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SELF-HELP LEGAL SOFTWARE AND THE UNAUTHORIZED PRACTICE OF LAW

I. INTRODUCTION

The cost of legal assistance continues to rise every year as do almost all other services and products. As a result, each year it becomes more difficult not only for the poor to secure effective, competent, low cost legal assistance, but also the middle class. To combat the rising costs of legal services, many forms of self-help materials are available to the public. "Legal kits," form books, hornbooks and treatises, and statutory wills are just a few examples. More recently, self-help legal materials have been computerized.

Self-help legal software is now available to the general public. The software runs on the IBM PC, and several other popular home microcomputers. The user can purchase the software from a local retail outlet or order it direct from the publisher. The software poses questions to the user, analyzes the particular user's problem based on the facts and responses fed into it, and drafts a custom legal document for the user. The most popular packages draft wills, business agreements, promissory notes, power of attorney documents, and residential leases.

Although these computer programs are not true "expert system" programs based on artificial intelligence principles, they do perform a type of deductive reasoning. That is to say, if the user responds to a question with a "no", the program may ask a different subsequent question than if the user had responded with a "yes." Self-help legal software goes far beyond other self-help legal materials by providing an analysis of the specific user's problem, instead of the user performing his own analysis. These software programs should be distinguished from...
"Expert systems" are designed for use by professionals and contain representations of knowledge which can be deployed in the solving of given problems. The software programs available to consumers are nowhere near as sophisticated as "expert systems" and normally are of little use to the practicing lawyer.

Regardless of their lack of appeal to lawyers, self-help legal software is being used by consumers to handle transactions traditionally done by experienced lawyers. For example, drafting a will or lease agreement. This raises the issue of whether the software publisher, by providing the software to the public, is performing legal services such that it constitutes the unauthorized practice of law.

The purpose of this Note is to describe some of the self-help legal software that is currently available to consumers, discuss the unauthorized practice of law, and determine whether the publishing and sale of such software constitutes the unauthorized practice of law. The first section will discuss how the software, through deductive reasoning, performs an analysis of the particular user's problem. The advantages and disadvantages will be explored and the software will be compared to other types of self-help legal materials available to consumers.

The second section explains relevant aspects of the unauthorized practice of law. There are various statutes regulating and proscribing the unauthorized practice of law, and although there is no single uniform definition of the unauthorized practice of law, the state statutes are common in several aspects. An analysis of relevant case law is included and the policy reasons for preventing the unauthorized practice of law are presented.

Finally, this Note will analyze self-help legal software in light of the statutes and cases discussing the unauthorized practice of law, and conclude that self-help legal software is sophisticated enough to render legal advice to laypersons, but is not sophisticated enough to be considered a source of legal information that may be relied upon by users to sufficiently protect them in legal transactions. Self-help legal software has not been banned, at this time, by any jurisdiction. However, because the software provides what appears to be an analysis of the user's problem, unlike traditional sources of self-help information, and may be of questionable accuracy in all situations, self-help legal software should be banned as the unauthorized practice of law. It is in the public's in-

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8. Id. at 172. Such systems are referred to as Intelligent Knowledge-Based Systems.
terest to restrict the publishing of the software and to call the publishing the unauthorized practice of law. In addition, other sources of low cost legal information services should be encouraged.

II. SELF-HELP LEGAL SOFTWARE

Self-help legal software has been available for over four years from several software publishers and more publishers are likely to release similar software in the near future. The software is usually available from local software retailers or directly from the publisher, and most self-help legal software sells for between $25.00 and $100.00. The software is designed to run on most microcomputers of the type used by consumers in their homes or offices. A user's manual accompanies the software, describing how to use the software and often giving the user a general overview of the relevant law. The manual typically contains some type of disclaimer stating the limits of the software's capability and that the publisher does not guarantee the results.

The user places the disk containing the software into the computer's disk drive, boots the system, and the software then guides the user through a series of questions relating to that user's specific needs until it has enough information to complete and print out a customized legal document for that user.

For example, Residential Real Estate Lease, by Lassen Software, Inc. starts off by asking, "Is this lease for an apartment?" This question is designed to determine if the lease is for an apartment or a single family residence because there are numerous and significant differences between a lease written for one or the other. The program then asks for information regarding the names of the parties, address of the building, type of tenancy, terms of the lease, whether the user desires a provision specifying that the tenant agrees to maintain the premises in good condition, and so forth. The user either answers "yes", "no" or enters in the specific information requested. After the relevant questions have

10. Nolo Press publishes a software package called WillWriter, Lassen Software, Inc. publishes a package called Personal Lawyer, Michtron Inc. has a package called Business Agreements, Data Systems has a package called General Wills, and Haba Systems, Inc. publishes a package called Wills.

11. For example, WillWriter, available from Nolo Press Publishers, retails for $49.95. The Personal Lawyer Series from Lassen Software, Inc. is available as a set for $89.99, or individually starting at $29.99 for the Promissory Notes software.


13. Examples of a will produced on Nolo Press' WillWriter software, and a promissory note and residential real estate lease produced on Lassen Software's Personal Lawyer Series, are attached in Appendix B.
been asked and answered, the program chooses from several pre-drafted paragraphs and provisions in its memory, incorporates the data entered by the user, and finally prints out a "customized" document specifically for that user.

Another example is Nolo Press' WillWriter program. WillWriter, designed to draft a personal will, works in the same manner as Residential Real Estate Lease, but is more "menu-intensive." That is to say, every screen provides a menu at the bottom that lists all of the options available to the user at any given time. Certain limitations inherent in the software, however, affect the final document. For instance, the program, while allowing for the creation of trusts, will only create them for the testator's children. If the testator has a favorite niece for example, he cannot create a trust for that niece with WillWriter. In addition, any property left to his children by bequest is added to their trust accounts, thus making it impossible to separate family heirlooms from the trust accounts. The program also takes the liberty of leaving to every listed beneficiary and unlisted child of the testator, one dollar as evidence that the testator did not inadvertently leave his children out of his will.

One specific point to note about all self-help legal software packages in general, is that they are unable to distinguish differences between certain items, such as real and personal property. The WillWriter manual explains, correctly, that a testator must not leave both real and personal property together in one bequest because to do so voids the bequest. But despite the warning, if the testator attempts to leave both real and personal property together in one bequest, WillWriter (or any other software package) cannot alert the testator to his mistake.

The Wills software from Lassen Software, Inc. is similar to WillWriter from Nolo Press, with the exceptions that it does not allow the testator to create trusts, it automatically waives the bond requirement of the personal representative, and it contains provisions for funeral arrangements which would probably be moot by the time the will is read.

In some respects the documents created are standard legal forms in that the documents are based upon a finite set of assembled or unassembled paragraphs with predetermined blank spaces in the appropriate places to be modified by the user. It allows the user to add a personal touch to what arguably are prefabricated legal documents. In most cases the equivalent forms can be purchased from local stationery stores. California, for example, recognizes the validity of the California Statutory Will, available from the state bar for far less than the cost

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14. Brewlow, supra note 5.
of self-help legal software packages.\textsuperscript{15}

\section*{A. Advantages and Disadvantages of Self-Help Materials}

Self-help legal software provides essentially the same information that is available in most treatises, hornbooks, formbooks, self-help books and pamphlets. It goes far beyond a self-help book, however, because instead of forcing the user to analyze the problem on his own as he would if using a book, it performs or selects the appropriate "legal analysis" of the problem presented to it.\textsuperscript{16} The software has some advantages over other self-help materials, but has disadvantages as well.

From an advantage standpoint, self-help legal software provides a low cost, economical alternative to paying high legal fees to a lawyer for drafting a relatively simple will or promissory note. Because the software costs about $50.00 or less, the user may save substantial sums of money, especially if the user's financial situation changes after he has drafted his will and he needs to add codicils to the will or draft a completely new will. In most cases the changes can be done easily with the self-help software by making changes to the document stored on the user's disk and printing out a new document reflecting the changes. (Self-help books may be useful in drafting a will, but the user must do the actual writing). Normally, a person must consult the lawyer when he wants to make a change in his will, and the lawyer usually charges the client for each change.\textsuperscript{17}

Another advantage of self-help legal software is that it may be used for educational purposes.\textsuperscript{18} Permitting the publication and sale of self-help legal software for educational purposes allows the public to become better informed about specific areas of law. An individual seeking legal advice from a lawyer may be able to provide information to the lawyer that the person would have otherwise overlooked without having used the software first. (A good lawyer, however, should be able to adequately interview a client so that this would not be a factor). If he

\begin{itemize}
\item \textsuperscript{15} The California Statutory Will is available from the California State Bar for one dollar. It should be noted that the California Statutory Will provides for some of the same options available to the user of self-help legal software. For example, the testator may make bequests of real or personal property, and create trusts.
\item \textsuperscript{16} The term "legal analysis" as used here means any decision-making process, normally performed by the user of the self-help material, which is performed by the software. Thus, the term should not be construed as referring to the often complex analysis that trained lawyers use. While it is relevant to the topic of this Note, it would be impractical to include a discussion on the two forms of analysis. For a more detailed explanation of the difference, see, M. Polley, \textit{supra} note 5, at 5.
\item \textsuperscript{17} Most probate lawyers charge an hourly rate to make changes to a will, depending upon the changes made. Interview with Douglas Godbe, Esq. by Ross D. Vincenti (November 12, 1986) (discussing typical probate attorney billing methods).
\item \textsuperscript{18} M. Polley, \textit{supra} note 5, at 9-10; Thomas, \textit{supra} note 5, at 46.
\end{itemize}
drafts his own will, a user may feel that he has more control over his affairs and the eventual fate of his estate, and that he has a better understanding of his rights, duties and obligations in transactions with others.

