

KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-44
Issued: September 1990

Question: May a bank distribute forms for "living wills" and assist their customers by notarizing "living will" instruments?

Answer: Qualified yes.

OPINION

This question was brought to the Committee after an advertisement appeared in the local paper. The ad indicates that bank trust officers will prepare "living wills" as a free service for bank customers.

It is the law of Kentucky that a corporation (including a bank) may not prepare legal documents for its customers or for any other party, unless the Bank has some interest in the transaction. If the bank is a party to the transaction, it may have its in-house staff prepare documents for the bank and the customer (for example, the borrower) so long as no fee is charged. We refer the reader to the following opinions of the committee, as well as to the following cases: KBA U-23; Frazee v. Citizens Fidelity Bank & Trust Company, 393 S.W.2d 778 (Ky. 1965); Federal Intermediate Credit Bank of Louisville v. KBA, 540 S.W.2d 14 (Ky. 1976) (which dealt with mortgages).

On the other hand, we note that forms for a "living will" that conform to the recently adopted "living will" statute are generally available to the public. While the plain language of SCR 3.020 and the above cited cases make it clear that bank employees (even if they are licensed counsel) may not consult with bank customers for the purpose of drafting legal instruments for them to which the bank is not a party (whether or not a fee is charged), since this would in effect be practice of law by the bank, it is difficult to see why the bank may not make these forms available as a courtesy. It is also apparent that employees of the bank may provide necessary notarial services.

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."