

SUPREME COURT OF KENTUCKY

Countrywide Home Loans, Inc. v. Kentucky Bar Association

113 S.W.3d 105 (Ky. 2003) · No. 2000-SC-0206-KB to 2000-SC-0209-KB · Decided August 21, 2003

SUMMARY

The Supreme Court of Kentucky reviewed Kentucky Bar Association Advisory Opinion U-58, which declared that real estate closings conducted by laypersons constituted the unauthorized practice of law. The court vacated U-58 and held that prior Advisory Opinion U-31 accurately stated Kentucky law, permitting laypersons and institutional lenders to perform ministerial closing functions subject to specified limitations. The decision addressed attorney supervision, institutional lender activities, and the permissible role of title companies and settlement agencies.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	KELLER, Justice; Keller, Justice
JURISDICTION	Kentucky
DECIDED	August 21, 2003
DOCKET	2000-SC-0206-KB to 2000-SC-0209-KB
DISPOSITION	vacated
PROCEDURAL POSTURE	The appellants sought review under SCR 3.530(5) of Kentucky Bar Association Advisory Opinion U-58, which declared that real estate closings conducted by lay closing agents constituted the unauthorized practice of law. The Supreme Court of Kentucky granted review, permitted the parties to present evidence, and heard oral argument.
STANDARD OF REVIEW	Under SCR 3.530(5), the Supreme Court of Kentucky independently evaluates a Kentucky Bar Association formal advisory opinion and determines whether it accurately states the law; the court is not bound by the advisory opinion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Countrywide Home Loans, Inc., LandSafe Services, Inc., Kentucky Land Title Association, Kentucky Association of Realtors, Inc., Home Builders Association of Kentucky, Inc., Kentucky Bankers Association v. Kentucky Bar Association

TOPICS

real estate

appellate procedure

appellate jurisdiction

standard of review

PRACTICE AREAS

real estate law

unauthorized practice of law

professional responsibility

appellate procedure

QUESTIONS PRESENTED

1. Whether conducting a real estate closing as a layperson, without providing legal advice or counsel, constitutes the unauthorized practice of law under Kentucky law.
2. Whether Advisory Opinion U-58 accurately stated Kentucky law or should be vacated in favor of Advisory Opinion U-31.
3. Whether lay closing agents may conduct ministerial aspects of real estate closings while refraining from answering legal questions or providing legal advice.

HOLDINGS

1. A layperson does not engage in the unauthorized practice of law merely by conducting a real estate closing for another party, provided the layperson does not answer legal questions or provide legal advice.
2. Advisory Opinion U-58 is vacated because its blanket prohibition on layperson-conducted real estate closings was inconsistent with Kentucky law and with U-31.
3. Lay closing agents may perform ministerial closing functions, but they may not answer legal questions, provide legal advice, or otherwise engage in conduct requiring legal knowledge or legal skill.

KEY QUOTATIONS

“Accordingly, the conduct of a closing is the practice of law if (1) it requires legal knowledge or legal advice, (2) involves representation, counsel or advocacy on behalf of another party, and (3) involves the rights, duties, obligations, liabilities, or business relations of that other party.” (113 S.W.3d at 121-122)

“laypersons may conduct real estate closings on behalf of other parties, but they may not answer legal questions that arise at the closing or offer any legal advice to the parties.” (113 S.W.3d at 128)

“although a layperson may not dispense legal advice anywhere—not on the golf course, not in line at the grocery, not while fishing on a lake somewhere, and certainly not at a real estate closing—we do not believe that a real estate closing is a setting so fraught with the potential for unauthorized practice that U-58’s blanket prohibition against lay closing agents is warranted as a prophylactic measure.” (113 S.W.3d at 128)

FACTUAL BACKGROUND

The Kentucky Bar Association adopted U-58 after concerns were raised that title companies and other nonlawyer settlement agents were conducting real estate closings without attorney participation or supervision. The record showed that residential closings generally involved standardized lender-prepared documents, execution and exchange of documents, and transfer or disbursement of funds. Evidence also showed that lay

closing agents were trained not to provide legal advice and to stop the closing and refer parties to counsel when legal questions arose.

PROCEDURAL HISTORY

The Kentucky Bar Association Board of Governors adopted Advisory Opinion U-58 in November 1999 and published it in January 2000. The appellants moved for review and requested that the court vacate U-58 and reaffirm the earlier Advisory Opinion U-31. After receiving depositions and documentary evidence, the Supreme Court vacated U-58 and held that U-31 accurately stated Kentucky law governing layperson-conducted real estate closings.

DISPOSITION

vacated

CASES CITED

- Frazee v. Citizens Fidelity Bank & Trust Co., 393 S.W.2d 778 (Ky. 1965)
- Federal Intermediate Credit Bank of Louisville v. Kentucky Bar Association, 540 S.W.2d 14 (Ky. 1976)
- Kentucky State Bar Association v. First Federal Savings & Loan Association of Covington, 342 S.W.2d 397 (Ky. 1961)
- State v. Buyer's Service Co., 292 S.C. 426, 357 S.E.2d 15 (1987)
- People v. Title Guaranty and Trust, 227 N.Y. 366, 125 N.E. 666 (1919)
- Seigle v. Jasper, 867 S.W.2d 476 (Ky. App. 1993)
- Kentucky Bar Association v. Tussey, 476 S.W.2d 177 (Ky. 1972)
- Howton v. Morrow, 269 Ky. 1, 106 S.W.2d 81 (1937)
- American Insurance Association v. Kentucky Bar Association, 917 S.W.2d 568 (Ky. 1996)
- In re Opinion No. 26 of the Committee on the Unauthorized Practice of Law, 139 N.J. 323, 654 A.2d 1344 (1995)
- Virginia UPL Opinion No. 183 (Oct. 17, 1996)
- Adams v. Kentucky Bar Association, 843 S.W.2d 898 (Ky. 1993)