

Ethics in the Escrow Workplace

Bill Ronhaar, Member
Limited Practice Board

A Washington Supreme Court board administered by the
Washington State Bar Association

About me...

Personal

- * Born and raised in Lynden, Washington and have resided in Bellingham, Port Townsend, Olympia and Mount Vernon
- * Married - Sallie and I have raised 6 children ranging from 38 down to 15
- * 5 grandchildren
- * Resident of Mount Vernon for the past 33 years
- * Diehard Husky, Seahawk and Mariner's fan

Professional

- * 1970 Graduate of Lynden High School
- * Attended Western Washington State College
- * Employed in the title industry for over 43 years
- * 3-time past president of the Washington Land Title Association, former chair of the Education Committee and member of the Agent's Executive Section of the American Land Title Association
- * Appointed to the Limited Practice Board for term from 2017-2021

The Limited Practice Board (LPB)

Structure of the LPB

- * Nine members
- * All are appointed by the Washington State Supreme Court
- * Must contain business representatives from the following industries:
 1. Escrow
 2. Lending
 3. Title Insurance
 4. Real Estate
- * At least 4 members must be lawyers

Duties of the LPB

- * Meets four to six times per year
- * Primary task is to write the next exam for admission as an LPO.
 - * We also score exams at our meetings after the testing has taken place.
- * Approves courses and materials for continuing education requirements
- * Handles grievances and disciplinary matters
- * Responsible for providing approved forms for LPOs to use in practice.
- * Recommend rule amendments

LPO Numbers

Currently...

Licensed = 957

Active = 769

Inactive = 188

Most...

Licensed = 1406 (Apr 2008)

Active = 1193 (Apr 2007)

Inactive = 384 (Apr 2009)

Recently...

79 applicants for April 2017
exam = 28% passed

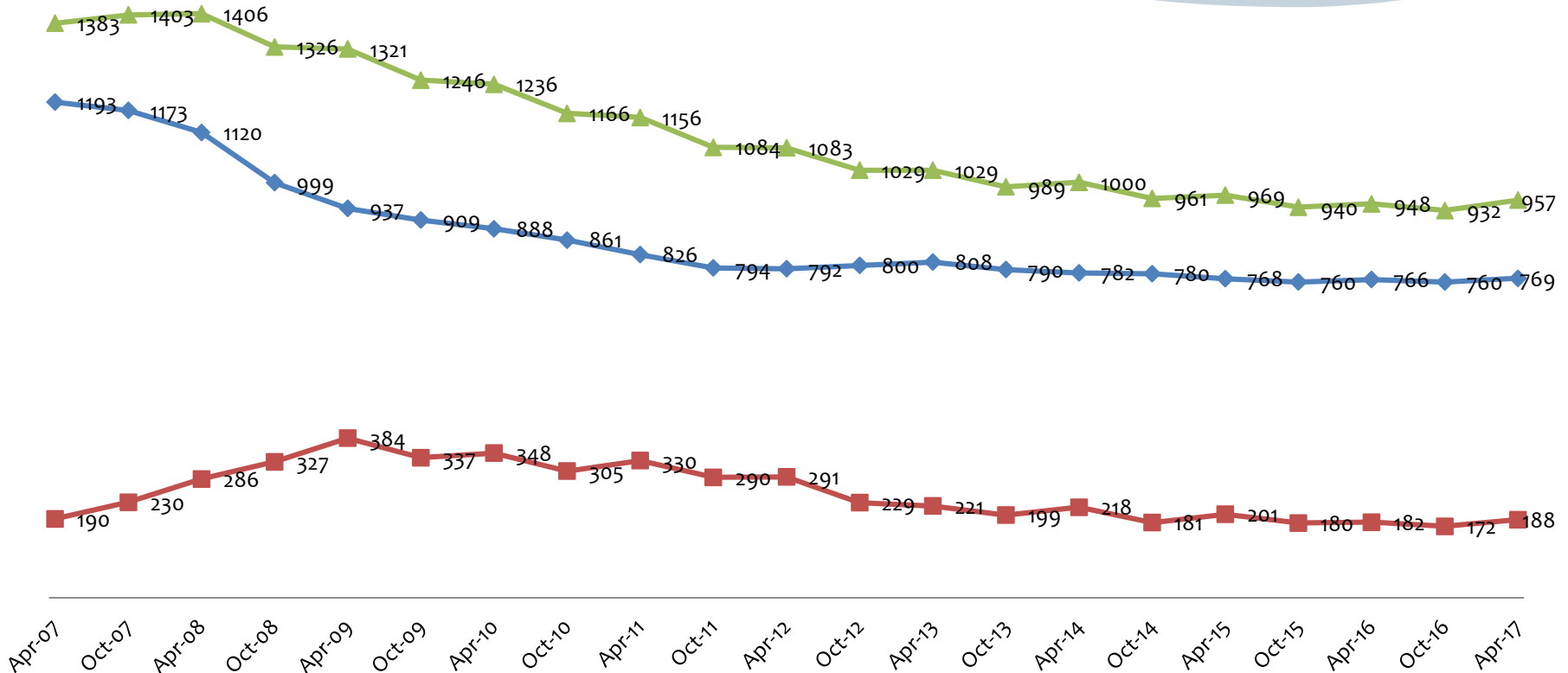
48 applicants for Oct 2016
exam = 65% passed

