

## WAGON WHEEL TITLE'S REALTOR QUICK GUIDE

Realtors, as part of our mission to make you look like the STARS that you are to your clients, we are providing you with a Quick Guide to title. Once Wagon Wheel is engaged in a real estate transaction, we immediately begin reaching out to your clients for various pieces of information. In a recent survey of Realtors, it was often mentioned that you would like to have more information so that you can get ahead of what might be needed by advising your client. We listened to your feedback and are hoping this Quick Guide will help you be knowledgeable and indispensable to your client, as well as to help the transaction run a smoother course.

### WIRE FRAUD

Wire fraud is one of the biggest threats in real estate transactions today, and we want to help protect you and your clients. Criminals are constantly attempting to intercept wire transfers by posing as legitimate parties in the transaction.

To keep your clients safe, remind them of these key points:

- **Always verify wire instructions** by calling our office using a known phone number—never trust emailed wire instructions without verification.
- **Wagon Wheel will never change wire instructions via email.** If your client receives an email requesting a change, it is likely fraud.
- **Encourage caution.** Clients should double-check account numbers and confirm details before sending funds.

If you or your clients have **any doubts about wire instructions**, call us immediately. A few extra minutes of verification could prevent a devastating loss.

### VESTING

If you are representing the buyer, Wagon Wheel will need to know how your buyers would like title vested; or, in other words, way the buyers want to hold title to the property being purchased. In part, this vesting will depend on the *marital status* of the buyer.

- If your buyers are **married** to each other, Wagon Wheel will need both buyer names and whether they will be both be listed on title. If both will be vested in title, the default method of taking title will be as **tenants by the entirety**. This is the legal form of property ownership which means that each spouse

holds an interest in the entire property, rather than in undivided parts, and that upon the death of one spouse, the survivor continues to own the whole property. For example, Aaron is married to Betsy. Aaron dies and Betsy owns the property in whole and can immediately sell the property without having to go through probate. This can be changed to **tenants in common** (see below), however, it would need to be explicitly stated.

- If two or more buyers are purchasing a property and they are **not married** to each other, they have the option to take title as **joint tenants with rights of survivorship** or **tenants in common**:
  - o **joint tenants with rights of survivorship** – This form of ownership is essentially the same as **tenants by the entirety**; the difference being that the buyers are not married to each other.
  - o **tenants in common** – In this form of property ownership, each party may have a specified percentage interest (note: this cannot be done in the other 2 forms of ownership) and share a common interest and right to use the property as to the whole. Each owner of the property has the right to sell, lease, or bequeath their divided interest in the property to their legal heirs. Owners vested as tenants in common **do not** have rights of survivorship, and this form of ownership requires the property to pass through probate before a sale can happen upon the death of one of the buyers.
- If your Buyers have any questions about which option to choose, Wagon Wheel is more than happy to have one of our attorneys discuss it with them! And, if your buyers have a more complicated situation than the ones above, the important thing for you to know is that there needs to be a discussion between the buyers and Wagon Wheel to determine the way in which they want title vested.

## ESTATE

If you are selling a property for a client and one of the sellers is deceased, there are several items of information that Wagon Wheel will need to close the transaction. If your client has notice of this at the time you have the listing agreement signed, your client has a longer runway of time to procure this information which is sometimes time consuming to obtain. Also, if possible, let Wagon Wheel know that a seller is deceased when you send the contract to us; the sooner we have knowledge that a

seller is deceased, the sooner we can start working on the things that we will need to be able to legally close.

Of note, if a seller is deceased, your sellers will need to gather the following documents on behalf of the deceased seller:

- the social security number of the deceased;
- the death certificate for the deceased;
- the deceased's will, if any;
  - o if the will has been probated, any probate court documents, including Letters of Administration;
- the name and contact information for the estate attorney for the deceased; and
- if the deceased did not have a will, Wagon Wheel will need to be connected with a family member who will not benefit from the sale (ex: aunt or uncle), a long-time neighbor or a family friend who is willing to sign an affidavit stating that they knew personally knew the deceased person and know who the legal heirs of the deceased (i.e., that they know the immediate family tree of the deceased).

