

Why Delaware Legal Opinions Matter – Part 1: Delaware Law at the Core of Modern Lending Transactions

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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.

In today's transactional landscape, Delaware is not just a preferred jurisdiction; it is often embedded in the structure of deals that have little or no other connection to the state. A borrower formed in Delaware. A guarantor organized as a Delaware LLC. A holding company sitting at the top of the structure. When that happens, core legal questions in the transaction, existence, authority, and enforceability, are governed by Delaware law, regardless of where the deal is negotiated or the assets are located.

That is where Delaware opinion counsel becomes essential.

One of the most common misconceptions is that Delaware legal opinions are only relevant to Delaware-based transactions. They often arise when the property or transaction is geographically nowhere near the State of Delaware. For example: property located in Arizona, a loan negotiated by Nevada counsel, or a borrower formed as a Delaware LLC. Even though the transaction is otherwise local, the lender's ability to rely on the borrower's existence, authority, and execution is a Delaware law question.

At its core, a Delaware legal opinion addresses a defined set of entity-level issues, including whether the:

- Entity validly exists and is in good standing
- Entity has the power to enter into the transaction
- Transaction has been properly authorized by the entity's governing documents
- Operative loan documents are enforceable (subject to customary limitations)

These are not abstract concepts—they directly address whether the transaction is legally binding on the entity.

From a lender's perspective, these opinions serve as a risk allocation tool. They provide comfort that the borrower is properly formed, authorized, and bound by the transaction documents. In institutional lending, particularly in real estate finance, this is a

standard closing requirement.

Accordingly, Delaware counsel typically reviews organizational documents, confirms authority and approvals, coordinates with deal counsel, and delivers the opinion on closing. Handled properly, Delaware counsel operates as a seamless extension of the deal team.

Delaware entities are used heavily in structured real estate finance and multi-entity borrower structures, where separateness and authority are critical. If your transaction involves a Delaware entity, the key questions are when to engage Delaware counsel and how to do so efficiently. Delaware legal opinions are a core component of modern transactional practice. They are not simply a formality; they are a targeted legal analysis that ensures a transaction is legally effective under Delaware law.