

Unauthorized Practice Rules and Considerations.

INTRODUCTION.

The right of individuals to represent themselves is an inalienable right common to all natural persons. But no one has the right to represent another; it is a privilege to be granted and regulated by law for the protection of the public.

The Supreme Court of Virginia has the inherent power to make rules governing the practice of law in the Commonwealth of Virginia. The Court has promulgated the definition of the practice of law. See "PRACTICE OF LAW IN THE COMMONWEALTH OF VIRGINIA," *infra*.

The public is best served in legal matters by lawyers. A client is entitled to be served disinterestedly by a lawyer who is not motivated or influenced by any allegiance other than to the client and our system of justice.

The services of a lawyer are essential and in the public interest whenever the exercise of professional legal judgment is required. The essence of such judgment is the lawyer's educated ability to relate the general body and philosophy of law to a specific legal problem. The public is better served by those who have met rigorous educational requirements, have been certified of honest demeanor and good moral character, and are subject to high ethical standards and strict disciplinary rules in the conduct of their practice.

By statute, any person practicing law without being duly authorized or licensed is guilty of a misdemeanor. The Attorney General of Virginia may leave the prosecution to the local attorney for the Commonwealth, or he may in his discretion institute and conduct such proceedings.

The courts of the Commonwealth have the inherent power, apart from statute, to inquire into the conduct of any person to determine whether he is illegally engaged in the practice of law, and to enjoin such conduct. The State Corporation Commission of Virginia may order the dissolution of any corporation or revoke its certificate of authority to transact business in the Commonwealth upon a finding that any officer, member, agent or employee thereof has been engaged in the unauthorized practice of law.

Any fees charged by a person engaged in the unauthorized practice of law are not collectible in court.

Any lawyer who aids a non-lawyer in the unauthorized practice of law is subject to discipline and disbarment. A lawyer has an affirmative duty to report unprivileged knowledge of such misconduct by another lawyer to the appropriate District Committee, and to discontinue his representation of a client when he discovers that his employment furthers the unauthorized practice of law by the client. Advisory opinions on the unauthorized practice of law, therefore, are as much intended to assist lawyers in fulfilling their ethical responsibilities as to inform and deter those who are engaged, or would engage, in such practice in derogation of the public's interest in a trained and regulated legal profession.

With the increase in the complexity of our society and its laws, the independence and integrity of a strong legal profession, devoted disinterestedly to those requiring legal services, are crucial to a free and democratic society. Allegiance to this principle, rather than the preservation of economic benefits for lawyers, is the basis upon which the Virginia State Bar, as the administrative agency of the Supreme Court of Virginia, carries forward the responsibility for the discipline of lawyers and the investigation of persons practicing law in the Commonwealth without proper authority.

PRACTICE OF LAW IN THE COMMONWEALTH OF VIRGINIA.

- (A) No non-lawyer shall engage in the practice of law in the Commonwealth of Virginia or in any manner hold himself out as authorized or qualified to practice law in the Commonwealth of Virginia except as may be authorized by rule or statute.
- (B) Definition of the Practice of Law. The principles underlying a definition of the practice of law have been developed through the years in social needs and have received recognition by the courts. It has been found necessary to protect the relation of attorney and client against abuses. Therefore, it is from the relation of attorney and client that any practice of law must be derived.

The relation of attorney and client is direct and personal, and a person, natural or artificial, who undertakes the duties and responsibilities of an attorney is nonetheless practicing law though such person may employ others to whom may be committed the actual performance of such duties.

The gravity of the consequences to society resulting from abuses of this relation demands that those assuming to advise or to represent others shall be properly trained and educated, and be subject to a peculiar discipline. That fact, and the necessity for protection of society in its affairs and in the ordered proceedings of its tribunals, have developed the principles which serve to define the practice of law.

Generally, the relation of attorney and client exists, and one is deemed to be practicing law whenever he furnishes to another advice or service under circumstances which imply his possession and use of legal knowledge or skill.

Specifically, the relation of attorney and client exists, and one is deemed to be practicing law whenever

- (1) One undertakes for compensation, direct or indirect, to advise another, not his regular employer, in any matter involving the application of legal principles to facts or purposes or desires.
- (2) One, other than as a regular employee acting for his employer, undertakes, with or without compensation, to prepare for another legal instruments of any character, other than notices or contracts incident to the regular course of conducting a licensed business.
- (3) One undertakes, with or without compensation, to represent the interest of another before any tribunal-judicial, administrative, or executive-otherwise than in the presentation of facts, figures, or factual conclusions, as distinguished from legal conclusions, by an employee regularly and bona fide employed on a salary basis, or by one specially employed as an expert in respect to such facts and figures when such representation by such employee or expert does not involve the examination of witnesses or preparation of pleadings.
- (4) One holds himself or herself out to another as qualified or authorized to practice law in the Commonwealth of Virginia.

(C) Definition of “Non-lawyer.” The term “non-lawyer” means any person, firm, association or corporation not duly licensed or authorized to practice law in the Commonwealth of Virginia. However, the term “non-lawyer” shall not include foreign attorneys who provide legal advice or services in Virginia to clients under the following restrictions and qualifications:

- (1) Such foreign attorney must be admitted to practice and in good standing in any state in the United States; and
- (2) The services provided must be on an occasional basis only and incidental to representation of a client whom the attorney represents elsewhere; and
- (3) The client must be informed that the attorney is not admitted in Virginia.

A lawyer who provides services not authorized under this rule must associate with an attorney authorized to practice in Virginia.

Nothing herein shall be deemed to overrule or contradict the requirements of Rules of this Court regarding foreign attorneys admitted to practice in the courts of the Commonwealth of Virginia including the association of counsel admitted to practice before the courts of this Commonwealth.

A lawyer who provides services as authorized under this rule, or who is admitted *pro hac vice* under Rule 1A:4 shall, with regard to such services or admission, be bound by the disciplinary rules set forth in the Virginia Code of Professional Responsibility.

Failure of the foreign attorney to comply with the requirements of these provisions shall render the activity by the attorney in Virginia to be the unauthorized practice of law.

(D) The Unauthorized Practice rules which follow represent a nonexclusive list of specific types of practice which would violate these rules.

**Unauthorized Practice Rule 1.
Practice Before Tribunals.**

UPR 1-101. Representation Before Tribunals.

- (A) A non-lawyer, with or without compensation, shall not represent the interest of another before a tribunal, otherwise than in the presentation of facts, figures or factual conclusions, as distinguished from legal conclusions, except:
 - (1) A non-lawyer under the supervision of a lawyer who is a regular employee of a legal aid society approved by the Virginia State Bar in accordance with its rules and regulations adopted under Section 54.1-3916 of the Code of Virginia may represent an indigent patron of such society before such a tribunal when authorized to do so by the governing body of such society and when such representation is permitted by the rules of practice of such tribunal. The supervising attorney shall assume personal professional responsibility for any work undertaken by the non-lawyer.

- (2) A law student may appear and represent others before such a tribunal in accordance with the third-year student practice rule.
- (B) A non-lawyer regularly employed on a salary basis by a corporation appearing on behalf of his employer before a tribunal shall not engage in activities involving the examination of witnesses, the preparation and filing of briefs or pleadings or the presenting of legal conclusions.
- (C) A non-lawyer regularly employed by a corporation or partnership may appear and file certain pleadings on behalf of his or her employer as authorized by Virginia Code § 16.1-88.03.

Unauthorized Practice Considerations.

