Agenda for the Meeting of the Opinion Standards Committee
of the Business Law Section of the Florida Bar
Friday, August 29, 2025
2:00 p.m. to 3:00 p.m.
In Person Meeting (Calusa 2-3) & Via Zoom

Join Zoom Meeting
https://beckerlawyers.zoom.us/j/81099132174?from=addon

Meeting ID:
810 9913 2174

I. Welcome Gary Teblum, Co-Chair
Stefan Rubin, Co-Chair
Robert Brighton, Vice-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.

- Report on status

V. Topics for Further Supplements

- Opinions under the Investment Company Act of 1940
- Opinions dealing with federal reserve board margin regulations
- Series LLC – now that the provisions have been adopted – effective in June 2026
- New Ratification of Defective Acts Provisions – do we need a Supplement?

VI. Article 12 (Digital Assets) Led by Rob Brighton

- Overview of Article 12
- What are the special issues for opinions?
  - Perfection by control
    - Controllable electronic records (CERs)
    - Controllable accounts (CAs)
    - Controllable payment intangibles (CPIs)
  - "Take free" right for certain purchasers
  - Importance of establishment of certain facts and use of assumptions
- Should we do a Supplement?
- Should we create and publish sample forms of opinion?
- Or should we simply adopt the Tri-Bar analysis and opinion form? (see attached exposure draft opinion forms from Tri-Bar)

VII. Update Regarding Working Group on Legal Opinions Foundation

VIII. Other Update Regarding TriBar Projects

IX. Webinars on Opinion Practice Issues

- Generic practice and/or specific practice issues

X. Miscellaneous Opinion Issues for Discussion

A. Enforceability Opinion on Commercial Loans Proposal from Task Force (see attached)
B. Bandera Update
C. Dissociation
   - Forfeiture of capital accounts/capital contributions for "wrongful dissociation" (e.g. "bad boy" acts)
D. 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?
E. 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
F. 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

XI. Good and Welfare

Appendix A

Illustrative opinion letter on controllable electronic record — See Tables 1–3

Illustrative Security Interest Opinion

Law Offices
Wise, Safe & Solvent LLP
One Thousand Wall Street
New York, New York 10005

[date]

Careful Lending Bank
Two Thousand Wall Street
New York, New York 10005

Ladies and Gentlemen:

We have acted as counsel to Rock Solid Corporation ("Borrower"), a [ ] corporation, in connection with the preparation, execution, and delivery of, and borrowing under, the Credit Agreement, dated August 1, 20–, between you (''Secured Party'') and Borrower (the ''Credit Agreement''), the Security Agreement, dated August 1, 20–, between Secured Party and Borrower (the ''Security Agreement''), and the other documents identified below. This opinion letter is delivered to you pursuant to Section [ ] of the Credit Agreement.

References in this opinion letter to the ''[covered law jurisdiction] U.C.C.'', the "[CER's jurisdiction] U.C.C.", and the "[location of debtor jurisdiction] U.C.C." are to the Uniform Commercial Code currently in effect in the [covered law jurisdiction], [CER's jurisdiction], and [location of debtor jurisdiction]. Capitalized terms used but not defined in this opinion letter have the meanings given to them in the Security Agreement. All terms in opinions [ ]–[ ] that are defined in the [covered law jurisdiction] U.C.C. and that are not capitalized have the meaning given to them in the [covered law jurisdiction] U.C.C.

For purposes of this opinion letter, we have reviewed the following documents:

(a) [Insert in appropriate lettered items the documents reviewed for non-security interest opinions, such as a certified copy of articles or certificate of incorporation];

(b) the Credit Agreement;

(c) the Security Agreement; and

(d) [other documents].

For purposes of this opinion letter we have also reviewed such additional documents, and made such other investigation as we have deemed appropriate.

[Assumptions]

1. The CER's jurisdiction for purposes of Uniform Commercial Code Article 9 with respect to the [CER] is the District of Columbia.

2. [Secured Party] has the power to avail itself of substantially all of the benefits of the CER.

3. [Secured Party] has the exclusive power to prevent others from enjoying substantially all of the benefits of the [CER].

