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THE WEST VIRGINIA STATE BAR UNLAWFUL PRACTICE COMMITTEE ADVISORY OPINION 01-02

TITLE INSURANCE

An inquiry was made whether this Committee should revisit Rule 93-003 (Inquiry No. 2) as it relates to title insurance services by lay persons since the enactment of West Virginia Code, § 33-11A-11(c).

Consistent with our previous ruling, this Committee is of the opinion that the preparation of documents evidencing title insurance services [i.e., binders, commitment or policies (owners or lenders)] constitutes the preparation of "legal instruments of any character" and such title insurance services in and of themselves, involve advice (express or implied) to individuals regarding the application of legal principles to facts, purposes, and desires. See, Definition of the Practice of law (1961).

Therefore, subject to the exception provided hereafter, title insurance services can only be accomplished by attorneys licensed to practice law in the State of West Virginia, and who comply with all applicable laws, or regulations set forth by the West Virginia Department of Insurance.

This Committee is, however, of the opinion that a lay person, or non-lawyer owned (in whole or part) company or entity is permitted to issue a title insurance binder, commitment or policy as defined in West Virginia Code, §33-1-10(f) (4), if the following requirements are met:

- (1) They are registered as a licensed agent or broker pursuant to West Virginia Code, §33-1-12, or §33-1-14, respectively;
- (2) They comply with all applicable state insurance licensing and appointment laws and regulations; and
- (3) That prior to issuing any such title insurance binder, commitment or policy, they fully comply with the provisions of West Virginia Code, §33-11A-11 (c), which states, in part:

No title insurance shall be issued until the title insurance company has obtained a title opinion of an attorney licensed to practice law in West Virginia, which attorney is not an employee, agent, or owner of the insured bank or its affiliates. Said attorney shall have conducted or cause to have conducted under the attorney's direct supervision a reasonable examination of the title.