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IN THE SUPREME COURT
STATE OF ARIZONA

PETITION TO AMEND RULE 31(d), ARIZONA RULES OF THE SUPREME COURT	Supreme Court No. R-11-0001 **Reply in Support of Petition to Amend Rule 31(d), Arizona Rules of the Supreme Court**

INTRODUCTION

Petitioners filed the Petition to solve the problem created when the State Bar of Arizona's Unauthorized Practice of Law Committee ("UPL Committee") and the AOC's Legal Document Preparer ("LDP") Board reached different conclusions on the question of whether community management companies engage in the unauthorized practice of law when they prepare, sign, and record notices of assessment liens on behalf of associations.[1]

[1] As in the Petition, this Reply will use the terms "association" and "associations" to refer to condominium unit owners' associations, as defined in A.R.S. § 33-1241, and planned community associations, as defined in A.R.S. § 33-1802.

In UPL Advisory Opinion 04-02,[2] the UPL Committee determined that community management companies could lawfully perform these activities under the exemptions listed in Rule 31(d)(20) and (24) of the Arizona Rules of Supreme Court. Relying on that opinion, numerous community management companies – including Petitioner AAM, LLC ("AAM") – hired Certified Legal Document Preparers ("CLDPs") who have prepared, signed, and recorded notices of assessment liens on behalf of associations for seven years without incident. However, the LDP Board recently entered findings that when community management companies and their CLDP employees sign these notices on behalf of associations, they commit the unauthorized practice of law.

The conflict between the UPL Committee's opinion and the LDP Board's rulings has created legal uncertainty for community management companies, their CLDP employees, and the legal community (as reflected in the comments in opposition to the Petition). Petitioners' proposed exemption resolves an open question of law, codifies the sound reasoning in UPL 04-02, and comports with the public policy behind regulating the practice of law by non-lawyers.

FACTUAL BACKGROUND

I. In 2004, the UPL Committee finds that property management companies can prepare, use, and record liens in their regular course of business.

In 2004, the UPL Committee was asked for an advisory opinion about whether property management companies "retained by homeowners' associations to manage associated communities" could prepare and record "liens against property owners in the association who have failed to fulfill their obligations regarding association fees or

[2] UPL Advisory Opinion 04-02, Property Management Companies (October 2004) (hereafter "UPL 04-02"), included as **Attachment A**.

dues." [3] Property management companies had been preparing, signing, and recording these liens for decades.[4] In response, the UPL Committee issued UPL 04-02, in which the UPL Committee determined that, under Rule 31 of the Arizona Supreme Court Rules, "a property management company's preparation and recording of a lien constitutes the practice of law."[5] Nevertheless, citing two exemptions to the unauthorized practice of law found in Rule 31(d), the UPL Committee concluded that "a property management company with broad responsibilities for a property or homeowners' association may prepare and record liens for property owners or the association, if the work is incidental to the management company's regular course of business or if the work is performed by certified legal document preparers."[6] Although UPL 04-02 did not expressly address whether a property management company could sign a notice of lien on behalf of a community association, it implied that execution of the document was inherent in its "preparation" and "use."

The UPL Committee's advisory opinion first considered the exemption set forth in Rule 31(d)(20) (formerly Rule 31(c)(19)).[7] Rule 31(d)(20) provides: "Nothing in these rules shall prohibit the preparation of documents incidental to a regular course of business when the documents are for the use of the business and not

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[3] *Id.*

[4] *See* Comment by Homeowner Association Board Members in Support of Petition to Amend Rule 31(d) (filed June 24, 2011) (hereafter "HOA Board Member Comment"); *see also* Comment by Arizona Home Builders in Support of the Petition to Amend Rule 31(d), Arizona Rules of the Supreme Court (filed June 24, 2011) (hereafter, "Home Builder Comment") ("Our declarant-controlled boards regularly delegate the responsibility for preparing, signing, and filing notices of assessment liens to management companies, who have performed these lien functions for associations for decades without issue").

[5] UPL 04-02 at 6.

[6] *Id.* at 6-7.