UPC 1-1. The term “tribunal” shall include, in addition to the courts and judicial officers of Virginia or of the United States of America, the State Corporation Commission of Virginia and its various divisions, the Virginia Workers’ Compensation Commission, and the Alcoholic Beverage Control Board, or any agency, authority, board, or commission when it determines the rights and obligations of parties to proceedings before it, as opposed to promulgating rules and regulations of general applicability. Such term does not include a tribunal established by virtue of the Constitution or laws of the United States, to the extent that the regulation of practice before such tribunal has been preempted by federal law, nor does it include a tribunal established under the Constitution or laws of Virginia before which the practice or appearance by a non lawyer on behalf of another is authorized by statute.

UPC 1-2. A non-lawyer may represent himself, but not the interest of another, before any tribunal. A non-lawyer regularly employed on a salary basis or one specially retained as an expert (whether as an independent contractor or an employee of another) may present facts, figures, or factual conclusions, as distinguished from legal conclusions, when such presentation does not involve the examination of witnesses or preparation of briefs or pleadings.

UPC 1-3. A corporation (other than a duly registered law corporation) does not have the same right of appearance before a tribunal as an individual and may not be represented before a tribunal by its officers, employees or agents who are not duly authorized or licensed to practice law in Virginia. A corporation can be represented only by a lawyer before a tribunal, with respect to matters involving legal conclusions, examination of witnesses or preparation of briefs or pleadings.

UPC 1-4. A lawyer who is duly authorized or licensed to practice law in Virginia and who is also regularly employed on a salary basis by a corporation may represent such corporation before a tribunal as lawyer for the corporation, with the same privileges of a lawyer in private practice (including confidential communications with his employer when he is acting as a lawyer in connection with such communication).

UPC 1-5. A lawyer who is duly authorized or licensed to practice law in Virginia and who is regularly employed on a salary basis by a corporation may also represent before a tribunal the interest of a subsidiary or affiliated corporation when requested to do so by his employer and when not otherwise in conflict with the Virginia Code of Professional Responsibility. Such lawyer (unless a regular employee of a duly registered law corporation) in the course of his employment may not normally represent before a tribunal customers or patrons of his employer.

**Unauthorized Practice Rule 2.
Lay Adjusters.**

UPR 2-101. Definitions.

- (A) “Lay adjuster” refers to a non-lawyer retained by a principal as an employee, independent contractor, or employee of an independent contractor, for the purposes of
 - (1) investigating facts and circumstances related to a personal injury and/or property claim;
 - (2) reporting such facts to his principal; or
 - (3) assisting his principal in the handling, negotiation and settlement of such claim.
- (B) “Principal” refers to:
 - (1) an insurance company as defined in Title 38.2 of the Code of Virginia;
 - (2) a self-insured; or
 - (3) any insured individual, business entity or governmental organization asserting a right to payment under an insurance policy or insurance contract issued to such individual, business entity or governmental organization arising out of the occurrence of the contingency or loss covered by such policy or contract.

- (C) A business entity shall include but not be limited to a sole proprietorship, firm, partnership, corporation, joint venture, association or unincorporated association engaged in a commercial, charitable or professional activity.
- (D) “Self-insured” refers to any person, business entity (as defined hereinabove) or governmental organization which is potentially liable for claims and which does not elect to insure against loss or, to the extent such organization retains by way of a percentage or deductible, a portion of its risk.

UPR 2-102. Investigation.

- (A) A non-lawyer shall not for compensation, direct or indirect, advise another as to the law governing the facts as disclosed by his investigation, except:
 - (1) A lay adjuster may investigate the facts relative to a claim, and make a report thereon and an estimate of its monetary value to his principal.
 - (2) A lay adjuster may give his opinion to his principal as to liability with respect to a claim investigated by him.

UPR 2-103. Negotiation of a Settlement.

- (A) A non-lawyer shall not for compensation, direct or indirect, negotiate or settle a claim on behalf of another party not represented by a lawyer except:
 - (1) A lay adjuster may secure and convey factual data and information, transmit settlement offers made by either party, determine and express his opinion on the extent of damage or injury and its monetary value, deliver releases or other documents, and assist the lawyer for his principal in the efficient performance of ministerial acts arising out of the settlement negotiations.
 - (2) A lay adjuster may, in the course of negotiating a settlement for his principal, make statements to the claimant or others as to his principal’s liability or as to the law governing the facts to the extent consistent with the principles enunciated in the Rules Governing Unfair Claim Settlement Practices as from time to time promulgated by the State Corporation Commission of Virginia, Section 38.2-510 of the Code of Virginia, provided that
 - (a) the lay adjuster has informed the claimant or other person that his principal may be adversarial to the claimant or other person;
 - (b) it is clear that the claimant or other person recognizes the lay adjuster as an adversary; and
 - (c) it is apparent that the claimant or other person is otherwise competent to manage his own affairs.
- (B) A non-lawyer shall not for compensation, direct or indirect, conduct negotiations to settle a claim pending in court except with the approval of the lawyer for his principal.

UPR 2-104. Preparation of Documents.

- (A) A non-lawyer shall not, with or without compensation, direct or indirect, prepare or deliver legal instruments of any character except a lay adjuster may prepare a form of release or other document prepared or approved by his principal as to which the lay adjuster may fill in blanks supplying factual data.

UPR 2-105. Third Party Claims.

- (A) The activities authorized under UPR 2-102, 2-103 and 2-104 are permitted only on behalf of a principal
 - (1) which is making a claim against its own insurance carrier; or
 - (2) which is subject to a claim which may be paid by the principal or its insurance carrier; or
 - (3) which is pursuing its subrogation rights.
- (B) Except as permitted in (A)(3) above, neither a non-lawyer nor a lay adjuster may engage in any of the activities described in UPR 2-102, 2-103 and 2-104, on behalf of any principal or other party which is making or may make a claim against a third party or against an insurance carrier or other potential guarantor or payor of third

party liability to the principal or other party. Claims against an insured's insurance carrier for Uninsured Motorists or Under Insured Motorists coverage shall be deemed to be third party claims.

Unauthorized Practice Considerations.

UPC 2-1. For example, the activities of a lay adjuster in claims may consist of acting on behalf of his principal in identifying the facts and parties, securing witness statements, estimating the costs of repair, and compiling other information about the claim. Statements are given by the lay adjuster to his principal from whom he receives instructions as to the disposition of the claim. The lay adjuster then may attempt to settle the claim at the monetary value his principal is willing to pay or accept.

UPC 2-2. As a part of his factual analysis, a lay adjuster may express his opinion on the extent of damage or injury and the monetary value of any claim investigated by him.

UPC 2-3. A lay adjuster may, incident to his investigation of the facts, give to his principal his opinion of liability as disclosed by his investigation. Such lay adjuster is authorized to make a settlement on behalf of his principal and, in the course of such negotiations, make statements as to his principal's liability or as to the law governing the facts to the extent consistent with the Rules Governing Unfair Claim Settlement Practices, as applicable. A lay adjuster not now covered by such Rules may make statements as to his principal's legal liability, or as to the law governing the facts to the extent consistent with the principles enunciated in such Rules, and with the requirements of UPR 2103(A)(2).

UPC 2-4. In a claim pending in court, a lay adjuster may properly secure factual data and transmit settlement offers made on behalf of his principal when acting with the consent of the lawyers for both plaintiff and defendant. With such consent, he may also assist in the settlement negotiations with the approval of the lawyer for his principal.

UPC 2-5. A lawyer who is regularly employed on a salary basis as a lay adjuster is deemed to be acting on behalf of his employer and is subject to the same limitations with respect to representing his employer's customers or patrons as are imposed on his employer hereunder.

