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IN THE SUPREME COURT OF FLORIDA

Case No. SC 13-889

IN RE: THE FLORIDA BAR RE: ADVISORY OPINION – ACTIVITIES OF COMMUNITY ASSOCIATION MANAGERS

TERRA MANAGEMENT SERVICES, INC.'S BRIEF IN SUPPORT OF ACTIVITIES OF COMMUNITY ASSOCIATION MANAGERS

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IDENTITY AND INTEREST

This brief is submitted on behalf of Terra Management Services, Inc., as an interested party, pursuant to the Court's invitation in its May 28, 2013, Order. Terra Management Services, Inc. is a community association management firm located and operating in central Florida under License No. CAB2814. Terra employs six (6) licensed community association managers and manages approximately twenty (20) homeowners' and condominium associations in the counties of Hernando, Hillsborough, Pinellas, Manatee, Lake and Polk. Terra's President, David M. Felice, is a member of the Real Property, Probate and Trust Law Section of The Florida Bar, and has significant experience as both an attorney and licensed community association manager, working in real estate, community development, and community operations.

SUMMARY OF ARGUMENT

The Court should reject the Proposed Advisory Opinion[1] filed by the Standing Committee on Unlicensed Practice of Law (the "Standing Committee") regarding activities of licensed community association managers ("CAMs"). No evidence has been produced to establish that the activities in question have resulted in harm to the public. Further, there is no evidence that, by characterizing these activities as the unlicensed practice of law, the potential for harm to the public will be reduced.

The standard relied upon by the Standing Committee in its Proposed Advisory Opinion is overly broad and does not encompass principles espoused by this court that are less restrictive and more appreciative of real world business applications of the law. We should revisit the decision set forth in *The Florida Bar re: Advisory Opinion – Activities of Community Association*

[1] FAO #2012-2, *Activities of Community Association Managers*, The Florida Bar Standing Committee on the Unlicensed Practice of Law.

Managers, 681 So. 2d 1119 (Fla. 1996) (the "*1996 Opinion"*), but not for the purpose suggested by the Standing Committee. Rather, the *1996 Opinion* should be revisited because it unnecessarily restricts the functions, duties and services which can be provided by CAMs. The activities at issue do not constitute the unlicensed practice of law. Moreover, even assuming *arguendo* that some of the activities do constitute the practice of law, we believe the Court should use its power to authorize, as it has done in the past, those activities which licensed community association managers are capable of performing with little risk of harm to the public.

ARGUMENT

THE COURT SHOULD REJECT THE STANDING COMMITTEE'S PROPOSED ADVISORY OPINION AND REVISIT THE 1996 OPINION FOR THE PURPOSE OF CLARIFYING IT'S HOLDING IN LIGHT OF SUBSEQUENT COURT RULINGS AND AVOIDING THE UNDUE RESTRICTION OF ACTIVITIES PERFORMED BY COMMUNITY ASSOCIATION MANAGERS.

A. There is no evidence of harm or potential harm from which to protect the public.

In *Florida Bar v. Moses,* the Supreme Court of Florida stated, "The single most important concern in the Court's defining and regulating the practice of law is the protection of the public from incompetent, unethical, or irresponsible representation."[2] Without a showing of harm to the public or the threat of future harm, this Court has authorized activities of similar professions even though those activities may be considered the practice of law when carried out by unauthorized individuals. In *In The Florida Bar Re Advisory Opinion-Nonlawyer Preparation of and Representation of Landlord in Uncontested Residential Evictions*, 605 So.2d 868, 871 (Fla. 1993), the Court held, "Because of the unique position of property managers and *the fact that*

[2] 380 So.2d 412, 417 (Fla. 1980); See also *Florida Bar v. Brumbaugh,* 355 So.2d 1191, 1192 (Fla. 1978) (hereinafter cited as "*Brumbaugh*") ("In determining whether a particular act constitutes the practice of law, our primary goal is the protection of the public.").

there has been no showing that the public is being or will be harmed by property managers handling uncontested residential evictions, we agree . . . that such activity should be authorized." (Emphasis added)

