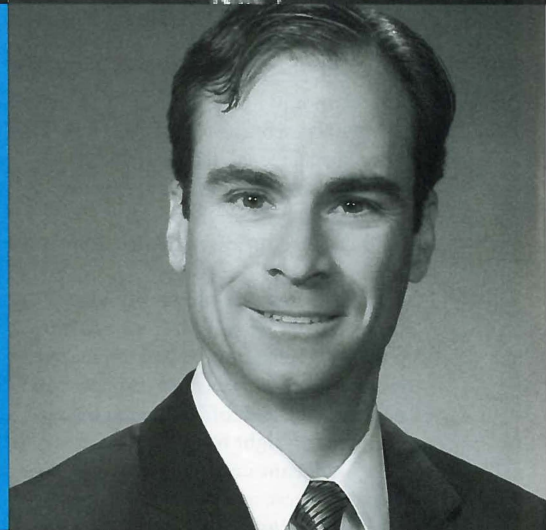




*Meet the 11
ATTORNEYS who
are **PROTECTING**
the Homebuilding
INDUSTRY at the
State Capitol*



CAHB's Not-So-Secret Weapon

HOW ELEVEN ATTORNEYS PROTECT THE HOMEBUILDING INDUSTRY AT THE STATE CAPITOL

EACH YEAR, THE COLORADO

Association of Home Builders' bylaws allows the Chair of the Government Affairs Committee — after consulting with the Board Chair — to appoint 15 to 25 voting members to the Government Affairs Committee.

This year, there are 25 voting members; 31 people applied for those spots. The industry is well represented by these 25 voting members; Amie Mayhew, CAHB's CEO noted that developers and homebuilders — including DR Horton, Classic Homes and Cardel Homes — serve as voting members of the Government Affairs Committee.

And if you take a closer look, you'll see that 36 percent of the committee's voting members, or nine members, are attorneys.

Why don't more builders serve?

It used to be that more builders served on the committee. But Chris Elliott, Government Affairs Committee chair, said that as the industry got more involved in construction defects issues, they began to defer to their attorneys.

"From a construction defects perspective, our attorneys really have the boots-on-the-ground experience," Elliott explained. "They're the ones who are in arbitrations, in the courtrooms or dealing with the pleadings and I think consequently, can step up and speak to one another as only lawyers can do about certain key aspects of what we may want to try or the implications of a particular proposal."

Today, issues extend well beyond construction defects issues to oil and gas issues and others that the attorneys bring to CAHB. "We're getting

an advance jump on the leading issues of the day," Elliott said, "and can quickly make decisions about whether we want to legislatively address an issue or get involved in the court process through amicus briefs."

Builders are focused on their businesses

Also, "builders are busy building homes," observed Mayhew. "And in a lot of cases, they don't have the legal expertise necessary to help navigate our rather complex issues. So builders send their attorneys."

Where many bigger builders used to send a staff attorney to represent their interests, Elliott noted they're "running lean and mean these days. With the exception of DR Horton, nobody else does that anymore," he said. "They don't have people whose primary focus is government relations. So we don't have that same sort of connection we once did."

These attorneys represent several builders and developers and report back to their clients what's happening at the legislature, and the Government Affairs Committee.

"The other piece is we have a need for very technical legal expertise on that committee," Mayhew said. "We not only need a legal analysis of what bills and drafts of bills mean and how they affect the industry, we're also asking that our members help us draft amendments to bills. Those are all things that require those lawyers to participate — and those are resources that are put into making sure this industry is protected at the capitol."

Attorneys donate their time


What's more, these nine voting members donate hundreds of pro bono hours to serve on the Government

Affairs Committee every year, "which is beneficial to homebuilders and developers," Mayhew said. "This is an instance where you've taken the resources of the industry and the attorneys who represent our builders and developers, and we've pooled them into the room where they can provide the knowledge that we need."

And that legal expertise — analyzing the bills, drafting amendments, testifying and meeting with legislators — "is critical to the process," she said.

Elliott regularly hears other related trade organizations — including the Associated General Contractors, Colorado Contractors Association, National Association of Realtors® and NAIOP — are envious of the attorney involvement and participation with the CAHB.

"You go into these coalition meetings and everybody turns back, looks at the caliber of attorneys we bring — and who specialize in the exact issue that's being discussed — and they defer," Elliott said. "One of our attorneys drafted our construction defects effort and it became the format and approved concept that all of the other organizations use. It's not that they don't have legal participation; they just don't have the participation from those who are in the trenches doing the work."

What follows is a glimpse into the nine attorneys who serve as voting members on the Government Affairs Committee, their specialties and how deeply committed to protecting homebuilders and developers' rights to continue their fight for the American dream of homeownership. 

THE QUESTIONS

- 1 What is/are your area(s) of expertise?
- 2 How long have you been involved with CAHB?
- 3 Why is being involved with CAHB important to you?
- 4 What percentage of your clients are developers and homebuilders?
- 5 Why do your clients feel it's important for you to be involved with CAHB?
- 6 As a voting member of CAHB's Government Affairs Committee, how much time do you estimate you contribute to CAHB each year?
- 7 To what level are you involved with your local HBA or NAHB?
- 8 What other professional organizations are you involved in?
- 9 If you could dream — and the political reality is removed from the equation — what changes to existing law in Colorado would you like to see, as it relates to the homebuilding industry? And why?

David McLain

Higgins, Hopkins, McLain & Roswell, LLC



QUESTION #1

Construction law, construction litigation and risk management

QUESTION #2

Since 2002

QUESTION #3

Most of my clients are either developers or homebuilders. My involvement with the CAHB allows me to serve those clients in that industry outside the courtroom or arbitration room.

QUESTION #4

85-90%

QUESTION #5

So that I can, based on my experience, provide guidance and support regarding legislation that impacts the litigation landscape.

QUESTION #6

If it's a year where there are no bills

impacting construction defects, it may be as few as 50 hours a year. But if there are bills that the CAHB is either actively supporting or trying to defeat, it could be 200 hours.

QUESTION #7

I'm not currently involved at the local level.

QUESTION #8

Denver and Colorado Bar Associations, Colorado Defense Lawyers Association, Claims and Litigation Management Alliance, Associated General Contractors of Colorado.

QUESTION #9

There are two main ones I'd like to see changed and both are politically unrealistic. One also has some unintended consequences regarding insurance coverage. Assuming there were no problems with either of these ideas, I would like to see an end to associational standing, that is, the ability of a homeowner's association, comprised of just a number of owners within a common interest community to file suit on behalf of everybody. It's an unfair mechanism by which the plaintiffs' attorneys are able to aggregate claims and turn construction defects into a profit center. The other change I'd like to see is builder have a right to repair problems that do come up. The Construction Defect Reform Act contains a notice of claim provision, but it only gives the builders the right to make an offer to make a repair. Regardless of whether it's a reasonable offer or not, there's no downside for the homeowners to turn down that offer and play the litigation lottery.