STATE OF IOWA

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IOWA DEPARTMENT OF COMMERCE
DIVISION OF CREDIT UNIONS
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Interpretive Bulletin

Date: March 14, 2013

To: All Iowa State Chartered Credit Unions

From: JoAnn M. Johnson
Superintendent of Credit Unions

SUBJECT: **In-house attorney for abstracts and title opinions**

The Division has been requested to comment on a credit union's plan to hire an in-house attorney to read abstracts and title reports, to prepare title opinions for borrowers, and to charge the borrowers fees for this service. While such a proposal doesn't appear to conflict with existing credit union statutes, the question remains whether the proposal conforms to best practices, as we further explain below.

Initially, we note that while the interests of a credit union and a borrower in obtaining the legal services relative to a title opinion are similar, they are not identical. The Iowa State Bar Association notes at least one potential danger to a buyer relying on a title opinion prepared by the lender's attorney:

> In many cases, if the buyer is obtaining financing, the buyer's lender will engage an attorney to examine the abstract and render the title opinion. Many buyers rely on the lender's attorney's title opinion and do not retain an independent attorney to examine the abstract. In these situations, please be cautious that the lender's attorney is most likely only responsible to the lender and not the buyer. Therefore, if the lender's attorney missed a title defect, the buyer may not have any recourse against the lender's attorney.

https://www.iowabar.org/?pg=BuyingAHome. A lender's attorney who does not have direct liability to the borrower raises issues of reputational risk for the credit union, and may present other liability issues for the credit union.

We believe there is an even greater potential for confusion and misunderstanding with an in-house attorney. An in-house attorney would be an employee of the credit union, representing the credit union's interests, and would be on the credit union's payroll. But the proposal

contemplates charging the borrower for the attorney's services. We question whether payment of a fee for that attorney's services by a borrower may create the appearance of an attorney-client relationship between the in-house attorney and the borrower, or otherwise create a potential conflict if a dispute related to the title opinion later arises. The Iowa State Bar Association further notes that "[t]he title opinion for the buyer should be at the buyer's expense." https://www.iowabar.org/page/BuyingaHome. But the Bar suggests that the lender should allow the buyer to choose an attorney to examine the abstract for both the buyer and the lender, to avoid the potential problem outlined earlier, in the event the attorney misses a title defect.

We also question whether issues could also arise related to the sale of the mortgage on the secondary market, whether such an employment arrangement would allow for issuance of both an Owner's and Lender's Title Guaranty Certificate, and whether the proposal raises any ethical issues for the proposed in-house attorney. A credit union may even consider it advisable to have an employee who is a member of the Bar request a formal ethics opinion on the proposal.

In conclusion, while the proposal would present certain advantages for a credit union, we believe that it raises many uncertainties, and does not represent best practices for title opinions, and that a credit union should proceed, if at all, with great caution.