

UPL ADVISORY OPINION
UPL 04 - 02
(October 2004)

Property Management Companies

This is an Advisory Opinion regarding Rule 31 of the Rules of the Supreme Court of Arizona regarding a property management company's preparation of late payment notices, eviction notices, and demand letters seeking payment of rent, as well as the preparation and recording of liens, and participation in mediations regarding unpaid rent.¹

Issue:

- 1. May a property management company prepare documents such as late payment notices, demand letters seeking payment of rent or association fees, and eviction notices relating to the property being managed? Yes, if the preparation of such documents is incidental to the regular course of the property management company's business or if the documents are prepared by a certified document preparer.**
- 2. May a property management company prepare and record liens relating to the property being managed? Yes, if the preparation and recording of such liens is incidental to the regular course of the property management company's business or if the liens are prepared and recorded by a certified document preparer.**
- 3. May a property management company represent owners or a homeowners' associations in mediations? No, representation in mediations is specifically identified as the practice of law and there are no applicable exceptions for property management companies, even if the individual performing the work is a certified legal document preparer. Although a property management company may not represent owners or a homeowners' association in a mediation, a property management company may certainly participate with the owners or the association representatives in a mediation, and may provide information and assistance to the owners or the homeowners' association in the mediation.**

¹ Opinions of the Committee are advisory in nature only and are not binding in any disciplinary or other legal proceedings. © State Bar of Arizona 2004

Facts:

In Arizona, some rental or investment properties are managed by a property management company rather than by the owner. Management companies are also retained by homeowners' associations to manage associated communities. Although the responsibilities of the management company may vary, management companies often have broad responsibilities relating to the property that might include maintenance, marketing the property, showing the property to prospective tenants, taking tenant applications, paying utilities and bills, dealing with tenant concerns or complaints, and collecting rent or association fees. Management company responsibilities may also include preparing documents such as notices of late payment, demand letters for unpaid rent or fees, eviction notices, and notices of breach of contract (either a rental agreement or an association agreement). Some management companies have been responsible for preparing and recording liens against property owners in an association who have failed to fulfill their obligations regarding association fees or dues. Additionally, some management companies participate in mediations regarding amounts owed to associations or owners.

Relevant Authority:

Arizona Supreme Court Rule 31:

Rule 31. Regulation of the Practice of Law

(a) Supreme Court Jurisdiction Over the Practice of Law

1. *Jurisdiction.* Any person or entity engaged in the practice of law or unauthorized practice of law in this state, as defined by these rules, is subject to this court's jurisdiction.

2. *Definitions.*

A. "Practice of law" means providing legal advice or services to or for another by:

- (1) Preparing any document in any medium intended to affect or secure legal rights for a specific person or entity;
- (2) Preparing or expressing legal opinions;
- (3) Representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration and mediation;
- (4) Preparing any document through any medium for filing in any court, administrative agency or tribunal for a specific person or entity; or
- (5) Negotiating legal rights or responsibilities for a specific person or entity.

B. "Unauthorized practice of law" includes but is not limited to:

(1) engaging in the practice of law by persons or entities not authorized to practice pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 33(d); or

(2) using the designations "lawyer," "attorney at law," "counselor at law," "law," "law office," "J.D.," "Esq.," or other equivalent words by any person or entity who is not authorized to practice law in this state pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 33(d), the use of which is reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law in this state.

C. "Legal assistant/paralegal" means a person qualified by education and training who performs substantive legal work requiring a sufficient knowledge of and expertise in legal concepts and procedures, who is supervised by an active member of the State Bar of Arizona, and for whom an active member of the state bar is responsible, unless otherwise authorized by supreme court rule.

* * *

(b) Authority to Practice. Except as hereinafter provided in section (c), no person shall practice law in this state or represent in any way that he or she may practice law in this state unless the person is an active member of the state bar, and no member shall practice law in this state or represent in any way that he or she may practice law in this state, while suspended, disbarred, or on disability inactive status.

