

RHODE ISLAND SUPREME COURT
UNAUTHORIZED PRACTICE OF LAW COMMITTEE

In re Daniel S. Balkun and Balkun Title : UPLC-2017-1
& Closing, Inc.

COMMITTEE REPORT

June 7, 2018

Pursuant to Rule 8(b) of the Governing Rules of the Unauthorized Practice of Law Committee (“Committee”), this report is being furnished to the Supreme Court for its consideration in connection with investigational hearings undertaken by the Committee in the above-captioned matter. In accordance with Rule 7(c)(ii)(p) of the Committee’s Rules of Procedure, a majority of the Committee members who were present during the investigational hearing have found that the charges in the complaint, that the respondents, Daniel S. Balkun (“Balkun”) and Balkun Title & Closing, Inc. (“Balkun Title”), have engaged in the unauthorized practice of law, have been sustained by a preponderance of the evidence presented.¹

I. PROCEDURAL HISTORY

A. Complaint Received by the Committee.

¹ All five Committee members, Debra Saunders, Robert Oster, Lise Iwon, David Strachman, and Jason Gramitt, voted in favor of the finding of unauthorized practice of law.

On January 19, 2017, the Committee received a complaint filed by Attorney Anthony A. Senerchia regarding certain actions taken by Balkun, a non-lawyer, and Balkun Title. *Tr. Vol. I (September 14, 2017)*, 4-5, *Exhibit 1*. In his complaint, Attorney Senerchia—who represented the buyer of the subject property during the transaction—alleged that Balkun and his company, Balkun Title, may have been engaged in the unauthorized practice of law by providing “sellers representation” during the conveyancing of property located at 60 Pine Hill Road, Johnston, Rhode Island.²

B. Investigational Hearing.

In connection with its investigation, the Committee held investigational hearings on September 14, September 26, November 14, and November 15, 2017 at which it heard testimony from Balkun, Attorney Senerchia, Attorney Andrew Pelletier, and paralegal Mignolia Rojas.³ During the investigational hearing, Balkun and Balkun Title were represented by Attorney Robert A. D’Amico II; Attorney Senerchia was represented by Attorney John Kelleher; and, Attorney Pelletier was represented by Attorney Thomas Mirza.

² Attorney Senerchia’s operation of his own entity, SouthCoast Title and Escrow, Inc., is the subject of a separate investigation and report by the Committee (UPLC-2017-7).

³ The investigational hearings were stenographically recorded and copies of the transcripts are included in the Appendix to this Report. *See Vol. I (September 14, 2017); Vol. II (September 26, 2017); Vol. III (November 14, 2017); Vol. IV (November 15, 2017).*

II. FINDINGS OF FACT.

After a review of the exhibits submitted and testimony offered at the investigational hearings, the Committee hereby makes the following findings of fact:

Background

1. Balkun is forty six years old and a resident of Cranston, Rhode Island. *Tr. Vol. I, 6.*
2. Balkun has never attended law school and has never been admitted to practice law in Rhode Island, or in any other state. *Tr. Vol. I, 7.*
3. After graduating from Toll Gate High School in Warwick, Rhode Island, Balkun took classes at the Community College of Rhode Island, and then completed a training academy to become a correctional officer in Rhode Island. He was employed as a correctional officer by the State of Rhode Island Department of Corrections for about six and one half years from 1989 to 1996. *Tr. Vol. I, 6-7.*
4. Balkun then moved to Las Vegas, Nevada where he was employed at what he characterized as a “sports telemarketing company.” *Tr. Vol. I, 13-14.*
5. In 1997, Balkun and numerous co-defendants were indicted for activities relating to the dissemination of sports gambling information and the collection of sports gambling funds under false pretenses. *Tr. Vol. I, 14, 128-132, 134-135, Exhibit 6; Tr. Vol. IV, 116.*
6. Balkun pled guilty to one count of “money laundering, aiding and abetting” on April 20, 2001. *Tr. Vol. I, 14, 129-130, Exhibit 6; Tr. Vol. IV, 113.* He was sentenced to forty six (46) months in prison, followed by three years of supervised probation. *Tr. Vol. I, 14, Exhibit 6.*

7. Balkun and his co-defendants were ordered to pay six hundred seventy thousand nine hundred seventeen dollars (\$670,917.00) in restitution. Balkun made payments towards the restitution during his incarceration and probation periods. Balkun indicated that he is no longer required to continue making payments for restitution following the completion of his probation. *Tr. Vol. I*, 14 94-97, *Exhibit 6*.
8. Balkun's probation was completed as of December 3, 2007. *Tr. Vol. I*, 15.
9. Balkun first became involved with the real estate industry while working as an account representative at a title company owned by Rhode Island lawyers Michael Lepizzera and Paul Laprocina.⁴ *Tr. Vol. I*, 7. In that position, Balkun solicited real estate closing business from mortgage companies and real estate companies. *Tr. Vol. I*, 8. He was employed in this position for approximately six years. *Tr. Vol. I*, 9.
10. Next, between 2011 and 2012, Balkun worked at the law firm of D'Amico & Burchfield,⁵ in Rhode Island, where he performed notary closings⁶ under the direction of Attorney Joe D'Amico. *Vol. I*, 9-10.
11. Balkun then worked at Germani Title & Closing ("Germani Title") where he performed notary closings under the direction of Attorney Stephen Germani.⁷ *Tr. Vol. I*, 10, 114; *Tr. Vol. IV*, 117. Balkun was employed by Germani Title until he departed to start his own company in 2016.

⁴ Balkun characterized this company as "both" a law firm and a title company. *Tr. Vol. I*, 8.

⁵ D'Amico & Burchfield is the law firm which represents Balkun in this proceeding.

⁶ Balkun described a notary closing as a real estate closing which is conducted by a non-lawyer notary public. *Tr. Vol. IV*, 119-120.

⁷ Balkun characterized Germani Title as a title company and indicated the Attorney Germani also operated a law firm separate from the title company. *Tr. Vol. I*, 10; *Tr. Vol. IV*, 117-118.

Balkun Title & Closing Inc.

12. On January 20, 2016, Articles of Incorporation were filed with the Rhode Island Secretary of State for Balkun Title. *Tr. Vol. I, 11, Exhibit 4*. As stated in the Articles of Incorporation, Balkun Title is a close corporation pursuant to General Laws 1956 § 7-1.2-1701.
13. Balkun is the sole shareholder of Balkun Title, *Tr. Vol. I, 24*, and he started Balkun Title with the intention of offering real estate closings and “real estate and title services.” *Tr. Vol. I, 12*.
14. Balkun Title maintains an office located at 33 College Hill Road, Suite 25E, Warwick, Rhode Island.

Title Insurance Agent’s License

15. A title insurance agent’s license authorizes the licensed person to issue title insurance policies as an agent of a title insurer. *Tr. Vol. I, 20*. Once the underlying real estate transaction closes, the title insurance policy is issued, and the agent is then paid directly by the insurer based on the premium of the policy. *Tr. Vol. I, 21-22*.
16. On February 20, 2016, Balkun filed an application for a title insurance agent’s license with the Rhode Island Department of Business Regulation (“DBR”). *Tr. Vol. I, 12-13, Exhibit 5; Tr. Vol. IV, 137-138*.
17. Being a lawyer is not a prerequisite for obtaining a title insurance agent’s license. *Tr. Vol. I, 20; Tr. Vol. IV, 135-136*.
18. In response to Question 1(b) of the title insurance agent’s license application asking “[h]ave you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony?” Balkun responded “Yes.” *Exhibit 5*.

19. Question 1(b) of the license application contains a sub-question, which states, “[i]f you have a felony conviction involving dishonesty or breach of trust, have you applied for written consent to engage in the business of insurance in your home state as required by 18 USC 1033?” The response on Balkun’s application states “N/A.” *Tr. Vol. I*, 17-18, 121-123, *Exhibit 5*. According to Balkun, he received no follow-up inquiries from the DBR at the time of his initial application, despite his indication of a felony conviction, and he was granted a title insurance agent’s license by DBR on February 25, 2016. *Tr. Vol. I*, 16, 111-112, *Exhibit 7*.
20. Subsequently, on September 26, 2017, his title insurance agent’s license was administratively renewed by the DBR. *Tr. Vol. I*, 16, *Exhibit 7*. Balkun’s counsel indicated that, while the license had been renewed administratively by DBR on September 26, 2017, DBR had also initiated a “1033 waiver” process to evaluate the felony conviction which would result in either the granting of a waiver or a revocation of Balkun’s title insurance agent’s license.⁸ *Tr. Vol. I*, 18.
21. At the time of the most recent investigational hearing before the Committee (November 15, 2017), the DBR waiver proceeding remained pending. *Tr. Vol. I*, 19; *Tr. Vol. IV*, 107-109. However, on January 22, 2018—after the Committee concluded its investigational hearings, but before it finalized this report—DBR issued a decision in which it approved Balkun’s title insurance agent’s license and 1033 waiver subject to numerous conditions.⁹ *See In the matter of Daniel Balkun*, DBR No

⁸ As part of his filings with the DBR regarding the status of his title insurance agent’s license, Balkun submitted fifteen “letters of recommendation.” Balkun offered those same letters into the record before the Committee. *Tr. Vol. IV*, 114-116, *Exhibit 16*.

⁹ The DBR granted Balkun’s 1033 waiver subject to the following conditions: (1) that the waiver apply to title insurance only, and not to any other type of insurance; (2) that Balkun notify DBR within ten days if he sells his company or changes insurance jobs; (3) that Balkun engage an independent certified public accountant to review his company’s financial records quarterly for two years, and then bi-annually for two more years, and file reports of those reviews with the DBR within

17RA020. That decision was then adopted by an order issued by the DBR on January 25, 2018.

22. At the time of the investigational hearings before the Committee, Balkun operated as an agent for only one title insurer, WFG (Warren Financial Group).¹⁰ *Tr. Vol. I*, 20.

Operation of Balkun Title

23. Balkun, as Balkun Title's only shareholder, oversees the company's daily operations. *Tr. Vol. I*, 24. He is paid a salary by the company for this work. *Tr. Vol. I*, 24.
24. Virtually all of Balkun Title's business involves residential real estate transactions. The company does not engage in any form of general consulting services. *Tr. Vol. I*, 24.
25. Aside from Balkun, Balkun Title also employs: Rhode Island attorney Andrew Pelletier;¹¹ four "paralegals," including Mignolia Rojas and Liz Gobin; and a bookkeeper. *Tr. Vol. I*, 25; *Tr. Vol. II*, 44, 101-102.
26. Balkun Title utilizes an operating bank account, along with one escrow account for each of the three states in which it conducts real estate transactions (Rhode Island, Massachusetts, and Connecticut.) *Tr. Vol. I*, 30, 106, 121; *Tr. Vol. III*, 79-95.

ten days; (4) that Balkun update the DBR regarding the names of each title insurance company he acts as an agent for on a monthly basis for four years; and, (5) that Balkun may petition the DBR to end any of the conditions prior to four years.

¹⁰ Balkun stated that he was also previously an agent for two other title insurers: Old Republic and National Title. *Tr. Vol. I*, 93-94.

¹¹ At the beginning of its operation, Balkun Title's affiliated attorney was Theresa Santoro, who was in that role from June 2016 to September 2016. *Tr. Vol. I*, 125-126, 133-134; *Tr. Vol. II*, 155; *Tr. Vol. IV*, 17-18. Attorney Pelletier began his work with Balkun Title at some point in September 2016, or sometime shortly thereafter. *Tr. Vol. III*, 62-63; *Tr. Vol. IV*, 132.

