

## What You Will Learn About in this Legal Update:

- SDA Spring Workshop
- Election Deadlines and Webinars
- The Gallagher Amendment and How to Navigate its Impacts
- Sexual Harassment Update: Time for Policy Reviews
- Effect of New Tax Law on Colorado Local Governments
- Insurance Claim Reminders

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### SDA Spring Workshop



In June, we will be traveling the State to present the SDA Spring Workshop. The Spring Workshop is essential for new Board Members and a helpful refresher for even the most seasoned Board Members and Managers. This year's Workshop will cover a wide array of topics, including the role of the Board and

individual Board Members, public meetings and public records, contracting, hiring practices and disciplinary actions, budgets, audits, and TABOR. The dates and locations are being finalized, so be sure to watch the SDA Newsletter for event and registration information. Bring your questions and join us for an informative morning.

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### Election Deadlines and Webinars

As a reminder, May 8, 2018 is the statutory date of regular special district elections. If your Board has not adopted a resolution calling the election, it should do so by the end of February. Of course, all regular elections that will include a TABOR ballot issue must be conducted by mail ballot.

#### Upcoming Election Deadlines:

*Friday, March 2<sup>nd</sup>* - Self-Nomination and Acceptance forms must be filed with the Designated Election Official (DEO) (or, if a DEO has not been designated, with the presiding officer or Secretary of the Board of Directors).

*Monday, March 5<sup>th</sup>* - Affidavits of Intent to be Write-in Candidate must be filed with the DEO.

*Tuesday, March 6<sup>th</sup>* – At the close of business 63 days before the Election or anytime thereafter, the DEO may cancel the election if there are no more candidates than positions to be filled and there are no issues or questions on the ballot, if instructed by resolution of the Board. No election may be cancelled in part.

*Friday, March 9<sup>th</sup>* – Last day to certify ballot content.

### Election Training Webinars

Micki Mills, our election expert paralegal, will be conducting several election training webinars. Registration for these webinars is through the [Division of Local Government](#) (DLG) and [SDA](#) websites.



*Tuesday, March 13<sup>th</sup>* – Completing the Election Process/SDA.

*Early April* – Separate Election Judge Trainings for Mail Ballot and Polling Place Elections/SDA website.

The DLG election calendar can be obtained from the [DLG website](#).

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### **The Gallagher Amendment and How to Navigate its Impacts**

Our attorneys and paralegals here at CC&C have been receiving significant interest this election cycle regarding TABOR and ballot questions to “de-Gallagherize” district mill levies. In particular, a combination of TABOR and the Gallagher Amendment, both entrenched in the State Constitution, are likely to cause dramatic impacts on local government budgets in the coming years. Although not appropriate in all circumstances, we highly recommend considering a question for voter approval at an upcoming available election (November, 2018) to de-Gallagherize your district’s mill levy.

The Gallagher Amendment, passed in 1982, requires that residential assessed values across the state make up no more than 45% of the state’s overall assessed valuation. At the time the Gallagher Amendment was passed, the commercial assessment rate (CAR) was 29% and the residential assessment rate (RAR) was 21%. The CAR has remained at 29%, while the RAR has been reduced to 7.2%, approximately a third of what it was at the time Gallagher was approved. One issue with the Gallagher Amendment is that it requires an automatic reduction in RAR to occur when the assessed values so dictate; however, TABOR, which was passed in 1992, expressly prevents the RAR from being increased without prior voter approval, even if the assessed values would indicate that the RAR should be increased to maintain the 45% valuation ratio. A combination of the Gallagher Amendment and the recent boom in residential real estate prices (especially along the Front Range and in mountain resort communities) have resulted in the state’s nonpartisan Legislative Council to make significant reductions to the RAR in recent years, with the next re-evaluation of the RAR to occur in 2019.

Every local government's situation will be slightly different based on prior voter approvals and its specific tax base so we are happy to work with you and/or your accountant to determine the best path forward for your local government.

