ADMISSION TO PRACTICE RULES
RULE 12.
LIMITED PRACTICE RULE FOR LIMITED PRACTICE OFFICERS

(a) Purpose. The purpose of this rule is to authorize certain lay persons to select, prepare and complete legal documents incident to the closing of real estate and personal property transactions and to prescribe the conditions of and limitations upon such activities.

(b) Limited Practice Board.

(1) Establishment. There is hereby established a Limited Practice Board (referred to herein as the "Board") consisting of nine members to be appointed by the Supreme Court of the State of Washington. Not less than four of the members of the Board must be admitted to the practice of law in the State of Washington. Four of the members of the Board shall be business representatives, one each of the following four industries: escrow, lending, title insurance, and real estate. Appointments shall be for 4-year terms. No member may serve more than two consecutive terms. Terms shall end on December 31 of the applicable year. The Supreme Court shall designate one of the members of the Board as chairperson.

(2) Duties and Powers.

(i) Applications. The Board shall accept and process applications for certification under this rule.

(ii) Examination. The Board shall conduct the examination for certification required by this rule. The examination shall consist of such questions as the Board may select on such subjects as may be listed by the Board and approved by the Supreme Court. The Board shall establish the number of examinations to be given each year and the dates of the examinations.

(iii) Investigation and recommendation for admission. The Board shall notify each applicant of the results of the examination and shall recommend to the Supreme Court the admission or rejection of each applicant who passes the examination. The Supreme Court shall enter an order admitting to limited practice those applicants it deems qualified, conditioned upon each applicant taking an oath that he or she will comply with this rule and paying to the Board the annual fee for the current year. Upon the entry of such order, the taking and filing of the oath, and payment of the annual fee, an applicant shall be enrolled as a limited practice officer and shall be entitled to perform those services permitted by this rule. The oath must be taken before a court of record in the State of Washington.

(iv) Education. The Board shall approve individual courses and may accredit all or portions of the entire educational program of a given organization which, in the Board's judgment, will satisfy the educational requirement of these rules. It shall determine the number of credit hours to be allowed for each such course. It shall encourage the offering of such courses and programs by established organizations, whether offered within or outside this state.

(v) Grievances and discipline. The Board shall adopt hearing and appeal procedures and shall hear complaints of persons aggrieved by the failure of limited practice officers to comply with the requirements of this rule and of the Limited Practice Officer Rules of Professional Conduct. Upon a finding by the Board that a limited practice officer has failed to comply in any material manner with the requirements of this rule, the Board shall take such action as may be appropriate to the degree of the violation, considering also the number of violations and the previous disciplinary record of the limited practice officer. Disciplinary action may include admonitions, reprimands, and recommendations to the Supreme Court for the suspension or revocation of

the limited practice officer's certification.

(vi) Investigation. Upon the receipt of a complaint that a limited practice officer has violated the provisions of this rule and in other appropriate circumstances, the Board may investigate the conduct of the limited practice officer to determine whether the limited practice officer has violated the requirements, conditions or limitations imposed by this rule.

(vii) Approval of forms. The Board shall approve standard forms for use by limited practice officers in the performance of services authorized by this rule.

(viii) Fees. The Board shall establish and collect examination and annual fees in such amounts as are necessary to carry out the duties and responsibilities of the Board.

(ix) Regulations. The Board shall propose regulations to implement the provisions of this rule for adoption by the Supreme Court.

(3) Expenses of the Board. Members of the Board shall not be compensated for their services. For their actual and necessary expenses incurred in the performance of their duties, they shall be reimbursed by the Board in a manner consistent with its rules. All such expenses shall be paid pursuant to a budget submitted to and approved by the Washington State Bar Association on an annual basis. Funds accumulated from examination fees, annual fees, and other revenues shall be used to defray all expenses of the Board. The administrative support to the Board shall be provided by the Washington State Bar Association.

(c) Certification Requirements. An applicant for certification as a limited practice officer shall:

(1) Age. Be at least 18 years of age.

(2) Moral Character. Be of good moral character.

(3) Examination. Satisfy the examination requirements established by the Board.

(4) Oath. Execute under oath and file with the Board two copies of his or her application, in such form as may be required by the Board. Additional proof of any fact stated in the application may be required by the Board. In the event of the failure or refusal of an applicant to furnish any information or proof, or to answer any interrogatories of the Board pertinent to the pending application, the Board may deny the application.

(5) Examination Fee. Pay, upon the filing of an application, the examination fee.

(d) Scope of Practice Authorized by Limited Practice Rule. Notwithstanding any provision of any other rule to the contrary, a person certified as a limited practice officer under this rule may select, prepare and complete documents in a form previously approved by the Board for use by others in, or in anticipation of, closing a loan, extension of credit, sale or other transfer of interest in real or personal property. Such documents shall be limited to deeds, promissory notes, guaranties, deeds of trust, reconveyances, mortgages, satisfactions, security agreements, releases, Uniform Commercial Code documents, assignments, contracts, real estate excise tax affidavits, bills of sale, and powers of attorney. Other documents may be from time to time approved by the Board.

