

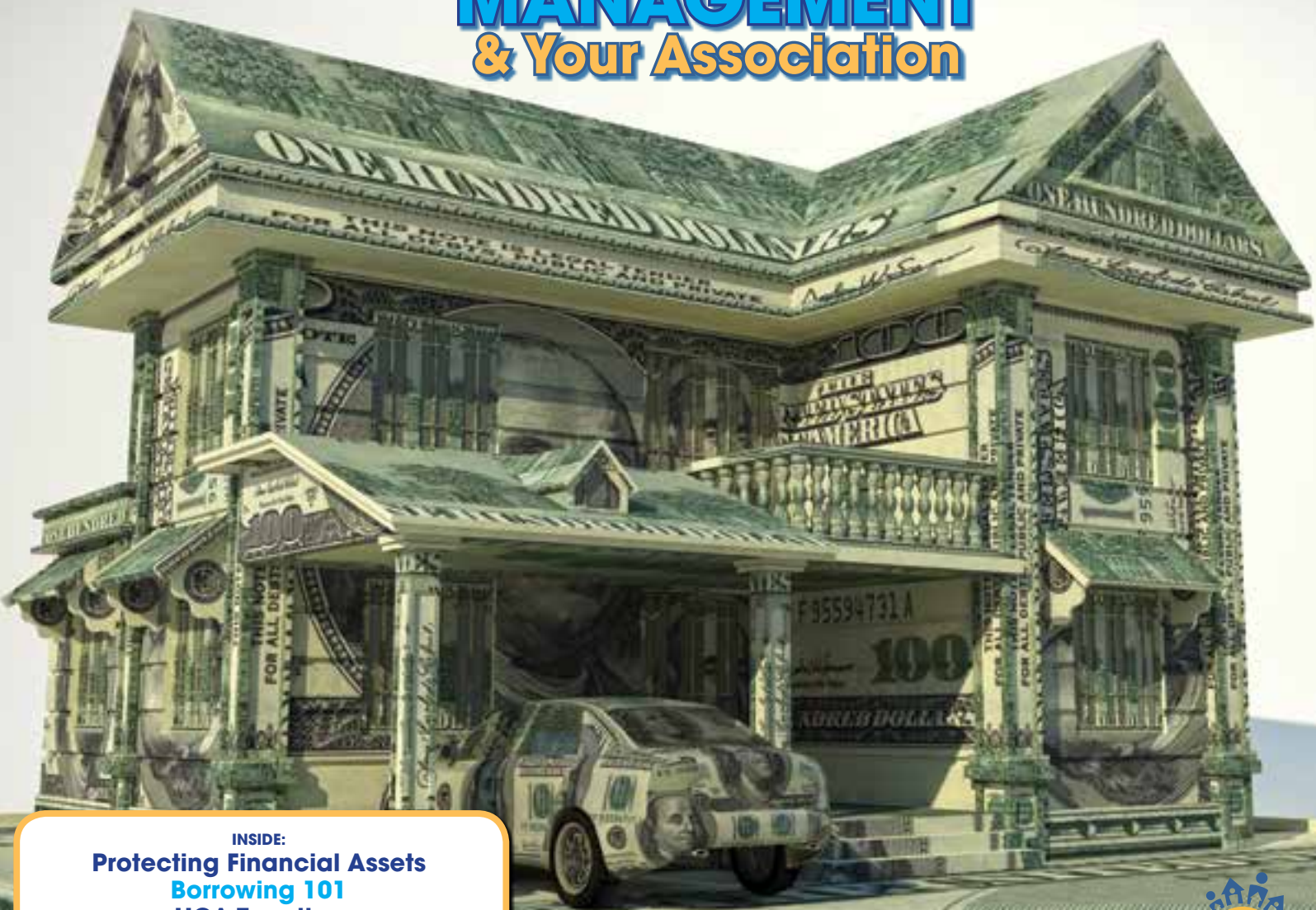
Vol. 34 • No. 9 • September 2016

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COMMON INTERESTS

**Financial
MANAGEMENT
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INSIDE:

Protecting Financial Assets
Borrowing 101
HOA Taxation
Mountain Management
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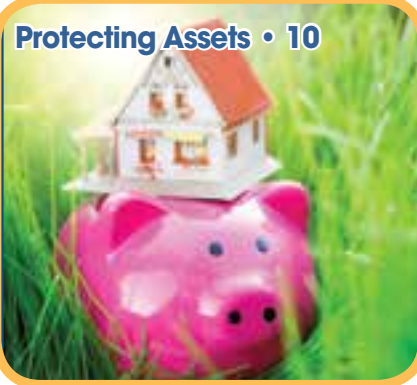
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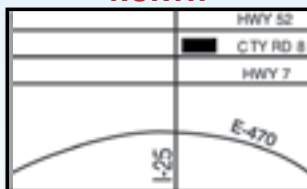


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President's Message



CARMEN STEFU

President
CAI-RMC

I am so excited to speak to you about what the Chapter has been doing in this last month! The Board of Directors and Committee Chairs held the annual strategic planning for 2017 recently. There are so many ideas and actions that come out of this planning! Did you know that our strategic plan is a nationally recognized plan and that the Chapter has even won an award for it in 2015? If you feel inclined to review the current strategic plan, it is posted on the Chapter's website and it's

something to behold. As soon as the 2017 plan is adopted, we will post that as well so if any member has any questions on that or past plans, please do not hesitate to contact any Board member or our Executive Directors.

I am so happy to report that the **Mountain Conference** that was held in Vail on September 16th was a great success! This year's theme, "The Art of Community" is something that we should implement for years to come. After all, we all are working with our HOA clients in building community, and this can certainly be an art! It was great to see so many familiar faces and meet some new members!

We now look forward to the **Fall Conference and Annual Meeting** that is scheduled for **November 15th, 2016** and will be held at **The Hyatt Regency** in Denver.

I hope you will enjoy the rest of the year's events and wish you a successful fall season. For most of us, this means budgeting and a lot of meetings—not to mention getting ready for snow! ⬆

CAI-RMC MISSION STATEMENT

To provide a membership organization that offers learning and networking opportunities and advocates on behalf of its members.