Testimony of Brad van Rooyen, Executive Director of CEOMC, an organization supporting the community management industry, as set forth in the Transcript of Proceedings from the Standing Committee's June 22, 2012 public hearing (the "Transcript"), indicated that eighty-six percent (86%) of homeowners' and condominium association members are opposed to greater regulatory control of associations.[3] Erica White, the prosecuting attorney for the Regulatory Council of Community Association Managers at the Department of Business and Professional Regulations (the "DBPR") estimated that her department receives approximately six hundred (600) CAM complaints a year and that only fifteen percent (15%) of those resulted in any type of discipline against a CAM.[4] Considering that there are at least eighteen thousand five hundred (18,500) CAMs in the state of Florida,[5] this equates to complaint rate of approximately three percent (3%). This rate of complaint is significantly less than that for attorneys. The Florida Bar reports a complaint rate approaching eight percent (8%) based on the occurrence of seven thousand five hundred (7,500) complaints for an attorney population of ninety-five thousand (95,000).[6] Further, not one of those complaints against CAMs involved accusations or prosecutions for the unlicensed practice of law.[7] Without evidence of actual harm to, or complaints by, Florida citizens, there seems to have been little reason for the Standing

[3] Transcript of Proceedings of June 22, 2012 Public Hearing, Standing Committee on UPL, FAO#2012-2 (hereinafter cited as "*Transcript*") at 116:4
[4] *Id* at 93:5.
[5] Proposed Advisory Opinion at 5
[6] Attorney Discipline - Information for the Public and Attorneys, The Florida Bar (June 14, 2013, 10:00 AM), http://floridabar.org.
[7] Written testimony of J. Layne Smith, Tab C to Proposed Advisory Opinion.

Committee to move forward with the Proposed Advisory Opinion and little reason to increase regulation of CAMs. In light of this lack of evidence, the potential for future harm is a weak justification. Moreover, even assuming *arguendo* that there is some harm, there is no evidence that limiting the ability of CAMS to perform the activities at issue would alleviate that harm as the complaint rate for attorneys far exceeds that of CAMs. By characterizing additional activities as the unlicensed practice of law, the Court would merely be increasing costs for homeowners without providing any corresponding benefit.

The lack of evidence that there is even a minimal amount of harm to the public, the lack of public sentiment to restrain CAM activities, and the continuing discussion in the legal community of other actions that may be detrimental to CAMs, gives rightful cause for one to wonder what the Real Property, Trust, and Probate Section's true motivation was for petitioning the Standing Committee in the first place. Regardless of the reason, there is a perception that this is an improper attempt by attorneys to utilize their collective power for their own benefit. Trust in our institutions is already at an all-time low and this perception should not be taken lightly. However this matter is decided, it is important that the appearance of impropriety be avoided and that the integrity of the legal profession is maintained.

B. The *Sperry* standard which the Proposed Advisory Opinion employs in assessing the activities of CAMs is overbroad and inadequate in today's business environment.

As a basis for determining what constitutes the unlicensed practice of law the Proposed Advisory Opinion makes reference to *Florida Bar v. Sperry*, where the Court stated:

> . . . if the giving of such advice and performance of such services affect important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess legal skill and a knowledge of the law greater than that possessed by the

> average citizen, then the giving of such advice and the performance of such services by one for another as a course of conduct constitute the practice of law.[8]

However, the *1996 Opinion* does not make specific reference to the above provision and the Court on repeated occasions has used a narrower standard than the *Sperry* test. We believe the standards set forth in *Sperry* should be narrowed, and the Court acknowledged as much in *Brumbaugh*, where it stated:

> This [Sperry] definition is broad and is given content by this Court only as it applies to specific circumstances of each case. We agree that any attempt to formulate a lasting, all encompassing definition of 'practice of law' is doomed to failure '*for the reason that under our system of jurisprudence such practice must necessarily change with the everchanging business and social order*.[9] (Emphasis added).

