

Attorney-Client Relationships: Avoiding Surprises, Conflicts of Interest

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Accurate communications can go a long way in preventing misunderstanding in any type of relationship. Law firms, as a rule, have more written communications with their clients than most other professional service providers to thoroughly document the nature of the relationship and overall expectations. This is not by accident. Not only is such documentation good business, but it also occurs because lawyers are bound to follow a code of professional responsibility.

For most firms, the written communications begin early in the client-attorney relationship, often starting with the execution of an engagement letter. This document is designed to benefit both the attorney and the client as it outlines the overall relationship, setting expectations for each party and defining limitations in the overall scope of work. Engagement letters will also set forth payment terms and may precisely describe the range of the engagement. The engagement letter is designed to guide the communications process and potentially help to resolve future conflicts. If a client has specific needs, such as requiring frequent updates or more expedited expectations regarding responsiveness, these may be clearly stated upfront in the engagement letter.

Within transactional practices, including specifically commercial real estate, another document that is being executed in greater frequency is the conflict waiver. Most law firms with a practice group focused on real estate represent a wide array of clients, including lenders, developers, tenants and landlords, among others. Such diverse expertise can prove extremely valuable to clients, as it provides the law firm with a broader depth of understanding of the overall industry and a greater ability to anticipate and address issues. Law firms that represent lenders and developers have the added advantage of being able to leverage those relationships and networks to help arrange collaborative partnerships which may facilitate the project's completion.

On occasion, however, as a result of these myriad clients, interests may conflict on a particular transaction. As Northeast Ohio's commercial real estate market has



witnessed a boom of sorts in recent years, the number of clients and projects has increased exponentially, creating a greater chance for conflicts of interest.

Such conflict occurs completely unintentionally and, often, unexpectedly. A law firm, for example, may have represented a particular lender and developer for years without conflict. Now suddenly the two clients find themselves on opposing sides of a transaction. Since lawyers follow a code of professional responsibility, they cannot jointly represent two clients whose interests conflict. As a result, the law firm may seek to represent one of the parties to the transaction so long as both parties execute a conflict waiver.

A typical conflict waiver describes the nature of the conflict in a specific situation, discusses the risks associated with the conflict, and clearly identifies the scope of counsel's engagement, as well as limitations in the event a conflict arises. Importantly, the waiver will likely state that, should a conflict between the parties arise with respect to the transaction then being handled, the firm would not be able to represent either party in any resulting litigation – even though the firm is only representing one party in the transaction itself.

Clients and counsel alike must be cognizant of two important functions a

lawyer provides as defined in the code of professional responsibility, particularly when it comes to conflict waiver situations. First, lawyers are obligated to zealously represent a client in each transaction. When a lawyer is participating in a transaction governed by a conflict waiver, the non-represented party (by the firm requesting the waiver) must keep in mind that the attorney, though typical counsel to such party, is in the particular situation representing the other party. As such, the attorney must act in the best interests of the party being represented, even though on other matters both parties are represented.

Clients must also keep in mind that lawyers are obligated to maintain strict confidentiality when it comes to client information. Clients must have the confidence that their attorneys will not share critical information with others, even if on a particular transaction their counsel is sitting opposite them pursuant to a waiver.

It's important to note that conflict waivers are transaction specific. In the above example, the law firm could continue to represent the lender on other transactions while being released from representation on the one transaction in which there is a conflict. It's equally important to understand that there is nothing personal about conflict waivers; they are simply a part of doing business. Solid communications regarding the situation and the impact of the document itself, however, are critical to managing client expectations and continuing the attorney-client relationship over the long-term. **P**

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