



ATTORNEYS AT REAL ESTATE CLOSINGS IN CONNECTICUT AND MASSACHUSETTS

By: Alex Reger, Legislative Analyst II

ISSUE

Do real estate closings in Connecticut and Massachusetts have to be conducted by an attorney? The Office of Legislative Research is not authorized to issue legal opinions, and this information should not be construed as such.

SUMMARY

Massachusetts statutes and court rulings generally require an attorney to actively participate in real estate transactions.

While Connecticut statutes do not require individuals buying or selling real estate to engage the services of an attorney, (1) statutes require an attorney to be involved in real estate transactions requiring title insurance and (2) certain services or activities in a real estate transaction may constitute the practice of law and thus can only be legally performed by an attorney. Based on statutes and practice rules, an attorney's participation is likely required in most real estate transactions.

REAL ESTATE CLOSINGS

Connecticut

According to an official at the Department of Consumer Protection (DCP), which oversees the Connecticut Real Estate Commission, attorneys are almost always involved in real estate transactions. DCP was unaware of any rule requiring attorney participation in all situations. However, several common circumstances will require an attorney's participation. For example, any closing involving title insurance requires an attorney, and a mortgagee or lender may require an attorney to conduct the closing as a condition of the mortgage or loan. (By law, a title insurance agent must be a practicing attorney unless he or she held a valid title insurance license on or before June 12, 1984 ([CGS § 38a-402\(13\)](#)).)

In addition, giving advice or representing the interest of any person in a real estate transaction constitutes the practice of law. Specifically, drafting legal documents involving the rights of a person and giving advice or counsel to any person in a real estate transaction both constitute the practice of law (Connecticut Practice Book §§ 2-44(a)(3) & (5)). Thus, based on these rules, if an individual provides legal advice or drafts documents, among other common closing-related activities, that person must be an attorney. However, an individual is not required by statute to engage anyone for these specific services.

An individual providing legal services who is not an attorney may be guilty of unauthorized practice of law, a class D felony punishable by up to five years imprisonment, a fine of up to \$5,000, or both (CGS § 51-88). We are not aware of any case interpreting the scope of these practice of law requirements regarding real estate closings.

Massachusetts

Massachusetts requires that an attorney be present and actively participate in real estate transactions.

In *Real Estate Bar Association v. National Real Estate Information Services, Inc.* ([REBA v. NREIS](#)), 459 Mass. 512 (2011), the Massachusetts Supreme Judicial Court ruled that many of the activities involved in a real estate closing require the “substantive participation” of an attorney. The case effectively ended the practice of “witness-only” closings in the state. (A “witness-only” closing is a real estate transaction in which an individual, who may be an attorney and generally acts on behalf of the mortgagee or lender, acts only as a notary or witness for a closing and is not actively involved in the transaction.)

According to the [Massachusetts Office of Bar Counsel](#), performing a witness-only closing by an attorney “would necessarily be inadequate, professionally and ethically, except in the (perhaps unlikely) event that the attorney is first assured that steps constituting the practice of law are being or have been properly handled by other Massachusetts attorneys.”

By law, an attorney is required to certify title in certain real estate transactions involving owner-occupied residential dwellings with less than five families ([Mass. Gen. Laws Ch. 93 §70](#)). In addition, certain other types of closing-related activities, including recording the deed and transferring proceeds, generally require an attorney ([Mass. Gen. Laws Ch. 183 §63\(b\)](#)).

AR:cmg

