

## THE UNAUTHORIZED PRACTICE OF LAW NORTH CAROLINA CLOSINGS

North Carolina has always been a battleground between Attorneys and Non Attorneys over who can take part in Real Estate Transactions. There are three main sources of legal precedent and guidance in North Carolina. The National Settlement Industry and National Title Industry tend to focus in on the main two areas: The North Carolina General Statutes and the Authorized Practice Advisory Opinion 2002-1 which was originally released in 2003 and later revised in 2012. While these two bodies of authority are rich in information, and provide very nice laundry lists of what specific tasks are considered the practice of law, in order to ensure some form of compliance with the whole of North Carolina Practice, it is necessary to consider the Case Law which applies the statute, and State Bar rules to actual scenarios. Many members of the National Settlement Industry and National Title Underwriters simply ignore this key body of legal precedent and often find themselves subject to the disciplinary activities of the North Carolina State Bar. This document is not intended to be an exhaustive treatise on this subject, rather this shall serve as a guide to many of the high points of contention and their origins. Readers are notified that the opinions of this document are for illustration only, and should not be relied upon for any specific fact pattern. This document shall not constitute legal advice, the opinion or view of the North Carolina State Bar or any other organization, rather this is a basic analysis of these bodies of law and a road map to further exploration. You are encouraged to seek the representation of North Carolina Counsel to give you legal advice specific to your facts and situation.

### Part 1- North Carolina General Statutes

The Statutory Guide which appears on the North Carolina State Bar Website discusses the many pertinent statutes which define the practice of law: [http://www.ncbar.gov/PDFs/upl\\_statutes.pdf](http://www.ncbar.gov/PDFs/upl_statutes.pdf)

The two most important statutes for the purposes of this discussion are Section 84-2.1 and Section 84-5.

**§ 84-2.1.**-The phrase “practice law” as used in this Chapter is defined to be performing any legal service for any other person, firm or corporation, with or without compensation, **specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies, or assisting by advice, counsel, or otherwise in any legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation . . .**

In summary the direct definition of the practice of law includes as it applies to the Real Estate and Mortgage industry includes: Drafting Deeds, Mortgages, and other legal documents, searching the public records and passing on an opinion of title and rendering opinions as to the legal rights of any party in a real estate transaction.

Section 84-5 of the North Carolina General Statutes discusses who is authorized to perform tasks which are defined as the practice of law and who may make advertise such services to the general public. **§ 84-5. Prohibition as to practice of law by corporation** -It shall be unlawful for any corporation to practice law or appear as an attorney for any person in any court in this State, . . . or hold itself out to the public or advertise as being entitled to practice law; and no corporation shall organize corporations, or draw agreements, or other legal documents, or draw wills, or practice law, or give legal advice, or hold itself out in any manner as being entitled to do any of the foregoing acts, by or through any person orally or by advertisement, letter or circular. . . Section 84-5 of the North Carolina General Statutes is misunderstood and often overlooked. It stands for the proposition that a corporation may not search title, prepare or aid in the preparation of deeds, mortgages and other instruments. This also means that a Settlement Company, Title Company or Underwriter may not circumvent these rules by simply hiring a North Carolina Attorney “on staff” to provide it with the product, and then simply resell it to the end user; only a law firm may hold itself out as being able to practice law; may participate in actions deemed the practice of law, and may provide legal services to consumers and end users.

In addition to the definitions of what constitutes the practice the law and who may practice, legislative changes in 2012 created a private cause of action for the unauthorized practice of law, and the harsh disgorgement penalty for any fees collected by a party taking part in the unauthorized practice of law. These 2012 changes were lobbied for and passed by the private trade organization made up of North Carolina Practitioners and the North Carolina Title Companies and Underwriters, and designed to combat the entrance of the National Industry into the North Carolina Industry. These powers are broad, well thought out and designed to be used. To date this has not be used, however as the industry becomes more and more competitive we expect an action much like REBA v NREIS which was decided in Massachusettes to be brought to bar.

## PART 2- Authorized Practice of Law Advisory Opinion 2002-1

In 2001 the North Carolina State Bar was requested to interpret the North Carolina unauthorized practice of law statutes (N.C. Gen. Stat. §§84-2.1 to 84-5) as they apply to residential real estate transactions. In 2003 and again in 2012 the State Bar released and revised **Authorized Practice Advisory Opinion 2002-1 for the purpose of** interpreting the unauthorized practice of law statutes as it relates to the consummation of Residential Real Estate Transactions. This Opinion is based on two separate inquiries each of which is answered with a simple “yes” or “no”, followed by an examination of related questions addressed used to reach the simple answer. This is a summary of the opinion based on the authors reading of the Opinion, and shall not relied upon as binding law. A copy of the opinion is attached for the readers review.

**The first inquiry made by the State Bar in this Opinion is: May a nonlawyer handle a residential real estate closing for one or more of the parties to the transaction?**

The Bar issued a very simple one word answer: NO. The meat of the answer to this inquiry is really a description of what the closing process in North Carolina looks like. I have broken the first paragraph into phases to help show what the State Bar views as the different phases of a Residential Real Estate Closing. It is very important to note that in the sentence immediately after the list the State Bar makes it clear that every part of the step and each phase is not all composed of activities that are considered the practice of law, some are ministerial in nature, some are considered practicing law, and there are some which are unidentified.