BIG Be Part of the PICTURE

In 2015, the Foundation for Community Association Research will celebrate 40 years of providing critical research you need to make educated decisions about your community and its management.

To mark this milestone, we're launching the Big Picture campaign and inviting everyone with a stake in the success of community associations to show their support for our work—and get some recognition in return!

A picture's worth a thousand words. In addition to raising funds for research initiatives, we want to display your picture at the 2015 CAI Annual Conference and Exposition and in the Foundation headquarters.

For information on how to contribute to the Foundation and submit your picture, visit www.cairf.org/BigPicture.

The Foundation for Community Association Research is a registered 501(c)(3) entity and gifts are tax deductible to the full extent of the law.

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COMMUNITY ASSOCIATION
research



Executive Director's Message



BRIDGET SEBERN
Executive Director
CAI-RMC

Financially speaking, our office is tremendously busy getting ready for 2017. Time, dedication and a lot of sitting down and staring at numbers is what it takes when you're budgeting and planning for associations - it takes months of gathering information, looking at data, and researching trends. Over the years I've come to appreciate the process because it can make life so much easier when done correctly. It's also a lot of fun to pat yourself on the back when you hit a budget accurately and precisely.

How do you plan effectively? Do you have any crazy stories about financial management that you'd be willing to share (using anonymous examples) and the lessons learned? Let me know! Email me at bridget@hoa-colorado.org and your story could be featured in our next issue.

As we gear up for the **Fall Conference**, I hope that you budgeted for your attendance. Board members, don't forget that *State law authorizes an association to reimburse board members for expenses incurred in attending Colorado specific educational meetings and seminars on responsible governance of communities. If you didn't

budget for our chapter events in 2016, make sure you do for 2017.

Business partners, we are going to have some exciting programs and sponsorship opportunities in 2017. We hope that you'll consider creatively sponsoring some of our events next year. The board, committees, and I are excited about what's to come and we hope you are too. Make sure to save some room for CAI-RMC in your budgets!

Happy Financial Planning, CAI-RMC members!!! 🏠



§ 38-33.3-209.6. EXECUTIVE BOARD MEMBER EDUCATION

The board may authorize, and account for as a common expense, reimbursement of board members for their actual and necessary expenses incurred in attending educational meetings and seminars on responsible governance of unit owners' associations. The course content of such educational meetings and seminars shall be specific to Colorado, and shall make reference to applicable sections of this article!



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Deadline: First of each month for the following month's issue.

NOTE: All ads must be camera ready or additional charges will apply. All ads must be prepaid. Advertising in *Common Interests* is a benefit of membership, and you must be a member to advertise. Acceptance of advertising in this magazine does not constitute endorsement of the products or services. Rates available upon request. Email bridget@hoa-colorado.org.

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Committee Corner



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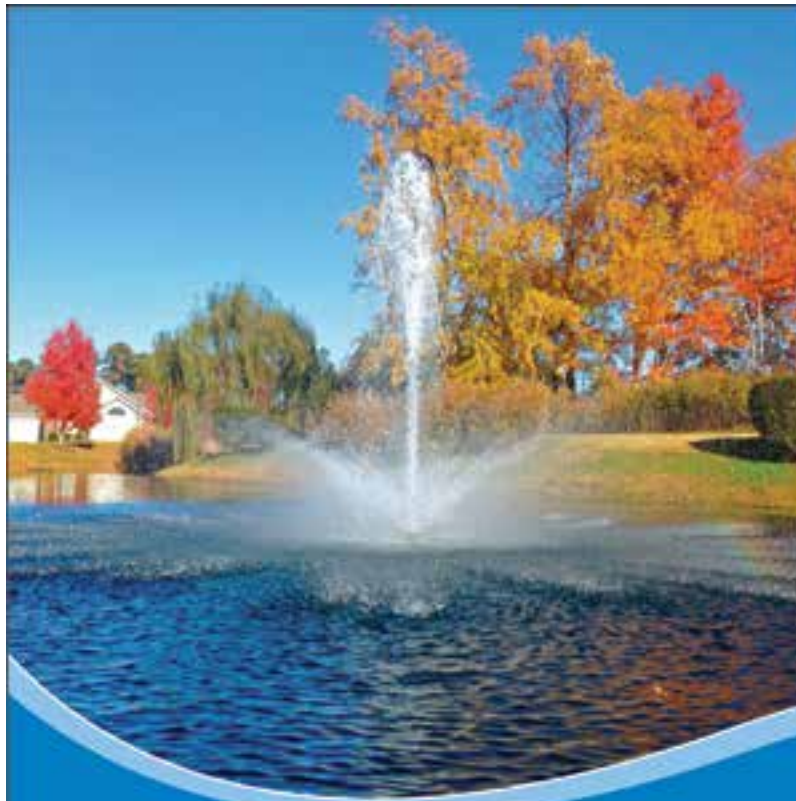
SAVE THE DATE!

DORA DAY has been confirmed for **October 7, 2016**. P&E has been working hard to ensure this is an event that you will not want to miss! We have confirmed the location at the beautiful **Golden Hotel**. The classes will start at 9:00 am and end at 3:00 pm. Then be sure to schedule time to stay for the membership mixer at 3:00 pm. Community Managers be sure to sign up early as seating is limited.



FALL CONFERENCE COMMITTEE

Fall Conference Committee has been working to create a great conference with new challenges each month. This month we tackled the villain "setting a theme" for the upcoming conference. With the assistance of mighty CED, we saved the day! Save the date of November 15 and keep an eye out for more information coming out soon.



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the homeowners we serve



Homeowners are CAI's largest member group, comprising a large percentage of our 33,000-plus members. For the most part, these are the homeowners who have chosen to be leaders in their communities—serving on association boards and committees or volunteering for special projects. Some simply rely on CAI to stay informed about how their communities should be governed and managed.

