

IN THE CIRCUIT COURT OF BROOKE COUNTY, WEST VIRGINIA

LORRIE MCMAHON,

Plaintiff,

vs.

CIVIL ACTION NO: 01-C-121

**ADVANCED TITLE SERVICES COMPANY
OF WEST VIRGINIA,** a West Virginia
Corporation, et. al.,

Defendants,

and

**WEST VIRGINIA BANKERS ASSOCIATION,
INC., and WEST VIRGINIA ASSOCIATION
OF COMMUNITY BANKERS, INC.,**

Interveners.

STIPULATION AND AGREED ORDER

WHEREAS, in or about June, 2001, Plaintiff, Lorrie McMahon, filed the subject Complaint for Declaratory Judgment, Contempt, Injunctive Relief, alleging that Defendants, Advanced Title Services Company of West Virginia, Advanced Real Estate Services Corporation of America, Nations of Pennsylvania, Inc., successor in interest to Advanced Title Services Company of West Virginia and/or Advanced Real Estate Services Corporation of America (hereinafter jointly referred to as "Corporate Defendants"), had engaged in the unauthorized practice of law in the State of West Virginia by providing various title services for real estate transactions, including but not limited to the preparation of deeds and other legal documents, conducting title examinations, issuing title insurance policies, escrow services, performing real estate closings, and providing other title related services;

WHEREAS, by Order dated September 26, 2003, this Court held that the above-described services engaged in by Defendants constituted the practice of law;

WHEREAS, by Order dated September 30, 2003, this Court, pursuant to Rule 13(b) of the Rules of Appellate Procedure and West Virginia Code, §58-5-2, issued a certificate certifying the certain questions concerning what constitutes the unauthorized practice of law to the West Virginia Supreme Court of Appeals. The text and this Court's proposed answers to the certified questions are set forth on the attached Exhibit A;

WHEREAS, on or about December 3, 2004, in *McMahon vs. Advanced Title Company*, 216 W.Va. 413, 607 S.E.2d 519 (2004), the West Virginia Supreme Court of Appeals affirmed this Court's answer to certified question number 5 and voided the answers to certified questions [1-4 and 6] holding that there existed an insufficient record upon which a determination could be made. The McMahon Court remanded the proceedings to this Court with instructions to allow other stakeholders to intervene, if appropriate, in order to assert and/or protect their interests;

WHEREAS, by Order dated February 27, 2007, this Court granted a Motion to Intervene filed by the West Virginia Bankers Association, Inc., and the West Virginia Association of Community Bankers, Inc. (now the "Community Bankers of West Virginia") (hereinafter collectively referred to as "Intervenors"). See, Rule 24 of the West Virginia Rules of Civil Procedure;

WHEREAS, the parties herein, after numerous discussions and negotiations, have agreed that the settlement of this matter without further litigation is in their best interests.

WHEREAS, immediately prior to entry of this Agreed Order, Plaintiff, Lorrie McMahon, voluntarily dismissed Defendants, Brian C. Ulanowicz, Penny L. Rose (a/k/a Penny L. Warren) and James Monroe Whitecotton;

WHEREAS, class certification has been abandoned; and

NOW, THEREFORE, upon the consent and agreement of the parties to this Agreed Order by their attorneys and authorized officials, it is **HEREBY ORDERED, ADJUDGED, AND AGREED** as follows:

I. JURISDICTION

1. This Court has jurisdiction over the subject matter herein and the parties consenting hereto. West Virginia Code, §51-2-2 and *West Virginia State Bar vs. Earley*, 144 W.Va. 504, 109 S.E.2d 420 (1959).

2. Venue is proper in Brooke County. West Virginia Code, §56-1-1.

3. The subject complaint states claims upon which this Court can grant relief against Defendants and Interveners. West Virginia Code, §§53-5-4 and 55-13-1, et. seq.

II. BINDING EFFECT

4. The provisions of this Agreed Order shall apply to and be binding upon Corporate Defendants.

5. The provisions of this Agreed Order shall apply to and be binding upon the Interveners and its members, except to the extent any member shall "opt out" of this civil action.

III. AUTHORIZATION

6. The undersigned representatives of Defendants and Interveners (subject to the exceptions available pursuant to Paragraph 5 above) certify that they are authorized to enter into this Agreed Order to the terms and conditions of this Agreed Order and to execute and legally bind Defendants and Interveners, except as to those members who elect to "opt out" of this civil action with proper notice to the court.

IV. PURPOSE

7. The express purpose of the parties in entering into and agreeing to this Agreed Order is to clearly define what constitutes the unauthorized practice of law in the State of

West Virginia relating to real estate transactions of property located within the boundaries of this State.

V. FACTUAL BACKGROUND

8. In or about June 2000, Plaintiff, Lorrie McMahon, sought to purchase real estate located at 1321 Walker Road, Brooke County, Follansbee, West Virginia.

9. In order to consummate the purchase of said property, Ms. McMahon hired USA Preferred Mortgages, Inc., a mortgage broker, which obtained financing for Ms. McMahon through a lender, Decision One Mortgage Company, LLC, Indianapolis, Indiana (hereinafter "Decision One").

10. Agents, servants, workmen, and/or employees of Decision One then contacted one or more of the Defendants, their agents, servants or employees to, among other things, conduct a title examination, issue a title insurance policy, conduct a real estate closing, engage in escrow services, and perform other title related services, with Ms. McMahon being responsible to pay for the costs and expenses for such work.

