

NAVIGATING THE ETHICAL MINEFIELD FOR MORTGAGE LENDING LAWYERS

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1

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.

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Some History

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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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