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Broker's Agency Disclosure Law: Misinformation or Disinformation?
by Roger Bernhardt
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Starting this year, the sellers of a one-to-four-family residential building received from their broker a new form which described three possible agency relationships they could have with their broker. This form should have been given to them before they were allowed to sign a listing on their building. A similar experience happened to the buyer: Once she showed more than passing interest in the property, her broker gave her the same form before letting her make an offer. When the two brokers presented the offer to the sellers, the buyer's broker gave another copy of this same form to them, before presenting them with her offer. (To avoid confusion, this article employs the following linguistic conventions for the parties: Each broker is a male ("he"); the buyer is a female ("she"); and the sellers are a married couple ("they").)

These events are the result of the Broker's Agency Disclosure Law (CC §§2373-2382), which took effect January 1, 1988. It is a law that probably creates more problems than it solves. This article describes how the law works, points out the questions and problems it raises, and concludes that the law probably does little, if anything, to enhance the position of the consumers it was intended to protect.

Summary of the Law

The law creates broker disclosure requirements for transactions involving (1) the purchase and sale of property improved with one to four dwelling units, (2) a lease of such property for more than one year, and (3) mobile homes. Under CC §2374, listing and selling brokers must provide to buyers and sellers a disclosure statement that describes the kinds of agency relationship a broker may have in a transaction (seller's agent, buyer's agent, or dual agent) and the duties that arise on the part of the broker in each relationship. The statement must be in the form prescribed by CC §2375, and, in most situations, must be given to the buyer or seller "as soon as practicable." When an agency relationship with a specific client has been selected (apparently by the broker, as discussed below), this election must be disclosed to both buyer and seller "as soon as practicable" and confirmed in writing either in the purchase and sale contract or in a separate writing.

The Disclosure Transactions

The document given to the clients lists three possible agency relationships; it does not state which relationship actually will arise between broker and sellers or buyer. Disclosure of that fact may occur later, conceivably as late as the final signing of the sales contract. Because delivering the document and disclosing the agency relationship chosen may be different events, five steps could occur in a normal transaction: (1) The

first broker hands a disclosure form to the sellers (and gets their listing); (2) he selects an agency relationship and informs them of it; (3) the second broker hands a disclosure form to the buyer; (4) he gets her offer and informs her of the agency relationship he has selected; (5) he hands another copy of the form to the sellers, presents her offer to them, and informs them of the agency relationship he has with the buyer. (This order could vary; No. 2 could follow No.3 or No.4.)

Definitions

The first broker described above is the "listing agent," *i.e.*, the one who has taken the listing from the sellers. CC §2373(f). The second broker is the "selling agent," *i.e.* the one who has found the buyer (or has found the property for the buyer). CC §2373(n). (Compare the definition of "selling agent" in CC § 1086(g), an element of which is participation in a multiple listing service (MLS); participation in an MLS is not a prerequisite for §2373 disclosure purposes.)

"Buyer" includes not merely a person who offers to purchase but also anyone "who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction." CC §2373(c). Thus, touring an open house will not get the buyer a disclosure form, but if she shows enough interest, she might get one before she leaves. This expanded definition was necessitated by the statutory requirement that she receive a disclosure form before making an offer. CC §2374(d).

The legislation creates important new categories covering the relationship of the listing and selling agents with the sellers and buyer. A broker can be a "seller's agent," a "buyer's agent," or a "dual agent." See CC §2375. (This nomenclature is sure to generate confusion, especially when the "selling agent" elects to be the "buyer's agent" rather than the "seller's agent." It is unfortunate that the "selling agent" was not designated the "showing agent" instead.) Substantive differences between the forms of agency are discussed below.

Timing: When Is the Choice of Agency Disclosed?

Requiring early disclosure of possible agency relationships but allowing deferred disclosure of the actual agency relationship selected is certain to cause trouble.

1. Listing Agent's Disclosure to Sellers

The sellers are informed at the outset that the listing agent can be either their exclusive agent or a dual agent; he may not act as the buyer's exclusive agent (CC §2375.5(b)). However, they might not learn until after

they have signed the listing (or later) what kind of agent they have working for them.

