IN THE SUPREME COURT OF KENTUCKY

KENTUCKY LAND TITLE ASSOCIATION, ET AL.,

Movants,

v.

KENTUCKY BAR ASSOCIATION,

Defendant.

ON MOTIONS TO REVIEW THE
KENTUCKY BAR ASSOCIATION'S ADVISORY OPINION KBA U-58

BRIEF AMICUS CURIAE OF THE UNITED STATES OF AMERICA IN SUPPORT OF MOVANTS KENTUCKY LAND TITLE ASS'N ET AL.

JOEL I. KLEIN
Assistant Attorney General

A. DOUGLAS MELAMED
Deputy Assistant Attorney General

ROBERT B. NICHOLSON
JOHN P. FONTE
JESSICA N. BUTLER-ARKOW
Attorneys
U.S. Department of Justice
601 D Street, N.W.
Washington, D.C. 20530
(202) 514-2435

MATTHEW R. HALL
Attorney
Kentucky Bar No. 86884
U.S. Department of Justice
Civil Division
Box 878 Ben Franklin Station
Washington, D.C. 20044
(202) 353-7743

I hereby certify that a true copy of this brief was served by Federal Express on this 9th day of March 2000, upon: Gregory P. Parsons, attorney for movant Kentucky Land Title Association, Richard A. Vance, attorney for movant Countrywide Home Loans, Inc., Debra Stamper, General Counsel for movant Kentucky Bankers Association, and Bruce K. Davis, Executive Director for defendant Kentucky Bar Association.

COUNSEL FOR UNITED STATES OF AMERICA

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES: **PAGE**

STATUTES AND RULES:

MISCELLANEOUS:

STATEMENT OF POINTS AND AUTHORITIES

This is a case in which the movants are asking the Court to reject the Kentucky Bar Association's ("KBA") advisory opinion KBA U-58, which declares real estate closings performed by non-lawyers the unauthorized practice of law. Through its enforcement of the federal antitrust laws, the Antitrust Division of the United States Department of Justice works to promote free and unfettered competition in all sectors of the American economy to bring consumers goods and services at lower prices and higher quality. The Antitrust Division also promotes competition by filing comments with government bodies that have regulatory powers. Thus, in 1997 and 1999, the Division submitted Competition Advocacy Letters to the KBA's Board of Governors urging it not to adopt proposed opinion KBA U-58. The United States now asks the Court to reject that opinion.

"The basic consideration in suits involving unauthorized practice of law is the public interest." Frazee v. Citizens Fidelity Bank & Trust Co., Ky., 393 S.W.2d 778, 782 (1964), p. 5, infra. Determining the public interest involves a balancing of multiple factors. In re Opinion No. 26 of the Committee on the Unauthorized Practice of Law, 654 A.2d 1344, 1345-46, 1352 (N.J. 1995), pp. 5-11, infra. In this case, KBA U-58 likely will cause costs for all Kentucky consumers to rise while providing them no more protection than they currently receive. On the other hand, there is no demonstrated harm from the lay closings that have taken place in Kentucky since the KBA sanctioned the practice in 1981, and less drastic measures than banning lay settlements are available if additional consumer protections are required. Thus, the Court should reject KBA U-58 in its entirety. Pages 3-14, infra.

STATEMENT OF THE CASE

In 1981, the KBA approved an opinion which held that lay persons conducting a real estate closing did not engage in the unauthorized practice of law. KBA U-31 (March 1981).[1] Thus, for almost 19 years Kentucky consumers have been able to choose to use a lay closing agent.

In 1997, the KBA's Unauthorized Practice of Law Committee submitted to the Board of Governors a draft of opinion KBA U-58 that would have prevented non-lawyers from competing with attorneys in providing real estate closing services. The Antitrust Division and others submitted comments opposing adoption of the rule on grounds that it was anticompetitive and also unnecessary to protect the public. In November 1997, the Board of Governors declined to adopt the Opinion.

