

James G. Benjamin

- Born: Washington, D.C., August 7, 1949
- Admitted to Bar: California 1976; Colorado 1977
- Education: University of Southern California (B.A. cum laude, 1971); Loyola University, Los Angeles (J.D. 1976)
- Member: Denver Bar Association (“DBA”)-President (2012-2013); DBA Board of Trustees (2010-present), Executive Committee (2010- present), Denver Bar Foundation-Board of Directors (2010 – present), Member of the Professionalism Coordinating Council (2010- present), Executive Council of the Young Lawyers Section 1979-1982 (DBA YLD Secretary-1981); Colorado Bar Association (“CBA”)-Board of Governors, 2005-2007 and 2011-2014, Executive Council 2012-2013, CBA Real Estate Section Chairman 2004, Executive Council 1998 to 2012, Secretary 2002, Vice Chair 2003, CBA Legislative Policy Committee Member 2005 to present and Real Estate Section Liaison 2005-2013; CBA Ethics Committee Member 1998 to 2009, CBA/DBA Joint Management Committee (2011- present); State Bar of California (1975-present). Arapahoe County Bar Association, Board of Directors, 2013 to present.
- Author/General Editor: Colorado Real Estate Forms Deskbook, Bradford Publishing Co., copyright 2009; “*Real Estate Transactions*,” Chapter 23 of the Lawyers’ Professional Liability in Colorado: Preventing Legal Malpractice and Disciplinary Actions, Second Edition, CLE of Colorado, Inc. 2007; “*Commercial Law*,” California Continuing Education of the Bar, Vol. II, 1977 (Articles 3, 4 and 5 of the Uniform Commercial Code); “*Foreclosure Sale Excess Proceeds*,” 23 Colorado Lawyer 375, February 1994; “*Beneficiary Deeds in Colorado-Part I*,” 34 Colorado Lawyer 79, June 2005; “*Beneficiary Deeds in Colorado-Part II*,” 34 Colorado Lawyer 103, June 2005;
- Lecturer: "Negotiable Instruments," Security Pacific Bank Management Training (1977-1980); "Financing Commercial Real Estate," Northwest Center for Professional Education (April 1986); "Mechanic's Liens," Legal Educational Seminars (March 1980); "Forcible Entry and Detainer Actions," Bank One-U Hills (1983); "Public Trustee Foreclosures," Bank One- U Hills (1984); "Lender Liability," (1986) Bank One B U Hills; "Asbestos and Hazardous Substance Liability for the Lender," United Banks of Golden (1990); "Keys to Success in a Real Estate Transaction in Colorado," National Business Institute (1994); “Multi-Disciplinary Practice” Annual Real Estate Symposium, CLE of Colorado, Inc. (2000); “Ethics Primer for Real Estate Lawyers,” CLE of Colorado, Inc. (2000); “Real Life Ethical Issues For The Transactional Lawyer,” CLE of Colorado, Inc.(2000); “Ethical Issues For The Transactional Lawyer,” CLE of Colorado, Inc. (2001); “Update On Ethics For Real Estate

Lawyers,” CLE of Colorado, Inc. (2002); “Current Ethical Problems For Real Estate Lawyers,” Boulder County Bar Association, Real Estate Section (2002); “Ethical Issues for the Real Estate Lawyer Acting as Title Agent” Attorneys Title Guaranty Fund, Inc., 2003 Assembly (2003); “Legislative Update,” CLE of Colorado, Inc. (2003); “Real Estate Legislative Update,” Annual Real Estate Symposium (2003); “Ethical Issues for the Real Estate Lawyer,” Boulder County Bar Association (2003); Program Chair, “23rd Annual Real Estate Symposium”, jointly produced by the Real Estate Section of The Colorado Bar Association and CLE of Colorado, Inc.; “A Real Estate Lawyer’s Observations of the Beneficiary Deed Act,” Boulder Bar Association (2004); “Real Estate Ethics,” CLE of Colorado, Inc. (2004); “Section 12(a) of the CREC Standard Form Contracts,” First Judicial District Bar Association (2005); “Beneficiary Deeds - A Dirt Lawyer’s Perspective,” Real Estate Symposium, CLE of Colorado, Inc. (2005); Beneficiary Deeds-Boulder County Bar Real Estate Section (2007); “Roof Top Leases,” Annual Real Estate Symposium, CLE of Colorado, Inc. (2011).

