

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-39
Issued: October 1970

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

Question 1: A mortgage company insists that all real estate closing in which it is the lending institution be held at its office; that the mortgage, note, closing statement and similar documents be prepared by secretaries employed by it. It requires the closing attorney, normally the same party who does most of its work, to pay the mortgage company twenty dollars per loan closed to compensate it for the services thus supplied, in effect the time and effort of the secretaries and the use of its facilities. The attorney, of course, reviews all the documents prepared and places his “prepared by” stamp on the documents requiring such. From the attorney’s standing, we will assume that the services performed by the secretaries are a convenience to him and worth the amount being paid.

Answer 1: No.

Question 2: Assume the same factual situation as in Question 1, except that the payment for the services applied might vary depending on the size of the loan or the paper work involved.

Answer 2: No.

Question 3: Assume the same factual situation as in Question 1, except that the payment is a fixed percentage of the attorney’s fee in each situation.

Answer 3: No.

Question 4: Assume the same factual situations, except that the attorney pays the secretarial help directly.

Answer 4: No.

References : Code DR 3-102

OPINION

A mortgage company or other lending institution such as banks or savings and loan associations, certainly have the right to insist that all loan closings be held at its offices. It further has the right to insist that the physical preparation of the mortgage, note, loan, closing statement and similar documents be prepared by its secretaries. Such preparation does not obviate the necessity for the supervision and appraisal of the preparation of those documents by an attorney authorized to practice law in this Commonwealth. Kentucky State Bar Assn v. First Federal Savings and Loan Assn, 342 S.W.2d 397.

For the attorney to pay a lending institution a flat fee to compensate for the services as proposed in Question 1 amounts simply to the subsidization of the institution and the exploitation of the attorney by a lending institution such as has been previously condemned by opinions of the Court of Appeals. Kentucky State Bar Assn v. First Federal Savings & Loan Assn, *supra*. A lawyer may not properly share his professional emoluments with a layman or a lay agency, DR 3-102(A), ABA Code of Professional Responsibility; Opinions of ABA Committee on Professional Ethics and Grievances, No. 10 (1926). The same can be said as to situations 2, 3 and 4.

Although the payment of the secretarial help directly by the attorney is not so obvious as in the other instances, nevertheless, it simply amounts to a subsidy to the lending institution and permits that institution to under-pay its secretarial help and continues the theory of exploitation that has previously been mentioned.

Each of these practices should be condemned.

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.