

THE “NEW AND IMPROVED” REPORT ON LEGAL OPINIONS TO THIRD PARTIES IN GEORGIA REAL ESTATE SECURED TRANSACTIONS

Commercial Real Estate Law Seminar
November 12, 2009

James B. Jordan
Sutherland, Asbill & Brennan, LLP, Atlanta, Georgia
jim.jordan@sutherland.com

John R. Parks
Bryan Cave LLP, Atlanta, Georgia
john.parks@bryancave.com

A. Michelle Willis
Troutman Sanders LLP, Atlanta, Georgia
shelli.willis@troutmansanders.com

A. **Introduction**

1. In 1997, the Executive Committee of the Real Property Law Section (the “Executive Committee”) approved the Report on Legal Opinions to Third Parties in Georgia Real Estate Secured Transactions. In 2002, the Executive Committee approved an amendment to the 1997 Report pertaining to UCC opinions resulting from revised Article 9.
2. On March 17, 2009, the Executive Committee approved the Amended and Restated Report on Legal Opinions to Third Parties in Georgia Real Estate Secured Transactions (the “Amended Report”). The Amended Report and a blackline showing differences from the prior report are available on the RPLS website.
3. The 2009 Report, like its predecessor, consists of a Model Opinion, Interpretive Standards that provide official interpretation as to the Model Opinion, suggested “practice procedures” to be employed in giving the Model Opinion, and an extensive report providing background as to the deliberations of the Legal Opinion Committee regarding the Model Opinion and Interpretive Standards.
4. The Executive Committee also adopted the Uniform Statement on the Role of Customary Practice in the Preparation and Understanding of Third Party Legal Opinions. This Statement summarizes the role of customary practice in the rendering of Opinion Letters. The statement has been adopted and approved by more than 25 state and local bar associations or sections. The Statement contains a description of the work Opinion Givers are expected to perform to give opinions and guidance as to how certain words and phrases commonly used in opinions should be understood. The Statement has been adopted as a matter of general policy in conjunction with the Amended Report.

B. **Process**

1. 1997/2002 Report “piggybacked” on the Executive Committee of the Business Law Section of the State Bar of Ga. (formerly Corporate & Banking) Report on Legal Opinions to Third Parties in Corporate Legal Transactions (Institute of Continuing Legal Education in Ga. Pub. No. 921714, 1992) (available at <http://www.gabar.org/public/pdf/sections/buslaw/lotpct.pdf>), the so-called “Corporate White Paper” (which, by its terms, is not applicable to real estate

liens).

2. In 2008, a legal opinion committee (the “Legal Opinion Committee”) was formed consisting of experienced counsel representing lenders and borrowers to avoid any bias. Exhibit A sets forth the members of the Opinion Committee.
3. Before embarking on the project, the Opinion Committee surveyed members of the Real Property Law section of State Bar of Georgia (“RPLS”) to obtain input as to the use of Model Opinion, with particular emphasis on what worked and what needed to be improved. The prevailing input was that when lender and borrower were both represented by Georgia counsel, the Model Opinion worked exceedingly well and substantially simplified the opinion process. While the experience in the case where one party was represented by a non-Georgia counsel was not as uniformly positive, many members of RPLS reported a fair amount of success in utilizing the Model Opinion when dealing with an out-of-state lawyer.
4. Consequently, one of the Opinion Committee’s tenets was “if it ain’t broke, don’t fix it”
5. Subcommittees were established and were assigned the responsibility for reviewing each section of the 1997/2002 Report to determine whether improvements and changes were necessary or advisable. Each of the subcommittees updated research as to applicable Georgia law and surveyed other states’ opinion projects to determine how various issues were handled by our peers.
6. Each subcommittee prepared a written report as to its assigned sections. Each report was then discussed in detail at a meeting attended by all Legal Opinion Committee members. These meetings often resulted in the need for further modifications and revisions, which were presented and approved at a subsequent meeting.

C. Summary of the Amended Report

1. Generally speaking, there were relatively few material changes (although a review of the blackline will show many changes to the style of the 1997/2002 Report).
2. As in the past, the Amended Report makes it clear that the Model Opinion is not a mandated form that must be used in all cases. By agreement, the Opinion Giver and Opinion Recipient can negotiate changes to the Model Opinion. We do recommend that a blackline be utilized to show changes from the Model Opinion.