CAI strives to serve homeowners who have or probably will step up to the plate to serve their communities and fellow residents. The benefits we provide to them—from *Common Ground* magazine and our specialized newsletters to web content and educational opportunities—are developed for these leaders.



While we do provide information for all HOA residents—including our online course, *An Introduction to Community Association Living*—our focus is on community associations and those who lead them, especially the more than two million residents who serve on association boards and committees. By supporting community leaders, we are making communities preferred places to live for all residents.

Our primary mission is to help homeowner leaders and professional community managers protect property values, preserve the character of their communities and meet the established expectations of all residents.

Our education inspires effective governance and management. Our best practices help leaders build and sustain more harmonious communities. Our advocacy promotes practical legislative and regulatory policies. Our ethics guidelines inspire fairness, transparency and integrity.

That's how we serve all community association residents, even as we strive to preserve and enhance the concept, perception and value of common-interest communities.



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Rights and Responsibilities for Better Communities

Principles for Homeowners and Community Leaders

Homeowners Have the Right To:

1. A responsive and competent community association.
2. Honest, fair and respectful treatment by community leaders and managers.
3. Participate in governing the community association by attending meetings, serving on committees and standing for election.
4. Access appropriate association books and records.
5. Prudent expenditure of fees and other assessments.
6. Live in a community where the property is maintained according to established standards.
7. Fair treatment regarding financial and other association obligations, including the opportunity to discuss payment plans and options with the association before foreclosure is initiated.
8. Receive all documents that address rules and regulations governing the community association—if not prior to purchase and settlement by a real estate agent or attorney, then upon joining the community.
9. Appeal to appropriate community leaders those decisions affecting non-routine financial responsibilities or property rights.

Homeowners Have the Responsibility To:

1. Read and comply with the governing documents of the community.
2. Maintain their property according to established standards.
3. Treat association leaders honestly and with respect.
4. Vote in community elections and on other issues.
5. Pay association assessments and charges on time.
6. Contact association leaders or managers, if necessary, to discuss financial obligations and alternative payment arrangements.
7. Request reconsideration of material decisions that personally affect them.
8. Provide current contact information to association leaders or managers to help ensure they receive information from the community.
9. Ensure that those who reside on their property (e.g., tenants, relatives, friends) adhere to all rules and regulations.

Community Leaders Have the Right To:

1. Expect owners and non-owner residents to meet their financial obligations to the community.
2. Expect residents to know and comply with the rules and regulations of the community and to stay informed by reading materials provided by the association.
3. Respectful and honest treatment from residents.
4. Conduct meetings in a positive and constructive atmosphere.
5. Receive support and constructive input from owners and non-owner residents.

6. Personal privacy at home and during leisure time in the community.
7. Take advantage of educational opportunities (e.g., publications, training workshops) that are directly related to their responsibilities, and as approved by the association.

Community Leaders Have the Responsibility To:

1. Fulfill their fiduciary duties to the community and exercise discretion in a manner they reasonably believe to be in the best interests of the community.
2. Exercise sound business judgment and follow established management practices.
3. Balance the needs and obligations of the community as a whole with those of individual homeowners and residents.
4. Understand the association's governing documents and become educated with respect to applicable state and local laws, and to manage the community association accordingly.
5. Establish committees or use other methods to obtain input from owners and non-owner residents.
6. Conduct open, fair and well-publicized elections.
7. Welcome and educate new members of the community—owners and non-owner residents alike.
8. Encourage input from residents on issues affecting them personally and the community as a whole.
9. Encourage events that foster neighborliness and a sense of community.
10. Conduct business in a transparent manner when feasible and appropriate.
11. Allow homeowners access to appropriate community records, when requested.
12. Collect all monies due from owners and non-owner residents.
13. Devise appropriate and reasonable arrangements, when needed and as feasible, to facilitate the ability of individual homeowners to meet their financial obligations to the community.
14. Provide a process residents can use to appeal decisions affecting their non-routine financial responsibilities or property rights—where permitted by law and the association's governing documents.
15. Initiate foreclosure proceedings only as a measure of last resort.
16. Make covenants, conditions and restrictions as understandable as possible, adding clarifying "lay" language or supplementary materials when drafting or revising the documents.
17. Provide complete and timely disclosure of personal and financial conflicts of interest related to the actions of community leaders, e.g., officers, the board and committees. (Community associations may want to develop a code of ethics.)

Community Associations Institute (CAI) is a national organization dedicated to fostering vibrant, responsive, competent community associations. Founded in 1973, CAI represents association-governed communities, such as condominium and homeowner associations, cooperatives, and planned communities. To learn more about CAI and its local, regional and state chapters, visit www.caionline.org or call CAI Direct at 703-548-8600.

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Protecting the Financial Assets of Associations



Pat Wilderotter,
CIRMS
CCIG

Where associations cannot control property and liability losses easily, after all we do live in Colorado known for slip and falls during winter and being the second highest state to register hail losses, we can protect the financial assets of communities through good controls and adequate insurance.

Association declarations will typically address that the association should maintain fidelity coverage for their reserves plus two or three months assessments. Additionally, to be compliant with DORA, each association needs

to have fidelity coverage equal to reserves plus two months assessments. This coverage is easily obtained through insurance. However, in purchasing fidelity coverage, make sure to purchase coverage for all exposures. Basic fidelity policies offer what is known as “employee dishonesty” coverage. Most associations do not have employee so look to the definition of “employee” which should include non-compensated officers. Also, make sure that the management company is listed as an additional insured under the fidelity coverage. The largest theft of association funds is done by managers with board members coming in second.

Next, make sure you have coverage for “forgery and alteration”. Every time you give a vendor or member a check, they now have

your bank account number, your routing number and check signatures. In this age of computers, it is easy to duplicate checks and insert new payees and amounts. One association paid a pianist \$500 to play at an event and suddenly their bank account was out thousands from checks he had fabricated.

Many associations also collect money for events, so most policies should contain some coverage for “money and securities”.

Finally, “Computer fraud and wire transfer”. One management company several years ago had their computers accessed and funds transferred out of eight associations. Two associations had computer fraud and wire transfer coverage so only they were able to recoup the loss funds.