In many instances the Court has applied the forward thinking set forth in *Brumbaugh*. For example, in *In re Advisory Opinion-Nonlawyer Preparation of Notice to Owner and Notice to Contractor*, 544 So. 2d 1013 (Fla. 1989), the Court decided it was not the unauthorized practice of law for certain persons to prepare notice to owner forms, recognizing that those providing notice to owner services had knowledge of the construction industry and familiarity with the requirements for perfecting a mechanics lien that negated the likelihood of the public being harmed. Subsequently, in *In The Florida Bar Re Advisory Opinion-Nonlawyer Preparation of and Representation of Landlord in Uncontested Residential Evictions*, 627 So.2d 485 (Fla. 1993), the Supreme Court of Florida held that non-lawyer property managers are authorized to complete, sign and file complaints for eviction and motions for default and to obtain final judgments and writs of possession on behalf of landlords in uncontested residential

[8] *Florida Bar v. Sperry*, 140 So.2d 587, 591 (Fla. 1962), *vacated on other grounds*, 373 U.S. 379 (1963) (hereinafter cited as "*Sperry*").
[9] *Brumbaugh* at 1192.

evictions for nonpayment of rent, recognizing that the handling of evictions is incidental to the management of the rental property."

In both of the above-cited advisory opinions, the court found that the individuals possessed specialized knowledge and experience that would allow them to perform activities that would otherwise constitute the practice of law. In other words, the Court looked at the specific individuals, rather than the "average citizen" to determine if the activities that they performed constituted the unauthorized practice of law. This is directly applicable to the situation now being faced by CAMs.

Community association managers have knowledge of the industry and are familiar with the statutory requirements for most of the challenged activities such as determining the days for notice, determining voting and quorum requirements, and modifying limited proxy forms. Community association managers are licensed through the DPBR and must pass an examination which "demonstrate[s] that the applicant has a fundamental knowledge of state and federal laws relating to the operation of all types of community associations. . . ."[10] Further, all community association managers must complete 20 hours of continuing education every two years, 4 hours of which are devoted to legal issues.[11]

We would ask this Court to formalize the standard that it has clearly employed in its earlier decisions. It is not a standard based on the knowledge of the "average citizen," but one based on the specialized knowledge of persons within an industry. In the case of a CAM that standard could be verbalized as follows: an activity constitutes the unlicensed practice of law if the performance of that activity requires that the community association manager to possess legal

[10] § 468.433, Fla. Stat.
[11] Rule 61E14-4.001, Florida Administrative Code.

skill and a knowledge of the law greater than that possessed by the average, prudent, and competent community association manager.

This is not a new standard, but merely an extension of the principle laid down in *Brumbaugh*. It recognizes that in today's business environment, information of the law is readily available to all, and that the services of an attorney are not always necessary to apply it. Further, it provides a standard that is flexible and which adapts to changes in industry knowledge and practice.

C. **The 1996 Opinion and the Proposed Advisory Opinion fail to recognize a distinction between "interpretation" of the law and "application" of the law. This failure leads to the improper characterization of CAM activities as the unlicensed practice of law.**

Over time, the Florida Statutes governing community associations have become more and more procedural. There are numerous statutory provisions which specify time periods for action, procedures for giving notice, collection procedures, turnover procedures, and procedures of other types, all of which should be capable of being applied by CAMs without fear of it constituting the unauthorized practice of law. To hold that a CAM cannot read, understand and apply the statutes to their management practice, is akin to saying that a licensed contractor is not allowed to read an apply the building code to his construction. It leads to a ridiculous result.

In the *1996 Opinion*, the Court distinguishes ministerial tasks from task that require "interpretation" of statutes and governing documents. However, "interpretation," as it applies to the unlicensed practice of law, has never clearly been defined. The need for interpretation presupposes that there are multiple meanings for the same word or phrase. It requires the reader to decipher the meaning. However, if there is a clear meaning for a particular word or phrase, then there is nothing to interpret. For instance, Section 718.112(2)1, Florida Statutes states,

"Adequate notice of all board meetings, which must specifically identify all agenda items, must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency. . . ." There is nothing ambiguous about this statute. Forty-eight continuous hours is not up for interpretation, and while "conspicuous" may be the fancy legal way of saying clearly visible or standing out for everyone to see, it is not ambiguous. Yet the *1996 Opinion* states that "determining the timing, method and form of giving notice of meetings," constitutes the unlicensed practice of law.[12]

The *1996 Opinion* draws a distinction between activities that are ministerial in nature and those that require significant legal expertise. However, the conclusion that it reaches, as set forth above, fails to recognize that, as an incident to performing their duties, CAMs must read and apply statutes and law. This is necessary because the same provide procedures to be followed in the management of their community association clients. Due to this shortcoming, the *1996 Opinion* needlessly restricts the activities of CAMs, and as a result increases the financial burden on homeowners who live in managed community.

