

Bank A, a state chartered bank and member of F.D.I.C., makes purchase money loans and refinancing loans on residential property. The loan officers of Bank A do not advise borrowers that they need an attorney for the transaction nor are the borrowers asked the name of their attorney. Rather, borrowers are told by the loan officers either that the bank will send the papers to its attorney, Attorney X, or that Attorney X handles loan matters for it. Attorney X then prepares the loan documents, certifies title to Bank A, bills the borrower and either sends the documents to the borrower for signatures or advises the borrower of the date and time to come to the law office for the execution of the documents. Attorney X is also the named trustee on the deed of trust.

On several questions related to the facts presented, the Committee opined as follows:

1. Although the Committee has previously opined that a bank, like an individual, has the right to secure legal counsel of its choice to protect its interest, as well as the interest of the shareholders and customers, under the present facts, the Committee opined that, if the attorney is engaged to represent the lender only, that fact should be communicated to the borrower so that the borrower may exercise his right to independent counsel of his choice.

The question posed regarding the legality of the bank's billing of the borrower for the lender's attorney's services, may be resolved by attention to Va. Code § 6.1-330.70 et seq., the interpretation of which is beyond the purview of this Committee.

2. The borrower has the right to independent counsel to protect his interest in the transaction. The Committee is of the opinion that the Disciplinary Rules do not require the bank's attorney to advise the borrower of his right to obtain independent counsel.

3. Since DR:7-103(A)(2) mandates that the only advice which can be given to an unrepresented opposing party is the advice to seek counsel, the Committee opined that, where the attorney represents only the lender, that attorney is not required to advise the borrower that the title insurance obtained is for the lender only and that the borrower could obtain title insurance in borrower's name to protect his equity.

4. The Committee referred the inquirer to prior LE Op. 1153 which requires disclosure of multiple representation when the attorney representing the lender also represents the borrower.

5. It is not per se improper for an attorney to serve as counsel for a bank as well as being a member of its board of directors; however, under the facts presented, the Committee opined that if the attorney represents the lender and serves in another capacity

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for lender, such as on its board of directors, loan committee, or other committee, full and adequate disclosure must be made, and consent received from, the borrower before the attorney may represent both borrower and lender.

6. Where the attorney represents the lender and the borrower but obtains title insurance only for the lender, the Committee is of the opinion that the attorney must advise the borrower as to the nature, benefits, and availability of title insurance. [DR:5-101(A), DR:5-104(A), DR:7-103(A)(2), DR:7-103(B); LE Op. 747, LE Op. 1120, LE Op. 1151, LE Op. 1153; Va. Code § 6.1-330.70, et seq.]