



the Advocate

LEGAL NEWSLETTER OF THE
LAW OFFICES OF LEONARD S. DEPALMA, L.L.C.

Issue No. 23

Summer 2003

Part Two: A Brief History of New Jersey's Attorney Review Clause

Introductory Note:

This article is the second part of a two issue article examining the history of the attorney review clause. The first part of the article appeared in the Spring 2003 issue of The Advocate.

In support of his decision, Judge Sullivan in New Jersey State Bar Association v. New Jersey Association of Realtor Boards, 186 N.J.Super. 391 (Chan.Div 1982) cited Justice Jacobs, in N.J. Bar Ass'n v. North N.J. Mtg. Assocs., 32 N.J. 430, 161 A.2d 257 (1960), wherein it was noted that:

"It is, of course, clear that the practice of law is not confined to litigation but extends to legal activities in many non-litigious fields which entail specialized knowledge and ability... Oftentimes the line between such activities and permissible business and professional activities by nonlawyers is indistinct. See Auerbacher v. Wood, 139 N.J.Eq. 599 [53 A.2d 800] (Ch. 1947), affirmed 142 N.J.Eq. 484 [59 A.2d 863] (E. & A. 1948). In the Auerbacher case Justice Heher noted that what constitutes the practice of law does not lend itself "to precise and all-inclusive definition" and that some fields may "in some areas" properly overlap the law. [at 437, 161 A.2d 257]."

Judge Sullivan further stated that a realtor's function in selling (or leasing) residential real property falls into this area. "The evidence at trial showed that, in New Jersey, most contracts for the sale of residential property are originally prepared by the realtors who negotiated the sales. The proofs also showed a widespread practice among realtors of including an attorney review option clause in such contracts. The

realtors and attorneys by allowing the realtor to consummate the contract phase of the transaction, with attorneys handling the actual transfer of title. Most importantly, however, it serves to protect the public interest by making the contract subject to prompt attorney review if either buyer or seller so desires."

Judge Sullivan also incorporated into his opinion suggestions for modifications to certain terms of the settlement. These suggestions included, in lieu of the three business day time for attorney review, a five business day period which was recommended by some as affording greater protection to the parties. This suggestion would enlarge the waiting period during which the seller and buyer cannot be certain that a binding contract has been negotiated. The Court noted that it is important that this waiting period be as short as possible giving due regard to the opportunity to consult an attorney. Since the settlement also allowed for an extension of the time for attorney review by written agreement of the parties, Judge Sullivan concluded that the public interest is adequately protected by the three day term of the settlement as presented.

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Great Quotations

"Make money and the whole world will conspire to call you a gentleman."
- Mark Twain

"I never been in no situation where havin' money made it any worse."
- Clinton Jones

"Money is something you got to make in case you don't die."
- Max Asnas

"If the rich could hire other people to die for them, the poor would make a wonderful living." - Jewish Proverb

It was also suggested by some that the notice of disapproval by an attorney which, under the settlement, must be served upon the broker, be also served upon the other party to the contract or lease. Judge Sullivan thought this suggestion was a good one, and since counsel for both associations had no objection to it, this term of settlement was modified accordingly.

The final suggestion, except for those relating to language and grammar, involved the provisions of the settlement dealing with residential real property leases. The settlement proposed that only leases for more than a term of one year would be subject to the notice and attorney review clause requirements heretofore set forth. The suggestion was that these requirements be applied to all residential property leases, or at least to leases for a term of one year or more.

Judge Sullivan stated in his opinion that he could not see the need of making the preparation of all residential leases subject to provisions for notice and attorney review. Summer rentals often are for short periods of time, he explained, so that the economics of that kind of situation would not call for such a requirement. Moreover, legislative enactments extend broad protections to lessees of residential property, so that the form of leases used by realtors as well as attorneys is largely standardized. However, according to Judge Sullivan, the line should be drawn somewhere and at some point the public interest requires that attorney review be available. Counsel for both associations had reconsidered this portion of the settlement and were in agreement that it may be modified so as to call for a notice and attorney review option as to any realtor prepared lease for a term of one year or more. The Court found this modification to be in the public interest and held it should be incorporated into the terms of the settlement.

In summary, Judge Sullivan approved the settlement as submitted by the parties with the modifications discussed above. "I find [the settlement] to be a sensible accommodation of the interests of both realtors and attorneys but, most importantly, the settlement is in the public interest and affords adequate protection to purchasers and sellers of residential real estate or lessors and lessees thereof." Judge Sullivan held, in closing, that the rulings contained in his opinion would become effective only upon approval by the Supreme Court of the State of New Jersey.

The Supreme Court took up that issue in the case titled New Jersey State Bar Association v. New Jersey Association of Realtor Boards, 93 N.J. 470 (1983).

The Supreme Court concluded that approval of the settlement was appropriate and that the activities to be undertaken by realtors pursuant to the settlement agreement would not transgress unduly upon the practice of law. "To the extent that there is an inevitable or unavoidable overlap between the realty and legal professions, the public's interest is safeguarded through the settlement's attorney review provisions and the Court's continuing supervisory control... Both the Attorney General and the Public Advocate, whose sole concerns in this matter are the protection of the public, have recognized that the public welfare can be reasonably accommodated and safeguarded through an agreement settling the matters in dispute ..."

However, one aspect of the settlement was modified by the Supreme Court. During the course of the public review process of the proposed Final Consent Judgment, the Court received comments relating to the conformance of certain aspects of the settlement to the requirements of the Plain Language Law, N.J.S.A. 56:12-1 to -13. This was a particular concern of the Public Advocate and the State Bar Assn's Committee on Plain Language. It was the intent of the parties and the court to adhere to the standards of this enactment, which calls for the expression of consumer contracts in a "simple, clear, understandable and easily readable way." N.J.S.A. 56:12-2. The Court held that such compliance in this matter would give further assurance that the interests of the public be properly served through the effectuation of the settlement. In that regard, a portion of the settlement language was modified by the Court so as to comply with the Plain Language Law.



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