



More Reasons to Beware Dual Agency

As hinted above, there's an ironic twist at play. Obeying the law and following the code of ethics actually works to pit dual agents against home buyers.

That's not to say there's anything wrong-headed with the law, unethical about the code or evil about human nature. The problem is the double-bind that comes from the very idea that an agent can serve the opposite interests of buyer and seller.

HOW THE LAW WORKS AGAINST YOU:

Minnesota real estate license requirements and related regulations set high standards of conduct to make sure the clients of real estate agents get rigorous representation. These standards grow out of the law of agency, a legal tradition rooted in 500 years of common law.

Most every real estate agent works tirelessly to meet those standards. And, truth be told, there are few agents who need rules to inspire them to look out for the interests of their clients or more commonly called "Customers".

There's sense to this emphasis on advocacy. The modern real estate transaction, after all, can have as many points of possible conflict as a law suit. That means there's the same risk of things turning adversarial.

That makes the emphasis on advocacy a good thing, right? You want the law to encourage agents to go to bat for his or her client.

The problem is that—unless a home buyer has a signed contract that says otherwise—**you're** not the client. All that rigor and representation is going to the seller.

Let's say you drive past a charming Victorian home. There's a for sale sign in front bearing the photo of a smiling woman and a phone number. You call the agent and arrange a showing.

Or maybe you seek representation from the pleasant young man who appears on a bus stop bench. One fine Saturday afternoon he picks you up and takes you to see several houses.

In both cases, the agents are genuinely charming. Both clearly love their jobs and both seem to want you to find the home that will make you happiest. With both agents, you sense a fine character. And, in each case, you're right.

But they may be keeping secrets.

Maybe the house is criminally over-priced, despite the agent's recommendations to the homeowner. Or maybe it's been re-listed to camouflage how long it's been for sale. The agents probably know a few tricks for negotiating price. But, don't expect them to share any of this. As much as they might want, doing so could put them at odds with the law and ethical commitments.

With that charming Victorian home, it's pretty clear who the agent's client is. With her sign in the front yard, there's no doubt the REALTOR® put it there on the seller's behalf.

It's a little trickier in the second instance. You called the agent and he set up the showings at your request. You'd think he was working for you—until you learn to review what a subagent is.

WHEN GOOD ETHICS LEAD TO BAD CONDUCT:

Ethical expectations assume the same fierce loyalty as the law. “It is the Code of Ethics that separates REALTORS® from other licensees,” say the Minnesota Association of REALTORS, “...so, we take enforcement of the Code very seriously.”

The problem with dual agents is that ethical expectations, like the law, put them in service to the seller.

Article 1 of the ethics code laid out by the National Association of Realtors—and followed by the Minnesota Association—sets the tone.

“REALTORS® pledge themselves to protect and promote the interests of their client. This obligation of absolute fidelity to the client's interests is primary.”

You may find the strength and directness of these words very comforting, until you remember how the three types of real estate agents work. With most real estate agents, the client is the seller. Unless you've signed a contract with an exclusive buyer agent, the client is not you.

DUAL AGENTS ARE HUMAN TOO:

No one is saying dual agents are evil or subhuman. The problem is the opposite. Dual agents fall prey to the same temptations any of us would. And all of us, whether we know it, are influenced by self-interest.

Put yourself in a dual agent's shoes. You're working with a young couple and you have two homes under serious consideration. By all objective measures—asking price, square footage, neighborhood, vintage, proximity to schools, etc.—the houses are comparable.

Comparable, that is, except for one detail. The first home is listed with your agency and the second is not. If the couple buys the second home, you and the listing agency split the commission, with each typically getting usually three-and-a-half percent of the purchase price. The first home, however, would net your agency the full seven percent.

Who wouldn't, subconsciously or otherwise, find a reason to prefer the house that would double his or her income?