



## Dual Agency – The Elephant in the Room

Several years ago, the State of Illinois mandated that real estate brokers require prospective buyers, sellers, tenants and landlords to acknowledge in writing that the broker is or is not functioning as a DUAL AGENT. In this age of consumerism and protecting the parties from being taken advantage of, government has stuck its hands into an area, that for a hundred years worked just fine, most of the time.

What is a DUAL AGENT? That's when a broker represents both parties in a given real estate deal. As an example, you see my sign or my ad in one of the data bases for a property I represent and you call me directly to find out information or to see the property. I accommodate you by taking my time to walk you thru the property and answer all your questions. The law calls this a "ministerial act". I am required by law to have you sign a form explaining my role as a dual agent, concerning what I can and cannot do. I must treat all parties fairly and cannot divulge confidential information from one party to the other. Basic "Golden Rule" stuff.

There is a "camp" that contends a consumer should NEVER work with a broker who is a dual agent because, they say, you don't have any advocate for your side of the deal. They think a dual agent can't get the best deal possible for both parties. They contend there is an ethical taboo being violated if a broker acts as a dual agent. Attorneys are big on condemning dual agency and consider it a conflict of interest to represent "opposing" parties in a legal matter. However, they have no problem with a mediation attorney who, with the consent of opposing parties, represents both to arbitrate a dispute. So why is THAT OK when a broker being a dual agent with both parties consent is not OK? The issue is "both parties must consent."

Probably 60-80% of my closed deals are ones where the parties both consent to my being a dual agent. They typically share this mentality: Here's one guy, a skilled and seasoned broker, who understands better than anyone else, the needs, wants and desired outcomes of both parties. That one broker has the ability and obligation, it seems, to find a solution that makes both parties happy. One where both parties win. Isn't that what everyone wants?

You can always hire a broker to represent only you in a transaction. That broker will research the market for properties that meet your specifications, arrange to show you the properties you choose to see and negotiate and make offers on your behalf to buy or lease the property you choose as your best option. There's nothing wrong with that. But, if that broker happens to have the listing on the property you find as your best option, he can, with your permission, become a dual agent. If you do not want the broker to be a dual agent in this instance, you either have to find another broker to represent you, or the broker who showed you the property has to find you another broker. In either case, you diminish the broker's incentive to make this deal happen because you force him to give up to half of his commission away to someone who did absolutely nothing to make this deal happen. If you remove a broker's incentive to help you make the deal, how does that benefit you? I maintain it doesn't.

Self-serving attitude on my part? Hardly. My experience has taught me the benefits of dual agency for all parties in most commercial real estate transactions.

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