Most Exam applicants = 224
(April 2006) = 46% passed

Least Exam applicants = 15
(April 2009) = 40% passed

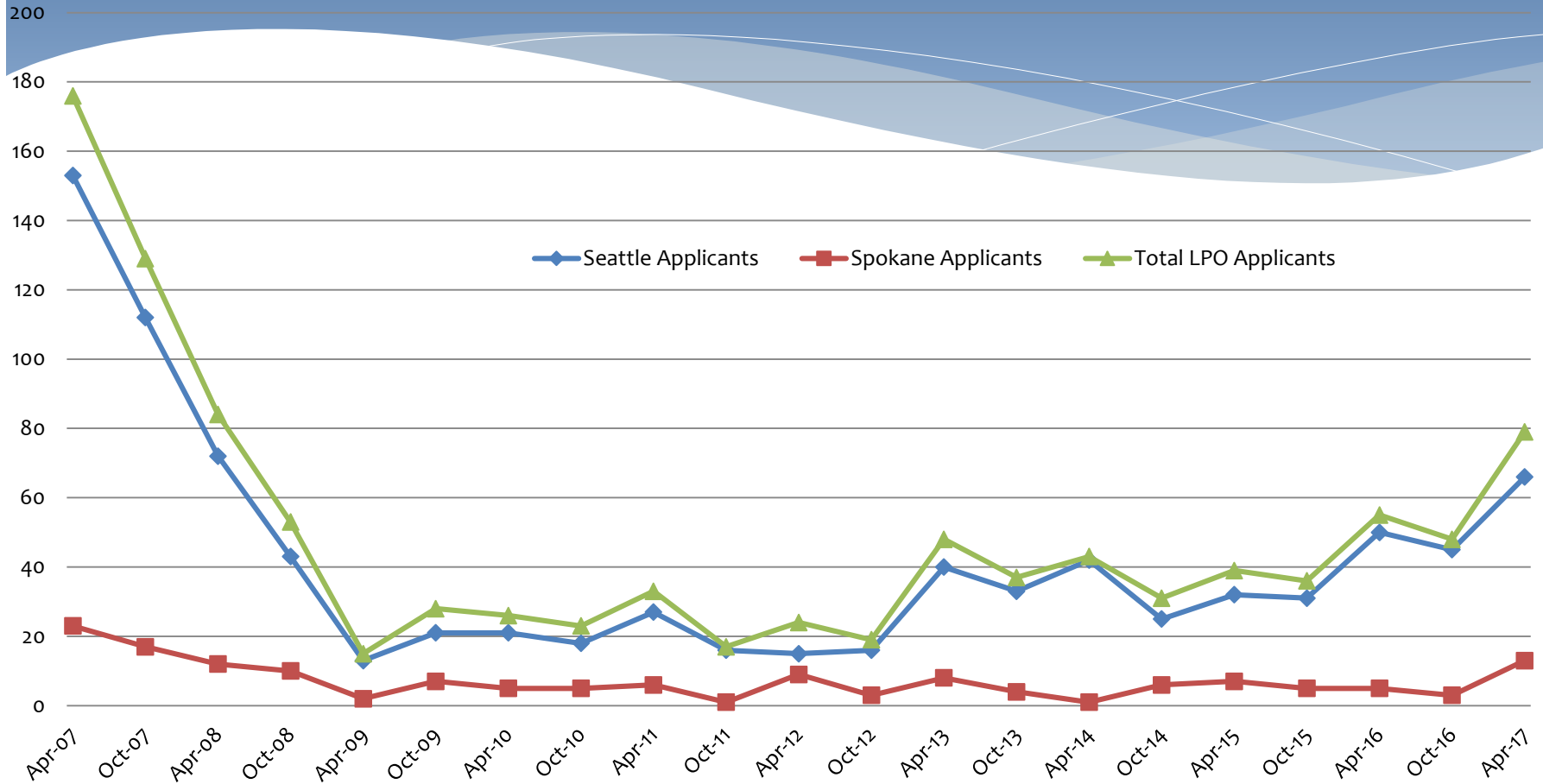
Licensed LPOs

◆ Active LPOs ■ Inactive LPOs ▲ Total Licensed LPOs



Data as of April 2017, based on WSBA data since April 2007

LPO Exam Applicants



Data as of April 2017, based on WSBA data since April 2007

WSBA Committee/Board Application

- * Applying for a position on the Limited Practice Board is through the WSBA committee/board application process
- * Online application available in January on mywsba.org
- * Login for myWSBA is LPO number followed by LPO, e.g., 90909LPO
- * Limited Practice Board nominates and the Supreme Court appoints members

AMENDMENTS TO THE RULES

* EFFECTIVE SEPTEMBER 1, 2017

- * License renewal for 2018 will change to the calendar year (Jan – Dec). We will collect the 2nd half of 2018 beginning this fall
- * Bar Cards will be issued in lieu of paper licenses at 2018 renewal
- * Continuing education will be governed by APR 11 and the Mandatory Continuing Legal Education board (MCLE)
 - +MCLE will go back to the calendar year
 - +MCLE will require 30 total credits every 3 years with 15 law & legal and 6 ethics
 - +MCLE will be reported beginning with staggered 3 year reporting periods

LPO MCLE REPORTING PERIOD TABLE

Year Admitted	1 st Phase-in Reporting Period	Then Every Three Years Jan – Dec.
1984-1990, 1993, 1996 1999, 2002, 2005, 2008 2011, 2014, 2018	Jul 1, 2017-Dec 31, 2018 (2016-2018) 10 Total/ 5 Law & Legal/ 2 Ethics Certify by Feb. 1, 2019	2019-2021, 22-24, etc 30 Total 15 Law & Legal, 6 Ethics