3. Assumption of genuineness of signatures
 - a. Matter of fact; not legal opinion.
 - b. Interpretive Standard 13 continues the express assumption that **all** signatures on the Loan Documents, including the signatures of the Opinion Giver's client, are genuine.
 - c. This assumption is not overridden by the opinion as to the execution and delivery (Section 2.08 of the Amended Report).
 - d. By agreement of the parties, specific comfort or an express opinion can be provided as to the genuineness of the signatures of the Opinion Giver's client (and others).

4. "Good Standing" Definition
 - a. Committee re-examined use of this concept in the Report since no codified definition exists; however, term was retained due to "good standing" opinion being traditionally requested.
 - b. Definition of "good standing" unchanged from 1997/2002 Report – See Interpretive Standards 28(5), 31(A)(3), 31 B(3) and 34(3). See also comments in Sections 5.02(D), 8.02(C) and 12.02(C).

5. Model No Violation Opinion (Article XV)
 - a. Since lawyers are presumed to know the law, the knowledge qualifier as to no violation of laws was removed.
 - b. As to no violation of operative agreements, an option is included to permit material agreements to be specified on a schedule. Otherwise, the No Violation Opinion will refer to no violations as to a material agreement "known to the Opinion Giver".

6. No Consent Opinion (formerly Article XVII) was removed from the Report.
 - a. Consistent with prevailing custom in other states. See Exhibit B.
 - b. Redundant as the No Violation Opinion addresses matters such as violation of applicable laws, constituent documents, etc.
 - c. Unlike corporate transactions, real estate transactions do not typically require extensive consents from third parties.

7. Execution and Delivery of Guaranty (new Article XVII)
 - a. The 1997/2002 Report and Model Opinion contain an oversight and do not expressly address the execution and delivery of the Guaranty although there is an opinion to the enforceability of the Guaranty. This oversight has been corrected.
 - b. The Model Opinion assumes that the Guarantor is an individual and includes an express opinion as to execution and delivery of the Guaranty. If the Guarantor is an entity, similar status, acts and powers opinions will be required.
 - c. Execution is not the same as genuineness of signatures.
 - d. Confirm delivery (either by witnessing or certification from authorized representative).

8. Remedies Opinion (Article XVIII)
 - a. General approach unchanged – generic qualification with assurance of specific remedies.
 - b. See Exhibit C for other issues Committee examined and other Bar reports reviewed.
 - c. 2009 Revisions:
 - (i) “enforceable” v. “valid and enforceable”. Committee believed these are interchangeable, only needed one or the other, chose the latter.
 - (ii) Refined specific assurance (i) regarding judicial enforcement of obligation to more closely track language of O.C.G.A. §44-14-161: confirmation of exercise of power of sale is a prerequisite to an action to obtain a deficiency judgment (rather than the collection of such judgment).
 - (iii) Optional language for specific assurance (ii) added, 1997/2002 Report only opined that acceleration of note is available upon a material default to pay principal or interest. New optional language also opines acceleration available for other material defaults under Loan Documents. Commentary specifically states Opinion Giver is not required to determine what is a “material default.”

- (iv) Refined language of specific assurance for guaranty enforceability (but still only deals with guarantor's payment obligations, and does not include performance obligations).
 - d. The Amended Report, like the 1997/2002 Report, contains an express exception as to the enforceability of waivers in the Guaranty. The Amended Report, however, contemplates that the Opinion Giver and Opinion Recipient may negotiate opinion coverage addressing the enforceability of such waivers.
 - e. Implied Exceptions unchanged (i.e., bankruptcy exception, equitable principles exception, choice of law exception, waiver of guarantor's rights exception).
 - f. New practice tip – review and confirm that form of security deed is in recordable form (e.g. three-inch margin at top of first page, return to address at top of first page, grantee's mailing address included, amount of note in words and figures and final maturity date, proper witness and notary blocks and sealing by signatory and notary).
9. Model Litigation Confirmation (Article XXI)
- a. Not an “opinion”, but instead confirmation as to factual matters.
 - b. In a departure from the previous Report, the Model Opinion does not include such confirmation.
 - c. Given cases on the subject such as National Bank of Canada v. Hale & Dorr, 17 Mass. L. Rptr. 681, 2004 WL 1049072 (Mass. Super. Apr. 28, 2004) and Dean Foods Co. v. Pappathanasi, 18 Mass. L. Rptr. 598, 2004 WL 3019942 (Mass Super. Dec. 3, 2004), the expansion of law firms in terms of size and geographic diversity, and other factors, many firms today have established policies against giving litigation confirmations.
 - d. Based on review of other Bar reports [See Exhibit B] and considerations noted in paragraph 9(c) above, litigation confirmation determined to be an optional provision, with the Legal Opinion Committee taking no position for or against the inclusion of such confirmation.
 - e. Expanded practice tip - Opinion Giver should follow comprehensive due diligence procedures as a condition to giving this confirmation.
10. **Limitation on Scope of Opinion – Interpretive Standard 2**
- a. Certain matters, including their effects and the effects of noncompliance, are not covered by implication or otherwise in any Opinion, unless

coverage is specifically addressed in the Opinion Letter. In this Report the Patriot Act was included in the list of specific laws that are not covered by the Model Opinion by implication.

