

September 26, 2011

### **INFORMAL OPINION 2011-7 Title Insurer**

#### **Audit of Real Estate IOLTA Trust Account and Bank Statements**

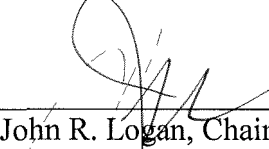
You have asked this committee to consider whether a title insurer's auditing of an attorney's real estate trust account gives rise to a violation of the Rules of Professional Conduct. You have indicated that the audit is limited to the information in the real estate IOLTA trust account, the firm's bank statements for this account, and a subset of six real estate files in which the title insurer issued policies.

Rule 1.6 (a) of the Rules of Professional Conduct provides in relevant part that "[a] lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent." Even if the information sought in the audit is information relating to the representation of a client, the circumstances surrounding the real estate transaction are such that client has already, pursuant to Rule 1.6 (a), "impliedly authorized" the disclosure to the title insurer "in order to carry out the representation" of the client in the transaction. Inasmuch as the client has impliedly authorized the disclosure of this information to the title insurer, Rule 1.6 is not violated. The firm's real estate IOLTA trust account may contain information related to transactions involving title insurers other than the title insurer that has requested the audit. That information should be redacted.

If the identity of the client is a continuing concern, then the audit can proceed by providing only the client's initials or assigning to the name a number and disclosing only the number to the title insurer. The title insurer in question has permitted the redaction of client information if that is what the attorney chooses to do. We have previously recommended the use of such a procedure in response to an requested audit by the Internal Revenue Service. See Informal Opinion 81-3.

Because the information disclosed in the course of the audit is information that the client has impliedly authorized the attorney to disclose to the title insurer, providing this information does not result in a violation of the Rules of Professional Conduct.

THE COMMITTEE ON PROFESSIONAL ETHICS

By   
John R. Logan, Chair



Jill Perbeck

**To:** kknnox@hortonshieldsknox.com  
**Subject:** Professional Ethics Committee

**Attachments:** Informal Opinion 2011-7.pdf

Informal Opinion  
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Please find attached a copy of Informal Opinion 2011-7 from the Committee on Professional Ethics. Thank you.

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