

Third-Party Legal Opinions Regarding Limited Liability Companies

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Focus of Presentation

- Third-party closing opinions regarding LLCs, especially Texas LLCs
- Despite developed corporate-opinion language and practice, be aware of, and address, differences regarding LLCs
- Example opinions – Paper has commentary and lists of actions to support opinions

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LLCs/ Corporations — # 1

- Corporate-opinion language and practices fairly developed and standardized
- But LLCs not corporations
 - LLCs governed primarily by contract
 - LLC statute principally provides “default” terms

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LLCs/ Corporations — # 2

- Importance for opinion givers:
 - LLC’s agreement or contract terms critical
 - LLC’s governing agreement subject to contract law
 - LLC terms not standard, so terms of different LLCs can vary significantly
- Insist on written LLC agreement

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Contract Law Applicable to LLCs

- Contract law of LLC's state of formation applies
- Not typically an issue for opinion giver practicing in LLC's state of formation
- But poses issue for opinion giver not practicing in LLC's state of formation

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Delaware LLC Opinions by Non-Delaware Lawyer —# 1

- Widespread use of Delaware LLCs
- TriBar Opinion Committee's 2006 Report
 - Delaware contract law addressed in Delaware LLC opinions
 - Non-Delaware lawyer's comfort with Delaware contract law

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