

North Carolina Closing Process – Who, What, When, Where, How and Why?

Below is a very simple chart, followed by relevant statutes regarding NC legal requirements for closing real estate transactions and issuance of title insurance coverage. These are in addition to anything required by federal law or RESPA.

<u>Action</u>	<u>Who & How</u> <u>Legal Cites</u> (N.C.G.S. means North Carolina General Statutes)
Preparation or aiding in the preparation of deeds, mortgages, legal docs *	1. NC licensed attorney, not an employee of a company (other than of a law firm), or legal assistant under their direct supervision, 2. Actual party (lender, borrower, <i>not</i> a paid representative or non-attorney employee) N.C.G.S. 84-2.1; N.C.G.S. 84-5; State v. Pledger Preparer's name must be shown on face of the deed or deed of trust. N.C.G.S. 47-17.1
Abstracting or passing upon titles *	NC licensed attorney, or legal assistant under their direct supervision, not a company employee (other than of a law firm) N.C.G.S. 84-2.1
Title certification for title insurance *	NC licensed attorney on title insurer's approved attorney list (though may use report of legal assistant under the attorney's direct supervision) – <i>NOT EMPLOYED BY, AN OWNER OF OR AFFILIATED OR UNDER CONTRACT WITH THE TITLE INSURANCE COMPANY OR AGENT</i> N.C.G.S. 58-26-1(a). "Companies may be formed in the manner provided in this Article for the purpose of furnishing information in relation to titles to real estate and of insuring owners and others interested therein against loss by reason of encumbrances and defective title; provided, however, that no such information shall be so furnished nor shall such insurance be so issued as to North Carolina real property unless and until the title insurance company has obtained the opinion of an attorney, licensed to practice law in North Carolina and not an employee or agent of the company, who has conducted or caused to be conducted under the attorney's direct supervision a reasonable examination of the title. The company shall cause to be made a determination of insurability of title in accordance with sound underwriting practices for title insurance companies. . . ." N.C.G.S. 84-2.1
Title update and certification at time of recording *	NC licensed attorney on title insurer's approved attorney list (though may use report of legal assistant under their <i>direct</i> supervision) – <i>NOT EMPLOYED BY, AN OWNER OF OR AFFILIATED OR UNDER CONTRACT WITH THE TITLE INSURANCE COMPANY OR AGENT</i> N.C.G.S. 58-26-1(a); N.C.G.S. 84-2.1

<ul style="list-style-type: none"> • Present and identify the documents, • Direct the parties where to sign the documents, & • Ensure that the parties have properly executed the documents, <p><i>without answering questions, explanation or analysis</i></p>	<p>Attorney closing is standard in North Carolina. However, a nonlawyer can do these 3 very limited functions (so long as providing <u>no</u> explanation or advice regarding nature or terms of documents being signed).</p> <p><i>CAUTION: This is not the normal procedure in NC and the buyer/borrower’s lack of representation is risky to anyone involved. So it is highly discouraged and should be accompanied with significant, clear disclosures to consumer about scope of representation (or lack thereof) and risks to them of failure to retain attorney instead as well as written waivers.</i> The transaction must be effectively controlled by or under the direct supervision of an independent NC licensed attorney, not the non-lawyer. “Coordination” or “handling” by a non-lawyer otherwise may be interpreted that the non-lawyer is, in effect, controlling the transaction and thereby rendering legal representation and advice – the unauthorized practice of law.</p> <p><i>No representation of saving money using nonlawyer should be made as this is highly unlikely to be true and may be a clear misrepresentation.</i></p> <p><i>No closing protection coverage is available to a nonattorney other than the actual agent/agency of the title insurance underwriter.</i></p> <p>Authorized Practice Advisory Opinion 2002-1, January 24, 2003, revised January 26, 2012, on-line at: https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/authorized-practice-advisory-opinion-2002-1/</p> <p>N.C.G.S. 58-26-1 See large number of cases decided by the North Carolina State Bar Authorized Practice Committee</p>
<p>Receive and disburse the closing funds only (based on <i>parties’</i> drafting & agreement on HUD-1 or comparable closing statement, and <i>only after update of title and recording of closing documents</i>)</p>	<p>Attorney closing is standard in North Carolina. A nonlawyer may receive and disburse funds, but only after all legal documents are prepared by a NC attorney (or a party to the transaction) and <i>after an attorney has updated title and recorded documents.</i></p> <p>Any funds held and disbursed as part of a residential closing on North Carolina real estate must be held in an account qualifying for interest on trust or escrow accounts and must be reported to the North Carolina State Bar. N.C.G.S. 45A-9</p> <p>Good Funds Settlement Act, N.C.G.S. Chapter 45A</p> <p>Authorized Practice Advisory Opinion 2002-1, January 24, 2003 revised January 26, 2012, on-line at: https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/authorized-practice-advisory-opinion-2002-1/</p> <p>Residential: Illegal to disburse prior to attorney’s update of title and recordation of closing documents. N.C.G.S. 45A-4.</p>