In the Spring of 1999, a revised version of KBA U-58 was presented to the Board of Governors. The Opinion proposed to bar lay settlement agents from conducting closings for real estate sales and for any loans secured by real estate, without the supervision of an attorney, even though the Opinion contained no evidence or discussion that Kentucky consumers have been substantially harmed over the past 18 years by lay real estate closings. Nor did the Opinion mandate the types of consumer protections that the KBA believed were necessary to protect the parties to a real estate transaction. Thus, although the Opinion concluded that the "conduct" of a real estate closing amounted to the practice of law -- largely because the "legal questions present at a closing . . . are endless" -- it contained no requirement that an attorney actually be present at closing, or even that the attorney in charge represent the consumer buyer or seller as opposed to the commercial

[1] KBA U-31 is reproduced at Appendix C to Kentucky Land Title Association's brief. Citations in this brief to KBA U-31 will be: "KLTA Br. App. C."

lender. The United States and others again objected to adoption of KBA U-58 because the opinion restricted competition and likely would lead to increased costs for Kentucky consumers. Nonetheless, in November 1999, the Board of Governors adopted the Opinion, and published it in the January 2000 issue of the Kentucky Bench & Bar.[2]

Under Supreme Court Rule 3.530, when the Board of Governors approves an Unauthorized Practice of Law Opinion and publishes it in the Kentucky Bench & Bar, a party aggrieved may file a motion with this Court seeking review of that Opinion. Such a motion begins an original action before the Court under its authority to promulgate the rules of legal practice and procedures in Kentucky. See Turner v. Kentucky Bar Ass'n, Ky., 980 S.W. 2d 560, 562-63 (1998). On March 1, 2000, several aggrieved parties, including the Kentucky Land Title Association, filed motions asking the Court to reject the Opinion. The United States files this amicus brief in support of those motions.

ARGUMENT

Since 1981, Kentucky has permitted non-lawyers to conduct real estate closings. In Opinion KBA U-31, the KBA determined that real estate mortgage lenders and title insurance companies do not commit the unauthorized practice of law when their non-lawyer employees close real estate transactions. KLTA Br. App. C. The KBA concluded:

> A "real estate closing" is at best ministerial in nature. Some lawyers will allow secretaries and paralegals to participate in closings. The closings, which consists mainly of financial matters, payments, schedules of payment, and insurance, is basically a nonlegal function. *So long as the lay person*

[2] KBA U-58 is reproduced at Appendix A of KLTA's Br., and citations in this brief to KBA U-58 will be: "KLTA Br. App. A." KBA U-58 makes an exception for institutional lenders by allowing them to use their non-lawyer employees to close refinancing transactions in which they are the new mortgagee, if the transaction involves no transfer of property. See KLTA Br. App. A at 47.

> *avoids the giving of legal advice, there is no problem with a lay employee closing a real estate transaction.*

Id. (emphasis added).

The new KBA U-58 would, without even discussing let alone refuting KBA U-31, take from Kentucky consumers the benefits of competition they have had for many years, and likely drive up the prices of real estate closings. Because KBA U-58 contains no evidence or reasoning that such drastic action is required to protect the public, the Court should reject the Opinion in its entirety.

THE PUBLIC INTEREST IS BEST SERVED BY CONTINUED COMPETITION BETWEEN LAY SETTLEMENT SERVICES AND ATTORNEYS

In ascertaining whether a service is the practice of law in Kentucky, the touchstone is "the public interest." Frazee v. Citizens Fidelity Bank & Trust Co., Ky., 393 S.W.2d 778, 782 (1964); accord Lowell Bar Ass'n v. Loeb, 52 N.E.2d 27, 31 (Mass. 1943) ("The justification for excluding from the practice of law persons not admitted to the bar is to be found, not in the protection of the bar from competition, but in the protection of the public"). And determining the public interest involves consideration of many factors. As the Supreme Court of New Jersey recently explained when rejecting a proposed unauthorized practice of law opinion similar to KBA U-58:

> The question of what constitutes the unauthorized practice of law involves more than an academic analysis of the function of lawyers, more than a determination of what they are uniquely qualified to do. It also involves a determination of whether non-lawyers should be allowed, in the public interest, to engage in activities that may constitute the practice of law.
>
> * * *
>
> We determine the ultimate touchstone -- the public interest -- through the balancing of the factors involved in the case, namely, the risks and benefits to the public of allowing or disallowing such activities. In other words, like all of our powers, this power over the practice of law must be exercised in the public interest; more specifically, it is not a power given to us

> in order to protect lawyers, but in order *to protect the public, in this instance by preserving its right to proceed without counsel*.

In re Opinion No. 26 of the Committee on the Unauthorized Practice of Law, 654 A.2d 1344, 1345-46 (N.J. 1995) (emphasis added); see also id. at 1352 (ultimate question is "whether the public interest is disserved by permitting such conduct. The resolution of the question is determined by practical, not theoretical, considerations").