(c) Exceptions. Notwithstanding the provisions of section (b):

* * *

19. Nothing in these rules shall prohibit the preparation of documents incidental to a regular course of business when the documents are for the use of the business and not made available to third parties.

23. Nothing in these rules shall prohibit a certified legal document preparer from performing services in compliance with Arizona Code of Judicial Administration. Part 7, Chapter 2, Section 7-208.

Arizona Code of Judicial Administration § 7-208: Legal Document Preparers.

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F. Role and Responsibilities of Certificate Holders.

1. Authorized Services. A certified legal document preparer may:
 - a. Prepare or provide legal documents, without the supervision of an attorney, for an entity or a member of the public in any legal matter when that entity or person is not represented by an attorney;
 - b. Provide general legal information, but may not provide any kind of specific advice, opinion or recommendation to a consumer about possible legal rights, remedies, defenses, options or strategies;
 - c. Provide general factual information pertaining to legal rights, procedures, or options available to a person in a legal matter when that person is not represented by an attorney;
 - d. Make legal forms and documents available to a person who is not represented by an attorney; and
 - e. File and arrange for service of legal forms and documents for a person in a legal matter when that person is not represented by an attorney.

Discussion:

1. May a property management company prepare documents such as late payment notices and eviction notices relating to the property being managed? Yes, if the preparation of such documents is incidental to the regular course of the property management company's business or if the documents are prepared by a certified legal document preparer.

In some instances, preparation of a document such as a late payment notice or a letter stating that a rent payment is overdue may not be the practice of law if the notice or letter is not legally required under Arizona law or under any existing lease or rental contract, but merely is being given to inform a tenant or association member that a payment has been missed and that the payment should be made. For example, if rent is due on the first of the month, but not overdue until the tenth, a property management company may send out a notice to all tenants who did not pay by the first, that payment will be late if not paid by the tenth. If the notice is not contractually required or required under any statute, the notice is not of any material legal effect (the rent is late on the tenth regardless of whether a notice is sent or not) and preparation and service of such a notice would not constitute the practice of law.

However, preparation of documents such as eviction notices or late payment notices constitutes the practice of law under Rule 31 (a) (2) (A) (1) if they are intended to affect a property owner's legal rights relative to a property owner's tenant. For example, whether an eviction notice is properly given can affect whether a court will evict a non-

paying tenant or allow the tenant to remain in the property. Likewise, written notice of lack of payment may be required under the terms of a contract to establish breach and to give the tenant an opportunity to cure any breach. Preparation of eviction notices or notices of breach would constitute the practice of law as they are intended to affect the Landlord's rights relative to the Tenant.

Rule 31(b) requires that “[e]xcept as hereinafter provided in section (c), no person shall practice law in this state...unless the person is an active member of the state bar...” Therefore, legal documents such as eviction notices and notice of breach of a rental contract may only be prepared by an active member of the state bar of Arizona, unless the preparation falls within a specific exception identified in Rule 31 (c).

There is no exception in Rule 31 (c) that would exempt preparation of eviction notices and notices of breach of a rental contract under all circumstances. However, Rule 31 (c) (19) provides: “Nothing in these rules shall prohibit the preparation of documents incidental to a regular course of business when the documents are for the use of the business and not made available to third parties.”

In situations in which the management company has broad responsibilities to act on behalf of the owner or the association, it would seem inappropriate to assert that Rule 31 (c) (19) did not apply, because the management company was preparing the documents for use by a “third party” – the owner of the property – even though the Rule could technically be read to reach such a result. The more appropriate reading of Rule 31, from a public policy perspective, would appear to be that the document is being prepared by the management company and used by the management company in a manner that is incidental to the regular course of its business.

Therefore a management company with broad responsibilities regarding management of a property or management of an association may prepare legal documents that are incidental to the management of the property (just as the owner would be allowed to do so) pursuant to Rule (c) (19).

However, if a company does nothing but prepare eviction notices or notices of breach of contract for property owners, such work would not be incidental to the company's regular course of business and would not fall within the exception established by Rule 31 (c) (19) regardless of whether such a company called itself a management company or not.

