

MINUTES

COMMITTEE: Ethics Committee

DATE: April 12, 1995

8. IMPLIED UNDERTAKING IN REAL ESTATE PURCHASE; CHAPTER 11, RULE 8

The Committee considered a number of issues dealing with the provisions of Chapter 11, Rule 8. Those issues were:

- 1) As a matter of ethics, should the provisions of Chapter 11, Rule 8 be considered subject to the holdback provisions of the *Builder's Lien Act*?

The Committee noted that the deemed undertaking referred to in Chapter 11, Rule 8 is an undertaking to pay according to the Statement of Adjustments. It was the Committee's view, therefore, that the holdback provisions of the *Builder's Lien Act* should not take precedence over an undertaking unless the undertaking expressly contemplates the provisions of the *Builder's Lien Act* will take precedence.

- 2) How should Chapter 11, Rule 8 be interpreted where there is a common law right to a setoff?

The Committee noted that the 1983 opinion of the Professional Standards Committee is that the undertaking takes precedence over a common law right to setoff and the Committee continues to believe that is the proper result.