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Anthony S. di Santi, Chair
David R. Johnson, Deputy Counsel
Authorized Practice Committee
The North Carolina State Bar
208 Fayetteville Street
Post Office Box 25908
Raleigh, North Carolina 27611

Re: Allegation of Unauthorized Practice of Law
Your File No. 07AP0011.

Dear Mr. di Santi and Mr. Johnson:

I am writing this letter in response to the Letter of Caution sent by Mr. di Santi to LegalZoom.com, Inc., on behalf of the Authorized Practice Committee of The North Carolina State Bar dated May 5, 2008 ("the Committee"). I am General Counsel of LegalZoom.

The Committee's Letter of Caution asserts that LegalZoom is engaged in the unauthorized practice of law by making its online legal document preparation services available to customers in North Carolina. As we understand the Letter of Caution, the only way for LegalZoom to comply would be to cease offering its services to any customer located in North Carolina.

We respectfully disagree that we are engaged in the unauthorized practice of law. We previously set out our position at length in letters to the Committee's counsel dated April 17, 2008 and February 13, 2007 and personally at the meeting held in Raleigh on April 23, 2008. We would, however, like to draw the Committee's attention to the following specific points in response to the Letter of Caution.

1. The Committee previously found no evidence of wrongdoing. The Committee conducted an investigation into LegalZoom's practices in 2003, which included LegalZoom's incorporation services. The Committee closed its investigation with the conclusion that "the evidence was insufficient to support a finding of probable cause that [LegalZoom is] engaged in the unauthorized practice of law." LegalZoom has always been an Internet business with its services freely open to inspection online. LegalZoom's services have been available to North Carolina consumers prior to 2003, and our practices have not changed since 2003. Indeed, LegalZoom has been joined by many other companies that provide the same self-help services using the Internet and through software packages.

2. LegalZoom provides incorporation services, not organization services. The Letter of Caution concentrates primarily on LegalZoom's services in assisting customers in preparing articles of incorporation. As you know, we have retained North Carolina counsel A.P. Carlton. He has prepared an opinion letter regarding the scope of N.C. Gen. Stat. § 84-4, which restricts the act of "organizing" a corporation to members of the North Carolina Bar. Mr. Carlton's opinion letter is attached. He concludes that "incorporating" a corporation and "organizing" a corporation are distinct acts under North Carolina law, and that LegalZoom only participates in "incorporation," not the "organization" of corporations. Because § 84-4 only prohibits non-lawyers from organizing corporations, not incorporating them, Mr. Carlton concludes that LegalZoom is not violating § 84-4. As noted by Mr. Carlton, this analysis is consistent with the provisions of the Model Business Corporation Act, as well.

3. The Letter of Caution appears to mistake the nature of LegalZoom's services. In several places, the Letter seems to suggest that LegalZoom makes individualized determinations of a customer's legal needs, customizes legal forms to meet those needs, and has lawyers review completed legal forms for correctness and applicability. This is not how LegalZoom's services work.

LegalZoom does not select legal forms for customers. Its customers make their own decisions as to which forms they believe they need. The process is automated – the customer goes to the LegalZoom website; decides what form to purchase; fills in information for the selected form; and a document is generated from standardized language based on the information and decisions made by the customer. LegalZoom does, of course, provide the standardized language that is used in the automated document-creation process. These forms are typically obtained from state agencies. This "selection," however, takes place prior to, and independent of, any customer seeking to generate a legal document. It is no different than the "selection" of one form from many potential forms that is made by the author of any legal textbook, legal form book, or do-it-yourself legal document kit.

LegalZoom does not determine which form is appropriate for individual customers. Again, the process is fixed and automated, just as in any form book with instructions or a do-it-yourself kit. LegalZoom does not exercise legal judgment based on the facts or circumstances of any given customer's needs. LegalZoom does have attorneys who prepare and review the standardized language that underlies the document-creation software; however, LegalZoom does not (and does not claim to) have attorneys who review the customer's documents after they are generated to determine if the forms meet the individual customer's needs. The prepared documents are checked for completeness and accuracy only, not legal sufficiency. This is clearly stated in numerous disclaimers throughout the website.

4. *In re Reynoso* does not apply to LegalZoom's services. The only legal precedent cited in the Letter of Caution is *In re Reynoso*, 477 F.3d 1117 (9th Cir. 2007). The Letter argues that this

single case demonstrates there is “no doubt” that LegalZoom’s services constitute the practice of law. For a number of reasons, this is a misreading of *In re Reynoso*.

