**Agenda for the Meeting of the Opinion Standards Committee**
**of the Business Law Section of the Florida Bar**
**Saturday, September 5, 2026**
**1:00 p.m. to 2:30 p.m.**
**In Person Meeting (Pelican Bay)**

**Zoom Access:**

Phone one-tap: US: +13052241968,,81888932728# or +13126266799,,81888932728#

Meeting URL: https://beckerlawyers.zoom.us/j/81888932728?from=addon
Meeting ID: **818 8893 2728**

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**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. Topics for Further Supplements**

- Updating Sample Form Opinions and Back Up Fact Certificate
    - Rob Brighton to lead efforts
    - Volunteers to help?
- 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 and are effective
- New Ratification of Defective Acts Provisions – do we need a Supplement?
- Article 12 Opinions
    - Follow Tri-Bar Form?
        - Additions to address Florida Article 12 and Florida Payment Stablecoin Act?
    - Or add these to excluded laws?

**V. Update Regarding Working Group on Legal Opinions Foundation**

**VI. Other Update Regarding TriBar Projects**

**VII. Webinars on Opinion Practice Issues**

- Generic practice and/or specific practice issues, including under commercial loans and loans secured by real property – timing?

**VIII. Miscellaneous Opinion Issues for Discussion**

A. List of Additional Items Not Covered By the Opinion
a. Dodd Frank
b. Bail In
c. PATRIOT Act

d. CFIUS
e. Health care laws
f. National and local emergencies
g. Executive orders
h. Go around the table with what others are adding
i. See if anyone has a good up to date example to share

B. Additional Items at the End of Opinions – Who is including these?
  a. Reliance – what is the latest common form?
    i. Successors?
  b. Who may receive a copy on a non-reliance basis? – what is the latest common form?
  c. Requirement that any claims on the opinion be brought in a single proceeding (e.g., "Furthermore, all rights hereunder may be asserted only in a single proceeding by and through the [Lender] or other [Reliance Party]")
  d. Prohibition on assignment of claims
  e. Limitations on damages
  f. Electronic execution of the opinion
  g. Appropriate form to sign the opinion (e.g., by an individual attorney, by an individual attorney on behalf of the firm, or just in the name of the firm with no individual attorney signing)

C. Delivery opinions – which law should govern if the law of the transaction documents is different from the law governing the transaction party and/or the law covered by the opinion?

D. Opinions that the transaction documents do not breach or violate other contracts that are governed by the laws of jurisdiction other than the law covered by the opinion
  a. "As if" governed by the law covered by the opinion?
  b. Plain Meaning/Plain English?
  c. Plain Meaning, but with a technical term gloss?

E. Use of Generative AI in legal opinion diligence

F. Proposed Additions to Statement of Opinion Practices Being Considered
  a. Coverage of federal laws when only state law is stated as being covered
  b. Predicate opinions
  c. Meaning of the "knowledge" qualifier
  d. Opinions regarding delivery of a contract – governing law – see above
  e. Up the chain authorizations
  f. Other?

G. 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?
        - Who has a good example they would be willing to share?

H. Opinions covering performance of a company's obligations in the future – should it be given at all?
   a. Properly authorized
   b. Will not breach
   c. No consents required

I. Enforceability Opinion on Commercial Loans Proposal from Task Force (see attached)

J. Article 12 (Digital Assets) Opinions

K. Special issues in rendering opinions addressing not for profit law, condominium law and homeowner association law

L. Ethical and Risk Management Considerations in Legal Opinions Practice

M. Cross Border Opinions

**IX. Good and Welfare**

A. The ABA Legal Opinions Committee will meet virtually in December 2026

B. The ABA Task Force on Counsel to Opinion Recipients Needs Committee Members

C. Other

# 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

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* 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.