CDOA Certification Textbook – Chapter 21:

"TITLE ISSUES WITH RESPECT TO CORPORATIONS AND PARTNERSHIPS IN TEXAS AND NEW MEXICO"

This Chapter 21 appears to revolve around at least two or three seminal Questions:

1. Did the party or parties who signed a conveyance on behalf of a corporation or partnership have the statutory and business authority to do so? (And, apparently, this would include the ubiquitous Assignment of an Interest in the Leasehold Estate, possibly requiring execution of a Transfer Order.)

2. Will the Statute of Limitations in Texas or New Mexico now bar a court action to vitiate a conveyance recorded without meeting the respective State statutory requirements in regard to the capacity of the signatory party to do so?

3. (And, as this Presenter's supplement to the original text) Do the same statutory signature rules also apply to Limited Partnerships and Limited Liability Companies?
   And Please Note: this 3rd offering of information is not repeat NOT a part of or in any way germane to any of the questions on the CDOA Examination

The principle difference between an Individual or one of these Business Entities executing conveyances is that Business Entities must execute them by the signature of their duly authorized employee or third-party agent.

CORPORATIONS:

Texas:

Prior to August 28, 1989, a conveyance could not be executed by anyone other than either the President or Vice-President of a corporation pursuant to a resolution by that corporation's Board of Directors. However, after this date in 1989, Texas Statutes provide that any officer of the corporation or Attorney-in-Fact appointed under a Power of Attorney (ostensibly issued pursuant to a resolution of its Board of Directors, *comment: mine*) can sign for the corporation, so long as they are named as such agent in at least the signature block or acknowledgment on the instrument of conveyance.

And, in regard to signature by an Attorney-in-Fact, the title examiner should be furnished a copy of the Power of Attorney –although the latter need not be recorded. But note: Unlike the title examiner –who is almost always an oil and gas Division Order title attorney--the Division Order Analyst is often not provided or even sees the "POA" but may still rely on the fact that the correct capacity of the party signing is indicated in either the signature block or acknowledgement on the instrument.

Also, the instrument being executed and recorded need not bear the corporate seal, and the execution and recording apparently do not require authorization by the shareholders.

As to the Statute of Limitations, Texas' provides that any court action by the corporation to vitiate the instrument cannot be brought later than two years after the date the instrument is recorded—so long as the date of recording is on or after September 1, 2007. For recordings between September 1, 1993 and September 1, 2007—4 years, and for recordings prior to September 1, 1993—within 10 years.

New Mexico:

In New Mexico, the statutes provide that an authorization to convey real property needs to be issued by the Corporation's Board of Directors to allow the correct employee—generally presumed to be the President, Vice-President or duly appointed Attorney-in-Fact—to execute a conveyance. In the event the conveyance is signed by, say, a Treasurer, Secretary, CEO, CFO or even COO of the Corporation, a title examiner—again, usually the attorney writing the Division Order Title Opinion—should examine the corporate resolution to determine that it authorizes one or more of these employees to execute the conveyance.

However, if the Division Order Analyst of, say, a First Purchaser, is not provided with a copy of the Power-of-Attorney authorizing execution of the Conveyance by the Attorney-in-fact, but is confronted with a conveyance signed by one of these employees, and no mention of this possible defect in title is made in the Division Order Title Opinion, the Division Order Analyst can only assume that a signature by one of these employees is sufficient to convey title to a third party.

As to the Statute of Limitations in New Mexico, no action to vitiate the conveyance based on signature by an unauthorized person can be brought after fifteen years from the date the instrument is recorded.

PARTNERSHIPS

Texas and **New Mexico:**

The statutes of both these States provide that any one of the partners, alone, can bind the Partnership by executing, as one of its partners, a conveyance of real property belonging to the Partnership named in the instrument being executed, so long as that partner has been given the authority to do so in the terms of the Partnership Agreement.

Of course such a one-partner conveyance may be invalid if that partner does not have the authority to do so from the terms of the Partnership Agreement. Albeit the author of this Chapter 21 suggests that, "…the examining attorney should always make a requirement to examine the partnership agreement to determine whether the partner had authority to execute the conveyance…" this offers the Division Order Analyst little or

no assistance in curing this defect, short of wringing a copy of the Partnership Agreement out of one of the Partners if any of them can be found, and this, after having received the Division Order Title Opinion with this Requirement in it.

It is suggested that the examining attorney should be the person to secure and examine a copy of the Partnership Agreement, or at least give the Division Order Analyst the ability to waive this requirement as a reasonable business risk—especially if the interest of the Partnership being conveyed is small in relation to the total acreage in the drilling and spacing unit.

