

The Pitfalls Of Dual Agency!

By Stephen M. Canale, Ann Arbor, Michigan, USA

Up until just a few years ago, all consumers needed to know about real estate agency was that brokers almost always represented the seller's best interests in the transaction.

The rationale was simple. Since it was the seller who hired the agent, signed a listing contract and agreed to pay the broker, the broker's loyalty was to this seller.

Unfortunately, buyers often became confused regarding this issue. As it was not uncommon for a buyer to work with just one real estate agent for an extended period of time in looking for housing, many buyers assumed that this agent should be loyal to them.

The industry responded by offering buyers the opportunity to hire real estate brokers under contract to represent their best interests, instead of the seller's. This concept was promoted as a leveling of the playing field, the seller would have representation, and now, so would the buyer.

Unfortunately, the real estate industry did not respond as many had anticipated. Rather than eagerly agreeing to represent and be loyal to either the buyer or the seller, a large percentage of brokers decided that they wanted to represent both parties in the same transaction! This is "dual agency." In some areas, such as ours, it's not just a large percentage who are practicing dual agency, but in fact, the majority!

Why is this a potential problem for buyers and sellers alike? Agency and representation are very fundamental to business and negotiation. When an agent represents you they are obligated to several fiduciary responsibilities. Among other things, the agents must:

- Disclose all relevant information to you that might effect your willingness to buy or your negotiating strategy.
- Keep confidential any and all information that might be damaging to you in the negotiation process.

However, when an agent is attempting to represent both parties in the same transaction, these obligations become impossible to fulfill. To illustrate: the agent cannot "disclose" to the buyer that a home is a bad investment, as this would breach the agent's obligation of "confidentiality" to the seller.

Likewise, the agent cannot "disclose" to the seller the fact that the buyer has credit problems and may not be able to obtain financing because of the agent's obligation of "confidentiality" to the buyer.

Obviously, being a dual agent is an untenable situation, so why are so many agents eagerly engaged in it? In most situations the agent is promising representation to both the buyer and seller in as a way to get each party to sign a binding contract with the agent, before the conflict arises.

If the buyer desires the home of a seller that the agent does not represent, then there is no conflict. Reciprocally, if the agent lists a seller's home and it is purchased by a buyer working with another broker, no conflict exists.

However, when the buyer and seller have both contracted with the same brokerage firm, and wish to enter into negotiations, then the dual agency arises.

Unfortunately, there is no way the consumer can tell whether or not a dual agency will occur at the time of hiring an agent. What you can discover at this time is what the brokerage's policy is on handling these conflicts when they do arise.

What you need to assure yourself of, as a consumer, is that the brokerage will release you from your contract with them, so that you can make arrangements to protect your own best interests. What you should not accept, is a brokerage that will require you to be bound to their representing both parties as a dual agent.

Stephen M. Canale is President, Broker/Instructor of [Acclaim Residential Marketing](#)