

Cover Page

Name of Provider: Florida Land Title Association

**Name of Course: Eating with Ethics: No Good
Deed Goes Unpunished**

**Targeted audience: Title agents, title industry
professionals**

**Course Relevance: To test the ethical knowledge of
Florida licensed title agents**

Study Method: Classroom

“No Good Deed Goes Unpunished” Course Outline

This seminar presents situations that test the ethical knowledge of Florida licensed title agents and Florida Bar licensees. Audience members review scenarios and related questions to determine the best ethical response for each question.

This seminar will be taught in two segments, a series of round-table break-out, 6-10 person and discussions of complex ethical and practical questions having no unambiguous ethical answers for approximately 20 minutes. Each break out group will have an assigned facilitator. This will be followed by approximately 30 minutes of summaries on the discussions and conclusions reached by each of the break-out groups with commentary from the moderator/host. Since the facilitated discussion is central to the value of this education, depending on the size of the group, not all questions will necessarily be addressed in a given event.

I. Notary (5 minutes)

A. A friend asks you to notarize a deed, but he is going out of town tomorrow which is the only time you can do it.

1. What are your ethical duties when it comes to notarization of documents?
2. Does notarization of documents fall under notary laws or your duties as a closing agent/attorney or both?
3. Can you fill in the notarization section on the deed and then send it to him to sign?
4. Can he send you his signed deed today so that you can notarize it tomorrow?
5. What if you notarize the deed using Skype? What about being the witness in addition to being the notary? Are there any guidelines relevant to witnessing a document in the State of Florida?

II. Accommodation Recording (5 minutes)

B. One of your very best real estate agent customers asks you to record a Quit Claim deed on property for which she is the listing agent. There is no current contract on this particular property and therefore no commitment has been ordered. Her seller client will pay for the recording fees. Would you be liable for the document in the event that there was an error on the legal description? What if the document has fraudulent signatures? Would you

have any ethical duty to insure all the information contained on the document was true and accurate?

1. Do you say, "Sure, just bring the money and document to your office whenever she can"?
2. Do you decline, saying you can only record documents if they are part of a title insurance transaction for which you are issuing a policy?
3. What would you say if the agent asks you to prepare the quit claim deed, using a form she found on the Internet?

III. Third Party Payment

(4 minutes)

A. The seller at your closing asks you to give a portion of his proceeds to the construction company that performed the repairs on the subject property so that the sale could go through.

1. Do you have an ethical duty to show the payment to the construction company on your settlement statement?
2. Would you need an invoice from the construction company? Would your answer be any different if there was a new lender involved?
3. If repairs had been done, was there a notice of commencement executed? Would there be any indication within the sales contract that would have given you a clue to a repair?
4. Do you say, "Sure? Write down how you want the check to be made out and how much."?
5. Do you decline, saying you can only issue seller proceeds to the seller of record?

IV. Traveling Sellers

(4 minutes)

A. The sellers will be out of town visiting their daughter the week of the closing, so they have asked you to send them the documents they need to sign to their daughter's residence. They gave you written instructions with her name and address. The documents are returned a week later, signed, and notarized.

1. Do you have an ethical duty to any party to the transaction to confirm that the sellers did execute their documents?
2. Do you call the sellers to confirm they signed the documents? Where did you obtain that telephone number?

3. Do you feel more comfortable if they returned the documents in the overnight mail envelope you provided?
4. What would you do if you cannot read the notary's name and seal information because of water damage to the documents?
5. Do you feel more comfortable if the notary was a bank officer or if the transaction was done by another reputable settlement agent or a direct title insurer's branch office?

V. Funding Approval

(4 minutes)

A. You are at a closing, waiting for the buyer's lender to give funding approval. The buyer's real estate agent is insisting that you go ahead and cut the check to the agent, rationalizing as to what could really happen, anyway.

1. What documentation would you look to regarding disbursement of funds?
2. What would you do?
 - a. Agree, telling the agent not to cash the check until you let her know that the funding has been approved; or
 - b. Decline, explaining that you are following the lender's closing instructions not to disburse before funding approval.
3. Would you be comfortable disbursing on a verbal funding number from the lender?

VI. Positive Pay

(4 minutes)

A. You talk to your banker about using Positive Pay, or Reverse Positive Pay, for your escrow/trust account. The banker says his bank does not have that capability yet, but the bank is looking into it. You mention that you might have to move your account because this security procedure is not available. He responds that your account has been safe for over 15 years, so you should trust that the bank will take care of your customers' money.