In regard to conveyances of partnership property made by a partner lacking the authority to do so, a purchaser who has no knowledge of this defect has the ability to bind the partnership to the conveyance, as does a second purchaser from the original grantee of the unauthorized partner.

In Texas, a Statute of Limitations did not apply to partnerships prior to September 1, 1993 and thereafter (now) for only two years after the instrument is recorded.

In New Mexico, the Statute of Limitations does not apply to partnerships.

And again, please note:

EVERTHING FROM HERE DOWN ALSO HAS ABSOLUTELY NOTHING WHATSOEVER TO DO WITH THE NADOA CERTIFICATION EXAMINATION:

Operational Designs for Businesses:

Corporation: Often generated by a determination by a given business to “go public” (probably to make much larger investments in items or processes familiar to them or even other companies they want to buy out)—that is, sell stock or “shares” in the company. They are generally manned by a President and Chief Executive Officer often rolled into one, a Board of Directors, a Chairman of the Board (and also quite often combined with the position of President. There are then Vice-Presidents created by the President offloading portions of his span of control by creating Departments and delegating them to the respective Vice-President of each. The V.P.s then set up Directors in as many autonomous areas as possible, and the Directors, in turn place Supervisors to make the direct contract with line and staff employees.

But it is the Initial Public Offering to shareholders that is watched most closely by security regulators—both State and Federal. And it is the interaction of even the holder of 5% or less of the stock with the remainder of the Board of Directors that may cause the most internecine eruptions in the governance of the Corporation.

A Corporation of any size creates the demand to create and store a mountain of paperwork—from the Articles of Incorporation to the “Minutes” (try hours) of the last meeting of the Board of Directors.The parties to watch for when they sign a conveyance for the Corporation, and their necessary authorization, if any, is described above.

PARTNERSHIP: Still a popular form of business best operated under a clear and very detailed Partnership Agreement. **Only one Partner** in either a simple co-op (between, say brothers or **only one partner** of a group of partners ostensibly has the power to convey. The Partner making the conveyance should be given the authority to do so in the Partnership Agreement or perhaps better, an affidavit signed by the other partner(s), and to be recorded—although often not a statutory requirement . However, since the Division Order Analyst may often see little or none of this type of curative material it must be taken on faith that this was checked out in the Division Order title Opinion or that the author of same has sufficient errors and omissions insurance.

LIMITED PARTNERSHIPS: These were a very popular form of syndicating producing properties and even just Leases to be developed during the late 70's and right up until the Penn Square Bank failed on July 3? 4? 5?, 1982. However, there are still some very legitimate Limited Partnerships being operated presently and they are generally structured like this: The General Partner gathers funds from the purchase of "units" by Limited Partners. The Limited Partners are limited in two ways: (1) they have nothing to say in regard to the day-to-day operations being conducted by the General Partner (in oil and gas, generally an Operator or an Exploration and Production Company), and (2) the potential loss to any Limited Partner is limited to the amount invested, virtually the same as would be the case with a stockholder in the corporation. The General Partner uses the funds gather from the Limited Partners and uses them in the day-to-day operations of the General Partner. It is the signature of one of the Officers of the General Partner (Company) that is needed on a conveyance. A best practice for the Division Order Analyst is to look for the authentication of this signatory in the same manner as that described above for Corporations.

LIMITED LIABILITY COMPANY: This form of doing business continues to grow in popularity. The "LLC" appears to be a stripped-down Corporation. It is not compelled to have annual meetings , and generates far less paperwork. It has only Members or Managers. The Managers actually own the assets of the Company, and they, in turn appoint Managers to do the day-to-day work of the Company. Members may or may not have already authorized the Managers to convey property of the Company in the terms of the Articles of Organization generally filed with the Secretary of State and that start the operation of the LLC, or may do so on an *ad hoc* basis. This business structure is very popular with persons that would otherwise be sole proprietors, but wish to have the advantage of operating as a corporation in regard to expenses and taxes. They generally do so by appointing themselves in the Articles of Organization as Managing Members, thus having full power to convey any or all of the assets of company. If the "LLC" is of any size—say, with several Members and at least one or more Managers—then if only one Member is signing the conveyance some of the other Members may object, especially if the signing member is conveying more than the property contributed to the LLC by the signatory initially. The Division Order Analyst appears to be best advised to seek a signature on a conveyance by, at least, a Member and, ideally, that of a Managing Member.