



**Home Buyers Best Realty LLC  
and  
Tom Wemett  
Present:**

**Conflict Free**

**The concept of eliminating conflicts  
when representing home buyers.**

# "Conflict Free"

## What Does It Mean?

A traditional real estate company has inherent conflicts of interest built into their business model. They are representing sellers AND representing buyers and often times trying to represent both in the same transaction. The larger the real estate company the more potential for these conflicts of interest. To be "conflict-free" you need to work with a real estate company that truly does have the best interests of home buyers only and that has built their business model around that concept. See below how Home Buyers Best Realty LLC operates a "conflict-free" business dedicated to home buyers only.



## Conflict of Interest #1

### Representing a Buyer and a Seller in the Same Transaction

It has long been understood that someone can't serve two masters. Agents owe fiduciary duties to their clients, whether the client is a buyer or a seller. One of these duties includes "Undivided Loyalty" - meaning, "The client's sole interest comes first and above all others, including the agent's (and the real estate company's interest)". So when a buyer client of a real estate company wants to buy a property which is also listed by the same real estate company, the duty of "Undivided Loyalty" is compromised. The real estate company can't serve both masters, the buyer and the seller, in this same transaction.

Why? Because buyers and sellers have conflicting needs. The buyer wants the lowest price and best terms in their favor and the seller wants the highest price and best terms in their favor. Hence, a conflict of interest between the buyer and the seller. Of course, the real estate company would like to get both sides of the commission, so they have sought out and obtained special legislation in most states allowing them to compromise their fiduciary duties but to hide the real truth by burying it deep in an agency disclosure that buyers have difficulty understanding or that is never presented to the buyer in a timely fashion.

## Conflict of Interest #2

### **The R.E. Company Gets a Double-Dip & the Agent Gets a Bonus**

This is a huge conflict. The Real Estate Company, and the Agents involved, stand to make more money if they are able to put a deal together between the buyer and the seller. If an in-house transaction takes place the real estate company gets a "double-dip", getting both sides of the commission, and often the real estate agents are paid a higher commission split for closing an in-house deal as a reward. Don't you think that also might negatively impact the agents role in representing your best interests? Where does their "real" loyalty lie? Will they work hard to get the best deal for you or will they encourage you to accept something less? Some traditional real estate companies brag about having 30-35-40% of their transactions being "in-house" and many real estate firms rely on the "in-house" transaction to stay in business.

## Conflict of Interest #3

### **Representing Two Buyer Clients on the Same Property**

Another conflict comes when a real estate company represents two buyer clients negotiating on the same property. Attempting to represent both a buyer and seller client at the same time is a pretty obvious conflict of interest. However, rarely is the conflict of representing two buyer clients on the same property disclosed. Recently such a situation in New York State made it into the court room. Two buyer clients of the same real estate company made offers on the same property. One buyer lost out even though their offer was \$5,000 higher. He sued the real estate company for a breach of their fiduciary duties. Clearly it is a conflict of interest to attempt to represent two buyer clients on the same property. Each buyer wants to get the best deal possible and not get into a bidding war due to the real estate company also representing another buyer they are bidding against.

NYSAR, the New York State Association of Realtors, filed an Amicus Curiae ("In support of") brief in support of the real estate company. NYSAR and NAR (the National Association of Realtors) wield great political power and in this case apparently influenced the judges decision. In part the Judge's decision read, "As the New York State Association of REALTORS, Inc. (NYSAR) points out in its amicus brief, in today's real estate marketplace buyers are routinely represented by buyer's agents, and real estate licensees are commonly affiliated with mega-brokerage firms featuring multiple licensees and offices. Indeed, NYSAR avows that numerous brokerage firms in New York have more than 100 or 200 - and, in three cases, more than 1,000 - affiliated licensees. Would-be buyers are very well aware that they are competing with other potential buyers, including those represented by other agents affiliated with the firm that they have retained."

Does that make sense to you? Yes, would-be buyers are very well aware that they are competing with other potential buyers. That is the nature of the real estate market. However, when a buyer hires a buyer agent they certainly wouldn't expect that other buyers of the firm would be bidding on the same property driving up the price they would pay if they were the successful bidder. Law firms have a "conflict checking system" in place to eliminate such conflicts of interest from happening. Real estate firms could also. Or, at least they should inform the buyer of this potential conflict. As a result of this court case, it appears that "buyer-beware" is more the case as real estate companies are being told that they don't have to disclose this as a conflict.

A recent addition to the Capital Region Multiple Listing Service, Inc's (a subsidiary of GCAR - the Greater Capital Association of Realtors) "Exclusive Buyer/Tenant Agency Agreement", states in Paragraph 6. Additional Clients: "Client understands that other potential buyers may consider, make offers on or acquire through Broker the same or similar properties as Client is seeking to acquire. Client consents to Broker's representation of such other potential buyers before, during and after expiration of this agreement." No mention of a conflict of interest. Merely an attempt to put you on notice that other buyers of the real estate company may compete with you on the same property. The conflict of interest still exists - you just aren't made aware of it.