In addition to securing adequate insurance, each association should establish protocols to protect their funds. Some standard practices are:

- If the association’s financial activities occur on line, make sure to have adequate controls and password protection.
- Require dual signatures on operating and reserves accounts.
- Use lock-box deposits for assessments.
- Reconcile bank statements monthly.
- Conduct annual audits or reviews by independent CPA.

Finally, and it may seem ironic to point out when talking about fidelity coverage, but make sure you complete the application answering all questions truthfully. Putting in the wrong responses to questions about safeguards in place, such as who has the authority to sign checks and make deposits, can potentially void coverage. ⬆



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APPROVED!

BORROW 101



April Ahrendsen
VP Regional
Account Executive
Mutual of Omaha
Bank .

It's October and the board and manager are preparing the 2017 budget. The association came up short in 2016 due to surprise roof leaks, black hole asphalt repairs (Jane's car is still missing), and repairs to decks that tried to jump off the building. The board knows they are responsible to maintain the association but how

can they do a major assessment increase or special assessment? Does this sound familiar?

There are many challenges to living in a Common Interest Development. One of these challenges is the maintenance of the property. The community as a whole shares the responsibility and cost to maintain the common elements. Typically, these types of projects would be paid for from your reserve account. Unfortunately, many associations find their reserve accounts are underfunded. In the scenario above the association could consider these options.

1. **Raise Assessment**
(save up over set time)
2. **Special Assessment**
(lump sum payment)
3. **Association Loan**
4. **Special Assessment/
Association Loan**

When the association is considering these options they should consult experts such as their manager, contractor, banker, and attorney. They need to consider these questions.

1. **If they raise the assessment how long will it take, will cost go up, money wasted on repairs, and can they wait?**
2. **If they special assess, will all or most the homeowners be able to pay a large lump sum?**
3. **If they borrow, do they have the ability too? Is a vote required? Do their documents need to be changed? Do they qualify?**
4. **If going to allow special assessment/ loan what options will they provide owners? (If doing this option keep it simple.)**

The association met with its experts and has decided financing is its best option. They can get all their work done next summer and no longer throw good money at temporary repairs. Now what? They need to choose a bank.

1. **How many Association loans have they done?**
2. **Prepayment Penalties?**
3. **Will they meet with board/ Association to help get vote passed if needed?**
4. **Will they lend without requiring operating or reserve account to be kept at their bank?**
5. **Competitive interest rates?**

Now that the association has chosen the bank it must complete the application. Typically, when we apply for a mortgage or car loan the bank tells us what we can borrow. An association loan is different. The bank wants you to tell them what you need so the board/manager must gather bids and provide the amount they would like to borrow on the application. Then submit a full application and with all supporting documents to the bank who will begin underwriting.

Woohoo! This association was approved! The board decides if the terms are acceptable with their attorney. They work thru the closing process which may include an attorney opinion letter that confirms the board did everything required per documents. The loan is now funded and ready to be spent. They may have received all the money at one time or as a line of credit for a specified time.

If the money is instantly dispersed the association will start making full payments. The payments will be automatically withdrawn out of the associations account. If the association is doing a line of credit they typically pay interest only payments until it rolls into a term loan. The association as a whole can make additional payments to pay off the loan quicker if there are no prepayment penalties or they didn't allow pre payments.

The moral of the story...Associations have options to get work done. They need to work with industry experts to get best solutions possible for their association. Yes, it is a bit of a process but following it saves time in the end. Most importantly, the loan can reduce the stress on your homeowners in getting the needed repairs completed. ⬆

ING

HOA Taxa

The Basics

by Frank J. Sassalino, CPA & Ellie Stadnick, CPA

How many times has a board member asked the following question; Why do we have to pay taxes? I thought homeowners associations were nonprofits. Under IRS regulations HOAs do not qualify as nonprofit entities, which are organized for and operating exclusively for exempt purposes. They are considered not for profits, operating for the benefit of their community and not the general public, and must file annual tax returns.

HOAs make a choice annually to file either a Form 1120 and be taxed as a regular corporation on all of their membership and non-membership income, or to file a Form 1120H and be taxed as a homeowners association only on their nonexempt function

income. Nonexempt function income includes; revenue from non-association property, revenue from non members for use of association property, and amounts charged to members for specific services. In either case, income from non-members is generally taxable. Once a Form 1120H is filed for a year, the association cannot revoke its election and file an 1120 without IRS approval.

Taxes on Form 1120 are computed using graduated tax rates with an initial tax rate of 15% on the first \$50,000 of taxable income, to a maximum rate of 38%. All of the association's income and expenses are included on Form 1120. The 1120 is often considered to be complex and preparing it can be time consuming and costly.

tion



To simplify filing requirements for HOAs, the IRS added code section 528 and Form 1120H in 1976. The intent of this new code section was to tax HOAs similar to individuals. For HOAs exempt function income, that is income from members, is generally excluded from taxable income.

Exempt function income must also meet certain tests:

- **The source of income is from HOA members, such as dues and late fees.**
- **The nature of the income is payment made by an HOA member and assessed ratably to all members in that association.**
- **The purpose of the income is to acquire, build, manage and maintain HOA property.**

The association's nonexempt function income is taxed at a flat rate of 30%. Some of the most common examples of nonexempt function income are; investment income, laundry commissions, rental income, gains from the sale of association property, and easement income. Nonexempt income can be reduced by expenses which are directly allocable, reasonable, well documented and applied on a consistent basis. A specific deduction of \$100 is allowed on this form similar to the standard deduction provided to individuals.

Although the 30% tax rate on Form 1120H is more than the 15% corporate rate on Form 1120, there are significant benefits to using this form. The preparation time, cost and audit risk are all considerations when choosing which form to file. However, if an association has a significant amount of non-exempt function income, the tax saved by filing an 1120 may be justified.