Although the above advantages are not insignificant, there are many disadvantages common to legal self-help books and software, and some disadvantages unique to the software. A common disadvantage is the likelihood of incorrect or out-of-date information. Laws vary from state to state. Self-help material must be sufficiently broad to cover the variations, yet not so broad that it leaves out important details. On the other hand, self-help material that is too narrow might be cumbersome to use or understand, or it may be so detailed that the user becomes lost in the myriad of rules. One publisher of self-help legal books and software provides updates to its customers on changes in the law that might affect those customers. But this may not be adequate warning to the consumer who uses a self-help legal software program once to draft his will, and subsequently ignores follow-up information sent to him by the publisher in the belief that it is “junk mail.” If the user changes his address this may make it impossible for the publisher to keep the user adequately informed, thereby defeating the purpose of the update service. As one court put it, “The law is not static. It grows and changes from day to day, by legislative enactment and by judicial interpretation. What may be law to-day [sic] may not be the law tomorrow.” Thus, reliance by the user on the information contained in self-help books and software may be risky.

The user of self-help legal materials may misinterpret the information provided, or may not fully understand the relevant legal theories and principals involved. Because some legal language and terms are not easily translated into statements understood by laypersons, it is likely that a user of self-help legal materials would not be able to make the fine distinctions necessary to distinguish one legal theory from another. The user may fail to spot additional, relevant legal issues not explicitly analyzed by the self-help materials. Even if the user of self-help materials understands the information presented to him, he may not be getting the entire scope of the law governing the particular problem he seeks to solve, due to the limited amount of information that can be squeezed into a self-help book or computer program. Alternatively, if the amount of information presented to the user is enormous and ex-

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20. Nolo Press provides an update service to its customers to notify them of changes in the law that might affect their wills and about any improvements in its WillWriter software.
22. M. Polley, supra note 5, at 6; Thomas, supra note 5, at 44.
haustive in its thoroughness, the user may ignore important information because he is unable to resist the temptation to skip relevant background information necessary for him to understand the legal theory applicable to his situation.23

B. DISADVANTAGES UNIQUE TO SELF-HELP LEGAL SOFTWARE

In addition to the disadvantages common to all self-help legal materials, self-help legal software is subject to other problems. The software performs a legal analysis24 of a problem based upon the facts given to it by the user. In this respect it differs from treatises, hornbooks, printed digests, form books, and other self-help materials.25 The user may not communicate effectively with the software if the program asks for more than simple “yes” or “no” responses. Even if the program only requires simple “yes” or “no” responses, since the subsequent questions posed to the user will vary depending upon the previous response, one inaccurate response may substantially change the resulting analysis and perhaps the document itself.26 Often a fine distinction in the law is based upon one or two facts.27 Self-help legal software is more specific than other self-help materials which typically give a broad overview of the law, versus relating it to one person’s specific fact situation.

Current technology permits self-help legal software to perform

23. For example, the user’s manual provided with the WillWriter software package contains over two hundred pages of text and diagrams. Although most of the text is presented in relatively simple lay terms and there is a glossary, purchasers might not read the manual thoroughly before attempting to use the software. Even if the purchaser reads the entire manual there is the additional possibility that he will not fully understand the concepts presented to him. This may result in a will that fails to distribute his property according to his intentions or a will that fails to satisfy the Statute of Wills.

24. See supra note 16.

25. Freed, supra note 9.

26. WillWriter Manual, pt. 3.3 (Nolo Press, 1986). “The program takes you through the steps in writing your will in a definite order. The main reason we impose this logical sequence on you is that your answers to questions at one point in the program often affect what questions you need to answer later. For example, if you answer ‘yes’ to the question of whether you have children under 18, you are later provided the opportunity to name a personal guardian for them. However, if you say ‘no’ when you are asked if you have minor children, you obviously have no need to name a guardian to care for your non-existent minor children and WillWriter skips this step.”; Douglas B. Jacobs, Personal Lawyer/Residential Real Estate Lease Manual, p. 5 (1985). “[T]he program will respond with a series of questions concerning the property that is to be rented . . . . The program then asks subsequent questions based on the responses that you have previously given . . . . Once the complete set of questions has been asked, the program will design a lease based on the circumstances that you have described . . . . In this way the program can generate numerous unique leases specifically designed for the user, and at the same time ensure that the final lease is a valid legal document.”

27. Thomas, supra note 5, at 44.
only a limited analysis of the law because it is essentially a “check-list” type of analysis.\textsuperscript{28} In other words, the program analyzes problems through a logical checklist approach that accepts infinite variables.\textsuperscript{29} The result is that the user is buying a software package that performs an analysis of the law for a specific user’s situation, but that analysis is likely to be incomplete and therefore offer an incomplete solution to the user’s problem.\textsuperscript{30}

When a person reads a book or pamphlet for assistance in solving a legal problem, he actively analyzes his situation by analogizing the legal principles in the book to his situation. In contrast, a computer program that performs a legal analysis of the user’s situation assumes much of the thinking process the user would employ if he were reading a book or pamphlet. The user relinquishes significant control over the reasoning process and in doing so is a passive spectator, waiting for the final result.\textsuperscript{31} Because the system picks the legal options, the process of analysis may differ from that which would be used by the consumer working out of books or pamphlets.

Although some individuals may remain skeptical about computers in general, younger generations have grown up accustomed to them and, because of their familiarity with computers, may tend to rely more heavily on the resulting data or documents. While this may be reasonable when the program is without flaws or the data is accurately entered into the computer, it would be unreasonable to assume that just because the analysis of the problem was performed by a computer it must be accurate. For example, none of the will-producing software purports to consider estate or inheritance tax consequences of the choices made by the user of the software. In some cases the user may not fully grasp the significance or meaning of the question posed to him by the program. Because of this “inquiry ambiguity” the input data itself may be inaccurate with the result that the final document is not representative of the user’s intent.

Users of self-help legal software may be lulled into a false sense of security because the computer appears to be offering legal advice and

\textsuperscript{28} M. Polley, \textit{supra} note 5, at 5.

\textsuperscript{29} An example is where the user inserts into his will the particular items he bequests, such as “my gold watch and signet ring.” These statements of bequest are necessarily unlimited in scope because the testator leaves whatever he wishes. Alternatively, a landlord may insert almost any provision agreed to by the tenant in a lease agreement as long as it does not violate public policy. Thus, these variables will be different for every document.

\textsuperscript{30} M. Polley, \textit{supra} note 5, at 5.

\textsuperscript{31} \textit{Id. at 6.} \textit{But cf.,} Solomon and Grossman, \textit{Computers and Legal Reasoning,} 121 TR. & EST. 43 (Oct., 1982). “Reading a book may become a passive activity, whereas working at a computer terminal is not. Because at a terminal the user must respond to questions in order to advance the program, a higher degree of alertness is fostered.”
making complex decisions based upon the specific facts fed into it. Consequently the user may believe that all relevant legal issues and theories have been adequately explored.\(^2\) This phenomenon is referred to as the "aura of credibility."\(^3\)

Despite this "aura of credibility," it is possible a user of self-help legal software may be unhappy with the results. When the user of self-help legal software is unhappy with the results, for example where a potential tenant balks at signing a computer-generated lease because it contains illegal provisions, he has three options. First, he may try to return the software and get his money back. Second, depending on how strongly he is influenced by the "aura of credibility," he may determine that the computer has achieved the best result possible under his circumstances. This may eliminate any desire on the user's part to effect legal reform. Lawyers, on the other hand, are less likely to take the law at its face value and are more likely either to find exceptions to the rule or to challenge the rule outright. This is part of the lawyer's job as an advocate for his client and it is difficult to imagine a computer zealously representing the user in this manner.\(^4\) The third option is for the user to consult a lawyer. The fact that the user has already invested in self-help legal software that was designed to relieve him of this situation only adds insult to injury.

The process of legal analysis itself must be considered as well. A disadvantage unique to self-help legal software is that while it may be able to perform deductive legal analysis by drawing a legal conclusion from a particular fact situation in light of some body of legal doctrine, it cannot consider additional factors not programmed into it.\(^5\) For example, such factors as logical progression, historical development, custom, and social justice, are considered by lawyers and judges alike in the process of legal reasoning.\(^6\) Thus, while legal analysis may be logically structured so that a computer can render legal advice, legal reasoning is not always logical and might be impossible to program onto a computer.

This inability of the computer to think beyond the limits of its program has prompted computer experts to work toward the development of "expert systems" based upon artificial intelligence.\(^7\) Such systems, if ever developed, in theory would be capable of closely approximating the thought process of humans. Unfortunately, even if developed into

\(^{32}\) M. Polley, supra note 5, at 6; Breslow, supra note 5, at 142.


\(^{34}\) Thomas, supra note 5, at 45.


\(^{36}\) Id.

\(^{37}\) Susskind, supra note 7.
working systems, “expert systems” would be prohibitively expensive for lay use and would require legal training to understand the concepts utilized in such systems.

It is unlikely that self-help legal software will ever accurately emulate the analysis provided by a lawyer.38 For this reason it may be unwise for the layperson to rely on self-help legal software, even for the most basic transactions. Simple transactions may be fraught with unforeseeable problems and abstract sub-issues, and while a self-help legal software program can provide some measure of protection by providing the user with variations of standard documents, the analysis undertaken by the computer cannot consider the subtle and intricate nuances which exist between conflicting case law and public policy issues.39 For example, one software program that permits the user/landlord to specify in a residential lease that he is under no duty to maintain the premises in a condition fit for residential use, contradicts public policy considerations in most states that require a landlord to maintain the premises in habitable condition regardless of what the lease agreement states.40 Thus, the software misinforms the user as to the law in many, if not most, jurisdictions, and misleads the user into believing he may contract away certain of his legal rights.

C. WHOM IT WILL IMPACT

The users of self-help legal software are likely to come from middle-class backgrounds. This is so for two reasons. First, it is doubtful that wealthy individuals would be willing to rely on a $49.95 software package to handle their legal affairs.41 When the potential losses are so high and lawyers’ fees are only a fraction of the potential losses, wealthy individuals will seek out competent legal advice. Second, the poor and indigent would not be able to afford the software, would not have access to a computer to run it on, and most importantly would not be involved in estate planning, promissory notes or designing lease agreements for their tenants. Thus, as a low cost alternative to high lawyers’ fees self-help legal software fails to assist those who need low cost legal assistance the most. Two viable alternatives for the poor, however, are to seek assistance from free legal clinics in their community and pro bono help from various local law firms.

