

## Dual Agency: Opposition



By **Brian Madigan LL.B.**

So, who is opposed to dual agency?

Having undertaken some research on this issue, I was somewhat surprised by the results. There appear to be two separate and distinct groups:

- Buyer agency brokerages
- Consumer groups

Of course, there are others, but mostly the opposition seems to fall into the two camps. There are some individual consumers who feel aggrieved by the present dual agency system. However, I have left them in the consumer group category. Also, on occasion there will be some government official who feels that dual agency is wrong. Perhaps a memo will be written, but beyond that, you will not find a concerted effort or impetus for change.

Ralph Nader and other consumer groups have lobbied for change but to date have been unsuccessful.

So, where is the real opposition? Most of the time you will find that it comes within the real estate industry. What is the motivation here? Actually, while you might have thought this movement for change would be championed by realtors wishing to uphold high ethical standards, this appears not to be the case.

We are back to the strongest motivator of all: **self-interest**.

The major, large brokerages dominating individual markets have most of the listings. That seems to be a natural by-product of their success. The more listings, the more agents; the more agents, the greater the chance of dual agency.

A small number of individual brokerages without many listings and without much success have moved into the field of “buyer agents”. They clearly point out all the problems with dual agency. They advertise “we will not take on any listings”, and “we will not act for sellers”. This is really not much of a problem

because they didn't have any listings to begin with. So, it's easy to give up that side of the business.

You will appreciate that the costly side of the business is acting for sellers. That's where all the front-end costs take place. The listings need to be consistently advertised and marketed. A new agent will not advertise as much and will unlikely have economies of scale when they do.

The least costly approach is to initially act for buyers. Have them select you as their agent and submit offers. Yes, I do appreciate that they may wish to run around to a number of properties before making up their minds, but there is no weekly advertising bill.

The buyer agencies seem to be more self-motivated than encouraged to act solely in the best interests of the buyer. Often, they have newer, less experienced agents, often combined with a number of experienced but, less successful, mature agents. They seem to lack experience in the middle. Frequently, their successful agents obtain a few listings and then suddenly move on to one of those large, dominant brokerages. That comment is anecdotal based on a limited number of observations. I am not aware of any scientific surveys to support my assertion. So, it will just have to remain an hypothesis. It may or may not be true.

When I looked into the opposition against the entire issue of dual agency, I was disappointed to find that the primary opponents were acting in their own self-interest. I think that I just hoped that such self-righteous proclamations on their websites and in the advertising material would have been based on a somewhat more solid ethical foundation.

Nevertheless, whatever the motivation, they still have a point, and I agree that the dual agency problem needs to be addressed and resolved in some way.

However, that is probably where we would part company. The buyer agencies don't want it to be resolved. One method of resolution would be to make the realtors the agents-at-law. That would be an unfortunate result for buyer agencies. They want to advertise and appeal to buyer consumers who believe that being represented individually is best. So, in part, the status quo needs to remain intact.

Essentially, that leaves us with a few consumer groups who oppose dual agency on moral and ethical grounds. That seems fair, but so far there are not enough consumer groups around.

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