4. [Secured Party] has the exclusive power to transfer control of the [CER] to another person or to cause another person to obtain control of the [CER] as a result of the transfer of the electronic record.

5. Any powers held by a person other than [Secured Party] are "shared" as that term is used in UCC § 12-105.

6. [Secured Party] has the power readily to identify itself as having the powers described in assumptions[ ]–[ ].

7. [Third person] has control of the CER and has acknowledged that it has control on behalf of [Secured Party].

Based on the foregoing and subject to the other paragraphs of this opinion letter, we express the following opinions:

1. [Insert in appropriately numbered paragraphs for non-security interest opinions].

2. [Insert in appropriately numbered paragraphs for creation or attachment of security interest].

3. Insert in appropriately numbered paragraphs addressing perfection of the security interest by filing of a financing statement].

4. [Secured Party] has control of the [CER].

5. The security interest in the [CER] is perfected by control.

The opinions expressed in this opinion letter are limited to the federal law of the United States and the law of the [covered law jurisdiction] [and] [location of debtor jurisdiction]. Our opinions in paragraphs 1–2 are limited to Article 9 of the [covered law jurisdiction] U.C.C. Our opinions in paragraphs 3–5 are limited to Article 9 of the (CER's jurisdiction) [location of debtor jurisdiction] U.C.C. This opinion letter is being delivered to you in connection with the above-described transaction and may not be relied on by you for any other purpose. This opinion letter may not be relied on or furnished to any other person without our prior written consent.

Very truly yours,

Appendix B

Illustrative opinion letter on controllable account or controllable payment intangible — See Tables 4–6

Illustrative Security Interest Opinion

Law Offices

Wise, Safe & Solvent LLP
One Thousand Wall Street
New York, New York 10005

[date]

Careful Lending Bank
Two Thousand Wall Street
New York, New York 10005

Ladies and Gentlemen:

We have acted as counsel to Rock Solid Corporation ("Borrower"), a [ ] corporation, in connection with the preparation, execution, and delivery of, and borrowing under, the Credit Agreement, dated August 1, 20–, between you (''Secured Party'') and Borrower (the ''Credit Agreement''), the Security Agreement, dated August 1, 20–, between Secured Party and Borrower (the ''Security Agreement''), and the other documents identified below. This opinion letter is delivered to you pursuant to Section [ ] of the Credit Agreement.

References in this opinion letter to the ''[covered law jurisdiction] U.C.C.'', the "[CER's jurisdiction] U.C.C.", and the "[location of debtor jurisdiction] U.C.C." are to the Uniform Commercial Code currently in effect in the States of [covered law state], [CER's jurisdiction], and [location of debtor jurisdiction]. Capitalized terms used but not defined in this opinion letter have the meanings given to them in the Security Agreement. All terms in opinions [ ]–[ ] that are defined in the [covered law jurisdiction] U.C.C. and that are not capitalized have the meaning given to them in the [covered law jurisdiction] U.C.C.

For purposes of this opinion letter, we have reviewed the following documents:

(a) [Insert in appropriate lettered items the documents reviewed for non-security interest opinions, such as a certified copy of articles or certificate of incorporation];

(b) the Credit Agreement;

(c) the Security Agreement; and

(d) [other documents].

For purposes of this opinion letter, we have also reviewed such additional documents, and made such other investigation as we have deemed appropriate.

[Assumptions]

1. The [controllable account] [controllable payment intangible] is evidenced by the [CER].

2. The [controllable account] [controllable payment intangible] is a ["controllable account"] ["controllable payment intangible"] as defined in UCC § 9-102(a)(27A) and (27B).

3. The CER's jurisdiction for the [CER] for purposes of Uniform Commercial Code Article 9 is the District of Columbia.

4. Any litigation or similar proceeding concerning the perfection, effect of perfection or nonperfection, and the priority of a security interest in a [controllable account] [controllable payment intangible] will take place in a forum where the 2022 Uniform Commercial Code amendments are in effect.

Based on the foregoing and subject to the other paragraphs of this opinion letter, we express the following opinions:

1. [Insert in appropriately numbered paragraphs for non-security interest opinions].

2. [Insert in appropriately numbered paragraphs for creation or attachment of security interest].

3. [Insert in appropriately numbered paragraphs addressing perfection of the security interest by filing of a financing statement].

