

Real Estate Agents ~ Tricky Moves



By Brian Madigan LL.B.

So, you thought you had an agent?

Only one little problem, your agent takes all your secrets and immediately tells the other side. And, it's legal. At least, that's what the real estate industry thinks.

How does this work? Well, let's look at the following scenario. One day you drop into an Open House on the spur of the moment. This house is in good shape, but it's a little too expensive.

The agent seems nice and asks you some questions about what you're looking for. He takes your name and address and calls you the next day. He has something that fits your requirements. You agree to see it.

The agent pulls out some papers for you to sign before seeing the house. These papers would commit you to deal with him and pay him a commission. You decline, simply saying that you're "just looking, and not really sure whether you want to buy a house at this time".

Then, you view the house without signing any documents. The home fits the bill. It's listed at \$499,000 through another agent at her office.

You are very interested and say that you "would like to put in an Offer at \$459,000, just to try out the vendor in these uncertain economic times, but you could go up in \$10,000 increments and you would be prepared to pay \$489,000 to get the deal done".

So, you might be quite surprised to find that the agent immediately tells the listing agent in the office that the prospective purchaser:

"would like to put in an Offer at \$459,000, just to try out the vendor in these uncertain economic times, but you could go up in \$10,000 increments and you would be prepared to pay \$489,000 to get the deal done".

That kind of information is really not going to help you negotiating. It certainly looks like you're being played for a fool and you're right.

But, here is the rationale. Your agent was under a legal obligation to the vendor. She worked for the same brokerage as the listing agent and the contractual obligation was owed to the vendor.

Your agent was **not** your agent. You were foolish and foolhardy to think that was the case. You're out in the cold. No one is acting for you. You are on your own.

Now, if you had signed those documents in the coffee shop, you would have been a client too. So, the brokerage and the two agents would not be able to take advantage of you. Now, they are just helping you out.

The bottom line, of course, is that you end up negotiating a purchase price of \$489,000 for the property. Interestingly enough, that was the top end of your price range. So, who knew that was your top price:

- The agent, you thought was your agent
- The listing agent, and
- The seller

Well, that's a great team! And, guess what? They all want you to pay the most amount of money for the property.

No one is acting for you. You are on your own.

So, that's the general theory: both agents and the brokerage owe legal duties to the vendor, the client.

What they owe to you is "fairness, honesty and integrity". Those are three simple obligations set out under the *Real Estate and Business Brokers Act, 2002*.

Clearly, reporting confidential information is considered by the real estate industry as quite appropriate, completely ethical and legally required. In fact, this matter arises frequently.

What do you think? Does this make any sense? Most people would say "no". Many would think that it's a breach of confidence and that it should not be permitted.

I should point out, that not every agent thinks this way. many believe that the law is changing. They have confidential information, and they should not disclose it. Unfortunately, there have not been many reported legal cases dealing with this type of issue. What do you think the law should be in such circumstances?

Was there an expectation of privacy? Was confidentiality expected? If you told something to someone else's lawyer, would you not expect that they would provide that information to their client?

Do you think that the documents in the coffee shop bear heavily on the later negotiations? That was your opportunity and you missed it?

Who knows for sure, but one of these days we will see a case that outlines the law in these circumstances. And, if you are a realtor, you don't also want to be a defendant.

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