

**Title Alert 2017-09  
Update on Limited Liability  
Companies in Pennsylvania**

**December 29, 2017  
PA - STANDARD**

**Purpose:** To provide an update on limited liability company ("LLC") requirements with respect to Pennsylvania real estate transactions.

**Background:** A critical part of the due diligence required by title insurers is to ensure that there is proper corporate authority for a conveyance or transfer and that the documents affecting title are properly created, executed, and delivered. Refer to, for example, Covered Risk 2(a)(ii) in the ALTA 2006 owner's and loan policies. This explains why we must establish proof of formation, that all requirements in a limited liability company's ("LLC") operating agreement have been met, and that the LLC is in good standing with its state of creation. Previously, LLCs in Pennsylvania were governed by the Limited Liability Company Law of 1994.<sup>1</sup> Act 170 of 2016 ("Act 170")<sup>2</sup> recently replaced the 1994 law, and made some changes with respect to the authority of the members and managers of an LLC.

Status of member or manager as agent - Under Act 170, a member of an LLC is no longer considered an agent of that LLC solely by reason of being a member. In addition, where the certificate of organization states that the LLC is manager- managed, a manager has apparent authority to bind the LLC unless 1) the manager lacks actual authority to act in the particular matter and 2) the party dealing with the manager has knowledge that the manager lacks such actual authority.<sup>3</sup> Remember that apparent authority arises out of what *the principal* (in this case, the LLC) does, not out of what *the agent* (in this case, the manager) does. Apparent authority arises because the LLC has led third parties to believe that a person has powers by naming that person as the LLC's manager. This apparent authority can be limited or removed by means of certificates of authority, as discussed below.

Certificates of authority and certificates of denial - Act 170 permits an LLC to file a certificate of authority ("COA") with the Department of State to provide record evidence of an authorized person or officer to transact company business. The COA must contain the LLC's name and address or commercial registered office, and it may list the authority or limitations on authority of positions in the LLC or specific parties to transfer real estate held in the name of the company or enter into other transactions on behalf of, or otherwise bind, the LLC. The COA supersedes prior inconsistent provisions of the certificate of organization. For a third party to rely on a COA for the transfer of real estate, a certified copy of the COA must be recorded in the office of the Recorder of Deeds in the county where the real property is located. A recorded COA may be relied upon as conclusive evidence of authority unless (1) the COA has been canceled or amended and the cancellation or amendment is also recorded; (2) a limitation contained in another COA effective later is recorded; or (3) a person to whom authority was granted denies such authority by filing a certificate of denial with the Department of State and recording it in the land records. If a limitation of authority appears in a recorded COA in the county where the property is located, all persons are deemed to know of the limitation. Note also that a COA naming an individual as having authority is automatically cancelled 5 years after the original COA or its most recent amendment was filed.

<sup>1</sup> 15 Pa.C.S.A. § 8901 *et seq.*

<sup>2</sup> 15 Pa.C.S.A. § 8811 *et seq.*

<sup>3</sup> 15 Pa.C.S.A. § 8831

**Advisory:** Penn Attorneys Approved Attorneys should contact our office for further guidance if an LLC that is a seller or borrower in a transaction to be insured has recorded a COA in the land records or if you find a COA in the chain of title for a prior grantor.

If you have any questions, please feel free to contact us.

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\*\*\* This Title Alert should become a permanent part of your records to assure compliance with its requirements. \*\*\*

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