<p>Underwriting & issuing title insurance commitments or policies</p>	<p>Issued only by NC licensed title insurance underwriter Underwriter Lookup → https://sbs-nc.naic.org/Lion-Web/jsp/sbsreports/CompanySearchLookup.jsp OR licensed appointed agent, Agent Lookup → https://sbs-nc.naic.org/Lion-Web/jsp/sbsreports/AgentLookup.jsp as reflected on the NCDOI records.</p> <p>REQUIRES the opinion of an attorney, licensed to practice law in North Carolina and not an employee or agent of the company, who has conducted or caused to be conducted under the attorney's direct supervision a reasonable examination of the title. N.C.G.S. 58-26-1(a)</p>
<p>Advise or give opinion upon the legal documents, rights of person, etc.*</p>	<p>NC licensed attorney only (not an employee of title insurer or company other than law firm, even if an attorney) N.C.G.S. 84-2.1; N.C.G.S. 84-5</p>
<p>Closing Protection Coverage</p>	<p>Issued by title insurance underwriter but only for:</p> <ol style="list-style-type: none"> (1) NC Licensed attorney on title insurer's approved attorney list, not an employee of the title insurer or agent or a company other than a law firm OR (2) Individual or Business Entity with active NC agency license, filed with NC Dept of Insurance, with licensed underwriters appointed by the underwriter <p>Rate must comply with NC Title Insurance Rating Bureau filing with the NC Department of Insurance. NO BLANKET LETTERS – specific attorney, lender and borrower/buyer must be identified in each letter. Form must be filed with NCDOI – NCLTA files ALTA forms; NCTIRB 2003 letter still filed; companies can file their own forms N.C.G.S. 58-26-1(a). “. . . A company may also insure the proper performance of services necessary to conduct a real estate closing performed by an approved attorney licensed to practice in North Carolina. Provided, however, nothing in this section shall be construed to prohibit or preclude a title insurance company from insuring proper performance by its issuing agents.”</p>

Actions marked with an asterisk “” which are the practice of law are subject to the criminal liability and disallowance of fees charged under N.C.G.S. 84-8 and civil penalties under N.C.G.S. 84-10.1.

North Carolina General States, relevant provisions:

N.C.G.S. 58-26-1(a). “Companies may be formed in the manner provided in this Article for the purpose of furnishing information in relation to titles to real estate and of insuring owners and others interested therein against loss by reason of encumbrances and defective title; provided, however, that no such information shall be so furnished nor shall such insurance be so issued as to North Carolina real property unless and until the title insurance company has obtained the opinion of an attorney, licensed to practice law in North Carolina and not an employee or agent of the company, who has conducted or caused to be conducted under the attorney's direct supervision a reasonable examination of the title. The company shall cause to be made a determination of insurability of title in accordance with sound underwriting practices for title insurance companies. A company may also insure the proper performance of services necessary to conduct a real estate closing performed by an approved attorney licensed to practice in North Carolina. Provided, however, nothing in this section shall be construed to prohibit or preclude a title insurance company from insuring proper performance by its issuing agents.”

N.C.G.S. 84-2.1(a) “Practice of law” includes, among other things, “preparation or aiding in the preparation of deeds, mortgages, . . . abstracting or passing upon titles, . . . or assisting by advice, counsel, or otherwise in any legal work; and to advise or give opinion upon legal rights . . .”

N.C.G.S. 84-4. Persons other than members of State Bar Prohibited from practicing law.

N.C.G.S. 84-5. Prohibition as to practice of law by corporation.

N.C.G.S. 84-8. Punishment for violations.