11. One or more of the Defendants contracted with Andrew Kerr (hereinafter "Kerr"), an independent non-lawyer title abstractor and resident of Hancock County, West Virginia, to perform a title search, examination, report, opinion or certificate in the Brooke County Clerk's Office relative to the subject property and to submit the same to one or more of the Defendants. Kerr testified that he provided "title services" to one or more of the Defendant's on a number of occasions.

12. Kerr appeared at the Brooke County Clerk's Office to conduct a title examination, search, review or inspection (hereinafter "title examination") including the review of the relevant records and books, including, but not limited, deeds, deeds of trust, judgments, lis pendens, mechanic liens, execution liens, real property taxes, adverse conveyances, plats, estate

records (wills, appraisal, final accounting, etc...) real property taxes and any exceptions, restrictions, reservations, conditions, qualifications of record.

13. Kerr testified at deposition that, in the process of performing title examinations for and/or at the request of Defendants, he would make various judgments as to what to note and what to leave out of his title examinations regarding the contents of a particular deed [e.g., quiet enjoyment, corporate seal, notary clauses, covenant to pay rents, etc.] or he would make a determination whether or not an estate was properly probated. *Kerr Deposition Transcript, pp. 26-83, 111-133 and 57-64.*

14. Kerr was not an employee of any of the Defendants, but was an independent contractor.

15. During the title examination, Kerr was not under the direct supervision and control of an attorney licensed to practice law in the State of West Virginia.

16. Upon completion of his aforementioned work, Kerr faxed, submitted, or otherwise forwarded his title examination field notes, papers or things to one or more of the Defendants.

17. Upon receipt of the field notes, one or more of the Defendants had a non-lawyer agent, servant, workman or employee prepare or type-up a "Property Report," said property report being a summary of the field notes provided by Kerr to one or more of said Defendants.

18. Said "Property Report," which was neither reviewed nor signed by an attorney licensed to practice law in the State of West Virginia, stated, among other things, that the information contained in said report should not be considered a "title guarantee or opinion of title."

19. Kerr received from one or more of the Defendants the approximate sum of \$50.00 for his aforementioned non-professional services.

20. Neither the services performed by Kerr nor the payment to him for such services were disclosed by the Defendants to Ms. McMahon on the HUD-1 Settlement Sheet, or at any other time.

21. Upon receipt of said "Property Report" either Defendant, Whitecotton, or another non-lawyer agent, servant, workman or employee of one or more of the remaining Defendants reviewed and inspected said "Property Report" and rendered a decision whether or not to issue a title insurance policy (owners, lenders or both) insuring the title to the real property.

22. Defendant, Whitecotton, relevant to Ms. McMahon's real estate purchase, issued a title insurance commitment, and after the real estate closing, counter-signed a Lender's Title insurance policy for Stewart Title Guaranty Company.

23. The tile insurance commitment, binder and policy issued by Defendant, Whitecotton, was based solely upon the "Property Report" provided by one or more of the Defendants.

24. On or about June 13, 2000, one or more of the Defendants had a non-lawyer employee, agent or servant conduct a real estate closing and acted as an escrow agent for Plaintiff, Lorrie McMahon, for the purchase of the real estate located at 1321 Walker Road in Follansbee, Brooke County, West Virginia.

25. After said closing, an agent, servant, workman or employee of Defendant, Advanced Title Company, had certain legal instruments (e.g., deed, deed of trust, riders, assignment, etc...) hand-carried or mailed to the courthouse for recording in the Brooke County Clerk's Office.

26. Defendant, Advanced Title Company, charged the following fees for services in connection with the subject real estate transaction:

- (i) "Title Examination" - \$200.00;

- (ii) Closing - \$200.00;
- (iii) Title Insurance Policy - \$397.00;
- (iv) Deed Preparation - \$75.00 [paid for from the seller's funds at settlement];
and
- (v) Recording Fees - \$25.00.

None of these services was performed by an attorney or under an attorney's supervision or direction.

VI. PRINCIPAL PHASES OF A REAL ESTATE TRANSACTION

A. TITLE EXAMINATION:

27. A "title examination" is a search, review, examination, inspection or investigation of the history and present condition of the title of certain real estate and its status with reference to liens, encumbrances, clouds, etc. in order to determine its legal condition and marketability.

28. In order to determine a property's title condition or marketability, a person conducting a title examination will search, review, examine, inspect or investigate the relevant records and books primarily at the County Clerk's Office, including, but not limited to, deeds, deeds of trust, judgments, lis pendens, mechanic liens, execution liens, real property taxes, adverse conveyances, plats, estate records (wills, appraisement, final accounting, etc...), real property taxes and any exceptions, restrictions, reservations, conditions, qualifications of record associated with the property.

29. After the work is conducted at the County Clerk's Office, a certificate, notes (handwritten or otherwise), abstract, summary, opinion, guarantee, verbal verification and/or report reflecting a property's title condition or marketability is prepared.

30. A number of legal issues both simple and complex may arise during the title examination process, including the interpretation and application of many state and federal statutes and case-law and common law principles.

31. The title examination process requires knowledge and appreciation of various laws or statutes in the State of West Virginia, since it is the knowledge of these statutes that determine or dictate what a person performing a title examination notes, how the review is done and whether title to real property is marketable and/or has issues or defects which, in the opinion of the person conducting the title examination must be disclosed.

