

Supplement to  
Report on Legal Opinions to Third Parties  
in Georgia Real Estate Secured Transactions

---

This Supplement to Report on Legal Opinions to Third Parties in Georgia Real Estate Secured Transactions has been approved and endorsed by the Executive Committee of the Real Property Law Section of the State Bar of Georgia. Comments regarding the contents of this Report may be directed to:

Douglas D. Selph  
Paul, Hastings, Janofsky & Walker LLP  
600 Peachtree Street, NE, Suite 2400  
Atlanta, Georgia 30308-2222  
[dougselph@paulhastings.com](mailto:dougselph@paulhastings.com)

Special thanks to Eric Fenichel and Andy Locker of Sutherland, Asbill & Brennan LLP for their assistance in the preparation of this Supplement.

---

May 20, 2002

1. The following definition is hereby added to Section 1.02 of the Report:

*Fixture Filing* means a UCC financing statement that is filed as a fixture filing for the purpose of perfecting the Opinion Recipient's security interest in the Property consisting of goods that are or are to become fixtures.<sup>1</sup>

2. The definition of "UCC" contained in Section 1.02 of the Report is hereby deleted and the following definition is hereby substituted in lieu thereof:

*UCC* means the Uniform Commercial Code in effect in the State of Georgia on the date of this Supplement to the Report.<sup>2</sup>

3. Section XX (THE MODEL UCC OPINION) is hereby deleted in its entirety and the following Section XX is hereby substituted in lieu thereof:

## **XX. THE MODEL UCC OPINION**

*The Security Deed creates in favor of Lender, as security for all obligations of Borrower purported to be secured thereby, a security interest in such of the Personal Property and fixtures described therein as collateral in which a security interest may be created under the Uniform Commercial Code (the "UCC") in effect in the State of Georgia (the "UCC Collateral"). To the extent that a security interest may be perfected by the filing of a financing statement in the State of Georgia, (i) the filing of the Financing Statement in the UCC records of the Office of the Clerk of the Superior Court of any county in the State of Georgia will result in the perfection of such security interest in the UCC Collateral (other than fixtures, as-extracted collateral, crops or timber to be cut) described in the Financing Statement, and (ii) the further recordation of the Fixture Filing in the real property records of the Office of the Clerk of the Superior Court of the county in which the Real Property is located will result in the perfection of such security interest in the UCC Collateral described in the Fixture Filing that consists of goods that are or are to become fixtures.*

## **COMMENT**

**20.01 Purpose and Background of the Model UCC Opinion.** The purpose of the Model UCC Opinion is to provide assurance to the Opinion Recipient that the Security Deed contains the necessary provisions to create a security interest under the Uniform Commercial Code in effect in the State of Georgia<sup>3</sup> and that the necessary steps are being taken to perfect such security interest.

---

<sup>1</sup> See O.C.G.A. §§ 11-9-502(b), -334.

<sup>2</sup> See O.C.G.A. §§ 11-1-101 to -12-102 (1994 & Supp. 2001).

<sup>3</sup> See Uniform Commercial Code, O.C.G.A. §§ 11-1-101 to -12-102 (1994 & Supp. 2001); see *supra* § 1.02.

As discussed in more detail below, the Model UCC Opinion covers only UCC security interests and not those created under common law or under non-UCC statutory law. This limitation is appropriate given that in most real estate secured transactions the principal collateral is of a type to which the Opinion Recipient may obtain valid security title under a security deed, which is covered by the Model Remedies Opinion or in which the Opinion Recipient may obtain a valid security interest under the UCC. The most notable exception is rents.<sup>4</sup>

Moreover, as to perfection, the Model UCC Opinion covers only those security interests that may be perfected by the filing of a financing statement. Again, because furniture, fixtures and equipment are the personal property collateral types that generally are most important to real estate lenders and because the filing of a financing statement is the proper method of perfection for these classes of collateral, it is appropriate for the Model UCC Opinion to be limited to perfection by filing.

**20.02 Elements of the Model UCC Opinion.** The Model UCC Opinion has two elements, creation and perfection, as well as certain express limitations.

**A. Creation.** Under Section 9-203(b) of the UCC, three elements must be present for a valid security interest to be created: (i) value must be given; (ii) the debtor must have rights in the collateral or the power to transfer rights in the collateral to a third party; and (iii) either (a) the debtor must authenticate a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned, (b) the collateral is not a certificated security and is in the possession of the secured party under Section 9-313 pursuant to the debtor's security agreement, (c) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 8-301 pursuant to the debtor's security agreement, or (d) the collateral is deposit accounts, electronic chattel paper, investment property or letter-of-credit rights, and the secured party has control under Section 9-104, 9-105, 9-106 or 9-107 pursuant to the debtor's security agreement.<sup>5</sup>

Although the secured party's possession or control, or delivery to the secured party, of the collateral pursuant to an oral security agreement in certain circumstances will satisfy the requirement of clause (iii) above, a secured party rarely maintains possession or control (or takes delivery) of the collateral in real estate transactions. Moreover, given the difficulties of establishing the existence of an oral agreement between the debtor and the secured party, it is recommended that the security interest creation opinion be based solely on the debtor's executing a written security agreement. The Model UCC Opinion is drafted for transactions in which the Security Deed is intended to serve as the security agreement. The Opinion Giver should make appropriate modifications to the Model UCC Opinion if the Loan Transaction includes a separate security agreement.

