRS code is written in "black and white". Black ink on white paper. A more appropriate definition is from The Free Dictionary — "Involving a very clear distinction, without any gradations". So, what are gray areas? Some will ask is that a gray area that I could use. According to my handy Merriam-Webster, a grey area is "an area or situation in which it is difficult to judge what is right and what is wrong." Many will look at tax regulations using this lens.

At Stone CPA, we respectfully disagree. A better distinction exists. In understanding the application of the tax rules, you should use a process like the well-recognized stop light. The top light is green and simply means go.

We look for green lights in the tax code. It is specifically allowed by the law. For example, 280 (a)(g) or better known as the Augusta rule state that you may rent your home for up to 14 days and not declare the income received. Really! Sounds too good to be true. The surrounding facts is that when the Masters Golf Tournament began, a shortage in lodging existed in Augusta, GA. Many residents took in boarders only to find out later that it was going to create a taxable situation. They complained to their US Senator who was the Chair of the Finance committee. Now, 280(a)(g) is a prime example of green lights. You can always use a green light to reduce your tax liability.

What about those big red lights — located at the bottom of the stoplight and bigger than the others. It is an act you are specifically not allowed to do. IRS Code Section 274 states "No deduction otherwise allowable under this chapter shall be allowed for any item:

- A. With respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, or
- B. With respect to a facility used in connection with an activity referred in subparagraph A (above)"

Do not run this red light. It disallows entertainment expenses, but exceptions do exist. "Recreational, ETC., Expenses for Employees" - IRS 274 (e) (4) allows these expenses for employee morale. For example, you can take your employees to the Avalanche game.

Isn't the stop light approach the same as the black and white concept. No. You either can or can not do it. What happens if there is no light? Is that a gray area? No. It is simply without any guidance or direction. When you approach an intersection and the traffic sign says no right turn. You know you can get a ticket for making a right turn. If the intersection does not have any traffic sign directing otherwise, you can make a right

turn. Our legal system is built on the foundation of English common law principles. Unless you have something in the code specifically forbidding it — a red light. You can do it.

Join us for our Weekly Community Q&A, every Thursday beginning 10 AM MST to get more clarification of what the red and green lights are. We will answer your questions about what you can do.



STONE CPA & ADVISORS

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End of the Year Tax Planning Reminders



As a partner in your retirement investing, New Direction Trust Company encourages investor education to make the most of tax planning opportunities. Year-end is a good time to consider strategies that could assist you in reaching your goals. Let's look at a few things that you may want to consider as you plan for your 2020 tax return.

Roth Conversion? The IRS allows individuals to convert a portion or, all of their tax deferred retirement plan to a Roth IRA or Roth 401(k). Upon conversion the account owner incurs ordinary income tax on the amount converted, subject to any basis limitations. However, once converted Roth dollars grow tax free AND are withdrawn tax free, assuming certain guidelines are followed. For comparison, tax deferred plans like Traditional and SEP IRAs grow tax free but are later taxed at distribution.

Why would someone consider a Roth conversion? In a year marked by Covid, it's possible taxpayers may have reduced income, resulting in a lower income tax bracket. This creates a window to convert at a much lower tax rate. Doing so also eliminates uncertainty surrounding tax rates at retirement, a meaningful variable in retirement financial planning.

IRA & 401K Contributions: To reduce your 2020 taxable income consider contributing to a tax deferred retirement account like an IRA, 401(k) or even your Health Savings Account (if you qualify). You can contribute \$6,000 to a Traditional IRA and up to \$57,000 to a SEP

IRA. If your employer has a 401(k), you can contribute \$19,500. Don't forget the Catch-up contributions for taxpayers over the age of 50.

Required Minimum Distributions & Covid Distributions: New

legislation enacted in 2020, the SECURE Act, increased the age at which people must begin taking retirement plan distributions from 70.5 to 72. The CARES Act, which was passed in March of 2020 in response to the Covid pandemic, has some additional features worth considering. First, the IRS is allowing people affected by Covid to take penalty free distributions from their retirement plans. Withdrawals under this condition may or may not be taxable, depending on whether recontributions are made. Second, required minimum distributions are optional in 2020.

