

Conflicts of Interest



In the Real Estate Transaction

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Conflicts of Interest in the Real Estate Transaction

What are the conflicts that you have had in a real estate transaction?

- 1.
- 2.
- 3.
- 4.
- 5.

The Most Common Conflicts to Consider Are:

I. Agency conflicts

A. Single agency conflicts

1. Representing Competing Sellers:

Listing two properties that are similar in nature and will attract the same buyer. What information can you share with the sellers? Can you advise one seller to do “fix-ups” to increase the potential of a sale without advising the other seller? Is there a conflict of interest disclosure in the listing agreement stating that the brokerage company could have other listings that might compete with this property regarding the procurement of a buyer.

What other issues could arise?

2. Representing Competing Buyers:

This is perhaps the most often occurrence in conflicts of interest.

Non designated agency offices: In these offices everyone represents each other's buyers...so if 2 or more agents are representing buyers looking for the same type of property...the entire company has a conflict of interest.

Designated agency offices: In these offices just the "Designated Buyer's Agent" has a conflict if they are working with more than one buyer looking for the same type of property.

Disclosure of conflict **MUST** be in the buyer's representation agreement.

"Other Potential Buyers": Buyer understands that other potential buyers may consider, make offers on, or purchase through, Broker the same or similar property as the Buyer is seeking to acquire. Buyer consents to Broker's representation of such other potential buyers before, during, and after the expiration of this Agency Agreement.

B. Limited Agency

1. Two conflicting duties: Confidentiality vs. Full Disclosure

The parties have been promised that you will preserve their confidential information, AND you have promised them that you will fully disclose ANYTHING that will help them make a decision on the price to offer or accept on a property, etc. How can you address this conflict?

2. Two duties that "go away": Undivided loyalty and Full Disclosure

Limited Agency "refers to a situation in which the licensee has agreements to provide services as an agent to more than (1) party in a specific transaction and in which the interests of such parties are adverse.

YOU MUST HAVE THE INFORMED CONSENT OF BOTH PARTIES TO ACT AS A LIMITED/DUAL AGENT.

13 Things I CAN do for you in a Limited/Dual Agency Transaction

1. Disclose all material defects about the property that are actually known to the agent
2. Treat both parties honestly
3. Provide helpful hints about the property and neighborhood to the buyer within HUD guidelines
4. To extent of their knowledge, respond accurately to questions concerning the property

5. Convey all questions Buyer has about the property to the seller and relay to the Buyer the Seller's answers in writing if possible
6. Disclose the ability of the buyer to buy and the seller to sell
7. Explain real estate terms and procedures
8. Assist with arranging property inspections by the property inspector of the buyer's choice
9. Explain closing costs/procedures
10. Help the buyer obtain financing information as requested
11. If requested and available, provide information about comparable properties so that the Seller and Buyer may make informed decisions regarding the price to accept or offer for the property
12. Assist with standard Purchase Agreement form
13. Work diligently to complete the sale of the property after the purchase agreement has been accepted

4 Things I CANNOT do for you in a Limited Agency Transaction

1. Disclose price the seller will accept, or the buyer will pay, for the property other than the listed price and the offered price
2. Disclose any terms that are not in the listing or purchase agreements
3. Disclose motivation of parties to buy or sell
4. Disclose anything that hinders the bargaining position of the parties

Without the clients' written consent!!

II. Personal Interest Conflict of Interest

A. Rules of Conduct

1. No broker or affiliate broker shall, either directly or indirectly through a third party, purchase for himself or attempt to purchase or acquire any interest in or option to purchase property listed with him or with his company, or property regarding which he or his company has been approached by the owner to act as broker, without first making a full disclosure of his true position to the owner of the property or to any prospective purchaser for which he has represented for as a client or customer. After acquiring any such personal interest, either directly or indirectly, the broker or affiliate broker shall make a full disclosure of his true position to prospective purchasers who tender offers to buy the property.
2. "All licensee shall identify themselves as a licensee when buying or selling property for themselves."

