

Grantor Clause Issues

Ex. Property is Owed by Donald Mofford. He grants a POA to Kenneth M. O'Brien authorizing Kenneth to sell real property.

SPECIAL POWER OF ATTORNEY	
<i>(To be prepared under the supervision of an Attorney)</i>	
THIS IS A MILITARY POWER OF ATTORNEY PREPARED AND EXECUTED PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 1044b BY A PERSON AUTHORIZED TO RECEIVE LEGAL ASSISTANCE FROM THE MILITARY SERVICES. 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 ANY STATE, COMMONWEALTH, TERRITORY, DISTRICT, 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.	
KNOW ALL PERSONS, that I,	<u>(DONALD F. MOFFORD, individually)</u> a legal resident of
<u>Randolph</u>	<u>and as Trustee Massachusetts</u>
<i>(City)</i>	<i>(State)</i>
and presently stationed or residing at	<u>39 Reynolds Avenue, Randolph, Massachusetts 02368-3739</u>
desiring to execute a SPECIAL POWER OF ATTORNEY, do hereby appoint <u>Kenneth M. O'Brien</u>	
whose address is	<u>6 Swandale Drive, Mendon, Massachusetts 01756</u>
my Attorney-in-Fact to act as follows, GRANTING unto my said Attorney full power to:	
REAL ESTATE: (a) to enter into and upon the property located at 162 Mulberry Street, Brockton, Massachusetts, and to cause to be repaired/maintained or otherwise improve or alter the property as required to keep it habitable. To lease or rent the real property for such rental and under such terms and conditions as my Attorney-in-Fact deems appropriate. Also to initiate, prosecute, and settle, in my name, and on my behalf, any action for collection of related debts and/or the recovery of possession of property, and the removal of tenants or the persons, animals, or objects therefrom. (b) sell and convey in fee the above described property, together with all improvements thereon for such amount as my Attorney-in-Fact deems advisable in his best judgment, (c) buy, contract to buy, accept, mortgage, settle, or pledge, or otherwise acquire any interest therein on such terms, conditions and consideration as my Attorney-in-Fact shall deem proper, in my name, or jointly in my name with my Attorney-in-fact, the above described property, and to sign any and all documents necessary to effectuate closing of said property, (d) do and perform any and all acts necessary, in my name, to refinance the above described property to include signing, in my name, any and all necessary documents.	
All business transacted by means of this power shall be transacted in my name, and all indorsements and instruments executed by my	

Grantor Clause Issues

- *Deed is granted by:*

INCORRECT

MASSACHUSETTS QUITCLAIM DEED

I, Kenneth M. O'Brien, Attorney-in-Fact for Donald F. Mofford of 162 Mulberry Street, Brockton, Massachusetts 02302, for consideration paid, and in full consideration of ONE HUNDRED SIXTY-THREE THOUSAND AND 00/100 Dollars (U.S. \$163,000.00) grant to Marcos A. Coli and Maria D. Coli, husband and wife, Tenants by the Entirety, of 12 Henry Street, Brockton, Massachusetts 02302 with *quitclaim covenants* the following property in Plymouth County, Massachusetts.

Grantor Clause Issues

Proper Grant:



Donald F. Mofford of 162 Mulberry Street, Brockton, Massachusetts 02302, for consideration paid, and in full consideration of ONE HUNDRED SIXTY-THREE THOUSAND AND 00/100 Dollars grant to Marcos A. Coli and Maria D. Coli, husband and wife

Grantor Clause Issues

- *Ex. Property is owned by Lewis Associates LLC via Quitclaim deed from CoPark LLC.*

CoPARK LLC, a duly organized Massachusetts limited liability company having its principal place of business in Plymouth, Plymouth County, Massachusetts,

for consideration paid, and in full consideration of **ONE HUNDRED FIFTY THREE THOUSAND AND 00/100 (\$153,000.00) DOLLARS**,

grants to **LEWIS ASSOCIATES LLC**, a duly organized Massachusetts limited liability company, of Plymouth, Plymouth County, Massachusetts (mailing address: 170 Court Street, Plymouth, Massachusetts 02360),

Grantor Clause Issues

- Deed is granted by:

I, Edward P. Lewis Jr. Manager of Lewis Associates, LLC

of 170 Court Street, Plymouth, MA 02360

in consideration of \$1.00

grant to Edward P. Lewis Jr.

of 65 Stillwater Drive, Plymouth, Massachusetts 02360 with quitclaim covenants

INCORRECT

Grantor Clause Issues

Proper Grant:

Lewis Associates LLC, a Massachusetts LLC of 170 Court Street, Plymouth, MA 02360 in consideration of \$1.00 grant to Edward P. Lewis Jr. of 65 Stillwater Drive, Plymouth, MA 02360 with Quitclaim covenants...



