

of the REAL ESTATE FINANCE OPINION REPORT OF 2012⁵ (the “2012 Report”) provides the following example of a no violation of law opinion:

3.8 No Violation of Law. The execution and delivery by the Borrower of, and performance by the Borrower of its payment obligations in, the Transaction Documents, neither are prohibited by applicable provisions of Law comprising statutes or regulations duly enacted or promulgated by the State (“Statutes or Regulations”) nor subject the Borrower to a fine, penalty, or other similar sanctions, under any Statutes or Regulations. Our opinions in this Paragraph do not extend to any action or conduct of ... the Borrower ... that a Transaction Document may permit but does not require.

The same language is incorporated in the Illustrative Opinion Letter appended to the soon-to-be-published LOCAL COUNSEL OPINION LETTERS IN REAL ESTATE FINANCE TRANSACTIONS: A SUPPLEMENT TO THE REAL ESTATE FINANCE OPINION REPORT OF 2012 (the “Local Counsel Supplement”). This opinion language clarifies that the “law” referred to is statutory or regulatory, and not “common law.” This is consistent with recognized customary practice. The 2012 Report notes that judicial decisions interpreting statutes and regulations must be considered also.

The illustrative language of the 2012 Report in Paragraph 3.8 (as well as in Paragraph 3.7 providing an example opinion that no governmental approvals are required) limits the opinion to “payment” obligations, as formulated in Sections 14 and 15 of the ABA/ACREL Accord Adaptation Report.⁶ This reflects the view that in real estate secured transactions, there are often loan covenants that would require compliance with specific laws at the time of performance, and an unqualified “no violation of law” opinion cannot be given about them in an opinion letter delivered at loan closing. When obligations other than payment obligations are an issue, they should be separately addressed, and often may be satisfied by certificates, warranties, and representations of a

NO VIOLATION OF LAW OPINION - A LOCAL COUNSEL PERSPECTIVE IN A REAL ESTATE FINANCE TRANSACTION

The Illustrative Opinion Letter (Chapter Three)

5. 47 REAL PROP. TR. & EST. J 213 (2012), Chapter Three, Paragraph 3.8. See Chapter Two, Paragraph 3.8 for a discussion of this opinion in a lead transaction counsel opinion letter. The 2012 Report can be accessed at <http://www.acrel.org/Documents/PublicDocuments/Real%20Estate%20Finance%20Opinion%20Report%20of%202012%20Circulation%20Final%2011302012.PDF>.

6. 29 REAL PROP. TR. & EST. J 569, 601-2 (1994).

loan party or other professionals rather than by a legal opinion.

The no violation of law opinion, like the no governmental approvals are required opinion, relates to the party about whom the opinion is given, and is not formulated to apply only to the transaction documents. For local counsel, this may pose difficulty. If local counsel is engaged to provide an opinion only about the enforceability of an instrument granting a lien on real estate owned in the jurisdiction whose law governs the opinion by an entity not organized under the law of the state, about which matters of entity status, power, authorizations, and execution and delivery are assumed, pursuant to loan documents not governed by the law of the state, providing an opinion about the performance of obligations by the specific mortgagor (borrower or guarantor) is well outside the scope of the engagement. Local counsel would expect to opine about the mortgage terms themselves, but would not expect to opine about them in terms of actions of the specific mortgagor. In giving the enforceability opinion, local counsel would not need to have knowledge of the mortgagor party. Acquiring the specific knowledge necessary to provide a broad no violation of law opinion would require extensive due diligence into the business activities of the mortgagor for which there would likely not be either time or budget.

The Local Counsel Supplement will suggest an assumption or a limitation that addresses the scope of the request and the meaning of a response. Assumption Paragraph 2.1(w) provides:

The Borrower [or the Guarantor] is a general business entity of a type that is not regulated by governmental authority or court order in a way that would restrict the ability of the Borrower [or the Guarantor] to alienate or encumber its property to secure indebtedness [or to enter into the Transaction Documents].

Limitation Paragraph 4.4(b) provides an alternative way to qualify the opinion:

In rendering the opinions in Paragraph(s) *as applicable* __ [3.5 *Enforceability*], __ [3.8 *No Violation of Law*], and __ [3.13 *No Governmental Approvals*], we have not made any independent investigation into the nature of the Borrower or its business that may require governmental or court approvals or procedures for execution and delivery of the Transaction Documents or the performance of the Borrower's obligations thereunder. We are relying solely on informa-

tion provided to us that has been the basis for our review; and our opinion is rendered as if the Borrower is a general business entity authorized to conduct business in the State without special conditions.

