

**Association of Commercial  
Finance Attorneys**

---

**Opinion letters in  
commercial lending**

**Ed Smith  
Steve Weise**

# Overview

---

- ✓ Lay of the land
- ✓ Common opinions in commercial lending financing transactions
  - Entity opinions
  - Contract opinions
  - UCC opinions
  - Real estate financing opinions
  - Securitization opinions

# Role of customary practice

---

- ✓ Basis for:
  - Diligence
  - Meaning of words
- ✓ ALL Restatement of Law Governing Lawyers
- ✓ TriBar Customary Practice Statement (proposed)

# Sources of opinion letter 'law' and customary practice

- ✓ ABA reports
- ✓ TriBar reports
- ✓ ACREL reports
- ✓ S & P guidelines
- ✓ State Bar reports

# Entity opinions

---

- ✓ Existence
- ✓ Good standing
  - Not all states
- ✓ Authorization
- ✓ No breach of contracts
- ✓ No litigation statement

# Entity opinions

---

## ✓ Sources:

- TriBar II
- TriBar LLC Report

# Contract opinions

---

- ✓ Remedies opinion - scope
  - Enforceability
  - Does not include UCC opinions

# Contracts opinions

---

- ✓ Exceptions to remedies opinion
  - Bankruptcy and equitable principles
  - Prepayment premiums
  - Yield maintenance
  - Late charges

# Contract opinions

---

## ✓ Sources:

- ABA Guidelines
- ABA Principles
- TriBar II
- TriBar Remedies Report

# UCC opinions - attachment

---

- ✓ Based on contract law opinions
- ✓ Assume rights in collateral
- ✓ Assume value?

# UCC opinions - perfection by filing

---

- ✓ Opinion on choice of law?
- ✓ Debtor name
- ✓ Collateral description
- ✓ Proper filing and tender of fee

# Perfection by possession and control

---

- ✓ Status of agent or bailee?
- ✓ Control
  - Effect of debtor's right to given entitlement orders or instructions

# UCC opinions - priority - filing

---

- ✓ Filing priority?
- ✓ Review of UCC report

# UCC opinions - priority investment property/notes

---

- ✓ Control priority
- ✓ Possession priority
- ✓ Holder-in-due-course priority

# UCC remedies

---

- ✓ Waivers of debtor rights
- ✓ Notice provisions
- ✓ ‘Not manifestly unreasonable’ provisions

# Sources - UCC provisions

---

- ✓ TriBar Article 9 Report
- ✓ State Bar reports

# Real estate opinions

---

- ✓ Form of deed of trust or mortgage sufficient
- ✓ No opinions on title or priority
- ✓ Practical realization exception
- ✓ Sources:
  - ACREL reports
  - State bar reports

# Securitization opinions

---

- ✓ True sale opinion
  - Transfers of mortgage notes
- ✓ Non-consolidation opinion
  - Use of SPE as single-asset real estate borrower
- ✓ Sources:
  - S & P guidelines
  - Older TriBar report