### TITLE PHASE

- (a) reviewing the purchase agreement for any conditions that must be met before closing;
- (b) abstracting titles;
- (c) providing an opinion on title;
- (d) applying for title insurance policies, including title insurance policies that may require tailored coverage to protect the interests of the lender, the owner, or both[i];
- (e) resolving possible clouds on title and issues concerning the legal rights of parties to the transaction;

### DOCUMENT PREPARATION PHASE

- (f) preparing legal documents, such as deeds (in the case of a purchase transaction), deeds of trust, and lien waivers or affidavits;

### DOCUMENT SIGNING AND EXECUTION

- (g) interpreting and explaining documents implicating parties’ legal rights, obligations, and options;
- (h) overseeing execution and acknowledgement of documents in compliance with legal mandates;

### RECORDATION ACCOUNTING AND POST CLOSING

- (i) handling the recordation and cancellation of documents in accordance with North Carolina law;
- (j) disbursing proceeds when legally permitted after legally-recognized funds are available and all closing conditions have been satisfied;
- (k) providing a post-closing final opinion of title for title insurance after all prior liens have been satisfied.

“These and other functions are sometimes called, collectively, the “closing” of the residential real estate transaction. As detailed below, the North Carolina General Assembly has determined specifically that only persons who are

licensed to practice law in this state may handle **most** of these functions.” The key word in this passage is “most” we will look at how the Courts define this in the State Bar vs Lighthouse Title Case

The Second Paragraph of Opinion #1 examines who may practice law and who may not practice law in North Carolina. The answer is clear:

“A person who is not licensed to practice law in North Carolina and is not working under the direct supervision of an active member of the State Bar may not perform functions or services that constitute the practice of law.[iii] Under the express language of N.C. Gen. Stat. §§ 84-2.1 and 84-4” This means that a Lawyer must do the steps which constitute the practice of law or must supervise a lay person as they do it. The term supervise has been interpreted throughout the various ethics codes in North Carolina and other states to mean that the lay person should be properly vetted by the lawyer to ensure they have proper moral fiber and knowledge, that the lawyer prescribes how the task is to be done by the lay person, and makes sure they are properly instructed on how to do it, and provides any forms or checklists to assist the lay person. The supervising lawyer must have the opportunity to exercise legal judgment during the task, and have the opportunity to review the work of the lay person and critique the same. The supervising lawyer must be available to the lay person while they are working for the lawyer should a consultation become necessary. In the electronic age it is easy for a supervising lawyer to immediately communicate with the lay person, look at the documentation the lay person is looking at as well as to give legal advice directly to the end client. The natural question which flows from this paragraph is what are the acts which a lay person cannot undertake on their own. The simple answer is: that the lay person may not undertake any action which would require the exercise of legal judgment or the giving of legal advice to a third party. The next paragraph makes this a little easier with our second list of examples of acts considered to be practice of law.

Accordingly, a nonlawyer is engaged in the unauthorized practice of law if he or she performs any of the following functions in connection with a residential real estate closing (identified only as examples):

1. Abstracts or provides an opinion on title to real property;
2. Explains the legal status of title to real estate, the legal effect of anything found in the chain of title, or the legal effect of an item reported as an exception in a title insurance commitment except as necessary to underwrite a policy of insurance and except that a licensed title insurer, agency, or agent may explain an underwriting decision to an insured or prospective insured, including providing the reason for such decision;
3. Explains or gives advice or counsel about the rights or responsibilities of parties concerning matters disclosed by a land survey under circumstances that require the exercise of legal judgment or that have implications with respect to a party’s legal rights or obligations;
4. Provides a legal opinion, advice, or counsel in response to inquiries by any of the parties regarding legal rights or obligations of any person, firm, or corporation, including but not limited to the rights and obligations created by the purchase agreement, a promissory note, the effect of a pre-payment penalty, the rights of parties under a right of rescission, and the rights of a lender under a deed of trust;
5. Advises, counsels, or instructs a party to the transaction with respect to alternative ways for taking title to the property or the legal consequences of taking title in a particular manner;
6. Drafts a legal document for a party to the transaction or assists a party in the completion of a legal document, or selects or assists a party in selecting a form legal document among several forms having different legal implications;
7. Explains or recommends a course of action to a party to the transaction under circumstances that require the exercise of legal judgment or that have implications with respect to the party’s legal rights or obligations;
8. Attempts to settle or resolve a dispute between the parties to the transaction that will have implications with respect to their respective legal rights or obligations;
9. Determines that all conditions of the purchase agreement or the loan closing instructions have been satisfied in accordance with the buyer’s or the lender’s interests or instructions;

10 Determines that the deed and deed of trust may be recorded after an update of title for any intervening conveyances or liens since the preliminary opinion;

11. Determines that the funds may be legally disbursed pursuant to the North Carolina Good Funds Settlement Act, N.C. Gen. Stat. § 45A-1 et seq.[iv]

The foregoing list of examples of functions that constitute the practice of law is not exclusive, but reflects a range of responsibilities and duties that involve the following: the exercise of legal judgment; the preparation of legal documents such as deeds, deeds of trust, and title opinions; the explanation or interpretation of legal documents in circumstances that require the exercise of legal judgment; the provision of legal advice or opinions; and the performance of other services that constitute the practice of law.

The next section of this second paragraph defines who can claim to be able to provide legal services: “Under the express language of N.C. Gen. Stat. § 84-4, it is unlawful for any person other than an active member of the State Bar to hold himself or herself out as competent or qualified to give legal advice or counsel or as furnishing any services that constitute the practice of law. Additionally, under N.C. Gen. Stat. § 84-5, a business entity, including a corporation or limited liability company, may not provide or offer to provide legal services or the services of attorneys to its customers even if the services are performed by licensed attorneys employed by the entity. *See, Duke Power Co. v. Daniels*, 86 N.C. App. 469, 358 S.E.2d 87 (1987); *Gardner v. North Carolina State Bar*, 316 N.C. 285, 341 S.E.2d 517 (1986), and *State ex rel. Seawell v. Carolina Motor Club, Inc.*, 209 N.C. 624, 184 S.E. 540 (1936).