---

<sup>4</sup> By virtue of the generic qualification, the Model Remedies Opinion does not contain an opinion as to the validity and enforceability of an assignment of rents as discussed in Section 18.02D of this Report. *See also Report on Adaptation of Accord, supra* note 5, at 597.

<sup>5</sup> O.C.G.A. § 11-9-203(b)(1)-(3).

To qualify as a valid security agreement, the Security Deed must contain language granting a security interest. The most common language is "Borrower hereby grants a security interest in..." Although any conveyancing language that is intended by the parties to grant a security interest will suffice, because the Opinion Giver cannot ascertain the intention of the parties other than from the four corners of the Security Deed, it is recommended that clear language granting a security interest be present in the Security Deed as a prerequisite to the rendering of the Model UCC Opinion. As noted below, the Model UCC Opinion does not cover the adequacy of any collateral description, and therefore the Opinion Giver need not reach any legal conclusion with respect to this requirement.

Under the provisions of the UCC, in a loan transaction a person gives value for rights if he acquires them in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon.<sup>6</sup> Because the Model UCC Opinion assumes that contemporaneously with the delivery of the Opinion Letter to the Opinion Recipient, the Opinion Recipient will have either advanced to Borrower the proceeds of the Loan to be secured by the security interest or entered into a commitment to make the Loan, as discussed below in Section 20.03, the value requirement is assumed to be satisfied. Because the Model UCC Opinion assumes that Borrower has rights in the collateral, as discussed below in Section 20.03, the Opinion Giver also need not reach any legal conclusion with respect to this requirement.

**B. Perfection.** The perfection opinion is limited only to those security interests for which the filing of a financing statement is a proper method of perfection. Therefore, the Opinion Giver's role is to review the Financing Statement and the Fixture Filing and to determine that the Secured Party is authorized to file them<sup>7</sup> and that they contain the necessary information to satisfy the requirements of the UCC with respect to the required contents of financing statements and fixture filings as discussed in Section 20.05.

It should be noted that under the amendments to the UCC adopted effective January 1, 1995 and under Revised Article Nine of the UCC, a deed to secure debt, mortgage or other real estate security instrument may no longer qualify as a fixture filing. This change is important because in a number of real estate secured transactions, the only UCC collateral in which a lender obtains a security interest is fixtures. Under prior law, it was not necessary in these transactions to file a financing statement. The recordation of the security deed fulfilled the dual function of conveying security title to the real estate and creating a perfected security interest in fixtures (assuming it contained the necessary fixture filing information). Under current law, a secured party must file a financing statement to perfect a security interest in fixtures.

Although the filing of a financing statement in the UCC records of the Office of the Clerk of the Superior Court of any county in the State of Georgia may, as a technical matter, result in the perfection of a security interest in fixtures, it will not obtain for the Secured Party the priority

---

<sup>6</sup> O.C.G.A. § 11-1-201(44)(a).

<sup>7</sup> By executing a security agreement, a debtor authorizes the filing of an initial financing statement covering the collateral described in the security agreement. *See* O.C.G.A. § 11-9-509(b). Alternatively, a debtor may authorize such a filing in a signed writing or other authenticated record. *See* O.C.G.A. § 11-9-509(a)

which would result from the filing of a fixture filing in the real property records of the county in which the Real Property is located.<sup>8</sup> Because secured lenders in most real estate transactions will file a financing statement as a fixture filing in the real property records of the subject county, the opinion as to perfection of the Secured Party's security interest in fixtures by its terms is limited solely to perfection as result of that fixture filing. If the Lender's only collateral will be goods that are or are to become fixtures, no filing in the UCC records is necessary, as the making of the proper fixture filing (or filings) in the real property records of the appropriate county (or counties) is sufficient to perfect the Lender's security interest.

The perfection opinion by its terms also excludes perfection of security interests in as-extracted collateral, crops or timber to be cut, since the filing of the Financing Statement in the UCC records of a county clerk's office in Georgia would not result in the perfection of security interests in such collateral. The Opinion Giver should make appropriate modifications to the Model UCC Opinion if the Opinion Recipient requires an opinion as to the perfection of security interests in these classes of collateral.