40. Breslow, supra note 5, at 141. Residential Real Estate Lease, available from Lassen Software, Inc. also contains a provision allowing the landlord to cancel the lease in the event that the tenant files for bankruptcy. This clearly is contrary to proposed federal bankruptcy provisions under 11 U.S.C. § 541(c)(1) (1986).
41. See, supra note 11.
Because upper-class and lower-class society are probably excluded as users of self-help legal software, the typical user will be middle-class. The user may have a serious distrust of lawyers and have decided that a software program is preferable as a reasonably trustworthy alternative, especially if he is susceptible to the "aura of credibility" syndrome. On the other hand, the user may simply want to handle some of his own legal affairs for the lowest possible cost. By purchasing a software program that apparently performs legal analysis, he saves both money and the time it would take him to go to his local law library, do his own research, and perform his own analysis. The person's financial situation may be such that he is the ideal consumer of self-help legal software. For example, his estate would be large enough to require the drafting of a will, yet not large enough to necessitate hiring a lawyer to draft a simple will leaving everything to his wife. Likewise, he may wish to have a promissory note in exchange for a moderate loan he made to a friend, which if not repaid would not go unnoticed.

III. THE UNAUTHORIZED PRACTICE OF LAW

A. THE POWER TO REGULATE

The authority to regulate the practice of law belongs to the states. Most state constitutions delegate this authority to the judicial branch of the state government usually through a separation of powers provision. Even with a separation of powers provision, however, state legislatures usually set minimum standards regarding the practice of law so as to aid the judicial branch.

Every state has a statute or statutes defining and regulating the practice of law. Yet the authority and responsibility for controlling the unauthorized practice of law generally falls on the courts. Thus, the interpretation of the statutes and the determination of what acts constitute the practice of law is made by the courts. The statutes themselves range from the general to the specific. In the case of the generally worded statutes, courts will have wide discretion in determining which activities should be restricted and which should be permit-
In some instances courts have practically usurped the legislature's ability to regulate the unauthorized practice of law claiming that the authority to regulate the practice of law is exclusive to the judicial branch.\(^\text{50}\)

The most general types of statutes are known as Integration Acts.\(^\text{51}\) Utilized by most states, these statutes require that a person be a member of the state bar in order to practice law in that state.\(^\text{52}\) By limiting the practice of law to members of the state bar or bar association the courts accomplish two tasks. First, the statute prevents non-members from practicing law and thus ensures that at least minimum standards of competence have been met by all lawyers practicing in the state. Second, the statute allows for the control and discipline of members who fail to adhere to the rules and regulations of the state bar. A layperson is not subject to these restrictions.

Because each state regulates the practice of law within its borders, the definition of what activities constitute the practice of law vary from state to state. The American Bar Association has not undertaken any steps to come up with a single definition suitable for adoption by all the states, and has determined that it is up to the states to draft their own definitions.\(^\text{53}\) In spite of the fact that each state drafts its own definition, all state statutes defining the practice of law list the following activities;

(a) representing others before judicial or administrative bodies;
(b) advising others on their legal rights and problems on a regular basis or for a fee; and
(c) drafting legal instruments for others.\(^\text{54}\)

52. See, e.g., ALA. CODE § 34-3-6 (1975); West 17A ARIZ. S. CT. R. 27(a)3 (1973); CAL. BUS. & PROF. CODE § 6125 (West 1974); 1A TEX. REV. CIV. STAT. ANN. art. 320a-1, § 10(a) (Vernon 1986).
54. See, generally, Comment, *Computer Retrieval of the Law: A Challenge to the Concept of Unauthorized Practice*, 116 U. PA. L. REV. 1261, 1271 (1968) [Hereinafter referred to as *Computer Retrieval of the Law*]; Fischer and Lachman, supra note 44, at 15; N.C. GEN. STAT. § 84-2.1 (1985) "Practice of law defined.—The phrase 'practice law' as used in this chapter is defined to be performing any legal service for any person, firm or corporation, with or without compensation, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, or assisting by ad-
Because the scope of this Note is limited to the use of self-help legal software, and does not deal with issues of representation, only (b) and (c) will be discussed.

It is important to note that all jurisdictions provide an exception to the above general principles for self-representation. This is based upon the notion that every person has the right to waive counsel and appear for himself in a court of law. It is considered a violation of due process to deny any person the right to plead and conduct his own case.

This due process right appears to create a conflict for the state bars which seek to stop the unauthorized practice of law. The state bars have an interest in restricting the use of self-help materials that perform legal analysis for the user. Balanced against this valid interest of the state is the individual's right to have access to legal reporters, digests, form books, and other materials not only for the purpose of self-representation, but for general knowledge. It is obvious that the state cannot restrict the layperson's right to use such materials.

Instead, the court should consider whether the publisher who produces self-help legal material (such as software) is engaged in the unauthorized practice of law. The issue can be resolved by looking to see whether the materials (1) advise others of their legal rights, or (2) draft legal instruments. If courts determine that the materials perform either function, the materials could simply be outlawed and would no longer be available to the public, unlike other materials (such as books and pamphlets) that do not perform any legal analysis and do not violate the statutes.

The two criteria above, giving legal advice and drafting legal instruments, will be interpreted in different ways by different jurisdictions. Depending upon the specific facts involved, activities one jurisdiction characterizes as the unauthorized practice of law may be authorized in a different jurisdiction. The court in State Bar v. Cramer stated that "the descriptive definitions [of the practice of law] which have been agreed upon from time to time have only permitted disposition of specific questions. These definitions have been relatively helpful in count-
selsing conduct but have provided no sure guide for the public's protection." One author noted that because courts have been unable to agree upon a definition of what acts constitute the practice of law the result "has been a line of decisions consistent only in their inconsistency. . . ." Thus, when presented with first impression cases, courts apparently look for the most analogous situation they can find and, similar to pounding a square peg into a round hole, force a sometimes arbitrary decision upon the parties. In this era of computers and rapidly changing technology, it is likely that some decisions will be rendered moot before they are published. The result, of course, is a lack of a clearly defined line between legal activities and illegal activities.

Since there are no previous cases discussing the relationship of self-help legal software and the unauthorized practice of law, it is necessary to analogize the software to other self-help materials considered by the courts such as publications, and to situations involving either the drafting of legal instruments or legal "kits."

B. PUBLICATIONS

The act of advising others may take many forms beyond merely speaking to another person. It may consist of advising others through books, pamphlets, or even radio broadcasts. When presented with the question of whether a particular act constitutes the giving of legal advice, courts typically do not look so much at the medium through which that advice is given, but instead look at the content of the material to determine what was said. This results in decisions that may contradict other decisions based upon similar facts, but in a different jurisdiction.

In Oregon State Bar v. Gilchrist, the Supreme Court of Oregon held that the advertisement, publication, and sale of legal form books containing instructions that gave advice on which forms to use did not constitute the unauthorized practice of law. In marked contrast to Gil-

59. Id. at 116, 122 N.W.2d at 6.
66. 272 Or. 552, 538 P.2d 913 (1975).
Christ is Florida Bar v. American Legal & Business Forms, Inc., where the court held that the inclusion of printed instructions with legal forms constituted the unauthorized practice of law because the complexity of the forms necessitated professional assistance. It should be noted that in at least one jurisdiction, the mere selling of legal forms alone was declared illegal because the court felt that certain instruments such as wills cannot be standardized.

The issue over what publications constitute the giving of legal advice stretch back several decades. Typically the courts are asked to determine at what point a publication discussing one or more aspects of the law becomes more than a general discussion and turns into legal advice such that it constitutes the unauthorized practice of law. Most courts hold that a publication does not constitute the unauthorized practice of law if (1) the information is general in nature, (2) it is directed at the general public and not toward a particular person's problem, and (3) there is no personal contact between the publisher and the purchaser of the publication, i.e. not a question-and-answer type service. This means that a publication that gives direct legal information and advice, or offers specific legal information or other legal services to a particular individual constitutes the unauthorized practice of law.

One of the more significant cases addressing this issue was N.Y. County Lawyers' Ass'n v. Dacey. The Dacey court held that the publication and sale of a book entitled “How To Avoid Probate”, containing fifty-five pages of text and three hundred ten pages of forms did not

67. 274 So.2d 225 (Fla. 1973).
68. Palmer v. Unauthorized Practice Comm. of the State Bar of Texas, 438 S.W.2d 374 (Tex. Civ. App. 1969); A number of states, however, specifically authorize and make available to the public a statutory will. California and Michigan, for example, have provided statutory wills for several years. For a more indepth discussion of statutory wills, see, Harvey, Stationers' Will Forms: In re Philip and other cases, 10 MAN. L. J. 481 (Fall, 1980); Lawrence and Sytsma, Michigan Statutory Wills, 64 MICH. B. J. 677 (July, 1985); Girdner, State's Consumer's Snapping Up Wills Under New Statute; But Few Individuals Consult Attorneys on Simple Forms, 96 L. A. Daily J., p. 1, col. 6 (Jan. 27, 1983); Granelli, Do-It-Yourself Wills Ready In California, 5 NAT. L. J. p. 7, col. 1 (Nov. 1, 1982); California Bar Sells 175,000 Will Forms, 9 B. Leader 7 (Jan. - Feb. 1984).
69. See, e.g., Cain v. Merchants Nat'l Bank & Trust Co. of Fargo, 66 N.D. 746, 268 N.W. 719 (1936).
constitute the unauthorized practice of law. The court reviewed to whom the information was addressed and determined since it did not give particular advice to a specific individual it was aimed at the general public, thus there was no identifiable recipient of the information such that it would be specific legal advice.