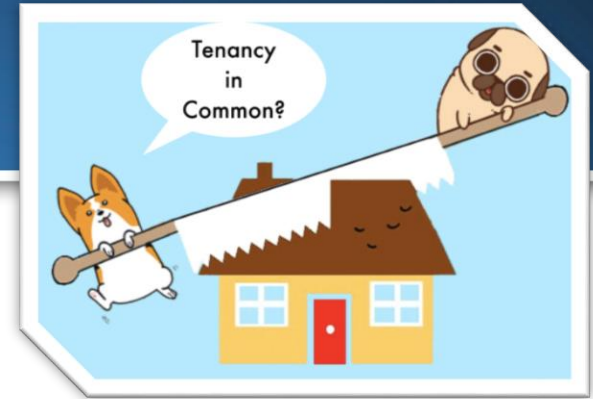
Grantor Clause Issues

Be cautious and ensure that grants for the following are also proper:

- Condominium Master Deed
- Easements
- Mortgages
- Assignments
- Discharges



Tenancies



Tenancy in Common

- Example:

- Conveyance to Jane Smith and Bob Smith as husband and wife.

What is the trap

- The notation that they are husband and wife doesn't create a tenancy by the entirety. They own as tenants in common.
- If one spouse dies, the property passes through that spouse's estate.
- **Probate would be necessary upon the death of the spouse.**

Tenancies



Joint Tenancies

- Unities of Title still required in Massachusetts
- Four Unities are:
 - Unity in Interest (Equal Interest)
 - Unity in Title (Title Derived from Same Document)
 - Unity of Possession (Equal Rights to Occupy the Entire Property)
 - Unity in Time (Interests Arise at the Same Time)

Tenancies



Tenancy by the Entirety

Interest Held only by a husband and wife in which each party has a right of survivorship. It has to be specifically listed in the deed.

Bad Deed



Ex. Tom Brady and his fiancé Gisele Bündchen own property as tenants in common. Two years later they get married and want to change their tenancy to tenants by the entirety.

- They as grantors convey to themselves as tenants by the entirety.
- A conveyance to oneself is void.



Instead: Use a straw or have both convey to one and then a deed from one to both as Tenants by the Entirety.

Legal Description

- In order to convey good title, a description of a parcel of land must be capable of referring to only one parcel. A description is not sufficient to convey title if the land is described as part of a tract without a specific description of its location within the tract.
- When a deed contains two inconsistent descriptions of a parcel of land, the more specific will govern. In the absence of evidence in the deed of a different intention, the descending order of priority is: monuments (including neighboring land of someone other than the grantor), courses and bearings in a running description, distances and area.
- Missing bounds, errors in direction or distance, and ambiguous descriptions are cured by reference to a specific lot on a recorded plan or by a title reference to a deed containing an adequate description

Homestead



Termination of Homestead

- Home is conveyed via deed to a non-family member and deed is signed by owners and *spouse if they are residing in the home* as the principal residence.
- A release of the homestead is signed and acknowledged by the owner and if applicable the *non-owner spouse residing in the home* at the time of the release.
- Abandonment of the home as a principal residence by the owner, owners spouse, former spouse or minor children
- If the deed is in trust, either by the trustee or the beneficial owner identified in the homestead declaration records a termination on the property held in trust.
- If a subsequent homestead declaration is made on another home, it shall terminate a prior homestead.

Deeds signed under POA

- Signature: agent should sign principal's name
 - e.g., Donald Mofford by Kenneth M O'Brien, his attorney in fact under durable power of attorney
 - NOT "Kenneth M. O'Brien, attorney in fact for Donald Mofford"
- Acknowledgement: agent personally appears and acknowledges it's the principal's free act and deed
- Record original POA and affidavit of non-revocation

Authority Documents

Corporation – deed signed by president (or VP) and treasurer (or assistant treasurer) – don't need to record a vote.

- Look at SOS records to confirm identity of officers and directors.
- MGL c. 155, s. 8 “rely on a deed from president or VP and treasurer or assistant treasurer so long as we're doing so in good faith, even if it's a foreign corporation”

Authority Documents

Limited Liability Company (LLC) – MGL c. 156C, s. 66 allows us to rely on a deed signed by the manager or authorized real estate signatory.

- ➡ Look at SOS records to confirm identity of managers.
- ➡ If more than one manager named, do we need signature of both?
 - Look at Certificate of Organization – unless there's language in it requiring both signatures, the signature of one is sufficient.