**C. Express Limitations.** The Model UCC Opinion is limited by its terms only to that collateral in which a security interest may be created under the UCC in effect in the State of Georgia and, as to perfection, only to that collateral in which a security interest is perfected by the filing of a financing statement in the State of Georgia. It therefore is subject to the following express limitations:

1. Jurisdiction Covered. The only law covered by the Model UCC Opinion is the UCC in effect in the State of Georgia. Therefore, to the extent that the creation or perfection of a security interest in any particular collateral is governed by the UCC in effect in a jurisdiction other than Georgia, such creation and perfection is excluded from the Model UCC Opinion. For example, if Borrower is a corporation or other registered organization organized in a U.S. state other than Georgia, then perfection of a security interest in Borrower's equipment (other than fixtures located in Georgia as to which a fixture filing is made), inventory, accounts, and general intangibles (among others) would not be governed by the Georgia UCC.

2. Type or Class of Collateral Covered. The Model UCC Opinion also does not cover the creation or perfection of a security interest in any collateral that is of a class or type that is excluded from the coverage of the UCC, such as real property, rents, leases, and deposit accounts in consumer transactions.

3. Limitation on Perfection. With respect to perfection, the Model UCC Opinion covers only that collateral in which a security interest may be perfected by the filing of a financing statement in the State of Georgia. Security interests in certain types of UCC Collateral (such as deposit accounts) may not be perfected by filing. In cases where perfection is effected by another method (such as by control or by possession of the collateral), no perfection opinion is given.

4. Collateral Covered. The Model UCC Opinion covers only that collateral that is described in the Security Deed, the Financing Statement and the Fixture Filing and

---

<sup>8</sup> See O.C.G.A. § 11-9-334.

therefore does not cover any collateral that is described in the Security Deed but that is not also described in both the Financing Statement and the Fixture Filing. It is the responsibility of the Opinion Recipient to satisfy itself that the Financing Statement and the Fixture Filing do not omit collateral that the Security Deed covers or include collateral that the Security Deed does not cover.

**20.03 Implied Assumptions and Exceptions to the Model UCC Opinion.** The Model UCC Opinion is subject to the implied assumptions and exceptions described below in this Section 20.03. These assumptions and exceptions are set forth primarily in Interpretive Standard 27, and a Model UCC Opinion that incorporates the conventions of this Report as reflected in the Interpretive Standards will be deemed to include and be subject to such assumptions and exceptions.

**A. Rights in Collateral.** The Model UCC Opinion assumes that Borrower has sufficient rights in the UCC Collateral for the Opinion Recipient's security interest to attach to the UCC Collateral. The Model UCC Opinion therefore does not provide assurances that Borrower has title to the UCC Collateral or otherwise has any rights in the UCC Collateral. However, with respect to UCC Collateral consisting of after-acquired property, the Model UCC Opinion does assure that under present law and subject to the other express and implied limitations and qualifications set forth in this Report, once Borrower has sufficient rights in the property for a security interest to attach, the Opinion Recipient will have a valid and perfected security interest in the property.

**B. Consideration.** The Model UCC Opinion assumes that contemporaneously with the delivery of the opinion to the Opinion Recipient, the Opinion Recipient will have either advanced to Borrower the proceeds of the Loan to be secured by the security interest or entered into a commitment to make the Loan. This assumption is necessary for satisfaction of the legal requirement that value be given as a prerequisite for the creation of a valid security interest.

**C. Name and Address of Secured Party and Name of Record Owner.** The Model UCC Opinion assumes that the name and mailing address of the secured party and the name of the record owner or lessee, if any, set forth in the Financing Statement and the Fixture Filing are accurate.

**D. Description of Real Property.** The Model UCC Opinion assumes that the description of the Real Property is accurate. Interpretive Standard 22 contains an assumption as to the accuracy and sufficiency of the description of the Property, which is comprised of the Real Property and the Personal Property. Also the Model UCC Opinion is subject to the implied qualification that it does not assure that the form of the real estate description is adequate. The UCC requires that the Fixture Filing contain a description of the real estate sufficient to give constructive notice of a mortgage under Georgia law.<sup>9</sup> It is inappropriate for an Opinion

---

<sup>9</sup> O.C.G.A. § 11-9-502(b)(3).

Recipient to request an opinion that a particular description of real estate would be sufficient to give constructive notice of a mortgage under Georgia law.<sup>10</sup>

**E. The Bankruptcy Exception.** The Model UCC Opinion is subject to the effect of bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights and remedies of creditors. The exception includes the effect of the Federal Bankruptcy Code in its entirety, including matters of contract rejection, fraudulent conveyance and obligation, turn-over, preference, equitable subordination, automatic stay, conversion of a non-recourse obligation into a recourse obligation, and substantive consolidation. It also includes state laws regarding fraudulent transfers, obligations and conveyances, including Sections 18-2-20 through 18-2-80 of the Georgia Code,<sup>11</sup> and state receivership laws.

**F. The Equitable Principles Exception.** The Model UCC Opinion is subject to the effect of general principles of equity, whether applied by a court of law or equity. The equitable principles exception includes the following concepts: (i) principles governing the availability of specific performance, injunctive relief or other traditional equitable remedies; (ii) principles affording traditional equitable defenses (e.g., waiver, laches and estoppel); (iii) good faith and fair dealing; (iv) reasonableness; (v) materiality of the breach; (vi) impracticability or impossibility of performance; (vii) the effect of obstruction or failure to perform or otherwise act in accordance with an agreement by a person other than Borrower; (viii) the effect of Section 1-102(3) of the UCC; and (ix) unconscionability.