27. The Rhode Island-specific escrow account is held in the name of Balkun Title, and the only individuals with authority to access the account are Balkun and his bookkeeper. *Tr. Vol. I*, 30-31; *Tr. Vol. II*, 34-36, 99-100, 144-146.
28. Pursuant to a subpoena issued by the Committee, Balkun Title produced “[a]ll monthly account statements from the previous twelve (12) months for the escrow account maintained and used by Balkun Title & Closing, Inc. for the collection and disbursement of funds pertaining to Rhode Island real estate transactions.” *Tr. Vol. III*, 81, *Exhibit 10B*. Those documents (*Exhibit 10D*), as produced by Balkun Title, include monthly account activity summaries which are outlined in the following chart:

MONTH	BEGINNING BALANCE	DEPOSITS/ CREDITS	WITHDRAWALS/DEBITS	ENDING BALANCE
September 2016	384,870.22	5,107,280.19	-4,449,902.25	1,042,248.16
October 2016	1,042,248.16	5,287,158.13	-4,204,333.25	2,125,073.04
November 2016	2,125,073.04	3,306,436.32	-4,519,527.91	911,981.45
December 2016	911,981.45	7,538,893.56	-6,755,022.50	1,695,852.51
January 2017	1,695,852.51	5,842,356.92	-6,469,930.88	1,068,278.55
February 2017	1,068,278.55	5,885,592.31	-5,571,163.41	1,382,707.45
March 2017	1,382,707.45	6,760,753.67	-7,072,889.54	1,070,571.58
April 2017	1,070,571.58	8,229,810.23	-8,324,236.63	976,145.18
May 2017	976,145.18	12,203,034.95	-11,328,607.33	1,850,572.80
June 2017	1,850,572.80	13,163,314.61	-12,334,179.74	2,679,707.67
July 2017	2,679,707.67	12,064,716.31	-11,449,358.75	3,295,065.23

August 2017	3,295,065.23	11,773,418.14	-11,844,167.83	3,224,315.54
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29. Balkun Title’s average monthly deposits in the most recent six months of the Rhode Island escrow account were \$10,392,239.97.
30. When asked several times by members of the Committee whether Balkun Title earned interest on the funds in escrow, Balkun stated only that he did not believe that the escrow account earned interest for Balkun Title. *Tr. Vol. I*, 107-110; *Tr. Vol. II*, 5-6; *Tr. Vol. III*, 81.
31. Balkun Title does not carry attorney’s professional liability insurance coverage, *Tr. Vol. I*, 32; *Tr. Vol. II*, 163; although, it does maintain “errors and omissions” insurance. While he could not specify the precise amount of that coverage, Balkun indicated that it is an amount sufficient to satisfy the lending institutions issuing the mortgages on the underlying transaction. *Tr. Vol. I*, 31.
32. Balkun testified that he has always been open about the fact that he is not a lawyer, and that he has instructed all of his staff to be open with clients about that fact, but Balkun Title does not have any particular set procedures to advise all new clients that Balkun is not a lawyer. *Tr. Vol. I*, 32-34, 97-98.

Attorney Pelletier

33. Attorney Andrew Pelletier was admitted to practice law in Rhode Island in 1986 and has remained in good standing since that time. *Tr. Vol. II*, 89. He was also admitted to practice law in Massachusetts in 1986 and has remained in good standing with that state’s bar since then. *Tr. Vol. II*, 89.
34. Attorney Pelletier maintains a private practice called Pelletier Law Group, LLC with offices in Weymouth, Massachusetts and

East Providence, Rhode Island.¹² *Tr. Vol. II*, 90-91. He described his private practice as a general practice, including real estate. *Tr. Vol. II*, 90. Attorney Pelletier maintains attorney's professional liability insurance through Pelletier Law Group, LLC. *Tr. Vol. II*, 100, 152-153. In his private practice, Attorney Pelletier's fee is generally \$200 per/hour. *Tr. Vol. II*, 143-144.

35. Attorney Pelletier also has a title insurance agent's license issued by the Rhode Island DBR, although he indicated that, while he has given "commitment to the lender" on such policies through Pelletier Law Group, LLC, he does not recall ever having issued a policy as an agent in a transaction for Balkun Title. *Tr. Vol. II*, 103-106.
36. Attorney Pelletier also has experience acting as a settlement agent in real estate transactions and estimated that he has done so approximately 20-25 times in the last year. *Tr. Vol. II*, 107.
37. In addition to his private practice, Attorney Pelletier also performs work for Balkun Title. At Balkun Title, Attorney Pelletier is not a "W-2 employee," but rather, he is "paid on a 1099 basis," meaning as an independent contractor. *Tr. Vol. I*, 27, 86-87, 91.
38. Both Attorney Pelletier and Balkun testified that they view Attorney Pelletier's client to be Balkun Title, and Attorney Pelletier indicated that his obligations are to Balkun Title, but that he also has a duty to all other parties to the transaction, including Balkun Title's clients. *Tr. Vol. II*, 29-32, 41-43, 91-92, 126-131, 141-143, 153-154, 168.
39. Despite the purported attorney-client relationship between Attorney Pelletier and Balkun Title, Balkun claimed that

¹² The Rhode Island Secretary of State online corporate database indicates that Pelletier Law Group, LLC is a Rhode Island domestic limited liability company which first registered with the Secretary of State on July 13, 2012; however, the entity is not licensed by the Rhode Island Supreme Court to practice law in Rhode Island, pursuant to Article II, Rule 10 of the Supreme Court Rules.

Attorney Pelletier acts as his supervisor (even though Balkun is the sole shareholder of Balkun Title). *Tr. Vol. I*, 85 (Line 23)-86 (Line 1). Yet, Balkun also asserted that he supervises Attorney Pelletier. *Tr. Vol. I*, 86 (Line 2-10).

40. Attorney Pelletier provides his services to Balkun Title by way of an “oral agreement” between he and Balkun; they do not have a written engagement agreement. *Tr. Vol. II*, 139-140, 163-164.
41. Attorney Pelletier, through Pelletier Law Group, LLC, is paid a set monthly stipend of \$3,500.00 by Balkun Title to perform his various tasks; he is not paid on a per-transaction basis.¹³ *Tr. Vol. I*, 27; *Tr. Vol. II*, 39, 92-93, 125.
42. The monthly stipend that he receives from Balkun Title represents his compensation for the work he has performed each month for clients of Balkun Title. He is rarely ever paid directly for his services by clients of Balkun Title, although there are occasions where a transaction may require more extensive legal work beyond the typical scope of the transaction, in which case Attorney Pelletier would engage the client separately through his law firm, Pelletier Law Group, LLC. *Tr. Vol. I*, 27-28, 74, 77-78; *Tr. Vol. II*, 82-84, 97.
43. In his role at Balkun Title, Attorney Pelletier spends 2-4 days per week in Balkun Title’s Rhode Island office and is present to review title abstracts, performs closings, drafts deeds, and answer legal questions for the staff and Balkun Title’s clients pertaining to both Rhode Island and Massachusetts transactions. He stated that, since he is admitted to practice law in Massachusetts, he performs all of Balkun Title’s work in Massachusetts. *Tr. Vol. I*, 73; *Tr. Vol. II*, 91-94, 102, 116, 126-127, 137, 147-148, 164-166; *Tr. Vol. IV*, 23-25, 30.
44. Balkun indicated one of Attorney Pelletier’s primary roles in the office is to be available to answer legal questions which

¹³ Attorney Pelletier’s monthly stipend from Balkun Title is occasionally increased to \$5,000.00 per month to acknowledge a productive month. *Tr. Vol. II*, 41.

might be raised by either the staff or clients of Balkun Title. *Tr. Vol. I, 75-77*. Particularly, when clients of Balkun Title need legal advice on their respective transactions, Attorney Pelletier is available to assist them. *Tr. Vol. II, 81*.

45. When Pelletier works on a typical transaction for clients of Balkun Title, he does not sign any sort of engagement agreement with the individual clients, nor does he provide them with a statement of the client's rights and responsibilities. *Tr. Vol. I, 28; Tr. Vol. II, 81-82, 95-97*.

Paralegals

46. Balkun Title employs four "paralegals," including Mignolia Rojas ("Rojas") and Liz Gobin. *Tr. Vol. I, 25; Tr. Vol. II, 44, 101-102*.
47. Rojas has been employed as a paralegal at Balkun Title since November or December of 2016. *Tr. Vol. IV, 6, 17*.
48. After graduating from high school, Rojas received an Associate's Degree in Legal Studies from Community College of Rhode Island and a Bachelor's Degree from Roger Williams University. *Tr. Vol. IV, 4, 72*. She then attended law school, but did not complete her degree and has never been admitted to practice law in Rhode Island or any other state. *Tr. Vol. IV, 5*.
49. Rojas began working in the real estate industry around 1999 or 2000, and has worked in the industry continually since then. *Tr. Vol. IV, 5*.
50. During that period, she has worked for at least five different law firms and two title companies.¹⁴ *Tr. Vol. IV, 5, 50-51*. She indicated that her responsibilities in her prior positions with all of those law firms and title companies were substantially the

¹⁴Rojas specifically indicated that she has worked under the direction of an attorney throughout all of her prior positions, including while at the respective title companies. *Tr. Vol. IV, 6, 70-71*.

same: client intake, pre-closing tasks, performing closings, and post-closing tasks. *Tr. Vol. IV*, 5-6, 51.

51. In her current position with Balkun Title, Rojas performs the same tasks which she previously performed at those law firms and title companies (“intake files for real estate transaction[,] pre and post for the file as well.”) where she was previously employed. *Tr. Vol. IV*, 6, 48-49, 54-55.
52. The Balkun Title paralegals order title searches and prepare various documents which are then used in their respective transactions; when the paralegals identify a legal issue while performing these tasks, they consult with Attorney Pelletier, but Attorney Pelletier generally only reviews those documents pertaining to the closings that he performs. *Tr. Vol. II*, 45, 133-134, 149-150; *Tr. Vol. IV*, 19-20. Rojas estimated that fifty percent (50%) of the files that she opens are closed without any review by Attorney Pelletier. *Tr. Vol. IV*, 32, 66.
53. Before the Committee, Rojas first stated that Attorney Pelletier is her supervisor, but later acknowledged that Balkun is her “boss” and “direct supervisor,” *Tr. Vol. IV*, 6-7, 30-32, 61-63, 65; however, Balkun and Attorney Pelletier both indicated that they viewed Balkun as the paralegals’ daily supervisor. *Tr. Vol. I*, 132-133; *Tr. Vol. II*, 45-47. Attorney Pelletier specifically stated that he does not personally supervise the paralegals and that Balkun is their supervisor. *Tr. Vol. II*, 131, 133, 152, 156-157, 168-169.
54. Rojas indicated that all of the paralegals know that it is company policy, albeit unwritten, for employees to dispel any notion that Balkun is a lawyer if that question arises in their dealings with customers. *Tr. Vol. IV*, 62-64, 66-67.

Services Provided by Balkun Title to Buyers

Title Insurance

55. Balkun estimated that, within the past one year, he had issued roughly five hundred title insurance policies as an agent. *Tr.*

Vol. I, 21; Tr. Vol. II, 36-38. The fees earned by Balkun as title agent are paid to Balkun Title. *Tr. Vol. I, 22, 36.*

56. Most of Balkun's business as a title agent is a result of referrals from real estate companies or individual realtors. *Tr. Vol. I, 22.*
57. In regards to his business as a title insurance agent, Balkun described that, generally, a transaction starts with an order from the buyer's lending institution to perform a title search. *Tr. Vol. I, 23.* Balkun Title then "send[s] out an examiner" to perform a title search on the property which outlines the background of the property, along with a conclusion sheet. *Tr. Vol. I, 23.* Next, Balkun Title forwards that title search to the insurer to assess the insurability of the title, after which the insurer authorizes Balkun to issue the policy upon closing. *Tr. Vol. I, 23.* Generally, two policies are issued: one to the buyer in the amount of the purchase price; the other to the buyer's lending institution in the amount of the loan. *Tr. Vol. I, 23; Tr. Vol. II, 11-17.*

Title Searches and Examinations

58. Typically, in the early stages of a transaction in which Balkun is acting as title insurance agent, Balkun Title receives a "formal request for title service" which requires that a title search and examination be done on the underlying property. *Tr. Vol. I, 38-39.*
59. In these instances, Balkun Title responds by engaging an independent examiner who searches the title records for "any deficiencies or inconsistencies in the title" in order to determine marketable title. *Tr. Vol. I, 39-40; Tr. Vol. II, 9-11, 132; Tr. Vol. IV, 7.*
60. Occasionally, Attorney Pelletier performs title searches and examinations on behalf of Balkun Title, and Balkun Title is paid for these services. *Tr. Vol. I, 40; Tr. Vol. II, 93-94, 108, 132, 157.* Attorney Pelletier is compensated for this task as part of his monthly stipend. *Tr. Vol. I, 40, 92-93.*

61. After the title search is performed, by either the outside contractor or Attorney Pelletier, it is returned to the paralegals at Balkun Title. The paralegals, in turn, generally provide that search to Attorney Pelletier and/or the insurer for an examination of the underlying title for deficiencies, though Attorney Pelletier does not review every title search performed. *Tr. Vol. I*, 123-124; *Tr. Vol. II*, 38, 108-109, 132, 157-159; *Tr. Vol. IV*, 7-8.
62. If defects in the title are detected, Attorney Pelletier generally works to correct the defect, *Tr. Vol. I*, 43; *Tr. Vol. II*, 34, 92-93, 167-168; however, the ultimate determination as to insurability of the title rests with the insurer, *Tr. Vol. I*, 42-44; *Tr. Vol. II*, 10-11, 110-111.

