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To: Charter National Bank

From: Kraettli Q. Epperson

Date: July 11, 1995

Re: Execution of Real Property Documents By Private Corporations and Limited Liability Companies

I. INTRODUCTION

The procedures in Oklahoma for corporations and for limited liability companies ("LLC's") to follow for the execution of real property documents have changed recently. These procedures must be adhered to in order for the conveyances -- such as easements -- to be valid between the parties and to constitute constructive notice to third parties.

The old and the new procedures are discussed and contrasted below.

II. CORPORATIONS

A. Continuing Procedures

The unchanged and continuing rule is that private Corporations are required to put real property related contracts, deeds, mortgages, easements, and similar agreements into written form ("Real Property Documents"). (16 O.S. § 4)

It is also still the rule that private corporations are expected to execute Real Property Documents in accordance with their own Articles and Bylaws. Such Articles and Bylaws may contain language requiring the Corporate President or Vice President execute the Real Property Documents, and requiring the Corporate Secretary to affix the corporate seal and to sign his or her name to Attest (i.e., witness) the signing officer's signature. Until these Articles and Bylaws are changed, their procedures must be followed.

It is also a continuing practice that, whenever a party is about to accept the conveyance of a real property interest through a Real Property Document from a Corporation, the prospective grantee needs to undertake appropriate "due diligence" steps to protect itself. Usually these steps would include a review of the following:

1. A current certified copy of the corporate Articles and Bylaws,
2. A Corporate-Secretary-certified copy of the Board's Corporate Resolution authorizing the proposed transaction, and
3. A current Corporate-Secretary-certified statement of incumbency confirming the signing officer's present office.

In addition -- in both the past and the present -- the Real Property Document would need to be acknowledged, to make the document enforceable against the signing corporation, and against third parties (who would get notice through the filing of the document in the County Clerk's land records). (16 O.S. §§ 92 & 95)

B. Old Procedures

In the pre-1986 period, whenever the Corporate Secretary "sealed" and Attested a Real Property Document, there was a statutory rebuttal presumption (not conclusive) that the signing officer was the current President or Vice President and that this transaction was authorized by the Corporate Board of Directors. (18 O.S. § 1.242; now repealed)

In 1986 this statutory presumption was repealed as part of a major revision of the State's Corporate statutes. This creation of a presumption -- arising from the use of an Attest and Seal -- was not reenacted anywhere in the statutes in a different form or location. However, after 1986 the practice of requiring the use of an Attest and Seal on Real Property Documents continued. It remained mandatory because other un-repealed statutes still insisted on their use. (16 O.S. § 94)

As of September 1, 1994, the Oklahoma real property statute which required the use of an Attest and Seal (16 O.S. § 94), was repealed by an Act known as "House Bill 2783." The new process is discussed below.

C. New Procedures

Any new Real Property Documents, executed by a corporation on and after September 1, 1994, must still conform to the Corporation's own Articles and Bylaws. However, unless such Articles and Bylaws require the use of an Attest and Seal, such steps are no longer required by statute and, are, therefore, unnecessary.

Consequently, other than any due diligence steps taken by the prospective grantee (e.g., getting a Corporate Authorizing Resolution and Corporate Incumbency Certificate), all that the grantee needs to see on the "new" Real Property Document (i.e., executed post-September 1, 1994) is a signature on the document by the President, Vice President or the Board Chairman or Vice Chairman. Of course, you still need an acknowledgment.

The retroactive impact of this 1994 statutory change on earlier documents is uncertain; therefore, if you see a Real Property Document which was executed pre-September 1, 1994, which either omits an Attest or Seal, or relies on a Chairman's/Vice Chairman's signature, you still need to get a corrective instrument. This is the case even though the corrective instrument

(executed post-September 1, 1994) has the same apparent defect (i.e., omitting the Attest and Seal, or using a Chairman's/Vice Chairman's signature).

III. LIMITED LIABILITY COMPANIES

A. Conveyances To An LLC

The Limited Liability Company ("LLC") is a newly recognized form of business organization in Oklahoma. It was statutorily recognized for the first time as of September 1, 1992. (18 O.S. §§ 2000 et seq.)

An LLC is specifically described in the statute as an "unincorporated association". (18 O.S. § 2001(12))

Traditionally, before the passage of the LLC laws in 1992, in Oklahoma an "unincorporated association" could not hold title to real property in its own name. Under the new statutes an LLC is authorized to hold and convey title to real property. (18 O.S. §§ 2003(5))

When a Real Property Document is executed conveying real property to an LLC, the grantee that is shown on the face of the document should be the name of the LLC itself. This is the preferred procedure. By state statute the name of the LLC must be set forth in the Articles of Organization (18 O.S. § 2008(1)) and the name:

Shall contain either the words 'limited liability company' or 'limited company' or the abbreviations 'L.L.C.' or 'L.C.' The word 'limited' may be abbreviated as 'LTD.' and the word 'Company' may be abbreviated as 'CO.'