UPC 2-6. If a lay adjuster in any case attempts to draft legally binding settlement papers, he is engaged in the unauthorized practice of law. A lay adjuster may draft a receipt or fill in blanks supplying factual data in a form of release or other document prepared or approved by his principal, but he may not otherwise undertake to draft particular provisions intended to have legally binding effect in a specific case.

**Unauthorized Practice Rule 3.
Collection Agencies.**

UPR 3-101. Attorney-Client Relationship.

- (A) An agency shall not disrupt the relationship of confidence and trust which must exist between a lawyer and his client.
- (B) An agency shall not prevent a lawyer from exercising independent professional judgment on behalf of his client by attempting to fix the lawyer's compensation, or sharing in a percentage of his compensation, or prescribing the terms of his employment, or attempting in any way to control or direct his actions.
- (C) An agency shall not place itself between the lawyer and the creditor in an attempt to act as the only conduit of information between the two, since this would prevent the establishment of the fundamental relationship of trust and direct personal responsibility which ought to exist between a lawyer and his client.

UPR 3-102. Referral and Control of Claims.

- (A) An agency may refer claims to a lawyer on behalf of the creditor subject to the following:
 - (1) The creditor shall first have the opportunity to select a lawyer of his own choosing.
 - (2) If the creditor does not so select a lawyer, the agency shall submit a list of lawyers from which the creditor may make his selection, which list may include the customary fee of each attorney. The creditor may subsequently authorize the agency to refer his account to the lawyer so selected by the creditor.
 - (3) The lawyer shall be free at all times to communicate directly with the creditor; and, upon receipt of the initial referral, as well as upon receipt of any subsequent referral unacceptable to the lawyer on the basis of the prior fee arrangement, the lawyer shall communicate with the creditor for the purpose of establishing the fee arrangement, in which arrangement the agency shall not participate.

- (4) The agency may thereafter, if authorized by the creditor, continue correspondence of a routine nature with the lawyer on behalf of the creditor.
- (B) An agency shall not exercise or attempt to exercise any control or imply that it has any right to control the actions of the lawyer in the handling of the creditor's claim. All decisions are to be those of the lawyer acting on behalf of his client, the creditor.

UPR 3-103. Preparation of Documents.

- (A) An agency may prepare statements of accounts and affidavits of facts relating to accounts and may file the same with personal representatives and trustees in bankruptcy.
- (B) An agency shall not prepare a proof of claim or file such a claim as agent for the creditor with the bankruptcy court except to the extent it is permitted to do so by the Bankruptcy Rules.
- (C) An agency shall not prepare for others any document which requires legal training or the application of legal principles to factual situations except as authorized under these Rules.
- (D) An agency shall not use any letters or forms which threaten the institution of legal proceedings or simulate judicial process or notice of judicial process.

Unauthorized Practice Considerations.

UPC 3-1. A collection agency (herein referred to as "an agency") is a business involved in the collection of past-due accounts for its customer (herein referred to as "the creditor"). The efforts of an agency to collect such a claim through correspondence or personal contacts, or both, are not the unauthorized practice of law. It is, however, improper for an agency to refer an account to a lawyer in a manner which disrupts the fundamental lawyerclient relationship.

UPC 3-2. It is critical to the lawyer-client relationship that the lawyer remain in a position that will enable him to exercise independent judgment on behalf of his client, the creditor. A lawyer should not accept a claim from an agency under circumstances or pursuant to an arrangement that would render his judgment susceptible to control by the agency.

UPC 3-3. A referral by an agency which permits the agency to fix the lawyer's compensation, or share in a percentage of his compensation, or prescribe the terms of his employment, or control and direct his actions, is improper. The lawyer, while handling such a claim, would not be governed by his independent judgment of what would best benefit his client, the creditor, but would be influenced, if not controlled, by the provisions of the agreement by which the referral was made. Since an agency itself cannot directly provide the creditor with legal advice, it cannot be permitted to provide such advice indirectly by influencing the actions of the lawyer.

UPC 3-4. With regard to referrals by an agency to a lawyer, any arrangement or understanding requiring that communications between the lawyer and the creditor be handled only through the agency is improper. Such an arrangement could disrupt the relationship of trust and direct personal responsibility which ought to exist between a lawyer and his client. With direct communications, the lawyer can better perceive and analyze the individual needs of his client, and the creditor's direct contact with his lawyer lessens the possibility of misunderstanding and affords him the opportunity to determine for himself the quality of service that he is receiving. Furthermore, if the agency is the sole conduit of information, the lawyer is unable to preserve the confidences and secrets of his client. There can be no effective representation of a client if the client is reluctant to provide his lawyer with a complete and accurate statement of the facts because of his concern that this information might be divulged to some third party without his permission. It is the responsibility of both the lawyer and the agency to abide by these considerations and to avoid arrangements contrary thereto.

UPC 3-5. The decision to bring suit on a claim involves the application of legal principles to a factual situation. An agency threatening the institution of legal proceedings is engaged in the unauthorized practice of law, but the mere statement that the claim is being or will be referred to a lawyer, without more, is not deemed to be threatening the institution of legal proceedings as long as the lawyer remains free to exercise his independent professional judgment on behalf of the creditor. Likewise, the use by an agency of letters or forms that simulate or are intended to simulate judicial process or notice of judicial process is improper.

UPC 3-6. Statements of account and affidavits of facts relating to accounts and other matters are not legal instruments, and the preparation of the same by an agency is not the unauthorized practice of law. Such preparation does not require legal training or the application of legal principles; nor is the mere filing of such accounts or affidavits with personal representatives, trustees in bankruptcy and the like representing the interest of another before a tribunal.

UPC 3-7. A non-lawyer may properly act as a trustee in bankruptcy but may not prepare pleadings in the bankruptcy court except as authorized by the Bankruptcy Rules.

**Unauthorized Practice Rule 4.
Estate Planning and Settlement.**

UPR 4-101. Estate Planning Advice.

- (A) A non-lawyer shall not advise another for compensation, direct or indirect, in any matter involving the application of legal principles to particular facts or purposes or desires, except:
- (1) A non-lawyer may collect information and analyze the facts and assets of a particular estate in relation to its economic or investment needs.
 - (2) A non-lawyer may, incident to the sale or transfer of a particular investment asset, give information about the laws affecting the holding or disposition of such asset, such as making projections of possible tax effects arising from a transfer of ownership of a life insurance policy, security or other investment.
 - (3) A non-lawyer may specifically recommend dispositive provisions for a will or trust.

UPR 4-102. Holding Out With Regard to Estate Planning.

- (A) Except to the extent estate planning advice is permitted under UPR 4-101, a non-lawyer shall not hold himself out as authorized to furnish another advice or service under circumstances which imply his possession of legal knowledge or skill in the application of any law, federal, state or local, to a specific set of facts for a particular person.
- (B) A non-lawyer shall not be excused from any violation of these Rules by any disclaimer or other statement that his unauthorized advice or conduct should be reviewed by his customer's own lawyer.

UPR 4-103. Preparation of Documents.

- (A) A non-lawyer shall not, with or without compensation, prepare or draft, or cause his own lawyer to prepare or draft, for another, legal instruments of any character, including the filling out of a form for any will or trust, except:
- (1) A non-lawyer may prepare forms of wills or trust of general application.
 - (2) A non-lawyer, as an incident to the regular course of conducting his business, may submit to his customer's lawyer specimen language for inclusion in a legal instrument to be prepared by such lawyer, subject to acceptance, modification or rejection by such lawyer.
 - (3) A non-lawyer, as an incident to the regular course of conducting his business, may furnish his customer with routine forms or contracts of generally accepted application which do not go beyond the legitimate interest of the non-lawyer and do not involve a selection by the customer as between alternatives with materially different legal results not generally understood in the community. For example, the offering by a savings institution of a joint account with right of survivorship, a simple revocable trust account or a custodial account under the Virginia Uniform Gifts to Minors Act would normally not constitute the unauthorized practice of law.