Assume that the broker tells the sellers that he has chosen to be a dual agent *after* they have signed the listing. Can they object? Can they tell him that they want him to be their exclusive agent instead? The legislation seems to make it strictly the broker's choice. Civil Code §2375.5 provides that the broker shall "disclose" the choice made "as soon as practicable," and §2378 provides for his "selecting as a condition of [his] employment, a specific form of agency relationship." This language certainly suggests that the broker alone makes the choice. On the other hand, §2375.5 also provides that the choice be "confirmed" by the sellers in writing, which implies agreement on the part of the sellers. Also, the preamble of the disclosure form states as follows: "When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation *you wish* to have with the agent in the transaction. [Emphasis added.]" That statement should make the sellers think they have some say in the matter.

A fundamental problem with the disclosure statement is that it does not tell the client *who* makes the agency choice. Given the language quoted above from the preamble, reasonable sellers (or buyers) could easily conclude that the choice is theirs and can be made later. Sellers who draw this conclusion would feel no need to resolve the agency issue before signing a listing agreement.

The California Association of Realtors (CAR), which sponsored the bill, believes that the choice is the broker's. It has stated that "[o]ne of the most important benefits of the agency disclosure legislation is that it preserves the agent's right to choose the agency relationship that best suits the agent's business." California Association of Realtors Legal Department, Agency Legislation Compliance Manual p 6, Answer 7 (1987). CAR acknowledges that "[l]icensees *still need* to discuss with their clients and customers *which* agency will be used in their particular relationship" (p 28, Answer 32), but at the same time it recommends an office policy of agency representation "that can only be varied with the employing broker's written approval" (p 29, Answer 34). A policy of that kind leaves little to discuss except for a one-way explanation of what the broker's choice means (another source of problems, discussed below).

Suppose that the broker does not explain to the sellers at the time he gets their listing that he will be the one choosing the relationship. Explaining to them what the relationships mean is not the same as informing them of where the choice lies or that it has already been made. The statute requires that the listing agent disclose the agency choice "as soon as practicable" (CC §2375.5(b)), which should mean *before* getting the listing if the broker has a settled office policy, as CAR suggests. It is likely that the sellers can rescind for fraud under CC § 1689(b)(1) if the listing broker gave them the general

disclosure form without disclosing that the critical choice under it had already been made.

If further contact occurred between the broker and the sellers before the broker disclosed his choice (*e.g.*, an offer was received and discussed), and the sellers imparted confidential information to him or relied on his advice as to their negotiating position, his failure to disclose the intended dual agency could get him in even more trouble. In most instances, the listing agent's choice of dual agency will probably be disclosed in the offer. (CAR has revised its standard form Real Estate Purchase Contract and Receipt for Deposit to include a section that discloses the agency status of both listing agent and selling agent. See Compliance Manual pp 15-18.) As a practical matter, however, many sellers will not read this document closely until they are ready to sign the acceptance or make a counteroffer—*i.e.*, *after* they have discussed the offer and their negotiating position with the broker.

In such circumstances, what are the sellers' remedies? May they rescind the listing agreement under CC§ I 689(b)(2) (partial failure of consideration) or CC § I 689(b)(6) (the public interest will be prejudiced by allowing the contract to stand)? May they accept an offer but refuse to pay the commission because of their unhappiness with the broker's choice? (A principal may recover a commission paid to a broker for a willful breach of fiduciary duty. *Menzel v Salka* (1960) 179 CA2d 612, 4 CR 78. See California Real Property Sales Transactions §2.106 (Cal CEB 1981).) The agency disclosure law is absolutely silent about the consequences of nondisclosure. It will be hard for the broker to argue that the sellers should have expressed their displeasure sooner when the very problem arose because of his own tardiness in disclosing the fact which troubled them. What else could they have done if they were not told the broker was a dual agent until after they had been persuaded to accept the offer? Revocation of the listing may be the least of the broker's problems; his license may be revoked for acting as a dual agent without the prior knowledge and consent of both parties. Bus & P C § 10176(d).