However, the Statute that establishes the LLC as a new entity in Oklahoma also impliedly allows either a "member" or a "manager" to receive title on behalf of the LLC. Such conveyance to a named individual as a "member" or as a "manager" should mention that such grantee is a "member" or a "manager" of an entity which is an LLC, and should (but does not have to) go on to list the name of the LLC. However, if the grantee is only shown as a person with a brief mention that such person is a "member" or a "manager" of an LLC, without specifically naming which LLC, such person holds title free of claims by the LLC and its members; in fact, where the specific LLC is unnamed, such individual's title is subject to the probate and homestead laws.

B. Conveyances From An LLC

On and after September 1, 1992, LLC's were recognized in Oklahoma as entities capable of holding and conveying title to real property. Therefore, so long as the earlier conveyance which put the LLC into title was executed after September 1, 1992, the LLC can convey or encumber whatever interest it received.

The procedure to follow to have an LLC convey an interest in real property, such as a deed, mortgage or an easement, includes both the "due diligence" steps taken leading up to the transaction and the execution procedures used to sign, acknowledge and record the operative document -- referred to herein as a Real Property Document.

While LLC's are intended to be private and/or secretive type entities, a prospective grantee under a deed, mortgage or an easement is entitled to receive reasonable assurances before disbursing funds to, or on behalf of, an LLC. The transactional due diligence steps will usually include -- in addition to your normal title examination -- a review of the recorded Articles of Organization to discover if there are any limitations on a member's or manager's authority. Such limitations may, for example, require the written consent of a majority of the members, if the transaction involves getting a loan over \$10,000.00 or involves the granting of an interest in real property (e.g., a mortgage). If such consent is required, you will need to see written proof of such majority agreement.

Many purchasers, lenders and title companies -- on a uniform basis -- ask for a copy of the LLC's internal Operating Agreement, and for a resolution signed by all of the LLC members disclosing and representing (1) who all the members are, (2) authorizing the transaction itself and (3) confirming the signing person's authority (as manager) to execute and deliver the needed documents. To maintain the LLC's members' privacy, these documents would be kept in the buyer's or lender's files and would not be placed in the public record.

In addition, there will need to be a land title records check done to see exactly how the grantee is listed on the conveyance into the LLC -- is it (1) in the LLC's name itself, (2) in the name of a member or manager as a member or manager of a specifically identified LLC, or (3) in the name of a member or manager as a member or manager of an unidentified LLC? In whatever form the title came in, it must go out the same way, using the old grantee as the new grantor.

If the title is held in the name of the LLC itself, the person signing the Real Property Documents must sign as a "manager", even if he or she is also a "member".

If the title is held in the name of "AB, a manager of the XYZ L.L.C.", or "AB, a member of the XYZ L.L.C.", it must go out as "AB, a manager of the XYZ L.L.C.". It cannot go out as "CD, a manager of the XYZ L.L.C." or as "AB, a member of the XYZ L.L.C.".

If the title is held in the name of "AB, a manager of an L.L.C.", or "AB, a member of an L.L.C.", it must go out as "AB, a manager of an L.L.C.". In addition, where the LLC is unidentified, the member's or manager's marital status will need to be disclosed on the face of the Real Property Document and the person's spouse will need to sign it.

There will not be an Attest or Seal on the new LLC document, but it will need to be acknowledged to be recordable.

IV. SAMPLE SIGNATURES

A. New Corporate Execution

If the Attest and Seal are not required by the Corporation's own Articles or Bylaws on a Real Property Document, the signature line will look like this:

The XYZ Corporation

By: _____ (signature)
_____ (typed name)
_____ (typed office)

B. New LLC Execution

The LLC would execute a Real Property Document in the following manner, matching whatever way the LLC came into title:

1. Title held by LLC:

The XYZ L.L.C.

By: _____ (signature)
_____ (typed name)
Manager

2. Title held by a Manager or a Member of a "named" LLC:

_____ (signature)
_____ (typed name)

as a Manager of the XYZ L.L.C.

3. Title held by a Manager or a Member of an "unidentified" LLC:

_____ (signature)
_____ (typed name)

as a Manager of an L.L.C.

and (his/her spouse),

_____ (signature)
_____ (typed name)