

Corporate POA's

We are going to change gears this month and talk about something other than Mechanics Liens. An issue that we have been seeing a bunch of lately is the scenario whereby corporations conduct business through the execution of Powers-of-Attorney. We generally see this concept at work in the foreclosure/REO context. Typically, the servicer of the loan has an agreement with the holder of the note to perform certain acts related to the servicing. These acts often times include, executions of Substitutions of Trustees, Deeds and Satisfactions. Personally, I have always struggled with the notion of officers delegating their responsibilities to other corporations by the use of a power-of-attorney, but the Title Underwriters point to the provisions of Chapter 55 for the legal justification for doing so. The Relevant statutory language is listed below:

§ 55-3-02. General Powers.

(a) Unless its articles of incorporation or this Chapter provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power:

... (11) To elect or appoint directors, officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(b) It shall not be necessary to set forth in the articles of incorporation any of the powers enumerated in this section. (Code, ss. 663, 666, 691, 692, 693; 1893, c. 159; 1901, c. 2, s. 1; Rev., s. 1128; 1909, c. 507, s. 1; C.S., s. 1126; 1925, cc. 235, 298; 1929, c. 269; 1939, c. 279; 1945, c. 775; G.S., s. 55-26; 1951, c. 1240, s. 1; 1955, c. 1371, s. 1; 1959, c. 1316, ss. 4, 5; 1969, c. 751, ss. 7, 8; 1989, c. 265, s. 1.)

So...there is legal authority for this sort of framework, but that does not represent the end of our analysis. We still need to determine a couple of things. First, there must be some evidence that the Corporation acting as Principle properly appointed the Agent/Attorney-in-Fact. What we have seen – when done properly – is a copy of the Resolution attached to the Power of Attorney itself. Second, we must have proof that the Attorney-in-Fact has the authority to perform the act contemplated. In other words, if the Agent/Attorney-in-Fact is executing a Deed then the Power-of-Attorney must list execution of Deeds (or, alternatively, conveyancing of real property) as one of the acts it may conduct on behalf of the principle. As with all powers of attorney, it must be recorded. This is a requirement that seems to have escaped some of the lenders and servicing agents utilizing this approach. While the power-of-attorney should be recorded in the County where the property is located, we have had success insuring these transactions when: 1) the power-of-attorney is recorded in one of the one hundred Counties in North Carolina and 2) the acknowledgment of the instrument being examined makes reference to the book, page and county where the power-of-attorney is recorded.

So. . .in our examination, we have determined that the Corporation acting as Principle has resolved to appoint an agent, that resolution is recorded, the power-of-attorney is recorded and the instrument in question was properly acknowledged. There is one more thing left to do. . .we must determine whether the individual executing the instrument on behalf of the entity acting as Agent is authorized to do so. If the individual in question is an Officer of the Agent, then the analysis is over. However, what we have found is that is rarely the case. In fact, the Agent appoints a list of employees to execute instruments on behalf of the Agent entity. If this is the case, then you will need to see a Resolution from the Agent entity appointing those persons. Oftentimes, this Resolution is filed with the Power-of-Attorney or as an exhibit to the instrument in question.