

Signing policies in associations

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By signing something, the signatory confirms that they acknowledge the content of the document and consent to all of the resulting legal consequences.

It also means that the document is deemed valid for documentary purposes. It proves, for example, who is responsible for rights and obligations arising from the document.

It is possible to appoint somebody as an authorised representative. In that case, the signature has the effect of obligating the person being represented or entitling them to something. This also applies to the association.

If the association incurs damage as a result of the business that can be attributed to a lawfully signed contract, generally speaking the association will be liable with all its assets. However, if the signatory acts negligibly or even has caused damage intentionally (Article 41 of the Swiss Code of Obligations), the signatory will be personally liable.

1. Different forms of signing powers

Full or sole signing powers are when somebody is permitted to lawfully conduct all business within the scope of the association alone and without consultation. Unless otherwise provided for in the association's articles of association, a member of the executive committee has sole signing powers. This means that each executive committee member is a sole authorised signatory, meaning that their signature can lawfully entitle and obligate the association to something.

Joint signing powers (usually two signatures) mean that a contract is only valid if signed by two members of the executive committee. Joint signatures reduce the liability risk for the association and the members of the executive committee.

Signing powers may also be restricted, for example to special business areas, departments or up to certain amounts.

If someone represents the association who is not authorised to do so, the association will only become obligated if the representation is subsequently approved by an authorised member of the executive committee. Otherwise, the representative themselves will be liable for any damages occurred.

2. Internal and external effects

In principle, external persons should be able to rely on the signatory actually having the authorisation to sign. External persons cannot be reasonably expected to check that the person is authorised to sign. This means that the external effect of a signature is always a given as a matter of principle. If an association is entered in the commercial register, the persons authorised to sign are listed there.

If somebody signs something when they are not authorised to do so, this person may be held liable for their misconduct within the association. They are also liable for any damages resulting from negligent conduct.

In terms of internal relationships, namely the relationship between the association and the signatory, all limitations on representation formulated verbally or in writing apply.

3. Practical issues

Opening an account at the post office or bank: If the articles of association or a decision of the executive committee provide that all members or the executive committee or individuals (e.g. chair/treasurer) have sole signatory powers, someone with the authorisation to sign (generally the chair) must personally open the account. They will be required to present a form of personal identification (identity card, driving licence). If joint signatory powers apply within the association, individual or all authorised signatories, depending on the bank, need to be present in person, together with their identification documents, to open an account. The articles of association and any resolutions set out in minutes in which signatory powers are set out must also be presented. It is recommended to call the bank in advance to ask which documents need to be presented to open an association account, and arrange an appointment.

Accounts and signing policy: Each financial transaction is reflected in the accounts, which requires a corresponding receipt. A receipt should always be confirmed by one or, in the case of joint signatories, two authorised executive committee members with their initials (to confirm that they have seen it). This tells the treasurer/bookkeeper that the transaction is actually valid.

4. What is the best way to proceed in an association?

Normally two people, the chair and another member of the executive committee, are authorised to sign. For legal transactions, two people should sign to be on the safe side and check the transaction. If those authorised to sign are often absent, it is recommended to grant powers of attorney to a third person, as otherwise the business could end up being blocked.

If a person's authorisation to sign expires because they have left the association or have otherwise withdrawn therefrom, a replacement person must be appointed in due course and communicated to the financial institution to ensure that the association can continue its business without interruption.

The signing powers are generally set out in the **articles of association**: individual or joint signing powers, and possibly which business may only be decided upon by the general meeting.

A written **signing policy** sets out who has which signatory power and for what. Such a policy is drawn up by the executive committee and brought into force by the general meeting. The policy should be based on the association's tasks and not unnecessarily complicate day-to-day affairs. Limits are useful and easy to use (example: "Executive committee members can execute transactions up to a value of CHF 500 with a sole signature, or up to CHF 10,000 with a joint signature. Transactions in excess of CHF 10,000 must be submitted to the general meeting or approved by the entire executive committee as part of the budget.)

Definitions

Sole signature: A contract/mandate is legally valid with *one* signature from an authorised member of the executive committee.

Joint signature: A contract/mandate is legally valid with *two* signatures from authorised members of the executive committee.

Powers of attorney: Complete power of representation for all business except the sale/mortgaging of land. Not used in small or medium-sized associations.

Authority to act: Signing powers for the association's own day-to-day activities (correspondence, purchases or sales of goods, delivery notes).

Initials: Short signature (initials) to confirm that the receipt or document has been acknowledged.

General correspondence: Purely informative, non-legally-valid documents can also be signed by persons without signatory powers.

5. Where are proxies governed?

Laws

Pursuant to Article 55 of the Swiss Civil Code, the governing bodies, particularly the general meeting and the executive committee, act on behalf of the association and also bind and entitle the association. Pursuant to Article 69 of the Swiss Civil Code, the executive committee is entitled and obliged as defined under the articles of association to represent the association.

The Swiss Code of Obligations governs the following topics: proxy representation with authorisation: Articles 32 to 37, proxy representation without authorisation: Articles 38 and 39, business conduct without due authority: Articles 419 to 424.

Articles of association and resources for defining the signing policy

The articles of association may contain details on the signing policy, but do not have to. Unless otherwise provided for under the articles of association, the statutory provisions shall apply, according to which the executive committee has the capacity to act. The general meeting may govern the representation of the association at any time or determine it for certain transactions or tasks.

If the articles of association provide that the executive committee shall govern signing powers itself, this provision must at least be set out in the minutes. To avoid ambiguity and disputes, drawing up a written signing policy is recommended.

Special power of attorney:

It is also possible to be represented for a very specific matter. For this, the representative is granted a restricted right to representation, clearly defined in terms of time and space.

Literature:

Kunz, Peter V. et al. (Hrsg.): Entwicklungen im Gesellschaftsrecht ("Developments in company law") V, Bern: Stämpfli. 2010, pages 175 to 221