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Why a Certain Real Estate Practice Should Be Banned

By Lee Kanon Alpert



The real estate industry needs to abandon the practice of dual representation, which presents serious legal and ethical problems. Let's begin with an all-too-common example:

A real estate agent lists an office building for \$2.7 million. The buyer confides in the agent that he is in financial trouble and would unload the property for \$2 million. A potential buyer contacts the seller's agent and asks to look at the building. He's excited about the property, but believes it's about \$200,000 overpriced. He asks the agent, "How far do you think the seller will come down in price?" Does the agent tell the potential buyer about the financial situation of the seller and his willingness to accept \$2 million? Or does he keep quiet and hope that the buyer will be satisfied with a possible higher purchase price? Such is the kind of moral, ethical and professional dilemma facing real estate agents who represent both sides of a transaction.

Real estate is one of the few professional service industries that allows the professional (in this case the agent) to represent both sides in a deal. Codes of ethics for lawyers and CPAs are explicitly clear that this practice is not allowed. Yet with all sorts of obvious conflict of interest issues, the practice flourishes within the real estate industry.

The problems with dual representation are many. Clients

expect their real estate agent to be an aggressive advocate on their behalf. Representing both sides makes this impossible. Agents also have a fiduciary obligation to clients and must disclose any problems with a deal—minor or otherwise. Would an agent representing both sides insist that a mold test be conducted in an older office building for the buyer's protection, knowing that it would result in possibly thousands of dollars in added expenses to the seller? Maybe, maybe not—but why should the agent be put in this situation? How can any agent honestly argue that representing both sides of a real estate transaction will result in the best deal for both sides?

Not only are ethical and moral obligations compromised with dual representation, but it opens the door to liability problems. Agents have been taken to court when a buyer or seller believes valuable information was withheld in a dual agent real estate transaction. Juries often follow the money trail, and if an agent is accused of neglecting to fully protect either side of a transaction, the agent can be perceived as attempting to quickly close a deal to reap the commissions.

Disallowing dual representation should become an industry standard and incorporated in the Realtor's code of ethics. These ethics should be engrained in all new real estate agents. The likelihood of this

happening, however, is slight. Dual representation means more money for the agent. Unfortunately, money can be a powerful deterrent to ethical business practices. Many times, the "negotiated" deal is only in the best interest of the agent. While both sides get some, but not all of what they were asking, the agent walks away as the true winner—with full commission.

Even if commissions are not an issue, agents should realize that the advice they can freely offer to clients would always be compromised in dual representation. Buyers and sellers have opposite agendas. For an agent to claim to be able to follow both agendas aggressively is foolish.

Banning dual representation will only become a reality when clients refuse to accept the arrangement. Real estate agents may balk at a ban, but in their hearts they know that ethically and professionally it's the right thing to do.

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