

REAL ESTATE PROCTICE
CONTRACTS: SETTLEMENT
ATTORNEY ESCROWING REAL
ESTATE COMMISSION AT CLOSING
DUE TO DISPUTE BETWEEN SELLER
AND BROKER/SELLER'S AGENT.

An attorney's practice consists, in large measure of, real estate transactions. The attorney is named in a contract of sale as the settlement agent. The contract provides that it is by and between buyer and seller, through the real estate broker, seller's agent, and it sets forth the amount of the real estate commission payable to the broker. Furthermore, the contract is signed by all of the parties thereto, including the real estate broker, and provides that the seller agrees to pay the real estate commission due to broker, to instruct the settlement agent to deduct the commission from the proceeds of sale, and then pay it over to the real estate broker.

You indicate that, in the transaction in issue, prior to closing, a dispute arises between seller and the real estate broker, and the seller advises the settlement attorney not to pay the real estate commission. You wish to know whether the settlement attorney may escrow the real estate commission at closing despite the broker's objection and insistence that the settlement take place pursuant to the contract terms.

The Committee is of the opinion that the Code of Professional Responsibility is inapplicable to the question you present since the issue raises a legal question pertinent to the contract dispute. The resolution of legal disputes is beyond the purview of the Committee's authority and requires a determination by the court as a finder of fact.

Committee Opinion
July 31, 1990