

Board on the Unauthorized Practice of Law of
The Supreme Court of Ohio

65 S. Front Street, 5th Floor
Columbus, Ohio 43215-3431
www.supremecourtofohio.gov/UPL

Advisory Opinion **UPL 2008-02**

Issued: December 12, 2008

Nonattorney Completion of Mortgage Instruments

SYLLABUS: A nonattorney employee may perform the act of completing a standardized form mortgage for his/her bank or lender employer without the supervision of an attorney admitted to practice law in Ohio.

OPINION: The question addressed in this opinion is whether a nonattorney employee of a lending institution or bank may complete a standard form mortgage to which the lender or bank is a party.¹ The preparation of a legal instrument for another in Ohio is considered the practice of law. *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St. 23. A mortgage is a type of legal instrument used for the conveyance of title to property that is given as security for the payment of a debt or the performance of a duty that will become void upon payment. *National Bank of Columbus v. Tennessee C. I. & R. Co.* (1990), 62 Ohio St. 564, 585. The unauthorized practice of law in Ohio is defined as “the rendering of legal services for another by any person not admitted to practice in Ohio under Rule I and not granted active status under Rule VI, or certified under Rule II, Rule IX, or Rule XI of the Supreme Court Rules for the Government of the Bar of Ohio.” Gov. Bar R. VII(2)(A). The preparation of a legal instrument by an individual not licensed to practice law in Ohio for another constitutes the unauthorized practice of law.

The Board is aware that a practice has evolved in Ohio whereby banks and lenders prepare or complete standard form mortgage instruments and related documents through nonattorney in-house lending staff, third party document preparers, and title companies. Often the mortgage is a standard form widely used for the sale of various mortgage products and is drafted to comply with federal requirements. The only terms changed in each iteration or use of the form mortgage document are the names of the parties and the legal description or address of the property to be encumbered. Typically no legal knowledge, discretion or special skills are involved in the completion of the document. The act of preparing a mortgage document in simple lending transactions is chiefly one of a clerical nature, since it typically involves the completion of a standardized form mortgage document by using common knowledge to insert the required information. See *Gustafson v. V.C. Taylor & Sons, Inc.* (1941), 138 Ohio St. 392.

¹ The permissibility of the charging of a fee to the mortgagor for the preparation of the mortgage instrument is not discussed in this opinion.

In Ohio, the preparation of mortgages and other real estate documents for others, where the preparer has no direct or primary interest as principal, is the unauthorized practice of law. See *Dworken* at 24; *In re Unauthorized Practice* (1936), 7 Ohio Op. 110. However jurisdictions adopting similar reasoning expressly recognize a *pro se* exception that a party's completion of a legal document for use in a transaction to which it is an interested party is not the unauthorized practice of law. *King v. First Capital Fin. Servs. Corp.*, 828 N.E.2d 1155 (Ill. 2005); *Title Guaranty Company v. Denver Bar Association* (1957) 135 Colo. 423; *Chicago Bar Ass'n v. Quinlan & Tyson, Inc.* (1966), 34 Ill. 2d 116, 214 N.E.2d 771. Recently, other jurisdictions have formally adopted a similar position that the preparation of a form mortgage document by a lay employee of a bank or lending institution is not the practice of law. *Dressel v. Ameribank* (2003), 664 N.W.2d 151 (Mich. 2003); *Charter One Mortgage Corp. v. Condra*, 865 N.E.2d 602 (Ind. 2007).

Based on the above analysis, a form mortgage document prepared by a bank or lender has an obvious direct and primary benefit to the party that prepared it. Therefore, the completion of a form mortgage document by a bank or a licensed lender to lend its money and secure property as collateral is not the preparation of a legal instrument for another and consequently the Board concludes it is not the practice of law in Ohio. A nonattorney of a bank or lending institution may perform the act of completing a standard form mortgage document by filling in blanks for his/her mortgagee employer without the supervision of an attorney admitted to practice law in Ohio. However, neither a bank nor its employees may advise another about the legal effect of a mortgage or the legal rights and duties of the parties. Nor may a bank or lending institution rely on a third party document preparer that has no direct and primary interest in the transaction to prepare a mortgage instrument for its use. In the latter example, the preparation is the act of preparing a legal instrument for another and clearly constitutes the unauthorized practice of law.

Advisory opinions of the Board on the Unauthorized Practice of Law are informal and nonbinding pursuant to Gov. Bar R. VII(2) in response to prospective or hypothetical questions submitted by unauthorized practice of law committees of local or state bar associations and the Office of Disciplinary Counsel.