32. It is recognized that under West Virginia law a bona fide full-time lay employee may perform legal services for his or her regular employer including conducting a title examination and that such activity is not the unauthorized practice of law if such activity is conducted in compliance with the Definition of the Practice of Law as set forth in the West Virginia State Court Rules (the "State Court Rules"). See, State Court Rules, Michies West Virginia Code Annotated.

B. REAL ESTATE CLOSINGS:

33. In the sale and purchase of real estate, a real estate closing is the final step in which the deed of title is delivered to the buyer, the title is transferred, financing and related documents are executed, and funds are collected and disbursed. Some of the final documents, including the deed and deed of trust, are then delivered to the County Clerk's Office to be recorded. See *e.g.* BLACK'S LAW DICTIONARY. In the financing or refinancing of real estate where legal title does not change hands, a real estate closing is the final step in which financing and related documents are executed and funds are collected and disbursed. Some of the final documents, including the deed and deed of trust, are then delivered to the County Clerk's Office to be recorded. (For purposes herein both types of closings shall be collectively referred to as a "Closing").

34. A number of documents executed at a real estate closing materially affect the legal rights and obligations of the parties to a real estate transaction.

35. It is inherent in a real estate closing that legal issues may arise requiring explanation or discussion.

36. At the closing, the attorney or the non-lawyer employee under the direct supervision of an attorney explains the various documents in the closing process to the parties, is able to advise them on the legal ramifications of each document, and assists with any problems that may arise during the course of the closing, including, if need be, suspending the closing and advising the parties to seek independent representation if any problems cannot be resolved at that time.

37. While some documents executed at a real estate closing may be self-explanatory to a layperson of average intelligence, other more complex documents included within the process require the special skills and knowledge of those within the legal profession to be able to explain their applicability and affect on an individual's legal rights and obligations, such as the borrowers and lender's obligations, rights and duties under the Deed of Trust and promissory note.

38. There is a risk to the parties of a real estate closing in having documents affecting legal rights and obligations explained by those without the necessary legal knowledge and skill.

39. It is recognized that under West Virginia law a bona fide full-time lay employee may perform legal services for his or her regular employer including conducting a real estate closing and that such activity is not the unauthorized practice of law if such activity is conducted in compliance with the Definition of the Practice of Law as set forth in the West Virginia State Court Rules (the "State Court Rules"). See, State Court Rules, Michies West Virginia Code Annotated.

C. TITLE INSURANCE:

40. Title insurance is defined as follows:

Title insurance. Insurance against loss or damage resulting from defects or failure of title to a particular parcel of realty, or from the enforcement of liens existing against it at the time of the insurance. This form of insurance is taken out by a purchaser of the property or one loaning money on mortgage, and is furnished by companies specially organized for the purpose, and which keep complete sets of abstracts or duplicates of the records, employ expert title-examiners, and prepare conveyances and transfers of all sorts. A "certificate of title" furnished by such a company is merely the formally expressed professional opinion of the company's examiner that the title is complete and perfect (or otherwise, as stated), and the company is liable only for a want of care, skill, or diligence on the part of its examiner; whereas an "insurance of title" warrants the validity of the title in any and all events.

Black's Law Dictionary, 5th ed. (1979); see also, West Virginia Code, §33-1-10(f)(4).

41. Title insurance agents must review title examinations in order to render a decision whether or not to issue a title insurance policy (owners, lenders or both) insuring the title to the real property.

42. Under West Virginia law, when title insurance is required in connection with a loan, West Virginia financial institutions must obtain a title opinion issued by an attorney licensed to practice law in West Virginia. West Virginia Code, §33-11A-11(c), 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.

VII. DEFINITION OF THE PRACTICE OF LAW

43. Pursuant to the West Virginia Supreme Court's constitutional and inherent power, and the legislative authorization under West Virginia Code, §51-1-4a, the West Virginia Supreme Court has the "indisputable and exclusive authority to define, regulate and control the practice of law in West Virginia." West Virginia Constitution, Article VIII, §3, See also, West Virginia State Bar vs. Earley, 109 S.E.2d 420 (1959); Brammer vs. Taylor, 338 S.E.2d 207, 212

(W.Va. 1985); In re Mann, 154 S.E.2d 860, 864 (W.Va. 1967); State ex rel Haight vs. Donnahoe, 321 S.E.2d 677, 683 fn. 12 (W.Va. 1984); Committee on Legal Ethics vs. Coleman, 377 S.E.2d 485, 492 (W.Va. 1988); Lawyer Disciplinary Board vs. Allen, 198 W.Va. 18 (1996); State ex rel Quelch vs. Daugherty, 306 S.E.2d 233, 234-235 (W.Va. 1983); Lane vs. WV State Board of Law Examiners, 295 S.E.2d 670, 672-673 (W.Va. 1982); In re Brown, 262 S.E.2d 444, 447 (W.Va. 1980); Carey vs. Dostert, 294 S.E.2d 137, 138 (W.Va. 1982); State ex rel. Askin vs. Dostert, 295 S.E.2d 271, 274-275 (W.Va. 1982); Sargus vs. WV Board of Law Examiners, 294 S.E.2d 440, 444 (W.Va. 1982); Pushinsky vs. WV Board of Law Examiners, 266 S.E.2d 444, 451 fn. 13 (W.Va. 1980); Daily Gazette vs. Committee on Legal Ethics, 326 S.E.2d 705, 708-709 (W.Va. 1984); and State ex rel. vs. Frieson vs. Isner, 285 S.E.2d 641, 647-654 (W.Va. 1981).