Closings

63. Balkun Title also conducts real estate closings in Rhode Island. *Tr. Vol. I*, 46-47. Most of the closings performed by Balkun Title are performed in transactions where Balkun has acted as the title insurance agent. *Tr. Vol. I*, 46-47. Balkun estimated that Balkun Title performs an average of roughly forty closings per month (equaling roughly 480 per year). *Tr. Vol. I*, 47; *Tr. Vol. II*, 36-38.
64. Balkun further estimated that he, personally, as a non-lawyer notary public, has conducted seventy five to eighty percent (75-80%) of those closings in Rhode Island, with the remainder being performed by Attorney Pelletier.¹⁵ *Tr. Vol. I*, 47, 69-70; *Tr. Vol. II*, 39, 134-135; *Tr. Vol. IV*, 21-22.
65. Balkun stated that, in his experience, notary closings are a common practice throughout the State of Rhode Island, including by corporations organized in the same fashion as

¹⁵ Balkun and Attorney Pelletier indicated that when Balkun Title performs title services and closings in Massachusetts, those services are performed by Attorney Pelletier, as a Massachusetts attorney, on behalf of Balkun Title. *Tr. Vol. II*, 37-38, 138.

Balkun Title, or on a larger scale.¹⁶ *Tr. Vol. IV*, 119-124, *Exhibit 17*. This sentiment was also agreed to by Rojas based on her own experience. *Tr. Vol. IV*, 52.

66. Attorney Pelletier estimated that he has performed roughly 50-60 closings on behalf of Balkun Title in the past year. *Tr. Vol. II*, 111-113. Rojas, the paralegal, stated that she, too, has performed closings, but very rarely and generally only because of her fluency in Spanish.¹⁷ *Tr. Vol. IV*, 8-9, 16-22.
67. When Balkun Title is expected to conduct a closing in Rhode Island, the decision of whether that closing will be handled by either Balkun or Attorney Pelletier is based almost exclusively on their respective availability. *Tr. Vol. II*, 39, 140-141, 148-149; *Tr. Vol. IV*, 9, 24.
68. When Balkun conducts closings, he is typically provided all of the necessary closing documents ahead of the closing by the buyer's lending institution. Balkun then presents each of those documents, one after another, to the buyer for his or her signature. These closing documents typically include "the note, the mortgage, the first payment letter" and numerous disclosures. *Tr. Vol. I*, 48-49, 70.
69. When asked to describe how he conducts the closing, Balkun stated that he gives "a brief explanation or brief description of what the document is"—including the terms of default—and obtains the buyer's signature (with Balkun's notarization if necessary), before moving to the next document. *Tr. Vol. I*, 50, 71-73, 80-81, 87. Attorney Pelletier described his own conducting of the closing in the same general manner, *Tr. Vol. II*, 111-115; as did Rojas in regards to her own rare closings. *Tr. Vol. IV*, 8-9, 34.

¹⁶ The large-scale companies specifically identified by Balkun in this respect included Linear Title & Closing, Ltd., Equity National Title, and Liberty Title. *Tr. Vol. IV*, 120-131, *Exhibit 17*.

¹⁷ Rojas also indicated that she performed closings in all of her previous places of employment. *Tr. Vol. IV*, 51.

70. Balkun stated that, if a legal question were to come up during a closing, he would get Attorney Pelletier involved, but he further stated that that he has never had to stop a closing to address legal questions in that manner. *Tr. Vol. I*, 84, 87-88.
71. Balkun stated that, based on his experience in Rhode Island, there is no substantive difference between a closing performed by a non-lawyer notary (such as himself) and a closing performed by a lawyer.¹⁸ *Tr. Vol. I*, 71.
72. For performing these closings, Balkun Title is paid a flat fee which is recorded on the HUD-1 statement and disbursed to the company following the closing. *Tr. Vol. I*, 51. Balkun Title is listed on the HUD-1 and collects the fee regardless of whether a closing is performed by Balkun or Attorney Pelletier. *Tr. Vol. I*, 55-56; *Tr. Vol. II*, 161.

Settlement Agent or Settlement Services

73. Once all of the closing documents have been signed, Balkun gives the executed closing documents to the paralegals in his office. After the paralegal reviews the closing documents for compliance, Balkun Title proceeds to complete the transaction by recording the deed, disbursing the funds in escrow to the seller and other participants, and also issues the title insurance policies. *Tr. Vol. I*, 50-51, 105-106; *Tr. Vol. II*, 22-23, 107-108; *Tr. Vol. III*, 82-89 94-95.
74. For performing these settlement services, Balkun Title is paid a flat fee which is recorded on the HUD-1 statement and disbursed to the company following the closing. *Tr. Vol. I*, 51, 54.

¹⁸ Balkun stated that his company also conducts business in Massachusetts. *Tr. Vol. I*, 78-79. He specifically stated that Massachusetts is “an attorney state,” meaning that the state requires that closings be conducted by lawyers admitted in Massachusetts. Thus, all of Balkun Title’s closings in Massachusetts are conducted by Attorney Pelletier. *Tr. Vol. I*, 79-80.

75. Balkun indicated that Balkun Title regularly provides settlement services in transactions where he is also acting as title insurance agent. *Tr. Vol. I*, 53-54.

Services Provided by Balkun Title to Sellers

76. Typically, Balkun Title is engaged to provide services to the seller of a property through a referral from the seller's listing real estate agent. *Tr. Vol. I*, 58-59.
77. The service which Balkun Title offers to a seller is generally referred to as "document preparation" or "doc prep." *Tr. Vol. I*, 59. In this role, Balkun Title drafts three documents for the seller: a deed, a residency affidavit, and if needed, a power of attorney. *Tr. Vol. I*, 59.
78. Upon receiving a request for seller doc prep, the paralegals enter the seller's basic information gathered from the purchase and sales agreement into Balkun Title's database, and then draft the requisite documents based on templates used in past transactions, which, Rojas indicated, were used by her during her previous employment at several law firms. *Tr. Vol. II*, 102-103; *Tr. Vol. III*, 10-12; *Tr. Vol. IV*, 11. These templates were not uniformly drafted or created by Attorney Pelletier, but he has edited them on an "ad hoc basis." *Tr. Vol. II*, 155-156.
79. The seller documents, once drafted by the paralegals, are generally not reviewed by Attorney Pelletier, *Tr. Vol. II*, 60, unless, for some reason he plans to participate in the closing, in which case he reviews the specific documents drafted by the paralegals. Rather, upon drafting the documents, the paralegals usually send the documents for immediate review by the buyers. *Tr. Vol. II*, 149-152; *Tr. Vol. IV*, 14, 40. Although, if Rojas identifies an issue in drafting the seller documents, she sometimes consults with Attorney Pelletier, but, the need for such review by Attorney Pelletier is based only upon Rojas' comfort level with the transaction. *Tr. Vol. IV*, 14-15.
80. For "doc prep" services, Balkun Title is paid a flat fee which is recorded on the HUD-1 statement and disbursed to the

company following the closing. *Tr. Vol. I*, 62; *Tr. Vol. II*, 161-162. Balkun Title is listed on the HUD-1 and collects the fee regardless of whether the “doc prep” was reviewed by Attorney Pelletier; similarly, when Attorney Pelletier does review the documents, Balkun Title is listed to collect the fee. *Tr. Vol. I*, 65.

81. Balkun indicated that, in seller “doc prep” matters, Balkun Title’s role is typically limited to just drafting those documents; but, he also indicated that there are instances where, in certain transactions, he is already acting as title insurance agent and settlement agent, but is asked to do “doc prep” for the seller because the seller has no representation. *Tr. Vol. I*, 64, 87-92, 127.
82. In situations where the seller expresses a desire to have a lawyer accompany them to the closing, Attorney Pelletier would normally be present; however, Balkun has also appeared at closings with sellers. Balkun described his role at such a closing as “support staff” and notary. *Tr. Vol. I*, 63; *Tr. Vol. II*, 161.

Deeds

83. In a residential real estate transaction, a deed to the property is used to memorialize the seller’s transfer of the property to the buyer. *Tr. Vol. I*, 60.
84. When Balkun Title prepares a deed for the seller, the deed is originally drafted by the paralegal based either on templates of prior transactions, or based on information contained in the purchase and sales agreement or communicated to Balkun Title by the buyer’s closing agent. *Tr. Vol. I*, 59-60; *Tr. Vol. III*, 63-68; *Tr. Vol. IV*, 12, 26-28, 47-48.
85. When asked about how Balkun Title determines the proper tenancy to articulate in the deed being prepared for the seller in a sale, both Balkun and Rojas indicated that the tenancy for the present sale is generally copied from the prior deed conveying the property to the current seller (i.e. if the current seller

previously received the property by an estate deed, then the deed to make the current sale would also be an estate deed). *Tr. Vol. III*, 67-71; *Tr. Vol. IV*, 12, 28, 33-34.

86. Some of the deeds prepared by the paralegals are reviewed by Attorney Pelletier prior to their use, but many are used immediately after drafting by the paralegal, without any review. *Tr. Vol. I*, 59-61; *Tr. Vol. II*, 116; *Tr. Vol. IV*, 12-13, 32-33.
87. In instances where Attorney Pelletier reviews a deed prior to its use by the seller, he is compensated for that task as part of his monthly stipend. *Tr. Vol. I*, 61.
88. When pressed by the Committee to describe “joint tenancy[,] tenants in common, and tenants by the entirety,” Balkun offered a scattered explanation and concluded that, if asked by a seller about their tenancy, he “offer[s] them to either find their own legal counsel or to have a conversation with [Attorney] Pelletier.” *Tr. Vol. II*, 26-28.

Residency Affidavits

89. Balkun Title also drafts residency affidavits for sellers of residential real estate. *Tr. Vol. I*, 61; *Tr. Vol. II*, 33, 74-78, 116-119; *Tr. Vol. IV*, 13, 41-43.
90. A seller’s residency affidavit is a standardized form designated by the Rhode Island Division of Taxation, pursuant to General Laws 1956 § 44-30-71.3, which requires a seller of real estate located in Rhode Island to certify whether they are a resident of the State of Rhode Island. The document is used to determine related tax requirements upon sale. *Tr. Vol. I*, 61-62, 93; *Tr. Vol. IV*, 41-42.
91. In most instances where Balkun Title is responsible for the seller’s residency affidavit, the document is drafted by the paralegals, and sometimes reviewed by Attorney Pelletier. *Tr. Vol. II*, 116-120; *Tr. Vol. IV*, 13.

92. When asked by the Committee how Balkun Title determines a seller's residency and/or that a residency affidavit is required, Balkun and Rojas indicated that that determination is based on the seller's driver's license or their address listed in the purchase and sales agreement. *Tr. Vol. II*, 74-78, 117; *Tr. Vol. IV*, 26-27, 42-45.

