

**KENTUCKY BAR ASSOCIATION**  
**Ethics Opinion KBA E-22**  
Issued: January 1965

***This opinion was decided under the Canons of Professional Ethics, which were in effect from 1946 to 1971. Lawyers should consult the most recent version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.***

**Question:** May an attorney represent a building and loan association where the association requires an applicant for a real estate loan to pay an attorney's fee to an attorney he has not employed and does not know?

**Answer:** Yes.

**References:** Canon 35, 47; KRS 289.501

**OPINION**

A building and loan advertises and solicits those in need of money to purchase real estate. When an application is made for a loan the borrower is required to pay an attorney fee to an attorney that he has not employed, and does not know, before he can secure a loan.

1. Is the attorney who represents a building and loan under this state of fact using the building and loan to solicit business or is the attorney accepting business through an intermediary and thereby violating Canon 35?

This question also involves Sections 35 and 47 of the Canons of Professional Ethics. Again it should be noted that the attorney is representing the building and loan association. As stated above in response to Question I the association has the right to choose its own attorney. See Kentucky State Bar Assn v. First Federal Savings and Loan Assn, 342 S.W.2d 397.

As the attorney is employed by the association to perform a specific legal service he is not violating either Canon 35 or 47. The payment of the legal fee is made by the association for the legal services rendered. Whether the association collects this fee from the borrower, as is usually done, or absorbs this cost itself as is sometimes done, is up to the association and does not involve the attorney. This is a part of the loan costs which the borrower is required to pay if he desires to make a loan. The lender is within its legal right to require not only a title report and opinion on the marketability of the property, but may also require a credit report, appraisal, survey, and any other requirement to satisfy itself as to the security it is asked to accept for the loan. See KRS 289.501. All of these charges may be passed on to the borrower as part of his cost of securing the loan. The borrower in this

position cannot dictate to the lender the terms of the loan; if not satisfied he may go elsewhere to obtain a loan.

Since the attorney is representing the association and rendering a legal service to it, he is not in our opinion soliciting business through intermediaries in violation of Canon 35.

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***Note to Reader***

*This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.*