

WHAT IS IN A NAME? A LOT MORE THAN PEOPLE REALIZE

We have written about the importance of filing cases in the correct party name. It seems like a simple concept, file the case in the name of the property, but there is more to it, and not filing in the correct name can carry serious consequences. A simple inadvertent error can lead to a very large expense and loss of time. The best way to illustrate this is a fictional situation inspired by true events. Be advised the names have been altered to protect the innocent.

LET US MEET OUR CAST OF CHARACTERS:

The Apartment Community is Blackacre Square Apartments. Blackacre Square Apartments is a relatively new community. They have been operating for 2 years.

The Ownership is an entity Ownership, LLC

The Management Company, LLC manages lots of apartments and is commonly referred to as MC on their signs and branding.

The Tenants, Abbey & Ben

Now that the stage is set and the players identified we can share with you the costly convoluted drama of the Owner, the Management Company, the Tenant and “**THE NAME.**”

The Landlord is listed on the lease in the name of the owner’s entity Ownership, LLC. Ownership, LLC is an entity that is licensed to do business in Colorado. Blackacre Square Apartments is managed by Management Company, LLC. Management Company, LLC manages lots of apartments and is commonly referred to as MC on their signs and branding. Management Company, LLC merged with Old Management Company, LLC about a year ago. Old Management Company was the original manager of Blackacre Square Apartments. Tenants routinely make their checks out to Blackacre Square or Blackacre Square Apartments. The tenant’s Abbey and Ben, are behind on their rent.

The case starts off with a demand for payment or possession given by Management Company. The manager signs and serves the demand. The community name on the demand is listed as Blackacre.

The tenants fail to pay rent after the demand has expired. Management Company proceeds to send off the expired demand to their law firm. The Management Company files their eviction cases under the abbreviation MC.

Abbey and Ben file an answer to the Court claiming that they do not know who MC is because MC is not on their lease agreement. Their lease agreement is with Old Management Company, and Abbey and Ben counterclaim for a million dollars for a claim of damages. The details of the damages are not important. The important aspect is that a counterclaim above \$15,000 is beyond

the jurisdiction of the County Court. The counterclaim results in the case being transferred from County Court to District Court resulting in a delay. The hearing is set promptly, but the District Court deals with a variety of cases both criminal and civil, and while evictions are set on a fast track, that fast track in District Court is not as fast as it is in County Court.

The District Court sets this matter for a possession hearing. Abbey and Ben prior to the possession hearing do some research on the Secretary of State's website, and discover that Blackacre Square Apartments and Blackacre Square are not registered tradenames. And, neither is the Management Company's nickname MC. Abbey and Ben decide to go ahead and register the tradenames of Blackacre Square Apartments, Blackacre Square and MC into their names personally. Abbey and Ben raise the issue at the possession hearing that the case is not filed in the correct name, because Abbey and Ben are the legally registered owners of the tradename MC as well as Blackacre Square and Blackacre Square Apartments. Despite, the obvious trickery of the tenants, Abbey and Ben, the Court continues the possession hearing to give the parties an opportunity to amend their pleadings.

The case is amended into the name of the ownership on the lease agreement, Ownership, LLC. The Court at the next possession hearing, considers the motion to amend and allows the change of the name from MC to Ownership, LLC. The Court continues the case one more time to allow Abbey and Ben to get an attorney and reconsider their position with the current case in the Ownership's name.

Prior to the hearing, Abbey and Ben attempt to get the case dismissed based on the name of the parties and they try to get money for sanctions against the Ownership entity. Ownership, responds to the motions and the Court takes them under consideration at the possession hearing. After hearing arguments, the hearing is allowed to proceed, but only after Abbey and Ben file additional motions to try and delay the possession hearing based on the name change. And, so the soap opera continues!

While you never can predict what will happen in Court, an issue with the name of the Plaintiff can create delays and additional costs. What started off as a straightforward rent demand case, ended up being an extended case of litigation, resulting in delays, and additional costs. While in the above case, the tenants were likely to use or manufacture anything they could to create a delay, it is a good reminder of what could happen if a name is not registered with the State and should serve as a cautionary tale to be taken seriously.

Given the issues raised by Abbey and Ben in their counterclaim, it is clear that regardless of the name issue this dispute would have resulted in prolonged litigation. It is an important reminder to avoid giving the opposing side any argument that you can easily take away. So make sure that you are filing cases in the proper name, and that the entity is registered to do business in the State of Colorado, and that the Landlord has the authority to act on behalf of that entity. ***Or, the next "Name Issue" soap opera at THS could feature you and your property in a starring role.***