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LETTERS TO THE EDITOR

Here's how I'd handle dual agency ...

Re: ['Time to let go of old thinking'](#) (Jan. 10)

Dear Editor:

I wish (Ms. Geffner) would ask me how I handle dual agency. My clients feel that I give them great general counseling before we make or accept an offer, so when it comes to the negotiation, I simply parrot each other's arguments to the other side, advocating only as much as I am told by either side. I provide information that is of public record. All other information is either legally required disclosure or information that I wouldn't know if I weren't representing a seller anyway.

I remind my clients that each of them has what the other side wants, and the best way to get what you want is to treat each other respectfully. The deals usually come together. It might be my manner of presentation, but my clients seem to really like the process and it is reflected in my written post-closing reviews. I think agents who have a problem with the truth might have a problem with dual agency. If so, I would suggest not going into dual agency.

Tim Westhoven
 A. A. Green Realty Inc.
 Bowling Green, Ohio

Re: ['Buyer agent's mistake comes back to haunt'](#) (Dec. 11)

Dear Editor:

This is a little harsh toward the buyer's agent, don't you think? True, a buyer's agent is expected to -

Real Estate Articles from Inman News

Ohio real estate agency sued for alleged kickbacks

Homeowners allege affiliated business arrangement funneled kickback fees

Tuesday, November 15, 2005

By [Janis Mara](#)
[Inman News](#)

A federal lawsuit has been filed against an Ohio real estate agency alleging that the company set up a sham operation to enable it to accept kickback payments for business referrals from Chicago Title, owned by Fidelity National Financial.

The lawsuit, filed Nov. 9 by Erick Carter and his wife Whitney Hayes-Carter, alleges that Welles Bowen Realty of Toledo, Ohio, set up an affiliated business, Welles Bowen Title Agency, to funnel kickbacks it allegedly received from Fidelity National Financial and Chicago Title Insurance Co.



The plaintiffs are seeking class-action status with the lawsuit, filed in U.S. District Court for the Northern District of Ohio.

[Affiliated business arrangements](#), or ABAs, such as the one targeted in this suit have come under national scrutiny in the wake of investigations into title insurance industry referral practices. In early July, First American Title [agreed to pay \\$680,000](#) in a settlement with the Department of Housing and Urban Development over a probe of alleged kickbacks involving such business partnerships.

ABAs are partnerships between real estate entities such as title insurance companies, mortgage lenders and real estate brokerages. The arrangements are legal under the [Real Estate Settlement Procedures Act](#), as long as certain guidelines are followed, such as disclosing the relationships to consumers. RESPA regulates referrals and other practices in the real estate closing process.

"RESPA says that while ABAs can be legal, you have to meet stringent requirements," said John Huffman, one of the attorneys representing the Carters. "You have to have a separate and discernable place of business. You have to staff it with employees who are actually performing the core title services. In this case, there's no evidence that Wells Bowen Title conforms to these requirements."

Kevin Smith and David Browning, the brokers and owners of Welles Bowen Realty, could not be reached for comment. The two told the *Toledo Blade* they dispute the lawsuit's claims and the title company has two employees who handle title business.

Fidelity National also did not return calls asking for comment.

The lawsuit alleges that Welles Bowen Title "is not a *bona fide* provider of settlement services as set forth in HUD Statement of Policy 1996-2, 'Regarding Sham Controlled Business Arrangements.'"

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The court papers allege that, 'the primary purpose of the existence of Welles Bowen Title is to permit Chicago Title and its owner, Fidelity, to pay kickbacks to the Welles Bowen Defendants in exchange for referrals of real estate settlement work.'

When the Carters bought their Perrysburg, Ohio, home, they were referred by their Welles Bowen agent to Welles Bowen Title for home-purchase closing services, the complaint said.

The two received a closing document indicating the title company was paid \$946.28 for title insurance, \$644 from the seller for title insurance, and \$25 from the seller for a title examination, according to the complaint.

The Carters allege that although Welles Bowen "did not conduct the title search, provide any closing services, or provide office space for the closing, it received approximately 70 percent of the funds applied to title charges on the Carters' HUD settlement statement," the legal papers said.

"All the work is done by – and this can be gleaned from the HUD settlement statements – Chicago Title, and there's no evidence that Welles Bowen Title does any of it," Huffman said.

According to the Welles Bowen Web site, "Welles Bowen Title Agency provides complete Property Title Insurance Products and Services...in conjunction with Chicago Title. The experienced staff of Chicago Title provides the title searches and the closing services for Welles Bowen Title Agency."

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- and should have -- knowledge regarding the neighborhoods their clients are looking at. This agent obviously lacked the neighborhood knowledge necessary to properly assist his client and now due to the disclosure error made by the listing agent the buyer is forced into fees and rules that the purchaser never wanted in the first place.

Assuming the agent did research the comparables in the MLS before writing the purchase offer he should have been able to easily identify the HOA posted on other listings. Finding out the answer to an HOA question should be pretty simple. Still, the fault here is with the listing agent. The listing broker should have listed the HOA name, contact, rules, amenities and fees into the MLS to assist buyer agents and buyers themselves. Listing agents are also responsible for ordering resale packages from the HOA. This resale package details among other things what the fees and obligations are to the HOA. The purchaser has the right to read this packet with a full three-day right of contract rescission prior to closing unless the purchaser signs a release that the resale package isn't available. It sounds like the listing agent didn't order this package and the seller never had the opportunity to review this packet during escrow.

If I were the seller I'd be upset with my agent and with the listing agent, too. If I were the buyer's agent, I would contact the listing agent and try to work something out to compensate the owner's inconvenience. If the listing agent doesn't want to cooperate, I'd file a complaint to the board regarding the HOA resale package. It is the listing agent that caused this chaos by not knowing the property he listed.

Greg Salera
Realtor
Burke, Va.

The Carters are seeking damages equal to three times the amount of any charges paid by them or others, along with legal costs.

Huffman said it is likely that other plaintiffs will join the lawsuit.

Send tips or a Letter to the Editor to janis@inman.com or call (510) 658-9252, ext. 140.

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