(a) Any person, corporation, or association of persons violating any of the provisions of [G.S. 84-4](#) through [G.S. 84-6](#) or [G.S. 84-9](#) shall be guilty of a **Class 1 misdemeanor**.

(b) **No person shall be entitled to collect any fee for services performed in violation of [G.S. 84-4](#) through [G.S. 84-6](#), [G.S. 84-9](#), or [G.S. 84-10.1](#).**

N.C.G.S. 84-10.1. Private cause of action for the unauthorized practice of law

If any person knowingly violates any of the provisions of [G.S. 84-4](#) through [G.S. 84-6](#) or [G.S. 84-9](#), fraudulently holds himself or herself out as a North Carolina certified paralegal by use of the designations set forth in [G.S. 84-37\(a\)](#), or knowingly **aids and abets another person to commit the unauthorized practice of law**, in addition to any other liability imposed pursuant to this Chapter or any other applicable law, any person who is damaged by the unlawful acts set out in this section shall be entitled to maintain a **private cause of action to recover damages and reasonable attorneys' fees and other injunctive relief** as ordered by court. No order or judgment under this section shall have any effect upon the ability of the North Carolina State Bar to take any action authorized by this Chapter.

N.C.G.S. 14-2.4. Punishment for conspiracy

(b) Unless a different classification is expressly stated, a person who is convicted of a conspiracy to commit a misdemeanor is guilty of a **misdemeanor** that is **one class** lower than the **misdemeanor** he or she conspired to **commit**, except that a **conspiracy to commit a Class 3 misdemeanor is a Class 3 misdemeanor**.

N.C. Administrative Code, Title 27, The North Carolina State Bar:

“Supervision” required of non-lawyers is spelled out very clearly in **27 N.C.A.C. Rules 5.3, Responsibilities Regarding Nonlawyer Assistants, and 5.5(f), Revised Rule of Professional Conduct**, (“A lawyer shall not assist another person in the unauthorized practice of law.”),

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a principal, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm or organization shall make reasonable efforts to ensure that the firm or organization has in effect measures giving reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

- (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
- (2) the lawyer is a principal or has comparable managerial authority in the law firm or organization in which the person is employed, or has direct supervisory authority over the nonlawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action to avoid the consequences.

Comment

. . . [2] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Nonlawyers Outside the Firm

[3] A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client. . . . When using such services outside the firm, a lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations and, depending upon the risk of unauthorized disclosure of confidential client information, should consider whether client consent is required. See Rule 1.1, cmt. [7]. The extent of this obligation will depend upon the circumstances, including the education, experience, and reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality. See also Rules 1.1 (competence), 1.2 (allocation of authority), 1.4 (communication with client), 1.6 (confidentiality), 5.4(a) (professional independence of the lawyer), and 5.5(a) (unauthorized practice of law). When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.

“**Supervision**” is also addressed in multiple State Bar ethics opinions, including the primary four below:

RPC 29, Purchase and Use of Title Abstracts <https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-29/>

Opinion rules that an attorney may not rely upon title information from a nonlawyer assistant without direct supervision by said attorney

Opinion provides:

For an attorney to rely on an abstract or title search by a nonlawyer not supervised by the attorney or the firm does not constitute adequate preparation under the circumstances for rendering of a title opinion or drafting a deed in reliance on the information disclosed by this title abstract or search. An attorney is required to supervise and evaluate the nonlawyer assistant. An attorney relying on nonlawyer assistants, whether employed by his firm or contracted with, must make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the lawyer's professional obligations, including his ethical obligations as required by Rule 3.3(a).

RPC 216 (supplementing RPC 29): <https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/rpc-216/>

Using the Services of an Independent Title Abstractor

Opinion rules that a lawyer may use the services of a nonlawyer independent contractor to search a title provided the nonlawyer is properly supervised by the lawyer.

Provides:

Before hiring or contracting with a nonlawyer assistant to perform title searches, Attorney A should take reasonable steps to ascertain that the nonlawyer is competent. Attorney A must also give the nonlawyer appropriate instruction and supervision.

The opinion goes on to require competence by the attorney:

Moreover, it is incompetent representation of a client, in violation of Rule 6, for a lawyer to adopt as his or her own an opinion on title prepared by a nonlawyer or to render a legal opinion on title if the lawyer's opinion is not based upon knowledge of the relevant records and documentation and the lawyer's own independent professional judgment, knowledge, and competence in real property law.

