

## Opinions Reports Continued: U.C.C.

At long last! The report on (and named) **Uniform Commercial Code Opinions in Real Estate Finance Transactions** is being published in Volume 53 No. 2 of the Real Property, Trust & Estate Law Journal (Fall, 2018, cited as 53 REAL PROP. TR. & EST. L.J. 163), to be available to ABA Section members in print form about mid-April 2019. A copy of the U.C.C. Report, as it appears in the Journal, will be posted in the ACREL Attorneys' Opinions Committee website in a downloadable form. The goal of the report is to provide a knowledgeable basis for opinions and fair warning about matters beyond its scope.

The U.C.C. Report follows the Real Estate Finance Opinion Report of 2012 and the report, Local Counsel Opinions in Real Estate Finance Transaction, is a project of ACREL and the ABA RPTE Section committees and the American College of Mortgage Attorneys ("Joint Drafting Committee"). The purpose of the U.C.C. Report is to provide a picture of customary and acceptable opinion practice in real estate financing, working through a Joint Drafting Committee. The American College of Commercial Finance Lawyers was actively involved in reviewing and commenting on the U.C.C. Report as it progressed, and the ACCFL has given its approval of the report as issued.

The 2012 Report did not encourage giving U.C.C. opinions, and avoided discussion of them. Development of a resource on U.C.C. opinions for real estate lawyers has been in process since work on the Local Counsel Report began in 2013. We set out to de-mystify and de-"mythify" opinion practice in real estate finance transactions that involve important collateral and to help the real estate practitioner understand which a security interest may be subject to U.C.C. provisions.

The U.C.C. Report discusses creation, attachment, and perfection of security interests in "real estate collateral" to which the U.C.C. applies: (i) fixtures, as-extracted collateral, timber to be cut and (ii) personal property such as FF&E to remain non-fixtures. The U.C.C. report includes a lengthy discussion of deposit account and investment property security interests. The Illustrative Opinion Letter provided with the Local Counsel Report is supplemented with many specific assumptions and opinions suggested by the U.C.C. Report text added.

In the course of its preparation the U.C.C. Report received an extensive deal of review, comment, and contribution by members of the sponsoring groups' committees, many of whom have active and advanced practices in U.C.C. matters. Although an opinion preparer will not become an expert in commercial finance by reading this report alone, the reader will understand when and how to provide— or not — and review opinions in transactions with U.C.C. collateral encountered in real estate finance. Additionally, an opinion preparer will have reference to other resources for further knowledge and skills.

Bill Dunn served as Reporter and principal author of the U.C.C. Report, with assistance of Steve Weise and Marshall Grodner, as contributing reporters. Ed Levin and Scott Willis, were co-editors. Ken Jacobson provided significant drafting commentary and suggestions for the Illustrative Opinion Letter.