Authority Documents

Foreign Entities: If they are not registered to do business in MA – ask the underwriter

Lenders: MGL c. 183, s. 54B – allows us to rely on assignments, discharges or foreclosure or REO deeds signed on behalf of the lender entity by a class of individuals who hold certain positions

Authority Documents

Newly-formed Entities or Recently Changed Information

- ➡ *Be suspicious of recent changes in personnel*
- ➡ *Be suspicious if only one of the principals is being benefitted*

Sales where the property is not encumbered by a mortgage

- ➡ **Watch out for fraudulent discharges.**

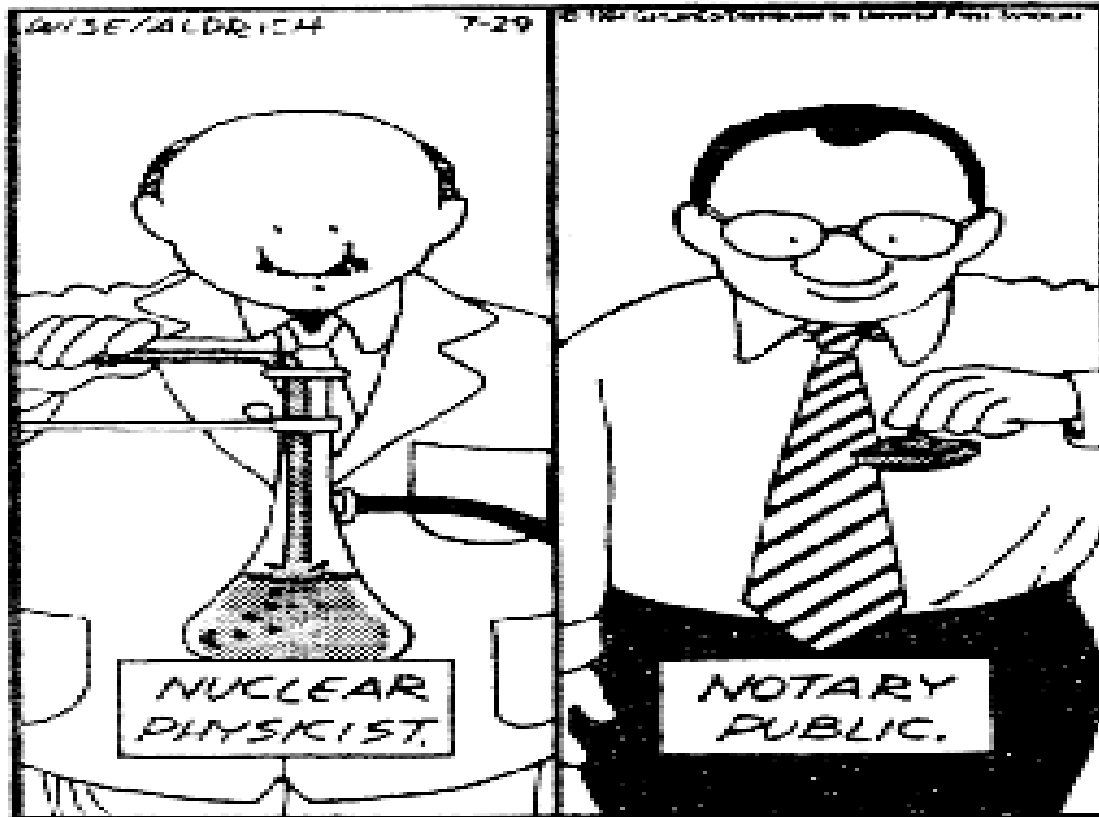
Specific Issues in Establishing Authority

Trusts and Trustees: Trustee's Certificates under MGL c. 184, s. 35: must be from a trustee of record – they cannot be used to *establish* a trustee of record.

➡ **NOTE:** MUTC Section 1013 gives specific authority for reliance upon a Certification of Trust in compliance with that section

The Acknowledgment

Real Life Adventures



Jobs in which nobody understands
what you do.

The Acknowledgment

- Why is it important?
 - In re Giroux – strict compliance with formalities of execution
 - The issue in Giroux – the names of the signers were not specifically included in the acknowledgment clause
 - What was the effect? Mortgage is avoided, causing significant claim losses

The Acknowledgment and POA's

Weiss v. Wells Fargo (In re Kelley)

Facts:

- Shawn Kelly and Anne Marie Kelley wanted to refinance
- The Kelleys gave a Power of Attorney to Shannon Obringer
- She signed a mortgage on their behalf
- The mortgage was acknowledged
- **The Kelley's filed for bankruptcy protection**

The Acknowledgment and POA's

The Challenge:

- The BK Trustee attacked to form of the acknowledgment clause because it was ambiguous as to who was executing voluntarily and freely.

The Acknowledgment

[SEAL]
-Bottomer

On this 11 day of June 2007, before me, the undersigned notary public, personally appeared Shawn G Kelley and Annemarie Kelley by Shannon Obinger as Attorney in fact.

to be the person(s) whose name(s) is/are signed on the preceding document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose.

My Commission Expires: 10 4 09

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal
Magda Esposito, Notary Public
Moon Twp., Allegheny County
My Commission Expires Oct. 4, 2006

Notary Public

Migda Esposito

(d) A notary shall take the **acknowledgment** of the signature or mark of persons acknowledging for themselves or in any representative capacity by using substantially the following form:

On this ____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____ (name of document signer), proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.

(as partner for _____, a partnership)

(as _____ for _____, a corporation)

(as attorney in fact for _____, the principal)

(as _____ for _____, (a) (the) _____)

_____ (official signature and seal of notary)

QUESTIONS???