Or,

We express no opinion as to any consent, approval, authorization, or other action by, or filing with, any governmental agency or court required as a condition to the Borrower's entering into and delivering the Transaction Documents or performing its obligations thereunder.

The assumption or the limitation provides safe harbor when the only opinion provided is enforceability, but when an express no violation of law opinion is required, the assumption or the limitation narrows, if not excludes, the opinion as to the party.

Some recipient's counsel assert that the opinion must be rendered without limitation to payment obligations, and without the suggested assumptions or limitations. In these situations, it is important to reason through the request with recipient's counsel. Often, such a process results in an amelioration of extreme requests. First, what is the risk that recipient is seeking assurance about? If there are statutes that prohibit the mortgaging of property, they typically pertain only to significantly regulated entities. In providing a mortgage enforceability opinion, local counsel in the setting described would not be expected to know of or research the business of the mortgagor. If such an opinion is requested, it should be justified by an expressed specific concern that can be evaluated by an appropriate person.

Second, providing an opinion about specific regulation or licensure of the mortgagor would more properly be the role of lead or in-house counsel. If the entity is doing business in a foreign jurisdiction, its officers need to know what laws apply to it, and whether it is subject to statutes or regulations that control its ability to encumber its assets. If local counsel has been engaged to advise the mortgagor in such matters independent of the closing opinion, local counsel may be an appropriate source of the assurance, but if, as is more typical, local counsel's role is limited to providing a closing opinion, such an unlimited opinion is beyond the reasonable scope of its engagement.

The request for the no violation of law opinion is often a checklist item, made without specific relevance to the transaction. Local counsel could be informed by certificate of specific business activity or status that may

give rise to governmental regulation or necessity for court approval, and evaluate whether based solely on that information, there is any law that would be violated by the act of encumbering assets or performing obligations. The cost vs. benefit of this inquiry should be considered.

The opinion giver should be conscious of the breadth of the no violation of law opinion. It is similar in some respects to an enforceability opinion. For example, a usury opinion would be deemed to be given implicitly in a no violation of law opinion. Limitations appropriate to such an opinion should be included in the opinion letter. Further discussion of this subject is found in the 2012 Report Chapter Two ¶3.8.

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Annex A

LOCAL COUNSEL OPINION LETTERS: A REVOLUTIONARY SUPPLEMENT TO THE REAL ESTATE FINANCE OPINION REPORT OF 2012

Presented by William B. Dunn, Edward J. Levin,
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Third party opinion letters are requested from real estate lawyers in a variety of settings. There have been a number of papers and reports on this topic, including state bar reports, the Third-Party Legal Opinion Report of the ABA Business Law Section, which included a Legal Opinion Accord (the "Accord") of 1991,² Real Property Adaptation to the Accord of 1994,³ Inclusive Real Estate Secured Transaction Opinion of 1999,⁴ the Real Estate Opinion Letter Guidelines of 2003⁵, and the Real Estate Finance Opinion Report of 2012 (the "2012 Report").⁶

Not much discussion in legal opinion literature exists, however, regarding opinion letters of local counsel in real estate loan transactions. In an effort to provide guidance to real estate attorneys who provide local coun-

1. * Special thanks to Sterling Scott Willis for his work in the preparation of this paper.

2. 47 BUS. LAW. 167 (1991).

3. 29 REAL PROP. PROB. & TR. J. 569 (1994).

4. <http://meetings.abanet.org/webupload/commupload/RP213000/newsletterpubs/opinion.pdf> (Feb. 2, 1999).

5. ACREL Attorneys' Opinion Comm. and ABA Section of Real Prop., Prob. and Tr. Law Comm. on Legal Opinions in Real Estate Transactions, *Real Estate Opinion Letter Guidelines*, 38 REAL PROP. PROB. & TR. J. 241 (2003).

6. 47 REAL PROP. TR. & EST. J. 213 (2012).

sel opinion letters, representatives of the legal opinions committees (the "Committees") of the ABA's Section of Real Property, Trust and Estate Law, ACREL (the American College of Real Estate Lawyers), and ACMA (the American College of Mortgage Attorneys) have prepared a report entitled Local Counsel Opinion Letters— A Supplement to the Real Estate Finance Opinion Report of 2012 (the "Local Counsel Supplement") (see Annex A). Each of the three Committees has approved the Local Counsel Supplement, and we expect that it will be published in the Fall 2016 issue of Real Property, Trust and Estate Law Journal.

