

Who Signs The Papers?

January 6, 2013

The following text, compliments of First American Title in Anchorage, aptly sums up the issues surrounding a “Non-Human” participant in a real estate transaction, and addresses a couple of questions recently received from readers concerning what will be required at closing by the Title Company:-

“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 says 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 the 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.

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: 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 (formerly 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. In situations where the deceased was a resident of another state, an “ancillary probate” proceeding must be initiated in Alaska to deal with property here.

In Alaska, there is only one exception to the rule requiring a probate. Here, the law presumes that when a legally married couple acquires title to real estate together, they do so as “tenants by the entirety”. This means that, if one spouse passes away (and the couple is still married at the time), the deceased spouse’s interest in the property passes to the surviving spouse without the need for probate. In those cases, we will need to see a copy of the death certificate of the deceased to record with any deed or deed of trust being signed by the surviving spouse only.”

First American Title is fairly typical of all Alaska title companies with regard to the aforementioned requirements, but they may vary slightly from company to company.

In any event, if you are “Non-Human” and buying or selling real estate you should make your inquiry early in the transaction as pinning down the correct documentation or persons can take time. Feel free to call First American Title at 907-561-1844, or your preferred title company, and they will gladly assist you in advance of your non-human transaction.

Dear Dave: We live in Anchorage but want to buy a property in Homer. Can we use our Anchorage Realtor?

Answer: Real Estate services can best be provided by ‘local’ Realtors, since knowledge of the immediate market is critical. When buying property remote from where you currently live, always seek the services of a Realtor knowledgeable in the area which you are considering.

Dear Dave: When moving into an older home on which you have just closed, is it reasonable to expect the seller to professionally clean the carpets?

Answer: It is reasonable to expect the carpets to be clean, and you should check this on your final-walk through before closing. After closing, it is difficult to force the seller to come back and clean. If you want carpets “professionally” cleaned, make sure it is spelled out in your contract to purchase.