**APAO 2002-1 Inquiry 2 Drills Down to specify exactly what duties a lay person may or may not carry out if they are not under the direct supervision of a licensed North Carolina Attorney. The inquiry specifically asks:** “May a nonlawyer who is not acting under the supervision of a lawyer licensed in North Carolina (1) present and identify the documents necessary to complete a North Carolina residential real estate closing, direct the parties where to sign the documents, and ensure that the parties have properly executed the documents; and (2) receive and disburse the closing funds?”

**Again the State Bar responds with a one word answer, then continues to examine the question in depth and describes the relationship which much be developed between a Lawyer and a Non Lawyer. It also prohibits the Non Lawyer from engaging in the activities set forth in the first Opinion.** However the state bar does allow a non attorney to do two very clear and distinct duties : (1) present and identify the documents necessary to complete a North Carolina residential real estate closing, direct the parties where to sign the documents, and ensure that the parties have properly executed the documents; or (2) receive and disburse the closing funds. This language is clearly fleshed out in the Lighthouse Case which follows.

From a technical standpoint the Bar states that regardless of the fact that the Non Lawyer is permitted to perform these very limited duties without direct supervision, this does not mean that the nonlawyer is “handling the closing”. This becomes an issue in advertising and websites for national title and settlement providers. Since, as described in issue 1 above, the closing is a collection of services, most of which involve the practice of law, a lawyer must provide the necessary legal services, and is heavily covered in the ensuing case law.

N.C. Gen. Stat. § 84-5 prohibits nonlawyers from arranging for or providing the lawyer or any legal services, in other words it is illegal for a Lawyer to be “on Call” if they are not actually handling the whole closing. In North Carolina nonlawyers may not specifically advertise or represent to lenders, buyers/borrowers, or others in any manner that suggests that the nonlawyer will (i) handle the “closing;” (ii) provide the legal services associated with a closing, such as providing title searches, title opinions, document preparation, or the services of a lawyer for the closing; or (iii) “represent” any party to the closing.<sup>[vi]</sup> The lawyer must be selected by the party for whom the legal services will be provided, and must perform all legal services incident to the transaction, and retain full responsibility for the actions of the non lawyers. Almost without exception, many nonlawyer service providers are corporations or limited liability companies that market their services to lenders, not consumers. Many are also title insurance agents. Accordingly, lenders commonly inform borrowers that the nonlawyer settlement agent will be conducting “the closing” without any meaningful opportunity for the borrower to decide to retain a lawyer to protect its interests. Additionally, when the nonlawyer is a title insurance agent, the borrower usually is given no

choice on insurer or available rates. The Committee expresses no opinion whether these actions may violate N.C. Gen. Stat. § 75-17, which prohibits a lender from requiring its borrower to obtain a policy of title insurance from a particular insurance company, agent, broker or other person specified by the lender. Title companies (and other parties) may refer lenders or borrowers to attorneys at their customer's request, but may not require the use of a specific attorney or charge a fee for any such referral.

The evidence the State Bar has considered suggests, however, that performing administrative or ministerial activities in connection with the execution of residential real estate closing documents and the receipt and disbursement of the closing proceeds does not necessarily require the exercise of legal judgment or the giving of legal advice or opinions. Indeed, the execution of closing documents and the disbursement of closing proceeds may be accomplished—and often have been accomplished—by mail, by email, or by other electronic means, or by some other procedure that would not involve the lawyer and the parties being physically present at one place and time. The State Bar therefore concludes that it should not be presumed that performing the task of overseeing the execution of residential real estate closing documents and receiving and disbursing closing proceeds necessarily involves giving legal advice or opinions or otherwise engaging in activities that constitute the practice of law.

In 2011, a new attorney trade organization modeled after the Real Estate Bar Association (REBA) was born. REBA was the entity which sued and successfully enjoined NREIS from operating in MA. The new organization was called the Real Estate Lawyers Association of North Carolina (RELANC). One of the main missions of this organization was to enforce the UPL rules and to protect the citizens of NC. Currently the organization has been focusing on changing legislation and rules in order to protect the citizens of the State. While their heart seems to be in right place, I think there is an element territorialism which is lurking in the background. In 2012 RELANC was successful in getting two major changes to the way North Carolina deals with matters of Unauthorized Practice of Law. RELANC was able to get the North Carolina Legislature to adopt SB 339 which modified the NC Statutes as follows:-

- 1. All interest earned by any person who maintains a trust or escrow account to disburse closing and loan funds on real estate closings must pay interest to IOLTA. – *This has been the basis of several actions in several states where the State Bar was using the loss of IOLTA funding as a compelling reason for attorneys to be utilized in closings rather than lay closers.*
- 2. No person who violates the provisions prohibiting the unauthorized practice of law in the North Carolina General Statutes may collect any fees. – *While this appears to be innocent on its face, this rule has been interpreted by RELANC, and members of the Unauthorized Practice committee to mean that in the event a party is found to have participated in UPL, all fees earned as a result of that practice, or in the course of practice over time must be disgorged from the offending party. In other words, if a company makes \$500,000 per year and its found that their acts constitute UPL, the company may be required by the court to return the \$500,000 to the parties.*
- 3. There is established a private cause of action against any person who knowingly commits or aids and abets another person committing the unauthorized practice of law. *In the past only the State Bar or Attorney General, had the right to bring an action for UPL. Under this new statute, a private entity such as an individual lawyer, or trade group could bring an action for UPL; in other words, any party could bring this action, and the accused entity would be forced to defend the cause of action in court at a great expense. This is precisely how REBA was able to bring a cause of action against NREIS in MA. This is also a way for the action to not be in violation of the Commerce Clause of the Constitution.*

