

Nebraska Ethics Advisory Opinion for Lawyers
No. 76-6

IT IS NOT PER SE UNETHICAL FOR AN ATTORNEY WHO EXAMINES TITLES FOR A SAVINGS AND LOAN ASSOCIATION TO HANDLE THE CORRECTIVE WORK REQUIRED BY HIS TITLE OPINION AND CHARGE THE SELLER FOR SUCH CORRECTIVE WORK PROVIDED THE SELLER HAS REQUESTED HIM TO PROVIDE SUCH SERVICES EITHER DIRECTLY OR THROUGH THE ASSOCIATION, SINCE THIS IS A MATTER OF CONTRACT LAW RATHER THAN ETHICS. THE PARTICULAR FACTUAL SITUATION MAY BRING OTHER ETHICAL CONSIDERATIONS INTO PLAY, HOWEVER, SUCH AS CONFLICTS OF INTEREST OR REPRESENTING SOMEONE ALREADY REPRESENTED BY COUNSEL AS POSSIBLY MIGHT BE THE CASE IN OBTAINING A RELEASE OF A CHILD SUPPORT LIEN.

QUESTION

In your letter you asked for an opinion as to whether you could charge a fee to the seller of real estate for corrective title work performed by you under the following circumstances:

You are employed by a savings and loan association to examine the title to real estate for the association (presumably in connection with loans to buyers); occasionally corrective title work is required such as the obtaining of an inheritance tax determination, the release of a child support lien, the obtaining of affidavits or corrective deeds, etc.

You report that you "have no contract relation with anyone except the association" and ask if you can "exact from such party for whom the work is done a reasonable fee."

For purposes of this opinion, we are assuming that the words "such party for whom the work was done" are intended to refer to the seller and not to the savings and

loan association.

DISCUSSION

If in fact you have no contract relation with the seller you have no enforceable claim against him for a fee. This is simply a matter of contract law. As pointed out in Formal Opinion No. 5 of the American Bar Association:

"An attorney can seek compensation for his services only from those who employ him."

If, however, the seller requests that you do the work, you would have a contract with him for the performance of the work and would be entitled to compensation for those services. The seller could make this request directly to you, through the association or through some other agency.

The matter of the release of child support liens presents a special problem. Such liens arise out of court proceedings in which the parties are or have been represented by counsel. Ethical Consideration 2-30 states:

"If a lawyer knows a client has previously obtained counsel, he should not accept employment in the matter unless the other counsel approves or withdraws, or the client terminates the prior employment."

There could also be conflict of interest and practical considerations involved, depending upon the facts of the particular situation.

CONCLUSION

Your question as stated does not present an ethical issue. As a matter of contract law, a lawyer cannot ordinarily recover compensation for services from one who has not employed him.

Nebraska Ethics Advisory Opinion for Lawyers
No. 76-6