And it requires that the attorney check for conflicts of interest and assure that the independent searcher will comply with the attorney's duty to safeguard the confidences of his clients.

2007 FEO 12: Outsourcing Legal Support Services <https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2007-formal-ethics-opinion-12/>

Opinion rules that a lawyer may outsource limited legal support services to a foreign lawyer or a nonlawyer (collectively "foreign assistants") provided the lawyer properly selects and supervises the foreign assistants, ensures the preservation of client confidences, avoids conflicts of interests, discloses the outsourcing, and obtains the client's advanced informed consent.

2011 FEO 14: Outsourcing Clerical or Administrative Tasks <https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2011-formal-ethics-opinion-14/>

Opinion rules that a lawyer must obtain client consent, confirmed in writing, before outsourcing its transcription and typing needs to a company located in a foreign jurisdiction.

**AUTHORIZED PRACTICE ADVISORY OPINION 2002-1:
ON THE ROLE OF LAYPERSONS IN THE CONSUMMATION OF RESIDENTIAL REAL ESTATE
TRANSACTIONS**

Adopted: January 24, 2003

Revised January 26, 2012

The North Carolina State Bar has been requested to interpret the North Carolina unauthorized practice of law statutes (N.C. Gen. Stat. §§84-2.1 to 84-5) as they apply to residential real estate transactions. The State Bar issues the following authorized practice of law advisory opinion pursuant to N.C. Gen. Stat. §84-37(f) after careful consideration and investigation. This opinion supersedes any prior opinions and decisions of any standing committee of the State Bar interpreting the unauthorized practice of law statutes to the extent those opinions and decisions are inconsistent with the conclusions expressed herein. As a result of its review of the activities of more than 50 nonlawyer service providers since the adoption of this opinion on January 24, 2003, including injunctions issued against two companies, the Committee is clarifying the opinion concerning issues that it has addressed since adoption of the opinion.

Issue 1:

May a nonlawyer handle a residential real estate closing for one or more of the parties to the transaction?

Opinion 1:

No. Residential real estate transactions typically involve several phases, including the following: reviewing the purchase agreement for any conditions that must be met before closing; abstracting titles; providing an opinion on title; applying for title insurance policies, including title insurance policies that may require tailored coverage to protect the interests of the lender, the owner, or both;¹ preparing legal documents, such as deeds (in the case of a purchase transaction), deeds of trust, and lien waivers or affidavits; interpreting and explaining documents implicating parties' legal rights, obligations, and options; resolving possible clouds on title and issues concerning the legal rights of parties to the transaction; overseeing execution and acknowledgement of documents in compliance with legal mandates; handling the recordation and cancellation of documents in accordance with North Carolina law; disbursing proceeds when legally permitted after legally-recognized funds are available and all closing conditions have been satisfied; and providing a post-closing final opinion of title for title insurance after all prior liens have been satisfied. These and other functions are sometimes called, collectively, the "closing" of the residential real estate transaction. As detailed below, the North Carolina General Assembly has determined specifically that only persons who are licensed to practice law in this state may handle most of these functions.²

A person who is not licensed to practice law in North Carolina and is not working under the direct supervision of an active member of the State Bar may not perform functions or services that constitute the practice of law.³ Under the express language of N.C. Gen. Stat. §§ 84-2.1 and 84-4, a non-lawyer who is not working under the direct supervision of an active member of the State Bar would be engaged in the unauthorized practice of law if he or she performs any of the following functions for one or more of the parties to a residential real estate transaction: (i) preparing or aiding in preparation of deeds, deeds of trust, lien waivers or affidavits, or other legal documents; (ii) abstracting or passing upon titles; or (iii) advising or giving an opinion upon the legal rights or obligations of any person, firm, or corporation. Under the express language of N.C. Gen. Stat. § 84-4, it is unlawful for any person other than an active member of the State Bar to hold himself or herself out as competent or qualified to give legal advice or counsel or as furnishing any services that constitute the practice of law. Additionally, under N.C. Gen. Stat. § 84-5, a business entity, including a corporation or limited liability company, may not provide or offer to provide legal services or the services of attorneys to its customers even if the services are performed by

licensed attorneys employed by the entity. See, *Duke Power Co. v. Daniels*, 86 N.C. App. 469, 358 S.E.2d 87 (1987); *Gardner v. North Carolina State Bar*, 316 N.C. 285, 341 S.E.2d 517 (1986), and *State ex rel. Seawell v. Carolina Motor Club, Inc.*, 209 N.C. 624, 184 S.E. 540 (1936).

