

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

In the standard form real estate opinion provided by commercial lenders to local counsel, lenders commonly request local counsel to give a "good standing" opinion in order to provide basic assurances to the lender regarding the borrower's organizational status in that state. 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 _____.

In most states, local counsel typically respond to such a request by requesting a current good standing certificate for the applicable borrower entity from the Secretary of State's office or other governmental agency responsible for issuing such certificates in that state. Upon receipt of a certificate indicating that the entity was in fact incorporated or organized and is in good standing as of the date of the certificate, the local counsel would then provide some variation of the requested opinion based upon such good standing certificate.

In Wisconsin, however, the relevant state agency, the Wisconsin Department of Financial Institutions (DFI), does not issue good standing certificates but instead issues "Certificates of Status." Although a Certificate of Status as issued by the DFI will not state that an entity is in "good standing," it will address the entity's incorporation, organization or qualification in Wisconsin (as applicable) and a handful of other very specific matters related to the organizational status of such entity. As a result, Wisconsin attorneys serving as local counsel typically must revise the standard language found in the lender's form opinion to conform to the language found in the actual certificate provided by the DFI.

For a validly existing Wisconsin corporation or limited liability company, the Certificate of Status issued by the DFI will state that the entity is a domestic corporation or limited liability company and provide the date of its incorporation or organization. The Certificate of Status will also confirm whether the entity has fulfilled its obligations to file an annual report and whether it has not filed articles of dissolution. Assuming that the local counsel receives a current Certificate of

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Status from the DFI in the form described above, the local counsel will likely revise the traditional form of "good standing opinion" to read as follows:

Borrower is a [corporation] [limited liability company] validly existing under the laws of the State of Wisconsin and, based solely on a certificate of the Wisconsin Department of Financial Institutions (the Department), (a) has filed with the Department during its most recently completed year the required annual report, and (b) has not filed articles of dissolution with the Department.

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 frequently found in a lender's standard form opinion. However, provided they obtain current Certificates of Status from the DFI, Wisconsin attorneys serving as local counsel should be capable of opining to the lender whether the borrower is a corporation or limited liability company validly existing under Wisconsin law. Please note that this update concerns only

Wisconsin corporations and limited liability companies. In a subsequent update, we intend to provide a different version of the traditional "good standing opinion" that would generally be available for non-Wisconsin corporations and limited liability companies.

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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