Thus, in determining how best to protect the public interest, the Court should balance the harm that would be caused by banning lay settlements against the harm that might be caused by continuing to allow them. As explained below, this balancing supports the conclusion that the public interest would best be served by allowing the nearly two-decades-old practice of permitting lay settlements in Kentucky to continue.

A. KBA U-58 Would Likely Hurt The Public By Causing Prices To Rise

Free and unfettered competition is at the center of the American economy. As the United States Supreme Court has observed: "Ultimately, competition will produce not only lower prices but also better goods and services. 'The heart of our national economic policy long has been faith in the value of competition.'" National Soc'y of Prof'l Eng'rs v. United States, 435 U.S. 679, 695 (1978); accord FTC v. Superior Court Trial Lawyers Ass'n, 493 U.S. 411, 423 (1990). Competition benefits not only consumers of traditional manufacturing industries, but also consumers of services offered by the learned professions. See Goldfarb v. Virginia State Bar, 421 U.S. 773, 787 (1975); National Soc'y of Prof'l Eng'rs, 435 U.S. at 689.

KBA U-58 would erect an insurmountable barrier against free competition from lay settlement services, thereby depriving Kentucky consumers of the ability to choose to close real estate transactions without the services of an attorney. The Opinion likely

would increase costs for consumers in two ways. First, it would force Kentucky consumers who would not otherwise pay for the services of a lawyer at closing to do so. Hence, the Opinion would injure all consumers who might prefer the combination of price, quality, and service that a lay settlement service offers.[3] Second, the Opinion, by eliminating competition from lay providers, would likely increase the price of lawyers' settlement services, since the availability of alternative, lower-cost lay services would no longer be available. Consequently, even consumers who would otherwise choose an attorney over a lay agent would likely pay higher prices. These facts are demonstrated by experience in other states.

For example, in 1995, after a 16-day evidentiary hearing conducted by a special master, the New Jersey Supreme Court found that real estate closing fees were much lower in southern New Jersey, where lay settlements were commonplace, than in the northern part of the State where lawyers conducted almost all settlements.[4] This was true whether or not the South Jersey transaction included a lawyer. South Jersey buyers unrepresented by counsel paid no closing costs, while unrepresented sellers paid about $90; South Jersey buyers represented by counsel throughout the entire transaction, including closing, paid on average $650, while sellers paid $350; North Jersey buyers represented by counsel paid on average $1,000, and sellers $750. In re Opinion No. 26, 654 A.2d at 1349.

---

[3] Besides hurting consumers who are buying and selling homes and commercial properties, KBA U-58 would also harm those obtaining home equity loans or refinancing existing real estate loans who could not use the lender as their closing agent. See note 2, supra.

[4] In South Jersey, only about 40% of buyers and 35% of sellers were represented by counsel at closing, while in North Jersey 99.5% of buyers and 86% of sellers were represented by counsel. In re Opinion No. 26, 654 A.3d at 1349.

The experience in Virginia was similar. As in Kentucky, lay settlement services have operated in Virginia since 1981, when the State rejected an Opinion declaring lay settlements to be the unauthorized practice of law. And, as expected, a 1996 study found that lay closings in Virginia were substantially less expensive than attorney closings.

Virginia Closing Costs			
	Median	Average	Average Including Title Examination
Attorneys	$350	$366	$451
Lay Services	$200	$208	$272

Media General, Residential Real Estate Closing Cost Survey, September 1996 at 5.[5]

In 1997, Virginia codified the right of consumers to continue using lay settlement services by enacting the Consumer Real Estate Protection Act, Va. Code Ann. §§ 6.1-2.19 to 6.1-2.29 (Michie 1997).[6]

There is no reason to expect Kentucky's experience to be any different. In Kentucky, the use of lay settlement services has grown since Opinion KBA U-31 was rendered nearly 19 years ago. Lay closings of real estate purchases and sales are now common in northern Kentucky, and are growing in other areas of the State. Thus, in deciding whether to affirm KBA U-58, the Court should recognize the serious potential harm to consumers from eliminating lay services.

---

[5] The Media General survey explained that 425 law firms and 64 lay providers reported closing costs without title examinations, and 165 law firms and 41 lay providers reported costs including title examinations.

[6] As authority for banning lay settlements in Kentucky, KBA U-58 cites Virginia UPL Opinion #183 (1996). See KLTA Br. App. A at 47. However, while that *proposed* opinion was pending before the Virginia Supreme Court, Virginia enacted the Consumer Real Estate Protection Act.

