

1st June 2015

## Can you be a CEO by power of attorney?

Powers of attorney are commonplace. They are used when people are on vacation, or in the hospital, or (lamentably) when people just don't feel like coming to the closing. We are often asked to review forms for insurability of a transaction where an attorney in fact will sign the documents. The vast majority of these are perfectly functional for the transaction at hand.

And we can rely on them, absent *actual knowledge*: N.C.G.S 32A-40(a) provides that, absent actual knowledge to the contrary, a person who in good faith relies on a power of attorney that is duly signed, acknowledged, and otherwise appears regular, and that purports to confer a power of attorney, shall be protected to the full extent of the powers that reasonably appear to be granted to the attorney-in-fact in that writing.

Every now and then we will see a power of attorney from John Doe, as officer of AAA Company, LLC to a third party attorney in fact. The intent is that the designated attorney in fact be able to bind the company as if the officer himself had signed.

The entities (be they LLCs, Corporations, or trusts) absolutely can designate powers, authority, and responsibility to non-officers. Typically, they do so within corporate organizational documents or resolutions. We see this often with large mortgage backed pools (you know, the ones that read like "*Smith Holdings, LLC as successor trustee to Johnson Land, Inc. for the holders of the CTIC Loan Trust 2002-1567, Loan Asset Backed Pass Through Series 2045-9, by its attorney in fact KA Law, PLLC.*") There should be significant and sufficient documentation that allow an attorney in fact for Johnson Land, Inc. to appoint some servicer to appoint an attorney in fact to handle the administration of the property that falls under this Series. Yes, that is no fun to dissect, but the authority is usually there.

BUT, the individual power of attorney of a person who is also an officer of a corporation, trustee of a trust, or in some other type of fiduciary capacity does not authorize that attorney in fact to act for the individual principal in their fiduciary capacity. That authority must come directly from the entity's bylaws, trust agreement or other organizational instrument. (A clear example would be: A vice president of Chicago Title Company cannot give a power of attorney to their spouse, parent or a non-officer employee of the company to act as their attorney in fact on Chicago Title official corporate matters!)

Beware who the principal in the relationship is. If you are attempting to delegate your authority as officer, the principal you are trying to bind is not you, but the company itself... and unless you have specific authority from the entity, that's just not going to work.

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