



Who is authorized to sign a contract on behalf of an LLC?

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QUESTION: If a limited liability company (an “LLC”) is selling or buying property, does the contract have to be signed by all of its members? Alternatively, is it sufficient for just one member to sign?

ANSWER: In most cases, the signature of one authorized person will be enough. However, if the transaction involves the sale of the LLC’s only asset, the sale may not be considered to be in the “ordinary course” of the LLC’s business. In that event, agents are advised to obtain the signatures of all of the LLC’s members.

LLCs, like corporations, are legal entities that are authorized by statute. The current version of North Carolina’s Limited Liability Company Act (the “Act”) is found in Chapter 57D of North Carolina’s General Statutes. The Act authorizes the owners of an LLC (called “members”) to form their own agreement (called the “operating agreement”) to govern their relationship. The operating agreement can be oral or written. Typically, it will specify which persons are authorized to act for the LLC. Agents representing an LLC should therefore ask their client about the existence of an operating agreement. If one exists, agents should review it to determine whether the subject of authority is addressed and, if so, follow its mandate.

In the absence of an operating agreement, or if an agreement exists but does not address the issue of authority, the authority to act on behalf of the LLC is governed by Section 57D-3-20 of the Act. That section states (a) that management of an LLC is vested in its managers; (b) that all members of the LLC, by virtue of their status as members, are managers of the LLC; and (c) that, subject to the direction and control of a majority of managers, each manager may act on behalf of the LLC “in the ordinary course of the LLC’s business.” In other words, if there is no operating agreement, and the transaction is in the “ordinary course,” the signature of one manager is enough.

What if the agent is dealing with something other than an “ordinary course” transaction? Section 57D-3-03 of the Act states that the approval of all members of the LLC is required for a transfer that is not “in the ordinary course of business” and that, in one transaction or a series of related transactions, involves all or substantially all of the LLC’s assets. To be safe, if the transaction under consideration involves the LLC’s only asset, agents should insist that all of the LLC’s members sign the contract documents.

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