UPR 4-104. Settlement of Estates.

- (A) A non-lawyer shall not give legal advice with respect to a person's domicile.
- (B) A non-lawyer shall not prepare or draft instruments, or give legal advice, with respect to the disclaimer of all or part of a person's interest in property, or a person's right to renounce all or part of any interest due under the will of such person's spouse.
- (C) A non-lawyer shall not undertake in the settlement of an estate or trust to represent the interest of another before any tribunal, judicial, administrative or executive, otherwise than in the presentation of facts, figures or factual conclusions, except:
- (1) A non-lawyer may offer to the proper clerk of court a will for probate or qualify as a fiduciary in any uncontested proceeding.

- (2) A non-lawyer may prepare and file accountings and confer with the Commissioner of Accounts in any uncontested proceeding.
- (3) With respect to tax matters, as set forth in Unauthorized Practice Rule 5, *infra*.

Unauthorized Practice Considerations.

UPC 4-1. “Estate planning,” as that term is generally used and understood today, refers to the orderly arrangement of an individual’s assets so as to provide most effectively for his economic needs while living, and for the personal and economic needs of those he may wish to benefit after his death. Estate planning necessarily involves, among other things, a knowledge and application of principles of the law relating to wills and descents and distribution, trusts and future interests, real and personal property, gifts, and taxation. In addition, effective postmortem estate planning requires an intimate familiarity with probate procedure and practice.

UPC 4-2. The proper planning of an individual’s estate is often aided by the services of non-lawyers skilled in insurance, investments, accounting services, and the like. An analysis of the facts and assets of an estate in relation to its economic or investment needs, and the giving of general information as to the laws affecting the disposition of estates without any specific application thereof to a particular situation, other than mathematical computations to support a hypothetical analysis, is not the unauthorized practice of law.

UPC 4-3. The holding out to the public, directly or indirectly, overtly or subtly, by any non-lawyer of his willingness to give advice as to the legal consequences of a particular plan which goes beyond matters incident to the sale or transfer of a particular investment asset, such as a life insurance policy or security, in the regular course of the non-lawyer’s business, or his willingness to perform legal services in the field of estate planning, is a holding out to engage in the unauthorized practice of law. A non-lawyer cannot solicit such services and then hire a lawyer to perform them. A non-lawyer consultant or adviser cannot offer the legal services of his own lawyer. Such practices are not purged or purified by an acknowledgment that the consultant or adviser is not authorized to give legal advice, or by any disclaimer or suggestion that such advice should be reviewed by the customer’s own lawyer.

UPC 4-4. Activities geared to motivating an individual to give consideration to his estate, and to seek the advice of a lawyer of his own choosing as early as possible, preferably from the outset, with regard to the development of an overall estate plan, are in the public interest. Advice on matters of law with respect to the particular factual situation of the individual concerned, however, is the unauthorized practice of law whenever it goes beyond advice on matters incident to the sale or transfer of a particular investment asset, such as a life insurance policy or security, in the regular course of the non-lawyer’s business.

UPC 4-5. The preparation of legal instruments such as wills, codicils and trusts by a non-lawyer for another, with or without compensation, goes beyond the area of permitted advice incident to the regular course of a non-lawyer’s business. There is nothing improper, however, in the submission of suggested forms for various types of wills or trusts to lawyers for present or prospective customers of a non-lawyer. Distributing forms of separate administrative or dispositive provisions setting forth the proper name of a fiduciary, a charity or the like is not improper.

UPC 4-6. Selecting or filling out a form of will or trust for another is an exercise in legal judgment. As an aid to a customer’s lawyer, a non-lawyer may submit to such lawyer, and only to him, specimen language for technical provisions to be included in his client’s will, codicil or trust; but such non-lawyer is not entitled to hold himself out as the responsible draftsman of such provisions.

UPC 4-7. Advice by a non-lawyer as to the use of his “standard form trust,” “plain English trust,” “mini-trust,” or the like constitutes the unauthorized practice of law when the provisions of such instrument go beyond the legitimate interest of the non-lawyer therein, seek to do more than the normal agency or deposit contract, or affect the legal rights of persons not parties to the contract. For example, the furnishing by a non-lawyer to his customer of a power of attorney which extends the authority of the attorney-in-fact to deal on behalf of his principal with all his principal’s assets or accounts, whether or not maintained by that particular non-lawyer, goes beyond the area of that non-lawyer’s legitimate interest.

UPC 4-8. The settlement of a decedent’s estate invariably poses problems of a legal nature. Such settlement may involve the practice of law in such areas, among others, as the offering of writings for probate, the qualification of fiduciaries, the preparation of accountings, and the determination of legal rights and liabilities with respect to the assets of the estate. In administering and settling the affairs of an estate, a fiduciary is not acting primarily for himself; and the drafting of instruments and appearance at probate hearings by a non-lawyer, as contrasted to the preparation and filing of a list of heirs, inventory or accountings, whether in person or through lawyers who are salaried employees, ordinarily constitutes the unauthorized practice of law.

**Unauthorized Practice Rule 5.
Tax Practice.****UPR 5-101.** Holding Out as a Tax Expert.

- (A) A non-lawyer shall not hold himself out as authorized to furnish to another advice or service under circumstances which imply his possession of legal knowledge or skill in the application of any law, federal, state or local, dealing with taxes, except:
- (1) A non-lawyer may hold himself out as an expert in the preparation of tax returns.
 - (2) A certified public accountant or a person duly enrolled may hold himself out as authorized to practice before the Internal Revenue Service, as those terms are defined by the then applicable federal regulations and to the extent permitted therein.
 - (3) A person admitted to practice before the United States Tax Court may hold himself out as such to the extent permitted by the rules of such Court.
 - (4) As permitted by UPR 5-102.

UPR 5-102. Practicing Law in Tax Matters.

- (A) A non-lawyer shall not furnish to another for compensation, direct or indirect, advice or service under circumstances which require his use of legal knowledge or skill in the application of any law, federal, state or local, dealing with taxes, except:
- (1) A non-lawyer may prepare tax returns.
 - (2) A certified public accountant or a person duly enrolled may practice before the Internal Revenue Service, as those terms are defined by the then applicable federal regulations and the extent permitted therein.
 - (3) A non-lawyer may render such advice or service in connection with his representation of his employer or others before a tribunal, judicial, administrative, or executive, (i) in the presentation of facts, figures or factual conclusions, (ii) as authorized before the Internal Revenue Service, in (2) above, or (iii) as permitted by the rules of practice of the United States Tax Court.
 - (4) A non-lawyer may render such advice or service incident to an engagement to provide products or services which he is otherwise authorized to provide, where such advice or service arises out of the providing of such other products or services and was not the principal purpose of the engagement.
 - (5) A non-lawyer may render such advice or service to his regular employer other than in aid of such employer's unauthorized rendition of legal advice or services to another.

Unauthorized Practice Considerations.

UPC 5-1. Taxation affects almost every phase of modern life. The giving of tax advice necessarily involves many branches of law and requires a familiarity with many non-tax legal principles on which the tax issues depend. In addition, the legal and accounting phases of tax practice are often so interrelated and overlapping that they are difficult to distinguish.

UPC 5-2. The preparation of a tax return does not necessarily involve the practice of law. It may often be accomplished by one having only incidental legal knowledge.

