



**ILLINOIS STATE  
BAR ASSOCIATION**

# **ISBA Advisory Opinion on Professional Conduct**

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**ISBA Advisory Opinions on Professional Conduct are prepared as an educational service to members of the ISBA. While the Opinions express the ISBA interpretation of the Illinois Rules of Professional Conduct and other relevant materials in response to a specific hypothesized fact situation, they do not have the weight of law and should not be relied upon as a substitute for individual legal advice.**

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**This Opinion was AFFIRMED by the Board of Governors in May 2010. Please see the 2010 Illinois Rule of Professional Conduct 5.5(a). This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.**

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**Opinion No. 90-13  
January 29, 1991**

Topic: Unauthorized Practice of Law; bank preparing trust agreement and deed into trust.

Digest: A bank that prepares an Illinois land trust agreement for its client and/or deed into trust is engaged in the unauthorized practice of law.

Ref.: Rule 5.5(b)  
Illinois Revised Statutes, Ch. 13, §1  
CBA v. Quinlan & Tyson, 34 Ill.2d 116, 214 N.E.2d 771 (Ill. 1966).  
Lozoff v. Shore Heights, Ltd., 35 Ill.App.3d 697, 342 N.E.2d 475, aff'd 66 Ill.2d 398, 6 Ill.Dec., 225, 362 N.E.2d 1047 (Ill. 1977)  
64 Illinois Bar Journal 684 (August, 1976)

## **FACTS**

A bank wishes to prepare an Illinois Land Trust agreement for a customer to hold the customer's real estate and then draft a deed into trust for the customer. It wants to accomplish this through the use of a trust officer and without the services of an attorney. Generally the bank contemplates taking information from the customer about the real estate and the customer's wishes and intentions with regard to such matters as identity of beneficiaries, identity and description of the real estate interest, and the way in which the beneficiaries will hold the beneficial interest, i.e., joint tenancy

with a right of survival or in some other form, and other pertinent matters.

The trust officer, after preparing the trust agreement according to the customer's wishes and having it executed by the customer, would then sign the agreement on behalf of the bank and prepare the deed of the real estate into the trust for the customer's signature.

### **QUESTION**

When a bank, through a trust officer who is not an attorney prepares an Illinois Land Trust Agreement and a deed into trust for its customer, at the customer's request, is it engaged in the unauthorized practice of law?

### **OPINION**

In the opinion of the Committee, the action contemplated by the bank would involve the bank in the unauthorized practice of law in violation of Illinois Revised Statutes, Chapter 13, Section 1.

In order to draft a land trust agreement the bank will need to know the customer's wishes with regard to such matters as, the nature and amount of real estate to be put in trust, the way in which the beneficiary or beneficiaries are to hold the beneficial interest, (joint tenancy with a right of survivorship or some other form), the effect of different percentage interests if there is more than one beneficiary, the terminability or modifiability of the agreement, how the trust properly will be treated at the customer's death, third party beneficiary issues, and other matters. The customer may also wish to know whether this trust properly will be treated differently at his death than other property he intends to pass by will or that may pass by operation of law.

In advising customers about any of these matters, or the effect of an Illinois Land Trust on any of them, the bank would inevitably be giving legal advice to the customer and accordingly, would be involved in the unauthorized practice of law. The same can also be said of the bank's preparing the deed for the customer putting the property into trust. See Chicago Bar Association v. Quinlan & Tyson, 34 Ill.2d 116, 214 N.E.2d 771 (Ill. 1966); (filling in blank portions of deeds, mortgages, etc. requires the particular skills of an attorney); Lozoff v. Shore Heights, Ltd. 35 Ill.App.3d 697, 342 N.E.2d 475, aff'd 66 Ill.2d 398, 6 Ill.Dec. 225, 362 N.E.2d 1047 (Ill. 1977) (the practice of law is not limited to court appearances but includes the giving of advice or the rendering of any service requiring the use of any degree of legal knowledge or skill). See also, ISBA Unauthorized Practice of Law Committee Opinion on Land Trust Agreements and Application for Inheritance Tax Consent, 64 Illinois Bar Journal 684 (August, 1976).

Moreover, having a trust officer who was also an attorney would not avoid the bank's practicing law without a license and would further involve any attorney trying to effect the bank's purposes in a conflict of interest. Rule 5.5(b).

Merely giving a customer an uncompleted "form" for a land trust without advising the customer on how it is to be filled out would, in and of itself, not involve the bank in the unauthorized practice of law.

A land trust agreement is prepared principally to benefit someone other than the bank trustee. Giving advice as to how that agreement will affect the beneficiary involves the bank in giving legal

advice to the grantor and/or a beneficiary. In contrast a checking or savings account agreement generally is prepared by the bank for its own benefit, most likely on a take it or leave it basis. Where the bank prepares these agreements principally for its own benefit, it can provide how it will hold the customer's funds and the customer is generally left to decide on his or her own what options to choose. In this instance, there is not nearly the incentive or temptation to give the customer legal advice as to how best to hold the account for the customer's benefit.

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