1991, 1994, 1997, 2000, 2003, 2006, 2009, 2012, 2015, 2016	Jul 1, 2017–Dec. 31, 2019 (2017-2019) 20 Total/ 10 Law & Legal/ 4 Ethics Certify by Feb. 3, 2020	2020-2022, 22-25 etc. 30 Total/ 15 Law & Legal/ 6 Ethics
1992, 1995, 1998, 2001, 2004, 2007, 2010, 2013, 2017	Jul 1, 2017-Dec 31, 2019 (2018-2020) 30 Total / 15 Law & Legal / 6 Ethics Certify by Feb. 1, 2021	2021-2023, 24-26, etc 30 Total / 15 Law & Legal/ 6 Ethics

Admission and Practice Rules

Rules 11-12, Rules 3-5

1. The purpose of APR 12 is “to authorize certain lay persons to select, prepare and complete documents incident to the closing of real estate and personal property transactions and to prescribe the conditions of and limitations upon such activities.”
2. APR 12 establishes the Limited Practice Board
3. APR 3-5 lists the admission requirements to be licensed as an LPO.
4. APR 11 and 12 lists the continuing license requirements (i.e. continuing legal education, financial responsibility, trust account information, and license fees)

APR 12 describes the LPO Scope of Practice

1. LPOs select, prepare and complete documents in a form previously approved by the Board for use by others in, or in anticipation of, closing a loan, extension of credit, sale or other transfer of interest in real or personal property.
2. An LPO is held to the standard of a lawyer: “to comply with the duty of care, an attorney must exercise the degree of care, skill, diligence, and knowledge commonly possessed and exercised by a reasonable, careful and prudent lawyer in the practice of law in this jurisdiction.”