Alternatively, regardless of the scope of a management company's responsibilities, the management company would be allowed to prepare legal documents such as eviction notices and notices of breach if such documents were prepared by a certified document preparer pursuant to Rule 31 (c) (23), which provides: “Nothing in these rules shall prohibit a certified legal document preparer from performing services in compliance with Arizona Code of Judicial Administration. Part 7, Chapter 2, Section 7-208.”

Section 7-208 (F) (1) (a) of the Code of Judicial Administration allows a certified document preparer to prepare documents such as eviction notices or notices of breach of contract. That provision, in pertinent part, provides: “A certified legal document preparer may: (a) Prepare or provide legal documents, without the supervision of an attorney, for an entity or a member of the public in any legal matter when that entity or person is not represented by an attorney.”

Therefore, a property management company with broad responsibilities regarding the management of the property may prepare legal documents such as eviction notices or notices of breach of a rental or association agreement that are incidental to the operation of its business. Alternatively, a property management company may prepare legal documents such as eviction notices or notices of breach of contract if those documents are prepared by a certified legal document preparer.

2. May a property management company prepare and record liens relating to the property being managed? Yes, if the preparation and recording of such liens is incidental to the regular course of the property management company’s business or if the liens are prepared and recorded by a certified document preparer.

Under Rule 31 (a) (2) (A) (1), a property management company’s preparation and recording of a lien constitutes the practice of law, because a lien is intended to affect either the property owner’s rights relative to a tenant or a homeowners’ associations’ rights relative to an individual homeowner. Additionally, because a lien is filed with the County Recorder, the preparation and recording of a lien is also the practice of law under Rule 31 (a) (2) (A) (4), which states: “‘Practice of law’ means providing legal advice or services to or for another by. . .(4) Preparing any document through any medium for filing in any court, administrative agency or tribunal for any specific person or entity.”

Consistent with the discussion above, a property management company with broad responsibilities for managing the property may prepare and record liens if doing so is incidental to the property management company’s regular business. See Rule 31(c) (19).

Likewise, regardless of the scope of a property management company’s responsibilities, a certified document preparer can file and record liens. See Rule 31 (c) (23); Section 7-208 (F) (1) (a) and (e) of the Code of Judicial Administration (“A certified legal document preparer may: (a) Prepare or provide legal documents, without the supervision of an attorney, for an entity or a member of the public in any legal matter when that entity or person is not represented by an attorney. . . [and] (e) File and arrange for service of legal forms and documents for a person in a legal matter when that person is not represented by an attorney.”

Therefore, a property management company with broad responsibilities for a property or homeowners’ association may prepare and record liens for property owners or

the association, if the work is incidental to the management company's regular course of business or if the work is performed by certified document preparers.

- 3. May a property management company represent owners or a homeowners' associations in mediations? No, representation in mediations is specifically identified as the practice of law and there are no applicable exceptions for property management companies, even if the individual performing the work is a certified legal document preparer. Although a property management company may not represent owners or a homeowners' association in a mediation, a property management company may certainly participate with the owners or the association representatives in a mediation, and may provide information and assistance to the owners or the homeowners' association in the mediation.**

Rule 31 (a) (2) (A) (3) specifically identifies representing another party in an arbitration or mediation as the practice of law. Rule 31 (a) (2) (A) (3) in pertinent part states: "Practice of law" means providing legal advice or services to or for another by: ... (3) Representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration and mediation."

Rule 31(b) requires that "[e]xcept as hereinafter provided in section (c), no person shall practice law in this state...unless the person is an active member of the state bar..." Therefore, an individual may only represent another at a mediation if the representative is an active member of the State Bar of Arizona, unless the representation falls within a specific exception identified in Rule 31 (c).

There are no exceptions identified in Rule 31 (c) that would allow a property management company to represent an association or a property owner, even if the work was performed by a certified legal document preparer. Therefore only a licensed attorney may represent a property owner or homeowners' association at a mediation or arbitration.

However, a property management company may certainly participate with the owners in a mediation by providing information to the owners or the homeowners' association in the mediation.