In 1973 the Florida Supreme Court addressed almost the exact same circumstances as the *Dacey* court, but reached the opposite conclusion. In *Florida Bar v. American Legal & Business Forms, Inc.* ,75 the court held that the sale of "package" forms constituted the unauthorized practice of law. The court looked at the instruction book included with the forms and stated "[w]e perceive no harm to the public . . . and perhaps a service, in having printed legal forms and copies of statutes available, PROVIDED they do not carry with them what purports to be instructions on how to fill out such forms or how they are to be used . . . ."76 (emphasis in original).

In determining when legal advice is directed at a specific person and not at the general public, it is important to consider for whom the information and advice is being prepared.77 For example, when a law clerk researches a legal issue the research is done with a specific fact situation in mind. The law clerk researches the law and applies the law to the specific facts to arrive at a recommendation for the lawyer who employs him. Because this information and recommendation goes through the lawyer first, who then analyzes the matter based upon his own experience and knowledge of the law, it does not constitute the unauthorized practice of law. If the law clerk were to pass the same information and recommendation on to a layperson, he would be guilty of the unauthorized practice of the law.78 Thus, depending on who the recipient of the information is, any unlicensed provider of legal advice may be engaged in the unauthorized practice of law if the advice is specific in nature.

Personal contact between the publisher or offerer of the legal advice and the consumer may take many forms. It is not necessary for the offerer actually to meet with his customer face to face, as contact through the mail79 is considered to be sufficient contact to be the unauthorized practice of law. What the courts are trying to discourage are question-and-answer type services. An extreme example of this type of service is *Rosenthal v. Shepard Broadcasting Service, Inc.* ,80 where the

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75. 274 So.2d 225 (Fla. 1973).
76. Id. at 227.
77. *Computer Retrieval of the Law, supra* note 54, at 1272.
78. Id.
80. 299 Mass. 286, 12 N.E.2d 819 (1938).
defendant operated a radio station and broadcast programs entitled “Court of Common Troubles” and “Goodwill Court.” Listeners submitted specific questions about their legal problems which were read to a panel of judges, who then issued an advisory opinion. The court held this to constitute the unauthorized practice of law because “[t]he giving of legal advice in the manner described in the master’s report not only violates the confidential relation of an attorney and client but is inconsistent with the traditional standards of the bar and the courts.”81

C. DRAFTING LEGAL INSTRUMENTS FOR OTHERS

The second major activity the courts hold as an unauthorized practice of law is drafting legal instruments. Perhaps no other activity has received more attention by courts attempting to define the practice of law than the issue of drafting legal instruments. The variety of documents considered “legal instruments” is enormous and contributes to the legal system’s case-by-case approach, rather than encouraging a standard definition of legal instrument.

The determination that a document is a legal instrument is only half the issue. The other half of the question is what constitutes the drafting of a legal instrument. If it is more than the mere filling in of blanks, then a person who uses a preprinted form would not be engaged in the unauthorized practice of law by filling in those blanks. On the other hand, if the term drafting is construed broadly by the courts, even the filling in of blank spaces may constitute the unauthorized practice of law.82

Authorities are split over what constitutes “drafting” of the instrument. Some hold that merely filling in the blanks on a standard legal form constitutes drafting, while other courts require something more.83 Generally speaking, the more involved the filling in becomes, the more likely the court will call it the unauthorized practice of law.84 There are essentially two situations where the drafting of legal instruments occurs. The first is when the layperson fills in the blanks on his own

81. Id. at 821. The opinion of the court seems to be based more on traditional values and not on any readily identifiable legal principal.
82. A.B.A. Comm. on Unauthorized Practice of Law, Informative Opinion (1936).
84. See, e.g., In re Eastern Idaho Loan & Trust Co., 49 Idaho 280, 285-6, 288 P. 157, 160 (1930). The court held that while every layperson has the right to perform simple clerical filing out of blanks or drawing instruments not requiring the determination of the legal effect of special facts or conditions, “where an instrument is to be shaped from a mass of facts and conditions, the legal effect of which must be carefully determined by a mind trained in the existing laws in order to insure a specific result and guard against others, more than the knowledge of the layman is required . . . .” (quoted in A.B.A. Comm. on Unauthorized Practice of Law, Informative Opinion (1936)).
form provided to him either by a bar association or from other sources such as legal "kits." The second is when a person either fills in a blank document for another or draws up a commonly used business document for legal purposes, such as trust deeds, mortgages, deeds of conveyance, or wills.

The vast majority of cases fall into the second category. Most cases involve a real estate broker who drafts such documents as an incidental part of his business. While courts acknowledge that technically the act of drafting deeds of conveyance, mortgages and the like do constitute the unauthorized practice of law, many courts are reluctant to find the defendants guilty.85 In refusing to enjoin real estate brokers from continuing to perform legal functions, most courts emphasize the traditional role real estate brokers have played in land conveyancing,86 the convenience to the public of allowing the practice to continue,87 and the fact that it is "incidental to business" as a real estate broker.88

More recent decisions have centered on the availability of "Divorce Kits."89 These kits are essentially a compilation of the forms required to file for divorce in states permitting self-filed divorces. These do-it-yourself kits also include instructions on how to fill out the forms, and this is what most disputes have centered on.90 Depending on the forms and instructions included, some courts have held that the distribution and sale of such kits is the unauthorized practice of law. In Florida Bar v. Stupica,91 the Florida Supreme Court held that the furnishing of divorce kits which contained every form necessary to effectuate a divorce constituted the unauthorized practice of law.92

In contrast, the court in State v. Winder,93 relying on the Court of Appeals earlier decision in Dacey, held that even though a divorce kit contains instructions on how to fill out the forms included in the kit, "because of the absence of the essential element of 'legal practice—the representation and advising of a particular person in a particular situa-

86. See, e.g., State ex rel. Reynolds v. Dinger, 14 Wis. 2d 193, 109 N.W.2d 685 (1961).
87. Id.
88. See, e.g., Note, supra note 1.
89. Id.
91. 300 So.2d 683 (Fla. 1974).
92. The kit contained, inter alia, petition for dissolution of marriage; answer thereto; summons; sworn statement for constructive service; notice of petition for dissolution of marriage; motion for default; default; joint stipulations for motion for final hearing; order setting final hearing; final judgment of dissolution; and the necessary instructions.
tion' in the publication and sale of kits . . . ,"94 there was no unauthorized practice of law by the defendant.

D. Policy Arguments For Restricting the Practice of Law

Although all courts have not reached a consensus of the definition of the unauthorized practice of law, in cases where unauthorized practice was found, there is surprising similarity in their analyses of the policy reasons for restricting the practice of law only to lawyers. The primary reason cited in virtually every case which discusses unauthorized practice is for the protection of the public.95 In our adversarial system, peoples' rights, property, and integrity are at stake; thus, courts have a responsibility to protect laypersons from incompetent advice.

In those cases where the courts have upheld the practice of allowing laypersons to complete standardized forms or draft instruments incidental to their business, the courts have simply changed the definition of public interest, continuing to rely on public policy arguments. For example, in Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n,96 the court allowed real estate brokers to continue drafting trust deeds and mortgages based upon the fact that there were only twenty-four lawyers in twenty counties of Colorado, reasoning that it was in the public interest to permit such practices in light of the circumstances.

A second argument for restricting the practice of law is to preserve the integrity of the legal profession. When a lawyer gives unsound legal advice to a client, and the client relies on the advice to his detriment, not only can the lawyer be sued for malpractice, the lawyer may be disciplined by the state bar as well. Such right of action is not provided for solely to enforce private remedies, but is instead designed to protect both the courts and the public from incompetent lawyers who impugn the dignity of the courts.97

In contrast, a layperson cannot be disciplined by the state bar or bar association for acts constituting the unauthorized practice of law.98 The only resort is for the courts to broadly interpret legislative wording and deem the acts illegal. One basis for a decision to classify an activity as unauthorized practice is the traditional standards of the bar and the

94. Id. at 272.
96. 135 Colo. 398, 3212 P.2d 998 (1957).
98. The layperson is subject to civil liability on a variety of theories, however. See generally, M. Polley, supra note 5.
courts. For example, in one case where legal advice was rendered by a judge, but was broadcast over the radio, the court held it to constitute the unauthorized practice of law because of its "untraditional" approach.99

One commentator suggests that another reason for restricting the availability of lay information sources is to protect the courts from further burdens on their already overcrowded schedules. "The danger to the courts, of course, lies in the terrible burdens which 'do-it-yourself' kits place on court personnel and judges—who can't possibly help the parties before them to represent themselves and act as judge [sic] as well."100

Finally, it has been suggested that lawyers are merely trying to maintain their monopoly on the legal profession by eliminating any form of competition, that they are motivated only by economic concerns,101 and that lawyers in general are untrustworthy.102 Some groups charge that there are too many lawyers and a dearth of business for them.103

IV. THE SALE OF SELF-HELP LEGAL SOFTWARE CONSTITUTES THE UNAUTHORIZED PRACTICE OF LAW

A. SPECIFIC INFORMATION SOURCE

From the previous discussion in section II, it should be apparent that self-help legal software are more than general information sources like treatises or hornbooks. While the publishers claim that their software does nothing more than provide general information, the fact is that self-help legal software goes far beyond the typical treatise in presenting information to the user. Unlike treatises and hornbooks, software programs are not passive dissertations of the law; instead, they use particular facts to develop documents. If, as the publishers claim, their software only put basic standardized forms into disks that can be read by computers and printed out, this would probably not constitute the unauthorized practice of law. This argument, however, loses its strength when one considers that if that were the case, a consumer would be better off financially by ordering a blank form for wills from his state bar or bar association. This costs far less than typical self-help

100. Buesser, supra, note 1, at 14.
101. Id. at 12.
legal software.\textsuperscript{104} Thus, to increase the attractiveness of the software publishers must give it some analytical capabilities. If software had no greater capabilities than simple forms, software publishers would go out of business.