4. [Secured Party] has control of the [controllable account] [controllable payment intangible].

5. The security interest in the [controllable] [controllable payment intangible] is perfected by control.

The opinions expressed in this opinion letter are limited to the federal law of the United States and the law of [covered law jurisdiction] [and] [location of debtor jurisdiction]. Our opinions in paragraphs 1–2 are limited to Article 9 of the [covered law jurisdiction] U.C.C. Our opinions in paragraphs 3–5 are limited to Article 9 of the [CER's jurisdiction] [location of debtor jurisdiction] U.C.C. This opinion letter is being delivered to you in connection with the above-described transaction and may not be relied on by you for any other purpose. This opinion letter may not be relied on or furnished to any other person without our prior written consent.

Very truly yours,

Appendix C

Illustrative opinion letter on electronic money — See Tables 7–9

Illustrative Security Interest Opinion

Law Offices

Wise, Safe & Solvent LLP
One Thousand Wall Street
New York, New York 10005

[date]

Careful Lending Bank
Two Thousand Wall Street
New York, New York 10005

Ladies and Gentlemen:

We have acted as counsel to Rock Solid Corporation ("Borrower"), a [ ] corporation, in connection with the preparation, execution, and delivery of, and borrowing under, the Credit Agreement, dated August 1, 20–, between you (''Secured Party'') and Borrower (the ''Credit Agreement''), the Security Agreement, dated August 1, 20–, between Secured Party and Borrower (the ''Security Agreement''), and the other documents identified below. This opinion letter is delivered to you pursuant to Section [ ] of the Credit Agreement.

References in this opinion letter to the ''[covered law jurisdiction] U.C.C.'' and the "[location of debtor jurisdiction] U.C.C." are to the Uniform Commercial Code currently in effect in the States of [covered law jurisdiction] and [location of debtor jurisdiction]. Capitalized terms used but not defined in this opinion letter have the meanings given to them in the Security Agreement. All terms in opinions [ ]–[ ] that are defined in the [covered law jurisdiction] U.C.C. and that are not capitalized have the meaning given to them in the [covered law jurisdiction] U.C.C.

For purposes of this opinion letter, we have reviewed the following documents:

(a) [Insert in appropriate lettered items the documents reviewed for non-security interest opinions, such as a certified copy of articles or certificate of incorporation];

(b) the Credit Agreement;

(c) the Security Agreement; and

(d) [other documents].

For purposes of this opinion letter we have also reviewed such additional documents, and made such other investigation as we have deemed appropriate.

[Assumptions]

1. The debtor is located for purposes of Uniform Commercial Code Article 9 in [name of state].

2. [Secured Party] has the power to avail itself of substantially all of the benefits of the [electronic money].

3. [Secured Party] has the exclusive power to prevent others from enjoying substantially all of the benefits of the [electronic money], subject to [5] below.

4. [Secured Party] has the exclusive power to transfer control of the [electronic money] to another person to obtain control of the [electronic money] as a result of the transfer of the electronic record, subject to [5] below.

5. Any powers held by a person other than [Secured Party] are "shared" as that term is used in UCC § 12-105.

6. [Third person] has control of the [electronic money] and has acknowledged that it has control on behalf of Secured Party.

7. [Secured Party] has the power readily to identify itself as having the powers listed in assumptions [ ]–[ ].

Based on the foregoing and subject to the other paragraphs of this opinion letter, we express the following opinions:

1. [Insert in appropriately numbered paragraphs for non-security interest opinions].

2. [Insert in appropriately numbered paragraphs for creation or attachment of security interest].

3. [Insert in appropriately numbered paragraphs addressing perfection of the security interest by filing of a financing statement].

4. [Secured Party] has control of the [electronic money].

5. The security interest in the [electronic money] is perfected by control.

The opinions expressed in this opinion letter are limited to the federal law of the United States and the law of the [covered law jurisdiction] [and] [location of debtor jurisdiction]. Our opinions in paragraphs 1–2 are limited to Article 9 of the [covered law jurisdiction] U.C.C. Our opinions in paragraphs 3–5 are limited to Article 9 of the [location of debtor jurisdiction] U.C.C. This opinion letter is being delivered to you in connection with the above described transaction and may not be relied on by you for any other purpose. This opinion letter may not be relied on or furnished to any other person without our prior written consent.

