

## When Do We Bump Up Against Unauthorized Practice of Law (UPL)?

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### Michigan Compiled Laws

MCL-Section 600.916 Unauthorized practice of law.

Sec. 916.

(1) A person shall not practice law or engage in the law business, shall not in any manner whatsoever lead others to believe that he or she is authorized to practice law or to engage in the law business, and shall not in any manner whatsoever represent or designate himself or herself as an attorney and counselor, attorney at law, or lawyer, unless the person is regularly licensed and authorized to practice law in this state. A person who violates this section is guilty of contempt of the Supreme Court and of the circuit court of the county in which the violation occurred, and upon conviction is punishable as provided by law. This section does not apply to a person who is duly licensed and authorized to practice law in another state while temporarily in this state and engaged in a particular matter.

(2) A domestic violence victim advocate's assistance that is provided in accordance with section 2950c does not violate this section.

(3) An application assistant's or victim advocate's assistance that is provided in accordance with the address confidentiality program act does not violate this section.

### 500.7304 Title insurers; powers.

Sec. 7304.

Every title insurer authorized to do business pursuant to this code may issue title insurance; make, execute and perfect such contracts, agreements, policies and other instruments as may be required therefor; examine titles to real estate in connection with any transaction in which a policy of title insurance or commitment therefor is being issued and report thereon; issue commitments for title insurance policies specifying the requirements for the issuance of such policies; act as escrow agent in any transaction involving the issuance of a title insurance policy. Nothing contained in this chapter shall be construed to authorize any title insurer, or any officer, director, employee, trustee, agent or solicitor thereof, to engage in any act or practice prohibited by Act No. 354 of the Public Acts of 1917, being section 450.681 of the Compiled Laws of 1948, under a claim that the act or practice is incidental to the conduct of a business authorized by this chapter, whether or not a separate charge is made therefor. It shall be unlawful for any title insurer, or any such person, to suggest to any party to a transaction involving the examination, insuring and conveyancing of titles to real estate that the party does not need to retain for the transaction the professional services of an independent attorney duly licensed to practice law in this state.

## Understanding Unauthorized Practice of Law in Michigan

In Michigan, as in most states, the **unauthorized practice of law (UPL)** refers to individuals who perform legal services or provide legal advice without a license to practice law. Engaging in activities that fall within the domain of licensed attorneys without being licensed is prohibited by law and can lead to serious consequences, including criminal charges, civil penalties, and the risk of significant legal ramifications for both individuals and businesses.

### What is the Unauthorized Practice of Law?

The Michigan Rules of Professional Conduct (MRPC)

<https://www.courts.michigan.gov/4b1134/siteassets/rules-instructions-administrative-orders/rules-of-professional-conduct/michigan-rules-of-professional-conduct.pdf>

And the Michigan Court Rules <https://www.courts.michigan.gov/48ec32/siteassets/rules-instructions-administrative-orders/michigan-court-rules/michigan-court-rules.pdf>

Define the practice of law as activities that involve giving legal advice, representing a client in legal matters, or preparing documents that affect a person's legal rights. While non-lawyers can engage in various business activities related to law (such as selling real estate or acting as a notary public), they cannot engage in activities that require legal knowledge or expertise unless they are licensed attorneys.

Some examples of unauthorized practice of law in Michigan include:

- **Giving Legal Advice:** Advising a client about the legal implications of their actions or their rights, such as recommending how to structure a contract or the consequences of breaking a lease.
- **Drafting Legal Documents:** Preparing legal documents like contracts, wills, or pleadings for court without the oversight of a licensed attorney.
- **Representing a Client in Court:** Only licensed attorneys are allowed to represent clients in court. Non-lawyers cannot advocate for others in a legal proceeding or appear on behalf of a client in a judicial forum.
- **Negotiating Legal Matters:** Negotiating on behalf of a client in matters like property transactions, divorce settlements, or other legal agreements.