44. The definition of the practice of law was adopted by the West Virginia Supreme Court of Appeals on March 28, 1947, effective May 1, 1947, and amended by an order adopted June 27, 1961, effective July 1, 1961 and is found in the State Court Rules, Michies West Virginia Code Annotated (2008). Under the State Court Rules, the practice of law is defined as follows:

It is essential to the administration of justice and the proper protection of society that only qualified persons duly licensed be permitted to engage in the practice of law. It is harmful to the public interest to permit anyone to represent falsely that he is qualified to perform legal services.

Unlicensed persons are excluded from the practice of law to protect the public from being advised and represented in legal matters by unqualified and undisciplined persons over whom the courts could exercise little, if any, control.

The principles underlying a definition of the practice of law have been developed through the years in social needs and have received recognition by the courts. It has been found necessary to protect the relation of attorney and client against abuses. Therefore it is from the relation of attorney and client that any definition of the practice of law must be derived.

The relation of attorney and client is direct and personal and a person, natural or artificial, who undertakes the duties and responsibilities of an attorney-at-law is nonetheless practicing law though such person may employ or select others to whom may be committed the actual performance of such duties.

The gravity of the consequences to society resulting from abuses of this relation demands that those assuming to advise or to represent others in matters connected with the law shall be properly trained and educated, and be subject to a peculiar discipline. The [That] fact, and the protection of society in its affairs and in the ordered proceedings of its tribunals, have developed the principles which serve to define the practice of law.

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 formulate 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 interest of another before any judicial tribunal or officer, 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. **Nothing in this paragraph shall be deemed to prohibit a lay person from appearing as agent before a justice of the peace or to prohibit a bona fide full-time lay employee from performing legal services for his regular employer (other than in connection with representation of his employer before any judicial, executive or administrative tribunal, agency or officer) in matters relating solely to the internal affairs of such employer, as distinguished from such services rendered to or for others.** (emphasis added).

45. 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. Earley, supra, p. 431.

46. Under the definition of the practice of law, a lay person may engage in the practice of law for his regular employer in matters relating solely to the internal affairs of such employer, as distinguished from such services rendered to or for others, if such person is a bona fide full-time lay employee, including, but not limited to, conducting an examination of title to real estate and a real estate loan closing.

47. A law license in the State of West Virginia can only be issued to a natural person, and a for-profit corporation or association is specifically prohibited from practicing law in the State of West Virginia unless all of its directors, stockholders and officers are licensed to practice law in the State of West Virginia. West Virginia Code, §30-2-5a.

48. The prohibition of the unlawful practice of law applies equally to a corporation or association which is indirectly practicing law through an agent or employee, even if that employee or agent is a licensed attorney, and except in limited circumstances, a lawyer or law firm may not share or split legal fees with a non-lawyer. West Virginia Rules of Professional Conduct, Rules 5.4 and 5.5.

VIII. CONCLUSIONS OF LAW:

A. TITLE EXAMINATIONS:

49. It is the practice of law for a person to conduct a title examination, search, review or inspect records, and provide any certificate, notes (handwritten or otherwise), abstract, summary, opinion, guarantee, verbal verification and/or report of any kind or nature, to or for a third-party, as to the status, legal significance and/or marketability of real estate title and/or reflecting, or absent from, matters of record and/or the quality or validity of title, or the giving of any other advice concerning the application of legal principles, and such activity may only be

conducted by an attorney licensed to practice law in the State of West Virginia, or by a person acting under his or her direct supervision and control or by a bona fide full-time lay employee performing legal services for his or her regular employer under appropriate circumstances as provided in the State Court Rules.

50. "Under the direct supervision and control" of an attorney licensed to practice law in the State of West Virginia for purposes of this section means: (a) non-lawyer searchers may not offer any service which constitute the practice of law to the general consumer public or any third-party; and (b) a lawyer may employ a non-lawyer assistant in the representation of the attorney's client so long as: (i) the attorney retains a direct relationship with the client; (ii) the client understands that a non-lawyer will be conducting the title examination; (iii) the lawyer, based on the certification, education, training, experience of the searcher, reasonably supervises the searcher throughout; and, (iv) the lawyer remains solely responsible for the work-product, including all actions taken or not taken by the searcher to the same extent as if such search had been furnished entirely by the lawyer.

51. For purposes of this Agreed Order, the parties hereby agree that in the interest of public policy, banking institutions will not conduct title examinations with respect to purchase money real estate loans although this activity is not prohibited under West Virginia law when it is conducted by a bona full-time lay employee of a banking institution in compliance with the State Court Rules.

52. Under the State Court Rules, a banking institution is not engaged in the practice of law when performing a title examination for non-purchase money real estate loan transactions as long as:

- (i) said title examination is done by a bona fide full-time lay employee and that bank is the employee's regular employer;

- (ii) the result of said title examination is for matters relating solely to the internal affairs of such bank as distinguished from such services rendered to or for others.