**G. Adequacy of Collateral Description.** The Model UCC Opinion assumes that the descriptions of the collateral contained in the Security Deed, the Financing Statement and the Fixture Filing reasonably identify such collateral, except to the extent that the collateral is described by reference to the types of collateral defined in the UCC, other than commercial tort claims and, in consumer transactions, consumer goods, a security entitlement, a securities account, or a commodity account. Where collateral other than that falling within the above-listed exceptions is described by reference to the types of collateral defined in the UCC,<sup>12</sup> such descriptions are deemed automatically to be reasonable for purposes of the UCC.<sup>13</sup> As discussed below, the determination of the adequacy of a collateral description other than by reference to UCC collateral types is largely a question of fact, and therefore it is inappropriate for the

---

<sup>10</sup> A description of real property in a mortgage, in order to be valid, must identify the land or must contain a key by the use of which the description may be applied by extrinsic evidence. *See* Brasher v. Tanner, 353 S.E.2d 478 (Ga. 1987). The question of the sufficiency of description of property in a mortgage is one of law, for the court; that of the identity of the property mortgaged is one of fact, to be decided by the jury. *See* Chapman v. Bank of Cumming, 270 S.E.2d 4 (Ga. 1980).

<sup>11</sup> *See* O.C.G.A. §§ 18-2-20 to -59 (1999); Uniform Fraudulent Transfers Act, H.B. 84 (2002).

<sup>12</sup> Such defined UCC collateral types include accounts (including healthcare receivables), chattel paper (whether tangible or electronic), deposit accounts, documents, fixtures, general intangibles (including payment intangibles and software), goods (including inventory, equipment and fixtures), instruments (including promissory notes), investment property, letter-of-credit rights, letters of credit, proceeds (including cash proceeds and non-cash proceeds), and supporting obligations. *See* O.C.G.A. § 11-9-101.

<sup>13</sup> *See* O.C.G.A. §§ 11-9-108 and -504.

Opinion Giver to provide opinion assurance on this issue.<sup>14</sup> Interpretive Standard 22 includes an assumption as to the adequacy and sufficiency of the description of the Property, which is comprised of the Real Property and the Personal Property.

**H. Conversion into Proceeds.** The Model UCC Opinion is subject to the implied qualification that perfection of a security interest may be lost under the circumstances set forth in Section 9-315 of the UCC with respect to UCC Collateral that is converted into proceeds.<sup>15</sup>

**I. Filing of Continuation Statements.** The Model UCC Opinion is subject to the implied qualification that perfection of the security interest terminates unless appropriate continuation statements are filed within six months prior to the end of each successive five year period from the date of the original filing of the Financing Statement.<sup>16</sup>

**J. Future Events.** The Model UCC Opinion does not cover future events that might affect perfection, such as changes in a debtor's name that make the Financing Statement or the Fixture Filing seriously misleading, or the change of the debtor's location<sup>17</sup> to a new jurisdiction outside the State of Georgia.

**K. Fixtures.** With respect to fixtures, the Model UCC Opinion covers only those fixtures that are attached to the Real Property covered by the Security Deed.

**L. Building Materials.** The Model UCC Opinion does not cover any security interest in ordinary building materials that are incorporated into an improvement on the Real Property.<sup>18</sup>

**20.04 Matters Not Covered by the Model UCC Opinion.** The Model UCC Opinion does not address the priority of any security interest. It is customary for the Opinion Recipient to obtain a title examination and lien search reports<sup>19</sup> as well as representations from Borrower, to

---

<sup>14</sup> Under Georgia law, a collateral description in a financing statement is sufficient if "the description provides such a key to the identity of the property as would enable a person of ordinary business prudence, upon inquiry, to discover the actual identity of the property described." *In re Env'tl. Elec. Payment Sys., Inc.*, 11 B.R. 965 (Bankr. N.D. Ga. 1981). *See also* *Trust Co. Bank v. Walker*, 35 B.R. 237 (Bankr. N.D. Ga. 1983) (description in security agreement must reasonably describe the collateral). The Financing Statement and the Fixture Filing need not restate verbatim the collateral description contained in the Security Deed, so long as the description provides constructive notice of the collateral.

<sup>15</sup> O.C.G.A. § 11-9-315.

<sup>16</sup> O.C.G.A. § 11-9-515.

<sup>17</sup> *See* O.C.G.A. § 11-9-307.

<sup>18</sup> Once building materials become so incorporated, they lose their character as personal property. O.C.G.A. § 11-9-334(a) ("a security interest does not exist under this article in ordinary building materials incorporated into an improvement on land").