D. Conclusion

1. We recommend the Report to you as both a resource as to applicable law as well as a systematic approach for the preparation and interpretation of legal opinions.

2. We believe that the Amended Report will continue to streamline and simplify the preparation and interpretation of legal opinions. This should enhance the efficiency of secured lending transactions, contribute to cost effective preparation of legal opinions and enhance the professionalism of the members of the real estate bar in the eyes of our clients and other parties involved in the legal opinion process.

EXHIBIT A

LEGAL OPINION COMMITTEE CONTACT LIST

William J. Berg
Kitchens Kelley Gaynes, PC
Eleven Piedmont Center, Suite 900
3495 Piedmont Rd., NE
Atlanta GA 30305
(404) 467-7509
bberg@kkgpc.com

Robert A. Goldstein Esq.
Metropolitan Life Insurance
Company
One Alliance Center
3500 Lenox Road, NE, Suite 1800
Atlanta, GA 30326
(404)838-2835
rgoldstein@metlife.com

Joshua M. Kamin Esq.
King & Spalding LLP
1180 Peachtree St., NE
Atlanta GA 30309-3521
(404) 572-4849
JKamin@kslaw.com

Robert W. Reardon
Morris, Manning & Martin
1600 Atlanta Financial Center
3343 Peachtree Road
Atlanta GA 30326
(404) 504-7774
rreardon@mmmlaw.com

Andrew Siegel
Arnall Golden Gregory LLP
171 17th St., NW, Suite 2100
Atlanta GA 30363-1031
404-873-8500
andrew.siegel @AGG.com

A. Michelle (Shelli) Willis
Troutman Sanders LLP
600 Peachtree St., NE, Suite 5200
Atlanta GA 30308-2216
(404) 885-3440
shelli.willis@troutmansanders.com

David Burge
Smith, Gambrell & Russell, LLP
Suite 3100, Promenade II
1230 Peachtree Street, N.E.
Atlanta, Georgia 30309-3592
(404) 815-3500
dburge@sgrlaw.com

Stephen J. Greenway
Troutman Sanders LLP
Bank of America Plaza, Suite 5200
600 Peachtree Street, NE
Atlanta GA 30309-2216
(404) 885-3257
jeff.greenway@troutmansanders.com

John R. Parks
Bryan Cave Powell Goldstein LLP
1201 West Peachtree St., NW
One Atlantic Center, Fourteenth Floor
Atlanta GA 30309-3488
(404) 572-6783
john.parks@bryancave.com

Lisa M. Roberts
Counsel – Legal Department
RBS WorldPay
600 Morgan Falls Road
Atlanta, GA 30350
Phone: (678) 587-1314
lisa.roberts@rbsworldpay.us.com

Kathryn Smith
Brosnahan, Carpenter, Lyons & Smith, LLP
51 Lenox Pointe
Atlanta, Georgia 30324
Phone: 678.805.4458
khs@bclslegal.com

Michael R. Davis
Alston & Bird LLP
One Atlantic Center
1201 West Peachtree St.
Atlanta GA 30309-3424
(404) 881-7367
mike.davis@alston.com

James B. Jordan
Sutherland Asbill & Brennan LLP
999 Peachtree St., NE
Atlanta GA 30309-3996
(404) 853-8101
jim.jordan@sutherland.com

Kurt A. Raulin
The Raulin Professional Group, LLC
3280 Northside Parkway, N.W.
Suite 210
Atlanta, GA 30327-2258
(404) 869-6164
kraulin@raulingroup.com

Douglas D. Selph
Morris, Manning & Martin
1600 Atlanta Financial Center
3343 Peachtree Road, N.E.
Atlanta GA 30326
(404) 233-7780
dds@mmmlaw.com

Jaliya Stewart
Sutherland Asbill & Brennan LLP
999 Peachtree St., NE
Atlanta GA 30309-3996
(404) 853-8192
jaliya.stewart@sutherland.com