Powers of Attorney

93. Balkun Title also drafts powers of attorney for sellers of residential real estate. *Vol. IV*, 13-15, 34-40.
94. A seller's power of attorney, in the real estate context, is an affidavit signed by a seller, authorizing another person to sign of their behalf or act in their place during a transaction. For example, a husband may sign a power of attorney in favor of his wife authorizing her to sign on his behalf at the closing; or, a seller may authorize a lawyer to act on his behalf. *Tr. Vol. II*, 69-70, *Exhibit 10D*, 19 (limited durable power of attorney); *Vol. IV*, 13-15, 34-40.
95. In most instances where Balkun Title is responsible for a seller's power of attorney, the document is drafted by the paralegals based on templates of past transactions, and sometimes reviewed by Attorney Pelletier. *Vol. IV*, 13-15, 34-40.

Negotiating Short Sales

96. Balkun Title has also engaged in short sale negotiations on behalf of sellers. *Tr. Vol. I*, 65-69; *Tr. Vol. II*, 120, *Exhibit 9C*, 2-7.
97. A short sale is a situation where, generally, the value owed by the seller on the mortgage is greater than the value or sale price of the property. *Tr. Vol. I*, 65-66. To negotiate a short sale means to negotiate with the lending institution which holds the mortgage to the property to accept an amount less than the value owed under the mortgage. *Tr. Vol. I*, 65-66.

98. Balkun described the negotiation of a short sale as a process by which he, on behalf of the buyer, works to establish the seller's inability to satisfy the mortgage. This is done by providing a series of documents to the bank, including the seller's tax returns, employment pay stubs, and hardship letters. *Tr. Vol. I*, 66.
99. Balkun has personally conducted short sale negotiations on behalf of sellers. These negotiations are typically conducted via telephone and email, and sometimes through online portals designated by the lending institutions. *Tr. Vol. I*, 67.
100. As a general practice, when Balkun Title is involved with a short sale negotiation, the related documents are often organized and filed by the paralegals, communications are also made by Balkun himself, and Attorney Pelletier sometimes oversees the negotiations and drafting of the documentation on behalf of Balkun Title clients, but it was not fully established whether Attorney Pelletier oversees every short sale. *Tr. Vol. I*, 66-68.
101. For performing these short sale negotiations, Balkun Title is paid a fee which is recorded on the HUD-1 statement and disbursed to the company following the closing. *Tr. Vol. I*, 68-69; *Tr. Vol. II, Exhibit 9C*, 2-7, 13.

60 Pine Hill Road, Johnston

102. Attorney Anthony Senerchia was admitted to practice law in Massachusetts in 2001 and was subsequently admitted to practice law in Rhode Island in 2008. *Tr. Vol. III*, 5. Attorney Senerchia described his practice as focused on real estate, and that he practices through both a private firm, Senerchia & Sheehan, P.C.,¹⁹ and SouthCoast Title and Escrow, Inc.

¹⁹ The Rhode Island Secretary of State online corporate database indicates that Senerchia & Sheehan, P.C. is Rhode Island domestic professional service corporation which first registered with the Secretary of State on February 25, 2011. On January 27, 2012, that entity received a limited liability entity (LLE) license

(“SouthCoast Title”),²⁰ both of which are located in the same office in Cranston, Rhode Island. *Tr. Vol. III*, 5-6, 20-22. Attorney Senerchia also has a title insurance agent’s license issued by the Rhode Island DBR. *Tr. Vol. III*, 6-7.

103. When asked about his experience in real estate matters, Attorney Senerchia stated that he, personally, on hundreds of occasions, has: acted as title insurance agent; acted as settlement agent; performed title searches, evaluated title defects; conducted closings; and, has also drafted deeds, residency affidavits, and powers of attorney for sellers. *Tr. Vol. III*, 7-9, 24, 38-39.
104. A real estate closing was scheduled to be held on December 2, 2016 to transfer a property located at 60 Pine Hill Road in Johnston, Rhode Island, from Ronald and Mary Cellucci (“sellers”), mother and son, to Taylor Real Estate Investing LLC (“buyer”). *Tr. Vol. I*, 4-5, *Exhibit 1*, Internal Exhibit C; *Tr. Vol. II*, 49, *Exhibit 9D*; *Tr. Vol. III*, 10.
105. During the transaction for 60 Pine Hill Road, Balkun Title was engaged by the sellers to prepare—and did prepare—documents including a deed, residency affidavits, and a power of attorney for Mary in favor of Ronald. *Tr. Vol. III*, 12, 46-48; *Exhibit 9D*, 9 (deed), 10-11 (power of attorney), 12-15 (residency affidavits). Balkun indicated that these documents would have all been prepared by his paralegal, Liz, whose name was on the related correspondence, but could not be certain whether Attorney Pelletier reviewed these documents prior to their use. *Tr. Vol. III*, 48-49.

from the Rhode Island Supreme Court to practice law in Rhode Island, pursuant to Article II, Rule 10 of the Supreme Court Rules.

²⁰ The Rhode Island Secretary of State online corporate database indicates that SouthCoast Title and Escrow, Inc. is Rhode Island domestic profit corporation which first registered with the Secretary of State on April 7, 2004. *Tr. Vol. III*, 24-25.

106. Attorney Senerchia, of SouthCoast Title, acted as the title insurance agent and the settlement agent for the buyer, and also performed the closing. *Tr. Vol. III*, 5, 10.
107. Prior to the closing, after ordering and reviewing a title search on the property, Attorney Senerchia discovered that two deeds had been filed on the property back in 1960. The first deed conveyed the property to Mary Cellucci and her husband Carmino as joint tenants with rights of survivorship (not tenants in common or tenants by the entirety). The second deed, filed several months later, was a “corrective deed done to correct avenue to road in many of the legal descriptions,” but, because that second deed “never recited the actual tenancy,” Attorney Senerchia was of the opinion that the previously recorded joint tenancy was severed and converted it back to tenants in common. *Tr. Vol. III*, 12-13. Subsequent to the recording of those two deeds on the property back in 1960, there was a deed issued from Mary individually, to Mary and her son Ronald Cellucci. *Tr. Vol. III*, 13.
108. Based on his observations regarding the history of the title, Attorney Senerchia felt it necessary to inquire as to whether Carmino Cellucci was still alive in order to determine the nature of any defect in the title. *Tr. Vol. III*, 13-15.
109. In search of this information, a paralegal from SouthCoast Title contacted the sellers’ realtor, Nathan Clark & Associates, to ask who represented the sellers, and he was told the sellers were represented by Balkun Title. *Tr. Vol. III*, 13, 37-38.
110. On November 23, 2016, a paralegal at SouthCoast Title sent an email to a paralegal at Balkun Title asking “can you check to see if Carmino Cellucci passed away?” *Tr. Vol. I, Exhibit 1*, Internal Exhibit D at “2”; *Tr. Vol. III*, 14-15, 51. Two hours later, the paralegal from Balkun Title responded stating “Carmino is alive.” *Tr. Vol. I, Exhibit 1*, Internal Exhibit D at “1”; *Tr. Vol. III*, 14-15. Balkun indicated that his paralegal believed that Carmino was alive because she had been advised so by the sellers’ real estate agent, and that his office did not

- conduct any independent research of the fact. *Tr. Vol. III*, 51-54.
111. The closing was scheduled for December 2, 2016 at Attorney Senerchia's office. *Tr. Vol. III*, 15-6. Attorney Senerchia was prepared to conduct the closing, but Balkun Title was not expected to appear on behalf of the sellers. *Tr. Vol. III*, 15. Those present at the closing were Attorney Senerchia, the buyer, and the sellers' realtor (Jason Clark, from Nathan Clark & Associates). *Tr. Vol. III*, 16.
112. At the beginning of the closing, Attorney Senerchia became aware that Carmino Cellucci was, in fact, deceased. *Tr. Vol. III*, 15. Upon learning this information, the paralegal from Attorney Senerchia's office emailed the paralegal at Balkun Title, stating "Ronald is here right now and he stated that his father passed away in 2011." *Tr. Vol. I, Exhibit 1*, Internal Exhibit D at "1."
113. About forty five minutes later, Balkun responded by email to the paralegal at SouthCoast Title stating "can you please forward me the e-mails you sent to [L]iz about the deceased seller. I need to review this and see what's happened." *Exhibit 1*, Internal Exhibit D, "1"; *Tr. Vol. III*, 54-55.
114. As a result of this information, the closing was stopped and Attorney Senerchia advised Ronald, the seller, that he should obtain counsel in order to open a probate matter to address Carmino's interest in the property. *Tr. Vol. III*, 16. Ronald then hired Attorney Mortimer Newton who proceeded to probate court where the matter was rectified. *Tr. Vol. III*, 17, 55, 57-61.
115. Upon completion of the probate matter, the closing was rescheduled for January 13, 2017. *Tr. Vol. I, Exhibit 1*, Internal Exhibit C; *Tr. Vol. III*, 17. That closing was completed and the property was successfully transferred to the buyer. *Tr. Vol. III*, 18, 56-57.

116. The final HUD-1 form, which was prepared by Attorney Senerchia's office and completed at the closing, included an entry for payment for "Seller Representation to Balkun Title and Closing [\$]395.00." *Tr. Vol. I, Exhibit 1*, Internal Exhibit C, Line 1104; *Tr. Vol. III*, 22-23, 37, 46. Balkun Title received a check in that amount which it cashed. *Exhibit 9D*, 16; *Tr. Vol. III*, 50. That same HUD-1 form included an entry for payment for "Attorney's fees to SouthCoast Title and Escrow, Inc. [\$]550.00." *Tr. Vol. I, Exhibit 1*, Internal Exhibit C, Line 1107; *Tr. Vol. III*, 25-26.
117. On January 19, 2017, shortly after the closing on the property was completed, Attorney Senerchia filed a complaint with the Committee alleging that Balkun Title may have engaged in the unauthorized practice of law by representing the seller in the transaction at 60 Pine Hill Road. *Tr. Vol. I, Exhibit 1*; *Tr. Vol. III*, 18. When asked what compelled him to file the complaint with the Committee, Attorney Senerchia indicated that he felt the sellers had been wronged by Balkun Title in the transaction because, as a result of Balkun Title's error regarding Carmino, the buyer was able to successfully negotiate a \$5,000 reduction in the purchase price due to the delay in the closing. *Tr. Vol. III*, 18-19, 23, 71-73.

17 Renaudet Street, West Warwick

118. On November 10, 2016, a real estate closing was held to transfer a property located at 17 Renaudet Street, West Warwick, Rhode Island, from Orvis Luker and Deborah DiPietro ("sellers") to Nuno and Susan Medeiros ("buyers"). *Tr. Vol. II*, 48-85, *Exhibit 9B*; *Exhibit 10D*, 2.
119. During the transaction, Attorney Marc Gertsacov of the Law Offices of Ronald C. Markoff, acted as the title insurance agent and the settlement agent for the buyers, and also performed the closing. *Tr. Vol. II*, 50-51.
120. Balkun Title was engaged by the sellers to prepare documents for them. *Tr. Vol. II*, 50. Balkun Title did not act as title insurance agent for the transaction. *Tr. Vol. II*, 51, 59.

121. Prior to the closing, an email was sent to Rojas, the paralegal at Balkun Title, to an assistant for Attorney Gertsacov indicating that “our office [Balkun Title] represents the seller” and asking Attorney Gertsacov’s assistant to provide Balkun Title with the “commitment and current deed.” *Tr. Vol. II, 51-52, Exhibit 9B, 7*. Those documents were provided to Balkun Title immediately by Attorney Gertsacov’s assistant. *Tr. Vol. II, 51-52, Exhibit 9B, 7*.
122. Minutes later, Rojas provided Attorney Gertsacov’s office with several documents that Balkun Title prepared for the seller, including: a deed, *Tr. Vol. II, 53, Exhibit 9B, 20-22*; residency affidavits, *Tr. Vol. II, 55, Exhibit 9B, 25-28*; and, a limited durable power of attorney for Luker, *Tr. Vol. II, 54, Exhibit 9B, 23-24; Tr. Vol. IV, 36-38, 41*.
123. Neither Balkun, nor Attorney Pelletier could recall if Attorney Pelletier reviewed any of these documents prepared by Balkun Title. *Tr. Vol. II, 53, 55, 121-123*.
124. Also ahead of the closing, Attorney Gertsacov’s office prepared a Closing Disclosure form outlining the itemized components of the transaction and provided it to Balkun Title for its review. *Tr. Vol. II, 56, Exhibit 9B, 2, 8-9*. That draft Closing Disclosure included an entry for “Attorney’s Fees to Balkun Title & Closing \$395.00.” *Tr. Vol. II, Exhibit 9B, 9, Line C01*.
125. Upon receiving the draft Closing Disclosure, Rojas responded on behalf of Balkun Title via email stating “[p]lease change to DOC PRE we’re title not lawfirm. [sic]” *Tr. Vol. II, 56-57, Exhibit 9B, 2*. The final Closing Disclosure was edited to remove the “attorney’s fees,” instead, listing “Document Preparation to Balkun Title & Closing \$395.00.” *Tr. Vol. II, 57, Exhibit 10D, 3*.
126. A few days before the closing, because he did not intend to be present at the closing, Luker signed the limited durable power of attorney, his residency affidavit, and his portion of the deed.

