

BACKGROUND OF 1989 REPORT ON LAWYERS' OPINIONS IN COMMERCIAL TRANSACTIONS

Background on the Report of the Special Joint Committee on Lawyers Opinions in Commercial Transactions of the Maryland State Bar Association, Inc. and The Bar Association of Baltimore City

January 18, 1989

In January, 1987, the Section of Real Property, Planning and Zoning and the Section of Business Law of the Maryland State Bar Association, Inc. and the Banking, Bankruptcy and Business Law Committee of The Bar Association of Baltimore City formed the Special Joint Committee on Lawyers Opinions in Commercial Transactions (the "**Committee**") in response to a perceived need for an in-depth review of practice considerations in connection with the rendering of opinions by attorneys in commercial transactions in Maryland. The Committee was given a broad mandate to study the area and make whatever recommendations it deemed necessary and appropriate. On January 18, 1989, the Special Joint Committee completed its Report (the "**Report**"), which was published at 45 Bus. Law. 706 (1990).

There was a consensus among the members of the Committee that the quality of lawyers opinions and their value to their recipients could be significantly improved by the compilation of certain guidelines to assist practitioners in this area. Prior to the Report there were no clear sources of guidance available to aid a lawyer in Maryland in rendering an opinion or to assist the party receiving an opinion in interpreting its meaning and in understanding what steps were taken to reach the opinion that was rendered.

The Committee consisted of twenty lawyers from Baltimore City and various counties in Maryland. Bennett Gilbert Gaines, Edward J. Levin, and S. Nelson Weeks served as Co-Chairmen of the Committee, and Susan J. Mathias served as the Reporter for the Committee. In order to subject each aspect of the legal opinion to careful scrutiny, and to involve more lawyers in the process of preparing the Report, the Committee formed eighteen separate subcommittees and charged each subcommittee with examining a distinct issue in the opinion process. The membership of many of the subcommittees included lawyers who were not members of the Committee. Each subcommittee was comprised of both lenders counsel and borrowers counsel. A total of forty-four lawyers were involved in the initial preparation of the Report, as members of the various subcommittees and the full Committee.

The Committee presented a draft of the Report in connection with a continuing legal education seminar at the June, 1988 meeting of the Maryland State Bar Association. The Committee solicited comments on the June, 1988 draft of the Report from members of the bar in Maryland and lawyers outside of the state, and also from other interested persons, including lenders and borrowers. The Final Report incorporated a number of comments and suggestions from people who were not members of the Committee or any of the subcommittees. Both the Board of Governors of the Maryland State Bar Association and the Executive Council of The Bar Association of Baltimore City passed resolutions approving the Report.

The primary focus of the Report is on opinions given by lawyers to third parties in commercial and real estate loan transactions, typically by borrowers lawyers to lenders. However, the Report also addresses

issues that parties in the process of rendering legal opinions confront in all types of commercial transactions.

The Committee developed two "**Illustrative Opinion Letters**" to illustrate the issues discussed in the Report. The first opinion assumes a commercial loan transaction where the borrower is a corporation (called the "**Illustrative Commercial Loan Opinion Letter**"). The second opinion assumes that the borrower is a limited partnership and that the loan is secured primarily by real estate (called the "**Illustrative Real Estate Loan Opinion Letter**"). The Illustrative Opinion Letters are attached. Also attached are form certificates prepared to be delivered to the opinion givers by the borrowers and guarantors that are the subjects of the Illustrative Opinion Letters.

The Illustrative Opinion Letters incorporate the Report by reference, and they cannot be understood without understanding the full Report.

In the years since the Report was published, the Illustrative Opinion Letters have been widely accepted in Maryland-based transactions. Generally, Borrowers counsel are comfortable in rendering opinions based on the Report, and lenders and their counsel are satisfied to receive such opinion letters. Additionally, other portions of the Report are very useful, particularly the discussions concerning ethical considerations in rendering opinion letters and the steps necessary to complete the legal due diligence attendant to giving opinion letters.