D. Most of the activities in the Standing Committee's Propose Advisory Opinion do not constitute the Unlicensed Practice of Law

a. Activities the Standing Committee properly found not to constitute the unlicensed practice of law.

- **Activity 1: Preparation of a certificate of assessments due once the delinquent account is turned over to the association's lawyer**
- **Activity 2: Preparation of a certificate of assessments due once a foreclosure against the unit has commenced**
- **Activity 3: Preparation of certificate of assessments due once a member disputes in writing to the association the amount alleged as owed**

[12] *Id.*

- **Activity 10: Drafting of pre-arbitration demand letters**

The Standing Committee found that the above activities do not constitute the unlicensed practice of law. As we are in agreement with the result of the Standing Committee's analysis as to these activities, we refrain from further addressing them here.

b. Activities the Standing Committee properly found to constitute the unlicensed practice of law.

- **Activity 4: The drafting of amendments (and certificates of amendment that are recorded in the official records) to declaration of covenants, bylaws, and articles of incorporation when such documents are to be voted upon by the members**

We concede that the drafting of amendments to the declaration of covenants, bylaws, and articles of incorporation constitutes the unlicensed practice of law. The carrying out of these responsibilities requires a heightened understanding of various aspects of the law that is beyond the knowledge and skill of the average, prudent, and competent CAM. In addition to knowledge of the statutes governing community associations, drafting amendments requires extensive knowledge of the statutes governing real property and corporations. This knowledge extends outside of the realm of the education, training, and experience of most CAMs, and therefore should not be done without the assistance of an attorney.

c. Activities the Standing Committee improperly found to constitute the unlicensed practice of law

- **Activity 5: The determination of number of days to be provided for statutory notice**

This activity is analogous to the issue raised in the *1996 Opinion* that found that determining the timing, method, and form of giving notices of meetings requires the interpretation of statutes, administrative rules, governing documents, and rules of civil procedure

and that such interpretation constitutes the practice of law. As stated above, we believe that this conclusion is too restrictive. The statutes governing statutory notice are procedural in nature and do not require interpretation. Knowledge is the prerequisite. For CAMs, that knowledge is often firsthand. Understanding notice requirements is "community management 101,"[13] and even if a CAM does not know firsthand, the requirements can easily be obtained by referring to the relevant statutes and documents. Short of the manager not having basic literacy and reading comprehension skills, there is little potential for harm. The licensure, testing, and continuing education requirements for CAMs ensure that CAMs have the requisite abilities to understand and apply procedural statutes.

- **Activity 6: Modification of limited proxy forms promulgated by the State**

This activity was addressed in the *1996 Opinion*, where the court gave specific modifications that would not constitute the unlicensed practice of law.[14] Modifications the Court found to be ministerial in nature and thus authorized included:

> [M]odifying the form with the name of the association; the date, time, and place of the meeting; phrasing yes or no questions on the issues of waiving reserves, waiving the compiled, reviewed or audited financial statement requirement, carryover of excess membership expenses, and adoption of amendments to the Articles of Incorporation, Bylaws or condominium cooperative documents."[15]

The Court stated that for more complicated modifications that an attorney should be *consulted*.[16]

We would argue that there may be other than "ministerial" modifications which are capable of being performed by a CAM, and that this standard unduly restricts the profession. Modifications that are within the skill and knowledge of the average, prudent, and competent

[13] *Transcript* at 49:17.
[14] *1996 Opinion* at 1121.
[15] *Id*.
[16] *Id* at 1124.

CAM should be allowable. Modifications which are "more complicated," or that require interpretation because of the complicated nature of the statutes relevant to the modification sought, should be done with the assistance of an attorney. In any event, the standard suggested in the Proposed Advisory opinion, whether "discretion in phrasing" is involved, is far too ambiguous and broad to be adopted as a viable standard.