Needless to say, this has drastically changed the environment in North Carolina, and it seems to have been wholly ignored by many of the national service providers who operate in NC You can access the entire Authorized Practice Advisory Opinion 2002-1: <http://www.ncbar.com/ethics/ethics.asp?id=656>; And read up on the view of the Authorized Practice Committee of the State Bar on the North Carolina State Bar Website: <http://www.ncbar.gov/programs/upl.asp>



## PART 3 CASE LAW

In the following Section of this document, we will look at how the Courts have interpreted and applied the Statutes and APAO 2002-1 to the facts of a case. In the following case, Lighthouse Title was a national settlement services provider and title insurance company which advertised that it could handle closings, title searches and title curative work in North Carolina.

The facts of the case show that the court felt that if a non attorney advertised on the internet that it could provide legal services in North Carolina, that it got paid for providing legal services on the HUD-1/ Settlement Statement, or offered services direct to the public, it was misleading the public into believing it was qualified to practice law in the state. This case provides bright line rules which establish what roles certain parties may hold and get paid for. It also provides guidance on how to structure the transaction so it does not run afoul of North Carolina Statute. The red comments are the comments of the author and not of the court or the bar. The light blue shaded boxes correspond to a workflow which may be attached for further explanation in certain specific proposals.

There are several key concepts set out in this decision:

Paragraphs 4,5,6,7,9 and 14 when taken together stands for the proposition that it is unlawful for a company which is not a licensed law firm in North Carolina to provide searches, abstracts, and documents to a third party even if they were prepared by a licensed North Carolina Attorney who was hired by the nonlawyer to produce legal services which were then provided to the third party by the nonlawyer. This often appears when a non-lawyer utilizes its panel of abstractors to perform a search to be certified by a licensed attorney for a settlement company or other client. Furthermore, the North Carolina Rules of Professional Conduct (RPC) 216, adopted on July 18, 1997 states:

Using the Services of an Independent Title Abstractor:

Opinion rules that a lawyer may use the services of a nonlawyer independent contractor to search a title provided the nonlawyer is properly supervised by the lawyer.

Paragraph 8 represents a commonly misunderstood concept of law in North Carolina. In the “finding of facts” #8 the Court held that it is unlawful for a company which is not a licensed law firm in North Carolina to be listed as collecting a fee for a legal service: ie a title search. The Court states that by allowing this to appear on the HUD-1, the non-lawyer is holding itself out as being able to provide legal services.

Paragraph 9 represents a commonly misunderstood concept of law in North Carolina. In the “finding of facts” #9 the Court held that it is unlawful for a company which is not a licensed law firm in North Carolina to offer Title Curative and Document Preparation Services.

Paragraph 12 represents a commonly misunderstood concept of law in North Carolina. In the “finding of facts” #12 the Court held that it is unlawful for a company which is not a licensed law firm in North Carolina to respond to inquiries of the parties as to their rights under the loan documents or other parts of the closing. It also makes it clear that a non-lawyer may not point out certain provisions in the documents in response to inquiries.

Paragraph 14 represents a commonly misunderstood concept of law in North Carolina. In the “finding of facts” #14 the Court held that it is unlawful for a company which is not a licensed law firm in North Carolina to hire a lawyer on behalf of a third party to provide legal services. In other words the court does not permit a non attorney to “re-sell” the legal work of a licensed attorney to a third party. In the closing industry this often means, that the certifying attorney must be retained by the title company, the lender, seller or borrower. It cannot be retained by the title company for the borrower or the lender.

Our proprietary workflow which has been developed over the years takes into account all three aspects discussed in the various parts of this document and is designed specifically to meet these standards. While there are certainly firms who will bend the rules, it our position to follow the letter of the law and interpretation of the courts.

FILED

STATE OF NORTH CAROLINA  
WAKE COUNTY

2005 AUG 30 PM 1:25  
IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
WAKE COUNTY, N.C. FILE NO.: 05 CVS 10637

BY \_\_\_\_\_  
THE NORTH CAROLINA STATE BAR,  
  
Plaintiff

v.

LIGHTHOUSE TITLE AGENCY, INC.;  
LIGHTHOUSE TITLE AGENCY, INC. d/b/a  
LTA CORP; WILLARD BRADLEY LAMB;  
and WILLARD BRADLEY LAMB d/b/a  
LIGHTHOUSE TITLE AGENCY, INC.  
and/or LTA CORP  
  
Defendants

CONSENT ORDER OF  
PERMANENT INJUNCTION

THIS MATTER comes before the Court on the consent of the parties before the undersigned Judge of Superior Court of Wake County. Jennifer A. Porter represented the Plaintiff, the North Carolina State Bar. Amanda A. Mingo represented the Defendants, Lighthouse Title Agency, Inc. and Willard Bradley Lamb. Based upon the State Bar's verified complaint and the exhibits attached thereto and with the stipulation and consent of the parties, the Court hereby enters the following

#### FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereinafter "State Bar"), is a body duly organized under the laws of the state of North Carolina and is a proper body to bring this proceeding under the authority granted to it in Chapter 84 of the General Statutes of North Carolina and the rules and regulations of the State Bar promulgated pursuant thereto.

2. The Authorized Practice Committee is a standing committee of the State Bar appointed and authorized, pursuant to N.C. Gen. Stat. § 84-37(a) and 27 N.C.A.C. Chapter 1, Subchapter D, §§ .0201 et. seq., to investigate any charges or complaints of the unauthorized practice of law and bring actions against any person or entity that engaged in rendering any legal services unauthorized or prohibited by law.



