



Consumer Federation of America

The Agency Mess

**Home Buyer and Seller Confusion and Costs
Related To Diverse and Poorly Enforced State
Laws about the Role and Responsibility of Real
Estate Agents**

**Stephen Brobeck
Senior Fellow**

January 14, 2019

For many years, a large majority of home buyers and sellers have worked with real estate agents.¹ Most consumers believe that these agents always or almost always are required to represent the interests of the home buyer or seller with whom they are working. In a national survey undertaken in October 2018, one-half (50%) percent of 1,004 respondents said “yes always” in response to the question: “Do you believe that real estate agents are required to represent the interests of the home buyer or seller with whom they are working?” An additional 16 percent said, “yes almost always.”²

Yet, real estate agents often are not required by law to represent the interests of the buyer or seller with whom they are working, and many do not.³ In reality, there are a number of different types of relationships allowed in most states between real estate agents and their clients.⁴

- Single agent: The agent works solely for the client and has fiduciary responsibility. A fiduciary agent is “obligated to procure the greatest advantage to his client.”⁵
- Designated agent: The agent is recruited by the listing agent to work with a buyer and has fiduciary responsibility to that buyer.
- Subagent: The agent works with the buyer but has fiduciary responsibility to the seller.
- Dual agent: The agent somehow is expected to represent the interests of both the seller and buyer in a home purchase.
- Transactional agent: The agent works with both buyer and seller to facilitate a sale but has no fiduciary responsibility to either party.

Many consumers do not understand these terms and their differences. In the October 2018 survey, consumers were also asked: “Today if you sell or buy a home, your real estate agent may be acting as a single agent, a designated agent, a dual agent, a subagent, or a transactional agent. Do you understand the differences between these different types of agent roles and their implications for home buyers and sellers?” Fifty-five percent of consumers said that they did not understand these differences and their implications.⁶

This report discusses consumer confusion about agent representation, the sources of this confusion, how the confusion harms consumers, and how law reform and better enforcement could reduce the confusion. It also provides advice to home sellers and buyers about how to protect themselves given diverse and poorly enforced state laws on agency.

Proximate Causes of Consumer Confusion

This lack of consumer comprehension has been noted by journalists, as well as academics, and reflects a number of factors.⁷ Several relate to the way these laws specify agent roles and responsibilities.

- Diversity and complexity of state laws: The most thorough analysis of state laws identified 24 different types of state agency laws based on only three criteria – role, default position,

and other-party duties.⁸ Many laws, for example, presume that an agent functions as a fiduciary while others presume that the agent acts as a facilitator. Other criteria, including how the agent relationship is disclosed – orally or in writing, using a standard form or not, and the timing of the disclosure -- further differentiate these laws.

- Differences in terminology in law and practice: For example, different laws and industry practice identify an agent, who works with both buyer and seller with fiduciary responsibility to neither, as a “transactional broker,” “transactional agent,” “transaction coordinator,” “transaction licensee,” “facilitator,” or “intermediary.” And terms can mean different things in different states.⁹ For instance, “designated agent” can refer to an agent designated by the listing agent to work with the buyer, or to an agent designated to work with either seller or buyer by the broker.

Other factors relate to the ineffectiveness with which these agent roles and responsibilities are disclosed to consumers.

- Most states require some consumer disclosure of the roles and responsibilities of agents. But these disclosures: may be only required orally; may not require the use of a standard form; and may not be required at an early stage in a home purchase.¹⁰ Several states allow disclosures to be made at the end of the purchase during the closing, long after the seller or buyer has begun working with an agent.¹¹
- These disclosures have not always been conscientiously made by agents. According to one survey of home buyers, more than one-third (34%) were either unsure that they had signed an agency disclosure form or sure that they had not signed one.¹² Other research suggests that timely disclosure was made much less frequently.¹³
- State real estate commissions are responsible for enforcing these laws but rarely make it a priority. In fact, a recent survey revealed that fewer than half of these commissions (19) provide consumers with information about agent roles and responsibilities on their websites.¹⁴

Still other factors relate to the position and priorities of home buyers and sellers.¹⁵

- Most buyers and sellers, particularly first-time buyers, have little knowledge of the role and responsibilities of agents. The infrequency with which they buy or sell homes provides little experience from which to draw on.
- Consumers are understandably much more focused on selling or purchasing a house than on the legal responsibilities of a real estate agent. In the case of those who are selling and buying at the same time, consumers are usually preoccupied with temporally matching the sale and the purchase, thus avoiding the need for either an interim rental or the carrying of two mortgages.