Mr. Benjamin's experience in real estate, banking and lending dates back to 1967 when he started his career as a bank officer. While he currently emphasizes commercial real estate transaction work (acquisitions, sales, leasing, condominium development, land development, condominium conversions and financing) and institutional client lending (asset-based financing and real estate-secured financing), he adds an insight to the practice due to prior extensive real estate oriented litigation experience and due to his pre-law employment as a loan officer and operations officer at one of the world's largest commercial banks.

Mr. Benjamin is, and has been for over 25 years, rated "AV-Preeminent" by *Martindale-Hubbell Law Directory* and has been listed in *Who's Who in American Law* (published by Marquis Who's Who) and in the *Martindale-Hubbell Bar Register of Preeminent Lawyers*. He was selected for inclusion in the list of Colorado Super Lawyers in real estate law for the last 10 consecutive years (every year since the creation of the Colorado Super Lawyers list). For 2013, 2014, and 2015, Mr. Benjamin was selected by Colorado Super Lawyers for inclusion in the *Top 100* lawyers in Colorado. In January of 2013, Mr. Benjamin was named by Colorado Law Week as amongst the 26 "Lawyers of the Year." Mr. Benjamin is listed in Chambers International as a Band 1 attorney in real estate.

Formerly in charge of the transactional real estate departments: of Roath & Brega, P.C. (a 98 lawyer firm, in which he was a shareholder and a member of the executive management committee); of the Denver office of McKenna, Conner & Cuneo (a 250 lawyer firm, with offices in Washington, D.C., Los Angeles, San Francisco, Dallas and Denver); and of Berryhill, Benjamin, Cage & North, P.C. (of which he was a founding principal). Currently Mr. Benjamin is a manager of the law firm of Benjamin, Bain, Howard & Cohen, L.L.C. From 1977 to 1981, he was a litigator with the real estate litigation law firm of Towey & Zak. From 1971 until 1977, he was employed as an operations officer, consumer loan officer, management relief officer, and in-house counsel for Security Pacific National Bank, Los Angeles.

Mr. Benjamin has lectured to various financial institutions and real estate brokerages on foreclosures, negotiable instruments, perfection of personal property security interests, hazardous waste, asbestos, radon and lender liability. He also is a frequent lecturer for CLE of Colorado, Inc. (the continuing legal education organization of the Colorado Bar Association) on aspects of the practice of real estate law and the application of the Rules of Professional Conduct to real estate lawyers.

Mr. Benjamin's publications include an extensive standard operating procedures manual on letters of credit, a Colorado Lawyer article on a unique aspect of foreclosure, an analysis of Colorado's beneficiary deed statute (a statute in which he assisted in the drafting), a chapter on practicing real estate law with professionalism, and an article used in the continuing education of the bar on the

negotiation and documentation of construction and permanent real estate loan financing. He is the General Editor of the over 700 page book on Colorado real estate forms published by Bradford Publishing Co., the Colorado Real Estate Forms Deskbook, copyright 2009.

He has represented borrowers in the negotiation of asset-based loans (including such variety as a \$45,000,000 loan to a livestock processing plant, a \$20,000,000 lease-loan on commercial aircraft, and a \$4,000,000 loan for a mining operation); in commercial real estate acquisition and refinancing loans (including a multi lender transaction to acquire a number of apartment complexes in the same transaction at an aggregate acquisition cost of over \$150 million); and, in construction and development loans (such as a high-end mountain residential golf community utilizing metro district funds and revolving construction lines of credit in excess of \$30,000,000). In the aggregate, he has documented and provided general counsel representation to lending institutions on real estate secured transactions for loans aggregating in excess of a half billion dollars on loans ranging from a half million dollars to over \$80,000,000. Mr. Benjamin's representation on behalf of lenders has included loans which have been originated to provide for building construction, for off-site (infrastructure) improvements, and for permanent or bridge- loan financing. Mr. Benjamin has negotiated and documented on behalf of lenders: industrial revenue bond transactions; credit facilities for the issuance of letters of credit; permanent financing credit facilities on multi-family residential buildings, single family residential subdivisions, office buildings, hotels, shopping centers, golf courses, mini-warehouses, industrial projects, mixed use facilities (such as construction financing on a commercial structure containing retail on the ground floor, office space in the interim floors and residential penthouses on the top floor), agricultural (mushroom farm in rural Colorado), and vacant land. Legal representation provided by him has continued through modification stages of the loan, workouts, collection, deed in lieu of foreclose, and foreclosure and receivership.

