Why Delaware Legal Opinions Matter – Part 2: What Delaware Opinions Actually Cover

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Welcome to *Why Delaware Legal Opinions Matter*, a five-part series examining the role of Delaware legal opinions in transactional practice. In this series, you will learn about the scope and purpose of these opinions, the circumstances in which they are required in real-world transactions, how lenders rely on them in real estate finance deals, and practical strategies for obtaining them efficiently without closing delays.

For many transactional attorneys and business professionals, the phrase "Delaware opinion" sounds broader and more comprehensive than it actually is. In reality, the Delaware opinion serves a focused and highly specialized role: providing opinions on discrete issues of Delaware law relating to Delaware entities involved in the transaction.

Most Delaware opinions address core legal issues such as:

- The valid existence and good standing of a Delaware entity
- The entity's power and authority to enter into the transaction
- Due authorization, execution, and delivery of the transaction documents
- Enforceability of the applicable transaction documents against the Delaware entity[1]
- In certain transactions, perfection or UCC-related matters governed by Delaware law

Importantly, the Delaware opinion generally does not address the entire transaction. The opinion does not typically cover the laws of the state where the real estate is located, the economic substance of the transaction, regulatory compliance outside Delaware, or the business terms negotiated by the parties. Instead, the Delaware opinion provides lenders, investors, and transaction parties with comfort that the Delaware entity itself has been properly formed, authorized, and bound under Delaware law.

This distinction matters because modern transactions frequently involve multiple jurisdictions and multiple layers of counsel. For example, a real estate financing transaction involving a property in Texas will require a Delaware opinion because the borrower or guarantor is organized as a Delaware LLC. Similarly, an acquisition governed primarily by New York law will require a Delaware opinion because a holding company or acquisition vehicle was formed in Delaware.

In these transactions, Delaware opinion counsel operates as part of a coordinated closing team alongside lead transaction counsel, local real estate counsel, borrower's counsel, and lender's counsel. The role is specialized but often critical to closing the deal efficiently.

Experienced Delaware opinion counsel also helps avoid one of the most common causes of closing delays: opinion requests that are overbroad, inconsistent with customary practice, or disconnected from the actual structure of the transaction. Because Delaware opinion work is highly practice-driven, understanding customary limitations, assumptions, qualifications, and opinion scope is just as important as understanding the Delaware statutes themselves.

When handled efficiently, Delaware opinions become a streamlined component of the closing process rather than a last-minute obstacle.

[1] An opinion regarding the enforceability of transaction documents against a Delaware entity is limited to the enforceability of such documents against that Delaware entity under Delaware law and should not be interpreted as a general enforceability opinion regarding the transaction documents as a whole or under the laws of any other jurisdiction.