[7] The UPL Committee's advisory opinion cites to exemptions found at Rule 31(c)(19) and (c)(23), were subsequently renumbered to Rule 31(d)(20) and (d)(24), respectively.

made available to third parties." The UPL Committee explained that "[i]n situations in which the management company has broad responsibilities to act on behalf of the owner or the association, it would seem inappropriate to assert that [Rule 31(d)(20)] did not apply" simply because the "management company was preparing the documents for use by a 'third party.'"[8] "The more appropriate reading of Rule 31, from a public policy perspective, would appear to be that the document is being prepared by the management company and used by the management company in a manner incidental to the regular course of its business."[9]

Furthermore, the UPL Committee noted, "regardless of the scope of a property management company's responsibilities, a certified legal document preparer can file and record liens" pursuant to Rule 31(d)(24) (formerly 31(c)(23)) and Section 7-208 (F)(1)(a) and (3) of the Arizona Code of Judicial Administration.[10]

In light of the UPL Committee's well-reasoned opinion, community management companies with contracts giving them primary responsibility for the management of associations felt confident that they could continue their decades-long practice of preparing, signing, and recording notices of assessment liens on behalf of associations. The community management companies understood that if they prepared and used the documents in a manner incidental to the regular course of their business, they would not be engaging in the unauthorized practice of law.

Moreover, even though it was not ***required*** under the UPL advisory opinion, many community management companies required the employees who prepared the notices of assessment liens to obtain certification under the Court's newly-created legal document preparer program. The community management companies could not

[8] UPL 04-02 at 5.

[9] *Id.*

[10] *Id.* at 6.

foresee that their efforts to comply fully with the UPL Committee's advisory opinion by having CLDP employees prepare, sign, and record notices of assessment liens would subject them to future complaints and ultimately findings that they had engaged in the unauthorized practice of law.

II. The LDP Board enters orders finding community management companies and their CLDP employees engaged in the unauthorized practice of law.

Relying on UPL 04-02, community management companies continued to have their CLDP employees prepare – and sign – notices of assessment liens on behalf of associations for many years without incident. However, in April 2009, AOC's Certification and Licensing Division issued a complaint against a CLDP who worked for a community management company, alleging that she had engaged in the unauthorized practice of law when she signed a notice of assessment lien. The employee denied wrongdoing, citing to UPL 04-02 and the exemptions in Rule 31(d)(20) and (24). The LDP Board rejected the applicability of these exemptions and found that the CLDP had engaged in the unauthorized practice of law.

This initial complaint and the LDP Board's subsequent finding resulted in numerous additional complaints against community management companies and their CLDP employees. The LDP Board has uniformly rejected the applicability of UPL 04-02 and the Rule 31(d)(20) and (24) exemptions and entered findings that community management companies and their CLDP employees engage in the unauthorized practice of law by signing notices of liens on behalf of their association customers.[11]

[11] AAM is one of the many community management companies against whom complaints were filed. The State Bar states that Petitioner "AAM, LLC has engaged in this effort to render the certified Legal Document Preparer rules inapplicable to them by seeking this amendment to Rule 31." State Bar Comment at 16. The opposite is true: AAM fully supports the legal document preparer program, believes it serves a very important role, and has supported its staff members in obtaining and maintaining their certification. That said, AAM has declined to enter into a consent

Community management companies and their counsel are confused by the LDP Board's findings. The LDP Board recognizes that *preparing* and *recording* notices of liens by CLDPs is permissible under Rule 31(d)(24). Nevertheless, the LDP Board has found that the ministerial act of *signing* the notices of liens as an association's duly authorized agent constitutes the unauthorized practice of law, even though the notices of liens were "prepared by the management company and used by the management company in a manner that was incidental to the regular course of its business," which qualifies as an exemption under Rule 31(d)(20).[12]

III. The Proposed Exemption and Subsequent Revised Language.

Community management companies and associations have explored various options for resolving inherent conflict between the UPL Committee's advisory opinion and the LDP Board's orders. Representatives have approached the UPL committee for further clarification on UPL 04-02. The UPL Committee indicated that an additional opinion would be forthcoming in Fall 2010, but none has been issued to date.[13] Community management companies, including Petitioner AAM, thoroughly briefed the issue to the LDP Board, and will continue briefing the issue as their cases work their way through the administrative process. Given the conflicting decisions by the UPL Committee and the LDP Board, Petitioners ultimately determined the best course of action was to request that the Court amend Rule 31(d) to expressly authorize community management companies to, *inter alia*, prepare, execute, and record notices of assessment liens arising under A.R.S. §§ 33-1256 and -1807.

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agreement which would require the company to admit that it engaged in the unauthorized practice of law by signing notices of liens on behalf of associations because that is not true under Rule 31(d) of the Arizona Supreme Court Rules and well-established principles of agency law.

[12] UPL 04-02 at 5.

