



# **BULLETIN**

OF THE BUSINESS LAW SECTION

Vol. 29

Special Issue (June - September 1992)

Nos. 2 & 3

STATE BAR OF TEXAS  
BUSINESS LAW SECTION

REPORT OF THE  
LEGAL OPINIONS COMMITTEE  
REGARDING LEGAL OPINIONS  
IN BUSINESS TRANSACTIONS

June 1, 1992

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**STATE BAR OF TEXAS  
BUSINESS LAW SECTION**

**REPORT OF THE  
LEGAL OPINIONS COMMITTEE  
REGARDING LEGAL OPINIONS  
IN BUSINESS TRANSACTIONS**

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**Non-Accord Opinion**

- Exhibit "B" - Illustrative Form of Non-Accord Opinion Letter in a Secured Loan Transaction

Illustrative Qualifications

- Exhibit "C" - Other Common Texas Qualifications (May be Incorporated by Reference)
- Exhibit "D" - Assumptions Regarding Security Interests in Personal Property (May be Incorporated by Reference)
- Exhibit "E" - Qualifications Regarding Security Interests in Personal Property (May be Incorporated by Reference)

Illustrative Form of Officer's Certificate

- Exhibit "F" - Officer's Certificate, certifying as to (a) articles of incorporation, (b) bylaws, (c) resolutions of directors authorizing the Transaction, (d) incumbency of officers, and (e) authorization of officers

Selected Bibliography

- Exhibit "G" - Selected Texas Cases
- Exhibit "H" - Selected Bibliography--Articles, Books, and Bar Association Committee Reports

**STATE BAR OF TEXAS  
BUSINESS LAW SECTION**

**REPORT OF THE  
LEGAL OPINIONS COMMITTEE  
REGARDING LEGAL OPINIONS  
IN BUSINESS TRANSACTIONS**

June 1, 1992

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**I. INTRODUCTION TO THE TEXAS REPORT AND ITS INTENDED USE**

**A. Background of the Opinion Committee Project.**

1. **Formation and Goals of the Committee.** The Legal Opinions Committee of the Business Law Section of the State Bar of Texas was organized and began its work as an ad hoc committee in June 1989. The Committee was originally comprised of twenty-seven members, all of whom were experienced business lawyers from law firms located in various cities in the State of Texas. The Committee became a standing committee of the Business Law Section of the State Bar of Texas in 1990, and continued its work with the intent of publishing the report of the Committee prior to June 30, 1992.

The goals of the Committee were primarily to encourage and express a consensus of Texas business lawyers with regard to (i) the philosophy and purposes of legal opinions rendered to third parties in business transactions; (ii) uniform approaches to format and coverage of such opinions; (iii) the meaning of certain words and phrases commonly used in legal opinions; (iv) guidelines for negotiation of and factual investigation to back up legal opinions; and (v) guidelines for Texas lawyers with respect to professional ethics and maintaining professionalism and quality control in connection with legal opinions. To achieve these goals, the Committee agreed to prepare a comprehensive report covering these topics, to be published as an educational tool and a guide to Texas lawyers in negotiating and drafting legal opinions.

2. **Review of Reports by Other Bar Groups.** The Committee reviewed and discussed the special reports on legal opinions by various bar groups,<sup>1</sup> including the Preliminary Draft of the Statement of

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<sup>1</sup> The first state bar opinion project was a joint effort of the City, County and State of New York bar associations, beginning with Tri-Bar Opinion Committee, Legal Opinions to Third Parties: An Easier Path, 34 Bus. Law. 1891 (1979) [hereinafter Tri-Bar Report]; followed by Tri-Bar Opinion Committee, An Addendum--Legal Opinions to Third Parties: An Easier Path, 36 Bus. Law. 429 (1981) [hereinafter Tri-Bar First Addendum]; and Tri-Bar Opinion Committee, Second Addendum to Legal Opinions to Third Parties: An Easier Path, 44 Bus. Law. 563 (1989) [hereinafter Tri-Bar Second Addendum] [collectively hereinafter New York Report]. Several business practice sections of the California Bar have published a series of reports, including the Committee on Corporations of the Business Law Section of the State Bar of California, Report of the Committee on Corporations Regarding Legal Opinions in Business Transactions, 14 Pac. L.J. 1001 (1983) [hereinafter California 1983 Corporate Report]; Committee on Corporations of the Business Law Section of the State Bar of California, 1989 Report of the Committee on Corporations of the Business Law Section of the State Bar of California Regarding Legal Opinions in Business Transactions, 45 Bus. Law. 2169 (1990) [hereinafter California 1989 Corporate Report]; Uniform Commercial Code Committee of the Business Law Section of the State Bar of California, Legal Opinions in Personal Property Secured Transactions, 44 Bus. Law. 791 (1989) [hereinafter California UCC Report]; and Joint Committee of the Real Property Section of the State Bar

