

New Jersey Courts

NOTICE TO THE BAR

Clarification of Advisory Committee on Professional Ethics Opinion 710

In response to numerous inquiries concerning "seller's concessions," the Advisory Committee on Professional Ethics hereby clarifies Opinion 710, "Misrepresenting Purchase Price or Other Material Fact Regarding a Real Estate Transaction." The Opinion is based upon the particular facts submitted by the inquirer and recited in the Opinion. It addresses fictional and deceptive increases in purchase prices unrelated to the actual circumstances or costs of closing, and contrary to the expectations of the lender or the ultimate holder of the mortgage. As stated in the Opinion, a prohibited transaction is one that is not premised on "a legitimate charge against the seller on account of any actual costs assumed by it and otherwise payable by the buyer." Accordingly, the Opinion does not implicate a contract of sale that explicitly states that the seller shall provide the buyer with a credit against legal and legitimate costs or expenses related to the sale, which would otherwise be absorbed by the buyer, such as actual closing costs.

Melville D. Miller, Jr., Esq., Chair
Advisory Committee on Professional Ethics
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