

**Agenda for Meeting of the Opinion Standards Committee
of the Business Law Section of the Florida Bar
Wednesday, June 21, 2023
3:00 p.m. to 4:00 p.m.
In Person Only
Amalfi Room**

- I. Welcome** Gary Teblum, Co-Chair
David Peterson, Co-Chair
- II. Pro Bono Reminder**
- III. Business Law Section Update & Welcome from Section Chair**
- IV. First Supplement to December 3, 2011 Third Party Legal Opinion Customary Practice in Florida Report.**
- Need volunteer to create a “composite” version of the Report that can be made available to Section members
- V. Topics for Further Supplements**
- Opinions under the Investment Company Act of 1940
 - Kirkland & Ellis - Use of Inquiry Memorandum to Client
 - Opinions dealing with federal reserve board margin regulations
 - Series LLC – once the provisions are adopted and go into effect
 - Corporate Transparency Act – addressing carve outs – letting WGLO and ABA take the lead
- VI. Update Regarding Working Group on Legal Opinions Foundation**
- VII. Update Regarding TriBar Projects**
- Risk Allocation Report – in Business Lawyer
 - Sample exception language ‘The opinion on the enforceability of the [agreement] in this opinion does not cover ... disclaimers, waivers, releases, indemnities, hold harmless provisions, exculpations, provisions for contribution and liquidated damages, and other provisions, however expressed, altering or eliminating the rights, liabilities or remedies a party otherwise would have, nor does it cover any provision having the effect of modifying the statute of limitations.’
 - Should we add this to our Florida forms?
 - Doesn’t this water down the remedies opinion to a point where is begins to become meaningless?
 - Isn’t the next step elimination of the remedies opinion in most opinions, as is currently being considered by TriBar?
 - Other

VIII. Webinars on Opinion Practice Issues

IX. Miscellaneous Opinion Issues for Discussion

- A. Need to go “up the chain” to give an authority opinion for an LLC – Florida Bar Report vs. TriBar - Discussion of Exposure Draft (additional copy attached)
- B. Special Issues in Freddie Mac Opinions for Guarantor – Appointment of Process Agent – method of suing Guarantor that is a trust – Other.
- C. Opinions on Delaware business entities given by non-Delaware lawyers update to address appellate decision – *Boardwalk Pipeline Partners LP v. Bandera Master Fund LP*, 2022 WL 17750348 (Dec. 19, 2021)
- D. Consideration of eliminating enforceability opinions in loan transactions with sophisticated lenders’ counsel
- E. Follow on Opinions
 - Kinds of deals
 - Types of amendments
 - Assumptions needed?
 - Original documents were enforceable before amendment
 - No defaults
 - Consideration for amendment
 - All conditions to effectiveness are satisfied or waived
 - All actions have been taken
 - Scope of remedy opinion
 - Amendment only
 - Original agreement and amendment
 - Perfection opinion
 - No new collateral versus added collateral
 - No adverse effect/no impairment?
 - Should a new UCC-1 be filed or UCC-3?
 - Continue to be perfected
 - No violation/breach opinions – appropriate?
 - Organization Documents
 - Applicable Laws
 - Novation issue – check for no novation provision
 - Should we/can we develop and publish a standard template for such a follow on opinion?
- F. “not aware” vs “to our knowledge”
- G. No violation/breach opinion – exclude financial covenants
 - How can this opinion be given if governing law is not the law of state of opinion giver?

- Violation/breach of material agreements – where material agreements are governed by law other than law of state of opinion giver

H. VC/PE Opinion Letters

- When are opinions appropriate or customary?
- VC vs. PE
- Model NVCA Legal Opinion
- Alternative entity opinions
- When to bring in Delaware counsel to give building blocks

X. **Good and Welfare**