

SIGNING AUTHORITY

DID YOU KNOW...

When closing real estate transactions for a corporation, guardianship, probate entity or trust, it can be a little confusing to determine who signs the documents at the closing table. But if you know the right answers in advance, your closing might be smoother and faster.

In Indiana, here's how First American Title examines these issues. There may be a few supporting documents to provide before we can provide title insurance to establish the legal right of representing parties to sign.

BUSINESS ENTITIES

Partnerships - Whether the entity is a general partnership or limited partnership, we need to review the partnership agreement before insuring the transaction. In this agreement, we will be looking for information that verifies the authority of the partners to bind the partnership to real estate transactions. Unless the agreement clearly states otherwise, our general rule is that all the general partners must sign any deed, deed of trust, and/or lease affecting partnership-owned property.

Limited Liability Companies (LLCs) - As with partnerships, the formation documents are key for us. We need to see the Articles of Organization and (if there is one) the Operating/Management Agreement of the LLC, so we can determine who can legally bind the LLC. As with partnerships, unless the agreements clearly state otherwise, all the members of the LLC must sign the transaction documents. We also will need an official document from the home state where the LLC was formed certifying that it was formed in accordance with state laws.

Corporations - For corporations, we also need proof of formation. In addition for each transaction, we need a resolution of the board of directors approving the transaction and stating who may sign on behalf of the corporation. The resolution should be signed by the corporation's secretary and bear the corporation's seal. Finally, for transactions involving the sale of all the corporation's assets, a resolution stating the approval of the shareholders also is required.

TRUSTS

When a trust or trustee is in title, we need to review the trust agreement to confirm the trustee's powers. We are sensitive to the privacy of our customers, who may be concerned about providing copies of trusts to us. Our customers can rest assured that our files are treated as confidential and will not be turned over to any other person without a subpoena or other court order.

An "Inter vivos trust" is made while living and a "Testamentary trust" is made through a will and is not valid until you die. A trustee must be 18 or older. Indiana law automatically gives a trustee the power to sell, buy, lease, and mortgage real estate unless the trust specifically prohibits doing one of those powers. This is very rare, but one of the reasons why we still ask for a copy of the trust to see if it prohibits a power.

A buyer is protected under Indiana law, which states we can assume a trustee has the power to do what they are doing unless we are told otherwise by someone. This is our protection if a copy of the trust cannot be produced.

A trust deed is like a special warranty deed and only warrants what the trustee may know. If a trust has two co-trustees, they both must sign the deed unless the trust specifically states that only one needs to sign. If a trust has three or more trustees, a majority of the trustees must sign the deed unless the trust states otherwise. If a trust has a successor trustee, the successor trustee has the same powers as the original trustee and can sign the

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deed if the original trustee is dead or has agreed to the signing in writing. If a trustee is in the title and has died, we will probably need to put language in the trustee's deed that this person has died and that the co-trustee is the surviving trustee, or that the successor trustee has replaced the deceased trustee.

We need to do this to transfer taxes. If only the name of trust is in title, we don't need to do the above.

A trustee can appoint a Power of Attorney "POA" under Indiana law but the most accepted practice is to have the trustee sign the POA and Trustee's Deed and then use the POA to sign the other closing documents.

GUARDIANSHIPS AND CONSERVATORSHIPS

When a guardian or conservator has been appointed to protect the rights of a person with a disability (called the "ward"), we need to review the Letters of Guardianship and/or Letters of Conservatorship. These "Letters" actually are a court order specifying the powers of the guardian and/or conservator. Generally speaking, guardians do not receive full control of the real estate assets of the ward whereas a conservator usually does.

If only a guardian has been appointed, both the guardian and the ward will need to sign unless there is a modification of those powers in the "Letters". If the appointment is of a conservator, only the conservator need sign on the ward's behalf.

PROBATE AND ESTATES

When a deceased person is in title, a probate proceeding must be initiated to establish who will inherit the property of the deceased.

A personal representative of the estate (commonly referred to as an executor or administrator) is appointed by the court to take control of the assets of the deceased. We will need to review the

order appointing the personal representative, usually called the "Letters Testamentary", to make sure the personal representative is authorized to perform the transaction we are being asked to insure. The following applies for these situations:

- In the situation of husband and wife as joint tenants where one spouse has passed away, survivorship language needs to be added to the deed. We only require the date of death; we do not require death certificates as we take people at their word.
- If the sellers were tenants in common, then the deceased's heirs own the property and not the other survivor. In this case, we will need an heirship affidavit and quit-claim deed from the heirs.
- With Life Estates: If the life estate tenant has died, then we need language in the deed establishing that person has passed away.
- If the life estate tenant is still alive, then we need a quit-claim deed executed from that person. If a property has a life estate, the lender will request the life tenant to deed their interest to the fee owner. The fee owner will then take out a mortgage. Then fee owner can then grant a new life estate to the life tenant.
- What about a Power of Attorney granted to someone who dies before closing? Keep in mind that a POA is no good for the deceased; it's only good while you're alive. A will replaces a POA when a person dies. Can a personal rep use a POA? In this situation, the attorney for the estate needs to be consulted.



QUESTIONS?

If you have a question that we have not answered here, please pick up the phone and give us a call. Nothing delights us more than hearing from you and having the opportunity to assist you with an efficient, professional transaction.



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