

Signature WHOSE LINE
IS IT
ANYWAY?

A red arrow originates from the word 'Signature' and points diagonally upwards and to the right, ending at the top of the word 'LINE' in the main title.

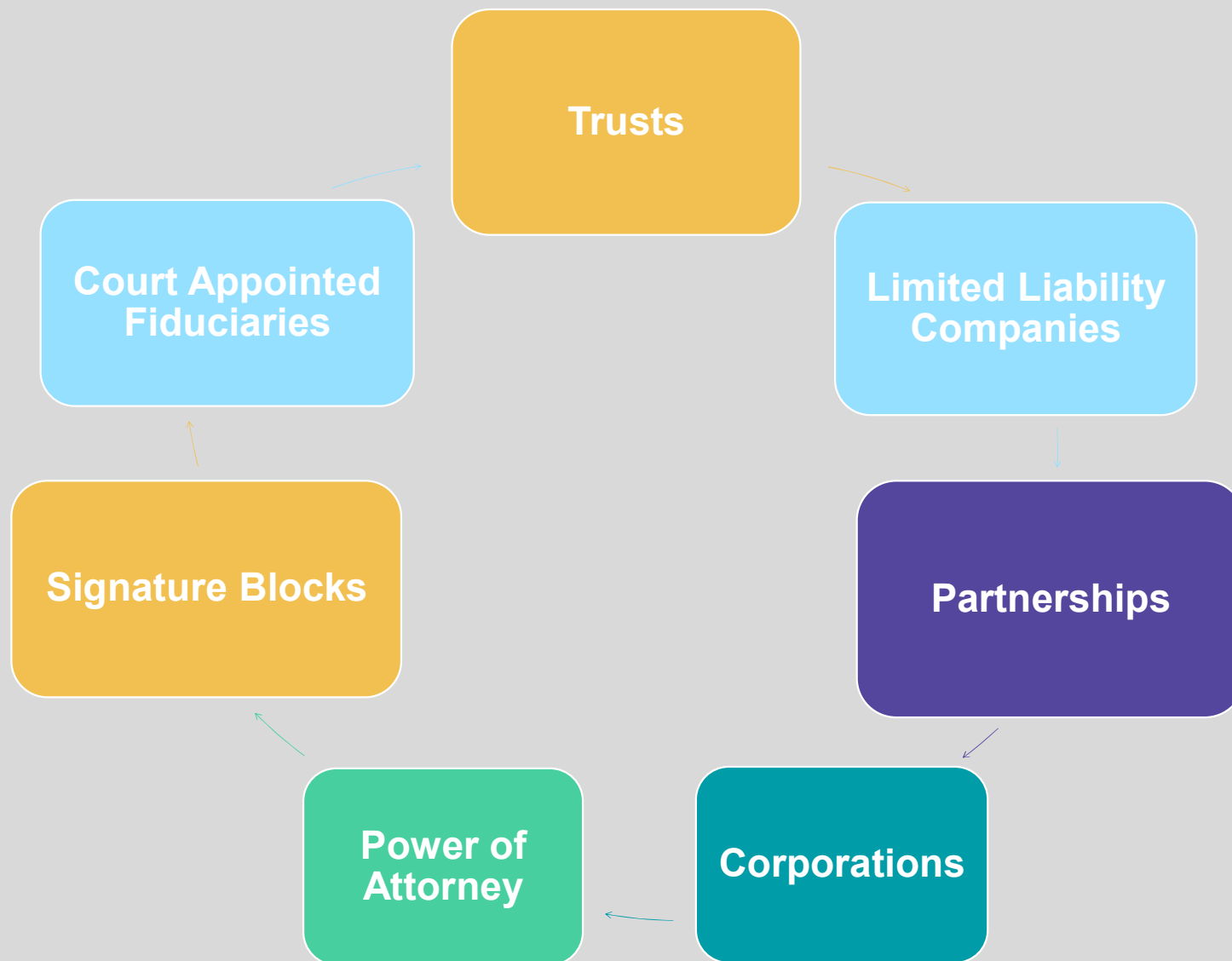
Signing authority issues faced by
title and escrow professionals.

