

New Colorado Real Estate Contract - New form becomes mandatory January 1, 2009

Here are five of the major revision to the Real Estate Contract and how these changes may affect your closing with the title company.

Closing Instructions

In Section 15.4, the buyer and seller agree to execute the Real Estate Commission's Closing Instructions (which are no longer attached to the Contract) and undertake to deliver the Closing Instructions to the title company. This is important in view of the requirement in Section 4.2 that the Closing Instructions must accompany the delivery of the earnest money if the title company is to hold the earnest money.

Earnest Money

Section 4.2 stipulates that "if the Earnest Money Holder is other than the Brokerage Firm... Closing Instructions signed by the Buyer, Seller, and Earnest Money Holder must be obtained upon or before delivery of earnest money to Earnest Money Holder."

This is an important change in practice. The title company can only accept delivery of the Earnest Money if the Earnest Money is accompanied by the executed Closing Instructions or no longer attached to the Contract, it is imperative that the title company receive written closing instructions signed by both buyers and sellers before or at the time the Earnest Money is delivered.

Practice Tip: We suggest that the seller's and buyer's agents ensure that the Closing Instructions are executed when the Contract is signed by the parties. This will ensure that the Closing Instructions accompany the earnest money when delivered.

Transfer of Water Rights and Wells

Section 3.1.6 of the Contract requires that a Change in Ownership Form be completed if there is an existing well on a property being transferred.

Title companies can provide this form and act as a scrivener in completing the form. Please remember that is water rights (other than ownership of a well as defined in the Contract) are to be conveyed, the title company can complete the deed conveying the water rights acting as scrivener and at the direction of the buyer and seller or their agents. However, buyers and sellers are advised (and should be encouraged) to seek legal advice prior to executing a deed conveying waters rights.

For greatest accuracy and protection, a water rights attorney should always be employed to research the water rights and to prepare the deed conveying such rights.

Section 3.1.6 of the Contract states, "If any water well is to be transferred to Buyer, Seller agrees to supply required information about such well to the Buyer. Buyer understands that if the well to be transferred is a Small Capacity Well or a Domestic Exempt Water Well used for ordinary household purposes, Buyer shall, prior to or at Closing, complete a Change in Ownership form for the well. If an existing well has not been registered with the Colorado Division of Water Resources in the Department of Natural Resource (Division), Buyer shall complete the registration of existing well form for the well and pay the cost of registration."

The closing company is responsible for the filing of the form with the Colorado Division of Water resources in the Division of Natural Resources. If there is no closing service in connection with the transaction the Buyer is responsible for filing the form within 60 days after closing.

Cash at Closing

Section 4.3 of the Contract stipulates that the closing company actually has cash on hand at the time of closing or the party shall be default under the Contract.

Practice Tip: In practice this will mean that if a buyer is relying on the proceeds of the sale of the buyer's house, which is closing on the same day as the purchase of a home, the parties must ensure that the buyer is able to bring the proceeds to the closing of the new home. Careful coordination of the two closings between all parties - including the title companies - is essential.

Remember that cash means cashier's checks, wire transfers, certified checks, or savings and loan teller checks available for immediate disbursement. Buyers should contact their bank prior to closing about its policies; some out-of-state banks without local offices require that wire transfers be initiated in person.

