The West Virginia State Bar
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ADVISORY OPINION 93-002

The Committee on Unlawful Practice of The West Virginia State Bar has received a request from an attorney inquiring as to whether or not the preparation of deeds of trust by a bank, and the designation of bank officers as trustees therein, constitutes the unlawful practice of law. Accompanying this inquiry are various copies of deeds of trust that are in use by the Trader's Bank of Spencer, West Virginia. The deeds of trust are pre-printed forms which require the insertion of certain information, including the name and address of the grantor, a description of the property covered by the deed of trust, and information regarding the underlying note obligation. The form contains the printed notation that they were printed by "Banker's System. Inc." The deed of trust form further contains the notation that the instrument was prepared by "Trader's Bank".

Pursuant to the provisions of Section 4a, Article 1, chap- ter 51 of the West Virginia Code of 1931, as amended, the West Virginia Supreme Court, on March 28, 1987, by rule discussed and defined the practice of law in the State of West Virginia in the following terms, in part:

It is essential to the administration of justice and the proper protection of society that only qualified persons duty licensed be permitted to engage in the practice of law. It is harmful to the public interests to permit anyone to represent falsely that he is qualified to perform legal services ...
In general, one is deemed to be practicing law whenever he or it furnishes to another advice or service under circumstances which imply the possession or use of legal knowledge and skill.
More specifically but without purporting to for- mutate a precise and completely comprehensive definition of the practice of law or to prescribe limits to the scope of that activity, one is deemed to be practicing law whenever (1) one undertakes, with or without compensation and whether or not in connection with another activity, to advise another in any matter involving the application of legal principles to facts, purposes or desires; (2) one undertakes, with or without compensation and whether or not in connection with another activity, to prepare for another legal instruments of any character; or (3) one undertakes, with or without compensation and whether or not in connection with another activity, to represent the interests of another before any judicial tribunal or officer, or to represent the interest of another before any executive or administrative tribunal, agency or officer otherwise than in the presentation of facts, figures or factual conclusions as distinguished from legal conclusions in respect to such facts and figures.

The above definition of the practice of law was expanded upon by the West Virginia Supreme Court in the case of West Virginia State Bar v. Early, 109 S.E.2d 420 (W.Va. 1959). In that case, in attempting to define what constituted the practice of law, the West Virginia Supreme Court held that:
The courts in numerous decisions in different jurisdictions have undertaken to define and designate what constitutes the practice of law; but it is generally recognized that it is extremely difficult, perhaps impossible, to formulate a precise and completely comprehensive

definition of the practice of law or to prescribe limits to the scope of that activity ...It is clear, however. that a licensed attorney at law in the practice of his profession generally engages in three principal types of professional activity. These types are legal advice and instructions to clients to inform them of their rights and obligations; preparation for clients of documents requiring knowledge of legal principles which is not possessed by an ordinary layman; and appearance for clients before public tribunals, which possess the power and authority to determine rights of life, liberty, and property according to law, in order to assist in the proper interpretation and enforcement of law ...The practice of law is not limited to the conduct of cases in courts. It embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts and, in addition conveyancing, the preparation of legal instruments of all kinds and in general all advice to clients and all action taken for them in matters connected with the law.

In Early, supra, the Court, in describing what constitutes the practice of law, also gave some examples of activities that would not constitute the practice of law. In that regard, the court held that:

Section 14, Article 1, Chapter 23, Code of 1931, provides that the state compensation commissioner shall prepare and furnish blank forms of applications for benefits, notices to employers, proofs of injury or death, of medical attendance, of employment and wage earnings and other proofs, and that it is the duty of employers to keep on hand a sufficient supply of such blanks at all times. The completion of such blank forms does not require any knowledge and skill beyond that possessed by the ordinarily experienced and intelligent layman, and the layman may properly complete and file such forms in behalf of another person as employer, employee, claimant or beneficiary without engaging in the practice of law.

Furthermore, in Brammer v. Taylor, 338 S.E.2d 207 (W.Va. 1985), the court further held that:

On the other hand, merely typing a legal instrument drafted by another person or merely reducing the words of another person to writing does not constitute the preparation of a legal instrument and, thus, does not constitute the practice of law.

The Committee on Unlawful Practice believes that a deed of trust is a "legal instrument" as that term was used by the Supreme Court in its definition of the practice of law and as that term was expanded upon in the decision of West Virginia State Bar v. Early, supra. Consequently, the drafting of a deed of trust by a lay person would constitute the unlawful practice of law. However, the Committee is mindful that business entities, including banks, are in the practice of using preprinted forms for their deeds of trust which merely require the filling in of certain information, including the name of the grantor, a description of note obligations, and descriptions of the property covered by the deed of trust. If the bank in question is merely using a preprinted form and placing this type of information into that form, then the Commit- tee on Unlawful Practice does not believe the bank or its employees would be engaged in the unlawful practice of law but, instead, would merely be completing a blank form that does not require any knowledge and skill beyond that possessed by the ordinarily experienced and intelligent layman. The Committee believes the notation on the bottom of the deed of trust forms involved in this inquiry, indicating that the forms had been prepared by the bank, was merely an indication that the actual insertions in the blank form had been prepared by the bank, and was not assertion or representation that the form language itself

had been prepared by the bank.

The Committee on Unlawful Practice does not find anything improper in the appointment of trustees under a deed of trust, which trustees are not attorneys. The mere naming of such persons as trustees does not constitute the practice of law. The Committee, while not being specifically addressed with these questions, does note that a trustee under a deed of trust may unlawfully practice law in performing those functions if that trustee undertakes to advise another regarding the application of legal principles to facts, purposes, or desires.

Revised: 04/12/01