Self-help legal software is sold to the purchaser on the implied promise that it is useful for the specific problems and facts relating to each user. The software is not designed to teach law. Instead, it is designed to consider the facts fed into it, draft a legal instrument appropriate for the particular situation, and provide instructions to the user on how to fill out the drafted instrument—in essence, everything a lawyer would do for a client. In fact, one software publisher's pitch is “Your Personal Computer becomes your attorney!”\textsuperscript{105}

Use of the software involves a series of specific questions. the user’s response to each question determines the next question that the software asks.\textsuperscript{106} In this respect the software is acting as more than a mere editing device because the author of the program has predeter-

dined what questions will follow what responses in a deductive reasoning process. Regardless of whether the programmer was a lawyer or a layperson this reasoning process takes away the user’s own reasoning process, reducing him to a provider of facts, just as he would be were he to visit a lawyer.

When a computer system reaches this point of development it arguably involves the practice of law. In 1967 the American Bar Association Standing Committee on Unauthorized Practice of the Law addressed this issue and its relationship to library retrieval services similar to LEXIS and WESTLAW. Its conclusion is equally applicable to self-help legal software. The report stated

\begin{quote}
When, however, the system becomes so sophisticated that facts are fed into it from which the system draws legal conclusions based on \textit{specific legal analysis}, it would involve the practice of law. On well established principles, these services may be rendered only to \textit{lawyers}, for as soon as the spectrum of services becomes broader, so that the services are rendered to \textit{non-lawyers}, it impinges upon the unauthorized practice of law (emphasis in original).\textsuperscript{107}
\end{quote}

Of course, self-help legal software publishers will dispute the meaning of the terms “legal conclusions” and “specific legal analysis.”

Self-help legal software is dangerous in that it is sophisticated enough to perform a perfunctory analysis of the user’s problem

\begin{flushleft}
\textsuperscript{104} Breslow, supra note 5, at 139.
\textsuperscript{105} Chevreau, \textit{Think of it! Producing a Will in 90 Minutes}, 10 \textit{Canadian Law}. 40, 43 (Apr. 1986).
\textsuperscript{106} See, supra note 26.
\end{flushleft}
(through the program) and give advice (through the program and its instruction manual), but is not as sophisticated as a true artificial intelligence system, which, if available, would perform a more complete analysis.\textsuperscript{108} The user is encouraged to rely on the output as accurate for his particular situation or problem. Certainly there are instances where this might be true, but it is equally probable that the output will be limited in its scope or flexibility, thereby creating the risk of depriving the user of valuable legal rights. In such cases the "advice" given to the user is faulty because it gives the user the impression that there are only a few solutions to his problem when there may be alternative solutions the system is not programmed to consider.

\section*{B. DRAFTING CAPABILITIES}

There is another reason why self-help legal software should be prohibited. It is capable of drafting legal instruments that are "personalized" to each user.\textsuperscript{109} Standard legal forms specifically adopted by a state legislature as valid in that state do not pose an unauthorized practice problem because the state legislature has authorized their use by the lay public. In contrast, self-help legal software publishers claim that the user can create custom documents with their software. The legal documents produced are based upon prefabricated legal documents, but by "analyzing" the facts fed into it, the computer modifies that legal document for each user. This, in effect, gives the impression that it is the proper document for that user based upon his situation. The system is doing more than filling in blanks, it is determining what blanks go where and the selection and structure of the language in the document. Even if the document turns out to be the correct document the publisher should not be relieved from charges of unauthorized practice.\textsuperscript{110}

\textsuperscript{108} Compare, Breslow, \textit{supra} note 5, at 142 with M. Polley, \textit{supra} note 5, at 6. Breslow states that the self-help legal software package available from Lassen Software, Inc. entitled \textit{Personal Lawyer} does not actually make complex decisions based on the user's input. Polley, on the other hand, states that Computer-Aided Legal Analysis systems similar in concept to the currently available self-help legal software packages do perform legal analysis upon which the layperson may rely for legal advice.

\textsuperscript{109} Clark v. Reardon, 231 Mo. App. 666, 104 S.W.2d 407 (1937). The court considered whether drafting an assignment and giving legal advice constituted the unauthorized practice of law stating: "It avails nothing to say that some lawyer . . . prepared and advised the use of a similar form or of the identical form, at some other time and place. The law is not static. It grows and changes from day to day, by legislative enactment and by judicial interpretation. . . . Any one who wants to pay the price may purchase a set of form books and read and copy them. He may use them in his own business if he so desires. But when he advises others for a consideration, that this or that is the law, or that this
C. USE OF DISCLAIMERS

Self-help legal software packages usually carry disclaimers warning the user that the software may not be completely up to date, may suffer some omissions or other inaccuracies, and that the user is completely responsible for the results. Most packages disclaim not only all express and implied warranties, but also any liability attributable to errors, omissions or inaccuracies. Software publishers are in effect saying that the results obtained with their software may not survive a legal challenge and for those cases it is best to retain a lawyer.

If such disclaimers are upheld, consumers may lose access to a form of low cost legal assistance because the consumer would have to pay for legal assistance twice to achieve a satisfactory result. After he purchases the software he is warned that he should consult a lawyer to make sure the results would survive a challenge. He would be better off seeing the lawyer initially, because it is unlikely a consumer would know when to doubt the results without a lawyer's assistance. On the other hand, if the disclaimers are not upheld, either the cost of the software will rise as publishers' liability insurance costs rise, or the software will cease to be available. In either scenario, the consumer loses.

The disclaimer in Nolo Press' WillWriter package specifically states the publisher cannot be held liable because "we have no control over whether you carefully follow our instructions . . . ." This raises the question of whether the user really is responsible for the results when the analysis of the problem is taken away from the user and is

form or that is the proper form to be used in a certain transaction, then he is doing all that a lawyer does when a client seeks his advice." Id. at 410.

111. Nolo Press, a publisher of self-help materials and software, provides a disclaimer with its WillWriter software which states "please be aware that laws and procedures in various states are constantly changing and are subject to differing interpretations. Also, we have no control over whether you carefully follow our instructions or properly understand the information contained on the WillWriter disk or this manual. Of necessity, therefore, neither Nolo Press nor Legisoft makes any guarantees concerning the use to which the WillWriter program or its manual is put, or the results of that use." . . . . "If you want a legal opinion regarding the legal effect of any will you write using WillWriter, have it reviewed by an attorney in your state who specializes in wills and estate planning. Also, if you become confused by any aspect of WillWriter or the manual, we recommend you talk to a lawyer before further use." WillWriter Manual supra note 25, at 3; Lassen Software provides a disclaimer on the back of its instruction manual for each of its legal software packages. "This program, instruction manual, and reference materials are sold 'as is,' without warranty as to their performance, merchantability or fitness for any particular purpose. The entire risk as to the results and performance of this program is assumed by you . . . . Your sole and exclusive remedy in the vent of a defect is expressly limited to replacement of the diskette as provided above."

112. M. Polley, supra note 5, at 7.

performed by the computer. If the user, in fact, carefully follows all of the instructions, properly enters his facts, and answers the questions posed to him, it is difficult to see how the user's control over the results differ from when he does not strictly follow the instructions because the computer is performing the actual analysis. On the other hand, one commentator suggests that because of the passive nature of entering facts into a computer, the user may overlook matters that he might otherwise have considered while using books which require more active reasoning.\textsuperscript{114}

The person with a legal problem who goes to a lawyer for legal advice and documents at least has some assurance that the lawyer is qualified to practice law in his state. In addition, the client receives the added assurance that if he is later injured by the incompetence of the lawyer he can pursue a cause of action against the lawyer for malpractice. The user of self-help legal software receives none of the above assurances. It is argued that the injured user of self-help legal software may have a cause of action against the publisher for products liability in either strict liability or negligence.\textsuperscript{115} The availability of either basis of liability is not clear because of the dispute over whether software is a product or a service. If the disclaimers are upheld, however, it would be difficult, if not impossible, to overcome this additional barrier to recovery.\textsuperscript{116}

V. THE STATE BAR OR BAR ASSOCIATIONS SHOULD DISCOURAGE THE PUBLICATION AND SALE OF SELF-HELP LEGAL SOFTWARE

Because the states have an interest in protecting the public from incompetent legal assistance, the state bar or bar associations should take affirmative steps to prevent software publishers from distributing self-help legal software. The Iowa Supreme Court recognized the danger of allowing the unauthorized practice of law to go unchecked in \textit{Bump v. District Court of Polk County.}\textsuperscript{117} The court stated

The public, far more than the lawyers, suffers injury from unauthorized practice of law. The fight to stop it is the public's fight . . . . Unauthorized practice of law is the attempt by laymen and corporations to make it a business for profit of giving the public, as a substitute, the services of unqualified and unprofessional persons . . . .\textsuperscript{118}

Allowing the sale of self-help legal software to continue unchecked

\textsuperscript{114} M. Polley, \textit{supra} note 5, at 6.
\textsuperscript{115} Id. at 15.
\textsuperscript{116} For a discussion of the types of claims a user of legal analysis software may have, see M. Polley, \textit{supra} note 5, at 18-25.
\textsuperscript{117} 232 Iowa 623, 5 N.W.2d 914 (Iowa, 1942).
\textsuperscript{118} Id. at 639.
would cause more harm to the public than depriving the public of this source of legal information.

