

WHO SIGNS THE DEED?



Chicago Title CLE Seminar
Securing the Castle 2020

PARTIES – AUTHORITY & EXECUTION

- Vested owner of record *same as grantor* of new deed or deed of trust
 - Hypothecation – owner *not* borrower, but ...
 - **MUST** still be grantor & **MUST** still sign the document itself
 - **NOT** just addendum or exhibit
- Parties –
 - Correct/consistent *legally established* names
 - Findable on indexing at Register of Deeds
 - Authority
 - LLC → manager or “company official”
 - Corp → Pres, VP, CEO, CFO, Treas
 - LP → General Partner
 - POA → Agent / AIF
 - **NOT** personal POA to assign officer duties unless...
 - G.S. 32C-2-209
- Gifts & Self-dealing!



2

ENTITIES

- ALWAYS review the organizational documents for authority
- **Articles of Incorporation, Partnership Agreements, or Articles of Organization** for Corporation, Non-Profit Corporation, Limited Liability Company (LLC), Limited Partnership (LP) and a few other statutory entities must be filed with Secretary of State (or equivalent) of their home state
- **Annual Reports**
 - current officers/managers - legal reliance
 - current address
 - good standing
- **Self-Dealing** and **Gifts** require additional scrutiny!
 - REMINDER: Gift deed VOID if not recorded within 2 years G.S. 47-26

3

**ENTITY AUTHORITY:
CORP, NONPROFIT, LLC, LP, ...
BUT DISTINGUISH ASSUMED
BUSINESS NAME**

**FIND INFORMATION
ON-LINE TO VERIFY!**

**View
Document
Filings**

Search Business Registration

Search By: Company

Search For:

Search

Search Results

Records Found: 4 Search Type: Starting Search Criteria: Chicago, IL

Search Time: 1/24/2015 08:47 AM Search Again

Entity Name	Sos Id	Date Formed	Status	Type	Actions
Chicago Title Company, LLC	1227726	10/27/2011	Current - Active	Limited Liability Company	View Document Filings

**REVIEW OF ORGANIZATIONAL
DOCUMENTS,
CONSENT OF ALL PRINCIPALS
AND LOANS WITH PRINCIPALS ...
NOT TO BE IGNORED!**

In re Foreclosure of Fox Den
Development, LLC, unpublished,
245 N.C.App. 328,
782 S.E.2d 122 (2016)

**IN RE: FOX DEN DEV., LLC
782 S.E.2D 122 (COA15-471, FEB. 2, 2016,
UNPUBLISHED)**

FACTS:

- Fox Den entities were owned by Goforths and Burkes, operated without fully documenting. Goforths and Burkes each loaned the Fox Den Companies \$1,000 to develop Phase IV
- 2004 Goforth died, so Fox Den gave note and recorded deed of trust to estate, and nearly identical documents to Burkes
- Each family contributed another \$1.5 million, not documented with notes until 2009 (\$2.5MM notes combined debts) and no deeds of trust
- 2013 Goforths filed foreclosure; Superior Court held lack of authority for 2004 note and deed of trust.

HELD:

- Authority is question of fact and trial court had found lack of authority, since Fox Den managers had never met and officially approved the 2004 documents (even though they were the sole owners of the LLC and beneficiaries of the note and deed of trust), as a matter of law (all that can be raised in a foreclosure-related proceeding)
- However, this does not preclude any actions in equity, including ratification, substitution and novation, which were not before the trial court at that time.

Entity (statute)	Governing Document	Conveyances
Corporations (Ch. 55)	Articles of Incorporation (SOS*) Bylaws Annual Report with NC SOS	G.S. §47-18.3 (rev. 6/25/18) G.S. §55-12-01 and §55-12-02
Nonprofit Corporations (Ch. 55A)	Articles of Incorporation (SOS*) Bylaws And denomination, sect, society or group documents	G.S. §55A-12-01 and §55A-12-02, including NCAG approval G.S. §55A-12-02(g) for charitable or religious corporation
Religious Societies by trustees (Ch. 61)	Church and denomination, sect, society or group documents	G.S. §61-2 through § 61-5
Unincorporated Nonprofit Assoc. (Ch. 59B)	Statement of Authority	G.S. §59B-6 (former G.S. §39-24 & §39-25, prior to Jan 1, 2007)
Name change, merger, conversion, amendment changing name – Secretary of State's certificate required in Register of Deeds office, G.S. §55D-26 and G.S. §47-18.1.		G.S. §105-230: Revenue suspension Transaction may be void if entity not revived.

Entity (statute)	Governing Document	Conveyances
Partnerships (Ch. 59)	Partnership Agreement Limited Partnership (SOS*)	G.S. §47-18.3 (deeds of trust, effec. 6/25/18) G.S. §59-39 and §59-40
LLC's (Ch. 57D)	Arts of Organization (SOS*) Operating Agreement Annual Report with NC SOS G.S. §57D-2-30(d)(2))	Manager or "company official" G.S. §57D-3-20 et seq. G.S. §47-18.3 (deeds of trust, effec. 6/25/18)
Business Trust (Ch. 39, Art. 8)	Declaration of Trust	G.S. §39-44 et seq.; G.S. §39-6.7
Personal / Family Trusts (Ch. 36C)	Trust Agreement	G.S. §36C-8-815 et seq.; G.S. §39-6.7
Name change, merger, conversion, amendment changing name – Secretary of State's certificate required in Register of Deeds office, G.S. §55D-26 and G.S. §47-18.1.		*SOS → filed with Secretary of State (or equivalent) of home state