<sup>19</sup> Most lenders obtain lien search reports from commercial lien search companies. Because of the change in Georgia's UCC filing and indexing rules as of January 1, 1995, it is necessary to search both in the central computer index (for post-January 1, 1995, UCC filings) as well as in the records of each county where a financing statement filing would have been made under prior law (for pre-January 1, 1995, filings). Beginning

provide the Opinion Recipient with the necessary assurances that its liens and security interests have the requisite priority.

**20.05 Practice Procedure for the Model UCC Opinion.** Described below are the steps to be taken by the Opinion Giver in reviewing the Financing Statement and the Fixture Filing in connection with the Model UCC Opinion. Until such time, if any, that the Georgia Superior Court Clerks' Cooperative Authority prescribes additional official forms, both the Financing Statement and the Fixture Filing must be only on the national Uniform Commercial Code financing statement form (Form UCC1), as set out in Section 9-521(a) of official text of Revised Article 9 of the Uniform Commercial Code.<sup>20</sup>

**A. Financing Statement.** Under Section 9-502 of the UCC, a Financing Statement must contain:

- (i) the legal name of Borrower (debtor),<sup>21</sup> which, if Borrower is a registered organization, must be the name of Borrower shown on the public record of Borrower's jurisdiction of organization,<sup>22</sup> and, if Borrower is an individual, should include Borrower's last name;<sup>23</sup>

*Note:* The name on the Financing Statement must be the exact legal name of Borrower. A trade name or assumed name is not sufficient unless the trade name or assumed name is so similar to the legal name of Borrower that a search of the records office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement using such trade name or assumed name, so as to make the use of such trade name or assumed not seriously misleading.<sup>24</sup> The Opinion Giver should determine the legal name of Borrower from a certified copy of Borrower's Organizational Documents or from a certificate of Borrower.

---

January 1, 2000, only a central index search will be necessary since continuation statements of pre-January filings will be reflected in the central index. It should be noted that a lien search will not necessarily uncover all competing interests in the personal property collateral that might prime the lender's security interest. For an excellent, though somewhat dated, discussion of the limits of lien searches, see Gerald T. McLaughlin, "Seek But You May Not Find": Non-UCC Recorded, Unrecorded and Hidden Security Interests Under Article 9 of the Uniform Commercial Code, 53 FORDHAM L. REV. 953 (1985).

<sup>20</sup> See O.C.G.A. § 11-9-521.

<sup>21</sup> O.C.G.A. § 11-9-502(a)(1).

<sup>22</sup> O.C.G.A. § 11-9-503(a).

<sup>23</sup> O.C.G.A. § 11-9-516(b)(3)(C).

<sup>24</sup> O.C.G.A. § 11-9-506(c).

- (ii) the secured party's name;<sup>25</sup>

*Note:* Because the Model UCC Opinion assumes that the name in the financing statement is accurate, the Opinion Giver need not verify the accuracy of the secured party's name.

- (iii) an indication of the collateral covered by the financing statement;<sup>26</sup> and

*Note:* Because the Model UCC Opinion is subject to the implied qualification that, except for collateral (other than commercial tort claims and, in consumer transactions, consumer goods, a security entitlement, a securities account, or a commodity account) which is described by reference to types of collateral defined in the UCC, it does not assure that the Financing Statement adequately describes the collateral that it purports to cover, the Opinion Giver need not determine whether the collateral description is adequate

- (iv) where the collateral described consists only of consumer goods and the secured obligation is originally \$5000.00 or less, the maturity date of the secured obligation or a statement that such obligation is not subject to a maturity date.<sup>27</sup>

In addition, in order for the Financing Statement to be in a form which the filing office is not entitled to refuse to accept, it must contain:

- (v) a mailing address of Borrower (debtor);<sup>28</sup>

*Note:* The address need not be the address of Borrower's chief executive office; any valid mailing address of Borrower is permissible.

- (vi) a mailing address of the secured party;<sup>29</sup> and

*Note:* Because the Model UCC Opinion assumes that the address in the financing statement is accurate, the Opinion Giver need not verify the accuracy of the secured party's address.

---

<sup>25</sup> O.C.G.A. § 11-9-502(a)(2).

<sup>26</sup> O.C.G.A. § 11-9-502(a)(3).

<sup>27</sup> O.C.G.A. § 11-9-502(a)(4).

<sup>28</sup> O.C.G.A. § 11-9-516(b)(5)(A).

<sup>29</sup> O.C.G.A. § 11-9-516(b)(4).

- (vii) an indication of whether Borrower (debtor) is an individual or an organization, and if Borrower is an organization, Borrower's type of organization and jurisdiction in which it was organized.<sup>30</sup>

*Note:* The Opinion Giver should determine the type of organization and jurisdiction of organization of Borrower from a certified copy of Borrower's Organizational Documents or from a certificate of Borrower.