### Why is the Unauthorized Practice of Law Prohibited?

The prohibition on UPL exists to protect the public from potential harm. Legal matters can significantly impact individuals' rights, obligations, and financial well-being. A non-lawyer, regardless of good intentions, may not possess the necessary knowledge of the law or court procedures to provide competent representation. The consequences of poor legal advice or error in legal documents can be severe, ranging from financial loss to legal entanglements.

### Key Examples of Unauthorized Practice of Law in Real Estate Transactions

In Michigan, real estate transactions involve complex legal documents and processes that must be handled by licensed attorneys. Here are some common examples of unauthorized practice of law related to real estate:

1. **Drafting Real Estate Contracts:** Non-attorneys who draft purchase agreements, lease agreements, or other real estate contracts can be committing UPL. Even if a real estate agent uses a standardized form, altering or drafting a contract with unique terms or conditions requires legal expertise.
2. **Providing Legal Advice About Property Rights:** A real estate agent cannot advise a client on the legal implications of property ownership, zoning issues, or the legality of a property dispute.
3. **Representing a Client in a Real Estate Closing:** While title agents can assist in preparing closing documents, they cannot represent clients or negotiate terms of a real estate deal in place of a licensed attorney.
4. **Advising on Evictions or Landlord-Tenant Law:** Property managers or landlords who advise tenants or other parties on how to proceed with eviction or tenancy disputes, without involving an attorney, are engaging in UPL. Eviction is a legal process, and only a licensed attorney can represent someone in such matters.

### **Consequences of Unauthorized Practice of Law in Michigan**

Engaging in UPL can have serious consequences for both the individual committing the UPL and the parties affected by it. Here are some of the potential legal consequences:

#### **Criminal Penalties**

In Michigan, engaging in the unauthorized practice of law is a criminal offense. Under Michigan law, UPL is classified as a misdemeanor, and offenders may be subject to fines, penalties, or imprisonment. While criminal penalties can vary depending on the specifics of the offense, the state treats unauthorized practice of law seriously to prevent harm to the public.

#### **Civil Penalties**

In addition to criminal penalties, individuals or entities that engage in UPL may be subject to civil action. A person harmed by the unauthorized practice of law may bring a civil lawsuit against the non-lawyer who provided the legal services. This could result in financial compensation for any damages suffered, including legal fees or costs incurred due to improper legal advice or document preparation.

#### **Injunctive Relief**

The Michigan Supreme Court has the authority to issue injunctive relief to prevent UPL. This means that a person or entity found to be engaged in UPL can be ordered by the court to cease their unauthorized activities immediately. The Michigan Attorney Grievance Commission investigates UPL cases and may issue a formal request to the court to stop the individual or business from continuing unlawful practices.

### **How to Avoid Unauthorized Practice of Law in Michigan**

To avoid committing UPL, it is important to recognize the boundaries between business practices and the practice of law. Here are some general guidelines:

1. **Know Your Scope:** If you are a real estate agent, title agent, notary public, or other professional, ensure that you are aware of the legal limits of your role. Stick to tasks that are within your professional scope, and refer clients to a licensed attorney for legal advice and document preparation.
2. **Refer to an Attorney:** If you are uncertain about whether an activity constitutes the practice of law, err on the side of caution and refer the client to an attorney. A licensed attorney can provide legal counsel and draft documents tailored to the client's specific legal needs.
3. **Stay Informed:** Professionals who regularly deal with legal matters should stay informed about the law and the regulations governing their industry to ensure they do not accidentally cross into the realm of legal practice.

## Conclusion

In Michigan, the unauthorized practice of law is a serious matter that carries both legal and professional consequences. The law seeks to ensure that individuals receive competent legal services from those who are trained, qualified, and authorized to practice law. Anyone who is unsure about whether their actions might constitute UPL should consult a licensed attorney or seek guidance from regulatory authorities to avoid running afoul of the law.

For more information, or to report a potential instance of UPL, individuals can contact the **Michigan Attorney Grievance Commission** or consult the **State Bar of Michigan** for guidance on legal services and professional conduct.