Tr. Vol. II, 69-70, Exhibit 10D, 13 (deed), 19 (limited durable power of attorney), 22-23 (residency affidavit).

127. At the closing, the documents prepared by Balkun Title for the sellers were signed by DiPietro, *Tr. Vol. II, 60-63, Exhibit 10D, 14 (deed), 20-21 (residency affidavit);* and, Balkun Title was paid a check in the amount of \$395, which included a notation made by Attorney Gertsacov's office stating "atty fees - Medeiros." *Tr. Vol. II, 78-79, Exhibit 9B, 10.*
128. Neither Balkun, nor anyone from Balkun Title attended the closing. *Tr. Vol. II, 71-72.*
129. When asked by the Committee, Balkun could not articulate the legal significance of the terms "limited" and "durable" contained in the phrase "limited durable power of attorney" used in this transaction. *Tr. Vol. II, 65-69.*

Social Media Activity

130. Balkun Title maintains a public Facebook account in its own name. By agreement, the Facebook page for Balkun Title is operated and curated by an outside marketing company which has the ability to access the Facebook account to post on Balkun Title's behalf. *Tr. Vol. IV, 73-74, 83-85, 109-113.* In that capacity the marketing company makes roughly twenty-five posts per month on behalf of Balkun Title. *Tr. Vol. IV, 112.*

Post on September 27, 2016

131. On September 27, 2016, a Facebook post was made by Paula Gallant, a realtor, regarding a transaction that had recently been completed. In that post, Ms. Gallant stated:

"Congratulations to my first time home buyers [] on your home purchase. Thank you [Loan Officer] on working with me on another closing. It's always a pleasure working with wonderful people such as yourself [sic][.] *The closing Attorney Dan*

Balkun was awesome as well and made their experience easy and fun.” (Emphasis added.) Tr. Vol. IV, 92-93, 99, Exhibit 12.

132. In response to this post, Balkun, from his personal Facebook account, clicked the “like” feature, thereby displaying his name publically as someone who viewed the post favorably. *Tr. Vol. IV, 94, 98-99, Exhibit 12.*
133. When asked by the Committee, Balkun stated that, in response to seeing this post, he called Ms. Gallant by telephone to make sure she was aware that he is not an attorney and that the reference to him as an “attorney” was removed on November 21, 2016. *Tr. Vol. IV, 94-98, Exhibit 15.*

Post on October 5, 2016

134. On October 5, 2016, Balkun Title made a public post which stated: “Thinking about buying a home? Be sure to hire a title & closing attorney to secure the sale of your soon-to-be #home. Nothing should interrupt that special memory.” *Tr. Vol. IV, 73, Exhibit 11.* The banner accompanying the post included a photograph of Balkun’s head. *Tr. Vol. IV, 73, Exhibit 11.*
135. With respect to this specific post, Balkun testified that it was posted by the outside marketing company without his review and that, when he saw the post shortly after it was first posted, he immediately called the marketing company to advise them that the reference to a lawyer was inappropriate, though he could not say for certain if, or when, the post was edited or removed. *Tr. Vol. IV, 74-76, 78, 80-81, 85, 91.* Balkun indicated that, as a result of this particular post, he now preapproves every post made by the marketing company on behalf of the Balkun Title. *Tr. Vol. IV, 76, 86-91, Exhibit 14* (email from Balkun to marketing company dated February 12, 2017).

Post, Undated

136. On an undetermined date, Ashley Borden posted a photograph on Facebook which had been taken at a breast cancer fundraiser for the Gloria Gemma Foundation at which Balkun had served as the master of ceremonies. *Tr. Vol. IV, 101-102, 105, Exhibit 13.*
137. After viewing the photograph, Balkun, from his personal Facebook account, commented: “Nice picture ladies![],” to which Ms. Borden immediately replied “Dan![] You did such an amazing job![] Forget law....you belong on a stage![]” Balkun then responded “thank you sooooo much!! I look forward to seeing you soon![]” *Exhibit 13.*
138. When asked about this particular post, Balkun indicated that he was not sure why Ms. Borden would have thought he was practicing “law” or a lawyer, other than that he owns a title company, because he only knows her in a social context and has never indicated to her that he is a lawyer. *Tr. Vol. IV, 102-103, 105-106.*

III. ANALYSIS

A. The Complaint

The complaint filed with the Committee by Attorney Senerchia alleged that Balkun and Balkun Title engaged in the unauthorized practice of law by representing and preparing documents for the sellers in connection with the real estate transaction for the property at 60 Pine Hill Road in Johnston. The Committee’s investigation of the complaint, along with the invocation of certain statutory provisions by Balkun and Balkun Title in

their response, has also prompted this Committee to evaluate the operation of Balkun Title more generally.

The question before the Committee is whether the services provided by Balkun and Balkun Title constitute the practice of law, and if so, whether they are authorized to provide those services by the Rhode Island Supreme Court.

The Supreme Court has recognized that the “practice of law at a given time cannot be easily defined,” *Unauthorized Practice of Law Comm. v. State, Dep't of Workers' Comp.*, 543 A.2d 662, 664 (R.I. 1988), and that the “[p]ractice of law under modern conditions consists in no small part of work performed outside of any court and having no immediate relation to proceedings in court.” *In re Ferrey*, 774 A.2d 62, 64 (R.I. 2001) (quoting *Rhode Island Bar Association v. Automobile Service Association*, 55 R.I. 122, 134, 179 A. 139, 144 (1935) (internal quotations omitted)).

The Supreme Court has said that the practice of law “embraces conveyancing” and “the giving of legal advice on a large variety of subjects, and the preparation and execution of legal instruments covering an extensive field of business and trust relations and other affairs.” *Rhode Island Bar Association, supra*, (quoting *In re Opinion of the Justices to the Senate (Mass.)* 194 N. E. 313, 317 (1935)) (internal quotations omitted). The Committee’s research shows that the Court has not squarely addressed whether the various services which are part of

a real estate conveyance constitute the practice of law, and further, whether a lawyer must perform them.

B. Respondents' Position

In response to the complaint, Balkun and Balkun Title have asserted that, as a “title company,” all of Balkun Title’s various services are authorized under G.L. 1956 § 11-27-16(a) (“Practices permitted to corporations and associations”). *Tr. Vol. I*, 98-101; *Tr. Vol. II*, 43, 73, 138; *Tr. Vol. III*, 35; *Tr. Vol. IV*, 116-117.

Section 11-27-16(a) provides, in relevant part:

“(a) Nothing in §§ 11-27-2 -- 11-27-11 or §§ 11-27-16 -- 11-27-18 shall be construed to limit or prevent:

- (1) Any corporation, or its officers or agents, lawfully engaged in the insuring of titles to real property from conducting its business, and the drawing of deeds, mortgages, and other legal instruments in or in connection with the conduct of the business of the corporation[.]”

In addition, in their response to the complaint, Balkun and Balkun Title have asserted that, by virtue of Balkun’s individual title insurance agent’s license and Balkun Title’s engagement in the “title insurance business,” § 11-27-16(a)—and by extension *Rhode Island Title Insurers Act* (“*Title Insurers Act*”), § 27-2.6-1 *et seq.*—confers on them the authority to perform their various services. Balkun Title has also asserted that, in reliance on these same statutes, other title companies, which are organized similarly to Balkun Title and provide the same services, have

established themselves in Rhode Island. *Tr. Vol. I*, 98-102; *Tr. Vol. IV*, 117-124, *Exhibit 17*.

C. Case Law and the Rhode Island General Laws

The Supreme Court alone has “the ultimate and exclusive authority to determine what does and does not constitute the practice of law within the state and to regulate those people qualified to engage in the practice.” *In re Town of Little Compton*, 37 A.3d 85, 88 (R.I. 2012); *Unauthorized Practice of Law Comm.*, 543 A.2d 662, 664 (R.I. 1988); *Berberian v. New England Telephone and Telegraph Co.*, 114 R.I. 197, 330 A.2d 813 (1975); *In re Rhode Island Bar Association*, 106 R.I. 752, 263 A.2d 692 (1970); *Rhode Island Bar Association v. Automobile Service Association*, 55 R.I. 122, 179 A. 139 (1935)). The Supreme Court has recognized that the Legislature has the power to declare acts of unauthorized practice of law illegal, *In re Town of Little Compton*, 37 A.3d at 92 (citing *Rhode Island Bar Association*, 55 R.I. at 127, 179 A. at 141), which it has done with the enactment of chapter 27 of title 11. For its purpose, the Legislature has defined the practice of law as follows:

“‘Practice law’ as used in this chapter means the doing of any act for another person usually done by lawyers at law in the course of their profession, and, without limiting the generality of the definitions in this section, includes the following:

(1) The appearance or acting as the attorney, solicitor, or representative of another person before any court, referee, master, auditor, division, department, commission, board, judicial person, or body authorized or constituted by law to determine any question of

law or fact or to exercise any judicial power, or the preparation of pleadings or other legal papers incident to any action or other proceeding of any kind before or to be brought before the court or other body;

(2) The giving or tendering to another person for a consideration, direct or indirect, of any advice or counsel pertaining to a law question or a court action or judicial proceeding brought or to be brought;

(3) The undertaking or acting as a representative or on behalf of another person to commence, settle, compromise, adjust, or dispose of any civil or criminal case or cause of action;

(4) The preparation or drafting for another person of a will, codicil, corporation organization, amendment, or qualification papers, or any instrument which requires legal knowledge and capacity and is usually prepared by lawyers at law.” G.L. 1956 § 11-27-2.

In § 11-27-16(a), the Legislature carved out a broad exception for title insurers to “conduct [their] business” and to draft legal documents.

To determine what precisely the Legislature meant when, in § 11-27-16(a), it exempted the business of insuring titles to real property from the prohibition on the unauthorized practice of law, the Committee looked to the *Title Insurers Act*. Section 27-2.6-3(18) of the *Title Insurers Act* defines the title insurance business as follows:

“(18) ‘Title insurance business’ or ‘business of title insurance’ means:

(i) Issuing as insurer or offering to issue as insurer, a title insurance policy;

(ii) Transacting or proposing to transact by a title insurer any of the following activities when conducted or performed in contemplation of, or in conjunction with, the issuance of a title insurance policy:

(A) Soliciting or negotiating the issuance of a title insurance policy;

(B) Guaranteeing, warranting or otherwise insuring the correctness of title searches for all instruments affecting titles to real property, any interest in real property, cooperative units and proprietary leases and for all liens or charges affecting the same;

(C) *Handling of escrows, settlements or closings;*

(D) Executing title insurance policies;

(E) Effecting contracts of reinsurance.

(iii) Guaranteeing, warranting or insuring searches or examination of title to real property or any interest in real property;

(iv) Guaranteeing or warranting the status of title as to ownership of or liens on real property and personal property by any person other than the principals to the transaction; or

(v) Doing or proposing to do any business substantially equivalent to any of the activities listed in this subsection in a manner designed to evade the provisions of this chapter.” (Emphasis added.)