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## **Sexual Harassment Update: Time for Policy Reviews**

It is difficult to be unaware of the recent focus that has been given to the topic of sexual harassment and abuse in the workplace. This blurb is not intended to offer political commentary on any recent claims that have come out in the media, or on the #MeToo movement in general. Instead, our focus is for our clients to take a critical look at their personnel policies and practices, and consider whether they are sufficient, both legally and as a practical matter in light of the expectations that have resulted from the recent #MeToo allegations.

The legal standard is that employers have an affirmative duty to prevent sexual harassment from occurring in the workplace, and most employers have adopted policies prohibiting sexual harassment, along with procedures for individuals to bring forward a complaint to management. A smaller percentage also conduct regular employee training on sexual harassment prevention and other workplace issues, which we encourage. The question is whether this level of policy will be sufficient going forward.

A recent EEOC report on the topic states that 90% of those who say they were harassed never reported the conduct or took action to initiate a workplace investigation. With all of these policies in place and opportunities for training that number seems surprisingly high, but the #MeToo allegations of recent months suggests possibly otherwise. In light of recent events, we suggest a review of your personnel policies and practices in this area, with an eye to both prohibiting misconduct as well as creating a clear and easy-to-follow complaint procedure. Policies around the use of workplace electronics to access personal social media or other personal websites, such as dating applications, should be dusted off and revisited. Most of you are aware that email and text messages of public employees may be the subject of a Colorado Open Records Request. But you may not be aware that they can lead to liability, especially for sexual harassment complaints. Perhaps more importantly than regular harassment training, developing clear guidelines on use of workplace electronics may be the next frontier to consider for reducing a potential claim of workplace harassment.

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## **Effect of New Tax Law on Colorado Local Governments**

Just prior to the end of 2017, Congress passed and the President signed the Tax Cuts and Jobs Act, bringing about the most substantial changes to the federal tax laws in decades. Some of these changes affect local governments in Colorado.

The change with the most direct



impact is elimination of advanced-refunding financings. Advanced-refunding financings allowed local government bond issuers to refinance an outstanding bond or other obligation at a lower interest rate prior to the bond's or other obligation's actual call date. This change could likely lead to differences in the structures of new municipal financing

issues. Government issuers may now desire shorter call protection periods, such as five years, instead of the current standard ten years to provide more flexibility if yields move lower. Government issuers also may not issue as many premium coupons, because these types of obligations have been used as more attractive candidates for advanced-refunding financings as premium coupons require more interest to be paid each year as an offset.

Some are also predicting that because the new tax law eliminates or caps many tax exemptions, but preserves the municipal bond interest tax exemption, demand from investors for municipal bonds will increase. Higher interest rates on municipal bonds may be the result of the lower corporate tax rate.

Although advanced-refunding obligations have been eliminated, alternatives still exist for government entities to refinance obligations, and we are happy to discuss individual situations with clients.

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## Insurance Claim Reminders

When a government entity suffers a loss due to natural or other causes or a claim or lawsuit it is always necessary to notify the entity's insurer so that the entity can receive appropriate insurance coverage including legal defense costs, where appropriate.



Most public entities are insured through one of the public entity insurance pools that offer coverage for governments in Colorado.

If your entity is insured through the Colorado Intergovernmental Risk Sharing Agency (CIRSA), you can contact CIRSA at [www.cirsa.org](http://www.cirsa.org), (800) 228-7136, or (303) 757-5475.

If your entity is insured through the Colorado Special Districts Property and Liability Pool, you can contact them at [www.csdpool.com](http://www.csdpool.com), (800) 318-8870, or (720) 962-0301.

If your entity is insured through County Technical Services, Inc. (CTSI), you can contact CTSI at [www.ctsi.org](http://www.ctsi.org), (800) 544-7868, or (303) 861-0507.

These insurers offer extensive pre-loss services, and they encourage you to contact them before you have a situation that may result in a claim to receive advice on loss prevention.