The Local Counsel Supplement, as its name suggests, is a supplement to, and must be read in conjunction with, the 2012 Report. The 2012 Report can also be found on the website of RPTE's Legal Opinions in Real Estate Transactions Committee and at the ACREL website, www.acrel.org.

I. Background of the Local Counsel Supplement.

The 2012 Report was also a joint effort of the three Committees. As the Local Counsel Supplement notes, the 2012 Report discusses a variety of opinion topics in real estate finance transactions that are commonly the subject of opinion letter requests, along with appropriate assumptions and limitations, in the context of a single opinion rendered by one opinion giver. The 2012 Report referred to that counsel as "lead counsel." The 2012 Report does not cover situations where opinions are needed from different attorneys in multiple jurisdictions or where one opinion giver may be acting in a limited role and capacity. Normally attorneys acting in such a limited role are referred to as "local counsel." The purpose of the Local Counsel Supplement is to provide guidance to attorneys in a real estate finance transaction acting in a capacity other than as lead counsel. It was written to make the 2012 Report applicable to local counsel. It includes discussion of the opinions that are the subject of the 2012 Report from the perspective of local counsel, and it addresses certain other opinions that are frequently requested of local counsel.

II. Using the Local Counsel Supplement.

- The Local Counsel Supplement is a supplement to the 2012 Report. Accordingly, an understanding and knowledge of the approach, structure, and format of the 2012 Report is required in order to make full use of the Local Counsel Supplement.
- The Local Counsel Supplement contains a form of illustrative opinion letter as an addendum. Chapter Three of the 2012 Report is similar in form to an illustrative opinion letter, but that

chapter is called illustrative language of a Real Estate Finance Opinion Letter. The illustrative opinion letter with the supplement contains suggested language that may be selected depending on whether the opining counsel is rendering opinions about entity formation, existence, power, authority, and authorization, or about enforceability and other opinions about some or all of the transaction documents. It may be used to lead counsel or local counsel. There is no single form of local counsel opinion that fits all local counsel opinion situations or requests.

III. Who is Local Counsel?

At the beginning of the project, the drafters of the Local Counsel Supplement⁷ thought differentiating between opinions normally given by lead counsel and opinions given by local counsel would be self-evident. Early in the drafting process, however, it became apparent that no such bright line of distinction exists. Opinions of local counsel vary across the board. These distinctions can range from opinions given by a local counsel who is retained in the very late stage of a transaction with respect to a client with whom the local counsel has never had any prior dealings, to opinions rendered by a local counsel who has acted regularly for years for a client. As noted in the Local Counsel Supplement,

In themselves, the labels “lead” and “local” have insufficient inherent meaning to determine without more information what opinions each counsel is to provide. The labels more appropriately describe a hierarchy of relationship in the transaction than determine the scope of each such counsel’s opinion letter. The legal matters to be addressed in an opinion letter of local counsel often are not as comprehensive as those matters on which lead counsel opines. The menu of opinions is substantially the same, however; and which opinions will be given by lead or by local counsel will depend on the facts and circumstances of each transaction.

Local counsel opinion requests are typically generated in two primary factual scenarios. First, the borrower, guarantor, or other party covered by the opinion (the “client”) is organized under the laws of the jurisdiction of

7. Bill Dunn served as Reporter of the Local Counsel Supplement, and Ed Levin and Scott Willis served as its Co-Editors. The Joint Drafting Committee consisted of the ten original drafters of the 2012 Report, and five additional members. Charlie Menges and Lydia Stefanowicz were members of the Joint Drafting Committee.

the local counsel. The second common scenario is when the real estate or other significant collateral involved in the loan transaction is located in the jurisdiction of the local counsel. These are the two most common examples, but any number of combinations or variances of these are possible in local counsel situations, especially given the fact that several entities may be involved as borrower, guarantor, member, or manager, and they may be formed under the laws of different jurisdictions.

