

STANDARD NO. 414

PROBLEM:

When a grantor in the chain of title is a limited liability company or a person purporting to act on behalf of a limited liability company, what evidence of authority to convey real estate should be required by the examiner?

RECOMMENDATIONS:

- A. Prior Transactions.** Except as set forth in Recommendation C below, evidence of the authority of the person acting on behalf of the limited liability company should be required only in a pending transaction, and not in a transaction already of record.
- B. Pending Transactions.** In a pending transaction evidence of authority to convey real estate may be relied upon by the examiner, but such evidence need not be recorded.
- (1) The examiner may rely on an effective statement of authority filed with the Maine Secretary of State pursuant to 31 M.R.S. §1542 (effective July 1, 2011), provided that at the time of the transaction the grantee (a) is giving value and (b) has no knowledge to the contrary.
 - (2) The examiner may rely on evidence that the person purporting to act on behalf of the limited liability company is a manager, member, president or treasurer of the limited liability company. That evidence may be in the form of one of the following:
 - (a) a certificate of incumbency from a person in possession of the limited liability company's records;
 - (b) a certificate of incumbency from a person authorized in the limited liability company agreement to provide such certificates on which third parties may rely;
 - (c) an opinion of the limited liability company's counsel; or
 - (d) any other document which the examiner reasonably believes is reliable.
 - (3) Otherwise, the examiner in a pending transaction should review the limited liability company agreement and any action or vote of the members pursuant to §1556 of the Limited Liability Company Act that does not contravene the limited liability company agreement to determine who is authorized to execute and deliver documents on behalf of the limited liability company.
- C. Transactions Prior to June 30, 1998 Where Statement of Limited Liability Company Authority is of Record.** If the transaction occurred prior to June 30, 1998 and if an examination of the Registry records discloses a statement of limited liability company authority recorded pursuant to 31 M.R.S. §626 (repealed effective June 30, 1998) prior to that date, certified by the Secretary of State's office and filed with that office within five years prior to a conveyance made by a limited liability company, which remained uncanceled at the time of the conveyance, the examiner should determine whether the conveyance is consistent with the statement including any limitations set forth in the statement. No further evidence of authority is required.

STANDARD NO. 414, Continued

DISCUSSION:

- A.** General practice has been not to record limited liability company votes or agreements authorizing conveyances. Except in a pending transaction, requiring production of such authorization would impose an unreasonable burden on the proponent of title.
- B.** Recommendation B relates only to pending transactions. The law (effective July 1, 2011) provides that “[a]n effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that when the person gives value the person has knowledge to the contrary.” 31 M.R.S. §1542(3). *See*, also, 31 M.R.S. §1503 regarding the meaning of “knowledge” under the Act. The law also provides that if no statement of authority is in effect, any manager, member, president, or treasurer has the authority to bind a limited liability company. 33 M.R.S. §1541(4). The ultimate source of authority of any person acting on behalf of the limited liability company is the limited liability company agreement or action of the members pursuant to 31 M.R.S. §1556 that does not contravene the limited liability company agreement.

First adopted May 20, 1997; amended January 25, 2001; amended September 18, 2012.