Accordingly, a nonlawyer is engaged in the unauthorized practice of law if he or she performs any of the following functions in connection with a residential real estate closing (identified only as examples):

1. Abstracts or provides an opinion on title to real property;
2. Explains the legal status of title to real estate, the legal effect of anything found in the chain of title, or the legal effect of an item reported as an exception in a title insurance 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;
3. Explains or gives advice or counsel about the rights or responsibilities of parties concerning matters disclosed by a land survey under circumstances that require the exercise of legal judgment or that have implications with respect to a party's legal rights or obligations;
4. Provides a legal opinion, advice, or counsel in response to inquiries by any of the parties regarding legal rights or obligations of any person, firm, or corporation, including but not limited to the rights and obligations created by the purchase agreement, a promissory note, the effect of a pre-payment penalty, the rights of parties under a right of rescission, and the rights of a lender under a deed of trust;
5. Advises, counsels, or instructs a party to the transaction with respect to alternative ways for taking title to the property or the legal consequences of taking title in a particular manner;
6. Drafts a legal document for a party to the transaction or assists a party in the completion of a legal document, or selects or assists a party in selecting a form legal document among several forms having different legal implications;
7. Explains or recommends a course of action to a party to the transaction under circumstances that require the exercise of legal judgment or that have implications with respect to the party's legal rights or obligations;
8. Attempts to settle or resolve a dispute between the parties to the transaction that will have implications with respect to their respective legal rights or obligations;
9. Determines that all conditions of the purchase agreement or the loan closing instructions have been satisfied in accordance with the buyer's or the lender's interests or instructions;
10. Determines that the deed and deed of trust may be recorded after an update of title for any intervening conveyances or liens since the preliminary opinion;
11. Determines that the funds may be legally disbursed pursuant to the North Carolina Good Funds Settlement Act, N.C. Gen. Stat. § 45A-1 et seq.⁴

The foregoing list of examples of functions that constitute the practice of law is not exclusive, but reflects a range of responsibilities and duties that involve the following: the exercise of legal judgment; the preparation of legal documents such as deeds, deeds of trust, and title opinions; the explanation or interpretation of legal documents in circumstances that require the exercise of legal judgment; the provision of legal advice or opinions; and the performance of other services that constitute the practice of law.

Issue 2:

May a nonlawyer who is not acting under the supervision of a lawyer licensed in North Carolina (1) present and identify the documents necessary to complete a North Carolina residential real estate closing, direct the parties where to sign the documents, and ensure that the parties have properly executed the documents; and (2) receive and disburse the closing funds?

Opinion 2:

Yes. So long as a nonlawyer does not engage in any of the activities referenced in Opinion 1, or in other activities that likewise constitute the practice of law, a nonlawyer may: (1) present and identify the documents necessary to complete a North Carolina residential real estate closing, direct the parties where to sign the documents, and ensure that the parties have properly executed the documents; or (2) receive and disburse the closing funds.

Although these limited duties may be performed by nonlawyers, this does not mean that the nonlawyer is handling the closing. Since, as described in issue 1 above, the closing is a collection of services, most of which involve the practice of law, a lawyer must provide the necessary legal services.⁵ And, since N.C. Gen. Stat. § 84-5 prohibits nonlawyers from arranging for or providing the lawyer or any legal services, nonlawyers may not advertise or represent to lenders, buyers/borrowers, or

others in any manner that suggests that the nonlawyer will (i) handle the “closing;” (ii) provide the legal services associated with a closing, such as providing title searches, title opinions, document preparation, or the services of a lawyer for the closing; or (iii) “represent” any party to the closing.⁶ The lawyer must be selected by the party for whom the legal services will be provided.