**ENTITIES:
DISSOLUTIONS**

- Title remains vested in entity
- For current transaction, either:
 - Deeds must be consistent with winding up by remaining "economic interest holders"

OR

- Entity must bring reports, fees, taxes current
- Corporations G.S. 55-14
- LLCs G.S. 57D-6

But if revenue suspension:
See G.S. 105-230 vs. *LE Oceanfront v. Lands End (2014)*



[illegible]

FORMS
FORMS
& MORE
FORMS!

www.northcarolina.ctic.com → Resources

10

[illegible]

<https://www.northcarolina.ctic.com/legalarticles.htm>

CHICAGO TITLE

PEOPLE & PLACES • PRODUCTS & SERVICES • RESOURCES • NEWS & EVENTS • CONTACT US

NEW PRACTICES ALTA BEST

Legal Articles

A Wide Range of Legal Articles for Your Convenience. Read or Print a Copy from Here!

- 1031 Tax-Deferred Exchanges
- Access
- Acknowledgments
- ALTA Best Practices - Additional Resources
- Assessments
- Assumed Business Name
- Attorneys & Closings
- Bankruptcy

Resources

- ALTA Best Practices
- Approved Attorney Application
- Claims Notification Procedure
- DueDip Online
- Forms
- Fraud Corner
- Industry Links
- Legal Articles
- LendAC
- National Rate Calculator
- OFAC Screening

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**ENTITIES: NAME CHANGE,
CONVERSION, CONSOLIDATION
OR MERGER (G.S. 55D-26)**

Certificate issued by the NC Secretary of State (or entity's resident state authority) MUST:

- Comply with both business entity conversion statutes – the “from” and the “to”
- Recite name change, merger, consolidation or conversion
- Be recorded in Register(s) of Deeds where property lies
- Former entity = “Grantor”
- New entity = “Grantee”



12

[illegible]

NAME DISCREPANCIES / MISNOMERS

As between actual parties

- Tomika Investments, Inc. v. Macedonia True Vine Pentecostal Holiness Church of God, Inc., 136 N.C.App. 493, 524 S.E.2d 591 (2000)
- Bank of Hampton Roads v. Wilkins, NCCOA 18-1239 (8/6/2019)

OR different entity altogether, related or unrelated?
OR
? forgery
? fraudulent appointment of "new" principal
? fake "similar" entity name
? other scam

Constructive Notice to Third Parties

- G.S. 47-18
- G.S. 47-20
- "reasonable" or "careful & prudent" title examiner: Hinnant v. Philips, 184 N.C.App. 241, 645 S.E.2d 867 (2007)



13

What are the indexing rules ... and when? ... and where?

Pre-1996,
NO consistent standards:
• McDonald under Mc or D?
• First Baptist Church under "C" (Churches)
• Jack's Carwash, Inc. under "C" (Corporations)
• A-B-C under "A-B-C" or "ABC" or "A B C"?

Must be posted at
register's office (not
necessarily on-line)

NORTH CAROLINA ASSOCIATION OF
REGISTERED DEEDS
MINIMUM STANDARDS FOR INDEXING
REAL PROPERTY INSTRUMENTS

18 pp.

53 pp.

Effective
July 1,
2012

Revised December 1, 1996 - Effective January 1, 1997
Revised/Effective September 13, 2004
REVISED MARCH 12, 2006 - EFFECTIVE OCTOBER 1, 2006

14

PRIOR INDEXING STANDARDS

- d. Non-human names containing Mount or Mt and Saint or St shall be converted into their abbreviated or full form. Such shall be indexed as they appear in the document.

Example:

Name - Mount Olive Baptist Church

Mount Olive Baptist Church

Mount Olive Baptist Church

Mount Olive Baptist Church

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15


*Personal Property
Appraisal and Assessment*


June 2007



Florida Department of Banking and Finance
Property Tax Section

BEWARE: PERSONAL PROPERTY TAXES
BUSINESS ENTITIES HAVE ASSETS





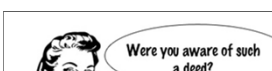
- Separate tax bill?
- Separate tax listing?
- Separate tab on the tax website?
- Will typically *not* be on the real property bill
- May come up later as “discoveries” but **YOU** know they’re there and **YOU** need to ask
- May not be included in your “tax certification” *unless you specifically request!*

19

[illegible]

**UNAUTHORIZED ACTIONS:
LLCS, CORPORATIONS &
PARTNERSHIPS**

- Good standing
- Capacity of signers
- Organizational docs
- Resolutions
- Self-dealing?
- Foreign executions?
- Proper notarial certificates



Were you aware of such a deed?

[illegible]

RED FLAGS



- They're family
- They're related / affiliated
- Don't get along with neighbors
- Marital dispute

Woman Impersonates Her 21-Year-Old Daughter In Attempt To Avoid Arrest

21

[illegible]

RED FLAGS: AUTHORITY ISSUES

- Recent amendments in state filings or trust or partnership, adding or deleting parties with authority
- "Powers of attorney" or "Trusts" to unrelated third party, not a financial institution
- Borrowers suddenly obtain cancellations on substantial debt without any visible source of funds (refinance, inheritance, etc.)
- Conveyance or mortgage of Land by or to an officer of a corporation, partner of a partnership, member of an LLC or parties to a trust.
- Foreign Executions when entity officials or owners are not located in the United States.
- Any variation in name, no matter how minor, in chain of title or the documentation submitted to support the chain of title.
- Any recent conveyance without corresponding financing.
- Gift deed by business of their business property.



22

WHO IS THAT MASKED "MANAGER"? THE IMPORTANCE OF REVIEWING THE FILED (AND NOT FILED) DOCS!

