



Minn. survey reveals attorney concerns over UPL, AfBAs, dual agency

A Minnesota-based consumer group conducted a survey of real estate attorneys in November that revealed some grave concerns attorneys in that state have regarding how conflicts of interest among service providers may have played a role in the mortgage and real estate crisis in the United States.

Consumer Advocates in American Real Estate (CAARE) surveyed nearly 100 attorneys attending the Nov. 14 Minnesota Continuing Legal Education Real Estate Institute concerning their views on dual agency, affiliated business arrangements and the unauthorized practice of law among real estate agents.

“While a lot of attention is being focused on multi-billion dollar Wall Street firms that gambled and lost on risky debt, we believe a huge underlying cause that has yet to receive as much rightful blame for this catastrophe is the real estate industry,” the organization said this week in releasing the results of the survey. “We believe conflicts of interest and self dealing have eroded the foundations of the residential real estate industry to the lasting detriment of consumers, many of whom now find themselves dispossessed of their most important investment, their homes.”

CAARE set out to establish real estate attorney views on the affect of certain common practices in the real estate industry on the consumer.

Regarding referral practices, the organization asked if real estate agent selection of service providers is likely to result in diminished safeguards.

Ninety-seven percent of the attorneys said they believe that real estate agents are more likely to select service providers who are not deal killers; 86 percent believe agents will chose a provider that has as its motivation the safeguarding of the real estate agent’s commission rather than the transaction; and 93 percent said they believe if the real estate agent chooses the service providers, important safeguards are likely to be diminished.

When asked if they believed it was appropriate for real estate brokerage firms to engage in affiliated business practices with loan companies, 82 percent said they believed it was not appropriate with mortgage lenders and 81 percent said it was not appropriate to have such arrangements with title agents.

“The real estate industry claims this creates ‘cost savings’ for the consumers but it is our belief that it is nothing more than a way to sell more property, more easily, with the principal

benefit going to the realtor and his so-called ‘partners,’” said Doug Miller, executive director of CAARE.

Miller also suggested that independent service providers can be penalized by real estate agents for not “looking the other way” to avoid disclosing something that might kill a deal.

“If any one of these service providers discovers something that might negatively impact the sale, sale price, or mortgage origination, he can be cut off from future business by a spiteful real estate agency,” Miller said. “Of course, nowhere is this found in writing, or in explicit company policy. However it is implicit, and it is thoroughly understood by everyone who works at these firms. What kind of motivation is that to do a good and thorough job? And whose interests are being protected?”

The survey also asked the attorneys to agree or disagree with the following statements:

- A broker abuses their statutory supervisory responsibility when they encourage their agents to sue the broker’s affiliated business arrangements, with which 84 percent agree or strongly agreed.
- Since the broker controls the real estate agent’s compensation, that relationship creates inappropriate pressures to steer clients to the broker’s affiliated business arrangement, with which 88 percent agreed or strongly agreed
- Disallowing AfBA practices would result in a real estate marketplace that is more competitive and more in favor of consumers, with which 92 percent agreed or strongly agreed
- AfBAs and service provider selection practices eroded the checks and balances in real estate and contributed to the current meltdown, with which 84 percent agreed or strong agreed

The survey also asked attorneys several questions about dual agency.

- 79% said they believe current education and training is inadequate to understand and manage dual agency
- 85% believe dual agency disclosure forms do not do an adequate job of disclosing conflicts of interest
- 57% believe dual agency should be prohibited

“While real estate brokers were not the single cause of the real estate crisis, widespread practices (or malpractices) within the real estate industry have been a leading contributor,” Miller concluded.