

Beware Letters of Intent – You May Get More than You Bargained For

By Trish Weaver

Sometimes, as parties are negotiating an agreement, they will sign an interim document – such as a letter of intent (LOI) or memorandum of understanding (MOU) – reflecting the terms to be incorporated into a later, formal agreement. While parties in some circumstances want and intend these interim documents to be binding, more often they believe that they will not be bound until the formal agreement is signed. The Maryland Court of Appeals just decided a case that should disabuse parties of the latter belief and alert them to proceed with caution.

In *Falls Garden Condominium Association, Inc. v. Falls Homeowners Association, Inc.*, No. 30, September Term 2014, the Court held that, if all material terms are stated in definite, unambiguous language, a court need not consider any extrinsic evidence (emails, testimony regarding the parties' understanding of whether they were bound, etc.) and should find the interim document binding on the parties. In the *Falls Garden* case, the letter of intent did not expressly state whether it was binding on the parties, but it did expressly state that a lease and a formal settlement agreement would be drafted by one party and submitted to the other party for "review, comment, and execution." The Court of Appeals ruled that, in the absence of an express statement in the interim document making clear that it is either binding or not binding, the critical determination is whether the interim document included all definite material terms. The Court went on to explain that, if the material terms are definite, they are binding, and that the trial court need not consider anything beyond the face of the document. The Court of Appeals also took a narrow view of the scope of terms considered to be material.

PRACTICE TIP: If an LOI or MOU is to be used, it should contain an express statement as to whether or not the parties intend to be bound by that document. If you do not wish to be bound, you should insert a provision that expressly and particularly states that the parties intend not to be bound until the formal written agreement is executed. Simply expressing that the parties will execute a formal agreement containing the terms will not do.