2. Disclosure to the Buyer

Equally severe problems can arise between the selling agent and the buyer. She may be quite distressed to discover that the person who allayed her private fears about the property and who persuaded her to make the offer was acting all along as the sellers' agent (or a dual agent), rather than as her exclusive agent. Like the listing agent, he is required to make his election and disclosure "as soon as practicable." His foreknowledge will often be easier to establish. If this is an "in-house" sale and the listing agent had previously made an agency election, the selling agent's status is already determined; the statute does not permit associate licensees to hold different agency relationships. CC §2373(b). He knew (or should have known) from the start what sort of agency relationship he would have to have with the buyer. Disclosure "as soon as practicable" should mean when he discussed

with the buyer the offer she would make. The same would be true for multiple listings, if the broker has a policy of accepting the offer of subagency extended through MLS.

If the selling agent is automatically an agent of the listing agent under a house policy, then delivering a form to the buyer which falsely insinuates that status is an open question and discussing the pros and cons of various bargaining strategies with her before telling her of his true status may be actionable deceit. But what may she do about it? She may refuse to make an offer, but that penalizes her more than the broker. She owes no commission that she can subsequently refuse to pay. A complaint to the Real Estate Commissioner may be her only resort.

3. Selling Agent's Disclosures to Sellers

As noted above, CAR's revised offer form includes a section that confirms the agency designation for both listing agent and selling agent. It has advised its members as follows: "Since the agency confirmation clause in the body of an offer is a term of the agreement ..., modification of the clause will generally result in a counteroffer" (Compliance Manual p 9, Answer 26). "A seller can refuse to accept an offer based on the agency selected by the selling agent. If this occurs, the seller may wish to counter the buyer's offer, specifying the agency relationship the seller would find acceptable, and the buyer and the selling agent can modify their agency relationship accordingly....Otherwise, this is a term of an offer which must be negotiated" (p 9, Answer 27).

If the sellers' objection is that the selling agent has elected to act as the buyer's agent or a dual agent, and they demand that he act as their exclusive agent, can matters be undone? Presumably, he has already rendered services to the buyer and elicited information from her as her agent. Can he withdraw as her agent without prejudicing her interests? Can the sellers trust the advice he has already given them about the offer, knowing that he also acted as agent for the buyer in preparing the offer? Are they willing to risk losing the offer by objecting to the agency selection? If the selling agent chose dual agency, are they willing to have the commission they must pay split with a broker who also represented the buyer?

The scenarios described above reveal a fundamental flaw of the statutory scheme, *i.e.*, its failure to recognize that brokers may owe clients duties even *before* they determine their status. For example, an agency relationship is created at the moment the sellers give the broker a listing even though the statute allows the broker to determine his status later. The statute neither acknowledges this twilight zone between the time the listing is given and the time the broker elects his status, nor recognizes that rights and obligations arise the moment the listing was given and cannot be so easily ignored by the broker's subsequent election. Brokers may discover that their attempt to narrow their duties by appropriate choices has

generated a broader set of pre-choice duties. The judicial admonition that there is a strong reason to find the broker to be an agent when he has caused harm (*Skopp v Weaver* (1976) 16 C3d 432, 440, 128 CR 19,24) will probably find full employment in cases arising under this new law.

Distinctions or Doubletalk?

Honorable brokers may have a harder time than dishonorable ones when they attempt to let their principals participate in the agency selection. If the selling agent intends to allow his buyer to decide what kind of agent she wants him be, he will have to explain the differences to her. (I choose the selling agent/buyer as an example because all three agency possibilities do exist in that situation. If the listing broker and sellers were involved, there would be no option of acting as the buyer's exclusive agent.) Will the buyer understand the following explanation (which paraphrases CC §2375)?

"I can be your agent ('a buyer's agent'), the sellers' agent, or a dual agent. If I am your agent, I owe you *fiduciary* obligations of 'utmost care, honesty, integrity and loyalty.' In addition, I owe both you and the seller *general* obligations of 'diligent exercise of reasonable skill and care,' 'honest and fair dealing and good faith,' and 'a duty to disclose all facts known [to me] materially affecting the value or desirability of the property' that you are not likely to know or discover. However, my loyalty to you is tempered by the fact that I am not obligated to reveal any confidential information which the sellers gave me which does not relate to any of these duties.

