

REBA RESIDENTIAL CONVEYANCING SECTION & UPL  
COMMITTEE PRESENT:

**REBA v. NREIS CODIFIED?**  
**HOW HOUSE BILL 4716 COULD END**  
**WITNESS CLOSINGS FOR GOOD**

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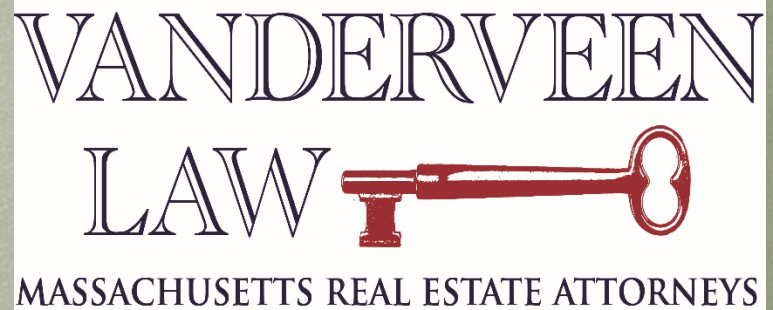
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## I. Pre-NREIS (before 2011)

### Is Conveyancing the Practice of Law?

- Black's Law Dictionary: "act and business" of transferring title in RE
- Massachusetts: traditionally, residential connotation

### MCA v. Closings, Ltd. (Super. Ct. 1993)

- Default judgment against national foreign corporation
- Hire MA attys to conduct conveyancing
- Violation M.G.L. c. 221 § 46 (prohibits corporations from practicing law)
- Practice of law includes residential RE conveyancing
- Prep. of instruments affecting title to RE
- Advising others re legal rights in conveyancing

## Pre-NREIS (cont'd)

### MCA v. Colonial Title (Super. Ct. 2001)

- Court issued declaratory judgment/permanent injunction against Colonial
- Colonial MA and R.I. corp. owned by 2 non-lawyers
- Conducted all conveyancing duties / title agent
- Court: dual roles as title ins. agent and closing agent = UPL
- Issuing policies based on Colonial's title evaluation enjoined

### Bottom Line

- No appellate decisions → green light for witness closings

## II. *REBA v. NREIS* 459 Mass. 512 (2011)

### Procedural History

- 2006: REBA files UPL suit in Super. Ct (DJ & Injunc. relief)
- NREIS removes to U.S. District Court (MA)
  - \* NREIS obtains summary judgment; activities not UPL; \$900k legal fees
- REBA appeals; 1<sup>st</sup> Circuit vacates; certifies 2 questions to SJC

## *REBA v. NREIS (cont'd)*

**Question #1** :Whether NREIS's activities, either in whole or in part, based on the record in this case and as described in the parties' filings, constitute the unauthorized practice of law in violation of Mass. Gen. Laws ch. 221, §§ 46 et seq.

- “Conveyancing” = series of interconnected but discrete activities
- Title exams/preparation of abstracts – not UPL
- Prep. of HUD / closing documents – not UPL (except deeds, other title xfer docs)
- Post-closing delivery of documents to lender and Registry – not UPL
- Issuance of title insurance policies – not UPL
- Possible violations re deed prep., Good Funds Statute, title opinions
- Record insufficient

## *REBA v. NREIS* (cont'd)

**Question #2:** Whether NREIS's activities, in contracting with Massachusetts attorneys to attend [real estate] closings, violate Mass. Gen. Laws ch. 221, §§ 46 et seq.

- Record insufficient for definitive answer, BUT.....
- 1<sup>st</sup> Circuit also requests advice to “aid in the proper resolution of the issues”
- ... and what great advice it was for Massachusetts consumers and practitioners

## *REBA v. NREIS* (cont'd)

“[A] lawyer is a necessary participant at the closing to direct the proper transfer of title and consideration and to document the transaction, thereby protecting the private legal interests at stake as well as the public interest in the continued integrity and reliability of the real property recording and registration systems.”

...

