

Clients Ask: Isn't It a Conflict of Interest to Represent Both Buyer and Seller?

Nothing, I'm told, causes as much litigation and disciplinary action as the question of representation. We licensees routinely represent both sellers and buyers, and occasionally we have unrepresented buyers purchase our listings, putting us in the sometimes awkward but always remunerative position of "double-ending" a transaction.

When we represent only one side of a transaction we can be an "agent," always working in the best interest of that client.

When we have two clients — a buyer and a seller — we obviously can't put each client's interest above the other's. In that case we have to change to the role of neutral facilitator — what the industry refers to as a "transaction broker."

As a transaction broker, I can't advise the buyer what to offer, and I can no longer advise my seller how to respond. I also can't share with

either buyer or seller anything I know about the other party's willingness to pay more or to receive less than the amount that is on the table.

After several years of dealing with this kind of conflict, I have landed firmly on the side of retaining my agency relationship with my seller and treating any buyer as a "customer" — unless I had a buyer agency relationship which existed prior to the buyer identifying this home as "the one."

Since the listing agent makes twice as much commission when he doesn't have to share his commission with a buyer's agent, we are inherently disincentivized to do what I do, which is to give the buyer a disclosure saying "I'm working for the seller, not for you." Won't this scare the buyer into getting his own agent and cutting my commission in half?

Yes, it could have that effect, but I have double-ended many transac-

tions this way and rarely had a buyer take that step of finding his own buyer's agent.

The reason is two-fold. First of all, I relate to the buyer in such a way that he/she believes I will be fair, ethical and honest with him. When constructing an offer, for example, I will have my seller pay all costs which sellers customarily pay and not transfer those to my "customer."

Secondly, I make sure that the buyer receives something of value in return for being unrepresented. I offer to provide totally free moving, including labor and gas and not just free use of my moving truck.

Agency law — which is what we're talking about — is governed by the same principle as most of the real estate business: A licensee's number one protection against getting into trouble is full disclosure. As long as we fully disclose our role, we can be an agent or a transaction broker — or neither.

Call or email Jim Smith (right) to receive this column each week by email.

This Week's Featured New Listing:

Golden Home Backs to Open Space

Backing to the Mt. Galbraith Open Space Park is just the beginning of this home's many features. The finished basement features a special home theater with a THX sound system, the same kind used in the big movie theaters. A Murphy bed and adjoining full bath combine with the ceiling-mounted HD projector and retractable screen to make the room suitable as a 4th bedroom, too. The flat, unfenced backyard blends into the hillside in a beautiful way — see the pictures on the website to fully appreciate it. An invisible fence keeps your dog in your yard and extends into the house itself to keep your dog on the hardwood floors and off the carpeting. Take a video tour on the website.



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