

Committee Opinion  
December 14, 1993

LEGAL ETHICS OPINION 1565

ATTORNEY'S COMPLIANCE WITH  
LENDER'S INSTRUCTIONS WHICH  
MAY CONTRADICT WET  
SETTLEMENT ACT AND FEDERAL  
CONSUMER LAW.

You have presented a hypothetical situation in which a law firm has been retained by borrowers to represent them in the handling of a refinance of their principal residence. The lending institution which the borrowers/clients have selected forwards the attorney's office an agreement which must be signed by the attorney prior to closing. One of the conditions of the agreement is that all closing documents are to be returned to the lender within 24 hours of the settlement date. This condition applies to refinances. You state that failure to sign the agreement prevents the attorney from conducting the closing. Finally, you also state that signing the agreement and failing to supply the closing documents subjects the attorney to a daily fine imposed by the lender, as well as denial of funding.

You have asked the committee to opine, under the facts of the inquiry, (1) whether it is unethical for a settlement attorney who represents a borrower in a refinance to surrender original closing documents to the lender prior to the borrower's three-day right to rescind having run; and (2) whether it is unethical for a settlement attorney who represents a borrower in a refinance to surrender the original promissory note to the lender prior to the borrower's three-day right to rescind having run.

The committee has considered your inquiry and determined that the issues raised call for an interpretation of the Truth-in-Lending Act (15 U.S.C. § 1601 et seq.) as well as the Wet Settlement Act (Va. Code § 6.1-2.10 et seq.) and thus present a legal issue the resolution of which requires a determination beyond the purview of the committee.

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