#### Conflict of Interest #4

### **Buyer Agency Agreement "Renegade" Clause**

This is a clause in a buyer agency agreement that allows the real estate company to lower the fiduciary standards and "renege" to a lesser form of representation, automatically, without giving you the option of getting out of the agreement and finding full representation elsewhere. Or, if you do want out, you may still owe a commission or other reimbursement to the real estate company. You should be able to walk away from the real estate company if they can't fully represent you. You are entitled to full representation. Generally you are paying a price that includes the real estate commission for both sides of the transaction. Shouldn't one side be fully representing you? You are, after all, paying for it.

#### Conflict of Interest #5

### **Buyer Agency Agreement "Protection Period" Clause**

The real estate company will want you to still pay their commission in the event you purchase a property that was shown to you, or *that you were made aware of*, by an agent of the company during the term of the agreement for a certain number of months after the agreement terminates. I've seen these protection periods go as long as 12 months. So, in other words, if you were made aware of a property or saw a property with someone from the real estate company and didn't buy anything and your agreement terminated, you would still owe that company a fee even though you bought it through someone else or direct from the seller months later.

#### Conflict of Interest #6

### **Property Owned by Another Buyer Client of the Company**

It would be a conflict of interest for a real estate company to represent you as a buyer on a property that is owned by another buyer client of the real estate company. The buyer client who is selling wants the highest price and best terms for the sale of their home. You as the buyer client who is buying wants the lowest price and best terms for you when you buy the home. Your needs and the needs of the other buyer client when selling their home conflict. The real estate company also has confidential information about both clients further increasing the conflict as they would know how low the buyer client with the house to sell would go and probably how high the buyer client seeking to buy the home would go. Thus the real estate company can't provide full fiduciary duties to either client without releasing one or the other from further representation.

## How is Home Buyers Best Realty LLC Different?

When I formed Home Buyers Best Realty LLC I did so around a business model of eliminating conflicts of interest for home buyers only. By representing home buyers only and never representing sellers, nor writing listings or marketing homes for sale, we have eliminated the conflicts of representing both a buyer and a seller in the same transaction and having the incentive to compromise our fiduciary duties to either one or both of the seller and buyer in order to make more money, as well as any need for a “renege” clause (**Eliminating Conflict #1, #2 and #4 noted above**).

I also decided to have an “Office Policy With Respect to Conflicts of Interest” and communicate that policy to buyers *before* they became our clients. For example, we will not represent two buyer clients on the same property. We will negotiate on behalf of the first buyer client who expresses an interest in a particular property and exclude any other buyer clients from negotiating on that property as long as the first buyer client is still involved in it (**Eliminating Conflict #3 noted above**). If the second buyer is still interested in negotiating a deal on the property we will release them from our agreement and they are free to pursue it on their own or with another agent. So how do we know if two buyer clients are competing on the same property? We have a “conflict checking system” in place whereby our agents check a database first to see if any other clients are negotiating on a particular property. If they aren’t, the agent registers the property and client information.

We also have no so-called “Protection Period”. Either you trust us and appreciate that we are involved in representing your best interest or you don’t. If you don’t and you want to pursue the purchase of a property through someone else or directly with the seller you are free to do so. We allow our clients to cancel our agreement at any time for any or no reason (**Eliminating Conflict #5 noted above**). We only want to work with buyer clients who trust us and who want to work with us and with whom we want to work. We also have the right to terminate our agreement if we don’t think we are the right buyer agent and consultant for you.

Another one of our office policies is to not represent a buyer client who is interested in buying the home that another one of our buyer client’s has for sale. The buyer client who is selling wants the highest price and best terms for them. The buyer client who is buying wants the lowest price and best terms for them. Hence the conflict and our policy of not representing the client who wants to buy the home, even though we don’t take listings and aren’t representing the buyer client on the sale of their home. We would release the buyer client who wants to buy the home and let them pursue the property directly or through another agent or real estate company (**Eliminating Conflict #6 noted above**).

Any time we release a buyer client from their agreement with Home Buyers Best Realty LLC, the client has no further obligation to us. Our belief is that people are good and that they will operate in good faith and thus not attempt to take advantage of us by terminating in order to cut us out of a commission. In most cases, the buyer would be at a big disadvantage for doing so as our experience and skills consulting, negotiating and overseeing of the transactional details are unparalleled in the real estate business. We are very good at what we do and our clients appreciate the results as evidenced by the referrals and introductions they make for us to their friends, family and others they care about.

I sincerely hope that this discussion has been helpful. There is much more for you to explore at [www.home-buying-action-guide.com](http://www.home-buying-action-guide.com). Check it out and when you are ready contact us. We would be happy to discuss further with you how our “conflict-free” home buyer only services can benefit you and your family.

Tom Wemett Founder - Home Buyers Best Realty LLC