

Submitted anonymously to CAARE

You (not including Realtors) Cannot Serve Two Masters

The Realtor Association and the residential real estate industry are apparently smarter than God – no matter which religion you practice. If you are a Realtor, you can serve two masters or even three or four. When you do, you make more money. In fact, brokerages stand to double their commissions. The rest of the biblical saying goes like this, “You cannot serve both God and money.” One Minnesota real estate firm has done more to destroy that biblical and legal principle and in doing so has put millions of consumers at risk.

For thousands of years the old precept that you cannot serve two masters (a basic principle in Christianity, Judaism, Buddhism and most others) has been an integral part of our ancestry. That principle still exists today and has been prescribed in legal systems around the world. If you hire a law firm, they will first conduct a conflict check to make sure that they do not (or have not in the past) represent(ed) any adverse clients to you. If such a conflict is found, the law firm will withdraw. Lawyers know that serving two masters (also called dual agency and designated agency) creates an insurmountable conflict of interest that is immensely harmful to their duty of loyalty to their clients. In addition, attorneys who practice dual agency could be disbarred or disciplined. It is usually impossible to provide a full disclosure to clients and to obtain their informed consent. There is simply too much that can and does go wrong and lawyers know this.

If law firms could engage in dual agency, firms would likely double in size and become much more profitable; they could represent both buyers and sellers in the same contract negotiations. They could represent husband and wife in divorce negotiations. They could even represent defendant and plaintiffs in the same lawsuit. Despite the potential for profit, the legal profession has refused to put the self serving interests of profit above their unfettered duty of loyalty to properly represent their clients.

It used to be illegal for Realtors to serve two masters. However, if a brokerage firm serves two masters they can collect twice as much in commissions. That money likely enticed one Minnesota firm to take a shot at it. Perhaps Edina Realty did a cost benefit analysis and determined that the financial benefits of serving two masters outweighed the cost of any lawsuit that might be brought. In 1993, that firm found itself on the wrong end of a class action lawsuit for engaging in dual agency that sent shock waves around the country. Every news story, except the Minnesota Star & Tribune, condemned the practice. Rather than stop the practice, the local Realtor Association successfully lobbied for the legalization of serving two masters (called “dual agency”). These laws have now spread all over the country and have allowed brokerage firms to grow to tremendous size while simultaneously leaving a trail of injustices and harmed clients. Realtors are now the only profession that can serve two masters. Realtors also have the least amount of training to engage in this practice. Most do not understand it.

“The disclosures and consents necessary to make a dual agency lawful are so comprehensive and specific that a typical real estate broker cannot undertake them as a matter of routine.” That was written by the William North, President of the National Association of Realtors in 1986. At that point in time, the Realtor Association and Mr. North appeared to have their priorities regarding

money and representation properly aligned. They embraced the basic principles of loyalty that existed for all other professions and fiduciaries: A fiduciary should place the interests of their client above all others, especially their own.

Recently, the same firm that blazed new trails in the destruction of the two thousand year old biblical and legal principal struck again. Their latest move demonstrates why the old legal and religious principle should be reinstated. Edina Realty intentionally limited the marketing exposure of their clients' homes by removing their sellers' listing data from two of the top visited homebuyer websites, Realtor.com and Trulia.com.

Homebuyers who are starting their search are most likely to start their search using an online resource such as Realtor.com (the number 1 real estate buyer website) or one of the other top 4 (including Trulia.com). Realtor.com actually gets their data updated daily directly from the Realtor owned Multiple Listing Service. Home buyers will no longer see most of Edina Realty's listings on those sites. That means homebuyers will not see Edina listings and Edina Realty sellers have lost huge marketing exposure of their homes. For out of state homebuyers who have never heard of Edina Realty, the likelihood that they will even see an Edina Realty listing in their search is even more remote.

Edina Realty is likely to be paid twice as much if homebuyers find their new home on Edina's website vs. one of the other online resources. Buyers who find their home on Edina's website will be directed to an Edina agent who also represents the seller. Those buyers will be forfeiting their right to negotiating advice. The dual agency (two master) rules prohibit the dual agent from helping the buyer negotiate price or terms (to help reconcile the conflict of interest). The same goes for sellers. If a buyer uses an Edina agent, the seller will forfeit their right to representation. Do Edina sellers understand that this new practice increases the chances that they will lose their advocate as well as decrease the market exposure of their homes?

In our opinion, Edina Realty is placing a bet that they will make more in double commissions than they will lose from reducing the marketing exposure of their sellers' listings. In other words, they will earn more in double commissions than is lost from the reduced number of sales and possibly lower sales prices. What is good for Edina Realty is not good for their sellers. Sellers do not stand to similarly benefit from this. Rather, the reduced marketing exposure could cause sellers' homes to remain on the market longer, cause them to sell for less, and at the same time cause sellers to lose the advice and counsel of their agent if an offer does come in. Unfortunately, most sellers will not figure this out.

If Realtors believe that everyone would be better off with a revision to the biblical standard about serving two masters, perhaps they could take it up with their theological professionals and see how their lobbying efforts succeed there.