Real World Examples of UPL:

### 1. Drafting Legal Documents for Others

- **Example:** A non-attorney drafts a **contract** for a business deal, creates a **will**, or prepares a **power of attorney** for someone. Only licensed attorneys can draft legal documents that are specifically tailored to someone's needs or that have legal consequences.
- **Why it's UPL:** Drafting legal documents requires knowledge of legal principles to ensure that they are legally valid and properly executed. Non-attorneys could inadvertently make errors that could harm the person relying on the document.

### 2. Providing Legal Advice

- **Example:** A real estate agent tells a client whether a particular **lease agreement** or **purchase contract** is legally binding or advises a buyer on how to structure their **real estate transaction** to minimize legal risks.
- **Why it's UPL:** Offering advice on legal matters is reserved for attorneys because it requires an understanding of complex laws and regulations that non-attorneys might not have.

### 3. Representing Someone in Court

- **Example:** A non-attorney represents a party in a **civil lawsuit** or **family court** proceeding. For example, they might argue on behalf of a client during a **divorce** or **child custody** case.

- **Why it's UPL:** Only licensed attorneys can represent individuals in court. Non-attorneys cannot argue motions, examine witnesses, or make legal arguments on behalf of a client in a court of law.

#### 4. Negotiating Settlements

- **Example:** A non-attorney negotiates a **settlement agreement** between parties involved in a legal dispute, such as a **personal injury claim** or **breach of contract case**.
- **Why it's UPL:** Negotiating the terms of a legal dispute often involves understanding legal rights, obligations, and the potential consequences of the agreement, which only a licensed attorney is qualified to handle.

#### 5. Advising on Bankruptcy, Tax, or Estate Planning

- **Example:** A non-attorney advises someone on how to file for **bankruptcy**, what tax **deductions** or **credits** apply to a real estate transaction, or how to set up an **estate plan** or **trust**.
- **Why it's UPL:** Bankruptcy law, tax law, and estate planning require specific legal knowledge. Offering advice in these areas without a license could lead to improper advice, potentially causing serious legal and financial problems for the client.

#### 6. Eviction Proceedings

- **Example:** A landlord or property manager prepares **court documents** to evict a tenant or represents the landlord in an **eviction hearing**.
- **Why it's UPL:** Even though landlords can begin eviction proceedings, they must have a licensed attorney represent them in court or provide legal advice on the eviction process. A non-attorney cannot legally represent someone in eviction court, especially when the matter is contested.

#### 7. Real Estate Closings and Title Opinions

- **Example:** A real estate agent or title company employee **provides legal opinions** regarding the status of a property title or drafts documents related to the transfer of property that involve legal rights and obligations.
- **Why it's UPL:** Determining whether a title is clear or advising on issues that affect the ownership of property requires legal expertise. Only licensed attorneys can provide legal opinions regarding title matters.

#### 8. Advising on or Handling Probate Matters

- **Example:** A non-attorney assists in the preparation of documents related to **probate** (such as filing a will for probate), advises on the distribution of an estate, or represents someone in probate court.
- **Why it's UPL:** Probate law is complex, and non-attorneys cannot engage in legal activities related to the distribution of a deceased person's assets or represent someone in probate court. Only attorneys can handle the legal aspects of probate.

## 9. Acting as a Legal Mediator or Arbitrator without a License

- **Example:** A non-attorney attempts to act as a **mediator** or **arbitrator** in a legal dispute, offering binding legal opinions or decisions.
- **Why it's UPL:** Mediation and arbitration in legal disputes require understanding legal principles, and only licensed attorneys or other authorized professionals can make decisions that affect a person's legal rights in such contexts.

## 10. Providing Legal Advice about Divorce, Child Custody, or Family Law

- **Example:** A non-attorney advises a client on the best strategy to obtain **custody** of children in a divorce or how to divide assets in a **divorce** settlement.
- **Why it's UPL:** Family law is highly nuanced, and giving advice on child custody or the distribution of assets requires specific legal knowledge that non-attorneys are not qualified to provide.

