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Ernest W. Stephens, Retired

December 5, 1986

Re: Ethics Opinion 86-7

Dear

You have submitted the following question to us:

"Over the years, we have written title opinions covering property mortgaged to the Farmers Home Administration (FHA). The FHA has asked attorneys who wrote the original title opinions to provide them with supplemental opinions with additional information as to the status of the loans that have heretofore been made. This, as I understand it, will give them information so that they can intelligently determine whether to foreclose, extend the time for payment, or in some manner restruction the loan.

When we wrote our original title opinions as designated attorney, we billed the borrower for our services but it is my understanding that the supplemental title information and opinions will be paid by the FHA.

Our concern is whether there would be a conflict of interest if we now wrote a supplemental opinion to be paid for by the lender when the borrower was our original client. In many instances, the rendition of such an opinion, particularly where the FHA decides to restructure the loan, would be to the benefit of the borrower (our original client), but on the other hand, there are situations where the opinion furnished to the FHA could conceivably work to the detriment of the borrower.

We would be furnishing an opinion based on matters of public record only, such as those of which could be picked up by an abstractor. We are not evaluating or furnishing an opinion as to the land owners' financial position. Is such representation proper?"

The committee believes there would not be a conflict of interest in the ordinary case. The original transaction was presumably concluded and the firm was paid for its services. Additionally, the law firm is not acting contrary to the interest of the land owner because it is only reporting the status of the public records. Hence it appears representation would be appropriate.

The committee does caution you, however, that it is the general rule that a lawyer should decline to represent multiple clients with directly conflicting interests. DR 5-105(A) Obviously, the borrower was your client when the initial title opinion was rendered, however, the creditor is now asking you for advice and counsel concerning supplemental title information. As mentioned above, our assumption is that the initial attorney-client relationship has ceased, however, if it has not so ceased, the committee would suggest that you avoid involvement with multiple clients which may result in litigation between them.

One member believed that in any situation, before an attorney, who on behalf of a borrower has submitted a title opinion covering property to be mortgaged, may furnish the lender with its supplemental opinion, he should first insure that:

1. The opinion will not adversely affect the interest of the borrower, and

2. The borrower consents after being fully informed of the factors involved.

Clearly, even with the above there are many situations where an attorney could render a supplemental opinion.

Likewise, where there is an ongoing relationship between a client and the firm, although not an attorney-client relationship, prudence might dictate non-involvement by the attorney.

Respectfully submitted,

Robert C. Riter, Jr., Chairman
Ethics Committee