

RI Supreme Court Decision to Impact Real Estate, Title and Mortgage Industries

Description

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In a case having broad implications for residential real estate transactions, title insurance companies, and the mortgage industry, the Rhode Island Supreme Court on May 29 addressed the issue of whether residential real estate closings and related services should be considered the practice of law, and if so, whether non-attorneys should nevertheless be allowed to perform those services in the public interest. The Court specifically considered whether the following activities are the practice of law: (1) conducting a residential real estate closing; (2) examining a title for marketability; (3) drafting a deed; (4) drafting a residency affidavit; and (5) drafting a durable power of attorney. The Court's Unauthorized Practice of Law Committee and the Rhode Island Bar Association urged the Court to prohibit non-lawyers from performing those activities. The respondents and several non-party organizations, including the U.S. Federal Trade Commission and also certain Rhode Island title insurance, banking and real estate trade associations or businesses represented by Partridge Snow & Hahn, argued that consumers should have the option of hiring an attorney to assist them with a residential real estate transaction but that it should not be required.

The Court emphasized that residential real estate transactions can give rise to many potential legal problems, but also acknowledged that there is very little evidence that existing Rhode Island real estate practices including non-attorney closings have harmed buyers or sellers, and that requiring an attorney to handle closings would increase the cost. The Court also acknowledged that defining a closing as the practice of law would potentially require hiring multiple lawyers to represent the interests of all of the different parties to the transaction, a further expense.

The Supreme Court concluded that a non-attorney agent of a title insurance company may conduct a real estate closing in Rhode Island, provided that the parties to the transaction are given clear notice that the non-attorney is not representing anyone as a lawyer and cannot provide legal advice. The Court laid out the steps that a non-attorney should follow when giving buyers and sellers that notice. In contrast, the Court held that reviewing a title for marketability and drafting a deed is the practice of law, and must be performed by an attorney. The Court took a middle ground on durable powers of attorney, holding that drafting such documents in connection with the issuance of title insurance is not the practice of law provided that the power of attorney is limited to the specific real estate closing involved. Drafting residency affidavits in connection with the issuance of title insurance is not the practice of law in Rhode Island, unless the party signing the affidavit has questions about their residency in which case those questions must be answered by a lawyer.

The Court's decision was made in the context of residential real estate purchase and sales transactions, and does not explicitly address refinancings. However, the Court's reasoning will likely impact refinancing transactions as well. The decision allows non-attorney closings to continue in Rhode Island, but does impose several new requirements and limitations on title insurance companies and others involved in residential real estate transactions in the state. Banks, title companies and others that use non-attorneys for certain aspects of such real estate transactions should review their procedures in light of the Rhode Island Supreme Court's new ruling. The full text of the decision can be [viewed here](#).

Partridge Snow & Hahn's [Litigation Practice Group](#) is ready to answer questions regarding the extensive implications of this decision. For more information, contact [Robert Taylor](#) or [Paul Kessimian](#).

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