

**STATE OF TENNESSEE**  
OFFICE OF THE  
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June 6, 2007

Opinion No. 07-88

Preparation of Real Estate Documents; Unauthorized Practice of Law

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**QUESTION**

Whether the preparation of real estate documents such as deeds, deeds of trust, releases of liens, contracts for sale and purchase of real estate, and escrow agreements constitutes the “practice of law” for the purposes of Tenn. Code Ann. § 23-3-101?

**OPINION**

The preparation of real estate documents is not the “practice of law” under Tenn. Code Ann. § 23-3-101, but may constitute engaging in “law business” under that statute if the preparation requires the professional judgment of a lawyer.

**ANALYSIS**

The “practice of law” is defined in Tenn. Code Ann. § 23-3-101(2) as “the drawing of papers, pleadings or documents . . . in connection with proceedings pending or prospective before any court. . . .” Tenn. Code Ann. § 23-3-101(2). Real estate documents such as deeds, deeds of trust, releases of liens, contracts for sale and purchase of real estate, and escrow agreements are transactional in nature and are not created in connection with pending litigation. Therefore, the preparation of these real estate documents does not constitute the “practice of law” as defined by Tenn. Code Ann. § 23-3-101(2).

The preparation of such documents may, however, amount to engaging in “law business” under Tenn. Code Ann. § 23-3-101(1). That statute defines “law business” to include “the drawing or the procuring of or assisting in the drawing for a valuable consideration of any paper, document or instrument affecting or relating to secular rights. . . .” Tenn. Code Ann. § 23-3-101(1). If performed for “a valuable consideration” the preparation of the real estate documents at issue here would constitute the “law business” within the meaning of the statute.

The unauthorized practice of law, which may occur during the preparation of certain real estate documents, is statutorily prohibited:

No person shall engage in the practice of law or do law business, or both, as defined in § 23-3-101, unless such person has been duly licensed, and while the person's license is in full force and effect, nor shall any association or corporation engage in the practice of the law or do law business, or both.

Tenn. Code Ann. § 23-3-103(a).

In *Bar Association of Tennessee, Inc. v. Union Planters Title Guaranty Co.*, 326 S.W.2d 767, 769 (Tenn. 1959), the Court suggested that title insurance companies may draft legal documents intimately connected to their business even though the drafting of the documents would constitute the law business. As this office has noted, however:

The Court in *Union Planters* does not define what documents fall within this exception, and the continued validity of *Union Planters* may be questionable because of the subsequent repeal of T.C.A. § 62-1325 upon which the Court partly relied in reaching its decision. Furthermore, *Union Planters* involved the drafting of documents by staff attorneys, and therefore arguably the Court's analysis would not allow non-attorneys to draft these documents.

Op. Tenn. Att'y Gen. 86-184 (Oct. 17, 1986). Our prior opinion also observed that, even if the exception in *Union Planters* included non-lawyers, the holding of that case was narrowly confined and did not contemplate the drafting of complex legal documents by non-lawyers. *Id.*

More recently, the Tennessee Supreme Court, which is the final arbiter regarding unauthorized practice of law issues, has held that the conduct described in the statutory definition of "law business," "if performed by a non-attorney[,] constitute[s] the unauthorized practice of law only if the doing of those acts requires the 'professional judgment of a lawyer.'" *In re Petition of Burson*, 909 S.W.2d 768, 776 (Tenn. 1995). The unauthorized practice of law is thus by its very nature fact-dependent, and the conduct alleged to constitute unauthorized practice must be examined on a case-by-case basis. Accordingly, whether the preparation by non-lawyers of certain real estate documents would constitute unauthorized practice depends on whether the preparation of the particular documents at issue would require the professional judgment of a lawyer.

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