Mr. Benjamin has also represented developers and landowners: in the acquisition and disposition of vacant land, subdivisions, office buildings, apartment units, ranches, camp grounds, mobile home parks, commercial development property, and shopping centers; in building and zoning matters; on hazardous waste issues; on leasing and eviction matters; on creation of condominium projects and conversion of apartments to condominiums; on creation of conservation easements; and in a wide variety of I.R.C., Section 1031 tax deferred exchanges, reverse exchanges, and Bramblett transactions.

Representative of some of the transactions in which Mr. Benjamin has acted as lead counsel include:

Commercial real estate acquisitions and sales: AT&T Building (170,000 square foot class A office building in Downtown Denver); International Athletic Club Building (Downtown Denver commercial office, retail, and athletic club); Beacon House Apartments (112 unit apartment complex); Parkside Village Apartments (288 unit apartment complex); Woodbridge Apartments (194 unit apartment complex); Cahners Publishing Facility (a light industrial/office complex); DTC 5 Building (commercial office building in the Denver Technological Center); Rampart & Lake Mead Shopping Center (Las Vegas shopping center); Rampart Business & Industrial Center (vacant land-light industrial); Texas Instruments Building (industrial building); Waterpark III Office Building (108,000 square foot multi-story office building); Crested Butte Airport (resort area subdivision); Crazy Horse Campground (a commercial recreational campground); Tiger's Run RV Park (a shared-ownership recreational vehicle park); Prairie Canyon Ranch (a 2000 plus acre ranch); Wal-Mart Shopping Center at Plum Creek (shopping center); Beaver Lodge at Winter Park (a hotel, restaurant and condominium complex); Sommerset Condominiums (a 250 unit condo project); DuoFast Building (industrial/warehousing facility in Salt Lake City); Belle Bonfils Blood Bank (public benefit conveyance of closed Air Force Base property, formerly a 120,000 square foot commissary); Park Centre at Westminster (mixed use office/light industrial park); Heritage Hills (patio homes subdivision); Cambridge Park (single family residential subdivision); Golden Eagle Ranch (private hunting preserve with conservation easement); Pinnacle Highline Apartments (258 unit condo conversion); Burger King Restaurant franchises; Beaver Valley Ranch (hunting and fishing preserve, working cattle ranch and rolling conservation easements); Brightwater Club

(exclusive private golf community of over 500 high-end residences, Robert Trent Jones, Jr. Golf Course and fly fishing club); Parkway Towers Apartments and Tantra Lakes Apartments (over 700 unit condo conversion, which involved the largest apartment sale in Colorado history, with multiple layers of acquisition and mezzanine financing); Pradera (combination of developed single-family lots, subdivided but undeveloped property, and un-subdivided vacant land); Turtle Bay and Shortridge Mobile Home Parks; Casper Super 8 Motel; Super 8 Hotel Westminster; and Hyatt Place Hotel Nashville.

Commercial leasing transactions -Retail (Landlord representation): Blockbuster Videos (pad site lease); Pak Mail (private retail shipping facility); Cellular One (cellular telephone installation and servicing center); Grease Monkey (automobile maintenance facility); Off Belleview Grill (restaurant lease); Marina Landing Restaurant (restaurant lease); Taco Bell (pad site sale); First American State Bank (commercial bank facility); Kaufman & Broad Home Builders (combination office and retail facility located in a shopping center); Birmer Dental Management Services (executive suite of dental offices); Panera Bread.).

Office (Landlord Representation):-Downtown Child Care Consortium (in- office building child care facility); North American Title Company of Colorado; Chicago Title Company Denver headquarters; Columbia College (17,550 square foot lease); State Mutual Life Assurance Company (27,100 square foot lease); Dixon Paper Company (16,000 square foot lease); Platte Valley Mortgage (32,000 square foot lease); Duofast Building (industrial single user building) and, Olympian Executive Suites (15,600 square foot lease of executive office suites); Denver School of Science and Technology (2 1/2 acre ground lease for Denver Public Schools high school); Colorado Heights University lease to Summit Academy (for high school classroom use, 11,822 square feet); Geotech offices (3,240 square feet); Denver Mortgage Company (4,092 square feet); Damon Kaplan, CPA (3,286 square feet); Lower Machebeuf (9,700 square feet).

