

Eastern Panhandle Organization of Homeowners Association, Inc.

Policy

Effective: August 22, 2013

Legal information vs. Legal Advice

WHEREAS, Article IV, Section A, (1) of the Bylaws of the Eastern Panhandle Organization of Homeowners Association, Inc. assigns to the Board of Directors (Directors) the authority to adopt and amend Rules and Regulations;

WHEREAS, The Directors have identified a need to adopt reasonable Rules and Regulations for the application of guidance with respect to legal information and legal advice by members of Eastern Panhandle Organization of Homeowners Association, Inc.;

NOW THEREFORE LET IT BE RESOLVED, that the following rules and regulations shall be considered by the Executive Board for the application of guidance with respect to legal information and legal advice by members.

EPOHOA's mission is to share information and resources to help improve the welfare of HOAs and their members. EPOHOA representatives are frequently asked for legal information or legal advice to help solve the numerous problems faced by HOAs. While EPOHOA can provide legal information, only an attorney licensed to practice law can provide legal advice. In order to understand the difference between legal information and legal advice, one must understand what it means to practice law.

The term "practice of law" has never been easy to define, especially since the law changes and evolves on a daily basis. With so many regulations, rules, procedures and laws applicable to virtually every facet of modern day life, our ability to answer many questions often requires at least some amount of legal knowledge. Due to the complexities and ever changing nature of the American legal system, we often rely on the advice of others who have more knowledge than ourselves. However, relying on the advice of others can negatively impact our legal rights or position. That is the reason all states require those who wish to practice law to register with their respective practice areas, and to carry malpractice insurance.

So what is the difference between practicing law and sharing legal information? To paraphrase the Florida State Bar, if answering a legal question requires more legal knowledge than what an average person knows about the law, then answering the question probably constitutes practicing law. While seeking the advice of a licensed and insured attorney is always the most prudent course of action, not all questions require specialized legal knowledge to answer. The West Virginia State Bar has provided guidance by preparing a list of activities that constitute the

practicing law (see sources below). Simply sharing general information about the law or legal processes is not listed as practicing law. When sharing legal information, one may do so without practicing law as long as they do not apply the principles of the law to specific facts, purposes or desires. If answering a question would require the application of the law to specific facts, then only a licensed and insured attorney should provide the answer.

The following examples should help illustrate the types of legal questions EPOHOA representatives and other non-attorneys can and cannot answer. Non-attorneys can answer the following types of questions:

- “What is the definition of a... (lien),”
- “How do I...(record a lien),”
- “What is the deadline to file...(corporate annual report).”

Questions that require interpreting or applying the law to specific facts should only be answered by an attorney. For example, the following types of questions should be directed to an attorney:

- “Should I...(file a lawsuit),”
- “Do you think...(we have a claim against the developer),”
- “Do we have the right to...,” or
- “What is your opinion regarding...”

The language inside the parenthesis are just examples. Most questions can be easily assigned into one of the two categories above by the beginning or end of the questions. Sometimes the purpose of the question can be just as important as the question itself. The person asking the question may not disclose a specific set of facts or the intended purpose they are seeking the information. For the reasons stated above, EPOHOA has adopted a policy that its representatives must always state that any information provided is general information, legal or otherwise, and the information it is not intended to advise anyone of their rights, duties or obligations. If there is ever any doubt about the language or purpose of a question, representatives of EPOHOA will urge the individual to consult an attorney of their choice.

Sources:

http://en.wikipedia.org/wiki/Practice_of_law Defining the problem of unauthorized practice of law.

<http://floridabarhearing.com/unauthorizedpracticeoflaw.html> Florida test to determine if an activity is defined as the practice of law – Legal seminars can be given by non-lawyers as long as the information provided is general legal advice...just do not answer specific legal questions

<http://www.wvbar.org/wp-content/uploads/2012/04/AO-2007-01.pdf> WV State Bar definition for practicing law:

However, in West Virginia the following activity, with or without compensation and whether or not in connection with another activity, is clearly defined as the unauthorized practice of law. ¹

- (1) To undertake to advise another in any matter involving the application of legal principles to facts, purposes or desire;
- (2) To undertake to prepare for another legal instruments of any character;
- (3) To undertake to represent the interest of another before any judicial tribunal or officer, or to represent the interest of another before any executive or administrative tribunal, agency or officer otherwise than in the presentation of facts, figures or factual conclusions as distinguished from legal conclusions in respect to such facts and figures...” ²

CERTIFICATION I, the undersigned, do hereby certify:

THAT I am the duly elected and acting Secretary of Eastern Panhandle Organization of Homeowners Association, Inc., a West Virginia non-profit corporation, and,

IN WITNESS WHEREOF, I have hereunto subscribed my name this 22nd day of August 2013.

/SIGNED/

Phyllis Smock

Secretary

Eastern Panhandle Organization of Homeowners Association