1. What are your ethical duties to protect the funds that are held within your escrow account?
2. What ALTA Best Practice refers to Positive Pay and what does it say?
3. Should you notify your customers that their money is deposited in a bank with no Positive Pay capability?
4. Has anyone at your table experienced the value of Positive Pay recently? If so, what has been your experience?

VII. Assignment of Contract

(4 minutes)

A. Your very best real estate agent calls you to let you know that the contract for one of your pending cash transactions has been assigned to another buyer. You ask for a written addendum to the contract, but the agent tells you not to worry about it; besides, the seller is out of town so it would be practically impossible to get something in writing from her.

1. Who is required to sign the addendum to the contract?
2. What if the original contract states "Bill Buyer and/or his assignees," then do you need an addendum?
3. You go ahead without an addendum and enter the assignment information in your file and change the requirements in the Commitment to the name of the new buyer.
4. You offer to prepare the required addendum and send it to all parties for signature.
5. What should you do about the deposit already sent you by the original buyer?
6. Would your answer be different if the transaction if the buyer was obtaining a loan on the property?

VIII. Required Mortgage Signatories

(4 minutes)

A. The lender for a pending transaction sends you an email, saying that the wife does not need to sign the mortgage. In the lender's original closing instructions, the wife was required to sign the mortgage.

1. What do the terms of the Closing Protection Letter say and what are your ethical duties pursuant to the CPL?
2. You reply to the email, saying you received the changed instructions and will proceed accordingly.
3. You reply to the email, requesting that the original Loan Closing Instructions be modified to reflect the changed signatory requirement.
4. What if the lender says they do not have time to resend amended closing instructions?

IX. New Business

(4 minutes)

A. A real estate broker that has not previously sent you business but from whom you have been trying to get business drops by your office with five (5) new contracts from the same purchaser all with financing.

1. How do you handle this?

a. You are thrilled and take the broker out to lunch.

b. Do you wonder why this real estate agent is bringing you these transactions?

2. Do you confirm with the real estate agent that all of these purchases are investment properties? If the purchaser is using different lenders on these transactions and you discover at closing that the purchaser stated to all the lenders that their transaction was for primary residence, do you have an ethical duty to let the lender(s) know.

X. Multiple Contracts

(4 minutes)

A. A real estate agent brings you, as settlement agent, a fully executed contract for the purchase and sale of a pricy residential property, located in Palm Beach County. Excited about this opportunity, you immediately place an order for a title search and commitment. However, in reviewing the contract, you notice that there are actually two (2) contracts that were provided to you, which contain different dates and different proposed buyers. You call the real estate agent, who explains that he only intended to give you the latter contract as the first contract was canceled.

1. What do you do?

a. Proceed as instructed; or

b. Require an executed cancellation of the first contract.

2. Would you immediately require an executed cancellation by all the parties to the other contract or would you accept the cancellation just prior to closing?

3. Do you have an ethical duty to disclose the first contract to any parties of either contract?

XI. Consummation vs. Disbursement Date(s)

(4 minutes)

A. Under the new TRID guidelines, "consumers" must sign their closing documents on the day of consummation, the date they are legally obligated under the loan. They are executing these documents on a Friday and the

documents should be returned by Monday at which time the lender will disburse. Do you have an ethical duty under the terms of the contract to advise the seller and the real estate agents that disbursement will be on Monday? Do you have an ethical duty to the lender regarding explanation of the delay?

1. Whose responsibility is it to advise the seller and purchaser of the terms and conditions of the purchase contract?
2. If you find yourself in a position where you must speak with the seller regarding his proceeds delay, how would you explain the difference between the day of closing and the day of disbursement? Is there anything in the contract that would assist you in the event that you speak with the parties directly?
3. Do you feel it necessary to have all the parties execute a "delay of disbursement" escrow agreement reciting the terms and conditions of disbursement?

XII. Duty to Review Commitment

(4 minutes)

A. You order a title search from your underwriting production center and simply convert your Commitment into your software system for closing. You failed to compare your Commitment with the supporting documents and now five days prior to closing discover an issue with a document in the chain of title.

1. What is your duty to compare your commitment with the supporting documents?
2. Can you upcharge your search fee if you go back and look over all of the supporting documents. Can you charge for an update?
3. Can you charge either party on your settlement statement for an exam fee?
4. Are you responsible in the event that you did not compare the documents with the Commitment or do you feel your underwriter should take full responsibility since it provided the search?