

December 15, 2011

The "Report on Third-Party Legal Opinion Customary Practice in Florida, dated December 3, 2011" of the Legal Opinion Standards Committee of the Business Law Section and the Legal Opinions Committee of the Real Property, Probate and Trust Law Section was approved earlier this month at meetings of the Executive Council of each Section. The Report provides guidance to Florida attorneys who render third-party legal opinions, and to both Florida and out-of-state attorneys who, on behalf of their clients, receive third-party legal opinions from Florida attorneys, as to the nature and meaning of the content of legal opinions and as to the diligence recommended to render such opinions.

The Report is a practice guide that covers all aspects of Florida third-party legal opinion customary practice. The Report: (i) includes coverage of opinions that are the "building block" opinions to the enforceability of a contract, including sections on opinions on entity status and organization, authorization to transact business in Florida, entity power, authorization of the transaction, execution and delivery, no violation and no breach or default and no required governmental consents or approvals; (ii) describes the meaning of the remedies or enforceability opinion and lays out the qualifications to the remedies opinion that are appropriate to include in opinions rendered by Florida counsel; (iii) sets forth guidance about giving a no-litigation confirmation; (iv) addresses opinions on particular substantive areas of commercial practice, including opinions with respect to issuances of securities, opinions with respect to collateral under the Uniform Commercial Code and opinions with respect to real estate transactions; (v) provides guidance on delivering opinions under Florida law regarding usury and choice of law; and (vi) includes guidance on matters that are common to all third-party legal opinions rendered by Florida counsel and on matters to consider when acting as local counsel.

The Report is accompanied by four illustrative opinion letter forms: (i) a form of opinion letter to be used in a commercial lending transaction; (ii) a form of opinion letter to be used in a lending transaction secured by real estate; (iii) a form of opinion letter to be used in connection with a share issuance by a Florida corporation; and (iv) a form of opinion letter to be used in a loan transaction when Florida counsel is acting as local counsel. The Report also includes an illustrative form of certificate to counsel that can be used in connection with the rendering of a third-party legal opinion. These illustrative forms are annotated with guidance and with references to sections of the Report where further information about the Florida customary practice regarding such opinions is described.

The Committees believe that the Report is a major step forward in the guidance available to Florida attorneys regarding third-party legal opinions and will be a great benefit to business lawyers in our state.

If you have any questions, please feel free to contact either of the following.

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