**B. Fixture Filing.** Under Section 9-502 of the UCC, a Fixture Filing must contain:

- (i) the legal name of Borrower (debtor), which, if Borrower is a registered organization, must be the name of Borrower shown on the public record of Borrower's jurisdiction of organization, and, if Borrower is an individual, must include Borrower's last name;
- (ii) the secured party's name;
- (iii) an indication of the collateral covered by the financing statement;
- (iv) where the collateral described consists only of consumer goods and the secured obligation is originally \$5000.00 or less, the maturity date of the secured obligation or a statement that such obligation is not subject to a maturity date;
- (v) an indication that the Fixture Filing covers goods that are or are to become fixtures;<sup>31</sup>
- (vi) an indication that the Fixture Filing is to be filed for record in the real property records;<sup>32</sup>
- (vii) a description of the Real Property to which fixtures are attached sufficient to give constructive notice of a mortgage under Georgia law if the description were contained in a record of the mortgage of the real property;<sup>33</sup> and

*Note:* Because the Model UCC Opinion assumes that the description of the Real Property is accurate, the Opinion Giver need not independently verify the accuracy of the real estate description. The Model UCC Opinion

---

<sup>30</sup> O.C.G.A. §§ 11-9-516(b)(5)(B) and (C).

<sup>31</sup> O.C.G.A. 11-9-502(b)(1).

<sup>32</sup> O.C.G.A. 11-9-502(b)(2).

<sup>33</sup> O.C.G.A. 11-9-502(b)(3).

also is subject to the implied qualification that it does not assure that the form of the description of the Real Property is adequate.

- (viii) if Borrower (debtor) does not have an interest of record in the real estate, the identity of the record owner or record lessee of the Real Property.<sup>34</sup>

*Note:* For the Opinion Recipient to obtain valid security title under the Security Deed to the Borrower's (debtor's) interest in the Real Property that is enforceable against third parties, Borrower must have an interest of record in the Real Property, and therefore it should not be necessary to identify in the Fixture Filing the record owner or record lessee of the Real Property. Nonetheless, to the extent that the financing statement identifies the record owner or record lessee, the Model UCC Opinion assumes that the identification is accurate, and therefore the Opinion Giver need not independently verify the accuracy of the identity of the record owner or record lessee.

In addition, in order for the Fixture Filing to be in a form which the filing office is not entitled to refuse to accept, it must contain:

- (ix) a mailing address of Borrower (debtor);
- (x) a mailing address of the secured party; and
- (xi) an indication of whether Borrower (debtor) is an individual or an organization, and if Borrower is an organization, Borrower's type of organization and jurisdiction in which it was organized.

The due diligence, if any, required of the Opinion Giver with respect to Items (i) through (iv) and (ix) through (xi) above is the same as for the corresponding items in the Financing Statement.

\* \* \* \* \*

---

<sup>34</sup> O.C.G.A. 11-9-502(b)(4).

4. Interpretive Standard 27 (Model UCC Opinion) contained in Appendix I is hereby deleted in its entirety and the following provision is hereby inserted in lieu thereof:

27. Model UCC Opinion.

A. General Meaning. The Model UCC Opinion, subject to the limitations contained in these Interpretive Standards, means that:

(1) The Security Deed creates in favor of the Opinion Recipient a security interest in such of the Personal Property and fixtures described in the Security Deed as collateral in which a security interest may be created under the UCC in effect in the State of Georgia (the "UCC Collateral").

(2) To the extent that a security interest may be perfected by the filing of a financing statement in the State of Georgia, (i) the filing of the Financing Statement in the UCC records of the Office of the Clerk of the Superior Court of any county in the State of Georgia will result in the perfection of such security interest in the UCC Collateral (other than fixtures, as-extracted collateral, crops or timber to be cut) described in the Financing Statement, and (ii) the further recordation of the Fixture Filing in the real property records of the Office of the Clerk of the Superior Court of the county in which the Real Property is located will result in the perfection of such security interest in the UCC Collateral described in the Fixture Filing that consists of goods that are or are to become fixtures.

B. Implied Assumptions and Exceptions. The Model UCC Opinion is subject to the following implied assumptions and exceptions:

(1) The Model UCC Opinion assumes that Borrower has sufficient rights in the UCC Collateral for the security interest of the Opinion Recipient to attach thereto. The Model UCC Opinion does not provide assurances that Borrower has title to the UCC Collateral.

(2) The Model UCC Opinion assumes that contemporaneously with the delivery of the opinion to the Opinion Recipient, the Opinion Recipient will have either advanced to Borrower the proceeds of the Loan to be secured by the security interest or entered into a commitment to make the Loan.

(3) The Model UCC Opinion assumes that the name and address of the secured party and the name of the record owner or lessee set forth in the Financing Statement and the Fixture Filing are accurate.

(4) The Model UCC Opinion assumes that the description of the Real Property is accurate (as provided in Interpretive Standard 22).

(5) The Model UCC Opinion assumes that the security interest is subject to the effects of bankruptcy and insolvency law (as provided in Interpretive Standard 25(1)).

