Practicing dual agency can be a costly experience

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Some licensees have found that practicing dual agency is a costly experience. Before you enter such a relationship be sure you understand the potential consequences.

Dual agency continues to be an important area of concern for licensees More than 37% of them recently surveyed by NAR stated that the issue is the basis of a significant number of current disputes, and over 44% placed the issue among their top three current issues. Forty-four percent of the survey respondents believe that the issue will increase in importance over the next two years, 54% ranked it among their top three potential future issues, and nearly 57% believe there is a significant need for training on Dual Agency. Vermont, like several other states, now prohibits dual agency altogether.

Twenty-two cases addressed dual agency issues in some manner. Liability was decided in 14 of those cases: nine cases ended in a determination that that licensee was not liable and five ended in a plaintiff's verdict. Several of these verdicts were substantial.

* Hawkins A dual agent added an "as is" clause to the purchase agreement without the buyer's concent. The jury returned a $62,641 verdict.

* Jenkins The seller's agent, acting as an undisclosed dual agent, signed a sales agreement for the sellers that contained provisions the sellers never agreed to, resulting in a $24,843 verdict.

* Maali A dual agent arranged the sale of a gas station, but the national franchisor refused to approve the transfer of the franchise agreement to the buyer. The agent's broker was found vicariously liable for the agent's conduct; the jury awarded $149,000 in compensatory damages and $50,000 in punitive damages.

* Martinez v. AFM Realtors of Am. The buyer wanted to purchase an apartment complex that was not subject to rent control, and the dual agent did not tell him the property was subject to rent control. The jury returned a $209,100 verdict.

One case, Sampson, ended in a substantial settlement. Ralph Sampson purchased a home for about $3.25 million with the understanding that it included sufficient land to build a pool and outbuilding. He later found out that he could not install a pool because the property already exceeded local "hardscape" limits. To obtain a variance for the pool, the plaintiff had to reduce the "hardscape" by replacing a paved driveway with cobblestones. There was no way he could obtain a variance for the planned additional building. A single broker represented both sides of the transaction, with different agents representing each party. The agent representing Sampson was dismissed; the agent representing the seller allegedly made the material misstatements of fact that induced Sampson to buy the property. The case settled for $450,000.

The bottom line is that misunderstanding your obligations while practicing dual agency can potentially cost you far more than the enhanced fee you were planning on.

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