B. REAL ESTATE CLOSING:

53. It is the practice of law for a person to conduct a real estate closing (including "witness-only" or "witness" closings") for mortgage financing or real estate transactions, to or for the general consumer public or any third-party, when part of his or her responsibilities as closing agent consist of: (1) explaining, interpreting, giving an opinion and/or advising another on the meaning of terms or principles (legal or otherwise) relevant to the mortgage transaction, or in matters involving the application of legal principles to particular facts, purposes or desires; (2) instructing clients in the manner in which to execute legal documents; or (3) preparing the HUD-1 Settlement Statement, and at times, other instruments related to mortgage loans and transfers of real property and such activity may only be conducted by an attorney licensed to practice law in the State of West Virginia, or by a person acting under his or her direct supervision and control, or by a bona fide full-time lay employee performing legal services for his or her regular employer in compliance with the State Court Rules.

54. "Under the direct supervision and control" of an attorney licensed to practice law in the State of West Virginia for purposes of this section means: (a) non-lawyer searchers may not offer any service which constitute the practice of law to the general consumer public or any third-party; and (b) a lawyer may employ a non-lawyer assistant in the representation of the attorney's client so long as: (i) the attorney retains a direct relationship with the client; (ii) the client understands that a non-lawyer will be conducting the title examination; (iii) the lawyer, based on the certification, education, training, experience of the searcher, reasonably supervises the searcher throughout; and, (iv) the lawyer remains solely responsible

for the work-product, including all actions taken or not taken by the searcher to the same extent as if such search had been furnished entirely by the lawyer.

55. Notwithstanding the standardization of real estate closing documentation, the settlement agent may not present important legal documents to the seller, buyer, borrower, and/or lender at a closing without legal questions being asked and without giving legal advice.

56. Under the State Court Rules, a banking institution is not engaged in the unlawful practice of law when performing a real estate closing as long as:

(i) said closing is done by a bona fide full-time lay employee and that bank is the employee's regular employer;

(ii) the result of said closing is for matters relating solely to the internal affairs of such bank, e.g. making of a loan by a banking institution, as distinguished from such services rendered to or for others.

C. TITLE INSURANCE:

57. In West Virginia, it is the practice of law to prepare documents evidencing title insurance services, i.e., binders, commitments or policies (owners or lenders), since it constitutes the preparation of "legal instruments of any character" and/or involve the application of legal principles to facts, purposes, and desires, but may be permissible by non-lawyers if the licensed insurance agent or company relies upon a title examination conducted by an attorney licensed to practice law in West Virginia.

58. Lenders in the State of West Virginia shall comply with West Virginia Code, §33-11A-11[c], which provides that when title insurance is required as a condition of obtaining a loan, "[n]o 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...".

IX. SHERMAN ANTITRUST ACT

59. The provisions of the Sherman Antitrust Act and/or the Interstate Commerce Clause are not applicable to determine whether the subject activities constitute the practice of law. *Allstate Insurance Company vs. West Virginia State Bar*, 233 F.3d 813 (4th Cir. 2000).

X. STIPULATED PENALTIES

60. This Agreed Order shall be entered on March 31, 2010, subject to approval by all counsel and shall commence upon May 15, 2010, if Defendants and/or Interveners fail to fully comply with any requirement and/or provision of this Order, Defendants and/or Interveners may be charged with contempt.

XI. DELAYS OR IMPEDIMENTS TO PERFORMANCE

61. Failure to fully and timely comply with the notice requirements of this section as specified above shall render this section void and of no effect as to the particular event involved, and shall constitute a waiver of any opportunity to seek an extension of time for the obligations under this section based on such event.

62. Unanticipated or increased costs or expenses associated with the implementation of this Agreed Order, changed financial circumstances, or technical infeasibility shall not, in any event, serve as a basis for a claim of force majeure, changes to this Agreed Order, or extensions of time under this Agreed Order, unless so determined by a Court of competent jurisdiction.

XII. GENERAL PROVISIONS

63. This Agreed Order constitutes the entire agreement among the parties and is a final settlement. This Agreed Order may be modified with the written consent of all of the Parties and with the approval of the Court. No amendments or modifications to this Agreed Order shall be valid unless in writing, executed by the Parties, and entered by this Court.

64. The Court shall retain jurisdiction of this case after entry of this Agreed Order to enforce compliance with the terms and conditions of this Agreed Order and to take any action necessary or appropriate for its interpretation, construction, execution or modification.

65. All parties, including any opting out parties, preserve the right to appeal the form of the required "opt out" notice to the West Virginia Supreme Court of Appeals. See *Notice of Proposed Settlement* attached hereto as Exhibit "B."

XIII. COSTS OF SUIT

66. Each party shall be responsible for its own costs and attorney fees in this proceeding and through appeal.

XIV. COMPLIANCE SCHEDULE

67. The Corporate Defendants are immediately and permanently enjoined from conducting any business that is adverse to or in violation of the provisions of this Agreed Order.

68. Interveners shall have forty-five (45) days from the date of the Entry of this Order to notify their members of the provisions of this Agreed Order. After the expiration of this time, Interveners will be permanently enjoined from conducting business that is adverse to or in violation of the provisions of this Agreed Order.

XV. PENALTY FOR PAST VIOLATIONS

69. Neither the Interveners, nor their members shall be assessed any monetary damages, costs or attorney fees in this action.

All of the provisions and directives described within this Order are hereby Ordered, Adjudged and Decreed.