The states have several alternatives available to prevent the sale of self-help legal software;\textsuperscript{119} the most severe is criminal prosecution.\textsuperscript{120} It requires that the state legislature enact a statute and establish criminal penalties for the unauthorized practice of law. Most states have followed this alternative.\textsuperscript{121} Most of the statutes make it a misdemeanor offense to engage in the unauthorized practice of law.\textsuperscript{122} This is a rather Draconian measure considering the nature of the crime and the fact that it is probable that the typical offender does not possess criminal intent to cause harm.\textsuperscript{123} Instead, he is probably trying to fill a niche in the market for legal services. In addition, it is questionable whether criminal penalties are an effective deterrent, especially if the business is lucrative.\textsuperscript{124}

A more effective alternative is for state bar or bar associations to meet with offenders and request that they cease publishing the software.\textsuperscript{125} It is possible the publisher believes that it is not engaged in the unauthorized practice of law by distributing self-help legal software. A frank discussion with a lawyer well versed in the unauthorized practice field may be all that is necessary to prevent further sales of the software. If the publisher continues to publish the software, the state bar or bar association may bring a lawsuit seeking injunctive relief.\textsuperscript{126}

The use of injunctive suits is not only the most popular method of dealing with unauthorized practice offenders, it is also the most effective.\textsuperscript{127} This is done at the state or local level where the state bar or bar association sues the offender and seeks injunctive relief preventing further acts of unauthorized practice. The state bar's ability to bring suit against unauthorized practice offenders rests on several grounds.\textsuperscript{128} In some states it is authorized by statute.\textsuperscript{129} Other states hold that the bar

\begin{itemize}
\item \textsuperscript{119} Note, \textit{Remedies Available to Combat the Unauthorized Practice of Law}, 62 \textit{COLUM. L. REV.} 501 (1962).
\item \textsuperscript{120} \textit{Id.} at 501.
\item \textsuperscript{121} See, e.g., \textit{CAL. BUS. \\& PROF. CODE} § 6126 (West 1974); \textit{LA. REV. STAT. ANN.} § 37.213 (West 1974); \textit{NEB. REV. STAT.} § 7-101 (1983); \textit{TENN. CODE ANN.} § 23-3-103 (1980).
\item \textsuperscript{122} \textit{CAL. BUS. \\& PROF. CODE} § 6126 (West 1974); \textit{NEB. REV. STAT.} § 7-101 (1983); \textit{TENN. CODE ANN.} § 23-2-103 (1980).
\item \textsuperscript{123} Although, considering the potential for irreparable harm to the user and the government's role in protecting the public welfare, a valid argument can be made that criminal penalties are necessary and appropriate.
\item \textsuperscript{124} Fischer & Lachman, \textit{supra} note 44, at 98.
\item \textsuperscript{125} Satterfield, \textit{The President's Page}, 48 A.B.A.J. 99, 114 (1962).
\item \textsuperscript{126} See, Buesser, \textit{supra} note 1, at 14.
\item \textsuperscript{127} Note, \textit{supra} note 119, at 505.
\item \textsuperscript{128} \textit{Id.} at 507.
\item \textsuperscript{129} \textit{Id.}
association, as a public organization, is entitled to sue on behalf of the public.\textsuperscript{130} Even if the bar association is considered private, because it serves a public function it may be permitted to sue on behalf of the public.\textsuperscript{131} If a grant of injunctive relief has been ordered but disobeyed, contempt of court may be imposed.\textsuperscript{132} This may be either civil or criminal in nature.\textsuperscript{133}

One commentator suggests using consumer fraud legislation to halt the advertising of self-help legal software and motivate the Federal Trade Commission (FTC) to take action.\textsuperscript{134} Because of the national availability of the software through mail-order houses and the potential harm to consumers, this would make it an ideal cause for FTC intervention.

Finally, a different method would be to require the name of the programmer or draftsman of the software to be printed on every package of software and registered in each state's consumer affairs office.\textsuperscript{135} Officials could then monitor the number of complaints received and determine whether the software should be prohibited from the market. This, however, would appear to be an unreasonable solution considering that the "injury" suffered by a user of self-help software may not be discovered for many years. The classic example is the user who drafts a will, passes away thirty years later, and when the will is probated, several "flaws" are discovered.

If the above measures are not enough, the American Bar Association (ABA) should step in and affirmatively encourage those seeking legal advice to rely on free legal clinics, or low cost legal clinics staffed by competent lawyers. Therefore the person seeking information is assured of competent advice, rather than taking his chances on a computer program. The ABA could also provide additional encouragement to local law firms to increase the amount of pro bono work performed for clients who could not normally afford their services.

VI. CONCLUSION

The recent development of self-help legal software is indicative of how computers play an increasingly important role in the legal system. Undoubtedly more sophisticated and creative uses of computers will be developed in the future. Self-help legal software may sound like a via-
ble alternative to rising legal costs, however, its shortcomings cannot be overlooked. The benefits of inexpensive legal services rendered by a computer must be weighed against the costs of the potential harm to society. Individuals who rely on legal software may suffer far greater harm in the long run than if they had initially consulted a lawyer. Self-help legal software should be carefully examined in this context.

Concern for the individual, however, should not be the only criteria in determining whether self-help legal software violates unauthorized practice statutes. The courts have an interest in protecting the legal system as well. Our legal system derives its power and authority from its credibility. Permitting unqualified legal assistance may seriously undermine that credibility. The legal system is not, and should not become, a forum for entrepreneurs to test their creativity at condensing the practice of law onto a five and one-quarter-inch floppy diskette or other medium. When it fails to sanction those who provide inadequate or ineffective legal advice, the legal system contributes to an erosion of its credibility.

Given the previous rulings on unauthorized practice, courts seem reluctant to permit much more than the use of preprinted documents by laypersons. Considering the nature of self-help legal software (its apparent ability to render legal advice and draft legal documents), it would be reasonable to expect courts to be consistent with previous rulings and find the publishers in violation of unauthorized practice statutes. In doing so, courts should attempt to set more definitive guidelines of what activities are illegal. This would provide fair warning to laypersons contemplating a career in the legal advice field.

Although the need for low cost legal advice is great, society should not lower its standards to fulfill that need. Instead, society should be more vigilant, to ensure that any steps toward the goal of affordable legal assistance maintain those high standards.

Ross D. Vincenti

APPENDIX A

For the purposes of the sample will, assume the following situation:

Testator .................................. John William Doe
Spouse .................................... Jane Mary Doe
Child 1 ................................... Dean John Doe (age 16)
Child 2 ................................... Doreen Mary Doe (age 14)

The testator desires to leave the bulk of his estate to his spouse, but
would like to set up trust funds for his children, Dean and Doreen. Testator and his family live in California, a community property state. Testator and his spouse own $100,000 in equity in their home Blackacre (which is encumbered by a remaining mortgage of $125,000) as husband and wife, and a joint tenancy savings account containing $25,000.

Testator separately owns a condominium in Florida, which he inherited from his father, worth $90,000, and a 1963 Corvette which he purchased before he married Jane. John also holds separately $200,000 worth of IBM stock, a sailboat, gold cuff links received as gift from his company, and a gold signet ring left to him by his grandfather.

His will makes a distribution as follows:

(1) His one-half interest in Blackacre and the condominium in Florida to Jane.

(2) His 1963 Corvette, his cuff links and one-half of the IBM stock in trust for Dean.

(3) His gold signet ring, sailboat, and one-half of the IBM stock to Doreen.

APPENDIX B

IMPORTANT NOTES

BEFORE YOU SIGN:

Read your will carefully. Is everything printed as you intended? Do you understand the meaning of every word? See Part 13 of the manual as well as the glossary (Part 15) if you don't completely understand all provisions.

WHILE YOU SIGN:

* For your will to be valid you must be of sound mind and of the age specified by your state. This is almost always 18. See manual Part 2.

* Your will must be witnessed by three witnesses, even though only two are legally required in many states. The witnesses should be in your and each other's presence when you sign the will. The witnesses need not read your will.

* You must say to the witnesses that you intend this to be your will.

† In both instances, the personal property will be added to the trust. It would be up to the trustee to determine whether to liquidate the personal property or to transfer the personal property to the beneficiaries.

Note also that the testator cannot appoint separate trustees for each trust account. The WillWriter software only allows for the naming of an alternate trustee in the case that the testator's first choice cannot serve.
Initial and date each page where indicated. Then sign the last page in the presence of the witnesses. Use exactly the form of your name printed on the will.

The witnesses should state that they realize you intend this to be your will and they should then, in your presence, initial each page on the same line you did. Finally they should sign the last page in the space indicated for witnesses, and include their addresses.

AFTER YOU SIGN:

Keep your will in a safe place, where it can be readily found. You may make photocopies. However, only the signed original is legally valid and can be probated.

If there are major changes in your life, you should make, sign, and have witnessed a new will. Destroy the original of your old will and all copies. Changes that make it wise for you to make a new will include: having or adopting a child, moving to another state, the death of anyone named in your will, a change of marital status, and a significant change in the property you own. See manual Part 12 for a complete list.

KEEP UP TO DATE:

Fill out the WillWriter registration card in the manual and send it to Nolo Press at the address below. If you do not have a copy of the manual include $49.95 for a full WillWriter package.

WillWriter, Copyright 1985, 1986 by Legisoft, Inc.
Nolo Press. 950 Parker St., Berkeley, CA 94710
WILL OF John William Doe

I, John William Doe, a resident of THE STATE OF CALIFORNIA, COUNTY OF Los Angeles, declare that this is my will. My Social Security Number is: 123-45-6789.

FIRST: I revoke all wills and codicils that I have previously made.
SECOND: I am married to Jane Mary Doe.
THIRD: I have 2 children now living, whose names are:
    Dean John Doe
    Doreen Mary Doe

FOURTH: I make the following devise of real property. I give my one-half interest in the community property Blackacre and my condominium in Florida together with any insurance on that property, and subject to any encumbrances on it at the time of my death, including any mortgage, deed of trust, and real property taxes and assessments, to
    Jane Mary Doe.
However, if the beneficiary named in this section to receive this property fails to survive me by 45 days, that beneficiary's living children shall take the property, in equal shares.

If the beneficiary named in this section to receive this property fails to survive me by 45 days and leaves no children of his or her own, the property shall go to:

my brother James Wilbur Doe.

FIFTH: I make the following bequest of money or personal property. I give

my 1963 Corvette roadster
one-half of my IBM stock
and my gold cuff links
to:

my son Dean John Doe.

However, if the beneficiary named in this section to receive this property fails to survive me by 45 days, the property shall go to:

my daughter Doreen Mary Doe.

