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## UNDERWRITING BULLETIN

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### Limited Liability Companies

In your system, you have a code for LLC's that reads something like this:

*The Company will require that it be provided with the following with respect to the California limited liability company named below:*

- A. A copy of its operating agreement and any amendments thereto;
  - B. A certified copy of its articles of organization (LLC-1), any certificate of correction (LLC-11), certificate of amendment (LLC-2), or restatement of articles of organization (LLC-10); and
  - C. A copy of the current Statement of Information form (LLC-12) filed with the Secretary of State.
- Limited Liability Company: (Name of LLC goes here)

**Those requirements are a given, but sometimes it just isn't enough.**

### Here is the tale of a genuine situation recently encountered:

We were presented with a refinance of a multi-residential property owned by an LLC. The deed in to that LLC was recorded within the last couple of years and on it's face it stated that the grantors and grantees were comprised of the same parties. While that statement shouldn't be relied upon as absolute truth, it's certainly an indication that this was not an arms length transfer. The grantors were a husband and wife who had owned the property for a long time. The property was free and clear. All of the required documentation for an LLC was supplied, which indicated the Manager was a person other than the previous owners.

That Manager was the person who executed the trust deed. A check with the Secretary of State verified the information. This was an 'investor' type of loan which isn't uncommon these days.

Not much time elapses before the old couple become aware of the existence of this loan. They notify the lender that they did not take this loan out and won't be held responsible for its repayment. The lender promptly submits this as a claim.

What happened here? It seems the LLC was not formed until some months after the deed recorded. The prior owner had executed and recorded the deed but did not form the LLC. Somehow, the 'Manager' of the LLC discovered that fact and took advantage of it.

The LLC was not formed for some months after the deed.

The deed recited that the parties remain the same, yet the LLC filing does not mention the prior owners.

The deed did not recite that the LLC was formed under the laws of California. That actually is pretty important. There is no national database of LLC names and the same name could be used in multiple states by different people.

The LLC filing did not use the address of the prior owners, but did use the address of the Manager

The nature of the lender. This was a mortgage broker arranged loan with a non-traditional investor-type lender. On these kind of 'hard money' loans, significantly less inquiry is done by the lender into the borrower's credit than a national bank would have done.

This property was free and clear with long time owners not living on the property. Free and clear properties are a target of the Bad Guys because a lot more cash can be generated without having to pay off prior loans.

The message here is that while timing isn't EVERYTHING, it certainly matters. Be careful when dealing with an LLC that you are truly dealing with the correct LLC and the correct people behind it. In this case, the Manager could have formed a similarly named LLC in another state and tried to get that through.

**Intentional disregard of the matters contained in this Bulletin may cause any loss sustained under the terms of a policy to be allocated entirely to the Agent**