LLC documents from fraudster, who purported to be managing member of Nevada LLC.

Reviewed the LLC information on the Nevada Secretary of State's website,

- confirmed LLC was active in good standing
- did not scroll down to determine managing members.

Over \$1 million.



23

BEWARE OF BUSINESS GIVING "GIFTS" ... OUTSIDE OF CLOSING!

- Title vested in a limited partnership.
- Prior to closing, *gift deed* from the limited partnership to the borrower, an individual.
- Title Affidavit provided (no tenancies, no liens, etc.)
- Gift deed dated December 23, but acknowledgment September 24, *3 months earlier*.
- Gift deed purportedly signed by "partner", not "General Partner"

\$300,000.00 TFOT!



24

BILLS NOT ENACTED (YET) NON-RESIDENT SELLER REPORTING

2019 Proposal: Foreign "Non-resident Seller" reporting requirement for a Form 1099-NRS submission would be made statutory under a proposed new G.S. 105-251.3 (and, thereby, subject to penalties for noncompliance) and would extend to *all* defined non-resident (i.e. non-NC, not just non-US) sellers.

Dropped from S523 in 2019 Session, for further discussion.

Current NC Regulation: 17 NCAC 6B.3906, adopted effective May 1, 2016:

PURCHASE OF REAL PROPERTY LOCATED IN NORTH CAROLINA FROM A NONRESIDENT

(a) Every individual, fiduciary, partnership, corporation, or unit of government buying real property located in North Carolina from a nonresident individual, partnership, estate, or trust shall complete Form NC-1099NRS, Report of Sale of Real Property by Nonresidents, to report the following:

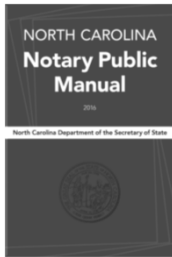
- (1) the seller's name, address, and social security number, or federal employer identification number;
- (2) the location of the property;
- (3) the date of closing; and
- (4) the gross sales price of the real property and its associated tangible personal property.

(b) Within 15 days of the closing date of the sale, the buyer shall file one copy of the report with the Department and also furnish a copy of the report to the seller.

Under 17 NCAC 06C. 0203(b) ANNUAL REPORTS, NC-1099NRS is required regardless of any requirement to report the sale to the Internal Revenue Service.

25

Notaries, Notaries, Notaries



26

Unless Articles or Bylaws provide otherwise, board of directors can, without shareholder approval:

(1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business.

(2) Transfer any or all of its property to a corporation or an unincorporated entity all the shares or ownership interests of which are owned by the corporation.

(3) Sell, lease, exchange, or otherwise dispose of any of its property, not in the usual and regular course of business, if the sale, lease, exchange, or other disposition is of less than all, or substantially all, of the corporation's property.

If the sale, lease, exchange, or other disposition would leave the corporation with a continuing business activity that represented at least twenty-five percent (25%) of total assets at the end of the most recently completed fiscal year and at least twenty-five percent (25%) of either

- (i) income from continuing operations before taxes or
- (ii) revenues from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis,

the sale, lease, exchange, or other disposition will conclusively be deemed to be of less than all, or substantially all, of the corporation's property.

CORPORATIONS G.S. 55-12-01

27

**EXECUTION BY CORPORATION OR LLC
COMPANY OFFICIALS – G.S. 47-18.3
CHANGE APPLICABLE TO DEEDS OF TRUST
ONLY**

Presumption of authority of company officials for transactions in the ordinary course of business and prima facie presumption if under seal under G.S. 47-18.3 extended to:

- Broader list of company officials – *vice-president, assistant vice-president, treasurer, or chief financial officer, chief operations officer, general counsel, deputy or assistant general counsel, manager, member, director, or other fiduciary duly authorized by the applicable business entity's statutes or governing documents*

AND

- Limited liability companies added.
However (we believe inadvertently),
the Legislature limited this amendment
"to mortgages and deeds of trust" (only).
Above changes do not apply to other instruments.

S.L. 2018-80, § 2.2,
effective for mortgages and deeds of trust
Entered before on or after 6-25-2018.

Became
effective
6-25-18

**STILL Needs
Technical Correction
to clarify "person" &
to apply to deeds.**

28

**CORPORATIONS –
(G.S. CH. 55)**

- Articles of Incorporation @ Secretary of State (resident state)
- Certificate of merger, consolidation, conversion or name change – G.S. 55D-26
- Register of Deeds
- Secretary of State (resident state)
- Mortgage, sale in ordinary course of business or sale leaving 25% of assets and income or revenues
- Board of Directors without shareholder approval G.S. 55-12-01
- All or substantially all requires shareholder approval G.S. 55-12-02
- See Revised G.S. 47-18.3 for presumption of authorized officials

29



30

**CORPORATION
ANNUAL REPORTS
TO
SECRETARY OF STATE**

- LLC is formed at time articles of organization are filed with NC Secretary of State G.S. 57D-2-20(b)
- Articles of organization must identify initial members, G.S. 57D-2-20(c) OR Organizer(s) must identify the initial members or dissolve the LLC.
- Annual Report must include "principal company officials" contact info G.S. 57D-2-24(a)
- "Company official. – Any person exercising any management authority over the limited liability company whether the person is a manager or referred to as a manager, director, or officer or given any other title." G.S. 57D-1-03(5)
- LLC may be managed by "company officials" not designated as managers, if Operating Agreement so provides G.S. 57D-3-20(d) & G.S. 57D-3-23
- Merger or name change – Secretary of State and Register of Deeds G.S. 55D-26