3. Lighthouse Title Agency, Inc. is,

Lighthouse was a corporation and not a professional corporation or law firm licensed to provide legal services in NC

Carolina business corporation conducting business and trade under the name of "Lighthouse Title Agency, Inc." at 4801 East Independence Boulevard, #307, Charlotte, NC 28212 (hereafter "Lighthouse").

4. Willard Bradley Lamb ("Lamb") is a citizen and resident of Mecklenburg County, North Carolina and is Lighthouse's president and registered agent.

5. In about January 2005 Lamb and Lighthouse began doing business as LTA Corp in addition to doing business as Lighthouse Title Agency, Inc. LTA Corp has not filed incorporation papers with the North Carolina Secretary of State's Office. In about January 2005 the Defendants began doing business from the address of 9115 Harris Corners Parkway, Suite 540, Charlotte, NC 28269.

6. Defendant Lighthouse is not a corporation authorized to practice law in North Carolina under the provisions of Chapter 55B of the General Statutes of North Carolina, nor is there a corporation by the name of LTA Corp authorized to practice law in North Carolina under the provisions of Chapter 55B of the General Statutes of North Carolina.

7. Defendant Lamb is not a licensed attorney at law in North Carolina and is not authorized to practice law in North Carolina.

8. As part of its business, Lighthouse provides title insurance policies to parties with interests in real property, including owners and mortgagees. Stewart Title is an insurance company organized and operated in accordance with Chapter 58 of the General Statutes of North Carolina.

Lighthouse was a title agent for national underwriters and also provided closing services, for both purchases and refis

9. In addition to providing title insurance to customers, Lighthouse offers to provide loan closing services for residential real estate transactions to the public as part of its usual and customary business, including services associated with loan closings in both purchase and refinance transactions.

Lighthouse Advertised its services on flyers and internet

10. In its promotional materials, both in printed form and/or in electronic form on internet sites affiliated with Lighthouse, Lighthouse offers to provide "complete Title and Closing services" in several states, including North Carolina. It states that it offers "24 - 48 hour turnaround on Title Searches" and states that "Timely, accurate title searches . . . are our standard." In its materials, Lighthouse also offers "Preparation of Subordination Agreements"

Lighthouse also advertised they could prepare documents, record, and clear title.

Lighthouse appeared to be paid for bringdown and recording on HUD-1

and "Recordation of appropriate documents." Included in the list of title search related services, Lighthouse offers "Personal attention to the clearing of title issues."

11. Lighthouse has been listed on line 1204 of HUD-1 Settlement Statements having performed "Update & Recording Bringdown" services for closings.

12. Lighthouse customers have requested Lighthouse provide opinions of title on property without issuing a title insurance policy. Lighthouse has provided title opinions with issuing title insurance for such customers. Lighthouse has hired non-attorneys to prepare title abstracts that Lighthouse then provided to an attorney retained by Lighthouse for review/certification. Lighthouse received the title abstract from the attorney and then provided the title opinion to the Lighthouse customer.

Lighthouse hired non attorney abstractor to provide search to attorney to review

13. Preparation of title opinions constitutes abstracting or passing upon titles. Nothing in Chapter 58 of the General Statutes authorizes title insurance companies or their agents to give an opinion of title or to abstract or pass upon titles to customers.

Lighthouse collected a fee on HUD-1 for title search and document preparation

14. In the course of providing loan closing services for some residential real estate transactions, Lighthouse has prepared and otherwise provided the deeds and other legal documents for its customers.

15. On those occasions when Lighthouse provided a title opinion to a customer for a residential real estate transaction, Lighthouse listed itself on line 1102 of the HUD-1 Settlement Statement as receiving a fee for "Abstract or Title Search."

16. On those occasions when Lighthouse provided a deed or other legal documents for a customer for a residential real estate transaction, Lighthouse listed itself on line 1105 the HUD-1 Settlement Statement as receiving a fee for document preparation and indicated the fee was for preparation of a deed.

17. When Lighthouse is hired to conduct a residential real estate closing for a customer, a non-attorney agent of Lighthouse is sent to conduct that closing. When conducting a closing, the agent of Lighthouse informs the borrower that the agent is not an attorney. The agent has the borrower sign a "Scope of Representation" form. This form states that Lighthouse represents the lender in that transaction. It also creates the impression that Lighthouse could represent the borrower and/or seller by its statements "We are limiting our representation to make it more convenient for you. The North Carolina State Bar would require a lawyer meet with you if we represented you."



Non attorney closing agents answered borrowers questions

18. While conducting a closing, if a borrower has a question that the Lighthouse agent feels can be answered from the documents being signed to close the residential real estate transaction and/or loan, the agent will direct the borrower to the document and/or a provision within the documents.

LIGHTHOUSE retained atty to answer client questions

19. In addition, Lighthouse has retained an attorney and offers the services of its attorney to respond to borrower questions.

20. After the closing, Lighthouse has the appropriate documentation recorded at the appropriate register of deeds office.

THE COURT HELD AND MADE THESE CONCLUSIONS OF LAW

CONCLUSIONS OF LAW

1. The Court has both personal jurisdiction over the defendant and subject matter jurisdiction in this cause.

2. Plaintiff, the North Carolina State Bar, has the authority to bring this action pursuant to N.C. Gen. Stat. § 84-37.

3. Plaintiff's verified complaint is accepted as an affidavit of the Chair of the Authorized Practice Committee of the North Carolina State Bar.

