

PART II



Why is a Legal Opinion important?

Shareholders frequently ask if a legal opinion is truly necessary when selling shares under Rule 144. They receive different responses from various transfer agents and brokers, depending on who they ask. *The truth is, there is no SEC regulation that specifically mandates a legal opinion as part of the requirements of selling under Rule 144.* However, the tightening regulatory environment that the SEC and FINRA have created, in addition to certain vague stipulations in the 2008 revision of Rule 144, have made legal opinions an industry standard. All professional transfer agents in the US require legal opinions for Rule 144 legend removals, and a shareholder would be hard-pressed to find a broker dealer today who would accept shares for resale under Rule 144 absent a legal opinion.

What makes a quality legal opinion?

First and foremost, *only qualified securities counsel should write your legal opinion.* Hiring unqualified counsel, or shopping attorneys to find one who will write an opinion based on questionable resale circumstances, is considered an industry red flag. Even if such an opinion were to be accepted by a transfer agent and broker, it would not alleviate you, the shareholder, from the consequences associated with improper use of Rule 144. Hiring competent counsel, whose opinion you can confidently depend on, is key.

While the content and length of legal opinions vary, below are key points that should be included in the letter:

- Full name of selling shareholder and issuer of the securities
- Specific reference to certificate number and number of shares being sold
- Statements concerning independent investigation and determination that:
 - The selling shareholder is or is not an insider
 - The issuer is not a "shell" and hasn't been for 12 months
 - The appropriate holding period requirement has been satisfied
 - All other provisions of Rule 144 have been satisfied
- Detail any special circumstances relevant to the specific transaction at hand
- Conclusion that the legend may be removed from the certificate to facilitate a public resale of the shares pursuant to Rule 144
- Signature of an actual attorney, and opinion printed on letterhead
- Dated within 90 days of the date presented to the transfer agent or broker

Disclaimer

The information contained herein is general in nature, is not legal advice, and should not be treated as such. You must not rely on the information here as an alternative to legal advice from your attorney or other professional legal services provider.

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ClearTrust, LLC is an independent, full-service stock transfer agent serving listed and small-cap issuers. Our mission is to help issuers and shareholders navigate the securities industry with confidence. Contact us today to learn more.

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