**NFMA WHITEPAPER (FIRST FULL DRAFT 1/16/25)**

**EVALUATING MUNICIPAL COLLATERAL PACKAGES &   
 RECOMMENDED DISCLOSURE PRACTICES**

**Introduction & Overview**

Since its inception in 1983, the National Federation of Municipal Analysts (NFMA), has been at the forefront of efforts to improve disclosure of credit and other risks that face investors in the taxable and tax-exempt municipal bond markets. NFMA’s work in this regard has been recognized by other industry associations and by various regulatory bodies. NFMA is composed of over [\_\_\_\_] members, primarily research analysts, who evaluate credit and other risks of investing in municipal securities. These individuals represent mutual funds, insurance companies, separately managed accounts, broker/dealers, bond insurers, and rating agencies, and other municipal market stakeholders.

One of the main initiatives of NFMA is to promote timely and complete disclosure of all material financial, socio-economic and market sector information needed to assess the credit quality and risk of investments in municipal debt--both before issuance and on an ongoing basis after issuance until the debt is fully paid. Consequently, NFMA focuses on disclosure in both the initial offering documents (whether a preliminary and final official statement or a preliminary and final limited offering memorandum) and in the continuing disclosure agreements of the municipal issuer and the material borrowers/obligors undertaking the underlying development/project, where applicable. NFMA’s on-going disclosure efforts have ranged from broad disclosure-related issues to more detailed, sector-specific work such as Recommended Best Practices in Disclosure Whitepapers (RBPs). Irrespective of market sector, NFMA believes that the best practices in disclosure are those that provide a steady flow of timely material information from municipal issuers and obligated persons to the market and investors. For further information on NFMA’s continuing work in the area of disclosure, please see the “Disclosure Guidelines” and “Position Statements” pages of NFMA’s website at [www.nfma.org](http://www.nfma.org).

This RBP Whitepaper contains descriptions of sector-specific material financial, socio-economic and operating information that investors, stakeholders and other market participants require to assess the investment risks involved in investing in the sector. In order to develop RBP Whirepapers for a specific sector, NFMA analysts form a committee which includes analysts as well as non-analyst professionals such as municipal issuers, representatives of relevant industry groups, public finance lawyers and underwriters who specialize in the particular sector. The committee then creates a review draft that is presented to NFMA’s board of directors for review and comment. After NFMA board approval of the RBP Whirepaper the proposed RBP Whitepaper is posted for broader public comment from interested parties where additional feedback is encouraged. Finally, NFMA may then revise the RBP Whitepaper based upon feedback received during the comment period. NFMA’s disclosure efforts are a continuous process, and the guidelines provided in this RBP Whitepaper will be updated as market and sector conditions warrant. NFMA encourages interested parties to submit comments on this RBP at any time to Lisa Good at lgood@nfma.org for consideration in the development of future versions of this RBP Whitepaper.

*This RBP Whitepaper disclosure recommendations ares not intended to be applicable to every MCP and municipal bond transaction. transactions. Similarly, this RBP cannot predict all categories of material information which may apply to any particular MCP or transaction. Issuers, investment bankers, financial advisors, underwriters, legal counsel and other parties responsible for the disclosure process must use their professional judgment in accordance with applicable securities laws and best practices to determine what MCP items are material for disclosure in a particular municipal finance transaction.* NFMA recognizes that the information and data needed to analyze an LST will vary from issue to issue, based upon the type of Development, the state of the Development is in (i.e. greenfield versus fully built), and the state/jurisdiction where the Development is located. However, this **RBP** covers the information and data that is relevant to nearly all LSTs and is needed by a reasonable investor to make an informed investment decision in the LST. It is NFMA’s recommendation that when providing LST disclosure to either the primary market or in secondary market, the disclosure areas, identified in this RBP should, be addressed in the detail recommended by this RBP as relevant.

Finally, this RBP Whitepaper *does not address credit enhancements in municipal finance transactions such as guarantees, letters of credit, municipal insurance and the various forms of state/local credit support such as “moral obligation” debt .*

**The Purpose & Scope Of This Whitepaper—The Benefits Of Evaluating MUNICIPAL Collateral Packages**

This paper presents the RBPs for evaluating municipal collateral packages (MCPs) in municipal bond transactions. Many municipal bond transactions are supported by various types of collateral, and this Whitepaper is intended to help buy-side analysts understand the types of collateral comprising MCPs and recommended best practices in disclosure of MCPs and related risks such as the effects of bankruptcy on MCPs. This Whitepaper is intended to help all parties to a MFT provide the proper level of disclosure about the MCP and the all the material risks applicable to each component part of the MCP.

Most municipal finance transactions (MFTs) involve some “pledge” of or “lien” on municipal revenues, taxes and/or property to a Bond Trustee, or on the real estate, equipment, revenues and other property of a non-govt borrower (e.g., charter school). This is especially true for “high yield” MFTs. However, the nature of a “pledge” and “lien” in MFTs is not so straight forward as it seems. This Whitepaper will cover the following topics and objectives:

A. Assist NFMA analysts in identifying and understanding the basic types of legal   
 structures creating “pledges”, “collateral” and “liens” in MFTs, and the general   
 problems associated with each type of legal structure (e.g., rights/remedies limits;   
 public notice requirements; etc.). This analysis will be referred to as a “Collateral   
 Package” analysis;

1. Highlight documentation issues and perfection/priority risks involving the enforcement of the various types of “pledges” and “liens” in a Collateral Package; and
2. Provide NFMA analysts with a checklist to help in assessing Collateral Package risks\*.

WHY IS A “COLLATERAL PACKAGE” ANALYSIS IMPORTANT? Bondholder recovery in MFTs is highly dependent on the quality and sufficiency of the Collateral Package supporting the MFT especially in high yield MFTS. As used herein, “Collateral” includes both hard collateral (real estate/equipment) and the revenues/taxes (e.g., sales taxes) pledged to repay the debt. Collateral Package analysis is especially important for high yield MFTs as they fund riskier start-up projects like hotels, multi-family housing, mixed use retail developments, recycling/bio-gas plants, industrial projects, business parks, etc. However, it seems that many high yield MFT offering statements do not proved adequate disclosure of the nature and strength of the “pledges” and “liens” that create the Collateral Package, nor the enforcement risks involved in liquidating the Collateral Package. Consequently, NFMA analysts need to conduct a Collateral Package analysis as part of their due diligence process when looking at high yield MFTs, and understand how quickly/efficiently a Bond Trustee can realize on that Collateral Package to repay the MFT if required.   
  
The importance and benefits of having a “fully secured" Collateral Package in HY MFTs are as follows:  
  
 1) MFTs that have a “fully secured” Collateral Package should be given a higher   
 internal credit rating than those that are “under secured” given the higher probability   
 of bondholder recovery before and after default;  
  
 2) A “fully secured” Collateral Package is needed to protect bondholders from   
 bankruptcy “cramdown” in a Chapter 9 and 11 bankruptcy—often a problem in HY   
 MFTs;  
  
 3) HY MFTS bond restructurings that have a “fully secured” Collateral Package allows   
 bondholders to negotiate from a position of strength viz-a-viz the obligor and other   
 competing creditors, and obtain better restructuring outcomes;   
  
 4) Having a “fully secured” Collateral Package with the Bond Trustee having all the   
 needed rights/remedies to liquidate the collateral/collect the pledged revenues should   
 minimize situations where bondholders take a loss—very common in high yield   
 MFTs; and

5) Having a “Fully Secured” Collateral Package Makes It Easier/Cheaper To Get   
 Municipal Bond Insurance In Secondary Market.

KNOWING YOUR COLLATERAL PACKAGE AND WHAT TYPE OF PLEDGE OR LIEN ON PROPERTY SUPPORTS REPAYMENT OF YOUR BONDS IS CRUCIAL IN EVALUATING HIGH YIELD MFTS.

VALUE-ADDED PM SUPPORT: PUBLIC RATING AGENCIES DO NOT REALLY FOCUS ON THE STRENGTHS OF COLLATERAL PACKAGES, SO BUY-SIDE ANALYSTS HAVE AN OPPORTUNITY TO INFORM INVESTMENT DECISIONS WITH INSIGHTFUL COLLATERAL PACKAGE RISK ASSESSMENTS.

**CURRENT MFT OFFERING STATEMENT DISCLOSURE: LACK OF LEGAL OPINIONS ON COLLATERAL PACKAGES (PERFECTION & PRIORITY) & MINIMAL PLEDGE/LIEN AND RIGHTS/REMEDIES RISK DISCLOSURES.**

1. CURRENT PROBLEMS: Unlike commercial loan transactions that routinely get a legal opinion on the perfection/priority of the Collateral Package (including UCC perfection/priority opinions, title insurance commitments, etc) as a closing condition, MFTs usually do not provide legal opinions on the perfection/priority of the Collateral Package. In addition, MFT offering statements do not have much risk disclosure on Collateral Packages including perfection/priority risks, adverse real estate title issues, title insurance exceptions/exemptions (e.g., lack of a survey), and risks of the Bond Trustee lacking clear enforcement/collection rights in the Collateral Package. Bond counsel is usually not responsible for issues regarding the perfection/priority of “pledges”, “liens” and security interests in MFTs, and so bondholders must request underwriter’s and issuer’s counsel for adequate disclosure on these issues when reviewing a MFT—especially high yield MFTs. Consequently, NFMA analysts need to undertake their own Collateral Package analysis as part of their credit risk due diligence/assessment, and identify weaknesses in the Collateral Package of MFTs--especially in HY MFTs.
2. WHAT IS A “PLEDGE” AND “LIEN” IN MUNICIPAL FINANCE TRANSACTIONS?: LACK OF ADEQUATE OFFERING STATEMENT DISCLOSURE.  
     