The *Title Insurers Act* gives title insurance agents the authority to perform various real estate services, including the handling of real estate closings. Section 27-2.6-3(17) provides:

“‘Title insurance agent’ or ‘agent’ means an authorized person, other than a bona fide employee of the title insurer who, on behalf of the title insurer, performs the following acts, in conjunction with the issuance of a title insurance report or policy:

(i) Determines insurability and issues title insurance reports or policies, or both, based upon the performance or review of a search or abstract of title; and

(ii) Performs one or more of the following functions:

(A) Collects or disburses premiums, escrow or security deposits or other funds;

(B) *Handles escrows, settlements or closings;*

(C) Solicits or negotiates title insurance business; or

(D) Records closing documents.” (Emphasis added.)

Section 11-27-16(a) and the *Title Insurers Act* do not preclude the Supreme Court from finding that Balkun and Balkun Title engaged in the unauthorized

practice of law. As the Supreme Court noted in *In re Little Compton*, the Legislature may enact statutes to aid the Court in its duty to regulate the practice of law, “but may not in and of itself ‘grant the right to anyone to practice law save in accordance with standards enunciated by this [C]ourt.’” *In re Town of Little Compton*, 37 A.3d at 92. These provisions appear to go beyond criminalizing the unauthorized practice of law and instead unilaterally authorize non-lawyers to engage in conduct that constitutes the practice of law and, as discussed in greater detail below, outside of the standards set by the Court. See Art. II, Rule 10 (“Limited Liability Entities”) of the Supreme Court Rules.

At issue in this Complaint is whether non-lawyers can perform the following services related to a real estate conveyance: title searches and examinations, closings, settlement services, and drafting certain legal documents. In *Real Estate Bar Ass'n for Massachusetts, Inc. v. Nat'l Real Estate Info. Servs.*, 946 N.Ed.2d 665 (Mass. 2011), the Massachusetts Supreme Judicial Court addressed whether the particular services in a modern day real estate conveyance constitute the practice of law. In that case, the real estate bar association brought an action against a Pennsylvania-based real estate settlement services provider, claiming that various activities engaged in by that company constituted the unauthorized practice of law. The action was removed to federal court and the U.S. District Court for the District of Massachusetts entered a judgment against the bar association. The bar

association then appealed to the U.S. Court of Appeals for the First Circuit which vacated in part, reversed in part, and certified questions regarding the unauthorized practice of law to the Supreme Judicial Court.

When the Supreme Judicial Court decided the case in 2011, the legal landscape in Massachusetts appears to have been much like it is today in Rhode Island and the Supreme Judicial Court's precedent was limited to an earlier pronouncement that the practice of law "embraces conveyancing." The Supreme Judicial Court then looked to the definition of conveyancing:

“[t]he act or business of drafting and preparing legal instruments, esp. those (such as deeds or leases) that transfer an interest in real property.” *Real Estate Bar Ass'n for Massachusetts, Inc.*, 946 N.Ed.2d at 675 (citing Black's Law Dictionary 383 (9th ed. 2009)).

The Supreme Judicial Court concluded that “modern conveyancing of real property interests” “typically involves many more activities than merely drafting and preparing legal instruments.” The Supreme Judicial Court found,

“[m]any of the discrete services and activities that may fall within the penumbra of modern conveyancing do not qualify as the practice of law, and the talismanic invocation of the word ‘conveyancing’ is not sufficient to require that all of them be performed by or under the supervision of an attorney. Whether a particular service or activity constitutes the practice of law remains a fact-specific inquiry.” *Id.*, 946 N.Ed.2d at 675 (internal citations omitted.)

The Supreme Judicial Court addressed the various services performed in connection with real estate transactions and concluded:

1. “[T]he first step of the process, investigation of the record at the registry of deeds and preparation of a title report or abstract, generally *does not* constitute the practice of law[.]” *Real Estate Bar Ass’n for Massachusetts, Inc.*, 946 N.Ed.2d at 668 (Emphasis added).
2. “The second step in the process—analyzing title abstracts and other records to render a legal opinion as to marketability of title—*does* constitute practice of law[.]” *Id.* (Emphasis added.)
3. The drafting for others of deeds to real property *does* constitute the practice of law. *Id.* at 678.
4. Preparing settlement statements, like HUD-1 and HUD-1A, which are standardized government forms, and other mortgage-related forms for its lender clients *does not* constitute the practice of law. *Id.*
5. Issuance of title insurance commitments and policies to lenders and borrowers as a title insurance agency for underwriters generally *does not* constitute the practice of law. *Id.* at 681-682.
6. Handling of real estate closings *does* constitute the practice of law. *Id.* at 684-687.
7. Post-closing services which include reviewing closing documents to ensure valid execution, delivering documents to the appropriate registry of deeds for recording, disbursing mortgage funds in and of itself *does not* constitute the practice of law in Massachusetts. *Id.* at 679-681.

In July 2012, the Superior Court (Silverstein, J.) issued a decision in *Rhode Island Resource Recovery Corporation v. Albert G. Brien and Associates, et al.*, CA No. PB10-5194 (R.I. Super. Ct. July 16, 2012) in which several lawyers—along with the lawyers’ commonly-owned title company, Pilgrim Title, and their law firm, Belliveau & St. Sauveur, LLP—were named as defendants. The plaintiff, Rhode Island Resource Recovery Corporation (“RIRRC”), alleged that

Pilgrim Title provided RIRRC with legal services. The counts against Pilgrim Title included breach of fiduciary duty and legal malpractice or professional negligence. In his decision, Justice Silverstein stated that, in the particular arrangement between RIRRC and Pilgrim Title, Pilgrim Title served only as title insurance agent and/or settlement agent and that such services do not rise to the level of legal services. Justice Silverstein concluded that “[t]he duties of a settlement agent are similar to an escrow agent and are limited to disbursing funds as per the closing instructions and filing settlement statements,” and that serving as a settlement agent, “in and of itself, does not qualify as the practice of law[.]” *Id.* at 36.

He further concluded that issuing title insurance policies is not the practice of law either, as “title insurance protects against defects in title, but does not guarantee the state of the title or impose any duty on the title insurer to disclose title defects.” *Id.* As a result, Justice Silverstein dismissed all counts against Pilgrim Title.

When examining whether Pilgrim Title provided legal services during the handling of real estate closings, Justice Silverstein found that separate legal counsel performed those closing services in that case. In distinguishing closings from those real estate services that Justice Silverstein determined do not constitute

the practice of law, Justice Silverstein appears to have found that the handling of real estate closings constitutes the practice of law stating,

“closing lawyers, in contrast, have a number of duties to the clients, including protecting the interest of their clients in the transaction, ensuring marketable title, and effectuating a valid conveyance.” *See Rhode Island Resource Recovery Corp.*, CA No. PB10-5194, at 36 (citing *Real Estate Bar Ass’n for Massachusetts, Inc.*, 946 N.E.2d at 679).

Although the foregoing holding has no preclusive effect on this Court’s determination of the ultimate issue, it nonetheless is a useful examination of some of the same issues now facing the Court.

On the issue of real estate closings, some jurisdictions have prohibited non-lawyers from performing real estate closings,²¹ while others have expressly allowed non-lawyers to perform real estate closings.²²

²¹ Massachusetts (*Real Estate Bar Ass’n for Massachusetts, Inc.*, 946 N.E.2d 665 (2011)); Georgia (*In re UPL Advisory Opinion 2003–2*, 588 S.E.2d 741 (Ga. 2003); *Formal Advisory Opinion No. 04-1*, 626 S.E.2d 480 (Ga. 2006)); South Carolina (*State v. Buyers Service Co., Inc.*, 292 S.C. 426, 357 S.E.2d 15 (1987); *In re Foster*, 356 S.C. 129, 587 S.E.2d 690 (2003)); West Virginia (*Dijkstra v. Carenbauer*, No. 5:11-CV-152, 2014 WL 791140, at *8 (N.D.W. Va. Feb. 26, 2014)). *See also* Alabama (*Coffee County Abstract and Title Co. v. State ex rel. Norwood*, 445 So. 2d 852 (Ala. 1983)).

²² Arizona (Ariz. Const. art. XXVI, § 1); Kentucky (*Countrywide Home Loans, Inc. v. Kentucky Bar Ass’n*, 113 S.W.3d 105 (Ky. 2003)); Minnesota (Minn. Stat. Ann. § 82.641; *Cardinal v. Merrill Lynch Realty/Burnet, Inc.*, 433 N.W.2d 864 (Minn. 1988)); New Jersey (*In re Opinion No. 26 of Committee on Unauthorized Practice of Law*, 139 N.J. 323, 654 A.2d 1344 (1995)); Virginia (Va. Code Ann. § 55-525.18(B)(1)); Nevada (Nev. Rev. Stat. Ann. § 692A.110(1)(b)).

The Committee finds the opinion of the Supreme Judicial Court in *Real Estate Bar Ass'n for Massachusetts, Inc.* and the decision of the Superior Court in *Rhode Island Resource Recovery Corporation*, to be particularly instructive in resolving the current complaint and, for the following reasons, the Committee finds that Balkun Title and its agents, in particular Balkun, engaged in the unauthorized practice of law.

To aid the Court in its consideration of this matter, the Committee addresses each of the services related to a real estate conveyance performed by Balkun Title and its agents.

1. Title Searches and Examination

When Balkun serves as a title insurance agent on a transaction, Balkun Title is generally responsible for facilitating both a title search (or “abstract”) on the subject property, and a title examination in order to determine marketable title. The Committee understands the first phase of this task, the title search or abstract, to consist of the largely administrative function of compiling the documentation of all recorded acts pertaining to the subject property. An individual conducting a title search is typically limited to simply locating the relevant documents and assembling them for later examination and determination of insurability. In light of the administrative nature of this function, and persuaded by the pronouncements on this issue by the Supreme Judicial Court and our Superior Court, the Committee

finds that the title search and preparation of the title abstracts is not the practice of law. *Real Estate Bar Ass'n for Massachusetts, Inc.*, 946 N.E.2d at 677 n.15 (citing *Goldblatt v. Corporation Counsel of Boston*, 277 N.E.2d 273 (1971) (making reports and even recommendations about information discovered during search at registry of deeds is presumably not practice of law)[;] *Opinion of the Justices*, 194 N.E. 313 (1935) (“search[ing] of records of real estate to ascertain what may there be disclosed” is not practice of law)); *see also Rhode Island Resource Recovery Corporation*, CA No. PB10-5194, at 15 (“[g]enerally, title examiners who examine record title and prepare title abstracts are not engaged in the practice of law[.]”)

The subsequent title examination, however, is of a more legal nature. After the title search is returned to Balkun Title, the Balkun Title paralegals assemble the title search and transmit it to either Attorney Pelletier or the insurance company to conduct an examination of the title to determine whether any encumbrances or defects affect the title being transferred. In the instance where a defect is detected by Attorney Pelletier, he responds by taking whatever legal measures are necessary to correct the defect. Given that the precise function of a title examination is to determine the legal status of the title, along with the correlating legal consequences that status may have on the particular transaction, the Committee concludes that conducting a title examination is the practice of law. *See Real Estate Bar Ass'n for Massachusetts, Inc.*, 946 N.E.2d at 677 (“title examinations and providing title

abstracts by themselves[] * * * may well constitute the practice of law when they are provided in conjunction with giving legal advice or providing legal opinions about the marketability or quality of the title or on any other subject.”) (Internal citations omitted).

Since the Committee finds that performing a title examination to determine the marketability of title is the practice of law, the next question is whether Balkun and Balkun Title’s provision of that service was authorized. The Committee’s research suggests that this Court has not authorized non-lawyers to perform title examinations. Accordingly, the Committee finds that by providing title examinations to its customers, Balkun Title and its agents engaged in the unauthorized practice of law.

The Committee finds that having Attorney Pelletier perform those title examinations does not protect Balkun Title from the claim of unauthorized practice of law. It has been established that Attorney Pelletier performs title examinations on behalf of Balkun Title and that Balkun Title is paid for those services. Balkun Title is a title insurance company, not a law firm. Attorney Pelletier may provide legal services to Balkun Title but he cannot provide legal services to the customers of Balkun Title. When Attorney Pelletier provides legal services to the customers of Balkun Title, Balkun Title, in essence, functions as a law firm.