As a regular part of Mr. Benjamin's practice, he provides general counsel representation to his real estate clients. Representative of such clients include Colorado Heights University and Prime West Development. This general counsel representation has included such matters as creation of the entities for holding title and for memorializing the business agreements amongst the principals (Mr. Benjamin served on the Bar Subcommittee which revised the Colorado Limited Liability Company Act); preparation of declarations of covenants, conditions and restrictions for common interest communities inclusive of those for condominiums, shopping centers, office parks, industrial parks, residential subdivisions and recreation vehicle parks; preparation of reciprocal easement agreements for cross-access and parking arrangements; preparation of boundary line agreements; lease negotiation and drafting (office space, warehouse space and retail space); acquisition and sale contract negotiation, due diligence assistance and closing representation; property management and leasing issues; workout, deed in lieu of foreclosure and forbearance agreement negotiation and documentation; and foreclosure and eviction representation.

Mr. Benjamin has served in the past, pro-bono, as general counsel for Osage Initiatives (the U.S. West k/n/a Century Link) created organization to employ the homeless and economically at-risk, utilizing an alliance of non-profit and for-profit entities, with the for-profits created to support the mission and financial needs of the non-profit alliance members) and as real estate counsel for the Girl Scouts – Mile High Council. He served on the Colorado Bar Association Limited Liability Company Act Revision Committee, which drafted the amendments to the Colorado Limited Liability Company Act, adopted by the State Legislature in 1994. He served on the joint committee of the Real Estate Section and the Trusts and Estates Section that drafted the Beneficiary Deed Statute (adopted by the Colorado Legislature in 2004). He served as a primary drafter on the Real Estate Section Committee that advised the sponsoring legislators and assisted in the drafting of the law on adverse possession adopted by the Colorado legislature in 2008. He has served, by appointment, on the Colorado Department of Regulatory Agencies (DORA) Real Estate Advisory Committee from 2004 until 2007 (which primarily dealt with real estate broker law and regulations) and served in 2006 on the DORA committee that drafted the Department of Insurance and the Colorado Real

Estate Commission regulations for Affiliated Business Arrangements. He served on the Real Property Law Advisory Board to Bradford Publications (2004 to 2007). He was a member of the Colorado Bar Association Ethics Committee for over 10 years as the CBA Real Estate Section Liaison to the Ethics Committee. Mr. Benjamin is presently serving on the Colorado Bar Association's Legislative Policy Committee (which determines the Bar Association's position on pending legislation); on the Nominating Committee of the Denver Bar Association (which selects the officers of the Denver Bar Association); on the Board of Directors of the Arapahoe County Bar Association; and the CBA/DBA Professionalism Coordinating Council. He served as the President of the Denver Bar Association for the 2012-2013 term and served as the Past President of the Denver Bar Association and as one of the three member Executive Council of the Denver Bar Association for the 2013-2014 term. During 2004 and 2005, Mr. Benjamin was the Chairman of the Real Estate Section of the Colorado Bar Association.

Mr. Benjamin has acted as an expert witness in a variety of cases pertaining to real estate law, reasonableness of legal fees and the standard of care of real estate lawyers.

Within the last 5 years, Mr. Benjamin has testified as an expert (either at trial or by deposition) in the following civil actions and arbitrations: *Spectrum Acquisition Partners, L.L.C. v. Jim and Sandra Willborn Family Trust, LLC, et al.*, Denver District Court, 05CV1728, Div. 4; *David H. Wollins v. Steven A. Klenda, et al.*, Denver District Court, 05CV2182, Ctrm. 18; *Keith Holder, et al., v. Stephen Castor, et al.*, Mesa County District Court, 06CV458, Div. 9.; *Bushman Investment Properties, Ltd., et al. v. DBSI E-470 East LLC*, ADR Source Arbitration; *Quintel-MC, Inc., et al., v. Lisa Culpepper, et al.*, Arapahoe County District Court, 10CV296; *In re the Estate of Calvin Shimizu v Bonnie Rae Trujillo-Dickson, et. al.*, Denver Probate Court, 2011PR928; *Daniel T. Long v. Weld Reservoir Company*, Boulder District Court, 2006CV433; *James E. Ray v. Sylvia L. Lovisone*, Boulder District Court, 2012 CV 30303.