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

Attest Glenda Brooks
Clerk, Circuit Court
Brooke County, West Virginia

By: Shirley Jack, Deputy

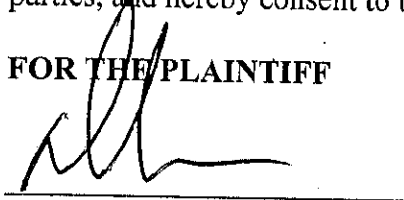
Dated and entered this 31st day of March, 2010



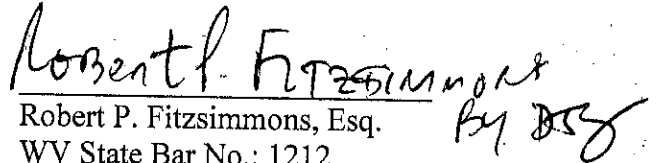
Martin J. Gaughan, Judge

Approved and agreed upon by each of the following parties by and through their attorneys who acknowledge that this Order fully and completely sets forth the agreements of the parties, and hereby consent to the entry of this Agreed Order.

FOR THE PLAINTIFF

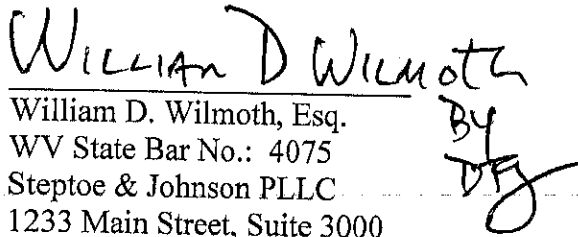


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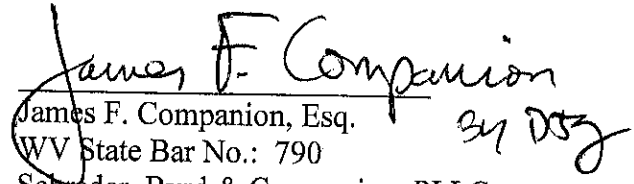
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(304) 277-1700

FOR THE CORPORATE DEFENDANTS

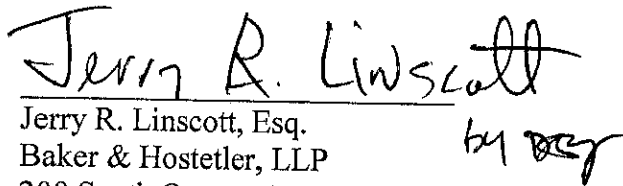


William D. Wilmoth, Esq.
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Steptoe & Johnson PLLC
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(304) 231-0456

FOR THE INDIVIDUAL DEFENDANTS



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(304) 233-3390



Jerry R. Linscott, Esq.
Baker & Hostetler, LLP
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Sun Trust Center, Suite 2300
P.O. Box 112
Orlando, FL 32802-0112
(407) 649-4024

FOR THE INTERVENORS

Edward D. McDevitt

Edward D. McDevitt, Esq.

WV State Bar No. 2437

Sandra M. Murphy, Esq.

WV State Bar No. 4359

Bowles Rice McDavid Graff & Love LLP

600 Quarrier St.

Charleston, WV 25301

(304) 347-1100

By DSG

EXHIBIT A

(1) Is a lay person *not* under the direct supervision or control of an attorney licensed to practice law in the State of West Virginia engaged in the unlawful practice of law when performing a title examination, search, review or inspection of records, and providing any certificate, notes (handwritten or otherwise), abstract, summary, opinion, guarantee, verbal verification and/or report of any kind or nature as to the status or marketability of real estate title and/or reflecting matters of record?

ANSWER: YES

(2) Is a lay person, *not* under the direct supervision or control of an attorney licensed to practice law in the State of West Virginia, engaged in the unlawful practice of law by performing the function of a "closing agent" for mortgage financing or real estate transactions when part of his or her responsibilities as closing agent consist of: (1) explaining, interpreting, giving an opinion and/or advising another on the meaning of terms or principles (legal or otherwise) relevant to the mortgage transaction, or in matters involving the application of legal principles to particular facts, purposes or desires; (2) instructing clients in the manner in which to execute legal documents; and (3) preparing the HUD-1 Settlement Statement, and at times, other instruments related to mortgage loans and transfers of real property?

ANSWER: YES

(3) Does the preparation of documents evidencing title insurance services [i.e. binders, commitments or policies (owners or lenders)] constitute the preparation of "legal instruments of any character" and/or involve the application of legal principles to facts, purposes, and desires that, subject to the exception provided hereafter, can only be accomplished by attorneys licensed to practice in the State of West Virginia?

ANSWER: YES

(4) Can a non-lawyer engage in title insurance services if he or she complies with the provisions of West Virginia Code §33-1-10(f)(4) and UAL Opinion 01-02?

ANSWER: YES

(5) Is a lay person, *not* under the direct supervision or control of an attorney licensed to practice law in the State of West Virginia, engaged in the unlawful practice of law by mailing or hand-carrying instruments to the courthouse after the real estate closing for recording when the recordation of instruments takes place as part of a real estate transaction?

ANSWER: YES

(6) Does a non-lawyer plaintiff have standing to bring a cause of action alleging the unlawful practice of law in the State of West Virginia?

ANSWER: YES

(7) Do the Sherman Antitrust Act or the Interstate Commerce Clause preclude this court from exercising jurisdiction in this matter?

ANSWER: NO

IN THE CIRCUIT COURT OF BROOKE COUNTY, WEST VIRGINIA

LORRIE MCMAHON,

Plaintiff,

vs.