“[M]any of the activities that necessarily are included in conducting a closing constitute the practice of law and the person performing them must be an attorney.”

...

## *REBA v. NREIS* (cont'd)

“Implicit in what we have just stated is our belief that the closing attorney must play a meaningful role in connection with the conveyancing transaction that the closing is intended to finalize.”

...

“[This] case is closer to one where a party places itself as an intermediary between an attorney and a client. When a third party interposes itself between an attorney and a client, the key question is who exercises and retains control over the attorney ... there must be a genuine attorney-client relationship, and direction and control over the attorney's actions cannot rest with that third party.”



### III. Post-NREIS (2011 - Present)

#### Fake Compliance - Model #1

- Title & settlement arm of National Title Insurers
- Assembly line model
- 1 funding attorney; disburses proceeds & records mortgage/conveyance documents
- Title & settlement co. contracts attorney to conduct closing
- Title co. is primary or sole contact with lender-client
- REBA position: violation of NREIS, no atty-client relationship established
- State offices of nat'l carriers support REBA position to no avail
- 3 Cheers for CATIC: exception to the rule

## Post-NREIS (cont'd)

### Fake Compliance - Model #2

- Out of state law firm or independent title/escrow company
- Same as model #1 but in-house attorney gets licensed in MA
- Typically, has never practiced in MA; not involved in transactions
- Transactions managed by out of state non-attorneys

## Post-NREIS (cont'd)

### Recent Complaints Received by UPL Committee

#### 1. Refi closing conducted by non-attorney

- Borrower was a REBA board member!
- REBA members have reported cold call advertising from non-atty notaries

#### 2. Rhode Island law firm

- 1 atty; 1 non atty who handles transactions; hire MA attys to close
- Rhode Island / Bristol County border fertile ground for UPL

## Post-NREIS (cont'd)

### 3. Mass. title/escrow LLC (Bristol County)

- owned, managed by non-attorney (even named after him)
- tacitly holding himself out as an attorney
- Employs 2 MA attys
- Violation of M.G.L. c. 221 §§ 46, 46A
- Violation of MRPC Rule 5.4 (fee sharing w/non-lawyer)

## IV. House Bill No. 4716 – Remote Online Notarization

Amends M.G.L. Chapter 222 (governing notaries public)

- Proposed adoption of Remote Online Notarization
- Would pre-empt pending Federal RON bill (with no witness closing safeguards)
- AG rule-making authority, communication technology and ID verification

Amends M.G.L. Chapter 221

- Adds Section 46E *Practice of law in real estate closings involving the use of communication technology.*

## House Bill No. 4716 (cont'd)

*[N]o person shall direct or manage a real property closing unless that person has been admitted as an attorney in the Commonwealth of Massachusetts.*

*No person shall take the following actions in preparation for, or furtherance of closing unless that person has been admitted as an attorney in the Commonwealth of Massachusetts:*

- (1) giving or furnishing legal advice as to the legal status of title;*
- (2) ensuring that the seller, or the borrower-mortgagor in a mortgage refinancing transaction, is in a position to convey marketable title to the residential property at issue;*
- (3) issuing a certification of title pursuant to section 70 of chapter 93;*

## House Bill No. 4716 (cont'd)

- (4) drafting a deed to real property on behalf of another;*
- (5) ensuring that the documents necessary for the transfer of title are executed in accordance with the laws of the Commonwealth of Massachusetts;*
- (6) disbursing, or managing the disbursement, of consideration for the conveyance.*

*The attorney general may initiate an action, including a petition for injunctive relief against any person or creditor whose violation of this section is part of a pattern, or consistent with a practice, of noncompliance. The supreme judicial court and the superior court shall have concurrent jurisdiction in equity. A person having an interest or right that is or may be adversely affected by a violation of this section may initiate an action against the person or creditor for private monetary remedies.*

## V. What Can Do You?

- Join REBA's UPL Committee (Committee Co-Chair Vacancy)
- Report UPL to REBA promptly
- Contact your local state representative and say: *Pass House Bill No. 4716 now!*