LIMITED LIABILITY COMPANIES CHAPTER 57D



31

- Third parties can rely on Annual Report G.S. 57D-2-30(d)
- Transfer all or substantially all assets, not in ordinary course of business & prior to dissolution, requires unanimous consent of members G.S. 57D-3-03(3)
- Each manager may act in ordinary course of business G.S. 57D-3-20(c), except if majority under G.S. 57D-3-20(b), G.S. 57D-3-22
- Creditors of interest owners have exclusive remedy of charging order G.S. 57D-5-03(d)
- Membership terminates (though economic interest continues) upon bankruptcy or assignment for benefit of creditors, receivership, trusteeship or liquidation by member. G.S. 57D-3-02
- Dissolution of LLC does not transfer ownership of assets G.S. 57D-6-07(e)



32



- If named "series" but actually separately formed LLC, then it's a true entity
- Delaware allows "registered" series certificate (2018 amdt) and allows series to hold title § 18-215(c)
- Rules changing and differs by state (if authorized at all)

- Form "Mothership LLC" like any other LLC
- Each true "series" LLC (not a separately formed LLC) is an accounting/business allocation, *not another entity*
- Title held by "Mothership LLC"
- Other ambiguities & problems

MOST COMMON RECOMMENDED STRUCTURE OF SERIES LLC



33

https://www.sosnc.gov/divisions/business_registration/annual/
North Carolina Secretary of State

Annual Report
Each Business Corporation, Limited Liability Company, Limited Liability Partnership and Limited Liability Limited Partnership is required to file an annual report with the Secretary of State.

LLC'S ANNUAL REPORTS TO SECRETARY OF STATE

IMPORTANT NOTE:
Third parties (not company officials or parties to operating agreement) can reasonably rely on documents filed with Secretary of State.
G.S. 57D-2-30(d)(2)

EXECUTION BY CORPORATION OR LLC COMPANY OFFICIALS – G.S. 47-18.3 CHANGE APPLICABLE TO DEEDS OF TRUST ONLY

Became effective 6-25-18

Presumption of authority of company officials for transactions in the ordinary course of business and prima facie presumption if under seal under G.S. 47-18.3 extended to:

- Broader list of company officials – *vice-president, assistant vice-president, treasurer, or chief financial officer, chief operations officer, general counsel, deputy or assistant general counsel, manager, member, director, or other fiduciary duly authorized by the applicable business entity's statutes or governing documents*
- Limited liability companies added.

However (we believe inadvertently), the Legislature limited this amendment "to mortgages and deeds of trust" (only). Above changes do not apply to other instruments.

STILL Needs Technical Correction to clarify "person" & to apply to deeds.

S.L. 2018-80, § 2.2.
effective for mortgages and deeds of trust
Entered before on or after 6-25-2018.

GENERAL PARTNERSHIP

- Partnership name OR individuals
 - Association of 2 or more persons to carry on as co-owners a business for profit G.S. 59-36
 - Tenants in Common?
 - Joint tenants with right of survivorship? G.S. 59-37
- Assumed Business Name Certificate @ Register of Deeds (and Secretary of State) G.S. 66-71.1 et seq., G.S. 59-84.1
- Not apparently for the carrying on in the usual way of the business of the partnership requires joinder of all general partners (unless partnership agreement otherwise) G.S. 59-39 & 59-40
- Title held by Partnership G.S. 59-38(c)

LIMITED PARTNERSHIP

- Certificate of Limited Partnership @ Secretary of State (resident state)
G.S. 59-201, Ch. 55D
- "Limited Partnership" in name in NC
- Merger or name change – G.S. 55D-26
 - Register of Deeds and Secretary of State (resident state)
- Conveyance by General Partners(s), *subject to LP Agreement*:
 - Apparently carrying on in the usual way the business of the partnership
G.S. 59-39(a)
 - **Not** apparently for the carrying on in the usual way of the business of the partnership requires joinder of all general partners
G.S. 59-403(a)
G.S. 59-39(b) & (c), G.S. 59-40
- Title held by Partnership
G.S. 59-38(c), G.S. 55D-26

37

ASSUMED BUSINESS NAME ACT

"Assumed business name certificate" must be filed in the Register of Deeds of at least one county in which the "person" is or will be engaged in business, including:



- (1) The Assumed Business Name (other than their real legal name) – **NOT** "Inc." or "LLC" or "Limited Partnership"
- (2) A real legal name of the person (or entity) OR if a partnership (other than a limited liability partnership or limited partnership), the real name of five general partners or of each general partner, whichever is fewer.
- (3) The nature of the business.
- (4) The street address of the principal place of business.
- (5) Each county where the person uses or will be using the assumed business name to engage in business – *or just say "ALL"*.

Existing assumed names must be renewed by July 1, 2022.

Effective December 1, 2017 38



Assumed Business Names:
NEW statute,
NEW requirements,
NEW search engine!



Effective December 1, 2017, there is a brand new Assumed Business Name Act in North Carolina – Article 1A, of Chapter 66 of the N.C. General Statutes, N.C. Gen. Stat. §66-171 et seq. Any individual or business operating under an assumed business name, i.e., any name other than their real legal or official name, must file a Certificate of Assumed Business Name with the real register of deeds, which will automatically be transmitted to and to state on the records of the Secretary of State. The search site, forms, fees and other information about the process have been completely revised and are on-line at the office of the Secretary of State assumedbusinessnames.nc.gov. A new register issue is scheduled for 1/1/2018, regarding the new act. N.C. Gen. Stat. §66-171 et seq. is effective on December 1, 2017, and requirements for existing businesses to file are extended to December 1, 2022, by S.L. 2017-223.

