

May A Tax-Reduction Company Retain A Lawyer For A Property Owner

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N.Y. State Bar Opinion 705 (clarifying N.Y. 371)

This Opinion covers the engagement of an attorney by a non-attorney tax reduction company to represent a property owner in a Supreme Court tax certiorari case.

Question 1: May a lawyer accept engagement directly by a tax reduction company which was previously engaged by a property owner to bring a tax proceeding under Real Property Law § 706 after denial of the grievance petition.

Opinion: The attorney may, as a general matter, agree to represent a property owner in tax certiorari proceedings upon engagement by a tax reduction company that has authorization from the owner to select counsel. But certain limitations apply:

(i) The lawyer must recognize that the client is the property owner, not the tax reduction company. Therefore, the lawyer may not accept employment if the company imposes conditions compromising the lawyer's professional judgment in representing the owner. For example, the lawyer may not agree to retain expert witnesses recommended by the company. Also, the lawyer must look to the property owner for decisions "affecting the merits, e.g., whether to settle.

The engagement is improper if it involves solicitation and fee-splitting. The lawyer must not aid the tax reduction company in the practice of law. The lawyer should avoid accepting referrals from any company "on a regular basis" if to do so gives "assurance that if a grievance is denied, the company will be able to engage counsel to represent the property owner in Supreme Court proceedings."

Question 2: May a lawyer charge a percent of the tax reduction company's fee?

Opinion: The lawyer's fee may be an hourly fee, a flat fee, or a contingent fee equal to a fixed percentage "of the tax reduction company's fee."