Situations in which a real estate lawyer may be asked to provide an opinion letter as local counsel include the following types of financing transactions:

- A loan to finance a specific real estate project located in local counsel’s state, where some or all of the loan documents are governed by, and the borrower is organized under, the laws of the local counsel’s state, but the borrower is represented in the transaction by other lead counsel.
- A loan to finance a specific real estate project located in local counsel’s state, where some or all of the loan documents are governed by the laws of the local counsel’s state, but the borrower is organized under the laws of a state other than the local counsel’s state.
- A loan to finance one or more specific real estate projects located in local counsel’s state (and perhaps other states), where the core financing documents—the loan agreement, the note, any guaranty—are governed by the laws of another state (usually New York), but the mortgage, any assignment of rents and leases, and perhaps other documents specifically related to the real estate located in the local counsel’s state will be governed in whole or in part by the laws of the local counsel’s state. The borrower may or may not be organized under the laws of the local counsel’s state.
- One or more loans secured by real property all located outside of the local counsel’s state, but the borrower is organized under the laws of the local counsel’s state. (This scenario would generate essentially a “corporate law” opinion.)

IV. No One Size Fits All.

The Local Counsel Supplement acknowledges there

is no single form of local counsel opinion or set of opinion requests appropriate in all circumstances. The Local Counsel Supplement contains suggested language to address the most common requests, together with notes as to when certain language should be used. The drafters of the Local Counsel Supplement are aware that a whole host of other topics, such as UCC opinions, could be covered, but the decision was made to save those topics for another day. One reason for this was to limit the opinions addressed in the Local Counsel Supplement to those covered in the 2012 Report or those that are frequently asked of local counsel.

Opinion practice in a local counsel setting, just as it would be in the case of lead counsel, is subject to appropriate customary practice and often involves matters that are better obtained from sources other than local counsel. As noted in the Local Counsel Supplement:

Local counsel should prepare an opinion letter that addresses the matters that are appropriate in the circumstances under customary practice. If this response is considered inadequate by the recipient, further content should be discussed and agreed upon, again within the bounds of customary practice, respecting the legitimate interests of the parties, including cost effectiveness and the necessity of the opinions and assumptions and limitations under consideration. Some subjects of the request may be answered more appropriately and customarily by service providers other than local counsel or by reliance on commonly accepted alternatives. Examples of such subjects are ownership of collateral (provided by title insurance), litigation (provided by search services, unless the request is limited to matters in which the opinion giver is representing the client), and U.C.C., tax, or similar searches (provided by search services).

V. Professional and Ethical Responsibilities of Local Counsel.

The degree of familiarity that local counsel may have with the client can be extremely limited or it may be significant, and it may be anywhere in between. Certain practitioners believe that local counsel with limited knowledge of the client or the client's activities may have somewhat lesser ethical and professional responsibilities than opinion givers who continually represent the client or have greater knowledge of the client. While this may seem intuitive, there is no basis for this distinction under the ethical rules, and the authors of the Local Counsel Supplement have not found any case law that states that

the ethical rules are applied differently to local counsel than to lead counsel. Therefore, the Local Counsel Supplement takes the position that local counsel has the same professional responsibilities and duties that must be discharged in rendering local counsel opinions that it has any other legal matter.

The Local Counsel Supplement addresses professional responsibility in three primary areas. First, it notes that “[t]he formalities of establishing [the lawyer-client] relationship [between the opinion giver and the subject of the opinion] cannot be overlooked even in the face of a request for an opinion to be delivered in a very short time.” Ethical obligations to the client are imposed by that relation even though the local counsel may have no direct contact with the borrower.

Second, the Local Counsel Supplement recognizes that situations exist in which local counsel are asked to opine on documents that may be defective, or to provide changes to documents that will improve them or provide for the best available remedies. These changes may be contrary to the interests of the borrower, but certain of these changes may be necessary in order for the local counsel to render the opinions requested of it. This can create an ethical dilemma for the local counsel. Some view this dilemma inherent in the role of local counsel and that client consent is deemed waived in the situation. However, local counsel should be mindful of this. As noted in the Local Counsel Supplement, it may be better in these situations for local counsel to represent the lender, not the borrower, so as not to have these problems.

Finally, the Local Counsel Supplement notes that while the standard of care of local counsel should generally be determined by practice standards of the law of the local counsel's jurisdiction, providing an opinion about the law of another jurisdiction could impose the duties of professional responsibility of that other jurisdiction.

VI. Format of the Local Counsel Supplement.

As a supplement to the 2012 Report, the Local Counsel Supplement follows the outline, the formatting, and the numbering of the 2012 Report for ease of use. Following some initial introductory matters, the Local Counsel Supplement contains an introduction and then a discussion of the content of most opinion letters: assumptions, substantive opinions, limitations to the opinion, and matters with respect to the use of the opinion letter. There is also the form of an illustrative opinion like the 2012 Report.