[13] The State Bar Comment acknowledges that UPL 04-2 "is currently under review by the UPL Committee," but there is no indication when or if a new opinion will issue.

The exemption proposed in the original Petition was broader than the opinion in UPL 04-02. Petitioners proposed a comprehensive exemption that would take into account the unique nature of the relationship between associations and community management companies. By contract, and consistent with well-established principles of agency law, management companies have broad authority to act on behalf of associations, and management companies regularly conduct almost all of associations' day-to-day business. The proposed exemption included activities that a community management company with broad responsibilities for an association might engage in on the association's behalf, incidental to the management company's regular course of business, including "communicat[ing] with homeowners and condominium unit owners about unpaid assessments and fees" and "represent[ing] associations in procedures before the small claims division of Arizona's justice courts."[14] Petitioners fashioned their proposal after a similar exception in California.[15]

After extensive discussions with various State Bar committees, sections, and the Board of Governors, and after reviewing the comments filed in opposition to the original Petition, Petitioners narrowed the scope of the Petition to address many of the concerns raised. The narrowed language merely codifies UPL 04-02:

> A condominium unit owners' association, as defined in A.R.S. § 33-1241, and a planned community association, as defined in A.R.S. § 33-1802, may be represented in the preparation, execution, and recordation of notices of liens created pursuant to A.R.S. § 33-1256 and § 33-1807 by an officer or employee of a management company who is not an active member of the state bar if the management company has a contract with the association that gives the management company primary responsibility for the management of the association.

[14] *See* Petition, Attachment A thereto.

[15] *See, e.g.*, Cal. Code Civ. P. § 116.540(i) (allowing associations to "appear and participate in small claims actions through an agent, a management company representative, or bookkeeper who appears on behalf of that association").

Despite overwhelming support for the proposed rule by homeowners, homebuilders, and associations alike, the State Bar, the LDP Board, and a CLDP submitted comments opposing the proposed rule amendment on grounds that adoption of the proposal will expose homeowners to an unspecified harm. For the reasons discussed below, however, these concerns do not withstand scrutiny.[16]

LEGAL ANALYSIS

The Court should adopt an exemption to Rule 31(d) that formally recognizes community management companies' ability to prepare, execute, and record notices of liens on behalf of the associations they manage.

A. Associations have legitimate business reasons for recording notices of assessment liens.

As a threshold matter, associations have legitimate business reasons for recording notices of assessment liens. The State Bar wrongly suggests that the statutes creating assessment liens negate the need to record notices of these liens.[17] Although the pertinent statutes say that "further recordation of any claim of lien for assessments under this section is not ***required***,"[18] there is nothing that prohibits recordation of a notice of lien. Additionally, most CC&Rs authorize – and in some cases require – that associations record notices of claims of lien for unpaid assessments.[19]

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[16] The comments submitted in opposition to Petitioners' proposal contain numbers concerns rendered moot by Petitioners' compromise language. Because the proposed exemption now focuses solely on the preparation, execution, and recordation of notices of assessment liens, this reply does not address concerns raised in opposition to negotiating with homeowners or small claims court representation *See, e.g.*, Maricopa County Justice of the Peace Bench Comment.

[17] *See* State Bar Comment at 8.

[18] *See* A.R.S. § 33-1807(E) (emphasis added); *see also* A.R.S. § 33-1256(E).

[19] *See* HOA Board Member Comment.

Moreover, although Arizona law does not *require* associations to record notices of liens, attorneys strongly encourage them to do so for the following reasons: (1) to provide additional safeguards that a title company facilitating a transfer of ownership of a unit will check with associations to clear the lien for unpaid assessments owed by the seller before closing; (2) to provide additional reasons for a mortgage company or trustee under a deed of trust to provide notice of sale to associations; (3) to provide the holder of "excess proceeds" from a trustee's sale pursuant to a deed of trust with notice of the need to be notified to make a claim to the excess proceedings; and (4) to incentivize homeowners to pay past due assessments.[20] Accordingly, associations have valid business reasons for recording notices of assessment liens and the State Bar's comment is without any factual basis or merit.[21]

B. Associations have the legal authority to delegate the execution of notices of liens to managing agents.

In addition to having the legitimate business reasons for recording notices of assessment liens, associations also have the legal authority to delegate the signing of the notices to a managing agent. Section 33-421(A) authorizes "*an entity* created under covenants, conditions, restrictions, or declarations" to file liens affecting real property. The only way a business entity can execute a document is through its agents. Indeed, a corporation "cannot act in the physical world except through the actions of individual persons."[22] A corporation's officers have inherent agency authority to sign documents on behalf of a corporation, but officers regularly delegate

[20] *See* Scott B. Carpenter, Community Association Law in Arizona (2008), at § 2.8.1.

