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THE NEW STATUTORY EXCEPTION DEEDS, NEW SECTION 13 OF THE CONTRACT TO BUY AND SELL, AND THE AFFILIATED NEWLY ADOPTED CLOSING INSTRUCTIONS

Recently, Colorado House Bill 19-1098 became effective on March 8, 2019, and made changes to Colorado's laws involving deed warranties and preparation of deeds by title insurance companies. This recent change was expected and led by the Division of Real Estate, Colorado Association of Realtors, Colorado Bar Association, and the Land Title Association of Colorado. As referenced in the initial 2019 Commission Update Class, this same legislation was pending when the new 2019 Contract to Buy and Sell went into effect January 1, 2019 (especially effecting Section 13 - Transfer of Title).

The current version of the promulgated Contract to Buy and Sell requires that a list of certain title exceptions be attached as an exhibit to all conveyance deeds containing warranties of title per Section 13 of the new 2019 Contract. House Bill 19-1098 was passed to address the use of those title exception exhibits. Most importantly, House Bill 19-1098 creates and defines the term "Statutory Exceptions" which now may be incorporated into a deed and will limit the warranties of title via the property conveyance without the need for title exceptions to be included as an exhibit to the recorded deed.

What are the new Statutory Exceptions applicable to a General or Special Warranty Deed?

When used in any deed, the Statutory Exceptions mean that the Grantee (*buyer*) accepts title to the conveyed property subject to:

1. "Real Estate taxes for the calendar year in which the conveyance occurred and subsequent years that are not yet due and payable;"
2. "All matters that are disclosed or that would have been disclosed by an improvement survey plat, as defined in Section 38-51-102 (9), of the conveyed property or could have been ascertained by an inspection of the conveyed property and which matters were not created or other wise known by the Grantor (*seller*); and"
3. And matters recorded in the real estate records of the county clerk and recorder of the county in which the conveyed property is located (*of record matters*)."

See, C.R.S. 38-30-113 (5)(a).

Outside of the above, House Bill 19-1098 provides that title companies can now legally "draft" deeds as long as the deed contains the Statutory Exceptions. The additional limitations for a title company to draft a deed are when the General or Special Warranty deed is prepared in connection with the issuance of title insurance. In all other cases, the title company will continue to assist in deed preparation as a Scrivener directed by the brokers (or the parties) to a transaction.

Has the Commission of Real Estate revised the Contract to Buy and Sell given the new deeds?

Yes, only applicable to Section 13 – Transfer of Title. Brokers now have the option of using the Revised Contract (approved May 10, 2019) or can continue to use the January 1st version up until July 1, 2019. After July 1, only the Revised Contract will be deemed the approved (therefore mandatory) Contract by the Division of Real Estate. Unless the parties to the transaction direct otherwise, the default direction in



the Revised Contract's Section 13 now calls for the property to be conveyed via a deed subject to Statutory Exceptions, as follows:

"13. TRANSFER OF TITLE. Subject to Buyer's compliance with the terms and provisions of this Contract, including the tender of any payment due at Closing, Seller must execute and deliver the following good and sufficient deed to Buyer, at Closing: special warranty deed general warranty deed bargain and sale deed quit claim deed personal representative's deed _____ deed. Unless otherwise specified in Section 30 (Additional Provisions), if title will be conveyed using a special warranty deed or general warranty deed, title will be conveyed "subject to statutory exceptions" as defined in Section 38-30-113 C.R.S."

The new Statutory Exception deeds prepared by title companies will simply reference that statute in the body of the deed.

Again, please note the statute requires that a title company can only legally draft a Special Warranty or a General Warranty deed that must include the Statutory Exceptions. In all other circumstances (including direction by the parties that certain title commitment exceptions or other restrictions must be included and/or recorded with the subject deed), the title company remains in a Scrivener role for the conveyance deed called for in the Contract. The decision of deed choice remains a term of the Contract between the parties (unless in conflict with a title commitment requirement for closing).

New Closing Instructions also?

Yes, in reaction to House Bill 19-1098, the Commission concurrently adopted a new Closing Instructions form. The new form contains updated sections including "Preparation of Documents" by the closing company regarding the Deed, Bill of Sale, and Closing Statement; "Wire and Other Frauds"; and "FIRPTA and Colorado Withholding". You can presently use the current Closing Instructions form or the newly adopted form prior to July 1, 2019. As of July 1, 2019, however, only the newly adopted mandatory Closing Instructions form will be acceptable for use in your transactions. Please note the Scrivener's Agreement, previously contained in the historical Closing Instructions, has now been eliminated in the newly adopted Closing Instructions. A Redline copy of the new Closing Instructions are attached for your review.

Remember the Contract and Closing Instruction differences between May 10th and July 1st

If you utilize the initial Contract between now and July 1st, the same initial Closing Instructions should be executed to avoid conflict with Section 13 and the corresponding Closing Instructions. The title company will continue to record exceptions as an exhibit and act as your Scrivener. In turn, if you utilized the Revised Contract prior to July 1st please make sure the newly adopted Closing Instructions are executed in conjunction with the Revised Contract to also avoid any conflicts with new Section 13 and the newly adopted Closing Instructions.

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