To qualify as a homeowners association and to file Form 1120H all of the following must apply:

- **At least 60% of gross income must be exempt function income. This income is generated from member dues, fees, or assessments.**
- **At least 90% of expenses must be to acquire, build, manage, maintain or care for its property or activities of members.**
- **The association must pass the substantial residence test, which states that at least 85% of units are residential. Amenities, such as swimming pools, tennis courts, and storage facilities are considered residential for this test.**
- **In addition, no member should profit from HOA earnings, which is defined as a lack of private benefit test.**

Even though the 1120H is a simple return, there are still some tax planning ideas to consider to reduce nonexempt function income. An association may increase member assessments and forego user fees for facilities or "pay as you go income", or charge user fees on an annual basis, recharacterizing them as exempt function income which is not taxable.

Form 1120H does not require estimated tax payments throughout the year, but final payment must be made by the due date on the return. However, for cash flow planning purposes, an HOA may choose to make estimated payments. In contrast, Form 1120 does require estimates. Penalties and interest will be charged if estimated payments are not made or are too low.

Tax returns, either 1120 or 1120H forms, must be signed and dated by an association officer. If a return is filed on behalf of the association by a receiver, trustee, or assignee, this fiduciary may sign the return. In this case, a copy of the court order must accompany the tax return.

Payments of federal taxes for taxes due on the 1120 or 1120H must be made using the Electronic Federal Tax Payment System – on the EFTPS website.

In conclusion, the best advice to follow is to contact your tax preparer if circumstances change during the year, or if you have specific questions. Most preparers would rather be informed of changes during the year, since they cannot help after year end. With proper tax planning the HOA can avoid being surprised by a large year end tax liability. ⬆

Financial Mismanagement & Board Liability



The terms “financial mis-management” or “mis-management of funds” are often casually tossed about—and sometimes forcefully asserted—at association meetings. Board members will often recoil at such accusations and may instinctively become defensive about how carefully they managed their neighbors’ money.

At one end of the continuum is embezzlement. It is a crime and was responsible, in part, for the manager licensing laws that became effective a year ago and exist today. At the other end of the continuum is a Board decision that caused the association to lose money.

Embezzlement will result in possible jail time and, will almost certainly result in individual liability for the individual director involved. For most other cases of alleged “financial mismanagement,” individual director liability is not a certainty, as described below. But the term is not clearly defined in the law or in most governing documents. Recklessly investing reserve funds would be one clear example of financial mismanagement. The Colorado Common Interest Ownership Act (“CCIOA”), at C.R.S. §38-33.3-303, states that the investment of reserve funds must be done in good faith, with reasonable care, and in a manner believed to be in the association’s best interests.

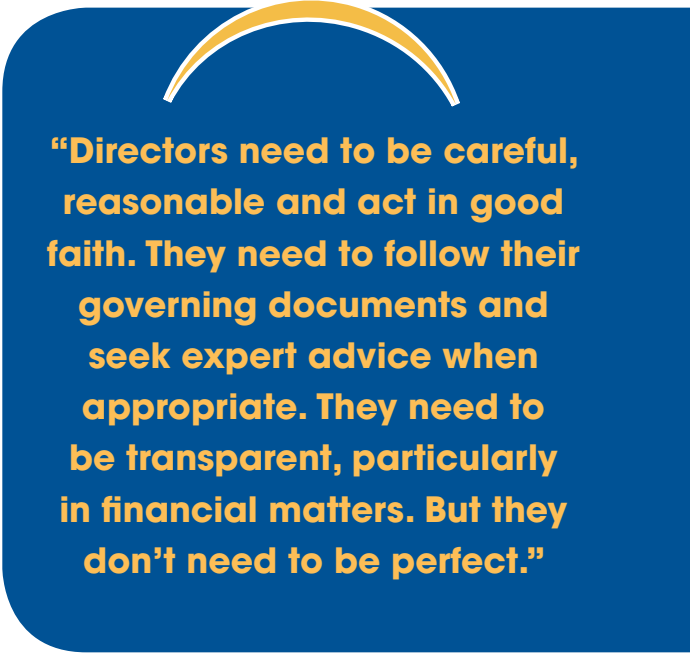
In cases where a decision was made that cost the association money, it is much more difficult to define financial mismanagement. Not all decisions will create a positive economic event for an association. Assessment collection cases may go bad, vendor services are not as expected, and construction projects can go over budget. The law does not require perfection in financial management, nor create liability when an outcome is not as expected. Instead, the law establishes a standard of conduct on director decisions that can be evaluated in light of a bad outcome.

For communities organized as nonprofit corporations, which is the overwhelming majority, the Colorado Revised Nonprofit Corporation Act (“Nonprofit Act”), at C.R.S. §7-128-401, limits the liability of directors in certain circumstances. This statute provides that directors of a nonprofit corporation have no individual liability to the corporation or to its members if they follow certain standards of conduct in the performance of their duties.

These standards require the director to act in good faith, with the care that an ordinarily prudent person would act in a similar situation, and in a manner that the director reasonably believes to be in the best interests of the corporation. Notice that this statute does not say that the decision must be the correct one, or even a particularly good one. Instead, the law focuses on the conduct required by the director in making the decision as opposed to the result of the decision.

This statute states that directors are entitled to rely on information, advice and reports from others, such as accountants, managers, lawyers, engineers and others acting within their fields of practice, as well as others whom the board members reasonably believe are credible, given their area of expertise. However, directors who have knowledge that the advice from outside experts is incorrect are not entitled to rely on it.

Having liability for financial management is one thing. Being sued for it is another. The Nonprofit Act, at C.R.S. §7-129-102, allows an association board to indemnify a director for claims made against that director as a result of the director’s service to the corporation if the director acted in good faith and in a manner that the director reasonably believed was in the corporation’s best interests.



“Directors need to be careful, reasonable and act in good faith. They need to follow their governing documents and seek expert advice when appropriate. They need to be transparent, particularly in financial matters. But they don’t need to be perfect.”

The problem with indemnification is that the decision is made by the then-current board and the director requesting indemnification may no longer be on the board. Indemnification is still permitted in the case of former board members but due to the personal dynamics that may exist, a former board member may find that his/her request for indemnification is denied. For that reason, it is important for the association to have directors’ and officers’ insurance (“D&O insurance”).