Very truly yours,

Appendix D

Illustrative opinion letter on chattel paper where there is an electronic copy of a record evidencing the chattel paper — See Tables 10–12

Illustrative Security Interest Opinion

Law Offices

Wise, Safe & Solvent LLP
One Thousand Wall Street
New York, New York 10005

[date]

Careful Lending Bank
Two Thousand Wall Street
New York, New York 10005

Ladies and Gentlemen:

We have acted as counsel to Rock Solid Corporation ("Borrower"), a [ ] corporation, in connection with the preparation, execution, and delivery of, and borrowing under, the Credit Agreement, dated August 1, 20–, between you (''Secured Party'') and Borrower (the ''Credit Agreement''), the Security Agreement, dated August 1, 20–, between Secured Party and Borrower (the ''Security Agreement''), and the other documents identified below. This opinion letter is delivered to you pursuant to Section [ ] of the Credit Agreement.

References in this opinion letter to the ''[covered law jurisdiction] U.C.C.'', the "[chattel paper's jurisdiction] U.C.C." and the "[location of debtor jurisdiction] U.C.C." are to the Uniform Commercial Code currently in effect in the States of [covered law jurisdiction], [chattel paper's jurisdiction] and [location of debtor jurisdiction]. Capitalized terms used but not defined in this opinion letter have the meanings given to them in the Security Agreement. All terms in opinions [ ]–[ ] that are defined in the [covered law jurisdiction] U.C.C. and that are not capitalized have the meaning given to them in the [covered law jurisdiction] U.C.C.

For purposes of this opinion letter, we have reviewed the following documents:

(a) [Insert in appropriate lettered items the documents reviewed for non-security interest opinions, such as a certified copy of articles or certificate of incorporation];

(b) the Credit Agreement;

(c) the Security Agreement; and

(d) [other documents].

For purposes of this opinion letter we have also reviewed such additional documents, and made such other investigation as we have deemed appropriate.

[Assumptions]

1. The chattel paper's jurisdiction for purposes of Uniform Commercial Code Article 9 is [name of jurisdiction].

2. Any litigation or similar proceeding concerning the perfection or priority of a security interest in chattel paper perfected by control will take place in a forum where the 2022 Uniform Commercial Code amendments are in effect.

3. The electronic copy of a record evidencing the chattel paper is an "electronic copy of a record evidencing chattel paper" as defined in UCC § 9-102(a)(11).

4. [Secured Party] has the power to avail itself of substantially all of the benefits of the [chattel paper].

5. [Secured Party] has the exclusive power to prevent others from enjoying substantially all of the benefits of the [chattel paper].

6. [Secured Party] has the exclusive power to transfer control of the [chattel paper] to another person.

7. Any powers held by a person other than [Secured Party] are "shared" as that term is used in UCC § 12-105.

8. [Third person] has control of the [chattel paper] and has acknowledged that it has control on behalf of Secured Party.

9. [Secured Party] has the power readily to identify itself as having the powers listed in assumptions [ ]–[ ].

10. [Secured Party] has the power readily to identify itself as having the powers listed in assumptions [ ]–[ ].

11. [Secured Party's] control of the [chattel paper] covers each authoritative electronic copy of the record evidencing the chattel paper.

12. [There are no authoritative tangible copies of a record evidencing the chattel paper]. [Secured Party has possession of each authoritative tangible copy of a record evidencing the chattel paper].

Based on the foregoing and subject to the other paragraphs of this opinion letter, we express the following opinions:

1. [Insert in appropriately numbered paragraphs for non-security interest opinions].

2. [Insert in appropriately numbered paragraphs for creation or attachment of security interest].

3. [Insert in appropriately numbered paragraphs addressing perfection of the security interest by filing of a financing statement].

4. Secured Party has control of the chattel paper where there is an electronic record evidencing the chattel paper.

5. The security interest in the chattel paper is perfected by control where there is an electronic record evidencing the chattel paper.

