

**TITLE TIPS**

**BUSINESS ENTITIES**

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Title Resources Guaranty Company

THE UNDERWRITER BUILT FOR THE REAL ESTATE INDUSTRY

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**I. DOCUMENTATION**

The existence of entities such as corporations, limited liability companies, limited partnerships, etc., is based on statutory authority.

Thus, to exist they must comply with state laws regarding formation and other matters.

Our concern is that the entity, through its officers, members, managers or partners (as the case may be) has the legal authority to act.

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**I. DOCUMENTATION**

**A. Corporations**

- Articles of Incorporation – (and any amendments) recorded w SDAT;
- By-laws – (and any amendments);
- Resolution – signed by the Secretary certifying that the board of directors
  - i) authorized the sale or encumbrance,
  - ii) directed an officer (or authorized signatory) to execute documents on behalf of the corporation;
- Certificate of Good Standing – from SDAT.

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## I. DOCUMENTATION

### B. Limited Liability Company

- Articles of Organization – (and any amendments) recorded w/ SDAT;
- Operating Agreement (and any amendments);
- Resolution-
  - i) signed by the all the members and showing their percentage interests (should equal 100% );
  - ii) authorizing the transaction and appointing an "authorized person" to execute documents on behalf of the LLC;
- Certificate of Good Standing – from SDAT.

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## I. DOCUMENTATION

### C. CLIMB THE DOCUMENT LADDER

If the entity is owned by another entity (or entities) you should require the documents for each entity.

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## II. PREVENT FRAUD – DOCUMENT REVIEW

### A. Corporations

Review the documents on file with SDAT as well those filed in the Land Records.

Does everything make sense?

Who has been signing the documents?

You can ask for copies of the Annual Report. Who signed it?

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## II. PREVENT FRAUD – DOCUMENT REVIEW

### B. Limited Liability Companies

- Review the operating agreement as it should contain a list of all the members.
- Require a resolution be signed that is executed by **all** of the members of the LLC and reflects their percentage interest. NOTE: If a member is missing, that member and their interest must be accounted for.
- The resolution can authorize the specific transaction and appoint or confirm the "authorized person" to sign on behalf of the entity.

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## II. PREVENT FRAUD – DOCUMENT REVIEW

### B. Limited Liability Companies

- Request copies of the tax returns/ Annual reports
- If it is a sole member, LLC operating without an Operating Agreement, address this in the resolution and get a hold harmless indemnity agreement signed.  
Does the IRS letter re: EIN indicate it is a sole member LLC?
- Review the documents on file with SDAT as well those filed in the Land Records.  
Does everything make sense? Who has been signing the documents?

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## II. PREVENT FRAUD – DOCUMENT REVIEW

### C. Foreign Entities

- Obtain the charter documents (i.e. Articles of Organization or Incorporation);
- Review the Operating Agreement/By-Laws;
- Obtain a copy of the registration as foreign entity with SDAT;
- Obtain a Certificate of Good Standing from the home state and SDAT.

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## II. PREVENT FRAUD – DOCUMENT REVIEW

Q: Why is document review so important?

A: Have you ever heard of entity theft?

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## III. DOING BUSINESS

A. Domestic Entities Authority  
Corporations – Corporations and Associations Article §2-102

- Requirements**
  - (a) Except as provided elsewhere in this section, in order to form a corporation, one or more adult individuals acting as incorporators shall:
    - (1) Sign and acknowledge articles of incorporation; and
    - (2) File them for record with the Department.
- Effect**
  - (b)(1) A proposed corporation becomes a body corporate under the name and subject to the purposes, conditions, and provisions stated in the articles of incorporation, effective as of the later of:
    - (i) The time the Department accepts the articles for record; or
    - (ii) The time established under the articles, not later than 30 days after the Department accepts the articles for record.
  - (2) Except in a proceeding by the State for forfeiture of a corporation's charter, acceptance of the articles for record by the Department is conclusive evidence of the formation of the corporation.