First, the defendant’s conduct in *In re Reynoso* was uniquely egregious and far different from LegalZoom. The defendant made false and fraudulent claims that his product allowed bankruptcy filers to find “loopholes” and “stealth techniques” to hide assets, to hide their bankruptcy from credit bureaus, to keep their bankruptcy off their credit report, and how reestablish good credit in months instead of years. LegalZoom makes no such false claims.

Second, and more importantly, *In re Reynoso* is an appeal from Bankruptcy Court, which has unique rules regulating “bankruptcy petition preparers.” LegalZoom is not a bankruptcy petition preparer and does not provide bankruptcy services.

In re Reynoso has never been applied outside the bankruptcy context. This is particularly significant, because the case arose in a California bankruptcy court, and LegalZoom is based in California. If *In re Reynoso* stood for the proposition that LegalZoom’s business model constituted the unauthorized practice of law, one would have expected California courts to follow *In re Reynoso* and California authorities to have taken action against LegalZoom. None have. LegalZoom is, and remains, a licensed, bonded and registered Legal Document Assistant under California law. Cal. Bus. & Prof. Code § 6400, *et seq.* Indeed, a case cited in *In re Reynoso* makes clear that providing forms, instructions for filling out forms, filling out the forms, and filing the forms is not the practice of law:

California law and the approach taken by other states with respect to divorce services teach that such services do not amount to the practice of law as long as the service offered ... was merely clerical, i.e., the service did not engage in the practice of law if it made forms available for the client's use, filled the forms in at the specific direction of the client and filed and served those forms as directed by the client. Likewise, merely giving a client a manual, even a detailed one containing specific advice, for the preparation of an unlawful detainer action and the legal incidents of an eviction would not be the practice of law if the service did not personally advise the client with regard to his specific case.

People v. Landlords Professional Services, 215 Cal. App.3d 1599, 264 Cal. Rptr. 548 (Cal. 1989).

5. LegalZoom has never been found to be engaged in the unauthorized practice of law. LegalZoom offers its services in 50 states. No authority – federal, state, or local – has determined that LegalZoom is engaged in the practice of law. In fact, just today LegalZoom received a letter from the New Jersey Committee on the Unauthorized Practice of Law closing a similar investigation and dismissing the complaint. The Committee would be breaking new legal ground in attempting to enjoin LegalZoom’s services in North Carolina. Indeed, an injunction

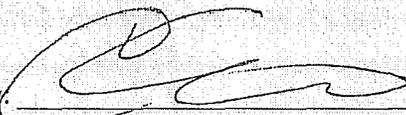
against LegalZoom would have broad consequences to a significant and long-established legal self-help business, including online document preparation services, self-help software vendors and legal document kit publishers whose products can be found for sale all across North Carolina.

There is a long line of cases holding that the sale of legal forms and instructions and do-it-yourself legal document kits is not the unauthorized practice of law, and holding that the sale of such products and services is protected by the First Amendment. *E.g., New York County Lawyers' Association v. Dacey*, 21 N.Y.2d 694, 287 N.Y.S.2d 422, 234 N.E.2d 459 (1967); *Oregon State Bar v. Gilchrist*, 272 Ore. 552, 538 P.2d 913 (1975); *State Bar v. Cramer*, 399 Mich. 116, 249 N.W.2d 1 (1976); *Florida Bar v. Brumbaugh*, 355 So.2d 1186 (Fla. 1978). LegalZoom's services are simply a more modern version of these same products, presented to the customer in a more efficient way through the use of the internet. There is not a single state in the United States that prohibits the sale of legal software or the operation of document preparation websites. The Committee's position would put North Carolina alone in the nation. In all frankness, we believe an effort by The North Carolina State Bar to define "preparation" of documents and "practice of law" to cover the publication of web-based self-help legal software would be anti-competitive and would invite scrutiny under the antitrust laws.

In conclusion, as we read the Committee's Letter of Caution, there is no way for LegalZoom to comply without simply making its services unavailable to North Carolina customers. We believe this would be a great disservice to North Carolina residents, many of whom have found LegalZoom to provide a cost-effective, efficient, self-help alternative to hiring legal counsel. If we are wrong about the scope of the Letter of Caution, we would welcome a response as to whether there are specific changes that LegalZoom could make in its service offerings that would address the Committee's concerns.

Sincerely,

LegalZoom.com, Inc.

By: 

Charles E. Rampenthal
Vice President and General Counsel

*Member, State Bar of California and
Massachusetts Board of Bar Overseers*

CC: Peter Kennedy, Esq.
A.P. Carlton, Esq.