   1. Introduction: “Pledges” and “liens” in MFT’s can be based on the following legal   
    concepts/structures: 1) a statutory lien; 2) a security interest created/perfected under   
    UCC Article 9; 3) a private mortgage/deed of trust; 4) a private collateral assignment   
    of contract rights; and 5) a public “common law” pledge. If the “pledge” is not   
    created by one of these five legal structures, then the “pledge” or “lien” may not   
    create an enforceable priority claim for the Trustee against other creditors/the   
    borrower as to the revenues or property supporting the MFT, and the “pledge” may   
    only represent an unsecured “promise” to pay certain revenues or deliver certain   
    properties to pay the MFT.
3. “Pledges”: When a NFMA analyst discovers that certain revenues or property are “pledged” to repayment of a MFT, it is important that the analyst verifies what is meant by the term “pledge” in making its Collateral Package analysis. The term “pledge” does not have a single or agreed-upon legal definition in MFTs. The attached article authored by NABL Atty Rick Weber explores all of the possible meanings of the term “pledge” in municipal finance and highlights its pervasive ambiguity. In fact, the word “pledge” used in MFT offering statements is usually in lower case and undefined—SO BUY-SIDE ANALYSTS NEED TO VERIFY THE NATURE & SCOPE OF ANY “PLEDGE” NOTED IN THE MFT OFFERING STATEMENT. MFT OFFERING STATEMENT DISCLOSURE ABOUT EACH “PLEDGE” IS GENERALLY INCOMPLETE OR MISSING.  
     
   To improve MFT disclosure of any “pledges” that are part of the Collateral Package, the MFT offering documents should identify the specific type and source of each “pledge” of Collateral described in the POS, and excerpt all relevant state or local statutes, laws, resolutions, etc creating such pledge and the associated rights/remedies available to the Bond Trustee to collect/foreclose/realize on the pledged property. NFMA analysts can use the attached Checklist in Section M below to help them undertake this “pledge” analysis when evaluating Collateral Packages.
4. “Liens”: When a NFMA analyst discovers that certain revenues or property are subject to a “lien” in favor of the Trustee to secure repayment of a MFT, it is important that the analyst verifies what is meant by the term “lien” in making its Collateral Package analysis. The term “lien” is usually undefined and in lower case in MFT offering statements, SO ANALYSTS NEED TO VERIFY THE NATURE & SCOPE OF ANY “LIEN” NOTED IN THE OFFERING STATEMENT. “Liens” are usually based on a specific federal/state statute or a local ordinance/resolution, and “Liens” cover tax liens (property taxes/income taxes), mechanics liens, landlord liens, contractor liens, bank liens (against accounts), and judgment liens. However, the term “lien” could also refer to a private real estate mortgage/deed of trust or private security interest, so analysts need to verify the source of the “lien” described in the MFT POS. One important subset of “liens” commonly found in MFTs are called Statutory Liens granting a lien on specific property or revenue stream in support of a MFT, may enjoy special creditor treatment in bankruptcy, and which generally are not subject to any special public perfection or filing requirements. [NOTE: Statutory Liens are covered in a separate NFMA Whitepaper entitled “General Obligation Bond Payments: Statutory Liens & Related Disclosures” (December 2017) which is attached to these materials].   
     
   The generic term “lien” used in a MFT offering statement can be ambiguous unless it refers to a specific Statutory Lien (as discussed below). When a NFMA analyst discovers that certain revenues or property are covered by a “lien” in favor of the Bond Trustee (or in favor of the issuer in cases where there is a underlying borrower/obligor which is commonplace in HY MFTs), it is important that the analyst verifies the source of the lien (federal/state statute; local ordinance; or bond resolution) and verify if it is a Statutory Lien (see discussion below). The MFT offering statement should provide a specific reference to the legal source of the “lien”, excerpt language on the scope, terms, perfection and priority of the lien, and excerpt the rights/remedies of the lienholder (which in this case is either the bond trustee or the issuer depending on the type of MFT financing involved). NFMA analysts can use the attached Checklist in Section M below when undertaking this “lien” analysis.

**The Legal STRUCTURED Involved In Evaluating MUNICIPAL Collateral PACKAGES**

1. **WHAT LEGAL STRUCTURES SUPPORT COLLATERAL PACKAGES IN MUNICIPAL FINANCE TRANSACTIONS?**

This Whitepaper has identified five (5) legal structures that are involved in creating the Collateral Package supporting a MFT\*. More than one legal structure may be involved in creating the Collateral Package for a particular MFT.

1) Statutory Liens;

2) UCC-9 Security Interests (Needed To Create “Special Revenues” Under   
 Bankruptcy Code):

3) Real Estate Mortgages/Deeds Of Trust (“Real Estate Liens”);

4) Common Law Pledges; and

5) Collateral Assignment of Contracts.

While there may be other state/federal legal structures supporting a Collateral Package, the five described above are the most common especially in high-yield MFTs. While there is no clear preference ranking of legal structures, Statutory Liens may be the easiest to perfect and enforce if no public filing/notice is needed and certain Statutory Liens have a special continuation after the filing of a Chapter 9 bankruptcy. UCC-9 Security Interests have some unique benefits in that they are created under the UCC which has complete and broad listing of the rights/remedies of secured parties.   
  
MCPs are essential in supporting the credit quality and repayment of MFTs. MCPs are of special importance in assuring that municipal bonds are repaid in the event the issuer or borrower/obligor experiences financial difficulties and cannot themselves pay the municipal bond debt when required. Buy-side analysts often do not have the luxury of having well-trained lawyers to review all the MCPs that come to market each week. The primary purpose of this Whitepaper is to educate buy-side analysts on the major legal structures supporting MCPs in municipal finance transactions, and recommend best practices in disclosing the types, nature and risks of each MCP. This Whitepaper will greatly assist buy-side analysts in understanding and framing the appropriate questions regarding the MCP for purchaser’s counsel, underwriters and underwriters counsel, and other professionals on the sell-side. Given the number of MFTs that are brought to market each week, buyside analysts need to be well educated and prepared to evaluate MCPs as one part of their job to evaluate the credit and liquidity risks presented by these various transactions to their portfolio managers, traders and compliance teams.

The five principal legal structures supporting MCPs are as follows:

**B. Statutory Liens (Federal, State & Local) KIM**

A statutory lien is a lien that attaches by operation of law rather than by consent of or   
 security agreement with the debtor. These liens are codified in state statute and do   
 not depend on common law or specific contractual arrangements for their existence.   
 Many states have passed statutory provisions intending to provide for liens on

municipal ad valorem taxes. A key difference between a statutory lien and a

contractual or UCC lien is that a statutory lien could attach to revenues received by   
 the municipality after it files for bankruptcy, while a contractual lien does not. Under

Section 552(a) of the Bankruptcy Code, a perfected consensual security interest in   
 property can terminate upon the filing of a Chapter 9 (except in certain circumstances   
 such as a consensual lien on special revenues). However, Chapter 9 of the Bankruptcy   
 Code limits the jurisdiction and powers of the bankruptcy court – the bankruptcy court   
 cannot, without consent of the municipality, “interfere with the governmental or   
 political powers or the revenues, property, use or enjoyment of the property of the  
 municipality.” As such, the “bankruptcy court cannot impair, limit or adversely affect   
 such statutory liens. [Section D page 133] [PROBABLY NEED A BANKRUPTCY   
 LAWYER TO WEIGH IN HERE RELATED TO PUERTO RICO AND   
 DECISIONS AROUND STATUTORY LIENS AND SPECIAL REVENUES   
 THERE].

For more information on what constitutes a statutory lien and when a statutory lien   
 arises, see NFMA’s “White Paper on General Obligation Bond Payments: Statutory   
 Liens and Related

Disclosures”([https://www.nfma.org/assets/documents/position.stmt/wp\_statliens\_final\_d  
 ec2017. pdf](https://www.nfma.org/assets/documents/position.stmt/wp_statliens_final_d%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20ec2017.%20pdf)). The language in the statute or law creating the statutory lien must   
 clearly create a lien on specific revenues. Disclosure related to bonds or municipal   
 obligations secured by a statutory lien should clearly state what the statutory   
 requirements are for the lien to be effective or applicable in a section related to   
 security for the bonds or municipal obligations. Risk factors should include   
 discussion of any circumstances where the lien may not be effective, if applicable,   
 and disclosure of how the lien would or may be treated   
 in bankruptcy, including any inability of creditors to continue receiving revenues if   
 the municipal entity commences a Chapter 9 bankruptcy.

C. **UCC Security Interests (State Law) LES**

**General**

A secured party has an actual property interest in pledged collateral; an unsecured   
 party has no property rights. Consequently, upon default (whether or not also in   
 bankruptcy), when the collateral is liquidated, a ‘secured party’ has a dollar for   
 dollar claim on the liquidation proceeds (up to the lower of the secured debt or the   
 amount of the liquidation proceeds). By contrast, an unsecured creditor only   
 receives its proportionate share of the funds available for all unsecured creditors –   
 which doesn’t include liquidation proceeds paid to secured parties – and therefore   
 the unsecured creditors often get just pennies on the dollar. While there can be   
 competing interests in collateral by multiple ‘secured’ parties, it’s almost always   
 better to be a ‘secured party’ than an unsecured creditor.

One rationale for the Uniform Commercial Code (UCC), enacted in the 1950s, was   
 to provide public notice to a debtor’s actual and prospective creditors that ‘secured   
 parties’ have a security interest in the debtor’s collateral. Thereafter, upon an event   
 of default, the collateral can be disposed of so that sale proceeds can be used to   
 satisfy the secured debt. If the collateral can be sold for an amount equal or greater   
 than the debt, the ‘secured party’ can be paid in full even if the debtor is insolvent.

INSERT DISCUSSION ON APPLICABILITY OF UCC 9& STATE LAW   
 VARIATION CONCERNS/RISKS. ALSO DISCUSS THE IDEA OF HAVING   
 THE INDENTURE AND LOAN/SECURITY SGREEMENT STATE THAT UCC   
 9 APPLIES TO THE MCP TO THE EXREWNT NOT INCONSISTENT WITH   
 ANY OTHER STATE LAW (ESSENTIALLY A CHOICE OF LAW ELECTION!)

