



HENRY McMASTER
ATTORNEY GENERAL

February 17, 2009

The Honorable James E. Smith
Member, House of Representatives
P. O. Box 11867
Columbia, South Carolina 29211

Dear Representative Smith:

In a letter to this office you questioned whether it is the unauthorized practice of law for a licensed real estate agent in this State to complete a contract for the sale of real estate by filling in the names of the parties in the transaction, along with necessary dates, figures or other relevant information on a pre-approved form contract. You indicated that this question assumes that the use of the form contract does not constitute the unauthorized practice of law and that it should be assumed that the real estate agent would not alter or amend the pre-approved language used on the form contract. Your question is only concerned with the addition of the information necessary to make the contract specific to the transaction.

Enclosed please find a copy of a prior opinion of this office dated May 22, 2007 which I believe is responsive to your inquiry. That opinion was premised on the following facts:

...many real estate agents in this State use a prefabricated contract for the sale of real property. It is your understanding that this contract is designed and, with the exception of the specific information for the specific transaction later filled in, written by a licensed attorney.

It was questioned whether the filling in of the blanks on such contract in association with the sale of property constitutes the unauthorized practice of law. That opinion concluded that

...as to the situation you addressed involving the use of a prefabricated contract for the sale of real property where it is my understanding that all that is done is the mere filling in of the blanks on such a contract, it does not appear that such activity would constitute the unauthorized practice of law. I assume, of course, that absolutely no legal advice is provided or requested in association with the execution of such a contract. However, as explained earlier, the ultimate resolution of your question

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would be a matter for the State Supreme Court as that body is given the authority to regulate the practice of law in this State.

You also questioned whether proposed changes to S.C. Code Ann. § 40-5-310 contained in House Bill 3123 would change this office's opinion regarding the above question. You questioned whether the activity described above would become the unauthorized practice of law.

House Bill 3123 amends Section 40-5-310 to state that:

[n]o person may either practice law or solicit the legal cause of another person or entity in this State unless he has been enrolled as a member of the South Carolina Bar pursuant to applicable court rules, or otherwise authorized to perform prescribed legal activities by action of the Supreme Court of South Carolina. The practice of law shall be defined by the decisions of the Supreme Court of South Carolina prior to any charge being filed pursuant to this section. A person who violates this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years.

Based upon my review, in the opinion of this office, the proposed changes to Section 40-5-310 would not change the opinion of this office as expressed in the referenced May 22, 2007 opinion.

If there are any questions, please advise.

Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General