CAUTION: The requirement may apply when you are not expecting it. This applies to those who operate and conduct in the business name that predecessor (N.C. Gen. Stat. § 66-171). The new provisions specifically apply to any of the following operating under a name which is not their "real name":

The "person" who files the Certificate and assigns the Assumed Business Name is very broadly defined. This includes: an individual, partnership, limited partnership, limited liability partnership, limited liability company, corporation, association, union, organization, joint venture, trust, trust, governmental entity, or any other legal or commercial entity. There may not be and probably will not be an exception, as has been the requirement for other entities that with the Secretary of State, NCDS, keep in mind the "real name" would be based on compliance with the applicable statute, some of which are listed below. See S.L. 2017-223, §4, concerning S.L. 2017-10.

- Individual, such as one trading operating as a sole proprietor.
- Partnership (N.C. Gen. Stat. § 66-171 and 1, other than limited liability partnership or limited partnership) such as Joe Smith and Jane Jones operating as ABC limited partnerships.

You could go to either the online or printed form for filing, depending on the type of business and the type of filing. For more information, visit assumedbusinessnames.nc.gov or call 1-800-735-7353.

ASSUMED BUSINESS NAME ACT, REVISED

"Person" filing may be an entity.

But this act is about assumed name –
other than their official legal name!

REMEMBER: Corporations, LLCs, limited partnerships and others must still comply with statutory filing requirements for their **true legal official name**.

S.L. 2019-117

39

**ASSUMED BUSINESS NAME
BUT DISTINGUISH ...
ENTITY AUTHORITY:
CORP, NONPROFIT, LLC, LP**

**FIND INFORMATION
ON-LINE TO VERIFY!!**

**View
Document
Filings**

**AGENTS UNDER
POWERS OF ATTORNEY**

**ORIGINAL ENACTMENT
S.L. 2017-153 (SB 569)
EFFECTIVE 1/1/2018
GENERAL STATUTES COMMISSION
TECHNICAL CORRECTIONS
S.L. 2018-142, SEC. 27
EFFECTIVE 12/14/2018**

FORMS FOR POWERS OF ATTORNEY



- (1) the power of attorney is effective at the time of closing and authorizes the agent or attorney-in-fact to act on behalf of the principal with regard to the real property transaction to be insured;
- (2) the power of attorney (or a certified copy) is recorded in the office of the Register of Deeds in North Carolina in which the Land is located or in which the principal is domiciled, or, for a non-resident principal, in any county in North Carolina in which the principal owns real estate or has a business reason for registration; and
- (3) if the power of attorney is not recorded in the county in which the Land lies, the recording information (book, page and county) is referenced in the instrument executed by and recorded on behalf of the agent or attorney-in-fact pursuant to the power of attorney.

(b) agent's certification pursuant to G.S. 32C-3-302 regarding the transaction to be insured.

[illegible]

- 1) in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest;
- 2) in good faith;
- 3) loyally for the principal's benefit;
- 4) only within the scope of authority granted in the POA; and
- 5) in a manner so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest.

[illegible]

G.S. §32C-3-302
(REPLACING G.S. §32A-40(D))

**AGENT'S CERTIFICATION AS TO THE VALIDITY OF
POWER OF ATTORNEY AND AGENT'S AUTHORITY
(R.C.G.S. 32C-3-352)**

Principals _____

I, _____ (Name of Agent), do hereby state and affirm the
following under penalty of perjury:

(1) _____ (Name of Principal) granted present authority as an
agent or successor agent in a power of attorney dated _____, "Power of
Attorney" (hereinafter "Power of Attorney").

(2) The powers and authority granted to me in the Power of Attorney are currently exercisable by me.

(3) I have no actual knowledge of any of the following:

(a) The Principal is deceased.

(b) The Power of Attorney or any agent under the Power of Attorney has been
revoked or terminated, partially or otherwise.

(c) The Principal lacks the understanding and capacity to make and communicate decisions
and acts and parties to the Power of Attorney are not competent.

(d) The Power of Attorney was not properly executed and is a legal, valid power of attorney.

(3) (Insert other relevant statements):

(4) I agree not to exercise any powers granted under the Power of Attorney if I become aware that
the Principal is deceased, that the Power of Attorney has been revoked or terminated, or that
any agent under the Power of Attorney has been revoked or terminated.

SIGNATURE AND ACKNOWLEDGMENT

Notary

Notary

Figure 1. The Agent's Authority to Make a Gift under the Act

Language in the POA	Agent's Gift Authority
POA silent or says agent has all powers of the principal	No authority to make a gift
POA only says the agent has the authority to make a gift or references G.S. 32C-217	Agent ONLY has the authority to make gifts as set forth in G.S. 32C-217, subject to G.S. 32C-218(a) and (c)
Any other authority to make gifts	Must be specifically set forth in the POA, subject to G.S. 32C-218(b) and (c) unless POA says otherwise

* Note the court may authorize any gift that is reasonable under the circumstances, including a gift that is in addition to or differs from a gift authorized by the POA, G.S. 32C-218.

More on Gifting Authority under the North Carolina Uniform Power of Attorney Act

This entry was contributed by Meredith Smith on May 11, 2018 at 4:00 pm and is filed under Power of Attorney.

Recently wrote about an agent's authority to make gifts under the new North Carolina Uniform Power of Attorney Act. The new law is intended to protect the rights of the donor and the agent under a new North Carolina Uniform Power of Attorney Act. The new law is intended to protect the rights of the donor and the agent under a new North Carolina Uniform Power of Attorney Act. The new law is intended to protect the rights of the donor and the agent under a new North Carolina Uniform Power of Attorney Act.