INSERT DISCUSSION ON HOW GOVT REVENUES/TAXES WOULD BE   
 TREATED UNDER UCC-9? THEY MIGHT BE ACCOUNTS BUT COYLD   
 ALSO BE GENERAL INTANGIBLES, ETC.

INSERT DISCUSSION ON DURATION OF UCC FILINGS FOR PUBLIC   
 FINANCE TRANSACTIONS & TRANSMITTING UTILITY TRANSACTIONS   
 UNDER 9-515.

**Documentation**

*Security Agreement*

A security agreement (the personal property analogy to a mortgage) must   
 “reasonably identify” the collateral (just like a mortgage must specifically identify   
 the mortgaged real property). A security agreement can include “after-acquired   
 property” as collateral, not just existing property, but that must be clear in the   
 collateral description. The security agreement must also identify the debt that is   
 being secured. It can cover “future advances” as well as current (when the   
 agreement is signed) advances, but that must be clear in the security agreement.

*UCC Financing Statement Filings*

Although a security agreement is valid as between the debtor and the ‘secured   
 party,’ it is not a powerful real world tool unless the security interest is “perfected.”   
 In generally, perfection is achieved by the filing of a UCC Financing Statement.

The collateral must be identified in the UCC Financing Statement. The best practice   
 is probably to use the same description in both the security agreement and the   
 financing statement.

*Exceptions*

There are a few types of collateral for which a financing statement cannot perfect   
 the security interest. These are demand bank accounts (called “deposit accounts” in   
 the UCC) and rights to draw under letters of credit (called “letter of credit rights”)   
 in the UCC. In those cases, perfection is achieved by establishing “control.” But   
 this can be very complex.

*Refiling Requirements*

UCC Financing Statements must generally be refiled every five (5) years to   
 maintain perfection of security interests not required through control. However,   
 such UCC filings do not expire for thirty (30) years in public finance transactions.

**Proceeds**

*General*

Whenever collateral is sold or otherwise disposed of (including, for example,   
 equipment that is leased by a borrower to a third party), the security interest in the   
 collateral continues in the “identifiable proceeds” of the collateral. This is true   
 whether the collateral itself has been sold to a third party free of the security   
 interest or subject to the security interest.

*Tracing*

Tracing proceeds can get complicated and assistance from counsel may be required.   
 From the perspective of the ‘secured party,’ the best practice would be to   
 proactively monitor dispositions of collateral so that, when it is disposed of, the   
 proceeds can be identified sooner than later. That is because tracing gets more   
 complicated over time.

*Case Study*

Here’s one illustration of the complexity of tracing of proceeds in a disposition for   
 security interest purposes:

Suppose the original collateral is a borrower’s inventory. Inventory gets told to a   
 customer and an invoice is issued to the customer. The proceeds are now the new   
 collateral. The customer later sends a check in payment for the inventory. The new   
 collateral could be considered an “instrument.”

The borrower then deposits the check into its bank account. Now the collateral is   
 “identifiable cash proceeds” in a “deposit account.” The borrower then withdraws   
 some money from the bank account and buys some equipment. If that withdrawal   
 can be traced to the deposited check (there are ways to do this), the collateral is   
 now that “equipment.” However, if the lender’s UCC Financing Statement only   
 identified “inventory” as the collateral, the lender’s security interest will become   
 unperfected subsequent to purchase of the equipment.

If, on the other hand, the lender’s UCC Financing Statement also identified   
 “equipment” in the collateral description, the security interest would not become   
 unperfected. But a borrower that is not borrowing from the lender to finance   
 equipment purchases may object to such a broader collateral description.

**Priority and Exceptions**

Generally, the first filed UCC Financing Statement has priority over financing   
 statements filed later. But there are exceptions.

*Purchase Money Security Interests*

Under the UCC, a purchase money security interest (“PMSI”) in equipment and   
 inventory will have priority over an earlier filed financing statement covering the   
 same collateral if the ‘secured party’ observes some special rules.

*Equipment*

The purpose of this exception is to facilitate borrowings secured only by the   
 financed equipment, occasionally by the manufacturer of the equipment who is   
 able to provide better financing terms than the borrower’s existing ‘secured party.’   
 In an equipment financing, the equipment lender’s financing statement takes   
 priority over the earlier filed financing statement of the borrower’s existing   
 ‘secured party’ even if that financing statement includes “equipment” as collateral.

*Inventory*

The rules for PMSIs in inventory are more stringent. The inventory lender must   
 give written notice to all other secured parties who have financing statements on   
 file against the same borrower and covering inventory before the PMSI loan is   
 advanced. For an inventory financing, the inventory lender’s financing statement   
 must be on file before the financed inventory is delivered to the borrower.

*Contrasting Treatment of Proceeds for Equipment and Inventory*

An inventory lender’s PMSI security interest generally only has priority in the   
 financed inventory, not the proceeds of that inventory when the borrower sells it.   
 By contrast, an equipment lender’s PMSI security interest has priority not only in   
 the equipment but also in the proceeds when the borrower sells it.

*Permissible Collateral Sales Free and Clear of the Security Interest*

*Ordinary Course Sales*

For example, if the collateral is inventory in the hands of the borrower – that is,   
 the borrower sells the inventory in the ordinary course of its business – then a   
 “buyer in the ordinary course of business” can buy the inventory from the   
 borrower free of the ‘secured party’s’ security interest no matter what the security   
 agreement says. Although the above-described term emphasizes the role of the   
 buyer, the seller must be selling in the ordinary course of its business as well.

*Routine Sales Practice*

If the ‘secured party’ permits the sale of collateral free and clear of the security   
 interest, the buyer takes free and clear. This would generally require some express   
 approval by the ‘secured party,’ but permission can be inferred by conduct.   
 Suppose a borrower routinely sells used equipment when it decides to replace it   
 with new equipment; the borrower’s ‘secured party’ knows of this practice; and   
 the ‘secured party’ never objects. Permission can fairly be inferred in a case like   
 that.

*Negotiable Securities Sales*

If the collateral consists of negotiable securities – including stocks and bonds and   
 investment property credited to a securities account with a broker – a buyer who   
 gives value, who has no notice that any other party has a claim to the collateral,   
 and who obtains “control” of the collateral, can take free of a security interest even   
 if perfected. Such a buyer used to be called a “good faith purchaser without   
 notice.”

The purpose of this exception is to permit the sale of negotiable securities to   
 purchasers in circumstances in which it is not customary for a buyer to search   
 UCC records because that would be inconsistent with the notion that the asset   
 being purchased is “negotiable.”

*Collateral Repledging*

Another exception occurs when a lender or a swap provider repledges the   
 collateral, which is often permitted under financing documents involving   
 securities as collateral.

The purpose of this exception is to permit secured parties to leverage their loans   
 to make additional loans to other qualified borrowers. However, this exception   
 also permits secured parties to leverage off of an issuer’s or conduit borrower’s   
 collateral when it itself is subject to financial distress and even absent an event   
 of default by the issuer or conduit borrower.

Such risks are subject to standard disclosure by the Securities Industry and   
 Financial Markets Association (SIFMA) where the re-use risks and   
 consequences of repledging enumerated include:

* The loss of proprietary rights in the collateral
* The related claim will not be secured in the event of insolvency
* There is no obligation to notify any party about the repledging or any   
   insolvency, subject to an express agreement

1. **Real Estate Mortgages/Deeds Of Trust (“Real Estate Liens”) & Ground Leases CASEY  
      
   Mortgage vs. Deed of Trust**

Mortgages and deeds of trust differ in two fundamental aspects, one being the   
 number of parties involved and the other being foreclosure proceedings in the event   
 of default. The two parties involved in mortgages are the lender, which can either be   
 the issuer or the Bond Trustee, and the owner of the fee interest/leasehold interest.   
 Through the mortgage, the lender is given the right to use the property by the owner   
 of the fee interest/leasehold interest. Mortgages, unlike deeds of trust, require a state   
 foreclosure proceeding to liquidate the real estate.

On the other hand, deeds of trusts involved three parties, the beneficiary/lender, the   
 trustee and the trustor/borrower. In this arrangement the trustee is an independent   
 third party, usually a state/local entity, who holds the real estate interest for the   
 beneficiary/lender. If the trustor defaults, the trustee has the legal right to take full   
 control of the property. The trustee’s job is to correct the default and repay the   
 lender. To do this, the trustee may have to sell the property and in most deeds of   
 trust, it has the power to do that without seeking formal court permission to   
 foreclose on it.[[1]](#footnote-1) This may expedite the liquidation as well as lower costs. It’s   
 important to note, not all states recognize a deed of trust.[[2]](#footnote-2)  
  
 **Fee Simple Mortgages/Deeds Of Trust**

A fee mortgage/deed of trust gives the owner full and irrevocable ownership of land,   
 and any buildings on that land.[[3]](#footnote-3)

**Leasehold Mortgages/Deeds Of Trust**

A leasehold mortgage/deed of trust is a type of mortgage that is secured by a   
 leasehold interest in a property. This means that the borrower owns the right to use   
 and occupy the property for a certain period of time but does not own the property   
 itself.[[4]](#footnote-4) For this reason, leasehold mortgages are less secure than fee mortgages.

