MARYLAND LEAD POISONING PREVENTION COMMISSION

October 6, 2016

Attorney General Brian E. Frosh
Office of the Attorney General
200 St. Paul Place
Baltimore, MD 21202

Dear Attorney General Frosh:

The Lead Poisoning Prevention Commission (Lead Commission) is unclear about the actual holdings and practical effects of the *Dackman* decision on certain provisions of the Insurance Article concerning coverage for qualified offers (e.g. 19-704). The Lead Commission is requesting an Attorney General opinion on (1) whether a qualified offer may be made or not, and (2) what are the obligations of an insurance company to pay out on a qualified offer as described under §19-704 of the Insurance Article.

Section 19-704 Subsections (d)-(f) of the Insurance Article still contains language that reflects the requirements of the Reduction of Lead Risk in Housing Act. Under Section 19-704, a landlord that meets certain requirements either under §6-816 or §6-815(a)(2) of the Environmental Article and submits certain documentation to the insurer, may be able to obtain coverage from an insurer for a qualified offer.

As enacted, the Reduction of lead Risk in Housing Act (RLRHA) requires landlords of properties with lead paint to implement certain mitigating measures and provide notices to prospective and current tenants of the presence of lead. In return, landlords who comply with the mitigating measures and inspection requirements of the Act are able to avoid or minimize liability for lead paint related injuries to children under age 6 or pregnant women who reside or spend 24 hours or more each week in the affected rental property. The language of the statute expressly caps the liability of the landlord at $7,500 for medical care and $9,000 for relocation expenses; this is called a "qualified offer". Once a qualified offer is made (and regardless of whether the offer is accepted or rejected), the statute, as enacted, waives all other liability for lead-related injuries. These waivers of liability provisions are referred to here, collectively, as the "immunity" provisions. The endorsement to an insurance policy provides coverage solely for the expenses related to a qualified offer.

In the *Zi'Tashia Jackson v. The Dackman Co.* case, the Court of Appeals held that the immunity provisions of the RLRHA are unconstitutional. The Court recognized that under Article 19, the Legislature can restrict an individual's right to access to the courts, and offer a substitute remedy for an injury so long as the substitute remedy is "reasonable". The Court concluded that, because it was unreasonable for a statute to bar a child from bringing suit for his/her injuries before the child reaches the age of majority, the provisions violate Article 19 of the Maryland Constitution. The Court further held that, under Section 23 of Article 1 of the Maryland Code, these provisions are severed from the Act because the RLRHA did not expressly state that its provisions are not severable. The Lead Commission is requesting an opinion from the Attorney General's office about whether the provisions defining a qualified offer under the Insurance Article and permitting a property owner to make such an offer are unaffected by the *Dackman* decision. As such, the Lead Commission is asking for clarification about whether a landlord could still make a qualified offer as provided for under the Insurance Article but that making such an offer will not waive all other potential liability for lead related injuries.

Sincerely,

Patricia M Laine

Patricia McLaine, DrPH, MPH, RN
Chair, Maryland Lead Poisoning Prevention Commission