## **DIVORCE**

If you are representing the seller who is going through a divorce currently or who recently went through a divorce, Wagon Wheel will need to know this information and will need to obtain certain documents related to that divorce. Among the information and documents we will need are:

- where the seller is in the divorce (i.e., no final divorce decree has been issued to date, the final divorce decree was ordered by the court more than 30 days prior or less than 30 days prior);
- a Final Divorce Decree, if ordered; and
- a Marital Dissolution Agreement if executed.

These documents will most often address how the subject property is to be treated at closing, or rather how the proceeds from the subject property are to be treated. Also of note is that one spouse may need to execute a Quitclaim Deed prior to the closing or at the closing pursuant to the Final Divorce Decree or Marital Dissolution Agreement.

## **BUSINESS ENTITY**

Often times buyers will want to purchase in the name of an entity, or your seller will be an entity. When that happens, Wagon Wheel will need different documents and information depending on the type of entity involved. These are the documents that Wagon Wheel will need by entity:

- **Limited Liability Companies (LLCs):**

- Certificate of Existence from the Secretary of State where the LLC was formed;
- Operating Agreement, if any, and all amendments thereto;
- name, email and phone number for each LLC member; and
- the LLC's Federal Employer ID Number (FEIN)

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- Additionally, the LLC members may need to sign a LLC certification or resolution authorizing the transaction prior to closing to confirm there are no amendments or modifications to the Operating Agreement that was provided.

- **Corporations:**

- Certificate of Existence issued from the Secretary of State where the corporation was formed;
  - corporate bylaws and all amendments thereto;
  - resolution of the corporation authorizing the proposed purchase or sale;
  - name, email and phone number for each shareholder or authorized signer; and
  - the corporation's FEIN.
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- Additionally, should the necessary resolution not exist, the shareholders of the corporation may need to sign a resolution authorizing the transaction and confirming there are no amendments or modifications to the corporate bylaws.

- *Partnerships:*

- Partnership Agreement, if any, and all amendments thereto;
  - name, email and phone number for each partner; and
  - social security number for each partner for tax reporting purposes.
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- Additionally, the partners of the partnership may need to sign a resolution authorizing the transaction and confirming there are no amendments or modifications to the Partnership Agreement provided.

Wagon Wheel does have an attorney team available to help your buyer create a buying entity, if needed.

Additionally, prior to closing, the buyer or seller will want to make sure the subject entity is in good standing with the Secretary of State where the entity was formed. Often times there are taxes that have not been paid or a similar administrative issue that can delay closing if not addressed early in the process.

## **IDENTIFICATION**

Everyone signing at closing will need to supply two forms of identification. These forms of identification can be brought to closing, or sent to Wagon Wheel in advance of closing.

1. Identification #1 needs to be a photo ID (e.g., a driver's license or passport); and
2. Identification #2 can be any other form of ID with the signatory's name on it (e.g., a social security card, Costco card, AAA card, zoo membership card).

**\*\*Please note that we cannot accept credit cards or debit cards as a form of identification.**

## **SELLER IS NOT A U.S. CITIZEN**

If you are representing the seller, and they are not a U.S. citizen, let Wagon Wheel know. Not being a citizen will not prevent the seller from closing; however, there are some added steps that will need to be taken in order to comply with federal tax law.

Additionally, if you are representing the buyer, and you find out the seller is not a U.S. citizen, please let Wagon Wheel know this, as well. Federal law imposes hefty fines on **buyers** for not withholding a certain amount of taxes from the **seller** at the point of purchase. In other words, even if your buyer is a U.S. citizen, it is the buyer who will receive the fine for not reporting that the seller is not a U.S. citizen. We can help prevent those fines so let us know as soon as you find out.