

Committee Opinion
June 22, 1992

LEGAL ETHICS OPINION 1466

REAL ESTATE REPRESENTATION:
APPLICATION OF THE WET
SETTLEMENT ACT TO REAL ESTATE
CLOSING HANDLED BY SEPARATE
ATTORNEYS FOR PURCHASER AND
SELLER.

You have indicated that a real estate transaction involves one attorney who represents the seller and another attorney who represents the purchaser. You further indicate that the attorney representing the purchaser will do the "closing" with his client and lender and then disburse funds to the seller's attorney who has drawn the deed and who will assume responsibility for paying off existing mortgages, real estate commissions and other costs.

You have asked the Committee to opine as to the form of funds which must be used when the purchaser's attorney disburses to the seller's attorney. Specifically, you have inquired whether those funds must be disbursed in the form of certified funds only or may be disbursed in the form of certified funds or a cashier's check or in the form of an attorney's trust account check which is backed up by certified or cashier's funds received by the attorney from his client plus lender's funds which conform to the Wet Settlement Act, Va. Code § 6.1-2.10. You have also asked whether any cost incurred by the purchaser's attorney to secure a certified or cashier's check may be passed along to the seller's attorney and thus to the seller.

As to your first inquiry, the Committee is of the opinion that the conclusions articulated in LEO Op. 183, requiring strict compliance with the Wet Settlement Act as to the form of funds acceptable for immediate disbursement in real estate settlements, are equally applicable to the circumstances you describe. Thus, the Committee opines that when the purchaser and seller in a real estate transaction each are represented by separate counsel rather than by one "settlement or closing attorney", any disbursement of purchaser's and lender's funds made to seller's attorney by purchaser's attorney must be made utilizing the form of funds enumerated in the Wet Settlement Act.

With regard to your second inquiry, as to any cost incurred by purchaser's attorney for securing funds in the form required by the Wet Settlement Act, the Committee is of the opinion that its prior LE Op. 1204, LE Op. 1228, and LE Op. 1346 are dispositive of the issue. Thus, such charges may not be passed on to the other party, who is represented by separate counsel, without the other party's prior agreement.