For both fee and leasehold mortgages, it’s imperative that the proper real estate   
 records be perfected by public recording. Additionally, it’s important to check if   
 state laws grant any other creditor priority over the mortgage and if there are any   
 material title exceptions, defects or limitations regarding the real estate.[[5]](#footnote-5)

INSERT

1. **Common Law & Possessory Pledges (State Law & Judicial Decisions) MEGAN**
2. **Collateral Assignments Of Contracts To Bond Trustee (State Contract Law) MEGAN/DAN/KIM**A collateral assignment of contracts is an agreement in which the borrower in a financing collaterally assigns all of its right, title and interest in the agreements the borrower is a party to over to the bond trustee (or collateral agent), as the secured party. Collateral assignments should be entered into a closing along with the other bond documents. Collateral assignments of contracts are recommended in financings that involve collateral packages that include project agreements, including agreements like construction contracts, development agreements, management agreements, feedstock and offtake agreements and any other agreements that are integral to the construction, completion, development, operation or revenue generation of the facility being financed. This ensures that the bond trustee, on behalf of the bondholders, can step into the shoes of the borrower with respect to the assigned documents to the extent the borrower is in default. Without a collateral assignment of contracts, the trustee has no ability to protect the collateral or revenue generation related to the project under the project agreements. An alternative to a stand-alone collateral assignment agreement is to have the borrower assign all project agreements or borrower documents in the loan agreement. In this instance, specific language should be included in the loan agreement that addresses this assignment, and also include these documents in the indenture definition of “trust estate” (through the issuer’s right, title and interest from the loan agreement assignment). If there is another meaningful project party that enters into material project agreements, for example a developer entering into a construction contract, there should also be a collateral assignment of contracts from the developer to the bond trustee.

Additionally, because the bond trustee does not have direct privity with a counterparty   
 in a project agreement, it is also a good idea to have the borrower, the bond trustee   
 and the project agreement counterparty enter into a direct agreement or consent   
 agreement related to the project agreement, pursuant to which the project agreement   
 counterparty consents to the assignment and agrees, among other things, to   
 (1) recognize the bond trustee as having an interest in, or being a beneficiary of, the   
 project agreement, (2) give the bond trustee notice and cure rights if there is an event   
 of default under the project agreement, (3) continue performing under the project   
 agreement even if the borrower is in default, (4) not amend, modify, cancel, terminate,   
 assign or transfer the project agreement without the prior written consent of the bond   
 trustee, (5) enter into a replacement agreement on the same terms as the project   
 agreement if the project agreement is terminated as a result of any borrower   
 bankruptcy or insolvency proceeding, and (6) pay all amounts due to the borrower   
 under the project agreement directly to the bond trustee (usually into the revenue fund   
 or other fund/account under the indenture).

Direct agreements are best practice to ensure the bond trustee has direct step in rights   
 to protect the collateral security for the bonds. An example form of direct agreement   
 is attached hereto as Exhibit [\_\_]. A direct agreement should be entered into for every   
 material project agreement. For those material project agreements that are going to   
 be in place or entered into for closing, the corresponding direct agreement should also   
 be delivered at closing. For any future material project agreements entered into by   
 the borrower or material project participant after closing, the loan agreement or   
 security agreement or relevant bond document should have a covenant requiring the   
 borrower or material project participant to cause the project agreement counterparty   
 to enter into a direct agreement upon execution of the future project agreement in form   
 and substance that is similar to the direct agreements entered into at closing. In these   
 cases, the form of project agreement is attached to the loan agreement or security   
 agreement so that Often, because the direct agreements are negotiated with third party   
 project agreement counterparties, these can be long lead time items in a bond   
 financing. It is prudent to start this process sooner rather than later in a bond financing   
 and ensure that project agreement counterparties are aware of the unique aspects of   
 bond financings – namely that bond trustees are not “lenders” in the traditional sense,   
 and are not able to quickly make decisions, as having to get bondholder consent or   
 direction for actions can sometimes take several days to weeks. On this note, notice   
 and cure periods in the direct agreements should ideally be 90 days for a monetary   
 cure and 150 days for any other cure to ensure time for bondholder outreach and   
 consent and direction to the bond trustee. See Exhibit [\_\_].

**COMMON PROBLEMS & ISSUES WITH MFT COLLATERAL PACKAGES—MUNI BONDHOLDERS BEWARE!**  
 A. **COMMON CLOSING & POST-CLOSING RISKS INVOLVING MCPs:**

The following list identifies common “closing risks” with various MCPs before and after closing of the MFT. These risks arise partly from lack of coordination of each party’s responsibilities to finalize MFT closing documents (e.g., file UCC Financing Statements; record mortgages in proper recording office; and reconcile/remove any real estate title exceptions.), but also from a failure to properly classify and understand the Collateral Package.  
  
1) Failure To File UCC Financing Statements In The Correct Places/Obligors (Post-  
 Closing Issue);

2) Failure To Have Title Insurance Commitment Exceptions Reviewed & Removed (Pre-  
 Closing Issue). Needed to Verify The Required Priority Of The Mortgage/Deed Of   
 Trust;

3) Failure To Undertake UCC & Lien Searches On Each Obligor (Pre & Post-Closing   
 Issues);

4) Errors In Legal Descriptions Of Real Estate (Requires A Survey) (Pre-Closing Issue);

5) Failure To Use UCC-9 Recognized Security Interest Collateral Descriptions   
 (Accounts, Cash, Intangibles, Proceeds, etc) In The Indenture And In Any Security   
 Agreement (Pre-Closing Issue);

6) Failure To Get Lessor Consents To Collateral Assignments Of Real Estate Leases   
 Especially Ground Leases (Pre-Closing Issue);

7) Failure of Trustee To Continue UCC Financing Statements (Usually 5 Years After   
 Original Filing, But Some Extended Continuation Rights For Public Finance   
 Transactions) (Post-Closing Issue);

8) Failure Of Trustee To Get An Equipment List To Identify Equipment Collateral   
 Pledged To Bond Trustee/Purchased with Bond Proceeds (Needed To Acquire Purchase   
 Money Security Interests/Fixture disputes) (Pre- Or Post-Closing Issue);

9) Failure Of Trustee To Obtain A Depository Control Agreement With Each Local Bank   
 Used To Receive/Collect Cash (Pre- and Post-Closing);10) Failure To Verify All   
 Required Contract Assignments To Trustee & Consents From Counterparties Have   
 Been Obtained; and

10) Failure To Include The Entire Collateral Package (Pledged Revenues, Hard Collateral   
 & Contract Assignments) In The Indenture Definition of “Trust Estate”.  
  
 B. CONFIRMING THE **CORRECT UCC COLLATERAL DESCRIPTIONS &   
 AVAILABILITY OF UCC & LIEN SEARCHES**:

Buy-side analysts should see if the Indenture, Loan Agreement, Mortgage/Deed of Trust   
 contain the UCC-9 Collateral descriptions. Unfortunately, many older Indentures, Loan   
 Agreements and Mortgages/Deeds of Trust have not been updated to use the UCC-9   
 Collateral descriptions—so buy-side analysts should confirm this point when reviewing   
 the UCC security agreements as part of their Collateral Package Evaluations.

As part of the due diligence process underwriter’s counsel or purchaser’s counsel should   
 request lien and litigation searches covering the borrower, its parent (if the borrower is a   
 special purpose entity with no assets), guarantor, if any, and other material project   
 participants (for example, developer, sponsor, or project or asset manager). Lien and   
 litigation searches should be done for the location of the project and the location of the   
 main corporate office of each material project participant, and should include federal and   
 state tax and lien searches, local superior court searches, local defendant suit and judgment   
 searches, and bankruptcy and UCC debtor searches. Searches should ideally be dated   
 within 30 days of closing, but 30 days can be modified depending on the facts and   
 circumstances and discussions with counsel. Generally, the offering document disclosure   
 should disclose any material litigation issues, and any material lien issues would ideally be   
 cleared prior to or concurrently with closing.

[SHOULD WE TALK ABOUT EXISTING LIENS AND WHAT CAN/SHOULD BE   
 DONE WITH THOSE IF THEY AREN’T RELEASED? I.E. THE CREDITOR   
 ENTERING INTO A SUBORDINATION AGREEMENT, OR AN INTERCREDITOR   
 ARRANGEMENT IF THE LIENS ARE INTENDED TO BE PARITY LIENS?]  
  
 C. **Looking For Holes, Ambiguities & Conflicts In The MCP GIL**

One main purpose of requiring appropriate level of MCP disclosure (both as to the MCP   
 structure and risks of certain MCPs) is to assist all parties to the MFT to identify   
 any holes, ambiguities and conflicts in the MFT. NFMA believes the sole   
 responsibility for eliminating any holes, ambiguities and conflicts in the MCP is the   
 issuer/underwriter team—and not buy side municipal analysts.   
 MCPs can be complex and involve Statutory Liens, UCC Security Interests, Real   
 Estate Liens, Common Law Pledges and Collateral Contract Assignments from one   
 or more issuers, borrowers and obligors. Consequently, holes, ambiguities and even   
 conflicts can arise in the structuring of a MCP, but the issuer/underwriter team. For   
 example, a MFT may be supported by a project finance loan from the issuer to the   
 project borrower who has granted the issuer a UCC Security Interest and Real Estate   
 Lien on the project’s assets, but the issuer has also granted the bond trustee a direct   
 Statutory Lien on certain govt revenues/taxes related to the project (or not related to   
 the project!). What rights does the bond trustee have in enforcing the UCC Security   
 Interest given to the issuer? Is the project debt “recourse” to the project borrower or   
 the issuer? Can the issuer pledge the govt revenues/taxes to other debt not related to   
 the current MFT? What happens if the state where the MFT occurs limits/prohibits   
 the applicability of its UCC-9 to govt issuers---can you contractually bind a govt   
 issuer to the state’s UCC-9 anyway? These are just a few of the thorny issues that can arise   
 with MCPs involving complex MCPs and MFTs.

One area where holes, ambiguities and conflicts can arise is in the definition of the “trust   
 estate” in the bond indenture. The description of the “trust estate” must contain specific   
 references to each part of the MCP including all the property collateral, reference to each   
 Statutory Lien and UCC 9 Security Interest, Mortgage/Deed of Trust, Common   
 Law/Possessory Lien and Collateral Assignment of key contracts/agreements. The bond   
 trustee’s rights and remedies against the MCP is governed by the trust estate, and so that   
 definition must encompass the entire MCP.