Structural Conflicts That Underlie This Confusion

A brief history of agency illuminates the structural conflicts that underlie the complexity of state laws which result in consumer confusion and related costs.¹⁶ Basically, a real estate agent can act as

- a fiduciary of their client with legal responsibility for representing and advancing the interests of a home buyer or seller,
- a fiduciary only of the other party in the transaction, typically the seller, or
- as a fiduciary of neither party.

Most importantly, a fiduciary agent for a seller seeks to help the seller find a buyer who will reliably and timely purchase a house for the highest sale price. Conversely, a fiduciary agent for a buyer seeks to help the buyer purchase a desirable house for the lowest sale price. Accordingly, no agent can act as a true fiduciary for both a seller and buyer of the same house. Furthermore, serious questions can be raised about whether a fiduciary agent can effectively represent a home seller when the buyer and seller are represented by fiduciary agents from the same company.

However, to maximize business opportunities, many agents desire to represent both seller and buyer in the same transaction, allowing retention of the full commission. Moreover, almost all agents are willing, indeed are often incentivized, to work with an agent from the same firm on opposite sides of the transaction. Thus, serious potential conflicts of interest, including breach of confidentiality, are built into the current fiduciary agency system.

These conflicts are less serious in a system where agents work not as a fiduciary with significant responsibility to a buyer or seller, but as a facilitator with much less responsibility to both a buyer and seller. A home sale system effectively based on facilitatorship has existed in Great Britain and several Commonwealth countries. Here, estate agents, though hired by sellers, usually function as facilitators who list properties but also work with potential buyers. This system has limitations and problems yet, largely because only one agent is involved, is more economically efficient than one based on fiduciary relationships.¹⁷ This greater efficiency allows commissions that usually range from one to three percent of the sale price and, according to one consumer group survey, recently averaged 1.4 percent in England.¹⁸

The evolution of a US system based on fiduciary relationships partly reflects historic societal and legal differences between the US and England. Regardless, when the seller and buyer have separate fiduciary agents in a home sale, it is easier to justify much higher commissions than in a system in which one agent facilitates a sale.

The US industry wanted to ensure a system that functioned smoothly, with good cooperation between listing and buyer agents, and one which allowed individual agents to work with both parties in a sale. But the industry was also mindful of the potential and real conflicts of interest that such a

system would create. In the 1970s, NAR’s chief legal counsel proposed and successfully persuaded NAR members to adopt a solution in which all agents, even those working with buyers (as subagents), would be fiduciaries of sellers. While subagency had been widely practiced for many decades before this time, now the NAR formally and explicitly adopted it as the basis for all relationships between its members and its customers.¹⁹

This subagency system greatly clarified relationships for agents and also allowed them to work with a buyer and seller in the same transaction as well as with agents from their own firm. However, it did not permit home buyers to have a fiduciary relationship with an agent. A new group of agents (“exclusive buyer brokers”) did emerge that worked exclusively with buyers as their fiduciary agents. Yet, partly because of discrimination by other agents,²⁰ they had difficulty surviving, and only a handful still practice today.²¹

More effective opposition to the subagency system was mounted through litigation, criticism by the Federal Trade Commission, consumer group opposition, and press exposure. By the mid-1990s, the NAR abandoned its strong defense of this system and worked with local industry groups to find alternatives. A large number were approved by state legislatures. Almost all of these state laws permitted a variety of consumer-agent relationships – single agency, designated agency, subagency, and transactional brokerage. Statutes in 43 states (including DC) also permitted disclosed dual agency. Though the eight remaining states prohibited dual agency, they also allowed individual agents to work both with a buyer and seller in a transaction.²² Typically, the agent representing the seller was required to inform the buyer that they would help facilitate the sale but not provide fiduciary representation.²³

An increasing number of states permitted transactional brokerage in which agents act as facilitators not fiduciaries. That option was not supported by the NAR, which feared that consumers would expect to pay lower commission levels. This fear was supported by the NAR’s own survey which found that 72 percent of sellers believed that facilitators should receive lower commissions than fiduciary agents.²⁴ But many agents and their local organizations thought that avoiding dual agency problems related to conflicts of interest and related consumer complaints, and lawsuits, were more important issues. Twenty-five states now permit transactional brokerage, with a number of the 25 considering it to be the default relationship between agent and customer.²⁵

How This Confusion and Related Conflicts Harm Consumers

Consumers are harmed by the current agency system both because it is rife with conflicts of interest and because, as noted above, these conflicts are not clearly disclosed to or well-understood by consumers.