UPC 5-3. A non-lawyer otherwise entitled to do so may hold himself out as a tax return preparer or as enrolled to practice before the Internal Revenue Service; but he may not hold himself out as qualified to deal with difficult and involved questions of tax law, wholly apart from any engagement to prepare tax returns or practice before the Internal Revenue Service.

UPC 5-4. In general, tax planning is not considered to be the unauthorized practice of law. Attempting to resolve uncertainties as to the interpretation or application of tax or general law to a particular transaction, however, involves the practice of law unless it is incidental to a tax return preparer's engagement or the regular course of conducting a licensed business, for example, an investment business, or is limited to an analysis of merely the facts and assets of an estate.

UPC 5-5. Only a lawyer may prepare legal instruments for others or take the necessary steps to create, amend or dissolve a partnership, corporation or other business entity. Suggesting that any such legal work should be reviewed by the taxpayer's lawyer will not cure any unauthorized practice. In general, a lawyer working for a corporation not engaged in the practice of

law as a registered law corporation is not entitled in the course of his employment to provide such services for customers or patrons of his employer.

UPC 5-6. Non-lawyers authorized by statute or Treasury Department regulations to represent taxpayers may do so in accordance with the existing law, rules and regulations governing such practice.

UPC 5-7. When a taxpayer is being investigated for a possible criminal violation of the tax laws, he should be promptly advised to seek advice from a lawyer. The lawyer-client privilege is a unique relationship to which the taxpayer is entitled at the earliest stage of the investigation.

UPC 5-8. Nothing herein is intended to modify or limit the right of a certified public accountant to certify, attest or express an opinion that financial data comply with conditions established by law or contract. Certified public accountants are members of a profession regulated by law who must meet certain minimal education requirements and observe certain rules of professional conduct. As such, certified public accountants engaged in the practice of their profession are entitled to a greater degree of latitude in the resolution of issues involving overlapping legal and accounting principles.

**Unauthorized Practice Rule 6.
Real Estate Practice.**

UPR 6-101. Giving Legal Advice.

- (A) A non-lawyer shall not undertake for compensation, direct or indirect, to advise another in any matter involving the application of legal principles to the ownership, use, disposition or encumbrance of real estate, except that, incident to his investigation of factual matters, he may give advice to his regular employer, other than in aid of his employer's unauthorized practice of law, or to a lawyer upon request by the lawyer therefor.
- (B) A non-lawyer or lay entity may not employ a lawyer, directly or indirectly, to advise a customer in any matter involving the application of legal principles to the ownership, use, disposition or encumbrance of real estate. A non-lawyer or lay entity may, however, refer its customer to a lawyer for legal services.
- (C) If a non-lawyer or lay entity refers its customer to a lawyer for legal services involving the application of legal principles to the ownership, use, disposition or encumbrance of real estate, such a non-lawyer or lay entity shall not exercise or attempt to exercise any control over, or imply that the non-lawyer or lay entity has any right to control, the actions of the lawyer in the handling of the transaction. All decisions are to be those of the lawyer acting on behalf of his client.

UPR 6-102. Holding Out With Regard to Real Estate Services.

- (A) Except as specifically provided in UPR 6-101(A), a non-lawyer shall not hold himself out as authorized to furnish to another advice or service with respect to real estate transactions under circumstances which imply his possession of legal knowledge or skill in the application of any law, federal, state or local, to a specific set of facts for a particular person.
- (B) Notwithstanding any rule of this Court to the contrary, a settlement agent authorized by law to provide escrow, closing or settlement services for real estate transactions may hold himself out as authorized to provide such services in the purchase or financing of real estate in the Commonwealth of Virginia.
- (C) A non-lawyer shall not be excused from any violation of these Rules by any disclaimer, admonition to seek the advice of an attorney, or waiver by the customer.

UPR 6-103. Preparation of Legal Instruments.

- (A) Unless a party to the transaction, a non-lawyer shall not, with or without compensation, prepare for another legal instruments of any character affecting the title to or use of real estate.
 - (1) A non-lawyer may prepare a deed for any real estate owned by him. A non-lawyer may prepare a deed of trust or deed of trust note for any real estate owned by him or in connection with any transaction to which he is a party involving its purchase, sale, transfer or encumbrance.
 - (2) A regular employee may prepare legal instruments for use by his employer for which no separate charge shall be made. However, such employee may not assist his employer in the unauthorized practice of law.

- (3) A real estate agent, or his regular employee, involved in the negotiation of a transaction and incident to the regular course of conducting his licensed business, may prepare a contract of sale, exchange, option or lease with respect to such transaction, for which no separate charge shall be made.
 - (4) A lending institution may in the regular course of conducting its business prepare a deed of trust or mortgage on real estate securing the payment of its loan, for which no separate charge shall be made.
 - (5) A settlement agent authorized to provide escrow, closing or settlement services for real estate transactions under the Consumer Real Estate Settlement Protection Act (CRESPA), Va. Code §§ 6.1-2.19, et seq. or the Real Estate Settlement Agent Registration Act (RESARA), Va. Code §§ 6.1-2.30, et seq. or any other Virginia statute now existing or hereafter enacted may complete form documents and instruments selected by and in accordance with the instructions of the parties to the transaction.
- (B) A non-lawyer or lay entity may not employ a lawyer, directly or indirectly, for the purpose of drafting legal instruments affecting the title to or use of real estate for a customer of the non-lawyer or lay entity. A non-lawyer or lay entity may, however, refer its customer to a lawyer for legal services.

UPR 6-104. Real Estate Closings.

- (A) In connection with a real estate closing, a non-lawyer shall not give legal advice to another, or prepare for or advise another in the preparation of legal instruments, for compensation, direct or indirect. A non-lawyer may:
- (1) Act as a settlement agent if registered under and in compliance with CRESPA.
 - (2) Provide such services of a clerical or ministerial nature as may assist the parties in the settlement of a contract, commitment or other agreement with respect to the sale or encumbrance of property including administrative and clerical services as authorized under CRESPA and RESARA.
 - (3) Act as an agent or broker in connection with issuance of title insurance commitments, binders and policies.
 - (4) Perform searches of public land and related records, make abstracts of title (i.e., copy salient portions of what the public records show as distinguished from expressing an opinion on the legal consequences of such records), prepare title reports and, to the extent licensed to do so, underwrite for and prepare title insurance commitments or binders and policies.

UPR 6-105. Lawyer-Client Relationship.

- (A) A real estate agent, closing agent, lender or other party interested in a real estate transaction shall not:
- (1) Disrupt the relationship of confidence and trust which must exist between a lawyer and his client.
 - (2) Prevent a lawyer from exercising independent judgment on behalf of his client by attempting to fix the lawyer's compensation, or sharing in a percentage of his compensation, or prescribing the terms of his employment, or attempting in any way to control or direct his actions.
 - (3) Place himself between the lawyer and the owner or landlord in an attempt to act as the only conduit of information between the two, since this would prevent the establishment of the fundamental relationship of trust and direct personal responsibility which ought to exist between a lawyer and his client.

UPR 6-106. Referral of Business.

- (A) A real estate agent, closing agent, lender or other party interested in a real estate transaction may refer its customer to a lawyer subject to the following:
- (1) The customer shall first have the opportunity to select a lawyer of his own choosing.
 - (2) If the customer does not so select a lawyer, the agency shall submit a list of lawyers from which the customer may make his selection and subsequently authorize the agent to refer the representation of such customer to the lawyer so selected.
 - (3) The lawyer shall be free at all times to communicate directly with such customer, now his client; and, upon receipt of the initial referral, as well as upon the receipt of any subsequent business unacceptable to the lawyer on the basis of the prior fee arrangement, the lawyer shall communicate with his client for the purpose of establishing the fee arrangement, in which arrangement the agent shall not participate.

