

**Plaintiff Name – What it Means - Why it has to be Correct - How to make sure it is in order.**

The Plaintiff is the party who files the lawsuit. When a Landlord evicts a tenant (resident), the Landlord is the Plaintiff. If we file a case on your behalf, and the Plaintiff is not correct, your case is subject to dismissal and the court may award costs and attorneys' fees AGAINST YOU.

When you first become a firm client or there is a community management change, we ask you who should be the Plaintiff in your eviction cases. There are only two choices. Eviction suits can name the management company as Plaintiff, or the Owner as Plaintiff.

We strongly recommend filing in the name of the Owner.

If you file in the name of the management company (i.e. the management company is the Plaintiff), you have to meet two requirements. One, the Owner has to give you the right to sue in the Property Management Agreement ("PMA"). Two, if you are challenged by the person(s) being evicted that you don't have the right to sue on behalf of the Owner, you have to be able to produce the PMA evidencing this right.

Again, for multiple reasons, we strongly recommend that you file lawsuits in the name of the Owner. First, the Landlord / Owner of the community is almost always listed as either Landlord or Owner in the lease. Filing in the name of the Owner immediately eliminates any confusion. Second, making the Owner the Plaintiff also makes sure that tenant counterclaims are brought against the community.

**Requirements for Owner to be Plaintiff (to sue in the name of the Owner).**

1. The Lease Has to List the Owner's (Landlord's) EXACT name as registered with the Colorado Secretary of State.

Close doesn't count. You must list the exact name. You can't list a non-existent owner. Unless you have made it error proof leasing agents, especially new ones, may still put the wrong name for the Owner (the Landlord) into a lease. For example, you're managing ABC Apartments. ABC Apartments is owned by ABC Apartment Holding Company IV, LLC. Instead of inserting the correct legal name into the lease, onsite staff inserts the community name into the lease. Alternatively, the lease lists just part of the name. Instead of ABC Apartment Holding Company IV, LLC, the lease lists ABC Apartment, LLC.

**AND**

2. The Owner Legal Entity Has to Be Registered with the Colorado Secretary of State.

Assuming you get the Owner's legal entity name right in the lease, this Owner must also be legally registered and licensed to do business in Colorado. Many multi-family communities are owned by out-of-state legal entities. Non-Colorado companies are known as foreign entities. A foreign entity that has not registered to do business in Colorado has no right to use Colorado courts. Thus, even if the correct ownership entity (ABC Apartment Holding Company IV, LLC) is the Plaintiff in the eviction case, if the tenant raises the issue and the entity is not registered with the Colorado Secretary of State the case will be dismissed. Trade names are OK, but only if they are registered with the Colorado Secretary of State.

Using our example of ABC Apartment Holding Company IV, LLC, it is OK to list the Owner in the lease as ABC Apartments, *but if and only if a trade name has been filed with the Colorado Secretary of State*. When you check to see if your owners are registered in Colorado, you should also check to see if they have filed a trade name for the Owner name. For strategic or marketing reasons, many businesses legally operate under a different name. For example, Apple Computer, Inc. was always just known as Apple. Apple was the trade name for Apple Computer, Inc., and was so well known that Apple Computer, Inc. eventually became just Apple, Inc. A trade name is usually a shorter, simpler, and more appealing name for a business to be known as to the public. Trade names make a lot of sense in the rental industry because an apartment community is always publicly known by the community name, and not by legal entity name of the owner. Residents don't look for apartments at the ABC Apartment Holding Company IV, LLC community. Residents look for apartments at the ABC Apartments. Because filing a trade name for the owner name will solve the non-existent owner issue and avoid resident confusion, all apartment community ownership entities should file a trade name reflecting that the Owner does business in the name of the community. Of course, the Owner has to be legally registered before it can file a trade name. Your management agreement should identify all Owner trade names, and make the Owner responsible for filing any applicable trade names with the Colorado Secretary of State.