

January 17, 2003

Task Force on the Model Definition  
of the Practice of Law  
American Bar Association  
750 North Lake Shore Drive  
Chicago, Illinois 60611

Re: Comments on the American Bar Association's Proposed Model Definition  
of the Practice of Law

Dear Members of the Task Force:

This letter is written on behalf of the Title Appraisal Vendor Management Association (TAVMA) of which I am the Chairman of the Governmental Affairs Committee. TAVMA is a trade association of providers and consumers of real estate title reporting, title insurance, appraisal and evaluation services, and closing management services. TAVMA only recently learned of the Task Force's request for comment on the Proposed Model Definition of the Practice of Law and we ask that this letter be considered in your deliberations.

TAVMA's members include the leading title insurance underwriters, closing management services, appraisal management companies, title agencies, notaries, independent appraisers and technology providers. Many of our members are subsidiaries of or have affiliated business arrangements with the largest mortgage lending institutions in the United States. Typically, vendor management companies facilitate the real estate lending process by providing a centralized and standardized set of products to lenders. This might be referred to as "outsourcing the back office." Our services are of particular usefulness to regional and national banks, mortgage banks, and finance companies, which have recognized the benefits of our networks of appraisers, abstractors and closers. These benefits include quality control, geographic coverage, fast transactional turn around times, and single point of order.

The services that we offer to lenders also benefit consumers. Generally, we enable consumers to close on their loan or to refinance more quickly and at the location of their choice. Our companies also provide a full menu of settlement services, often saving the consumer time and effort. If there is an issue or problem with one product or service, we are uniquely positioned to help the consumer deal with those issues quickly and with one, centralized phone call.

In a handful of states, real estate settlement service providers are confronted with unauthorized practice of law issues. In most states, we are able to use lay abstractors and

closers. In many states, we are permitted to prepare deeds and other real estate documents. Significantly, we have not experienced higher rates of complaints or problems in these non-lawyer states.

TAVMA has actively participated in the debate in several states and before the FTC on what constitutes the practice of law in real estate settlement services and title insurance. Most recently, the North Carolina Bar recommended new rules that recognize that there are settlement activities that lawyers and laypersons may provide without harm to the public. The FTC has been very active in examining the effect of unauthorized practice of law provisions on competition and consumer protection and convenience. TAVMA strongly supports the views expressed in the DOJ/FTC letter to the Task Force dated December 20, 2002.

TAVMA is particularly concerned that the Proposed Model Definition is sufficiently open-ended and vague that it would prohibit our members and lay persons from performing valuable services, which in most states we can now perform, for consumers. Lay abstractors routinely search title to property and provide competent reports at a fraction of the cost of a search by a lawyer. Notaries perform witness closings at a fraction of the cost of having a lawyer present and typically at times and places more convenient to the consumer than a lawyer's office. Escrow agents and others provide the disbursement function for lenders competently and without the need for supervision by a lawyer (indeed, anecdotal evidence suggests that defalcations are much more prevalent when a lawyer is involved). Many real estate, title and loan documents can be competently prepared by non-lawyers. The Proposed Model Definition threatens all of these activities, which are now performed by non-lawyers in much of the country. The Proposed Model Definition tilts the playing field too far in favor of protecting lawyers at the expense of the public they serve.

TAVMA acknowledges that the Task Force's job is difficult. The interests of consumers should be foremost in the consideration of the Task Force. In accounting for the interests of consumers, cost and convenience are important factors that warrant consideration of narrower, less restrictive alternatives to the overly broad Proposed Model Definition. TAVMA would welcome the opportunity to assist the Task Force as it examines this issue.

Sincerely,

Thomas K. Lammert, Jr.