EXHIBIT B

NO VIOLATION, CONSENT AND LITIGATION OPINION REPORTS AND ISSUES

Opinion Report*	GA (1997)	GA (2009)	ABA/ACREL Adaptation (1993) [Business Law Section has Model; RPLS has commentary]	NY (1998)	CA (May 2005 Bus. Law Sec.) [2002 Review by CA Real Property Law Section has commentary rather than a Model opinion]	TX (1996)	FL (1996)
Opinion Issue							
1. No violation – Org. Docs	<i>The execution and delivery by Borrower of the Loan Documents do not violate Borrower's Organizational Documents.</i>	No change	<i>Execution and delivery by the Corporation of, and performance of its agreements in, the Agreement do not (i) violate the Constituent Documents ...</i>	<i>The execution and delivery by Borrower of the Loan Documents do not, and the payment of the indebtedness evidenced by the Note will not,¹ result in a violation of its Organizational Documents.²</i>	<i>The execution and delivery of the Agreement and the performance by the Company of its obligations under the Agreement do not (i) violate the Company's articles or bylaws ...</i>	<i>The execution and delivery by our Client of its agreements in the Transaction Documents do not violate the Constituent Documents of our Client.⁴</i>	The execution and delivery of the [Transaction Documents], the borrowing of the proceeds of the loan by [the Client] and the repayment of the indebtedness evidenced by the [Transaction Documents] pursuant to their terms, do not (i) violate the [organizational documents]...

¹ NY/TRI: This language of payment under the note is intended to avoid the word “no conflict” in the opinion, as the TriBar has an extensive explanation of the challenges and needs to avoid the broad “conflict” language. “No violation” and “no breach or default” qualifiers are more precise and thus preferred. Also, the no breach or default opinion is not an opinion that no adverse consequences will exist. In addition, no “future performance” opinions should be given as it relates to these items, hence the desire to limit the opinion to the execution, delivery and payment of the debt.

² NY/TRI: This opinion may be redundant of the powers and remedies opinion, though since the opinion is often requested it is issued in spite of this fact. Note that the opinion need not be given if a newly created special purpose entity.

Opinion Report*			ABA/ACREL Adaptation (1993) [Business Law Section has Model; RPLS has commentary]		CA (May 2005 Bus. Law Sec.) [2002 Review by CA Real Property Law Section has commentary rather than a Model opinion]		
Opinion Issue	GA (1997)	GA (2009)		NY (1998)		TX (1996)	FL (1996)
2. No violation – Laws	<i>The execution and delivery by Borrower of the Loan Documents, to our knowledge, do not violate any constitution, statute, regulation, rule, order or law known to us to which Borrower or the Property is subject.</i>	The execution and delivery by Borrower of the Loan Documents do not violate any constitution, statute, regulation, rule, order or law to which Borrower or the Property is subject.	<i>Execution and delivery by the Corporation of, and performance of its agreements in, the Agreement do not violate applicable provisions of statutory law or regulation.</i>	<i>The execution and delivery by Borrower of the Loan Documents do not, and the payment of the indebtedness evidenced by the Note will not, result in any violation of any law of the United States of America or the State of New York, or any rule or regulation thereunder.³</i>	<i>The execution and delivery of the Agreement and the performance by the Company of its obligations under the Agreement do not (i) violate any U.S. federal or California law, rule or regulation that in our experience is typically applicable to agreements similar to the Agreement, transactions of the</i>	<i>The execution and delivery by our Client of the Transaction Documents, and the performance by our Client of the <u>payment</u> obligations of the Transaction Documents, will not violate applicable provisions of statutory law or regulation.³</i>	The execution and delivery of the [Transaction Documents], the borrowing of the proceeds of the loan by [the Client] and the repayment of the indebtedness evidenced by the [Transaction Documents] pursuant to their terms, do not ... (iv) violate any federal or Florida

³ NY/TRI: This no violation of laws opinion does not cover laws relating to tax, insolvency, antitrust and securities matters, environmental or local laws. In fact, like the remedies opinion, it only covers laws which given the nature of the transaction and the parties to it, an opinion preparer exercising customary diligence would reasonably recognize as being applicable. Also, here to, no “future performance” opinion should be give for the same reasons set forth above. However, if the opinion issuer knows of a problem, then the opinion giver should note the same in the opinion.

