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Will the REAL authority please stand up?

There used to be a game show on television (1959-1962) called *To Tell The Truth* in which a panel of four celebrities attempted to correctly identify a described contestant who had some unusual occupation or experience from a group of three possible candidates. At the end of the show, the host would ask, "Would the real _____ please stand up?" Sometimes closing an escrow with an entity as one of the principals is much like that old TV show. It is often difficult to determine exactly who is authorized to sign on behalf of the LLC, family trust or corporation because the principals themselves aren't certain.



Anytime you have an entity (as opposed to a natural person) involved in selling real property, your title department will require... prior to recording, please...a copy of the entity documents for review. In the case of a **limited liability company/partnership**, those documents will include a copy of the **Articles of Organization and the operating agreement**. If your seller is a **family trust**, Title will ask for a copy of the trust, or if the **trust paperwork** is too lengthy, at least those pages dealing with the trustees and their powers to sell, convey, encumber, etc. A **corporation** should provide you with a copy of the **notarized corporate resolution** chronicling the meeting in which the officers of the corporation agreed to sell the property and appointed someone to sign the paperwork.

We often find when dealing with smaller entities such as single purpose LLC's or family trusts, that the principals themselves are unaware of the limitations of their own governing documents. They



don't understand that they cannot just grant someone Power of Attorney to sign on their behalf unless the entity's documents provide authorization for such a transfer of power. Where they generally run into trouble is when the authorized signor for an entity is not available to sign documents for some reason.



Take for instance my recent escrow in which a family trust was selling real property and the trustee wound up in the hospital. The trustee's son obtained a general power of attorney from his father, signed the sale contract and put the property into escrow. Since the signature on the contract was illegible (*as they often are*), I had no idea the contract had not been signed the trustee himself until I received a phone call from the son over a week later. After he had explained the situation



and sent me a copy of his father's trust, I quickly ascertained that it did not contain the necessary language that would allow for a power of attorney. I then had the task of explaining to the son that he was not authorized to sign anything on behalf of the trust and therefore could not sell the property. However, the trust did allow for a doctor's note to confirm the trustee was temporarily incapacitated so that a successor trustee could step forward; but



the successor trustee named was the trustee's wife and not his son, so at this point we didn't even have a valid contract. To make matters worse, the wife decided that she didn't want to sell the property and refused to sign the contract. The listing agent now had a real problem on his hands dealing with angry buyers and agents on a property that was not actually for sale. And this is only one example of how an issue can arise when you just assume the person signing the document(s) has the authority to do so.



If the selling entity is a corporation or limited liability company formed in Arizona, some of the required information is available on the Arizona Corporation Commission website. However, unless the limited liability company is a single member LLC, you will still need to secure a copy of the operating or management agreement that tells (a) who the members are, and (b) who is responsible for signing the closing documents. There have been successful lawsuits in the past over the fact that real property was sold by an entity that never provided the proper documentation and the title company negligently allowed the wrong person to sign on behalf of said company.

Given the rise in the number of limited liability companies being used by investors, this issue has the potential of becoming a problem for our industry. We can no longer take it for granted that we are dealing with savvy and sophisticated business individuals when we have an entity involved in a transaction. Many of today's investors are brand new to real estate and may not be all that familiar with what is required in order to complete a transaction. You would not think of buying or selling real estate without thoroughly reading the purchase contract, nor would you just assume that the person on the other end of the transaction has **your** best interests at heart. In a similar vein, think of the governing documents of an entity as a contract for and between the members in that LLC, trust or corporation. Those documents contain the instructions you need in order to properly handle the affairs of that entity. Now that our market is cooling down, don't allow your thirst for more business to lull you into turning a blind eye to such details just to "get the deal XXX". Slow down and make certain you are dealing with the correct individuals and/or principals in your

transaction, or you may end up with egg on your face and a loss for your company.



Remember, ASEA provides classes designed to keep you better informed and up to date on any changes happening in our industry. Please check our website at www.azsea.org often for upcoming classes and information. We are confident that you'll find something that will pique your interest and if you don't, please contact us at info@azsea.org to request a class on a particular topic.



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