

UNDERSTANDING DUAL AGENCY

All buyers and sellers who are professionally represented regarding a real estate transaction agrees to a form of “agency”. A real estate licensee may represent a buyer exclusively, a seller exclusively or serve as a dual agent representing both buyer and seller. Whether you are a buyer or a seller of real property, in most instances you anticipate that the Real Estate Licensee you select will represent and protect you throughout the transaction. As a “principal” in the transaction, your agent owes you a “fiduciary” obligation defined as the highest level of trust and loyalty accompanied by the duty to provide full and fair disclosure. Adherence to this fiduciary responsibility assures that the agent will function in all ways to the best advantage of his/her principal.

Dual agency most often occurs in today’s environment when the buyer and seller are both represented by the same real estate brokerage company. In this case, both buyer and seller, while having different individual agent representation, the “agency” is with the Broker for whom both agents work. With many large real estate companies now formed, this dual agency aspect can be difficult to avoid. The agents, for all practical purposes, represent their individual buyer or seller in spite of technically being considered dual agents

When only one agent is representing both buyer and seller, the issue can become a bit more complicated. This typically occurs when the listing agent for the property also represents the buyer. Some agents feel strongly that this form of dual agency wherein there is one point of contact is more effective and efficient. Others, in spite of agents being charged with treating both parties honestly and fairly, dislike the ambiguity or lack of “absolute” loyalty implied in this dual situation.

The one specific prohibition identified in the agency disclosure reads “In representing both Seller and Buyer, the agent may not, without express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.” But, with rare exception, isn’t this something one would expect of one’s agent anyway?

A common anticipation, mostly on the part of potential buyers, is that the listing agent may reduce the overall commission when representing both parties resulting in significant savings. Although this can and/or does occur, it can be unclear as to which party receives the benefit? Is the projected savings split between the parties or to be enjoyed by only one or the other? It can be an uncomfortable situation for an agent and is one reason why some prefer not to be in this form of dual agency relationship.

Some worry about being in a litigious environment today. The law tries to be clear with such language as “an agent must provide the buyer a full disclosure regarding the property but is prohibited from revealing any known confidential information about the seller”. We know, however, we know that in practice, some “coaching” occurs to both buyer and seller and it is a very fine line the agent must maneuver. The objective is

generally to have both buyer and seller well represented and for the transaction to close as a win-win for all parties.

I should be re-emphasized that dual agency often occurs with no adverse consequences. California Real Estate law requires that all principals sign the above mentioned agency agreement clearly identifying who is being represented and in what capacity. Knowledge is power and understanding dual agency and how it might affect you allows you to retain control of your real estate transaction.

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