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INTRODUCTION

**Does the entity have the power to act?
Who has the authority to Sign?**

When trustees of a trust, principals of a corporation, a partnership, or a limited liability company are looking to sell, refinance, or encumber a real property asset, the controlling documents must provide the authority to act and either the prevailing law or the controlling documents must identify who may act on behalf of the trust or entity.



WHY SHOULD I CARE?

Consequences of a failure to obtain proper signatory?

The transaction may be void or voidable resulting in a rescission of the entire transaction and causing damages to the buyer, and seller, and a potential for loss under the title insurance policies issued in the underlying transaction.

Consequences of a lack of authority to sell, encumber, etc.?

The transaction is void.



TRUSTS



TRUSTS

GENERALLY

A trust is a fiduciary arrangement in which the trustor, or grantor, allows a trustee to hold assets on behalf of a beneficiary or beneficiaries. Trusts can be arranged in many ways and can specify exactly how and when the assets pass to the beneficiaries. The trustor/grantor may also be a trustee and a beneficiary. A trust can serve many purposes, including estate planning, tax planning, medical planning, and charitable giving.



TRUSTS

PARTIES

- Grantor(s) or Settlor(s) or Trustor(s)
- Trustee(s) or Successor Trustee(s)
- Beneficiary or Beneficiaries and Successor Beneficiary or Successor Beneficiaries

TYPES

- Living Trusts
 - Revocable
 - Irrevocable
- Testamentary Trust
- Supplemental Needs Trusts
- Spendthrift Trusts
- Charitable Trusts

TRUSTS

Most common

Inter Vivos or Living Trust – created and comes into existence during the life of the Settlor/Trustor

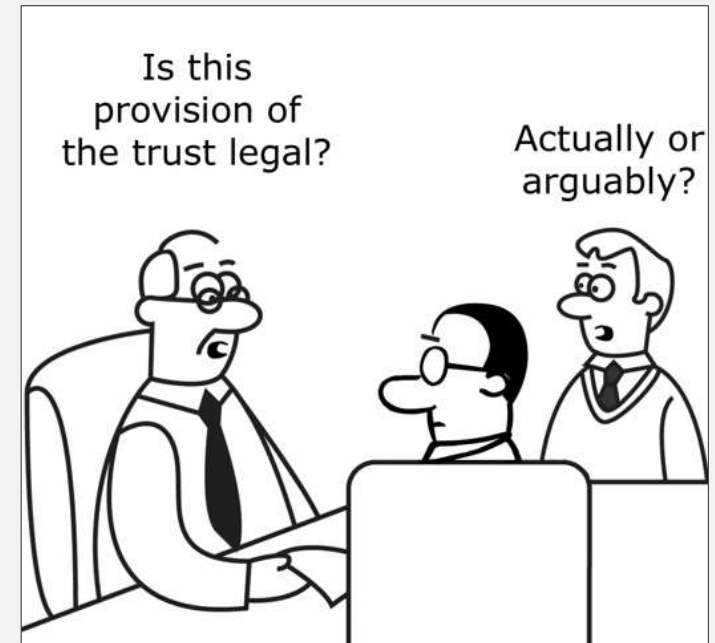
- Irrevocable Trust – Trust agreement that by its terms cannot be revoked by the Settlor/Trustor
- Revocable Trust – Trust agreement susceptible of being revoked.

Testamentary Trust – Trust agreement created under the terms and provisions of a valid and uncontested will. The trust becomes effective at the time of the testator's death.

TRUSTS

Powers and duties of the trustee:

- Manage trust assets
- Follow the terms of the Trust Agreement, which may grant
 - Power to Sell, Purchase, and Buy property
 - Power to Distribute Trust Assets
 - Power to hire professionals
- Act in the best interest of Beneficiaries
- Make Prudent & Informed Investments
- Communicate with Beneficiaries



TRUSTS - Typical Requirements for Closing



A full copy of the Trust? A Copy of pertinent sections? Or just a Trust Certification??