VII. Local Counsel Opinion Letter Introduction.

The introductory provisions of a local counsel opin-

ion letter can be very important because they serve to distinguish what issues the local counsel is covering and what documents are covered by the opinion. The Local Counsel Supplement offers guidance on how to address the documents that are reviewed by local counsel in connection with rendering the opinion letter.

Often the documents executed in connection with the transaction include documents that are not governed by the law of the local counsel’s jurisdiction. Nevertheless, certain of these documents need to be reviewed in order to identify terms that are cross-referenced in documents governed by the local counsel opinion letter. The Local Counsel Supplement urges that caution be exercised in this situation because defined terms in a transaction document may have substantive meanings that are different than the general meanings of the same terms in the jurisdiction of the local counsel. In this situation, counsel may need to make appropriate assumptions or qualifications, as noted in the Local Counsel Supplement. The Local Counsel Supplement also addresses local counsel’s not reviewing certain of the transaction documents that are governed by the laws of a different state.

VIII. Assumptions.

The 2012 Report and the accompanying illustrative opinion letter contain a number of customary assumptions. Not all will apply in every situation, of course, but many, and in some cases all, will be important in local counsel opinions. Which assumptions need to be made in a local counsel opinion depends on the nature of the requested opinions. For example, if local counsel is opining with respect to collateral in the local jurisdiction owned by a client formed under the laws in another jurisdiction, local counsel needs to include appropriate assumptions with respect to the organization and authority of the client. Alternatively, if the client is formed in the local counsel’s jurisdiction, the local counsel would not normally take assumptions with respect to the entity aspects of the client and instead would be expected to render opinions with respect to the status, power, authority, and authorization of the client.

Often, a borrower entity is owned or managed by one or more other entities, and the authorization and consent of these other entities is required for the borrower to authorize entering into the transaction. Moreover, the other entities must be validly existing, and often in good standing, under the laws of the jurisdictions of their formation. The Local Counsel Supplement contains suggested assumptions to deal with this “up the ladder issue,” i.e., authorization and approval of the transaction by the upper tiers of ownership or control of the client. The Local Counsel Supplement points out that there are reports on opinion letter practice that provide that opin-

ion givers implicitly assume that the consent and approval of all required upper tier entities have been properly given, but it notes that an explicit assumption about upstream entities will contravene any notion that the local counsel is rendering an opinion on this issue.

The Local Counsel Supplement further provides suggested assumptions with respect to matters involving the execution and delivery of documents and the form of acknowledgment to documents. The Local Counsel Supplement includes an assumption about acknowledgements that are taken outside of the local counsel’s jurisdiction. While this is a common situation when local counsel opinion letters are requested, it may also occur when a single counsel represents the borrower.

Finally, the Local Counsel Supplement includes assumptions with respect to certain U.C.C. matters as they relate to fixtures.

Not all of the above issues are unique to local counsel; lead counsel may be asked to opine about some of them as well and will want to include the applicable assumptions in its opinion letters even if they were not addressed in the 2012 Report.

IX. The Substantive Opinions.

A. Core Opinions. The 2012 Report discusses and includes illustrative language with respect to ten core opinions, namely:

1. Status – Existence and Good Standing.
2. Power.
3. Authorization.
4. Execution and Delivery – the Local Counsel Supplement includes an expanded discussion on this topic because of the issues raised when execution and delivery occurs outside of the local counsel’s state.
5. Enforceability.
 - The Local Counsel Supplement states that any enforceability opinion as to a mortgage or similar documents should not be read to assume that a lien has been created, but instead that a contract that can function for

that purpose has been formed.

