

Wisconsin's Title Clearing Statute and the Valid Form of Mortgage Lien Opinion

In commercial loan transactions involving out-of-state lenders, local real estate counsel are frequently asked to provide an opinion that a particular mortgage document is in a form sufficient to create a lien on the borrower's right, title and interest in a particular real property. Assuming the mortgage form meets Wisconsin's various legal and recording requirements, Wisconsin attorneys should be able to provide this opinion fairly easily. However, it is also important for Wisconsin attorneys to alert the opinion recipients that the effectiveness of their mortgage may be limited to 30 years.

Section 893.33 of the Wisconsin Statutes plays the role of a Title Clearing Statute by establishing time frames in which certain actions concerning real property must be brought. More particularly, Section 893.33 provides:

.... no action affecting the possession or title of any real estate may be commenced ..., which is founded upon any unrecorded instrument executed more than 30 years prior to the date of commencement of the action, or upon any instrument recorded more than 30 years prior to the date of commencement of the action, or upon any transaction or event occurring more than 30 years prior to the date of commencement of the action, unless within 30 years after the execution of the unrecorded instrument or within 30 years after the date of recording of the recorded instrument, or within 30 years after the date of the transaction or event there is recorded in the office of the register of deeds of the county in which the real estate is located, some instrument expressly referring to the existence of the claim or defense, or a notice setting forth the name of the claimant, a description of the real estate affected and of the instrument or transaction or event on which the claim or defense is founded, with its date and the volume and page of its recording, if it is recorded, and a statement of the claims made.

Accordingly, a lender involved in a typical loan situation needs to understand that their mortgage lien will only remain effective in Wisconsin for 30 years unless an additional notice of such a mortgage lien is placed of record prior to the

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expiration of the initial 30-year effectiveness period. Obviously, this is generally not a major issue for loans with terms of less than 30 years but can be of major significance for longer term loans or other encumbrances a lender wants to enforce beyond 30 years.

To ensure that we have highlighted this as a possible issue, Reinhart attorneys typically insert the following additional informational note in any opinion letter stating that a particular mortgage is in proper form to create a valid lien: We note that in order to maintain the effectiveness of a lien upon real property created by a mortgage, Wisconsin Statutes require that every 30 years after the initial recording thereof there appear of record in the applicable real estate records an instrument affording affirmative and express notice of the interest created by the mortgage.

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

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