**Roles & Responsibilities Of Counsel In Municipal Bond Transactions/Potential Holes In Documenting The Municipal Collateral Package/UCC Searches. THE Availability Of Legal Opinions On The MCP In Favor Of Bond Trustee DAN/LES**

**[NOTE HERE THE STATE LAW VARIATIONS OF THE UCC 9 ESPECIALLY AS TO THE APPLICATION OF UCC 9 TO MFTS AS WELL AS SPECIAL RULES ON PUBLIC FINANCE TRANSACTIONS AND TRANSMITTING UTILITIES, AND THE NEED FOR LEGAL OPINIONS ON THESE ISSUES ATTACHED TO POS].**

**NFMA RECOMMENDATIONS FOR PROPER Risk Disclosure Regarding Municipal Collateral PACKAGES: RIGHTS, REMEDIES & BANKRUPTCY Enforcement Concerns**

NFMA makes the following recommendations for POS disclosure in regarding MCPs in MFTS. These recommendations are deemed by NFMA to be material disclosures needed by a reasonable investor in order to understand the MCP and the risks associated with its strength, secured status, scope and ability to be liquidated by the bond trustee.

1. State Law Collection & Collateral Liquidation Rights/Trustee Rights To Obtain Reorganizations & Receiverships Against Issuers and Borrowers/Obligors (GIL)
2. For UCC Security Interests, the Uniform Commercial Code (UCC) Article 9 (UCC-9) sets forth the rights and remedies of secured parties like the Bond Trustee. UCC-9 allows for self-help rights/remedies as well as judicial proceedings to enforce UCC Security Interests. However, there are a number of amendments to UCC-9 that have not been adopted by all 50 states, and there are some state specific “non-uniform” parts of the UCC-9 dealing with governmental financing transactions that must be analyzed to make sure that the Bond Trustee enjoys all of the rights/remedies available under UCC-9, or that UCC-9 even applies to the MFT! The NFMA recommends that each MFT offering statement include a specific risk discussion of any non-uniform limits on a Bond Trustee’s general UCC-9 rights and remedies.

2. For Statutory Liens, a specific state/federal statute/local ordinance should set forth the   
 type and scope of the rights/remedies available to the Bond Trustee to enforce any   
 Statutory Lien. It is important for bondholders that the MFT offering statement   
 identify the specific statute/ordinance creating the Statutory Lien and excerpt the   
 statute/ordinance in the appendices to disclose the available rights/remedies. For   
 example, can Bond Trustee use “self-help” remedies to collect/liquidate the property   
 covered by the Statutory Lien? The Indenture or loan agreement will set forth the   
 Bond Trustee’s general rights and remedies applicable to the Statutory Lien, but if the   
 statute/ordinance sets forth the available rights and remedies they would supersede   
 those contained in the Indenture. Consequently, the MFT offering statement should   
 provide disclosure of any limits on the Bond Trustee’s rights and remedies as regards   
 each Statutory Lien contained in the Collateral Package.

NOT SURE MUNI ANALYSTS NEED A REASONED LEGAL OPINION ON   
 THESE ISSUES, BUT THEY NEED TO BE MADE AWARE OF THE RISKS OF   
 ENFORCING A STATUTORY LIEN ESPECIALLY AS THE   
 STATE/GOVERNMENTAL ENTITY MAY BE TOTALLY UNAWARE OF THE   
 EXISTENCE OF THE LIEN IN FAVOR OF THE BOND TRUSTEE SINCE NO   
 NOTICE OR ONDSENT IS USUALLY REQUIRED (EXCEPT FOR INTERCEPT   
 AGREEMENTS DISCUSSED BELOW)  
  
 3) For Mortgages/Deeds Of Trust, the Mortgage/Deed of Trust will set forth the type and   
 scope of the private rights/remedies available to the Bond Trustee to enforce the   
 Mortgage/Deed of Trust. State law will usually set forth the rights and remedies of the   
 Bond Trustee to foreclose and liquidate real estate interests, as well as any state law   
 limitations and exceptions (e.g., redemption rights. It is important that the MFT   
 offering statement contain a complete copy of the Mortgage/Deed of Trust and   
 Leasehold Mortgage (or excerpts of the event of default and rights/remedies   
 provisions in those documents) so that bondholders can verify any limitations.   
 Consequently, the MFT offering statement should provide disclosure of any state law   
 limits on the Bond Trustee’s rights and remedies as regards each Mortgage/Deed Of   
 Trust and Leasehold Mortgage contained in the Collateral Package.

1. For Collateral Assignments Of Contracts, the Bond Trustee’s rights and remedies to enforce the contracts are first governed by the assigned contracts (if any), and second by the terms of the collateral assignment agreement between the Bond Trustee and borrower/obligor. Consequently, there will be more variability and potential “holes” in the rights and remedies available to the Bond Trustee respecting enforcing collateral assignments. For example, does the Bond Trustee have ability to go to court and enforce the contract? Consequently, the MFT offering statement should provide disclosure of any state law limits on the Bond Trustee’s rights and remedies as regards each Collateral Assignment contained in the Collateral Package.
2. For Common Law Pledges, the rights and remedies of the Bond Trustee may not be clear under the state law common law pertaining to Common Law Pledges—and may be out of date! The most prevalent common law right pertaining to Common Law Pledges is the Bond Trustee’s rIght of set-off. The documents creating approval for the governmental financing may provide some specification of the Bond Trustee’s rights and remedies regarding any Common Law Pledge. In addition, the Indenture sets forth the Bond Trustee’s general rights and remedies regarding the Collateral Package including any Common Law Pledges. Consequently, the MFT offering statement should provide disclosure of the scope and limits on the Bond Trustee’s rights and remedies as regards each Common Law Pledge contained in the Collateral Package.
3. **Chapter 7/9/11 Bankruptcy Risk Disclosure (Issuer, Borrower, Obligor & Pledgor)**

1. Chapter 9 Filing Eligibility Of Govt Issuers (GIL)

The bond trustee’s enforcement of any rights and remedies (self-help and judicial) against the MCP can be limited and thwarted by a Chapter 9 bankruptcy filing by a local govt. Consequently, NFMA believes that each POS should have specific risk disclosure on the Chap 9 eligibility of each government entity providing any part of the MCP, State law regulates whether a local government can utilize Chapter 9 bankruptcy. In addition, States and US Commonwealths (Puerto Rico, Virgin Islands, Guam) themselves cannot file Chap 9 bankruptcy under the US Bankruptcy Code itself. Each State has different rules on the Chapter 9 eligibility of a local government, and this Whitepaper will not address all of these state rules. However, attached to this Whitepaper in Appendix \_\_ is a summary of those various State rules compiled by Atty James Spiotto in \_\_\_\_\_. NFMA refers interested muni analysts to this reference for specifics on each State. It should be noted that even if a government entity can file for Chapter 9 bankruptcy, there is no right of its creditors to file an involuntary Chapter 9 bankruptcy. WARNING: Certain quasi government issuers may not qualify to file a Chap,9, but are then free to use Chapter 7 or 11 bankruptcy.

2. Chapter 7/11 Filing Eligibility Of Issuers, Borrowers/Obligors & Pledgors; Involuntary   
 Chapter 11 Filings GIL

Private (i.e., non-governmental) borrowers, obligors and pledgors are not eligible to file Chapter 9 bankruptcy, but are free to file either a Chapter 7 liquidation or a Chapter 11 reorganization. In addition, at least three unsecured creditors of these private entities can file an involuntary Chapter 7 or 11 proceeding with the sole exception that 501©(3) organizations are exempt from involuntary bankruptcy proceedings. So muni analysts should always be aware of the bankruptcy risks involving private borrowers, obligors and pledgors, and the numerous limits and restrictions on the bond trustee’s rights/remedies to go after and liquidate the MCP in these situations. This Whitepaper will not elaborate on all of these limits and restrictions, but a good reference for that purpose is the 2017 NFMA Whitepaper on GO Bonds referenced at the end of this Whitepaper.

3. Statutory Liens In Bankruptcy—Special Rules & Limits CASEY/GIL

A statutory lien, per the US Bankruptcy Code, is a “lien arising solely by force of a statute on specified circumstances or conditions”, as opposed to a lien or interest that is dependent on an agreement such as consensual liens or security interests[[6]](#footnote-6). For the most part, statutory liens have not been invalidated as part of bankruptcy filings.[[7]](#footnote-7) The most important features of a statutory lien are that they arise automatically, without consent of the borrower, and that they apply to revenues post-bankruptcy petition.[[8]](#footnote-8) There are several cases in municipal history that have shown that recovery rates for bonds backed by a statutory lien are higher than without one, (outlined in the 2017 NFMA whitepaper). This discrepancy in recovery for bonds with and without statutory liens emphasize the importance of disclosure regarding statutory liens.

Despite the benefits of a statutory lien, there are some limitations. First off, if there’s no   
 explicit statement noting a statutory lien, there may be a difference of legal opinion as to   
 whether the statutory lien even exists. While bond counsel may believe the language is   
 indicative of a statutory lien, without the exact verbiage, a court could disagree.

Additionally, not all states provide for the implementation of a statutory lien. For   
 example, usually in official statements for Connecticut debt it is explicitly said there is no   
 statutory provision. In many states, there’s no express language confirming or denying the   
 existence of a statutory lien and its validity is up to legal interpretation.

