

Pursuant to Part Six: Section IV, Paragraph 10(c)(iv) of the Rules of the Supreme Court of Virginia, the Virginia State Bar Council, at its meeting on June 14–15, 2001, in Virginia Beach, Virginia, is expected to consider for approval, disapproval, or modification, the following proposed unauthorized practice of law opinions issued by the Standing Committee on the Unauthorized Practice of Law.

The proposed unauthorized practice of law advisory opinions may be inspected at the office of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

Any individual, business or other entity may file or submit written comments in support of, or in opposition to, the advisory opinions by filing ten copies with Thomas A. Edmonds, the Executive Director of the Virginia State Bar, not later than May 2, 2001.

UPL Opinion 197

Virginia State Bar Council to Review Unauthorized Practice of Law Opinion Concerning a Nonlawyer's Representation of a Party to a Real Estate Transaction

Opinion 197 was issued by the Standing Committee on the Unauthorized Practice of Law on June 26, 2000, and revised and reissued on January 22, 2001. This opinion generally addresses 1) whether a title company can be retained to serve as a legal representative of the seller in a real estate transaction when that title company is not the settlement agent in the transaction; 2) whether the title company can represent the seller if the person employed by the title company is an attorney in private practice who owns the title company, and 3) whether the attorney in the capacity as owner/employee of the title company could perform legal services for clients of the title company.

In this opinion, the Committee concluded that since the title company would not be acting as settlement agent under the Consumer Real Estate Protection Act (CRESPA), the title company would violate the Unauthorized Practice Rules if it undertook such representation and prepared any legal instruments. Only an attorney engaged in private practice and licensed to practice law in the Commonwealth of Virginia can serve as counsel to a party to a real estate transaction. In the context of a real estate transaction, a non-lawyer may not give legal advice to a party nor prepare legal instruments to which he or she is not a party. If the seller needs or desires legal representation, the seller cannot be represented by the attorney employed by the title company. The title company is a lay entity which is not authorized to practice law, and cannot employ its attorney to provide legal services to its customers.

UPL Opinion 198

Virginia State Bar Council to Review Unauthorized Practice of Law Opinion Concerning Activities of a Business Composed of Nonlawyers and Offering Residential Foreclosure Services

Opinion 198 was issued by the Standing Committee on the Unauthorized Practice of Law on January 22, 2001. This opinion generally addresses whether certain services could be performed by a business, whose principals are nonlawyers, which offers residential foreclosure services to mortgage lenders and servicers. The business would generate revenue by charging trustee fees and commissions. Of the twenty-one (21) tasks the business proposes to provide, the opinion finds that there are two items which would constitute the unauthorized practice of law if done by nonlawyer trustees: 1) drafting of Forbearance Agreements; and 2) drafting of Deeds in Lieu of Foreclosure.

UPL Opinion 201

Virginia State Bar Council to Review Unauthorized Practice of Law Opinion Concerning Activities of Attorneys Not Licensed to Practice Law in Virginia and Working in a Law Firm's Virginia Office

Opinion 201 was issued by the Standing Committee on the Unauthorized Practice of Law on January 22, 2001. This opinion generally addresses what activities are permissible for an attorney, who is not licensed to practice law in Virginia, and who works in the Virginia office of a multi-jurisdictional firm.

In this opinion, the Committee concluded that the attorney may: 1) advise a client on matters involving the law of the jurisdiction where the attorney is licensed; 2) advise a client and prepare legal documents in matters involving federal law, assuming the attorney is admitted to practice before that federal court; and 3) provide legal services concerning Virginia law when directly supervised by a Virginia-licensed attorney if the attorney-client relationship remains between the Virginia attorney and the client. The opinion also concluded that it would be the unauthorized practice of law for the attorney to 1) advise any client in Virginia on matters of law that involve neither federal law nor the law of the jurisdiction where the attorney is licensed; and 2) provide legal advice or prepare legal documents directly for a Virginia client in Virginia on matters involving Virginia law.