

## CREC-approved contracts: Syncing up objection rights

This is the 17th in a series of 18 articles that come from years of experience using the Colorado Real Estate Commission-approved contracts for purchase and sale of real estate for commercial real estate transactions. Previous articles addressed the buyer's name, the seller, the property, water rights, ordering the title commitment, owner's extended coverage, making title objections, off-record matters, special taxing districts, ordering and reviewing the new improvement location certificate or new survey, owners' associations, rights of first refusal, contract approval, the §13 trap and the deed.

The contract allows the seller and the buyer to set the record title objection deadline, the off-record title objection deadline, the association documents objection deadline and the new ILC or new survey objection deadline. All of these deadlines have been discussed in previous articles. The contract also provides for deadlines relating to 1) loan and credit in §4.5, §4.6, §4.7 and §5; 2) the appraisal in §6; 3) the property inspection, insurability and due diligence documents in §10 and 4) tenant estoppel statements in §11. All of these deadlines can lead to a process whereby the relevant matter is objected to and the matter is waived or resolved, or by which the buyer terminates the contract and receives the return of its earnest money.

**Tip:** The buyer should choose the various objection and resolution dates in the contract very carefully to allow the buyer time to obtain all the information the buyer needs to make objections in a coordinated and not piecemeal fashion. Often, brokers draft the contract and choose dates that, in their estimation, provide a reasonable time for each item. **Tip:** The deadlines in the contract should be chosen, however, so they allow for a coordinated due diligence process. I call this "syncing" the deadlines. Keep the following principles in



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

mind: The record title objection deadline, the off-record title objection deadline, the association documents objection deadline and the new ILC or new survey objection deadline should be the same. Since the new survey is likely to be the item that takes the longest to produce (a new ILC is not likely to cause the same problem), the new ILC or new survey deadline (the deadline for the buyer's receiving the new survey) usually drives these other objection deadlines. **Tip:** The new ILC or new survey objection deadline should be chosen to give sufficient time to obtain and review the new survey, the title documents, the association documents and the off-record matters together, as well as to conduct due diligence on any applicable special taxing districts as contemplated in §8.5, any right of first refusal or contract approval requirement as contemplated in §8.5, any severed mineral rights as contemplated in §8.7.1, any water rights as contemplated in §8.3 and any tenant estoppel statements as contemplated in §11.

The impetus for syncing the objection deadlines is simply that it is not possible to do an adequate review of the title documents without the benefit of the new survey. Nor can the new survey be reviewed meaningfully without the benefit of the title documents. Similarly, off-record matters often cannot be properly evaluated without the new survey, as the new survey often will show the evidence of, and perhaps reveal new, off-record matters, such as third-party implied or prescriptive easement rights, boundary discrepancies and encroachments.

Similarly, the association documents should be reviewed with the benefit of a title commitment in hand, as the title commitment usually will show or reveal some of the association documents and it is important to confirm that what the buyer has received from the seller or the association, at the least, includes all of the recorded association documents. The same might be said of the tenant estoppel statements.

The contract automatically terminates without a resolution acceptable to the seller as to objections made by the buyer with respect to the title documents, the association documents, the new ILC or the new survey and the off-record matters. **Tip:** The respective resolution deadlines should provide enough time for the seller to meaningfully consider the buyer's objections and for the buyer and seller to negotiate a resolution. Brokers often leave too little time for a resolution.

It is not as important that the inspection objection deadline and the due diligence documents objection deadline be the same as the record title objection deadline, the off-record title objection deadline, the association documents objection deadline and the new ILC or new survey objection deadline. Although there may be a connection or overlap between the title and survey review and the property inspection and due diligence (in which case syncing up the objection and resolution dates may make sense), in general, the types of due diligence conducted under the inspection and due diligence provisions of the contract differ from those under the title and survey provisions. Nonetheless, in choosing the record title objection deadline, the off-record title objection deadline, the association documents objection deadline and the new ILC or new survey objection deadline, the buyer and the seller should take into account each of the other deadlines in the contract.

A seller should not object if the buyer asks for a title objection deadline (and the other objection deadlines that are synced up with it) that is earlier than the inspection objection deadline, the due diligence documents objection deadline and perhaps some of the other deadlines. The inspection and due diligence provisions give the buyer a very broad termination right. The ability to terminate the contract on account of title and survey matters hardly expands the buyer's right to terminate the contract beyond the termination rights under the inspection and due diligence provisions of the contract. The more difficult "ask" is for a record title objection deadline, off-record title objection deadline, association documents objection deadline or new ILC or new survey objection deadline that is later than the inspection objection deadline or the due diligence documents objection deadline and all the other deadlines. To the extent the seller wants to know sooner rather than later that it has a firm contract, the seller extends the buyer's right to terminate the contract when the record title objection deadline, the off-record title objection deadline, the association documents objection deadline or the new ILC or new survey objection deadline is later than the inspection objection deadline, the due diligence documents objection deadline and all the other deadlines. For the buyer, however, these later deadlines are important whenever it takes longer to obtain the new survey than it does to conduct the physical inspection of the property and close up the due diligence, financing, appraisal, insurability and other contingencies in the contract.

In the next article, we will look at how the various deadlines play out for a buyer who wants to terminate the contract when some, but not all, of the objection deadlines have passed.▲