The opinions expressed in this opinion letter are limited to the federal law of the United States and the law of the [covered law jurisdiction] [and] [location of debtor jurisdiction]. Our opinions in paragraphs 1–2 are limited to Article 9 of the [covered law jurisdiction] U.C.C. Our opinions in paragraphs 3–6 are limited to Article 9 of the [covered law jurisdiction] [chattel paper's jurisdiction] U.C.C. This opinion letter is being delivered to you in connection with the above described transaction and may not be relied on by you for any other purpose. This opinion letter may not be relied on or furnished to any other person without our prior written consent.

Very truly yours,

ABA Task Force White Paper –June 13, 2025

Enforceability Opinions on Commercial Loans:

A Proposal of a Task Force of the ABA Legal Opinions Committee*

Credit agreements for commercial loans in the United States often require as a condition to closing that the lender receive an opinion letter of borrower's counsel (a "closing opinion") containing opinions on legal matters relating to the borrower and the loan. One of those opinions is an opinion that the credit agreement and other loan documents are enforceable obligations of the borrower (typically referred to as the "enforceability" or "remedies" opinion).[1]

In 2021, the Legal Opinions Committee of the American Bar Association's Business Law Section created an Enforceability Opinion Task Force, consisting of lawyers who regularly represent lenders and lawyers who regularly represent borrowers, to consider whether, in commercial loan transactions, a change might be appropriate in the wording of the enforceability opinion or in the responsibility for giving it. The Task Force's recommendations are the subject of this paper.

In addition to the enforceability opinion, a typical closing opinion includes opinions on the borrower's existence and its power to enter into, and its due authorization, execution, and delivery of, the loan documents, and on certain other legal matters of concern to the lender (collectively, the "other standard opinions"). Early formulations of some of the other standard opinions were overly broad or unclear as to what they were or were not covering, and over time, many opinion preparers sharpened the wording of these opinions.[2] The enforceability opinion also raised concerns about its coverage, but instead of rewording it, opinion preparers limited its coverage with an often ever-increasing number of exceptions and qualifications.[3] The result has been that as the number of exceptions and qualifications increased, so did the time and effort needed for lender's counsel to satisfy itself that the opinion continued to meet the needs of its client.[4]

A More Focused Enforceability Opinion

The current practice of a lender's receiving from borrower's counsel an enforceability opinion subject to an array of exceptions and qualifications is well-established in the United States.[5] Often, the exceptions and qualifications, which in many cases are based on a firm's form, are broadly worded,[6] and in some cases are irrelevant to the loan documents in question.[7] While the exceptions and qualifications narrow the coverage of the opinion, they often are worded so broadly that they leave unclear which provisions of the loan documents remain covered and which are not.

Addressing these concerns, real estate lawyers developed a "generic qualification" stating that "certain" provisions in the loan documents "may be" unenforceable but then following that statement with assurances regarding the enforceability of specified provisions.[8] The Task Force believes that the interests of borrowers and lenders, and their respective counsel, would be well-served if in non-real estate loan transactions they and their counsel would consider a similar approach, but one that provides the assurances affirmatively by rewording the enforceability opinion to state that it covers (i) the borrower's obligations to repay principal and to pay interest, fees, and other amounts called for by the loan documents, (ii) the lender's right to accelerate the borrower's obligations to repay principal upon the occurrence and during the continuance of specified material Events of Default, and (iii) to the extent the lender deems necessary, the borrower's obligations to comply with other specified provisions of the loan

* The members of the Enforceability Opinion Task Force of the Legal Opinions Committee of the American Bar Association's Business Law Section are: Stuart Ames, Kimberly Chi, Arthur Cohen, Jonathan Cohen, William Dunn, Arthur Field, Richard Frasch, Frank Garcia, Donald Glazer (co-chair), Mark Googins, Timothy Hoxie, Stanley Keller, Justin Klimko, Charles Menges, Anna Mills (co-chair), James Rosenhauer, Reade Ryan, and James Smith (co-chair).

documents. The Task Force believes that rewording the opinion in this way will eliminate uncertainty over which provisions of the loan documents are and are not covered and will focus the opinion on matters of importance to the lender.[9] The reworded opinion also would render unnecessary some exceptions and qualifications now typically included, thus allowing borrower's counsel to cut back the exceptions and qualifications in their firm's form and thereby the need for lender's counsel to review them.[10]

