



Corporate Entities and Requirements for Closing

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In today's litigious society the practice of individuals holding title to real property in their own name is becoming the exception rather than the rule. To be sure, owner occupied residential properties are still mostly held of record by individuals, but in many cases the goal is to shield one's personal assets from liability which may arise out of one's ownership of real property. Indeed, the latest entity utilized to hold title to real property forthrightly incorporates in its very name this crucial asset, thus the name "limited liability company." From a title insurance perspective artificial entities selling, purchasing leasing or mortgaging real property create special underwriting considerations in order to provide good title to a purchaser or lender.

For a standard Business Corporation duly filed in New York State we require proof of filing of the name in Albany. We ask for proof of formation by requesting a copy of the filing receipt from the corporation, a copy of the Certificate of Incorporation, any amendments and its By-Laws, as well as a Good Standing Certificate from the Department of State in Albany. It is important that the above referenced documents be carefully scrutinized because an entity's Certificate of Incorporation may limit the general powers of a corporation granted by statutory provisions. It is also of utmost importance that one verifies that a corporation currently in title was actually legally formed **before** it acquired title to the subject premises.

Good Standing Certificates provide the information as to when the Certificate of Incorporation was filed in the State, and whether the corporation is an existing corporation in the State. We also check to make sure that the corporation has paid or filed returns for New York State franchise taxes (in all cases where property is held within New York State, and New York City general corporation taxes (only in the instance where a corporation holds property within the boroughs of New York City). Open franchise and business corporation taxes are unique in that they constitute liens on real property without any requirement that either New York State or the City of New York file a judgment.

At closing we require a Corporate Resolution to convey title or authorizing the mortgage on the premises. If the transaction constitutes the sale of all or substantially all of the assets of the corporation the board of directors must authorize the sale and the shareholders must approve the sale by vote.

For a Not-For-Profit corporation execution of the closing deed, lease or mortgage must be authorized by a vote of two-thirds of the entire Board of Trustees or Directors of the Corporation, or, if there are 21 or more trustees or directors by a vote of the majority of the entire board. If the Certificate of Incorporation or By-Laws require a greater number, then compliance therewith is required. (Not-For-Profit Corporation Law ("N-PCL"), Section 509).

For a Type A or D corporation, as defined in Section 201 of the N-PCL, if the proposed sale, lease or exchange or other disposition to be insured then we will required proof of compliance with Section 510 (a) (1) or (2) of the N-PCL which concerns the threshold requirements for the disposition of all or substantially all the assets of a corporation. If the proposed sale, lease or exchange or other disposition to be insured is a Type B or C corporation, as defined in Section 201 of the N-PCL, compliance with Section 510 of (a) (1) (2) and (3) of the N-PCL is required. In essence this means that leave of the Supreme Court is required in advance of the transfer.

In the case of a New York Religious Corporation, Religious Corporation Law Section 12 mandates that a conveyance, a lease for a term exceeding 5 years or a mortgage must be approved by an appropriate Order of the Supreme Court, prior to closing. This requirement does not apply to a purchase money mortgage executed by a Religious Corporation.

For a foreign corporation, (a corporation duly formed outside of New York State, but within the United States) its authority to convey, lease or mortgage the subject premises, under the laws of the state of incorporation must be submitted to the Company in advance of the closing. Similar requirements apply to alien corporations, that is to say, corporations formed outside the United States with respect to the laws of the nations under whose laws they are formed. In the case of foreign and alien corporations it is much more important to determine that they are in good standing in the state or nation of their incorporation than whether they are in good standing in New York State.

For a limited liability company (LLC) in a purchase, sale or refinance, proof is required of its formation and that it has not been dissolved. Proof is also required that there has been no change in the composition of the LLC. We require a copy of the Operating Agreement and any amendments thereto, to be delivered to us for review, which will set forth the name of the Managing Member who is authorized to sign any closing documents on behalf of the LLC. In addition it will give information as to its authority to acquire, convey, lease or mortgage the land. For LLCs formed in this state we require a Good Standing Certificate. If the LLC is a foreign limited liability company, we will require a Certificate of Good Standing from the state of formation.

General partnerships require the date of formation of the partnership and a copy of all of the partnership agreements to be produced. The names of all parties or persons interested as partners must be supplied along with proof that there has been no change in the composition of the partnership by either adding or dropping partners since its formation. We do this by affidavit. The names of the partners are run for federal tax liens and bankruptcy searches.

For limited partnerships we also ask for proof of its formation in accordance with the Partnership Law or if a foreign limited partnership in accordance with the laws of the jurisdiction of its origin and that it has not been dissolved. A copy of any amendment to the certificate of Limited Partnership must be submitted for review in advance of closing.

It should be noted that if you are involved in a closing where any of these entities are involved, this can be a checklist for you, your attorney or your client to have prepared prior to closing. In addition, submitting the above listed proofs prior to closing makes certain that you will have a more efficient closing for title purposes.