



Entity Review Part I

LLCs & Corporations

Basic Rules for Entity Reviews

1. Name of Company – the name is established in the Articles (or other formation document)
 - a. Only an amendment to the Articles can change the name
 - b. If there is inconsistency between the Articles and other documents, the Articles control
2. Entity Status – make sure the company exists and is in good standing
 - a. Most states give you the status on the SOS website, some states require payment for a Certificate of Good Standing (i.e. Delaware)
 - b. If we get a COGS, we want it to be dated within the last 60 days
 - c. Search the state of formation and the property state (if different)

Reviewing LLC Operating Agreements

1. Review management structure/signing authority
 - a. Who needs to sign/approve?
 - b. Is the OA management structure consistent with the Articles?
2. Check the term of the company
 - a. Is the term perpetual (most common), or does the company have an expiration date?
 - b. If there is an expiration date, make sure it does not expire during the loan term

Reviewing LLC Operating Agreements Cont.

1. Purpose of the company
 - a. Is this loan transaction consistent with the purpose of the company?
 - b. If the company is single purpose, make sure this is the right property and that there aren't any specific references to a past lender/loan
2. Special Circumstances
 - a. SPE, Bankruptcy Remote Entity, Mezz Loan, etc.
 - b. If there are special requirements for the entity, seek guidance from an attorney experienced in that type of requirement

Substantive Problems vs. Technical Problems

1. Some entity document problems are substantive, some are just technical:
 - a. EXAMPLE 1: The Articles say the company is manager-managed, but the OA says member-managed. The LLC has a sole member and the Statement of Information reflects only the sole member as manager/member. Substantive or technical?
 - b. EXAMPLE 2: The Articles say member-managed (by all members). The OA says manager-managed, and reflects one of the three members as the manager. Substantive or technical?

Substantive Problems vs. Technical Problems Cont.

1. General Rule: if we are getting a signature from everyone involved in the company (members/managers), then the problem is likely technical.
2. Analyze whether there is anyone involved in the entity who could have grounds to challenge the signature authority of the signer.
3. Takeaway: if the problem is technical, advise the client and proceed unless the client tells you to stop. If the problem is substantive, make sure it gets resolved before closing.

Corporation Entity Reviews 1/3

1. Corporations are typically managed by a board of directors, and the day-to-day operations are handled by the officers
2. Review the bylaws to ascertain signing authority/who needs to approve the signer
3. Typically, the Board will need to authorize a signer, but sometimes an officer may be given special powers
4. It is common for the bylaws to be certified by the corporate secretary, as opposed to an LLC operating agreement which is ratified by the signatures of all members

Corporation Entity Reviews 2/3

1. If the Board needs to approve the loan/signer, we either need a resolution or to have the Board sign our Entity Certificate
2. Typically, an officer or officers will sign the loan documents
3. It is rare, though not prohibited, for a signer to have the title “Director”; most commonly the signer will be the President or the Secretary

Corporation Entity Reviews 3/3

1. Non-profit corporations do not have shareholders, only a Board
2. For a non-profit corporation you will always need Board approval

Questions?

Thanks for Listening