

Practice Rules Compliance Committee

Title Insurance Fees

Law Society Rule 8.12 prohibits a member from receiving discounts or commissions from a third party, such as a title insurance company. There has been discussion at the Practice Rules Compliance Committee respecting “fees” paid to members by some title insurance companies. During the audit program, the Law Society Auditor, Diane Rendell, CA, has been advised by some members that the fees received from a title insurance company are payment for work done. These members claim that they must do more work to obtain the policy and are therefore earning a fee, not a commission.

Research was conducted on this issue by the Committee and there was further discussion about members who take the \$100 fee offered by a title insurer for completing a policy application. The Law Society of Upper Canada (LSUC) has taken the position that the relationship between the member and the title insurer is a joint-retainer. A legal opinion offered for consideration by LSUC states that the commission from the title insurer is, in effect, a fee for performing legal services. The LSUC endorses that position. Accordingly, a lawyer taking a commission benefit must have a consent form signed by the client because the lawyer is acting for both sides.

The Practice Rules Compliance Committee takes the position that the \$100 payment to a lawyer by a title insurer can be accepted by the lawyer as a fee and not as a commission. In summary, by accepting the \$100 as a fee, there must be: disclosure to the client, consent from the client, general consent from the title insurer, and disclosure on the invoice to the client.

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