"If I am the sellers' agent, then I do not owe you the *fiduciary* duties and, in fact, I will owe them to the sellers instead. I will still owe to you the *general* duties, however, and I am not obligated to reveal to the sellers any confidential information you give me. To elaborate, I will not owe you a duty of 'utmost care,' but only 'diligent exercise of reasonable skill and care' (which I must reconcile with my fiduciary duty of utmost care to the sellers). I will not owe you utmost honesty but only honest and fair dealing and good faith (to be reconciled with a duty of utmost honesty to the sellers). I will not owe you my integrity or loyalty although my freedom to be corrupt or disloyal to you may be limited by my duties of good faith and fair dealing (which, again, I must square with my duty of loyalty to the sellers). Finally, my duties of disclosure and nondisclosure of confidential information are the same whether I am your agent or their agent.

"If I am a dual agent, then I again owe you all of the fiduciary duties I would owe as your agent, but I simultaneously owe them to the sellers as well. Not only do I owe both sides utmost care, integrity, and honesty, but loyalty as well. Additionally, I owe both sides the general duties of skill, care, good faith, fair dealing, etc. But I cannot disclose to you that the sellers will take less than their listing price, nor can I tell them that you will pay more than your offering price."

As the example above illustrates, the explanation of gency relationships offers little more than contradictory clichés. Clients will not understand the distinctions. Brokers will hardly know how to behave according to the choice made, and their attorneys will not be able to tell them. When the brokers are sued by unhappy principals, judicial instructions will be unintelligible and jury verdicts are bound to be unpredictable. (CAR advises its members that "[s]pecific fiduciary duties include loyalty, obedience, disclosure, confidentiality, reasonable care and diligence, and accounting." Compliance Manual p 25, Answer 3. If CAR blurs the fiduciary/general duty distinction, why should anyone else do better?)

This problem cannot be blamed solely on the statute. The root cause of the difficulty is that we continue to permit brokers to represent both sides at once (the "dual agency" problem, as it is called). No lawyer is foolish enough to believe that he or she can represent both adversaries in battle simultaneously, but brokers continue to believe that they can. The legislature has not prohibited dual agency, and in response the judiciary has imposed duties on brokers that conflict with their fiduciary duty to their principals. See, e.g., *Easton v Strassburger* (1984) 152 CA3d 90, 199 CR 383 (7 CEB RPLR 93 (June 1984)). The brokerage industry has responded by seeking to clarify and limit those duties. But self-contradictory duties cannot be made comprehensible. No person can properly serve two masters, even when ordered to do so by statute.

The legislature has compounded the dilemmas inherent in dual agency by using language that creates even more confusion. For example:

- Civil Code §2375 states that "[a]n agent is not obligated to reveal to either party any confidential information obtained from the other party which does not involve the affirmative duties set forth above." This creates two linguistic nightmares: (1) With regard to information not involving an affirmative duty, is the broker really free to reveal or not reveal at his pleasure, *i.e.*, did the legislature really mean "not Obligated to reveal" rather than "obligated not to reveal"? (2) With regard to confidential information involving an affirmative duty, is there really an obligation to disclose, as the statute seems to require, once all the "nots" have been removed from the sentence? (Compare CC §2379, which prohibits disclosing a principal's willingness to move on price, and which states: "This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.")
- The disclosure form (CC §2375) states that a seller's agent or a buyer's agent owes to his principal "[a]

fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with" the principal. I assume that "utmost" modifies all four fiduciary duties. When a broker acts as dual agent-*i.e.*, seller's agent and buyer's agent-just how does he show utmost loyalty to adverse principals without being duplicitous?

- The duty not to disclose that a seller will take a lower price or the buyer will pay more is technically imposed only on the dual agent. CC §2379. Is the single agent really free to divulge such price information? Disclosure of his own principal's willingness to concede would be a clear breach of the fiduciary duty of loyalty; but disclosure of the other party's price position would be either lack of good faith and fair dealing or a wrongful revelation of confidential information under the statute. If silence about price is mandated in all cases, it is regrettable that the statute mentions only dual agencies.

Does It Matter?

A broker most commonly gets himself in trouble when he skims off the difference between seller's and buyer's prices, when he does not disclose to the buyer defects in the property sold, and when he does not disclose to the sellers that he is purchasing the property himself. How do the new agency rules affect the outcomes in those cases?

