

Dual Agency: Supporters



By Brian Madigan LL.B.

Just who is in favour of dual agency? If there are such substantial problems, why is it still around?

The simple answer seems to be real estate brokerages, organized real estate, the real estate cartel and the real estate industry. Those with a vested interest in the business, the way things are, want to have the status quo continue. And, why wouldn't they, they're making money.

In order to **maintain control, it is necessary the brokerage be the agent.** This means that the brokerage owes fiduciary duties to the client at common law and other duties by statute.

The real estate industry is very much opposed to having individual realtors become the legal "agent" of the client. This would represent a loss of control and a corresponding loss of income.

They make nothing of it, when two agents both from the same office represent a seller and a buyer. That's simply a technicality. Apparently, both clients are well-served, since they have their own realtors.

And, to deal with any criticism if the listing realtor were also to act for the buyer: they have designated agency. The broker will pick another realtor from the office to act for the buyer. No thought of sending the client across the street. Keep it all in-house.

Truly, if you were to analyze the situation, who is really acting as the agent? Ask any client and they will name the realtor, not the office. They deal with the realtor directly. This could be a friend, associate, business acquaintance. They have never met the broker. That is just back office administrative support. They don't care! If the realtor changes offices, they will too.

The only exception here seems to be commercial brokerages and corporate clients.

When we are talking about the consumer and residential sales, the vast majority view the realtor as their agent. It is only when they actually sign an agency agreement that they realize that their deal is with the broker. They agree to this because that's the way it's done.

Designated agency is simply a response to avoid the conflict of interest issue. But, why not avoid the entire issue in the first place and make the individual realtors agents at law?

This would transfer control to the realtors, who would then be in the market of purchasing back-office services from the brokerages. At this point, realtors need to acquire:

- Computers
- Phone service
- Couriers
- Photocopiers
- Printers
- Advertisers
- Office space
- Answering services
- Reception services
- Accounting

The above list represents a number of purchases services that the realtor may acquire independently now. Some or all may be available through the broker's office.

Brokers argue that they provide certain matters which provide added value to consumers, namely:

- Supervision of realtors
- Custody of documents
- Maintenance of a trust account to hold deposits safely
- Assurance that there will be insurance for errors and omissions

Beyond that, they also provide some non-essential services like reduced rates for local advertising, internet websites and so on, all of which ultimately provide some indirect benefit to the consumer.

These arguments are reasonable, but to a large extent they discount the role of the Real Estate Council of Ontario, the licensing body, which provides:

- Licensing guidelines
- Insurance for deposits
- Errors and omissions insurance coverage

The matter of supervision is dubious. RECO responds largely on a complaint basis, but then again, so do most brokerages. By and large, brokerages have little or nothing to do with the realtors on a daily basis. They are in the business of selling services to realtors to make their lives easier. They have become an “essential service” by petitioning the legislators to make them the legal agents. If they were not, then, they would not be in a position to charge anymore for photocopying than anyone else. In due course, that would drive the price down, and the savings could be passed onto consumers.

The dual agency issues and conflicts arise simply because brokerages are the agents. If realtors were the agents, then, the dual agency problems would largely be solved. That would leave one last matter, and that would be that a listing agent acting for a seller could not also act for the buyer in the same transaction. The relevant licensing statute could be amended to address that issue.

So, the problem is solved, unless you are a large brokerage with political influence.

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