Depending on the local area, between about 10 and 20 percent of all home sales involve only one agent who works both with seller and buyer.²⁶ In many instances, the agent signs an agreement with the seller to provide fiduciary representation then, if the agent finds a buyer, persuades the seller to agree to dual agency. The seller, fearing the loss of a sale, agrees to give up fiduciary representation. In doing so, the seller no longer has a champion seeking the highest sale price. Agents also have a strong financial incentive – retaining the entire commission – to promote the sale to those buyers who will work directly with them. These buyers are not necessarily those who are willing and able to make a timely purchase at the highest price.²⁷ For instance, to retain the entire commission, an agent listing a home would be sorely tempted to persuade the seller to accept an offer of \$290,000 from a buyer with whom they could work directly, rather than an offer of \$300,000 from a buyer working with their own agent.

In this situation, the buyer also often does not fare well. Listing agents do not always make it clear to buyers who contact them, even when there is a dual agency disclosure, that they are effectively facilitators to buyers, providing no fiduciary representation. In early January 2019 as a potential buyer, a CFA researcher called 30 listing agents, selected randomly in eight local markets, to learn whether the agents would discuss the issue of representation. Nineteen of the 30 agents indicated they would work with us but said nothing about representation. Another four agents alluded to the representation issue but stated or implied they could provide representation. Only seven agents stated or implied that they could not represent us. In sum, more than three-quarters of the agents called addressed the representation issue inadequately. Moreover, several of the agents asked us what we were willing to spend on a house.²⁸

Less egregious but still troubling is the practice of designated agency.²⁹ An agent acting as a fiduciary to a seller finds a buyer then recruits another agent, typically from the same firm, to act as their agent. The designated agent, however, may feel somewhat beholden to the listing agent, who has provided a source of income, with the result that the buyer may well not receive as adequate representation as the seller.³⁰ Also, there are increased opportunities for breach of confidentiality affecting either seller or buyer.

Designated agency is just one manifestation of in-house sales, about 20 percent of all home sales, where company agents work with buyers and sellers in the same transactions. To expand their sales and income, firms desire in-house transactions and provide incentives to encourage these sales. These incentives range from favorable commission splits to bonuses to referrals to preferred treatment in the office to in-house praise and recognition. The incentives (which also act as disincentives to work with agents outside the firm) encourage agents to show and promote the listings of the company.³¹ But the incentives bias and limit the range of potential buyers of the property and also the property options effectively available to home buyers.³² Given the fact that nearly all firms have a minority of all home listings in an MLS area,³³ a buyer with an agent promoting in-house listings is less likely to purchase the MLS-listed property that they would consider to be the most desirable in terms of both price and quality.³⁴

One would expect that, given industry trends, the percentage of in-house sales would grow. First, there is growing concentration within the industry. As one recent article (titled “Merger Mania”) put it: “With pressure to stay competitive in an uncertain market, real estate firms (big and small) are scrambling to buy each other up at record rates.”³⁵ Second, as home buyers increasingly undertake their own property searches using real estate portals like Zillow, a higher percentage are likely to contact listing agents and work with them directly rather than through their own fiduciary agent.³⁶

The current agency system and related consumer confusion also play a key role in keeping commissions at a relatively high level. The typical commission of 5-6 percent is based on the assumption that two fiduciary agents, one working for the seller and the other for the buyer, will split this commission. Yet, this is not the case when agents work as a facilitator to both parties (or as a fiduciary to one party and facilitator to the other). Twenty-five states now permit transactional brokerage, and in a number, this brokerage (facilitatorship) is defined by state law as the default relationship between consumer and agent. In Florida, the law does not even require that this relationship be disclosed to buyers and sellers.³⁷ Since facilitators have less responsibility and liability than a fiduciary agent, they should be compensated at a somewhat lower commission level. But we could find no evidence that facilitators are ever paid lower commissions than fiduciaries. The industry itself has been mum on this issue.

One factor mitigating conflict of interest somewhat is the strong interest of all parties in a home sale. Sellers want to sell, buyers want to buy, and most agents only receive compensation after a sale. This interest tends to moderate the desire of sellers to receive the highest price, the desire of buyers to pay the lowest price, and the willingness of fiduciary agents to push for either.³⁸ This factor helps to explain the lack of conclusiveness of research on whether sellers or buyers tend to benefit from in-house sales.³⁹ It also helps explain why a number of state agent groups broke from the NAR to champion transactional brokerage. Transactional agents face fewer conflicts of interest, have less related legal liability, and have more flexibility to negotiate sales than do fiduciary agents. Notwithstanding, in states where transactional brokerage is the default option, because some consumers want representation, agents still act as fiduciaries for a number of customers.

