

"Good Standing" Opinions Issued on Behalf of Non-Wisconsin Corporations and Limited Liability Companies Acting As Borrowers

In loan transactions involving non-Wisconsin borrowers, Wisconsin counsel are frequently called upon to provide a "good standing" opinion to assure a lender that the non-Wisconsin borrower is qualified to transact business in Wisconsin. A typical formulation of that opinion for corporations or limited liability companies would read as follows:

Borrower is a [corporation] [limited liability company] validly existing and in good standing under the laws of _____.

As is the case in most states, local counsel in Wisconsin would typically respond to such a request by contacting the relevant state agency to determine whether the out-of-state corporation or limited liability company is qualified to transact business in Wisconsin. The relevant Wisconsin agency, the Wisconsin Department of Financial Institutions (DFI), however, does not issue good standing certificates, but instead issues "Certificates of Status." Although a Certificate of Status will not state that such a non-Wisconsin entity is in "good standing," it will state whether the borrower is a foreign corporation or foreign limited liability company authorized or registered to transact business in Wisconsin, and will provide the date of such qualification or registration. The Certificate of Status should also confirm whether or not the foreign corporation or foreign limited liability company (a) has fulfilled its obligations to file an annual report, (b) has applied for a certificate of withdrawal, and (c) is subject to a proceeding to revoke its certificate of authority or registration. Upon receipt of a current Certificate of Status, the Wisconsin local counsel will likely be able to agree to the following language in the opinion:

Based solely upon a certificate of the Wisconsin Department of Financial Institutions (DFI), Borrower has (a) qualified to transact business in the State of Wisconsin, (b) has filed with the Department during its most recently completed year the required annual report, (c) not applied for a certificate of withdrawal, and (d) is not the subject of a proceeding to revoke its certificate of authority or registration.

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In conclusion, lenders and their counsel should understand that a Wisconsin attorney serving as local counsel will not be able to issue the traditional "good standing" opinion for non-Wisconsin corporations and limited liability companies serving as borrowers. However, provided they obtain current Certificates of Status from the DFI, Wisconsin attorneys serving as local counsel should be capable of opining to a lender whether the non-Wisconsin corporation or limited liability company is qualified to transact business in Wisconsin and restate the other basic findings set forth on the Certificate of Status.

If you have questions about this update, please contact your Reinhart attorney or any member of the Reinhart Real Estate Opinion Team.

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