Check your Designation of Beneficiary Form(s): Estate planning experts recommend reviewing your retirement plan designation of beneficiary (DOB) form(s) annually. First, make sure you have a DOB form for every retirement plan you own. The DOB supersedes any Trust or Will documents you may have in place, so be sure to have one on file for every retirement plan. Second, make sure the DOB is current with your estate planning wishes. People often forget to update the DOB after major life events like marriage, divorce, births and deaths.

If you have any questions or need a more detailed explanation, please feel free to contact us at (877) 742.1270.

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"Live where you want to live, but invest where the numbers make sense."

Ever thought about investing out-of-state, but haven't pulled the trigger? Well, one thing is for sure —you cannot go into out-of-state investing alone.

We have put together an amazing experiential learning lab AND marketplace to help investors, just like you, build their network and learn about the hottest markets all over the country. Don't miss your chance to hear directly from our national panel of experts, as well as insights from our local market experts to drill down to the WHAT and the WHY so you can learn HOW and begin immediately investing out of state!

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Running Numbers on Market Case Studies of properties that have been done in each market to LEARN:

- Acquisition costs for good, better, best inventory
- Holding costs
- Nuances of the market, codes, laws, and regulations that will affect the bottom line.
- Rehab costs for the market and how they vary from neighborhood to neighborhood
- Running comps to determine rents and after repair values

Early Registration

\$75 for members / \$125 for non-members

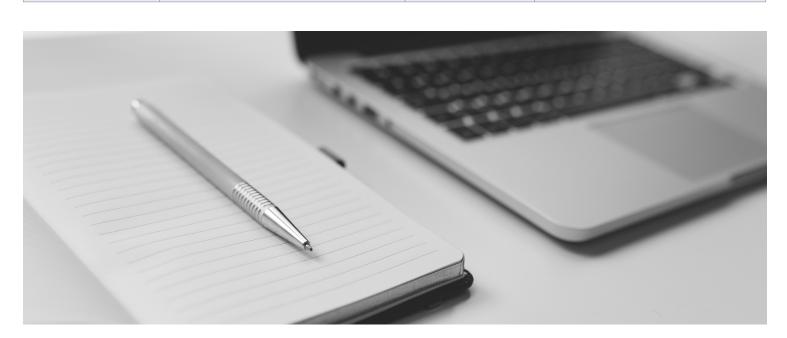
Mid Registration

\$99 for members/\$149 for non-members

Regular Registration

\$125 for members/\$175 for non-members

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Contractor	Vern Robinson Ridge Construction	303.881.1169	vern@ridgeconstructioninc.com
Financial Planning	New Direction Trust Company	877.742.1270	info@ndtco.com
Financial Planning	Jason Power Unbridled Wealth	303.957.9175	jpowers@unbridledwealth.com
Lender	Chuck Townsend Forrest Financial	303.877.3221	chuck@forrestfinancial.com
Lender	Greg Osborne Bridge Capital Resources, LLC	303.475.5873	greg@bridgelending.com
Lender	Justin Cooper Pine Financial	303.835.4445	Justin@pinefinancialgroup.com
Lender	Kim Hubbard Merchants Mortgage	303.898.1366	khubbard@merchantsmtg.com
Lender	Mark Corbett Nat Lend	720.390.0473	mark@natlend.com
Lender	Tyler Ideker Indicate Capital	303.567.6333	tyler@costfund.com
Lender	David Neilson Boomerang Capital Partners	480.779.9779	David@boomerangcapital.com
Property Management	Cory Rasmussen Atlas Real Estate	303.242.8980	info@realatlas.com
Rehabber	Craig Dillion	719.661.8848	craigdillion@me.com
Tax Planning	Stone CPA & Advisors	970.668.0772	info@coloradotaxcoach.com
Title	Bill McAfee Empire Title, Colorado Springs	719.499.0968	bill@etcos.com
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