- **Activity 7: Preparation of documents concerning the right of the association to approve new prospective owners**

This activity, as stated in the Proposed Advisory Opinion, is somewhat ambiguous because it fails to identify with any particularity the type and nature of the document involved. Is this referring to a declaration amendment, or an informational form to be completed by new residents? It is not clear from the Proposed Advisory Opinion. In any event, this activity was largely addressed in the *1996 Opinion's* ruling on "drafting documents required to exercise the community association's right of approval or right of first refusal on the sale or lease of a parcel," where the Court found the drafting of such documents does not constitute the practice of law, but that providing advice as to the legal consequences of taking certain courses of action does constitute the unlicensed practice of law.

At the very least, preparation of documents concerning the right of the association to approve new prospective owners should similarly be allowed, and the providing advice as to legal consequences could be deemed the unlicensed practice of law. However, we are of the position that neither of these activities are inherently the practice of law, and that that determination should be made in light of a CAMs expertise and knowledge as these matters are an incidental part of their regular course of business.

- **Activities 8 and 9: The determination of affirmative votes needed to pass a proposition or amendment to record documents; and the determination of owners' votes needed to establish a quorum**

Both activities were addressed in the *1996 Opinion* where the Court concluded that determining the votes necessary for certain actions which would entail interpretation and application of certain statutes, rules, and governing documents constitutes the unlicensed practice of law. The key distinction is whether such actions require knowledge and application of the statutes or interpretation of the statutes. We believe these statutes are procedural. For instance, Fla. Statute 718.110(1)(a) says:

> If the declaration fails to provide a method of amendment, the declaration may be amended as to all matters except those described in subsection (4) or subsection (8) if the amendment is approved by the owner of not less than two-thirds of the units. Except as to those matters described in subsection (4) or subsection (8), no declaration record after April 1, 1992, shall require that amendments be approved by more than four-fifths of the voting interest.

The statute clearly states the method for amendment when the declaration does not provide the method. Calculating ownership of two-thirds of the units is a math problem, not interpretation. The exceptions for subsection (4) and (8) are merely restrictions on specific types of amendments allowed and different voting requirements for declarations recorded after April 1, 1992.

On quorum requirements for homeowners' associations, Fla. Statute 720.306(1) states:

> Unless a lower number is provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members shall be 30 percent of the total voting interests. Unless otherwise provided in this chapter or in the articles of incorporation or bylaws, decisions that require a vote of the members must be made by the concurrence of at least a majority of the voting interests present, in person or by proxy, at a meeting at which a quorum has been attained.

There is no ambiguity as to what the requirements are. Computing 30 percent of the total voting interests is a mathematical calculation. It is true that there are other factors to consider, such as

units owned by the association or members who are delinquent in their assessments. However, CAMs play an integral role in the election process of the communities they manage. It is part of a CAMs job to be in constant communication with members and board members of the associations they manage. CAMs are very much involved in the communities and are probably more aware than the associations' attorneys of the circumstances within the community that would affect voting and quorum requirements. CAMs should be allowed to carry out these activities because the statutes are primarily procedural and CAMs' education, skill, and expertise significantly reduces the likelihood of harm. Assisting associations in the election and voting processes is incidental to the responsibilities of a CAM. Certainly a situation could exist where the statutes or rules conflict with the governing documents and an attorney may need to be consulted, but if the statute is clear and there is no conflict, we see no need to constitute the application of the statute as the unlicensed practice of law.

- **Activity 11: Preparation of construction lien documents (e.g. notice of commencement, and lien waivers, etc)**

This activity was addressed in the *1996 Opinion* where the Court found the drafting of claim of lien, satisfaction of lien, and notice of commencement forms constituted the unlicensed practice of law. Not only do we disagree with the Standing Committee's position, but we also believe the *1996 Opinion* deserves revision. We are of the position that licensed community association managers are uniquely qualified to carry out these activities based on their education and experience. These factors create a very low probability that any harm will come to the public by allowing licensed community association managers to carry out these duties. The Court should use its power to authorize these activities based on the unique qualifications of CAMs.

