

# Agenda

## Easements

*M. Cohen*

What is and is not an easement. Differences between an easement and a license.  
Different uses of the term “right of way.”

Types of easements

- Express easements
- Easements by necessity
- Easements by estoppel
- Condemnation of an easement
- Prescriptive easements
- Easements implied by prior by use
- R.S. 2477

Locating easements

Easements in gross versus easements appurtenant

Considerations in drafting easements

Mechanics of easement litigation      Modifications of easements

Obstructing use of easements and remedies for obstruction

## Trespass, Adverse Possession and Other Unauthorized Access to Land

*K. Gantenbein*

Elements of civil trespass to land

Reviewing the history of adverse possession

Maintaining a claim for adverse possession

- Statute of limitations
- Elements of a claim

Defending against a claim for adverse possession

Examining recent adverse possession cases

## Understanding Utility Easements

*S. Hendon*

Definition of a utility easement

Types of utilities affected

Areas of use

- New design
- Conversion
- Relocation
- Abandonment
- Temporary construction

Condemnation

Considerations for avoiding conflict

## Eminent Domain Process from Start to Finish Landowner Perspective

*J. Alderman*

Starting the condemnation process      Immediate possession

Valuation trial      Appeal

## Eminent Domain Process from Start to Finish Government Perspective

*R. Rodriguez*

Starting the condemnation process      Immediate possession

Valuation trial      Appeal

## Right to Take and Types of Takings

*R. Simatic*

Right to take

- Public use or public purpose
- Limitations for challenging public use
- Inverse condemnation
- Blight and eminent domain abuse
- Floodings
- Extractions

Types of takings

- Total take
- Partial take

Direct damages

Severance damages

- Easements

Fulllest extent rule

Temporary easements

- Regulatory takings

## Colorado Easements, Rights-of-Way, and Eminent Domain

Live, Interactive Webinar - Monday, March 22, 2021

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## Learning Objectives

### *You'll be able to:*

**Distinguish** between what is and what is not an easement.

**Learn** about trespass, adverse possession and other unauthorized access to land.

**Discuss** utility easements and rights of way.

**Review** the eminent domain process from a landowner perspective and government perspective.

**Examine** the right to take and types of takings.



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## HalfMoon Education Online Learning

# Colorado Easements, Rights-of-Way, and Eminent Domain

*Live, Interactive Webinar - Monday, March 22, 2021*



**Distinguish** between easements, licenses and rights-of-way

**Explore** trespass, adverse possession and other unauthorized access to land

**Examine** utility easements

**Review** the eminent domain condemnation process from both the landowner and government perspectives

**Discuss** types of eminent domain takings, including inverse condemnations

## Continuing Education Credits

**Colorado Attorneys**  
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Professional Land Surveyors**  
7.0 Continuing Education Hours\*

\*CE is not required in Colorado



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# Faculty

**Mark Cohen, J.D., LL.M.**

Mark Cohen has 37 years of legal experience. He is an AV-rated lawyer and was selected as a Super Lawyer in business litigation. He earned a B.A. degree in Economics at Whitman College and earned his law degree at the University of Colorado in Boulder. He earned an LL.M. degree in Agricultural and Food Law from the University of Arkansas, where he also taught advanced legal writing. His diverse legal career includes service as an Air Force JAG, a Special Assistant U.S. Attorney, a prosecutor, a municipal judge for Boulder, and six years on the Advisory Board of *The Colorado Lawyer* (including one as chairperson). Mr. Cohen wrote six articles in the *Am.Jur. Proof of Facts* series, including the seminal article on piercing the corporate veil. He wrote two mysteries published by Time Warner, and his first mystery, *The Fractal Murders*, became a Book Sense® mystery pick. His satirical article, *How to Draft a Bad Contract*, won praise from scholars such as Steven Pinker and has been reprinted in many legal publications. His practice focuses on business and real estate law, and related litigation.

**Keith Gantenbein Attorney at Gantenbein Law Firm**

Mr. Gantenbein Jr. is the Owner of Gantenbein Law Firm and specializes in Real Estate Law, including Residential and Commercial Real Estate Issues, HOA Law and Foreclosure Defense, as well as Tax Law Business Law, Civil Litigation, Probate, Estate Planning, Wills, Trusts, Elder Law and Credit Dispute. Mr. Gantenbein has an extensive real estate background. His experience in real estate began while working for his father, a local real estate agent with over 40 years of experience. He began his legal career in HOA law, working for Hindman Sanchez, a large Colorado Homeowner's Association (HOA) law firm. Mr. Gantenbein's experience in HOA collections and HOA foreclosures gives him a valuable approach on how to represent homeowners who have issues with their HOAs, including judicial foreclosure and unreasonable HOA fees. He then worked for the largest foreclosure firm in Colorado, Castle Stawiariski, in Denver. Mr. Gantenbein and is admitted to practice law in the State of Colorado, the State of Michigan, the State of Wyoming, the U.S District Court of Colorado and the U.S. 10th Circuit Court of Appeals of Colorado.