Lastly, despite the track record of improved recovery rates in MFT with a statutory lien,   
 the bondholders’ claims could still be restructured. For example, the interest rate or   
 maturity of the debt could be changed.[[9]](#footnote-9)

Statutory Liens as defined in the Bankruptcy Code Section 101(53) have a unique protection   
 in Bankruptcy under Section 545 which provides that the Statutory Lien survives the filing   
 of a bankruptcy (Chap 9 and 11) and the Statutory Lien cannot be avoided, so the Bond   
 Trustee can continue to have its Statutory Lien continue after bankruptcy and continue to

collect the pledged revenues/taxes subject to any other   
 debtor protections like the automatic stay. The bankruptcy definition of Statutory Lien is   
 restricted to statutory liens which require no public filings or other notices. **When making   
 a Collateral Package Evaluation, buy-side analysts should try to determine if any   
 public notice is required to perfect the Statutory Lien and whether the Statutory Lien   
 has the special bankruptcy code protections. WHEN IN DOUBT, BUY-SIDE   
 ANALYSTS SHOULD REACH OUT TO THE UNDERWRITING TEAM FOR   
 THIS INFORMATION—DON’T BE SHY!!**

1. Special Revenue Pledges In Chapter 9 Bankruptcies—Special Rules & Limits GIL

Certain types of government revenue pledges to the bond trustee are given special protection under Chapter 9 of the Bankruptcy Code. This special protection allows the bond trustee’s security interest in those pledged revenues to continue after the Chapter 9 filing and continue to be subject to the bond trustee’s security interest subject to a few important qualifications. See the 2017 NFMA Whitepaper on GO Bonds plus the discussion in Section \_\_\_ above for further information on the treatment of these special revenues.

**C. Need To Use Modern UCC 9 Collateral Descriptions/Benefits Of Using A Modern UCC   
 Security Agreement GIL**

One area of MFTs that remains a problem is MFTs secured by “revenues” including “gross   
 revenue pledges” and “net revenue pledges”. Many high yield MFTs have a pledge of   
 revenues including tax collections, govt fees/fines, and other govt revenues. UCC-9 does   
 not have “revenues” as a permitted UCC-9 Collateral description, so buy-side analysts   
 should be requesting the underwriting team to make sure that the security agreement and   
 UCC Financing Statements use the correct UCC-9 Collateral descriptions for “revenues”.   
 Usually, “revenues” are a combination of accounts, intangibles, cash, money, depository   
 accounts, and proceeds thereof—so those UCC-9 Collateral items should be used in   
 addition to “revenues”.

D. **The Concerns With Leasehold Mortgages/Deeds Of Trust & Ground Leases** CASEY

Collateral for leasehold mortgages/deeds of trust are riskier than fee simple mortgages   
 since they provide the right to occupy, rather than ownership of the property. Specifically   
 for ground leases, if the ground tenant defaults, the landowner can extinguish the leasehold   
 lenders security by terminating the ground lease. To mitigate these risks, there are several   
 actions analysts can take. We advise analysts advocate for the right to receive notice and   
 cure in the case of a default by a ground tenant. This will mitigate risk associated with the   
 leasehold mortgage being exterminated by a default on the ground lease.The term of these   
 leases should also be noted. It’s preferable that the lease extend past the scheduled maturity   
 date of the bonds so that it makes refinancing easier. Analysts should also inquire as to   
 whether there are any other liens on the property such as a mechanic’s lien or another   
 mortgage to which their mortgage would be subordinate.[[10]](#footnote-10)

E. **Importance Of Title Insurance Disclosure & Reviewing The Title Insurance   
 Commitment JEFF/LES**

1. Metes & Bounds or Legal Description

In addition to ensuring that the property description in the title policy matches the   
 property description in the mortgage or deed of trust, the property descriptions should   
 conform to the survey for the property. This is accomplished by scrupulously tracking   
 the property description against a new or updated survey for the benefit of the   
 trustee/bondholders. The property should be readily identifiable in a recorded plat or   
 parcel map and associated, by document number (e.g. Doc No. 2024-123456), with the   
 book and page number in the records of the county recorder.

1. Title Policy

Scheduled B sets forth exceptions to clear title to real property which are not covered   
 by title insurance. These exceptions could include, among others, the following   
 recorded documents: (i) deed restrictions, (ii) easements (utility and private), (iii)   
 mortgages/deeds of trust and (iv) governmental regulatory and land-use restriction   
 agreements (e.g. for affordable housing). A title report can be ordered from a title   
 company that contains hyper-linked access to the recorded documents impacting title,   
 which can be reviewed by bondholders and local counsel familiar with such liens,   
 encumbrances and title impairments.

According to First American Title Company, a typical standard title policy may cover   
 such risks as:

* Forgery and impersonation (including of satisfactions and releases);
* Lack of competency, capacity or legal authority of a party; [note:  not sure rest has come up often but your call]
* Deed not joined in by a necessary party (co-owner, heir, spouse, corporate officer, or business partner);
* Ineffective satisfactions and releases due to:
  + Acquisition of note by bona-fide purchaser (with no notice)
  + Bankruptcy of creditor prior to recording;
* Undisclosed (but recorded):
  + Prior mortgages
  + Tax or environmental liens
  + Pending lawsuits affecting the land
  + Easements or use restrictions (including governmental land use restriction and regulatory agreements)
  + Options or rights of first refusal to purchase the property;
* Erroneous or inadequate legal descriptions;
* Lack of a right of access; and
* Deed not properly recorded.

An extended coverage policy may be requested to protect against such additional defects as:

* Off-record matters, such as claims for adverse possession or prescriptive easement;
* Deed to land with buildings encroaching on land of another;
* Incorrect survey;
* Silent (off-record) liens (such as mechanics' or estate tax liens); and
* Pre-existing violations of subdivision laws, zoning ordinances, or covenants, conditions and restrictions.

Some title insurers may also provide extended coverage that address such risks as:

* Post-policy forgery;
* Forced removal of improvements due to lack of building permit (subject to deductible);
* Post-policy construction of improvements by a neighbor onto insured land; and
* Location and dimensions of insured land (survey not required).

In a refinancing, existing mortgages either should be repaid and released of record, or   
 subordinated if possible. Bondholders should also be mindful of easements and   
 regulatory agreement provisions that have restrictions that negatively impact the use of   
 the property. If there are such restrictions, they need to be amended, released or factored   
 in when underwriting a bond financed project.

3. Additional Diligence

Though Schedule B includes all exceptions that have been recorded against the real   
 property (and, if not, the title company would be responsible insuring title against them),   
 there should be other searches required in connection with the borrower or the guarantors   
 that might not be of record. Such searches include, (i) tax lien, (ii) UCC Financing   
 Statement and (iii) judgements.

In one instance, there were hundreds of old lawsuits that had settled but had not been   
 properly disposed of with the courts. In order to close, this necessitating determining   
 whether or not a suit was material and, if so, that it was covered by insurance. Once this   
 was done, clearing the court records were done as a post-closing obligation.

**F. Importance Of Obtaining An Equipment List Funded From Bond Proceeds/After   
 Acquired Equipment**

A complete list of equipment for analysts is another factor analysts should look at when   
 assessing the collateral for MTFs. In the case of liquidation, these physical assets may be   
 resold to provide additional funds for bondholders and/or debt service payments. The list   
 should include the name of the equipment, acquisition cost, quantity, age and market value   
 to give analysts an idea of how much value the equipment provides to bondholders. This is   
 particularly useful for new or unique technology which may be hard to get a market value   
 for and hard to resale in the event of liquidation.

**G. Importance Of Disciplined Project Fund Draw Procedures; Role Of Trustee & Title   
 Insurer JEFF**

In project financings, the analyst should know and understand the construction process   
 and how monies are paid from a project or construction fund held by the Indenture   
 Trustee.

Upon request, and ideally pledged to the bondholders as additional security for a   
 construction project, the analyst should review the construction contract for the work to   
 be performed and how the Indenture treats interim and final payments from a project or   
 construction fund.

Any payment made request made by a contractor pursuant to the construction contract to   
 the owner/borrower that will be paid from monies held by the Indenture Trustee should   
 include:

· A payment application made by the contractor at unit prices specified in the   
 construction agreement, with confirmation that the owner/borrower has   
 accepted the work.

· A schedule of values in the construction contract should identify unit prices   
 and actual quantities for work performed and allocates the overall contract   
 price among the various items of work. These allocations should provide the   
 basis for progress payments under the contract.

The contractor should warrant that the work performed meets the requirements   
 of the contract agreements. ,The contractor shall certify under penalty of   
 perjury (without the requirements of notary certification) that all cost   
 breakdowns and periodic estimates accurately reflect the work completed on   
 the project in accordance with the contract documents as of the date of the   
 payment request. Once the owner/borrower accepts the work and the project is   
 complete, the contractor should submit to a written statement of the final   
 quantities of unit price items for inclusion in a final payment request.

Typically, some amounts are withheld from each payment request to further   
 assure performance of the contractor under the construction contract—called   
 retention. Retention requirements vary by statute and may vary between private   
 and public works projects. Retention is paid upon final completion of the   
 project, assuming the owner/borrower has accepted the work and no   
 outstanding constriction-related issues pertaining to the contract remain.

Each payment application should include, as a condition of payment, payroll   
 affidavits, receipts, vouchers, certified payroll reports, and other documents   
 that may be required under the construction contract.

Additionally, to avoid the possibility of mechanic’s liens that could be filed by   
 general contractor and sub-contractors and materials suppliers to a project for   
 non-payment of work, the contractor should file on behalf of itself and those   
 subcontractors and suppliers that furnished labor, material, equipment or   
 services to the work and that have served a preliminary lien notice, with each   
 payment application, conditional waivers and releases while the construction   
 work is being performed, and unconditional final waivers and release of lien   
 when the project is complete, all work has been accepted by the   
 owner/borrower, and all final payment, including retention, have been made.   
 Note that mechanics’ lien filing requirements vary by statute.