Maintenance of LPO License

To maintain the LPO license under APR12, an LPO must,

- * Pay an annual license fee by February 1st of each year.
- * Maintain proof of ability to respond if damages result from acts or omissions. (An E&O policy of at least \$100K or an audited financial statement showing net worth of at least \$200K – annual financial statements or notice to Board if coverage lapses or changes).
- * Attend a minimum of 30 hours of approved continuing education during each three-year reporting period
 - * Three year reporting periods will be phased in
 - * Can now get credit for recorded activities
- * 15 of the credits must be “Law & Legal” and 6 must be “Ethics”
- * Carryover is 15 per reporting period

What are my responsibilities as a LPO?

(hint: remember that oath you took?)

- i. You are subject to Washington State laws, Rules 11 and 12 of the Admission and Practice Rules and the APR 12 Regulations
- ii. You must support both the federal and state constitutions
- iii. Abide by the Limited Practice Officer Rules of Professional Conduct and Rules for Enforcement of LPO Conduct
- iv. Confine your legal services as an LPO to only those activities allowed by law and to only utilize documents approved pursuant APR 12
- v. Disclose the limitations of your services as an LPO (cannot advocate for any party or provide any legal advice)
- vi. You can be held liable for any violation of the applicable standard of care as an LPO. It is essential that you have Financial Responsibility Coverage to act as an LPO!!

Office Scenarios:

What's an LPO to do?

Understanding your role as an LPO

Scenario 1:

Outside the envelope

You witness another LPO in your office telling a buyer in a transaction that they should really be getting a statutory warranty deed, as opposed to the bargain and sale deed they negotiated for in the purchase and sale agreement.

What should you do?

LPORPC 1.8 Unauthorized Practice of Law:

An LPO shall not:

- (a) engage in, or assist others in, the unauthorized practice of laws, including the giving of legal advice

LPORPC 1.10 Misconduct:

It is professional misconduct for an LPO to:

- (a) Violate or attempt to violate the LPORPCs,...

LPORPC 1.11 Reporting Professional Misconduct:

An LPO who knows that another LPO has committed repeated and material violations of the LPORPC should inform the Limited Practice Board.

The intent of this rule is to encourage LPO's to report professional misconduct in order to ensure effective self-regulation amongst LPOs.

Scenario 2:

Good help is hard to find

You gave an Occupancy Affidavit to a mobile notary and asked her to have it signed by the borrower. Instead of going to the borrower's residence to have the document signed, the notary signed it herself!

What should you do?

RCW 42.44.160

"A notary public commits official misconduct when he or she signs a certificate evidencing a notarial act, knowing that the contents of the certificate are false."

- * Notary misconduct is a gross misdemeanor

The REAL question is, "Does the LPO have a duty to do anything in relation to its client?"

- * **LPORPC 1.7** - (Truthfulness in Statements to Others) In the course of performing LPO services, an LPO shall not knowingly fail to disclose material facts to clients or any parties to the transaction
- * **LPORPC 1.10 (c)**- (Misconduct) It is professional misconduct for an LPO to engage in conduct involving dishonesty, fraud, deceit or misrepresentation

Scenario 3:

Some friend you are...

Your closest friend is finally buying her dream home on the lake. She calls to tell you that she made sure to have you personally named the “closing agent” in the purchase and sale agreement. She trusts you to make sure her dream comes to fruition and the deal is closed.

How do you respond?

LPORPC 1.5(a)

Conflict of Interest

- * An LPO **shall** not provide LPO services in a transaction where the LPO, or a member of the LPO’s immediate family, is either a party or client.
- * “Immediate Family” includes a spouse, child, parent, grandparent, grandchild or other any relative or individual with whom the LPO maintains a close, familial relationship.

Scenario 4: *Now what?*

You receive a call from the buyer in a transaction scheduled to close in two weeks. The buyer informs you that the bread winner of the family just lost her job. Loan documents just arrived from the buyer's lender that morning. The lender has no knowledge of the latest news.

What are your obligations, if any?

LPORPC 1.7

Truthfulness in Statement to Others

- * In the course of performing LPO services in a transaction, an LPO cannot:
 - * Knowingly fail to disclose all material facts to clients or any parties to the transaction, or
 - * Make false statements regarding material facts to a client or any such party.

Scenario 5:

Smell something fishy?

Ed is a known wheeler dealer and manages several large apartment complexes in the area. Ed has financing all lined up so he can pull roughly a million dollars of equity out of the property for a “sister-project” across town. You’ve been asked to assist with the closing.