**Serena L. Hendon Attorney at Montgomery Little & Soran**

Ms. Serena L. Hendon is a non-equity partner at Montgomery Little & Soran. Her practice focuses representing architects and engineers with issues related to construction, professional liability, and commercial litigation. She is well-versed in complex construction defect and has represented owners, developers, general contractors, and subcontractors in cases involving construction on commercial, governmental, and residential sites. Prior to becoming an attorney, she worked for almost two decades as a civil engineer. She remains a licensed professional engineer in the State of Colorado. Having been an active participant as an engineer on projects from the initial site design phase all the way through construction, she knows firsthand the issues that challenge parties throughout the design and construction of a project. Bringing such knowledge to the legal side aids Ms. Hendon in evaluating the situation from a technical and legal standpoint in order to strategize and appropriately advise clients. Ms. Hendon is licensed to practice law in both Colorado and Wyoming. She is a Certified Floodplain Manager and is a staff editor for the American Water Works Association.

## Webinar Information

Log into Webinar 8:00 - 8:30 am MDT	Break 11:45 am - 12:45 pm MDT
Morning Session 8:30 - 11:45 am MDT	Afternoon Session 12:45 - 5:00 pm MDT

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**Jody Alderman Attorney at Alderman Bernstein**

Ms. Alderman has practiced eminent domain law and real estate law for more than two decades. During law school at the University of Colorado School of Law, it was the takings clause of the U. S. Constitution, where the power of eminent domain stems, that immediately piqued her interest. As such, her *University of Colorado Law Review* article focused on the Fifth Amendment's takings clause. Upon graduating from law school, she found a job at Denver law firm Grimshaw & Harring (now called Spencer Fane) where she could focus on the area of law that so interested her. Ms. Alderman worked at Grimshaw & Harring until 2009, when she and a colleague left to start Alderman Bernstein. At Alderman Bernstein, her practice focuses primarily on eminent domain law, and she also does both transactional and litigation work related to real estate. Ms. Alderman handles contract disputes; quiet title actions and Rule 105 proceedings; Rule 106 appeals of land use decisions; drafting and negotiation of a variety of real estate contracts, leases, easements and other conveyance instruments; and due diligence and closings. She has been selected to Super Lawyers since 2014, has been designated as one of the *Best Lawyers in America* for Eminent Domain and Condemnation Law since 2007 and she is an AV Preeminent Rated Lawyer by Martindale-Hubbell.

**Richard Rodriguez Attorney at Hamre, Rodriguez, Ostrander & Dingess**

Mr. Rodriguez represents public and private entities, individual property owners, developers, lenders, landlords, tenants, and others in all phases of public and private eminent domain and condemnation proceedings. Mr. Rodriguez' practice has concentrated primarily on real estate litigation, with an emphasis on eminent domain and land use litigation. Mr. Rodriguez also maintains a complex commercial litigation practice, a significant portion of which includes real estate and construction litigation, including, but not limited to, quiet title actions, foreclosures, boundary disputes, mechanics' lien litigation, and construction litigation. Prior to affiliating with Hamre, Rodriguez, Ostrander & Dingess, P.C., Mr. Rodriguez was a partner at a large international law firm headquartered in Denver, Colorado. Mr. Rodriguez graduated from the University of Southern California in 1991, receiving a B.A. degree in Political Science. He received his J.D. degree from the University of California, Los Angeles, in 1994.

**Ryan Simatic Attorney at Biersdorf & Associate**

Mr. Simatic is an attorney at Biersdorf & Associates, a law firm representing property owners in eminent domain actions from Alaska to Florida and everywhere in between. Mr. Simatic has individually and cooperatively tried multiple eminent domain matters to verdict or award with estimated damages ranging from \$50,000 to over \$20 million. Simatic's practice has also involved other real estate litigation matters, including disputes on property taxes, adverse possession, and land use. Simatic has practiced extensively in the appellate courts and has obtained favorable rulings in Minnesota, Tennessee, and North Dakota. Simatic obtained his J.D. degree from the Mitchell Hamline School of Law in St. Paul, Minnesota and his B.A. degree from the University of Minnesota. Simatic is licensed to practice in Wisconsin, Minnesota, and Arizona.

### Continuing Education Credit Information

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# Registration

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