Needed Public Policy Reforms

In theory, there are two opposite ways of minimizing these conflicts of interest. The first is to completely separate listing and buying (called “selling”) agency. One group of agents, and their firms, would work only with sellers while another group would work solely with buyers. That would simplify and clarify agency relationships, and would increase the chances that real competition over agent commissions took place. Agents would not be able to collude with each other to prop up relatively high commission splits because buyers would compensate their own agents directly.

Conversely, these conflicts would also be minimized by greatly accelerating the trend to “transactional brokerage.” If all agents worked as facilitators, the system would evolve toward the system in countries with estate agents. Despite problems and dissatisfactions with this system, it is less costly to consumers who pay commissions in the 1-3 percent range.

Realistically, however, we do not see either of these alternatives as practicable in the US in the foreseeable future. An influential industry, weak regulators, and distracted consumers make it unlikely that the agency system will be drastically altered. But there are opportunities to sort out the current mess of agency and non-agency relationships to make it much easier for consumers to understand these relationships and how they can be beneficial. Pursuing these opportunities would also improve agent understandings and also reduce the risks of consumer complaints and lawsuits. Significant improvements would likely occur if:

- Dual agency was prohibited. And agents should not be permitted to alter their role as fiduciary agent or facilitator during the course of the transaction.
- There was a clear written and verbal communication from agent to consumer at the first substantive contact about whether the agent will function as a fiduciary to buyer or seller, or as a facilitator. This role should be disclosed both to the seller and buyer when the agent works with both parties.
- The written disclosure form should be developed by states in consultation with industry and consumer groups. It should be as simple as possible, use common language, and not be in small print. The new Massachusetts disclosure form, adopted in 2017, meets these criteria and should receive consideration as one model. There would be a great benefit, given consumer mobility and consumer use of national information sources, if all states adopted the same form (or given differences in state laws, similar forms).
- States must make an effort to enforce implementation of the disclosure requirements. Given extensive industry participation in state real estate commissions, this implementation would be much more effective if strongly supported by the NAR and affiliates.⁴⁰ Absent that, state attorneys-general should be asked to take the lead on enforcement.
- In states permitting designated agency, regulators should develop or strengthen rules to minimize conflicts of interest.⁴¹
- As transactional brokerage spreads – and it is now well-entrenched in a few states – it becomes even more important that states approve certain basic duties required of all agents, such as the disclosure of known material adverse facts and reasonable care to non-clients.⁴²

Advice to Consumers on Agency

Consumers should be aware that, given intense competition among agents for clients, they have a great deal of influence on the agent-customer relationship before signing an agreement. Consumers should ask the agent whether the agent will be solely representing their interests (i.e., acting as a

fiduciary) throughout the entire home purchase process. They should also ask the agent for a completed form that discloses this relationship.⁴³

Home sellers should request that the agent represent their interests *throughout the sale of the property*. If they choose to work with an agent who is unwilling to do so, they should:

- ask for a reduction of the commission by one percentage point if another agent is involved, or by two percentage points if no other agent is involved (i.e., the agent ends up working for both buyer and seller),
- be cautious about disclosing the minimum sale price they would accept for their home, and
- consider hiring an attorney who will look out for their interests during the sale.

In addition, to ensure the greatest exposure to potential buyers, sellers should insist that their home be immediately listed on the local MLS.

Home buyers should be aware that many agents will not be willing to act as their fiduciaries. If they still wish to work with these agents, they should request a clarification as to the role of the agent – as a subagent (and fiduciary) to the seller or as a facilitator acting as a fiduciary neither to them nor to the seller. If their agent is not a fiduciary, buyers must be very cautious about disclosing information about the highest price they are prepared to pay for a property. They should also consider employing an attorney who will represent their interests during the sale.

¹ According to the National Association of Realtor (NAR) 2017 Profile of Home Buyers and Sellers, 89 percent of home sellers and 87 percent of buyers worked with an agent.