B. KBA U-58 Does Not Establish Any Actual Harm To Consumers From Lay Closings Nor Address Concerns About Consumer Protection

KBA U-58 justifies elimination of lay closings by asserting that, for consumers to receive adequate protection, lawyers must supervise real estate closings because they always involve legal questions requiring legal advice. KBA U-58 assumes that requiring a lawyer to be responsible for the closing will ensure that all legal issues will be identified and answered properly. There are two fatal flaws in this logic. First, KBA U-58 contains no factual evidence or assessment of how lay services have actually hurt Kentucky consumers. Second, KBA U-58 does not accomplish its ostensible purpose of protecting consumers who need legal advice because it does not require that any attorney, much less an attorney representing the consumer, actually be present at the closing.

1. At the outset, it is important to remember that consumers benefit immensely from competition among different types of service providers. As the United States Supreme Court has explained:

> The assumption that competition is the best method of allocating resources in a free market recognizes that all elements of a bargain - quality, service, safety, and durability - and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers.

National Soc'y of Prof'l Eng'rs, 435 U.S. at 695; accord Superior Court Trial Lawyers' Ass'n, 493 U.S. at 423. Permitting competition by lay agents allows consumers to consider all relevant factors in selecting a provider of settlement services, such as cost, convenience, and the degree of assurance that the necessary documents and commitments are sufficient. In general, the antitrust laws and competition policy require that a sweeping restriction on competition be justified by a credible showing of need for the restriction and require that the restriction be narrowly drawn to minimize its anti-

competitive impact. This is required to protect the public's interest in competition. See generally FTC v. Indiana Federation of Dentists, 476 U.S. 447, 459 (1986).

KBA U-58 does not contain such a showing of need for a near-complete prohibition on lay closing service competition. The Opinion cites no statistics showing that the proportion of lay settlements that are problematic in Kentucky is greater than the proportion of problematic attorney settlements. Indeed, it fails to cite any instances of actual consumer injury from lay closings despite the fact that lay closings have been permitted in Kentucky for nearly 19 years. In fact, at least one study of several states found that "[t]he only clear conclusion . . . is that the evidence does not substantiate the claim that the public bears a sufficient risk from lay provision of real estate settlement services to warrant blanket prohibition of those services under the auspices of preventing the unauthorized practice of law." Joyce Palomar, The War Between Attorneys and Lay Conveyancers--Empirical Evidence Says "Cease Fire," 31 Conn. L. Rev. 423, 520 (1997). A showing of harm is particularly important where, as here, the proposed restraint eliminates consumers' opportunity to use an entire class of providers.

2. In 1981, the KBA recognized that "[a] 'real estate closing' is at best ministerial in nature [and] is basically a nonlegal function." KLTA Br. App. C. Thus, it declared that "[s]o long as the lay person avoids the giving of legal advise, there is no problem with a lay employee closing a real estate transaction." Id. KBA U-31 is eminently correct. This Court defines the "practice of law" as "any service rendered involving legal knowledge or legal advice." S.C.R. 3.020. Since KBA U-31 prohibits lay closing agents from "giving . . . legal advice," it would appear that lay closings should not conflict with S.C.R. 3.020. See Turner v. Kentucky Bar Ass'n, 980 S.W. 2d at 564 (finding that

the performance of tasks that are primarily "procedural and administrative in nature" is not the practice of law).

Rather than attacking KBA U-31 directly, KBA U-58 attempts to appear consistent with U-31 by citing the earlier opinion for the proposition that non-lawyers "may provide clerical services for a closing." KLTA Br. App. A at 47. But the change wrought by KBA U-58 is far more drastic than the Opinion admits. Thus, while KBA U-31 specifically holds: ***"there is no problem with a lay person closing a real estate transaction"*** so long as he or she offers no legal advice, KLTA Br. App. C (emphasis added), KBA U-58 explicitly provides: "A title agency may not conduct real estate closings." Id. App. A at 47; see also id. at 46. ("Question: May title agencies or title insurance companies conduct real estate closings? Answer: No.") Thus, KBA U-58 directly overrules U-31 sub silentio.