TX SUPP: The 1998 Texas Supplement excludes the following legal issues from its form legal opinion: antitrust and securities laws, margin regulations, pension and employee benefit laws, federal/state laws regarding filing and notice requirements (e.g., Hart-Scott-Rodino), fiduciary duty requirements, local law, lien creation (except to the extent that enforceability of remedies is dependent on such lien), title to Collateral, sufficiency of description of Collateral to provide notice, certain UCC issues, fraudulent transfer and conveyance, environmental laws, land use/ subdivision laws, tax laws intellectual property laws, RICO, OSHA, labor laws, laws regarding emergency, sovereignty and forfeiture, and federal/ state statutes of general application that provide for criminal prosecution. In giving the No Violation of Laws opinion, the Opinion Giver need only determine whether any such prohibition would occur under or any fine, penalty or similar sanction would arise from a statute or regulation of the Opinion Jurisdiction that a lawyer “exercising customary professional diligence” would reasonably recognize as being directly applicable to the Client, the Transaction, or both.

Opinion Report*			ABA/ACREL Adaptation (1993) [Business Law Section has Model; RPLS has commentary]		CA (May 2005 Bus. Law Sec.) [2002 Review by CA Real Property Law Section has commentary rather than a Model opinion]		
Opinion Issue	GA (1997)	GA (2009)		NY (1998)		TX (1996)	FL (1996)
					<i>nature contemplated by the Agreement, or generally applicable to companies engaged in the same line of business as the Company [, which violation in the case of this clause (iv) would materially adversely affect the Company]</i>		Law, Rule or Regulation.
3. No violation – Contracts	<i>The execution and delivery by Borrower of the Loan Documents, to our knowledge, do not constitute a breach or default under any other written agreements.</i>	The execution and delivery by Borrower of the Loan Documents, to our knowledge, do not constitute a breach or default under any other material written agreements.	<i>Execution and delivery by the Corporation of, and performance of its agreements in, the Agreement do not... (ii) breach, or result in a default under, any existing obligation of the Corporation under [contracts dealing</i>	<i>The execution and delivery by Borrower of the Loan Documents do not, and the payment of the indebtedness evidenced by the Note will not, result in a breach or default under any agreement or instrument listed on Schedule ____ hereto,⁴ or result in</i>	<i>The execution and delivery of the Agreement and the performance by the Company of its obligations under the Agreement do not ... (ii) constitute a default under or [material] breach of any agreement identified on Schedule I....</i>	<i>The execution and delivery by our Client of the Transaction Documents do not breach, or result in a default under, any existing obligation of our Client under Other Agreements⁴.</i>	The execution and delivery of the [Transaction Documents], the borrowing of the proceeds of the loan by [the Client] and the repayment of the indebtedness evidenced by the [Transaction Documents] pursuant to their terms, do not ... (ii) to our

⁴ NY/TRI: TriBar believes that it is impractical for an attorney to know the answer to this question, and that the opinion giver should procure a certificate stating the specific documents in question, and then rely upon it for the opinion (hence the schedule reference). Note: this opinion does not include the sometimes requested language that the execution and delivery of the Loan Documents do not result in the creation or imposition of a lien, charge or encumbrance upon the property or

Opinion Report*			ABA/ACREL Adaptation (1993) [Business Law Section has Model; RPLS has commentary]		CA (May 2005 Bus. Law Sec.) [2002 Review by CA Real Property Law Section has commentary rather than a Model opinion]		
Opinion Issue	GA (1997)	GA (2009)		NY (1998)		TX (1996)	FL (1996)
			<i>with money borrowed by the Corporation ...] [specify other method used to determine, or specifically identify, the "Other Agreements"]</i>	<i>the acceleration of (or entitle any party to accelerate) any obligation of Borrower thereunder.</i>			knowledge [as limited pursuant to Section II.J of the Report] constitute a breach of or a default under any agreement or document to which [the Client] is a party or by which it or its assets are bound, or result in the creation of a security interest in or mortgage or other encumbrance on the assets of [the Client] (except as set forth in the [Transaction Documents]
4. No violation	<i>The execution and delivery by Borrower</i>	No change	<i>Execution and delivery by the Corporation of, and</i>	<i>The execution and delivery by Borrower</i>	<i>The execution and delivery of the</i>	<i>The execution and delivery by our</i>	The execution and delivery of the

assets of Borrower, including negative pledges, and these lien/negative pledge opinions are not included in the above opinion. Also, note that the TriBar assumes that contracts governed by the laws of another state can be the subject of an opinion, and that the opinion issuer is relying on the plain meaning of the contracts - no explicit qualification is needed.

TX SUPP: To give these opinions, the Opinion Giver need only take into account information furnished to him or her by others and “other facts of which the Opinion Giver has Actual Knowledge.” The term “Actual Knowledge” is defined as “the conscious awareness of facts or other information by the Primary Lawyer or the Primary Lawyer group.” This concept is applied by reference to all of the no violation and no litigation opinions.

