

UPL Advisory Opinion No. 2003-2

Issued by the Standing Committee on the Unlicensed Practice of Law on April 22, 2003. Approved by the Supreme Court of Georgia on November 10, 2003. In re UPL Advisory Opinion 2003-2, 277 Ga. 472 (2003).

QUESTION PRESENTED

Is the preparation and execution of a deed of conveyance (including, but not limited to, a warranty deed, limited warranty deed, quitclaim deed, security deed, and deed to secure debt) considered the unlicensed practice of law if someone other than a duly licensed Georgia attorney prepares or facilitates the execution of said deed(s) for the benefit of the seller, borrower and lender?

SUMMARY ANSWER

Yes. Under Georgia law, the preparation of a document that serves to secure a legal right is considered the practice of law. The execution of a deed of conveyance, because it is an integral part of the real estate closing process, is also the practice of law. As a general rule it would, therefore, be the unlicensed practice of law for a nonlawyer to prepare or facilitate the execution of such deeds.

OPINION

In answering the above question, the Committee looks to the law as set out "by statute, court rule, and case law of the State of Georgia." Bar Rule 14-2.1(a). "Conveyancing," "[t]he preparation of legal instruments of all kinds whereby a legal right is secured," "[t]he rendering of opinions as to the validity or invalidity of titles to real or personal property," "[t]he giving of any legal advice" and "[a]ny action taken for others in any matter connected with the law" is considered the practice of law in Georgia. O.C.G.A. §15-19-50. Moreover, it is illegal for a nonlawyer "[t]o render or furnish legal services or advice." O.C.G.A. §15-19-51.

There are certain exceptions to these statutory provisions. For example, "no bank shall be prohibited from giving any advice to its customers in matters incidental to banks or banking..." O.C.G.A. §15-19-52. A title insurance company "may prepare such papers as it thinks proper or necessary in connection with a title which it proposes to insure, in order, in its opinion, for it to be willing to insure the title, where no charge is made by it for the papers." Id. Nonlawyers may examine records of title to real property, prepare abstracts of title, and issue related insurance. O.C.G.A. §15-19-53. O.C.G.A. §15-19-54 allows nonlawyers to provide attorneys with paralegal and clerical services, so long as "at all times the attorney receiving the information or services shall maintain full professional and direct responsibility to his clients for the information and services received."

In addition to the acts of the Georgia legislature, the Supreme Court of Georgia has made it clear that the preparation of deeds constitutes the practice of law, and is to be undertaken on behalf of another only by a duly qualified and licensed Georgia attorney. For example, the Court has issued the Rules Governing Admission to the Practice of Law

in Georgia. Under Part E of those rules, an individual can be licensed as a "foreign law consultant," and thereby be authorized to "render legal services and give professional legal advice on, and only on, the law of the foreign country in which the foreign law consultant is admitted to practice...." Since such an individual has not been regularly admitted to the State Bar of Georgia, the Court prohibits foreign law consultants from providing any other legal services to the public. For purposes of this discussion, it is noteworthy that Part E, §2(b) states that a foreign law consultant may not "prepare any deed, mortgage, assignment, discharge, lease, trust instrument, or any other instrument affecting title to real estate located in the United States of America."

The Committee concludes that, with the limited exception of those activities expressly permitted by the Georgia legislature or courts, the preparation of deeds of conveyance on behalf of another within the state of Georgia by anyone other than a duly licensed attorney constitutes the unlicensed practice of law.

The Committee turns its attention to the execution of deeds of conveyance. Pro se handling of one's own legal affairs is, of course, entirely permissible, and there is nothing in Georgia law to "prevent any corporation, voluntary association, or individual from doing any act or acts set out in Code Section 15-19-50 to which the persons are a party...." O.C.G.A. §15-19-52. The Committee instead focuses on "notary closers," "signing agents," and others who are not a party to the real estate closing, but nonetheless inject themselves into the closing process and conduct, for example, a "witness only closing." A "witness only closing" is one in which an individual presides over the execution of deeds of conveyance and other closing documents, but purports to do so merely as a witness and notary, not as someone who is practicing law.

The Supreme Court of Georgia periodically issues advisory opinions relating to attorney conduct. Under Court rule, such opinions have "the same precedential authority given to the regularly published judicial opinions of the Court." Bar Rule 4-403(e). It would be proper, then, for the Committee to turn to any relevant advisory opinions for guidance.

In Formal Advisory Opinion 86-5, the Supreme Court of Georgia interpreted the word "conveyancing" as set out in O.C.G.A. §15-19-50, and considered what the term meant in relation to the closing of a real estate transaction. The Court viewed a real estate closing "as the entire series of events through which title to the land is conveyed from one party to another party...." That being the case, the Court concluded "it would be ethically improper for a lawyer to aid nonlawyers to 'close' real estate transactions," or for a lawyer to "delegate to a nonlawyer the responsibility to 'close' the real estate transaction without the participation of an attorney."

In Formal Advisory Opinion 00-3, the Court restated its view that the real estate closing is a continuous, interconnected series of events. The Court made it clear that, in order for an attorney to avoid possible disciplinary sanctions for aiding a nonlawyer in the unauthorized practice of law, "[t]he lawyer must be in control of the closing process from beginning to end. The supervision of the paralegal must be direct and constant." The Court held that "[e]ven though the paralegal may state that they are not a lawyer and is

not there for the purpose of giving legal advice, circumstances may arise where one involved in this process as a purchaser, seller or lender would look to the paralegal for advice and/or explanations normally provided by a lawyer. This is not permissible." A lawyer who aids a nonlawyer in the unauthorized practice of law can be disbarred. Georgia Rule of Professional Conduct 5.5.

The Committee finds that those who conduct witness only closings or otherwise facilitate the execution of deeds of conveyance on behalf of others are engaged in the practice of law. As noted above, "conveyancing" is deemed to be the practice of law, and the very purpose of a deed is to effectuate a conveyance of real property. In reviewing the foregoing opinions of the Supreme Court of Georgia, the Committee concludes that the execution of a deed of conveyance is so intimately interwoven with the other elements of the closing process so as to be inseparable from the closing as a whole. It is one of "the entire series of events through which title to the land is conveyed from one party to another party." To view the execution of a deed of conveyance as something separate and distinct from the other phases of the closing process--and thus as something other than the practice of law--would not only be forced and artificial, it would run counter to the opinions of the Court. Such an interpretation would mean that a nonlawyer could lawfully preside over the execution of deeds of conveyance, yet an attorney who allowed an unsupervised paralegal to engage in precisely the same activity could be disbarred. An interpretation of Court opinions that leads to such an incongruous result cannot be proper. Rather, the view consistent with those opinions is that one who facilitates the execution of deeds of conveyance is practicing law.

Accordingly, the Committee concludes that, subject to any relevant exceptions set out by the Georgia legislature or courts, one who facilitates the execution of a deed of conveyance on behalf of another within the state of Georgia is engaged in the practice of law. One does not become licensed to practice law simply by procuring a notary seal. A Georgia lawyer who conducts a witness only closing does not, of course, engage in the unlicensed practice of law. There may well exist, however, professional liability or disciplinary concerns that fall outside the scope of this opinion.

Refinance closings, second mortgages, home equity loans, construction loans and other secured real estate loan transactions may differ in certain particulars from purchase transactions. Nevertheless, the centerpiece of these transactions is the conveyance of real property. Such transactions are, therefore, subject to the same analysis as set out above.