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MEMORANDUM

TO: ELEVENTH ANNUAL REAL ESTATE SYMPOSIUM ATTENDEES
FROM: CATHERINE H. FINN, ESQ.
RE: TITLE INSURANCE COVERAGE AND
CREATION OF LIMITED LIABILITY COMPANIES
DATE: May 4, 2004

In its Opinion in *Gebhardt Family Investments, LLC, et al v Nations Title Insurance of New York, Inc.*, the Court of Special Appeals of Maryland addressed the issue of whether individuals insured under a policy of title insurance who convey the subject property to a limited liability company of which the insured individuals are the sole members continue to be covered under the policy of title insurance. The Court held that coverage was terminated when the property was conveyed.

Joseph and Faye Gebhardt purchased 31.6707 acres of land in Prince George's County, Maryland in September 1987. At the same time, they purchased a policy of title insurance from Nations Title Insurance of New York, Inc. The policy named Joseph and Faye Gebhardt as the insureds. In 1995, the Gebhardts learned that someone else was paying property taxes on 4.75 acres of the property. They notified Nations Title Insurance of New York, Inc. of the possible cloud on their title. Before the matter was resolved, the Gebhardts conveyed all 31.6707 acres to Gebhardt Family Investments, LLC, a limited liability company created apparently to facilitate their estate planning. The deed recited consideration of \$160,999.00.

The Gebhardts and Gebhardt Family Investments, LLC sued Nations for breach of contract for failing to resolve the cloud on their title. At trial, Joseph Gebhardt testified that he and his wife had formed the LLC as part of their estate planning, that

they were the sole members of the LLC, and that no money was actually paid by the LLC to the Gebhardts for the transfer of the property. Therefore, the Gebhardts argued that there had not in fact been a conveyance from the Gebhardts to the LLC. The Court disagreed finding that the LLC was a legally separate entity distinct from the Gebhardts as individuals, and that, even if no money changed hands, there was consideration for the conveyance, including the estate planning benefits the Gebhardts experienced by the creation of the LLC.

The Gebhardts further argued that even if the property was conveyed to the LLC, they are nevertheless entitled to coverage because they submitted their claim before the property was conveyed. The Court rejected this argument on the grounds that the Gebhardts did not sustain a loss. They conveyed the property to the LLC and therefore the property was not unmarketable. Any cloud on the title was the problem of the LLC and not the Gebhardts.

While formation of a limited liability company and the placing of assets in the LLC have in many respects become garden variety transactions, there are certain subtleties which should be considered, this case illustrates one such issue.

At Maddin Hauser, we have a great deal of experience assisting clients with all types of real estate transactions and litigation issues. If you have any questions regarding title insurance coverage and/or claims, or any other issue, please feel free to contact me at (248) 359-7521 or chf@maddinhauser.com.