The North Carolina State Bar

AUTHORIZED PRACTICE COMMITTEE

C. Colon Willoughby, Jr.
Chair

JAN 26 2005

LETTER OF CAUTION
To Cease and Desist

Priority Trustee Services of NC, L.L.C.
C/o counsel
S. Nicole Taylor
Manning Fulton & Skinner PA
P.O. Box 20389
Raleigh, NC 27619-0389

Re: Alleged unauthorized practice of law
Our file number: 04AP0082

Dear Priority Trustee Services of NC, L.L.C.:

On January 19, 2005 the Authorized Practice Committee met and considered the results of its investigation made into your activities in the above referenced matter. As you will recall, you were informed of the allegations before the Committee and given an opportunity to respond. The allegation before the Committee is that you, as a corporation, have engaged in litigation *pro se* in violation of N.C. Gen. Stat. § 84-5 by filing documents as a corporate substitute trustee to obtain authorization from a clerk of court to hold a foreclosure sale. You responded through counsel with Manning Fulton & Skinner PA, and the Committee carefully considered both the information received by it and your response. Additionally, Evan B. Horwitz with Manning Fulton & Skinner PA submitted a request for an advisory opinion regarding whether a corporate substitute trustee could represent itself *pro se* in foreclosure proceedings. His letter arguing that such representation should not be prohibited has been considered in this matter as well.

Based upon all of the evidence available, the Committee concluded that Priority Trustee Services of NC, LLC acts as a corporate substitute trustee on deeds of trust in North Carolina. In this role, Priority Trustee Services files notices of hearing as described in N.C. Gen. Stat. § 45-21.16 with offices of the clerk of court in counties in North Carolina. The hearings are held before the clerk of court. At such hearings, the clerk determines whether the evidence proves that the statutory requirements for proceeding with a foreclosure sale have been met. The statute states that the act of the clerk in either finding that the requirements are met or refusing to so find is a judicial act. Consequently, the process of obtaining the order authorizing foreclosure sale from the clerk is litigation.

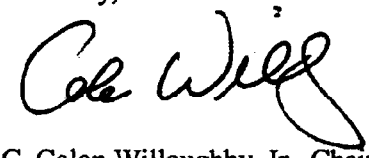
208 Fayetteville Street Mall Post Office Box 25908 Raleigh, NC 27611 (919) 828-4620 Fax (919) 834-8158

It is the unauthorized practice of law in North Carolina for a business corporation to engage in the practice of law. N.C. Gen. Stat. § 84- 5. The Court of Appeals of North Carolina has held that a corporation is prohibited from proceeding *pro se* in litigation under N.C. Gen. Stat. § 84-5, with certain specified exceptions. *Lexis Nexis v. Travishan Corp.*, 155 N.C. App. 205 (2002). Foreclosure hearings under N.C. Gen. Stat. § 45-21.16 are not listed in the specified exceptions of the *Lexis Nexis* case, and the language of the Court of Appeals does not support interpreting the exceptions broadly. *Id.; see also In the Matter of Appeal of Schwarz & Schwarz, Inc.*, 2004 N.C. App. LEXIS 384 (2004) (although unpublished, this opinion illustrates how narrowly the Court of Appeals interprets the exceptions listed by it in the *Lexis Nexis* case). The Committee concluded that your conduct constituted the unauthorized practice of law in violation of this statute. Accordingly, it voted to issue this Letter of Caution to notify you of its decision and to demand that you stop proceeding *pro se* in foreclosure proceedings under N.C. Gen. Stat. § 45-21.16.

Your conduct is illegal and must cease immediately. If you continue your activities, the State Bar may seek a court order to perpetually enjoin your unlawful conduct, as the Bar is authorized to do pursuant to North Carolina General Statute Section 84-7 and Chapter 1, Subchapter D, Section .0200 through .0207 of the Rules and Regulations of the North Carolina State Bar (copies enclosed). Please also be aware that the unauthorized practice of law can be prosecuted as a criminal misdemeanor offense pursuant to North Carolina General Statute Sections 84-7 and 84-8 (copies enclosed).

Please contact the Committee's counsel, Jennifer A. Porter, if you have any questions.

Sincerely,



C. Colon Willoughby, Jr., Chair
Authorized Practice Committee

CCW/paa

cc: Complainant
Evan B. Horwitz, Manning Fulton & Skinner PA