CIVIL ACTION NO: 01-C-121-

ADVANCED TITLE SERVICES COMPANY OF
WEST VIRGINIA, a West Virginia
corporation, et. al.,

Defendants,

and

WEST VIRGINIA BANKERS ASSOCIATION, INC.,
and WEST VIRGINIA ASSOCIATION OF
COMMUNITY BANKERS, INC.,

Interveners.

NOTICE OF PROPOSED SETTLEMENT

TO: Members of the West Virginia Bankers Association, Inc., and West Virginia Association of Community Bankers, Inc. (now know as the Community Bankers of West Virginia, Inc.)

**PLEASE READ THIS NOTICE CAREFULLY.
YOU ARE A MEMBER OF THE WEST VIRGINIA BANKERS ASSOCIATION, INC.,
AND/OR WEST VIRGINIA ASSOCIATION OF COMMUNITY BANKERS, INC.
AND YOUR RIGHTS MAY BE AFFECTED BY
LEGAL PROCEEDINGS IN THIS LITIGATION.**

By Order of the Honorable Martin J. Gaughan, Judge, of the Circuit Court of Brooke County, West Virginia ("the Court"), you are hereby notified of the following:

(1) The Court has approved a settlement in which the West Virginia Bankers Association, Inc., and West Virginia Association of Community Bankers, Inc. (collectively "the Associations") are Interveners in the case known as *McMahon v. Advanced Title Services Company*

of West Virginia, et al., Circuit Court of Brooke County, West Virginia, Civil Action No. 01-C-121.

(2) Pursuant to the terms of the Stipulation and Agreed Order, Nations of Pennsylvania, Inc., a foreign corporation authorized to do business in the State of West Virginia, successor in interest to Advanced Title Services Company of West Virginia, a West Virginia Corporation, and/or Advanced Real Estate Services Corporation of America, a Pennsylvania Corporation, West Virginia Bankers Association, Inc., and West Virginia Association of Community Bankers, Inc. (now known as the Community Bankers of West Virginia) have agreed to conduct business in compliance with the terms and conditions of the Stipulation and Agreed Order.

(3) You have the right, within forty-five (45) days from the date of the entry of the Order, or until May 15, 2010, to “opt-out of” or be excluded from the Brooke County Circuit Court’s ruling. After the expiration of this time, all members of the Associations on the Notice Start Date (as defined below) who have not opted out will be bound by the terms and conditions of the Stipulation and Agreed Order.

I. What is this lawsuit about?

This lawsuit alleged that Nations of Pennsylvania, Inc., a foreign corporation authorized to do business in the State of West Virginia, successor in interest to Advanced Title Services Company of West Virginia, a West Virginia corporation, and/or Advanced Real Estate Services Corporation of America, a Pennsylvania corporation, had engaged in the unauthorized practice of law in the State of West Virginia by providing various title services for real estate transactions including, but not limited to, conducting title examinations, issuing title insurance policies, performing real estate closings and providing other title related services. The Associations

intervened in the action in order to protect their interests. A copy of the Stipulation and Agreed Order is attached hereto.

II. Who is included in the Stipulation and Agreed Order?

Nations of Pennsylvania, Inc., a foreign corporation authorized to do business in the State of West Virginia, successor in interest to Advanced Title Services Company of West Virginia, a West Virginia Corporation, and/or Advanced Real Estate Services Corporation of America, a Pennsylvania Corporation, and the Associations except as to any members of these Associations who elect to be excluded as herein provided.

III. What are the terms of the Stipulation and Agreed Order?

The complete terms and conditions of the settlement are contained in the Stipulation and Agreed Order between the parties filed with the Court on March 31, 2010. This Notice is intended only as a summary of those terms and conditions. If you have any questions regarding this Notice or the Stipulation and Agreed Order, you may contact counsel for Interveners, the Associations, at the following address in order to obtain more information about the terms of the settlement:

Edward D. McDevitt, Esq.
Sandra M. Murphy, Esq.
Bowles Rice McDavid Graff & Love LLP
600 Quarrier St.
Charleston, WV 25301
(304) 347-1100

A. Option for Opting Out of the Stipulation and Agreed Order

Any member of the Associations wishing to opt-out of the Stipulation and Agreed Order will have the opportunity to do so.

The Stipulation and Agreed Order requires that any member of said Associations on the Notice Start Date provide notice of its intent to opt-out of and therefore not be bound by the Stipulation and Agreed Order within forty-five (45) days from March 31, 2010 (or such other date set by the Court) (the "Notice Start Date") or May 15, 2010 (the Opt-Out Period"). Notice of a member's intent to opt-out shall be made by mailing an executed Request for Exclusion (attached) to Edward D. McDevitt, Esq. and Sandra M. Murphy, Esq., Bowles Rice McDavid Graff & Love LLP, 600 Quarrier St., Charleston, WV 25301, with the mailing envelope postmarked on or before May 15, 2010. Within seven (7) days after the end of the Opt-Out Period, counsel to the Associations will mail copies of all Requests for Exclusion to Daniel J. Guida, 3374 Main Street, Weirton, West Virginia 26062.

If you do not opt-out and exclude yourself from the Stipulation and Agreed Order, you will be bound by its terms. If you opt-out and exclude yourself and still desire to contest matters contained within the Stipulation and Agreed Order, you should immediately consult with your own attorney, so that you can determine, what if any actions you may be required to or need to take.

