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Clerk, Supreme Court of Florida
Tallahassee, Florida 32301

RE: Integration Rule 11.02(4)(f)

Dear Sir:

Response has been requested to the Integration Rule above-captioned.

As a sole-practitioner involved in a mainly real estate practice, I often find myself at a disadvantage in disbursing closing funds do to present rules governing disbursement of trust funds. — what rules?

Commercial title companies have no trouble receiving loan proceeds and disbursing them the same day. I do.

While we insist that closing monies be paid by certified or cashier's checks, we treat the deposit of these funds the same way we would treat the deposit of someone's personal check. It makes little sense to my clients that I insisted the checks be cashier's checks and yet must wait for clear funds before disbursing and I believe the delay leads them to distrust us and think that the funds or the interest earned on such funds are somehow used by us during the waiting period. Certainly there is no practical means of restoring the interest lost by the client.

In many cases the documents of conveyance are held back from recording during this period to satisfy the seller. Such delay creates the risk of an intervening instrument affecting title during this "gap". I do not believe the fact that my buyer was waiting for his funds to clear before recording his documents would protect him from an earlier recorded instrument.

The legislature created Florida Statute 627.7841 requiring the title insuror to assume the risk of an intervening instrument affecting title during the "gap" period, but my title company's instructions on the subject require that I disburse the closing proceeds to fall within the ambit of the statute before waiving the standard policy exception which insulates them from this type of liability.

I believe that the rule which has been promulgated would allow the real estate practitioner to compete more effectively with commercial title insurors, would enhance public confidence in the profession, and would more adequately protect the interests of our clients.

My concern with the rule lies in the final paragraph. What to do if the deposit fails for some reason. The language of the rule as to the attorney's duty to "act" to protect the funds of other clients would seem to me to be satisfied by bringing an action on the bad check. Such an action would not aid the client whose closing was lost for lack of sufficient funds held by his attorney.

I believe that the risk of the deposit failing should include the obligation of the attorney making the deposit to indemnify the client's accounts from his own funds. Such an obligation would temper the rule's effect in the case of very large transactions in that an attorney's caution in making disbursements against uncollected funds would be directly proportional to the personal risk he assumes by so doing.

One other suggestion would be to allow the attorney who disburses in good faith reliance based on the deposit of an instrument such as those described in the rule to borrow from the Bar's Client Security Fund for the purpose of indemnifying his other clients. Such a loan could be made more readily available to a lawyer finding himself in this position than would be the case in having to borrow from a commercial bank to cover the loss. Likewise the interest rate on such an emergency loan might be partially subsidized by the Fund for those attorneys participating in the interest on trust funds program.

The new rule will be welcomed by the real estate bar and our clients.

Very truly yours,

JOSEPH A. SOLLA

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cc:
Staff Counsel
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