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Real Estate Law: Duty to non-clients

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The courts in Massachusetts have held that a lawyer owes no duty to non-clients in real estate closings.

However, in a recent case (October 30, 2009), a Superior Court judge found that a closing attorney may have liability to non-clients.

The judge found that the closing attorney may have given the buyer legal advice, although the closing attorney was only representing the lender at the closing.

The case is *Mercuri v. Newhouse, et al.* It involved a title defect, a private way on which a driveway was located.

Casual advice to a buyer at a closing may create an implied attorney-client relationship. This may be contrary to *Page v. Frazier*, 388 Mass. 55 (1983), which has been considered the "final word" in real estate matters involving legal malpractice. *Page v. Frazier* states that an attorney has no duty to non-clients, absent foreseeable reliance.

Although the *Mercuri* case is only a Superior Court case, it may be the beginning of a new standard for lawyers. This could be important for everyone involved in real estate.

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