- (B) A real estate agent, closing agent, lender or other party interested in a real estate transaction shall not exercise or attempt to exercise any control over or imply that he has any right to control the actions of the lawyer in the handling of the transaction. All decisions are to be those of the lawyer acting on behalf of his client.

Unauthorized Practice Considerations.

UPC 6-1. A non-lawyer may not express to any person, an opinion as to the validity or legal status of title to real estate or as to the legal effect of anything found in the chain of title such as, for example, a suit, will, judgment, release deed or extension agreement or as to the effect on title of matters not necessarily appearing of record such as, for example, adverse possession, the statute of limitations, or the disabilities of parties. A lawyer employed by a lay agency to render services for others is restricted to the doing of acts in the course of his employment that a non-lawyer can lawfully do. Nothing herein shall be construed to impair the right to practice of duly licensed house counsel, see Unauthorized Practice Rule 1, Practice Before Tribunals; or to impair rights guaranteed by the Constitution; or to impair the rights of a subscriber under a legal services plan licensed under Chapter 23 of Title 38.2 of the Code of Virginia.

UPC 6-2. A non-lawyer may not hold out to the public, directly or indirectly, his willingness to give legal advice or perform legal services, nor solicit such services and then hire a lawyer to perform them. Such practices are not validated by an acknowledgment that the non-lawyer is not authorized to give legal advice, or by any disclaimer or suggestion that such advice should be reviewed by the customer's own lawyer. A settlement agent registered under and in compliance with CRESPA or RESARA, may hold himself or herself out as providing escrow, closing or settlement services in the purchase or financing of real estate in the Commonwealth of Virginia.

UPC 6-3. A non-lawyer may compile and report factual information as disclosed by the public records, sometimes referred to as making an abstract of title; but he may not express an opinion or issue a certificate as to the legal consequences of what his investigation of the public records may show. Incident to his investigation of the facts, an abstracter may give to his regular employer or, upon request, to a lawyer his opinion as to the status of legal title as disclosed by his investigation; but neither he nor his employer, unless a lawyer or registered law corporation, may give a certificate of title or opinion to a third party, or otherwise hold themselves out as possessing legal knowledge or skill.

UPC 6-4. The drawing or preparation of deeds, deeds of trust, mortgages, deeds of release, and other instruments affecting title to real estate requires the possession and use of legal knowledge and skill. Such instruments are extraordinary contracts and muniments of title to real estate. This is nonetheless true where a form of deed or deed of trust prepared by a lawyer may be followed or filled in, and whether the instrument is deemed simple or complex. Legal knowledge and skill are required, in any event, in the selection and completion of the proper form to fit the facts of the particular case. Notwithstanding the foregoing, a settlement agent registered under and in compliance with CRESPA may complete form documents and instruments selected by and in accordance with the instructions of the parties to the transaction. However, a non-lawyer settlement agent may not draft the deed or deed of trust or select the form of the deed or deed of trust to be used for a particular transaction.

UPC 6-5. An individual, if he chooses to do so, may draw or attempt to draw legal instruments for himself or affecting his property. A corporation acting through its employees may do the same with respect to its own property.

UPC 6-6. A non-lawyer licensed real estate agent may, pursuant to Virginia Code § 54.1-2101.1, prepare for another contracts incident to the regular course of conducting a licensed real estate business. Whether in a particular case the preparation of a contract by a non-lawyer is incident to the regular course of conducting such licensed business must, of necessity, be determined on the facts of that particular case. Preparation, in this context, includes not only the drafting of a form but also the filling in of a previously prepared form. In making such a determination, the following facts, not necessarily listed in the order of their importance, are among those which should be considered:

- A. Whether the preparer is a party to the contract;
- B. Whether the object to be accomplished by the contract is essential to the regular conduct of the real estate business of the preparer or merely ancillary thereto or an indirect by-product;
- C. Whether a separate charge is made for preparation of the contract;
- D. Whether the implication of legal knowledge and skill on the part of the drafter is minimal;
- E. Whether the reliance on such service as a legal service is minimal;
- F. The extent to which the licensed purpose of the business would be frustrated if preparation of the contract were not permitted;

- G. The likelihood that legal advice will in fact be given by a non-lawyer, in connection with the execution of the contract by the parties;
- H. The extent to which preparation of the contract by a non-lawyer reduces costs, saves time and avoids inconvenience to the parties; and
- I. The custom and practice in the industry.

UPC 6-7. In connection with a real estate closing, a non-lawyer settlement agent may not give legal advice to another, or prepare for or advise another in the preparation of legal instruments, for compensation, direct or indirect. A non-lawyer may, however:

- A. Order a survey, but not give an opinion as to the adequacy of such survey or with respect to matters reflected therein.
- B. Obtain copies of leases, easements, restrictions, building codes, zoning ordinances and the like, but not give an opinion as to the legal effects thereof or any party's legal obligation to comply therewith.
- C. Order termite or other inspections, but not give an opinion as to a party's legal obligations with respect thereto.
- D. Ascertain the status of utility services and assist in their transfer, but not give advice as to a party's legal obligation with respect thereto.
- E. Arrange for the issuance of casualty insurance coverage, as requested by a party in interest.
- F. Provide lien payoff figures as asserted by the lienholder, but not give advice as to a party's legal obligation to pay the amount claimed.
- G. Make mathematical computations involving the proration of taxes, insurance, rents, interest and the like in accordance with the terms of the contract or local custom.
- H. Obtain lien waivers from mechanics or materialmen in form acceptable to the party in interest.
- I. Prepare settlement statements and complete form documents and instruments selected by and in accordance with the instructions of the parties to the transaction and prepare settlement statements, such as the HUD-1, and other form documents such as the Owner's /Seller's Affidavit, Notice of Availability(of Owner's Title Insurance), and tax reporting forms including FIRPTA, Form 1099, VA R-5, and VA R-5E.
- J. Receive and disburse settlement funds, and serve as escrow agent, to the extent licensed to do so.
- K. Prepare receipts and certificates of satisfaction, but not deeds, deeds of trust, deeds of trust notes, or deeds of release.
- L. Create or prepare a title abstract or title report, and to the extent licensed to do so, underwrite for and prepare title insurance commitments or binders and policies.

The foregoing list of examples would not be considered to be the unauthorized practice of law; it is intended only to provide guidance and is thus non-exclusive.

UPC 6-8. While a lay agency may recommend to its customers the employment of a lawyer, the lawyer so employed should in all matters be employed, controlled and paid by his client, the customer. The lay agency may refer its customer to a lawyer and may consult with that lawyer or any other lawyer engaged by its customer. The lawyer, however, owes his undivided loyalty to his client, the customer, and not to the lay agency, and should be especially sensitive in real estate transactions to the ethical constraints governing conflicts of interest. To the extent the lawyer considers the lay agency to be his client and, in the preparation of legal instruments for the lay agency, he knows, or should know, that the lay agency intends to use such legal instruments in the closing of a real estate transaction for another, such lawyer is aiding such lay agency in the unauthorized practice of law. A lawyer may, however, in representing his or her lay agency client, advise the lay agency as to compliance with applicable law including the legal sufficiency and accuracy of legal documents or instruments. A direct and personal lawyer-client relationship must be established and preserved at all times; otherwise, through its own lawyer, such lay agency becomes engaged in the business of providing legal services to others.

