

Matter of Mid-Atlantic Settlement Services, Inc.

Supreme Court No. 102, 2000, UPL 95-15 (5/31/00)

The Delaware Supreme Court approved the Decision of the Board on the Unauthorized Practice of Law, dated March 8, 2000, determining that Delaware attorneys must participate in all real estate settlements. The question resolved by the Board was whether a Delaware attorney is required to conduct a closing of a sale of Delaware real property or of a refinancing loan secured by Delaware real property. The Supreme Court affirmed the Board's recommendation that:

1. An attorney licensed to practice law in Delaware is required to conduct a closing of a sale of Delaware real property.
2. An attorney licensed to practice law in Delaware is required to conduct a closing of a refinancing loan secured by Delaware real property.
3. An attorney licensed to practice law in Delaware is required to be involved in a direct or supervisory capacity in drafting or reviewing all documents affecting transfer of title to Delaware real property or where Delaware real property is used as security for the repayment of a debt or the performance of an obligation, with the exception of home equity loans in which the lender is acting in a pro se capacity and no evaluation of exceptions to title is required.
4. The participation of an attorney licensed to practice law in Delaware is necessary in evaluating the legal rights and obligations of the parties, representing the buyer in examining the title and removing exceptions to the title, supervising the disbursement of funds, and responding to questions concerning the legal effect of documents and ramifications of a transaction by which title to Delaware real property is transferred or where Delaware real property is used as security for the repayment of a debt or the performance of an obligation, with the exception of home equity loans in which the lender is acting in a pro se capacity and no evaluation of exceptions to title is required.