Title to the property is held in the name of an LLC, of which Ed and Tom share an equal interest. But Ed has provided proof that he is the manager of the LLC and has been given broad authority to take out loans on behalf of the company.

Ed goes to great lengths to deter you from speaking to his partner in the project, Tom. You’re a little suspicious, but Ed explains that Tom has been very ill and doesn’t want to be bothered. However, on the eve of closing you receive a very disturbing call from Tom, who just heard a rumor that Ed is refinancing one of the properties in which he has a 50% interest. He wants to know if the rumor is true and wants details NOW!

You promptly call Ed to tell him about the call from Tom and he prohibits you from taking any more calls from Tom. Tom is sick and should not be bothered by this. He instructs you to just get the job done or he’ll have to hire someone else to do it.

You really appreciate Ed’s business and he’s generally a really nice guy, but....

What do you do?

LPORPC 1.6(a)

Declining or Terminating Services

LPORPC 1.6(a) An LPO shall decline to provide LPO services or, where LPO services have commenced, shall terminate LPO services, if:

- (1) The LPO services will clearly result in violation of the Limited Practice Officer Rules of Professional Conduct or other law, including the unauthorized practice of law by the LPO;
- (2) The LPO's physical or mental condition materially impairs his or her ability to provide LPO services;
- (3) The LPO reasonably believes that the documentation requirements of the transaction exceed the LPO's competence;
- (4) The LPO is discharged; or
- (5) A client insists on confidentiality of information disclosed to the LPO to which the LPO cannot agree.

(b) An LPO may refuse to provide LPO services for any other reason, including without limitation the following, if:

- (1) A client persists in a course of action involving the LPO's services that the LPO reasonably believes is criminal or fraudulent or illegal, or that might require the LPO to exceed his or her authority as an LPO;
- ...
- (3) A client insists upon pursuing an objective or practice that the LPO reasonably considers repugnant or with which an LPO has fundamental disagreement;
- ...
- (6) Other cause for refusal of services exists. Where the clients are unwilling or unable to correct the situation, other cause for refusal of services may include, but is not limited to: insufficient or conflicting documentation that is not timely corrected by the clients; direction from a client to use forms not approved by the Limited Practice Board or to make unauthorized alterations to approved forms; direction from a client that is inconsistent with the existing documentation; apparent lack of or defect in the capacity of a client or signature; or failure of the clients to allow sufficient time for competent and orderly performance of LPO services.

Scenario 6:

Do we give refunds here?

A signing fee was quoted and approved on an est. HUD by the short sale lender.

The seller then comes to your office in person to sign the closing papers. Are you required to refund that signing fee to the short sale lender?

Things to consider:

- * Does it matter if no one is the wiser? After all, it's just a small fee and the lender has already approved it.

LPORPC 1.10 - Misconduct

- * It is professional misconduct for an LPO to:
- * (a) violate or attempt to violate the Limited Practice Officer Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- * (b) commit a criminal act that reflects adversely on the LPO's honesty, trustworthiness or fitness as an LPO in other respects;
- * (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- * (d) willfully disobey or violate a valid court order...

Scenario 7:

This Old House

You receive a transaction to close the sale of a small home near I-405 that is almost completely surrounded by commercial properties. The seller, Betsy, is an elderly woman and the buyer is a man named Joseph. Shortly after receiving the transaction, another deal for the same property comes in, showing that Joseph is selling to a company with a store located next to the small house. The same broker is named on both transactions as both the listing and selling broker.

When Betsy comes in to sign papers, she tells you that she was approached by the company owning the store next door, but she refused to sell to them because she didn't want her house destroyed. Betsy was relieved that the broker had found an offer from an individual to purchase the property.

It's obvious to you that the broker set up an interim buyer to get the lady to go through with a sale, knowing that the individual was just going to turn around and sell to the company that owned the store.

What should you do?

Can someone selling their property dictate what the purchaser can do with the property after it becomes theirs?

- * The parties can agree to this in writing, but this is not for an LPO to dabble in.

Can you ethically disclose a second transaction to her, when she was not a party to the transaction?

- * Does LPORPC 1.7 - Truthfulness in Statements to Others apply? Is this information you are "knowingly failing to disclose" and that is "material to the client or a party to the transaction?"