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## III. DOING BUSINESS

A. Domestic Entities Authority  
Corporations – Corporations and Associations Article §2-103 addresses authority. See also items (2), (4) – (9)

- (2) Sue, be sued, complain, and defend in all courts;
- (4) Transact its business, carry on its operations, and exercise the powers granted by this article in any state, territory, district, and possession of the United States and in any foreign country;
- (5) Make contracts and guarantees, incur liabilities, and borrow money;
- (6) Sell, lease, exchange, transfer, convey, mortgage, pledge, and otherwise dispose of any or all of its assets;
- (7) Issue bonds, notes, and other obligations and secure them by mortgage or deed of trust of any or all of its assets;
- (8) Acquire by purchase or in any other manner, and take, receive, own, hold, use, employ, improve, and otherwise deal with any interest in real or personal property, wherever located;
- (9) Purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of and otherwise use and deal in and with stock and other interests in and obligations of other Maryland and foreign corporations, associations, partnerships, and individuals;

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### III. DOING BUSINESS

A. Domestic Entities Authority

LLC's – Corporations and Associations Article §4A-202

- Articles of organization
  - (a) Any person may form a limited liability company by causing articles of organization to be executed and filed for record with the Department.
- Acceptance
  - (b) A limited liability company is formed at the time when the Department accepts the articles of organization for record or at a later time specified in the articles, if in either case there has been substantial compliance with this title.

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 **TITLE RESOURCES GROUP**

### III. DOING BUSINESS

A. Domestic Entities Authority

LLC's – Corporations and Associations Article §4A-203 addresses authority. See also items (2) – (6) and (12)

- (2) Sue, be sued, complain, and defend in all courts;
- (3) Transact its business, carry on its operations, and have and exercise the powers granted by this article in any state and in any foreign country;
- (4) Make contracts and guarantees, incur liabilities, and borrow money;
- (5) Sell, lease, exchange, transfer, convey, mortgage, pledge, and otherwise dispose of any of its assets;
- (6) Acquire by purchase or in any other manner, take, receive, own, hold, improve, and otherwise deal with any interest in real or personal property, wherever located;
- (12) Sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

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 **TITLE RESOURCES GROUP**

### III. DOING BUSINESS

B. Foreign Entities - Doing Business - Corporation

The following activities of a Foreign Corporation do not constitute – doing business

- § 7-202 Corporations and Association Article

**Registration with Department**

(a) Unless it is qualified to do business under § 7-203 of this subtitle, before doing any interstate or foreign business in this State, a foreign corporation shall register with the Department.

- § 7-203 Corporations and Association Article

**Foreign corporations**

(a) Before doing any intrastate business in this State, a foreign corporation shall qualify with the Department.

- § 7-202.1 Corporations and Association Article

**Foreign corporations**

(a) This section does not apply to the property that a foreign corporation acquires by any means enumerated in § 7-104 of this title.

**Property producing income**

(b) Unless it is required to qualify to do business under § 7-203 of this subtitle, a foreign corporation that owns income-producing real or tangible personal property in this State shall register with the Department to do interstate business.

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### III. DOING BUSINESS

B. Foreign Entities - Doing Business - Corporation  
The following activities of a Foreign Corporation do not constitute – doing business  
§7-104 Corporations and Association Article

In addition to any other activities which may not constitute doing intrastate, interstate, or foreign business in this State, for the purposes of this article, the following activities of a foreign corporation do not constitute doing intrastate, interstate, or foreign business in this State:

- (1) Foreclosing mortgages and deeds of trust on property in this State;
- (2) As a result of default under a mortgage or deed of trust, acquiring title to property in this State by foreclosure, deed in lieu of foreclosure, or otherwise;
- (3) Holding, protecting, renting, maintaining, and operating property in this State **so acquired**; and
- (4) Selling or transferring the title to property in this State **so acquired** to any person, including the Federal Housing Administration or the Veterans Administration.

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### III. DOING BUSINESS

B. Foreign Entities - Doing Business - LLC  
Corporations and Association Article §4A-1002 (A)

**Registration required**

(a) Before doing any interstate, intrastate, or foreign business in this State, a foreign limited liability company shall register with the Department.