One form of opinion that illustrates this suggested approach is below. Paragraphs (b)(ii) and (c) of the illustrative form (in italics) have been included to accommodate requests from a lender for an opinion on provisions other than those covered by paragraphs (a) and (b)(i), to the extent the lender considers an opinion on those provisions necessary:

[_] The following are enforceable against the Borrower in accordance with their terms:

(a) The Borrower's obligations under the Loan Documents[11] (i) to repay principal and to pay [accrued] interest [under the Note[12]] [under Section(s) __][13] and (ii) to pay fees and other amounts under Section(s) __ ;[14] and

(b) The Lender's rights under Section __ of the Loan Documents to accelerate the Borrower's obligations to repay outstanding principal and [accrued] interest[15] upon the occurrence and during the continuance of an Event of Default[16] (i) resulting from a breach of, or constituting a default under, any of the obligations of the Borrower referred to in sub-clauses __ of clause (a) above[17] or (ii) resulting from an Event of Default referred to in Section __.[18]

(c) The Borrower's obligations under the Loan Documents to comply with the covenants and obligations in Sections ___.[19], 20

Forgoing an Enforceability Opinion in Some Situations

When loan documents, including amendments, closely follow a form of the lender, the lender and lender's counsel usually will be well aware of any limitations on their enforceability under the law chosen by the lender to govern those documents.[21] Consequently, an opinion by borrower's counsel on the enforceability of the loan documents under the governing law is unlikely to provide a lender much, if any, new information, particularly when the number and breadth of the exceptions and qualifications create uncertainty over which provisions are and are not covered. When, therefore, the loan documents or amendments closely follow a form of the lender and are governed by lender's chosen law, the Task Force recommends that lenders consider forgoing receipt of an enforceability opinion from borrower's counsel.[22] By doing so, lenders will be able to reduce transaction costs by not requiring borrower's counsel to duplicate work already done for the lender by its counsel and by not requiring lender's counsel to review the many exceptions and qualifications borrower's counsel otherwise would have included in its closing opinion.

The Proposal on Enforceability Opinions on Commercial Loans has been issued by the Enforceability Opinion Task Force with the approval on December 13, 2024, of the Legal Opinions Committee of the ABA Business Law Section, with the hope that it will prompt parties to commercial loan transactions and their counsel to consider in appropriate circumstances the role and scope of the enforceability opinion. The members of the Enforceability Opinion Task Force are: Stuart Ames, Kimberly Chi, Arthur Cohen, Jonathan Cohen, William Dunn, Arthur Field, Richard Frasch, Frank Garcia, Donald Glazer (co-chair), Mark Googins, Timothy Hoxie, Stanley Keller, Justin Klimko, Charles Menges, James Rosenhauer, Reade Ryan, and James Smith (co-chair). Anna Mills contributed to the initiation of this project and served as co-chair at its outset. Donald Glazer was the co-chair of the Task Force and a principal drafter of the Proposal up to the time of his death in October 2024.

Endnotes

1. The enforceability opinion typically states that the loan documents are "valid and binding obligations of the borrower, enforceable against the borrower in accordance with their terms." As a matter of customary practice, the opinion is understood to cover the enforceability of each and every provision of the loan documents, subject to the bankruptcy exception, the equitable principles limitation and the other exceptions and assumptions. See TriBar Op. Comm., Third-Party "Closing" Opinions, 53 Bus. Law. 592, 619 (1998) [hereinafter 1998 TriBar Report]; TriBar Op. Comm., The Remedies Opinion—Deciding When to Include Exceptions and Assumptions, 59 Bus. Law. 1483 (2004).

2. For example, in many closing opinions (i) the phrase "duly organized" was dropped from the corporate status opinion, thus eliminating uncertainty over the meaning of "duly organized," (ii) the "to our knowledge" qualifier to a no breach opinion was eliminated by revising the opinion's wording, (iii) the word "conflicts" in the no breach opinion was replaced by the more precise phrase "result in a breach of or a default under," (iv) the no litigation confirmation was narrowed to cover only pending litigation and litigation overtly threatened in writing, in each case challenging the transaction addressed by the opinion, and (v) the no violation of law opinion was reworded to make clear that it covered only violations by the borrower of statutes, rules, and regulations of jurisdictions whose laws were covered by the opinion.