ORS 130.860 (9)b

Any transaction, and any lien created by that transaction, is enforceable against a trust if the transaction is entered into by a person acting in reliance on a certification of trust containing the information set forth in this section without actual knowledge that the representations contained in the certification are incorrect

Overcoming Objections to Providing Trust Documents

- Explain why the documents are necessary for review
- The Trust Agreement will not be recorded
- Send the Trust Agreement directly to manager or underwriter
- Fax, or scan and email Trust documents
- Mail Trust documents to Title Company





Land Trusts

- A Land Trust a/k/a Illinois Land Trust is a specific type of entity in which a trustee holds legal title but does not control the property
- The trustee may only act upon the written direction of the beneficiaries
- The beneficial interest is considered personal property and may be “assigned” without an actual conveyance of the real property
- Only six states actually have a statute or case law that recognizes true Land Trusts
 - Illinois, Indiana, South Dakota, Florida, Virginia and Hawaii
- Attempted conveyances to a Land Trust outside of these six states may be void or voidable and therefore subject to challenge by former owners or creditors



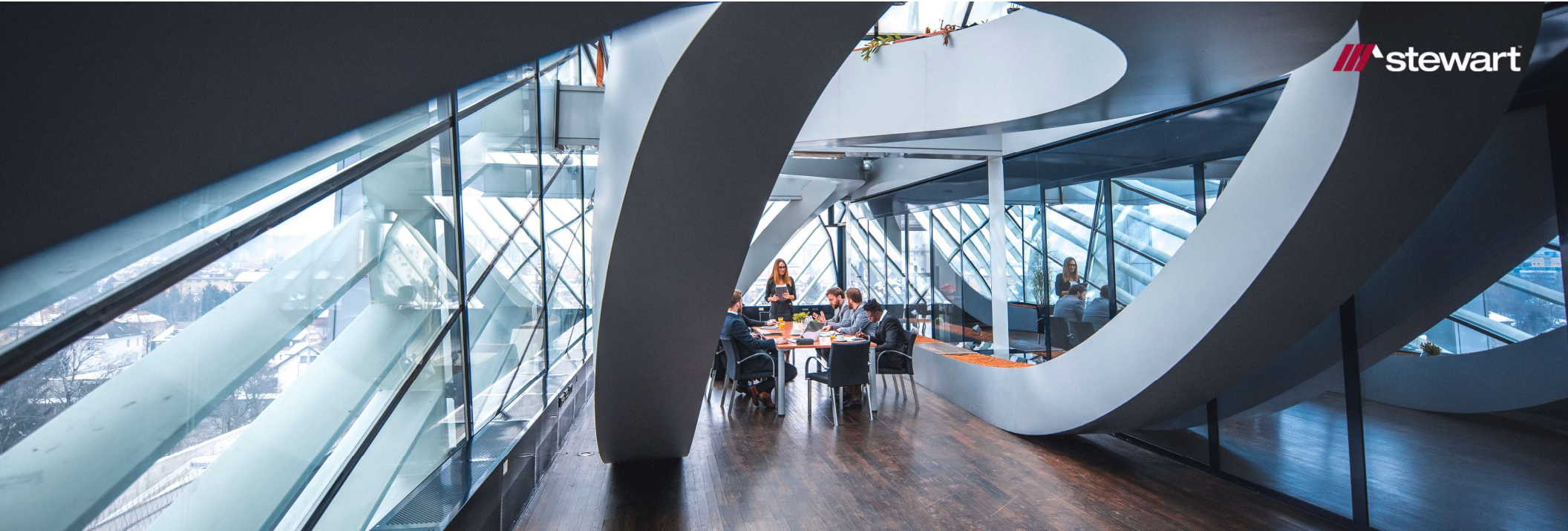
Land Trusts

ORS 128.560 “Business trust” described

A “business trust” is any association, including a real estate investment trust, engaged in or operating a business under a written trust agreement or declaration of trust, the beneficial interest under which is divided into transferable certificates of participation or shares, other than a trust engaged solely in exercising the voting rights pertaining to corporate shares or other securities in accordance with the terms of a written instrument. [1971 c.491 §1]

ORS 128.565 Business trust permitted

A business trust is permitted as a recognized form of association for the conduct of business within the State of Oregon. [1971 c.491 §2]



LIMITED LIABILITY COMPANY

LIMITED LIABILITY COMPANY



FORM OF BUSINESS ENTITY

A business entity created by state statute to take advantage of the features of both a corporation and a partnership.