(6) The Model UCC Opinion assumes that the security interest is subject to equitable principles (as provided in Interpretive Standard 25(2)).

(7) The Model UCC Opinion does not assure that the Security Deed, the Financing Statement or the Fixture Filing adequately describes the collateral they purport to cover, except to the extent that the Personal Property collateral is described by reference to the types of collateral defined in the UCC, other than commercial tort claims and, in consumer transactions, consumer goods, a security entitlement, a securities account, or a commodity account.

(8) The Model UCC Opinion is subject to the implied qualification that the perfection of a security interest may be lost under circumstances set forth in Section 9-315 of the UCC with respect to UCC Collateral that is converted into proceeds.

(9) The Model UCC Opinion is subject to the implied qualification that perfection terminates unless appropriate continuation statements are filed within six months prior to the end of each successive five year period from the date of filing.

(10) The Model UCC Opinion does not cover future events that might affect perfection.

(11) With respect to fixtures, the Model UCC Opinion covers only those fixtures that are attached to the Real Property covered by the Security Deed.

(12) The Model UCC Opinion does not cover any security interest in ordinary building materials that are incorporated into an improvement on the Real Property.

\* \* \* \* \*

5. The Model Opinion contained in Appendix II is hereby deleted in its entirety and the attached Appendix II is hereby inserted in lieu thereof.

**APPENDIX II**  
**MODEL OPINION**

DATE

The Opinion Recipient  
Street Address  
City, State Zip

Ladies and Gentlemen:

We have acted as counsel to \_\_\_\_\_ (“Borrower”), a Georgia corporation/general partnership/limited partnership/limited liability partnership/limited liability limited partnership/limited liability company, and \_\_\_\_\_ (“Guarantor”)\*, a resident of the State of Georgia in connection with the closing of a \$\_\_\_\_\_ loan (the “Loan”) from \_\_\_\_\_ (“Lender”), secured by certain real property (the “Real Property”) located in \_\_\_\_\_ County, Georgia, and related personal property (the “Personal Property”) (the “Real Property” and the “Personal Property” hereinafter collectively referred to as the “Property”).

This Opinion Letter is limited by, and is in accordance with, the October 15, 1997, edition of the Interpretive Standards applicable to Legal Opinions to Third Parties in Georgia Real Estate Secured Transactions adopted by the Legal Opinion Committee of the Real Property Law Section of the State Bar of Georgia and approved by the Executive Committee of the Real Property Law Section of the State Bar of Georgia, as supplemented on May 20, 2002, and such Interpretive Standards are incorporated in this Opinion Letter by this reference. Capitalized terms used in this opinion letter (and any attachments hereto) and not otherwise defined herein shall have the meanings assigned to such terms in the Interpretive Standards.

In the capacity described above; we have considered such matters of law and of fact, including the examination of originals or copies, certified or otherwise identified to our satisfaction, of such records and documents of Borrower, certificates of officers/partners/members/managers and representatives of Borrower, certificates of public officials and such other documents as we have deemed appropriate as a basis for the opinions hereinafter set forth.

The opinions set forth herein are limited to the laws of the State of Georgia and applicable federal laws.

In connection with the Loan, we have examined the following documents (the “Loan Documents”), executed by Borrower:

---

\* For purposes of the Model Opinion it is assumed that Guarantor is an individual; if Guarantor were an entity, the Model Opinion would include as to Guarantor parallel opinions to the Model Status, Powers and Acts Opinions as to Borrower set forth in Paragraphs 1-3 of the Model Opinion.

- (a) Promissory Note in the original principal amount of \$ \_\_\_\_\_ (the “Note”);
- (b) Deed to Secure Debt and Security Agreement (the “Security Deed”);
- (c) Assignment of Rents and Leases;
- (d) UCC-1 Financing Statement (the “Financing Statement”); and
- (e) UCC-1 Financing Statement to be filed as a fixture filing (the “Fixture Filing”).

Each of the Loan Documents, other than the Financing Statement and the Fixture Filing, is dated as of \_\_\_\_\_.

We have also examined the Guaranty (the “Guaranty”), executed by Guarantor and dated as of \_\_\_\_\_.

Based upon and limited by the foregoing, it is our opinion that:

1. Borrower was duly organized as a corporation/limited partnership/limited liability limited partnership/limited liability company and is existing and in good standing under the laws of the State of Georgia.

[or]

Borrower is a general partnership/limited liability partnership existing under the laws of the State of Georgia.

2. Borrower has the power to execute and deliver the Loan Documents, to perform its obligations under the Loan Documents, to own and use the Property and to conduct its business.

3. Borrower has duly authorized the execution and delivery of the Loan Documents and all performance by Borrower thereunder and has duly executed and delivered the Loan Documents.

4. The execution and delivery by Borrower of the Loan Documents do not violate Borrower’s Organizational Documents, and, to our knowledge, do not (i) violate any constitution, statute, regulation, rule, order or law known to us to which Borrower or the Property is subject, (ii) constitute a breach or default under any other written agreements known to us to which Borrower is a party or by which Borrower or the Property is bound, or (iii) violate any judicial or administrative decree, writ, judgment or order known to us to which Borrower or the Property is subject.