B. How do I stay in the Stipulation and Agreed Order?

If you are a member of the Associations, you will be bound by the terms and conditions of the Stipulation and Agreed Order, if you do not opt-out and thereby exclude yourself from the Stipulation and Agreed Order. If you do not file a timely notice to opt-out, you will be

bound by the terms and conditions of said Stipulation and Agreed Order entered in this case.

C. How do I exclude myself from the Stipulation and Agreed Order?

If you do not wish to participate in the Stipulation and Agreed Order, you may opt out and exclude yourself from it. To exclude yourself, you must provide written notice that you want to be excluded from the Stipulation and Agreed Order as set forth in Paragraph A, above.

D. Who is protecting my interests?

For purpose of the proposed Stipulation and Agreed Order, the Associations are represented by Edward D. McDevitt, Esq. and Sandra M. Murphy, Esq., Bowles Rice McDavid Graff & Love LLP, 600 Quarrier St., Charleston, WV 25301. **You are encouraged to have your own legal counsel review this Notice in consultation with the Associations' legal counsel listed above.**

IX. Where can I get more information?

This Notice contains a summary of the Stipulation and Agreed Order, and should not be construed as a complete statement of said Order. **Any questions you may have about matters addressed by this Notice should not be made to the Court, but should instead be directed only to your Bank's legal counsel in consultation with the Associations' counsel as follows:**

Edward D. McDevitt, Esq.
Sandra M. Murphy, Esq.
Bowles Rice McDavid Graff & Love LLP
600 Quarrier St.
Charleston, WV 25301
(304) 347-1100

Certain of the pleadings and other papers filed in this action are also available for inspection at the

Office of the Brooke County Circuit Clerk, Wellsburg, WV.

REQUEST FOR EXCLUSION

DO NOT COMPLETE THIS FORM UNLESS YOU WISH TO EXCLUDE YOURSELF FROM THE STIPULATION AND AGREED ORDER.

READ THE ENCLOSED LEGAL NOTICE CAREFULLY BEFORE FILLING OUT THIS FORM.

I have read the Notice of Stipulation and Agreed Order dated March 31, 2010, and I DO NOT wish to be bound by the terms and conditions of the said Agreed Order in *McMahon v. Advanced Title Services Company of West Virginia, et al.*, Circuit Court of Brooke County, West Virginia, Civil Action No. 01-C-121.

Full Name of Member of West Virginia Bankers Association, Inc., and/or West Virginia Association of Community Bankers, Inc. (now known as the Community Bankers of West Virginia) Seeking Exclusion:

Street Address: _____

City and State: _____

Zip Code: _____

Telephone Number: _____

Date: _____

Signature: _____

Title: _____

IF YOU WANT TO OPT OUT AND EXCLUDE YOURSELF FROM THIS STIPULATION AND AGREED ORDER, THIS FORM MUST BE COMPLETED, POSTMARKED BY MAY 15, 2010, AND SENT TO:

Edward D. McDevitt, Esq.
Sandra M. Murphy, Esq.
Bowles Rice McDavid Graff & Love LLP
600 Quarrier St.
Charleston, WV 25301

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 17th of November, 2010, the following order was made and entered:

Lorrie McMahon, Plaintiff Below, Petitioner

vs.) No. 101027

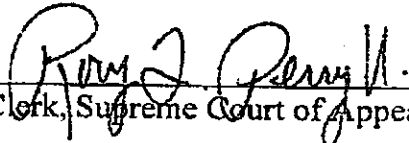
Advanced Title Services Company of West Virginia, a West Virginia corporation, et al., Defendants Below; and West Virginia Bankers Association, Inc., and West Virginia Association of Community Bankers, Inc., Intervenors Below. Respondents

On a former day, to-wit, August 23, 2010, came the petitioner, Lorrie McMahon, by Daniel J. Guida and Robert P. Fitzsimmons, her attorneys, and presented to the Court her petition praying for an appeal from a judgment of the Circuit Court of Brooke County, rendered on March 31, 2010, with the record accompanying the petition.

Upon consideration whereof, the Court is of opinion to and doth hereby refuse said petition for appeal.

A True Copy

Attest:


Clerk, Supreme Court of Appeals

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 27th January, 2011, the following order was made and entered *nunc pro tunc*:

Lorrie McMahan, Plaintiff Below, Petitioner

vs.) No. 101027

Advanced Title Services Company of West Virginia, a West Virginia corporation, et al., Defendants Below; and West Virginia Bankers Association, Inc., and West Virginia Association of Community Bankers, Inc., Intervenors Below, Respondents

On a former day, to-wit, December 20, 2010, came the petitioner, Lorrie McMahan, by Daniel J. Guida and Robert P. Fitzsimmons, her attorneys, and presented to the Court her motion in writing to renew her petition for appeal, out-of-time, for the reasons set forth therein.

Upon consideration whereof, the Court is of opinion to amend its November 17, 2010 order *nunc pro tunc*, in the above-captioned matter as follows:

On a former day, to-wit, August 23, 2010, came the petitioner, Lorrie McMahan, by Daniel J. Guida and Robert P. Fitzsimmons, her attorney, and presented to the Court her petition praying for an appeal from a judgment of the Circuit Court of Brooke County, rendered on March 31, 2010, with the record accompanying the petition.

Upon consideration whereof, the Court is of opinion to and doth hereby refuse said petition for appeal on the ground that the circuit court judgment is plainly right.

A True Copy

Attest: /s/ Rory L. Perry II, Clerk of Court