B. Code of Ethics:

Article 4

"REALTORS shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner's agent or broker. In selling property they own, or in which they have any interest, REALTORS shall reveal their ownership or interest in writing to the purchaser or the purchaser's representative. (Amended 1/00)

Article 5

"REALTORS shall not undertake to provide professional services concerning a property or its value where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties.

Article 6

“REALTORS shall not accept any commission, rebate, or profit on expenditures made for their client, without the client’s knowledge and consent.”

C. Law

“Not engage in self-dealing nor act on behalf of licensee’s immediate family, or on behalf of any other individual, organization or business entity in which the licensee has a personal interest without prior disclosure of such interest and timely written consent of all parties to the transaction”

D. Personal Interest Disclosure and Consent Form (see attached copy)

III. Conflicts in Contract Negotiations and Compensation Issues

A. Code of Ethics:

1. SOP 1-15 New 1/03

“REALTORS in response to inquiries from buyers, or cooperating brokers shall, with the SELLER’S APPROVAL, divulge the existence of offers on the property.”

2. SOP 1-6

“REALTORS shall submit offers and counter-offers objectively and as quickly as possible.”

3. Article 7

“In a transaction, REALTORS shall not accept compensation from more than one party, even if permitted by law, without disclosure to all parties and the informed consent of REALTOR’s client or clients.

B. Compensation Issues:

1. Variable rate commissions

2. Negotiating commissions in order to make the “deal” go together

3. Disclosure of discriminatory commissions to sellers and buyers to the transaction

IV. Conflicts in Material Fact vs. Non-Material Fact Disclosures

Adverse Facts...means conditions or occurrences generally recognized by competent licensees that have negative impact on the value of the real estate, significantly reduce the structural integrity of improvements to real property or present a significant health risk to occupants of the property.

Material...means any statement, representation, or fact relative to a transaction that would affect a reasonable person’s decision to enter into an agreement and which has been identified by such person as being of significance to a particular party;

A real estate licensee will further be subject to a cause of action for damages or equitable relief for failing to disclose adverse facts of which the licensee has actual knowledge or notice. ‘Adverse Facts’ means conditions or occurrences generally recognized by competent

licensees that significantly reduce the structural integrity or improvements to real property, or present a significant health risk to occupants of the property

Do the above statutes conflict?

A. Code of Ethics:

SOP 2-1 REALTORS shall only be obligated to discover and disclose adverse factors reasonably apparent to someone with expertise in those areas required by their real estate licensing authority. Article 2 does not impose upon the REALTOR the obligation of expertise in other professional or technical disciplines.”

B. Handling the release of information regarding stigmatized properties without causing a conflict with your client is an important issue which must be addressed with each listing and potential client.

V. Conflicts of interest in obtaining “confidential information”

Every real estate licensee shall maintain the confidentiality of any information received from you by the licensee prior to the licensee’s disclosure to you of a written agency or subagency agreement to represent anyone in a transaction to which you may be a party, except for adverse facts required to be disclosed.

A. Explain how to handle going on a listing presentation with a seller and NOT getting the listing, but yet you have a buyer client that would be the perfect buyer for the property.

B. Explain how to handle meeting with a buyer, obtaining information about them and then have them choose a different REALTOR to represent them on one of your listings.

C. What other conflicts could arise out of the obtaining of confidential information and how can those conflicts be resolved?

In Conclusion: There are conflicts of interests everywhere in the real estate transaction. Keep in mind that at all times, there isn’t a conflict if the parties involved have “waived” the conflict...ie allowed the disclosure of information. However, that disclosure should always be in writing.

Used to be Location, Location, Location NOW It’s Disclose, Disclose, Disclose!

Thanks for Coming!!

Conflicts of Interest Time Line

- 20 Minutes Conflicts Group Exercise**
- 30 Minutes Agency Conflicts of Interest**
 - Sellers**
 - Buyers**
 - Dual**
- 30 Minutes Personal Interest**
 - Rules of Conduct**
 - Code of Ethics**
- 10 minute Break**
- 30 Minutes Conflicts in Negotiations**
- 30 Minutes Material Facts**
- 10 minute Break**
- 30 Minutes Conflicts in Confidential Information**
- 15 Minutes Questions**