5. The execution and delivery by Guarantor of the Guaranty, to our knowledge, do not (i) violate any constitution, statute, regulation, rule, order or law known to us to which Guarantor is subject, (ii) constitute a breach or default under any other written agreements known to us to which Guarantor is a party, or (iii) violate any judicial or administrative decree, writ, judgment or order known to us to which Guarantor is subject.

6. No consent, approval, authorization or other action by, or filing with, any governmental authority of the United States or the State of Georgia is required for Borrower's execution and delivery of the Loan Documents or for Guarantor's execution and delivery of the Guaranty and the closing of the Loan Transaction [except...].

7. The Loan Documents are enforceable against Borrower [or are valid and enforceable against Borrower in accordance with their respective terms].

The enforceability opinion set forth above is subject to the qualification that certain provisions of the Loan Documents may not be enforceable; nevertheless, such unenforceability will not render the Loan Documents invalid as a whole or preclude (i) the judicial enforcement of the obligation of Borrower to repay the principal, together with interest thereon, as provided in the Note, as limited by the usury opinion set forth below and subject to the obligation to confirm an exercise of power of sale pursuant to O.C.G.A. Section 44-14-161 as a prerequisite to the collection of any deficiency judgment, (ii) the acceleration of the obligation of Borrower to repay such principal, together with such interest, upon a material default by Borrower in the payment of such principal or interest, and (iii) the non judicial foreclosure of the security title to the Real Property by exercise of power of sale pursuant to the Security Deed in accordance with Georgia law upon maturity of the Note or upon acceleration pursuant to (ii) above.

The Guaranty is enforceable against Guarantor [or is valid and enforceable against Guarantor in accordance with its terms].

The enforceability opinion set forth above with respect to the Guaranty is subject to the qualification that certain provisions of the Guaranty may not be enforceable; nevertheless, such unenforceability will not render the Guaranty invalid as a whole or preclude the judicial enforcement of Guarantor's obligation to pay the principal balance of the indebtedness guaranteed pursuant to the Guaranty, together with interest thereon, as provided in the Guaranty, as limited by the usury opinion set forth below.

8. The Loan Documents and the Interest Charges contracted for therein are in compliance with the Usury Laws of the State of Georgia; provided, however, that (i) no opinion is expressed with respect to the compliance with the Usury Laws of any provisions in the Loan Documents that purport to permit Interest Charges, however denominated and regardless of whether or not denominated as interest, to be charged, paid, collected or contracted for at a rate in excess of five percent (5%) per month if and to the extent a violation of O.C.G.A. Section 7-4-18 results (whether due to prepayment, acceleration, redemption, cancellation, termination or otherwise), and (ii) no opinion is expressed with respect to the compliance with the Usury Laws of any provisions in the Loan Documents that purport to permit interest to be charged or paid on interest if and to the extent such provisions result in a violation of O.C.G.A. Section 7-4-17.\*

9. The Security Deed creates in favor of Lender, as security for all obligations of Borrower purported to be secured thereby, a security interest in such of the Personal Property

---

\* The Model Usury Opinion is to be given only as to loans in the amount of \$250,000 or more. For a discussion of opinions relating to loans of more than \$3,000 but less than \$250,000, see § 19.02C.1(a). This Report does not address loans of \$3,000 or less as discussed in § 19.02C.1(c).

and fixtures described therein as collateral in which a security interest may be created under the Uniform Commercial Code (the “UCC”) in effect in the State of Georgia (the “UCC Collateral”). To the extent that a security interest may be perfected by the filing of a financing statement in the State of Georgia, (i) the filing of the Financing Statement in the UCC records of the Office of the Clerk of the Superior Court of any county in the State of Georgia will result in a perfection of such security interest in the UCC Collateral (other than fixtures, as-extracted collateral, crops or timber to be cut) described in the Financing Statement, and (ii) the further recordation of the Fixture Filing in the real property records of the Office of the Clerk of the Superior Court of the county in which the Real Property is located will result in the perfection of such security interest in the UCC Collateral described in the Fixture Filing that consists of goods that are or are to become fixtures.

Based upon the limitations and qualifications set forth above, we can confirm to you that, to our knowledge, except as set forth on Exhibit \_\_ hereto, (i) there is no litigation or other proceeding pending before any court or administrative agency against Borrower or the Property, which, if adversely determined, would have a material adverse effect on the Property or the financial condition of Borrower, and (ii) there is no litigation or other proceeding pending before any court or administrative agency against Guarantor, which, if adversely determined, would have a material adverse effect on the financial condition of Guarantor.

This Opinion Letter is provided to you for your exclusive use solely in connection with the Loan and may not be relied upon by any other person or for any other purpose without our prior written consent.

Very truly yours,

[Signature of the Lawyer/  
Law Firm Representing Borrower]