1. The Old G.S. Chapter 32A

The section law enacted the gift giving rules related to non-health care powers. The new law, which became effective on May 11, 2018 at 4:00 pm and is filed under Power of Attorney, is intended to protect the rights of the donor and the agent under a new North Carolina Uniform Power of Attorney Act. The new law is intended to protect the rights of the donor and the agent under a new North Carolina Uniform Power of Attorney Act. The new law is intended to protect the rights of the donor and the agent under a new North Carolina Uniform Power of Attorney Act.

BEWARE: GIFT-GIVING RULES ARE COMPLEX!

<p>MILITARY POWERS OF ATTORNEY STILL APPLY!</p>	<p>SPECIAL POWER OF ATTORNEY</p> <p>This is a Military Power of Attorney prepared pursuant to section 1044b of Title 10, United States Code, and executed by a person authorized to receive legal assistance from the Military Service. Federal law exempts this power of attorney from any requirement of form, substance, formality, or recording that is prescribed for powers of attorney by the laws of a State, the District of Columbia, or a commonwealth, territory, or possession of the United States. Federal law specifies that this power of attorney shall be given the same legal effect as a power of attorney prepared and executed in accordance with the laws of the jurisdiction where it is presented.</p> <p>TERMINATION: This Special Durable Power of Attorney shall terminate on 16th day of December, 2016, unless I revoke it sooner in writing.</p> <p>This Special Durable Power of Attorney shall not be revoked or terminated by my disability, nor shall the agency created by this Special Durable Power of Attorney be revoked or terminated by my death or disability as to any Attorney-in-Fact or such other person, who without actual knowledge or actual notice of my death has acted or acts in good faith, under, or in reliance upon, this Special Durable Power of Attorney, and any action so taken, unless otherwise invalid or unenforceable, shall be binding upon me, my heirs, devisees, and personal representatives.</p> <p>If prior to the termination date, a written statement by a licensed physician, signed and acknowledged before a Notary Public</p>
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SPECIFIC GRANTS OF AUTHORITY: G.S. CH. 32C, ARTICLE 2	
<p><u>§ 32C-2-204. Real property (incl. inchoate marital right & G.S. § 30-3.4)</u></p> <p>§ 32C-2-205. Tangible personal property</p> <p>§ 32C-2-206. Stocks and bonds</p> <p>§ 32C-2-207. Commodities and options</p> <p>§ 32C-2-208. Banks and other financial institutions</p> <p><u>§ 32C-2-209. Operation of entity</u></p> <p>§ 32C-2-210. Insurance and annuities</p> <p><u>§ 32C-2-211. Estates, trusts, and other beneficial interests</u></p>	<p>§ 32C-2-212. Claims and litigation</p> <p>§ 32C-2-213. Personal and family maintenance</p> <p>§ 32C-2-214. Benefits from governmental programs or civil or military service</p> <p>§ 32C-2-215. Retirement plans</p> <p>§ 32C-2-216. Taxes</p> <p><u>§ 32C-2-217. Gifts - general authority</u></p> <p>§ 32C-2-218. Gifts authorized by court order</p> <p>§ 32C-2-219. Certain acts authorized by the court</p>

GIFTS – BY SPECIFIC AUTHORITY

- G.S. 32C-2-201(a)(1)a. requires SPECIFIC EXPRESS GRANT OF AUTHORITY
- G.S. 32C-2-201(b) requires consistent with either:
 - "principal's objectives if actually known by the agent" or
 - "principal's best interest based on all relevant factors," including:
 - (1) The value and nature of the principal's property.
 - (2) The principal's foreseeable obligations and need for maintenance.
 - (3) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes.
 - (4) Eligibility for a benefit, a program, or assistance under a statute or regulation.
 - (5) The principal's personal history of making or joining in making gifts.
 - (6) The principal's existing estate plan.
- G.S. 32C-2-201(c) provides: "an agent may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise."
- G.S. § 32C-2-201 (3): Also subject to G.S. § 32C-2-217



49

GENERAL AUTHORITY WITH RESPECT TO GIFTS G.S. § 32C-2-217(B), ONLY:

Unless POA provides otherwise, general authority w/r/t gifts authorizes only:

- To/for benefit of* an individual if value of the gift does not exceed:
 - principal's history of making or joining in the making of gifts or
 - annual federal gift tax exclusion (IRC 2503(b) (or twice if spouse joins)
 - To any organization described in IRC §§ 170(c) and 2522(a) in accordance with the principal's history of making or joining in the making of gifts.
- NOTE: Consent, splitting gift with spouse under IRC § 2513.

50

PROHIBITED SELF-DEALING: G.S. §32C-2-201(C)

Even if the POA authorizes the agent to do any of the specific actions identified earlier, unless the POA provides otherwise, the agent may not exercise "general" or "specific" authority under a POA to create in the agent, or in an individual to whom the agent owes a legal obligation of support, any interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

This rule can be very important in real estate transactions.

MAY NOT BE ABLE TO
CONVEY TO SIBLINGS.

COMPARE: "Gifting" authority under
Whitford v. Gaskill & Gifford v. Linnell cases

51

**CONTROLLING LAW:
WHICH JURISDICTION?**

**Does not have
to be the
jurisdiction in
which executed!**

UPOAA Official Comment:

The phrase, "the law of the jurisdiction indicated in the power of attorney," is intentionally broad, and includes any statement or reference in a power of attorney that indicates the principal's choice of law.