UPC 6-9. If legal advice is requested by a party, the non-lawyer settlement agent should take care to refer the party to a lawyer. Defining what is legal advice is difficult; however, a non-lawyer acting as a settlement agent is engaged in the unauthorized practice of law if he or she:

- A. Recommends or urges a course of action to a party to the transaction under circumstances which require the exercise of legal judgment;

- B. Drafts a legal instrument for a party to the transaction, other than completing form documents selected by and in accordance with the instructions of the parties to the transaction; or selects or assists a party in selecting a form document, if such selection or assistance requires the exercise of legal judgment;
- C. Assists a party to the transaction in the completion of a legal document, other than a form document selected by and in accordance with the instruction of the parties, if such assistance requires the exercise of legal judgment;
- D. Advises or instructs a party to the transaction of which way to take title to the property or the legal consequences of taking title in a particular manner, except that providing a description of the various tenancies recognized under Virginia law shall be permitted;
- E. Attempts to settle or resolve a dispute between the parties to the transaction which requires the exercise of legal judgment to a particular situation;
- F. Explains the legal effect of an item reported as an exception in a title commitment except as necessary to underwrite a policy of insurance and except that a licensed title insurer, agency or agent may explain an underwriting decision to an insured or prospective insured including providing the reason for such decision;
- G. Provides a legal opinion in response to inquiries regarding rights and obligations under legal documents provided that a layman's description of the purpose or intent of a document shall not constitute a legal opinion.

The foregoing list of examples considered to be the unauthorized practice of law is intended only to provide guidance and is thus non-exclusive.

**Unauthorized Practice Rule 7.
Title Insurance.**

UPR 7-101. Title Insurance Practice.

- (A) A title insurance company, through its employees, agents or other representatives acting as such, shall not give legal advice or express an opinion to any person other than, upon request, to a lawyer, as to the status or marketability of title to real property in Virginia, or as to the legal effect of documents comprising the chain of title or matters revealed by a title search or examination.
- (B) A title insurance commitment, binder or policy, or any of the provisions thereof, shall not be held out, directly or indirectly, by any person as constituting the equivalent of, or as tantamount to, a legal opinion based upon an examination of title.
- (C) A title insurance company may in the regular course of conducting its business, issue directly to an insured or prospective insured its title insurance commitments, binders and policies, as otherwise permitted by law.
- (D) A title insurance company, its employees, agents and other representatives are subject in all respects to the Rules set forth in Unauthorized Practice Rule 6, Real Estate Practice.

Unauthorized Practice Considerations.

UPC 7-1. Title insurance is insurance indemnifying the insured from loss if the status of title on a certain date is other than as stated in the policy, subject to the exclusions and exceptions from coverage set out in the policy.

UPC 7-2. The abstracting of title to real property located in Virginia by a non-lawyer from public records does not, standing alone, constitute the practice of law; but the interpretation of the meaning of documents comprising and affecting the chain of title, and the concepts attendant thereto, require a knowledge of statutes, general law in the field, and judicial decisions not generally possessed by non-lawyers. It is not improper, however, for an employee of a title insurance company to search the title records and report his findings to his employer, and express his conclusions to his employer or, upon request, to a lawyer as to which liens, encumbrances and the like relate to or affect the status of a particular title.

UPC 7-3. Although legal knowledge and skill may be utilized in the preparation and issuance of a title insurance policy, this does not make such policy a legal opinion. The policy is one of indemnity against loss issued in the regular course of its business by a title insurance company subject to inspection, supervision and regulation by the State Corporation Commission of Virginia.

UPC 7-4. If an employee, agent or other representative of a title insurance company attempts to advise another, other than such company or, upon request, a lawyer, on the legal effect of matters affecting the chain of title to real estate located in

Virginia and the concepts attendant thereto, he then engages in the unauthorized practice of law since he would be furnishing to another advice or service under circumstances which imply his possession and use of legal knowledge and skill.

**Unauthorized Practice Rule 8.
Trade Associations.**

UPR 8-101. Giving Legal Advice.

- (A) A trade association shall not give legal advice or provide legal services to its members, directly or through its employed or retained lawyer, except that a trade association may:
- (1) Distribute to its members any legal opinion rendered to the trade association by its lawyer on a matter which affects or may affect the general membership of the association.
 - (2) Appear through its lawyer as an intervenor or amicus curiae in any case involving a member, to the extent otherwise permitted by the court.
 - (3) Refer one or more of its members to its lawyer with respect to any legal matter so long as such lawyer is recognized throughout by all concerned as representing solely the interest of such member or members, free of control by or interference from the trade association.
 - (4) Solicit the comments of its members on proposed legislation or regulations drafted by its lawyer which affect or may affect the general membership of the association.
 - (5) Provide legal advice and the services of its lawyer to one or more of its members preliminary to and in connection with any matter that may seek to:
 - (a) Further the political goals of the association;
 - (b) Obtain meaningful access to the courts; or
 - (c) Vindicate civil liberties guaranteed by the Constitutions of Virginia or the United States.

UPR 8-102. Holding Out With Regard to Legal Services.

- (A) Except to the extent legal advice or services are permitted to be provided under UPR 8-101, a trade association shall not hold itself out as authorized to furnish its members legal advice or services.

UPR 8-103. Attorney-Client Relationship.

- (A) A trade association shall not:
- (1) Disrupt the relationship of confidence and trust which must exist between a lawyer and his client.
 - (2) Prevent a lawyer from exercising independent judgment on behalf of his client by attempting to fix the lawyer's compensation, or sharing in a percentage of his compensation, or prescribing the terms of his employment, or attempting in any way to control or direct his actions, except that in matters of collective interest a trade association may negotiate on behalf of its members with respect to the legal fees to be charged.
 - (3) Place itself between the lawyer and the member in an attempt to act as the only conduit of information between the two, since this would prevent the establishment of the fundamental relationship of trust and direct personal responsibility which ought to exist between a lawyer and his client.

UPR 8-104. Referral of Business.

- (A) A trade association may refer its member to a lawyer subject to the following:
- (1) The member shall first have the opportunity to select a lawyer of his own choosing.
 - (2) If the member does not so select a lawyer, the trade association shall submit a list of lawyers from which the member may make his selection, which list may include the customary fee of each lawyer on the list.
 - (3) The lawyer shall be free at all times to communicate directly with such member, now his client; and upon receipt of the initial referral, as well as upon the receipt of any subsequent business unacceptable to the lawyer on the basis of the prior fee arrangement, the lawyer shall communicate with his client for the purpose of establishing the fee arrangement, in which arrangement the trade association, in pursuit of its associational goals, may participate as a negotiator or contributor, or both.

- (B) A trade association shall not exercise or attempt to exercise any control or imply that it has any right to control the action of the lawyer in the handling of the transaction. All decisions are to be those of the lawyer acting on behalf of his client.

Unauthorized Practice Considerations.

UPC 8-1. The term “trade association” as used herein means a nonprofit organization formed for the principal purpose of furthering the common business or professional interest of its members. Any organization that qualifies as a business league or chamber of commerce under Section 501(c)(6) of the Internal Revenue Code shall be presumed to be a trade association for purposes of this Rule. The conduct of a prepaid legal services plan is not to be considered governed by this Rule.

UPC 8-2. A trade association may recommend to its members the services of a lawyer. A trade association should not interfere with the personal lawyerclient relationship that should exist between a member and such member’s own lawyer.

