



2003 ANNUAL POLICYHOLDERS' MEETING

The Annual Policyholders' Meeting of Lawyers Mutual Insurance Company of Kentucky is scheduled for 7:00 am Wednesday, June 11, 2003, at the Hyatt Regency, Louisville, Kentucky. Included in the items of business are the election of a class of the Board of Directors, expansion of the Board of Directors, and a report on company operations.

Proxy materials will be mailed to policyholders prior to the meeting. We urge all policyholders to return their proxy and to attend the meeting.

The Three Most Important Words in Real Estate Malpractice! Malpractice! Malpractice!

Real estate malpractice claims are plaguing Kentucky lawyers. We continue to experience an increasing number of claims in that practice area. Improper disbursement of sale proceeds is proving especially costly. As we wrote in our Fall 2001 newsletter it is essential to understand the difference between escrow agent and client trust account management. An escrow agent is a neutral party with fiduciary obligations to all involved in the escrow arrangement. A lawyer holding the proceeds of a real estate transaction in a client trust account represents the client and has third party responsibilities for others with a claim on the proceeds. Kentucky Rule of Professional Conduct 1.15 Safekeeping Property provides:

"Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property."

Under no circumstances disburse the proceeds of a real estate transaction until the title search is updated, the transaction documents recorded, and all checks providing funds for disbursement have cleared. Tell clients up front that they will not receive funds until these things have occurred and never make exceptions. Finally, no lawyer should ever deliver such funds to a third party (real estate broker, mortgage broker) for ultimate distribution.

REAL ESTATE MALPRACTICE ERRORS

- Erroneous description in deed of property to be conveyed
- Misstated date to which interest was to be computed
- Failure to fill in blank on form
- Failure to reserve mineral rights
- Failure to advise on impending change in law
- Unauthorized delay or failure to strictly enforce closing time limits
- Failure to discover encumbrances on the property:
 - ✎ mortgage lien
 - ✎ vendor's lien
 - ✎ tax lien
 - ✎ mechanic's lien
 - ✎ contract for deed
 - ✎ right-of-way
 - ✎ mineral lease
- Failure to assure that clients received or conveyed title as represented:
 - ✎ remainder
 - ✎ dower
 - ✎ outstanding life estate
 - ✎ lease
- Errors in the description of the property
- Failure to perfect security interest:
 - ✎ failure to prepare mortgage document
 - ✎ failure to update title search at time of closing
 - ✎ failure to record or timely record a mortgage
 - ✎ filing in the wrong county
 - ✎ failure to obtain releases of other encumbrances
- Failure to collect or protect security interest
- Failure to attend commissioner's sale
- Failure to know other applicable law, e.g., probate, tax
- Failure to disburse sale proceeds properly

Double Signature Checks Aren't What They Used to Be

Many law firms have as part of their internal controls a double signature requirement for large checks drawn on client trust accounts. Because of our concern with proper disbursement of real estate transaction proceeds the following article from the Oregon Professional Liability Fund newsletter "In Brief" by Carol Wilson, PLF Practice Management Advisor and Richard W. Wingard, CPA, caught our eye and is reprinted here with permission:

Protect Yourself From Embezzlement: Check Those Cancelled Checks

Most banks no longer include a provision in their account agreements for requiring two signatures on a check. In fact, at least one bank has the following language in its agreement for new accounts:

If you (a) have specified that some or all checks must be signed by more than one person, (b) have specified that the authorized signers for checks in one category are different than those for another check category, or (c) utilize checks that require multiple signatures, you acknowledge that those restrictions are for your internal use only and do not bind us even if you have made us aware of them in a certificate of authority or otherwise.

If you currently have a bank agreement stating that two signatures are required on all checks or for amounts over a certain dollar figure, the bank may not check for two signatures before honoring the check. However, the bank may stand behind the existing agreement if a check without the proper two signatures is cashed.

Now that the bank may not be watching over your checks, it is even more important to have good law firm procedures that protect your money and your clients' money. Here are some tips to help you avoid embezzlement:

- ❑ Have the cancelled checks delivered to you unopened.
- ❑ Examine all cancelled checks as soon as the statement arrives. Watch for authorized signatures, endorsements, and payees.
- ❑ Require two signatures on large checks.
- ❑ Do not allow checks payable to "cash."
- ❑ Require supporting documentation for all checks.
- ❑ Approve all client billings and reconcile receipts.
- ❑ Control access to checkbooks.
- ❑ Divide bookkeeping responsibilities. The person paying the bills should not be the person who reconciles the account.
- ❑ Give receipts when accepting cash and keep duplicates. If possible, have cash payments witnessed.

IMMIGRATION INFORMATION CHECKLIST

The March 2003 KBA *Bench & Bar* is devoted to immigration law in recognition of the special considerations of representing immigrants. F. J. Capriotti III (franco@capriotti.com) and Richard M. Ginsburg published in the Oregon Professional Liability Fund newsletter "In Brief" an excellent checklist for obtaining the key information required for immigrant representation with special emphasis

on criminal matters. It is reprinted here with permission:

If your client's case involves an immigrant issue, gather and prepare the following information.

1. Name and all aliases.
2. Date and place of birth.
3. Native language and level of English fluency.
4. Summary of immigration history (including first/last entry to the U.S., and prior INS arrests/deportations).
5. A copy of your client's:
 - a. Passport (all pages)
 - b. "Green card" (front and back) (this card proves that an alien is a lawful permanent resident)
 - c. I-94 arrival card (front and back placed in the passport at the time of arrival)
 - d. Any "other" immigration related documents.
6. Information on family, especially parents, children, or spouse who were born in the United States or possess a green card (include ages and birth places) and copies of their immigration related documents.
7. Any immigration documents filed for the client by family members and/or employers and INS receipts and notices.
8. If your client has a green card, when and how he or she got it. (Note: This information appears in different places depending on when the green card was issued. Some cards have the code "ADJ DATE," others have it in reverse-date format such as: 980114.)
9. If your client is or has been a non-immigrant (such as student, tourist, etc.), list periods and any violations of status or overstays.
10. A list of the crime(s) the client is accused of, including statutory citations, and copies of all charging documents and police reports.
11. A list of the possible crimes (including violations) you are considering as a plea for your client.
12. A list of the sentencing possibilities for pleas you are considering. Include information on statutory maximum sentence possible and years probable (including estimates of years of actual incarceration and year of suspension/probation).
13. If the client has already been convicted, or has prior convictions, provide statutory citations, charging documents, police reports, and relevant orders/judgment/sentence. If not listed on the documents, also provide information on whether this crime is classified as a violation and/or infraction and/or misdemeanor and/or felony, including statutory maximum and actual sentences imposed.
14. Have any of the crimes (including the current crimes) been committed against a spouse, live-in partner or person with whom the client shares a child in common or has the client ever been found to have violated a restraining order?
15. Has the client ever admitted having committed a crime (or the essential elements of a crime) to a government employee, or under oath to anyone?
16. Has the client ever had any other problems or encounters with the law?
17. Is the client being detained and is there an INS hold?

For more information about Lawyers Mutual, call (502) 568-6100 or KY wats 1-800-800-6101

or visit our web site at www.lmick.com



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This newsletter is a periodic publication of Lawyers Mutual Insurance Co. of Kentucky. The contents are intended for general information purposes only and should not be construed as legal advice or legal opinion on any specific facts or circumstances. It is not the intent of this newsletter to establish an attorney's standard of due care for a particular situation. Rather, it is our intent to advise our insureds to act in a manner which may be well above the standard of due care in order to avoid claims having merit as well as those without merit.

Malpractice Avoidance Update

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