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Between The Lines

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PROPERTY PROBLEMS CAN GROW BY METES & BOUNDS



Daniel Jones
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I have previously discussed fundamentals of successful real-estate transactions, including surveys and title commitments, as well as, the valuable information included therein.

Another one of these fundamentals is the all-important legal description of the property being bought, sold or leased.

An accurate legal description of real property is critical when rights are conveyed through a deed or lease. However, my experience has revealed that errors often are made in legal descriptions, which can result in considerable headaches for everyone that is left to clean up the resulting title problems and documents.

Mistakes often appear in “metes-and-bounds” legal descriptions, which contain a series of instructions using directional bearings and distances between a series of identified points to describe the boundaries of a parcel of land. Such legal descriptions can be lengthy. For some large or oddly shaped parcels, these descriptions can contain dozens of point-to-point instructions

and stretch to more than a typed page in length. Parties working with such legal descriptions should proofread them very carefully and understand how such descriptions work. If you’re selling, buying or leasing property that is described in this fashion and you don’t understand how to interpret a metes-and-bounds description, find someone who does. Mistakes in such legal descriptions have had painful, expensive consequences for property owners.

For example, an owner who in the 1960s owned two adjacent city lots, one vacant and the other improved with a house, inadvertently confused which metes-and-bounds description applied to which parcel. In 1969, through two separate deeds to separate buyers, the seller described the improved parcel but included the address for the vacant lot in the deed to one buyer, and described the vacant lot but included the address for the improved lot to the other buyer. The buyers, not recognizing the mistake, both paid attention to the address, not to the legal description. In most jurisdictions, the legal description on a deed is controlling over an address. The buyer who paid much more for the improved lot

**NEW
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WEBSITE**

CP2 is pleased to announce the firm has launched a new website.

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Come See!



**CP2 congratulates
Casey Gill on her recent
promotion to legal
assistant.**

**As legal assistant, she
now supports the firm's
Fort Collins attorneys
and paralegals with
various legal matters.**

Casey Gill
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was given a deed conveying the vacant lot, and the buyer who paid less for the vacant lot was given a deed conveying the improved lot. Corrective deeds were required to clear up a series of mistakes that had commenced nearly 50 years ago.

Other examples I have run across include mistakes in legal descriptions for the locations of buildings in a condominium development, such that the legal descriptions for four of the buildings were more than than 150 feet off from their true locations, and an error in a metes-and-bounds description of land in a 1970s oil and gas lease that accidentally described a parcel of ground 500 feet away from the intended property.

While mistakes are most common in complicated metes-and-bounds descriptions, they also occur in descriptions of lots and blocks in subdivisions and in public land survey system legal descriptions (such as "the East half of the Northeast quarter of Section 23").

It is good practice to ensure that the legal description in a deed or lease is correct and as accurate as possible. We all can make mistakes, but when we proofread, ask others to proofread, and understand the legal descriptions in such documents, we're less likely to suffer the loss-of-time and harmful consequences of legal-description mistakes.

Anytime you find yourself or your business faced with a property dispute, or are in need of drafting and/or reviewing documentation regarding your property, it is wise to contact a real estate attorney to avoid any legal mistakes being made.

**CP2 WELCOMES NEW ATTORNEY
JORDAN WISWELL**



Jordan Wiswell
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Jordan Wiswell's legal practice focuses on all areas of real estate, business and banking litigation, including creditors' rights, equitable subrogation issues, judicial foreclosures, business and corporate disputes, insurance coverage and all real estate related litigation. Mr. Wiswell serves clients throughout Northern Colorado as part of CP2's business litigation team in the firm's Greeley, Colorado office.

Before joining CP2, Mr. Wiswell had the privilege of serving as the Honorable Judge Todd Taylor's law clerk in Weld County. Prior to moving to Fort Collins, Colorado, he worked as a law clerk for the Connecticut Superior Court and Alaska Superior Court. In these positions, Mr. Wiswell had the opportunity to work on multi-million dollar oil and gas disputes, complex real estate litigation and a large variety of breach of contract cases.

**CP2 WELCOMES NEW PARALEGAL
MICHELLE DESCHENES**



Michelle Deschenes
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Ms. Deschenes is a paralegal in the firm's Greeley office supporting the firm's litigation team.

Before moving to Colorado from Findlay, Ohio, Ms. Deschenes provided litigation and trial support in a variety of areas. Her current focus with CP2 is on intellectual property and employment law.

