

***NAVIGATING THE ETHICAL MINEFIELD
FOR MORTGAGE LENDING LAWYERS***

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Who Can Sue?

- Privity Rule—Generally only the client can sue the lawyer.

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Attorney Immunity

- Opposing counsel can be a target when a transaction goes poorly or the client or lawyer needs someone to blame or when opposing counsel may have lied in negotiations.

Some History

First National Bank of Durant v. Trans Terra Corporation-1998

- \$1.5 MM loan secured by oil and gas interests.
- Title opinion prepared by lawyer for borrower.
- Vastly overstates value of collateral.
- Loan defaults and everyone is sued.
- Court holds that there is a claim for negligent misrepresentation under Restatement.

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McCamish Martin Brown & Loeffler v. F.E. Appling Interests--1999

- Settlement with bank whereby attorney affirmed that agreement complied with statute binding FSLIC to deal.
- Bank failed and agreement did not bind FSLIC to deal.
- Claim against attorney for negligent misrepresentation upheld by Texas Supreme Court.

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Title search: Navigating the Ethical Minefield for Mortgage Lending Lawyers

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