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Policy Regarding Lawyers' Opinions in Mortgage Loan Transactions by the State Bar of Texas Committee on Lawyers' Opinion Letters in Mortgage Loan Transactions, 1985.<sup>2</sup> The Committee is deeply indebted to these groups, and has borrowed heavily from and utilized their reports in the preparation of this report. Other sources are listed in the Selected Bibliography attached hereto as Exhibit "H".

3. **Drafting by Subcommittees and Presentation of First Discussion Draft.** This report was initially drafted by several subcommittees of the Committee. Each subcommittee considered and drafted a part of the report, which was then submitted to the entire Committee for review and comment, and discussed at one or more of the regular meetings of the Committee. This first discussion draft of the entire report was furnished to the Committee in December 1990, and was presented as a discussion draft at the Advanced Business Law Course sponsored by the State Bar of Texas in San Antonio, Texas on January 25, 1991, and at the 13th Annual Conference on Securities Regulation and Business Law Problems sponsored by the University of Texas School of Law in Austin, Texas on March 7, 1991.

4. **Adoption of the ABA Report and Legal Opinion Accord.** The most significant recent development in legal opinion practice is the adoption and publication of the ABA's Third Party Legal Opinion Report and Legal Opinion Accord.<sup>3</sup> The ABA Report was designed to establish "a national consensus as to the purpose, format, and coverage of a third-party legal opinion, the precise meaning of its language, and the recognition of certain guidelines for its negotiation."<sup>4</sup> The ABA Report is limited to use in private (versus public) finance, excluding opinions in tax shelters, or in a regulatory context. The ABA Report generally does not cover the technical aspects of legal opinions dealing with security interests in personal property, or other secured financings.

The ABA Report has three parts. The first part is the Legal Opinion Accord (hereinafter the "Accord" or the "ABA Accord"), which consists of twenty-two "black letter" rules with accompanying commentary. The Accord is designed to be adopted by reference in legal opinions. The ABA Accord is intended to govern those opinions that expressly adopt it. Following the ABA Accord is an "Illustrative Opinion Letter," which demonstrates the use of the Accord in an opinion letter. The ABA Report concludes with "Certain Guidelines for the Negotiation and Preparation of Third-Party Legal Opinions."

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<sup>1</sup>(...continued)

of California and the Real Property Section of the Los Angeles County Bar Association, Legal Opinions in California Real Estate Transactions, 42 Bus. Law. 1139 (1987) [hereinafter California Real Estate Report] [collectively hereinafter "California Reports"]. Two recent state bar projects have been Special Joint Committee of the Maryland State Bar Association, Inc., and the Bar Association of Baltimore City, Report of the Special Joint Committee on Lawyers' Opinions in Commercial Transactions, 45 Bus. Law. 705 (1990) [hereinafter Maryland Report]; and Report of the State Bar of Arizona Corporate, Banking, and Business Law Section Subcommittee on Rendering Legal Opinions in Business Transactions, (Feb. 1, 1989) [hereinafter Arizona Report].

<sup>2</sup> Much useful information regarding the practices of Texas lawyers practicing in the mortgage lending area is provided by State Bar of Texas Committee on Lawyers' Opinion Letters in Mortgage Loan Transactions, Opinion Letters in Mortgage Loan Transactions: Preliminary Draft of the Statement of Policy Regarding Lawyers' Opinion Letters in Mortgage Loan Transactions, St. B. Newsl. Real Est. Prob. & Tr. L., Jan. 1985 at 20 [hereinafter Texas Real Estate Report].

<sup>3</sup> Third-Party Legal Opinion Report, Including the Legal Opinion Accord, of the Section of Business Law, American Bar Association, 47 Bus. Law 167 (1991) [hereinafter ABA Report]. The ABA Report is available in pamphlet form as reprinted from the November 1991 (Volume 47, Number 1) issue of The Business Lawyer.

<sup>4</sup> Id., Foreword, at 169.