1. Secret Profits

A broker reaps an unlawful secret profit by inducing the sellers to sell at a lower price and the buyer to purchase at a higher price, pocketing the differential (and a commission). The wrongfulness of such conduct does not depend on whose agent he is; he may be liable to either side. Compare *Blandy v Bowden* (1932) 217 C 61, 16 P2d 993 (buyer's agent liable to buyer for fraud), with *Ward v Taggart* (1959) 51 C2d 736, 336 P2d 534 (broker posing as seller's agent liable to buyer for unjust enrichment). The theories of recovery are different, but the measure of damages in both situations works out the same. The general measure of liability for fraud is out-of-pocket loss (CC §3343), except that a principal defrauded by her agent may recover her benefit-of-the-bargain loss (CC §3333). *Walsh v Hooker & Fay* (1963) 212 CA2d 450, 458, 28 CR 16,22. A buyer who has paid more than the sellers were asking may have no out-of-pocket loss (if the market value of the house matched what she paid) but she does have a benefit-of-the-bargain loss equal to the excess over what the sellers would have accepted. She can thus always recover the spread from a broker who was her own agent or a dual agent. *Walters v Marler* (1978) 83 CA3d 1, 147 CR 655. But even if he was not her agent at all (*i.e.*, he was the sellers' exclusive agent), *Ward's* doctrine that he holds his secret profit as involuntary trustee for her

produces the same recovery. Punitive damages are still available and the broker is still precluded from deducting his expenses from the award.

The new law is not likely to change this outcome. It imposes on the broker a duty of utmost honesty toward one party and a general duty of honesty and fair dealing to the other in single agencies, and a duty of utmost honesty to both in dual agencies. Secret profits fall below either standard. (The secretly profiting broker might be liable to buyer and sellers at the same time. If both would have been willing to transact at \$100,000, but he persuaded the sellers to accept \$95,000 and the buyer to pay \$105,000, the sellers might recover \$10,000 from him, because they received \$10,000 less than what the buyer paid, and the buyer might make has the same point in reverse. Neither side's argument refutes the other. If the question is phrased in terms of what damages the broker's fraud has caused, rather than how his secret profit should be allocated, he may thus be liable for \$20,000. There is no special reason to limit a defrauder's liability to his profit.)

2. Nondisclosure of Defects

Buyers commonly sue brokers for not having told them about the property's defects-*i.e.*, conditions or facts relating to the property which adversely affect its value. Sellers also sue for undisclosed problems with property taken in trade or taken as security for the unpaid balance of the price. See, *e.g.*, *Schoenberg v Romike Props.* (1967) 251 CA2d 154, 59 CR 359. When the concealment is intentional, the theory is fraud; when unintentional, the theory is negligence.

Intentional nondisclosure by a broker in California and most other jurisdictions constitutes fraud on the buyer, even if the broker was not her agent. *Godfrey v Steinpress* (1982) 128 CA3d 154, 180 CR 95 (5 CEB RPLR 59 (Apr.1982)). The sellers would be liable to her if they had intentionally concealed facts materially affecting value, and so is a knowing broker, regardless of whose agent he was.

Liability for negligent nondisclosure to the buyer generally invites a distinction between buyer's and seller's agents. In most jurisdictions, the broker owes a duty of careful disclosure to the buyer only if he is her agent. Under such a rule, a selling agent's election to act exclusively as the sellers' agent could significantly reduce his responsibilities toward the buyer. In California, however, *Easton v Strassburger* (1984) 152 CA3d 90, 199 CR 383 (7 CEB RPLR 93 (June 1982)), imposes on the broker a duty of care to the buyer, regardless of whose agent he is. Civil Code §§2079-2079.5, which partially codify *Easton*, do not change this duty. Section 2079 provides that "[i]t is the duty of a real estate broker ... to a prospective purchaser of residential real property comprising one to four dwelling units ... to conduct a reasonably competent and diligent visual inspection of the property offered for sale and to disclose to that prospective purchaser all facts materially affecting the value or desirability of the property that such an investigation

would reveal if that broker has a written contract with the seller to find or obtain a buyer or is a broker who acts in cooperation with such a broker to find and obtain a buyer." One need not be a buyer's agent to owe this duty to her. The standard of care owed by the broker is that of a "reasonably prudent" broker. It is "measured by the degree of knowledge through education, experience, and examination, required to obtain a license" (CC §2079.2), but not by the nature of the agency relationship.