The law supports volunteer service. There are few qualifications to serve on an association board. Directors need to be careful, reasonable and act in good faith. They need to follow their governing documents and seek expert advice when appropriate. They need to be transparent, particularly in financial matters. But they don’t need to be perfect. ⬆

Now What?

Association Use of Construction Defect Settlement Funds



Shane Fleener,
Partner,
Hearn & Fleener

Congratulations, your Association has completed a construction defect lawsuit and recovered funds through settlement or judgement. So now what? The answer seems simple: the Association should use those funds to repair the defects. While true, the answer is not so black and white. There are additional factors and considerations that should be taken into account, including accounting and tax issues, the Association's legal obligations, and repair priority. Because every case is different, it is impossible to provide a one-size fits all outline on

how an Association in this position should proceed. However, this article is intended to provide a general overview of common issues that Associations should consider.

Accounting and Taxes: Obviously, the settlement funds need to be received before any repairs can be made. It is important that the Association deposit the settlement funds in a separate, and newly created, bank account designated solely for repairs. The funds should not be commingled with the Association's general operating account or reserve account and should only be used to make repairs. By following this simple step, the settlement funds will avoid taxation. As with any other account, the funds will also gain interest, further benefiting the Association.

Legal Obligation to Make Repairs: I'm often asked if an Association has a legal obligation to spend settlement funds on the defects involved in the lawsuit. Again, the answer is not black and white. There is no specific Colorado law mandating that an Association use settlement funds to repair the defects involved in the claim. However, generally speaking, Association board members owe their members a fiduciary duty. Further, Colorado's Common Interest Ownership Act ("CCIOA"), as well as the governing documents for nearly all Associations, place common area repair and maintenance responsibilities upon the Association. Therefore, Associations should—to the extent possible—use settlement funds to repair the defects.

Making repairs involves many decisions: How should the repairs be made; who should make the repairs; what repairs should be made first vs. last; when should repairs be made . . . the list goes on. While this might sound intimidating, all of these decisions are subject to the discretion of the Association's officers and, with the help of your attorney and experts, can be made with confidence and protection under Colorado law. Board members that were not appointed by the Declarant are not only protected by the business judgment rule, but also CCIOA's limitations on personal liability and the reality that the owners have agreed to be bound by the decisions of the Association's board. Pursuant to CCIOA: "no member of the executive board and no officer shall be liable for actions taken or omissions made in the performance of such member's duties except for wanton and willful acts or omissions." C.R.S. § 38-33.3-303(2)(b).

Repair Triage: With legal considerations behind us, the Association must now consider the order and timing of repairs. In essence, this is a triage prioritization process that should involve communication with your counsel. Generally speaking, the first items that should be repaired are those presenting life-safety concerns, such as fire suppression defects, structural concerns, mold mitigation, trip hazards, etc. Defect that present immediate damage concerns, such as active water leaks, should also be at the top of the repair-priority list. After those defects have been addressed, attention can be focused on the other, less-time-sensitive, items. Exactly what those items are, and the order in which they should be repaired, will vary greatly from case to case.

Now whether you are a board member or a manager you should understand and be able to guide the decision making process on what to do with your associations money received from a defect case. Every case and association is and will be different depending on the outcome and the issues in the community. It is important to utilize your attorney and experts through this process; they are here to help the association every step of the way, from start to finish. ⬆

Shane Fleener has been guiding Associations through the settlement process and aftermath since 2006. If you have any questions on how to use your settlement money you can contact Shane at sfleener@hearnfleener.com.



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Mountain Management

The Challenges of a Unique Market

by Murray Bain, PCAM®, Summit HOA Services, Inc.;
Barbara Lucks, CMCA®, Your HOA Team;
and Grant Parker, AMS®, PCAM®, Wildernd Management

Murray Bain, PCAM®, is the broker and president at Summit HOA Services Inc.

Barbara Lucks, CMCA®, of Your HOA Team has more than 25 years of Western Colorado property management and HOA/condominium association oversight. They answered questions jointly for this article, and their responses are noted “MB+BL.”

Grant Parker, AMS® and PCAM®, is a licensed Community Association Manager for Wildernd Management with a portfolio of communities in Keystone, Colorado. His responses are marked “GP.”

The mountainous regions of our state are home to myriad community associations. This is especially true of condo associations; every ski resort from Arapahoe Basin to Zephyr Mountain is dotted with condominium communities, and each part of its own association.

As in all community associations, managing these communities comes with its fair share of challenges. And in many cases, these challenges stem directly from the nature of their remote locations. Our mountain management experts unpack some of these challenges below.

Meetings and Absentee Boards

MB+BL: “Most resort communities in the mountains have a higher percentage of second homes, well above 60% in many towns. This high number of absentee ownership creates logistical problems for participation and communications within an association, difficulty achieving a quorum and successful voting at meetings, as well as board member performance and continuity. The management may have little direction on how to proceed with their duties in order to satisfy the needs and desires of the owners, when he or she has never met the majority of the owners in his or her association.”

GP: “Board meetings are rare, typically less than three per year. The Annual Meeting is usually held in mid-summer when board members and owners can schedule vacation time that doesn’t cut into their peak rental season. The absence of board members who are year-round owner-occupants creates a real vacuum in the governance process. Without meetings (and the decisions made therein), most goals and objectives become a series of knee-jerk reactions to short term concerns or immediate system failures. Strategic planning is an afterthought. For the manager, this is a double edged sword. You may say “YEE-HAW!” for the dearth of board meetings, but for an untrained and unseasoned community manager, the lack of leadership and direction can be a killer.”

Owners Vs. Renters

MB+BL: “Both resort and rural HOAs are different, very different, from urban communities. A typical urban common interest community probably has several hundred members, most of whom consider it their primary residence. The board is comprised mainly of resident homeowners. Most resort communities in the mountains have a higher percentage of second homes, well above 60% in many towns.”