Takes advantage of the limited liability of a shareholder in a corporation with the federal tax benefits of a partnership.

MANAGED BY A MANAGER OR ITS MEMBERS

A **manager** is a person designated by members to manage the limited liability company. This person is like a corporate officer or a managing partner of a partnership. A **member** is an owner of an interest in the limited liability company. A manager or member may be a partnership, general or limited, another limited liability company, a trust, an estate, an association, a corporation, a custodian or nominee or an individual. An LLC may also be managed by its members.

Operating Agreement

This is the document agreed to by the members which governs the management of the LLC.

BEWARE OF THE RUSSIAN DOLLS



Central Perk, LLC, a New York limited liability company

By: Bing Holdings, LLC, its Manager

By: Geller Investments, LLC, its Managing Member

By: Buffay Management Inc., its Sole Member

By: _____

Phoebe Buffay, its President



We need to drill down until we reach a real person.

LIMITED LIABILITY COMPANY



AUTHORITY TO MANAGE, AUTHORITY TO ACT, AND REQUIREMENTS FOR CLOSING:

- Operating Agreement
- Bylaws/Regulations, if any
- Resolution of Members
- Affidavits re: current Members/Managers
- Good Standing Certificate
- Certificate of LLC



PARTNERSHIPS



PARTNERSHIPS



Uniform Partnership Act (UPA) definition of a Partnership: An association of two or more persons to carry on as co-owners of a business for profit.

Uniform Partnership Act assumes that partnerships will use a partnership name, and provides that real property may be acquired in the partnership name and that a title so acquired can be conveyed only in the partnership name.

Partnerships are generally formed to engage in general and continuing business of a particular kind and not for an isolated or single transaction. (Always exceptions!)

PARTNERSHIPS



General Partnership

- Primarily governed by the Uniform Partnership Act. The Act does not refer to any special categories of general partnerships. It can be stated that every partnership that is not formed following the law concerning limited partnerships is a general partnership.

Limited Partnership (LP) / Limited Liability Partnership (LLP)

- A partnership that limits the liability of all but general partners and is governed by the Uniform Limited Partnership Act or its revised versions.
- Must register with the Secretary of State therefore good standing requirements apply
- May contain both Limited and General Partners, however, the General partner is vested with nearly total control over the management of the business. Any General Partner may bind the partnership absent a written partnership agreement

PARTNERSHIPS

TYPES OF PARTNERS

- General Partners
- Limited Partners
- Silent or Dormant Partners
- Managing or Active Partners



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PARTNERSHIPS

EXAMPLES OF VESTINGS:

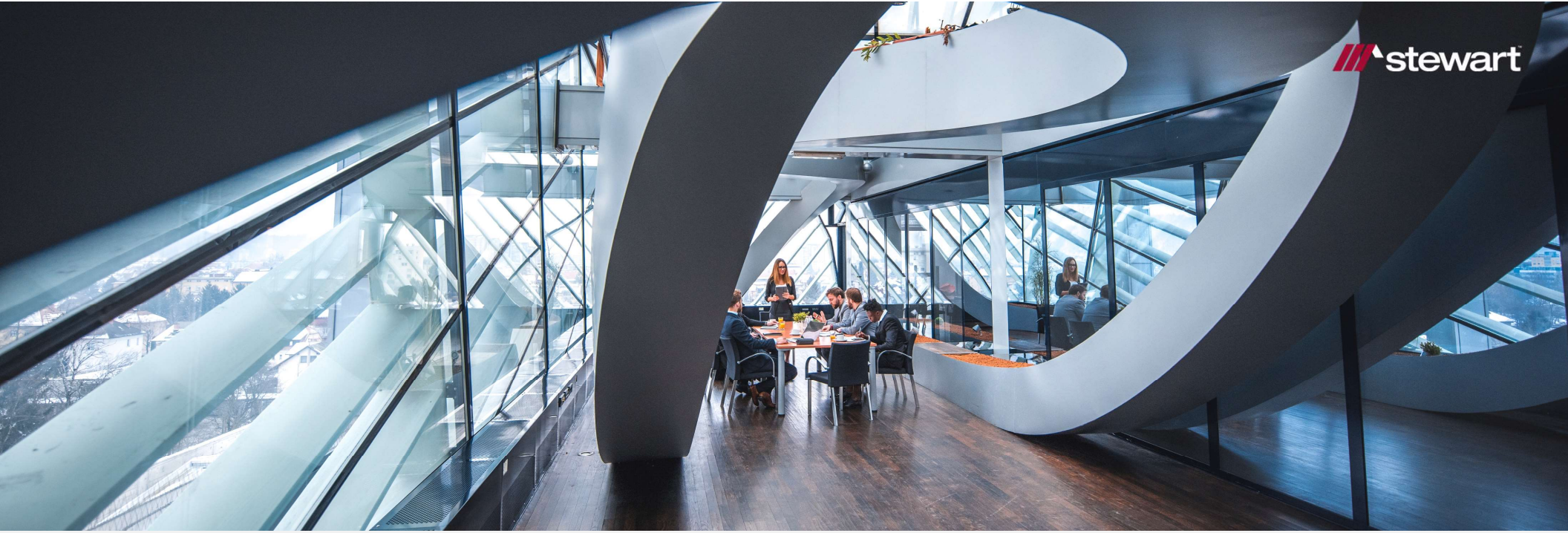
- ABC, a _____ partnership.
- ABC, a _____ partnership composed of _____ and _____ .
- ABC, a _____ partnership composed of _____ and _____, partners.
- _____ and _____, partners of _____ a _____ partnership.

Partnership property should be conveyed or mortgaged in the same name style in which the title was acquired. The question of the required signatories is dependent upon the partnership agreement and the applicable state law.

PARTNERSHIPS

DOCUMENTS FOR REVIEW FOR CLOSING: It is beyond the scope of title insurance to determine whether the transaction is or is not in the ordinary course of business, and consequently, it becomes imperative to establish the authority of the partner who executes the conveyance or mortgage by examining the documents.

- Partnership Agreement w/ amendments
- Statement of Partnership
- Certificate of Limited Partnership (if applicable)
- Consents of all Partners (if called for in the Agreement)
- Affidavits re: Signatory & Names of all Partners and Nonindividual Partners
- Certificates of Good Standing



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CORPORATIONS



CORPORATIONS

Business Corporations: organized to carry on a business for profit.

Nonprofit Corporations: organized for a nonprofit purpose such as: charitable, political, fraternal, scientific, civic, religious, educational, and health.

Public Corporations: Normally based on statutes, public corporations are governmental subdivisions or agencies. Except for the U.S. and some states, they are generally municipal corporations.

Quasi Public Corporations: are created, owned, and controlled by a public corporation, for public purposes, such as operating a toll bridge, a canal, a turnpike, a municipal power or water plant ABC, Limited Liability Company, A Delaware limited liability company.

Public Utility Corporations: are created to supply the public with a type of commodity or service, such as electricity, gas, water, or transportation. These corporations enjoy certain monopolistic advantages but are strictly regulated and supervised by several governmental agencies.

Financial Corporations: commercial banks, savings and loans, credit unions. Organized under Federal or State laws.

Insurance Corporations: insurance corporations are organized for the purpose of providing a line of insurance (life, casualty, fire, title, surety, etc.).

Industrial Development: Corporations: organized under statutory authority for the promotion of commercial and industrial development.

CORPORATIONS

FORMATION

Governed by the law of the jurisdiction where formed.

Formed by the act of the incorporators who execute article of incorporation and file the same.

Upon payment of taxes and fees the secretary of state issues certificate of incorporation.

POWERS

A corporation has legal capacity to hold and deal in real property.

Has the power to sue and be sued in its own name consistent with the powers given in its charter or articles of incorporation.

Its powers, scope of activities, duration of existence, and dissolution are governed by the charter or articles of incorporation unless limited or otherwise provided by statute.

MANAGEMENT

The board of directors of the corporation, not the shareholders, is responsible for the management of the corporation and the conduct of its affairs.