SIXTH: I make the following bequest of money or personal property. I give

my gold signet ring given to me by my grandfather
one-half of my IBM stock
and my 25 foot sailboat 'Azzahara'
to:

my daughter Doreen Mary Doe.

However, if the beneficiary named in this section to receive this property fails to survive me by 45 days, the property shall go to:

my son Dean John Doe.

SEVENTH: I hereby leave $1.00 to each of the following persons:

Dean John Doe
Doreen Mary Doe

This bequest is in addition to and not instead of any other gift, bequest, or devise that this will makes to these persons.

EIGHTH: I give my residuary estate, i.e. the rest of my property not otherwise specifically disposed of by this will or in any other manner, to:

The American Cancer Society.

However, if the beneficiary named in this section to receive this property fails to survive me by 45 days, the property shall go to:
The American Heart Association.

NINTH: I direct that my personal representative petition the court for an order to administer my estate under the provisions of the Independent Administration of Estates Act.

TENTH: I direct my personal representative to take all actions legally permissible to have the probate of my will done as simply and as free of court supervision as possible under the laws of the state having jurisdiction over this will, including filing a petition in the appropriate court for the independent administration of my estate.

ELEVENTH: If any beneficiary under this will in any manner, directly or indirectly, contests or attacks this will or any of its provisions, any share or interest in my estate given to the contesting beneficiary under this will is revoked and shall be disposed of in the same manner provided herein as if that contesting beneficiary had predeceased me without issue.

TWELFTH: If my spouse and I should die simultaneously, or under such circumstances as to render it difficult or impossible to determine who predeceased the other, I shall be conclusively presumed to have survived my spouse for purposes of this will.

THIRTEENTH: If 45 days after my death there is no living person who is entitled by law to the custody of my minor child or children and who is available to assume such custody, I name my brother James Wilbur Doe as guardian of my minor child or children.

If this person or institution shall for any reason fail to qualify or cease to act as guardian, I name my sister Ann Marie Doe as guardian instead.

I request that no bond be required of any guardian named in this section.

FOURTEENTH: If any person not my child who receives property under this will is a minor at the time of distribution, I direct my personal representative to distribute the property to the minor’s custodian under the provisions of the Uniform Gifts to Minors Act, or the Uniform Transfers to Minors Act, enacted by THE STATE OF CALIFORNIA, if either is applicable.

FIFTEENTH: I name my lawyer Richard B. Smith as personal representative (executor) of this will, to serve without bond.
If this person or institution shall for any reason fail to qualify or cease to act as personal representative, I name

my accountant Barbara A. Jones

as personal representative (also without bond), instead.

SIXTEENTH: All bequests and devises made in this will to any child listed immediately below shall be held in a separate trust for that child until that child reaches the age indicated:

Dean John Doe...age:25
Doreen Mary Doe...age:25

Any trusts established under this will shall be administered as described in the following sections.

SEVENTEENTH: Trust Beneficiary Provisions

(a) Any trust income which is not distributed to a beneficiary by the trustee shall be accumulated and added to the principal of the trust administered for that beneficiary.

(b) As long as a trust beneficiary is under the age specified above, the trustee may distribute from time to time to or for the benefit of the beneficiary as much, or all, of the principal or net income of the trust, or both, as the trustee deems necessary for the child's health, support, maintenance, and education.

“Education” includes, but is not limited to, college, graduate, postgraduate, and vocational studies, and reasonably related living expenses.

(c) In deciding whether to make a distribution to the beneficiary, the trustee may take into account the beneficiary's other income, resources, and sources of support.

EIGHTEENTH: Termination of Trust

The trust shall terminate when any of the following events occurs:

(a) the beneficiary reaches the age listed above;
(b) the beneficiary dies before the age specified above; or
(c) the trust is exhausted through distributions allowed under these provisions.

If the trust terminates for reason (a), the remaining principal and accumulated net income of the trust shall pass to the beneficiary.

If the trust terminates for reason (b), the principal and accumulated net income of the trust shall pass under the beneficiary's will, or if there is no will, to his or her heirs.

NINETEENTH: Powers of Trustee

In addition to other powers granted the trustee in this will, the trustee shall have:
(a) all the powers generally conferred on trustees by the laws of the state having jurisdiction over this trust;

(b) in respect to accumulated property and income in each trust, the powers conferred by this will on the personal representative; and

(c) the authority to hire and pay from the trust assets the reasonable fees of investment advisors, accountants, tax advisors, agents, attorneys, and other assistants for the administration of the trust and for the management of any trust asset and for any litigation affecting the trust.

TWENTIETH: Trust Administrative Provisions

(a) It is my intent that this trust be administered independent of court supervision to the maximum extent possible under the laws of the state having jurisdiction over this trust.

(b) The interests of trust beneficiaries shall not be transferable by voluntary or involuntary assignment or by operation of law and shall be free from the claims of creditors and from attachment, execution, bankruptcy, or other legal process to the fullest extent permissible by law.

(c) Any trustee serving hereunder shall be entitled to reasonable compensation out of the trust assets for ordinary and extraordinary services, and for all services in connection with the complete or partial termination of any trust created by this will.

(d) The invalidity of any provision of this trust instrument shall not affect the validity of the remaining provisions.

TWENTY-FIRST: I name

my lawyer Richard B. Smith

to serve as trustee of any trust established under this will.

If this person or institution shall for any reason fail to qualify or cease to act as trustee, I name

my accountant Barbara A. Jones

as trustee instead.

TWENTY-SECOND: Any bequest or devise made in this will to two or more beneficiaries shall be divided equally among them, unless unequal shares are specifically indicated.

I John William Doe, the testator, sign my name to this instrument, consisting of 6 pages, including this page signed by me, this ___ day of ____________, 19___.

I hereby declare that I sign and execute this instrument as my last will, that I sign it willingly, and that I execute it as my free and voluntary act for the purposes therein expressed.

I declare that I am of the age of majority or otherwise legally empowered to make a will, and under no constraint or undue influence.
(Signed)

We, the witnesses, sign our names to this instrument, and do hereby declare that the testator willingly signed and executed this instrument as the testator's last will.

Each of us, in the presence of the testator, and in the presence of each other, hereby signs this will as witness to the testator's signing.

To the best of our knowledge the testator is of the age of majority or otherwise legally empowered to make a will, and under no constraint or undue influence.

We declare under penalty of perjury, that the foregoing is true and correct, this ____ day of ______________, 19__

_________________ residing at:______________________________

_________________ residing at:______________________________

_________________ residing at:______________________________

RESIDENTIAL LEASE

Persons and Premises

John Williams Doe, hereinafter referred to as "Lessor", hereby leases to Richard B. Smith, hereinafter referred to as "Lessee," those certain premises, hereinafter referred to as "said premises," and further described as Apartment No. six of that certain building, hereinafter referred to as "the Building," bearing an address of 123 Maple Street, Los Angeles, California, on the following terms and conditions:

Term of Lease

The term of this lease shall be for one year commencing at 12:01 A.M. on January 1, 1987, and ending at 12:01 A.M. on December 31, 1987, unless sooner terminated as provided herein.

Rent

Lessee agrees to pay, the Lessor agrees to accept, as rent for the use and occupancy of said premises the sum of $1,200.00 per month payable in advance on the 15th day of each and every month at the address specified in this lease for the service of notices to Lessor or at such other address as Lessor may from time to time designate by written notice served upon Lessee.

Deposit

On execution of this lease, Lessee deposits with Lessor the sum of
$1,200.00, receipt of which is hereby acknowledged by Lessor, as security for the faithful performance of the provisions of this lease relating to rent, repairs, or cleaning, and to be returned to Lessee on the full performance of those provisions following the termination of this lease. Nothing contained in this paragraph shall give Lessee the right to withhold the rent, or shall prohibit Lessor from exercising any of the rights hereunder in respect to the non-payment of rent.

Condition and Maintenance of Premises

Lessee acknowledges that the premises have been examined as well as all the equipment and personal property subject to this lease and that said premises, equipment and personal property are in good, safe, and clean condition and repair. Lessee further agrees to:

(a) Keep said premises in good order and condition and on expiration or sooner termination of this lease to surrender them to Lessor in as good condition as they are on the date of this lease, reasonable wear and tear or damage by the elements excepted;

(b) Immediately notify Lessor of any defects, dilapidation, or dangerous conditions; and

(c) Promptly reimburse Lessor for the cost of any repairs to said premises, or the equipment or personal property subject to this lease, caused by Lessee's negligence or misuse or the negligence or misuse of any of Lessee's invitees, licensees, or guests.

Use

The demised premises shall be used only as a single-family residence, and Lessee shall not permit the demised premises or any part thereof to be used for (1) the conduct of any offensive, noisy, or dangerous activity that would increase the premiums for fire insurance on the demised premises; (2) the creation or maintenance of a public nuisance; (3) anything which is against the laws or rules and regulations of any public authority at any time applicable to the demised premises; or (4) any purpose or in any manner which will obstruct, interfere with, or infringe on the rights of other tenants of the Lessor.

Pets

Lessee shall not keep any pets on the premises.

Parking Privileges

Lessee agrees to use the areas designated as parking spaces, or reserved for vehicular parking, on the demised premises only for the parking of motor vehicles including automobiles, motorcycles, and pickup trucks but excluding, without the written consent of Lessor, trailers of any kind, mobilehomes, campers, buses, or trucks larger than
three-quarter ton. Further, Lessee agrees not to disassemble any motor vehicles of any kind in, on, or near the demised premises without the written consent of Lessor.

Quiet Enjoyment

Lessee shall be entitled to quiet enjoyment of the premises but Lessee shall not annoy, harass, endanger, or inconvenience any other Lessee of the Building nor commit any act that might disturb the quiet enjoyment of any other Lessee of the Building. Lessee shall at all times be responsible for the conduct of any guests, invitees, or licensees while they are on said premises or in and about the Building. Violation by Lessee of this paragraph shall be sufficient cause for termination of this lease by Lessor.