4. Preparation of deeds is the practice of law in North Carolina as defined by N.C. Gen. Stat. § 84-2.1. Preparing deeds and other instruments is the practice of law

5. Preparation of title opinions constitutes abstracting or passing upon title the practice of law in North Carolina as defined by N.C. Gen. Stat. § 84-2.1. Preparing title opinions constitutes passing and abstracting on title

6. Utilizing non-attorneys to prepare title abstracts for third parties Lighthouse to abstract or pass upon title, which is the practice of law in North Carolina as defined by N.C. Gen. Stat. § 84-2.1.

7. Under N.C. Gen. Stat. § 84-5, it is unlawful for a corporation not authorized to practice law under the provisions of Chapter 55B of the General Statutes of North Carolina to practice law or provide legal services or advice.

8. The listing of Lighthouse on HUD-1 Settlement Statements on line 1102 to receive compensation for "Abstract or Title Search" and/or on line 1105 to receive compensation for the preparation of a legal document and/or on line 1204 to receive compensation for "update & Recording Bringdown" is a holding out of Lighthouse as able to provide these legal services to others.

Because searching and preparing opinions constitutes the practice of law, it is illegal to collect a fee for that service on the HUD-1

Note  
I  
Step  
18

9. Lighthouse's Scope of Representation for legal representation to the lender and is a holding out of representation in a real estate transaction in general.

Because Title Curative and Document preparation is considered the practice of law, it was illegal for Lighthouse to advertise and represent it could provide that service.

10. Through its promotional materials, Lighthouse offers to provide legal services to others, including the drafting of legal documents, title abstracting, and representation for the "clearing of title issues."

Note  
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Step  
7-10

11. Under N.C. Gen. Stat. § 84-5, it is unlawful for a corporation not authorized to practice law under the provisions of Chapter 55B of the General Statutes of North Carolina to hold itself out to the public as being entitled to provide legal services or advice to others or to otherwise practice law.

12. By identifying certain sections of documents as responsive to a borrower's question, the non-attorney agents of Lighthouse are exercising legal judgment and providing legal advice.

It was illegal for an agent of Lighthouse to respond to client questions about the closing documents. Because that constitutes Practicing law

Note  
J  
Step  
24

13. Under N.C. Gen. Stat. § 84-4, it is unlawful for any person other than an active member of the Bar of the State of North Carolina admitted and licensed to practice as an attorney-at-law to provide legal advice to another.

14. Under N.C. Gen. Stat. § 84-5, it is unlawful for a corporation not authorized to practice law under the provisions of Chapter 55B of the General Statutes of North Carolina to give legal advice to another or to provide legal services to the public or customers of that corporation even if provided by a licensed attorney at law employed or retained by the corporation.

Note  
E

15. The above-described acts, activities, and representations constitute the unauthorized practice of law by Defendants, both individually and collectively, in violation of

#14 is very important in that the Court holds that a Non Attorney may NOT provide legal services directly to a consumer even if it was prepared by a duly licensed NC attorney. The attorney must be actively retained by one of the parties to the transaction.

injury, loss and damages as a result of such acts.

17. Pursuant to N.C. Gen. Stat. § 84-37(a), no bond for costs is required for the issuance of this permanent injunction order.



**PAY PARTICULAR ATTENTION BELOW... THIS SETS OUT HOW THE RELATIONSHIP MUST BE CREATED AND DOCUMENTED... IT IS THE BASIS OF THE REFI MODEL AND PURCHASE MODEL.... YOU CANNOT HIRE US FOR A THIRD PARTY, WE MUST HIRE YOU TO ASSIST US.**

Based upon the foregoing findings of fact and conclusions of law and with the consent of the parties, IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. Defendants Willard Bradley Lamb and Lighthouse Title Agency, Inc., in their own name or doing business as LTA Corp or any other name, and any corporate affiliates, including franchisors, franchisees, parents, subsidiaries, and divisions, and any persons, association of persons, or corporations associated with or employed, operated, or controlled by Defendants are hereby permanently enjoined from engaging in, or aiding or abetting others in engaging in any acts and activities constituting the practice of law in North Carolina, as defined in N.C. Gen. Stat. §§ 84-2.1, 84-4, and 84-5, including prohibition of the following specific acts:

- a. any express or implicit holding out or representation to the public by appearance on a HUD-1 Settlement Statement, by advertising, or otherwise, that Defendants may prepare legal documents for any person, firm, or corporation, specifically including but not limited to deeds and other legal documents associated with residential real estate transactions and/or loan closings;
- b. any express or implicit holding out or representation to the public by appearance on a HUD-1 Settlement Statement, by advertising, by promotional materials, by internet sites, or otherwise, that Defendants may abstract or pass upon title for any person, firm, or corporation or may represent or otherwise assist any person, firm, or corporation resolve title issues;
- c. any express or implicit holding out or representation to the public by appearance on a HUD-1 Settlement Statement, by advertising, by promotional materials, by internet sites, or otherwise, that Defendants may provide legal services to any person, firm, or corporation or may otherwise engage in the practice of law;
- d. contracting with any person, firm, or corporation to provide or prepare legal documents for another, specifically including but not limited to deeds and other legal documents associated with residential real estate transactions and/or loan closings;

Non Attorney cannot collect for legal services on HUD-1

Non Attorney cannot hold itself out to provide legal services, such as title searching, document prep, title curative

Non Attorney Cannot hold itself out as providing legal services in promotional materials

Non Attorney cannot contract with a person or company to provide legal services for another: Including Search, Doc Prep and Curative in a resi closing

Note I

Note B

Note C

Note I

**THIS MEANS THAT WE NEED RELATIONSHIP WITH BORROWER AND BANK THIS SECTION IS CRUCIAL NON ATTORNEY CAN WORK FOR US AND HELP US WITH LENDER, NOT THE OTHER WAY AROUND**



Non Attorney Cannot offer to contract or contract with a party to provide legal services, EVEN if they are provided by an Attorney.

