

REBA v. NREIS Ruling: Massachusetts Real Estate Attorneys Must Not Only Conduct Closings But Take “Substantive Participation” In Residential Transactions

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The long awaited ruling from the Massachusetts Supreme Judicial Court in case of *Real Estate Bar Association (REBA) v. National Estate Information Services (NREIS)* has just come down. The ruling can be read below. **The net effect of the Court’s ruling is to reaffirm Massachusetts attorneys’ long-standing role to oversee the closing process and conduct closings.** For more background, please read my prior post, [Battle Between Massachusetts Closing Attorneys vs. Settlement Service Providers Argued Before SJC](#).



This case pits Massachusetts real estate closing attorneys vs. out of state non-attorney settlement service providers which are attempting to perform “**witness or notary**” closings here in Massachusetts. At stake is the billion dollar Massachusetts real estate closing industry.

Quick Analysis

- **Massachusetts attorneys must be present for closings and take active role in transaction both before and after the closing.** The substantive ruling from the court was a huge victory for Massachusetts real estate closing attorneys and their continued, long standing involvement in the residential real estate industry. The court requires “not only the presence but the substantive participation of an attorney on behalf of the mortgage lender.” This is what Massachusetts real estate attorneys have been fighting about for consumers in the face of out of state settlement companies who have tried to conduct closings with “robo-attorneys” and notaries who cannot explain complex legal documents to parties at the closing table. The court stated:

The closing is where all parties in a real property conveyancing transaction come together to transfer their interests, and where the legal documents prepared for the conveyance are executed, often including but not limited to the deed, the mortgage and the promissory note. [FN38] The closing is thus a critical step in the transfer of title and the creation of significant legal and real property rights. Because this is so, we believe that a lawyer is a necessary participant at the closing to direct the proper transfer of title and consideration and to document the transaction, thereby protecting the private legal interests at stake as well as the public interest in the continued integrity and reliability of the real property recording and registration systems.

- **No “Robo-Attorneys” Allowed.** NREIS’ business model is to hire part-time, contract attorneys on an as-needed basis to conduct closings. Basically, these are kids right out of

law school who get a call to drive to a closing they know nothing about for \$100 or less a pop. Although they are licensed attorneys, these lawyers are really no different than the “rob0-signers” in the foreclosure industry because they did not participate in the transaction from the start, they did not examine the title, or do anything to manage the transaction. Here’s what the court said about this practice:

Implicit in what we have just stated is our belief that the closing attorney must play a meaningful role in connection with the conveyancing transaction that the closing is intended to finalize. If the attorney’s only function is to be present at the closing, to hand legal documents that the attorney may never have seen before to the parties for signature, and to witness the signatures, there would be little need for the attorney to be at the closing at all. We do not consider this to be an appropriate course to follow. Rather, precisely because important, substantive legal rights and interests are at issue in a closing, we consider a closing attorney’s professional and ethical responsibilities to require actions not only at the closing but before and after it as well.

- **Analyzing title and rendering an opinion of clear and marketable title must be conducted by attorneys.** This is the fundamental function of the real estate attorney in Massachusetts: Interpreting and analyzing the title to a home to ensure that the buyer and lender are receiving good title to the premises. NREIS was attempting to out-source this function to out of state companies and non-lawyers.
- **Attorneys are required to draft deeds.** The court held “because deeds pertaining to real property directly affect significant legal rights and obligations, the drafting for others of deeds to real property constitutes the practice of law in Massachusetts.”
- **Attorneys must effectuate the transaction.** The court also ruled that only licensed attorneys have duty to effectuate a valid transfer of the interests being conveyed at the closing. This includes ensuring that the deed and mortgage are properly recorded; that the exchange of funds is properly made and that prior mortgages and liens are properly paid off and discharged.
- **Title abstracts, title insurance and other administrative functions are properly delegated to non-attorneys.** The court also correctly recognized, consistent with modern practice, that many functions in the real estate transaction don’t have to be performed by an attorney. Included in this exempted list of functions are the preparation of title abstracts by title examiners at the registries of deeds, the issuance of title insurance policies, and the preparation of closing documents & the HUD Settlement Statement. Real estate attorneys typically use title examiners and paralegals at lower costs to perform these functions.

The case will move back to federal court where it started for more fact-finding unless it can be settled. There were several unanswered questions because the record was not adequately established. It remains to be seen whether NREIS and its ink can adopt their business model to the SJC’s holding. It’s possible it can be done, but they will have to hire a group of attorneys to manage the system.

[REBA v. NREIS Decision](#)