KBA U-58 fails to acknowledge the true import of KBA U-31, challenge its conclusion that closings are "at best ministerial," or explain how real estate closings have changed since its adoption in 1981. Rather, KBA U-58 is premised on the assertion that today lawyers are needed at closings to answer "endless" legal questions, interpret deeds and other documents, and give legal advice.[7] KLTA Br. App. A at 46. Thus, KBA U-58 asserts that "it is unrealistic and naive to assume that, in all instances, the settlement agent can present important legal documents to the seller, buyer, borrower, and or lender

[7]Not all closings involve an actual purchase and sale. A substantial number involve home equity loans or the refinancing of existing loans where, because a related transaction has already gone through the closing process, legal questions are less likely to arise. KBA U-58, however, makes no exception for these relatively simple closings unless the mortgagee acts as settlement agent. See note 2, supra.

at a closing without legal questions being asked and without giving legal advice." Id. Even if that premise was true, which it is not, KBA U-58 does not properly resolve it.

The assistance of a licensed lawyer at closing may be desirable, and consumers may decide they need a lawyer in certain situations. A consumer might choose to hire an attorney to answer legal questions, provide advice, negotiate disputes, or offer various protections. Consumers who hire attorneys may get better service and representation at the closing than those who do not. But, as the New Jersey Supreme Court has concluded, this is no reason to eliminate lay closing services as an alternative for consumers. In re Opinion No. 26, 654 A.2d at 1360. Rather, the choice of hiring a lawyer or a non-lawyer should rest with the consumer, as it has in Kentucky for the last 18 years.

Significantly, KBA U-58 guarantees consumers no more protection than they received under KBA U-31. KBA U-58 states that "[i]f a problem arises during closing ***and there is no attorney-client relationship***, the parties are without benefit of independent counsel and may lack the leverage or will to halt a transaction that is not in their best interests." KLTA Br. App. A at 46 (emphasis added). The Opinion, however, does not require consumers to hire their own lawyers to represent their interests. Thus, the Opinion does not assure that counsel acting on behalf of consumers would be available to advise them of all of their rights and obligations. In fact, the usual practice in Kentucky is that a representative of the **lender** closes the loan. While the lender's representative may be a lawyer, he or she does not have "an attorney-client relationship" with the buyer or seller; nor is he or she the consumer's "independent counsel" envisioned in the Opinion. See id. Nonetheless, his or her participation would satisfy KBA U-58 as long as the closer was an attorney or worked for one.

But the presence at closing of a lawyer representing the lender does not advance the goal of consumer protection. Such lawyers do not represent the buyer or seller. Thus, the attorney could not advise the consumer about whether a particular deed or loan term was in his or her best interests. Nor would their presence likely give consumers "the leverage or will to halt a transaction that is not in their best interests" foreseen in the Opinion. In fact, the New Jersey Supreme Court noted the possible issues that could arise if a lawyer conducting a closing offered legal advise to a participant he or she did not represent:

> We note that . . . where the attorneys [advising the buyer or seller] are employed by the title company . . . the basic evil is that the person performing the legal service is in no sense doing it for the *party*, but rather in the interest of the employer, the title company, neither of them (the lawyer or the title company) representing the party, be it seller, buyer or lender. [Such] practice of law would be unauthorized, impermissible, for it is only an attorney retained by and actually representing the client who is authorized to practice law on the clients behalf. What is involved is not simply the license to practice, but the professional duty of loyalty that is included in the concept of permissible representation. Depending on the circumstances, attorneys who act purportedly on behalf of those they do not represent may be engaged in the unauthorized practice of law, or unethical professional conduct, or both.

In re Opinion No. 26, 654 A.3d at 1352 n.3 (emphasis original).[8] Because only a party's own lawyer is authorized to answer the "endless" legal questions that party might have, a consumer who needs legal advice at closing must hire his or her own lawyer, regardless of whether another party to the transaction is represented by a lawyer or person supervised by a lawyer. Thus, KBA U-58 completely fails to provide the consuming public the

[8]The "evil" noted by the New Jersey Supreme Court would be the same regardless which interest the closing attorney represented.

protection upon which its draconian measure of complete elimination of lay settlement services is based.

KBA U-58 further reasons: "Real estate closings should be conducted only under the supervision of an attorney because questions of legal rights and duties are always involved and there is no way of assuring that lay settlement agents would raise . . . the legal questions." KLTA Br. App. A at 46. Inconsistently, the Opinion then provides that the responsible lawyer need not be present at the actual closing. Rather, the closing could be handled by a lay person employed by the attorney. Hence, if it is the practiced eye of the lawyer that protects consumers by being able to identify legal questions, this eye might not witness the actual closing. No lawyer would necessarily be present to recognize special problems that only a lawyer could understand. Instead, the consumer would receive protection equivalent to what he or she receives from any lay settlement agent. In both situations, the layperson conducting the closing would have to determine whether to call a lawyer because a question was outside his or her permitted realm.

