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The seller's name: Unexpected difficulties may occur

This is the second in a series of a dozen or so articles that come from some years of experience using the Colorado Real Estate Commission-approved Contracts for Purchase and Sale of Real Estate for commercial real estate transactions. The first article dealt with the name of the buyer. We now turn to the name of the seller and some unexpected difficulties you might encounter.

Tip: The name of the seller should be the name of the grantee (the "grantee name") exactly as it appears in the deed by which the seller took title (the "vesting deed"). If the name in the vesting deed is not the current true name of the seller, steps can be taken to address the change, variation or discrepancy as described below and in the next article in this series. For an entity registered with the Colorado Secretary of State, you can easily determine the current true name of the seller at: <http://www.sos.state.co.us/biz/BusinessEntityCriteriaExt.do>.

Trap: §2.3 of the contract states that the seller is "the current owner of the property," which might be construed as a title representation by the seller. That possibility should encourage you to take the time to get the seller's name right in the contract; besides, you will need to get it right in the deed given by the seller at the closing.

How do you find the vesting deed to get the grantee name? If the seller does not have the vesting deed in its files, the title insurance company might get you a copy. The title com-



Beat U. Steiner
Partner, Holland &
Hart LLP, Boulder

mitment will show the grantee name, but that might be too late for the contract. The assessors of many Colorado counties have websites that show the recording date and sometimes the recording information (book and page or reception number) of the vesting deed. With that information, or perhaps just the party names, the county clerk and recorder should be able to get you a copy of the vesting deed.

Trap: The name of the property owner shown in the county assessor's or treasurer's records is not a reliable source for the seller's name. While county treasurers and assessors get owner names from the latest vesting deed, errors occur, names are abbreviated and those records often are behind what the real estate records show.

Trap: If the grantee name is not the current true name of the seller, the deed at closing needs to have an explanation why the names are different. The explanation might be "formerly known as," or "f/k/a," if the seller has changed its name. If the seller stands in the shoes of the grantee because the seller has merged, the deed might describe the seller, using its current true name, as the "successor in interest to" the grantee. The explanation

might be "also known as," or "a/k/a," if there is a variance in the two names, such as the addition or deletion of a middle name or initial for an individual or an abbreviation of a word in the grantee name of an entity. If the grantee name is a trade name, the deed at closing might state the true name of the seller "doing business as," or "d/b/a," and the trade name. **Tip:** If the difference in the current true name of the seller is known at the time of the contract, it is a good idea to put the explanation in the contract.

Tip: The Colorado Title Standards (available on the Internet – you can find them by Googling "Colorado Title Standards" – may provide relief when the grantee name varies from the current true name. For example, if the name of an individual has changed as a result of a court order or marriage, Title Standard 9.1.2 states that the person may record a document evidencing the name change, such as the court order. If an entity's name has changed as the result of a registration of a partnership for limited liability or a conversion or a merger, Title Standard 9.6 provides for the recording in the real property records of the Secretary of State statements that effected the change. Recording the specified documents makes title marketable according to the Title Standards.

The Title Standards also help with variances in a name. For one thing, Title Standard 6.3 gives title examiners more leeway in identifying entities. The Secretary of State allows an entity to adopt a true name,

so long as there is, more or less, a "one keystroke difference" from all the entity names already in use. Under the Title Standards, however, if you added or forgot "The" in the name, no worries. Did you abbreviate the limited liability identifier or change the abbreviations to the full word or phrase? Those mistakes do not affect marketability either.

Trap: Call a corporation a limited liability company or otherwise mix up the type of entity, however, and you will have a problem that needs to be fixed. Sometimes, the Title Standards can't help you – they only tell you that you have a problem. **Tip:** Look back at the previous article in this series about the importance of the limited liability identifier in an entity name. The cautions in that discussion apply equally to the seller's name.

Tip: The lesson that comes out of this discussion about names is simple and important: Get the seller's name right in the contract. Then get it right in the deed at closing. You avoid a lot of problems later by being careful when the contract is written. **Trap:** Every once in a while, the paperwork required to fix the seller's name after the contract is signed will give the buyer a right to terminate the contract. The name discrepancy may be the basis for the buyer to object to title under §8.2 of the contract and to terminate the contract under §8.4. The termination might not be a good thing for the seller. Another reason to be certain that the seller's name is correct in the contract.▲