[21] The State Bar's lengthy discussion of liens "for violations of CC&Rs" under A.R.S. §§ 33-1242 and -1803 has no relevance because those types of liens are not covered by the proposed exemption. State Bar Comment at 7-9.

[22] Restatement (Third) of Agency § 3.04 (2006).

that authority to subordinate agents such as employees or independent contractors.[23] This delegation authority is implicitly recognized in Arizona statutes governing acknowledgments of documents affecting real property rights, which provide that the documents may be executed by an "***officer or agent***" signing "the instrument on behalf of the corporation by proper authority."[24]

Contrary to the LDP Board's findings, there is no basis under Arizona law for concluding that an agent (management company) who signs notices of assessment liens for a corporate principal (association) pursuant to express authority granted by the corporate principal engages in the "practice of law." This is a misapplication of Rule 31, A.R.S. § 33-421(A), and the law of agency. Under the LDP Board's reasoning, every time an officer, director, or employee of a corporation signs notice of lien on behalf of a corporation that person engages in the unauthorized practice of law. Even the State Bar acknowledges that officers, directors, and employees may execute notices of assessment liens on behalf of associations.[25] There is no exemption in Rule 31 that allows them to do so; they may do so under A.R.S. § 33-421(A) and principles of agency law. Neither the LDP Board nor the State Bar can point to any law supporting their contention that execution of a notice of assessment liens is a non-delegable duty.

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[23] Restatement (Third) of Agency § 1.03 cmt. c.

[24] *See* A.R.S. § 33-506(2) (the Statutory Short Form of Acknowledgement for a corporation provides as follows: "The foregoing instrument was acknowledged before me this (Date) by (Name of officer or agent, title of officer or agent) of (Name of corporation acknowledging) a (State or place of incorporation) corporation, on behalf of the corporation."); *see also* A.R.S. § 33-505(3)(b) (defining "acknowledged before me" to mean that "the officer or agent acknowledged he held the position or title set forth in the instrument and certificate, he signed the instrument on behalf of the corporation by proper authority, and the instrument was the act of the corporation for the purpose therein stated.")

[25] State Bar Comment at 5.

Associations have valid business reasons for delegating signing authority for notices of assessment liens to managing agents instead of signing the documents themselves or having them signed by lawyers. First, the management companies – not the association board members – have first-hand knowledge of which assessments are past due and subject to assessment liens. Community management companies maintain all the information necessary to complete a lien.[26] Second, management companies can more efficiently process the notices than association officers, who only meet on a periodic basis (typically monthly). Especially for *releases* of assessment liens, time is of the essence. Third, association officers are unpaid volunteers who live in the communities in which they serve and they are reluctant to sign notices of assessment liens against their neighbors. And, finally, associations have found that it costs significantly more to have lawyers (rather than management companies) carry out the ministerial tasks of preparing, signing, and recording notices of assessment liens.[27]

C. The proposed exemption resolves the contradictions between the UPL Committee Advisory Opinion and LDP Board Orders regarding what constitutes the unauthorized practice of law.

Against this factual and legal backdrop one may wonder *why* the proposed exemption is even necessary: Associations have the authority (and business justification) to record notices of assessment liens. Associations can contract with community management companies to *prepare* and *record* the notices, pursuant to the exemptions found in either Rule 31(d)(20) or 31 (d)(24). And associations can authorize their agents – especially their managing agents with principal responsibility for the management of the association's operations – to *sign* the notices. So *why* add yet another exemption to Rule 31(d), authorizing associations to be represented by

[26] *See* HOA Board Member Comment and Home Builder Comment.

[27] *See id.*

officers and employees of community management companies in the *preparation*, *execution*, and *recordation* of notices of assessment liens?

One need look no further than the conflicting opinions of the UPL Committee and the LDP Board and the comments filed in opposition to the proposed exemption to confirm that clarification from the Court, in the form of a clearly enumerated exemption, is both appropriate and necessary. Although the objections set forth in the opposition comments may be well intentioned, they do not provide sufficient bases for rejecting the proposed exemption. All stakeholders – including homeowners, associations, community management companies, CLDPs, the Administrative Office of the Courts, and the State Bar and its members – would benefit from the clarity that such an exemption would provide.