Moreover, if an attorney conducted the closing, he or she could not change the terms of the standard loan forms at the consumer's request, as a lawyer might change a contract in another setting. Almost all mortgages involve standardized loan forms approved by Fannie Mae, Ginnie Mae, and Freddie Mac. These uniform forms are required for reselling the mortgage in the secondary market; the consumer cannot alter their terms, even on the advice of a lawyer. See Palomar, supra, at 441-42 & nn. 64-72; Michael Braunstein, Structural Change and Inter-Professional Competitive Advantage: An Example Drawn from Residential Real Estate Conveyancing, 62 Mo. L. Rev. 241, 244, 249-50 & nn. 14, 41-44 (1997).

In short, KBA U-58 completely fails to provide consumers with any more protection than they currently have while enjoying the benefits -- namely, lower prices -- of lay closings. Thus, the public interest will not be disserved by continuing lay closings in Kentucky.

C. Less Restrictive Measures Can Protect Kentucky Consumers

Affirming KBA U-58 would likely impose higher closing costs on Kentucky consumers, who would no longer be able to reap the benefits of competition from lay settlement providers. These costs should not be imposed without a convincing showing that lay closings have not only injured consumers, but that less drastic measures cannot remedy any perceived problem. In fact, Kentucky consumers can be protected by measures that restrain competition less than a complete ban on lay settlements. Virginia, confronted with similar issues in 1997, adopted the Consumer Real Estate Protection Act, supra p. 7. This statute permits consumers to choose lay settlement providers, which are now regulated by the State. Hence, Virginia consumers continue to have the benefits of competition, including lower-cost settlements.

Likewise, the New Jersey Supreme Court, in permitting lay settlements, has required written notice to consumers informing the buyer and seller that neither will receive any legal advice during the transaction unless they hire their own attorney, identifying risks inherent with buying or selling real estate without a lawyer's assistance, and notifying them that whether to hire a lawyer is totally within their discretion. In re Opinion No. 26, 654 A.2d at 1361-64; cf. Turner v. Kentucky Bar Ass'n, 980 S.W. 2d at 564 (establishing "qualifications" under which non-lawyers may serve as workers' compensation specialists). These measures permit consumers to make an informed choice

about whether to hire an attorney, further assuring that the public is not disserved by the provision of lay closing services. See 654 A.2d at 1361.

In sum, the ban on lay settlement services imposed by KBA U-58 is entirely unnecessary to advance the public interest.

CONCLUSION

Because banning lay real estate closings will cause consumers' costs to increase, because there is no demonstrated harm from lay closings in Kentucky, because KBA U-58 guarantees consumers no more protection than they currently receive, and because less drastic measures than banning lay settlements are available if additional consumer protections are required, the Court should reject KBA U-58.

Respectfully submitted,

JOEL I. KLEIN
Assistant Attorney General

A. DOUGLAS MELAMED
Deputy Assistant Attorney General

ROBERT B. NICHOLSON
JOHN P. FONTE
JESSICA N. BUTLER-ARKOW
Attorneys
U.S. Department of Justice
601 D Street, N.W.
Washington, D.C. 20530
(202) 514-2435

MATTHEW R. HALL
Attorney
Kentucky Bar No. 86884
U.S. Department of Justice
Civil Division
Box 878 Ben Franklin Station
Washington, D.C. 20044
(202) 353-7743

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of February 2000, I served a true copy of the foregoing Brief Amicus Curiae Of The United States Of America In Support Of Movants Kentucky Land Title Association et al., by Federal Express, upon the following:

Gregory P. Parsons
Stites & Harbison
2300 Lexington Financial Center
250 West Main Street
Lexington, Kentucky 40507-1758

Richard A. Vance
Stites & Harbison
400 West Market Street
Suite 1800
Louisville, Kentucky 40202

Debra Stamper
General Counsel
Kentucky Bankers Association
325 West Main Street
Suite 1000
Louisville, Kentucky 40202

Bruce K. Davis
Executive Director
Kentucky Bar Association
514 West Main Street
Frankfort, Kentucky 40601-1883

_____
JOHN P. FONTE