- In addition to the discussion with respect to the validity of the choice of law provision set forth in the assumption section of the Local Counsel Supplement, the Local Counsel Supplement notes that there is not complete clarity or understanding as to whether an enforceability opinion includes an opinion as to the effectiveness of a choice of law provision. While certain bar reports have taken this position, others, including the 2012 Report, have been somewhat less definitive on the matter. Because of this, the Local Counsel Supplement cautions that local counsel opinions should deal with the issue directly, and, when choice of law issues are problematic in the jurisdiction of the local counsel, appropriate qualifications or assumptions, or even better, a statement that no opinion on the topic is being rendered, should be given.
 - The Local Counsel Supplement advances the position that an opinion that no governmental approvals are required of the Borrower to enter into the loan document should not be implied in an enforceability opinion given by local counsel, and it suggests adding limitations that the Borrower is not subject to specific governmental regulations regarding its ability to incur debt or pledge its assets.
6. Form of Documents – suitability of the mortgage for recording, issues relating to local rules that are not of state-wide application; the Local Counsel Supplement also discusses assignments of leases and rents.
 7. No Breach or Violation of Organizational Documents or other Obligations – local counsel should not be asked about other obligations of the Borrower.
 8. No Violation of Law.
 9. Choice of Law – the Local Counsel Supplement contains a discussion of bifurcated choice of law provisions and “as if” opinions.

10. Usury and Interest – the Local Counsel Supplement includes an expanded discussion on whether a usury opinion is implied by an enforceability opinion or a no violation of law opinion; it advances the position that when the security documents are governed by the law of the local counsel’s jurisdiction but the debt instruments are governed by the law of a different jurisdiction, an enforceability opinion should not be deemed to include any opinion regarding usury.

The Local Counsel Supplement examines each of these opinions and contains suggestions, when appropriate, as to how the substantive opinion requests may need to be modified or what considerations, assumptions, or limitations may need to be taken when dealing with specific local counsel opinion topics.

B. “No Litigation” Confirmation. While not a substantive legal opinion, the 2012 Report and the Local Counsel Supplement also discuss the “no litigation” confirmation.

C. Other Opinions. In addition to the ten core substantive opinion topics and the no litigation confirmation covered by the 2012 Report, the Local Counsel Supplement also discusses the following five other substantive opinion requests that are frequently asked of local counsel in real estate finance transactions:

1. Recording and its Effect – whether recording the mortgage in a particular location is the only action necessary to perfect; issues with respect to future advances.
2. No Governmental Approvals Required – the Local Counsel Supplement discusses how this opinion is often requested in transactions and why it is often more appropriate for lead counsel, rather than local counsel, to render this opinion. Also, the Local Counsel Supplement provides that a no governmental approval required opinion should not be implied in an enforceability opinion from local counsel.
3. Effect of Exercise of Remedies – the Local Counsel Supplement provides guidance for those local counsel whose jurisdictions have one-action or anti-deficiency legislation.
4. All Customary or Specific Remedies – the Local Counsel Supplement recommends that such an opinion not be given.

5. Recipient Party Matters – the Local Counsel Supplement recommends that usually such opinions not be given by borrower’s counsel since lender’s counsel is normally better suited to provide these opinions. Issues relating to lenders that are sometimes the basis for opinion requests include:

- Doing business. Borrower’s counsel is sometimes asked to discuss whether a lender is required to qualify to do business in the local counsel jurisdiction to enter into the loan.
- Taxation. Borrower’s counsel is sometimes asked to discuss whether the lender will be subject to taxation in the local counsel jurisdiction or a result of making the loan.

6. Zoning and Land Use, Compliance with Laws – the Local Counsel Supplement recommends that such opinions not be given routinely in transactional opinions.

7. Negative Assurances are generally discouraged outside of opinions relating to securities offering.

X. Limitations.

The Local Counsel Supplement discusses how normal limitations in an opinion may need to be modified in local counsel opinion letters, including limitations concerning the effect of assignment of rents, the scope of the generic enforceability qualification, and other matters.

XI. Use of the Opinion Letter.

The Local Counsel Supplement provides additional guidance from that provided in the 2012 Report with respect to how to deal with requests that nationally recognized statistical ratings organizations (“rating agencies”) be allowed to rely on an opinion letters, as opposed to merely being provided copies. The Local Counsel Supplement provides language disclaiming the ability of ratings agencies to rely on an opinion letter, and notes the recent discussions with rating agencies to confirm that rating agencies are not necessary reliance parties to a legal opinion, but instead are parties to which copies of the opinion should be provided. See William B. Dunn and Joseph Philip Forte, “Loan Closing Legal Opinions and Rating Agencies: Disclosure Not Reliance; CRE Finance World, Winter 2016, at 58, posted at <http://www.crefw/crefw/Winter201/index.html#60>. It also contains language with respect to how to deal with additional and subsequent lenders and with respect to syndicated loan transactions. The Local Counsel Supplement includes

suggested language that would allow only the agent for the lenders to take action against counsel that issued an opinion letter.

ANNEX A OMITTED