

Committee Opinion

March 8, 1988

May 24, 1988

LEGAL ETHICS OPINION 1022

REAL ESTATE – ATTORNEY AS  
TRUSTEE.

A law firm represents a local developer who often subdivides property and sells lots. The firm has often represented the purchaser of such lots. A note and deed of trust is often taken by the developer as purchase money. An associate with the firm is designated as trustee and does the title work for the developer. The note has a confession of judgment in it and a provision for attorney's fees based upon the amount collected.

Given the above, there are certain circumstances when an attorney may represent a borrower and, in addition, serve as trustee under a deed of trust without obtaining the borrower's consent. One such circumstance is if the attorney representing the borrower has in no way advised or counseled with regard to any of the terms or conditions contained in the note or deed of trust and the attorney did not, after closing, continue a relationship with the borrower which is deemed "substantially related," disclosure must be made, but consent is not necessary. (See LE Op. 824)

The trustee who formerly represented the borrower may also foreclose without first obtaining the borrower's consent.

Once foreclosure has taken place, it is not improper for the firm to bring a suit on behalf of the noteholders for any deficiency as long as disclosure has been made. [LE Op. 528, LE Op. 824]

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