GP: “Short-term rentals are the life blood of Summit County. This is exactly the opposite of most Front Range communities. One main reason for the shortage of affordable housing for workers is that there is so little long-term rental property available. Short-term rentals equate to more revenue for the owners. Managing short-term rentals is all about housekeeping and top notch services. Whatever the amenity package, it better be in good shape or you will hear about it from the guest, the owner and quite possibly, on TripAdvisor. In many respects, service standards are based more in the hospitality industry than in association management.”

Communication

GP: “E-mail communication is the order of the day in Summit County and it's a poor substitute for real-time communication with a Board of Directors. Without a regular cadence of meetings to drive things forward, we are forced to use this non-concurrent form of communication for just about everything. It took me awhile, but I finally figured out how to do it effectively, as follows;

1. Give them all the information up front. If you don't, you will spend hours answering questions from each individual director over a period of several days, or whenever they decide to read their e-mail. I prepare professional, written Memos with attachments and date-stamped pictures. I do not include these in the body of the e-mail, but instead direct each board member to simply “View the attached Important Report w/ attachments and to respond no later than _____.”
2. I usually offer no more than two options, as well as cost estimates, and include their most current financial statements and bank balances to help them decide.
3. Frequently, board members who are unaccustomed to making decisions “electronically” will turn an e-mail string into a long, drawn out diatribe. They offer their opinions and arguments, debating the merits of whatever the subject matter may be. Rather than weigh-in on these debates, I've learned to wait for the board to arrive at a consensus and then send a “clarification statement” such as; It is my understanding that this is how you wish to proceed. Is that correct? If that doesn't work, I'll pick up the phone, call the board president and tell him I need help.”


Self-Management, Lack of Management Companies and Licensed Managers

MB+BL: “Self-management, even of condominium associations, is common in far western Colorado. This is the only economic option for many rural HOAs with working class residents, high unemployment and high assessment delinquencies. Without good board education this format is often ineffective, and frequently leads to board burn out as well as entrenched HOA monarchies. The few qualified management companies in the region are already stretched thin. Uneducated boards and low HOA budgets make

their job even harder. HOA attorneys can be hard to find.

There are relatively few credentialed HOA professionals west of the Divide as well. A map of CMCA's and PCAM's in Colorado shows heavy clusters of professionals on the Front Range and eastern slope resorts, and just a spot here and there on the western slope.

GP: “There has always been a severe shortage of qualified individuals in this industry. In Summit County it's a chronic condition which has worsened since the requirement for manager licensing. That's because many client communities (read; absentee boards) aren't aware of and aren't willing to pay more for licensed managers. The value argument simply doesn't resonate with them. The Law of Supply & Demand has yet to gain a foothold on the western slope.”



“Both resort and rural HOAs are different, very different, from urban communities. A typical urban common interest community probably has several hundred members, most of whom consider it their primary residence. The board is comprised mainly of resident homeowners. Most resort communities in the mountains have a higher percentage of second homes, well above 60% in many towns.”

Poor Financial Practices and Manager Compensation

MB+BL: “Poor financial controls, reporting and grossly inadequate reserves planning or funding do jeopardize the well-being of the communities. Smaller HOA's are forced to rely on contracted bookkeeping services that have little understanding of HOA financial reporting. The bookkeeper also might pick up the mail and deposit the checks, placing them in violation of Colorado CAM licensing requirements. Without affordable access to resources and education, many are faced with the dilemma of how to protect their community.”

GP: “Compensation for Summit County managers is considerably less than for Front Range managers, especially considering the cost of living. We live in a resort, remember? And if the management company raises their fee, even if they're doing an exemplary job, there's always a company that will do it for less. For investor owners, anything that impacts a positive return on their investment is cause for concern. And many of those folks sit on boards. Since there's little chance of developing close relationships with some of these boards, and manager turnover is a fact of life, this has become the most important challenge we face.” ⬆

A Loan for Your Community Association



Some Real World Mechanics



Alan D. Seilhammer
HOA Lending Pro

We are going into budget season which means it is time to think about where all the money is going to come from. A primary activity of operating a community is the repair and maintenance of the property and planning for those big capital improvements that will be demanded.

I am a major proponent of having a reserve study performed, a study that should be updated 3 years. More strongly, communities should be regulatorily required to fund themselves based on that reserve study. I just spoke to a utopian world that far too often does

not exist and so. I have a career because associations do not have sufficient reserves to fund capital maintenance projects. I have been providing community association loan products nationally for almost 20 years and teaching numerous banks how to build successful lending programs. I hope the following dialog gives you guidance on how to squeeze money out of those banks that profess to be desirous of your business.


The statistical fact is this for banks: Community Association lending is one of the safest asset classes they can be involved with. Such loans rarely ever become a problem. The result has been that several banks have entered the market over the most recent 10 years. It is easy to find a bank that is active in the community association lending environment. Just reference the vendor directories of the CAI Rocky Mountain and Southern Colorado Chapters. It is equally easy to get multiple banks to compete for your business. That competition will result in a nicely low cost financing product for your community.

However, as always, the devil is in the details. The devil, so to speak, is the current state of commercial banking. The post-recession environment has left banks emotionally shell shocked and massively over regulated. The most influential departments in a bank are the Regulatory Compliance and Internal Audit Departments. To be clear as it relates to you, there is no such thing as having a bank “relationship” which suggests understanding, trust and human compassion. The reality is that the very nice person who comes to give you a sales pitch. Brings cookies into the office. Buys you drinks after an educational seminar. Takes you out for golf. That person has absolutely no power, no authority and nominal influence over whether your loan is approved or over the terms and conditions of that loan. The back room of a bank, operating under tight FDIC regulatory controls and review, approves and structures loans without emotion or sense of “relationship”. It is a purely mechanical process based on the bank’s loan policy and staff skills. The point being: negotiate with multiple banks. Be firm with them. Do not waste time with banks that you feel are being impractical.

