Underwriting Bulletin: UNCO-2020-011

Date: October 5, 2020
To: All Colorado Agents
From: David Dickard
RE: Deed Preparation by Title Companies

This bulletin is intended to serve as a reminder to agents of last year's change to the short form deed statute and the authority of title companies to prepare deeds.

In March 2019 the Colorado Legislature enacted C.R.S. 38-30-113, setting forth the statutory short forms for general warranty deeds, special warranty deeds, bargain and sale deeds and quitclaim deeds. The new statute consolidated several previous statutes regarding the form of the deeds and clarified the legal effect of certain language used in a deed. While the use of the bare bones statutory short form alone is not mandatory, the statute provides the minimum language to use in preparing a deed for a transaction.

Included in the Bill that enacted C.R.S. 38-30-113 was the introduction of C.R.S. 38-30-116.5, which governs deed preparation by title insurance entities and introduced an important change in the preparation of general warranty deeds and special warranty deeds by title companies. C.R.S. 38-30-116.5 authorizes title insurance entities to prepare deeds in connection with the issuance of a title policy. This limited authority underscores the fact that title companies should not prepare deeds unless it is clearly related to the issuance of a policy. The statute requires that any warranty deed (general or special) prepared by a title entity include the term "Subject to statutory exceptions" and nothing further. This statute supersedes ambiguous instructions regarding deed preparation in the Contract to Buy and Sell Real Estate.

Colorado's statutory deed exceptions (note that these differ from standard exceptions in a commitment) do not have to be specifically set forth in the deed. For informational purposes they are:

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 would be disclosed by an improvement survey plat or that could be discovered by an inspection of the property that were not created by or known to the grantor.
3. All matters recorded in the real property records.

C.R.S. 38-30-116.5 also provides that in lieu of the term "Subject to statutory exceptions" the grantor and the grantee (or their authorized agents) may agree to a different set of exceptions to be recited in the deed. Agents are advised to get such instructions in writing from both sides to the transaction.

FNTI is dedicated to providing excellent service to our agents. Should you have any questions regarding this bulletin, do not hesitate to contact your friendly FNTI underwriter.

This Underwriting Bulletin becomes a part of the principles and practices with which you are to comply under the terms of your Underwriting Agreement with First National Title Insurance Company. Should the content of this bulletin address the closing and escrow function, this information should be considered a directive and part of the principles and practices if non-compliance would result in liability to FNTI under either the insured closing service letter or policy of title insurance notwithstanding that the Underwriting Agreement does not include the closing and escrow functions of your agency.

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