- **Activity 12: Preparation, review, drafting and/or substantial involvement in the preparation/execution of contracts, including construction contracts, management contracts, cable television contracts, etc.**

The Court in *Sperry* found that the preparation of legal documents, including contracts, by which legal rights are either obtained, secured or given away, was the practice of law.[17] However, as previously noted, the Court has moved away from the strict *Sperry* standard on multiple occasions when the likelihood of harm is small, and the carrying out of the activity is incidental to the regular course of business.[18]

CAMs are charged with "coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association."[19] Often, contracts are executed at the direction from the association's board. In the course of this conduct CAMs are constantly dealing with vendors and other service providers. A CAM's familiarity with the expectations on both ends of the vendor-association relationship makes them uniquely qualified to participate in the process of entering into contracts. Preparing, reviewing, and drafting contracts is merely *incidental* to a CAM fulfilling their statutory and contractual obligations to the association of they serve.

The activity as stated in the Proposed Advisory Opinion is far too broad to determine that it is or is not the unlicensed practice of law. In many cases the proposal or contract is prepared by a vendor. To imply that it would be improper for a CAM to "review" or to have "substantial involvement" in the final contract is contrary to the best interests of the Association that the CAM serves. Often it is the CAM who is most knowledgeable about the requirements for the

[17] *Sperry* at 591.
[18] *The Florida Bar re: Advisory Opinion – Nonlawyer Preparation of and Representation of Landlord in Uncontested Residential Evictions* at 871.
[19] § 468.431(2), Fla. Stat.

Contract, and a logical standard to employ would be that which have set forth above: does the activity require legal skill and knowledge of the law greater than that possessed by the average, prudent, and competent community association manager.

Activity 13: Identifying, through review of title instruments, the owners to receive pre-lien letters

In practice, this activity is purely ministerial and incidental to the duties of a manager. Often, ownership of a property is readily apparent because of familiarity developed between the manager, the association, homeowners, and tenants, as a direct result of carrying out the management duties for the community (such as issuing estoppel letters upon ownership transfer). The community manager knows in most instances whether a tenant resides in a particular home as opposed to the owner. To be thorough, a CAM or management company may verify the owner information by reviewing title when the same is deemed necessary, but such is not the rule. This further underscores the incidental nature of these services.

If the Court finds it necessary to constitute this as the practice of law, then we believe that the court should authorize this activity. The Supreme Court of Florida has previously acknowledged that the verification of ownership through title instruments by a non-lawyer is not the unauthorized practice of law. In *Cooperman v. West Coast Title Company*, 75 So. 2d 818, 820 (Fla. 1954), the Florida Supreme Court concluded that agencies may take necessary steps to inform themselves of the condition of title through "examination of their own records, abstracts that may be furnished, and the public records accessible to all." In *In re Advisory Opinion-Nonlawyer Preparation of Notice to Owner and Notice to Contractor*, 544 So. 2d 1013 (Fla. 1989), the Florida Supreme Court considered whether industry practices in completing and serving a Notice to Owner and Notice to Contractor prior to the filing of a construction lien

constituted the unauthorized practice of law. Those practices included verification of ownership and property location through a computerized or physical "*search of the public records in much the same way a title insurance company searches the records*."[20] (Emphasis added). The Court concluded it was not the unauthorized practice of law.[21] The court further recognized that those providing notice to owner services had knowledge of the construction industry and familiarity with the requirements for perfecting a mechanics lien that negated the likelihood of the public being harmed by preparation of the notice to owner forms.[22] The practice of verifying ownership for a mechanics lien is analogous to that which would be performed as part of the pre-lien procedure performed by a CAM or community management company. Further, community association managers have knowledge of the industry and familiarity with the statutory requirements for preparation and service of a pre-lien notice. Community association managers are licensed through the DBPR and must pass an examination which "demonstrate[s] that the applicant has a fundamental knowledge of state and federal laws relating to the operation of all types of community associations. . . ."[23] Additionally, as previously noted, all community association managers must complete 20 hours of continuing education every two years, 4 hours of which are devoted to legal issues.[24]

In *The Florida Bar Re Advisory Opinion-Nonlawyer Preparation of and Representation of Landlord in Uncontested Residential Evictions*, 627 So.2d 485 (Fla. 1993), the Supreme Court of Florida held that non-lawyer property managers are authorized to complete, sign and file complaints for eviction and motions for default and to obtain final judgments and writs of