(e) Conditions Under Which Limited Practice Officers May Prepare and Complete Documents. Limited practice officers may render services authorized by this rule only under the following conditions and with the following limitations:

(1) Agreement of the Clients. Prior to the performance of the services, all clients to the transaction shall have agreed in writing to the basic terms and conditions of the transaction. In the case of a power of attorney prepared in anticipation of a transaction, the principal(s) and attorney(s)-in-fact shall

have provided the limited practice officer consistent written instructions for the preparation of the power of attorney.

(2) Disclosures to the Clients. The limited practice officer shall advise the clients of the limitations of the services rendered pursuant to this rule and shall further advise them in writing:

(i) that the limited practice officer is not acting as the advocate or representative of either of the clients;

(ii) that the documents prepared by the limited practice officer will affect the legal rights of the clients;

(iii) that the clients' interests in the documents may differ;

(iv) that the clients have a right to be represented by lawyers of their own selection; and

(v) that the limited practice officer cannot give legal advice as to the manner in which the documents affect the clients.

The written disclosure must particularly identify the documents selected, prepared, and/or completed by the limited practice officer and must include the name, signature and number of the limited practice officer.

(f) Continuing Certification Requirements.

(1) Continuing Education. Each limited practice officer must complete a minimum number of credit hours of approved or accredited education, as prescribed by regulation of the Board, during each calendar year in courses certified by the Board to be appropriate for study by clo limited practice officers providing services pursuant to this rule; provided, that the limited practice officer shall not be required to comply with this subsection during the calendar year in which he or she is initially certified.

(2) Financial Responsibility. Each limited practice officer or employer thereof shall show proof of ability to respond in damages resulting from his or her acts or omissions in the performance of services permitted by this rule. The proof of financial responsibility shall be in such form and in such amount as the Board may by regulation prescribe.

(3) Annual Fee. Each limited practice officer must pay the annual fee established by the Board.

(g) Existing Law Unchanged. This rule shall in no way expand, narrow or affect existing law in the following areas:

(1) The fiduciary relationship between a limited practice officer and his or her customers or clients;

(2) Conflicts of interest that may arise between the limited practice officer and a client or customer;

(3) The right to act as one's own attorney under the pro se exception to the unauthorized practice of law including but not limited to the right of a lender to prepare documents conveying or granting title to property in which it is taking a security interest;

(4) The lack of authority of a limited practice officer to give legal advice without being licensed to practice law;

(5) The standard of care which a limited practice officer must practice when carrying out the functions permitted by this rule.

(h) Treatment of Funds Received Incident to the Closing of Real or Personal

Property Transactions. Persons admitted to practice under this rule shall comply with LPORPC 1.12A and B regarding the manner in which they identify, maintain and disburse funds received incidental to the closing of real and personal property transactions, unless they are acting pursuant to APR 12(g)(3).

Comment

[1] Comment Re: APR 12(d)

Powers of attorney authorizing a person to negotiate and sign documents in anticipation of, or in the closing of, a transaction are included in the documents limited practice officers are authorized to prepare. Such documents may include, but are not limited to, purchase and sale agreements for real or personal property, loan agreements, and letters of intent.

[2] Comment Re: LPO Professional Standard Of Care
The purpose of this comment is to discuss the legal standard of care to which a limited practice officer is subject, while also clarifying the limited duties of a limited practice officer compared to an attorney when selecting and preparing legal documents and to show the greater breadth of a lawyer's duties and services which a party may not expect when engaging a limited practice officer.

Generally, when a non-lawyer selects and prepares a legal document for another, the non-lawyer engages in the unauthorized practice of law. Despite this, the non-lawyer (including a licensed limited practice officer) will be held to the standard of a lawyer: "to comply with the duty of care, an attorney must exercise the degree of care, skill, diligence, and knowledge commonly possessed and exercised by a reasonable, careful and prudent lawyer in the practice of law in this jurisdiction." Hizey v. Carpenter, 119 Wn.2d 251, 261, 830 P.2d 246 (1992). However, when selecting and preparing approved forms a limited practice officer, though having a limited license to practice law as defined and limited in APR 12, will not be authorized nor charged with many of the duties of a lawyer. Except as provided otherwise in APR 12 rules and regulations, these include the duty to investigate legal matters, to form legal opinions (including but not limited to the capacity of an individual to sign for an entity or whether a legal document is effective), to give legal advice (including advice on how a legal document affects the rights or duties of a party), or to consult with a party on the advisability of a transaction. See also LPORPC 1.1, Competence, and LPORPC 1.3, Communication.

[Adopted effective January 21, 1983; amended effective October 28, 1983; September 13, 1985; December 9, 1995; July 1, 2002; January 1, 2009.]