The new disclosure requirements for transfers of residential property (CC §§ 1102-1102.14) cover all brokers, regardless of whose agents they are. The statutory form (§ 1102.6) has one paragraph for inspection disclosure by the "broker representing seller" to be completed "only if the seller is represented by an agent," and another paragraph for inspection disclosure by the "broker obtaining the offer" to be completed "if the agent who has obtained the offer is other than the agent above." Thus both the sellers' agent and the buyer's agent must fill out the form (and make the inspection). A dual agent would surely have the same obligation.

None of this is changed by the new agency disclosure law. As for intentional nondisclosure, the broker has a duty "to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties." CC §2375. This is a *general* duty, not a fiduciary one, and is therefore owed by the broker to the buyer whether he is her agent or the sellers' agent (or a dual agent). (The language also includes those cases in which the broker actually knew of the defect and inadvertently failed to inform the buyer of it (negligent nondisclosure rather than simple negligence). The *Easton* duty to inspect and disclose defects found certainly includes the duty to disclose defects already known apart from an inspection.)

As for negligence, the law provides that "[n]othing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents...or to relieve agents...from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure." CC §2382. This leaves the *Easton* rule intact; the injured buyer may recover from a broker for negligence, regardless of whether he was her agent, the sellers' agent, or a dual agent. (Whether she could also recover from the sellers and a listing broker who was their exclusive agent for any fraud or negligence committed by the selling agent might depend on that broker's relationship to the sellers. If he had elected to be their agent or a dual agent, they may be liable for his wrongs under the principle of respondeat superior. See, e.g., *Ach v Finkelstein* (1968) 264 CA2d 667, 70 CR 472 (sellers' agent); *Johnston v Seargeants* (1952) 152 CA2d 180, 313 P2d 41 (cooperating broker). But it is considerably more difficult to make the sellers responsible to the buyer for the negligence of someone who was her agent rather than theirs. Correlatively, the sellers' rights of indemnity may be affected by the relationship they had to the

selling broker (*i.e.*, was he their agent exclusively or a dual agent?). See, *e.g.*, *Kruse v Miller* (1956) 143 CA2d 656, 300 P2d 855.)

3. Self-Dealing

In all jurisdictions a broker is prohibited from acquiring his principal's property for his own account without at least first disclosing his involvement. This prohibition is taken so seriously that the principal may recover against the broker for failing to disclose his involvement even if the price was fair. See, *e.g.*, *Bate v Marsteller* (1959) 175 CA2d 573, 583, 346 P2d 903, 909. But the bar does not apply to his purchasing land from someone who has not employed him as an agent. See, *e.g.*, *Caro v Savage* (1962) 201 CA2d 530, 543, 20 CR 286, 294. Being licensed as a broker does not prohibit one from buying and selling for his own account; it is only when he becomes agent for someone else that his dealings for his own account are restricted. *Abell v Watson* (1957) 155 CA2d 158, 317 P2d 159. (The same is true for a broker selling his own property; he may do so freely as long as he is not the agent of the buyer. *Anderson v Thacher* (1946) 76 CA2d 50, 65, 172 P2d 533, 541. As sellers' agent, the broker might be liable to the sellers for wrongfully competing with them, but that situation is much less common and raises entirely different issues.) The rule against self-dealing is not, therefore, a "general" duty; it is strictly fiduciary, being owed only by one who is agent for another.

Consequently, agency status will matter on this point. When the selling agent has elected to be the buyer's exclusive agent, the sellers may not be able to complain if he subsequently involves himself with the buyer without telling them (*e.g.*, if he loans his commission to the buyer to help her pay the price (see *Ziswasser v Cole & Cowan, Inc.* (1985) 164 CA3d 417, 210 CR 428), or simply goes in on the purchase with her or instead of her). Were he a dual agent or the sellers' exclusive agent, such activity would be automatically punishable, *i.e.*, he would lose his commission, his title to the property, his license, or all of these.

Of course, if it does make some difference what kind of agent the broker is, we will then need to determine how that affects what he must tell each principal (before he makes an election) about his potential freedom (after he makes an election) *not* to tell them about his own activities if he elects to work for the other side. There is no end to the unanswered questions this law can generate!