

Committee Opinion
November 12, 1987

LEGAL ETHICS OPINION 1000

REAL ESTATE – REPRESENTATION OF
BUYER AND SELLER.

You advise that a lawyer represented both the buyer and seller in a real estate transaction. Prior to settlement, the buyer and seller entered into an agreement whereby the seller would complete a list of repairs by a certain date. The seller failed to complete, or even start, the repairs by this date. The buyer then approached the lawyer and requested that the lawyer represent buyer against seller in order to get the work completed. The lawyer advised the buyer that he could not represent the buyer and seller. The lawyer also advised the buyer that he could not represent the seller either.

You wish to know whether or not the lawyer had a duty at the outset of his representation of the buyer and seller to advise both clients that if a dispute arose he could not represent either party against the other.

LE Op. 414 is dispositive of your inquiry. In that opinion the Committee stated that from the beginning of the representation of both the buyer and seller in a real estate transaction, a conflict of interest is created. The Committee advised that this conflict may be avoided by full disclosure and consent of the parties under DR:5-105. DR:5-105(C) provides that a lawyer may represent multiple clients, if it is obvious that he can adequately represent the interest of each, and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

The Committee reiterates LE Op. 414 and advises that when a lawyer represents both the buyer and seller in a real estate transaction, the lawyer has a duty to inform his clients, at the outset of the transaction, that he will not be able to represent either party against the other if a dispute should arise.

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