

**SPECIFICITY REQUIREMENT FOR THE ALIENATION OF REAL CONJUGAL PARTNERSHIP
PROPERTY IN EXPRESS AGENCY AGREEMENTS**

Recently, the Puerto Rico Supreme Court held in Scotiabank de Puerto Rico v. TCG, Inc., 2017 TSPR 88, that an agency agreement for the alienation of real estate property of the conjugal partnership must be (1) in writing (2) pursuant public deed and (3) **expressly**, in specific terms, delegate to the agent the power to perform any specific act of alienation over the real property of the conjugal partnership.

Facts

A Grantor bestowed a "General Power of Attorney" onto his daughter as Agent, which confers on her the general power to "in his name and representation, in relation to all his personal or real property and rights or persons when applicable," to be able to alienate the property or rights indicated above. Years later, the Grantor's wife and the Agent conferred a Mortgage Deed on the conjugal partnership and primary residence of the Grantor and his wife. In 2014, Scotiabank (as creditor) filed a Claim for collection of moneys and foreclosure.

Opinion

The Supreme Court of Puerto Rico held that the *Agent was not authorized to represent the Grantor* in the execution of a mortgage on the property and, therefore, the mortgage signed on behalf of the Grantor was **null** and non-recordable in the Property Registry. The Court's opinion rests on the distinction between ownership of conjugal property and private property; Conjugal partnership property is separate from private property and belongs to the conjugal partnership because it is acquired during a marriage. According to Art. 92 of the Puerto Rico Civil Code: "The real property of the Conjugal partnership **may not be alienated** or encumbered, under penalty of nullity, **except by the written consent of both spouses.**" Because the General Power of Attorney in this case was not specifically express in terms of the real property, for it covered but the private property of the Grantor and the Grantor's intent in conjugal partnership property, the Agent did not have the consent of the Grantor to alienate said property.

The Court established that an Agency Agreement must be express for a Grantor to authorize an Agent to perform acts of alienation on his behalf on the real property of the conjugal partnership to which the Grantor belongs. Express implies identifying in specific terms the power to performed certain acts of alienation on the real property of the Conjugal Partnership.

Implications

Care should be taken in the granting of powers of attorney whose language authorizes the transference of "all property," "the property that belong to him," "the property of the grantor," "the assets corresponding to the Grantor," "the assets of the appearing party," "their present assets," "the property he possesses," "all the assets that the power holders have" or any similar language. The Supreme Court ruling above clarifies that any such language refers to the Grantor's private property and *does not include authorization to alienate the real property of the Conjugal partnership* to which the Grantor is part of. Any act of alienation carried out under similar language will be **null** and the subscriber will not have power to alienate the real estate of the conjugal partnership.

Key Takeaway

Based on this ruling, Grantors and Agents are recommended to review their General Powers of Attorney and/or Durable Powers of Attorney to ensure that said documentation *specifically* includes private and conjugal partnership property in agency agreements. Failure to do so, or to otherwise expressly refer to the property included in the Agency Agreement (such as the specific description of the property), may subject to a challenge the Agent's authority to represent the Grantor. Likewise, we invite those with general powers to contact us, to determine whether they comply with the latest case law or should be verified.

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