Opinion Report*			ABA/ACREL Adaptation (1993) [Business Law Section has Model; RPLS has commentary]		CA (May 2005 Bus. Law Sec.) [2002 Review by CA Real Property Law Section has commentary rather than a Model opinion]		
Opinion Issue	GA (1997)	GA (2009)		NY (1998)		TX (1996)	FL (1996)
– Judgments	<i>of the Loan Documents, to our knowledge, do not violate any judicial or administrative decree, writ, judgment or order known to us to which Borrower or the Property is subject.</i>		<i>performance of its agreements in, the Agreement do not ... (iii) breach or otherwise violate any existing obligation of the Corporation under [... Specify other method used to determine, or specifically identity, the "Court Orders"]</i>	<i>of the Loan Documents do not, and the payment of the indebtedness evidenced by the Note will not, result in a violation of any court order listed on Schedule _____ hereto.⁵</i>	<i>Agreement and the performance by the Company of its obligations under the Agreement do not...(ii) violate any judgment, order or decree of any court or arbitrator identified on Schedule 2....</i>	<i>Client of the Transaction Documents do not breach or otherwise violate any existing obligation of our Client under Court Orders.⁴</i>	[Transaction Documents], the borrowing of the proceeds of the loan by [the Client] and the repayment of the indebtedness evidenced by the [Transaction Documents] pursuant to their terms, do not ... (iii) to our knowledge [as limited pursuant to Section II.J of the Report], violate a judgment, decree or order of any court or administrative tribunal, which judgment, decree or order is binding upon [the Client] or its assets....

⁵ NY/TRI: Same logic as with no contract breach or default opinion.

Opinion Report*			ABA/ACREL Adaptation (1993) [Business Law Section has Model; RPLS has commentary]		CA (May 2005 Bus. Law Sec.) [2002 Review by CA Real Property Law Section has commentary rather than a Model opinion]		
Opinion Issue	GA (1997)	GA (2009)		NY (1998)		TX (1996)	FL (1996)
5. No required Consent of Governmental Authority	<i>No consent, approval, authorization or other action by, or filing with, any governmental authority of the United States or the State of Georgia is required for Borrower's execution and delivery of the Loan Documents or for Guarantor's execution and delivery of the Guaranty and the closing of the Loan Transaction [except...].</i>	Eliminate	<i>No real corresponding opinion.</i>	<i>No real corresponding opinion.⁶</i>	<i>No real corresponding opinion.</i>	<i>No real corresponding opinion.</i>	Except as specified herein, no notice, report or other filing or registration with, and no consent, approval or authorization of, any Federal, Florida or Local Governmental authority is required to be submitted, made or obtained in connection with the execution and delivery of the [Transaction Documents], the borrowing of the proceeds of the loan by [the Client] and the repayment of the indebtedness

⁶ NY/TRI: TriBar believes that this opinion overlaps with the remedies and no violation of law opinion, and does not include it as such. Often, lenders will request no approvals or filings opinions, but since the opinion does not include matters of local law, this opinion is omitted. If such an opinion is issued, it is recommended that the opinion issuer qualify the opinion to the no breach or default or no violation standard for specificity sake.

TX SUPP: To give this opinion, the Opinion Giver relies only on upon information provided by others and a review of the Opinion Giver's litigation docket. The Opinion Giver need not review court or other public records or undertake any broader review of its own files.