POA SAYS ...:	Governing law:
NC Statutory Short Form POA	NC law
States "governed by X state law"	X state's laws
No mention of governing law	Law of the <u>state in which signed & acknowledged</u>

**WATCH
OUT!**

52

DURABILITY: POST-2018, G.S. §32C-1-104

- POA is a presumed durable POA unless it "expressly provides that it is terminated by the incapacity of the principal."
 - If transaction is on or after 1/1/2018, even if pre-2018 POA!
- Durable POA authority survives "incapacity" of principal – "The inability of an individual to manage property or business affairs because the individual has any of the following statuses:
 - An impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance.
 - Is missing, detained, including incarcerated in a penal system, or outside the United States and unable to return."

G.S. §32C-1-102(6)

53

**RECORDING REQUIRED FOR
REAL ESTATE TRANSACTION – G.S. 47-28**

- Record:
 - In the county in which the property is located – original or certified copy from another registry where original was recorded
- OR
- Reference the book, page and county of NC recording on the document relying on the POA, if only recorded in another NC county
- NOT just attach a copy – that is not recording and gives no legitimacy or reliability

54

FORGED POWER OF ATTORNEY!



Deed of trust executed on basis of *forged* POA upheld since bank had no knowledge of forgery, under G.S. 32C-1-119(b) and G.S. 32A-40(a) and “principal” knew about & accepted benefit from the loan,

In re foreclosure of Davis,
829 S.E.2d 526, NC COA 18-882
(unpublished, July 2, 2019)

55

NONPROFIT CORPORATION

- Articles of Incorporation @ Secretary of State (resident state)
- Certificate of merger, consolidation, conversion or name change – G.S. 55D-26
 - Register of Deeds
 - Secretary of State (resident state)

Board of Directors unless Articles or Bylaws require otherwise.

- Sell, lease, exchange or dispose of in usual & regular course of activities
- Mortgage or encumber, whether or not in usual & regular course of it activities

G.S. 55A-12-01

By members *and* directors, subject to Articles and Bylaws

- Sell, lease, exchange or dispose of *other than* in usual & regular course of activities

G.S. 55A-12-02

Charitable or Religious organizations must give notice to NC Attorney General

G.S. 55A-12-02(g)

56

NOTICE OF MERGER OR TRANSFER OF ASSETS BY A CHARITABLE OR RELIGIOUS CORPORATION

Pursuant to N.C. Gen. Stat. §§ 55A-11-02 and 55A-12-02, the charitable or religious corporation listed below hereby gives notice to the North Carolina Attorney General of an intent to merge or transfer:

Checklist of items for inclusion in Notice (Check Under):
N.C. Gen. Stat. §§ 55A-12-02(a), (c) 55A-11-02(d)

1. Name of the charitable or religious corporation:

Name: _____

Address: _____

Telephone: _____

Contact Person: _____

Title: _____

2. Entity to be merged with or transferred to:

Name: _____

Address: _____

Telephone: _____

Contact Person: _____

Title: _____

3. Type of transaction (check box):

- ☐ A description of the transaction and the reasons for it.
- ☐ An explanation of the transferring organization's plan for operations (or dissolution) following the transaction.
- ☐ Contact information for transferring and transferee entities.
- ☐ Final versions of all transaction documents (e.g., contracts, bills of sale, deeds, promissory notes, employment agreements, etc.).
- ☐ Documents demonstrating that the transaction has followed corporate formalities and is legally binding (i.e., articles of incorporation, bylaws, corporate consents or resolutions, records of membership votes if applicable).
- ☐ Information about the transferring entity's debts, if any, and how those will be resolved.
- ☐ A statement that the transaction does not violate the terms of any grants or restricted gifts.
- ☐ All relevant minutes of the board discussing the events surrounding the transaction and the transaction itself.
- ☐ If the transferee entity is taking on any responsibilities, appropriate documentation that it accepts those responsibilities.
- ☐ Appropriate evidence of the value of the assets being transferred.
- ☐ Identification of any actual or potential conflicts of interest and how those have been resolved.

Charitable or Religious Nonprofit Corporation must give 30-day+ notice to NC Attorney General:

- Sell, lease, exchange or dispose
- Of all or majority of its property
- Not in the usual & regular course of its activities

G.S. 55A-12-02(g)



57



<https://sosnc.gov/divisions/charities>

Charitable Solicitation Licensing Division
Annual Report

July 1, 2017 through June 30, 2018

North Carolina Department of the Secretary of State
Elaine F. Marshall, Secretary

Charitable Solicitation Licensing Division
P.O. Box 29622
Raleigh, NC 27626-0622
919-440-4400 or NC Toll Free: 888-830-4989
Email: charities@sosnc.gov
Website: sosnc.gov/divisions/charities

58

**CHURCHES & RELIGIOUS
ORGANIZATIONS**

CAUTION!



- Entity type
- Name in which title *actually* held
- Organizational documents / authority
- Denominational / Connectional oversight authority APPROVAL
- Title limitations in vesting instrument
 - Reversions
 - Conditions
 - Restrictions

59

**TITLE TO THE REAL PROPERTY:
ANALYZE IT!**



Property vested in an unincorporated association (such as a church) does not suddenly become the property of a new corporation (for profit or non-profit) of similar name or similar alleged membership.

In NC, that requires a duly authorized and recorded conveyance from the unincorporated association to the new corporation, in compliance with authority documents, state law regarding entity type.

Organizational documents must be worked through, just as with a for profit entity owner.