Providing or drafting legal Documents, including deeds, or other closing documents is considered the practice of law.

Providing legal searches, attorney opinions or otherwise by a non attorney is considered illegal and in violation of the Statute.

Responding to consumer questions about title or loan documents is considered the practice of law.

contracting with any person, firm, or corporation to abstract or pass upon title, including but not limited to providing title opinions, to any person, firm, or corporation;

offering to contract with, or contracting with, any person, firm, or corporation for any services that constitute legal advice or counsel to another in any manner, including but not limited to providing representation or other assistance to resolve issues with title;

providing to and/or preparing any legal documents for any person, firm, or corporation, specifically including but not limited to deeds and other legal documents associated with residential real estate transactions and/or loan closings;

h. utilizing a Scope of Representation form or indicating in any other manner that suggests either Defendant provides legal representation to the lender and/or is able to provide legal representation in a real estate transaction in general;

i. abstracting or passing upon title, including but not limited to providing title opinions, to any person, firm, or corporation, including but not limited to performing an update search of title for another person, firm, or corporation prior to recording documents from a real estate transaction; and

j. providing legal advice to any person, firm, or corporation, including but not limited to non-attorney agents of Lighthouse identifying certain sections of documents at a residential real estate transaction/loan closing as responsive to a borrower's question and offering the services of legal counsel, including an attorney employed or retained by Lighthouse.

Note A

Note A

Note J

2. On condition that, and to the extent that, Defendants do not engage in acts that violate N.C. Gen. Stat. §§ 84-2.1, 84-4, and 84-5, Defendants may engage in the administrative activities for residential real estate loan closings listed in Authorized Practice Advisory Opinion 2002-1, to wit: “(1) present and identify the documents necessary to complete a North Carolina residential real estate closing, direct the parties where to sign the documents, and ensure that the parties have properly executed the documents; or (2) receive and disburse the closing funds.”

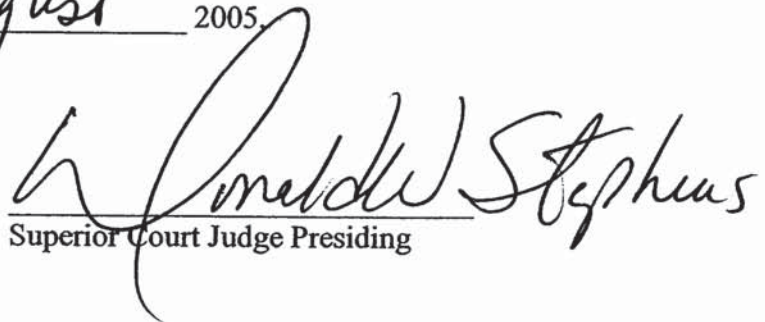
3. Defendants shall take notice that any willful violation of this Permanent Injunction may be treated as civil and criminal contempt leading to the imposition of sanctions upon him, including incarceration and fines.

4. This Order is binding upon Defendants, its officer, agents, servants, employees, attorneys, and upon those persons or entities in active concert or participation with Defendants who receive actual notice in any manner of the order by personal service or otherwise.

5. The parties agree to bear their respective costs of this action.

6. The court shall retain jurisdiction of this matter for further proceedings to enforce this Order.


Issued this the 29 day of August 2005.


  
\_\_\_\_\_  
Superior Court Judge Presiding

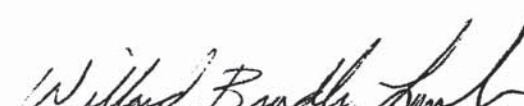
By signing below, the parties affirm their consent and agreement to the entry of the foregoing Consent Order of Permanent Injunction in Wake County file number 05 CVS 10637.

For the Plaintiff

For the Defendants

  
\_\_\_\_\_  
Jennifer A. Porter  
Attorney for Plaintiff

  
\_\_\_\_\_  
Amanda A. Mingo  
Attorney for Defendants

  
\_\_\_\_\_  
Willard Bradley Lamb, Individually and as  
Authorized Agent for Lighthouse Title  
Agency, Inc.

## Good Funds

The Good Funds Settlement Act, N.C. Gen. Stat. § 45A-4, funds may not be disbursed until the deed and deed of trust (if any) have been recorded, which in most counties requires physical delivery to the Register of Deeds during normal business hours. Accordingly, while execution of the documents may be conducted at any time, the actual “closing” and disbursement of funds may not occur until after the required documents are recorded. In recent years many North Carolina Counties have began to utilize “e-recording” which allows the closing attorney to record without physical presence at the courthouse.

North Carolina title insurance- In addition to the unique ness of the statutes surrounding the laws and opinions concerning the closing process, North Carolina has two statutes which make the title insurance industry much different than many of the other states. By statute, title insurance in North Carolina can be issued only after the title insurance company has received an opinion of title from a licensed North Carolina attorney who is not an employee or agent of the company and who “has conducted or caused to be conducted under the attorney's direct supervision a reasonable examination of the title.”N.C. Gen. Stat. § 58-26-1. Pursuant to \_\_\_\_\_ an attorney who opines or passes on title for the purpose of issuing title insurance may not collect any premium on that particular policy. This means that North Carolina Attorneys can either act as an attorney in a transaction or act as an insurance agent but not as both.