Opinion Report*			ABA/ACREL Adaptation (1993) [Business Law Section has Model; RPLS has commentary]		CA (May 2005 Bus. Law Sec.) [2002 Review by CA Real Property Law Section has commentary rather than a Model opinion]		
Opinion Issue	GA (1997)	GA (2009)		NY (1998)		TX (1996)	FL (1996)
							evidenced by the [Transaction Documents] pursuant to their terms.
6. No Litigation Confirmation	<i>To our knowledge, except as set forth on Exhibit __ hereto, there is no litigation or other proceeding pending before any court or administrative agency against Borrower or the Property, which, if adversely determined, would have a material adverse effect on the financial condition of Borrower.</i>	OPTIONAL: To our knowledge, except as set forth on Exhibit __ hereto, there is no litigation or other proceeding pending before any court or administrative agency against Borrower which, if it were adversely determined, would have a material adverse effect on the financial condition of Borrower.	<i>We hereby confirm to you ... that there are no actions or proceedings against the Corporation, pending or overtly threatened in writing, [known to the lawyers in this firm who have given substantive legal attention to representation of the Corporation in connection with the Transaction] before any court, governmental agency or arbitrator which (i) seek to affect the enforceability of the Agreement, or (ii) except as disclosed in [describe agreements, exhibit,</i>	<i>To our actual knowledge, Borrower is not a party to any pending [or overtly threatened in writing] actions or proceedings that may adversely affect the transactions contemplated by the Loan Documents [or that would have a material adverse effect on Borrower and that is not listed on Schedule __ hereto].⁷</i>	<i>To our knowledge, there is no action or proceeding pending or threatened in writing against the Company [except as set forth in {Schedule 2 of this opinion} {Section __ of the Agreement} {the certificate of an officer of the</i>	<i>There are no actions or proceedings against our Client, pending or overtly threatened in writing, before any court, governmental agency or arbitration which seek to affect the enforceability of the Transaction Documents.⁷</i>	To our knowledge after limited investigation [as limited pursuant to Section II.J of the Report], and except as set forth in the [certificate] of [the Client] attached as schedule__ to this opinion letter, there are no pending or overtly threatened actions, claims, investigations or other proceedings against [the Client], the [guarantor(s)] or

⁷ NY/TRI: Due to its factual nature, the litigation confirmation is often recommended as being given by inside counsel to Borrower instead of outside counsel. As custom, opinion issuers are not expected to check court records or review Borrower's files. TriBar believes that "to our actual knowledge" alerts the opinion recipient as to the limited scope of diligence. This opinion merely notes the existence of litigation, and does not pass on the merits. Also, it only addresses litigation against the Borrower, and not litigation against the collateral - an important distinction that is sometimes missed by the opinion recipient, and which opinion recipients sometimes request given this gap (though the committee recommends against issuing such opinion given the difficulties of determining whether Borrower's collateral is effected if Borrower is not named in the particular action.

Opinion Report*			ABA/ACREL Adaptation (1993) [Business Law Section has Model; RPLS has commentary]		CA (May 2005 Bus. Law Sec.) [2002 Review by CA Real Property Law Section has commentary rather than a Model opinion]		
Opinion Issue	GA (1997)	GA (2009)		NY (1998)		TX (1996)	FL (1996)
			<i>schedule, officer's certificate] come within [describe objective threshold established for disclosure of such matters and where located]</i>		<i>Company}}</i>		the [property].

TX SUPP: To give this opinion, the Opinion Giver relies only on upon information provided by others and a review of the Opinion Giver's litigation docket. The Opinion Giver need not review court or other public records or undertake any broader review of its own files.

EXHIBIT C
REMEDIES OPINION REPORTS AND ISSUES

Opinion Report *						
Opinion Issue	GA (1997)	GA (2009) Revised	ABA/ACREL Adaptation (1993)	NY (1998)	TX (1998)	FL (1996)
1. Basic orientation: Practical Realization of principal benefits v. Generic Qualification with Assurance of Specific Remedies	Generic Qualification with Assurances of Specific Remedies 1. sue on note 2. accelerate if fail to pay p & i 3. non-judicial foreclosure	No change to general approach	Same as 1997 GA Report (except (3) “foreclosure in accordance with applicable law”)	Alternative 1: Realization of principal benefits Alternative 2: Generic Qualification with Assurance of Specific Remedies	Generic Qualification with Assurance of Specific remedies	Generic Qualification with Assurance of Specific remedies
2. Acceleration upon default	Accelerate “upon a material default...in payment of principal or interest”	Provide alternate language for material defaults of material provisions (also revised assurance(i), re: deficiency action)	Same as 1997 GA Report	If Alternative 2: acceleration upon a material default under Loan Documents	Accelerate “upon a material default...in payment of principal and interest or upon material default in any other material provision of Transaction Documents”	Accelerate “upon a material default...in payment of principal and interest or upon material default in any other material provision of Transaction Documents”
3. Foreclosure (include judicial)	Non-judicial only	No change	Foreclosure in accordance with applicable law	Judicial foreclosure only (NY <u>does</u> have non-judicial foreclosure)	Judicial and non- judicial foreclosure	Foreclosure in accordance with applicable law (Note: no non-judicial foreclosure in FL)
4. Receivership	No opinion	No change (and no inclusion of receivership in Int. Standard 25(2)(a))	No opinion	No	Not recommended	No opinion
5. Assignment of Rents	No opinion	No change	No opinion	Judicial enforcement of Assignment of Leases upon acceleration for purposes of collecting rents after receiver appointed	Not recommended (but alternative language provided)	No opinion