² The survey was undertaken by ORC International for the Consumer Federation of America on the weekend of October 20, 2018. Respondents were representative of the U.S. adult population. The margin of error was plus or minus three percentage points. The findings of this survey are not inconsistent with those of a Federal Trade Commission (FTC) survey in the early 1980s, when almost all buyers worked with subagents to sellers. Nearly three-fourths (74%) of these buyers believed that the agent with whom they were working represented them when the agent actually represented the seller. FTC, *The Residential real Estate and Brokerage Industry: Los Angeles Regional Office Staff Report* (1983).

³ This paper uses the term “agent” to refer to the real estate professional working with a consumer. Technically, agents refer to professionals who report to brokers, who also often work directly with consumers. But this agent-broker distinction is not material to consumers.

⁴ Though somewhat dated, the definitive study of agent roles and responsibilities remains: Ann Morales Olazabal, “Redefining Realtor Relationships and Responsibilities: The Failure of State Regulatory Responses,” *Harvard Journal of Legislation*, v. 40 (2003), 65-132.

⁵ Royce de Rohan Barondes and V. Carlos Slawson, “Examining Compliance with Fiduciary Duties: A Study of Real Estate Agents,” *Oregon Law Review*, v. 84 (2005), 692.

⁶ Given responses to the question on agent fiduciary responsibility and academic research on the “cognitive bias of illusory superiority,” it is likely that the percentage of Americans who do not understand different agent roles is higher than 55 percent.

⁷ See Inman News articles by Matt Carter, especially, “‘Are You My Realtor?’ Consumer Confusion in Agency Laws” (February 14, 2012).

⁸ Olazabal, *ibid.*

⁹ State laws define transactional broker to refer to different groups of agents, with at least one state allowing this broker to serve as a fiduciary to a home seller. Olazabal, *loc. cit.*, 88-90.

¹⁰ According to a 2009 study, three states require only verbal disclosures; 26 states do not provide a standardized form; and 14 states do not require early disclosure. Jonathan A. Wiley and Leonard V. Zumpano, “Agency Disclosure in the Real Estate Transaction and the Impact of Related State Policies,” *Journal of Real Estate Research*, v. 31(3), Table 6.

¹¹ According to Olazabal (*loc. cit.*, 115), California, Georgia, Idaho, and West Virginia permit agency disclosure as late as “before an offer is made.”

¹² NAR, 1999 Buyers and Sellers Profile.

¹³ In a 1997 Massachusetts Office of Consumer Affairs survey in which examiners posed as homebuyers, none received an agency disclosure form from any of the largest 45 real estate firms in the state. June Fletcher, “New Rules: What Agents Won’t Tell You,” *Wall Street Journal* (march 13, 1993), B12.

¹⁴ Consumer Federation of America survey of state real estate commission websites (October 2018). Most state real estate commissions, and the departments in which they are housed, do not see providing consumer education as an important function. As is apparent from their websites, these commissions exist primarily to license and regulate relationships among agents and brokers.

¹⁵ For a discussion of consumer vulnerabilities, see: Stephen Brobeck, Consumer Federation of America Comments Submitted at the Department of Justice-Federal Trade Commission Workshop on Competition Issues (June 5, 2018).

¹⁶ The most detailed discussion of this history is found in Olazabal. A more recent informative overview is: Matt Carter, “From Subagency to Non-Agency: A History,” *Inman News* (February 17, 2012).

¹⁷ See article on “Problems with Buying and Selling a Home” on the Citizen Advice website. Also, Graham Norwood, “How to Avoid Problems with Estate Agents,” *Independent* (November 2006).

¹⁸ July 2018 survey by TheAdvisory reported in an article on “Estate Agent Fees and Contracts” found on the Which? website.

¹⁹ See Carter, “From Subagency to Non-Agency,” and a document written by NAR general counsel William North, “Agency, Facilitation and the Realtor,” noted by Carter.

²⁰ Realtor discrimination against exclusive buyer brokers is documented in: Patrick Woodall and Stephen Brobeck, “Nontraditional Real Estate Brokers: Growth and Challenges,” *Consumer Federation of America* (December 2006).

²¹ NAR’s 2011 Member Profile found that 10 percent of Realtors said they worked exclusively with buyers. Matt Carter, “Dual Agency and ‘Double-Dipping’ Still Risky Business,” *Inman News* (June 11, 2016). A portion of these 10 percent certainly represent the increasing number of newer agents in large firms who are being assigned the role of working solely with buyers in order to avoid dual agency issues. See comments from the Vermont Real Estate Commission Chairwoman reported in: Matt Carter, “The New Agency Laws of Real Estate,” *Inman News* (February 14, 2012).