The board acts according to the vote of a majority of its members for most matters.

The directors are responsible to the stockholders of the corporation and must account to them for their acts or conduct.

CORPORATIONS

AUTHORITY TO ACT

Corporate officers can exercise only such authority as is delegated to them under the corporate charter, certificate of incorporation by the Board of Directors, and bylaws.

They can bind the corporation by acts or conduct that are within the scope of their actual or apparent authority.

Ascertain whether the person who executes the instrument is an officer of the corporation and, if that is the case, is the officer duly authorized by the corporation to execute the instrument.

DOCUMENTS FOR CLOSING

- Certified copy of Articles of Incorporation
- Bylaws
- Good Standing Certificate
- Certified copy of Resolution of the Board of Directors
- Affidavits for the Directors

TITLE INSURANCE CONCERNS

- Duly Formed
- Precise Name of Corporation
- Date of Commencement
- Corporate Duration not expired
- Corporation is in Good Standing
- Corporate documents do not prohibit the proposed act
- There is no consent required from a regulatory agency
- If a foreign Corporation, it is authorized to do business in the State



POWER OF ATTORNEY



USING A POWER OF ATTORNEY

When needed

A required party is

- Out of the country
- Unable to be physically present
- In the military and deployed
- In the hospital or a care home
- Incarcerated



USING A POWER OF ATTORNEY

Kinds of Power of Attorneys

- General
- Limited
- Durable
- Springing

Requirements for Validity

- Principal must be at least 18 and must be competent when executed
- Signed before a Notary
Principal must be alive
- POA must be dated

USING A POWER OF ATTORNEY



WHAT ACTS ARE ALLOWED?

- Specific Acts Specified in the Power of Attorney
- “All Powers”:
 - Buy or sell things for you
 - Apply for public benefits (such as Medicaid, Medicare, or Social Security)
 - Manage your business
 - Manage your care
 - Collect your debts
 - Invest your money
 - Cash your checks
 - Manage your financial matters generally
 - Sue on your behalf

WHAT ACTS ARE NOT ALLOWED?

- The power to make gifts of your money or other property;
- The power to designate beneficiaries of your insurance policies.
- The power to vote in public elections;
- The power to make or alter a Will
- Self-dealing

WHEN EFFECTIVE, FOR HOW LONG?

- Immediately upon signing or on a future date as specified
- May last for a limited time or indefinitely
- Expires upon the death of the principal
- Is not a substitute for a Will

USING A POWER OF ATTORNEY

REQUIREMENTS FOR CLOSING

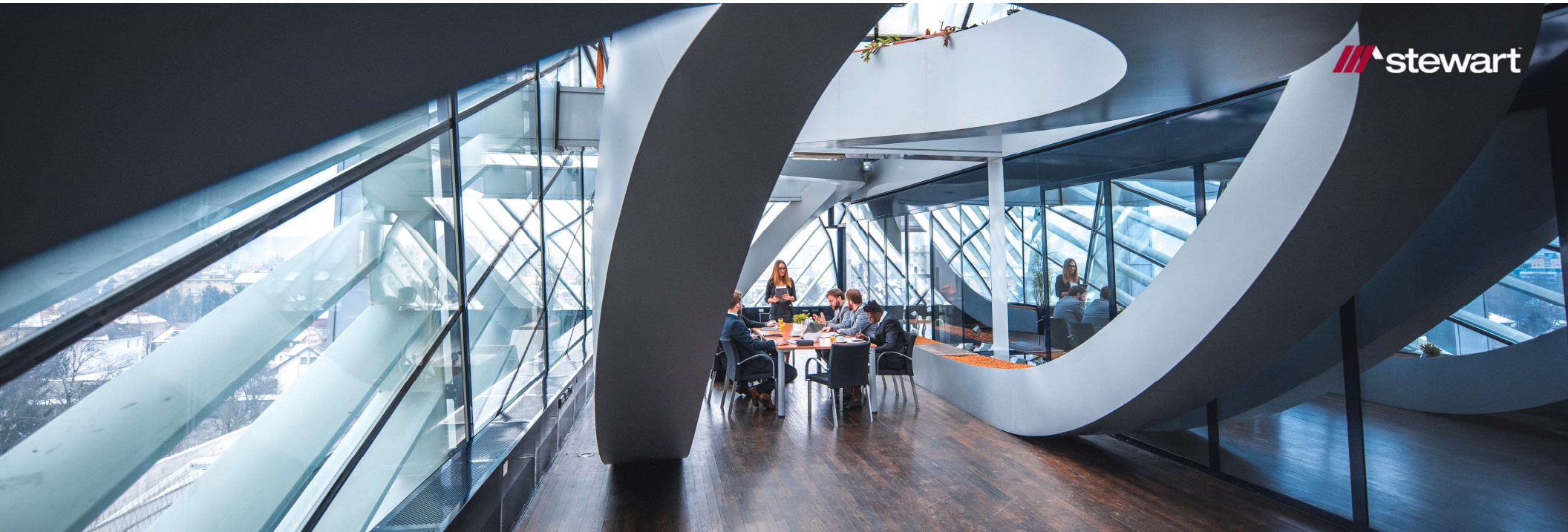
Receipt of Original POA in recordable form.