Opinion Report *						
Opinion Issue	GA (1997)	GA (2009) Revised	ABA/ACREL Adaptation (1993)	NY (1998)	TX (1998)	FL (1996)
6. Guaranty (incl. performance obligations)	Specific assurance <u>only</u> as to guarantor's obligation to pay principal and interest (not other performance obligations)	No change	Not addressed (Guaranty excluded as a "Transaction Document")	Alternative 1: realization of principal benefits Alternative 2: judicial enforcement upon material default	Guaranty included in specific assurances	Not addressed
7. Enforceability of guarantor waivers	Not addressed	No change to opinion but added commentary	Not addressed	Not addressed	Not addressed	Not addressed
8. Interpretive Standards - Additional Qualifications	<ul style="list-style-type: none"> 1. Generic Qualification (lead in language in form remedies opinion) 2. Interpretive Standard 25 <ul style="list-style-type: none"> - Bankruptcy and Insolvency Exception - Equitable Principles Exception - Choice of Law Exception - Guaranty waivers exception 		Generic Qualification, Bankruptcy and Insolvency Exception, Equitable Principles Exception and Other Common Qualifications (from Accord § 14 Plus § 12 of Adaptation "strongly recommended")	Generic Qualification, Bankruptcy and Insolvency Exception and Equitable Principles Exception	Incorporates ABA/ACREL Qualifications	Not addressed
9. Interpretive standard – Additional Assumptions		Add Assumption of Mutuality				
10. Choice of Law	Interpretive Standard 24	No change				

Opinion Report *					
Opinion Issue	AZ (2004)	Chicago Bar Association (1993)	OR (2004)	WA (1998; Suppl. 2000) (Secured Lending Opinion)	CT (1993)
1. Basic orientation: Practical Realization of principal benefits v. Generic Qualification with Assurance of Specific Remedies	Practical Realization	Practical Realization	Generic Qualification with Assurance of Specific remedies	Practical Realization	Practical Realization of Benefits (but defined as (i) judicial enforcement of obligation to pay principal, and (ii) foreclosure)
2. Acceleration upon default	Not applicable	Not applicable	Judicial enforcement upon material breach of material provision	Not applicable	Not addressed
3. Foreclosure (include judicial)	Not applicable	Not applicable	Foreclosure in accordance with applicable law (Note: OR has judicial and non-judicial)	Not applicable	Foreclosure (CT only allows judicial)
4. Receivership	Not applicable	Not applicable	No opinion	Not applicable	No opinion
5. Assignment of Rents	Not applicable	Not applicable	No opinion	Not applicable	No opinion
6. Guaranty (incl. performance obligations)	Not applicable	Not applicable	Ability to require Guarantor to pay principal and interest	Not applicable	Valid, binding and enforceable (but “enforceable” only means some remedy afforded)
7. Enforceability of guarantor waivers	Not applicable	Not applicable	Not addressed	Not applicable	Not addressed
8. Interpretive Standards - Additional Qualifications	Bankruptcy and Insolvency Exception and Equitable Principles Exception	Bankruptcy and Insolvency Exception and Equitable Principles Exception	Bankruptcy and Insolvency Exception and Equitable Principles Exception and 17 other enumerated	Bankruptcy and Insolvency Exception and Equitable Principles Exception and Other Common Qualifications (from Accord §14)	Bankruptcy exception, equitable principles exception, and lists a number of other qualifications

Opinion Report *		Chicago Bar Association (1993)		WA (1998; Suppl. 2000) (Secured Lending Opinion)	
Opinion Issue	AZ (2004)		OR (2004)		CT (1993)
			qualifications		

Opinion Report *	HA (2000)	PA (2008)
Opinion Issue		
1. Basic orientation: Practical Realization of principal benefits v. Generic Qualification with Assurance of Specific Remedies	Generic Qualification with Assurance of Specific Remedies	General Qualification with Assurance of Specific Remedies
2. Acceleration upon default	“upon a material default ... in payment of principal or interest or upon a material default in any other material provision of the Loan Documents	Same as 1997 GA Report
3. Foreclosure (include judicial)	Foreclosure in accordance with applicable law	Judicial foreclosure
4. Receivership	No opinion	No opinion
5. Assignment of Rents	No opinion	No opinion
6. Guaranty (incl. performance obligations)	No opinion	Judicial enforcement of Guarantor’s obligation to make payments under the Guaranty
7. Enforceability of guarantor waivers	Not addressed	Not addressed

*No State Real Estate Secured Opinion Reports in: IL, IN, MI, MN, VA, WI