



## STEIN LAW, PLC

A Real Estate & Business Deal Firm

Big Picture. Small Details. Distinct Approach.

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### *Recent Developments - 3rd Quarter 2014*

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*See This Quarter's Notable Closed Deals Below*

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#### **In My Opinion**

As a condition for making any kind of commercial real estate loan, lenders require a variety of assurances and representations from the borrower (and other key principals or guarantors) to verify that the borrower has the legal standing and ability to borrow (and payback) the loan.

Beyond taking the borrower's word for it, lenders also typically require a [legal opinion](#) from borrower's counsel as an added layer of protection covering certain legal matters involved in the transaction - including confirmation of the legality of the actual loan document forms being used. This squarely sets nearly all risk relating to the loan transaction on the borrower and its counsel. Obviously to most outsiders (and insiders!), this process is a bit counterintuitive - as one would hope that the lender itself and its own legal counsel should confirm these matters.

Be that as it may, this is the standard custom and approach.

Given the nature of having a borrower's own counsel opine as to these matters for a loan, it is no wonder that there are common misconceptions and myths relating to required opinions. Below is our attempt to separate the fact from fiction:

*Fact: Lender's required forms of legal opinions from borrower's counsel vary.* Each lender had its own particular form that it will require for a given transaction. Lenders are routinely changing its forms to keep up with changes in the law or, perhaps, to address problems it has encountered with previous loans. Just because a particular lender accepted one form of opinion does not mean that another will. For example, even the Fannie Mae and Freddie Mac forms used in similar multi-family loans vary substantively in their form, structure and requirements.

*Myth: Legal opinions are non-negotiable.* There is no true "boilerplate" legal opinion form. Lenders typically have a form that it will distribute at the outset of the loan closing process, but those forms are a starting point for negotiation. Most legal opinions follow a similar format, including identification of the loan specifics but there is a wide variety of assumptions, limitations and qualifications that can be used for the required opinions.

*Fact: Legal opinion are state-specific.* Because the legal opinion often includes statements regarding enforceability and, in some circumstances, perfection of the lender's security interest, the forms must be tailored to each state. As attorneys licensed to practice law in Arizona, our opinions are limited to Arizona law (and applicable federal law). However, because of our broad practice, we have clients that close transactions all over the country and so we routinely coordinate with a network of local counsel in other states for state-specific opinions and do the same for other firms and clients closing deals in Arizona.

*Myth: Legal opinions require attorneys to opine as to facts.* Facts are generally assumed and relied upon. Opinions are typically limited internal company matters, such as due formation and authorization based upon a review of the borrower's organizational documents, and other enforceability and legality of loan provisions based on specific loan documents for the transaction.

*Fact: Legal opinions include certain limitations and qualifications.* Legal opinions will contain certain basic assumptions that should not be problematic for the lender. For example, the law firm giving the opinion may assume that the signatures on the loan documents are genuine and that documents delivered as originals are authentic and that copies of a document conform to the original.

Stein Law represents a variety of borrower clients on large and small commercial loan transactions and regularly works with the Fannie Mae, Freddie Mac, major life companies and institutional lenders to provide required legal opinions.

For more information please call (480) 889-8948, send an email to [info@steinlawplc.com](mailto:info@steinlawplc.com) or visit [www.SteinLawPLC.com](http://www.SteinLawPLC.com).

Stein Law, PLC is a boutique business and real estate deal firm focused on:

- Real estate acquisitions and sales, development and leasing (both tenant and landlord);
- Business transactions, operating agreements, joint venture structuring and

Below are some noteworthy 3Q14 Stein Law closed deals:

- 200+ unit multifamily complex joint venture purchase with private equity and agency financing (Marietta, Georgia – July, 2014)
- Shopping Center purchase and lease-up (Glendale, July, 2014)
- Distribution and Retail Center

- corporate contracts;
- Loan financings, workouts and modifications; and
  - Hospitality development, management and licensing matters.

The following is a link to our Stein Law, PLC Recent Developments Archives:

[Recent Developments Archives](#)

- Refinance (Phoenix, August, 2014)
- Purchase of 250+-unit multi-family apartment with a Freddie Mac financing (Chandler – August, 2014)
  - Sale of developed build to suit NNN lease location (San Antonio, Texas - August, 2014)
  - Apartment complex purchase with a Freddie Mac assumption and supplemental financing (Tucson – September, 2014)
  - Represented Hotel Management Company takeover of two (2) New York City branded hotels (September, 2014)



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