## 2003 Formal Ethics Opinion 7

January 16, 2004

### Preparation of Power of Attorney for Principal Upon Request of Prospective Attorney-in-Fact

*Opinion rules that a lawyer may not prepare a power of attorney for the benefit of the principal at the request of another individual or third-party payer without consulting with, exercising independent professional judgment on behalf of, and obtaining consent from the principal.*

#### **Inquiry #1:**

Adult Child asks Attorney to prepare a durable power of attorney for her father to execute. No explanation is given as to why the father is not present to make the request. Adult Child has asked that specific powers be included in document, including the power to transfer to her, as Attorney-in-Fact, title to any of her father's assets. Adult Child asks that the document contain the condition that it will be effective upon its execution by her father. Adult Child will take the Power of Attorney to her father to execute. She does not want the document to contain provisions whereby witnesses can attest to either her father's capacity or whether he is under undue influence at the time he executes the document. Adult Child is ready to write out a check for the fee.

May Attorney draft the power of attorney?

#### **Opinion #1:**

Yes, but not based solely on the instructions of Adult Child. Attorney must clarify that she represents the father and, therefore, has certain duties to the father as a client. When a lawyer is engaged by a person to render legal services to another person, the lawyer may not allow the third party to direct or regulate the lawyer's professional judgment in rendering such legal services. Rule 5.4(c). Similarly, Rule 1.8(f) provides that when a lawyer's services are being paid for by someone other than the client, the lawyer may not accept the compensation unless the client gives informed consent, there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship, and confidential information relating to the representation of the client is protected. Competent representation of the father in this situation requires an independent consultation with the father to obtain his informed consent to the representation and to determine whether he wants or needs the power of attorney and, if so, who should be appointed attorney-in-fact and what powers should be granted to that person. For guidance on the representation of a client who may have diminished capacity, see Rule 1.14.

The situation described in this inquiry is distinguishable from a commercial or business transaction in which the lawyer is engaged by one person to prepare a power of attorney for execution by another person. Frequently, the power of attorney names the person requesting the legal services as the attorney-in-fact. If the document is being prepared to facilitate a specific task for the benefit of this person, such as the transfer of stock or real estate, the lawyer represents the person requesting the legal services and does not represent the signatory on the power of attorney. Thus, the purpose and goals of the engagement determine the identity of the client, not the signatory on the document prepared by the lawyer.

A lawyer may be asked by a client to prepare a document for the signature of a third party under circumstances that give rise to a reasonable belief that the client may be using the lawyer's services for an improper purpose such as actual or constructive fraud or the exertion of undue influence. If so, the lawyer may not assist the client and must decline or withdraw from the representation. Rule 1.2(d) and Rule 1.16(a)(1).

**Inquiry #2 (facts are unrelated to facts in Inquiry #1):**

Mom is elderly and, although she lives on her own, depends upon the assistance of Daughter, her adult child. Although Daughter believes Mom's mental and physical capacities are diminishing and that Mom can no longer care for herself in her own home, Mom's mental competency is not the immediate issue. Daughter contacts Attorney, stating that she is doing so "on Mom's behalf" to have Daughter appointed as Mom's attorney-in-fact and for assistance placing Mom in a nursing home. Daughter asked for a consultation at which Mom will not be present.

May Attorney meet with Daughter alone and, if so, who will be the client, Daughter or Mom?

**Opinion #2:**

Attorney may meet with Daughter alone to discuss the representation. However, because the purpose of the representation is to benefit Mom, Mom is the client. See Opinion #1. Attorney must explain to Daughter, in a timely and clear manner, that Attorney represents Mom and does not represent Daughter. Rule 4.3. Further, Attorney must inform Daughter that, in the event Mom and Daughter become antagonistic, Attorney will continue to represent only Mom and any information provided to Attorney by Daughter may be used to further the representation of Mom.

**Inquiry #3:**

May Attorney represent both Mom and Daughter?

**Opinion #3:**

Yes, however, because the representation of one of the clients may be materially limited by Attorney's responsibilities to the other client, Attorney must satisfy the conditions of Rule 1.7(b) before asking the clients to consent to the joint representation. In particular, Attorney must be able to make a reasonable determination that she can provide competent and diligent representation to each affected client and she must provide sufficient information about the potential conflict to obtain Mom's and Daughter's informed consents. Their consents must be confirmed in writing. Rule 1.7(b)(1) and (4).

In a family situation such as this, a lawyer may readily determine that the parties are working together for a common goal that is in the best interest of the elderly parent. However, these situations are fraught with the potential for abuse of the elderly client or conflicts between the relative's goal for the representation (e.g., putting Mom in a nursing home) and the parent's goal (e.g., independent living). In the current situation, for example, Attorney must advise Mom that she can choose anyone to be the attorney-in-fact and is not required to name Daughter.

Comment [29] to Rule 1.7 offers these cautionary words:

In considering whether to represent multiple clients in the same matter, a lawyer should be mindful



that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recriminations . . . Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good.

**Inquiry #4:**

Would the following disclosure and consent form satisfy the requirements of Opinion #2?

I, [Daughter], understand that Attorney does not represent me regarding issues that concern my mother. I understand that Attorney may be representing my mother after Attorney meets with her. I also understand that whatever I say to Attorney may be used against my interests by Attorney in her representation of my mother. I understand I could hire my own lawyer and I have chosen not to do so. I have read this document and understand its contents.

**Opinion #4:**

Yes.

**Inquiry #5:**

Daughter signs the disclosure form described in Inquiry #4. Mom refuses to move to a nursing home and Daughter brings a guardianship proceeding. May Daughter's statements to Attorney in the initial interview be used by Attorney to defend Mom's competency in the guardianship proceeding brought by Daughter?

**Opinion #5:**

Yes.

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**THE NORTH CAROLINA STATE BAR**

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