In complex projects, a construction monitor can be accommodated to provide   
 monthly construction reporting that identifies the payment application process   
 and request for, and

H. **Importance Of Evaluating Bond Trustee’s Property Insurance Coverage For The   
 Collateral/Business Interruption Insurance DAN/LES**

I**. Importance Of Intellectual Property Collateral/ Federal & State Law Protections For   
 Trustee** KIM/GIL

Intellectual property security comes into play for projects that require specific intellectual   
 property – patents or licenses – to develop and/or operate a project. The risks around   
 intellectual property include ownership and use, and particularly what happens if the   
 borrower is not able to use or access the intellectual property. Often intellectual property   
 is included in an all assets pledge and security agreement from the borrower to the bond   
 trustee as security for the borrower’s obligations under the bond documents, but it may be   
 prudent to enter into a separate intellectual property security agreement from the borrower   
 to the bond trustee if the intellectual property is crucial to the development and operation   
 of the project being financed. Depending on the intellectual security interest, additional   
 documentation may need to be filed with the U.S. Patent and Trademark Office (USPTO)   
 to fully perfect the security interest. This filing should be done on the date of closing in   
 addition to the filing of any other UCC financing statements to perfect Article 9 security   
 interests.

**J. Concerns Over Commingling Of Pledged Revenues/ Risk of Loss Of Lien/UCC-9   
 Security Interests**

Commingling Of Pledged Revenues/Taxes: For any components of a Collateral Package   
 that rely on the collection of revenues/taxes, the degree of the Bond Trustee’s “control”   
 over those revenue/tax collections during collection is important in maximizing recovery   
 on those collections. In MFTs, the Bond Trustee can obtain control over tax/revenue   
 collections in various ways such as special depository accounts with the initial collector of   
 the revenues/taxes, special remittance agreements with other govt entities that collect the   
 revenues/taxes, and collection agency agreements between a government entity and the   
 Bond Trustee. Under the terms of the UCC-9, various Statutory Liens and U.S. bankruptcy   
 laws, if these revenues/tax collections become commingled with other non-pledged   
 funds/taxes/revenues and lose their “identity” in the collection process before received by   
 the Bond Trustee, the Bond Trustee can lose its perfection and/or priority claim to the   
 pledged revenues/taxes. Consequently, the MFT offering statement should highlight the   
 risks of commingling/loss of identity of any pledged revenues/taxes if there is any danger   
 of commingling.

**K. The Importance Of The Negative Pledge Covenant** GIL

To preserve the value of the MCP from any competing creditors and to preserve the overall   
 fiscal/credit resiliency of the issuer, borrower, obligor or pledgor (collectively “Obligors”),   
 the trust indenture and/or loan agreement (as applicable) can contain a “negative pledge”   
 prohibiting the Obligors from granting a security interest, lien or pledge of any of their   
 assets to another creditor without bond trustee’s consent. The “negative pledge” can allow   
 the Obligors to grant a security interest to another creditor for specific equipment,   
 inventory, motor vehicles and other assets needed by the Obligors to operate, and any pre-  
 existing and future property leased by the Obligors from an outside leasing creditor. NFMA   
 believes that any MFT supported by a MCP should contain a negative pledge from each of   
 the Obligors, and the trust indenture/loan agreement in these MFTs should contain a   
 negative pledge, and if one is not included, that the POS contain risk disclosure on the lack   
 of a negative pledge of the Obligors’ assets.

**L. UCC-9 Collateral Descriptions & Danger Of “Revenue Pledges” In MFTS:**

MFT Collateral Packages and the UCC Financing Statements must use the collateral   
 descriptions required by UCC-9 to be effective (although an “all assets” UCC-9 Collateral   
 Description is permitted). As noted above, MFTs based on project/development financings   
 will usually have real estate, equipment, cash, money, depository accounts, accounts (aka   
 accounts receivable) and investment property as collateral. The UCC Financing   
 Statements must use these UCC-9 Collateral descriptions or they may be ineffective.   
  
 One area of MFTs that remains a problem is MFTs secured by “revenues” including “gross   
 revenue pledges” and “net revenue pledges”. Many high yield MFTs have a pledge of   
 revenues including tax collections, govt fees/fines, and other govt revenues. UCC-9 does   
 not have “revenues” as a permitted UCC-9 Collateral description, so buy-side analysts   
 should be requesting the underwriting team to make sure that the security agreement and   
 UCC Financing Statements use the correct UCC-9 Collateral descriptions for “revenues”.   
 Usually, “revenues” are a combination of accounts, intangibles, cash, money, depository   
 accounts, and proceeds thereof—so those UCC-9 Collateral items should be used in   
 addition to “revenues”.

Another common issue in understanding a MCP under the UCC 9 is the difference   
 between a “gross revenue pledge” and “net revenue pledge”. Both terms are not defined   
 in the UCC 9. While the term “gross revenue” seems to be intuitive, its definition in the   
 bond indenture, security agreement, UCC Financing Statement, etc should contain the   
 specific UCC 9 collateral items described above. However, the definition of “net   
 revenues” is not so intuitive and connotes that certain “expenses”, adjustments and   
 exclusions are applied to “gross revenues”. In this case, the POS should have express   
 disclosure on this point and provide a full description of these expenses, adjustments and   
 exclusions with references to where and how they will disclosed by the issuer, borrower,   
 obligor and pledgor in their financial statements or other financial report or disclosure   
 filing.

M**. Statutory Intercept Agreements: (GIL)**

Statutory Intercept Agreements on revenues/funds payable to a govt borrower are found   
 in several types of MFTs including high-yield deals involving charter school MFTs. These   
 statutory intercepts may not create a Statutory Lien on the funds/revenues payable to the   
 govt borrower under applicable state law. However, where authorized by state statute, the   
 intercept might create a Statutory Lien if the statute uses the word “lien” and the lien arises   
 at the time the intercept is created (and not only if/when the intercept is requested by the   
 Bond Trustee. For example, AZ 15-183.S: Charter schools may pledge, assign or   
 encumber their assets to be used as collateral for loans or extensions of credit

**N. Recourse VS. Non-Recourse Debt & The Importance Of A MCP GIL** Debt issued for any MFT can either be recourse to the borrower/obligor or “non-  
 recourse”. If the debt is issued as “non-recourse” debt by the issuer, the issuer is only   
 liable to pay the debt from the MCP and not its other “non-pledged” assets. In these   
 cases, the support/strength of the MCP is critically important to repayment of the MFT   
 debt. However, it is often not clear in the POS if the debt for a MFT is “recourse” or   
 “non-recourse” to the issuer/borrower/obligor, so there should be POS disclosure on this   
 important, and municipal analysts should request this disclosure if it is not present in the   
 POS.  
  
 If the debt is issued as “recourse” debt by the issuer, the issuer is liable to pay the debt   
 from not only the MCP, but also its other “non-pledged assets” if the MCP is not   
 sufficient to pay off the debt. So in “recourse” debt MFTs, the support/strength of the   
 MCP may not need to be as robust as if the debt is “non-recourse”. However, the bond   
 trustee has no superior or special claim to these “non-pledged” assets unless it gets a   
 judgment against the issuer and enforces its judgment lien against those “non-pledged”   
 assets. In addition, in certain states, getting a judgment/judicial lien on these “non-  
 pledged” assets may be limited or even prohibited. So municipal analysts should request   
 a legal opinion on the enforceability of any judgement/judicial lien on the issuer’s non-  
 pledged assets and adequate POS risk disclosure regarding any uncertainties in the   
 enforcement of a judgment/judicial lien against the issuer’s “non-pledged” assets.

O. **Importance Of Continuing Disclosure Agreements Addressing Status Of   
 Collateral/Clarifying “Material Events” Under SEC Rule 15c2-12 Respecting   
 Collateral GIL**

**RECOMMENDED MCP ADMINISTRATIVE RIGHTS OF BOND TRUSTEE; NFMA RECOMMENDED MCP INDENTURE ADDENDUM GIL**

Attached to this Whitepaper in Appendix \_\_\_ is a sample Addendum to a bond indenture that contains many of the key rights for bond trustees regarding post-closing administration of the MCP rec ommended by the NFMA in this Whitepaper. Muni analysts should feel free to forward this sample Addendum to underwriter team, issuer, bond trustee and borrower’s counsel and request the Addendum be added to the bond indenture. The sample Addendum addresses the following matters:

A. Annual UCC & Lien Searches By Bond Trustee  
 B. Annual Equipment Collateral Verifications By Bond Trustee  
 C. Right To Inspect Collateral & Get Physical Needs Assessment  
 D. Negative Pledge Covenant

E. Right To Get Annual Insurance Certificate

F. Right To Annual Confirmation Of Bank Depository Accounts

G. Right To Post Draw Certificates & Status Of Trustee Fund Account Balances &   
 Activity

H. [OTHERS??]

**CONCLUSION & BENEFITS OF EVALUATING COLLATERAL PACKAGES IN MUNICIPAL FIMANCE TRANSACTIONS:**

Bondholder recovery in MFTs is highly dependent on the quality and sufficiency of the Collateral Package supporting the MFT especially in high yield MFTS. As used herein, “Collateral” includes both hard collateral (real estate/equipment) and the revenues/taxes (e.g., sales taxes) pledged to repay the debt. Collateral Package analysis is especially important for high yield MFTs as they fund riskier start-up projects like hotels, multi-family housing, mixed use retail developments, recycling/bio-gas plants, industrial projects, business parks, etc. However, it seems that many high yield MFT offering statements do not proved adequate disclosure of the nature and strength of the “pledges” and “liens” that create the Collateral Package, nor the enforcement risks involved in liquidating the Collateral Package. **Consequently, NFMA analysts need to conduct a Collateral Package analysis as part of their due diligence process when looking at high yield MFTs, and understand how quickly/efficiently a Bond Trustee can realize on that Collateral Package to repay the MFT if required.**   
  
**The importance and benefits of having a “fully secured" Collateral Package in HY MFTs are as follows:**  
  
 1) MFTs that have a “fully secured” Collateral Package should be given a higher   
 internal credit rating than those that are “under secured” given the higher probability   
 of bondholder recovery before and after default;  
  
 2) A “fully secured” Collateral Package is needed to protect bondholders from   
 bankruptcy “cramdown” in a Chapter 9 and 11 bankruptcy—often a problem in HY   
 MFTs;  
  
 3) HY MFTS bond restructurings that have a “fully secured” Collateral Package allows   
 bondholders to negotiate from a position of strength viz-a-viz the obligor and other   
 competing creditors, and obtain better restructuring outcomes;   
  
 4) Having a “fully secured” Collateral Package with the Bond Trustee having all the   
 needed rights/remedies to liquidate the collateral/collect the pledged revenues should   
 minimize situations where bondholders take a loss—very common in high yield   
 MFTs; and

5) Having a “Fully Secured” Collateral Package Makes It Easier/Cheaper To Get   
 Municipal Bond Insurance In Secondary Market.