Notwithstanding this opinion, evidence considered by the State Bar with respect to this advisory opinion indicates that, at the time documents are presented to the parties for execution, a lawyer who is present may identify or be asked about important issues affecting the legal rights or obligations of the parties. A lawyer may provide important legal guidance about such issues, but a nonlawyer is not permitted to do so. Moreover, a consumer’s retention of a licensed North Carolina lawyer provides financial protection to the consumer. The North Carolina Rules of Professional Conduct require a lawyer to properly handle all fiduciary funds, including residential real estate closing proceeds. In the event a lawyer mishandles the closing proceeds, the lawyer is subject to professional discipline, and the State Bar Client Security Fund may provide financial assistance for a person injured by the lawyer’s improper application of funds. On the whole, the evidence considered by the State Bar indicates that it is in the best interest of a consumer to be represented by a lawyer with respect to all aspects of a residential real estate transaction.

The evidence the State Bar has considered suggests, however, that performing administrative or ministerial activities in connection with the execution of residential real estate closing documents and the receipt and disbursement of the closing proceeds does not necessarily require the exercise of legal judgment or the giving of legal advice or opinions. Indeed, the execution of closing documents and the disbursement of closing proceeds may be accomplished—and often have been accomplished—by mail, by email, or by other electronic means, or by some other procedure that would not involve the lawyer and the parties being physically present at one place and time. The State Bar therefore concludes that it should not be presumed that performing the task of overseeing the execution of residential real estate closing documents and receiving and disbursing closing proceeds necessarily involves giving legal advice or opinions or otherwise engaging in activities that constitute the practice of law.

Nonlawyers who undertake such responsibilities, and those who retain their services, should also be aware that (1) the North Carolina State Bar retains oversight authority concerning complaints about activities that constitute the unauthorized practice of law; (2) the North Carolina criminal justice system may prosecute instances of the unauthorized practice of law; and (3) that N.C. Gen. Stat. §84-10 provides a private cause of action to recover damages and attorneys’ fees to any person who is damaged by the unauthorized practice of law against both the person who engages in unauthorized practice and anyone who knowingly aids and abets such person. In addition, non-lawyers and consumers should bear in mind that other governmental authorities such as the Federal Trade Commission, the North Carolina Attorney General, district attorneys, and the banking commissioner, have jurisdiction over unfair trade practices and violations of requirements regarding lending practices.

Endnotes

1. By statute, title insurance in North Carolina can be issued only after the title insurance company has received an opinion of title from a licensed North Carolina attorney who is not an employee or agent of the company and who “has conducted or caused to be conducted under the attorney’s direct supervision a reasonable examination of the title.” N.C. Gen. Stat. § 58-26-1.
2. Except as permitted under *State v. Pledger*, 257 N.C. 634, 127 S.E.2d 337 (1962), which allows a party having a “primary interest” in a transaction to prepare deeds of trust and other documents to effectuate the transaction.
3. The State Bar notes that the North Carolina General Assembly and Supreme Court are the entities that have the power to make the ultimate determination whether an activity constitutes the practice of law.
4. Since the original adoption of this opinion, the Committee has reviewed numerous complaints concerning nonlawyers, many of whom hold out to the closing parties that they will conduct “closings,” including disbursement of funds, at any time of day, including after normal business hours. However, under the Good Funds Settlement Act, N.C. Gen. Stat. § 45A-4, funds may not be disbursed until the deed and deed of trust (if any) have been recorded, which in most counties requires physical delivery to the Register of Deeds during normal business hours. Accordingly, while execution of the documents may be conducted at any time, the actual “closing” and disbursement of funds may not occur until after the required documents are recorded.
5. Except as permitted under *State v. Pledger*, *supra*, or by an individual *pro se*.
6. Almost without exception, these nonlawyer service providers are corporations or limited liability companies that market their services to lenders, not consumers. Most are also title insurance agents. Accordingly, lenders commonly inform borrowers that the nonlawyer will be conducting the closing without any meaningful opportunity for the borrower to decide to retain a lawyer to protect its interests. Additionally, when the nonlawyer is a title insurance

agent, the borrower usually is given no choice on insurer or available rates. The Committee expresses no opinion whether these actions may violate N.C. Gen. Stat. § 75-17, which prohibits a lender from requiring its borrower to obtain a policy of title insurance from a particular insurance company, agent, broker or other person specified by the lender. Title companies (and other parties) may refer lenders or borrowers to attorneys at their customer's request, but may not require the use of a specific attorney or charge a fee for any such referral.