

# DUAL AGENCY INTERVIEW GUIDE

## Risk Awareness for the Informed Consumer

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Buying a home and planning to use the services of a real estate broker? Whom will the broker represent: buyer, seller, both or neither? **The choice is yours**, although many brokers may *seem to require* that you consent to the practice of dual agency in advance of making a home purchase.

As a consumer you **always** have the choice to consent or not consent to the practice of dual agency. To make the choice that is best for you, consider asking any real estate professional some or all of the following questions in advance of deciding whether [dual agency](#) is in your best interests. Their answers may better illuminate the risks and benefits to you associated with this real estate service option.

*For the purposes of this interview guide the term "dual agency" refers to the practice by a brokerage company of "representing" both the buyer and the seller in the same transaction regardless of what the dual representation [practice may actually be called in any particular state or brokerage office](#).*

1. Does your company require your associates to obtain the consent of each buyer or seller to the practice of dual agency as a condition of working with you?
2. If we consent to dual agency, how will the usual services you offer us as a "true agent" be diminished if a dual agency occurs?
3. Please explain how each of the six fiduciary duties you usually provide as a "true agent" is limited by dual agency.
4. If we do not consent to dual agency, will your brokerage company refuse to notify us in advance of placing newly available properties in the MLS or deny us access to these properties even if those properties meet our needs and we are financially qualified to purchase them?
5. If we consent to dual agency and a dual agency transaction occurs will you allow us to engage the services of a "true agent" to advise us on matters you are prohibited from doing and will you pay from your commission that other "true agent" a reasonable fee for those services which you can't provide us?
6. If you were selling a property you personally own that we were interested in buying, do you think you could still effectively and/or impartially represent our interests as a dual agent?
7. Given a choice between working with a dual agent and a "true agent", which service choice best serves us and why?
8. If dual agency is a reduction of service, would you be willing to reduce the commission you receive if we get into a dual agency transaction?
9. Are you willing to work with us as a customer if we understand your loyalties are exclusively with the seller and we consent to your representation of the seller only?
10. Explain your conflicts and service limitations to us as your buyer clients if you are also representing another buyer who wants to purchase the same property through you that we want to purchase. What is in our best interests in dealing with a conflict of this type and how can you represent each of us fully?
11. If you fail to comply with your lawful requirements when acting as a dual agent, what common law or other remedies are available to us in any legal action against you or your brokerage company?
12. Can you show us any advertising or promotional materials used by your company to promote the practice of dual agency or that identifies its benefits to us?
13. Will you provide us with a list of all the exclusive brokerage companies that only represent buyers in the areas where we want to buy?
14. Please list all the disadvantages to us as a consumer when we consent to allow you and your company to act as a dual agent.

15. Are you aware of any law firms in your area that permit their attorneys to represent adverse parties in the same matter and can you tell us which firms allow that dual representation?
16. When you act as a dual agent for us, how can you assure us that you can help us negotiate the best possible price for the property?
17. Assuming we purchase one of two properties priced the same but one property is offered for sale by your company and the other is offered for sale by another brokerage company, which sale will produce the greatest commission income to you personally?
18. If you were moving to a new town that was unfamiliar to you, would you choose to use the services of a dual agent to help purchase a house if you had the choice not to use one?
19. If you have no liabilities for illegal, unethical or harmful real estate practices as a dual agent, why should we use those services?
20. Before dual agency, did you always practice lawfully as a subagent?
21. How would you define the service value of dual agency?
22. If you negotiate a purchase contract on our behalf when acting as a dual agent should we be present with you when you submit our offer to the owner since you may be prohibited in advocating our position? Alternatively, would it be in our best interests for us to present and negotiate our offer to the seller, in your presence, since you may be prohibited in advocating for our interests? Why or why not?
23. If we do not consent to allow you to act as our dual agent, is there any property your company may have listed or may list that we would be prohibited from seeing or buying?
24. Have you or anyone in your brokerage company, ever presented public seminars to inform the public of the procedures and benefits of dual agency?
25. If you become our dual agent in a transaction whom do the associates in your company represent and whom does your broker represent?
26. If we complete and close a dual agency transaction will you receive a commission from both sides of the transaction?
27. Will you refer us to a knowledgeable attorney who can honestly advise us about the risks of dual agency?
28. Does your company allow a service choice of single agency only?
29. As an associate with your brokerage company, how are your duties as a dual agent different from the duties your broker has to the parties?
30. Will you provide us with a list of all the benefits to us for allowing you and your brokerage company to act as a dual agent and may we have your consent to give that information to our attorney?

**Dual agency** means the dual representation of the parties to a real estate transaction by the real estate brokerage company. It can be exceedingly difficult to understand or implement properly. With dual agency the brokerage company has **conflicting interests between buyer and seller** when those parties are each *represented* by the brokerage company. The service role individual associates in a brokerage company have to you may permit this dual representation on a limited basis as many states have statutorily redefined real estate practices by permitting some form of dual representation.

These dual representation practices are often subtly modified and carefully disguised by less negative terms like "**designated agency**", "**transactional broker**" or "**intermediary**". In each case the purpose is to allow the real estate brokerage company and its associates to *represent* both parties to the transaction which typically benefits broker interests over consumer interests.

Dual representation cannot provide the buyer or seller the highest in broker duties because the broker has loyalties to both that are in conflict. Nonetheless, today's brokerage custom is to ask, entice, coerce or otherwise trick buyers and sellers into accepting some form of dual agency. Some buyers aren't concerned about these **broker conflicts** while others feel their interests deserve a higher level of service commitment from real estate professionals.

Note: Real estate professionals who are well trained and experienced in implementing lawful real estate requirements, and who are truly committed to serving the best interests of the consumer, will undoubtedly

know how to practice any form of dual agency correctly. But then those professionals who do understand it will likely never offer dual agency or never encourage consumers to consider dual agency as a service value choice.

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