

# Secured Lending - Entity Documentation

*Presented by*

**D. Bradley Folsom**

## **SECURED LENDING - ENTITY DOCUMENTATION**

### IV. Entity Documentation.

The first step for any lender is to make certain the documentation for the loan, specific to the individual or entity being financed, is proper. In Georgia, as other jurisdictions, this means dealing with many different types of entities. Each of the entities created by statute in Georgia have specific characteristics which require specific documentation to complete a financing arrangement.

#### A. Corporations.

##### 0. Documentation to be obtained for corporate financing:

- (a) Certificate of Good Standing. Verify that the corporation is validly-existing and in good standing according to the records of the Office of the Secretary of State.
- (b) Certificate of authority to transact business in Georgia, if a foreign corporation.
- (c) Articles of Incorporation. The Articles of Incorporation should contain the following:
  - (i) The proper name of the Corporation.
  - (ii) Authorized number and classes of shares.
  - (iii) Location of Principal and Registered offices in the State.
  - (iv) Name of Registered Agent.
- (d) By-Laws of the Corporation.
  - (i) The By-Laws should contain any restrictions on

corporate borrowing or pledging of collateral.

- (ii) Define which officers can bind the corporation.
- (iii) Make sure all amendments are considered.
- (e) Corporate Resolution. It is essential that a resolution from the Board of Directors of the corporation be obtained authorizing the specific lending transaction and authorizing certain corporate officers to enter into that transaction on behalf of the corporation.
- (f) Certificate of Incumbency. A certification, verified by at least two corporate officers, verifying the identity of the Directors and Officers of the corporation.
- (g) Opinion of Counsel. If the credit is of sufficient size, it is advisable to obtain from the borrower's attorney an opinion of counsel verifying that all required corporate approval has been obtained and that the loan documents are binding on the corporation and its assets.
- (h) Personal Guarantees. As many as you can get!

## B. Limited Liability Companies.

1. Documentation to be obtained for Multi-Member LLC Financing:
  - (a) Certificate of Good Standing.
  - (b) Certificate of authority to transact business in Georgia if a foreign LLC.
  - (c) Articles of Organization. The Articles of Organization should contain the following:
    - (i) The effective date of the formation of the LLC.
    - (ii) The name of the organizer of the LLC.
    - (iii) The proper name of the LLC.
  - (d) Operating Agreement. The Operating Agreement is the equivalent of the by-laws of a corporation and should contain the following:

- (i) The management structure of the LLC - whether it is member-managed or manager-managed.
  - (ii) Any limitations on borrowing and what steps need to be taken to authorize borrowing.
  - (iii) Any restrictions on pledging collateral.
  - (iv) Specification of the ownership interests in the LLC.
  - (v) Any additional requirements, such as voting requirements, in order for the LLC to borrow money.
  - (vi) A determination as to the identity of the person or persons who are authorized to sign and bind the entity.
- (e) Member resolution. A resolution signed by all members of the LLC which authorizes the proposed borrowing. The borrowing resolution should authorize the LLC to enter into the borrowing transaction and authorize the appropriate members or manager to sign any loan documents on behalf of the LLC.
- (f) Certificate of Incumbency. Certification as to the identity of the members and or the manager of the LLC.
- (g) Opinion of Counsel. If the credit is of sufficient size, obtain an opinion of counsel from the attorney for the LLC verifying that all required approval for the transaction has been obtained and that the loan documents are binding on the LLC and its assets.
- (h) Personal Guarantees. Get as many as you can!
2. Documentation to be obtained for Single-Member LLC Financing:
- (a) Certificate of Good Standing.
  - (b) Certificate of authority to transact business in Georgia if a foreign LLC.
  - (c) Articles of Organization. The Articles of Organization should contain the following:

- (i) The effective date of the formation of the LLC.
  - (ii) The name of the organizer of the LLC.
  - (iii) The proper name of the LLC.
- (d) Operating Agreement. The Operating Agreement is the equivalent of the by-laws of a corporation. In a Single-Member LLC all power is vested in the single member and as such all decisions regarding the LLC are made at his discretion. For this reason, the Georgia Code does not require that a single member LLC have an operating agreement. Nevertheless it still good idea to require your borrower to execute an operating agreement and make sure that the following are included:
- (i) Limitations on the member's liability.
  - (ii) Management structure of the LLC - whether it is managed by the single-member or managed by a manager.
  - (iii) Any limitations on borrowing and what steps need to be taken to authorize borrowing.
  - (iv) Any restrictions on pledging collateral.
  - (v) Specification of the ownership interests in the LLC.
  - (vi) Any additional requirements of the LLC in order for the LLC to borrow money.
  - (vii) A determination as to the identity of the person or persons who are authorized to sign and bind the entity.
- (e) Member resolution. A resolution signed by the Single-Member of the LLC which authorizes the proposed borrowing. The borrowing resolution should authorize the LLC to enter into the borrowing transaction and authorize the member or manager to sign any loan documents on behalf of the LLC.
- (f) Certificate of Incumbency. Certification as to the identity of the member and or the manager of the LLC.

- (g) Opinion of Counsel. If the credit is of sufficient size, obtain an opinion of counsel from the attorney for the LLC verifying that all required approval for the transaction has been obtained and that the loan documents are binding on the LLC and its assets.
- (h) Personal Guarantee. Get it!

C. Partnerships.

- 9. There are several different types of partnerships in Georgia which may require different loan documentation.
  - (a) General Partnerships.
  - (b) Limited Partnerships (LPs).
  - (c) Limited Liability Partnerships (LLPs).
  - (d) Limited Liability Limited Partnerships (LLLPs).
- 2. Documentation to be obtained for Partnership Financing:
  - (a) General Partnerships.
    - (i) Obtain a copy of the Partnership Agreement, if any (strongly recommend requiring written partnership agreement).
    - (ii) Obtain the names and street addresses of all partners.
    - (iii) Obtain the addresses of all places of business of the partnership.
    - (iv) Be aware that lien searches should be carried out in name of individual partners as well as the partnership because of ability of less than all partners to bind partnership under certain circumstances.
    - (v) Personal Guarantees. Although all general partners are personally liable for general partnership debts as a matter of law, a separate written guaranty not necessary but cannot hurt.

(vi) Opinion of Counsel. In large loan transactions, an opinion of counsel from the attorney for the General Partnership can be obtained, certifying as to the binding effect of the loan documents.

(b) Limited Partnerships.

(i) Obtain a Certificate of limited partnership and ascertain its good standing with the Secretary of State.

(ii) Obtain a copy of the Limited Partnership Agreement - Look closely at borrowing requirements and limitations on pledging of collateral.

(iii) Obtain the names and street addresses of all General and Limited Partners.

(iv) Obtain the street addresses of the places of business of the Partnership.

(v) Review all partnership documents as to restrictions on borrowing, methods the partnership must follow to authorize borrowing, and other pertinent restrictions or requirements.

(vi) Obtain a resolution of all partners which authorizes the partnership to undertake the borrowing. This resolution should authorize specific partners to execute the loan documents.

(vii) Certificate of Incumbency. Certifying the identity of all general and limited partners.

(c) LLPs and LLLPs.

The Hybrid entities mentioned, LLPs and LLLPs follow the same general pattern for documentation as outlined above for General and Limited partnerships. Be certain you have copies of up to date filings on the entity, either at the county or state level, and also make certain appropriate authorizations have been made by the entity for borrowing. As with the other types of partnerships, it is essential to obtain a copy of the Partnership Agreement.