²² The eight states prohibiting dual agency are Alaska, Colorado, Maryland, Texas, Florida, Kansas, Oklahoma, and Vermont. Peter Gerardo, “Dual Agency Can Cost You,” *The Mortgage Reports* (Mary 10, 2018).

²³ Carter, “From Subagency to Non-Agency,” *ibid.*

²⁴ This 1993 survey was cited by: Barondes, “Examining Compliance with Fiduciary Duties,” *loc. cit.*, note 60.

²⁵ Carter, “From Subagency to Non-Agency,” *ibid.* Olazabal reported that in Alabama, Oklahoma, New Mexico, Pennsylvania, and Tennessee, transaction brokerage is the default position. Today, this is also the case in Florida and Colorado.

²⁶ Carter, “Dual Agency and ‘Double-Dipping’ Still Risky Business,” *ibid.*

²⁷ Dual agency has received criticism not only from regulators, consumer advocates, and consumer litigators but also from many members of the industry itself. An *Inman News* survey of 500 agents and brokers found that more than half (58%) said that a single agent representing both seller and buyer in a transaction was either “unacceptable” or “not desirable.” Carter, “Dual Agency and ‘Double-Dipping’ Still Risky Business,” *ibid.*

²⁸ Agents called listed homes priced between \$200,000 and \$500,000 in Bath, ME; Arlington, VA; Myrtle Beach SC; Clayton, MO; Minneapolis, MO; Reno, NV; Dallas, TX; or Seattle, WA. To their credit, several of the agents who said they could not represent us explained why and criticized the concept of dual agency.

²⁹ For recent research on this subject see: Lu Han and Seun-Hyun Hong, “Understanding In-House Transactions in the Real Estate Brokerage Industry,” *RAND Journal of Economics*, v. 47 (2016), 1057-1086.

³⁰ Some critics, however, call the practice of designated agency “legalized fraud.” See page titled, “Designated Agency – Is it Fraud?” from the website of the Consumer Advocates in American Real Estate (CAARE).

³¹ Han and Hong, *ibid.* CAARE, “Designated Agency – Is It Fraud?”, *ibid.*

³² This complaint was made recently by consumer plaintiffs against Houlihan Lawrence, one of the largest real estate firms in the New York City area. Josh Barbanel, “Lawsuit Accuses Westchester Real Estate Firm of Conflict of Interest in Home Sales,” *Wall Street Journal* (July 18, 2018). The complaint itself alleges that the firm routinely paid agents an additional five to ten percent bonus when buyers purchased in-house listings. See amended complaint in *Goldstein v. Houlihan/Lawrence Inc.* filed October 1, 2018 in the New York State Supreme Court.

³³ REAL Trends, 2017 Market Leaders. Jason Beck, Frank Scott, Aaron Yelowitz, “Competition and Market Structure in Local Real Estate Markets,” published online (August 23, 2012).

³⁴ Some also believe that firms increasingly utilize “pocket listings” – which are not immediately listed on the local MLS – to increase in-house sales. But in a buyer’s market, sellers are likely to object to this practice. Patrick Kearns, “Why is Everyone Talking About Pocket Listings?” *Inman News* (June 15, 2018).

³⁵ Rich Bockmann and E.B. Solomont, “Merger Mania,” *The Real Deal* (July 1, 2018).

³⁶ NAR, 2017 Profile of Home Buyers and Sellers.

³⁷ Carter, “New Agency Laws,” *ibid.*

³⁸ See discussion by Brobeck, “Written Comments,” *loc. cit.*, 9-10.

³⁹ See Han and Hong, *ibid.*, and summary of research, “Buyer and Seller Beware: Your Agent May Not Represent Your Best Interests,” published in *Inman News* (February 24, 2012).

⁴⁰ The great influence of the industry on state regulation is discussed by: Patrick Woodall and Stephen Brobeck, “State Real Estate Regulation: Industry Dominance and Its Consumer Costs,” *Consumer Federation of America* (July 2006).

⁴¹ At minimum, these rules should require written approval by home buyers and strict prohibitions on sharing confidential information. This is the general approach taken by many large law firms that, not infrequently, represent clients with opposing interests. See for example: Lisa A. Dolak, “Recognizing and Resolving Conflicts of Interest in Intellectual Property Matters,” *IDEA – The Journal of Law and Technology*, v. 42 (2002), 453-480.

⁴² See discussion by Olazabal, *loc. cit.*, 100-110.

⁴³ More specific, and very helpful advice for home sellers and buyers is provided for free on the website of the Consumer Advocates in American Real Estate (CAARE).