



2011 Bulletin 15 Bar issues UPL Letter on Short Sale Assistance

On September 30, 2011, the Florida Bar's Standing Committee on the Unlicensed Practice of Law issued its long awaited guidance on whether a title agent's facilitating a short sale constituted the unlicensed practice of law.

Last February, the FLTA took an active role in the UPL committee's public hearing. FLTA President Pat Hancock, Agent Section Chair Beverly McReynolds, Government Affairs Committee Chair Ted Conner, and Executive Director Alan Fields each provided testimony. We also provided written submissions on behalf of the [FLTA](#) and the [Agents' Section](#). These written submissions built on points raised by the [Real Property, Probate and Trust Law Section of the Bar](#).

Unfortunately, the final letter provided only limited guidance, concluding that each activity would have to be looked at "on a case-by-case basis considering public harm."

The UPL Committee did clarify that:

"Because of the possible legal repercussions, counseling a seller on whether or not to participate in a short sale would be UPL. Giving legal advice to a seller on a 'short sale approval letter' from the lender would also be UPL."

On the other hand, gathering and submitting documents to the lender on behalf of the seller does NOT constitute UPL. The Committee did not include any analysis of whether these or any other short sale functions might be permissible (even though they constitute UPL) under the limited privilege accorded title agents under [The Florida Bar v. McPhee](#), 195 So.2d 552 (Fla. 1967) when done pursuant to the issuance of title insurance as FLTA had argued.

Here is a copy of the [UPL Committee's Letter](#).

So, at the end of the process, we are basically where we started – without any official guidance on the exact boundaries of UPL in a short sale context. While it is not an official pronouncement, we would suggest the standards outlined in the [Real Property, Probate and Trust Law Section Letter](#) as a good guide in deciding your company's internal policies on the subject.