**WHITEPAPER CONTRIBUTORS: {INSERT}**

**APPENDICES:**

A. Common Problems With Collateral Packages In Muni World EVERYONE

B, Analyst Checklist/Tips For Evaluating Collateral Packages GIL

C. Sample Additions To Continuing Disclosure Agreements Respecting Collateral   
 Packages GIL

D. Role Of Artificial Intelligence In Evaluating Collateral Packages BARIDHI

E. Sample Tri-Party Agreement/Collateral Assignment Of Contracts Between Bond   
 Trustee, Issuer, Borrower/Obligor & Counterparty KIM

F. Sample Collateral Perfection, Priority & Enforceability Legal Opinion To Bond Trustee   
 KIM  
  
 G. Atty Rick Weber NABL piece on the words pledge/lien.

**REFERENCES**

1. [Reference To Spoito Bankruptcy Materials]

B. [reference To 2017 NFMA Whitepaper On GO Bonds/Special Revenues In Bankruptcy]

1. [Other References??}

***APPENDIX A:* Common Problems With Collateral Packages In  
 Muni World EVERYONE**

***APPENDIX B* Analyst Checklist/Tips For Evaluating Collateral Packages   
 GIL**

***APPENDIX C* Sample Additions To Continuing Disclosure Agreements   
 Respecting Collateral Packages GIL**

***APPENDIX D* Role Of Artificial Intelligence In Evaluating Collateral Packages   
 BARIDHI**

Artificial intelligence (AI) tools are software applications that use AI algorithms to perform specific tasks and solve problems. These tools can be used in a variety of manners to automate tasks, analyze data, and improve decision-making. While elementary examples include natural language toolkit (NLTK) applications, OpenAI’s ChatGPT is one of the most widely used tools in recent times. More recently, different corporations and providers have promulgated their proprietary versions of such tools and applications.

1. Understanding the Transaction Structure: Natural Language Processing (NLP) tools can parse the Preliminary Official Statements (POS) to extract and summarize key details like bond structure, pledged revenues, and repayment sources. Ideally, a POS that is prepared in a known template would be best suitable for this task. However, computer-vision enabled applications of AI tools may be trained to learn different formats of the POS. AI-powered contract analysis tools can automatically extract and analyze the bond indenture's terms, highlighting key clauses and requirements related to collateral. This could include summarizing security provisions and flagging unusual/non-standard provisions. For example, highlighting factual discrepancies or incongruities between terms of the lien or pledge across contractual documents.

2. Understanding and evaluating the collateral: AI can classify different types of collateral (e.g., UCC liens, statutory pledges) for efficient review. Related NLP techniques can be leveraged to identify and isolate the pledged collateral as cash, securities, or real estate. AI-powered data visualization tools can create interactive dashboards to visualize the concentration of the collateral, highlighting potential risks. Creating a knowledge graph using AI tools to visualize the relationships between different entities in the collateral structure could help analysts in identifying potential risks and inconsistencies.

<<to add: an example of an interactive dashboard and a knowledge graph >>

The tools could also be set up to provide preliminary estimates of collateral valuation by extracting initial features from the text of the underlying collateral. For example, in estimating the value of an equipment or a real estate parcel.

3. Legal and Credit Review: AI tools can compare legal descriptions in bond documents to flag missing or contradictory clauses. For example, identifying inconsistencies between the indenture and POS regarding collateral descriptions. Automated parsing of documents can help track covenant compliance, monitor reserve fund requirements, and draft compliance reports. Credit risk assessment tools can analyze the creditworthiness of the issuer or obligor, providing a credit score and risk assessment. Overall, AI tools can analyze legal contracts to identify potential loopholes, ambiguities, and risks.

4. Quantitative Analysis, Financial Modeling and Projections: AI can help analysts in the initial stages of creating a report by assisting with data aggregation, financial trend analysis, or even sentiment analysis of relevant news and market conditions. AI tools can help the analyst identify patterns or outliers in the data quickly, which can be used to support conclusions about the new-issue transaction. Analysts may leverage tools to run simulations, test different scenarios, and generate forecasts based on historical data. AI-assisted models can help project future performance under various assumptions (e.g., revenue growth, expenditures, interest rates).

5. Consistency Checking: AI could also perform a consistency check across multiple documents (POS, bond documents, UCC filings) to ensure that the descriptions of collateral align. For example, if one document mentions a mortgage over certain property and another document refers to the same property but as "collateral", the AI tool could alert the analyst to investigate potential inconsistencies between the documents. It could also compare collateral descriptions in the POS with the bond trustee's rights and remedies to verify whether they are in alignment or if there are conflicts.

6. Risk Identification: If a collateral package with certain characteristics (like ambiguous pledge definitions or lack of UCC filing) has historically led to greater loss in bondholder recovery, AI can flag these features in new POS documents. Specifically, these tools could be trained on data belonging to a specific state (for eg. distinguish FL vs OR).

a.Predictive Modeling: AI can be used to develop predictive models to forecast credit risk, prepayment risk, market trends, and other relevant factors.

b.Sentiment Analysis: AI can analyze news articles, social media, and other textual data to gauge market sentiment and identify potential risks.

c. Ongoing monitoring: AI tools can monitor for updates to collateral conditions or compliance and send alerts for material changes. These may include tracking legislative changes and summarizing court rulings.

d. Sensitivity testing and Scenario Analysis: Analysts may automate Monte Carlo simulations to examine sensitivity of financial projections to key variables. AI tools can be used to generate economic scenarios of stress. These could help predict default probabilities under market/economic stress.

e. Natural disaster risk modeling: AI tools may be augmented to help analysts evaluate increases/decreases in loss risk from natural disasters like floods/storms/drought/wildfires in particular states. This could enhance the geo-mapping of risk factors with an eye for damage and recovery analysis.

AI-Related Disclosures in Research Reports:

If an analyst uses AI tools (such as ChatGPT, proprietary AI models, or NLP tools) to help write portions of the research report, it is crucial to disclose this usage. While the core analysis and judgment will remain the analyst's responsibility, AI tools can assist in drafting

sections related to factual data aggregation, financial modeling, or even summarizing large datasets. There are several reasons why analysts/firms should look to provide disclosures:

· Build Trust: Ensuring that the buy-side analyst understands the level of AI involvement helps them assess the objectivity and reliability of the information presented.

· Clarify Responsibility: The analyst should clearly state that while AI tools are used for specific tasks (like data aggregation or summarizing), the final interpretations and recommendations remain the analyst's responsibility.

· Align with Ethical Standards: As AI becomes more embedded in financial analysis, the ethical responsibility to disclose the use of AI helps foster best practices in the industry, specifically around accuracy, fairness, and transparency.

· Limitations of AI: Acknowledge the limitations of AI, such as its potential for bias, error, and sometimes hallucination.

· Human Oversight: Emphasize the role of human analysts in reviewing and interpreting AI-generated insights.

· Transparency: Clearly communicate the methodology used in AI-powered analysis, including the data sources and algorithms employed.

· Accountability: Ensure that there is adequate oversight and accountability for AI-driven analysis. Further, the onus lies on the researcher to explain the underlying

***APPENDIX E* Sample Tri-Party Agreement/Collateral Assignment Of   
 Contracts Between Bond Trustee, Issuer, Borrower/Obligor   
 & Counterparty KIM**

***APPENDIX F* Sample Collateral Perfection, Priority & Enforceability Legal Opinion To Bond Trustee KIM**

1. [Deed Of Trust Vs Mortgage | Bankrate](https://www.bankrate.com/mortgages/deed-of-trust/#how-it-works) [↑](#footnote-ref-1)
2. [Free Deed of Trust Template & FAQs - Rocket Lawyer](https://www.rocketlawyer.com/real-estate/home-ownership/real-estate-financing/document/deed-of-trust) [↑](#footnote-ref-2)
3. [What Is Fee Simple In Real Estate? | Bankrate](https://www.bankrate.com/real-estate/what-is-fee-simple/#:~:text=Fee%20simple%20definition,other%20than%20local%20zoning%20ordinances.) [↑](#footnote-ref-3)
4. [leasehold interest definition · LSData](https://www.lsd.law/define/leasehold-interest) [↑](#footnote-ref-4)
5. [↑](#footnote-ref-5)
6. [USCODE-2021-title11-chap1-sec101.pdf](https://www.govinfo.gov/content/pkg/USCODE-2021-title11/pdf/USCODE-2021-title11-chap1-sec101.pdf) [↑](#footnote-ref-6)
7. [wp\_statliens\_final\_dec2017.pdf](https://www.nfma.org/assets/documents/position.stmt/wp_statliens_final_dec2017.pdf) [↑](#footnote-ref-7)
8. [wp\_statliens\_final\_dec2017.pdf](https://www.nfma.org/assets/documents/position.stmt/wp_statliens_final_dec2017.pdf) [↑](#footnote-ref-8)
9. [chapter-9-summary-memo-bruce-wilson.pdf](https://www.kutakrock.com/-/media/files/pdf-downloads/chapter-9-summary-memo-bruce-wilson.pdf?la=en&hash=7C76AAA6E3E7790C38C2D6CB11B7ED42F363473D) [↑](#footnote-ref-9)
10. [Financing Leasehold Interests: How To Manage The Risks - Real Estate - Real Estate and Construction - Canada](https://www.mondaq.com/canada/real-estate/45530/financing-leasehold-interests-how-to-manage-the-risks) [↑](#footnote-ref-10)