UPC 8-3. If a trade association offers to provide or provides its members with the services of a lawyer subject to the trade association’s direction and control, it is engaged in the unauthorized practice of law unless such services seek to further the political or ideological goals of their associational activity. For example, a trade association may provide its members with its views, including the legal opinions of its employed or retained lawyer, on legislative, administrative and judicial developments or other matters of general interest to some or all of its members, but may not advise, or hold itself out as permitted to advise, an individual member as to the application of a statute, regulation or decision to such member’s particular set of facts, unless such advice is incident to or part of the association’s collective activity undertaken to obtain meaningful access to the courts or other fundamental rights within the protection of Article I, Section 12 of the Virginia Constitution or the First Amendment to the United States Constitution.

UPC 8-4. Incident to his normal duties as a lobbyist or otherwise, a non-lawyer representative of a trade association may discuss with a member of the trade association the possible application of a proposed or enacted statute, regulation or decision to a particular set of facts; provided that such discussion does not constitute the giving of legal advice.

Unauthorized Practice Rule 9. Administrative Agency Practice.

UPR 9-101. Holding Out as an Expert.

- (A) A non-lawyer shall not hold himself out as authorized to furnish to another advice or service under circumstances which imply his possession of legal knowledge or skill in the application of any law, federal, state or local, or administrative regulation or ruling applicable thereto, except that a person admitted to practice by an administrative agency may hold himself out as such to the extent permitted by such agency as long as he does not misrepresent the scope of his practice authorized by such agency.
- (B) A person duly licensed or authorized to practice law in another state or before any administrative agency shall not use the descriptive term “law office” or its equivalent on any signs or listings in Virginia, unless he is an employee or member of a firm with one or more lawyers duly licensed to practice law in Virginia.

UPR 9-102. Agency Practice.

- (A) A non-lawyer shall not furnish to another for compensation, direct or indirect, advice or service under circumstances which require his use of legal knowledge or skill in the application of any law, federal, state or local, or administrative regulation or ruling applicable thereto, except:
- (1) As an employee to his regular employer.
 - (2) As permitted by the rules of such agency and reasonably within the scope of his practice authorized by such agency.
- (B) A non-lawyer shall not undertake, with or without compensation, to prepare for another legal instruments of any character incident to his practice before an administrative agency, except:
- (1) As an employee for his regular employer.
 - (2) In the regular course and reasonably within the scope of his practice authorized by such agency.
- (C) As to representing the interest of another before an administrative tribunal, see Unauthorized Practice Rule 1, Practice Before Tribunals.

UPR 9-103. Immigration Practice.

- (A) The preceding provisions of UPR 9 also apply to unauthorized non-lawyers who represent persons, with or without compensation, before federal administrative agencies in connection with petitions or applications for benefits under the Immigration and Nationality Act and other federal immigration and nationality statutes and regulations.
- (B) For purposes of UPR 9-103(A):
- (1) “Unauthorized” means unable to show specific authorization by the appropriate federal agency to practice before it. With respect to matters before the Immigration and Naturalization Service, this means unable to show recognition as an authorized non-lawyer representative pursuant to 8 CFR Part 292, to wit: providing for representation by law students, law graduates not yet admitted to the bar, “reputable individuals” appearing without direct or indirect remuneration, accredited representatives, accredited officials, and certain attorneys residing outside the United States.
 - (2) “Represent” means to engage in “practice” or “preparation” as those terms are defined, respectively, in 8 CFR “1.1(i) and (k), to wit:”practice” means the act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with the Service . . . ;”preparation” means the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers, but does not include the lawful functions of a notary public or service consisting solely of assistance in the completion of blank spaces on printed Service forms by one whose remuneration, if any, is nominal and who does not hold himself out as qualified in legal matters or in immigration and naturalization procedure or as 8 CFR Part 292 may be amended from time to time.
- (C) The provisions of (A) and (B) above are not intended to prohibit an unauthorized non-lawyer from assisting an individual in the completion of forms which had been personally selected by the individual, to the extent that such assistance involves only the taking and transcription of dictation or the translation of such dictation into English. However, the referenced provisions are intended to prohibit such an unauthorized non-lawyer from selecting specific forms for completion or from advising the individual as to which forms are appropriate for completion and submission to the Service provided such activities require the use of legal knowledge and skill.

Unauthorized Practice Considerations.

UPC 9-1. Representing another before an administrative agency normally constitutes the practice of law.

UPC 9-2. Regulation of the practice of law before federal administrative agencies is the responsibility of Congress. When Congress grants authority to an agency to prescribe regulations governing the recognition and conduct of a person representing the interest of another before such agency, the State is preempted from enforcing its own rules of practice while such person is acting reasonably within the scope of the practice authorized by the agency. As to rules of practice before Virginia administrative agencies, see Unauthorized Practice Rule 1, Practice Before Tribunals.

UPC 9-3. Normally, a person authorized to practice before an administrative agency may give advice to others informing them of their rights and obligations as to matters pending before, to be presented to or otherwise within the jurisdiction of such agency; prepare applications, exhibits and other documents as required by such agency in the submission of matters to it and in the performance of its regulatory functions; appear before such agency at any hearing, formal or informal, within Virginia and, as otherwise permitted by such agency, represent the interests of others before such agency, including filing motions and briefs, cross-examining witnesses, and making oral arguments as to matters of law; and hold himself out as qualified to perform such services before such agency within the scope of his agency license.

UPC 9-4. A person authorized to practice before an administrative agency may not prepare for another, not his regular employer, legal instruments not reasonably within the scope of his agency practice. For example, the preparation of a lease or contract to be approved by an administrative agency may facially appear to be incident to the regular course of conducting an approved agency practice; but such a document normally creates substantive rights and obligations for the parties under state law, and to prepare such documents and give advice concerning their significance beyond their compliance with federal law or regulations may constitute the unauthorized practice of law.

UPC 9-5. The privilege of practicing before most federal administrative agencies is not restricted to lawyers. The federal Administrative Procedure Act grants to an individual who is a member in good standing of the bar of the highest court of any state an initial right to represent others before any federal agency; but if such person is not duly licensed or authorized to practice law in Virginia or has not obtained the requisite revenue license required by Section 58.1-3700 of the Code of Virginia, he is subject to the same rules as a non-lawyer when his activities in Virginia extend beyond the scope of the practice authorized by the federal agency.

UPC 9-6. A person who is authorized to practice before an administrative agency and who is duly licensed or authorized to practice law in another state presumably has met certain minimal educational requirements and is subject to discipline for violations of a code of professional responsibility similar to that governing the conduct of lawyers licensed to practice in Virginia. As such, a person licensed or authorized to practice law in another state is entitled to a greater degree of latitude in the resolution of issues involving whether his activity is within the scope of the practice authorized by such agency and whether any legal instruments prepared by him are properly incident thereto.

UPC 9-7. Aliens are especially vulnerable to the unauthorized practice of law. Such unauthorized practice, which may include incompetent or fraudulent legal services, can cause serious economic harm, may result in the separation of families, and may even result in the death of an individual forcibly repatriated to another country if asylum is denied to him in the United States.

The Virginia State Bar recognizes that certain non-lawyers may be authorized to practice before a federal immigration agency. However, non-lawyers who are not so authorized are limited to providing assistance to an alien resident for such limited services as translation of documents, and assistance in the transcription of documents or answers provided by the alien, for a fee commensurate with such limited services. However, the selection of appropriate immigration forms, the assistance to the alien in the information to be provided on such forms, and other related services by an unauthorized non-lawyer may constitute the unauthorized practice of law.

Furthermore, in addition to engaging in the unauthorized practice of law, an individual who holds himself or herself out as qualified to render such legal services and performs such services, may also be subject to criminal prosecution, to civil remedies such as quo warranto actions, and to such discipline and sanctions as may be imposed under federal statutes and regulations.