1. The proposed exemption contains sufficient protections to assure community management company accountability and competency.

The State Bar and the LDP Board contend that the proposed exemption is a "significant departure" from the existing exemptions in Rule 31(d) because the proposed exemption "would not assure any accountability or competency requirements."[28] These objections are unnecessarily alarmist, paternalistic, and only serve to further the public's perception that the "law on unauthorized practice implements the economic self-interest of the legal profession and is highly anticompetitive."[29] Indeed, UPL Committee's conclusion that the actions covered by the proposed exemption were allowed under Rule 31(d)(20) and (24) confirm that the proposed exemption is very much in line with existing exemptions.

[28] State Bar Comment at 3; Second CLDP Comment at 2.

[29] *See* Jonathan Rose, *Unauthorized Practice of Law In Arizona: A Legal and Ethical Problem That Won't Go Away*, 34 Ariz. St. L.J. 585, 600, 609 (Summer 2002).

The State Bar and the LDP Board's position that a non-lawyer providing legal services only can be held accountable or determined competent through "regulations" or a "state code of ethics" is not born out by the current exemptions to Rule 31.[30] The Court has found it appropriate to recognize a handful of exemptions for licensed, regulated non-lawyer professionals who provide legal services relying on their professional expertise.[31] But the vast majority of the Court-approved exemptions in Rule 31 involve duly authorized agents, including employees, officers of corporations, and members of business entities. These general "agency" exemptions contain no required specifications regarding skills, experience, or knowledge.[32] Under the general "agency" exemptions in Rule 31(d), the principals for whom non-lawyer agents perform limited legal services hold the agents accountable. The principals are in the best position to decide whether their non-lawyer agents have the requisite "skills, experience, or knowledge" to provide the very limited legal services allowed under the exemption.

These same principles extend to the proposed exemption. To address concerns about accountability and competency, the proposed exemption limits the legal services to be provided (*i.e.*, preparing, signing, and recording notices of assessment liens) and requires that any community management company that will provide these limited legal services have a contract with the association that gives the management company primary responsibility for the management of the association. This gives the association the ability to seek contract remedies if the community management company breaches the contract. Third parties affected by a community management

[30] *See* State Bar Comment at 3; Second CLDP Comment at 2.

[31] *See, e.g.*, Rule 31(d)(14), (16) and (17) (CPAs and federally authorized tax practitioners), 31(d)(24) (CLDPs), 31(d)(26) (registered property tax agents), 31(d)(27) (lawyers licensed in another jurisdiction).

[32] *See, e.g.*,Rule 31(d)(1-13, 18-20, 23, 28-29).

company acting as an agent for the association will have the remedies generally available under agency law, as well as applicable statutes.[33] In addition, associations may also hold community management companies accountable for breaches of any fiduciary duties the companies may owe as the associations' managing agents.[34] These well-established contract and agency-law legal principles have stood the test of time and provide adequate protection to stakeholders in this instance.

The State Bar and LDP Board attempt to distinguish the proposed exemption from other exemptions made for duly authorized agents by arguing that most of the general "agency" exemptions do not allow the agent (whether it be an officer or an employee) to charge a separate fee for the representation. Whether or not there is a fee for representation does nothing to ensure that non-lawyers providing legal services are competent or accountable. The economic reality is that corporations regularly compensate officers and employees for the services that they provide; there is no harm in allowing an association to compensate an independent contractor for services incidental to the contractor's broad responsibilities for the management of the association.

The State Bar further recommends that the Court deny the proposed exemption because "HOA management companies' powers are already too broad and unregulated, without accountability to any licensing body; and they should be regulated, not given more powers."[35] The State Bar Comment editorializes about Arizona's lack of "regulation and governance of HOA management companies" and concludes that "unlicensed and unregulated management companies should not be given such an unreasonable and unconscionable loophole as is proposed by the

[33] *See, e.g.*, A.R.S. §33-420.

[34] *See, e.g.*, HOA Attorney Comment.

[35] State Bar Comment at 2.

petition."[36] While Petitioners recognize the Court's authority to regulate the practice of law, Petitioners contend that the decision whether to further regulate community management companies falls within the Legislature's purview and far exceeds the scope of the proposed exemption.

