

**Agenda for Meeting of the Opinion Standards Committee
of the Business Law Section of the Florida Bar
Thursday, January 17, 2019
11:30 a.m. to 12:30 p.m.
*DoubleTree by Hilton Orlando at SeaWorld
Orlando, Florida
Orange Ballroom C***

- I. Welcome** *Robert W. Barron, Chair
Giacomo Bossa, 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.**

This Supplement updates information to address changes in the law for Land Trusts and the Revised Florida LLC Act.

It also provides new information to address Dodd Frank, the E.U. Bail In Rules, the Hague Securities Convention and other changes in the law. The Opinion Standards Committee included opinion guidance for (i) the issuance of preferred stock by a corporation and (ii) the issuance of membership interests in an LLC. This Supplement has already been approved by the Florida Bar Real Property, Probate and Trust Law Section.

V. Statement of Opinion Practices and Core Opinion Principles approved September 14, 2018 by the Legal Opinions Committee of the Business Law Section of the ABA and by the Working Group on Legal Opinions (“WGLO”) Board on October 29, 2018.

The Statement of Opinion Practices, Core Opinion Principles, and Explanatory Note (which includes the cross-reference table back to the ABA Guidelines and Principles) are updated and revised versions of a prior Statement of Opinion Practices previously approved by the Section.

The Statement describes customary and other practices generally followed throughout the United States in the giving and receiving of closing opinions. In addition to the approval by the two sponsoring organizations, the Statement has already been approved to this point by a broad range of Bar associations including, among others, the ABA RPTE Legal Opinions Committee, the TriBar Opinions Committee, the American College of Commercial Finance Lawyers, the American College of Mortgage Attorneys, ACREL, the Opinions Committee of the California Bar’s Business Law Section, and the Business Law Sections of the Maryland Bar Association, the Virginia Bar Association, the North Carolina Bar Association, the Michigan Bar Association, the Tennessee Bar Association and the State Bar of Texas, and numerous other bar organizations are expected to take the Statement up for approval in the next few months. The Statement is

expected to be published in *The Business Lawyer* in the spring of 2019. Phil Schwartz has been active in this process at the WGLO level.

VI. Update Regarding WGLO Foundation: Working Group on Legal Opinions Foundation

VII. Miscellaneous Florida Legal Opinion Issues

a. Two States Choice of Law Provisions in Loan Agreements.

(a) THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE APPLICABLE INDIVIDUAL PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

b. UCC Perfection of Pledge of Uncertificated Membership Interest as a General Intangible

c. Reliance on Opinion

Rating agencies, regulatory agencies and other non-parties may rely upon the opinion.

d. Other Types of Opinion Issues to Discuss?

VIII. Good and Welfare