To make a case of why your association qualifies for a loan, you need to have performed some due-diligence. Know the projects that you want to have funded and get multiple bids. You are not going to get very far with any bank if you do not have a defensible perspective on what the project is going to cost. If the project is going to require a Special Assessment or increase in the Budget, be able to show the bank a communication stream that validates

the unit owners are aware of the coming financial impact. Be prepared to communicate to the bank the additional future capital maintenance projects that might need to be addressed during the loan term. A bank is going to want to know that you are aware of the condition of the property and are prepared to support funding those future projects. These are the core talking points to be able to build confidence with the bank’s credit analyst.

Supporting material for a complete loan application will be 2+ years of financial statements, the year-to-date financial statements and the current year budget. A clear report that reflects the age of delinquent unit owner accounts is crucial. A document that shows the number of units rented in the community is important. Beyond these core items, different banks will ask for other types of readily available information.



“To be clear as it relates to you, there is no such thing as having a bank ‘relationship’ which suggests understanding, trust and human compassion ... The back room of a bank, operating under tight FDIC regulatory controls and review, approves and structures loans without emotion or sense of ‘relationship’. It is a purely mechanical process based on the bank’s loan policy and staff skills.”

A unique difficulty has developed in the loan approval process which is a function of banker stress during the recession and currently existing unskilled credit underwriters. Some banks are measuring the ratio of the loan amount to the average retail value of the units. Banks have set arbitrary limits of 10% to 15%. There is no valid basis for this credit approval metric as there are no community association loans that have become troublesome while a high ratio existed. Nonetheless, before you spend much time with a bank, come to appreciate their stance on this matter because it may cap your level of access to the funds needed.

In summation, the good news is that bank financing of community association financing is readily available. The challenging aspect is that banks are going to require well considered financial plans for getting a project done and for the success of accomplishing future projects. ⬆

Alan D. Seilhammer, President, HOA Lending Pro—Beginning in 1998, I have been a community association specialized lending officer within the banking industry. I have taken 3 banks to national leadership positions in providing this specialized loan program. I have acted as an advisor to 5 other banks and been instrumental in designing their loan policies and credit underwriting system. I am an active CAI educator, writer and social media enthusiast.”

Top 5: Audit Errors & Exceptions

by Scott Weidner, CPA, CFE
Weidner & Associates, P.C.

2016 marks my 14th year in this industry and in that time I've probably done something in the range of 1,000 HOA audits. I don't feel old enough to have done anything for 14 years, but the gray hairs which reside above my ears say it's true. Fortunately the gray hairs also tend to add credibility with clients so maybe I break even there. Based on my audit experience and resultant gray hair, below is a list of the five areas where I most commonly find errors or exceptions during audit work.

1

Expenses—Operating or Reserves?

Issues with proper fund accounting are probably the most common issues I encounter. I see errors in this area for a variety of reasons; maybe a reserve fund expense was initially paid with operating fund cash or an expense originally deemed an operating expense was reclassified as a reserve expense. No matter the path, if the expense appears in the reserve section of the income statement the cash to pay that expense should come from the reserve cash account.

2

Transfers to reserves

Your annual budget likely includes an allocation of assessment revenues to the reserve fund. Great for planning purposes, but in reality actual transfers from operating to reserves commonly differ from the budgeted amounts. Maybe snow removal expenses from a blizzard meant your association simply didn't have the cash available to meet the budgeted allocations. Or maybe a wet summer and a lower water bill meant your association had extra cash to put in the reserve fund. In either case, any variance from the budgeted amount should be documented in the minutes of a board meeting. This documentation helps confirm that the variance is deliberate rather than an error.

3

Errors in working capital collections

If your association was created within the past 25 years, your governing documents likely include a provision for collection of working capital. In most cases an association collects working capital only from the first resident-owner. However, we have seen many variations on working capital collection requirements, and the frequency with which we find errors in this process is surprising. A quick review of your governing documents will ensure compliance with the working capital collection routines prescribed therein.

4

Bad debt write-offs not documented in minutes.

Although delinquencies are less of an issue these days than they were years ago, most associations have owners who simply will not or cannot pay their dues. When an association has exhausted its collection options, rather than letting old delinquencies sit on the books the decision should be made to write the balance off to bad debt. We recommend that all write-offs be documented in the minutes of the board meetings. This documentation is an important anti-fraud measure, provides transparency to the membership, and if research is needed, provides a quick way to identify when the board chose to cease collection efforts for a delinquency. Boards can document such decisions in their minutes using no-name, no-address authorizations, whereby the minutes just reference the dollar amount of the write-off.

5

Charges to owners for collections-related legal fees.

Most associations incur legal expenses pursuing collection of fees from delinquent owners. Collections-related legal fees should be billed back to the owner responsible for the association incurring those fees. Therefore, legal reimbursement income and collections-related legal expense should always be closely correlated. If a decision is made not to charge a legal expense back to an owner, that decision should be documented in the minutes.

Implementation of controls to address the items described above requires minimal time and effort, and can become part of the review process whenever financial statements are produced. Elimination of these issues might even slow down the graying of my hair. And for that, I thank you. ⬆



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11:00 AM - 11:15 AM	Break
11:15 AM - 12:15 PM	Class #2 - 1 Credit <i>ASR: Civil Construction Issues for Community Managers</i>
12:15 PM - 1:00 PM	Lunch
1:00 PM - 2:00 PM	Class #3 - 1 Credit <i>Moeller Graf: Fair Housing 201</i>
2:00 PM - 3:00 PM	Class #4 - 1 Credit <i>Orten Cavanagh & Holmes: Covenant Enforcement Lawsuits</i>
12:00 PM - 3:00PM	Educated Business Partner Course (Live) <i>*Not part of the DORA Day Program. See website for more details</i>
3:00 PM - 5:00 PM	Membership Mixer <i>Anyone is welcome to attend</i>



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3 Mon	5th Annual Colorado Cup Castle Rock
7 Fri	DORA Day Golden
7 Fri	Business Partner Education Golden
13 Thu	Mountain Education Roundtable Breckenridge

20-21
Thu-Fri

M-203 Community Leadership
Thornton

NOVEMBER

15
Tue

Fall Conference & Trade Show
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DECEMBER

1
Thu

2016 Holiday Party
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