60

CHURCHES & RELIGIOUS ORGANIZATIONS

Types of organizations :

- Nonprofit corporation - G.S. Chapter 55A
- Religious Societies, (bishops, ministers, other ecclesiastical officer or Trustees) - G.S. Chapter 61
- (prior) Voluntary organization - G.S. 39-24
- Uniform Unincorporated Nonprofit Association Act (other than trust or LLC) - G.S. Chapter 59B ("Statement of Authority")



61

TYPES OF CHURCH ORGANIZATIONAL STRUCTURES

- Local church
 - Organizational documents / requirements
 - Approval of congregation and board
 - Authorized person
- Connectional churches
 - Organizational requirements
 - Due authorization and approval
 - Web sites

62

CHURCH EXAMPLES

- **Catholic Church** is held in the name of the Bishop of the Diocese of Raleigh (eastern half of state, <https://dioceseofraleigh.org/>) or Diocese of Charlotte (western half of state <https://charlottediocese.org/>) as "corporation sole," whoever such individual person is at the time of conveyance.
- **Presbyterian Church (USA)** requires permission of the presbytery, authority of elders and congregation Book of Order: <https://www.pcusa.org/resource/book-order-2017-2019/>
- **United Methodist Church** – Book of Discipline www.umc.org/genconf/pets/bd92/par2501.html <http://www.gcfa.org/services/legal-services/legal-manual/>
- **Episcopal Church, USA**, requires written consent of Bishop and Standing Committee of Diocese, resolution of vestry, and execution of documents by Senior Warden & Junior Warden; property is held in trust for the Church and the Diocese, pursuant to Title I, Canon 7, Sections 3 and 4: www.episcopalchurch.org/governance/canons/Title-I/Canon7-12.html https://www.episcopalchurch.org/files/attached-files/2009_candc.pdf
- **Moravian Church** in NC governed by Book of Order for the Moravian Southern Province and its Constitution; require Provincial Elders Conference (PEC) approval, local church bylaws, congregational approval: <https://www.moravian.org/southern/2018/08/southern-province-book-of-order/>

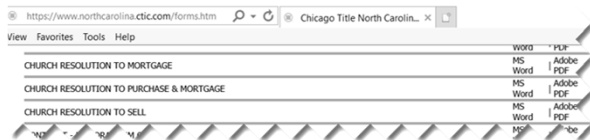
63

CHURCH EXAMPLES

- **Evangelical Lutheran Church of America**, formed in 1988, is the largest Lutheran denomination, though there are other smaller ones. NC is in Region 9. ELCA requires approval of congregation organizational documents by the Synod, with which the congregation must comply in buying, mortgaging or conveying property. Constitutions, Bylaws, and Continuing Resolutions Sec. 9.70
http://download.elca.org/ELCA%20Resource%20Repository/Constitutions_Bylaws_and_Continuing_Resolutions_of_the_ELCA.pdf?ga=2.58895534.202583490.1563534080.345909721.1563534080
- **Church of God International** requires the local church to be incorporated, to have certain required language in their articles of incorporation, their bylaws and any deeds of property, and that the real property be in the corporation, not a local board of trustees: <http://www.churchofgod.org/legal-services>
- **African Methodist Episcopal Church (AME Zion)** Book of Discipline grants AME Zion the rights to all real property and other assets owned by a member church; all property is under authority of the Board of Incorporators. NC is in the Second District.

64

SAMPLE RESOLUTIONS



65

VOLUNTARY ORGANIZATIONS G.S. 39-24 ET SEQ. NOW REPEALED EFFECT. 1/1/2007

- Title can be held by trustees or in common name
- Charitable, fraternal, religious or social organizations
- Conveyance must be authorized by "resolution of the body duly constituted and held"

G.S. 39-24

66

- Can hold title and convey
- Statement of Authority
 - By member or agent *not* the person authorized to transfer title
- Recorded if affects real property
- Presumed authority if recorded
- Expires 5 years from last recording

AFFIDAVIT OF STATEMENT OF AUTHORITY OF	
<u>NAME</u>	
A NORTH CAROLINA UNINCORPORATED NONPROFIT ASSOCIATION	
Affiant and role:	_____ affiant, being first duly sworn.
I, <u>NAME</u> _____, am an unincorporated nonprofit association (the "Association").	
I am the <u>MEMBER</u> and/or by Agent(s) of said Association, duly authorized by the Association to execute this Affidavit of Statement of Authority pursuant to Chapter 139 of the North Carolina General Statutes.	
The street address of the Association is: _____	

(4) The mailing address of the Association is different to: _____	

(5) The county in North Carolina in which the Association is located is: _____	

(6) The Association _____ does not have an address in the State of North Carolina.	
(7) The name(s) of the person(s) authorized to transfer all or interest in real property held in the name of the Association and the undersigned affiant is/are: _____	
Name	Position
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
[Initials] _____	
That the Association has duly authorized the undersigned member or agent executing this Statement of Authority to do so.	
The Affiant has executed this Affidavit of Statement of Authority on behalf of the Association.	
_____ Unincorporated Nonprofit Association	
State of _____ Member(s) Affiant	By _____ Member(s) Affiant
STATE OF NORTH CAROLINA, COUNTY OF _____	
do sworn to (or affirmed) before me this _____ day of _____, 20____.	
_____ Notary Public	

[illegible]

G.S. 57D-2-30 & 57D-9-20 & 55A-11A-10
Effective October 1, 2016.

[illegible]

- Trustees hold title, as appointed and reappointed over time
- For church, denomination, religious society or congregation
- Also allows vesting and authority in bishops, ministers or other ecclesiastical officers – G.S. 61-5

[illegible]

[illegible]

Thank you
for joining us today
and
for all you do for all of us
at



Chicago Title
