

Representing an Entity...

What is the Documentation?

If an agent believes he is going to work with an entity, it is important to get proof of the representative's authorization before beginning to work with that representative, but definitely before entering into an agreement with that representative. If an agent represents an entity such as an LLC thinking that the representative she has been working with is the authorized manager and they execute a listing agreement, there may be no enforceable agreement if the person is in fact not authorized to bind or sign on behalf of the LLC. A more difficult situation is when a person signs a purchase agreement on behalf of an entity and then cannot complete the sale because the entity is not willing to sell the property since the person who signed did not have the authority to sign the purchase agreement.

In order to avoid these and other similar problems, the following documents should be requested to confirm that the person signing the contract/listing agreement is the person authorized to do so:

Limited Liability Company (LLC) – Operating Agreement or a Certificate of Members (or Managers) designating the member (or manager) authorized to conduct business on behalf of the LLC.

Corporation – Certificate of Directors (or Secretary's Certificate) designating the officer that is authorized to conduct business on behalf of the corporation.

Partnership – Partnership Agreement designating either the managing partner or the general partner and a certificate of partners authorizing the transaction.

Trust – Trustee's Certificate stating who the current trustee is and listing out the powers of the trustee (which should include the purchase/sale of real property).

Estate – Letters Testamentary or Letters of Administration stating who the executor is and is the probate court's authorization regarding the estate.

The title company will also require an entity's documents to complete the transaction. The following documents are often set forth on a title report as required by the title company (but check the Preliminary Title Report or with your title officer for your particular transaction):

LLC – Articles of Organization, Operating Agreement (certified by the appropriate manager or member that it is the current copy), and a current list of the members if the company is member-managed.

Corporation – Certificate of good standing; Certificate of Directors designating the officer that is authorized to conduct business on behalf of the corporation; A copy of the corporate resolution authorizing a particular transaction, i.e., sell or borrow, specifying the property involved in that particular transaction.

Partnership – Certified copy of the partnership authority, Partnership Agreement (certified by the appropriate partner(s) that it is the current copy), satisfactory evidence of a consent of majority of interest of limited partners (if a limited partnership).

Trust – Excerpts from the trust instrument designating the trustee and the trustee's powers, Trustee's Certificate.

Estate – Evidence that final taxes and/or estate taxes have been paid for decedent/estate and an order by the probate court allowing the transaction (this could be accomplished through the Letters).

Since the title company will often need more than the agent needs to confirm the entity's authority, if an entity is unwilling to supply the agent with the documents, the entity can send them directly to the title company and the title company can confirm for the agent who is authorized to execute documents (e.g. listing agreement, purchase agreement) on behalf of the entity.

The key in representing an entity is to get the proper authorization before entering into an agreement with the entity! Please keep in mind that each deal is unique and while this provides a general outline of what we may need, please contact your Equity Title Sales Rep to discuss your specific transaction.



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