

**KENTUCKY BAR ASSOCIATION**  
**Unauthorized Practice of Law Opinion KBA U-11**  
Issued: July 1975

**Question:** Does the completion of a printed real estate mortgage form by a lay employee of a governmental lending agency, using information furnished by an attorney, the form containing a printed facsimile of the signature of an attorney who is not an employee or officer of the specific agency as the preparer of the mortgage, constitute the unauthorized practice of law by the lay employee or by the agency?

**Answer:** Yes.

**OPINION**

The Kentucky Bar Association has been requested, by way of a voluntary application of the General Counsel and Secretary of the Federal Intermediate Credit Bank, to furnish an opinion as to whether the mortgage preparation procedure used by production credit associations (PCA) in Kentucky involves the unauthorized practice of law.

As described by the requesting party, the PCA procedure is as follows:

1. Prospective borrower's application is prepared and approved.
2. Local attorney prepares and submits a title opinion to PCA, which title opinion, it appears, contains legal descriptions, source of title and other required data.
3. A PCA employee completes the blanks on a PCA mortgage printed form, utilizing the data furnished by the title opinion and also under general "form" instructions from the general counsel.
4. Loan is closed and the mortgage is recorded.
5. Local attorney reviews records and submits his final certificate of title.

From time to time renewals of loans are required and the procedure is then as follows:

1. Prospective borrower's application is prepared and approved.
2. PCA employee searches records for title developments since prior mortgage recorded. Any changes are noted and, if affecting title, are referred to local attorney for new opinion.
3. In event no changes are found, PCA employee completes blanks in new mortgage form, copying all information from prior mortgage except amount of loan.
4. Loan closed and mortgage recorded:

The immediate question presented is whether step (3) in each of the procedures above involves the unauthorized practice of law.

An examination of the blank mortgage form reveals the following information is filled in: date, name and address of borrower(s), legal description and source of title of property to be

encumbered, amount of mortgage, repayment schedule, amount of additional advances, if any, and completion of notary requirements. The form contains what appears to be standard mortgage language and reflects, at the foot thereof, a printed preparer's statement and a printed facsimile of the general counsel's signature. The general counsel concedes that he seldom personally sees or examines the completed document, although he prepared the printed form.

It is well settled that preparation of mortgages is the practice of law. Howton v. Morrow, 269 Ky.1, 106 S.W.2d 81 (1973) at page 82, Kentucky State Bar Assn v. Tussey, 476 S.W.2d 177 (Ky. 1972) at page 178.

It is clear, further, that a corporation may not, through professional or nonprofessional salaried employees, draft mortgages. Frazee v. Citizens Fidelity Bank & Trust Co, 393 S.W.2d 778 (Ky. 1965) at page 784.

Under the rule enunciated in the Frazee case, the proposed procedure of the PCA outlined above involves the unauthorized practice of law in the Commonwealth of Kentucky.

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***Note to Reader***

*This unauthorized practice opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). Note that the Rule provides in part: "Both informal and formal opinions shall be advisory only."*