Law firms are subject to Article V of the Rhode Island Supreme Court Rules of Professional Conduct which includes rules on confidentiality (*Art. V, Rule 1.6*), conflicts of interest (*Art. V, Rules 1.7, 1.8, 1.9*), safekeeping property (*Art. V, Rule 1.15*), false and misleading communications concerning services (*Art. V, Rule 7.1, 7.4*), bookkeeping (*Art. V, Rule 1.19*), professional independence (*Art. V, Rule 5.4*), and firm names and letterheads (*Art. V, Rule 7.5; Art. II, Rule 10(j)*). The operation of Balkun Title most specifically implicates the sharing of legal fees between a lawyer (Attorney Pelletier) and a non-lawyer (Balkun) (*Art. V, Rule 5.4*) and the responsibilities regarding law-related services (*Art. V, Rule 5.7*).²³ These professional obligations are not being met by Balkun Title.

Moreover, Rhode Island lawyers are authorized by the Supreme Court to practice law in this state as one of the approved corporate forms outlined in Article II, Rule 10 of the Supreme Court Rules (Professional service corporations, professional service benefit corporations, limited liability partnerships, and limited

²³ The Commentary to Rule 5.7 (“Responsibilities Regarding Law-Related Services”) states:

“A broad range of economic and other interests of clients may be served by lawyers’ engaging in the delivery of law-related services. *Examples of law-related services include providing title insurance, financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social work, psychological counseling, tax preparation, and patent, medical or environmental consulting.*” *Id.* at Paragraph 9 (Emphasis added).

liability companies (limited liability entities)).²⁴ Balkun Title fits none of the corporate forms authorized in Rule 10(a); rather, it is a title insurance company organized as a close corporation under § 7-1.2-1701 (the Rhode Island Business Corporation Act).

Balkun contends that Balkun Title is authorized to provide these real estate services under § 11-27-16(a) and the *Title Insurers Act* § 27-2.6-3(18)(ii)(B),(iii)-(iv) and § 27-2.6-3(17)(i). Again, the Committee is mindful that the Legislature can declare acts of unauthorized practice illegal, *In re Town of Little Compton*, 37 A.3d at 92 (citing *Rhode Island Bar Association*, 55 R.I. at 127, 179 A. at 141), but the Committee finds that the Legislature cannot unilaterally declare that certain conduct does not constitute the practice of law and it cannot authorize non-lawyers to practice law in contravention of Supreme Court Rules. *See* Article II, Rule 10 and Article V of the Supreme Court Rules.

²⁴ Article II, Rule 10(a) of the Supreme Court Rules, which states:

“(a) Lawyers at law admitted to practice before this Court may engage in the practice of law in the form of professional service corporations as provided by the Professional Service Corporation Law, G.L. 1956 §§ 7-5.1-1 to 7-5.1-12, as amended, professional service benefit corporations as provided by G.L. 1956 §§ 7-5.3-1 to 7-5.3-13, as amended, registered limited liability partnerships, as provided by the Uniform Partnership Act, G.L. 1956 §§ 7-12-31.1, 7-12-56 to 7-12-59, as amended, or as limited liability companies, as provided by the Rhode Island Limited Liability Company Act, G.L. 1956 §§ 7-16-1 to 7-16-75, as amended.”

2. Closings

The record in this matter confirms that Balkun Title and its agents conduct real estate closings in Rhode Island. During a real estate closing, the person conducting the closing functions to facilitate a valid conveyance of the property. This involves receiving the necessary items from the seller (i.e. the deed to the property and the keys) and also, most prominently, presenting the buyer with a series of documents for his or her review and signature. These “closing documents” are generally provided to the closer by the buyer’s lending institution (in a mortgage transaction) and include, among other things, the mortgage, the closing disclosure (previously referred to as a “HUD-1 Statement”), the promissory note, and other assorted financial documents usually required by the buyer’s lender in a mortgage transaction to secure financing for the property. The closer then presents these documents in successive order to the buyer for signature, which are often times notarized by the closer, after which the documents are collected for recording and final settlement.

Balkun stated that when he conducts a closing as a notary, he gives “a brief explanation or brief description of what the document is” and obtains the buyer’s signature before moving to the next document. Balkun also suggested that, if a legal question were to ever come up during a closing, he would ask Attorney

Pelletier to participate (though, curiously, he has never had to stop a closing to address legal questions in that way).

The jurisdictions that allow non-lawyers to perform real estate closings have determined that the handling of real estate closings does not constitute the practice of law—a conclusion that this Committee recommends against. The Committee recommends that the Supreme Court find that conducting a real estate closing is the practice of law in Rhode Island because a real estate closing is an important transaction with monumental legal consequences. As noted by the Supreme Judicial Court in *Real Estate Bar Ass’n for Massachusetts, Inc.*:

“The closing is where all parties in a real property conveyancing transaction come together to transfer their interests and where the legal documents prepared for the conveyance are executed, often including but not limited to the deed, the mortgage and the promissory note. The closing is thus a critical step in the transfer of title and the creation of significant legal and real property rights.” 946 N.E.2d at 684.

Since the Committee concludes that conducting a real estate closing is the practice of law, the next inquiry is whether Balkun Title’s provision of that service was authorized by the Supreme Court. Balkun Title performs closings mostly in transactions where Balkun has acted as the title insurance agent. Balkun estimated that he, as a non-lawyer notary public, personally conducts seventy five to eighty percent (75-80%) of the roughly 480 closings performed by Balkun Title in Rhode Island each year. Attorney Pelletier performs the rest of the closings in Rhode

Island. Notably, the testimony before the Committee established that the decision of whether a closing would be handled by either Balkun or Attorney Pelletier is based almost exclusively on their respective scheduling availability. In essence, Balkun Title conducts closings using an attorney and a non-lawyer notary public interchangeably. Regardless of whether the closing is performed by Balkun or Attorney Pelletier, Balkun Title is listed on the closing disclosure and collects the fee.

Balkun is licensed by the DBR as a title insurance agent and Balkun Title—of which he is the sole shareholder—might reasonably be considered to be in “the title business.” Nonetheless, neither § 11-27-16(a) nor the *Title Insurers Act* can unilaterally authorize the practice of law by non-lawyers.

The Committee found nothing to suggest that the Supreme Court has authorized non-lawyers to perform real estate closings.

The Committee recognizes that buying a home is often the single most significant purchase people make. At the point of a scheduled closing, emotions are high, time is of the essence, and the average buyer and seller are unaware of the pitfalls that may be lurking in the shadows. As noted by Justice Silverstein, the closer has a number of duties to the clients, including protecting the interest of their clients in the transaction, ensuring marketable title, and effectuating a valid

conveyance. Accordingly, the Committee recommends that the Supreme Court reserve this important function to duly licensed lawyers.

The Committee concludes that having Attorney Pelletier perform closings does not protect Balkun Title from the claim of unauthorized practice of law. Attorney Pelletier, as a licensed Rhode Island attorney, is individually authorized to practice law in Rhode Island. Here, Attorney Pelletier performs closings for customers of Balkun Title. Balkun Title is listed on the closing disclosure and accepts payment. Balkun Title is a title insurance company, not a law firm. Attorney Pelletier can provide legal services to Balkun Title but he cannot provide legal services to the customers of Balkun Title. When Attorney Pelletier provides legal services to the customers of Balkun Title, Balkun Title, in essence, functions as a law firm.

Balkun Title is not authorized to practice law in Rhode Island—it is a title insurance company organized as a close corporation—and the company does not operate within the professional obligations of lawyers.

3. Settlement Services

After the closing documents have been signed, the transaction enters into the final settlement phase. The settlement begins when Balkun or Attorney Pelletier (whoever performed the closing) gives the executed closing documents to the paralegals at Balkun Title. Following the paralegals' compliance review of the

closing documents, Balkun Title facilitates various final acts needed to complete the transaction, such as recording the deed, issuing the title insurance policies, and disbursing the funds in escrow to the buyer and any other parties entitled to payment as listed on the closing disclosure form. Balkun Title is paid a flat fee for performing these final settlement services which is recorded on the closing disclosure form. Balkun Title regularly provides these final settlement services in transactions where Balkun has also acted as the title insurance agent.

The Supreme Judicial Court concluded that “[n]either reviewing documents to ensure valid execution nor delivering documents to the appropriate registry of deeds for recording constitutes the practice of law” and “disbursing mortgage funds does not in and of itself qualify as the practice of law[.]”). *Real Estate Bar Ass’n for Massachusetts, Inc.*, 946 N.E.2d at 679-680. Justice Silverstein reached a similar conclusion that “[t]he duties of a settlement agent are similar to an escrow agent and are limited to disbursing funds as per the closing instructions and filing settlement statements,” and that serving as a settlement agent, “in and of itself, does not qualify as the practice of law[.]” *Id.* at 36.

The record before the Committee establishes that Balkun Title provides settlement services which generally include recording the deed, issuing the title insurance policies, and disbursing the funds in escrow to the buyer and other parties to the transaction. However, the Committee finds that, based on the limited

record before it, it cannot conclude that these component parts of the settlement service constitute the practice of law.

4. Preparation of Documents

Switching to the seller-side of the transaction, Balkun Title regularly provides sellers with “document preparation” services. These services uniformly consist of drafting the deed conveying the property from the seller to the buyer, and also a residency affidavit. If there is more than one seller, the document preparation package sometimes also includes a power of attorney, if needed. The Committee considers the drafting of all three of these documents for the benefit of the seller of real estate in Rhode Island to be the practice of law.

a) Deeds

There can be little doubt that the deed conveying property from a seller to a buyer is the legal lynchpin of every real estate transaction. G.L. 1956 § 34-11-1 (“Conveyances required to be in writing and recorded”); § 34-11-4 (“Delivery of conveyance sufficient to pass title.”). In addition to serving as the operative written memorialization of the transfer of legal title to the property, a primary function of a deed is to properly define and articulate the tenancy or property interest being conveyed. *See* § 34-11-15 (“Effect of warranty deed”); § 34-11-17 (“Effect of quitclaim deed”); § 34-11-43 (“Effect of special warranty deed.”). Given the innumerable ways in which the language and contents of a deed can

affect the legal rights of parties to a real estate transaction, the Committee finds that the preparation of a deed on behalf of a party to a real estate transaction constitutes the practice of law. *Real Estate Bar Ass'n for Massachusetts, Inc.*, 946 N.E.2d at 678 (“[b]ecause deeds pertaining to real property directly affect significant legal rights and obligations, the drafting for others of deeds to real property constitutes the practice of law in Massachusetts.”).

At Balkun Title, deeds are initially drafted by a paralegal based on templates of prior similar transactions. Some of the templates used by Balkun Title are based on documents used by Rojas in her previous employment at several law firms. From the Committee’s perspective, it is troubling that Balkun Title apparently determines the tenancy for a deed by copying the prior deed conveying the property to the current seller without any independent research and regard to whether the property rights have been affected in the interim. Even still, while Attorney Pelletier has reviewed many deeds prior to their use by seller-clients of Balkun Title, many deeds are seemingly used immediately after drafting by the paralegal, without any review by a lawyer. Balkun Title is paid for its drafting of the deed as part of its “document preparation” fee listed on the closing disclosure and collected following the settlement of the transaction.

The Committee finds that it is the unauthorized practice of law for Balkun Title to draft deeds on behalf of sellers in real estate transactions in Rhode Island,

even if the deed is drafted or reviewed by a lawyer. Balkun Title is a title insurance company, not a law firm, and to provide legal services through any such an entity is in contravention of Articles II and V of the Supreme Court Rules. Neither § 11-27-16(a) nor the *Title Insurers Act* can unilaterally authorize such practice.

b) Residency Affidavits

Pursuant to § 44-30-71.3, every seller in a real estate transaction must complete a “Seller’s Residency Affidavit” on a form as prescribed by the Division of Taxation. The residency affidavit form requires all sellers—be they an individual, estate, trust, partnership, or corporation—to certify whether they are a resident of Rhode Island within the meaning of the tax code. This determination of residency is then used to establish the specific tax liability owed on the transaction, if any. This is required by the Division of Taxation because, when property is sold by a nonresident individual or entity, a certain percentage of the sale proceeds must be withheld by the buyers. G.L. 1956 § 44-30-71.3(a).