Can you terminate your service under LPORPC 1.6(b)(6), when "other cause for refusal of services exist"?

Scenario 8:

If a tree falls in the forest...

You receive an escrow matter involving seller financing secured by a real estate contract. The property is heavily forested land with valuable timber.

You get a phone call from a concerned citizen who wants you to know the buyer plans to strip the property of the timber and then default on the contract. What should or can an LPO do with that information?

LPO RPC 1.3

Communication with Clients

The proper focus for LPO communication with clients is not as an advocate or advisor, but to clear up documentary discrepancies as needed and ensure that there is an adequate written agreement for the LPO to select, prepare and complete the documentation for the transaction.

Should the LPO advise the seller to seek legal advice?

LPO RPC 1.3(c) requires an LPO to inform a client to seek legal advice from a lawyer if the LPO is reliably informed, or based on context with the client reasonably believes, that the client does not understand or appreciate the meaning of document prepared by the LPO for signature by the client

Scenario 9:

Sneaky Pete

You have a refinance transaction with a private party payoff. Pete, who claims to be the contract collection agent, provides you a payoff statement in lieu of the beneficiary. Pete styles himself as a financial planner, and he has been part of a few other transactions that you have closed in the past.

You ask Pete for the contact information for the actual beneficiary and he angrily refuses. He huffs that he is a good, long-standing customer of the company that you work for and he is sure that you can get your superiors to approve of closing without a payoff from the beneficiary.

After some investigating, you find the contact info for the private beneficiary. The beneficiary tells you that the actual payoff figure is much higher than what Pete gave you because a few payments had not been received. As a result, the borrowers couldn't afford the actual payoff and the refinance transaction didn't close. Pete is now upset at you for "going around his back" and "killing the transaction."

How do you respond to this situation?

Scenario 9:

Sneaky Pete

- * Notify your supervisors of the situation, since Pete has already mentioned them
- * Kudos to the LPO for insisting on getting the payoff information directly from the beneficiary!
- * If the deal had been “closed” with the bank releasing funds and the private party refusing to release the lien, who would be at fault?

Scenario 10:

Loans and Groans

Steve, a private party lender, asks you to prepare a Note and Deed of Trust for a loan to a contractor, Larry, who says he will use the money to purchase a short sale property for future development.

You know that Larry has a very bad reputation and has not followed through with his commitments on transactions in the past. You call Larry directly to see if he intends to purchase the short sale property. He admits to you that he has no intention of purchasing the property.

How do you respond to this situation?

Scenario 10:

Loans and Groans

LPO RPC 1.3

Communication with Clients

The proper focus for LPO communication with clients is not as an advocate or advisor, but to clear up documentary discrepancies as needed and ensure that there is an adequate written agreement for the LPO to select, prepare and complete the documentation for the transaction.

Should the LPO advise Steve to seek legal advice?

LPO RPC 1.3(c) requires an LPO to inform a client to seek legal advice from a lawyer if the LPO is reliably informed, or based on context with the client reasonably believes, that the client does not understand or appreciate the meaning of the document prepared by the LPO for signature by the client.

Scenario 11:

Moonlighting...is it really worth it?

An LPO works for a company, but has been asked to prepare some “very simple loan documents” for a small residential transaction between friends. The LPO has been struggling to make ends meet and jumps at the opportunity to make a little extra cash on the side.

What's the problem?

APR 12 Regulation 7: Financial Responsibility Requirement

- * To maintain certification under APR 12, an LPO is required to maintain proof of ability to respond in damages resulting from acts or omissions.
- * **Remember your oath:** You can be held liable for any violation of the applicable standard of care as an LPO. It is essential that you have Financial Responsibility Coverage to act as an LPO!!
- * A violation of the LPO oath is misconduct under LPORPC 1.10(e)

Scenario 12:

Extracurricular Activities

You discover that Alice, an LPO who you work with, is doing signings for some of her transactions after hours and outside of the office. Because these transactions are occurring offsite, she is remitting a bill for her 'notary services' and paying her "company" out of the escrow fee.

How do you respond to this scenario?

LPORPC 1.10 - Misconduct

- * It is professional misconduct for an LPO to:
- * (c) engage in conduct involving dishonesty...
- * (e) violate his or her oath as an LPO

Contact Information



Whatcom Land Title Company is a locally owned and operated provider of title insurance and escrow services in Whatcom County, Washington

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