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Real Estate

When Agents Play Two Roles

By ELSA BRENNER

DO you know whom your broker is really working for? The natural assumption is that the agent is working for you, but the situation may not be that simple. There are seller's agents, buyer's agents, broker's agents, dual agents and even dual agents with designated sales agents — which all sounds more like the cast of characters in a spy film than people involved in a real estate transaction.

Even some agents do not fully understand the complexities of broker allegiance, though the state has passed several laws since the early 1990s requiring the signing of disclosure forms to avoid conflicts of interest.

Take Vincent and Rosemary Lorenzo, I.B.M. retirees who recently downsized to a three-bedroom two-bath condominium in Heritage Hills in Somers from a four-bedroom house with two and a half baths in North Salem. Their listing agent, Cindy Haas of Prudential Douglas Elliman, negotiated the \$525,000 sale of the Lorenzo house and then helped the couple search for a condo, thus becoming a buyer's agent. That would have been simple enough, except that the condo the Lorenzos bought for about \$450,000 also happened to be one of Ms. Haas's listings.

The situation was rife with the potential for conflicting loyalties, but all parties signed the state's disclosure form clarifying Ms. Haas's role. "By consenting to the dual agency relationship," the document states, "the buyer and seller are giving up their right to undivided loyalty." That means, for example, that the agent cannot tell the buyer what the seller's bottom-line price is, or disclose to the seller

how much the buyer may be willing to pay.

"In our case it all worked out smoothly," Mr. Lorenzo said, "but I think it was also because we had already developed a relationship of trust with the sale of our first house."

Dual agency has become more common as buyers shop for houses on the Internet on sites like Realtor.com. The typical situation: Potential buyers come across a house they are interested in, contact the listing agent — whose name and contact information are often displayed prominently on the Web page — and ask to be shown the property. The buyers are at that point using the same agent as the sellers.

As Stephen R. Meyers, the president of Houlihan Lawrence, observed, dual agent arrangements have their advantages: "There's one less intermediary involved, and they can offer a buyer a more direct pipeline to the seller during negotiations."

Under state law, though, a dual agent cannot be an advocate for the buyer or the seller. In other words, the dual agent cannot negotiate for either, or suggest an offering price. Nor can the agent provide information about the reason for selling, the price the sellers originally paid for the property, or how long and how many times the property has been on the market, among other things.

Joan O'Meara, a broker for Houlihan Lawrence, was recently the listing agent for the builder of a five-bedroom four-and-a-half-bath colonial for sale in Rye at \$2.995 million. Then she became a buyer's agent for a Manhattan couple who

had a budget of \$2.975 million. She wound up representing both parties when the couple bought the builder's house.

"It's always a little bit tricky," Ms. O'Meara said, "because you want to make everybody happy and at the same time you don't want either side to question your allegiance. This was a first for me, but it all worked out. The builder decided to offer less in the way of high-end finishes and fixtures, and in the end, the couple got their house."

Mark Seiden, a broker-owner in Briarcliff Manor, is among those opposed to dual agency under any circumstances. "I never allow it my office," he said. "It's not only about conflicts of interest, but also about the importance of specializing. No matter how brilliant a heart surgeon may be, would you want him to operate on your brain? The same goes for real estate agents. That's why I have one department for sellers and listing agents and a separate one for buyers."

But even that degree of separation is not enough to prevent conflicts of interests, according to Gary Herbst, principal broker of Buyer's Edge Realty in Tarrytown, which represents customers in Westchester and Putnam counties. Mr. Herbst, who refers to dual agents as "double agents," says that sellers' and buyers' agencies should be separate business entities to eliminate any opportunity for collusion within a brokerage. His agency advocates only for buyers and does not list property.

Mark Nadler, the owner-broker of Prudential Centennial Realty, said that in general, negotiations between buyers and sellers tend to be more aboveboard now

than they were before the state first issued guidelines in the 1990s.

Before then, said Mr. Nadler, whose company has offices in Larchmont and Scarsdale, "it was completely like the wild, wild West out there when it came to real estate. There was a lot of confusion about roles and allegiances, and the reputation of the industry suffered from those who did not conduct themselves properly. I could tell you horror stories."

Today, a broker acting in a dual agent capacity who fails to have a disclosure form filled out faces a monetary penalty, according to Edward I. Sumber, counsel to the Westchester Putnam Association of Realtors and the Rockland County Board of Realtors.

If the buyer or seller denies that dual agency was authorized, the broker may be considered to have acted as an undisclosed dual agent, which could result in the loss or suspension of his or her license and/or larger fines, Mr. Sumber said. The return of a commission in this instance would be adjudicated in a civil action.