## 11. Title Closings and Document Preparation for Probate Property

- **Example:** A non-attorney handles the closing of a real estate transaction where the property was transferred from an estate under probate, or they prepare documents related to the sale of a probate property.
- **Why it's UPL:** Real estate transactions involving probate estates require legal expertise to ensure that the transfer of property is valid and lawful. Non-attorneys cannot prepare or advise on these types of transactions.

## 12. Using a Power of Attorney to Transfer Real Estate

- **Example:** A non-attorney prepares a **power of attorney** for a client to transfer real estate ownership or to act on behalf of someone else in a legal transaction without consulting an attorney.
- **Why it's UPL:** While powers of attorney are legal documents, they should be drafted with specific legal knowledge to avoid future complications. Non-attorneys should not prepare or advise on powers of attorney related to real estate matters.

## Case Law

The following are some of the significant cases regarding the unauthorized practice of law; all are in pdf format:

- ***Bay County Bar Association v. Finance System, Inc.***—Where a corporation and an individual, who was not licensed as an attorney, in operating collection agencies, took assignments of claims from their customers and brought suits on the assigned claims, in which the customers retained an interest, the corporation and individual were engaging in the unauthorized practice of law.
- ***Detroit Bar Association v. Union Guardian Trust Co.***—The statute authorizing trust companies to act as agents or attorneys in management of estates and serve as trustees, empowers them to

perform ordinary and incidental services relative to trusts assumed by them for statutory fees only, without violating the UPL statute.

- ***Dressel v. Ameribank***—Preparing the legal documents for a banking or mortgage transaction the lender is involved in and charging the customer a fee for the documents does not constitute the unauthorized practice of law.
- ***Dubuc v. Michigan Board of Law Examiners*** (Cite 342 F.3d 610)—Michigan Bar as a state agency is entitled to immunity under the 11th Amendment. Executive Director of the SBM is not entitled to 11th Amendment immunity. Absolute immunity provisions of the Michigan Supreme Court Rules Concerning the State Bar of Michigan do not immunize Executive Director of the SBM from suit in federal court alleging federal constitutional violations.
- ***Ginger v. Cohn*** (Cite 426 F.2d 1385)—After disbarment attorney had no standing to continue to represent bankrupt corporation.
- ***In re Ernest J. Desilets*** (Cite 291 F.3d 925)—A lawyer not licensed to practice in Michigan may practice bankruptcy law generally in Michigan if properly admitted to practice before the federal court of the state.
- ***In the Matter of Bright*** (171 B.R. 799)—U.S. District court case regarding UPL and non-lawyer bankruptcy petition preparer.
- ***Ingham County Bar Association v. Walter Neller Company***—Title insurance companies have no authority to engage in activities "incidental" to their business, whether or not they charge for the service.
- ***Office of Disciplinary Counsel v. Frank J. Marcone*** (please refer to LexisNexis)—Federal practice—lawyer not admitted to state in which court sits.
- ***Peters Production, Inc. v. Desnick Broadcasting Company***—Recognizing that a corporation is a legal entity separate from its officers, shareholders, or other constituents, Michigan law does not allow a non-lawyer officer or shareholder of a corporation to appear in court proceedings on behalf of the corporation.
- ***Shenkman v. Bragman***—The filing of a wrongful death action by a Personal Representative of a deceased estate in pro per (without an attorney) constitutes the unauthorized practice of law.
- ***State Bar of Michigan v. Cramer***—Not only court appearances, but also out-of-court conduct may be prohibited pursuant to unauthorized practice of laws and rules.

This is probably the big case in Michigan even though it's from 1955: *Ingham County Bar Association v. Walter Neller Company Same v. Edward G. Hacker Company*, 342 Mich 214, 60 NW2d 713

<https://www.michbar.org/file/professional/pdfs/inghamcobarassoc.pdf>