[20] *In re Advisory Opinion-Nonlawyer Preparation of Notice to Owner and Notice to Contractor* at 1014.
[21] *Id* at 1016.
[22] *Id*.
[23] § 468.433, Fla. Stat.
[24] Rule 61E14-4.001, Florida Administrative Code

possession on behalf of landlords in uncontested residential evictions for nonpayment of rent. The Court acknowledged that such actions were the practice of law, but rejected the Standing Committee's suggestion that the property managers should not be authorized to engage in those activities, given the "understanding that evictions will be handled *incidental* to the management of the rental property."[25] (Emphasis added). The collection of overdue community association assessments fees is "incidental" to the management of the association. The preparation of pre-lien letters by community association managers is analogous to the activities that were performed by the rental property managers in the referenced case. Verification of ownership by the reviewing title instruments can be deemed to be merely a component of those "incidental" activities, and as such a CAM or community management firm should not be precluded from carrying out this activity.

- **Activity 14: Any activity that requires statutory or case law analysis to reach a legal conclusion**

This activity is analogous to the *1996 Opinion's* ruling on "Answering a community association's question about the application of law to a matter being considered or advising a community association that a course of action may not be authorized by law, rule, or the association's governing documents," of which the court found to be the unlicensed practice of law. We believe that the description of both of these activities is far too broad to be labeled the unlicensed practice of law. For instance, if an association board member asks a CAM "How many days do we need to post the notice for our upcoming Board meeting?" are we to understand that we need to consult an attorney to answer this question? That simple inquiry

[25] *The Florida Bar re: Advisory Opinion – Nonlawyer Preparation of and Representation of Landlord in Uncontested Residential Evictions* at 486.

would fall within both the activities, and this underscores the fact that they are unduly broad. It creates a situation where the manager cannot answer a question no matter how clear the law is on that particular matter. Everyday CAMs are asked about whether certain actions are allowable. If the association needed to go an attorney every time they had a question whether a certain action was allowable, it would be a great service to the attorneys and a great disservice to the association.

Thus, we reiterate, CAMs possess skill and knowledge of the law above that of the average citizen. A more proper standard to be employed in determining if an activity is the unlicensed practice of law is whether the activity requires legal skill and knowledge of the law greater than that possessed by the average, prudent, and competent community association manager. Any other standard unnecessarily constrains CAMs from taking any actions that require even the most cursory knowledge of the law.

CONCLUSION

The Court should formalize the standard that it has employed in its earlier decisions, which is based not on knowledge of the "average citizen," but on the specialized knowledge of persons within an industry in which the actor participates. In the case of a CAM that standard could be expressed as follows: an activity constitutes the unlicensed practice of law if the performance of that activity requires that the community association manager to possess legal skill and a knowledge of the law greater than that possessed by the average, prudent, and competent community association manager.

Except for Activity 4, as set forth above, the activities set forth in the Proposed Advisory Opinion should not be deemed the unauthorized practice of law. The *1996 Opinion* should be revisited to clarify its holding in light of subsequent Court rulings and to avoid its

effect of unduly restricting the activities that may be performed by licensed community association managers.

Respectfully submitted this 14th day of June 2013,

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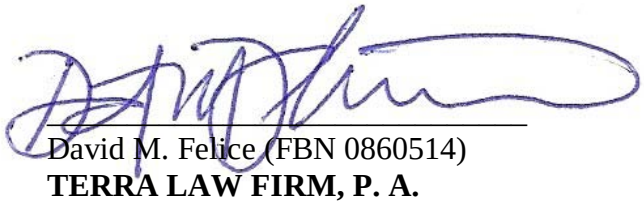
CERTIFICATE OF SERVICE AND FONT SIZE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail on this 14th day of June, 2013 to: Nancy Munjiovi Blount, Chair, Standing Committee on Unlicensed Practice of Law, The Florida Bar, 651 E Jefferson Street, Tallahassee, FL 32399-2300; and Jeffrey T. Picker and Lori S. Holcomb, The Florida Bar, 651 E Jefferson Street, Tallahassee, FL 32399-2300.

I further certify that this brief has been produced with Times New Roman 12 point font.



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