Rule and Regulations

Lessee's occupancy of said premises shall be subject to all rules and regulations now or hereafter promulgated for the Building including, but not limited to, rules with respect to noise, odors, disposal of refuse, pets, parking, and use of common areas.

Utilities

Lessee shall pay all charges incurred for the furnishing of public utilities to said premises, including any deposits required for any utilities, except charges incurred for the furnishing of water and the removal of refuse and garbage from said premises which shall be paid for by Lessor.

Alterations and Improvements

Lessee shall make no alterations or improvements to said premises nor do any painting or redecorating of said premises without the express written consent of Lessor first had and obtained. Should Lessee make any alterations or improvements to said premises or do any painting or redecorating of said premises without the express written consent of Lessor first had and obtained, or should Lessee damage or depreciate said premises, then the full cost of restoring said premises to their prior condition shall be borne by Lessee and promptly paid, on written demand, to Lessor. Any and all alterations and improvements made to said premises by Lessee with the consent of Lessor, including any wall-to-wall carpeting and draperies installed by Lessee, shall become the property of lessor and remain on said premises on the expiration or sooner termination of this lease, unless otherwise agreed upon by the parties hereto.
Entry by Lessor

Lessor shall have the right to enter the demised premises only in the following cases:

(a) In case of emergency.
(b) To make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the demised premises to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.
(c) After Lessee abandoned or surrendered the demised premises.
(d) Pursuant to a court order.

Hold-Harmless Clause

Lessee agrees to indemnify and hold Lessor and the property of Lessor, including said premises and the Building free and harmless from any and all liability, claims, loss, damages, or expenses, including any attorney's fees and/or costs, arising by reason of the death or injury of any person, including Lessee or any person who is an employee or agent of Lessee, or by reason of damage to or destruction of any property, including property owned by Lessee or any person who is an employee or agent of Lessee, caused or allegedly caused by some condition of said premises or the Building, the fault of Lessee, or some act or omission, whether or not negligent or intentional, of Lessee or any person in, on, or about said premises as a guest, licensee or invitee of Lessee.

Assignment and Subletting

Lessee shall not assign this lease or sublet all or any portion of said premises without the prior written consent of Lessor. Any assignment or subletting without the prior written consent of Lessor shall be void and shall, at the option of Lessor, terminate this lease. Lessor's consent to any such assignment of this lease or subletting of said premises by Lessee shall not be unreasonably withheld, but the consent of Lessor to any one such assignment or subletting shall not be deemed a consent by Lessor to any subsequent assignment or subletting.

Destruction of Premises

Should any part of said premises or the Building in which said premises are located be destroyed by fire, casualty, or other cause not the fault of Lessee, Lessor shall promptly repair and restore said premises or the Building to its former condition at Lessor's sole cost and expense. During the making of the repairs and the restoration work, the rent payable under this lease shall be abated for the time and to the extent that Lessee is prevented from fully occupying and enjoying said premises under this lease in Lessee's usual and normal manner. However, in lieu of making such repairs and performing such restoration
work, Lessor may terminate this lease whether either (a) the necessary repair or restoration work cannot reasonably be completed under applicable laws and regulations within 30 working days after it is commenced, or (b) the loss is not covered by Lessor's then existing fire and extended coverage insurance policies, provided that such insurance coverage is of an adequate and reasonable nature.

Default by Lessee

Should Lessee be in default for a period of more than 10 days in the payment of any rent payable under this lease or in the performance of any other provision of this lease, Lessor may terminate this lease and regain possession of the demised premises in the manner provided by the laws of unlawful detainer of this state in effect at the date of such default.

Insolvency of Lessee

Should Lessee make an assignment for the benefit of creditors or allow a judgment rendered against said Lessee to stand unsatisfied and unbonded for 60 days or more, this lease and all rights, privileges, and benefits of Lessee under this lease shall, at Lessor's option, terminate and not become part of the estate subject to such assignment or judgment.

Lessor's Election to Continue During Breach

At Lessor's option, if Lessee has breached this lease and abandoned the property, this lease shall continue in effect for so long as Lessor does not terminate Lessee's right to possession, and Lessor may enforce all the available rights and remedies under this lease, including the right to recover the rent as it becomes due.

Holdover by Lessee

Should Lessee remain in possession of the demised premises with the consent of Lessor after the natural expiration of this lease, a new tenancy from month-to-month shall be created between lessor and Lessee which shall be subject to all of the terms and conditions of this lease but shall be terminable by thirty days written notice served by either the Lessor or the Lessee on the other party to this lease.

Acts Constituting Breach by Lessee

Lessee shall be guilty of a material breach of this lease should Lessee:

(a) Fail to pay any rent or other sum becoming payable under this lease on the date it becomes due;

(b) Default in the performance of or breach any provision, term, covenant, or condition of this lease;
(c) Breach this lease and abandon said premises before expiration of the full term of this lease;

(d) Allow a receiver to be appointed to take possession of all or substantially all of Lessee's property unless the receiver is discharged within 30 days after his appointment; or

(e) Allow any judgment against the Lessee to remain unsatisfied and unbonded for a period of more than 60 days.

Lessor's Remedies for Breach of Lease

Should Lessee be guilty of a material breach of this lease as defined herein, Lessor, in addition to any other remedies given Lessor by law or equity, may:

(a) Continue this lease in effect by not terminating Lessee's right to possession of said premises and thereby be entitled to enforce all of Lessor's rights and remedies under this lease including the right to recover the rent specified in this lease as it becomes due under this lease; or

(b) Terminate this lease and Lessee's right to possession of said premises and commence action against Lessee to recover from Lessee:

(1) The worth of the unpaid rent which had been earned at the time of termination of this lease;

(2) The worth of the amount by which the unpaid rent which would have been earned but for termination of this lease exceeds the amount of rental loss that Lessee proves could have been reasonably avoided;

(3) Any other amount necessary to compensate the Lessor for all detriment proximately caused by Lessee's failure to perform lessee's obligations under this Lease; or

(c) Commence, in lieu of or in addition to the action described in above, an action to reenter and regain possession of said premises in the manner provided by the laws of unlawful detainer of this state.

Notices

Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this lease or by law to be served on or given to either party hereto by the other party hereto shall be in writing and shall be deemed duly served and given when personally delivered to the party, Lessor or Lessee, to whom it is directed or, in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed to lessee at the address of said premises or to Lessor at 456 Doheny Drive, Beverly Hills, California. Either party, Lessor or Lessee, may change their address for purposes of this paragraph by giving written notice of the change to the other party in the manner provided in this paragraph.
Attorney's Fees

Should any litigation be commenced between the parties to this lease concerning said premises, this lease, or the rights and duties of either in relation thereto, the party, Lessor or Lessee, prevailing in such litigation shall be entitled to, in addition to such other relief as may be granted, a reasonable sum as and for attorney's fees to be determined by the court in such litigation or in a separate action brought for that purpose.

Binding on Heirs and Successors

This lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, and successors of the parties, Lessor and Lessee, hereto, but nothing in this paragraph shall be construed as a consent by Lessor to any assignment of this lease by Lessee.

Time of the Essence

Time is expressly declared to be of the essence for all purposes of this lease.

Waiver

The waiver of any breach of any of the provisions of this lease by Lessor or Lessee shall not constitute a continuing waiver or a waiver of any subsequent breach by Lessor or Lessee either of the same or of another provision of this lease.

Sole and Only Agreement

This instrument constitutes the sole and only agreement between Lessor and Lessee respecting said premises or the leasing of said premises and any equipment or personal property subject to this lease to Lessee by Lessor. It correctly sets forth the obligations of Lessor and Lessee to each other as of its date, and any agreements or representations respecting said premises, the equipment or personal property subject to this lease, or their leasing by Lessor to Lessee not expressly set forth herein are null and void.

Executed on __________, 19__, at __________.

LESSOR: __________________________

John William Doe

LESSEE: __________________________

Richard B. Smith
PROMISSORY NOTE

$7,500.00

Los Angeles,

California

January 1, 1987

In installments as herein stated, for value received, the undersigned promises to pay to John William Doe or Jane Mary Doe, or order, at 456 Doheny Drive, Beverly Hills, California, the sum of $7,500.00 with interest from January 1, 1987, on the unpaid principal at the rate of 11.5% percent per annum: principal; and interest payable in installments of 2,500.00 on the 1st day of January and continuing for 3 years until the unpaid balance of principal and interest shall be paid in full. Interest shall accrue from the date of this note regardless of the date of payment.

Each payment shall be credited first on interest then due and the remainder on principal; and interest shall thereupon cease upon the principal so credited.

The undersigned promises to pay to the holder hereof a “late” charge of 33.33% as liquidated damages, and not as penalty, for each installment more than 10 days in arrears.

Upon default in payment on any installment, then the balance of this obligation shall become due immediately at the option of the holder hereof.

If this note is not paid when due, the undersigned promises to pay in addition all costs of collection and reasonable attorney’s fees incurred by the holder hereof on account of such collection, whether or not suit is filed hereon.

Privilege is reserved to pay the within note in full at any time by paying principal and accrued interest with no prepayment penalty.

In the event that the entire sum is paid in full on or before January 1, 1989, then there shall be credited upon said sum a discount of 4% percent.

On the happening to or by any maker of any of the following events, this note and all other obligations, direct or continent, of any such maker or endorser hereof to payee shall become due and payable immediately, without demand or notice: making of any misrepresentation to the payee for the purpose of obtaining credit or an extension of credit; any assignment for the benefit of creditors; voluntary or involuntary application for, or appointment of, a receiver; filing a voluntary or involuntary petition under any of the provisions of the federal bankruptcy laws; death; or, if at any time in the sole discretion of the payee financial responsibility shall become impaired or unsatisfactory to the payee.
Each maker consents to renewals, replacements, and extensions of time for payments hereof before, at, or after maturity, consents to the acceptance of security, if any, for this note, and waives demand and protest. All payments made hereunder shall be made in the lawful money of the United States.

Executed this ___ day of ______, ____, at Los Angeles, California.

By________________________________________