

Committee Opinion
October 14, 1987

LEGAL ETHICS OPINION 982

REAL ESTATE – RELEASE OF TRUST.

Your office handles a large volume of real estate closings. At times, title reports indicate that a trust which should have been released in a prior settlement was not released. When the previous settlement attorney is contacted, he assures your law firm that the previous trust has been paid. When your firm has requested a formal release of record, you have, at times, received a certificate of satisfaction and lost note affidavit pursuant to Virginia Code § 55-66.1:4. The previous settlement attorney will sign as noteholder and attach a form affidavit asserting the note has been lost or destroyed and cannot be produced. You wish to know whether or not it is ethical for a settlement attorney, who is confident he has paid a note, to proceed with a release as described above or if the attorney has a duty to bring a petition pursuant to Virginia Code § 55-66.5 or obtain a release in some fashion other than the method described above.

Disciplinary Rule 7-102 [DR:7-102] states that a lawyer shall not "knowingly make a false statement of fact or law."

The Committee feels it is unethical for a lawyer to assert he is noteholder when the lawyer does not have the note in his possession.

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