

Buyer's Agency

By Brian Madigan



There is a significant and important trend in the real estate industry towards buyer's agency.

You may recall that many agents enter into a sub-agency co-operation agreement with the listing agent. This means that they share in the commission payable should they sell the property. It also means that they, in addition to the listing agent act for the vendor.

This doesn't seem fair to have two agents both representing the seller while the buyer is on his own.

The Code of Ethics was changed and the expectation now is that the buyer's agent will owe their duties and obligations to the buyer, even though they may receive their compensation from the seller. This is a substantial and important change, and while it took a little time to develop; it is better late than never.

Wouldn't you be surprised to find out that your lawyer, the one you picked for your personal injury lawsuit was actually acting for the insurance company that you were suing? Not only that, your lawyer owed fiduciary duties to the insurance company as a client, but only had to treat you with ordinary care, in fact, the same duties owed to a stranger.

Well, until recently, that was the way it was, in the real estate business. Seems very peculiar!

It is now presumed that the buyer's agent will be acting for the buyer. Now, that seems fair!

There are however two classes of buyers: the good buyers and the not-so-good buyers and there is a legal relationship for each of them: 1) the client relationship, and 2) the customer relationship.

If you are a Client, then your real estate agent owes you certain fiduciary duties including disclosure, competence, obedience, accounting, confidentiality and loyalty.

If you are merely a Customer, then you are owed honesty, fairness and due care. But, these are the same duties owed to anybody. So, you are really not any better off, than if you were simply a stranger.

If you have a choice, you definitely want to be a client. This relationship will commonly be evidenced by a buyer's agency agreement. It will set out in writing exactly what your agent will do for you. In addition, it will, oftentimes be "exclusive", meaning that you may only deal with that particular agent. And, if you buy through a second agent, you as the buyer still have to pay a commission to the first agent.

So, you will have to enter into this type of arrangement very carefully. Make sure you have the right person. Limit the time period and the boundaries. Remember to specify the type of property, and the method of acquisition.

Let's take the case of Mary and Bob. They have lived together in a rented house for the last two years. They are planning to have a family, so they decide to buy a house in the Spring. They sign the usual buyers' agency agreement but find that all the houses their agent showed to them, were too expensive or were just not suitable. They resign themselves to trying again next year and renew their lease.

One little problem, this renewal fell within the scope of their buyers' agency agreement, and they owe a commission to their own agent because they signed the renewal.

So, be careful out there, and don't forget to read the document, including the fine print.

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