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Maylie & Grayson is a full service law firm providing representation to real estate brokerages, licensees, local Realtor® organizations, developers, builders, lenders and investors, providing services in all aspects of real estate including transaction review, land use planning, licensing, mediation, arbitration and court matters.

Enforceable Agreements - Securing Your Commission

Obtaining signatures of the proper parties to a transaction, whether on listing agreements, sale agreements, or other documentation is critical to establishing a binding transaction and entitlement to a commission. Issues relating to invalid signatories are frequently encountered by brokers and can easily jeopardize a transaction. Confusion surrounding signatures for companies, trusts, and other entities often results in a failure to obtain the correct signatures of property owners.

The following factual scenarios demonstrate the importance of obtaining signatures of the proper parties to a transaction.

In the first scenario, a broker listed three rental properties for sale. The seller indicated that he needed to sell immediately due to financial problems. He stated that he owned the properties and that one property was in his name personally, one was held in an LLC, and one was in his living trust.

The broker took the listings in the seller's personal name and was successful in securing acceptable offers for two of the properties within a week. The transactions were pending when the seller called the broker indicating that he no longer wished to sell. When the broker reminded him that he was contractually bound to the transactions as well as the commissions, he became enraged and stated that the properties were all held in a corporation owned by several investors, and the corporation would not honor the transactions or the commission agreement.

A second scenario involves a broker listing a home for previous clients, a married couple we will call the Joneses. Mrs. Jones contacted the broker and explained they needed to sell the home to address financial issues in anticipation of a divorce. She listed the property in her name and indicated that she would be handling the transaction on behalf of her soon-to-be ex-husband.

Upon receiving an offer, it was discovered that Mr. Jones would not sign the offer as he did not consent to the sale.

The broker in each instance sought legal advice as to whether the contracts were enforceable.

In the first scenario, the corporation that owns the properties will have a strong argument that it did not agree to the listing and sale agreements, as the individual did not disclose that he was acting in a representative capacity for the corporation. Although there may be legal recourse available against the individual, it is likely that the listing and sale agreements will be unenforceable.

Similarly, in the second scenario, Mr. Jones would argue that since he had not provided a power of attorney or other such consent for his wife to act on his behalf, the listing and sale agreements may not valid with respect to his interests.

Both of these situations could have been easily avoided by confirming the ownership of the properties, and securing the signatures of the appropriate parties.

The following is a list of common organizations and entities and the persons normally authorized to sign on their behalf.

<u>Organization/Entity Authority</u>	<u>Proper Party to Sign</u>	<u>Written Source of</u>
Limited Liability Company (“LLC”)	Member or Manager	Operating Agreement
Limited Liability Partnership (“LLP”)	Partner	Partnership Agreement
Corporation Resolution	President or other officer	Corporate Bylaws or
Trust	Trustee	Trust Document
General Partnership	Partner	Partnership Agreement
Limited Partnership Agreement	General Partner	Limited Partnership
Estate and	Personal Representative	Court Order of Appointment Letters Testamentary
Conservatorship and	Conservator	Court Order of Appointment Letters of
Conservatorship		
Husband and Wife	Both Husband and Wife	

Below are examples of formatting for signature blocks where an individual is signing on behalf of an entity.

XYZ CORPORATION, INC.
TRUST

JOE SMITH REVOCABLE LIVING

By: John Doe, President

By: Jane Smith, Trustee

This column contains general information only and must not be construed as legal advice. Questions may be submitted directly to Maylie & Grayson by fax at (503) 775-1765, by email at joelgrayson@mayliegrayson.com or by mail at 7959 SE Foster Road, Portland, Oregon 97206.

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