



STEIN LAW, PLC

A Real Estate & Business Deal Firm

Big Picture. Small Details. Distinct Approach.

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www.arizonalegalopinions.com

Assuming You Sign Here

When we give our legal opinion letters in connection with the enforceability of commercial real estate loans, we would like to assume that "all signatures are genuine" and focus on the actual language of the various loan documents. However, lenders will occasionally request that such *assumption* not apply to signatures on behalf of our clients (the borrower or the guarantor). After all, the lender wants assurance from someone that the signatures be delivered are not forgeries and that the individuals signing are in fact the persons they purport to be.

Loan agreements are contracts, and contracts need to be signed to be enforceable – seems innocuous enough.

But, this is when we get down to brass tacks: this assumption can create an issue for us as the opinion giver because such an assurance is not an opinion of law, but rather a statement of fact outside of our knowledge. Either the party signed the document or it did not.

This issue also received national legal focus with the notorious case that Fortress Investment Group brought against the law firm Deckert LLP for \$50 million in damages arising from a legal opinion letter issued in connection with fraudulent financing arranged by Marc S. Dreier, who forged borrower's signatures on the various loan documents. *Fortress Credit Corp. v. Dechert LLP*, 2011 WL 5922969 (N.Y.A.D. 1 Dept.).

As counsel, how can we say for sure that the signatures are genuine – as we are usually not with our clients when they sign (although on more than one occasion, we have had lender's counsel suggest that we fly cross-country to our client's out of state office to watch them execute the loan agreements).

So, what to do?

Indeed, even if we personally know the signor and have become familiar with them over the course of our representation, we still cannot give a factual determination that, as a legal certainty, the signature on the document is who the person purports to be. And usually we cannot rely on a notary to do this for us – because very few of the loan documents are actually notarized (usually it's only on those documents being recorded in the public records).

Assuming we are not going to hop on a flight or require an in-office "signing party" every time a loan gets signed up, we have found effective solutions to this challenging catch-22, which has worked for most lenders – whether on agency, life company, CMBS, or traditional, portfolio loans.

And so, on a practical level, in some instances, we have had separate certificates executed affirming that the signor in fact personally signed the documents. We have also set up standalone protocols, witnessed by other parties who attest to the genuineness of the signatures.

To date, we have not had a loan fail to fund because of this modern day quirk. And, it goes without saying that electronic signatures can create separate issues – as one can never really know who pressed the button to apply a signature. However, for now, this is usually less of an issue because most lenders are still requiring wet signatures on loan documents.

Stein Law routinely issues legal opinions both as part of a larger representation or a standalone engagement for clients that do not require assistance negotiating the related loan agreements. For more information visit <http://www.arizonalegalopinions.com>. **Sign here!**

In the past few months, we have delivered legal opinions in connection with:

- * \$16 Million acquisition loan (full opinion and representation, Tempe, AZ, Jan. 2017)
- * \$8 Million refinance (full opinion and representation, Tempe, AZ; Nov. 2016)
- * \$50 Million acquisition (Arizona local counsel, Chandler, AZ; Nov. 2016)
- * \$12 Million refinance (full opinion and representation, Glendale, AZ; Oct. 2016)
- * \$189 Million loan (Arizona local counsel, Phoenix, AZ; Sept. 2016)

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