

TAKE JUDICIAL NOTICE

Power of Attorney from an Entity

January 25, 2012

The question that frequently arises is whether a Corporation or an LLC can use a power of attorney to convey property owned by the entity.

Prior to September 1, 2009, the question was answered in the affirmative. Reliance was placed on real Property Law Section 292-a, which was titled: "Conveyances by certain corporations executed and acknowledged by attorneys in fact entitled to recordation." This section of the law is still in effect. However, the new Section 5-1501 of the General Obligations law defines a principal under a statutory power of attorney as follows: "Principal means an individual who is eighteen years or older who executes a power of attorney."

Whether corporations or LLC's can use a form other than the statutory short form in reliance on RPL 292-a is not clear. What is clear is that such entities cannot use the statutory short form power of attorney. What is the solution, then, if no one from the entity is available to execute documents? In the case of a corporation it will be required that a corporate resolution be produced appointing an "authorized signatory," or making an individual who is available to execute documents, an officer of that corporation for that limited purpose. An LLC cannot use the statutory short form power for the exact same constraints found in 5-1501 of the General Obligations Law requiring a principal to be an individual.

Title insurance companies are advising that in the case of an LLC, the Operating Agreement be amended to specifically allow for the appointment of an authorized signatory, followed by a resolution making the specific appointment of the individual who can execute documents.

In summary the procedures are as follows:

Step One: Prepare the applicable standard resolution to convey or mortgage the property

Step Two: Prepare a second resolution by the entity appointing an Authorized Signatory. The name and title should be specifically set forth.

Signature Block: ABC Investment Corporation (LLC)
 a company incorporated under the laws
 of _____, duly authorized
 to do business in the State of New York

By: _____
Name: _____
Title: Authorized Signatory

The best course of action, if an essential party cannot attend a closing, is to have all the documents executed by the proper party prior to the closing.