PARENTS LENDING TO CHILDREN FOR REAL ESTATE PURCHASES



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Good Old Mom and Dad

Frequently, situations arise where parents want to loan a child money to purchase real estate. For example, a child wants to buy their first home and does not have the credit history or income to qualify for a loan. Or, a child can qualify for a conventional first loan for 80% of the property value, but the child needs money for

the down payment, so the parents want to make a loan secured by a second lien against the property to fund the down payment. Or, in other situation, mom and dad have cash that isn't making money in a savings account and would be content to receive a fixed return of five percent on a mortgage to their child.

Current Law

Current Colorado law does not permit parents to make a loan to a child that will be secured by the child's residence without either: (i) the parent having a Colorado mortgage loan origination license, or (ii) working through a licensed Colorado mortgage loan originator. As currently written, Colorado law says that any person who "offers or negotiates terms of a residential mortgage loan" is considered a "mortgage loan originator." C.R.S. § 12-61-902(6)(a)(II). There is no requirement in the statute that the person making or negotiating the loan receive any compensation for doing so. Anyone who is considered a "mortgage loan originator" must have a mortgage loan origination license or make the loan through someone who has their license, unless an exemption applies. C.R.S. § 12-61-903(1) (a). As things stand today, there is no exemption that allows parents to make loans to their children to purchase a home.

Changes Coming

Earlier this year, the Colorado legislature introduced House Bill 16-1306, which will modify the State's mortgage loan originator laws, primarily to ensure that Colorado's laws more closely track applicable federal laws. As part of the bill, language was added to exempt parents from needing to involve a licensed mortgage loan originator to assist with a residential loan to their child. Specifically, the bill says that with respect to residential mortgage loans, a mortgage loan origination license is not needed by "[a] parent who acts as a loan originator in providing loan financing to their child." C.R.S. § 12-61-904(1) (b) (II).

Governor Hickenlooper signed the bill into law on April 21, 2016, and it will become effective on August 10, 2016. (Note that this licensure exemption is narrow and only applies to parents who wish to make a loan to their child to purchase residential real estate, where the loan will be secured by the property. It does not apply to any intra-family loans or other private lending scenarios.)

Conclusion

Beginning in August 2016, parents will be permitted to make loans to their children to purchase a home in Colorado and secure the loan against the property without being or involving a licensed mortgage loan originator. This exemption is similar to the exemption that already exists under Colorado law for seller financiers who act as the lender in seller carry-back situations.

If you are considering making a loan to your child to buy a property in Colorado, you should consult with an experienced residential real estate attorney before your child makes an offer on the home.

GREELEY TRIBUNE 20-UNDER-40 WINNERS



Edwin S. Chapin
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Edwin S. Chapin has been serving clients in Colorado since 2011 and works out of CP2's Greeley office. Mr. Chapin's legal practice focuses on business and real estate matters including: commercial transactions, land development, land use planning & zoning law, business contract reviews, oil and gas issues and commercial leasing.

Robert Herrera has been serving clients in Colorado since 2006 and also works out of the firm's Greeley office. His legal practice focuses on all areas of complex civil litigation in Federal District Court for the District of Colorado including: ERISA, Fair Labor Standards Act and violation of federal employment law. His state court practice focuses on business litigation, breach of contract or warranty, wrongful termination, real estate, property disputes and homeowner association matters.



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SUPER LAWYERS MAGAZINE HONORS FIVE ATTORNEYS FROM CP2!

The 2016 Super Lawyers and Rising Stars' lists are credible, comprehensive and diverse honors reserved for lawyers who exhibit excellence in their practice. No more than 5 percent of lawyers in the state are selected as Super Lawyers and no more than 2.5 percent are selected as Rising Stars. The selections are made using a statewide survey, an independent research evaluation and peer reviews.

2016 COLORADO RISING STARS'



Michael C. Payne
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This is Mr. Payne's third recognition for his high-caliber service in creditor & debtor rights.

Mr. Bartlett was selected for his outstanding performance in business and corporate law.



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2016 COLORADO SUPER LAWYERS



G. Brent Coan
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This is Mr. Coan's second year in row to be selected for his work in business and corporate law.

Mr. Carpenter has been selected every year since 2006 for his work in business & real estate law.



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Mr. Klatskin has also been selected every year since 2006 for business & real estate law.



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