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Remote Practice of Real Estate Law

2024 Drake Real Estate Transactions CLE

Christopher S. Talcott

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Agenda - Practical, legal, and ethical implications of remote practice

- I. Remote Work in General
- II. Remote Practice of Law
- III. Remote Practice of Real Estate Law



This is supposed to be a place of business!

This is why people don't want to work in offices

HA
HA

Remote Work in the United States and Iowa

- **“Telecommuting” to “work from home” to “hybrid”**
- **Business Record, May 12, 2023:**
 - Nearly 80% of private-sector business establishments in Iowa said their employees teleworked rarely or not at all during the last half of 2022, the report showed. That figure climbed from 70.4% the previous year and is nearing 82.4%, the level it was at in the months leading up to the pandemic.
 - Nationally, 72.5% of establishments said that in the last half of 2022 their employees rarely or never teleworked, according to the report. Before the pandemic, which began in March 2020, 76.7% of establishments said their workers rarely or never teleworked.
- **Bureau of Labor Statistics, U.S. Department of Labor, The Economics Daily, About 1 in 3 workers in management, professional, and related occupations teleworked, November 2023 at <https://www.bls.gov/opub/ted/2023/about-1-in-3-workers-in-management-professional-and-related-occupations-teleworked-november-2023.htm> (visited April 02, 2024).**

Remote Work in the United States and Iowa-Cont.

- **Effect of remote work on real estate market**
 - Commercial leasing vacancies
 - Reduction in corporate travel
 - Less foot traffic in central business districts
- **Market response**
 - Reconfiguring space
 - Repurposing buildings
 - Commercial to residential conversions
 - Sale/lease to public entities
 - New development in outlying neighborhoods

Remote Practice of Law

- **Temporary remote practice**
 - Not unauthorized practice of law while temporarily working from another state
 - Confidentiality/security issues while working in public places, hotels, etc.
 - Ethical issues – duty to be competent

Remote Practice of Law-Cont.

- **Permanent remote practice**

- Unauthorized practice?
 - Florida Supreme Court Advisory Opinion No. SC20-1220: out of state attorney working remotely from Florida home: <https://www-media.floridabar.org/uploads/2021/06/Order-on-FAO-2019-4-O-O-S-Atty.-Working-Remotely-From-Florida-Home.pdf>
 - ABA reaches same conclusion: https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-495.pdf
- Getting licensed in another state
 - Character and fitness
 - Annual fees
 - CLE
 - Trust account
 - Sit for bar exam and MPRE???

Remote Practice of Law-Cont.

- **Remote practice toolkit**
 - High-speed Internet
 - Confidentiality and security technology and support
 - Quality printer
 - Computer camera
 - Headset/Earpods
 - Dedicated office
 - Access to shipping services
 - Quiet dogs
 - Zoom/Teams or similar video conferencing (blurred background feature a must)
 - Calendar/scheduling

“I’m very comfortable working out of the house. I have a phone. There’s a Kinko’s nearby.”

**-Morty Seinfeld in *Seinfeld*
Episode 146, “The Money”
Original Air Date January 16, 1997**

Remote Practice of Iowa Real Estate Law

- **Abstract examination**
 - Scanning not always an option
- **E-SIGN/Iowa Uniform Electronic Transactions Act**
 - A signature shall not be denied legal effect or enforceability solely because it is in electronic form.
 - But potential consent requirements for use of e-signatures.
 - Iowa Code Chapter 554D
- **Electronic Notary Laws**
 - Iowa Code Sections 9B.14A and 9B.14B
 - Iowa Code Section 9B.20: Recorder may accept for recording a tangible copy of an electronic record of an instrument affecting real property if electronic record is evidenced by a certificate pursuant to 9B.15.
- **Ethical Obligations and ALTA/ITG Best Practices**

Concluding Remarks

- **Technology has come a long way very quickly.**
 - Improvements in technology itself.
 - Cultural adoption of the technology.
- **Potential future trends in remote practice of law:**
 - Increased use of electronic signatures and notarization.
 - Consolidation of closing work in escrow companies or specialty firms.
 - More cross-border practice and licensing in multiple jurisdictions.
 - Electronic abstracts.
 - Expanded business hours.
- **Pros and Cons as with anything.**
 - Flexibility, resiliency, expanded opportunities
 - Ethical/security risks, increased competition, loss of human element



Questions/Discussion?

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Thank You

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