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 **TITLE RESOURCES GROUP**

### III. DOING BUSINESS

B. Foreign Entities - Doing Business - LLC  
The following activities of a Foreign LLC do not constitute – doing business:  
Corporations and Association Article §4A-1009 (4)- (8)

- (4) Conducting an isolated transaction not in the course of a number of similar transactions;
- (5) Foreclosing mortgages and deeds of trust on property in this State;
- (6) As a result of default under a mortgage or deed of trust, acquiring title to property in this State by foreclosure, deed in lieu of foreclosure, or otherwise;
- (7) Holding, protecting, renting, maintaining, and operating property in this State **so acquired**; or
- (8) Selling or transferring title to property in this State **so acquired** to any person, including the Federal Housing Administration or the U.S. Department of Veterans Affairs.

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### III. DOING BUSINESS

B. Foreign Entities - Doing Business

NOTE: The exceptions provided under Corporations and Associations Article § 7-104 and §4A-1009 only apply to foreign entities. A corporation or LLC that is formed under Maryland law or conducting a non-exempt business activity would have to comply with the applicable law.

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### IV. WINDING UP

- Winding up of affairs –

Voluntary Dissolution v. Forefeiture

What is the difference?

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### IV. WINDING UP

A. Winding up of affairs - Voluntary Dissolution - Corporations

Corporations and Associations Article §3-408

- except as provided in subsection b the corporation is dissolved when the department accepts its articles of dissolution.
- The corporation continues to exist for purposes of paying, satisfying, and discharging any existing debts or obligations, collecting and distributing assets, and doing all other acts required to liquidate and wind up its business and affairs.

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## IV. WINDING UP

### A. Winding up of affairs - Voluntary Dissolution - Corporations

Corporations and Associations Article §3-410

Until the court appoints a receiver the business and affairs of the corporation shall be managed under the direction of the board of directors.

Under subparagraph c -

The directors may

1. Carry out the contracts of the corporation;
2. Sell all or any part of the assets of the corporation at public or private sale;
3. Sue or be sued in the name of the corporation; and
4. Do all other acts consistent with law and the charter of the corporation necessary or proper to liquidate the corporation and wind up its affairs.

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## IV. WINDING UP

### B. Forfeited Corporations

Corporations and Association Article §3-514

a. Any person that transacts business in the name or for the account of a corporation knowing that its charter has been forfeited and has not been revived is guilty of a misdemeanor and on conviction is subject to a fine of not more than \$500.00.

b. ... a person who was an officer or director of a corporation at the time its charter was forfeited is presumed to know of the forfeiture.

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## IV. WINDING UP

### C. Winding up of Affairs – Voluntary Dissolution - LLC's

Corporations and Associations Article §4A-904

a. Unless otherwise agreed to, the remaining members of a limited liability company, or if there are no remaining members, the personal representative, guardian or other successor to the last remaining member of the company may wind up the affairs of the limited liability company;

b. on cause the circuit court in the county where the principal office of the LLC is located may wind up the affairs of the LLC on application of any member, or the PR, guardian or other successor to the last remaining member.

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## IV. WINDING UP

C. Winding up of Affairs – Voluntary Dissolution - LLC's

Corporations and Associations Article §4A-905

Following dissolution a member of a limited liability company can bind the LLC –

- a. by any act appropriate for winding up the affairs of the LLC or completing transactions that were unfinished at the time of dissolution, unless the member did not have the authority to act and the person dealing with the member has actual knowledge or actual notice of the absence of authority, and
- b. in any transaction which would have been binding on the LLC had not been dissolved, provided the person the member is dealing with did not have actual knowledge or notice of the dissolution.

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## IV. WINDING UP

D. Forfeited LLC's

Corporations and Association Article §4A-919

Any person that transacts business in the name or for the account of a limited liability company knowing that its rights to do business in Maryland has been forfeited and has not been reinstated is guilty of a misdemeanor and on conviction is subject to a fine of not more than \$500.00.

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## K. TIME FOR QUESTIONS?



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