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## Professional Services

### Claim proceeds assignment important in purchase contracts

Commercial property transactions come in many forms, with a variety of parties, each with unique goals and objectives. As a result, the appropriate due diligence for each individual transaction will vary widely. However, one due diligence goal for all prospective buyers of real estate is to make an accurate determination of a property's condition and the expected future maintenance expenses. As an insurance claim and roof consulting firm that works largely with commercial building owners, we frequently are called upon to evaluate buildings that are targeted for acquisition by our real estate investment clients.

As we discussed in last month's edition of Colorado Real Estate Journal, an astonishing amount of damage caused by weather-related events goes unidentified year over year. This is primarily due to the challenges that come with accurately identifying and quantifying weather-related damage. It is very important for prospective buyers of property in Colorado to be aware that significant damage may exist to buildings that could go unidentified by your average professional.



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In our experience, there are countless real estate transactions every year during which a building purchased was subjected to a severe weather event and sustained significant damage that goes unidentified during due diligence inspections by general building inspectors. In many cases, the discovery of this damage comes long after the close of the transaction, eliminating any remedy for the new owner of the building. When damage such as this goes unidentified, a new building owner is subject to the out-of-pocket repair expenses; expenses that were unlikely to have been accounted for in the buyer's financial performance evaluation of the asset.

Despite all of this, one provision I frequently see missing from real estate purchase contracts is a general provision assigning the rights of insurance claim proceeds to a potential buyer in the event

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that damage caused by a covered peril is discovered via due diligence processes. Having a contract provision that ensures the buyer of the property can recover for damage caused by a covered peril is a critical and necessary reality in the Denver metro real estate market. Colorado is one of the leading states for hail and wind damage annually, for both number of events and total annual loss. This type of damage can be very difficult to accurately identify and quantify for anyone other than highly trained forensic specialists. Combine these factors with the very active Denver metro real estate market, and you have a high likelihood of purchasing a building with damage that can result in a significant financial perfor-

mance complication.

In these instances, a contract provision that assigns insurance claim proceeds can be beneficial to both the buyer and seller. For the buyers, they can buy a damaged building, recover the money needed to repair the damage from the seller's insurance carrier, and make the necessary repairs to the property. Comparatively, the seller benefits by not losing the sale of a property or being subjected to the complications and extensive delays that would come with recovering the money from his insurance carrier and then fixing the damage himself prior to the sale of the property. Obviously, the latter process comes with extensive delays for the seller.

Many of our firm's clients

have implemented standard provisions within their purchase contracts requiring the seller of the building to assign the rights to claim proceeds in the event this type of covered damage is identified during a due diligence inspection. In these situations, deploying capable experts who can identify and then quantify the extent of the damage and associated repairs allows for a real estate transaction to move forward and the property to change hands without exposing the new owner to the unplanned and significant expense of repairing damage that would have otherwise been a covered loss.

While the enforceability of such provisions may vary from state to state and insurance policy to insurance policy, it has been my experience in Colorado that an individual claim and its proceeds are assignable, even though most insurance policies prohibit the assignment of an insurance policy as a whole. It is important for all readers to consult appropriate legal counsel regarding the enforceability and implementation of such a contract provision and its impact on each individual transaction.▲