Moreover, the State Bar has failed to cite a ***single*** incident or example of abuse suggesting the need for regulation of the limited tasks of preparing, executing, and recording notices of assessment liens. In contrast, the homeowners, association board members, home builders and developers – representing tens of thousands of Arizona households – confirm through first-hand knowledge that management companies have been providing these services for them for decades without incident, and they support the limited exemption that Petitioners have proposed.[37]

2. The proposed exemption is consistent with the Rule 31(d)(24) exemption for CLDPs.

Contrary to assertions by the State Bar and the LDP Board, the proposed exemption is consistent with the Rule 31(d)(24) exemption, which allows CLDPs to prepare documents for third parties. The LDP Board suggests that if the Court adopts the proposed exemption, the Code of Conduct section governing when a CLDP may act in a representative capacity, ACJA § 7-208(J)(5)(b), "may no longer be applicable to certified legal document preparer property management companies or their certified employees."[38] The LDP Board's argument is based on a flawed interpretation of ACJA § 7-208.

The CLDP Code of Conduct does not strictly prohibit CLDPs from ***ever*** acting in a representative capacity. The relevant Code of Conduct section provides that a

[36] *Id*. at 9 & 12.

[37] *See* HOA Board Member Comment and Home Builder Comment.

[38] LDP Board Comment at 2.

legal document preparer shall not "provide legal advice or services to another… by representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process, ***except as authorized in Rule 31(d), Rules of the Supreme Court.***"[39] Stated in the affirmative, the Code of Conduct provides that a CLDP ***may*** provide legal advice or services to another ***if*** the legal advice or services fall within one of the exemptions set forth in Rule 31(d).

Thus, if the Court adopts the proposed exemption, a CLDP who is an officer or employee of a management company with a contract giving the management company primary responsibility for management of an association could represent the association in the preparation, execution, and recordation of notices of liens created pursuant to A.R.S. §§ 33-1256 and -1807. The Code of Conduct would still apply to the CLDP, but performing the activities authorized by the new exemption – as well as the existing exemptions – would not be a violation of the Code of Conduct.

The LDP Board correctly observes that if the Court adopts the proposed exemption, community management company officers and employees will not *need* to hold legal document preparer certification to prepare, sign, and record notices of assessment liens. This is not a sufficient basis in and of itself to reject the proposed exemption because the same is true of any business that prepares documents incidental to the regular course of business under the Rule 31(d)(20) exemption. Nevertheless, if the Court believes that it would be more appropriate to have property management companies employ CLDPs to prepare, sign, and record notices of assessment liens, the Court could incorporate the proposed exemption into the Rule 31(d)(24) exemption for CLDPs and amend the ACJA to include the proposed exemption among the "authorized services" a CLDP is allowed to perform under

[39] ACJA § 7-208(J)(5)(b) (emphasis added).

ACJA § 7-208(F)(1). Petitioners support whatever method the Court deems appropriate to codify the proposed exemption.

3. The proposed exemption does not raise issues of favoritism.

The LDP Board raises concerns that the proposed exemption would show "preferential treatment" toward community management companies and associations. Following this logic, each of the twenty-nine Rule 31(d) exemptions to the unauthorized practice of law could be said to be showing "preferential treatment" toward the people or entities covered by the exemption. The Court's recognition of exemptions is more nuanced than simply "playing favorites."

In the interest of protecting consumers of legal services, the Court requires that persons or entities who engage in the practice of law either be licensed by the Court or fall within specified Rule 31(d) exemptions. The UPL Committee found that existing exemptions allowed community management companies to represent associations in the preparation, signing, and filing of liens, but that finding has been called into question. Thus, it would be appropriate to adopt a separate exemption specifying that this representative relationship does not constitute the unauthorized practice of law. This will not be showing favoritism to either associations or community management companies; it will be clarifying an open question of law.

CONCLUSION

The proposed exemption provides a pragmatic solution to the problem created when the UPL Committee and LDP Board reached different conclusions on the question of whether community management companies engage in the unauthorized practice of law when they prepare, sign, and record notices of assessment liens on behalf of associations.

The exemption serves consumers by giving associations an effective, efficient, and affordable way to process assessment liens. It saves association members money by allowing associations to contract with authorized agents to carry out tasks that are incidental to their management duties. It reduces legal costs charged against financially-distressed homeowners who owe associations past due assessments and fees. It allows associations to be represented in the preparation, execution, and recordation of liens by the individuals with first-hand knowledge about the association's assessments and fees. And it allows associations to allocate more of their limited resources to the protection of property values and community upkeep.

For the foregoing reasons, Petitioners respectfully request that the Court adopt Petitioners' proposed Rule 31(d) exemption.

RESPECTFULLY SUBMITTED this 8th day of July, 2011.

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