3. See, e.g., Gail Merel et al., Common Qualifications to a Remedies Opinion in U.S. Commercial Loan Transactions, 70 Bus. Law. 121 (2014); Gail Merel et al., Laws Commonly Excluded from the Coverage of Third-Party Legal Opinions in U.S. Commercial Loan Transactions, 76 Bus. Law. 889 (2021).

4. While overlapping in many respects, the exceptions and qualifications included in the forms of closing opinions of different law firms are far from uniform and, therefore, require review by lender's counsel on an opinion-by-opinion basis.

5. U.S. practice, however, is not universal. In many non-U.S. jurisdictions, opinions on commercial loans are not given or, as in England, are given to lenders by their own counsel.

6. Except for the bankruptcy exception and equitable principles limitation, the 1998 TriBar Report did not anticipate how broadly exceptions and qualifications would be worded, for example covering all the risk-allocation provisions in the loan documents rather than simply specific provisions. 1998 TriBar Report, supra note 1, at 622, 626 (noting that "exceptions ordinarily identify with specificity the provisions of the agreement to which they apply").

7. For example, a firm's form of exceptions and qualifications may exclude arbitration provisions even though the loan documents do not provide for arbitration.

8. Two important assurances are that (a) the borrower's obligation to repay the loan and pay interest is enforceable and (b) the lender has the right to accelerate the loan upon a material default and to exercise specified rights in the collateral. See Joint Drafting Comm., Real Estate Finance Opinion Report of 2012, 47 Real Prop., Tr. & Est. L.J. 213, 252 (2012).

9. The Task Force further notes that doing so is consistent with the process that has taken place over the years of revising the wording of the other standard opinions typically given by borrower's counsel. See supra note 2.

10. For example, assuming the opinion covers only the matters listed in paragraphs (a) and (b) of the illustrative opinion below, borrower's counsel could eliminate, among others, exceptions and

qualifications covering risk sharing, arbitration and choice-of-forum provisions and provisions purporting to establish evidentiary standards and granting rights of set-off without notice, because these provisions are not among those addressed by the illustrative opinion. Of course, the bankruptcy exception and equitable principles limitation would apply whether or not stated, and other necessary exceptions and qualifications could continue to be included.

11. If the Borrower also is entering into other agreements, such as a Security Agreement relating to Collateral, that contain obligations of the Borrower to be covered by the opinion, the opinion should be modified to include those obligations or a separate opinion should be given on these other agreements.

12. Include bracketed reference to "the Note" if Borrower's obligation to pay principal and [accrued] interest is included in the Note rather than the Loan Documents.

13. List section(s); if not otherwise requested by the Lender, exclude default interest (if covered and not already expressly excluded).

14. List section(s); if not otherwise requested by the Lender, exclude prepayment and late fees (if covered and not already expressly excluded).

15. Include if accrued interest is to be covered but consider note 13 supra regarding default interest.

16. "Event of Default" is used as defined in the Loan Documents, which often define an Event of Default to occur only after notice or the passage of time or both and not simply upon the occurrence of an event that constitutes a default. Limiting Events of Default to specific sections assumes that only material Events of Defaults are covered.

17. To the extent requested by Lender, list the sub-clauses of clause (a).

18. List cross-default section.

19. List other sections which Lender has specifically requested be covered, such as those containing affirmative, negative, and financial covenants.

20. Other matters could be included in the opinion depending on the provisions in the Loan Documents. For example, if the Loan Documents choose the law of New York as their governing law and provide for Borrower's submission of jurisdiction to the courts of New York, the following subsection could be added to the opinion (assuming the opinion covers New York law): "( ) The agreement of the Borrower to the choice of law in Section ____ and to the submission to jurisdiction set forth in Section___."

21. This would not necessarily be the case for any loan documents, such as those governing collateral, that are governed by other law.

22. A lender could do so while still requesting opinions from borrower's counsel on other matters, including the other standard opinions, on which borrower's counsel typically has or can readily obtain the information needed to give the opinions. Borrower's counsel should continue to be prepared to give these opinions when requested.