Signature line must reflect the party is signing as the attorney in fact for the principal.

By: (signature of attorney in fact)
Jane Doe, as attorney in fact for
Principal

WHEN A POA IS NOT APPROPRIATE

- Use in place of a Trustee of a Trust - rather a Trustee must appoint a successor trustee to act
- When a principal party is a company or corporation – a resolution by the shareholders or members is required.



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SIGNATURE BLOCKS



SIGNATURE BLOCKS

TRUSTS – Executed by the Trustees in their capacity as Trustees

The 2020 Smith Family Trust

By: _____
Mary Smith, Co-Trustee

By: _____
John Smith, Co-Trustee

TRUSTS – Executed by the successor trustees in their capacity as Trustees

The 2020 Smith Family Trust

By: _____
Mary Smith,
Successor Co-Trustee

By: _____
John Smith,
Successor Co-Trustee

LIMITED LIABILITY CO – Executed by the Manager, or all Members, or an authorized signor

Joey’s Jawbreakers LLC, A Delaware limited liability company

By: _____
Archie Dog, Authorized signor

Joey’s Jawbreakers LLC, A Delaware limited liability company

By: _____
Archie Dog, Manager

Joey’s Jawbreakers LLC, A Delaware limited liability company

By: _____
Joseph JoJo, Member

SIGNATURE BLOCKS

PARTNERSHIP - Executed by authorized signatory

ABC, a general partnership

By: _____
John Doe, Manager

PARTNERSHIP - Executed by at least two partners or as provided for by partnership agreement.

ABC, a general partnership

By: _____
Jane Doe, General Partner

By: _____
John Doe, General Partner

LIMITED PARTNERSHIP -

Executed by all the general partners, unless a lesser number is provided in the certificate of limited partnership.

