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Access to Legal Services: The Market Provides

When I lived in Virginia in the 1990s, it was illegal for a title agent to conduct a real-estate closing. Even though title agents knew more about closings than the vast majority of lawyers, the state bar ruled that title agents conducting closings were engaged in the unauthorized practice of law (UPL).

In 2007, U.S. Assistant Attorney General Joel Klein and the Federal Trade Commission weighed in against Virginia's rule, finding that it cost

nearly twice as much to hire a lawyer rather than a title agent to conduct a real-estate closing, despite minimal consumer benefits. The state rescinded the rule, and now consumers can choose.

UPL requirements that are over-

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ly broad and zealously enforced create serious barriers to affordable legal services. Allowing paraprofessionals to provide certain legal services reduces costs and increases competition. Lawyers may not like that, but consumers benefit.

Fortunately, Arizona provides greater access to nonlawyer legal services than any other state.

That happened at least in part by historical accident. Arizona had a UPL statute that expired by sunset clause in 1985. Out of the sudden void of regulation emerged a vibrant new industry: legal document preparers.

The vast majority of states require paralegals to work solely under the direction of licensed attorneys. Nonlawyers can make legal forms directly available to consumers, but they cannot fill them out or file them. But in Arizona, legal document preparers did just that, at prices far below those charged by lawyers.

The services offered by legal document preparers concentrate in areas of the law that often use standard forms, such as bankruptcy, divorce, child support, wills and trusts, limited liability corporations, and immigration. The legal document preparers know which forms to use and how to file them, thus providing enormously valuable legal services to ordinary people at low cost.

In 2002, a petition was filed asking the Arizona Supreme Court for a rule requiring paralegals to work under lawyer supervision, which would have wiped out the entire industry. Advocates for the rule claimed that hundreds of bar complaints had been filed against legal document preparers; but it turned out nearly all of them were UPL complaints filed by lawyers.

The document preparers fought back, forming the Arizona


Association of Independent Paralegals. Then-Arizona Chief Justice Charles "Bud" Jones formed an ad hoc committee to resolve the issue, and compromise was reached that achieved the twin goals of protecting consumers while providing access to nonlawyer legal services.

Adopted in 2003, Arizona Code of Judicial Administration Rule 7-208 provides for the certification of legal document preparers. Eligibility is based on a combination of education and practical experience—high school graduates, for instance, may qualify if they obtain two years of legal experience. The candidates take an examination covering legal terminology, client communications, data gathering, document preparation, ethical issues, and professional and administrative responsibilities.

Once certified, legal document preparers can provide general legal information and factual information about legal rights. Consumer complaints are adjudicated by a board that is funded by application fees.

The Arizona certified document preparer rule was a major breakthrough for access to legal services. In our increasingly complex society, people often need help with even the simplest legal transactions, but they should not have to pay lawyers' hourly rates—or seek out public assistance or pro bono services—when the market is able to provide low-cost, high-quality paraprofessional services.

I would love to see the entire UPL regime disappear. The accounting profession flourishes without such legal constraints, and consumers freely may choose from among certified public accountants and regular accountants, based on their needs and resources. Consumers are protected not by legal cartels but by choice, competition, transparency, and the enforcement of fiduciary relationships.

But until that day, I'm happy to live in a state that recognizes that more choices lead to greater access to legal services. 



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