



# New Contract & CLOSING INSTRUCTIONS

## What You Need to Know

Just as we've settled into our new January, 2019 contract form, a revised contract form and closing instructions have been introduced, both of which will be mandatory as of July 1, 2019. But, change is good, and these changes in particular are welcome as they serve to simplify the process of conveying real estate in Colorado. Please read below for an outline of these changes, and the practical implications that they have for real estate transactions in Colorado.

## HB19-1098: The Deed Bill

HB19-1098, effective March 7, 2019, altered the four statutory deed forms (general warranty deed, special warranty deed, bargain and sale deed, and quit claim deed) available in Colorado. The two changes made by HB19-1098 that have the biggest practical effect on real estate purchase transactions are as follows:

First, HB19-1098 created a "statutory exception" to the warranties of title. By reciting the "statutory exception" language in a special warranty deed or general warranty deed, the deed automatically excepts from the warranties of title the statutory exceptions, which include the following: (a) off-record matters (with some limited exceptions), (b) matters recorded in the real estate records in the county in which the property is located, and (c) real estate taxes for the current tax year.

Second, it provided authority for title companies to prepare deeds. For the first time in Colorado, title companies have the legal authority to prepare deeds rather than to act as scriveners for real estate brokers.

## Section 13 of the Contract to Buy and Sell Real Estate

The passage of HB19-1098 necessitated a contract change so that the Contract to Buy and Sell Real Estate complied with the new deed legislation. This time around, the changes were limited to Section 13 of the Contract, which governs the conveyance of the real property. The revised form will still allow the parties to select one of the four statutory deed forms, and will default to a special warranty deed if no deed form is selected. The change is simple: If the property is being sold subject to a general warranty deed or a special warranty deed, it will also be subject to "statutory exceptions" from the warranties of title. This requirement that the deeds include the "statutory exception" language eliminates the need for parties to grapple with the question of whether

their deed should include exceptions to the warranties of title, and which documents are appropriate to reference in the warranty exception language.

## Closing Instructions

The passage of HB19-1098 also necessitated a change to the Closing Instructions form, to allow the title companies to actually prepare the deeds rather than to act as scrivener for the real estate broker. The new form says that if the contract calls for one of the statutory forms of deed, the Closing Company will prepare the deed in accordance with the terms of the Contract. The section of the old closing instructions form that followed the signature lines, in which the Broker engaged the Closing Company to complete the deed as a scrivener for the Broker, has been eliminated. Please note that if the contract calls for an alternative deed form such as a personal representative's deed, or if the contract calls for exceptions to the warranties of title other than the "statutory exceptions", the parties will have to provide the deed, or will have to provide the Closing Company with written instructions regarding the preparation of the deed. Unlike the revised contract, the revised closing instructions do contain myriad smaller changes that you should familiarize yourself with before July 1, 2019.

## Let us Help Eliminate the Confusion!

The new forms are not mandatory until July 1, 2019, but they are available and can be used today. As you can imagine, having two versions of contracts and closing instructions available for the month of June could create some confusion, and Land Title is here to help. We have developed an IT solution to assist our closing staff and our customers in ensuring that the correct closing instructions are used with the contract that is presented. Our programs will also ensure that the correct deed forms are produced with each closing, as these will differ depending on the contract form and closing instructions used. And finally, when the new contract and closing instructions are used, our system will ensure that the Document Preparation Fee (otherwise referred to as the Scrivener's Fee) will not be charged. All you will need to do is present your contract; we will review the contract and make sure that the correct documents and closing instructions are provided, so you don't have to.

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