

Maintaining Boundaries in Opinion Practice

Presented to
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Focus of Presentation

- This program focuses on third party opinion practice utilizing current real estate finance opinion reports to illustrate key concepts
- Basic knowledge of opinion practice is assumed

Disclaimer: Nothing contained in these materials is the rendering of legal advice. These materials are supplied for educational purposes only and represent the viewpoints of the presenters and no other parties.

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Coverage of Presentation

- Ethical considerations
- Rules of the road: Opinion Reports, Guidelines and Practice Statements help attorneys stay in the right lane!
- Examples of “crossing the line” and responses thereto
- Resources

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Ethical Considerations

- Third party opinion: addressed to a non-client
- Distinguish from:
 - Direct advice to a client
 - Audit letter response
- Status of duties of care and loyalty
- Guidance from Model Rules
 - Rule 1.6: Confidentiality
 - Rule 1.7: Conflicts – Current Clients
 - Rule 2.3: Evaluation for Use by Third-Parties
 - Rule 4.1: Truthfulness in Statements to Others

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The “Golden Rule”

- Core principle worthy of separately highlighting
- Cited in the 2003 Real Estate Opinion Letter Guidelines
- Opinions are an expression of professional judgment and not a business negotiation
- Reciprocity: Ask only for what you would give and give what you would seek

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Core Opinions – even these may be the source of contention

- Status
 - Needed at all?
 - Scope: Valid existence is typically sufficient; lack of familiarity and support may preclude speaking to due incorporation, organization or formation
 - Trusts
- Power
 - Needed?
 - How broad is the request?
- Authorization
 - Handling of multiple tiers
 - Handling of multi-state connections

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