

PRACTICE OF LAW BOARD
STATE OF WASHINGTON
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#04-02 ADVISORY OPINION
August 2004

NON-ATTORNEY REAL ESTATE AGENT

The inquirer requested an advisory opinion on 4 questions regarding his conduct as a real estate agent. He stated that he is a “retired” member of 2 other state bars (he is currently suspended in each state for nonpayment of annual license fees). He is not admitted to practice in Washington. The issues and responses are as follows:

Issue 1. May the inquirer explain the meaning of provisions in a standardized real estate contract to his real estate clients?

Response. No. To “explain the meaning” of contract terms would constitute “giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.” GR 24 (a)(1). The Supreme Court has held that licensed real estate brokers or salespersons are permitted to *complete* simple printed standardized real estate forms, approved by a lawyer, in connection with real estate transactions actually handled by the broker or salesperson, without charge for completing the form. *Cultum v. Heritage House Realtors*, 103 Wn.2d 623, 694 P.2d 630 (1985). They have also held that lenders are authorized to *prepare* legal documents ordinarily incident to their financing activities, whether or not a fee is charged, so long as the lay employees do not exercise any legal discretion. *Perkins v. CTX Mortgage Co.*, 137 Wn.2d 93, 969 P.2d 93 (1999). The Supreme Court has not permitted such nonlawyers to give legal advice.

Therefore, a licensed real estate agent may not “explain” the meaning of provisions in the standardized real estate contract to his or her real estate clients.

Issue 2. May the inquirer draft contractual provisions for a real-estate client, assuming always that he does not levy a separate charge for those services?

Response. No. Drafting legal documents is the practice of law. GR 24(a)(2). Nonlawyers are not authorized to draft legal documents. In *Cultum* and *Perkins* the Supreme Court authorized nonlawyers to select and complete legal documents incidental to their professions, but in both cases the documents were prepared by attorneys. Similarly, in Washington limited practice closing officers licensed by the

Supreme Court pursuant to APR 12 may only “select, prepare and complete documents in a form previously approved” by the Limited Practice Board.

Issue 3. May the inquirer advertise himself as an attorney? May he do so if the advertisement includes a parenthetical “retired” or “not admitted in Washington?”

Response. No. RCW 2.48.180 provides that a “nonlawyer” is a person not authorized to practice law by the Washington Supreme Court. RCW 2.48.180 (1)(b). It provides that if a nonlawyer holds himself out to practice law, he engages in the unauthorized practice of law.

Issue 4. May the inquirer advertise in a manner that could suggest or imply legal competence or ability (e.g., “I can help you through what can be a legally complex transaction”) as opposed to merely stating the objective fact that he has legal education and experience?

Response. The inquirer may not practice law in Washington. This question is not an issue of the practice of law, but whether it is a misleading advertisement on which the Board can express no opinion.