Preparing a residency affidavit on behalf of a seller inherently involves making a legal determination with regard to the seller’s residency (i.e. whether, for the purposes of the tax code, the person or entity qualifies as a Rhode Island resident). Moreover, the form is used to determine the seller’s related tax liability, and the form itself states that “any false statement contained herein could be

punished by fine, imprisonment, or both.” In the Committee’s estimation, the preparation of a residency affidavit on behalf of another person or entity constitutes the practice of law.

At Balkun Title, residency affidavits are drafted for sellers by the paralegals and sometimes reviewed by Attorney Pelletier. Testimony by Balkun and Rojas established that the requisite residency determination included in such affidavits is generally based on the seller’s driver’s license or their address as listed in the purchase and sales agreement. Balkun Title is paid for drafting residency affidavits as part of the “document preparation” fee listed on the closing disclosure and collected following the settlement of the transaction.

The Committee finds that it is the unauthorized practice of law for Balkun Title to draft residency affidavits on behalf of sellers in real estate transactions in Rhode Island, even if the affidavits are drafted or reviewed by an attorney. Balkun Title is a title insurance company, not a law firm, and to provide legal services through any such entity is in contravention of Articles II and V of the Supreme Court Rules. Neither § 11-27-16(a) nor the *Title Insurers Act* can unilaterally authorize such practice without the Supreme Court’s approval.

c) Powers of Attorney

Sometimes the document preparation package prepared by Balkun Title includes a power of attorney. The power of attorney is generally required in a

situation where there is more than one seller and one of those sellers wishes to allow the other to act on his or her behalf; or, where a seller does not wish to be present during the closing and wants his or her attorney to act on his or her behalf. *See* § 34-22-6 (“Acts under power of attorney”); § 34-11-34 (“Conveyances executed by attorney--Recording of power”).

The Committee has already determined that the drafting of deeds and residency affidavits for a seller of real estate is the practice of law, largely because of the significant legal rights that those documents establish and confer. It seems unavoidable that the drafting of a power of attorney—which, if done properly, effectively transfers the decisional control of those same legal rights from one person to another—is also the practice of law.

At Balkun Title, a seller’s power of attorney is drafted by the paralegals based on templates of past transactions and sometimes reviewed by Attorney Pelletier. Balkun Title collects the fee. The Committee finds that it is the unauthorized practice of law for Balkun Title to draft powers of attorney on behalf of sellers in real estate transactions in Rhode Island, even if the affidavit is drafted or reviewed by an attorney. Balkun Title is a title insurance company, not a law firm, and to provide legal services through any such an entity is in contravention of Articles II and V of the Supreme Court Rules. Neither § 11-27-16(a) nor the *Title*

Insurers Act can unilaterally function to authorize such practice without the Supreme Court's approval.

5. Negotiating Short Sales

The Committee heard testimony from Balkun in which he described the short sale negotiation process in broad terms and also confirmed that he has personally participated in such negotiations on behalf of Balkun Title's clients. Due to the Committee's focus on the issues raised in the Complaint and to the more typical real estate services performed by Balkun Title, the Committee did not explore the more precise details of short sale negotiations or of specific short sale transactions in which Balkun was involved. Based on this limited record, the Committee cannot make a determination at this time as to whether the negotiation of a short sale constitutes the practice of law.

D. Findings as to Specific Complaint Allegations and Other Facts

1. 60 Pine Hill Road, Johnston

The facts of the particular transaction at 60 Pine Hill Road in Johnston—which were the subject of the initial Complaint—are cataloged above, and the Committee will not repeat them here. For its purposes, it is enough to state here that Balkun Title's role in this transaction was to prepare seller documents on behalf of Mary and Ronald Cellucci and that those documents included a deed, residency affidavits, and a power of attorney for Mary in favor of Ronald. For

these services, Balkun Title was paid \$395.00. As analyzed above, the preparation of these documents by Balkun Title on behalf of these sellers constituted the practice of law, and that practice has not been authorized by the Supreme Court.

2. 17 Renaudet Street, West Warwick

During the transaction regarding the property located at 17 Renaudet Street in West Warwick, Balkun Title was engaged to prepare documents for the sellers, Orvis Luker and Deborah DiPietro. Balkun Title specifically prepared a deed, residency affidavits, and a limited durable power of attorney for Mr. Luker in favor of Ms. DiPietro for which Balkun Title was paid \$395.00. The preparation of these documents by Balkun Title on behalf of these sellers constituted the practice of law, and that practice has not been authorized by the Supreme Court

3. Social Media Activity

The Committee must also address the issue of Balkun’s and Balkun Title’s public Facebook activity because it raises the question of whether Balkun or Balkun Title have improperly held themselves out to the public as qualified to practice law. *See* § 11-27-12 (“Unauthorized holding out as qualified to practice law”); § 11-27-1²⁵ (“‘Hold himself or herself out’ and ‘person’ defined”).

²⁵ Section 11-27-1 states, in full:

“(a) ‘Hold himself or herself out’ as used in this chapter includes the following: the assumption, use, or advertisement of the title of lawyer, attorney, attorney at law, counselor, counselor at law,

The Committee has examined more than one Facebook post or message in which someone from outside of Balkun’s organization was under the impression that Balkun was a real estate closing attorney. In her Facebook post on September 27, 2016, Ms. Gallant indicated that, after observing Balkun during a real estate closing, she was impressed with his skills as a “closing attorney.” Balkun electronically indicated that he “liked” Ms. Gallant’s comment, but he testified before the Committee that he later called Ms. Gallant by telephone to clarify that he is, in fact, not a lawyer. Similarly, Ashley Borden, in her undated Facebook post, made comments suggesting that Balkun was, professionally, in “the law.”

These exchanges show the way in which the services performed by Balkun Title, in at least some instances, appear to the public, or even participants in a transaction, to be the practice of law.

The most concerning social media activity observed by the Committee was Balkun Title’s Facebook post on its company page advertising its services, stating,

solicitor, or any term or terms conveying the idea that the person in connection with whose name they or any of them are used is competent, qualified, authorized, or entitled to practice law, or the use of any kind of sign, token, symbol, card, letterhead, envelope, stationery, circular, or other writing, printing, or painting, or any representation by word or act, the purpose or tendency of which is to convey that idea.

(b) ‘Person’ when used in the phrase “another person” in this chapter, unless the context otherwise requires, includes partnerships, corporations, and associations.”

unequivocally, “[b]e sure to hire a title & closing attorney to secure the sale of your soon-to-be #home.” Under questioning by the Committee, Balkun testified that the post was authored by the outside marketing company without his review, and that he immediately took action to have that inaccurate reference to a lawyer removed.

Balkun has also suggested that Balkun Title’s employment of Attorney Pelletier goes to show his respect for the boundaries of the practices of law, rather than an intentional transgression of those boundaries. While the Committee observes that this sentiment may be true when applied to the holding out of Balkun personally, this employment cuts the other way with respect to Balkun Title. The employment of Attorney Pelletier by Balkun Title is, in reality, an implicit acknowledgement that Balkun Title knew that some of its services were the practice of law and required a lawyer. By utilizing Attorney Pelletier to perform tasks for its clients, Balkun Title held itself out as an entity that was qualified to practice law, which it was not.

4. Employment of Paralegals

The Committee also makes an additional observation regarding Balkun Title’s employment of “paralegals” in providing its services. The testimony has clearly shown that Balkun Title employs several paralegals and that those paralegals have been responsible for the preparation of nearly all documents used

regularly by Balkun Title, including closing documents, deeds, residency affidavits, and powers of attorney. While certain testimony indicated that Attorney Pelletier has reviewed some portion of these documents prepared by the paralegals, a disconcerting proportion of those documents appear to be provided to Balkun Title's clients, for their use, without review by any attorney.

The Rules of Professional Conduct, Rule 5.3 ("Responsibilities Regarding Nonlawyer Assistants") states:

"With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action."

Rule 5.3 is generally directed at the use of non-lawyer assistants within the setting of law firm—which Balkun Title is not—however, the rule’s precepts also extend to any non-lawyer assistant “associated with a lawyer.” In the instance of Balkun Title, the testimony supports the conclusion that both Balkun and Attorney Pelletier have exercised some supervisory and managerial responsibility over the non-lawyer paralegals. As a member of the Rhode Island bar, Attorney Pelletier was obligated to make reasonable efforts to ensure that the paralegals’ conduct was compatible with his own professional obligations. The fact that Balkun Title made pervasive use of documents that were drafted by the paralegals, but not reviewed by any attorney, suggests that Attorney Pelletier did not make such reasonable efforts as required in Rule 5.3.

E. Custom and Practice

Balkun testified that it is standard in the title insurance industry in Rhode Island to operate like Balkun Title. He testified that non-lawyer owned title companies are big business in Rhode Island and gave the example of a title insurance company located in Middletown that sold out to a “software or tech company for \$96 million.” *Tr. Vol. IV*, 122. Balkun’s counsel acknowledged that the title companies in Rhode Island are “playing ‘fast and loose’ with the rules,” but argued that they are operating in good faith under the statutes. *Tr. Vol. IV*, 129.

The Committee is mindful that the Supreme Court has looked to custom and practice to determine whether certain conduct is the practice of law and should be reserved to lawyers. *In re Town of Little Compton*, 37 A.3d at 86-87, 92. However, whether “everyone else is doing it” is not a consideration for this Committee in resolving complaints of the unauthorized practice of law in Rhode Island. Moreover, conduct should not escape review for unauthorized practice of law simply because it managed to evade review by this Committee and the Court for some time.²⁶ Nor should the Committee or the Court be swayed by the fact that a recommendation or decision may impact an industry or long-standing practice if such practice actually involves the unauthorized practice of law which this Court does not see fit to allow.

This Committee is charged with determining whether conduct complained of constitutes the practice of law and, if so, whether the Supreme Court has authorized the conduct by nonlawyers. Here, the Committee finds that Balkun Title and its agents engaged in the practice of law and that the Supreme Court has not authorized them (and other nonlawyers like them) to do so. Accordingly, unless and until the Court says otherwise, the conduct at issue here is reserved to lawyers—individuals who the Supreme Court has licensed after finding they

²⁶ Carl and Samuel Lovett engaged in the unauthorized practice of law in Rhode Island for over eighteen years before coming before this Committee and then the Supreme Court. *In re Lovett*, 117 A.3d 417 (R.I. 2015).

possess the requisite competence and good character required to practice law in Rhode Island.

RECOMMENDATION

Rule 7(c)(ii)(p) of the Rules of Procedure of the Committee provides that, when reporting its findings to the Supreme Court, the Committee shall recommend that the Court authorize:

- “1. the Committee to initiate civil proceedings in the Superior Court to enjoin the conduct; or
2. the referral of the matter to the Department of Attorney General for civil or criminal proceedings, or
3. such other disposition as the Committee deems appropriate and which is in the public’s best interest.”

Consistent with its prescribed duties, the Committee has determined that the allegations against Balkun and Balkun Title have been sustained by a preponderance of the evidence and that they have engaged in the unauthorized practice of law.

In light of the various statutory provisions which have created a confusing legal landscape in Rhode Island for anyone in the title insurance business, the Committee recommends that no civil or criminal proceedings be initiated against Balkun Title and its agents, but that the Court make a pronouncement that the following acts constitute the practice of law and can only be performed by a lawyer: (a) conducting a title examination to determine the marketability of title,

(b) conducting a real estate closing, (c) drafting a deed on behalf of a party to a real estate transaction, (d) drafting a residency affidavit on behalf of a party to a real estate transaction, and (e) drafting a power of attorney on behalf of a party to a real estate transaction. The Committee further recommends that the aforementioned services, as the practice of law, can only be performed by lawyers in either an unincorporated law firm or as a law firm licensed by the Supreme Court pursuant to Article II, Rule 10 of the Supreme Court Rules.