ABC, an Oregon limited partnership

By: _____
Jane Doe, General Partner

OR

ABC, an Oregon limited partnership

By: EFG, Inc., General Partner

By: _____
Jane Doe, President

SIGNATURE BLOCKS



CORPORATIONS

ABC, INC., a Delaware corporation

By: _____
Jane Doe
Its: President

By: _____
John Doe
Its Secretary

PUBLIC CORPORATIONS

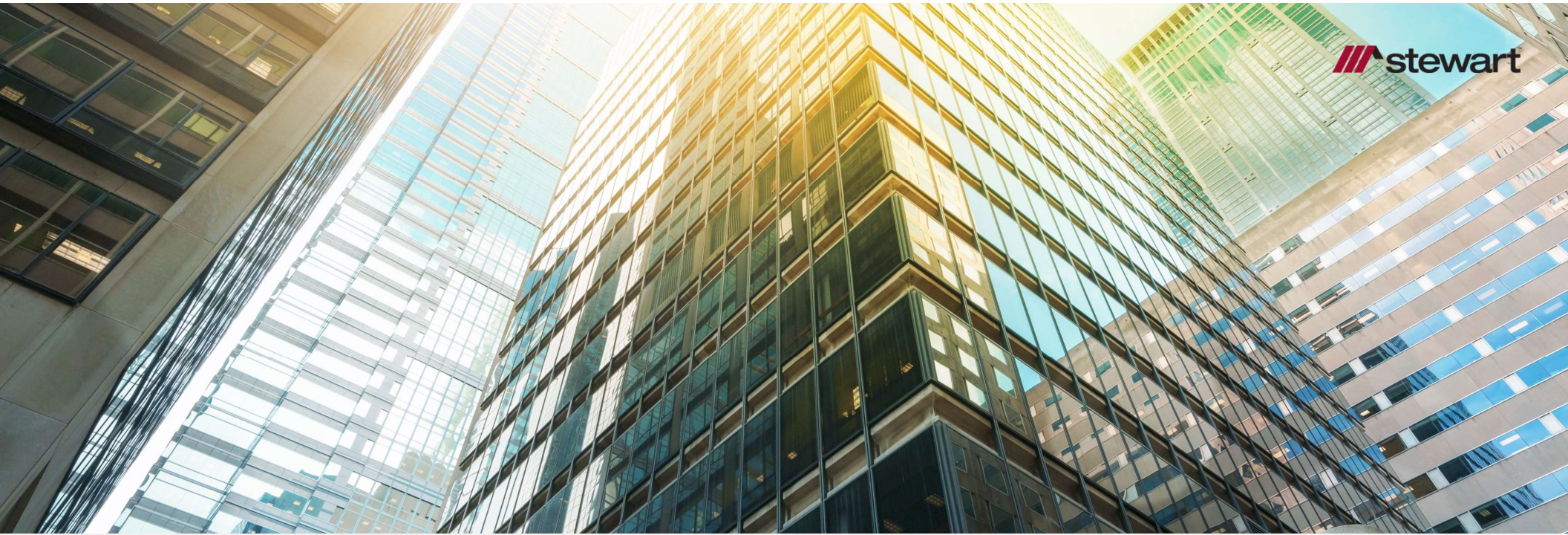
City and County of San
Francisco, a municipal
corporation

By: _____
Jane Doe
Title: City Manager

By: _____
Mary Doe, Witness

POWER OF ATTORNEY

By: _____
Jane Doe
as attorney-in-fact for
John Jones



Court Appointed Fiduciaries

PROBATE

Where does property vest at death when there is no survivorship estate?

"The Heirs and Devisees of _____, deceased."



"According to this, the cheshire cat gets everything."

Conveyances by a Personal Representative

- Order Appointing PR and Letters will identify the PR and contain any limits or restrictions on the PR's power
- Co-Personal Representatives must act jointly unless the Letters or a Court Order allows otherwise



GUARDIANS/CONSERVATORS



Guardian

Is appointed and provides care for the person

Conservator

Is appointed and provides fiduciary care over their assets and property



Miscellaneous



IRA Accounts

An IRA Account itself cannot hold and convey real property, but the IRA Company can on behalf of or “for the benefit of” the account owner

- *“Magic Kingdom, Inc., FBO Donald Duck IRA #12345”*

Normal good standing and entity authority questions will apply to the IRA Company

Certain “self-directed” IRA accounts allow the account owner to sign documents on behalf of the IRA company



Profit Sharing Plans



Profit Sharing Plan is similar to a trust with a “Plan Administrator” or Trustee

We should carefully review Profit Sharing Plan documents to confirm that the Plan is allowed to hold and convey real property and under which circumstances it can do so.

How do I get my hands on this amazing webinar?

This webinar along with others in the OLTA Educational Webinar Series will be available for download on the Oregon Land Title Association webpage, www.OregonLandTitle.com

If you have any questions, please email info@Oregonlandtitle.com

If you want to email me, Dulce.Phelps@Stewart.com

The image features a central graphic consisting of several concentric circles. The innermost circle is a dark blue color. Surrounding it are several rings of varying shades of red, from a deep, dark red to a lighter, more vibrant red. The text "That's all Folks!" is written in a white, elegant cursive font, positioned across the middle of the concentric circles. The overall composition is centered and balanced, with the text being the primary focus against the circular background.

That's all Folks!