

Limited Dual Agency



By **Brian Madigan LL.B.**

Limited dual agency is simply a justification for double-ending a deal. It is nothing more than a euphemistic explanation. There's really nothing to it.

However, let's run through the restrictions or limitations. The realtor, acting for both the seller and the buyer will not disclose to the other party:

The **price** one client is willing to accept or pay;
Any other **offers**;
The **motivation** of either client; and,
Either client's **personal** information.

The intention was to lessen the impact of the conflict of interest. At least, you might think that was the intention.

But really, it just provides a justification for double-ending, where the real estate agent gets both the commission on the seller's and buyer's side in the same deal.

So, the real estate industry appreciating that there was an inherent conflict of interest in dual agency, proposed limited dual agency as the right and proper way of doing things. This was not only ethically and morally correct, it also became law.

Legislation was enacted in a number of jurisdictions that restricted agents in their capacity as dual agents. It specifically outlined the limitations that were imposed. Hence, we have the concept of "limited dual agency" as authorized by statute.

In Ontario, the focus is upon:

- **Explanation**
- **Disclosure**
- **Informed consent**

Reproduced below are some excerpts from the relevant Regulations that have

been enacted under REBBA 2002.

Regulations under Real Estate and Business Brokers Act(580):

Disclosure before multiple representation

16. A brokerage shall not represent more than one client in respect of the same trade in real estate unless it has disclosed the following matters to the clients or prospective clients at the earliest practicable opportunity:

1. The fact that the brokerage proposes to represent more than one client in respect of the same trade.

2. The differences between the obligations the brokerage would have if it represented only one client in respect of the trade and the obligations the brokerage would have if it represented more than one client in respect of the trade, including any differences relating to the disclosure of information or the services that the brokerage would provide.

Nature of relationship

17. If a registrant represents or provides services to more than one buyer or seller in respect of the same trade in real estate, the registrant shall, in writing, at the earliest practicable opportunity and before any offer is made, inform all buyers and sellers involved in that trade of the nature of the registrant's relationship to each buyer and seller.

Regulations under Real Estate and Business Brokers Act(567):

Multiple representation

22. A registrant shall not represent more than one client in respect of the same trade in real estate unless all of the clients represented by the registrant in respect of that trade consent in writing.

So, under the applicable legislation (regulations 567 and 580), the registrant must explain agency to all the proposed clients and they must all agree to the dual agency or multiple agency arrangement. The focus is explanation, disclosure and consent. The legislation deals with the requirements to document the dual agency arrangement in writing. Dual agency in Ontario is now referred to as “multiple representation”.

The additional requirements namely the restrictions in terms of motivation, private information, other offers and price are matters that will appear in other jurisdictions in the statutes, regulations, codes of ethics or contracts.

In Ontario, these restrictions appear in the standard representation contracts.

However, no matter what the source of the limitation or restriction, the result is usually that the respective clients will go along with the proposed arrangement. The limited dual agency arrangement is just a nice metaphor for “legally authorized conflicts of interest”.

But, it doesn't really change things. It's still a conflict of interest. The limitations seem to be imposed upon the clients and not the agents, since the clients now have to negotiate for themselves. That's why they thought they had an agent in the first place.

*Brian Madigan LL.B., Realtor is an author and commentator on real estate matters, Royal LePage Innovators Realty
905-796-8888
www.OntarioRealEstateSource.com*